"As there is no dispute between the parties, in relation to the facts in this case, and as the opinion of the court, upon the points of law, are decidedly with the plaintiff, the verdict of the jury must be in his favor, &c."

To this charge of the court, the counsel for the defendants below, excepted; and assigned the same for error in the court above.

1st. That the court erred, in charging the jury, that it was unnecessary for the plaintiff to prove express malice, in order to entitle him to recover; that malice was implied in law.

2d. That the court erred, in charging the jury, that there was no provision in the constitution or laws of this State, which can be legally construed, to prohibit free negroes, or mulattoes, who are otherwise qualified, from exercising the rights of an elector.

The decision of the supreme court on the question, involved in the second error, rendered the expression of an opinion unnecessary in respect to the first.

Wright and *Conyngham*, for plaintiffs in error, cited, as to the first error, 1 *East* 555, *note page* 563; 11 *Johns. Rep.* 114; 3 *Con.* 537; 11 *Serg. & Rawle*, 3; 3 *Eng. Com. Law* 486; 2 *Starkie's Rep.* 577. In support of the second error, *Crandall's Case*, 10 *Con.* 339; 2 *Kent's Com.* 258, *note;* 1 *Litt. Ky. Rep.* 333; *Constitution of U. S., art.* 4, *sect.* 2; *Sergeant on Const. Law* 393.

Kidder and *Greenough*, for defendant in error, cited, as to the first error, 2 *Ld. Raym.* 938; 11 *Mass.* 330; *Constitution of Penn. art.* 3, *sect.* 1; *Abolition act of* 1780; 2 *Kent's Com.* 258; *Sergeant on Const. Law* 393; *Vattel's Law of Nations,* 166—7; *Stroud's Purd.* 981.

The opinion of the Court was delivered by

GIBSON, C. J.—This record raises, a second time, the only question on a phrase in the constitution, which has occurred since its adoption; and however partizans may have disputed the wisdom of its provisions, no man has disputed the clearness and precision of its phraseology. We have often been called upon to enforce its limitations of legislative power; but the business of interpretation was incidental, and the difficulty was not in the diction, but in the uncertainty of the act to which it was to be applied. I have said, a question on the meaning of a phrase has arisen a second time. It would be more accurate to say the *same* question has arisen the second time. About the year 1795, as I have it from James Gibson, Esquire, of the Philadelphia bar, the very point before us was ruled by the high court of errors and appeals, against the right of negro suffrage. Mr. Gibson declined an invitation to be concerned in the argument, and therefore, has no memorandum of the cause to direct us to the record. I have had the office searched for it; but the papers had fallen into such disorder as to preclude a hope of its discovery. Most of them were imperfect, and many were lost or misplaced. But Mr. Gibson's remembrance of the decision is perfect and entitled to full confidence.