Nor was this at all a question of confidence or otherwise in the Executive, and he was astonished that any gentleman should attempt to convert it into a question of that sort. It was no such question. A member in his place had offered to the House a copy of an order of a Spanish governor (or rather a translation of which the original could be produced) to pay 9640 dollars to general James Wilkinson; he had also offered a copy of a letter, certified by the governor of Natchez, and immediately after governor of Louisiana, which, unless possibly forged, established beyond a doubt the fact of the guilt of this commandant, not under the articles of war, for it had been this day suggested to Mr. R. that an officer was not amenable to military law for an offence committed so long ago—nor did he say under the common law or statute law—but that sort of offence which incapacitated that officer from the situation which he now held, and from which the President of the U. S. alone was competent to remove him. What did they ask the President of the U. S. to do by passing this resolution? To enquire: they left the mode of conducting that enquiry to his discretion. It was to enquire merely, and surely it was a strange doctrine to say that asking the President to enquire respecting the conduct of persons in high office under him, was an expression of diffidence in the Executive. Far from it: if any thing it would shew a confidence in the executive, expressing a conviction that he would institute an enquiry, and upon the result of that enquiry do what was proper to be done. And what had this to do with diffidence in the executive? They would make a question of adjournment before long a question of confidence; or on every question which came before the House would sound this tocsin, this whoop of want of confidence. The gentleman from New Orleans did not say that he had given evidence to the President of the U. S. and that the President had rejected it, if he understood him aright; he thought the gentleman said, that filling as he did an office of trust under the government of the U. S. he had given that department of government with which he corresponded to understand that he possessed information of an important kind touching this character, and that he had received no intimation from that department of a wish to receive it, and had therefore been discouraged from communicating the information which he possessed. The knowledge which that gentleman possessed related to information which the House had not yet heard, and not to that which Mr. R. now held in his hand; to that information which he hoped the House would use its authority (but respectfully) to compel that gentleman to give. If the House acted on this subject at this time, could it be said that they acted from information of the gentleman from New-Orleans who had given none? If overtures to give information had been neglected, what had that to do with the information which Mr. R. had in his place laid before the House? The question was extremely simple. Had they power (to which he was astonished to hear an objection) to make this request? If they had, had they seen sufficient ground on which the prayer of the request should be granted? If they had the right to make the request and he had laid before the House substantial ground for an enquiry, their was an end to all other questions on the subject. In the prosecution of the present business it would perhaps be found peculiarly difficult to adduce proof—and why? Because in taking possession of New Orleans, the commissioners—(and who were they? He wished the House to reflect upon that)—suffered the archives of the country to be ransacked; even papers relating to land titles were taken away; and it must be believed, and could not be doubted, that if one of those commissioners found in the archives of the former government, in the Spanish burreau, evidences of his own guilt, he would not be so far lost to a sense of his own safety, as not to destroy such evidences as far as in his power. Fortunately, enough had been preserved to establish that point beyond all possibility of doubt; and it remained for the House to say whether it constituted a sufficient ground for enquiry or not. Whatever might be the decision of the House, said Mr. R. I shall respectfully submit; but be the decission what it may, I shall conceive a great object which I had in view in bringing this subject forward, to be completely answered.

MR. CLARK said that the information which he had heretofore attempted to convey, did not particularly relate to the subject now before the House. He then knew that various attempts had been made by the Spanish government to detach the Western country from the Union; he had thought it incumbent on him, holding a commission under the United States, to state these facts to the Executive. When first he had the honor of being presented to the Executive, he had twice attempted to state these facts to him who either did not or would not understand him, and changed the subject; at this he naturally felt hurt, and had not renewed personal communication on the subject. Some time subsequent to this, when the French were preparing to take possession of Louisiana, believing that they would discover those who were before attached to foreign government and secure them in their interests, he had thought it a duty incumbent on him to write to the Secretary of State as the constitutional organ of communication, & had stated his grounds of suspicion. He had twice attempted to make this known, and had officially written to learn whether he was understood. Of these letters no notice had been taken. He had then stated that the proofs in his possession might not be sufficient for conviction, but if time were allowed proof sufficient might be procured.

MR. THOMAS asked at what time these communications had been made?

MR. CLARK. To the President of the U. States in 1802; to the Secretary of State in 1803.

