

dent, wished that the executive had power to control the public will.

This testimony, when compared with the books of the President, will substantiate the charges in the book written by Mr. Callender. It will go strongly to a confirmation of the charges in dispute; it goes directly to that part of the indictment where he is charged with having said that the President is a professed aristocrat. It has been stated that as there are nineteen charges in the indictment against the traverser, though we prove eighteen of them to be true, yet he must be found guilty, because we do not prove the truth of the nineteenth;—but how is it possible for us to defend ourselves, or how can we be prepared for trial, if the witness, by whom we can prove that particular charge, be absent? If the court think that, in order to justify ourselves, we must prove the whole libel to be true, and it shall appear that testimony to prove a particular charge is wanting, the court will afford us an opportunity of adducing it. I conceive, with submission, that the former judgment of the court, in particularly postponing the trial, admitted the evidence of Mr. Giles to be material, and that his personal attendance would be essential to justice.

JUDGE CHASE. Mr. Nicholas has not apprehended the opinion of the court rightly, although on the application of the counsel for the traverser, the court had given them the choice of postponement of the trial till today instead of a few hours; yet it was not meant by that indulgence, either to declare the testimony of Mr. Giles material, or to postpone the trial till another term, on account of his absence.

*Mr. Nicholas* urged the necessity of postponing the trial till Mr. Giles could attend. The question, on a motion for a continuance is, can the testimony of the absent witness substantiate the defense or the point in issue? How can it be done, if the witness be not present? When a witness, to prove the truth of a particular charge, is absent, I trust the court will give us time to avail ourselves of his evidence, and will not precipitate a trial, when a trial will not demon-