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Speech

OF

THOMAS A. JENCKES,

OF PROVIDENCE,

UPON THE

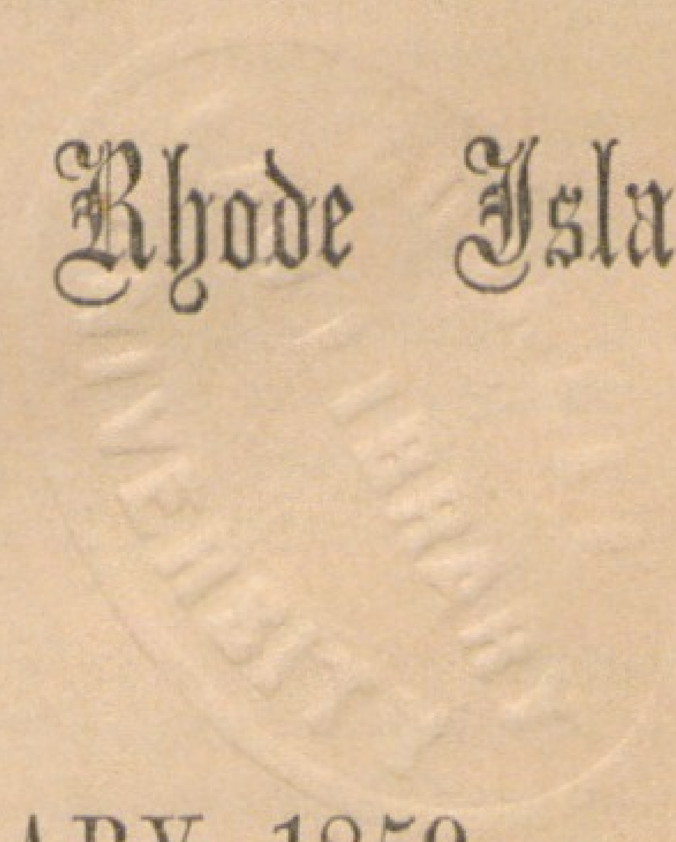
Resolution to Annul the Decree of the Supreme Court,

IN THE CASE,

IVES VS. HAZARD ET AL.,

DELIVERED IN

The House of Representatives of Rhode Island,



ON THE

23D AND 24TH DAY OF FEBRUARY, 1859.

[REPORTED BY WILLIAM HENRY BURR.]

PROVIDENCE:
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SPEECH.

The subject before the House was the following Report and Resolution; the question being upon the passage of the resolution :—

To the Honorable the General Assembly at its January session. A. D. 1859.

The undersigned, a special committee appointed at the present session of the Legislature, to consider the petition of Charles T. Hazard, for a rehearing by the Supreme Court, and of George H. Calvert et al. in relation to the same, and praying this honorable body to restrict and limit the equity powers of said Supreme Court, as well as the petition of Mumford Hazard for relief in relation to certain real estate, which he claims should have been properly deeded and conveyed to him by Robert H. Ives, as also certain acts in relation to the powers of the Supreme Court, beg leave respectfully to report:

That they recommend the petition of Mumford Hazard be continued to the May session of the General Assembly, and that said petitioner cause the said Robert H. Ives to be notified of the pendency of the same, in conformity with the statutes.

Your committee also recommend the passage of the accompanying acts, entitled "An act in amendment of Chapter 164, Title XXX. of the Revised Statutes—Of the Supreme Court," and "An act entitled an act in amendment of Chapter 176, Title XXVI. of the Revised Statutes—Of Actions."

Your committee further report that they have carefully investigated the facts and record evidence in the case "Robert H. Ives vs. Charles T. Hazard," upon which a decree was issued by the Supreme Court at its March term, A. D. 1856, and in the opinion of your committee, said court, in said case, exceeded the legitimate equity powers conferred upon them from time to time by this General Assembly; and that said decision and decree was and is contrary to the spirit and intent of our institutions, as well as opposed to a proper construction of the letter af our laws.

Your committee, therefore, recommend the passage of the accompanying resolution, entitled "A Resolution, in relation to a petition of Charles T. Hazard asking a Jury Trial."

Your committee coincide fully and unqualifiedly in the report of the special committee, appointed at the January session of the General Assembly, (a copy of which accompanies this report,) in relation to the powers and abilities of this General Assembly under the constitution, to wit: "That in instances where the court have exceeded the power conferred upon them, or have exercised those powers in an oppressive or an unauthorized manner, the General Assembly has the undoubted right, and is in duty bound to rectify such abuse of power, either by ordering a new trial, or in such other manner as will promote the ends of justice."

Your committee find, on comparing the published report of the case, Ives vs. Hazard, included in the fourth volume of Rhode Island Reports, with the original bill in equity, and the opinion and decree of the Supreme Court rendered in said case, that in the said original bill and the opinion and decree rendered thereon, there is no alledgement or charge of breach of trust or fraud as agent of said Ives, against said Charles T. Hazard; whereas in said report of said case, reference is made to a supposed agency on the part of said Hazard for said Ives, and your committee also find that a report of the case, Ives vs. Hazard et al., from the fourth volume of Rhode Island Reports, was annexed to a published statement of said Ives in relation to said case, some six months before said fourth volume of reports was published and ready for distribution.

Your committee, in their report, have confined themselves exclusively to a distinct and plain statement of the recommendations which they make, and the conclusion to which they have arrived, without attempting to eliminate or argue their views upon the subject properly brought before them. They are aware of the magnitude and importance of this investigation to all the people of our State, and of the necessity for judicious and thoughtful legislation in the premises.

All of which is respectfully submitted.

CHARLES C. VAN ZANDT, Chairman.
JOHN GOULD,
BERIAH H. LAWTON,
WILLIAM A. PEARCE.

A Resolution in relation to a petition of Charles T. Hazard, asking a Jury trial

Resolved, That in assuming equity jurisdiction in the case of Robert H. Ives vs. Charles T. Hazard, upon which a decree was issued by the Supreme Court at its September term, 1856, that said court exceeded the authority conferred upon it by the General Assembly, and that the equity proceedings in said case should be wholly amended, revoked and annulled, and the complainant left to seek his remedy before a court of common law, in con-

formity with the requirements of the constitution and laws of this State.

Mr. Jenckes addressed the House as follows:

PREFATORY REMARKS.

In entering the House, Mr. Speaker, at this late day of the session, I do not find it, according to its usual custom, engaged in discussing important questions of internal policy, statute laws, measures to promote the prosperity of the State, or any of the subjects embraced in the ordinary sphere of legislation. I find it absorbed in the discussion of a proposition which affects the private rights of individuals who are not here present by virtue of any process known to the law, and in debating abstract theories of legislation and constitutional law which affect the fundamental principles of government. I find this body, to my surprise, and I must say to my sorrow, not discussing this question in a spirit that would be commended by good men, but in a spirit of satire, of sarcasm, of personal allusion and vindictive aspersion; which never, within my experience, has been indulged in before either branch of this Assembly. I find that the discussion is mixed up with stories concerning law suits and probabilities of success in law suits; and that questions in constitutional law, to which parties should always bring calm and clear minds and honest purposes, are discussed in the spirit in which a case would be litigated in a county court.

I am happy to say, Mr. Speaker, that in the severe exercises in another forum, which have taxed my abilities during the time this Assembly has been in session, I have had neither the time nor the inclination to become mixed up with the feelings that have been manifested here. I bring to the discussion of this question, the knowledge which I acquired of it long before it ever entered the General Assembly; in the course of my business as counsellor at law, and in my studies in the practice of the law.

I shall endeavor, in what remarks I have to offer upon the matter now before this House, to exclude entirely, not only from my consideration, but from my recollection, everything I have seen in the newspapers, as reported to have been uttered upon this floor, which in any way impugns the motives of parties, or which brings into this arena, questions which are foreign to it. I am aware that the House is weary of this discussion, that it is exhausted in argument and illustration; but as is it my right, so it is my duty to inform this body, if I may, what thoughts I have upon this subject, and of the facts and course of reasoning which have brought me to the conclusion which I shall express.

I do not, Mr. Speaker, fear the result of this discussion. I have seen this House and our State agitated before by questions of law, of fact, of government and of politics, when even the existence of the government was threatened; and I never yet knew this Assembly, after having given full and fair consideration to all sides of the subject, and all views that were offered upon it, to come to an incorrect conclusion. I have that confidence in this House and in this people now; I know their intelligence and their honesty, and I know and feel that if a subject is fairly and properly presented before them—if they are brought to look at the origin of our government, at the principles which regulate it, the manner and the spirit with which it should be administered—their conclusions will ever be correct.

I do not regret that the principles of government are thus brought into the arena of political discussion. I think it is well that the people should know and understand them; that the maxims of constitutional law should be as household words among our people; so that no one should say that he has not had the means of knowing what they are;—has not at least had placed before him the history of the manner in which those maxims have heretofore regulated the governments of free Republics.

In what I have to say, I may, and necessarily must, repeat many things that have been said, and perhaps better said, by those who have preceded me. I shall do so as briefly as I may. I cannot trust that this House will understand my views, unless I do state them in the manner and order which are necessary to show the conclusions at which I have arrived. But in doing so, I shall endeavor to state them in as plain and direct a manner as it is possible for me to do. I shall not attempt the style of ambitious eloquence, which is reported to have been heard here,—which I certainly could not imitate, and never hope to equal; but I shall use plain words to express well considered ideas, and I beg the attention of the House whilst I do so.

THE FACTS OUT OF WHICH THE IVES AND HAZARD CASE ORIGINATED.

Mr. Speaker, what is the origin of this inquiry? No matter whether it be a law suit; no matter whether it be a controversy, that never has vexed the courts; no matter how insignificant the fact may be; if it appears here in this Legislature and demands and commands the attention of its members, it is worthy of investigation. I do not propose to overlook it. I think that it is well, that it is best, to look at the fact exactly as is. It is never wise to dispose of sophistries and of errors inconsiderately, but the best way to have the truth known and respected, is to present it fairly: then it will be welcomed and the specious guises of its counterfeit will be swept away.

It seems from the first authentic document we have before us in a printed form, which is the report of the proceedings of the Supreme Court of this State, that, in the year 1851, there lived a man in Newport by the name of Hazard, and a man in Providence by the name of Ives, who had some conference together concerning a piece of real estate. Neither of them owned this real estate. Both of them, it seems, had set their eyes upon it with some view of purchase. It matters not whether it was for one or the other; whether Mr. Hazard wanted it for himself, or Mr. Ives for himself. This authentic report states the sum of of the evidence between them to this effect; that Ives authorized Hazard to make an offer of a certain sum of money, $10,000, to the owner of that

land, for the purchase of it for himself; that was in 1851. It does not appear from that report whether between Nov. 1851, and May 1852, these parties had any other conference concerning it; it rested on that offer and authority. But in May, 1852, the parties again met, Hazard informs Ives that he had purchased the estate, and taken the title to himself; that he did not purchase it for $10,000, the amount he was instructed to offer, but that in his own right and for his own purposes, he had increased the offer five per cent, and the owner had taken it. Thereupon, further conversation ensues, and that further conversation entirely did away with the respective position of the parties, whether as principal, or agent, or otherwise, that existed before that time; because, then, Hazard had become the owner, and Ives did not choose to change his character as purchaser.—Ives then renewed the proposition to purchase, to the then owner Hazard; they conferred about it; they had some talk, as buyers and sellers always will, and the result was, the naming of a price for the land by the owner. Whether it was a price by way of "*bluff*," as the gentleman from Smithfield would assert and argue, or whether it was for actual sale, is of no consequence: it was a price, absolute and unconditional.

It seems that the price was agreed to. If it was offered at so much above the market price, that the offerer did not believe it would be accepted, no one could know that but himself; it was in the secrets of his own mind; it was an offer and it was accepted. The parties' minds met upon the subject matter of a trade and the consideration of a trade, and it was reduced by writing by one party, and signed by the other. It matters not, Mr. Speaker, I have not heard it stated or alluded to, but there seems to be an idea prevalent, that it does matter whether a contract is written with a pen, upon gilt-edged paper, or with a burnt stick on a barn door, so long as it has any legible characters, so long as it is signed by the party to be bound by it. The common law knows no distinction; nor does it matter whether the party who signs it, writes his name in full, or makes his mark, or a character which shall stand for his name; if it is his signature, that which he is accustomed to use in his business transactions, he is just as much bound by it as if it was written in the neatest hand upon the finest paper.

This contract was written and signed, and the parties separated; the one who had agreed to purchase, with the consciousness that he had now made a complete trade; the one who had sold, with the consciousness and satisfaction that he had made $4,500 by the operation, in the short interval of seven months or less.

They parted. The next communication is from the seller, wishing to avoid the execution of this contract. This is protested against. The matter remained in protestation; for it could not have been executed at that time, as the contract called for the delivery of the farm on the 25th of the subsequent March, and did not call for the payment of the money, until that day, the end of the year, as it is divided by farmers.

But it seems it did not remain in protestation alone on the part of the seller. He undertook to sell this land to others; and thereupon, and before the time for the execution of the contract, the party purchasing makes application to the courts for relief. He commences a suit in equity in the Supreme Court, in the county of Newport; he cites the defendant to answer; he makes application for a preliminary injunction, to restrain this man from doing anything inconsistent with the contract; the party is cited to respond to that application, and he does respond; he appears by counsel, and both parties are heard under oath, as they may be under such an application; the injunction is granted until the merits of the controversy shall be finally determined.

THE LAWSUIT HAD A FULL AND FAIR HEARING AND DECISION.

Thus a litigation is commenced, in the usual and regular forms of law, before the highest court known in this State, for the purpose of ascertaining what the rights of these parties may be. It appears from this record, that both parties went on with more than the usual speed of a court of equity, and prepared the cause for final hearing; that able, industrious, astute counsel were employed on both sides; that all the evidence was procured and taken regularly, which could be procured or which was then known. It appears that both parties had a full hearing before that court, by consent, in this court house, in the county of Providence; but that immediately after the hearing, one of the judges resigned, and another died, so that but one was left who had heard it, who, under the law, could not enter a decree. Of course that hearing went for nothing.

The bench was again filled up, there was a new chief justice and a new associate justice. Then, in order that there might be no dissatisfaction, but that each party should be fully heard without let, hindrance or stint in his argument, it was agreed that both parties should argue the case in writing, and they did so. They submittedto the court full printed arguments, raising and discussing every question of law and fact that could possibly be raised upon that record. Those arguments fill a volume. I do not know that they have been exhibited before this Assembly. I think they amount to some 200 pages; and having examined them myself, I know that, on the part of Hazard, every authority in every law book which was accessible in this State, relating to the questions in issue, was cited and commented upon; and that upon the other side there was equal industry; so that when our Supreme Court sat down to deliberate on the merits of this controversy, they had before them the suggestions of the ablest minds upon those questions of law and of fact; all that learned lawyers and judges in this and other countries had said and written; and there was no light known in the jurisprudence of the civilized world, that was not brought to bear upon the merits and decision of this cause. There has been no cause within my experience, in these Courts, in which there was more full discussion, both by the coun-

sel and Court, to ascertain the precise merits and justice of the controversy, than in this one.

