

defendant should be explicit? It is that he may clearly comprehend it, and be prepared to make his defense. It is not necessary for this purpose to recite the name of the libel. The charge against the traverser is very explicit, and he well understands and is prepared to defend it; but it is no censure on his counsel that they urge this argument in his favor. You argue further, on a supposition, that if a subsequent prosecution were to be instituted for the same offense, the verdict and judgment now to be rendered could not be pleaded in bar. It requires very little legal ability to demonstrate that the title need not be recited; and it is equally easy to prove that the decision in this case may be pleaded in bar of any other prosecution for the same offense. The attorney for the United States must prove that the traverser did publish a false, scandalous and malicious writing, with intent to defame the President. This can be done without reciting the title; and if he supports by the evidence any entire charge—if he proves that the traverser did publish any false, scandalous and malicious writing, it will be sufficient to support the indictment as to that charge, but he must be acquitted of the other charges: and the charges of which he may be found guilty, can be easily compared to charges in any subsequent indictment. This is quite different from the cases where there is an actual variance between the paper charged, and the paper offered in evidence. I understand that difference to be, that where the prosecutor undertakes to say that certain precise words have been published, he must establish them; but when he states words of the tenor and effect following, he will only be obliged to prove the substance;* but you insist that the whole original, including the

* This position, notwithstanding the boisterous way in which it is laid down, is incorrect. There must be always at common law an exact recital of the alleged libellous matter, unless in the indictment itself the pleader excuses himself from so doing on the ground of the destruction of the instrument, or its possession by the defendant. See the authorities collected in Wharton's Prec. of Indict., 545. "Tenor and effect" exacts a literal recital. *Fbró v. Bennett*, 1 *Ld., Ray*, 415. *R. v. Bear*, 2 *Salk.*, 417. At the same time, Mr. Hay's position, that the title must be set out, is not sustained by the au-