Mr. SLOAN said, that although he he could not consistently with the rules of order impeach the motives of the member who brought forward this resolution, he could question the propriety of passing it; the papers now adduced in evidence in his opinion amounted to no more than what had long before appeared in news-papers. He said that gen. W. had been formerly charged with mal-conduct before this House; Mr. S. said at that time he had declared that from what appeared, he considered general Wilkinson as deserving well of his country; that he had not discovered any cause to change his opinion; but contrarywise considered the various charges and insinuations as arising from malice or envy against him for having acted as the saviour of his country. From what the gentleman from Virginia had last said, it appeared that this resolution was to rest on the question whether there were sufficient evidence of guilt in that officer before the House to require an enquiry to be made. Would not the House by passing this resolution, say that this was the case, and would it not be throwing the whole weight of the House of Representatives of the United States against him? It undoubtedly would. As yet nothing had appeared to induce Mr. S. to change his opinion, and till there was, he should oppose every proposition of this kind.

FRIDAY, JAN. 1, 1808.

Mr. Morrow (Va.) obtained leave of absence for ten days from Monday next.

The House took up for consideration the bill supplementary to the embargo law; *Mr. Nelson's* motion for striking out the provision exempting fishing vessels in the first section being yet under consideration. After some debate, in which Messrs. Lyon, Rhea (Ten.) Macon, and Blackledge, supported the motion, and Messrs. Crowinshield, Southard, Newton, Sloan, Dana, and Holland opposed it—the question on the motion was taken by yeas & nays—yeas 40—nays 68.

Several verbal amendments were made to the bill.

Mr. Rhea (T.) moved that the House adjourn.

Mr. Randolph called for the yeas and nays on the question.

Mr. Rhea withdrew his motion.

After some further conversation on the details of the bill, it was discovered that there was not not a quorum present, on which the House adjourned.

SATURDAY, JAN. 2.

Mr. M. Clay from the committee to whom the subject was referred, presented a bill to amend the several acts more effectally to provide for the national defence by organizing the militia of the United States; which was twice read and referred to a committee of the whole on Wednesday next.

The House took up the bill to amend the law laying an embargo.

The motion for amendment under consideration when the House yesterday adjourned being withdrawn,

The bill was ordered to a third reading on this day, and was afterwards passed, 73 to 16.

On motion of Mr. *Findley* the House went into committee of the whole on the report of the committee of elections on the contested election of John Culpeper, which declares his seat to be vacated on the sole ground that some of the inspectors of election were not sworn as required by the state law. After some debate, (in the course of which a motion to postpone was negatived 50 to 27) the committee of the whole concurred in the report without a division, and reported it to the House.

The House immediately concurred in the report without a division.

On motion of Mr. *Blount*, a resolution, was passed, 65 to 14, directing the Speaker to inform the governor of North Carolina of this decision, in order that he may issue a writ for a new election. The minority in this vote wished to enquire whether the person contesting (Duncan M'Farland) was entitled to the vacated seat of Mr. Culpeper.

SENATE.

MR. ADAMS—from the —— Committee appointed to enquire whether it be compatible with the honor and privileges of this House that John Smith, a senator from the state of Ohio, against whom bills of indictment were found at the circuit court of Virginia, held at Richmond, in August last, for treason and misdemeanor, shall be permitted any longer to have a seat therein, and to enquire into all the facts regarding the conduct of Mr. Smith as an alleged associate of Aaron Burr, and report the same to the Senate—submitted the following

REPORT:

Your Committee are of opinion that the conspiracy of Aaron Burr and his associates against the peace, union, and liberties of these states, is of such a character, and that its existence is established by such a mass of concurring and mutually corroborative testimony, that it is incompatible not only with the honor and privileges of this House, but with the deepest interests of this nation, that any person engaged in it should be permitted to hold a seat in the Senate of the United States.

Whether the facts, of which the committee submit herewith such evidence, as under the order of the Senate they have been able to collect, are sufficient to substantiate the participation of Mr. Smith in that conspiracy, or not, will remain for the Senate to decide.

The committee submit also to the consideration of the Senate the correspondence between Mr. Smith and them through their chairman in the course of their meetings. The committee have never conceived themselves invested with authority to try Mr. Smith. Their charge was to report an opinion relating to the honor and privileges of the Senate, and the facts relating to the conduct of Mr. Smith. Their opinion indeed cannot be expressed in relation to the privileges of the Senate, without relating at the same time to Mr. Smith's right of holding a seat in this body; but in that respect the authority of the committee extends only to proposal, and not to decision—But as he manifested a great solicitude to be heard before them, they obtained permission from the Senate to admit his attendance, communicated to him the evidence in their possession, by which he was inculpated—furnished him in writing with the questions arising from it, which appeared to them material, and received from him the information and explanations herewith submitted as part of the facts reported. But Mr. Smith has claimed as a right to be heard in his defence by counsel, to have compulsory process for witnesses, and to be confronted with his accusers, as if the committee had been a circuit court of the U. States; but it is before the Senate itself that your committee conceived it just and proper that Mr. Smith's defence of himself should be heard; nor have they conceived themselves bound in this enquiry by any other rules than those of natural justice and equity due to a Brother Senator on the one part, and to their country on the other.

