must be for an *indictable* offence. The words of the constitution are, that "they shall be liable to impeachment for treason, bribery, *or other high* crimes and misdemeanors."

There can be no doubt but that treason and bribery are *indictable* offences. We have only to enquire then, what is meant by *high* crimes and misdemeanors. What is the true meaning of the word "*crime?*" It is the breach of some law, which renders the person, who violates it liable to punishment.—There can be no crime committed where no such law is violated. The honorable gentleman to whom I before alluded, has cited the new addition of Jacob's Law Dictionary; let us then look into that authority for the true meaning of the word "*misdemeanor.*" He tells us

"Misdemesnor or misdemeanor, a crime less than felony. The term misdemesnor is generally used in contradistinction to felony, and comprehends all indictable offences, which do not amount to felony, as perjury, libels, conspiracies; assaults, &c. see 4 Comm. c. 1, p. 5.

"A crime or misdemeanor, says Blackstone, is an act committed or omitted in violation of a public law, either forbidding or commanding it.—This general definition comprehends both crimes and misdemeanors, which properly speaking are mere synonimous terms; though in common usage, the word crime is made use of to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentle name of misdemeanors only.

"In making the distinction between public wrongs and private, between crimes and misdemeanors, and civil injuries, the same author observes, that public wrongs, or crimes and misdemeanors are a breach and violation of the public rights and duties, due to the whole community, considered as a community in its social aggregate capacity." 4 Comm. 5.

Thus it appears, crimes and misdemeanors are the violation of a law, exposing the person to punishment; and are used in contradistinction to those breaches of law, which are mere private injuries, and only entitle the injured to a civil remedy.

Blackstone's Commentaries, 4 vol. p. 5, is cited by Jacob, and is as there stated, I shall not turn to it. Hale, in his Pleas of the Crown, vol. 1, in his *Proemium*, which is not paged, speaking of the division of crimes, says,

"Temporal crimes, which are offences against the laws of this realm, whether the common law or acts of Parliament, are divided into two general ranks or distributions in respect to the punishments that are by law appointed for them, or in respect of their nature or degree; and thus they may be divided into capital offences or offences only criminal, or rather, and more properly into felonies & misdemeanors. And the same distribution is to be made touching misdemeanors, namely they are, such as are so by the common law, or such as are specially made punishable, as misdemeanors by acts of Parliament."

Thus then it appears, that crimes and misdemeanors are generally used as synonimous expressions, except that "crimes," is a word frequently used for *higher* offences. But while I contend that a judge cannot be impeached except for a crime or misdemeanor, I also contend that there are many crimes and misdemeanors for which a judge ought not to be impeached, unless immediately relating to his judicial conduct. Let us suppose a judge, provoked by insolence, should strike a person; this certainly would be an *indictable*, but not an *impeachable* offence. The offence for which a judge is liable to impeachment, must not only be a crime or misdemeanor but a *high* crime or misdemeanor. The word "crime," as distinguished from misdemeanor, is applied to offences of a more aggravated nature, the word "*high*," therefore, must certainly equally apply to misdemeanors as to crimes. Nay, sir, I am ready to go further, and say, there may be instances of *very high* crimes and misdemeanors, for which an officer ought to be impeached, and removed from office; the crimes ought to be such as relate to his office, or which tend to cover the person, who committed them, with *turpitude* and *infamy*; such as shew there can be no dependence on that integrity and honor which will secure the performance of his official duties.

But we have been told, and the authority of the state of Pennsylvania has been cited, by one hon. manager (Mr. Rodney) in support of the position, that a judge may be impeached, convicted, and removed from office, for that which is not indictable, for that which is not a violation of any law?

What, sir, can a judge be impeached and deprived of office, when he has done nothing which the laws of his country prohibited? Is not deprivation of office a punishment? Can there be punishment inflicted where there is no crime? Suppose the House of Representatives to impeach, for conduct not *criminal*—the Senate to convict, doth that change the law? No, the law can only be changed by a bill brought forward by one House *in a certain manner*, assented to by the other, *and approved by the President*. Impeachment and conviction cannot change the law, and make that *punishable* which was not *before criminal*.

