

The Hon.ble THO.s ERSKINE.

now

Lord Erskine!

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THE

# SPEECHES

OF

# THE HON. THOMAS ERSKINE,

(NOW LORD ERSKINE,)

WHEN AT THE BAR,

ON

## SUBJECTS

CONNECTED WITH

# THE LIBERTY OF THE PRESS;

AGAINST

## CONSTRUCTIVE TREASONS,

AND ON

## MISCELLANEOUS SUBJECTS.

COLLECTED BY

*JAMES RIDGWAY.*

IN TWO VOLUMES.

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TO THE GENTLEMEN OF THE

*AMERICAN BAR,*

THROUGHOUT ALL THE SEVERAL STATES OF THE UNION,

*THIS EDITION OF*

LORD ERSKINE'S *LEGAL* SPEECHES,

*IS MOST RESPECTFULLY DEDICATED,*

BY THEIR OBLIGED AND OBEDIENT SERVANTS,

*THE PUBLISHERS.*

# PREFACE

*TO THE AMERICAN EDITION OF*

# LORD ERSKINE'S SPEECHES.

THE Editor avails himself of the opportunity which the present publication of the forensic speeches of the first legal orator of the age affords, to exhibit a brief outline-view of the *relative* power of the Bar of America and the Bar of England.

However paradoxical it might appear to those who have not much considered the subject, it is asserted, because it can be demonstrated, that, *at present*, there is actually a greater aggregate amount of talent employed and exhibited at the American, than at the English Bar.

Indeed, other things being equal, the Bar of the United States ought to shew forth a greater general average display of talent, more particularly, in the extemporaneous, unpremeditated effusions of public speaking, than is manifested by the combined efforts of all the legal combatants in the British Isles. For, in this country, there is no other outlet for the *first-rate* talent of her children, than that of the profession of the *Law*.

The nature of our political institutions forbids any hope of our *Statesmen's* acquiring any permanent power, or extensive wealth and influence in the community; and consequently, offers no adequate inducement for the primary talents of the country to devote themselves exclusively to a life of politics. Whence the state, that is to say, the government, whether national or of each single state, seldom, or never commands for its *permanent* service, the first-rate abilities of America.

And yet it requires nothing less than a capacity of the *very highest* order to discern and to influence the dispositions and the habits of the American people;—to develope the bearings and tendencies of their government;—to fathom, and to call into prompt and persevering action, their national resources;—to comprehend and to appreciate the complicated interests, the multiplied relations, the ever-varying political aspect of a country, whose institutions are all founded on the basis of popular authority, and universal suffrage;—a country, whose dominion has *no* parallel in any other government, ancient or modern—having in itself twenty separate independent sovereignties, each sovereignty containing its own distinct *state*-executive, legislative, and judicial departments;—together with a *Federal*, or General head, having also its own separate, superintending, executive, legislative, and judicial branches of government.

It cannot be doubted, that the voting by ballot,—the right of universal suffrage,—the perpetually recurring elections of federal executive, federal senators, and federal representatives;—of state-executive, state-senators, and state-representatives;—of both federal and state charter-officers and servants;—together with many other practical comments upon the inferences and speculations of metaphysical politicians, and political metaphysicians, are all made in the United States, under the most favourable of all possible circumstances;—namely, a comparatively scanty population spread over an immense territory,—a propitious climate, and a fertile soil,—a large body of independent yeomanry, who are, for the most part, lords of the land which they occupy,—a very general diffusion of property throughout all the orders of society,—the almost universal prevalence of elementary and popular intelligence throughout all the classes of the community,—and the most jealous, fearful, systematic exclusion of the two only natural and effective aristocracies of man, talent and property, from all political influence and power.

Nor are the *pulpits* of America sufficiently cherished by the national or the state-governments,—nor sufficiently encouraged by public opinion, to offer an adequate bounty of stipend,

reputation, and influence, *often* to seduce into their service the devoted, the *life*-efforts of over-bearing, comprehensive, paramount talents.

The *Navy* and the *Army* of this country, have not yet grown up to a sufficient size and extent of magnificence, and splendour of heroic achievement, to vindicate to themselves the employment of the highest order of American genius. These two illustrious professions must experience many years of much more active and extensive service than they have ever yet seen, before they can allure to their paths of peril and of glory, their due proportion of the dominant mind of the country.

And in no community on the globe, have trade and mechanics, the plough, and the loom, taken unto themselves *permanently*, the exertions of very commanding abilities. If time and circumstance cast primary native genius into either of these occupations, after a few desperate struggles of agony, it either seeks refuge in the tomb, or, bursting asunder the bonds of its condition, springs upward into a region of intellect better fitted to its inclination and capacity.

The *Bar* then, is the great, the sole repository of all the highest talents produced, and reared in the United States. The primary native genius of this extensive country flocks to the legal standard, as offering the highest inducements of reputation, wealth, influence, authority, and power, that the community, in its present circumstances, *can* give.

But in *Britain*, her political institutions, her local situation, and the circumstances of Europe, continental and insular;—nay, the condition of the whole world itself, both civilized and barbarous;—more especially, during the lapse of the last thirty years, have all conspired to force her *primary* talents into the service of her Parliament, her executive cabinet, her army, her navy, her church, both national and dissenting, established and tolerated, her colonial governments, her diplomatic squadrons. While her *Bar* has been left to explore the mazy labyrinths of Jurisprudence by the feebler lights of secondary minds.

The time *has been*, indeed, when she availed herself of her first-rate capacities in the labours of the law. She *has* seen

Bacon, and Hale, and Mansfield, strengthen, adorn, illumine, dignify her seats of Justice. But that was a period when these great *master-spirits* were wanted to build up, and cope in, to the fulness of perfection, her system of Jurisprudence;—to reduce the judicial decisions of her various courts of equity and of common law, to one uniform level of wisdom, justice, and certainty, throughout all the reach of her extended empire. It was also at a time, when her *political* circumstances were such, as permitted her to spare a portion of her primary talent to rear the infancy, and to establish the manhood of her legal system.

But during the last thirty years, so great and so continued has been the pressure of her political condition, that she has been compelled to pour out nearly all her first rate intellect over the whole of her own dominions, comprehending at least *one-fifth* of the habitable globe, in the persons and the exertions of her executive statesmen, and senators, and provincial governors;—and to spread that highest flood of intellectual light over all the rest of the civilized world, in the persons and the exertions of her naval heroes, and her land warriors, and her ambassadors. And, consequently, as primary talent is never produced, excepting in very small quantities, in any given age and country, she has been scarcely able to spare any of it *permanently* to the service of the *Bar;* but the moment she has discovered it to have accidentally strayed into the precincts of the *Forum*, she has immediately called it thence into the upper regions of the state;—as she did her Burke, her Pitt, her Grenville, her Canning, and her Brougham.

Whence, as *native* genius is *equally* distributed, both as to quantity and quality, over all the nations and sections of the earth, and differs only in different countries, in the amount of its developement, and effectual display, according to the circumstances in which it is placed, whether favourable or unpropitious for the full, unfolding, and extensive exercise of its powers;—and as the American Bar employs all the first-rate talents of the United States,—and the British Bar uses only the secondary capacities of Britain,—it inevitably follows, that, other things being equal, the American Bar *must* mani-

fest a greater general average display of intellectual power than is afforded in the British Forum, more especially, in the exhibition of extemporaneous eloquence.

Nevertheless, within the memory of man, the British Bar has seen her vanguard led by Mansfield, Thurlow, and Loughborough;—three illustrious Lawyers, who were equalled by few, and by none surpassed, in the heighth, and depth, and breadth, and compass, and variety of wisdom and eloquence. And now, even now, in this, her day of degeneracy, —her age of secondary lawyers, the forensic labours of the Bar of England have been conducted to perfection by *Mr. Erskine's* most felicitous combination of profound legal argument with splendid eloquence.

Perhaps it is not going too far to say, that the speeches of *Mr. Erskine*, now presented to the public, are the most finished specimens of *bar*-eloquence, that any age or country has produced. When I say this, I take it for granted, the reader bears in mind the marked distinction between the forensic and the Parliamentary orations of Demosthenes and Cicero. Their *bar*-speeches are *not* equal to those of *Mr. Erskine*;—but there is no assignable proportion between the *forensic* effusions of these Greek and Roman orators, and the *legislative* energy of Demosthenes, or the Senatorial majesty of Cicero.

Few men have ever lived, who, like *Erskine*, could unite so much fire and eloquence, such intense heat of passion, such brilliancy of imagination, such extensive, yet selected command of language, with so much clearness of argument, such closeness of reasoning, such nice, acute, subtle discrimination. The prominent feature in the character of *Mr. Erskine's* bar-eloquence is, that in no one sentence does he ever lose sight of his cause, his client, his verdict. And while he is melting the hearts, inflaming the passions, and dazzling the understandings of his audience, he has always his own oratory under such perfect controul, as never to omit even the minutest details that may serve to give a favourable complexion to his cause. He is, indeed, unrivalled in the skill with which he has bent down the genius

of an orator of the highest order to the practical dexterity of a consummate advocate.

He who speaks *more* than is necessary on any public occasion, makes his speaking an *end*;—whereas, he who speaks *enough*, and no more, uses his eloquence as the *means* of obtaining some ulterior end, some greater object.—The *last* is the most effective, practical being. Julius Cæsar always said enough;—Cicero sometimes said more than enough;—and Cæsar bore Cicero down by the superior weight of his brain; by the more efficient energy of his practical wisdom. Many other great men, besides Cicero, have in this respect, erred;—and have lost sight of their existing object,—of the business they had to perform, in the eagerness of their anxiety to achieve a brilliant oration.

Gentlemen who are in training for the *Bar*, are more particularly interested in observing, and in acting upon this distinction;—not only, because those among them who happen to possess genius, are prone, in common with all powerful minds, to give the reins to their imagination, and permit the spirit of their heated enthusiasm to swing and sweep beyond the flaming bounds of space and time,—*extra flammantia mœnia mundi*;—but also, because the *Law* itself,—occupied as it is, in watching over the little, multiplied details of human life, and trammelled up, as it is, by the use and practice of a certain, precise, defined, ascertained phraseology, sanctioned by immemorial custom, and, although useful, not necessarily, nor inseparably allied to elegance, can seldom be prevailed upon to tolerate in a *forensic* speaker the bursts of deep, intense, genuine passion,—or a rich variety of imagery,—or extatic flights of poetry,—or the finer touches of extreme tenderness,—or the heavenly visions of a sublimated philosophy,—or the majestic amplitude of a style full, sonorous, flowing, fervid, and replete with energy and animation.

> "Monte decurrens velut amnis, imbres
> Quem super notas aluere ripas,
> Fervet, immensusque ruit profundo
> Pindarus ore."

It is also necessary to bear in mind a broad and marked distinction between the eloquence of ancient and of modern days. The ancient *statesmen* made it the main business of their lives to become great proficients in the art of public speaking; and consequently, if we allow the modern orators to possess native talents equal to those of Cicero and Demosthenes, yet as they do *not* bestow the same intense and continued labour on the study of their art, modern oratory cannot attain the elevated standard of that of antiquity. It *must* be inferior in methodical composition,—in the distribution of the subject,—in the style, elaborated to perfection by the combined efforts of persevering study and exalted genius, —in the mode of delivery, refined and purified by a long course of the most exact discipline,—in the exquisite union of refinement with the most perfect air of simplicity,—in the happiest combination of art with nature.

For full proof of the *fact* now asserted, the reader is confidently referred to the *deliberative* speeches of Demosthenes, and the *Senatorial* orations of Cicero, as compared with the Parliamentary and Congressional effusions of modern debaters.

Yet, doubtless, the *extemporaneous* reasoning and declamation of modern times are much better fitted for transacting the business of real life, than are the more highly adorned and finished compositions of antiquity. And therefore, as all life consists essentially of *action*, it is, perhaps, wiser for public men, more particularly for *lawyers*, whose whole business it is to be occupied in the transactions of real life,—to accustom themselves to the habit of extemporaneous speaking, which, although it can never render them such regular and finished orators, as Greece and Rome boasted of in their best days of high and palmy greatness,—will yet render them much more able to discharge with credit to themselves, and with benefit to the community, those various important and difficult duties which must ever be devolved upon genius and wisdom, amidst the ceaseless activity of commercial enterprize, and the everlasting agitations of popular freedom.

Can it be incumbent on the Editor of these orations, to inculcate the necessity, and to expatiate upon the benefit of an earnest, intense, habitual study of the best recorded speeches, both of ancient and of modern times?

It requires but little knowledge, and less reflection, to perceive, that such compositions contain a vast fund of moral, political, financial, commercial, and legal information;—delivered by the ablest men of the most civilized countries, in their most cultivated ages, as the last result of their happiest intellectual efforts, under the fullest inspiration of excited genius, giving vent to its effusions in thoughts that breathe, and words that burn. They furnish the best models of clear, profound, comprehensive, conclusive reasoning, illumined and adorned by all the brilliancy of splendid eloquence. They afford the finest exercise to the *analytical* powers of the student's mind, while tracing the golden links of their chain of argumentation;—and they enlarge his understanding and elevate his imagination, by opening to him the richest treasures of lofty sentiment and extensive thought; glistening in all the splendour of the most felicitous combinations of selected, appropriate, and copious language.

*New-York, May* 25, 1813.

# PREFACE

## TO THE ENGLISH EDITION.

ON reading lately a collection of celebrated Speeches of the Master of the Rolls of Ireland, when at the Bar in that country, where he so long maintained the highest reputation, the editor was forcibly struck with the following passage in the Preface to the Second Edition, published at Dublin last year:

"It is much to be regretted that Mr. Erskine's Speeches, "as an advocate, have not been yet published in a separate "volume. They are only to be found in printed reports "of the trials in which he was engaged; and from the diffi- "culty which the Editor of the present volume has experi- "enced in collecting those of Mr. Curran, it is probable "that, in a few years, to procure Mr. Erskine's Speeches "will be impossible."

This suggestion determined the Editor no longer to delay the publication of as many of the genuine Speeches of Lord Erskine as he could collect, which he had long intended to do, and which indeed he had begun several years ago, but found difficulties in the way.

It is indeed surprising how very few of the real Speeches of eminent Counsel have been preserved. Many of the printed Trials in circulation are the abridged reports of persons not acquainted with short-hand writing, and contending besides for the earliest publication, on occasions interesting to the Public, and do not convey any idea of the eloquence of the English Bar, the monuments of which, more especially in cases connected with the constitution of the government and with public liberty, ought to be carefully preserved as part of the history and character of our country.

It is much to be regretted that English State Trials are so little known; they have hitherto been printed in folio, and are only to be found in the possession of lawyers, or in great libraries; whereas they ought to be universally circulated throughout the country, where the prudent assertion of inva-

luable privileges depends so much upon a perfect acquaintance with the principles on which they rest, and where the common classes of the people are called upon daily to assist in the administration of criminal justice, in cases too where the stability and security of the government on the one hand, and the lives and liberties of the subject on the other, may depend upon an enlightened judgment. On this account we have seen, with much satisfaction, the progress of Mr. Cobbett's edition of the State Trials, now printing in octavo; which appear from the notes, to be superintended with very great legal information and remark, and which we hope will in the end embrace all the important proceedings in our Courts of Criminal Justice.

We cannot better illustrate what we have before observed, of the scarcity of genuine Trials, than by saying, that the Speeches of Lord Erskine, when at the Bar, which we now publish, do not fill up the pleadings of THREE WEEKS, out of a life of nearly THIRTY YEARS incessant occupation in all our courts of justice throughout the kingdom.

We have taken the assistance of a Gentleman well acquainted with legal proceedings, to state the occasions on which the Speeches collected were delivered, with as much of the circumstance, and of the evidence upon the trials, as was thought necessary to illustrate the argument.

It was our original intention, in pursuing this course, to have printed only the Speeches of Lord Erskine, which it was our sole object to collect; but as we advanced to occasions very near our own times, we were desirous to avoid even the appearance of supporting or qualifying the foundations and merits of public prosecutions of a peculiar class; and in those cases, therefore, we have printed also the Speeches of the Advocates, which have indeed tended farther to illustrate the arguments which it was our design to preserve.

In preparing the Prefaces to the Speeches, the Editor has carefully abstained from all observations upon their merits or character, wishing that every reader should be left to judge for himself, assisted as the Public now are by the many able and independent criticisms, which contribute so much to the advancement of learning in this island.

*The Honourable* THOMAS ERSKINE'S *First* SPEECH *in Westminster Hall, delivered in the Court of King's Bench, on the 24th of November*, 1778.

Taken in Short-hand and published with the rest of the Proceedings, by Captain Baillie himself, in 1779.

## THE SUBJECT.

*CAPTAIN THOMAS BAILLIE, one of the oldest Captains in the British navy, having, in consideration of his age and services, been appointed Lieutenant Governor of the Royal Hospital for Superannuated Seamen at Greenwich, saw (or thought he saw) great abuses in the administration of the charity; and prompted, as he said, by compassion for the seamen, as well as by a sense of public duty, had endeavoured by various means to effectuate a reform.*

*In pursuance of this object, he had at various times presented petitions and remonstrances to the Council of the Hospital, the Directors, and the Lords Commissioners of the Admiralty, and he had at last recourse to a printed appeal, addressed to the General Governors of the Hospital. These Governors consisted of all the great Officers of State, Privy Counsellors, Judges, Flag-Officers, &c. &c.*

*Some of the alleged grievances in this publication were, that the health and comfort of the seamen in the Hospital were sacrificed to lucrative and corrupt contracts, under which the clothing, provisions, and all sorts of necessaries and stores were deficient; that the contractors themselves presided in the very offices appointed by the charter for the control of contracts, where, in the character of counsellors, they were enabled to dismiss all complaints, and carry on with impunity their own system of fraud and peculation.*

*But the chief subject of complaint (the public notice of which, as Captain Baillie alleged, drew down upon him the resentment of the board of Admiralty) was, that* LANDMEN *were admitted into the offices and places in the Hospital, designed exclusively for* SEAMEN, *by the spirit, if not by the letter of the institution. To these landmen Captain Baillie imputed all the abuses he complained of, and he more than insinuated by his different petitions, and*

*by the publication in question, that they were introduced to these offices for their election services to the Earl of ——, as freeholders of Huntingdonshire.*

*He alleged further, that he had appealed from time to time to the Council of the Hospital, and to the Directors, without effect; and that he had been equally unsuccessful with the Lords Commissioners of the Admiralty, during the presidency of the Earl of Sandwich; that, in consequence of these failures, he resolved to attract the notice of the General Governors, and, as he thought them too numerous as a body, for a convenient examination in the first instance, and besides, had no means of assembling them, a statement of the facts through the medium of this appeal, drawn up exclusively for their use, and distributed solely among the members of their body, appeared to him the most eligible mode of obtaining redress on the subject.*

*In this composition, which was written with great zeal and with some asperity,* the names of the landmen, intruded into the offices for seamen, were enumerated; the contractors also were held forth and reprobated; and the First Lord of the Admiralty himself was not spared.*

*On the circulation of the book becoming general, the Board of Admiralty suspended Captain Baillie from his office. And the different officers, contractors, &c. in the Hospital, who were animadverted upon, applied to the Court of King's Bench, in Trinity Term, 1778, and obtained a rule upon Captain Baillie to show cause in the Michaelmas Term following, why an information should not be exhibited against him for a libel.*

*All Captain Baillie's leading Counsel having spoken on the 23d of November, and, owing to the lateness of the hour, the Court having adjourned the argument till the morning of the 24th, Mr. Erskine spoke as follows, from the back row of the Court, we believe for the first time, as he had only been called to the bar on the last day of the term preceding.*

* The foundation for it we do not mean to enter into, the Editor being a stranger to all the circumstances, and the preface being only introduced as explanatory of the Speech.

*THE HONOURABLE*

# MR. ERSKINE'S SPEECH

FOR

# CAPTAIN BAILLIE,

IN THE COURT OF KING'S BENCH,

*November* 24, 1778.

