

other testimony, however irregular or improper, might also be admitted; and, particularly, that it would be a departure from the universal principle of law, which required the production of the best testimony which the nature of every case admitted, and that the journals and records of Congress were the best evidence of what votes had been given on any subject discussed before that body.

JUDGE CHASE. *Mr. Nelson*: Being very much pressed by the young gentlemen who defend the traverser, to admit this testimony, I was going to recommend to you to permit those questions to be put to the witness, though they are certainly irregular. I wish you could consent that they should be propounded.

*Mr. Nelson* declared that he did not feel himself at liberty to consent to such a departure from legal principles.

*Mr. Wirt*. Gentlemen of the jury: I premise that the situation of the defendant and his counsel is extremely embarrassing; as *Mr. Callender* had been presented, indicted, arrested and tried, during this term, I have not been able to procure the testimony essential to his defense, nor are his counsel prepared to defend him. The conduct of the court was apparently precipitate, in not postponing the trial until the next term.

JUDGE CHASE told him he must not reflect on the court.

*Mr. Wirt* said, that his object was not to reflect on the court, but to apologize to the jury for the weakness of a defense which he was about to make.

JUDGE CHASE, after observing that his apology included the very reflection he denied, told him to proceed in his cause.

*Mr. Wirt*. Gentlemen of the jury: I am prevented from explaining to you the causes which have conspired to weaken our defense, and it is no doubt right that I should be prevented, as the court have so decided: permit me, then, gentlemen, to pass on abruptly to the law, under which we are indicted. You will find that a material part of your inquiry will relate to the powers of a jury over the subject committed