

APPENDIX.

ADDENDUM.

In *Sparf v. United States*, ante, 51, there should be added to the dissenting opinion of MR. JUSTICE GRAY, after the last full paragraph on page 158, the following :

In a charge to the grand jury of the Circuit Court of the United States for the District of Georgia in 1792, Mr. Justice Iredell said : " Where a *killing* is clearly proved, if the case be not very plain indeed, the grand jury should find the indictment for murder, and leave the consideration as to the species of homicide to the court and jury on the trial. I say the *court and jury*—for though it is held to be the province of the court to decide what species of homicide the offence belongs to, and that the province of the jury is merely to be confined *to the facts*, yet, in my opinion, this can mean nothing more, according to the true principles of law, than that, if a jury find a special verdict stating the facts, the court may pronounce the law upon it, and give judgment as effectually as they could have done on a general verdict. But as it is in the option of the jury to give a special verdict or not, and as they unquestionably may find a general verdict, I conceive they must find that verdict conscientiously, on the best of their judgment, after receiving all such assistance as the court may think proper to give them ; which assistance, where points of law are complicated with facts, will often be found very useful, and in some instances absolutely necessary. But as they, in the case of a general verdict, are by the law *judges in the last resort* (so far at least as the giving of that verdict is concerned), they have, I think, clearly a *right* as well as *power*, to determine as shall appear to them just ; *since it seems to me absurd to say, that where there is a lawful authority to determine, that determination must be made, not according to the judgment of those who have such authority, but according to the judgment of those*

who have it not. I know no trammels of precedent in this country to overrule a principle which appears to me so plain, and which is so well calculated to guard against indecent altercations between a court and jury, as well as, in my opinion, to prevent any of the rights or liberties of the citizens being overborne (as might otherwise sometimes be the case) by violent exertions of power." 2 McRee's Life of Iredell, 350.