MY LORD,

I AM likewise of counsel for the author of this supposed libel; and if the matter for consideration had been merely a question of private wrong, in which the interests of society were no farther concerned, than in the protection of the innocent, I should have thought myself well justified, after the very able defence made by the learned gentlemen who have spoken before me, in sparing your Lordship, already fatigued with the subject, and in leaving my Client to the prosecutor's Counsel and the judgment of the Court.

But upon an occasion of this serious and dangerous complexion, when a British subject is brought before a court of justice only for having ventured to attack abuses, which owe their continuance to the danger of attacking them; when, without any motives but benevolence, justice, and public spirit, he has ventured to attack them though supported by power, and in that department too, where it was the duty of his office to detect and expose them; I cannot relinquish the high privilege of defending such a character;—I will not give up even my small share of the honour of repelling and of exposing so odious a prosecution.

No man, my Lord, respects more than I do the authority of the laws, and I trust I shall not let fall a single word to weaken the ground I mean to tread, by advancing propositions, which shall oppose or even evade the strictest rules laid down by the Court in questions of this nature.

Indeed, it would be as unnecessary as it would be indecent; it will be sufficient for me to call your Lordship's attention to

the marked and striking difference between the writing before you, and I may venture to say almost every other, that has been the subject of argument on a Rule for a criminal Information.

The writings or publications, which have been brought before this Court, or before Grand Juries, as libels on individuals, have been attacks on the characters of private men, by writers stimulated sometimes by resentment, sometimes, perhaps, by a mistaken zeal; or they have been severe and unfounded strictures on the *characters* of public men, proceeding from officious persons taking upon themselves the censorial office, without temperance or due information, and without any call of duty to examine into the particular department, of which they choose to become the voluntary guardians: a guardianship which they generally content themselves with holding in a newspaper for two or three posts, and then, with a generosity which shines on all mankind alike, correct every department of the state, and find at the end of their lucubrations, that they themselves are the only honest men in the community.—When men of this description suffer, however we may be occasionally sorry for their misdirected zeal, it is impossible to argue against the law that censures them.

But I beseech your Lordship to compare these men and their works, with my Client, and the publication before the Court.

*Who is he?—What is his duty?—What has he written?—To whom has he written?—And what motive induced him to write?*

He is Lieutenant Governor of the Royal Hospital of Greenwich, a palace built for the reception of aged and disabled men, who have maintained the empire of England on the seas, and into the offices and emoluments of which, by the express words of the Charter, as well as by the evident spirit of the institution, no Landmen are to be admitted.

His DUTY—in the treble capacity of Lieutenant Governor, Director, and a General Governor, is, in conjunction with others, to watch over the internal economy of this sacred charity, to see that the setting days of these brave and godlike men are spent in comfort and peace, and that the ample revenues, appropriated by this generous nation to their support, are not perverted and misapplied.

HE HAS WRITTEN, that this benevolent and politic institution has degenerated from the system established by its wise and munificent founders;—that its Governors consist indeed of a great number of illustrious names and reverend chara-

ters, but whose different labours and destinations in the most important offices of civil life rendered a deputation indispensably necessary for the ordinary Government of the Hospital; that the difficulty of convening this splendid corporation had gradually brought the management of its affairs more particularly under the direction of the Admiralty;—that a new Charter has been surreptitiously obtained, in repugnance to the original institution, which enlarges and confirms that dependence;—that the present First Lord of the Admiralty (who, for reasons sufficiently obvious, does not appear publicly in this prosecution) has, to serve the base and worthless purposes of corruption, introduced his prostituted freeholders of Huntingdon into places destined for the honest freeholders of the seas;—that these men (among whom are the prosecutors) are not only Landmen, in defiance of the Charter, and wholly dependent on the Admiralty in their views and situations, but, to the reproach of all order and government, are suffered to act as Directors and Officers of Greenwich, while *they themselves* hold the very subordinate offices, the *control* of which is the object of that direction;—and inferring from thence (as a general proposition) that men in such situations cannot, as human nature is constituted, act with that freedom and singleness which their duty requires, he justly attributes to these causes the grievances which his gallant brethren actually suffer, and which are the generous subject of his complaint.

He has written this, my Lord, not *to the public at large*, which has no jurisdiction to reform the abuses he complains of, but to *those only* whose express duty it is to hear and to correct them, and I trust they will be solemnly heard and corrected. He has not PUBLISHED, but only distributed his book among the Governors, to produce inquiry and not to calumniate.

THE MOTIVE WHICH INDUCED HIM TO WRITE, and to which I shall by and by claim the more particular attention of the Court, was to produce reformation;—a reformation which it was his most pointed duty to attempt, which he has laboured with the most indefatigable zeal to accomplish, and against which every other channel was blocked up.

My Lord, I will point to the proof of all this: I will show your Lordship that it was his duty to investigate;—that the abuses he has investigated do really exist, and arise from the ascribed causes;—that he has presented them to a competent jurisdiction, and not to the public;—and that he was under the indispensable necessity of taking the step he has done to save Greenwich Hospital from ruin.

Your Lordship will observe by this subdivision, that I do not wish to form a specious desultory defence: because, feeling that every link of such subdivision will in the investigation produce both law and fact in my favour, I have spread the subject open before the eye of the Court, and invite the strictest scrutiny. Your Lordship will likewise observe by this arrangement, that I mean to confine myself to the *general* lines of his defence; the various affidavits have already been so ably and judiciously commented on by my learned leaders, to whom I am sure Captain Baillie must ever feel himself under the highest obligations, that my duty has become narrowed to the province of throwing his defence within the closest compass, that it may leave a distinct and decided impression.

And first, my Lord, as to its being his *particular duty* to inquire into the different matters which are the subject of his publication, and of the prosecutors' complaint: I believe, my Lords, I need say little on this head to convince your Lordships, who are yourselves Governors of Greenwich Hospital, that the defendant, in the double capacity of Lieutenant Governor and Director, is most indispensably bound to superintend every thing that can affect the prosperity of the institution, either in internal economy, or appropriation of revenue; but I cannot help reading two copies of letters from the Admiralty in the year 1742;—I read them from the publication, because their authenticity is sworn to by the defendant in his affidavit;—and I read them to show the sense of that Board with regard to the right of inquiry and complaint in all officers of the Hospital, even in the departments not allotted to them by their commissions.

"*To Sir John Jennings, Governor of Greenwich Hospital.*

*Admiralty Office, April* 19, 1742.

"SIR,

"The Directors of Greenwich Hospital having acquainted my Lords Commissioners of the Admiralty, upon complaint made to them that the men have been defrauded of part of their just allowance of broth and pease-soup, by the smallness of the pewter dishes, which in their opinion have been artificially beaten flat, and that there are other frauds and abuses attending this affair, to the prejudice of the poor men; I am commanded by their Lordships to desire you to call the Officers together in Council, and to let them know, that their Lordships think them very blame-

" able for suffering such abuses to be practised, which could not " have been done without their extreme indolence in not looking " into the affairs of the Hospital; that their own establish- " ment in the Hospital is for the care and protection of the " poor men, and that it is their duty to look daily into every " thing, and to remedy every disorder; and not to discharge " themselves by throwing it upon the under Officers and Ser- " vants; and that their Lordships being determined to go to " the bottom of this complaint, do charge them to find out and " inform them at whose door the fraud ought to be laid, that " their Lordships may give such directions herein as they " shall judge proper.

" I am, Sir,

" Your most obedient servant,

" THO. CORBET."

*Admiralty Office, May* 7th, 1742.

" SIR,

" My Lords Commissioners of the Admiralty having re- " ferred to the Directors of Greenwich Hospital the Report " made by yourself and Officers of the said Hospital in " Council, dated the 23d past, relating to the flatness of the " pewter dishes made use of to hold the broth and pease-pot- " tage served out to the Pensioners; the said Directors have " returned hither a reply, a copy of which I am ordered to " send you enclosed: they have herein set forth a fact which " has a very fraudulent appearance, and it imports little by " what means the dishes became shallow; but if it be true, " what they assert, that the dishes hold but little more than " half the quantity they ought to do, the poor men must have " been greatly injured; and the allegations in the Officers' " Report, that the Pensioners have made no complaint, does " rather aggravate their conduct, in suffering the men's pa- " tience to be so long imposed upon.

" My Lords Commissioners of the Admiralty do com- " mand me, to express myself in such a manner as may show " their wrath and displeasure at such a proceeding. You " will please to communicate this to the Officers of the House " in Council.

" Their Lordships do very well know that the Directors " have no power but in the management of the revenue and " estates of the Hospital, and in carrying on the works of the " building, nor did they assume any on this occasion; but " their Lordships shall always take well of them any infor-

" mations, that tend to rectify any mistakes or omissions " whatsoever, concerning the state of the Hospital.

" I am, Sir,

" Your obedient servant,

" THO. CORBET.

" *To Sir John Jennings,*
" *Governor of Greenwich Hospital.*"

From these passages it is plain, that the Admiralty *then* was sensible of the danger of abuses in so extensive an institution, that it encouraged complaints from all quarters, and instantly redressed them; for although Corruption was not then *an infant*, yet the idea of making a job of Greenwich Hospital never entered her head; and indeed if it had, she could hardly have found at that time of day, a man with a heart callous enough to consent to such a scheme, or with forehead enough to carry it into public execution.

*Secondly*, my Lord, that the abuses he has investigated do in truth exist, and arise from the ascribed causes.

And, at the word TRUTH, I must pause a little to consider, how far it is a defence on a rule of this kind, and what evidence of the falsehood of the supposed libel the Court expects from prosecutors, before it will allow the information to be filed, even where no affidavits are produced by the defendant in his exculpation.

That a libel *upon an individual* is not the less so for being true, I do not, *under certain restrictions*, deny to be law; nor is it necessary for me to deny it, because this is not a complaint in the ORDINARY COURSE OF LAW, but an application to the Court to exert an ECCENTRIC, EXTRAORDINARY, VOLUNTARY JURISDICTION, BEYOND THE ORDINARY COURSE OF JUSTICE;—a jurisdiction which I am authorized from the best authority to say, this Court will not exercise, unless the prosecutors come PURE AND UNPOLLUTED; denying upon oath the truth of every word and sentence which they complain of as injurious: for although, in common cases, the matter may be not the less libellous, because true, yet the Court will not interfere by information, for guilty or even equivocal characters, but will leave them to its ordinary process. If the Court does not see palpable MALICE and FALSEHOOD on the part of the defendant, and clear innocence on the part of the prosecutor, it will not stir;—it will say, This may be a Libel;—this may deserve punishment;—but go to a Grand Jury, or bring your actions:—all men are equally entitled to the protection of the laws, but all men are not

equally entitled to an extraordinary interposition and protection beyond the common distributive forms of justice.

This is the true constitutional doctrine of informations, and made a strong impression upon me, when delivered by your Lordship in this Court; the occasion which produced it was of little consequence, but the principle was important. It was an information moved for by General Plasto against the Printer of the Westminster Gazette, for a Libel published in his paper, charging that gentleman, among other things, with having been tried at the Old Bailey for a felony. The prosecutor's affidavit denied the charges *generally* as foul scandalous, and false; but did not traverse the aspersion I have just mentioned *as a substantive fact;* upon which your Lordship told the counsel,* who was too learned to argue against the objection, that the affidavit was defective in that particular, and should be amended before the Court would even grant a rule to show cause:—for although such GENERAL denial would be sufficient where the libellous matter consisted of scurrility, insinuation, GENERAL abuse, which is no otherwise traversable than by innuendos of the import of the scandal, and a denial of the truth of it, yet that when a Libel consisted of DIRECT AND POSITIVE FACTS AS CHARGES, the Court required SUBSTANTIVE *traverses of such facts* in the affidavit, before it would interpose to take the matter from the cognizance of a Grand Jury.

This is the law of informations, and by this touchstone I will try the Prosecutors' affidavits, to show that they will fall of themselves, even without that body of evidence, with which I can in a moment overwhelm them.

If the Defendant be guilty of any crime at all, it is for writing THIS BOOK: and the conclusion of his guilt or innocence must consequently depend on the scope and design of it, the general truth of it, and the necessity for writing it; and this conclusion can no otherwise be drawn, than by taking the WHOLE of it together. Your Lordships will not shut your eyes, as these Prosecutors expect, to the *design* and *general truth* of the book, and go entirely upon the *insulated* passages, culled out, and set heads and points in their wretched affidavits, without context, or even an attempt to unriddle or explain their sense, or bearing on the subject; for, my Lord, they have altogether omitted to traverse the scandalous facts themselves, and have only laid hold of those warm animadversions, which the recital of

* Mr. Dunning.

them naturally produced in the mind of an honest, zealous man, and which, besides, are in many places only conclusions drawn from facts as general propositions, and not aspersions on them as individuals. And where the facts do come home to them AS CHARGES, *not one of them is denied by the Prosecutors. I assert, my Lord, that in the Directors' whole affidavit* (which I have read repeatedly, and with the greatest attention) *there is not any one fact mentioned by the Defendant, which is substantially denied;* and even when five or six strong and pointed charges are tacked to each other, to avoid meeting naked truth in the teeth, they are not even contradicted by the lump, but a general innuendo is pinned to them all;—a mere illusory averment, that the facts mean to criminate them, and that they are not criminal; BUT THE FACTS THEMSELVES REMAIN UNATTEMPTED AND UNTOUCHED.

Thus, my Lord, after reciting in their affidavit the charge of their shameful misconduct, in renewing the contract with the Huntingdon butchers, who had just compounded the penalties incurred by the breach of a former contract, and in that breach of contract, the breach of every principle of humanity, as well as of honesty;—and the charge of putting improper objects of charity into the Hospital, while the families of poor Pensioners were excluded and starving;—and of screening delinquents from inquiry and punishment *in a pointed and particular instance*, and therefore traversable as a *substantive fact;* yet not only there is no such traverse, but, though all these matters are huddled together in a mass, there is not even a general denial; but one loose innuendo, that the facts in the publication are stated with an intention of criminating the Prosecutors, and that, *as far as they tend to criminate them*, they are false.

Will this meet the doctrine laid down by your Lordship in the case of General Plasto?—Who can tell what they mean by criminality?—Perhaps they think neglect of duty not criminal,—perhaps they think corrupt servility to a patron not criminal; and that if they do not ACTIVELY promote abuses, the winking at them is not criminal. But I appeal to the Court, whether the Directors' whole affidavit is not a cautious composition to avoid downright perjury, and yet a glaring absurdity on the face of it; for since the facts are not traversed, the Court must intend them to exist; and if they do exist, they cannot but be criminal. The very existence of such abuses, in itself criminates those, whose offices are to prevent them from existing. Under the shelter of such qualifications of guilt, no man in trust could ever be criminated.

But at all events, my Lord, since they seem to think that the facts may exist without their criminality,—be it so: the Defendant then does not wish to criminate them; he wishes only for effectual inquiry and information, that there may be no longer any crimes, and consequently no criminality. But HE trusts, in the mean time, and *I* likewise trust, that, while these facts do exist, the Court will at least desire the Prosecutors to clear themselves before the General Council of Governors, to whom the writing is addressed, and not before any *packed* Committee of Directors appointed by a noble Lord, and then come back to the Court acquitted of all criminality, or, according to the technical phrase, with *clean hands* for protection.

Such are the merits of the affidavits exhibited by the Directors; and the affidavits of the other persons are, without distinction, subject to the same observations. They are made up either of general propositions, converted into charges by ridiculous innuendos, or else of strings of distinct disjointed facts tied together, and explained by one general averment; and after all, the scandal, such as their arbitrary interpretation makes it, is still only denied with the old jesuitical qualification of criminality,—*the facts themselves remaining untraversed, and even untouched.*

They are, indeed every way worthy of their authors;—of Mr. ——, the *good* steward, who, notwithstanding the remonstrances of the Captain of the week, received for the pensioners such food as would be rejected by the idle vagrant poor, and endeavoured to tamper with the cook to conceal it;—and of Mr. ——, who converted their wards into apartments for himself, and the Clerks of Clerks, in the endless subordination of idleness;—a wretch, who has dared, with brutal inhumanity, to strike those aged men, who in their youth would have blasted him with a look. As to Mr. ——, and Mr. ——, though I think them reprehensible for joining in this prosecution, yet they are certainly respectable men, and not at all on a level with the rest, nor has the Defendant so reduced them. These two therefore have in fact no cause of complaint, and Heaven knows, the others have no title to complain.

In this enumeration of delinquents, the Rev. Mr. ——, looks round, as if he thought I had forgotten him. He is mistaken;—I well remembered him: but *his* infamy is worn threadbare: Mr. Murphy has already treated him with that ridicule, which his folly, and Mr. Peckham with that invective, which his wickedness deserves. I shall therefore for-

bear to taint the ear of the Court further with his name;—a name which would bring dishonour upon his country and its religion, if human nature were not happily compelled to bear the greater part of the disgrace, and to share it amongst mankind.

But these observations, my Lord, are solely confined to the Prosecutors' affidavits, and would, I think, be fatal to them, even if they stood uncontroverted. But what will the Court say, when *ours* are opposed to them, where the truth of every part is sworn to by the Defendant?—What will the Court say to the collateral circumstances in support of them, where every material charge against the Prosecutors is confirmed?—What will it say to the affidavit that has been made, that no man can come safely to support this injured officer?—that men have been deprived of their places, and exposed to beggary and ruin, merely for giving evidence of abuses, which have already by his exertions been proved before your Lordship at Guildhall, whilst he himself has been suspended as a beacon for prudence to stand aloof from, so that in this unconstitutional mode of trial, where the law will not lend its process to bring in truth by *force*, he might stand unprotected by the *voluntary* oaths of the only persons who could witness for him?* His character has, indeed, in some measure, broke through all this malice: the love and veneration which his honest zeal has justly created, have enabled him to produce the proofs which are filed in Court; but many have hung back, and one withdrew his affidavit, *avowedly* from the dread of persecution, even after it was sworn in Court. Surely, my Lord, this evidence of malice in the leading powers of the Hospital would alone be sufficient to destroy their testimony, even when swearing collaterally to facts, in which they were not themselves interested;—how much more when they come as *prosecutors*, stimulated by resentment, and with the hope of covering their patron's misdemeanors and their own, by turning the tables on the Defendant, and prosecuting *him* criminally, to stifle all necessary inquiry into the subject of his complaints?

Lieutenant Gordon, the first Lieutenant of the Hospital, and the oldest officer in the navy; Lieutenant William Lefevre; Lieutenant Charles Lefevre, his son; Alexander

* On the trial of a cause, every person acquainted with any fact is bound, under pain of fine and imprisonment, to attend on a subpœna to give evidence before the Court and Jury; but there is no process to compel any man to make an affidavit before the Court.

Moore; Lieutenant William Ansell; and Captain Allright, have all positively sworn, that a faction of Landmen subsists in the Hospital, and that they do in their consciences believe, that the Defendant drew upon himself the resentment of the Prosecutors, from his activity in correcting this enormous abuse, and from his having restored the wards, that had been cruelly taken away from the poor old men;—that on that just occasion the whole body of the Pensioners surrounded the apartments of their Governor, to testify their gratitude with acclamations, which sailors never bestow but on men who deserve them. This simple and honest tribute was the signal for all that has followed; the leader of these unfortunate people was turned out of office; and the affidavit of Charles Smith is filed in Court, which, I thank my God, I have not been able to read without tears;—how, indeed, could any man,—when he swears, that, for this cause alone, his place was taken from him;—that he received his dismission when languishing with sickness in the infirmary, the consequence of which was, that his unfortunate wife, and several of his helpless, innocent children died in want and misery;—THE WOMAN ACTUALLY EXPIRING AT THE GATES OF THE HOSPITAL. That such wretches should escape chains and a dungeon, is a reproach to humanity, and to all order and government; but that they should become PROSECUTORS, is a degree of effrontery that would not be believed by any man, who did not accustom himself to observe the shameless scenes, which the monstrous age we live in is every day producing.