Mr. Smith represents himself on this enquiry as solitary, friendless and unskilled, contending for rights which he intimates are denied him, and the defender of senatorial privileges, which he seems apprehensive will be refused him by Senators, liable so long as they hold their offices to have his case made their own. The committee are not unaware that in the vicissitudes of human events, no member of this body can be sure that his conduct will never be made a subject of enquiry and decision before the assembly to which he belongs. They are aware that in the course of proceeding, which the Senate may now sanction, its members are marking out a precedent which may hereafter apply to themselves—They are sensible that the principles upon which they have acted, ought to have the same operation upon their own claims to privileges as upon those of Mr. Smith, the same relation to the rights of their constituents, which they have to those of the legislature which he represents. They have deemed it their duty to advance in the progress of their enquiry with peculiar care and deliberation. They have dealt out to Mr. Smith that measure which under the supposition of similar circumstances they would be content to find imparted to themselves, and they have no hesitation in declaring, that under such imputations, colored by such evidence, they should hold it a sacred obligation to themselves, to their fellow-senators, and to their country, to meet them by direct, unconditional acknowledgment or denial, without seeking a refuge from the broad face of day, in the labyrinth of technical forms.

In examining the question whether these forms of judicial proceedings, or the rules of judicial evidence, can or ought to be applied to the exercise of that censorial authority which the Senate of the U. S. possesses over the conduct of its members, let us assume, as the test of their application either the dictates of unfettered reason, the letter and spirit of the constitution, or precedents, domestic or foreign, and your commitee believe that the result will be the same—That the power of expelling a member must in its nature be discretionary, and in its exercise always more summary than the tardy process of judicial tribunals.

The power of expelling a member for misconduct results on the principles of common sense, from the interest of the nation, that the high trust of legislation should be invested in pure hands. Where the trust is elective it is not to to be presumed that the constituent body will commit the deposit to the keeping of worthless characters. But when a man, whom his fellow-citizens have honored with their confidence, on the pledge of a spotless reputation, has degraded himself by the commission of infamous crimes, which become suddenly and unexpectedly revealed to the world, defective indeed would be that institution which should be impotent to discard from its bosom the contagion of such a member; which should have no remedy of amputation to apply until the poison had reached the heart.

The question upon the trial of a criminal cause, before the courts of common law, is not between guilt and innocence, but between guilt and the possibility of innocence. If a doubt can possibly be raised either by the ingenuity of the party or of his counsel or by the operation of general rules in their unforeseen application to particular cases, that doubt must be decisive for acquittal, and the verdict of not guilty, perhaps in nine cases out of ten, means no more than that the guilt of the party has not been demonstrated in the precise specific and narrow forms prescribed by law. The humane spirit of the laws multiplies the barriers for the protection of innocence, and freely admits that these barriers may be abused for the shelter of guilt. It avows a strong partiality favorable to the person upon trial, and acknowledges the preference that ten guilty should escape rather than that one innocent should suffer. The interest of the public that a particular crime should be punished is but as one to ten, compared with the interest of the party that innocence should be spared. Acquittal only restores the party to the common rights of every other citizen—It restores him to no public trust—it invests him with no public confidence—it substitutes the sentence of *mercy* for the doom of justice, and to the eyes of impartial reason, in the great majority of cases, must be considered rather as a pardon than a justification.

But when a member of a legislative body lies under the imputation of aggravated offences, and the determination upon his cause can operate only to remove him from a station of extensive powers, and important trust, this disproportion, between the interest of the public and the interest of the individual, disappears; if any disproportion exists it is of an opposite kind. It is *not* better that ten traitors should be members of this Senate, than that one innocent man should suffer expulsion. In either case, no doubt, the evil would be great. But in the former it would strike at the vitals of the nation—in the latter it might, though deeply to be lamented, only be the calamity of an individual.