That court determined that the defendant, Hazard, had made a contract; that it was clear and definite in its terms, and subject matter; and after due consideration, that there was no defence open on the equity side of the court, which of course includes all defences that may be resorted to on the law side, which would justify his violation of the contract; that as matter of *conscience* between man and man, —for that is the high ground of a court of equity,— dealing together with respect to their property, the defendant was bound to execute that contract. The law gave the court the power to compel the execution, and they decided that it should be executed. The cause lingered along, as such causes always must, to settle the details before a master. Both parties were heard there. The amount to be paid, the deductions to be considered, were all brought in and adjusted; the master's report was made, and a final decree entered upon it; the deed was executed; the title of the property passed from Hazard to Ives, and the money passed from Ives to Hazard; Ives entered and took possession of the land and enjoyed it, and does still, if he has not sold it.

And that, Mr. Speaker, was the end of this litigation. It has been the end of thousands of similar cases before. After the cause is heard and finished, the decree entered, execution ordered, and the money paid, there is nothing left of it. The cause itself is only known by the monument that is erected in our books, by way of report, to show what was decided; and its epitaph is there written in the marginal note of the reporter, to show the point upon which the case turned. The case itself had gone to its grave; the party defeated enjoyed that inalienable right which defeated parties always have, of grumbling at the court and the decision. The winning party simply took what the court decreed to be his own, subject to the loss, of course, of the expenses of the litigation. The defendant submitted with the bad grace that litigants always do; and there the cause would have rested in its grave, if it had not fallen into the hands of the resurrectionists, who have brought it forward,—not merely for the purposes of dissection, to ascertain the cause of its death, whether it was rightly decided or not; but they have carried the dead body through this State, as a scare-crow, to frighten men from their propriety of conduct, and to carry the idea that there is something wrong and rotten in the institutions of the State, instead of in the decaying corpse which they are thus exposing.

Thus, Mr. Speaker, I have stated the facts, without bringing into this statement, anything that thas been controverted at the hearing, or in the reports. I state merely what this record shows has been found to be correct and what the papers in the case before this Legislature now show.

THE COMMITTEE DO NOT REPORT THAT THE CASE WAS ERRONEOUSLY DECIDED.

Some four years after the hearing, without any notice to the parties, upon mere petition, the whole matter is brought up for some sort of consideration and action in this Assembly; and we have before us here, the second authentic document in this discussion, and that is the petition of this defendant Hazard, and the report of the special committee upon it and other matters.

Now, there is one thing that I wish to call the attention of every member of the House to in this report, that now lies upon members' tables. *The justice of this decision upon the merits of this controversy, is nowhere impugned.* I read from the report of the last special committee.

"Your committee further report, that they have carefully investigated the facts, and record evidence in the case of Robert H. Ives, against Charles T. Hazard, in which a decree was issued by the Supreme Court, in its March term, 1856; and in the opinion of your committee, said Court in said case," —did what? decided it wrongfully upon the merits of the controversy? Not at all!—"said Court in said case, *exceeded the legitimate equity powers* conferred upon them by this General Assembly; and that said decision and decree, was and is contrary"—to what? the evidence in the case? Not at all! "To the spirit and intent of our institutions, as well as opposed to a proper construction of the letter of our laws!"

I ask the gentleman from Newport, (Mr. Van Zandt,) or any other man now upon this floor, to point to anything in the documents before this House, which goes to show or tends to prove, or ventures to assert, that the Supreme Court made an incorrect decision upon the merits of that controversy. I have carefully read the debates as reported, I have read all these documents with more than ordinary care, and I have not yet been able to find the phrase that intimates such a conclusion. Well, then, where are we? These things, Mr. Speaker, are landmarks in this discussion; the authentic report made by the Court, based upon the documents which lie upon your table, and the reports of all these special committees.

We are then entering into this discussion, and shaking the foundations of the jurisdiction of our courts and of the constitution, upon a private cause between two litigants, in which it is conceded that the defeated party has no merits. If there had been the least ground for asserting that the Court had decided wrong, no doubt some ingenious advocate of that side of the cause would have produced and stated it; but the signatures are appended to no such statement. Those signatures and statements will remain on record. The justice of their conclusions will be criticised, not only by us who sit here now, but by those who shall follow us. But what they say in debate, must be answered now, and disposed of here; and I shall endeavor to do so when I come to another part of the discussion.

WHAT HAZARD'S DEFENCES WERE.

If, then, it is not pretended upon these papers that this defendant had any merits, where is it so pretended? In looking through the reports of the speeches that have been made upon the other side, and in listening to what has been said this morning, I have endeavored to find the place, to put my finger upon the proposition upon the facts

of this cause which they aver has been erroneously determined by the court. I do not find it. I hear and read that Mr. Hazard took three defences in this case—that he, or those who speak in his behalf, think that there are three defences open to him in the courts of this State or in whatever court or whatever body may assume jurisdiction over the matter. I have not heard of more than three; if I do not state these three with perfect accuracy, I ask the gentleman who argues the other side of this matter to correct me.

1. That when Hazard signed the memoradum after the conversation with Ives on the 28th of May 1852, he made it a condition of the validity of that contract, that he should be able to procure the assent of his wife to it.

2. That in signing his name to that paper—conceding it to be a contract, or memorandum of one—he was the subject of such surprise in the act of signature, that that should have discharged him from the obligation.

3. That he should not be held bound by that paper because it did not bear annexed to it the name of Robert H. Ives, signed by Mr. Ives, binding him to that bargain.

It became my duty, Mr. Speaker, in the course of my profession once to examine this cause. That fact has been alluded to by others, or I never should have alluded to it myself. After the first decree in the case had been entered, and while the petition for a re-hearing of the cause was pending in the Supreme Court, I was requested to examine the pleadings, evidence and arguments, with a view to the presentation of the cause anew to the court for a re-hearing and reversal of that decree. Upon an examination of the pleadings, evidence and arguments then in the cause, and all that was known concerning it, I felt bound, in performing my duty to my client as a counsellor at law, to say to him that there was no proposition of law or of fact contained in the record which I could expect to maintain before that or any other court with any hope of success. I accordingly returned him his papers and declined to argue it. I state now, therefore, what I have not acquired the knowledge of for the first time, but that which I acquired in the course of my business, when, if I could have formed a favorable opinion, and could have stated to my client that he could present an argument to the court which would have convinced it of its error, it would have been highly beneficial to me, in every sense, to have done so.

Now, Mr. Speaker, with the exhumation of this cause, we find it here accompanied by other statements and other evidence than that which the court had. I will take, in the examination I make of it, as a starting point, the opinion of the court, and see if anything has been adduced in the recent discussion which should shake its conclusions; and whether everything that has not heretofore been produced does not go to show the justice of its conclusions and decree.

THE CONSENT OF THE WIFE WAS NOT A CONDITION OF THE CONTRACT.

Take for instance, the first point, that the consent of the wife was to be obtained as a condition of the validity of the contract. That was a distinct matter of defence. It is not pretended that there is an allusion to any such condition upon the face of the paper itself. It is sought to be imported and interpolated in that paper from preceeding and subsequent conversations. Now this being a distinct matter of defence, not responsive in anyway to the allegation that he made and signed that paper as a contract, it became incumbent upon the person who made it, to prove it. I do not suppose that there is any one, however he may favor the proposition before this Assembly, who intends or expects to alter the rules of evidence. I do not think there is any one who sits here, who is to vote on this case, who believes, if it should ever be presented anew in a court of this or any other country under the common law, that the rules of evidence are to be altered to suit any emergency or exigency in it.

Now there is no better settled rule of evidence than this, which is not controverted nor dared to be controverted by any person at all skilled in the law, that if a man sets up a separate and independent defence, he must submit some evidence of it in order to have it believed and have effect. On this point the court say:

"We do not find in the case, *any legal evidence* to prove that there existed any such condition in the contract between the parties."

Well, where was *there* any evidence legal or illegal? I have searched this record through. I have read through all these pamphlets, and I do not find the suggestion of any such evidence, or that there existed any living witness who could testify to that fact. Then what does it amount to? Nothing. It is merely the imagination of the party,—of the defeated litigant,—nothing else.

Before adverting to any of these pamphlets, permit me to state the manner in which I consider they are here. I find in the report of one of these committees that it is stated that pamphlets were submitted to them upon both sides; one written, or purporting to be written, by Thomas R. Hazard on behalf of the defendant, Charles T. Hazard; one by Robert H. Ives on his own behalf; and a subsequent one, (also by Thomas R. Hazard) which it must be presumed, has had some effect upon the report they have made. I consider these as containing the arguments of the counsel, by the statement and admissions in which the parties are bound.

HIS WIFE WAS WITH HIM WHEN HE MADE THE CONTRACT.

Now, concerning the matter of the condition of this contract, there is a great deal written in each of these pamphlets. In one of them, the first and longest, the allegation is dwelt upon through pages with very indignant eloquence, that this was necessarily a condition. And with what face? The argument of the pamphlet is, "How could Hazard have met his wife *on his return home*, had he, regardless of her advice and wishes, contracted with Ives, during her absence, to sell the

roof from over her own and their childrens heads, and that too on the condition that she should sign away her right of dower?" Does not that carry the idea, is it not intended to convey the idea on the part of Hazard, that while he was negotiating with Ives in Providence, his wife was at home in Newport; that he had no opportunity to consult her, and that necessarily he must wait until he had done so before he could determine upon this contract? Has any man that ever read that pamphlet ever drawn any other inference from the language used? It is not possible to draw any other. And yet, mark Mr. Speaker, how, in the exigencies of this controversy, the truth will appear.

Now, here is a second pamphlet, a second argument purporting to have been written by the same person in the interest of the same party, treated as an argument bythe committee.

Mr. Van Zandt.—I would state, with the gentleman's permission, that the second pamphlet was not offered to the committee and they never had it in their hands.

Mr. Jenckes.—It is laid upon our tables, and I take what is in it as coming from the same hand, advocating the same cause, and as an admission by which the party is bound. Now, I find in it a letter from Thomas H. Rhodes to somebody, probably to the author of the pamphlet, stating facts which the writer of it seems to think pertinent to this question of condition. I will take the liberty of reading it.

Extract " Letter to Robert H. Ives," pamphlet, *p*. 26.

" Mrs. Charles T. Hazard came to my house and dined, sometime between the later part of May and the first part of July, or near the season of boarding, to the best of my recollections. Mr. Hazard was in the city and was expected by her to come to my house, but not coming, I walked to the steamboat with her. It being near time for the boat to start, we walked quick. As we approached the boat, Mr. Charles T. Hazard with Mr. Robert H. Ives were standing near the plank on board the boat. Mr Ives was writing with a pencil on what appeared to be a memorandum book or other paper. We passed in by them, and I left Mrs. Hazard on board; it being about time for the boat to start, I passed immediatily out by Messrs. Hazard and Ives, who being very busy, I did not speak to either of them, and walked towards the bridge on West Water or Dyer streets, I think without stopping. Before reaching the bridge I was overtaken by Mr. Robert H. Ives who walked and conversed with me as we passed along. This occurred when I lived in North Main street, where I resided in the fall of 1850, and about three years subsequent. I think Mrs. Hazard stated that she came to Providence to make some arrangements for the boarding season. THOMAS H. RHODES."

Providence, Nov. 22, 1858.

Now, in all the early suggestions and discussions of this matter before this legislature, and since the decree of the court, it has been industriously circulated, and every man's mind has been impressed with the belief, that Hazard acted suddenly, with no opportunity to consult his wife even if he had intended to do so; and it was only until after he got home and talked with her, that he expressed anything to her concerning it. Now I ask the gentleman from Smithfield (Mr. Newell) if, sitting as a juror in these seats, any party should be profligate enough before him to argue that he made a condition of his contract that a certain other party should assent to it, and should carry the idea that that party was absent a hundred miles away at the time it was made, he would not dash that defence down, withont the slighest degree of reluctance, if it was proved to his satisfaction that the pretendedly absent party was present during such negotiation? Here, at the very time when that paper was written and signed, the wife of this party, whose assent he says he must have and intended to have, was within three feet of him!

Members must see the shallowness of this pretence. I appeal to any man who sits here,—I do not care what his predilections may have been in regard to the parties in the cause,—to put those two things together; the arguments and the averment in the pamphlet; the testimony of a witness set forth concerning the same matter; and then say if he can hold up his hand and declare under oath as a member or a juror here, that this pretence could be believed. My experience before juries has not led me to hesitate concerning the matter in the least, in believing that when such a false pretence is made, and the fact appears out of the mouth of the same party to that pretence, that any credence whatever will be given by a jury to such a statement. It has not been my lot to have fallen in with such prejudiced juries, in this court house, in the administration of the law.

His surprise was that he had made so good a bargain.

Then, as to the question of surprise, it were well that all should understand what a surprise is, in the sense of the law, before giving any consideration to this defence. It is not a new thing; the term is no new invention of American lawyers. It is a phrase long known in the law, which has received a settled meaning through a long course of adjudications; and that I may not be deemed to use my own language instead of that of the law, I will do what I seldom do in this Assembly, read from a law book in order that what I say may be the language of authority and not of debate. I take the definition given in the first great cause in which this question arose, and I read the words of one of the greatest equity lawyers that ever sat in the English court,—Lord Somers.

" Now for this word " Surprise," it is a word of a general signification, so general and so uncertain, that it is impossible to fix it. A man is surprised in every rash and indiscreet action, or whatsoever is not done with so much judgment as it ought to be. But I suppose the gentlemen, who use that word in this case, mean such surprise, as is attended and accompanied with fraud and circumvention. Such a surprise may, indeed, be a good ground to set aside a deed, so obtained in equity, and hath been so in all times. *But any other surprise never was*, and I hope never will be, because it will introduce such a wild uncertainty in the decrees and judgments of the court, as will be of

greater consequence, than the relief in any case will answer for."

Is there any person that hears me that does not understand that plain language. And the surprise must be accompanied with injury. The party who obtained the deed or contract must have injured the other party, in some way, by procuring his signature to the deed or contract. Now, remember that we are going back to the 28th of May, 1852, and we are with Robert H. Ives and Charles T. Hazard on the deck of the the steamboat Perry. This memorandum book is placed upon the taffrail and Hazard is asked to write his name to it. Where was the circumvention and injury? On the opposite page of this pamphlet from that which I have quoted I find his:

"Hazard had been induced to name the price which he would himself ask for the farm provided he was going to sell it. The price then named, $15,000, was probably full $3,000 beyond what it would have been valued, at the time, by any person in Newport."