It is true, it often happens that the good of the community, requires that laws should be passed, making criminal and exposing to punishment conduct, which antecedently was not punishable; but even in those cases, government has no power to punish acts *antecedently* done; it can only punish those acts done *after* the enaction of the law. The constitution has declared, "no *ex post facto* law shall be passed."

Should *such* a principle be once admitted or adopted, could the officers of government ever know how to proceed? Admit that the House of Representatives have a right to impeach for acts which are not contrary to law, and that thereon the Senate may convict, and the officer be removed, you leave your judges and all your other officers at the mercy of the prevailing party. You will place them much in the unhappy situation as were the people of England during the contest between the white and red roses, while the doctrine of constructive treasons prevailed. They must be the tools or the victims of the victorious party.

I speak not, sir, with a view to censure the principles or the conduct of any party, which hath prevailed in the U. States since our revolution, but I wish to bring home to your feelings what may happen at a future time. In republican governments there ever have been,—there ever will be a conflict of parties. Must an officer, for instance a Judge, ever be in favor of the ruling party, whether wrong or right? Or looking forward to the triumph of the minority, must he, however improper their views, act with them? Neither the one conduct or the other is to be supposed but from a total dereliction of principle. Shall then a Judge, by honestly performing his duty, and very possibly thereby offending both parties, be made the victim of the one or the other, or perhaps of each, as they have power? No, sir, I conceive that a Judge should always consider himself safe while he violates no law, while he conscienciously discharges his duty, *whomever* he may displease thereby.

But an hon. manager (Mr. Campbell) hath read to us an authority to prove, that a Judge cannot in England be proceeded against by indictment for violation of his official duties but only in Parliament, or by impeachment; his authority was the new edition of Jacob's Law Dictionary. Let me be indulged with reading to this hon. court the case from 12 Coke, the case of Floyd and Barker, to which Jacob refers, and it will be found that the reasons there assigned, however correct they might be as to Judges in England, can have no possible application to the Judges of the United States; [Here Mr. Martin read the following part of the third resolution in that case, to wit:]

"It was resolved that the said Barker who was judge of assise, and gave judgment on the verdict upon the said W. P. and the sheriff who did execute him according to the said judgment, nor the justices of peace who did examine the offender, and the witnesses for proof of the murder before the judgment, were not to be drawn in question, in the Star-chamber, for any conspiracy; nor any witness, nor any other person ought to be charged with any conspiracy in the Star-chamber, or elsewhere, when the party indicted is convicted or attaint of murder or felony and although the offender upon the indictment was acquitted, yet the judge, be he judge of assise, or a justice of peace, or any other judge by commission and of record, and sworn to do justice, cannot be charged for conspiracy for that which he did openly in court as judge or justice of peace: and the law will not admit any proof against this vehement and violent presumption of law, that a justice sworn to do justice, will do injustice, but if he hath conspired before, out of court, this is extrajudicial, but due examination of causes out of the court, and enquiring by testimony, and similar, is not any conspiracy, for this he ought to do; but subordination of witnesses, and false and malicious prosecutors, out of court, to such whom he knows will be indictors, to find any guilty, &c. amounts to an unlawful conspiracy.

"And as a judge shall not be drawn in question in the cases aforesaid, at the suit of the parties, no more shall he be charged in the said cases before any other judge at the suit of the king.

"And the reason and cause why a judge, for any thing done by him as judge, by the authority which the king (concerning his justice) shall not be drawn in question before any other judge, for any surmise of corruption, except before the king himself, is for this; the king himself is *de jure* to deliver justice to all his subjects; and for this, that he himself cannot do it to all persons, he delegates his power to his judges, who have the custody and guard of the king's oath.

"And forasmuch, as this concerns the honor and conscience of the king, there is great reason that the king himself shall take account of it, and no other."