By the letter of the constitution, the power of expelling a member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two thirds of the votes to give it effect. The spirit of the constitution is perhaps in no respect more remarkable, than in the solicitude which it has manifested, to secure the purity of the legislature, by that of the elements of its composition. A qualification of age is made necessary for the members to ensure the maturity of their judgment. A qualification of long citizenship to ensure a community of interests and affections between them and their country. A qualification of residence to provide a sympathy between every member and the portion of the union from which he is delegated. And to guard, as far as regulation can guard against every bias of personal interest, and every hazard of interfering duties, it has made every member of Congress ineligible to office which he contributed to create, and every officer of the union incapable of holding a seat in Congress. Yet in the midst of all this anxious providence of legislative virtue, it has not authorised the constituent body to recall in any case its representative. It has not subjected him to removal by impeachment—and when the darling of the people's choice has become their deadliest foe, can it enter the imagination of a reasonable man, that the sanctuary of their legislation must remain polluted with his presence, until a court of common law, with its pace of snail can ascertain, whether his crime was committed on the right or on the left bank of a river—whether a puncture of difference can be found between the words of the charge and the words of the proof—whether the witnesses of his guilt should or should not be heard by his jury—and whether he was punishable, because present at an overt act, or intangible to public justice, because he only contrived and prepared it. Is it conceivable that a traitor to that country, which has loaded him with favors, guilty to the common understanding of all mankind, should be suffered to return unquestioned to that post of honor and confidence, where in the zenith of his good fame, he had been placed by the esteem of his countrymen, and in defiance of their wishes, in mockery of their fears, surrounded by the public indignation, but inaccessible to its bolt, pursue the purposes of treason in the heart of the national councils? Must the assembled rulers of the land listen with calmness and indifference, session after session, to the voice of notorious infamy, until the sluggard step of municipal justice can overtake his enormities? Must they tamely see the lives and fortunes of millions, the safety of present and future ages, depending upon his vote, recorded with theirs, merely because the abused benignity of general maxims, may have remitted to him the forfeiture of his life?

Such in very supposable cases would be the unavoidable consequences of a principle which should offer the crutches of judicial tribunals, as an apology for crippling the Congressional power of expulsion. Far different in the opinion of your committee, is the spirit of our constitution. They believe that the very purpose for which this power was given, was to preserve the legislature from the first approaches of infection. That it was made discretionary because it could not exist under the procrastination of general rules—That its process must be summary because it would be rendered nugatory by delay.

Passing from the constitutional view of the subject, to that which is afforded by the authority of precedent, your committee find that since the establishment of our present national legislature there has been but one example of expulsion from the Senate—In that case, the member implicated was called upon in the first instance, to answer whether he was the author of a letter, the *copy* of which only was produced, and the writing of which was the cause of his expulsion. He was afterwards requested to declare whether he was the author of the letter itself, and declining in both cases to answer, the fact of his having written it was established by a comparison of his hand writing, and by the belief of persons who had seen him write, upon inspection of the letter. In all these points the committee perceive the admission of a species of evidence, which in courts of criminal jurisdiction would be excluded—and in the resolution of expulsion the Senate declared the person inculpated *guilty of a high misdemeanor*, although no presentment or indictment had been found against him, and no prosecution at law was ever commenced upon the case.

This event occurred in July 1797. About fifteen months before that time, upon an application from the legislature of Kentucky, requesting an investigation by the Senate, of a charge against one of the members from that state, of perjury, which had been made in certain newspaper publications, but for which no prosecution had been commenced, the Senate did adopt by a majority of 16 votes to 8, the report of a committee, purporting that the Senate had no *jurisdiction* to try the charge, and that the memorial of the Kentucky legislature should be dismissed. There were indeed very sufficient reasons of a different kind assigned in the same report, for not pursuing the investigation in that particular case any further, and your committee believe, that in the reasoning of that report, some principles were assumed and some inferences drawn, which were altogether unnecessary for the determination of that case, which were adopted without a full consideration of all their consequences, and the inaccuracy of which was clearly proved by the departure from them in the instance which was so soon afterwards to take place. It was the first time that a question of expulsion had ever been agitated in Congress since the adoption of the constitution. And the subject being thus entirely new, was considered perhaps too much with reference to the particular circumstances of the moment, and not enough upon the numerous contingencies to which the general question might apply. Your committee state this opinion with some confidence, because, of the sixteen Senators who in March, 1796, voted for the report, dismissing the memorial of the Kentucky legislature, eleven, on the subsequent occasion in July 1797, voted also for that report, which concluded with a resolution for the expulsion of Mr. Blount. The other five were no longer present in the Senate—yet if the principles advanced in the first report, had been assumed as the ground of proceeding at the latter period, the Senate would have been as impotent of jurisdiction upon the offence of Mr. Blount, as they had supposed themselves upon the allegation against Mr. Marhall.

Those parts of the fifth and sixth articles amendatory to the constitution, upon which the report in the case of Mr. Marshall appears to rely for taking away the jurisdiction of the Senate, your committee suppose can only be understood as referring to prosecutions at law. To suppose that they were intended as restrictions upon powers expressly granted by the constitution to the legislature or either of its branches, would in a manner annihilate the power of impeachment, as well as that of