A plain statement and easily comprehended; "and was *so far above its market value*, that it drew from Ives the remark that it *was altogether too much for the land*. So no doubt Mr. Hazard himself thought; for it is plain that, under the circumstances, had he not supposed so, he might have set the price still higher."

That is the language of the party himself. So he thought; it would not have been written so there if he had not so stated; it would not have been written if it had not been the common judgment of every man in Newport in the latter part of May, 1852. Now where, tell me, is the "fraud or circumvention" that accompanied that surprise? The price, it is admitted, nay, argued here upon this floor, was put too high to prevent a bargain, and yet when accepted,—when the man has given a price which he thinks no living man will give for it; a price put beyond the limits which any reasonable man will give for such a piece of land;—why then, forsooth, because the offer was accepted, and the man got $3,000 more than he had the least idea of ever getting, he was *surprised!* I have no doubt he was, and pleased too; that he rejoiced over the bargain all the way to Newport, and that it was not until he found that land in that neighborhood would sell for $900 an acre, that he began to consider how he might back out from the contract he had thus fairly made.

I would like to hear the gentleman from Newport, (Mr Van Zandt) or any other gentleman learned in the law, rise in the presence of any court of law or equity, and say, "Now indeed, may it please your Honor or gentlemen of the jury, we really ought not to be held to carry this contract into effect, or to pay any damages for the breach of it, because it was $3,000 better for us than we had any right to expect!"

I would like to see the court or jury that would entertain such a proposition without laughing in the face of the counsel stating it.

What is this "surprise? Why, it is a creature of a court of equity. It is unknown to the common law side of the court. It is never allowed to be set up, as a defence in the genuine sense of the definition which I have cited, in a common law court. There is no common law court of this State where it would be allowed to pass to the jury. If a party has made a deed or contract which was complete in itself, or would be binding, except for surprise, what is his relief? He has none in this State, or under any jurisdiction in this country, unless he can apply to a court of equity to set aside that contract. If surprise did exist in this cause, and if Hazard was induced by fraud or circumvention in the emergency to sign this paper or deed, he would have been held bound by it in any court of law, and he could only get relief from it by a resort to a court of Chancery.

The assertion that Ives was not bound by the contract, was a false pretence.

There is still another ground on which he complains of this decision. He says there was no mutuality in the contract between himself and Ives;—a phrase not so easy to be understood from its mere statement, but which means in plain English simply this,—that there shall be two parties to a contract and both shall sign it to be bound. Now a contract as every one knows, may exist, and in many cases does exist as a distinct thing from the evidence of the contract. You and I agree to trade horses. We do not put anything upon paper and never expect to. It is a valid trade and we are bound by it, if we do not write it—do not put it in memorandum. Whether we sign it or not, is of no consequence. The trade is made and the contract is binding upon us, without memorandum, if it relates to personal property and is to be performed within a year from its date. But the statute requires that if the contract has reference to real estate, it must be signed. By whom? The language of the Supreme Court upon this matter is the language of the law.

"In reference to a contract for the sale of land, the statute requires that it shall be in writing and signed by the party to be charged therewith, in order to authorize an action upon it. That is all that the statute requires. Authorities are cited to support the proposition that it is necessary that both parties should sign the contract, but the point does not need to be sustained by authorities. The statute plainly does not require it.,,

Is that anything new? It may be new to some, but this statute of frauds, which we have on our statute book, is nearly 200 years old. It was passed in the reign of Charles II, by the same parliament that passed the Habeas Corpus act, and so many other acts, which have been essential to English liberty, and which have been incorporated into the principles of American liberty, since that time. It has remained on the statute book of England, and it now stands on that of every State in this Union, as declaratory of what the law is.

Previous to the statute, if parties made a contract, in relation to land, and joined hands upon it, it was just as binding upon them, as if it was in reference to a horse. Upon the consciences of men, who dealt in good faith, the crossing of hands upon a bargain, was just as much binding,

as if the bargain was written out, signed and sealed, in duplicate.

But the law says, that owing to the imperfections of human memory, all contracts, in relation to the sale of real estate, and all contracts which are to be executed more than a year from the date thereof, require another kind of evidence. It requires the evidence of such contracts to be in writing, and signed by the party, to be charged. If either party wishes to charge the other beyond the word of honor, or the good faith which the joined hands imply, then he must write down the contract, and ask his signature. There have been authorities, and my friend from North Providence (Mr. King) has cited them, which show that the law is now settled, that if one party writes his name, if it be only in the body of the agreement, and another signs it at the end, it is signed by both. That is the law, and wisely it is so; because if a man sits down and writes for another to sign, "I agree to sell to A. B." (the party writing) and if A. B. knows very well that there can be no agreement without the union of the mind of both parties, and that when he writes his name there, it is to show that an agreement has been made; when the other party signs his name at the end of it, both are bound and may use that paper as the evidence of the contract. That is the law as declared by all the courts of law and equity, that administer justice under the statute of frauds, in every state of this Union, and in the country from which we derive our laws.

There is nothing, at the present time, in the reports of any court,—and if there is, it can be produced,—there is nothing unreversed left in the records of any court, which shows that the contrary view is law. The law is settled as much as any question that is capable of being settled under that statute.

But, Mr. Speaker, the court were not called upon to inquire into that. They found the law to be equally well settled upon another point, and that is this ;—that when one man agrees to sell land to another, and signs a memorandum with a sufficient consideration expressed in it, if the other comes into court with a suit in equity to compel performance, he thereby binds himself just as effectually, as if he had signed the original paper. They found that to be settled law, and simply declared it, and did not look further than to find the signature of one party, and a bill filed by the other.

So there is nothing to be impeached in the decision. They declared the law upon both points, as it must be conceded to be by any person who examines the authorities.

But then, Mr. Speaker, when we sit here,—whether we sit here as judges in a high court of appeal, that overlooks all formal ceremonies, or whether we sit here simply as honest men endeavoring to find out the truth concerning the matter brought before us,—we are bound to look into all that the parties spread before us here, and see if there ever existed between these men the pretence that Ives was not bound by this contract. On page 45 of a pamphlet which is used as an argument here, there appears a letter from Hazard to Ives, dated June 2, 1852, and then occurs this paragraph:

"The following is a copy of a letter which was received by Mr. H. from Mr. Ives, in reply to the foregoing.

I will, however, here remark, that this letter does not appear in the testimony in the case, having been excluded, as I hear, by advice of eminent counsel from abroad, for what reason I know not," &c.

There the fact appears, that by the advice of eminent counsel, a letter from Ives to Hazard was excluded from the testimony in the cause, and this pamphleteer does not know the reason. That letter is in reply to the one from Hazard to Ives, dated the 2d of June, 1852, four days after this contract. Hazard then says,:

"I am sorry to say, when I first told my wife what arrangement *I had made* with you respecting the Peckham farm, she, at once, told me she would not consent to sell the whole of it."

Is there any reference there to the condition? "*The arrangement I had made*,"—not proposed to make, or agreed to make, but HAD MADE. Then further on: "If you can get her willing I am ready to go on *as we talked*;"—referring clearly to the contract. Now was Ives bound by that contract? here is what he says to Hazard in reply.

Providence, June 4, 1852.

Chas. T. Hazard, Esq.

Dear Sir : I received last evening your letter dated 2d instant, by which it appears *that the contract entered into between us for the sale of the Peckham farm* may not be carried into execution on account of the objection of Mrs Hazard. I confess, that I am very much surprised at such a suggestion."

"*The contract entered into between us for the sale of the Peckham farm.*" Now, I would ask if there is any more complete and explicit phrase in the English language that could acknowledge the obligation of a contract, than the fact that it was made, and the admission that he was bound by it, describing clearly the subject matter of the bargain to sell, viz. the Peckham farm.

Did not Mr. Hazard know what a contract was and how to state the terms of one? I recur to the letter of the 2d of June.

" Mr. R. H. Ives,

Dear Sir: According to your request, I saw Mr. Albert Armstrong the night I returned from Providence, and finally succeeded in buying his land at the rate of $900 per acre, to be measured; deed to be given any time between this and the first of September; one half of the purchase money to be paid when the deed is delivered, and the balance to be paid on the 25th of March next; to have possession of the land as soon as he takes the present crops off."

Mr. Speaker, if you know any lawyer in the United States of America, that will express a contract in all its terms, in clearer language, I have not yet made his acquaintance. There is Charles T. Hazard,—the man who was so *surprised* in signing the paper, which was a contract, when he did not think it was,—sitting down and writing, within three days of the time, a memorandum of a contract as perfect as the Statute law calls for.

Now place these letters together with the contract—those three papers—before any court in the world, and I would like to see the counsel

that would dare argue to a court of any intelligence, or court that would hear the argument, that Ives had not bound himself by that contract just as firmly as Hazard had. I appeal to the members of this House,—to their clear intelligence and common sense; if any one of them agrees to sell me a house, and sends me a letter saying "I agree to sell you my house in Smithfield for $1000," and signs it, and I write back saying, "the contract concerning the house, made between us, shall be carried into effect," referring to the subject matter of the letter to me, would he not bind me and hold me in any court of christendom; and would he not think the court worthy to be denounced—nay extinguished, utterly erased from existence,—if it suffered me to be discharged from my obligation thus fairly and deliberately entered into?

Looking at the report of this case, we find that this question of mutuality in fact formed nine tenths of the argument of counsel in one form or another. Looking at it in the report of the case, and at what is now submitted to us—because this letter, remember, was kept back by the party, by the advice of counsel—what do we find? Why, that no honest man ever could or would have taken that advice. I ask gentlemen what they must say of any man, be he rich or poor, high or low; be he acting under the advice of counsel or from his own instincts; when he has the evidence of a fact in his pocket, and does not produce it, and then argues and tries his case, as if that fact could not be proved, whether he deserves a decision in his favor? I have seen cases of that kind where there has been an instinct in the judicial mind and in the minds of an intelligent jury, that could detect the existence of this kind of evidence, and demand, nay enforce its production to defeat the case of the party who was thus endeavoring to deceive them. This letter was never in the case; it must have been a letter forgotten by the writer. The court that tried the cause had the power to compel its production, and if it had been produced, three-fourths, nay nine-tenths, of the argument and authorities submitted by counsel would have been swept out of the case at once.

This, Mr. Speaker, is no question of equity law, or of common law, or of doubtful powers of courts, or of nice construction of statute laws or authorities. It is the plain language of plain men dealing about a plain subject matter. "I agree to sell to R. H. Ives, the Peckham farm now owned and occupied by me for $15,000, payable the 25th of March, 1853." That is Hazard's side of the bargain. "The contract entered into between us for the sale of the Peckham farm," is what Mr. Ives says concerning it.

Now there is no more familiar principle in the statute law than that a contract may be found in several instruments. The only requirement of the law is, that the subsequent instrument, signed by one or both of the parties, shall refer to the previous instrument, so that there can be no mistake. Can the reference be clearer than it is in this case? It is impossible to make it more so. Within six days after the contract, there is a correspondence concerning the same subject matter, the contract, the obligation of the parties to it, with a view to its execution.

These, Mr. Speaker, are the three great defences to this case; these are all of them. I do not think that any one has ever heard any other. All that could be presented to any court of equity or law; all that could relieve the party from the obligation of his signature, all that could lessen his liability in any action, is embraced in these three defences, and you see how unworthy they were of success.

[The gentleman here gave way for a motion to adjourn.]

Of the Decree of the Court, and how Mrs. Hazard's dower was secured to her.

In the remarks which I addressed to the House yesterday, Mr. Speaker, I called its attention to the origin of the matter now before it, and at some length I taxed the patience of this body, in investigating this lawsuit, its origin, its history, and its merits. I called attention to what was before the court, and to what the party, who makes the complaint here, had seen fit to place before the committees of this Assembly, and before the House itself. I now ask attention, to what was actually done in that case. The decree of the court, which I find has been misrepresented here, in more ways than I should have conceived it possible that such a simple document could be, declares that the parties to that controversy, made a contract for the sale and purchase of a certain estate; that the subject matter of the contract was well known to both, and could easily be ascertained by any one; that the terms and times of payment, were equally certain; and that *in conscience*,—in which jurisdiction a court of equity acts,—the defendant was bound to execute a conveyance of the estate to the complainant.

A great deal has been said about the rights of Mrs. Hazard in the property; and it seems to have been intimated, as well in pamphlets, as in arguments, both in the newspapers, and upon this floor, that her rights were in some way injuriously affected by that decree. Nothing could be further from the truth. Her rights were expressly saved. If she chose to join in the deed, she might, and the title would have been perfect; if she chose not to do so, she stood exactly in the position in which any other married woman stands, who does not join in her husband's deed. Her contingent right of dower, is perfect and unimpaired. If Mr. Hazard dies to-day, his widow has one-third interest in that farm during her life, and no power on earth can deprive her of it; not even this General Assembly.

I see it stated that the complainant was required to pay only about half the contract price of the estate. The report of the master, and the decree of the court, are upon your table, and they show that instead of paying one-half of the amount, he actually paid some eighteen or nineteen thousand dollars.

The annuities which had accrued, before the final decree wa sentered,and the interest,were added to the sum which he had stipulated to pay, and the total was subject to a deduction of only the small sum of $604, or thereabouts, as the estimated value of the contingent right of dower. This was calculated upon the valuation of the estate, stated and fixed at the date of the contract; not at the date of the decree, *but at the date of the contract;* not upon a farm worth, as Hazard writes, $100,000, more or less, but on a farm worth $15,000. This sum of $600, was the sole deduction from the amount which the complainant had to pay; and this sum was ascertained by the life tables, as it always is in making an estimate of the value of dower, either in a court of law, or equity. The court decided, not that Mrs. Hazard should part with her right of dower, for they had no power to compel her to part with it; but that Mr. Ives

should not pay for a release of dower, unless Mrs. Hazard chose to give it. This was equitable and just. Every right of every party, represented in the estate, was fully and and fairly protected by the court, after the most ample hearing, and careful investigation.

OF THE DANGEROUS CHARACTER OF THE RESOLUTION.