But, even in England it has been solemnly determined, that judges may be proceeded against by indictment for the violation of the laws in their official conduct, for which I refer this honorable court to Viner's abridgment, 14th vol. page 579, (F) pl. 3, and in notes, where he says,

"A justice cannot rase a record, nor imbesil it, nor file an indictment which is not found, nor give judgement of death where the law does not give it, but if he doth this it is misprision and he shall lose his office, and shall make fine for misprision." In the note "Brooke, Corone pl. 173 cites 2 R. 3, 9, 10. S. C. and P. and that he shall be *indicted*, and arraigned."

And to Hawkin's pleas of the crown, vol, 1st, chap. 69, 6, where that author tells us,

"It is said, that at common law, bribery in a judge, in relation to a cause depending before him, was looked upon as an offence of so heinous a nature, that it was sometimes punished as high treason, before the 25th Ed. III. and at this day it certainly is a very high offence, and punishable, not only with the forfeiture of the offenders office of justice, but also with fine and imprisonment, &c."

Mr. President, the principle I have endeavoured to establish, is, that no judge or other officer can, under the constitution of the United States, be removed from office but by impeachment and for the violation of *some law*, which violation must be, not simply a crime or misdemeanor, but a *high* crime or misdemeanor.

[TO BE CONTINUED.]

CONSTITUTION OF HAYTI,

Translated for the Mercantile Advertiser.

WE H. Christophe, Clervaux, Vernet, Gabart, Petion, Geffrard, Toussaint Brave, Raphaal, Romain, Latondrie, Capoix, Magny, Daut, Conge, Magloire Ambrose, Yoyou, Jean Louis Francois, Gerin, Moreau, Fervu, Bazezelais, Martial Besse;

As well in our own name as in that of the people of Hayti, who have legally constituted us faithful organs and interpretors of their will; in presence of the Supreme Being, before whom all mankind are equal, and who has distributed so many species of creatures on the surface of the earth for the purpose of manifesting his glory and his power by the diversity of his work: In the presence of all nature by whom we have been so long a time considered as outcast children:

Do delare that the tenor of the present constitution is the spontaneous and invariable expresson of our hearts and the general will of our constituents; and we submit it to the sanction of His Majesty the Emperor, JACQUES DESSALINES, our deliverer, to receive its speedy and entire execution.

PRELIMINARY DECLARATION.

ART. 1. The people inhabiting the island formerly called St. Domingo, hereby agree to form themselves into a free state, sovereign and independent of any other power in the universe, under the name of Empire of Hayti.

2. Slavery is forever abolished.

3. The citizens of Hayti are brothers at home, equality in the eye of the law is incontestibly acknowledged; and there cannot exist any titles, advantages or privileges, other than those necessarily resulting from the consideration and reward of services rendered to liberty and independence.

4. The law is the same to all, whether it punishes, or whether it protects.

5. The law has no retroactive effect.

6. Property is sacred, its violation shall be severely prosecuted.

7. The quality of citizen of Hayti is lost by emigration and naturalization in foreign countries, and by condemnation to corporal or disgraceful punishments, The first carries with it the punishment of death and confiscation of property.

8. The quality of citizen is suspended in consequence of bankruptcies and failures.

9. No person is worthy of being a Haytian who is not a good father, a good son, a good husband, and especially a good soldier.

10. Fathers and mothers are not permitted to disinherit their children.

11. Every citizen must possess a mechanic art.

12. No white man, of whatsoever nation he may be, shall put his foot on this territory with the title of master or proprietor, neither shall he in future acquire any property therein.

13. The preceding article cannot in the smallest degree affect white women who have been naturalised Haytians by government, nor does it extend to children already born or that may be born of the said women. The Germans and Polanders naturalised by government are also comprised in the dispositions of the present article.

14. All acception of colour among the children of one and the same family, of whom the chief magistrate is the father, being necessarily to cease, the Haytians shall henceforward be known only by the general appellation of Blacks.

OF THE EMPIRE.

15. The Empire of Hayti is one and indivisible. Its territory is distributed into six military divisions.

16. Each military division shall be commanded by a general of division.

17. These generals of division shall be independent of one another, and shall correspond directly with the emperor or with the general in chief appointed by his majesty.