I come now, my Lord, to consider TO WHOM HE HAS WRITTEN.—This book is not PUBLISHED.—It was not printed for SALE, but for the more commodious distribution among the many persons who are called upon *in duty* to examine into its contents. If the defendant had written it to calumniate, he would have thrown it abroad among the multitude: but he swears he wrote it for the attainment of reformation, and therefore confined its circulation to the proper channel till he saw it was received as a libel, and then he even discontinued that distribution, and only showed it to his Counsel to consider of a defence;—and no better defence can be made, than that the publication was so *limited.*

My Lord, a man cannot be guilty of a libel, who presents grievances before a *competent* jurisdiction, although the facts he presents should be false; he may indeed be indicted for a malicious prosecution, and even there a probable cause would protect him, but he can by no construction be considered as a libeller.

The case of Lake and King, in 1st Levinz, 240, but which is better reported in 1st Saunders, is directly in point; it was an action for printing a Petition to the Members of a Committee of Parliament, charging the Plaintiff with gross fraud in the execution of his office; I am aware that it was an Action on the Case, and not a criminal prosecution; but I am prepared to show your Lordship, that the precedent on that account makes the stronger for us. The truth of the matter, though part of the plea, was not the point in contest; the justification was the presenting it to a proper jurisdiction, and printing it, as in this case, for more commodious distribution; and it was first of all resolved by the Court, that the delivery of the Petition to all the Members of the Committee was justifiable;—and that it was no Libel, *whether the matter contained were true or false*, it being an appeal in a course of justice, and because the parties, to whom it was addressed, had jurisdiction to determine the matter:—that the intention of the law in prohibiting libels was to restrain men from making themselves their own judges, instead of referring the matter to those, whom the constitution had appointed to determine it;—and that to adjudge such reference to be a libel, would discourage men from making their inquiries with that freedom and readiness, which the law allows, and which the good of society requires. But it was objected, he could not justify the PRINTING; for, by that means, it was published to printers and composers; but it was answered, and resolved by the whole Court, that the printing, *with intent to distribute them among the Members of the Committee*, was legal; and that the making many copies by clerks, would have made the matter more public. I said, my Lord, that this being an Action on the Case, and not an Indictment or Information, made the stronger for us; and I said so, because the Action on the Case is to redress the party in damages, for the injury he has sustained as an individual, and which he has a right to recover, unless the Defendant can show that the matter is true, or, as in this case, whether true or false, that it is an appeal to justice. Now, my Lord, if a Defendant's right to appeal to justice could, in the case of Lake and King, repel a Plaintiff's right to damages, although he was actually damnified by the appeal, how much more must it repel a criminal prosecution, which can be undertaken only for the sake of public justice, when the law says, it is for the benefit of public justice to make such appeal? And that case went to protect even falsehood, and where the Defendant was not particularly called upon in duty as an individual to animadvert:—

how much more shall it protect us, who were bound to inquire, who have written nothing but truth, and who have addressed what we have written to a competent jurisdiction?

I come lastly, my Lord, to the motives which induced him to write.

The Government of Greenwich Hospital is divided into three departments:—the Council;—the Directors;—and the general Governors;—the Defendant is a member of every one of these, and therefore his duty is universal. The COUNCIL consists of the officers, whose duty it is to regulate the internal economy and discipline of the house, the Hospital being as it were a large man of war, and the Council its commanders; and therefore, these men, even by the present mutilated charter, ought all to be seamen. Secondly, the Directors, whose duty is merely to concern themselves with the appropriation of the revenue, in contracting for and superintending supplies, and in keeping up the structure of the Hospital; and lastly, the General Court of Governors, consisting of almost every man in the kingdom with a sounding name of office:—a mere nullity, on the members of which no blame of neglect can possibly be laid; for the Hospital might as well have been placed under the tuition of the fixed stars, as under so many illustrious persons, in different and distant departments. From the Council, therefore, appeals and complaints formerly lay at the Admiralty, the Directors having quite a separate duty, and, as I have shown the Court, the Admiralty encouraged complaints of abuses, and redressed them. But since the administration of the present First Lord, the face of things has changed. I trust it will be observed, that I do not go out of the affidavit to seek to calumniate: my respect for the COURT would prevent me, though my respect for the said First Lord might not. But the very foundation of my client's defence depending on this matter, I must take the liberty to point it out to the Court.

The Admiralty having placed several Landmen in the offices that form the Council, a majority is often artificially secured there: and when abuses are too flagrant to be passed over in the face of day, they carry their appeal to the Directors, instead of the Admiralty, where, from the very nature of man, in a much more perfect state than the Prosecutors, they are sure to be rejected or slurred over; because these acting Directors themselves are not only under the same influence with the complainants, but the subjects of the appeals are most frequently the fruits of their own active delinquencies, or at least the consequence of their own neglects. By this

manœuvre the Admiralty is secured from hearing complaints, and the First Lord, when any comes as formerly from an individual, answers with a perfect composure of muscle, that it is *coram non judice*;—it does not come through the Directors. The Defendant positively swears this to be true;—he declares that, in the course of these meetings of the Council, and of appeals to the Directors, he has been not only uniformly over-ruled, but insulted as Governor in the execution of his duty; and the truth of the abuses which have been the subject of these appeals, as well as the insults I have mentioned, are proved by whole volumes of affidavits filed in Court, notwithstanding the numbers who have been deterred by persecution from standing forth as witnesses.

The Defendant also himself solemnly swears this to be true. He swears, that his heart was big with the distresses of his brave brethren, and that his conscience called on him to give them vent;—that he often complained;—that he repeatedly wrote to, and waited on Lord [illegible], without any effect, or prospect of effect; and that at last, wearied with fruitless exertions, and disgusted with the insolence of corruption in the Hospital, which hates him for his honesty, he applied to be sent, with all his wounds and infirmities, upon actual service again. The answer he received is worthy of observation;—The First Lord told him, in derision, that it would be the same thing every where else;—that he would see the same abuses in a ship; and I do in my conscience believe he spoke the truth, as far as depended on himself.

What then was the Defendant to do under the treble capacity of Lieutenant Governor, of Director, and of general Governor of the Hospital? My Lord, there was no alternative but to prepare, as he did, the statement of the abuses for the other Governors, or to sit silent, and let them continue. Had he chosen *the last*, he might have been caressed by the Prosecutors, and still have continued the first inhabitant of a palace, with an easy independent fortune. But he preferred the dictates of honour, and he fulfilled them at the expense of being discarded, after forty years gallant service, covered with wounds, and verging to old age. But he respected the laws while he fulfilled his duty;—his object was reformation, not reproach;—he preferred a complaint, and stimulated a regular inquiry, but suspended the punishment of public shame till the guilt should be made manifest

by a trial. He did not therefore *publish*, as their affidavits falsely assert, but only preferred a complaint *by distribution of copies to the Governors*, which I have shown the Court, by the authority of a solemn legal decision, is NOT A LIBEL.

*Such, my Lords, is the Case.* The Defendant,—not a disappointed malicious informer, prying into official abuses, because without office himself, but himself a man in office;—not troublesomely inquisitive into other men's departments, but conscientiously correcting his own;—doing it pursuant to the rules of law, and, what heightens the character, doing it at the risk of his office, from which the effrontery of power has already suspended him without proof of his guilt;—a conduct not only unjust and illiberal, but highly disrespectful to this Court, whose Judges sit in the double capacity of Ministers of the law, and Governors of this sacred and abused institution. Indeed, Lord [illegible] has, in my mind, acted such a part * * * * * * * * * * * * * * * * * * * * * * *

[*Here, Lord Mansfield observing the Counsel heated with his subject, and growing personal on the First Lord of the Admiralty, told him, that Lord [illegible] was not before the Court.*]

I know, that he is not formally before the Court, but, for that very reason, *I will bring him before the Court:* he has placed these men in the front of the battle, in hopes to escape under their shelter, but I will not join in battle with them: *their* vices, though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with *me*. I will drag *him* to light, who is the dark mover behind this scene of iniquity. I assert, that the Earl of [illegible] has but one road to escape out of this business without pollution and disgrace: and *that is*, by publicly disavowing the acts of the Prosecutors, and restoring Captain Baillie to his command. If he does this, then his offence will be no more than the too common one of having suffered his own *personal* interest to prevail over his *public* duty, in placing his voters in the Hospital. But if, on the contrary, he continues to protect the Prosecutors, in spite of the evidence of their guilt, which has excited the abhorrence of the numerous audience that crowd this Court; IF HE KEEPS THIS INJURED MAN SUSPENDED, OR DARES TO TURN THAT SUSPENSION INTO A REMOVAL, I SHALL THEN NOT SCRUPLE TO DECLARE HIM AN ACCOMPLICE IN THEIR

GUILT, A SHAMELESS OPPRESSOR, A DISGRACE TO HIS RANK, AND A TRAITOR TO HIS TRUST. But as I should be very sorry that the fortune of my brave and honourable friend should depend either upon the exercise of Lord ———'s virtues, or the influence of his fears, I do most earnestly entreat the Court to mark the malignant object of this prosecution, and to defeat it:—I beseech you, my Lords, to consider, that even by discharging the rule, and with costs, the Defendant is neither protected nor restored. I trust, therefore, your Lordships will not rest satisfied with fulfilling your JUDICIAL duty, but, as the strongest evidence of foul abuses has, by accident, come collaterally before you, that you will protect a brave and public-spirited officer from the persecution this writing has brought upon him, and not suffer so dreadful an example to go abroad into the world, as the ruin of an upright man, for having faithfully discharged his duty.

My Lords, this matter is of the last importance. I speak not as an ADVOCATE alone—I speak to you AS A MAN—as a member of a state whose very existence depends upon her NAVAL STRENGTH. If a misgovernment were to fall upon Chelsea Hospital, to the ruin and discouragement of our army, it would be no doubt to be lamented, yet I should not think it fatal; but if our fleets are to be crippled by the baneful influence of elections, WE ARE LOST INDEED!—If the Seamen, who, while he exposes his body to fatigues and dangers, looking forward to Greenwich as an asylum for infirmity and old age, sees the gates of it blocked up by corruption, and hears the riot and mirth of luxurious Landmen drowning the groans and complaints of the wounded, helpless companions of his glory,—he will tempt the seas no more. The Admiralty may press HIS BODY, indeed, at the expense of humanity and the constitution, but they cannot press *his mind*—they cannot press the heroic ardour of a British Sailor; and instead of a fleet to carry terror all round the globe, the Admiralty may not much longer be able to amuse us, with even the peaceable unsubstantial pageant of a review.*

FINE AND IMPRISONMENT!—The man deserves a PALACE instead of a PRISON, who prevents the palace, built by the public bounty of his country, from being converted into a dungeon, and who sacrifices his own security to the interests of humanity and virtue.

And now, my Lord, I have done;—but not without thank-

* There had just before been a naval review at Portsmouth.

ing your Lordship for the very indulgent attention I have received, though in so late a stage of this business, and notwithstanding my great incapacity and inexperience. I resign my client into your hands, and I resign him with a well-founded confidence and hope; because that torrent of corruption, which has unhappily overwhelmed every other part of the constitution, is, by the blessing of Providence, stopped HERE by the sacred independence of the Judges. I know that your Lordships will determine ACCORDING TO LAW; and, therefore, if an information should be suffered to be filed I shall bow to the sentence, and shall consider this meritorious publication to be indeed an offence against the laws of this country; but then I shall not scruple to say, that it is high time for every honest man to remove himself from a country, in which he can no longer do his duty to the public with safety;—where cruelty and inhumanity are suffered to impeach virtue, and where vice passes through a Court of Justice unpunished and unreproved.

# SPEECH *for* THOMAS CARNAN, *Bookseller, at the Bar of the House of Commons, on the* 10*th of May*, 1779.

As taken in Short-hand.

## THE SUBJECT.

*BY letters patent of King James the First, the Stationers' Company, and the Universities of Oxford and Cambridge had obtained the exclusive right of printing almanacks, by virtue of a supposed copy-right in the Crown. This monopoly had been submitted to from the date of the grant in the last century, until Mr. Carnan, formerly a bookseller in St. Paul's Churchyard, printed them and sold them, in the ordinary course of his trade. This spirited and active tradesman made many improvements upon the Stationers' and University almanacks, and at a very considerable expense, compiled many of the various classes of useful information, by which pocket almanacks have been rendered so very convenient in the ordinary occurrences of life, but which, without the addition of the calendar, few would have been disposed to purchase.*

*Upon the sale of Carnan's almanacks becoming extensive and profitable, the two Universities and the Stationers' Company filed a bill in the Court of Exchequer, for an injunction to restrain it; praying that the copies sold might be accounted for, and the remainder delivered up to be cancelled.*

*It appears from the proceedings printed at the time by the late Mr. Carnan, that the Court, doubting the validity of the King's Charter, on which the right of the Universities and of the Stationers' Company was founded, directed a question upon its legality to be argued before the Court of Common Pleas, whose Judges, after two arguments before them, certified that the patent was void in law; the Court of Exchequer thereupon dismissed the bill, and the injunction was dissolved.*

*Mr. Carnan having obtained this judgment, prosecuted his trade for a short time with increased activity, when a bill was introduced into the House of Commons by the late Earl of Guilford, then Lord North, Prime Minister, and Chancellor of the University of Oxford,* TO REVEST, BY ACT OF PARLIAMENT, THE MONOPOLY IN ALMANACKS, WHICH HAD FALLEN TO THE GROUND BY THE ABOVEMENTIONED JUDGMENTS IN THE KING'S COURTS.

*The preamble of the bill recited the exclusive right given to the Stationers and Universities by the charter of Charles the Second, as a fund for printing of curious and learned books, the uniform enjoyment under it, the judgments of the courts of law upon the invalidity of the charter, and the expediency of regranting the monopoly for the same useful purposes by the authority of Parliament.*

*The bill being supported by all the influence of the two Universities in the House of Commons, and being introduced by Lord North in the plenitude of his authority, Mr. Carnan's opposition to it by counsel was considered at the time as a forlorn hope; but to the high honour of the House of Commons, it appears from the Journals,* vol. xxxvii. p. 388, *that immediately on Mr. Erskine's retiring from the bar, the House divided, and that the bill was rejected by a majority of forty-five votes.*

# SPEECH

FOR

# THOMAS CARNAN,

AT THE BAR OF THE HOUSE OF COMMONS,

*On the 10th of May*, 1770.

MR. SPEAKER,

IN preparing myself to appear before you, as counsel for a private individual, to oppose the enactment of a *general* and *public* statute, which was to affect the *whole* community, I felt myself under some sort of difficulty. Conscious that no man, or body of men, had a right to dictate to, or even to argue with Parliament on the exercise of the high and important trust of legislation, and that the policy and expediency of a law was rather the subject of debate in the *House*, than of argument at the *bar*, I was afraid that I should be obliged to confine myself to the special injury, which the Petitioner as an individual would suffer, and that you might be offended with any *general* observations, which, if not applying to him personally, might be thought unbecoming in me to offer to the superior wisdom of the House.

But I am relieved from that apprehension by the great indulgence, with which you have listened to the general scope of the question from the learned gentleman,* who has spoken before me, and likewise by the reflection, that I remember no instance, where Parliament has taken away any right conferred by the law as a common benefit, without very satisfactory evidence, that the universal good of the community required the sacrifice; because every unnecessary restraint on the natural liberty of mankind is a degree of tyranny, which no wise legislature will inflict.

The general policy of the bill is then fully open to my investigation; because, if I can succeed in exposing the erroneous

* Mr. Davenport.

principles, on which it is founded,—if I can show it to be repugnant to every wise and liberal system of government, I shall be listened to with the greater attention, and shall have the less to combat with, when I come to state the special grounds of objection, which I am instructed to represent to you on behalf of the Petitioner against it. Sir, I shall not recapitulate what you have already heard from the bar;—you are in full possession of the facts which gave rise to the question, and I shall therefore proceed directly to the investigation of the principles, which I mean to apply to them in opposition to the bill before you,—pledging myself to you to do it with as much truth and fidelity, as if I had the honour to speak to you as a member of the House. I am confident, Sir, that, if you will indulge me with your attention, I shall make it appear, that the very same principles, which emancipated almanacks from the fetters of the prerogative in the Courts of law, ought equally to free them from all parliamentary restriction.

On the first introduction of printing, it was considered, as well in England as in other countries, to be a matter of state. The quick and extensive circulation of sentiments and opinions, which that invaluable art introduced, could not but fall under the gripe of governments, whose principal strength was built upon the ignorance of the people who were to submit to them. The PRESS was, therefore, wholly under the coercion of the Crown, and *all printing*, not only of *public* books containing ordinances religious or civil, but *every species of publication whatsoever*, was regulated by the King's proclamations, prohibitions, charters of privilege, and finally by the decrees of the Star-chamber.

After the demolition of that odious jurisdiction, the Long Parliament, on its rupture with Charles the First, assumed the same power which had before been in the Crown; and after the Restoration the same restrictions were re-enacted and re-annexed to the prerogative by the statute of the 13th and 14th of Charles the Second, and continued down by subsequent acts, till after the Revolution. In what manner they expired at last, in the time of King William, I need not state in this House; their happy abolition, and the vain attempts to revive them in the end of that reign, stand recorded on your own journals, I trust as perpetual monuments of your wisdom and virtue. It is sufficient to say, that the expiration of these disgraceful statutes, by the refusal of Parliament to continue them any longer, formed THE GREAT ÆRA OF THE LIBERTY OF THE PRESS IN THIS COUNTRY, and

stripped the Crown of every prerogative over it, except that, which, upon just and rational principles of government, must ever belong to the executive magistrate in all countries, namely, the exclusive right to publish religious or civil constitutions; —in a word, to promulgate every ordinance, which contains the rules of action by which the subject is to live, and to be governed. These always did, and, from the very nature of civil government, always ought to belong to the Sovereign, and hence have gained the title of Prerogative copies.

When, therefore, the Stationers' Company, claiming the exclusive right of printing almanacks under a charter of King James the First, applied to the Court of Exchequer for an injunction against the Petitioner at your bar, the question submitted by the Barons to the learned Judges of the Common Pleas, namely, "WHETHER THE CROWN COULD "GRANT SUCH EXCLUSIVE RIGHT?" was neither more nor less than this question—*Whether almanacks were such public ordinances, such matters of state, as belonged to the King by his prerogative, so as to enable him to communicate an exclusive right of printing them to a grantee of the Crown?* For the press being thrown open by the expiration of the licensing acts, nothing could remain exclusively to such grantees, but the printing of such books, as upon solid constitutional grounds belonged to the superintendance of the Crown as matters of authority and state.

The question, so submitted, was twice solemnly argued in the Court of Common Pleas: when the Judges unanimously certified, *that the Crown had no such power;* and their determination, as evidently appears from the arguments of the counsel, which the Chief Justice recognised with the strongest marks of approbation, was plainly founded on this,—that almanacks had no resemblance to those public acts religious or civil, which, on principle, fall under the superintendance of the Crown.

The counsel* who argued the case for the Plaintiffs (two of the most learned men in the profession) were aware that the King's prerogative in this particular had no absolute and fixed foundation, either by prescription or statute, but that it depended on public policy, and the reasonable limitation of executive power for the common good;—they felt that the Judges had no other standard, by which to determine whether it *was* a prerogative copy, than by settling upon principles of good sense, *whether it ought to be one*, they la-

* Mr. Serjeant Glynn and Mr. Serjeant Hill.

boured therefore to show the propriety of the revision of almanacks by public authority;—they said they contained the regulation of time, which was matter of public institution, having a reference to all laws and ordinances:—that they were part of the Prayer-Book, which belonged to the King as head of the church;—that they contained matters which were received as conclusive evidence in courts of justice, and therefore ought to be published by authority:—that the trial by almanack was a mode of decision not unknown:—that many inconveniences might arise to the public from mistakes in the matters they contained: many other arguments of the like nature were relied on, which it is unnecessary for me to enumerate in this place, as they were rejected by the court; and likewise, because the only reason of my mentioning them at all is to show, that the *public expediency or propriety* of subjecting almanacks to revision by authority, appeared to those eminent lawyers, and to the Court, which approved of their arguments, as only the standard by which the King's prerogative over them was to be measured. For if the Judges had been bound to decide on that prerogative by *strict precedent*, or by any other rule than a judicial construction of the *just and reasonable* extent of prerogative, these arguments, founded on *convenience*, *expediency*, and *propriety*, would have been downright impertinence and nonsense; but taking them, as I do, and as the Judges did, they were (though unsuccessful, as they ought to be) every way worthy of the very able men, who maintained them for their clients.