Now, when that decree was entered, and the deed was executed, and the possession of the land given, there was an end of the thing. That estate then became the property of Mr. Ives, just as if he had received a voluntary conveyance of it. The court had declared it to be his; the deed to him had been executed; and his title had become perfect. No motion was made for a reconsideration of the decree before the court. The parties submitted to it, and acquiesced in it, until this petition appeared here in this Assembly. And what is the petition? What is the General Assembly asked to do? Consider that that decree was entered three years ago. Upon this report of a special committee, who have discovered by the force of imagination, some wrong to be righted somewhere, it is proposed that this House pass the vote which they recommend. The resolution has been read a great many times, but I doubt if the full significance of it has yet been discovered, even by its advocates. I ask the attention of the House, while I read it again, that every word that is printed, and that members are asked to sanction by their votes, under oath, may be vividly before them, during the whole consideration of this question.

" *Resolved*, That in assuming equity jurisdiction in the case of Robert H. Ives vs. Charles T. Hazard, upon which a decree was issued by the Supreme Court at its March term, 1856, said court exceeded the authority conferred upon it by the General Assembly, and that the equity proceedings in said case should be wholly amended, revoked and annulled, and the complainant left to seek his remedy before a court of common law, in conformity with the requirements of the constitution and laws of this State."

That the proceedings be *amended, revoked and annulled.* I heard this phrase interpreted, by the member from Smithfield, yesterday, as meaning, in his understanding, that that decree of the Supreme Court, and the deed executed in conformity to it, should be declared a nullity; that is, that Ives obtained no title whatever under that decree, and by that deed; that Hazard should have a right to enter upon that estate by force and arms and expel the occupant; and that Ives should be turned over to the common law, to obtain some sort of remedy which the gentleman from Smithfield was pardonable in not stating. The language can mean nothing less than this.

Now, I ask the members of this House to consider if this General Assembly can, by its act, annul the title of any member here to his house and land. This resolution does not reach Ives alone; it does not affect Hazard alone; but if this General Assembly have power to pass such a vote as this, they have power to pass it with respect to the estate of any citizen of this State. It is declaring nothing less than that they may confiscate any man's property, seize it and sell it, and turn the proceeds into the general treasury of the State if they see fit. They have done such things, in times of revolution, for alleged cause, but they may now in time of peace, under a constitutional government, under well settled laws, administered, or supposed to be administered, according to the rules of the common law, and the course of equity, condemn the title of any man to his estate, for any alleged cause. Let any man familiar with the course of business, in the county of Providence, and especially with respect to the titles of manufacturing property, peruse the records from Providence to Woonsocket, and find how may titles to the most valuable property in the Blackstone valley, have passed through the law, and the decisions of the Supreme Court. The present owners hold under adjudged titles; and yet, if the action now proposed, is to be the regular course of proceeding, any party who alleges that he is aggrieved by any of these old decisions, may come to this legislature, upon petition, and this General Assembly may, without issuing a citation to the parties in interest, without doing more than appointing a special committee to make a general investigation here and there, wherever they please, and only so far as they please, annul the decrees of the court under which those titles are held, and either transfer the estates to the persons who come here as claimants, or permit them to litigate the titles anew in the courts. Nothing short of this is asked, and nothing short of it will be granted, if that resolution passes, and has any meaning. The persons who have introduced this new mode of proceeding; this new construction of the constitution; have set up no boundaries, no landmarks to the power of this legislature. They are to be supreme not only in a legislative, but in a judicial capacity; and when they vote that a title shall pass, their decree must pass it. When they vote that a title shall be annulled, it must become a nullity. That is what is proposed to be effected by this resolution.

THE RESOLUTION DECEPTIVE AS WELL AS DANGEROUS.

Suppose that this resolution, which proposes to annul the title of a man to his estate, is passed ; will the gentleman from Newport (Mr. VanZandt) who reported it, and who advocates it, explain how any court in this state can carry it into effect? What is to be expected of the court? Let us look at the resolution professionally, and practically, and see. The General Assembly declare, that the equity proceedings are annulled, and remit the parties to their original position and titles, with the contracts between them in force, (for they cannot impair the obligation of contracts,) and the plaintiff in the suit in equity is to have his remedy at the common law. That is the way the resolution proposes to arrange matters, if the General Assembly has the power of so disposing of the rights of the parties. But suppose that Ives refuses to surrender possession of his estate, or to admit that his title can be declared a nullity, and resists the forcible entry by Hazard. Hazard will be driven to his action of ejectment to recover the estate. He brings his action, enters it; the case is called ; and both parties appear with counsel. Ives produces the deed from Hazard to himself, and pleads that the plaintiff has no title. What is the reply to it? What can it be except that the deed was executed in pursuance of a decree of the Supreme Court, which decree the General Assembly have said "should be annulled." But the defendant demurs to that replication, and says that it is not good in law,—that the General Assembly have no power to destroy his title to his estate, which

he obtained in pursuance of a decree declaring and enforcing the contract by which he purchased it. Thus the issue will be one of law before the same court which entered the decree. Will the gentleman from Newport point me to any precedent or authority in the English law, or in the decisions of the courts of the United States, or of any court in either of the states of this Union, in which the power of the legislature to annul the title of a man to his estate, was ever acknowledged? What are the courts constituted for? Not to make laws, or to register the decrees of the Legislature, but to declare what the law is, as applicable to each case that is brought before them. And how can the court decide otherwise than that decree, established and executed, must stand? If it is intended to make a complete disposition of the matter, according to the spirit of the report of the special committee, this resolution does not cover the ground. There ought to be added another resolution like this; "*Resolved*, that this special committee be continued, and they are hereby constituted a court with full power and authority to carry the foregoing resolution into effect, in such a manner that Hazard may break his contract with Ives, and Ives recover no damages of Hazard, so that the parties shall stand precisely in the same position as if no contract had been made between them." Then there might possibly be found—it is barely possible—a jurisdiction which would entertain the propositions which I have stated. I will not do these gentlemen the injustice to believe, that it would be possible even for them, sitting and acting as a court administering and declaring the law, responsible to this community and the country for their decision, to commit such an outrage as is here contemplated, under the forms of justice.

Hazard's supposed Defences not available at law.

But, again, waive these considerations: suppose the deed can be declared a nullity, and amounts to nothing, and that the decree is worthless; suppose that these proceedings in court are wiped out of existence; the signature and seal legislated off the deed, and these parties remitted to their position exactly as they were on the 25th of March, A. D. 1853. Suppose further, that the doors of a court of equity are closed against the complainant, and that he brings his action at law, for damages; what must Hazard plead in defence? Why, that he never promised to convey—the general issue as it is technically termed. Ives will produce before the court and jury the contract signed by Hazard. He will prove the signature as he did in the equity cause. He will prove his readiness and offer to pay the money, and his demand for the deed and the refusal on the part of Hazard to execute and deliver it. Now, I ask the gentleman from Newport (Mr. Van Zandt) where, in the course of his studies in the common law or in the decisions under the statute of frauds, he has discovered a defence to such an action, supported by such evidence. Suppose he should say to the court, "there was a condition on which that contract was to take effect,—that the wife should give her assent to it," and he offers the letters of the 2d and 4th of June. The court look at the contract and at the correspondence, and they do not find any thing stated there as a condition precedent to the contract of sale. The wife's objection appears as an after thought. The court can see no such condition in what is written. "But," says the gentleman, "I can prove it by witnesses." Indeed! by whom? There has never been a witness produced in all the proceedings in equity,—there is no one named in all their pamphlets, or in their petition, or in the statements on this floor, who can testify to any such thing. Under the rules of law by which courts are governed, such evidence, if it existed, could not be admitted to alter, vary or explain a contract which had been reduced to writing. "But," says the gentleman again, I "can argue to the jury, that there was such a conversation and condition." The gentleman from Smithfield (Mr. Newell) stated yesterday, that he could *imagine* such a conversation to have taken place. Does any member of this House think that a court of law sitting in a civilized country, will permit the imaginings of counsel, party or jurors, to disturb the scales of justice which they had sworn to hold even between man and man, and in which are to be weighed nothing but the law and the evidence? Is such an argument to have weight here or any where? It would shame the lawyer who should announce it and propose it in court.

So, then, that defence could have no hearing, even if it had existence. "Well," says the counsel, "I have another defence. My client was surprised when he signed the contract." "Surprised?" say the court:—"show us the treatise upon the common law, or upon the statute law; or point us to any precedent in the administration of the law, in which surprise is stated to be a defence, at law, in an action upon a contract." The gentleman may search the books, beginning with the black letter, and coming down to the latest issue of reports, and he will find no such case. The law court would be surprised at the announcement of such a defence. In their surprise they might say, "what is your surprise, Mr. Counsel? How was your client surprised when he signed the memorandum of the contract?" "Why," says the counsel, "my client fixed the price of his land so high, that he didn't think Mr. Ives would accept it, and when he did, and wrote the memorandum, my client was surprised at it, and signed it under that surprise." "Then," say the court, "his surprise was caused by getting more for his land than he expected. We have known many cases in which a party sought to enforce a contract for that reason, but never before heard it stated as a cause for breaking it." Nor was such a pretence ever before heard in court or out of court. It is the most shameless of all their pretended defences. A court of law sometimes continues a case because a party is surprised at the evidence submitted by his opponent; but otherwise the doctrine of surprise is not heard of in that court. As I have shown, "surprise," as defence to a contract, is only known in a court of equity, and it was never yet suggested in that court, that a man ought to be released from a bargain, because he was surprised to find it some thousands of dollars more advantageous to himself, than he could have made with any other person at the time.

Then, as a last defence, the counsel may say, that there was no mutuality in the contract. The court look at the memorandum signed by Hazard, and say,—"You are the party sought to be charged, and here is your signature; that is all the statute requires. In all other respects the contract is clear and definite." But with the letters of the 2d and 4th of June before them, they might say, as we may now say here;—"This defence is not open to you. Here you have had in your pocket during all the previous litigation, and during the discussions upon it, which have excited the whole State,—

a document signed by Ives, which shows that you ought never to have pretended to have had that defence. You have attempted to impose upon the court, the people. and the General Assembly, the idea that you had such a defence, when you and the eminent counsel from abroad whom you consulted, well knew that you could not pretend to it for a moment, if you produced that letter." Mr. Speaker, there is no one that hears me, that does not perceive why the eminent counsel from abroad, advised that that letter should be kept out of the case in equity.

A COURT OF LAW MUST GIVE JUDGMENT FOR FULL DAMAGES.

The court have before them the contract in writing, signed by Hazard, and the two letters. Where is the counsel that will ask any court, that now is, or that can be constituted in Rhode Island, to leave the construction of these written documents to the jury? Is there any man living in the State of Rhode Island, at this day, that does not know that it is the province of the court, to construe all written instruments? No matter who sits upon the bench, it is the province and the duty of the court to do it, and the duty of the jury to take the construction from the court. There is no court that sits in any civilized land, where a jury sits to aid it, that is not governed by this rule.

We have, then, a contract complete, and a contract broken. What then? Why, the jury must assess damages. And what damages? The gentleman from Smithfield, (Mr. Newell,) said yesterday, that the damages were nothing; that there was no remedy for Mr. Ives, and there ought to be no remedy. But what is the rule of law upon that question? It is as clear and well settled upon the question of damages for a breach of contract, whether it be for the sale of land, or of a horse, as it is upon the assessment of what is due upon an account, or upon a promissory note. The difference between the stipulated price in the contract, and the price at the date when the contract was to have been performed, but was broken, is the measure of damages in all such cases. The difference between $15,000 on the 28th of May, 1852, and the value of that farm on the 25th of March, 1853, is what the jury must assess; and it is conceded on all hands, that the rise of land, which may have caused this difficulty, took place in the year 1852. The court must say to the jury,—"Here is a contract between these parties, and here is an admitted breach of it. You are to assess damages upon this principle:—you have $15,000 as a basis; you have the admissions of Hazard as to the value of the farm in 1853,—many thousands of dollars more,—and he is bound by his admission. Subtract one from the other, and render your verdict for the balance." That is the rule of law, and every juryman has sworn that he will render the verdict according to law and the evidence. There can be no controversy about the evidence in this case, because the defendant has put his admissions, as to the value of the land, in writing, in all possible shapes upon the records of the courts, and of this Assembly, and in pamphlets spread broadcast over the land.

HAZARD CAN ESCAPE JUST DAMAGES ONLY THROUGH A CORRUPT JURY.

Now, what is the hope of the defendant? Mr. Speaker, let us pause and consider this matter. I heard, yesterday, a speech from the member from Smithfield, (Mr. Newell,) and I have read, in the papers, the arguments of the gentleman from Newport (Mr. Van Zandt,) and I found in both, to my surprise and astonishment, the idea, not merely insinuated, not merely hinted at, but boldly and openly advanced and asserted, that a jury might be found who would disregard the law, and say that there were no damages in this case, notwithstanding the rule of law is clear and plain. And to my mind—and it seems to me it ought to be to the mind of every man who loves justice, and who knows that the stability of our institutions depends upon the faithful administration of justice,—it is a subject of grief, and should be to every one in this legislature of Rhode Island, that here, before the people of Rhode Island, it can be urged as a ground of legislative action, that juries can be found, or do exist, who will willfully violate their oaths and the law. Indeed! Has it come to this? The averment is boldly made. Bring your action before a jury; have the court rule according to established rules of law and instruct the jury; and yet we will find a jury who will violate the law; we will find some weak Judas among the twelve, who will be tempted to obstruct the administration of the law, and refuse to render a verdict according to the law and the evidence. If the divine wisdom itself could not select twelve men without one being tainted with avarice, and liable to fall, in slight temptation, are we to expect that the chance which selects jurors from our jury boxes, by lot, will find men wiser and better, and less disposed to yield to temptation.

SHALL JURIES BE ENCOURAGED TO VIOLATE THE LAW?

That is the secret of this movement, or rather, it was the secret, but it is not now. It is very boldly proclaimed that a jury,—that institution which has been here praised so much,—can be found to exist in this State, so corrupt, or so capable of being corrupted, that the due course of administration of the law can be blocked and prevented in any given case. Is there any man that has heard this proposition,—and it has been uttered here; it has been written and spoken, so that no man can have failed to have heard or seen it;—is there any man within the sound of my voice, whose property, whose reputation, whose liberty, may at some time come before a jury of this State, who, when he has heard this proposition announced, did not feel his blood tingle with shame and indignation? The men who come here and who are liable to be drawn and to sit on juries; do they take this imputation upon their honesty and good faith with silence, or with applause? Is there such a state of feeling in favor of corrupt jurymen existing in the state of Rhode Island?

Some of us who have had experience in the courts, have found how difficult it is, in cases that have been discussed much among the community, to obtain verdicts. It was a complaint of a judge who sat many years in the Circuit Court of the United States, in this district, that he had more juries disagree in this State, than in all the rest of his circuit. But, in those cases, he always said that there might be an honest difference of opinion; he knew of nothing else, and nothing else was suggested to him. There may be honest differences of opinion; but in a clear case where the law is plain and must be given in one way, if the court is true to its duty; where the duty of the jury is equally plain, and the result to be arrived at is to be obtained by simple subtraction, is it to be supposed that there can be an honest difference of opinion?