18. The following islands are integral parts of the empire; viz. Samana, La Portue, La Gonaive, Les Cayemites, La Saone, L'Isle-a-Vache, and other adjacent islands.

OF THE GOVERNMENT.

19. The government of Hayti is entrusted to a first magistrate, who assumes the title of emperor and commander in chief of the army.

20. The people acknowledge for emperor and commander in chief of the army, JAQUES DESSALINES, the avenger and deliverer of his fellow citizens. The title of majesty is conferred upon him, as well as upon his august spouse the empress.

21. The person of their majesties is sacred and inviolable.

22. The state will appropriate a fixed annual allowance to her majesty the empress, which she will continue to enjoy even after the decease of the emperor, as princess dowager.

23. The crown is elective, not hereditary.

24. There shall be assigned by the state an annual income to the children acknowledged by his majesty the emperor.

25. The male children acknowledged by the Emperor shall be obliged, in the same manner as the other citizens, to pass successively from grade to grade, with this only difference, that their entrance into service shall begin at the fourth demi brigade, from the period of their birth.

26. The Emperor designates, in the manner he may judge expedient, the person who is to be his successor either before or after his death.

27. A suitable provision shall be made by the state to that successor from the moment of his accession to the throne.

28. The emperor, and his successors, shall, in no case and under no pretext whatsoever, have the right of attaching to their persons any particular or privileged body, whether as guards of honor, or under any other denomination.

29. Every successor deviating from the dispositions of the preceding article, or from the principles consecrated in the present constitution, shall be considered and declared in a state of warfare against the society.

In such a case, the counsellors of state will assemble in order to pronounce his removal, and to chuse one among themselves who shall be judged the most worthy of replacing him; and if it should happen that the said successor oppose the execution of this measure authorised by law, the generals counsellors of state shall appeal to the people and the army, who will immediately give their whole strength and assistance to maintain liberty.

30. The emperor makes, seals, and promulgates the laws; appoints and revokes, at will, the ministers, the general in chief of the army, the counsellors of state, the generals and other agents of the empire, the land and sea officers, the members of the local administrations, the commissaries of government near the tribunals, the judges, and other public functionaries.

31. The Emperor directs the receipts and expenditures of the State, surveys the Mint, of which he alone orders the emission, and fixes the weight and the model.

32. To him alone is reserved the power of making peace or war, to maintain political intercourse, and to form treaties.

33. He provides for the interior safety and for the defence of the state; and distributes at pleasure the sea and land forces.

34. In case of conspiracy manifesting themselves against the safety of the state, against the Constitution or against his person, the Emperor shall cause the authors or accomplices to be arrested and tried before a special Council.

35. His Majesty has alone the right to absolve a criminal or to commute his punishment.

36. The Emperor shall never form any enterprise with the view of making conquests, nor to disturb the peace and the interior administration of foreign colonies.

37. Every public act shall be made in these terms:

"*The Emperor I. of Hayti, and Commander in Chief of the Army by the grace of God and the Constitutional law of the state.*"

Of the Council of State.

31. The Generals of division and of brigade, are of right members of the Council of State, and they compose it.

Of the Ministers.

39. There shall be in the empire two ministers and a Secretary of State. The minister of finances having the department of the interior, and the minister of war having the marine department.

40—44. [Interior regulations respecting the ministry.]

Of the Tribunals.

45. No one can interfere with the right which every individual has of being judged amicably by arbitrators of his own chusing, whose decisions shall be acknowledged legal.

46. There shall be a justice of peace in each commune. Any suit amounting to more than one hundred dollars shall not come within his cognizance. And when the parties cannot conciliate themselves at his tribunal, they may appeal to the tribunals of their respective districts.

47. There shall be six tribunals established in the cities hereafter designated, viz. at St. Marc, at the Cape, at Port-au-Prince, Aux-Cayes, Lanse-a-Vaux, and Porte-de-Paix. The Emperor determines their organisation, their number, their competence and the territory forming the district of each. These tribunals take cognizance of all affairs purely civil.

48. Military crimes are submitted to special councils and to particular forms of judgment.

49. Particular laws shall be made for the national transactions, and respecting the civil officers of the state.

Of Worship.