Thus, Sir, the exclusive right of printing almanacks, which, from the bigotry and slavery of former times, had so long been monopolized as a prerogative copy, was at last thrown open to the subject, as not falling within the reason of those books, which still remain, and ever must remain, the undisputed property of the Crown.

The only two questions, therefore, that arise on the bill before you are, FIRST, Whether it be wise or expedient for Parliament to revive a monopoly, so recently condemned by the courts of law as unjust, from not being a fit subject of a monopoly, and to give it to the very same parties, who have so long enjoyed it by usurpation, and who have, besides, grossly abused it? SECONDLY, Whether Parliament can, consistently with the first principles of justice overlook the injury, which will be sustained by the Petitioner *as an individual*, from his being deprived of the exercise of the lawful trade, by which he lives;—a trade which he began with the

free spirit of an Englishman in contempt of an illegal usurpation;—a trade, supported and sanctioned by a decree of one of the highest Judicatures known to the constitution?

Surely, Sir, the bill ought to be rejected with indignation by this House, under such circumstances of private injustice, independently of public inexpediency;—if you were to adopt it, the law would be henceforth a snare to the subject, —no man would venture to engage hereafter in any commercial enterprise, since he never could be sure that, although the tide of his fortunes was running in a free and legal channel, its course might not be turned by Parliament into the bosom of a monopolist.

Let us now consider more minutely the two questions for your consideration; the general policy, and the private injury.

As to the first, no doubt the Legislature is supreme, and may create monopolies which the Crown cannot. But let it be recollected, that the very same reasons, which emancipated almanacks from the prerogative in the courts below, equally apply against any interference of Parliament. If almanacks be not publications of a nature to fall within the legal construction of prerogative copy-rights, why should Parliament grant a monopoly of them, since it is impossible to deny, that, if they contain such matters as in *policy* required the stamp or revision of public authority, the exclusive right of printing them would have been inherent in the Crown by prerogative, upon legal principles of executive power, in which case an act would not have been necessary to protect the charter? and, it is equally impossible to deny, on the other hand, that, if they be not such publications as require to be issued or reviewed by authority, they then stand on the general footing of all other printing, by which men in a free country are permitted to circulate knowledge. The bill, therefore, is either nugatory, or the patent is void;—and if the patent be void, Parliament cannot set it up again, without a dangerous infringement of the general liberty of the press.

Sir, when I reflect that this proposed monopoly is a monopoly in PRINTING, and that it gives, or rather continues it to the Company of Stationers,—the very same body of men who were the literary constables to the Star-chamber to suppress all the science and information, to which we owe our freedom, I confess I am at a loss to account for the reason or motive of the indulgence: but get the right who may, the principle is so dangerous, that I cannot yet consent to part with

this view of the subject. The bill proposes, that Parliament should subject almanacks to the revision of the King's authority, when the Judges of the common law, the constitutional guardians of his prerogative, have declared that they do not on principle require that sanction:—so that your bill is neither more nor less than the reversal of a decision, admitted to be wise and just. Since as the Court was clearly at liberty to have determined the patent to have been good, if the principle by which prerogative copies have been regulated in other cases had fairly applied to almanacks, *you*, in saying that such principle *does apply*, in fact arraign that legal judgment. God forbid, Sir, that I should have the indecency to hint, that this reasoning concerning public convenience and expediency will ever be extended to reach other publications more important than almanacks; but certainly the principle might, with much less violence than is necessary to bring them within the pale of authority, upon the principle of the bill before you, subject the most valuable productions of the press to parliamentary regulations, and totally annihilate its freedom.

Is it not, for instance, much more dangerous, that the rise and fall of the funds, in this commercial nation, should be subject to misrepresentation, than the rise and fall of the tides?—Are not misconstructions of the arguments and characters of the Members of this high Assembly more important in their consequences, than mistakes in the calendar of those wretched saints, which still, to the wonder of all wise men, infest the liturgy of a reformed Protestant church?—Prophecies of famine, pestilence, national ruin, and bankruptcy, are surely more dangerous to reign unchecked, than prognostications of rain, or dust; yet they are the daily uncontrolled offspring of every private author, and I trust will ever continue to be so; because the liberty of the press consists in its being subject to no previous restrictions, and liable only to animadversion, when that liberty is abused. But if almanacks, Sir, are held to be such matter of public consequence as to be revised by authority, and confined by a monopoly, surely the various departments of science may, on much stronger principles, be parcelled out among the different officers of state, as they were at the first introduction of printing. There is no telling to what such precedents may lead;—the public welfare was the burden of the preambles to the licensing acts;—the most tyrannical laws in the most absolute governments speak a kind, parental language to the abject wretches, who groan under their crushing and humiliating

weight;—resisting therefore a regulation and supervision of the press *beyond the rules of the common law*, I lose sight of my client, and feel that I am speaking for myself,—for every man in England. With such a legislature, as I have now the honour to address, I confess the evil is imaginary—but who can look into the future?—this precedent (trifling as it may seem) may hereafter afford a plausible inlet to much mischief, —the protection of the LAW may be a pretence for a monopoly in all books on LEGAL subjects;—the safety of the *state* may require the suppression of *histories* and *political writings*; —even philosophy herself may become once more the slave of the schoolmen, and religion fall again under the iron fetters of the church.

If a monopoly in almanacks had never existed before, and inconveniences had actually arisen from a general trade in them, the offensive principle of the bill might have been covered by a suitable preamble reciting that mischief; but having existed above a century by convicted usurpation, so as to render that recital impossible, you are presented with this new sort of preamble, in the teeth of facts which are notorious.

[*States the preamble of the bill.*]

First, it recites an exercise and enjoyment under the King's letters patent, and then, without explaining why the patent was insufficient for its own protection, it proposes to confer, what had been just stated to be conferred already, with this most extraordinary addition, "*Any law or usage to the contrary notwithstanding.*" Sir, if the letters patent were void, they should not have been stated at all, nor should the right be said to have been exercised and enjoyed under them;—on the other hand, if they were valid, there could be no law or usage to the contrary, for contradictory laws cannot both subsist. This has not arisen from the ignorance or inattention of the framer of the bill, for the bill is ably and artfully framed; but it has arisen from the awkwardness of attempting to hide the real merits of the case. To have preserved the truth, the bill must have run thus:

*Whereas the Stationers' Company and the two Universities have, for above a century last past,* CONTRARY TO LAW, *usurped the right of printing almanacks, in exclusion of the rest of His Majesty's faithful people, and have from time to time harassed and vexed divers good subjects of our Lord the King for printing the same, till checked by a late decision of the courts of law:*

*Be it therefore enacted, that this usurpation be made legal, and be confirmed to them in future.*

This, Sir, would have been a curiosity indeed, and would have made some noise in the House, *yet it is nothing but the plain and simple truth;*—the bill could not pass, without making a sort of bolus of the preamble to swallow it in.

So much for the introduction of the bill, which, ridiculous as it is, has nevertheless a merit not very common to the preambles of modern statutes, which are generally at cross purposes with the enacting part. Here, I confess, the enacting part closes in to a nicety with the preamble, and makes the whole a most CONSISTENT and respectable piece of tyranny, absurdity, and falsehood.

But the correctness and decency of these publications, are, it seems, the great objects in reviving and confirming this monopoly, which the preamble asserts to have been hitherto attained by it, since it states "*that such monopoly has been found to be convenient and expedient.*" But, Sir, is it seriously proposed by this bill to attain these moral objects by vesting, or rather legalizing the usurped monopoly in the Universities, under episcopal revision, as formerly?—Is it imagined that our almanacks are to come to us in future, in the classical arrangement of Oxford,—fraught with the mathematics and astronomy of Cambridge,—printed with the correct type of the Stationers' Company,—AND SANCTIFIED BY THE BLESSINGS OF THE BISHOPS?* I beg pardon, Sir, but the idea is perfectly ludicrous; it is notorious that the Universities sell their right to the Stationers' Company for a fixed annual sum, and that this act is to enable them to continue to do so. And it is equally notorious, that the Stationers' Company make a scandalous job of the bargain, and, to increase the sale of almanacks among the vulgar, publish, under the auspices of religion and learning, the most senseless absurdities.—I should really have been glad to have cited some sentences from the one hundred and thirteenth edition of Poor Robin's almanack, published under the revision of the Archbishop of Canterbury and the Bishop of London,—but I am prevented from doing it by a just respect for the House. Indeed, I know *no house*—but a brothel,—that could suffer the quotation. The worst part of Rochester is ladies reading when compared with them.

* The imprimatur of the Archbishop of Canterbury and Bishop of London was necessary by the letters patent.

They are equally indebted to the calculations of their astronomers, which seem, however, to be made for a more *western* meridian than LONDON.—Plow MONDAY falls out on a SATURDAY,—and Hilary Term ends on Septuagesima Sunday. In short, Sir, their almanacks have been, as every thing else that is monopolized must be,—uniform and obstinate in mistake and error, for want of the necessary rivalry. It is not worth their while to unset the press to correct mistakes, however gross and palpable, because they cannot affect the sale. If the moon is made to rise in the west, she may continue to rise there for ever.—When ignorance, nonsense, and obscenity were thus hatched under the protection of a royal patent, how must they thrive under the wide spreading fostering wings of an act of Parliament;—whereas in Scotland, and in Ireland, where the trade in almanacks has been free and unrestrained, they have been eminent for exactness and useful information. The act recognises the truth of this remark, and prohibits the importation of them.

But, Sir, this bill would extend not only to monopolize almanacks, but every other useful information published with almanacks, which render the common business of life familiar. It is notorious, that the various lists and tables, which are portable in the pocket, are not saleable without almanacks;—yet all these, Sir, are to be given up to the Stationers' Company, and taken from the public by the large words in the bill, of *books, pamphlets, or papers;* since the booksellers cannot afford to compile these useful works, which, from their extensive circulation, are highly beneficial to trade, and to the revenue of stamps, if they must purchase from the Stationers' Company the almanack annexed to them, because the Company must have a profit, which will enhance their price.—In short, Sir, Parliament is going to tear a few innocent leaves out of books of most astonishing circulation, and of very general use, by which they will be rendered unsaleable, merely to support a monopoly, established in the days of ignorance, bigotry, and superstition, which has deviated from the ends of its institution, senseless and worthless as they were, and which could not stand a moment, when dragged by a public-spirited citizen, into the full sunshine of a MODERN English court of justice.

It would be a strange thing, Sir, to see an odious monopoly, which could not even stand upon its legs in Westminster Hall, upon the broad pedestal of prerogative, though propped up with the precedents, which the decisions of judges in darker

ages had accumulated into law,—it would be a strange thing to see such an abuse supported and revived by the Parliament of Great Britain in the eighteenth century, in the meridian of the arts, the sciences, and liberty,—to see it starting up among your numberless acts of liberal toleration, and boundless freedom of opinion.—God forbid, Sir, that at this time of day we should witness such a disgrace as the monopoly of a twopenny almanack, rising up like a tare among the rich fields of trade, which the wisdom of your laws has blown into a smiling harvest all around the globe.

But, Sir, I forget myself;—I have trespassed too long upon your indulgence;—I have assumed a language fitter, perhaps, for the House than for its bar; I will now therefore confine myself in greater strictness to my duty as an advocate, and submit to your *private justice*, that, let the *public policy* of this bill be what it may, the individual, whom I represent before you, is entitled to your protection against it.

Mr. Carnan, the Petitioner, had turned the current of his fortunes into a channel, perfectly open to him in law, and which, when blocked up by usurpation, he had cleared away at a great expense, by the decision of one of the highest courts in the kingdom. Possessed of a decree, founded too on a certificate from the Judges of the common law,—was it either weak or presumptuous in an Englishman to extend his views, that had thus obtained the broadest seal of justice?—Sir, he *did* extend them with the same liberal spirit in which he began;—he published twenty different kinds of almanacks, calculated for different meridians and latitudes, corrected the blunders of the lazy monopolists, and, supported by the encouragement which laudable industry is sure to meet with in a free country, he made that branch of trade his first and leading object;—and I challenge the framer of this bill (even though he should happen to be at the head of His Majesty's Government) to produce to the House a single instance of immorality, or of any mistake or uncertainty, or any one inconvenience arising to the public from this general trade, which he had the merit of redeeming from a disgraceful and illegal monopoly.—On the contrary, much useful learning has been communicated, a variety of convenient additions introduced, and many egregious errors and superstitions have been corrected. Under such circumstances I will not believe it possible, that Parliament can deliver up the honest labours of a citizen of London to be damasked and made waste paper of (as this scandalous bill expresses it) by any man or body of men in

the kingdom. On the contrary, I am sure the attempt to introduce, through the Commons of England, a law so shockingly repugnant to every principle, which characterizes the English Government, will meet with your just indignation as an insult to the House, whose peculiar station in the government is the support of *popular freedom*. For, Sir, if this act were to pass, I see nothing to hinder any man, who is turned out of possession of his neighbour's estate by legal ejectment, from applying to you to give it him back again by act of Parliament.—The fallacy lies in supposing, that the Universities and Stationers' Company *ever had* a right to the monopoly, which they have exercised so long. The preamble of the bill supposes it,—but, as it is a supposition in the very teeth of a judgment of law,—it is only an aggravation of the impudence of the application.

And now, Mr. Speaker, I retire from your bar, I wish I could say with confidence of having prevailed.—If the wretched Company of Stationers had been my only opponents, my confidence had been perfect;—indeed so perfect, that I should not have wasted ten minutes of your time on the subject, but should have left the bill to dissolve in its own weakness: but, when I reflect that OXFORD AND CAMBRIDGE are suitors here, I own to you I am alarmed, and I feel myself called upon to say something, which I know your indulgence will forgive. The House is filled with their most illustrious sons, who no doubt feel an involuntary zeal for the interest of their parent Universities.—Sir, it is an influence so natural, and so honourable, that I trust there is no indecency in my hinting the *possibility of its operation*. Yet I persuade myself that these learned bodies have effectually defeated their own interests, by the sentiments which their liberal sciences have disseminated amongst you;—their wise and learned institutions have erected in your minds the august image of an enlightened statesman, which, trampling down all personal interests and affections, looks steadily forward to the great ends of public and private justice, unawed by authority, and unbiassed by favour.

It is from thence my hopes for my client revive.—If the Universities have lost an advantage, enjoyed contrary to law, and at the expense of sound policy and liberty, you will rejoice that the courts below have pronounced that wise and liberal judgment against them, and will not set the evil example of reversing it *here*. But you need not therefore forget, that the Universities *have* lost an advantage,—and if it be a loss that can be felt by bodies so liberally endowed, it may be repaired

to them by the bounty of the Crown, or by your own.—It were much better that the people of England should pay ten thousand pounds a year to each of them, than suffer them to enjoy one farthing at the expense of the ruin of a free citizen, or the monopoly of a free trade*.

* According to the seasonable hint at the conclusion of the speech, *which perhaps had some weight* in the decision of the House to reject the bill, a parliamentary compensation was afterwards made to the Universities, and remains as a monument erected by a British Parliament to a free press.

# SPEECH

## AGAINST CONSTRUCTIVE TREASON.

*THE occasion of the prosecution of Lord George Gordon for High Treason is but too well remembered; but the general outlines of the extraordinary event which led to it, and of the evidence given upon the trial, may nevertheless lead to the better understanding of the following Speech.*

*A bill had been brought into Parliament, the session of* 1778, *by Sir George Saville, one of the most upright men which perhaps any age or country ever produced, to relieve the Roman Catholic subjects of England from some of the penalties they were subject to, by an act passed in the eleventh and twelfth year of King William the Third, an act supposed by many to have originated in faction, and which at all events, from many important changes, since the time of its enactment, had become unnecessary, and therefore unjust.*

*On the passing of this bill, which required a test of fidelity from the Roman Catholics who claimed its protection, many persons of that religion, and of the first families and fortunes in the kingdom, came forward with the most zealous professions of attachment to the Government, so that the good effects of the indulgence were immediately felt; and hardly any murmur from any quarter was heard. This act of Sir George Saville did not extend to Scotland; but in the next winter it was proposed by persons of distinction in that country to revise the penal laws in force against the Catholics of that kingdom: at least a report prevailed of such intention. This produced tumults in Edinburgh, in which some Popish chapels and mass-houses were destroyed, and the attempt to extend the Statute to North Britain was given up.*

*Upon this occasion a great number of Protestant societies were formed in Scotland, and the memorable one in London was soon afterwards erected under the name of the Protestant Association. Large subscriptions were raised in different parts of the kingdom, a secretary was publicly chosen, and correspondences set on foot between the different societies in England and Scotland, for the purpose of petitioning Parliament to repeal Sir George Saville's act, which was represented at these meetings, and branded in their various publications, as big with danger to the constitution, both of church and state.*

*In the month of November* 1779, *Lord George Gordon, youngest brother of His Grace the Duke of Gordon, and at that time a member of the House of Commons, was unanimously invited to become president of the London Association, where he afterwards regularly attended till the catastrophe of* 1780, *when he was committed to the tower.*

*The object of the Protestant Association to procure a repeal of the act of Parliament by petition, as appears from all their resolutions, which were publicly printed and distributed, without any interruption from the magistracy for many months together; and although it was undoubtedly meant, by the numbers and zeal of the petitioners, that Parliament should feel the propriety of repealing the act, and even an alarm of prudence in refusing to yield to the solicitation of multitudes not numbered, nor capable of enumeration; yet in all probability Mr. Erskine was justified by the real fact, when he asserted that the idea of* absolute force and compulsion, by armed violence, *never was in the contemplation of the prisoner, or of any who afterwards attended him on the memorable second of June. So certain is it that the destinations of mobs may not be dictated by their leaders, or even known to themselves; a truth which highly enhances the guilt of assembling them.*

*After the opening of the Attorney General, the case for the Crown was introduced by the evidence of William Hay, who had attended the meetings of the Protestant Association, and who swore that the Prisoner announced, that the associated Protestants amounted to above forty thousand persons, and directed them to assemble on Friday the 2d of June, in four separate columns or divisions, dressed in their best clothes, with blue cockades as a badge of distinction. The witness further swore that the Prisoner declared that the King had broken his coronation oath; and he also spoke to his attendance at the House of Commons on the 2d of June, and his exhortation to the multitude in the lobby to adhere to so good and glorious a cause; for though there was little hope from the House of Commons, they would meet with redress from their mild and gracious Sovereign. Mr. Hay also spoke to the burning of the different mass-houses; and, upon his cross-examination, appeared to have been in every quarter where mischief was committing. This gentleman was very ably cross-examined by Mr. Kenyon, afterwards Lord Kenyon, and the result of it appears at large in the following Speech, where much reliance was placed on it by Mr. Erskine, in discredit of the witness, and in protection of the Prisoner. It was afterwards proved by Mr. Anstruther, M. P. that the Prisoner at Coachmakers' Hall, where the Association assembled, desired the whole body to meet him on the 2d of June, to go up with the petition, declaring, that, if there was one less than twenty thousand men, he would not present it, but that they must find another President, as he would have nothing to do with them: that he recommended temperance and firmness, by which he said the Scotch had carried their point, and added, that he did not*

*many them to go into any danger which he would not share, as he would go to death for the Protestant cause. Mr. Anstruther further proved the Prisoner's directions with regard to the order of the assembling, and his conduct in the lobby of the House of Commons, viz.* "*that* "*he told them they were called a mob in the House, but that they were* "*peaceable petitioners; that he had no doubt His Majesty would send* "*to his Ministers to repeal the act when he saw the confusion it created.*" *He further proved, that several people called to Lord George, and asked him whether he desired them to disperse, to which he replied,* "*You are the best judges of what you ought to do—but I will tell you* "*how the matter stands.—The House are going to divide upon the* "*question, whether your petition shall be taken into consideration now* "*or on Tuesday. There are for taking it into consideration now, only* "*myself and six or seven others. If it is not taken into consideration* "*now, your petition may be lost; to-morrow the House does not meet,* "*Monday is the King's birth-day, and upon Tuesday, the Parliament* "*may be dissolved or prorogued.*" *The multitude in the avenues of the Houses of Parliament, and the consequent clamour and obstruction, it seems, continued after this. Mr. Anstruther gave this evidence with great coolness and precision; and it appears from the printed trial, that the Prisoner's Counsel thought it prudent to avoid any cross-examination of him.*

*Mr. Bowen, the Chaplain of the House of Commons, proved, that the Prisoner told the multitude that Mr. Rous had just moved, that the civil power should be sent for, but that they need not mind it;—they had only to keep themselves cool and steady. The Chaplain further stated, that he had advised Lord George to disperse them, and told him that he had heard in the lobby that they would go if he desired it. That the Prisoner then addressed them from the gallery, advising them to be quiet and steady;—that His Majesty was a gracious Sovereign, and when he heard that the people miles round were collecting, he would send his Ministers private orders to repeal the bill; that an attempt had been made to introduce a bill into Scotland*; that the Scotch had no redress till they pulled down the mass-houses; that then Lord Weymouth sent them official assurances that the act should not extend to them. *That he then advised them to be quiet and peaceable, and told them to beware of evil-minded persons, who would mix among them and entice them to mischief, the blame of which would be imputed to them. That somebody in the lobby then asked the Prisoner if it was not necessary for them to retire; and that he answered.* "*I will tell you* "*how it is: The question was put; I moved that your petition should* "*be taken into consideration to-night. It was clearly against you, but* "*I insisted upon dividing the House*—NO DIVISION CAN TAKE PLACE "WHEN YOU ARE THERE*; BUT TO GO OR NOT, I LEAVE TO YOUR-"SELVES." *The Chaplain then said, that the Prisoner laid hold of his*

* On a division one part of the House go forth into the lobby.

