

my stating to the court the reasons which have led me to this conclusion, may subject me to the imputation which has more than once fallen from the bench. It has been the pleasure of the court to observe, that the defense had been conceived and continued in error. What I am about to say will not, perhaps, induce the court to change that opinion. It is with great diffidence I address the court on a subject which I have not had sufficient leisure to investigate. If, unfortunately, my conception of this law be mistaken, I hope I shall be excused, and that the reprimand will not be severe, when it is recollected that I have had not sufficient time for a full examination of the case. The position for which I contend is that the book entitled "The Prospect Before Us" cannot be given in evidence in support of the indictment. The title of the book is not mentioned in the indictment. It states, that "on the first day of February, one thousand eight hundred, the traverser did write, print, utter and publish, a false, scandalous and malicious writing against the President of the United States, of the tenor and effect following: 'The reign of Mr. Adams,' etc." In prosecutions for libels in the English courts, great strictness is observed; the difference of a single letter between the words of the indictment and those in the written or printed paper adduced in evidence, is fatal; and when "tenor and effect" are inserted, all the authorities concur in declaring, that they impose on the prosecutor the necessity of proving the very words in the indictment. The first charge in the indictment is for a libellous writing of the following tenor: "The reign of Mr. Adams has been one continued reign of malignant passions." The book which is introduced in support of this charge begins differently, and contains a hundred other pages, and many pages besides, and is not named in the indictment. The position for which I therefore mean to contend is, that when libellous passages are extracted from a book which has a name by which it can be described, it is the duty of the prosecutor to describe the book by that name; for instance, he ought, in this case, to have stated, that the party accused had published a false, scandalous and malicious writing, entitled "The Prospect Before Us," containing, among other things, the passages complained of. There are two strong reasons to support this doctrine. The first ground on which I rest the validity of this observation is, that the practice has been invariably so. I have taken the trouble of examining fifteen or twenty cases, in all of which the books from which libellous passages were taken, had a name or title, and the prosecutor described every one of them by the name which the author had chosen to give it. From these I will select three cases, to show that the description of the libellous writing by the title given it by the author, has been deemed essentially necessary, the first of which was remarkable for the length of the title; the second, where the paper contained the libel, had a number as well as a title, and both the number and the title were recited. And the third, where the libel was published in the French language, in which case the title, though lengthy, was recited in that language, and then in English. In page 87 of the same book there is a history