50. The law admits of no predominant religion.

51. The freedom of worship is tolerated.

52. The state does not provide for the maintenance of any religious institution, nor of any minister.

Of the Administration.

53. There shall be in each military division a principal administration, whose organisation and inspection belong essentially to the minister of finances.

General Dispositions.

Art. 1. To the Emperor and Empress belong the choice, the salary, and the maintenance of the persons composing their court.

2. After the decease of the reigning Emperor, when a revision of the constitution shall have been judged necessary, the council of state will assemble for that purpose, and shall be presided by the oldest member.

3. The crimes of high treason, the delapidations of the ministers and generals, shall be judged by a special council, called and presided by the Emperor.

4. The armed force is essentially obedient, no armed body can deliberate.

5. No person shall be judged without having been legally heard in his defence.

6. The house of every citizen is an inviolable asylum.

7. It cannot be entered but in case of conflagration, inundation, reclamation from the interior, or by virtue of an order from the Emperor, or from any other authority legally constituted.

8. He deserves death who gives it to his fellow.

9. Every judgment to which the pain of death or corporal punishment is annexed, shall not be carried into execution until it has been confirmed by the Emperor.

10. Theft shall be punished according to the circumstances which may have preceded, accompanied, or followed it.

11. Every stranger inhabiting the territory of Hayti shall be, equally with the Haytians, subject to the correctional and criminal laws of the country.

12. All property which formerly belonged to any white Frenchman, is contestibly and of right confiscated to the use of the state.

13. Every Haytian, who, having purchased property from a white Frenchman, may have paid part of the purchase money stipulated in the act of sale, shall be responsible to the domains of the state for the remainder of the sum due.

14. Marriage is an act purely civil, & authorised by the government.

15. The law authorises divorce in all cases which shall have been previously provided for and determined.

16. A particular law shall be issued concerning children born out of wedlock.

17. Respect for the chiefs, subordination and discipline are rigorously necessary.

18. A penal code shall be published and severely observed.

19. Within each military division a public school shall be established for the instruction of youth.

20. The national colours shall be black and red.

21. Agriculture, as it is the first, the most noble, and the most useful of all the arts, shall be honored and protected.

22. Commerce, the second source of the prosperity of states, will not admit of any impediment: it ought to be favoured and specially protected.

23. In each military division a tribunal of commerce shall be formed, whose members shall be chosen by the emperor from the class of merchants.

24. Good faith and integrity in commercial operations shall be religiously maintained.

25. The government assures safety and protection to neutral nations and friends who may be desirous of establishing a commercial intercourse with this island, they conforming to the regulations and customs of the country.

26. The counting houses and the merchandize of foreigners shall be under the safeguard and guarantee of the state.

27. There shall be national festivals for celebrating Independence, the birth day of the emperor and his august spouse, that of agriculture and of the constitution.

28. At the first firing of the alarm gun the cities will disappear, and the nation rise.

We, the undersigned, place under the safeguard of the magistrates, fathers and mothers of families, the citizens, and the army, this explicit and solemn covenant of the sacred rights of man and the duties of the citizen.

We recommend it to our successors, and present it to the friends of liberty, to philanthropists of all countries, as a signal pledge of the Divine Bounty, who, in the course of his immortal decrees, has given us an opportunity of breaking our fetters, and of constituting ourselves a people free, civilised, and independent.

Signed,

H. CHRISTOPHE, &c. (as before.)

Having seen the present constitution:

We, JACQUES DESSALINES, Emperor I. of Hayti, and Commander in Chief of the army, by the grace of GOD and the constitutional law of the state,

Accept it wholly, and sanction it, that it may receive, with the least possible delay, its full and entire execution throughout the whole of our empire. And we swear to maintain it, and to cause it to be observed in its integrity to the last breath of our life.

At the Imperial Palace of Dessalines, the 20th May, 1805, second year of the Independence of Hayti, and of our reign the first.

DESSALINES.

By the Emperor,

JUSTE CHANLATTE,

Secretary General.