*gown, and presented him to the people as the clergyman of the House of Commons, saying, "Ask him his opinion of the Popish Bill," to which he answered, that the only answer he would give was, that all the consequences which might arise from that night would be entirely owing to him; to which the Prisoner made no reply, but went into the House; and when the Speaker went in, there were cries of "Repeal, Re-" peal."*

*Mr. Joseph Pearson, the Door-keeper of the house of Commons, was also examined for the Crown. He proved the presence of the mob, and their cries of "No Popery," and "Repeal, Repeal."—And with respect to Lord George Gordon himself, he said that his Lordship came to the door two or three times, saying, he would come out and let them know what was going on,—that they had a good cause, and had nothing to fear,—that Sir Michael Le Flemming had spoken for them like an angel. The witness added, that as they crowded upon him he called out, "For God's sake, Gentlemen, keep from the door." That the Prisoner put his hand out, waving it, and said, "Pray, Gentlemen, "make what room you can,—Your cause is good, and you have nothing "to fear." Other witnesses were examined to what passed in the lobby, the material substance of whose testimony the Editor has extracted from the printed trial. The rest of the evidence went to prove those scenes of disorder and violence, which are but too well remembered without narration.*

*In the course of the evidence for the Crown respecting the riots and burnings in London, a paper was produced by Richard Pond, a witness, who swore that, hearing his house was to be pulled down, he applied to the Prisoner for a protection, which he presented to him in the following words, and which was signed by the Prisoner:*

"*All true friends to Protestants, I hope, will be particular, and do* "*no injury* to the property of any true Protestant, *as I am well as-* "*sured the* PROPRIETOR* *of this house is a staunch and worthy friend* "*to the cause.*

"G. GORDON."

*The attorney General was also in possession of some letters and papers, which Mr. Dingwall, a jeweller, was called to establish; but he said he was not sufficiently acquainted with Lord George's hand to prove them.*

*On the whole of the evidence, the Counsel for the Crown contended, that the Prisoner, by assembling the multitude round the Houses of Parliament, to enforce their purposes by violence and numbers, or even to overawe and intimidate the Legislature in their deliberations, was a levying of war against the King in his realm, within the statute of treasons of the twenty-fifth of Edward the Third; a doctrine which was fully confirmed by the Court; and they concluded with contending*

* The tenant was a Catholic.

*that the overt acts established by the evidence were the only means, by which the Prisoner's traitorous purposes could possibly be proved. On the close of the evidence for the Crown, the late Lord Kenyon, then Mr. Kenyon, senior Counsel for the Prisoner, addressed the Jury in a speech of much ability and judgment, and, according to usual practice, should then have been followed by Mr. Erskine, before the examination of the Prisoner's witnesses: but it appears from the printed trial, that Mr. Erskine claimed the right of reserving his address to the Jury till after the final close of the whole evidence on both sides, which he said was matter of great privilege to the Prisoner, and for which he stated that there was a precedent, the protection of which he should insist upon for his Client. This being assented to by the Court, eleven or twelve witnesses were called on the part of the Prisoner, the great object of whose examinations was to negative the conclusions drawn by the Crown from the evidence laid before the Jury. For this purpose the different expressions culled out from the proceedings at Coachmakers' Hall, and the lobby of the House of Commons, were contrasted with the general tenour of the Prisoner's behaviour from his first becoming President of the Protestant Association.*

*The Rev. Mr. Middleton, a member of the Association, was the first witness: he said he had watched all his conduct, and declared that he appeared animated with the greatest loyalty to the King, and attachment to the Constitution;—that nothing in any of his speeches at the Association contained any expressions disloyal or improper, nor tended directly or indirectly to a repeal of the Bill* BY FORCE;— *that he expressed the cockade to be only a badge to prevent disorderly people from mixing in the procession of the Association;—that he desired them not to carry even sticks, and begged that riotous persons might be delivered up to the constables. Several other witnesses were examined to the same effect as Mr. Middleton, particularly Mr. Evans an eminent Surgeon, who swore that he saw Lord George in the centre of one of the divisions in Saint George's Fields, and that it appeared at that time from his conduct and expressions, that, to prevent all disorder, his wish was not to be attended across the bridge by the multitude. This evidence was confirmed by several other respectable witnesses; and it appeared also, that the bulk of the people in the lobby, and in Palace Yard, were not members of the Association, but idlers, vagabonds, and pickpockets, who had put cockades in their hats and joined the Association in their progress. This fact was particularly established by the evidence of Sir Philip Jennings Clerke, who said that the people assembled round the House of Commons were totally different, both in appearance and behaviour, from the members of the association who were assembled by the Prisoner, and who formed the original procession to carry up the Petition.*

*The Earle of Lonsdale (then Sir James Lowther) was also examined for the Prisoner, and swore that he carried Lord George*

*and Sir Philip Jennings Clerke from the House of Commons; that the carriage was surrounded with great multitudes, who inquired of Lord George the fate of the Petition, who answered, that it was uncertain, and earnestly entreated them to retire to their homes and be quiet.*

*On the close of the evidence, which was about midnight, Mr. Erskine rose, and addressed the Jury in the following Speech. The Solicitor General replied, and the Jury, after being charged by the venerable Earl of Mansfield, then Chief Justice, retired to deliberate. They returned into Court about three in the morning, and brought in a verdict* NOT GUILTY, *which was repeated from mouth to mouth to the uttermost extremities of London, by the multitudes which filled the streets.*

*The Editor, though he forbears from observing upon the arguments he has collected cannot forbear remarking, that the great feature of the following Speech is, that it combated successfully the doctrine of constructive treasons, a doctrine highly dangerous to the public freedom.*

*It is recorded of Dr. Johnson, that he expressed his satisfaction at the acquittal of this nobleman on that principle. "I am glad," "said he, "that Lord George Gordon has escaped, rather than a "precedent should be established of hanging a man for constructive "treason*."*

* Boswell's Life of Johnson.

# SPEECH

FOR

# LORD GEORGE GORDON.

GENTLEMEN OF THE JURY,

Mr. Kenyon* having informed the Court that we propose to call no other witnesses, it is now my duty to address myself to you, as counsel for the noble Prisoner at the bar, the whole evidence being closed;—I use the word closed, because it is certainly not finished, since I have been obliged to leave the place in which I sat, to disentangle myself from the volumes of men's names, which lay there under my feet, whose testimony, had it been necessary for the defence, would have confirmed all the facts that are already in evidence before you.

Gentlemen, I feel myself entitled to expect, both from you and from the Court, the greatest indulgence and attention;—I am, indeed, a greater object of your compassion, than even my noble friend whom I am defending.—HE rests secure in conscious innocence, and in the well placed assurance, that it can suffer no stain in your hands:—not so with ME;—I stand up before you a troubled, I am afraid a *guilty* man, in having presumed to accept of the awful task, which I am now called upon to perform;—a task, which my learned friend who spoke before me, though he has justly risen by extraordinary capacity and experience, to the highest rank in his profession, has spoken of with that distrust and diffidence, which becomes every Christian in a cause of blood. If Mr. Kenyon has such feelings, think what mine must be.—Alas! Gentlemen, who am I?—a young man of little experience, unused to the bar of criminal courts, and sinking under the

* Afterwards Lord Kenyon, and Chief Justice of the Court of King's Bench.

Mr. Erskine sat originally in the front row, under which there were immense piles of papers; and he retired back, before he began to address the Jury.

dreadful consciousness of my defects. I have however this consolation, that no ignorance nor inattention on my part, can possibly prevent you from seeing, under the direction of the Judges, that the Crown has established no case of treason.

Gentlemen, I did expect, that the ATTORNEY General, in opening a great and solemn state prosecution, would have at least indulged the advocates for the Prisoner with his notions on the law, as applied to the case before you, in less general terms. It is very common indeed, in little civil actions, to make such obscure introductions by way of trap;—but in criminal cases, it is unusual and unbecoming; because the right of the Crown to reply, even where no witnesses are called by the Prisoner, gives it thereby the advantage of replying, without having given scope for observations on the principles of the opening, with which the reply must be consistent.

One observation he has, however, made on the subject, in the truth of which I heartily concur, viz. That the crime, of which the noble person at your bar stands accused, is the very *highest* and most *atrocious* that a member of civil life can possibly commit; because it is not, like all *other* crimes, merely an *injury* to society from the breach of some of its reciprocal relations, but is an attempt *utterly to dissolve and destroy society altogether.*

In nothing therefore is the wisdom and justice of our laws so strongly and eminently manifested, as in the *rigid*, *accurate*, *cautious*, *explicit*, *unequivocal* definition of what shall constitute this high offence;—for, high treason consisting in the breach and dissolution of that allegiance, which binds society together, if it were left ambiguous, uncertain, or undefined, all the other laws established, for the personal security of the subject would be utterly useless;—since this offence, which, from its nature, is so capable of being created and judged of, by rules of political expediency on the spur of the occasion, would be a rod at will to bruise the most virtuous members of the community, whenever virtue might become troublesome or obnoxious to a bad government.

Injuries to the persons and properties of our neighbours, considered as individuals, which are the subjects of all other criminal prosecutions, are not only capable of greater precision, but the powers of the state can be but rarely interested in straining them, beyond their legal interpretation;—but if *treason, where the government itself is directly offended*, were left to the judgment of its ministers, without any bounda-

ries,—nay, without the most *broad, distinct,* and *inviolable* boundaries marked out by law,—there could be no public freedom,—and the condition of an Englishman would be no better than a slave's at the foot of a Sultan; since there is little difference whether a man dies by the stroke of a sabre, without the forms of a trial, or by the most pompous ceremonies of justice, if the crime could be made at pleasure by the state to fit the fact that was to be tried.

Would to God, Gentlemen of the jury, that this were an observation of theory alone, and that the page of our history was not blotted with so many melancholy disgraceful proofs of its truth!—but these proofs, melancholy and disgraceful as they are, have become glorious monuments of the wisdom of our fathers, and ought to be a theme of rejoicing and emulation to us. For from the mischiefs constantly arising to the state from every extension of the ancient law of treason, the ancient law of treason has been always restored, and the constitution at different periods washed clean,—though unhappily with the blood of oppressed and innocent men.

When I speak of the ancient law of treason, I mean the venerable statute of King Edward the Third, on which the indictment you are now trying, is framed;—a statute made, as its preamble sets forth, for the more precise definition of this crime, which had not, by the common law, been sufficiently explained; and consisting of different and distinct members, the plain *unextended letter* of which was thought to be a sufficient protection to the person and honour of the sovereign, and an adequate security to the laws committed to his execution. I shall mention only two of the number, the others not being in the remotest degree applicable to the present accusation.

*To compass, or imagine the death of the King;* such imagination, or purpose of the mind (visible only to its great Author), being manifested by some open act; an institution obviously directed, not only to the security of his natural person, but to the stability of the government; the life of the prince being so interwoven with the constitution of the state, that an attempt to destroy the one, is justly held to be a rebellious conspiracy against the other.

Secondly, which is the crime charged in the indictment, *to levy war against him in his realm;*—a term that one would think could require no explanation, nor admit of any ambiguous construction amongst men, who are willing to read laws according to the plain signification of the language, in which they are written; but which has nevertheless been an abundant

source of that constructive cavil, which this sacred and valuable act was made expressly to prevent. The real meaning of this branch of it, as it is bottomed in policy, reason, and justice,—as it is ordained in plain unambiguous words,—as it is confirmed by the precedents of justice, and illustrated by the writings of the great lights of the law, in different ages of our history,—I shall, before I sit down, impress upon your minds as a safe, unerring standard, by which to measure the evidence you have heard. At present I shall only say, that far and wide as judicial decisions have strained the construction of levying war, beyond the warrant of the statute, to the discontent of some of the greatest ornaments of the profession, they hurt not me;—as a citizen I may disapprove of them,—but as advocate for the noble person at your bar, I need not impeach their authority; because none of them have said more than this,—that war may be levied against the King in his realm, not only by an insurrection to change, or to destroy the fundamental constitution of the government itself by rebellious war, but, by the same war, to endeavour to suppress the execution of the laws it has enacted, or to violate and overbear the protection they afford, not to individuals (which is a private wrong), but to any general class or description of the community, BY PREMEDITATED OPEN ACTS OF VIOLENCE, HOSTILITY AND FORCE.

Gentlemen, I repeat these words, and call solemnly on the Judges to attend to what I say, and to contradict me if I mistake the law,—BY PREMEDITATED, OPEN ACTS OF VIOLENCE, HOSTILITY, AND FORCE;—nothing equivocal;—nothing ambiguous;—no intimidations, or overawings, which signify nothing precise or certain, because what frightens one man, or set of men, may have no effect upon another; but that which COMPELS and COERCES;—OPEN VIOLENCE AND FORCE.

Gentlemen, this is not only the whole text, but, I submit it to the learned Judges, under whose correction I am happy to speak, an accurate explanation of the statute of treason, as far as it relates to the present subject, taken in its utmost extent of judicial construction, and which you cannot but see not only in its letter, but in its most strained signification, is confined to acts which *immediately*,—*openly*,—and *unambiguously*, strike at the very root and being of government, and not to any other offences, however injurious to its peace.

Such were the boundaries of high treason marked out in the reign of Edward the Third; and as often as the vices of bad princes, assisted by weak submissive parliaments, extended state offences beyond the strict letter of that act, so often

the virtue of better princes and wiser parliaments brought them back again.

A long list of new treasons, accumulated in the wretched reign of Richard the Second, from which (to use the language of the act that repealed them) "no man knew what to do or say for doubt of the pains of death," were swept away in the first year of Henry the Fourth, his successor; and many more, which had again sprung up in the following distracted arbitrary reigns, putting tumults and riots on a footing with armed rebellion, were again levelled in the first year of Queen Mary, and the statute of Edward made once more the standard of treasons. The acts indeed for securing His present Majesty's illustrious house from the machinations of those very Papists, *who are now so highly in favour*, have since that time added to the list; but these not being applicable to the present case, the ancient statute is still our only guide; which is so plain and simple in its object, so explicit and correct in its terms, as to leave no room for intrinsic error; and the wisdom of its authors has shut the door against all extension of its plain letter; declaring in the very body of the act itself, that nothing out of that plain letter should be brought within the pale of treason by inference or construction, but that, if any such cases happened, they should be referred to the Parliament.

This wise restriction has been the subject of much just eulogium by all the most celebrated writers on the criminal law of England. Lord Coke says,—The Parliament that made it was on that account called Benedictum or Blessed; and the learned and virtuous Judge Hale, a bitter enemy and opposer of constructive treasons, speaks of this sacred institution with that enthusiasm, which it cannot but inspire in the breast of every lover of the just privileges of mankind.

Gentlemen, in these mild days, when juries are so free, and judges so independent, perhaps all these observations might have been spared as unnecessary;—but they can do no harm; and this history of treason, so honourable to England, cannot (even imperfectly as I have given it) be unpleasant to Englishmen. At all events, it cannot be thought an inapplicable introduction to saying, that Lord George Gordon, who stands before you indicted for that crime,—is not,—*cannot* be guilty of it, unless he has levied war against the King in his realm, contrary to the plain letter, spirit, and attention of the act of the twenty-fifth of Edward the Third; to be ex-

tended by no *new or occasional constructions*,—to *be strained by no fancied analogies*,—to *be measured by no rules of political* expediency,—to *be judged of by no theory*,—to *be determined by the wisdom of no individual, however wise*,—*but to be expounded by the simple, genuine* LETTER *of the law.*

Gentlemen, the only overt act charged in the indictment is—the assembling the multitude, which we all of us remember went up with the petition of the associated Protestants on the second day of last June; and in addressing myself to a humane and sensible jury of Englishmen, sitting in judgment on the life of a fellow-citizen, more especially under the direction of a Court so filled as this is, I trust I need not remind you, that the *purposes* of that multitude, as originally assembled on that day, *and the purposes and acts of him who assembled them*, are the sole objects of investigation; and that all the dismal consequences which followed, and which naturally link themselves with this subject in the firmest minds, must be altogether cut off, and abstracted from your attention,—*further than the evidence warrants their admission.* Indeed, if the evidence had been coextensive with these consequences;—if it had been proved that the same multitude, *under the direction of Lord George Gordon*, had afterwards attacked the Bank,—broke open the prisons,—and set London in a conflagration, I should not now be addressing you. —Do me the justice to believe, that I am neither so foolish as to imagine I could have defended him, nor so profligate as to wish it if I could. But when it has appeared, not only by the evidence in the cause, but by the evidence of the thing itself,—BY THE ISSUES OF LIFE, WHICH MAY BE CALLED THE EVIDENCE OF HEAVEN, that these dreadful events were either entirely unconnected with the assembling of that multitude to attend the petition of the Protestants, or, at the very worst, the unforeseen, undesigned, unabetted, and deeply regretted consequences of it, I confess the seriousness and solemnity of this trial sink and dwindle away. Only abstract from your minds all that misfortune, accident, and the wickedness of others have brought upon the scene;—and the cause requires no advocate. When I say that it requires no advocate, I mean that it requires no argument to screen it from the guilt of *treason.* For though I am perfectly convinced of the purity of my noble friend's intentions, yet I am not bound to defend his prudence, nor to set it up as a pattern for imitation; since you are not trying him for imprudence, for indiscreet zeal,

or for want of foresight and precaution,—but for a deliberate and malicious predetermination to overpower the laws and government of his country, by HOSTILE, REBELLIOUS FORCE.

The indictment therefore first charges, that the multitude, assembled on the 2d of June, "WERE ARMED AND ARRAYED "IN A WARLIKE MANNER:" which indeed, if it had omitted to charge, we should not have troubled you with any defence at all, because no judgment could have been given on so defective an indictment; for the statute never meant to put an unarmed assembly of citizens on a footing with armed rebellion; and the crime, whatever it is, must always appear on the record to warrant the judgment of the Court.

It is certainly true, that it has been held to be matter of evidence, and dependent on circumstances, what numbers, or species of equipment and order, though not the regular equipment and order of soldiers, shall constitute an army, so as to maintain the averment in the indictment of a warlike array; and likewise, what kinds of violence, though not pointed at the King's person, or the existence of the government, shall be construed to be war against the King. But as it has never yet been maintained in argument, in any Court of the kingdom, or even speculated upon in theory,—that a multitude, without either weapons offensive or defensive of any sort or kind, and yet not supplying the want of them by such acts of violence, as multitude sufficiently great can achieve without them, was a hostile array within the statute;—as it has never been asserted by the wildest adventurer in constructive treason, that a multitude,—armed with nothing,—threatening nothing,—and doing nothing, was an army levying war; I am entitled to say, that the evidence does not support the first charge in the indictment; but that, on the contrary, it is manifestly false:—false in the knowledge of the Crown, which prosecutes it; false in the knowledge of every man in London, who was not bed-ridden on Friday the 2d of June, and who saw the peaceable demeanour of the associated Protestants.