There can be no doubt in regard to this rule of law. It has been proclaimed thousands of times by the judges that have sat upon the bench, since the statute of frauds was passed. It was proclaimed by our own court. I hold in my hand a recent decision of the Supreme Court of Massachussetts, in a case almost precisely similar to this of Ives and Hazard, in which the same doctrine is declared as the sum and result of all preceding decisions. And I have yet to hear a lawyer,—a counsellor at law who gives advice under the oath which he takes when he is admitted to the bar, upon investigation of the decisions, of the statutes and the rules of the common law, who will give any other statement of the rule of damages in such a case.

THE COURT MIGHT HAVE ORDERED A JURY TRIAL, IF IT HAD BEEN ASKED FOR.

If this trial by jury was to have been of so great a benefit to either party, why was it not asked for, in the course of these proceedings in equity? A court of equity will always grant a jury trial, if both parties ask for it. They will grant it if one party asks for it, if the testimony is in any way contradictory, or the facts doubtful. But here, although some of the oldest and most experienced counsel in the State, were engaged in the cause, and although it was pending for four years, before a final decision, yet it never was suggested to the court, before which it was pending, that it might be aided by the verdict of a jury.

NO AUTHORITIES IN SUPPORT OF HAZARD'S DEFENCE.

It has been stated, in the course of this debate, by the gentleman from Warren, (Mr. Baker,) that upon the main point of controversy between these two parties, he had been informed that there was but a single decision in this country, which favored the cause of the defendant, and that that was overruled by the same Judge who made it. I bring this book here (6 Gray's Mass. Rep.) to show those who wish to look at it, that the Supreme Court of Massachusetts not only found that to be the state of the law, but declared it to be so in their opinion.

A certain Judge, in his younger days, erred, and in his riper knowledge, corrected his error. The uniform course of decisions in England and this country, has been in conformity with the riper experience and knowledge of that Judge. So there was nothing for our court to declare, and the Supreme Court of Massachusetts found nothing for itself to declare, but that the rule of law was clear and well settled, the remedy perfect, and that the right should be enforced.

THE SUPREME COURT CONSTRUED CORRECTLY THE STATUTE GIVING THEM EQUITY JURISDICTION.

Thus much, Mr. Speaker, for what has been done in this cause, and for what is now proposed to be done with it. I next meet the question, which is raised by the report of the committee, and the only one raised by it, namely: Did the Supreme Court of Rhode Island exceed its authority in taking jurisdiction and rendering the decree in this cause?

It could only exceed its authority by assuming jurisdiction which never had been granted to it. If it was not right to enter the decree, it was not right to have entertained the bill. The objection might have been as well taken in September, 1852, before the court, as it is now in this House of Representatives, in the year 1859. Laying aside, for the present, all the presumptions which are against the thing, from the character, learning and ability of the counsel, and of the court; let us look at the language of the statute, and of the constitution. It is conceded that the General Assembly *might have conferred* upon the Supreme Court, previous to the digest of 1857, full chancery powers. That is the plain letter of the constitution, and it has not been argued against to my knowedge. Have they done so? There is another clause in the constitution — the first article relative to the legislative power, which requires the General Assembly to pass all laws necessary to carry the constitution into effect. All the statutes of the State were in the course of revision at the date of the adoption of the constitution; and in January, 1844, the whole body of the statute law was revised and passed and took effect, as digested, in September, 1844. Now, what have the General Assembly done? They had the power by the constitution to make a grant to the Supreme Court, of complete, full and exclusive jurisdiction in all cases in law and in equity. They proceeded to make the grant, as follows: "The Supreme Court shall be holden, &c., * * * and shall have cognizance and jurisdiction—" of what? "*Of all actions* and pleas of a civil nature, whether in law *or in equity*." There is the subject of the grant:—"*all actions and pleas of a civil nature*." Compare this with the constitution of the United States. "The judicial power," says that constitution, "shall extend to all cases in law and and equity, arising under this constitution, &c.; * * * to *controversies* to which the United States shall be a party; * * * between citizens of different States, &c." The words, "in law and equity," are not repeated after the word "controversies." That word stands in this sentence precisely as the word "cases" does in the first clause. It has been construed to include all cases in law and in equity, as cases of both kinds are "controversies." So, in our statute, "all actions and pleas of a civil nature" includes all cases that may be litigated in the courts, and the words "whether in law or in equity," add nothing to the grant of jurisdiction, and serve only to define it. As in the constitution of the United States, there are phrases which define how and by whom the cases are to be brought before the courts, so in our statute, the actions and suits of a civil nature are required to be brought legally before the courts. The phrase is, "which may be legally brought before them."

And here let me render my acknowledgments to the learned light of jurisprudence, whoever he may be, who discovered, in this phrase, a meaning that all the fathers and sages of the law never before anticipated. That phrase, he says, is not to be interpreted by the constitution itself; but we are to go back to the days before the constitution, and hunt up the jurisdiction in those days; because, forsooth, nothing but what was then lawfully before the court, could be lawfully before it after this statute. Let the gentleman consider the effect of that proposition. It was well stated by the gentleman from North Providence, yesterday, (Mr. King,) that, if that phrase has this meaning, in the statute relative to the Supreme Court, what meaning has it in the statute establishing the Court of Common Pleas—for we find it there. Let us read.

"Said Court [of Common Pleas, the existence of which the constitution ignores, and which is a creation of the statute,] shall have cognizance of all civil actions between party and party, which shall be commenced," &c., "of what kind or na-

ture soever, *which shall be legally brought before them.*"

Do we go back to the days before the constitution to find out the jurisdiction of the Court of Common Pleas? Does not the letter of the constitution say that these inferior courts shall have the jurisdiction which the General Assembly shall prescribe, and does not the statute prescribe it? Nay, we go further. There is another jurisdiction in this State, known to and exercised by many of the members of this General Assembly. Let us read the statute creating that.

"Every justice of the peace within the county in which he resides, shall have jurisdiction and cognizance of all other crimes * * * and of all other criminal matters which are, or shall be declared, specially to be within his jurisdiction, by the laws of this State, *which shall be legally brought before him.*"

There is the phrase again. It must have the same meaning in these three statutes. It is the same phrase qualifying the jurisdiction clause in each case, to a certain extent, and it must have a uniform meaning, and what is it? To ascertain that, let us go back to the fundamental law, and see what phrases of this kind mean. There is a clause in the bill of rights in the constitution, adopted from *Magna Charta*, declaring that no person shall be deprived of life, liberty, or property, "unless by the judgment of his peers, or *the law of the land.*" What has that been determined to mean? *By due process of law*,—that no man shall be deprived of life, liberty or property, by legislative act, but it must be in the due course of the administration of justice. If it be for what is declared by the statute, to be a crime, he must be indicted by a grand jury, arraigned before a court of competent jurisdiction, put on trial before a jury of his country, and confronted with the witnesses against him, with the right of defence. That is what it means. It is the due course of proceedure in criminal cases, according to the settled course of the common law. And so it means in civil cases. When that clause was adopted in the constitution of the United States, as we see by the fifth amendment of that constitution, we find the words, "law of the land" changed to "due process of law," which the Supreme Court of the United States have repeatedly construed, and in one case, within the last few years. "Due process of law" means the ancient and due course of the common law, and the regular and proper course of the courts of equity. In criminal matters, it means a course of proceedure which shall do no injustice to the man accused of crime; which shall administer the merciful maxims of the common law, with regard to persons accused of crime, without fear or favor; which shall say to every man proceeded against, "You are innocent in the eye of the law until you shall be proved guilty." That is the meaning of due process of law.

And when we come to this lesser phrase, "legally brought before them," what does that mean? It means that a man shall not be compelled to pay a promissory note in an action of trespass. It means that a bill shall not be enforced for a specific performance of a contract, in an action for a breach of trust. It means that bills shall be brought in courts of equity, according to the due course of equity procedure, and actions at law shall be brought according to the due course of the common law. It means that a court which has appellate jurisdiction only in certain cases, shall not take original jurisdiction in those cases, and that a court which has original jurisdiction only, shall not take jurisdiction over appeals. It means that courts shall pursue a regular course, so that every man, when brought into a court, may know what he is called there for, and what he is to answer for; and courts will go back to the precedents of a thousand years, and ascertain what has been done in such cases, in order to see that no injustice shall be done him in the suit before them. That meaning has been given to this phrase, time and time again, by wise courts, by learned jurists, by the uniform and constant practice of the profession of the law, in all the States of this country; and here, now, for the first time, this discovery of a new meaning is made and proclaimed.

When I read the argument of the gentleman from Newport (Mr. Van Zandt,) I was much struck with that "learned and modest ignorance" which a great philosopher declares to be the highest characteristic of an enlarged mind, filled with knowledge. I say I was much struck with that; yet I would humbly suggest to him, whether it may not be possible, that all the learned judges who have sat on the bench of the Supreme Court, for the last fifteen years—including that most upright Judge (Durfee) now deceased, who was once its chief—and all the practice of the profession, the uniform opinion of the bar, the general acquiescence of the public, may, after all, be correct, in the construction of this statute? whether it is not *possible—barely possible*—that the gentleman from Newport may be mistaken? You have heard the earnestness with which he pressed upon you his convictions, that no man, in the depths of his heart, could believe differently from himself on this point. Nay, I do not know but he impressed upon this House the idea that he would lay down his life for his convictions, rather than change them,—they were so deep and well settled. And yet, after all this, finding himself arrayed against the wisdom of the bench, the learning of the bar, the practice of the profession, and the general acquiescence of the community, I would suggest to him, whether it may not be *just barely possible*—that is all—that he is mistaken, and not the court? I do not know that it occurred to him, and, therefore, I suggest it. [Laughter.]

THE JUDICIARY TO CONSTRUE AND INTERPRET THE LAWS.

This brings me, Mr. Speaker, to the last great question in this controversy, viz.: Who are to construe our laws? We conceive and consider Rhode Island to be a part of the civilized world; to be a portion of the great Republic of the United States of America; to be an independent, sovereign republic of itself, and being a republic, that it is a government of laws and not a government of men. I shall assume that in a government of laws, the well settled course of administration requires that there shall be some authority, some tribunal, which shall declare the meaning of the laws, and when so declared, that meaning shall be law, and shall be acquiesced in by the citizens. Now where is that tribunal?

Since the adoption of the constitution, many of us—how many it is impossible to tell, but I have supposed that it was by far the great majority of the people of this State—have believed that we had an independent Supreme Court, an independent judiciary, which stood apart from all contests of faction, the divisions of party, the bitterness of political strife, the personal animosities that arise in small communities, the interests of business and

the influences of social life; and which would examine and consider the laws passed by the law-making power, and the acts of the executive power, as well as the rights of parties litigant; and declare what the law is, for the guidance of all of us. Are we mistaken? We turn back to our constitution. We find, there, an article declaring that "*the judicial power* shall be vested in one Supreme Court," and in other courts, to be established by the General Assembly. What is "the judicial power?" Are we mistaken in the meaning of that phrase? We look abroad to the constitutions of Massachusetts, of Connecticut, of New York, of other States and of the United States, and we find what the judicial power is there declared to be. What meaning have these words in every constitution of every State of this country, and in the constitution of the United States? We find where such language has been used in these constitutions, that it has been declared to mean the entire judicial power that exists under that constitution. If any particle of judicial power exists elsewhere, then the meaning of the words is not satisfied, because then a part only of the judicial power would vest in the judiciary, and a part elsewhere.

THE CONSTITUTIONAL CONVENTION SEPARATED THE JUDICIAL FROM THE LEGISLATIVE POWER, AS IN THE FEDERAL CONSTITUTION.

And here let me answer an argument adduced by the gentleman from Smithfield, (Mr. Newell,) and which has been frequently adduced before this Assembly. I find upon the table a pamphlet containing not only the records of the Constitutional Convention, but the report of the proceedings and debates. That report, though I have not seen it, probably, for the last sixteen years, grows familiar upon examination. I find there the result of certain votes, and from them it is argued that that Convention understood one thing, and that the ground which we are now taking, was another and different thing from the understanding of the members of the Convention. In one part of this report will be found the ideas stated, that were brought forward in debate; in another, simply the names of the parties who debated the question. A motion which Mr. Updike made was noticed by the member from Smithfield, on page 49. He did not find what that was. It appears from the debates that it was a motion for a single judge for all the Courts of Common Pleas. It was made with a view to declare in the constitution the independence of the judiciary; in other words, to assert that it was so declared in the 10th article. Now hear what Mr. Jackson says. He expressed the views of those who spoke on his side:

"He opposed the amendment for the same reason that Mr. Simmons did—on the ground that the constitution of the United States left the organization of the courts to Congress. Nearly all the States had followed the language of the federal constitution; others had named the number of the courts, but left the organization to the legislature."

That was the reason for not incorporating any special language in the constitution. These ideas were reported in the first debate, and being repeated in the last debate, were consequently not reported; and knowing the fact, as I do, having been secretary, and sitting in that convention, through all its deliberations, and those of many of its committees, I find men here stating their reasons, as I recollect them, why no different language should be used in our constitution, from that used in the constitution of the United States. In that convention, sat Gov. Jackson, bred to the law. "There," said he, "is the great exemplar, the constitution of the United States. All the States of the Union that have framed constitutions since 1787, have adopted that language; let us adopt it. Then the construction of the constitution will be uniform here with what it is elsewhere." That was the argument; and it prevailed in the convention,—that there should be no special or different language from that which was contained in the constitution of the United States. And place them side by side, the 10th article of our constitution, and the third article of the federal constitution, and you will find them the same, word for word, so far as relating to the grant of judicial power. All the inference that can be drawn from the debates of that convention, is that they adopted the model of the constitution of the United States in all that pertains to the judiciary.

The meaning of the language of the constitution is clear, perfectly clear. It is not necessary to go to the understanding of the members of the convention, or to the debates; and no question would ever have been raised on this floor, or among the people, had it not been for the 10th section of the fourth Article of the constitution, which continues certain powers to the General Assembly. Members fix their eyes upon this short section in one article, and make all the rest of the constitution revolve around it; that is made the central point of the powers of the General Assembly.

The first criticism that arises in every man's mind, after you have separated the judicial power from the General Assembly, and given it to the courts, is, how does it get back again? But the force of that argument is not appreciated and why? Because members look simply at the language of that 10th section. Now let us take, Mr. Speaker, a somewhat broader view; let us go back before 1843, and ascertain what the jurisdiction of the General Assembly was, in regard to matters of private right, over which the courts had, or ought to have had jurisdiction.