But you will hear, no doubt, from the Solicitor General *(for they have saved all their intelligence for the reply)* that fury supplies arms; *furor arma ministrat;* and the case of Damaree will, I suppose, be referred to; where the people assembled, had no banners or arms, but only clubs and bludgeons; yet the ringleader, who led them on to mischief, was adjudged to be guilty of high treason for levying war. This judgment it is not my purpose to impeach, for I have

no time for digression to points that do not press upon me. In the case of Damaree, the mob, though not regularly armed, were provided with such weapons as best suited their mischievous designs:—their designs were, besides, open and avowed, and all the mischief was done that could have been accomplished, if they had been in the completest armour:—they burnt Dissenting meeting-houses protected by law, and Damaree was taken at their head, *in flagrante delicto*, with a torch in his hand not only in the very act of destroying one of them, but leading on his followers, *in person*, to the *avowed* destruction of all the rest. There could therefore be no doubt of *his* purpose and intention, nor any great doubt that the perpetration of such purpose was, from *its generality*, high treason, if perpetrated by such a force, as distinguishes a felonious riot from a treasonable levying of war. The principal doubt therefore in that case was, whether such an unarmed riotous force was war, within the meaning of the statute; and on that point very learned men have differed; nor shall I attempt to decide between them, because in this one point they all agree. *Gentlemen, I beseech you to attend to me here.* I say on this point they all agree; *that it is the* INTENTION *of assembling them, which forms the guilt of treason:* I will give it you in the words of high authority, the learned Foster; whose private opinions will, no doubt, be pressed upon you as doctrine and law, and which if taken together, as all opinions ought to be, and not extracted in smuggled sentences to serve a shallow trick, I am contented to consider as authority.

That great Judge, immediately after supporting the case of Damaree, as a levying war within the statute, against the opinion of Hale, in a similar case, viz. the destruction of bawdy-houses, which happened in his time, says, "*The true* "*criterion therefore seems to be*—quo animo *did the parties* "*assemble?—with what intention did they meet?*"

On that issue, then, by which I am supported by the whole body of the criminal law of England;—concerning which there are no practical precedents of the Courts that clash, nor even abstract opinions of the closet that differ, I come forth with boldness to meet the Crown; for even supposing that peaceable multitude,—though not hostilely arrayed,—though without one species of weapon among them,—though assembled without plot or disguise by a public advertisement, exhorting, nay commanding peace, and inviting the magistrates to be present to restore it, if broken:—though composed of thousands who are now standing around you, unimpeached

and unreproved, yet who are all principals in treason, if such assembly was treason; supposing, I say, this multitude to be nevertheless an army within the statute, still the great question would remain behind, on which the guilt or innocence, of the accused must singly depend, and which it is your exclusive province to determine:—namely, whether they were assembled by my noble Client, *for the traitorous purpose charged in the indictment?*—For war must not only be levied, but it must be levied against the King in his realm, *i. e.* either directly against his person to alter the constitution of the government, of which he is the head, or to suppress the laws, committed to his execution, BY REBELLIOUS FORCE. You must find that Lord George Gordon assembled these men *with that traitorous intention;*—you must find not merely a riotous illegal *petitioning*,—not a tumultuous, indecent importunity to influence Parliament,—not the compulsion of motive, from seeing so great a body of people united in sentiment and clamorous supplication,—BUT THE ABSOLUTE UNEQUIVOCAL COMPULSION OF FORCE, FROM THE HOSTILE ACTS OF NUMBERS UNITED IN REBELLIOUS CONSPIRACY AND ARMS.

This is the issue you are to try; for crimes of all denominations consist wholly in the purpose of the human will producing the act: *Actus non facit reum nisi mens sit rea.*—The act does not constitute guilt, unless *the mind* be guilty. This is the great text from which the whole moral of penal justice is deduced: it stands at the top of the criminal page, throughout all the volumes of our humane and sensible laws, and Lord Chief Justice Coke, whose chapter on this crime is the most authoritative and masterly of all his valuable works, ends almost every sentence with an an emphatical repetition of it.

The indictment *must* charge an open *act*, because the purpose of the mind, which is the object of trial, can only be known by actions; or, again to use the words of Foster, who has ably and accurately expressed it, "the traitorous purpose "is the treason, the overt act, the means made use of to effectu- "ate the intentions of the heart."—But why should I borrow the language of Foster, or of any other man, when the language of the indictment itself is lying before our eyes? What does it say? Does it directly charge the overt act as in itself constituting the crime?—No.—It charges that the prisoner "maliciously and traitorously did *compass, imagine, and in-* "*tend to raise and levy war and rebellion against the King;*"—this is the malice prepense of treason;—and that to fulfil and bring to effect *such traitorous compassings and intentions*, he

did, on the day mentioned in the indictment, actually assemble them, and levy war and rebellion against the King. Thus the law, which is made to correct and punish the wickedness of the heart, and not the unconscious deeds of the body, goes up to the fountain of human agency, and arraigns the lurking mischief of the soul, dragging it to light by the evidence of open acts. The hostile *mind* is the crime; and, therefore, unless the matters which are in evidence before you, do beyond all doubt or possibility of error, convince you that the Prisoner is a determined traitor *in his heart*, he is not guilty.

It is the same principle which creates all the various degrees of homicide, from that which is excusable, to the malignant guilt of murder.—The fact is the same in all,—the death of the man is the imputed crime; but the *intention* makes all the difference; and he who killed him is pronounced a murderer,—a single felon,—or only an unfortunate man, as the circumstances, by which his mind is deciphered to the jury, show it to have been cankered by deliberate wickedness, or stirred up by sudden passions.

Here an immense multitude was, beyond all doubt, assembled on the second of June; but whether HE that assembled them be guilty of high treason, of a high misdemeanour, or only of a breach of the act of King Charles the Second against tumultuous petitioning (if such an act still exists), depends wholly upon the evidence of his purpose in assembling them,—to be gathered by you, and *by you alone*, from the whole tenor of his conduct;—and to be gathered not by *inference* or *probability*, or reasonable *presumption*, but in the words of the act, *proveably*;—that is, in the full unerring force of demonstration. You are called upon your oaths to say, *not* whether Lord George Gordon assembled the multitudes in the place charged in the indictment, for that is not denied; but whether it appears by the facts produced in evidence for the Crown, when confronted with the proofs which we have laid before you, that he assembled them *in hostile array, and with a hostile mind, to take the laws into his own hands by main force, and to dissolve the constitution of the government, unless his petition should be listened to by Parliament.*

That it is *your* exclusive province to determine. The Court can only tell you what acts the law, in its general theory, holds to be high treason, on the general assumption, that such acts proceed from traitorous purposes: but they must leave it to *your* decision, and to *yours* alone, whether the acts proved appear, in the present instance, under all the circumstances, to have arisen from the causes which form the essence of this high crime.

Gentlemen, you have now heard the law of treason; first in the abstract, and secondly as it applies to the general features of the case: and you have heard it with as much sincerity as if I had addressed you upon my oath from the bench where the Judges sit. I declare to you solemnly, in the presence of that great Being, at whose bar we must all hereafter appear, that I have used no one art of an advocate, but have acted the plain unaffected part of a Christian man, instructing the consciences of his fellow citizens to do justice. If I have deceived you on the subject, I am myself deceived;—and if I am misled through ignorance, my ignorance is incurable, for I have spared no pains to understand it.

I am not stiff in opinions; but before I change any one of those that I have given you to-day, I must see some direct monument of justice that contradicts them: for the law of England pays no respect to theories, however ingenious, or to authors, however wise; and therefore, unless you hear me refuted by a series of *direct precedents*, and not by vague doctrine, if you wish to sleep in peace, *follow me.*

And now the most important part of our task begins, namely, the application of the evidence to the doctrines I have laid down; for trial is nothing more, than the reference of facts to a certain rule of action, and a long recapitulation of them only serves to distract and perplex the memory, without enlightening the judgment, unless the great standard principle by which they are to be measured is fixed, and rooted in the mind. When that is done (which I am confident has been done by you), every thing worthy of observation falls naturally into its place, and the result is safe and certain.

Gentlemen, it is already in proof before you (indeed it is now a matter of history), that an act of Parliament passed in the session of 1778, for the repeal of certain restrictions, which the policy of our ancestors, had imposed upon the Roman Catholic religion to prevent its extension, and to render its limited toleration harmless;—restrictions, imposed *not* because our ancestors took upon them to pronounce that faith to be offensive to God, but because it was incompatible with good faith to man;—being utterly inconsistent with allegiance to a Protestant government, from their oaths and obligations, to which it gave them not only a release, but a crown of glory, as the reward of treachery and treason.

It was indeed with astonishment, that I heard the Attorney General stigmatize those wise regulations of our patriot ancestors with the title of factious and cruel impositions on the consciences and liberties of their fellow-citizens.—Gen-

tlemen, they were *at the time* wise and salutary regulations; —regulations to which this country owes its freedom, and His Majesty his crown;—a crown which he wears under the strict entail of professing and protecting that religion which they were made to repress; and which I know my noble friend at the bar joins with me, and with all good men, in wishing, that he and his posterity may wear for ever.

It is not my purpose to recall to your minds the fatal effects, which bigotry has in former days produced in this island. I will not follow the example the Crown has set me, by making an attack on your passions, on subjects foreign to the object before you;—I will not call your attention from those flames, kindled by a villanous banditti (which they have thought fit, in defiance of evidence, to introduce), by bringing before your eyes the more cruel flames, in which the bodies of our expiring, meek, patient, Christian fathers, were little more than a century ago consuming in Smithfield;—I will not call up from the graves of martyrs all the precious holy blood that has been spilt in this land to save its established government and its reformed religion, from the secret villany, and the open force of Papists;—the cause does not stand in need even of such honest arts, and I feel my heart too big, voluntarily to recite such scenes, when I reflect that some of my own, and my best and dearest progenitors, from whom I glory to be descended, ended their innocent lives in prisons and in exile, *only because they were Protestants.*

Gentlemen, whether the great lights of science and of commerce, which since those disgraceful times have illuminated Europe, may, by dispelling these shocking prejudices, have rendered the Papists of this day as safe and trusty subjects as those, who conform to the national religion established by law, I shall not take upon me to determine;—it is wholly unconnected with the present inquiry: we are not trying a question either of divinity, or civil policy; and I shall therefore not enter at all into the motives or merits of the act, that produced the Protestant petition to Parliament: it was certainly introduced by persons who cannot be named by any good citizen without affection and respect: but this I will say, without fear of contradiction, that it was sudden and unexpected;—that it passed with uncommon precipitation, considering the magnitude of the object;—that it underwent no discussion;—and that the heads of the church, the constitutional guardians of the national religion, were never consulted upon it.—Under such circumstances it is no wonder, that many sincere Protestants were alarmed; and they had a right

to spread their apprehensions; it is the privilege and *the duty* of all the subjects of England to watch over their religious and civil liberties, and to approach either their representatives or the Throne with their fears and their complaints,—a privilege which has been bought with the dearest blood of our ancestors, and which is confirmed to us by law, as our ancient birthright and inheritance.

Soon after the repeal of the act, the Protestant Association began, and from small beginnings extended over England and Scotland. A deed of association was signed, *by all legal means* to oppose the growth of Popery; and which of the advocates for the Crown will stand up, and say, that such an union was illegal? Their union was perfectly constitutional; —there was no obligation of secrecy:—their transactions were all public;—a committee was appointed for regularity and correspondence;—and circular letters were sent to all the dignitaries of the church, inviting them to join with them in the protection of the national religion.

All this happened before Lord George Gordon was a member of, or the most distantly connected with it; for it was not till November 1779, that the London Association made him an offer of their chair, by an unanimous resolution communicated to him, unsought and unexpected, in a public letter signed by the secretary in the name of the whole body; and from that day to the day he was committed to the Tower, I will lead him by the hand in your view, that you may see there is no blame in him. Though all his behaviour was unreserved and public, and though watched by wicked men for purposes of vengeance, the Crown has totally failed in giving it such a context, as can justify, in the mind of any reasonable man, the conclusion it seeks to establish.

This will fully appear hereafter; but let us first attend to the evidence on the part of the Crown.

The first witness to support this prosecution is,

William Hay—a bankrupt in *fortune*, he acknowledged himself to be, and I am afraid he is a bankrupt in *conscience*. Such a scene of impudent, ridiculous inconsistency, would have utterly destroyed his credibility, in the most trifling civil suit; and I am, therefore, almost ashamed to remind you of his evidence, when I reflect that you will never suffer it to glance across your minds on this solemn occasion.

This man, whom I may now, without offence or slander, point out to you as a dark Popish spy, who attended the meetings of the London Association, to pervert their harmless purposes, conscious that the discovery of his character

would invalidate all his testimony, endeavoured at first to conceal the activity of his zeal, by denying that he had seen any of the destructive scenes imputed to the Protestants; yet almost in the same breath it came out, by his own confession, that there was hardly a place, public or private, where riot had erected her standard, in which he had not been; nor a house, prison, or chapel, that was destroyed, to the demolition of which he had not been a witness. He was at Newgate, the Fleet, at Langdale's, and at Coleman Street; —at the Sardinian Ambassador's, and in Great Queen Street, Lincoln's Inn Fields. What took him to Coachmakers' Hall? —He went there, as he told us, to watch their proceedings, because he expected no good from them; and to justify his prophecy of evil, he said, on his examination by the Crown, that as early as December he had heard some alarming republican language. What language did he remember?— "Why, that the Lord Advocate of Scotland was called only HARRY DUNDAS." Finding this too ridiculous for so grave an occasion, he endeavoured to put some words about the breach of the King's coronation oath into the Prisoner's mouth, as proceeding from himself; which it is notorious he read out of an old Scotch book, published near a century ago, on the abdication of King James the Second.

Attend to his cross examination: He was *sure* he had seen Lord George Gordon at Greenwood's room in January; but when Mr. Kenyon, who knew Lord George had *never* been there, advised him to recollect himself, he desired to consult his notes.—First, he is positively sure, from his memory, that he had seen him there: then he says he cannot trust his memory without referring to his papers;—on looking at them, they contradict him; and he then confesses, that he *never* saw Lord George Gordon at Greenwood's room in January, when his note was taken, *nor at any other time.* But *why* did he take notes?—He said it was, because he foresaw what would happen.—How fortunate the crown is, Gentlemen, to have such friends to collect evidence by anticipation! *When* did he begin to take notes?—He said on the 21st of February, which was the *first* time, he had been alarmed at what he had seen and heard, although not a minute before he had been reading a note taken at Greenwood's room in *January*, and had sworn that he attended their meetings, from apprehensions of consequences, as early as *December.*

Mr. Kenyon, who now saw him bewildered in a maze of falsehood, and suspecting his notes to have been a villanous

tion to give the show of correctness to his evidence, :d him with a shrewdness for which he was wholly un- ed. You remember the witness had said, that he took notes when he attended any meetings where he ed their deliberations might be attended with danger- nsequences. "*Give me one instance*," says Mr. Ken- *in the whole course of your life, where you ever took before.*" *Poor Mr. Hay was thunderstruck*;—the ran down his face, and his countenance bespoke des- not recollection:—"Sir, I must have an instance; me when and where?" Gentlemen, it was now too *ome* instance he was obliged to give, and, as it was t to every body that he had one still to choose, I think ght have chosen a better. *He had taken notes at the l Assembly of the church of Scotland six and twenty before.* What! did he apprehend dangerous conse- s from the deliberations of the grave elders of the —Were THEY levying war against the King? At last, ie is called upon to say to whom he communicated the ence he had collected, the spy stood confessed indeed: he refused to tell, saying he was his friend, and that he t obliged to give him up; and when forced at last to it came out to be *Mr. Butler*, a gentleman universally , and who, from what I know of him, I may be sure employed him, or any other spy, because he is a man way respectable, but who certainly is not only a Papist, person who was employed, in all their proceedings, in the late indulgences from Parliament. He said Mr. was his particular friend, yet professed himself igno- his religion. I am sure he could not be desired to con- ;—Mr. Butler makes no secret of his religion;—it is roach to any man who lives the life he does; but Mr. ought it of moment to *his own* credit in the cause, that *self* might be thought a Protestant, unconnected with s, and not a Popish spy.

mbitious, indeed, was the miscreant of being useful in lious character, through every stage of the cause, that aying a little in St. George's Fields, he ran home to his ouse in St. Dunstan's Churchyard, and got upon the where he swore he saw *the very same man*, carrying *the me flag*, he had seen in the fields. Gentlemen, whe- e petitioners employed the same standard-man through ole course of their peaceable procession is certainly to- nmaterial to the cause, but the circumstance is material r the wickedness of the man. "How," says Mr. Ken-

" yon, do you know that it was the same person you saw in " the fields?—Was you acquainted with him?"—" No."—How then?—Why, " he looked like a brewer's servant." *Like a brewer's servant!*—What, were they not all in their Sunday's clothes?—" Oh! yes, they were all in their Sunday's " clothes." Was the man with a flag then alone in the dress of his trade?—" No."—Then how do you know he was a brewer's servant?—*Poor Mr. Hay—Nothing but sweat and confusion again.* At last, after a hesitation, which every body thought, would have ended in his running out of Court, he said, he knew him to be a brewer's servant, *because there was something particular in the cut of his coat, the cut of his breeches,* AND THE CUT OF HIS STOCKINGS

You see, Gentlemen, by what stange means villany is sometimes detected; perhaps he might have escaped from me, but he sunk under that shrewdness and sagacity, which ability, without long habits, does not provide. Gentlemen, you will not, I am sure, forget, whenever you see a man, about whose apparel there is any thing particular, to set him down for a brewer's servant.

Mr. Hay afterwards went to the lobby of the House of Commons. What took him there?—He thought himself in danger; and therefore, says Mr. Kenyon, you thrust yourself voluntarily into the very centre of danger. *That would not do.*—Then he had a *particular friend*, whom he knew to be in the lobby, and whom he apprehended to be in danger.—" Sir, who was that particular friend?—Out with it;—Give " us his name instantly".—*All in confusion again. Not a word to say for himself; and the name of this person, who had the honour of Mr. Hay's friendship, will probably remain a secret for ever.*

It may be asked, are these circumstances material? and the answer is obvious:—They are material; because, when you see a witness running into every hole and corner of falsehood, and as fast as he is made to bolt out of one, taking cover in another, you will never give credit to what that man relates, as to any possible matter which is to affect the life or reputation of a fellow citizen accused before you. God forbid that you should.—I might therefore get rid of this wretch altogether, without making a single remark on that part of his testimony, which bears upon the issue you are trying; but the Crown shall have the full benefit of it all;—I will defraud it of nothing he has said. Notwithstanding all his folly and wickedness, let us for the present take it to be true, and see what it amounts to. What is it he states to have passed at

Coachmakers' Hall?—That Lord George Gordon desired the multitude to behave with unanimity and firmness, as the Scotch had done. Gentlemen, there is no manner, of doubt that the Scotch behaved with unanimity and firmness, in resisting the relaxation of the penal laws against Papists, and that by that unanimity and firmness, they succeeded;—but it was by the *constitutional* unanimity and firmness of the great body of the people of Scotland, whose example Lord George Gordon recommended, and not by the *riots and burning*, which they attempted to prove had been committed in Edinburgh in 1778.

I will tell you myself, Gentlemen, as one of the people of Scotland, that there then existed, and still exist, eighty-five societies of Protestants, who have been, and still are, uniformly firm in opposing every change in that system of laws, established to secure the Revolution, and Parliament gave way in Scotland to their united voice, and not to the firebrands of the rabble. It is the duty of Parliament to listen to the voice of the people;—for they are the servants of the people; and when the constitution of church or state is believed, whether truly or falsely, to be in danger, I hope there never will be wanting men (notwithstanding the proceedings of to-day) to desire the people to persevere and be firm. Gentlemen, has the Crown proved, that the Protestant brethren of the London Association fired the mass-houses in Scotland, or acted in rebellious opposition to law, so as to entitle it to wrest the Prisoner's expressions into an excitation of rebellion against the state, or of violence against the properties of English Papists, by setting up their firmness as an example? —Certainly not. They have not even proved the naked fact of such violences, though such proof would have called for no resistance, since to make it bear as rebellious advice to the Protestant Association of London, it must have been first shown, that such acts had been perpetrated or encouraged by the Protestant Societies in the North.

Who has dared to say this?—No man.—The rabble in Scotland certainly did that which has since been done by the rabble in England, to the disgrace and reproach of both countries; but in neither country was there found one man of character or condition, of any description, who abetted such enormities, nor any man, high or low, of any of the Associated Protestants here or there, who were either convicted, tried, or taken on suspicion.

As to what this man heard, on the 29th of May, it was nothing more than the proposition of going up in a body to

St. George's Fields, to consider how the petition should be presented, with the same exhortations to firmness as before. The resolution made on the motion has been read, and when I come to state the evidence on the part of my noble friend, I will show you the impossibility of supporting any criminal inference, from what Mr. Hay afterwards puts in his mouth in the lobby, even taking it to be true. I wish here to be accurate [*looks on a card on which he had taken down his words*]; He says: "*Lord George desired them to continue* "*steadfastly to adhere to so good a cause as theirs was;*— "*promised to persevere in it himself, and hoped, though there* "*was little expectation at present from the House of Commons,* "*that they would meet with redress from their* MILD AND "GRACIOUS SOVEREIGN, *who, no doubt, would recommend* "*it to his Ministers to repeal it.*" This was all he heard, and I will show you how this wicked man himself, (if any belief is to be given to him,) entirely overturns and brings to the ground the evidence of Mr. Bowen, on which the Crown rests singly for the proof of words which are more difficult to explain. Gentlemen, was this the language of rebellion?—If a multitude were at the gates of the House of Commons, to command and insist on a repeal of this law,—why encourage their hopes, by reminding them that they had a mild and gracious Sovereign?—If war was levying against him, there was no occasion for his mildness and graciousness. If he had said, *Be firm and persevere, we shall meet with redress from the* PRUDENCE of the Sovereign, it might have borne a different construction; because, whether he was gracious or severe, his prudence might lead him to submit to the necessity of the times. The words sworn to were, therefore, perfectly clear and unambiguous—*Persevere in your zeal and supplications, and you will meet with redress from a mild and gracious King, who will recommend it to his Minister to repeal it.* Good God! if they were to wait till the King, whether from benevolence or fear, should direct his Minister to influence the proceedings of Parliament, how does it square with the charge of instant coercion or intimidation of the House of Commons?—If the multitude were assembled with the premeditated design of producing immediate repeal by terror or arms, is it possible to suppose, that their leader would desire them to be quiet, and refer them to those qualities of the prince, which, however eminently they might belong to him, never could be exerted on subjects in rebellion to his authority?—In what a labyrinth of nonsense and contradiction do men involve themselves, when, forsaking the rules of evidence, they would draw con-

elusions from words in contradiction to language, and in defiance of common sense?

The next witness that is called to you by the Crown is Mr. Metcalf. He was not in the lobby, but speaks only to the meeting in Coachmakers' Hall, on the 29th of May, and in St. George's Fields. He says, that at the former, Lord George reminded them, that the Scotch had succeeded by their unanimity,—and hoped that no one, who had signed the petition, would be ashamed or afraid to show himself in the cause;—that he was ready to go to the gallows for it;—that he would not present the petition of a lukewarm people;—that he desired them to come to St. George's Fields, distinguished with blue cockades, and that they should be marshalled in four divisions. Then he speaks to having seen them in the fields, in the order which has been prescribed; and Lord George Gordon in a coach, surrounded with a vast concourse of people, with blue ribands, forming like soldiers, but was not near enough to hear, whether the Prisoner spoke to them or not. Such is Mr. Metcalf's evidence,—and after the attention you have honoured me with, and which I shall have occasion so often to ask again on the same subject, I shall trouble you with but one observation, viz. That it cannot, without absurdity, be supposed, that if the assembly at Coachmakers' Hall had been such conspirators, as they are represented, their doors would have been open to strangers, like this witness, to come in to report their proceedings.

The next witness is Mr. ANSTRUTHER, who speaks to the language and deportment of the noble Prisoner, both at Coachmakers' Hall on the 29th of May, and afterwards on the 2d of June, in the lobby of the House of Commons. It will be granted to me, I am sure, even by the advocates of the Crown, that this gentleman, not only from the clearness and consistency of his testimony, but from his rank and character in the world, is infinitely more worthy of credit than Mr. Hay, who went before him; and if the circumstances of irritation and confusion under which the Rev. Mr. Bowen confessed himself to have heard and seen, what he told you he heard and saw, I may likewise assert, without any offence to the Reverend Gentleman, and without drawing any parallel between their credits, that where their accounts of this transaction differ, the preference is due to the former. Mr. Anstruther very properly prefaced his evidence with this declaration: "*I do not mean to speak accurately to words; it is impossible to recollect them at this*

"*distance of time.*" I believe I have used his very expression, and such expression it well became him to use in a *case of blood.* But WORDS, even if they could be accurately remembered, are to be admitted with *great reserve and caution*, when the purpose of the speaker is to be measured by them. They are transient and fleeting; frequently the effect of a sudden transport,—easily misunderstood,—and often unconsciously misrepresented. It may be the fate of the most innocent language, to appear ambiguous, or even malignant, when related in mutilated detached passages, by people to whom it is not addressed, and who know nothing of the previous design, either of the speaker, or of those to whom he spoke. Mr. Anstruther says, that he heard Lord George Gordon desire the petitioners to meet him on the Friday following in St. George's Fields, and that if there were fewer than twenty thousand people, he would not present the petition, as it would not be of consequence enough:—and that he recommended to them the example of the Scotch, who, by their firmness, had carried their point.

Gentlemen, I have already admitted that they did by firmness carry it. But has Mr. Anstruther attempted to state any one expression, that fell from the Prisoner, to justify the positive unerring conclusion, or even the presumption, that the *firmness* of the Scotch Protestants, by which the point was carried in Scotland, *was the resistance and riots of the rabble?*—No, Gentlemen; he singly states the words, as he heard them in the Hall, on the 29th, and all that he afterwards speaks to in the lobby repels so harsh and dangerous a construction. The words sworn to at Coachmakers' Hall are, "that he recommended temperance and firmness."—Gentlemen, if his motives are to be judged by words, for Heaven's sake let these words carry their popular meaning in language. Is it to be presumed, without proof, that a man means *one* thing, because he says *another?*—Does the exhortation of temperance and firmness apply most naturally, to the constitutional resistance of the Protestants of Scotland, or to the outrages of ruffians who pulled down the houses of their neighbours?—Is it possible, with decency, to say in a court of justice, that the recommendation of temperance is the excitation to villany and frenzy? But the words, it seems, are to be construed, not from their own signification, but from that which follows them, viz. *by that the Scotch carried their point.* Gentlemen, *Is* it in evidence before you, that *by rebellion* the Scotch carried their point; or that the indulgences to Papists were not extended to Scotland,

because the *rabble* had opposed their extension?—has the Crown authorized either the Court, or its law servants, to tell you so?—Or can it be decently maintained, that parliament was so weak or infamous, as to yield to a wretched mob of vagabonds at Edinburgh, what it has since refused to the earnest prayers of an hundred thousand Protestants in London?—No, Gentlemen of the Jury, Parliament was not, I hope, so abandoned. But the Ministers knew, that the Protestants in Scotland were, to a man, abhorrent of that law; and though they never held out resistance, if Government should be disposed to cram it down their throats by force, yet such a violence to the united sentiments of a whole people appeared to be a measure so obnoxious, so dangerous, and withal so unreasonable, that it was wisely and judiciously dropped, to satisfy the general wishes of the nation, and not to avert the vengeance of those low incendiaries, whose misdeeds have rather been talked of than proved.

Thus, Gentlemen, the exculpation of Lord George's conduct, on the 29th of May, is sufficiently established by the very evidence, on which the Crown asks you to convict him:—since in recommending *temperance and firmness after the example of Scotland*, you cannot be justified in pronouncing, that he meant more than the firmness of the grave and respectable people in that country, to whose constitutional firmness the Legislature had before acceded, instead of branding it with the title of rebellion; and who, in my mind, deserve thanks from the King, for temperately and firmly resisting every innovation, which they conceived to be dangerous to the national religion, independently of which His Majesty (without a new limitation by Parliament) has no more title to the Crown than I have.

Such, Gentlemen, is the whole amount of all my noble friend's previous communication with the petitioners, whom he afterwards assembled to consider, how their petition should be presented. This is all, not only that men of credit can tell you on the part of the prosecution, but all that even the worst vagabond, who ever appeared in a Court,—the very scum of the earth,—thought himself safe in saying, upon oath, on the present occasion. Indeed Gentlemen, when I consider my noble friend's situation, his open, unreserved temper, and his warm and animated zeal for a cause, which rendered him obnoxious to so many wicked men;—speaking daily and publicly to mixed multitudes of friends and foes, on a subject which affected his passions, I confess, I am astonished that no other expressions, than those in evidence

before you, have found their way into this Court. That they have not found their way is surely a most satisfactory proof that there was nothing in his heart, which even youthful zeal could magnify into guilt, or that want of caution could betray.

Gentlemen, Mr. Anstruther's evidence, when he speaks of the lobby of the House of Commons, is very much to be attended to. He says, "*I saw Lord George leaning over the* "*gallery*," which position, joined with what he mentioned of his talking with the Chaplain, marks the time, and casts a strong doubt on Bowen's testimony, which you will find stands, in this only material part of it, single and unsupported. "*I then heard him*," continues Mr. Anstruther, "*tell them, they had been called a mob, in the House, and* "*that peace officers had been sent to disperse them*,—peaceable "*petitioners: but that by steadiness and firmness they might* "*carry their point; as he had no doubt His Majesty, who was* "*a* gracious *prince, would send to his Ministers to repeal the* "*act, when he heard his subjects were coming up for miles* "*round, and* wishing *its repeal.*" How coming up?—In rebellion and arms to compel it?—No!—All is still put on the *graciousness* of the Sovereign, in listening to the unanimous wishes of his people. If the multitude then assembled had been brought together to intimidate the House by their firmness, or to coerce it by their numbers, it was ridiculous to look forward to the King's influence over it, when the collection of future multitudes should induce him to employ it. The expressions were therefore quite unambiguous, nor could malice itself have suggested another construction of them, were it not for the fact, that the House was at that time surrounded, not by the petitioners, whom the noble Prisoner had assembled, but by a mob who had mixed with them, and who therefore, when addressed by him, were instantly set down as his followers. He thought he was addressing the sober members of the Association, who, by steadiness and perseverance, could understand nothing more than perseverance in that conduct, he had antecedently prescribed, as steadiness signifies an uniformity, not a change of conduct; and I defy the Crown to find out a single expression, from the day he took the chair of the Association, to the day I am speaking of, that justifies any other construction of steadiness and firmness, than that, which I put upon it before.

What would be the feelings of our venerable ancestors, who framed the statute of treasons to prevent their children

being drawn into the snares of death, unless *proveably* convicted by overt acts, if they could hear us disputing, whether it was treason to desire harmless unarmed men to be firm and of good heart, and to trust to the graciousness of their King?

Here Mr. Anstruther closes his evidence, which leads me to Mr. Bowen, who is the only man—*I beseech you, Gentlemen of the Jury, to attend to this circumstance*—Mr. Bowen is the *only* man who has attempted, directly or indirectly, to say, that Lord George Gordon uttered a syllable to the multitude in the lobby, concerning the destruction of the mass-houses in Scotland.—Not one of the Crown's witnesses, not even the wretched abandoned Hay, who was kept, as he said, in the lobby, the whole afternoon, from anxiety for his pretended friend, has ever glanced at any expression resembling it.—They all finish with the expectation which he held out, from a mild and *gracious* Sovereign. Mr. Bowen ALONE goes on further, and speaks of the successful riots of the Scotch;—but speaks of them in such a manner, as, so far from conveying the hostile idea, *which he seemed sufficiently desirous to convey*, tends directly to wipe off the dark hints and insinuations, which have been made to supply the place of proof upon that subject,—a subject which should not have been touched on, without the fullest support of evidence, and where nothing but the most unequivocal evidence ought to have been received. He says, his Lordship began, by bidding them be QUIET,—PEACEABLE,—and STEADY—*not steady alone;*—though if that had been the expression, *singly by itself*, I should not be afraid to meet it;—but be quiet, *peaceable*, and steady. Gentlemen, I am indifferent what other expressions of dubious interpretation are mixed with these, for you are trying whether my noble friend came to the House of Commons with a decidedly hostile mind; and as I shall, on the recapitulation of our own evidence, trace him in your view without spot or stain, down to the very moment when the imputed words were spoken, you will hardly forsake the whole innocent context of his behaviour, and torture your inventions to collect the blackest system of guilt, starting up in a moment, without being previously concerted, or afterwards carried into execution.

First, what are the words by which you are to be convinced, that the Legislature was to be frightened into compliance, and to be coerced if terror should fail? "*Be quiet,* "—PEACEABLE,—*and steady;—You are a good people;*— "*Yours is a good cause:—His Majesty is a* GRACIOUS *ma-*

"*narch, and when he hears that all his people, ten miles* "*round, are collecting, he will send to his Ministers to re-* "*peal the act.*" By what rules of construction can such an address to unarmed, defenceless men, be tortured into treasonable guilt? It is impossible to do it without pronouncing, even in the total absence of all proof of fraud or deceit in the speaker, THAT QUIET SIGNIFIES TUMULT AND UPROAR, AND THAT PEACE SIGNIFIES WAR AND REBELLION.

I have before observed, that it was most important for you to remember, that with this exhortation to quiet and confidence in the King, the evidence of all the other witnesses closed; even Mr. Anstruther, who was a long time afterwards in the lobby, heard nothing further; so that if Mr. Bowen had been out of the case altogether, what would the amount have been?—Why simply, that Lord George Gordon having assembled an unarmed, inoffensive multitude in St. George's Fields, to present a petition to Parliament, and finding them becoming tumultuous, to the discontent of Parliament, and the discredit of the cause, desired them not to give it up, but to continue to show their zeal for the legal object in which they were engaged;—to manifest that zeal *quietly and peaceably*, and not to despair of success; since, though the House was not disposed to listen to it, they had a GRACIOUS Sovereign, who would second the wishes of his people. This is the sum and substance of the whole. They were not, even by any one ambiguous expression, encouraged to trust to their numbers, as sufficient to overawe the House, or to their strength to compel it, nor to the prudence of the state in yielding to necessity,—but to *the indulgence of the King*, in compliance with the wishes of his people. Mr. Bowen however thinks proper to proceed; and I beg that you will particularly attend to the sequel of his evidence. He stands *single*, in all the rest that he says, which might entitle me to ask you absolutely to reject it;—but I have no objection to your believing every word of it *if you can;* because, if inconsistencies prove any thing, they prove that there was nothing of that deliberation in the Prisoner's expressions which can justify the inference of guilt. *I mean to be correct as to his words* [looks at his words, which he had taken down on a card]. He says, "*That Lord George* "*told the people, that an attempt had been made to introduce* "*the bill into Scotland, and that they had no redress till the* "*mass-houses were pulled down. That Lord Weymouth then* "*sent official assurances that it should not be extended to* "*them.*" Gentlemen, why is Mr. Bowen called by the

Crown to tell you this? The reason is plain,—because the Crown, conscious that it could make no case of treason from the rest of the evidence, in the sober judgment of law,—aware that it had proved no purpose or act of force against the House of Commons, to give countenance to the accusation, much less to warrant a conviction, found it necessary to hold up the noble Prisoner, as the wicked and cruel author of all those calamities, in which every man's passions might be supposed to come in to assist his judgment to decide. They therefore made him speak in enigmas to the multitude; not telling them *to do* mischief in order to succeed, but that *by* mischief in Scotland success had been obtained.

But were the mischiefs themselves, that did happen here, of a sort to support such conclusion?—Can any man living, for instance, believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long in this high tribunal, that the oldest of us do not remember him with any other impression, than the awful form and figure of justice;—a magistrate, who had always been the friend of the Protestant Dissenters, against the ill-timed jealousies of the establishment—his countryman too—and, without adverting to the partiality not unjustly imputed to men of that country, a man of whom any country might be proud?—No, Gentlemen, it is not credible, that a man of noble birth, and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the Prisoner), could possibly consent to the burning of the house of Lord Mansfield.*

If Mr. Bowen therefore had ended here, I can hardly conceive such a construction could be decently hazarded, consistent with the testimony of the witnesses we have called; how much less, when, after the dark insinuations which such expressions might otherwise have been argued to convey, the very same person, on whose veracity or memory they are only to be believed, and who must be credited or discredited *in toto*, takes out the sting himself, by giving them such an immediate context and conclusion, as renders the proposition ridiculous, which his evidence is brought forward to establish; for he says, that Lord George Gordon instantly afterwards addressed himself thus:—*Beware of ev l-minded*

* The house of this venerable nobleman in Bloomsbury Square was one of the first that was attacked by the mob.

*persons, who may mix among you and do mischief, the blame of which will be imputed to you.*

Gentlemen, if you reflect on the slander, which I told you fell upon the Protestants in Scotland by the acts of the rabble there, I am sure you will see the words are capable of an easy explanation. But as Mr. Bowen concluded with telling you, that he heard them in the midst of noise and confusion, and as I can only take them from *him*, I shall not make an attempt to collect them into one consistent discourse, so as to give them a decided meaning in favour of my client, because I have repeatedly told you, that words, imperfectly heard and partially related, cannot be so reconciled. But this I will say—that he must be a *ruffian* and not a lawyer, who would dare to tell an English jury, that such ambiguous words, hemmed closely in between others not only innocent, but meritorious, are to be adopted to constitute guilt, by rejecting both introduction and sequel, with which they are absolutely irreconcilable and inconsistent: for if ambiguous words, when coupled with actions, decipher the mind of the actor, so as to establish the presumption of guilt, will not such as are plainly innocent and unambiguous go as far to repel such presumption?—Is innocence more difficult of proof than the most malignant wickedness?—Gentlemen, I see your minds revolt at such shocking propositions. I beseech you to forgive me; I am afraid that my zeal has led me to offer observations, which I ought in justice to have believed every honest mind would suggest to itself with pain and abhorrence, without being illustrated and enforced.

I now come more minutely to the evidence on the part of the Prisoner.

I before told you, that it was not till November 1779, when the Protestant Association was already fully established, that Lord George Gordon was elected president by the unanimous voice of the whole body, unlooked for and unsolicited; and it is surely not an immaterial circumstance, that at the very first meeting where his Lordship presided, a dutiful and respectful petition, the same which was afterwards presented to Parliament, was read and approved of;—a petition, which so far from containing any thing threatening or offensive, conveyed *not a very oblique reflexion* upon the behaviour of the people in Scotland: taking notice that as England and that country were now ONE, and as official assurances had been given that the law should not pass THERE, they hoped the *peaceable* and *constitutional deportment of the English* Protestants would entitle them to the approbation of Parliament.