THE CHARTER GOVERNMENT, ITS ORIGIN AND DESIGN

Previous to the constitution of 1843, the only form of government which this State had, was that based upon the charter granted to the early settlers, by King Charles the Second. That charter was in its form similar to those granted to corporations in England, but with the powers enlarged, so as to be suitable for the government of a colony. Some similar charters were granted to other colonists in North America. The persons who received such charters, went off on a roving commission, to seize upon, occupy and govern some loosely described tract of land, then held by wild beasts and wild Indians. They were clothed with all the powers necessary for establishing, and carrying on a government in the territory which was assigned to their jurisdiction. Of course, the powers so granted, were to be executed with a large discretion. In those days,—two hundred years ago,—it was no every day matter to cross the Atlantic. It was a voyage of three months, in small ships, with unskillful navigators, instead of twelve days, as it is now, in comfortable steam ships; so that the colony of Rhode Island was then more remote from the palace at Westminster than is now the colony of New Zealand. The colonists went out into an inhospitable wilderness, and they were clothed with such powers as were

necessary for them to maintain their position among hostile Indians, and to keep peace and order among themselves.

THE CHARTER GOVERNMENT AFTER THE MODEL OF THE ENGLISH CONSTITUTION.

Such a government was therefore modeled, in some part, upon the government of England. There were a governor and assistants, as in England; there were a king and council. There was an assembly of the people, or the representatives of the people, as in England there was a House of Commons. The powers of the governor, assistants and assembly were, within the limited territory of the colony, compared to those of the parliament. They had power to constitute courts. We find that in the charter itself they had power to impose fines and penalties, and power to control their executive. The governor, assistants and members elected by the people, originally, all sat in one body, and passed laws by vote of the majority, controlling the governor, controlling the courts, controlling every inferior officer of the colony whose appointment rested with them. That was the constitution as it existed from 1662 to 1776, the only essential modification, in the meantime, being the division of the assembly into two houses.

NO JUDICIAL POWER GRANTED TO THE GENERAL ASSEMBLY BY THE CHARTER.

Now, in that charter, there is no grant of judicial power to the General Assembly. The power granted is the power to constitute courts. But suppose they did not constitute courts. How was justice to be administered then? There have been times in England when, in consequence of civil commotions, no court could sit; and times of war when the courts, which ordinarily sat at Westminster, followed in the train of the king, and no justice could be administered except by the king or by his command, of that rude kind that might be dispensed in the camp or on the march, or at the head of armies in the field. There had been times in England, also, when judges held their offices at the pleasure of the king, and when their decisions were such as the king commanded, and when few judges dared put their offices and emoluments in peril by an adverse opinion. Theoretically, the king was the fountain of justice as well as of honor, and all suits in the courts to sustain private rights or to obtain redress for private wrongs, were in the early history, petitions to the king, who referred them to his judges for determination.

This was the model for the exercise of the powers granted to the General Assembly. They had the power to constitute courts with full jurisdiction, but they did not do so; they were sovereign within their own territorial jurisdiction, subject to correction and control only by an appeal to the king in council. If they did not establish courts, no justice could be dispensed, except by themselves, upon petition. For a long period they exercised this jurisdiction, sometimes by way of appeal from courts which they saw fit to constitute, and sometimes by taking original jurisdiction themselves. For a long time, the principal court was composed of the governor and assistants, from which an appeal might be taken to the General Assembly. As the court of final resort, was so difficult of access, and an appeal to it was attended with great expense and delay, the General Assembly remained supreme both in judicial and legislative power.

THE JUDICIAL POWER EXERCISED BY THE GENERAL ASSEMBLY WAS A USURPATION.

But it has been found, and so you will find it recorded in the history of the State, written by one of its most learned and eminent citizens, and also in the decisions of the Supreme Court of the United States, and of our own Supreme Court, that the assumption of judicial power by the General Assembly was a usurpation. It was so declared to be by the General Assembly itself, at various times. At others, it assumed jurisdiction again over private causes, and in one instance was rebuked by the decision of the king and council, on appeal, in the year 1712. The highest court in the English government which had jurisdiction over appeals from the colonial governments, declared that the General Assembly had no jursdiction as a court, to hear and determine private causes. In consequence of that decision, the General Assembly passed certain penitential resolutions for what they had done, and voted that they would not again interfere with private causes, but would establish suitable courts with general and exclusive jurisdiction. This, however, they did not do for many years; and in the mean time, many wrongs went without a remedy, except such rude attempts at justice as the Assembly itself might have furnished. At last, about the year 1741, they did establish a court which lasted for three or four years, when it was abolished; probably at the instigation of some person of great influence, in the small colony, who had theretofore defied the law as administered by the General Assembly, but who feared that justice would be dealt out to him by the judges. From some quarter, a storm was raised, and the court was abolished. The colony remained without a court of general and exclusive jurisdiction, from that date down to the revolution, and in the mean time, undoubtedly, the General Assembly of the Colony heard appeals, took original jurisdiction, passed acts in the nature of decrees, and without rebuke. And why? Because the remedy against wrong done by such act, was in fact no remedy at all; it could only be prosecuted by an appeal to the king in council ; and what did that involve? Why, even now, in these times, an appeal from the Circuit Court of the United States to the Supreme Court of the United States, is almost a denial of justice, from the remoteness of time in which the appeal must be tried, and the great cost of the appeal and of the trial at Washington. What then must have been an appeal to the privy council? It involved a voyage across the Atlantic, the payment of heavy fees to the officers of the judicial department there, and the employment of the most learned and skillful counsel in England. The parties had to wait, not for months, but always for years, before they could have a hearing ; and the estates of but few persons in the colony would then have paid the expenses of such an appeal. It was far easier, under the practice that grew up, for a rich man who found himself aggrieved by any proceeding of the court or General Assembly, to go through the colony and talk of his wrongs, to hire men here and there to talk of them, and to influence town meetings so as to have members sent to the General Assembly representing his views, and to procure a vote of that body reversing the obnoxious judgment. It was far more sure and easy, and less expensive, than to take the regular course of law and go to the high court that sat in Westminster in presence of the king.

Thus we went on from 1743 to 1776. After 1776,

when the revolution severed our connexion with England, then the General Assembly within the State of Rhode Island, was, as one of its members used to declare, omnipotent. There were less restraints upon its power than upon that of the parliament of England. The British constitution was, to some extent, the model of the independent state government with the charter of king Charles for a basis; but that boasted constitution itself was little better than a myth. There are, in England, certain statutes which are regarded as sacred and not to be repealed; among these are MAGNA CHARTA and the other charters, the bill of rights, the act of settlement, and a settled course of usage founded upon traditions, which no party dare attempt to subvert. But there is no written constitution, nor any court which can declare an act of parliament unconstitutional. All acts of parliament are binding upon the courts and the people. So it was in this state, from 1776 till the adoption of the constitution of the United States in 1790. During that period, there was no power above the General Assembly of Rhode Island which could alter, control or modify its action. That Assembly then undertook to exercise a power which no legislature in any civilized country ever attempted before or since. They undertook to enact that a piece of paper should be equivalent to a piece of gold They then had judges who compared the government of this state as it was under the charter and usages, to that of Great Britain as it was under *Magna Charta*, and the usages, traditions and statutes which make up the British constitution; and they dared to say that that act of the legislature, omnipotent as it claimed to be, was void and unconstitutional, because it was against the great unwritten constitution of this and every civilized state. It was said in England, that certain acts of parliament which were contrary to natural justice, were void; but that raised, of course, the question—what is natural justice? Some courts may think one thing is natural justice and some another, so that although that saying remains an axiom in the law of England, it seldom has been reduced to practice. So in 1786, I believe, our Supreme Court declared the paper money law unconstitutional. The General Assembly then summoned the judges to give their reasons for their decision. They appeared and gave them, and the Assembly upon a sober second thought, acquiesced. The representatives of the people found that there was some boundary placed to the exercise of power, in a republic like ours, although they had no written constitution.

THE EXERCISE OF JUDICIAL POWER BY THE GENERAL ASSEMBLY CONTRARY TO THE CONSTITUTION OF THE UNITED STATES

How was it after 1790? It is true, that at times, the General Assembly exercised judicial power upon appeal, and they sometimes exercised it originally. If you look at the history of these cases, you will find them to have been always in favor of influential parties, or persons backed by wealth or political influence. But what did the Supreme Court of the United States say concerning that jurisdiction? I think their opinion was read by the member from Smithfield (Mr. Ballou) the other day. I will quote a few sentences, because it is the language of the highest court that sits in the United States of America; a court which can control the unconstitutional legislation of any, and every one of the several States. It is found in 2 Peters Reports,—p. 657.

"What is the true extent of the power thus granted, (by the charter) must be open to explanation, as well by usage as by construction of the terms on which it is given. In a government professing to regard the great rights of personal liberty and of property, and which is required to legislate in subordination to the general laws of England, it would not lightly be presumed that the great principles of Magna Charta were to be disregarded, or that the estates of its subjects were liable to be taken away without trial, without notice, and without offence. Even if such authority could be deemed to have been confided by the charter to the General Assembly of Rhode Island, as an exercise of transcendental sovereignty before the revolution, it can scarcely be imagined, that that grea event could have left the people of that State subjected to its uncontrolled and arbitrary exercise. That government can scarcely be deemed to be free, where the rights of property are left solely dependent upon the will of a legislative body, without any restraint. The fundamental maxims of a free government seem to require, that the rights of personal liberty and of private property should be held sacred. At least, no court of justice in this country would be warranted in assuming, that the power to violate and disregard them,—a power so repugnant to the common principles of justice and civil liberty,—lurked under any grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well being, without very strong and direct expressions of such an intention."

Strongly as the jurisdiction of the General Assembly in judicial matters, was urged upon the Supreme Court of the U. States, in that case, with greater strength did they meet and repel it. It was insisted that the case before the court was not an exercise of the judicial power, on the part of the Legislature of Rhode Island; that the act complained of was simply for the purpose of enforcing, in the particular case, a lien for the payment of debts, which the general law granted in all cases. Such acts, it was shown, had been passed in Connecticut, and in many of the States, before and after the revolution. This ground was sustained; but the court said that no presumption should arise in favor of the proposition that the people of Rhode Island, in their rights of property and of person, were subject to the will of an irresponsible legislative majority. They held that under the charter of King Charles the Second, controlled as it was by the great power of the Constitution of the United States, the people of Rhode Island were, like the people of all the other States of this Union, to be held sacred in their rights of person and of property, and not to be divested of either, except by the judgment of their peers, and by the law of the land.

THE GENERAL ASSEMBLY ACTED IN JUDICIAL MATTERS AS THE HOUSE OF LORDS.

Such was the state of things previous to the State Constitution. There was a usurpation of judicial power growing out of the non-performance

of their duties by the charter legislature; by their not establishing courts; by their thus denying the administration of justice to the citizens, compelling them to come directly to the sovereign power as represented by the legislature, for relief. The jurisdiction arose almost precisely as that of the House of Lords in England, over appeals in equity. It was a usurpation, and a usurpation enforced boldly, contrary to the most strenuous resistance of the Commons of England, until it was made certain, fixed, and definite by law. Precisely the same sort of jurisdiction was erected in this State, previous to the revolution, as it existed in the House of Lords in England, previous to the revolution of 1688; and that is precisely the sort of jurisdiction, which is attempted to be established here now. This General Assembly is asked to sit and revise the decrees of a Supreme Court in Equity, who are charged with the exercise of the whole judicial power of the State, in the same manner that the House of Lords in England, summoned before them the parties in suits decided in chancery, and arrogated to themselves the power of determining the rights of private parties, when they had no inherent jurisdiction in themselves, either by the Constitution of England, or by the authority of the king. This assumption was tolerated in England, only from the fact, that otherwise the supervisory power was with the king and and his council,—he being the fountain of power and the dispenser of justice,—and if the House of Lords did not take it, it would only swell the power of the crown, of which the people of England were ever jealous. It was an irresponsible jurisdiction exercised in a most irresponsible way, but in precisely the same way that it is now sought to be administered here.

WHY OUR CONSTITUTION WAS ADOPTED.

But complaints arose long and loud in this State, and the people at length decided upon a change; the same change that had taken place in every State of the Union, and in the general government itself. They wanted a written Constitution. They wanted the powers of government defined and limited. It was not necessary to have repealed or abolished King Charles's charter, in order to have extended suffrage wider than it is now. It was not necessary to have abolished that charter to have equalized the representation of the towns in the General Assembly. Those powers were within the scope of legislation under the charter, and always existed, and were repeatedly exercised. It was not necessary to have had a written Constitution, to have defined the powers of the executive, because, by the charter, the executive was in the entire control of the Legislature; and they might have passed a statute in precisely the same words as the article in the written Constitution, which now defines those powers; and it would have been binding until repealed. These powers stand written on the face of the Charter itself.

There is no portion of our Constitution, *with one exception*, which might not have been established under the grant in the Charter, "to make, ordain, constitute, or repeal such laws, statutes, orders and ordinances, forms and ceremonies of government and magistracy, as to them shall seem meet for the good and welfare of the said company, and for the government and ordering of the lands and hereditaments, hereinafter mentioned to be granted; and of the people that do, or at any time hereafter shall inhabit or be within the same; so as such laws, ordinances and *Constitutions*, so made, be not contrary and repugnant unto, but as near as may be, agreeable to the laws of this our realm of England, considering the nature of the place and people there."

Where is the limit of that grant,—as to the right of suffrage, as to the representation of the towns, as to anything;—upon the omnipotence of the General Assembly? For that is especially granted in these respects, and over courts, in the next clause, and over all officers. Having the power to establish courts and elect judges, they might abolish both courts and judges at any time, and they held them at their mercy. That was the state of things down to 1843. The General Assembly was omnipotent. What it made it could unmake, and there was nothing safe, certain, or established, within this small republic. Did the Constitution of 1843, change nothing of that? The argument here, says no; there was nothing changed; the General Assembly shall still exercise all powers except those specially prohibited. Point me to the phrase in the Constitution, which prohibits the exercise by the Legislature of any power except that of contracting debts. I ask any member to put his finger upon any other prohibition, and let me see it now. There is no such clause there. But when this government changed—when this form, which was flexible at the will of the General Assembly, took a form which was permanent, fixed and established, as that of the government of the U. States,—then, I think, the people of this State fondly hoped that something was at last settled and determined. I think they believed that, at last, a barrier was erected, which would stand firm, and against which the will of an irresponsible majority might beat, year after year, without injuring the private rights of any man, or changing those great public rights, which are expressed in the bill of rights, in the first article of that Constitution.

But if the Legislature are to exercise all their old powers unless prohibited, show me where is the prohibition in that Constitution, against extending suffrage to every resident? The Constitution declares who shall vote, and that the General Assembly shall have the power to pass all laws to carry that clause as well as all clauses into effect. There is a double grant of power in that respect. Yet, what is there to prevent, (if the doctrines argued here are to prevail,) this legislature from levying a tax upon the property of the State to pay the registry tax of every man in it? Then, would not suffrage be universal, dependent only on residence? Would not that article in the constitution be nullified? Unless there is a prohibition contained in the article itself, declaring what shall be done, then there is none elsewhere. Where is the prohibition, in the Constitution, from altering and defining the powers of

the Governor, as set forth in the article on the executive? Nowhere. The executive shall do this, and that, and shall be this and that; that is all. The General Assembly, previous to 1843, exercised the power of controlling the executive in every respect. He could not sign a commission, could not take command of the military, could not even call himself Governor, Captain-General, and Commander-in-Chief, if the General Assembly said no. And you remember, Mr. Speaker, what they did to Gov. Wanton, in revolutionary times. They deprived him of his office and titles, and sent him adrift, and their action was sustained by the people. They had full power to do it then, and they did it by legislative act.

But is there nothing changed since then? If our Governor commits treason, are we not bound by a vote of this House, to declare him a traitor, and send the resolution to the other branch of this legislature, and there have him impeached?

When a new remedy by impeachment is introduced in the Constitution, how can the effect of an impeachment be obtained by a legislative act? Yet there is no positive prohibition against it in the Constitution. The prohibition is implied from the direction that the thing shall be done in another manner.

So it is of the grants of all the powers in the Constitution. The people who established the Constitution, grant the judicial power to their courts, the executive power to their Governor, the legislative power to their Legislature. If a man owns three tracts of land, all adjoining and occupied in common by himself, and he grants one of them to the gentleman on my right, another to the gentleman before me, and a third to myself, can either of us claim a right of common in the lands of the other, from the fact that they were used in common by one common grantor, who owned the whole? Yet just as well might we do so, as for either of the departments of government under the Constitution, to claim a right to exercise any of the powers of the other, because those powers were once exercised by the legislative department alone. But the Supreme Court, under the Constitution, derives its existence from the Constitution, and not from the General Assembly, and the executive derives his power from the same high source. The General Assembly itself is not the omnipotent body, absorbing all the powers and functions of government, like the General Assembly under the charter, but it is a creature of the Constitution. And let me ask the members of this House, who created the Constitution of the State of Rhode Island? Not King Charles's Charter,—not the General Assembly under the Charter, but the sovereign people of the State of Rhode Island. They decreed the change of government; they made the Constitution; they divided and apportioned the powers of government to their servants, and charged them with the conduct of their several departments. They, the people, standing behind courts, and legislature, and executive, say to the one, "You are charged with the whole power and duty of administering justice among us" To the Governor they say, "You are charged with the execution of the laws, and neither the courts nor the legislature shall interfere with you in the discharge of the executive duties intrusted to you." They say to the Legislature they create, "You shall have legislative powers, and pass laws, and you may continue to exercise the powers of the charter legislature, unless prohibited." And how prohibited from exercising judicial and executive powers? Because these powers are granted by the people, the source of sovereign power, through the Constitution, to other parties than the legislature. Those powers which are in their nature legislative, and which are not specifically granted to the legislature, and which have not been granted to the executive and judicial departments, shall continue to be exercised by the legislature. Thus, for instance, is the pardoning power. That was vested in the General Assembly by the charter, and was not originally invested in the executive by the Constitution. It remained in the Legislature under the Constitution, until removed by the amendment. But the judicial power was never vested in the General Assembly by the Charter, and the people through their Constitution, have declared it to be vested in the courts; there can be no pretence, therefore, for the Legislature to claim any portion of it.

UNCERTAINTY UNDER THE CHARTER.

Thus we now have the three great functions of government separated, and to be performed by three distinct and independent departments. If they are not thus separate and independent, we have no free government as the supreme court of the United States most pointedly, nay eloquently, say, in the passage I have read to the House. Consider what our government would be, if the legislature were supreme. We have only to look back at history, and see what we once were. Every land title might be the subject of legislative action. Sales of land were ordered by the General Assembly for the payment of debts, for change of investment, for distribution of the proceeds; estates were divided between co tenants; and titles investigated and determined upon, between rival claimants, by committees of the House. All this was done upon mere petition, and in the loosest manner, as to notification, hearing, evidence and action. Questions of guardianship and administration, alterations of the trusts of wills, visitation and control of charities, injunctions against suits at law, were all brought within this unlimited jurisdiction, which was controlled in its action by no rules or precedents, but could, and often did, make the law for each case.

STABILITY AND CERTAINTY UNDER THE CONSTITUTION.

Have we gained nothing over all this uncertainty by the adoption of our constitution? Was there nothing gained, Mr. Speaker, by the people of the United States when they established the federal constitution, and placed the judicial power of the United States in the supreme court, and the courts which Congress might from time to time ordain and establish? Was this great bulwark against the encroachments of Congress, and of the executive, of no value? They took their example from the institutions of the mother country. The wise

and learned men who framed the federal constitution, looked back to a period in English history, fresh in the recollections of the colonists,—the period from the settlement of the colonies, until the revolution of 1688. This portion of the United States was principally settled by persons driven out of the mother country by the rigor of the laws and by persecution.

They brought with them to this country all the traditions and the spirit of the English common law—a law, which embodied more maxims of freedom, which has more of the roots of the tree of liberty in it, than any system of law that ever grew up in this world. Men were sent from old England to New England, upon the warrant of two justices of the peace. Hundreds and thousands of the dissenting religion were so sent, during the reigns of Charles II. and James II. This part of the country was peopled rapidly by persons who could not endure the tyranny there. They hailed with joy the deposition of King James, and the accession of William and Mary. They responded, with one voice, to that great "act of settlement," which, for the first time in English history, and for the first time in the history of the world, practically and efficiently made the judiciary independent of the powers that appointed them. From that day, the tenure of English judges ceased to be at the pleasure of the crown. The men who framed the American constitution, had deeply studied the history of their mother country. Every thing that the patriots of England had toiled, suffered and died for, in the great rebellion, as it was then called—and in the revolution of 1688—they had also felt only more deeply and earnestly, in the great struggle of the revolution of 1776. They were learned, skillful, wise statesmen and jurists; and when they raised that monument to freedom in the constitution, they inscribed thereon a record not only of all that was good in the past, but of all that they could discern as suited to the institutions of a great and free country in the future. Their studies had taught them that the great preservative of freedom, the main thing which would keep the rights of persons and property secure in the state, was, that the voice which pronounced what the laws were, should be above and apart from the tumult of politics, and independent of the change of sovereigns and of parties, and should not be distracted by the discussions of other forums, but should be "free, impartial and independent," in the language of the constitution of Massachusetts, "as the nature of humanity will admit."

EVILS OF A SUBORDINATE, DEPENDENT JUDICIARY.

Do gentlemen know the difference between an independent judiciary, and a dependent, subordinate judiciary? There is not so great a difference in the phrases. They do not sound so unlike to the ear; and persons unskilled in the use of language, and in the science of government, and the administration of the law, might not be struck with the vast difference in their signification. But look back over the history of the world,—nay, confine yourselves to the history of England, which alone is sufficient,—you find there what dependent and subordinate judges have been. Who were the judges that sustained the writ of ship-money, and fined John Hampden, and brought on the great rebellion? They were judges that held the tenure of their office at the pleasure of the crown, and gave their decision at the mandate of the crown; and notwithstanding that decision was against the common laws of England, against the common sense of the people, and the common understanding of the bar of England, yet those judges pronounced it legal; and the consequence was, that both the bench and throne, with their occupants, went down with the decision. Who, subsequently, were the judges that went through the bloody circuits? Scroggs and Jeffreys—names given to infamy through all time. They were dependent upon the will of a tyrannous king for their offices, and emoluments. At one word, they could be dismissed and disgraced, and hence they did the bidding of their superiors, and destroyed, by judicial murder, the lives of many of the best subjects of the king. Who were the judges that tried the seven bishops? Judges appointed by King James; judges who were charged to procure a verdict in that case, and to charge the jury that they could not do otherwise than convict the illustrious defendants. They held their offices at the pleasure of King James, and it was the result of that course of proceedings—the conduct of those judges, responsible only to executive power—that caused the Commons in England, in the Convention Parliament that assembled soon after the accession of William and Mary, by the act of settlement, to make the judges of England independent of the crown. It was the lesson of that history,—seeing what were the acts of those men, who were responsible only to the executive,—that caused the fathers of the constitution of the United States to set the judiciary apart from the executive, and away from the control of the representatives of the people, in order that it alone should pronounce and declare what the law was, and what the rights of parties under it were, without fear, favor or hope of reward.

VALUE OF AN INDEPENDENT JUDICIARY.

And what is an independent judiciary? What is it that men, studying the science of government, —men, seeking to enlarge and secure individual freedom,—have sought to establish in this republic, and in all others, as the great protector of private rights? They have endeavored so to create the system, that the judges should be uninfluenced by private interests, by personal solicitations, by social influences, by political controversies, by the heated discussions among the people, by the pressure of executive, or even of legislative power, so that they might resist governors, legislatures and the people in mass, if it were necessary, to protect the right of the humblest citizen. They have sought to erect a judgment seat thus apart, and to find, as the occupants of it, the men best fitted to do a judge's work—men learned in the great body of the common law, which takes nearly half a lifetime to acquire a knowledge of; men skilled in the statute law, and wise in its administration;

men, to whom both high and low, rich and poor, could have access, sure that their cases would receive attention, sure that they would search out, in the language of scripture, the cause that they did not understand, and do justice to all that brought their complaints before them.

Do men know what is expected of an independent judiciary? Why, Mr. Speaker, let our court be independent as the supreme court of Massachusetts, or the supreme court of any other state, or of the United States, and there is no man, whatever be his position in society, whatever be his standing in the community—his wealth, his poverty, his caste or his color—but can go before it and resist every other man that lives in this jurisdiction. Let this legislature pass an unconstitutional law, affecting the right of the humblest citizen;—that man thus affected, can go to your court, and the court hearing him, and finding that his cause is just, must declare the law unconstitutional, and that the right of that man shall stand protected against the unjust suit of every other man, though the legislature should sanction such unjust suit, and command the officers of the state to urge it on. That is what is required and expected of an independent judiciary. Nay, though crowds gather in mass meeting, though they be inflamed with the eloquence and zeal of public speakers, though they come from hill and valley, demanding access to the court, and shouting " The voice of the people is the voice of God;" if the court, in studying the constitution and the laws, find that what is asked, is not consistent with the freedom and the rights there secured, it is their duty to resist the mass meeting, and the popular orator, and to repel the crowd that may beset their doors, even though they come with arms in their hands, and must declare that their cause is unjust and unconstitutional. Nay, though a community may seek to crush down the individual; though it may pursue him by the civil and criminal law in the courts of justice; oppress him with skillful counsel, and bring crowds of witnesses against him; if th court find that his cause is just, they must discharge him, as innocent, and let those who clamor against him, howl in vain. Nay, when some wise and learned man, stud ous of men and things, and in whom there may be some of the divine wisdom, has obtained a reputation in the state; though all Athens should come, demanding that he be made to drink the hemlock poison, yet if they find "*that he hath not corrupted our youth, that he hath not omitted to worship the gods of the city, and that he hath not introduced new gods of his own,*' they must declare him innocent, and order that he go free, although the consequence of that decision may be, that both judge and judgment seat are laid prostrate in the dust. If they did not thus stand firm, and do their duty, where would be your boasted freedom?

It is not the first time in the history of republics, that there has been a clamor concerning a supposed wrong; it is not the first time people have become inflamed, and sought that some one should be offered up as a sacrifice. Look back, and see how many, owing to the timidity and yielding of judges, have been struck down by such popular clamor, to whom after times have raised monuments, and whom succeeding generations have worshiped as prophets. And the member from Newport (Mr. Van Zandt) knows well, that it is not from any mass meeting, it is not from the clamor of the people and through the popular voice crying aloud through sudden excitement, that the voice of God is heard; but he who would gather the voice of God from the utterances of the people, must look around and abroad over all lands and times; he must find where that still small voice has spoken to the wise man in his study, to the ruler in his cabinet, to the statesman in the legislative hall, to the good and true men who have toiled and suffered for the cause of humanity. He must look around and find where the people have been governed most wisely and well; and from their systems of government and the maxims they have handed down to us, he must gather that wisdom which is not to be found in crowds, and which never, or seldom, is to be found in one generation. What ever of civil rights we now enjoy, is the result of all that has been before us. Our systems are not of our own construction; they have grown of themselves, in a great measure. It has been only through the accumulated wisdom of great men, of wise counsellors, that we have and enjoy the freedom which is now secured to us.

I have thus endeavored to show that this sudden clamor has no just origin; that this suit is not different from a thousand other suits; that in fact it has less merit in it, so far as the defence is concerned, than most other suits,—perhaps nine-tenths of them, in equity,—that have been determined in our courts. For an imaginary wrong we are asked, therefore, to do what? To " wrest, once, the law to our authority." Fortunate it is for us that we have a judiciary independent, wise and fearless, that dares to say:

> " It must not be; there is no power in Venice
> Can alter a decree established:
> 'Twill be recorded for a precedent,
> And many an error, by the same example,
> Will rush into the State. It cannot be."

And it *cannot* be. Let this legislature undertake to pass an act affecting injuriously the private right of any citizen; that citizen fortunately is not bound by the action of this legislature. We are not living only in the Republic of Rhode Island. We are each and all of us citizens of the Republic of the United States of America. Twice, every year, the great power of the United States of America, clothed with the insignia of judicial authority, bearing the sword as well as wearing the ermine of justice, comes within this territory, and dispenses justice between the citizens of other states and of this state, including those who may be exiled from it by the action of unjust legislation, and compelled to seek a remedy in those courts. We have there a court of most ample jurisdiction; a court not affected by local passions and local politics; a court which hesitates not to declare any law of this State, as well as of the United States, which infringes the great principles of the bill of rights, unconstitutional and void; a court which is no respecter of persons, but in

whose presence the rich and the poor, citizens of one state or of another, are equal and the same.

THE INDEPENDENCE AND JURISDICTION OF OUR SUPREME COURT SHOULD NOT BE ALTERED.

And would we alter this with regard to our own courts, if we could? Thirty years ago, no man who had an important law suit in this State, but was advised by his counsel, as the first thing to be done in it, to move out of this jurisdiction. Look at the records of the Circuit Court in this district. We there find, that some of our most prominent citizens, some of the men who have figured most largely in the politics and business of this State, have been compelled to leave the State, for a time, and seek their remedy out of our own Courts, and in what to us is a foreign, and, as it were, imperial jurisdiction. Would we have that state of things again? It amounts to a denial of justice to a poor man.

The first cause I ever tried, on the equity side of the court, under the statute of 1844, was in favor of persons who had lost an estate by a sale for taxes, where the person who bid it in, took advantage of the confidence and ignorance of my clients. There was no remedy at law. He had acquired the title to the estate, the time for redemption had passed, and my clients, married women and minors, were entirely deprived of it. There were a half dozen of them, and they could not remove from the State. But, at last, there had been a court of equity established in this State; they went there and succeeded.

Almost the next cause I had, was the case of a man nearly imbecile in intellect, subject to the vice of intemperance, who became by inheritance entitled to a large estate rapidly increasing in value, in the suburbs of the city, who, when under the influence of liquor, was induced by the person who employed him, to sign a deed conveying away his entire estate to that party, for a small consideration. What could he have done at law? Nothing. The common law has no remedy for such a case, and the courts of the United States were inaccessible to that man. He sought his remedy under this general jurisdiction of our equity court, and recovered his estate.

And I could name such cases, by the dozen, that I have known in my own experience since the statute of 1844. And you would not only here, in this sudden clamor, deprive our court of its independence, but you would deny justice to the poorer citizens. Men who are rich, when driven into litigation, can afford to resort to that high jurisdiction that visits us occasionally. They can afford to have cases which may be carried to Washington, to employ counsel to follow them and argue them there, and to submit to the great expense and delay. But to a poor man, a resort to the courts of the United States, with an appeal far off to be tried years hence, is almost as great a terror as was an appeal to the privy council, in the days of the colony.

We have now with us, a court which receives the respect, and admiration too, of lawyers in all parts of the country. Wherever I have been since the publication of the last volumes of its reports, I have heard from those competent to judge, such compliments to our judiciary as are rarely bestowed upon any judiciary in the United States. Instead of finding, at home, a just pride that we have established such a court, and that such men are in it—men of integrity and learning—I find an attempt to tear it down, and I may be pardoned or my expression of astonishment.

THE ATTEMPT TO MAKE THE GENERAL ASSEMBLY A SORT OF HOUSE OF LORDS.

A little further concerning the jurisdiction sought to be established here. The gentleman from Newport (Mr. Van Zandt) calls it a supervisory jurisdiction,—a *quasi* judicial action. I ask him where he finds "*quasi*" in the constitution, and how long after the Assembly shall have assumed judicial powers before the "*quasi*" will drop off? Human nature is the same now as it has always been. The usurpation of jurisdiction by a court or branch of the legislature, or the legislature itself, will be the same here as it has been elsewhere. When the House of Lords in England, first heard appeals in equity, it was with the assent of both parties, and they took good care to get it. When they amplified their jurisdiction, and commanded Chancellors and Lord Keepers to send up their records, then, they dropped the assent and the "*quasi*," and exercised the judicial power in full force. And in those times, previous to the "act of settlement," the House of Lords were similar to this body in constitution. They were irresponsible. They referred causes to committees. They talked about them, out of their chamber, with suitors, just as members of this Assembly now talk with persons who are soliciting offices. Votes were solicited in private causes, in the same way as votes are now begged for candidates. It is written that the kings, even, as a matter of special favor to some suitors, would go down to the the houses of parliament, and speak to the lords in their seats and ask them to vote in favor of this or that gentleman's appeal, reversing or sustaining the decision below. Now, I wish to know—I ask the question of members of this House, and I wish I could put it to every man who lives in the state of Rhode Island—whether they want their private causes heard and adjudicated in a body open to solicitation, where every member may be buttonholed by a suitor or his attorney, just as he may be in any matter of private business; where causes may be discussed in secret caucuses; where, at last, the cause may be referred to the decision of a caucus. I want to know if the people are prepared for this. I think they will do as our fathers did in England—that they will protest against it as the commons of England always protested. Let me read you from the parliamentary history what they did in the case that finally brought this matter to an issue. They resolved—

"That whosoever shall prosecute any appeal before the lords, against any commoner of England, from any court of equity, shall be deemed a betrayer of the rights and privileges of the commons of England, and shall be proceeded against accordingly." (Dr. Shirley's case. 4 Par. Hist. 791.)

That is not a soft phrase, Mr. Speaker." Shall

be deemed a betrayer of the rights and privileges of the commons of England." They spoke in behalf of every subject of the crown. And when, probably the most learned and skillful peer of his time, undertook to defend the jurisdiction of his body, what does he say to that? He says they ought to have it, because they are independent hereditary, and beyond the reach of popular passion, and because they are not appointed by the king, and controlled by him as the judges were. Then he goes on to rebuke them for their misconduct in some causes, in this plain, forcible style. I read from Lord Shaftsbury's speech in the reign of Charles II.

"I must deal freely with your lordships; these things could never have arisen in men's minds but that there has been some kind of provocation that has given the first rise to it. Pray, my lords, forgive me, if on this occasion I put you in mind of committee dinners and the scandal of it; then the crowds of ladies that attended all causes. It was come to that pass that men even hired or borrowed of their friends, handsome sisters or daughters to deliver their petitions." (4 Par. Hist. 795)

This brings to mind the scandal that attended the introduction of divorce petitions into the General Assembly. I do not know, Mr. Speaker, but in some future General Assembly, my friend from Newport (Mr. Van Zandt) may resign his claim to the speaker's chair, and seek what is now the more humble, but what will then be the more desirable, place of chairman of the Judiciary Committee, and will sit, during the June session atNewport, with a rose in his buttonhole, receiving petitions from the fair daughters of the state, who will present themselves before him, pleading for the rights of parties to whom, forsooth, the courts have done injustice. (Laughter).

Such is the kind of administration of justice that met the reprobation of the commons of England. Such is the manner of administering justice which is now sought to to be introduced here. I ask what member of this House now thinks it objectionable for a party to speak to him about any private business pending here before committees? And if we draw hither all private controversies, I will ask if there would not be a lobby more powerful than that which assembles at any state capital, in the pay of litigants, to get this or that decree reversed or sustained, and get jurisdiction taken in this or that cause. For if that phrase in the 10th section of the 4th article of the constitution means that there is nothing prohibited except incurring debts, why, then the General Assembly may take to themselves all the judicial power, (without the *quasi*,) that they ever exercised or attempted to exercise by usurpation, under the charter.

PREJUDICED TRIBUNALS.

There are many kinds of jurisdictions in this world, which do not come within the definition of the judicial power. Churches have jurisdictions of their own; there is the military tribunal also. I ask what man in this state, with his well grounded dislike to any such jurisdictions as these, would wish to have any rights of his settled by them. Mr. Speaker, rather than submit myself to trial for life and property before an ecclesiastical, military or political tribunal, I would rather, God shield me, go before a council of wild Indians for justice. Where we appeal to the native instincts of men, we may get a sense of justice; but where they are perverted by controversial theology, or the maxims of military law, or the violence of political discussion and partizan zeal, what do we get? Simply the result of all, that superstition, military prejudice and political hatred can produce in the minds of men. We do not get the native man, or his native instincts; but the man educated to be perverted by what is done and learnen in that way. The victims of the inquisition, of the prison ship, and of the guillotine, teach us to beware of such jurisdictions.

SECURITY AS WELL AS LIBERTY TO BE LOVED AND PRESERVED.

Mr. Speaker, there is one other consideration to which I must beg the attention of members of this House, which it seems to me ought to have some weight. I think the member from Newport, and those who concur with him, are mistaken greatly in one thing. They hear the complaint of an individual, the complaint of his friends; and they get an idea that injustice has been done somewhere. A public commotion is raised about it, continually urged on by men of the most inflamed zeal, to say the least. They think they catch, in the voices they themselves raise, the idea that all the people along the hills and valleys and in our towns, are asking that this wrong should be righted; that those who are charged with having done it,—even if it be those who sit on the highest judgment seat, and whose integrity is unimpeachable, even in this act,—should be overthrown. The gentlemen mistake greatly. There are two things that this people love. They love liberty; their fathers have bled and died for it, and they, themselves, will do the same again, when liberty is threatened; but they love another thing, which is as important as liberty,and which dwells and should ever dwell with it. They love *security*. Greatly do they love our political freedom; greatly do they love the caucus, the town meeting, the open discussion, the election of representatives, the turning out of the defeated party, the bringing in of those who represent the victorious party; greatly do they love the mass meeting, the popular orator, the torch light procession, the bon-fire, the firing of cannon, the ringing of bells, the shouting and rejoicing, when a new triumph of liberty is gained. But after they have indulged their day in these things,—when the bon-fires have burnt out, the rockets have exploded, and the last light is extinguished,—they love to go home to their quiet beds and lay down their heads in security, feeling that over and around them, even while they sleep, is cast the mantle and the shield of the law; that while they rest, the watchman is going his round; that wrong or trespass cannot be committed with impunity; that the libeller of the fair fame of an honorable man, or the slanderer of the virtue of a modest maiden, shall not go unwhipt of justice; that every honest man is, under the law, a guardian of the rights of

person and of property of every other man; and that, at stated times and places, there sits an independent and upright judiciary, to arraign and condemn the guilty, and shield and protect the innocent. This do they love, and for this do they prize their liberty, because this security is the crowning glory and reward of it. Greatly do they love the mass meeting, the gathering crowds, the platform, the popular speaker They love to gather here, around their representatives; they love to hear the gentleman from Newport talk of liberty, and the powers of the people; they love to hear him anywhere, because he is a graceful and popular orator; they love to shout applause to him, and well does he deserve it when he glorifies their freedom. In the mass meeting, in the torch light procession, in the peaceful change of government by the change of party, in all these things we see the visible presence of our liberty. There we see her standards, her trophies and triumphs; and it rejoices the heart of every American, to feel that he has helped to raise and to maintain them. But after the shout and the procession are over, and they come back to the workshop, to the farm, to the counting house, and to the field; they love to feel that the results of all their toil will be gathered up by them, to be treasured up for their children; that they may make a will leaving a legacy of affection that will go with a sure hand in the administration of the law, to the loved object of it. They love to know when they lie down upon the bed of sickness and of death, that at their decease, the widow and the orphan cannot be plundered of the property which is left them, because the courts sit to protect them, and the shield of the law is ever around them. They love to know that in the court houses of the State, there sit in judgment, men learned in the law; men who are above and beyond the reach of political influence and personal solicitation; men who will not permit the dishonest trustee and executor, to defraud or cheat the legatee or the heir. They love to feel that the course of inheritance and transmission of property, the preservation of the reputations of their wives and children, and the security of their property and liberty, can and will ever be maintained. This thing, the gentleman will find that this people love, as well as the other. There may be those who are captivated, for the while, by the cry of wrong and the clamor for justice at the hands of the representatives of the people; but they will come to know, that the judges holding their offices for a long term, sitting apart from popular commotion, are as much the representatives of the people, as those who sit here for a year, under a popular election.

THE PURPOSE OF THIS AGITATION IS TO ENABLE A MAN TO BREAK HIS CONTRACT.

And what is all this for? Come down to the practical application of it again. It is to enable a man—is it not?—to break a contract in the forms of law. I find it reported that the gentleman from Johnston, (Mr. Pirce,) said that the farmers of his town, always thought that until they signed the deed they had a right to back out of their contracts. Now, in the course of litigation between man and man in this community, I think I have had as much experience with regard to what these people want, as the gentleman from Johnston; and I know that to say to the farmers with whom I once lived, and among whom I was brought up, that they want any law by which they may be enabled to break their contracts,—contracts made by the plighted hand, and by the word which is as good as the bond,—would be considered as an insult. I ask the representatives from Cumberland, my native town, if such a spirit has grown up among them in these years. I ask the representatives from Smithfield, if the farmers wish to have the laws altered so that they may back out of their bargains. I think it is a slander upon them, and that they would resent it as such if presented to them.

A great deal has been said here about one party in this controversy being a poor man, and the other a rich man. I do not know poverty or riches in questions of law. The grand result of all the past struggles for freedom, of all constitutions and governments of law, is, that all men are equal before the law. Do we hear, in a court of justice, any clamor about one client being rich and the other being poor? Do not the court and jury frown upon any such intimation? Can they who are sworn to administer the law, be respecters of persons?

It is stated in the arguments here, that, although these parties made a contract, and although the court of equity enforced it, yet, because one is rich and the other poor, a law should be passed to enable the poor man to be relieved from the consequence of this contract. I have already explained what a court of law will do, and must do, under the statute. But, do gentlemen consider that, if the course of justice can be changed by legislative act, so that a contract may be broken at all, or the consequence of the breach of it entirely done away, after it is once broken, for the sake of the poor man, that the rich man will not follow through the door thus opened? If a rich man finds himself aggrieved by the adjudication of our highest court, and finds that this General Assembly can do anything to relieve him from that judgment, do you think he will not follow in the way the poor man has led? Will gentlemen so ignore human nature, and the power of riches, as to keep this out of sight? Suppose, as the gentleman from Smithfield said, that the parties should be remitted to a trial by jury, and nominal damages should be recovered,—and he says the damages should be nothing,—they are no remedy in such contracts. Suppose it should be permitted to any poor man thus to avoid his contract, by a special act of this General Assembly, through some popular feeling in his favor. When the rich man is aggrieved, do you think he will not spend money in town elections,—especially where the towns are closely divided,—pay the registry taxes,

and return to this Legislature, men who will listen to his suit when he comes? Do we so ignore the power of riches in political questions? When you mix judicial questions up with political, they become wholly political, as is now the case in New York, where judges are elected by the people,—everything connected with the judiciary, having at last gone into the political cauldron. Let the rich man have access to this House of Representatives and to the Senate; have a right to come here to reverse the decrees of the courts against him; and you will find him here in every case, while the poor man will seldom or never come. Although the judges may stand up for the poor man; although they may risk their seats and their compensation, when they decide in favor of the poor man; although they may be turned adrift by the Legislature; yet, after they have done their whole duty, what chance in the end, will the poor man stand? He will be at the mercy of the rich man, who has the means and appliances of getting up a popular feeling in his favor. The rich man can print pamphlets; he can engage counsel; he can employ men to solicit votes, and to electioneer in all parts of the State; and you will find it will be, as I have heard that it once was,—I never saw it, it was before my day,—in former times, when a man could rise in the General Assembly, in favor of his client, on a private petition, and command the votes of an entire county. Do gentlemen want to bring about that state of things again? Do men here feel so secure in their rights of person and property, that they would be at the beck and command of scheming politicians?

No, Mr. Speaker, let us uphold the laws and the constitution; let us declare that we have a constitution, and that when the people of the State have charged the judiciary with the administration of the laws, and charged us with the making of them and nothing more, each shall stand within its own province, and neither interfere with the other, that this government may continue to be "*a government of laws and not of men.*