It appears by the evidence of Mr. Erasmus Middleton, a very respectable clergyman, and one of the committee of the Association, that a meeting had been held on the 4th of May, at which Lord George was not present:—That at that meeting a motion had been made for going up with the petition in a body, but which not being regularly put from the chair, no resolution was come to upon it:—and that it was likewise agreed on, but in the same irregular manner, that there should be no other public meeting, previous to the presenting the petition;—that this last resolution occasioned great discontent, and that Lord George was applied to by a large and respectable number of the Association to call another meeting, to consider of the most prudent and respectful method of presenting their petition: but it appears that, before he complied with their request, he consulted with the committee on the propriety of compliance, who all agreeing to it, except the secretary, his Lordship advertised the meeting, which was afterwards held on the 29th of May. The meeting was therefore the act of the *whole* Association; and as to the original difference between my noble friend and the committee, on the expediency of the measure, it is totally immaterial, since Mr. Middleton, who was one of the number who differed from him on that subject (and whose evidence is therefore infinitely more to be relied on,) told you, that his whole deportment was so clear and unequivocal, as to entitle him to assure you, on his most solemn oath, that he in his conscience believed his views were perfectly constitutional and pure. This most respectable clergyman further swears, that he attended all the previous meetings of the society, from the day the Prisoner became president to the day in question, and that knowing they were objects of much jealousy and malice, he watched his behaviour with anxiety, lest his zeal should furnish matter for misrepresentation;—but that he never heard an expression escape him which marked a disposition to violate the duty and subordination of a subject, or which could lead any man to believe, that his objects were different from the avowed and legal objects of the Association. We could have examined thousands to the same fact, for, as I told you when I began to speak, I was obliged to leave my place to disencumber myself from their names.

This evidence of Mr. Middleton's, as to the 29th of May, must, I should think, convince every man how dangerous and unjust it is, in witnesses, however perfect their memories, or however great their veracity, to come into a criminal court

where a man is standing for his life or death, retailing scraps of sentences, which they had heard by thrusting themselves, from curiosity, into places where their business did not lead them;—ignorant of the views and tempers of both speakers and hearers, attending only to a part, and, perhaps innocently, misrepresenting that part, from not having heard the whole.

The witnesses for the Crown all tell you, that Lord George said he would not go up with the petition unless he was attended by 20,000 people who had signed it: and there they think proper to stop, as if he had said nothing further; leaving you to say to yourselves—What possible purpose could he have in assembling such a multitude, on the very day the House was to receive the petition?—Why should he urge it, when the committee had before thought it inexpedient?—And why should he refuse to present it, unless he was so attended? Hear what Mr. Middleton says;—— He tells you, that my noble friend informed the petitioners, that if it was decided they were *not* to attend to consider how their petition should be presented, he would with the greatest pleasure go up with it *alone;* but that, if it was resolved they should attend it in person, he expected twenty thousand at the least should meet him in St. George's Fields, for that otherwise the petition would be considered as a forgery; it having been thrown out in the House and elsewhere, that the repeal of the bill was not the serious wish of the people at large, and that the petition was a mere list of names in parchment, and not of men in sentiment. Mr. Middleton added, That Lord George adverted to the same objections having been made to many other petitions, and he therefore expressed an anxiety to show Parliament, how many were actually interested in its success, which he reasonably thought would be a strong inducement to the House to listen to it. The language imputed to him falls in most naturally with this purpose: "*I wish Parliament to see who, and* "*what you are; dress yourselves in your best clothes*"— which Mr. Hay (who I suppose, had been reading the indictment) thought it would be better to call ARRAY YOURSELVES. He desired, that not a stick should be seen among them, and that if any man insulted another, or was guilty of any breach of the peace, he was to be given up to the magistrates. Mr. Attorney General, to persuade you that this was all colour and deceit, says, How was a magistrate to face forty thousand men?—How were offenders in such a multitude to be amenable to the civil power?—What a shameful

perversion of a plain peaceable purpose! To be sure, if the multitude had been assembled to *resist* the magistrate, offenders could not be secured. But *they themselves* were ordered to apprehend all offenders amongst them, and to deliver them up to justice.—*They themselves* were to surrender their fellows to civil authority if they offended.

But it seems that Lord George ought to have *foreseen* that so great a multitude could not be collected without mischief. Gentlemen, we are not trying whether he might or ought to have *foreseen* mischief, but whether he wickedly and traitorously PRECONCERTED AND DESIGNED IT. But if *he* be an object of censure for not foreseeing it, what shall we say to GOVERNMENT, that took no step to prevent it,—that issued no proclamation, warning the people of the danger and illegality of such an assembly?—If a peaceable multitude, with a petition in their hands, be an army,—and if the noise and confusion inseparable from numbers, though without violence or the purpose of violence, constitute war,—what shall be said of that GOVERNMENT, which remained from Tuesday to Friday, knowing that an army was collecting to levy war by public advertisement, yet had not a single soldier,—no, nor even a constable to protect the state?

Gentlemen, I come forth to do that for Government, which its own servant, the Attorney General, has not done.—I come forth to rescue it from the eternal infamy, which would fall upon its head, if the language of its own advocate were to be believed. But Government has an unanswerable defence. It neither *did* nor *could possibly* enter into the head of any man in authority to prophesy—human wisdom could not divine, that wicked and desperate men, taking advantage of the occasion, which, perhaps, an imprudent zeal for religion had produced, would dishonour the cause of all religions, by the disgraceful acts which followed.

Why then is it to be said, that Lord George Gordon is a traitor, who, without proof of any hostile purpose to the government of his country, only did not foresee,—what nobody else foresaw,—what those people, whose business it is to foresee every danger that threatens the state, and to avert it by the interference of magistracy, though they could not but read the advertisement, neither did, nor could possibly apprehend?

How are these observations attempted to be answered? Only by asserting without evidence, or even reasonable argument, that all this was colour and deceit. Gentlemen, I again say, that it is scandalous and reproachful, and not to

be justified by any duty, which can possibly belong to an advocate at the bar of an English court of justice, to declaim, without any proof, or attempt of proof, that all a man's expressions,—however peaceable,—however quiet,—however constitutional,—however loyal,—are all fraud and villany. Look, Gentlemen, to the issues of life, which I before called the evidence of Heaven—I call them so still—Truly may I call them so—when out of a book compiled by the Crown from the petition in the House of Commons, and containing the names of all who signed it, and which was printed in order to prevent any of that number being summoned upon the jury to try this indictment, NOT ONE CRIMINAL, OR EVEN A SUSPECTED NAME IS TO BE FOUND AMONGST THIS DEFAMED HOST OF PETITIONERS.

After this, Gentlemen, I think the Crown ought in decency to be silent. I see the effect this circumstance has upon you, and I know I am warranted in my assertion of the fact. If I am not, why did not the Attorney General produce the record of some convictions, and compare it with the list?—I thank them therefore for the precious compilation, which, though they did not produce, they cannot stand up and deny.

Solomon says, "*O that my adversary would write a book!*" —so say I.—My adversary has written a book, and out of it I am entitled to pronounce, that it cannot again be decently asserted, that Lord George Gordon, in exhorting an innocent and unimpeached multitude to be peaceable and quiet, was exciting them to violence against the state.

What is the evidence then, on which this connexion with the mob is to be proved?—*Only that they had blue cockades.* —Are you or am I answerable for every man who wears a blue cockade?—If a man commits murder in my livery, or in yours, without command, counsel, or consent, is the murder ours?—In all *cumulative*, constructive treasons you are to judge from the tenour of a man's behaviour, not from crooked and disjointed PARTS of it. *Nemo repente fuit turpissimus.*—No man can possibly be guilty of *this* crime by a *sudden* impulse of the mind, as he may of some others; and certainly Lord George Gordon stands upon the evidence at Coachmakers' Hall as pure and white as snow. He stands so upon the evidence of a man, who had differed with him as to the expediency of his conduct, yet who swears that, from the time he took the chair till the period which is the subject of inquiry, there was no blame in him.

You therefore are bound as Christian men to believe, that,

when he came to St. George's Fields that morning, he did not come there with *the hostile purpose* of repealing a law by rebellion.

But still it seems all his behaviour at Coachmakers' Hall was colour and deceit. Let us see, therefore, whether this body of men, when assembled, answered the description of that, which I have stated to be the purpose of him who assembled them. Were they a multitude arrayed for terror or force?—On the contrary, you have heard, upon the evidence of men, whose veracity is not to be impeached, that they were sober, decent, quiet, peaceable tradesmen;—that they were all of the better sort;—all well dressed, and well behaved; and that there was not a man among them, who had any one weapon offensive or defensive. Sir Philip Jennings Clerke tells you, he went into the Fields; that he drove through them, talked to many individuals among them, who all told him that it was not their wish to persecute the Papists, but that they were alarmed at the progress of their religion from their schools. Sir Philip further told you, that he never saw a more peaceable multitude in his life; and it appears upon the oaths of all who were present, that Lord George Gordon went round among them, desiring peace and quietness.

Mark his conduct when he heard from Mr. Evans, that a low riotous set of people were assembled in Palace Yard. Mr. Evans being a member of the Protestant Association, and being desirous that nothing bad might happen from the assembly, went in his carriage with Mr. Spinage to St. George's Fields, to inform Lord George that there were such people assembled (probably Papists) who were determined to do mischief. The moment he told him of what he heard, whatever his original plan might have been, he instantly changed it on seeing the impropriety of it. Do you intend, said Mr. Evans, to carry up all these men with the petition to the House of Commons?—O no! no! not by any means—I do not mean to carry them all up. Will you give me leave, said Mr. Evans, to go round to the different divisions, and tell the people it is not your Lordship's purpose? He answered—By all means; and Mr. Evans accordingly went, but it was impossible to guide such a number of people, peaceable as they were. They were all desirous to go forward, and Lord George was at last obliged to leave the Fields exhausted with heat and fatigue, beseeching them to be peaceable and quiet. Mrs. Whitingham set him down at the House of Commons; and at the very time that he thus

left them in perfect harmony and good order, it appears by the evidence of Sir Philip Jennings Clerke, that Palace Yard was in an uproar, filled with mischievous boys and the lowest dregs of the people.

Gentlemen, I have all along told you, that the Crown was aware that it had no case of treason, without connecting the noble Prisoner with consequences, which it was in some luck to find advocates to state, without proof to support it. I can only speak for myself; that small as my chance is *(as times go)* of ever arriving at high office, I would not accept of it on the terms of being obliged to produce against a fellow-citizen, that which I have been witness to this day: for Mr. Attorney General perfectly well knew the innocent and laudable motive, with which the protection was given, that he exhibited as an evidence of guilt: yet it was produced to insinuate, that Lord George Gordon, knowing himself to be the ruler of those villains, set himself up as a saviour from their fury. We called Lord Stormont to explain this matter to you, who told you that Lord George Gordon came to Buckingham House, and begged to see the King, saying, he might be of great use in quelling the riots; and can there be on earth a greater proof of conscious innocence? for if he had been the wicked mover of them, would he have gone to the King to have confessed it, by offering to recall his followers, from the mischiefs he had provoked?—No! But since, notwithstanding a public protest issued by himself and the Association, reviling the authors of mischief, the Protestant cause was still made the pretext, he thought his public exertions might be useful, as they might tend to remove the prejudices which wicked men had diffused. The King thought so likewise, and therefore (as appears by Lord Stormont) refused to see Lord George till he had given the test of his loyalty by such exertions. But sure I am, our gracious Sovereign meant no trap for innocence, nor ever recommended it as such to his servants.

Lord George's language was simply this; "The multi-"tude pretend to be perpetrating these acts, under the autho-"rity of the Protestant petition; I assure Your Majesty they "are not the Protestant Association, and I shall be glad to be "of any service in suppressing them." I say, by God, that man is a ruffian, who shall, after this, presume to build upon such honest, artless conduct as an evidence of guilt. Gentlemen, if Lord George Gordon had been guilty of high treason (as is assumed to-day) *in the face of the whole Par-*

how are all its members to defend themselves, from

the misprison of suffering such a person to go at large and to approach his Sovereign?—The man who conceals the perpetration of treason, is himself a traitor: but they are all perfectly safe, for nobody thought of treason till fears arising from another quarter bewildered their senses. The King, therefore, and his servants, very wisely accepted his promise of assistance, and he flew with honest zeal to fulfil it. Sir Philip Jennings Clerke tells you, that he made use of every expression which it was possible for a man in such circumstances to employ. He begged them, for God's sake to disperse and go home; declared his hope, that the petition would be granted, but that rioting was not the way to effect it. Sir Philip said he felt himself bound, without being particularly asked, to say every thing he could in protection of an injured and innocent man, and repeated again, that there was not an art, which the Prisoner could possibly make use of, that he did not zealously employ;—but that it was all in vain. I began, says he, to tremble for myself, when Lord George read the resolution of the House, which was hostile to them, and said their petition would not be taken into consideration till they were quiet. But did he say, *Therefore go on to burn and destroy?*—On the contrary, he helped to pen that motion, and read it to the multitude, *as one which he himself had approved.* After this he went into the coach with Sheriff Pugh, in the city; and there it was, in the presence of the very magistrate, whom he was assisting to keep the peace, that he *publicly* signed the protection which has been read in evidence against him: although Mr. Fisher, who now stands in my presence, confessed in the Privy Council, that he himself had granted similar protections to various people—*yet he was dismissed, as having done nothing but his duty.*

This is the plain and simple truth—and for this just obedience to His Majesty's request, do the King's servants come to-day into his Court, where he is supposed in person to sit, to turn that obedience into the crime of high treason, and to ask you to put him to death for it.

Gentlemen, you have now heard, upon the solemn oaths of honest disinterested men, a faithful history of the conduct of Lord George Gordon, from the day he became a member of the Protestant Association, to the day that he was committed a prisoner to the Tower. And I have no doubt, from the attention with which I have been honoured from the beginning, that you have still kept in your minds the principles, to which I entreated you would apply it, and that you have measured it by that standard.

You have therefore only to look back to the whole of it together;—to reflect on all you have heard concerning him;—to trace him in your recollection through every part of the transaction;—and, considering it with one manly liberal view, to ask your own honest hearts, whether you can say, that this noble and unfortunate youth is a wicked and deliberate traitor, who deserves by your verdict to suffer a shameful and ignominious death, which will stain the ancient honours of his house for ever.

The crime which the Crown would have fixed upon him is, that he assembled the Protestant Association round the House of Commons, not merely *to influence and persuade Parliament by the earnestness of their supplications*, but actually to coerce it *by hostile rebellious force*—That finding himself disappointed in the success of that coercion, he afterwards incited his followers to abolish the legal indulgences to Papists, which the object of the petition was to repeal, by the burning of their houses of worship, and the destruction of their property, which ended at last in a general attack on the property of all orders of men, religious and civil,—on the public treasures of the nation,—and on the very being of the government.

To support a charge of so atrocious and unnatural a complexion, the laws of the most arbitrary nations would require the most incontrovertible proof. Either the villain must have been taken in the overt act of wickedness, or, if he worked in secret upon others, his guilt must have been brought out by the discovery of a conspiracy, or by the consistent tenour of criminality;—the very worst inquisitor that ever dealt in blood would vindicate the torture by plausibility at least, and by the semblance of truth.

What evidence then will a jury of Englishmen expect from the servants of the Crown of England, before they deliver up a brother accused before them to ignominy and death?—What proof will their consciences require?—What will their plain and manly understandings accept of?—What does the immemorial custom of their fathers, and the written law of this land, warrant them in demanding?—nothing less, *in any case of blood*, than the clearest and most unequivocal conviction of guilt.—But in *this case* the act has not even trusted to the humanity and justice of our general law, but has said in plain, rough, expressive terms—*proveably*—that is, says Lord Coke, *not upon conjectural presumptions or inferences, or strains of wit*, but upon DIRECT AND PLAIN PROOF—"For the King,

"Lords, and Commons," continues that great lawyer, "did "not use the word *probably*, for then a common argument "might have served; but *proveably*, which signifies the "highest force of demonstration."—And what evidence, Gentlemen of the Jury, does the Crown offer to you in compliance with these sound and sacred doctrines of justice?—a few broken, interrupted, disjointed words, without context or connexion,—uttered by the speaker in agitation and heat,—heard by those who relate them to you, in the midst of tumult and confusion,—and even those words, mutilated as they are, in direct opposition to, and inconsistent with repeated and earnest declarations, delivered at the very same time, and on the very same occasion, related to you by a much greater number of persons, and absolutely incompatible with the whole tenour of his conduct. Which of us all, Gentlemen, would be safe, standing at the bar of God, or man, if we were not to be judged by the regular current of our lives and conversations, but by detached and unguarded expressions, picked out by malice, and recorded, without context or circumstances, against us? Yet such is the only evidence, on which the Crown asks you to dip your hands, and to stain your consciences, in the innocent blood of the noble and unfortunate youth who now stands before you:—on the single evidence of the words you have heard from their witnesses, *(for of what but words have you heard?)* which, even if they had stood uncontroverted by the proofs that have swallowed them up, or unexplained by circumstances which destroy their malignity, could not, *at the very worst*, amount in law to more than a breach of the act against tumultuous petitioning (if such an act still exists;) since the worst malice of his enemies has not been able to bring up one single witness to say, that he ever *directed*, *countenanced*, or *approved* rebellious force against the legislature of his country. It is therefore a matter of astonishment to me, that men can keep the natural colour in their cheeks, when they ask for human life, even on the Crown's original case, *though the Prisoner had made no defence.*—But will they still continue to ask for it after what they have heard? I will just remind the Solicitor General, before he begins his reply, what matter he has to encounter. He has to encounter this:—That the going up in a body was not even originated by Lord George, but by others in his absence.—That when proposed by him officially as Chairman it was adopted by the *whole* Association, and consequently was *their* act as much as his.—That it was adopted not in a conclave, but with open doors,

and the resolution published to all the world.—That it was known of course to the ministers and magistrates of the country, who did not even signify to him, or to any body else, its illegality or danger.—That decency and peace were enjoined and commanded.—That the regularity of the procession, and thoses badges of distinction, which are now cruelly turned into the charge of an hostile array against him, were expressly and *publicly* directed *for the preservation of peace, and the prevention of tumult.*—That while the House was deliberating, he repeatedly entreated them to behave with decency and peace, and to retire to their houses; *though he knew not that he was speaking to the enemies of his cause.* —That when they at last dispersed, no man thought or imagined that treason had been committed.—That he retired to bed, where he lay unconscious that ruffians were ruining him, by their disorders in the night.—That on Monday he published an advertisement, reviling the authors of the riots: and, as the Protestant cause had been wickedly made the pretext for them, solemnly enjoined all who wished well to it to be obedient to the laws. *(Nor has the Crown even attempted to prove, that he had either given, or that he afterwards gave secret instructions in opposition to that public admonition.)* —That he afterwards begged an audience to receive the King's commands;—that he waited on the Ministers;—that he attended his duty in Parliament;—and when the multitude,—*amongst whom there was not a man of the associated Protestants*,—again assembled on the Tuesday, under pretence of the Protestant cause, he offered his services, and read a resolution of the House to them, accompanied with every expostulation, which a zeal for peace could possibly inspire.—That he afterwards, in pursuance of the King's direction, attended the magistrates in their duty; honestly and honourably exerting all his powers to quell the fury of the multitude:—a conduct which, to the dishonour of the Crown, has been scandalously turned against him, by criminating him with protections granted publicly in the coach of the Sheriff of London, whom he was assisting in his office of magistracy; although protections of a similar nature were, to the knowledge of the whole Privy Council, granted by Mr. Fisher himself, who now stands in my presence unaccused and unreproved, but who, if the Crown that summoned him *durst have called him*, would have dispersed to their confusion the slightest imputation of guilt.

What then has produced this trial for high treason;—or given it, when produced, the seriousness and solemnity it

wears?—What, but the inversion of all justice, by judging from *consequences*, instead of from *causes* and *designs*?—what but the artful manner, in which the Crown has endeavoured to blend the petitioning in a body, and the zeal with which an animated disposition conducted it, with the melancholy crimes that followed?—crimes, which the shameful indolence of our magistrates,—which the total extinction of all police and government, suffered to be committed in broad day, and in the delirium of drunkenness by an unarmed banditti, without a head,—without plan or object,—and without a refuge from the instant gripe of justice:—a banditti, with whom the associated Protestants, and their President, had no manner of connexion, and whose cause they overturned, dishonoured, and ruined.

How unchristian then is it to attempt, without evidence, to infect the imaginations of men who are sworn dispassionately and disinterestedly to try the trivial offence, of assembling a multitude with a petition to repeal a law (which has happened so often in all our memories), by blending it with the fatal catastrophe, on which every man's mind may be supposed to retain some degree of irritation?—*O fie! O fie!* Is the intellectual seat of justice to be thus impiously shaken?—Are your benevolent propensities to be thus disappointed and abused?—Do they wish you, while you are listening to the evidence, to connect it with unforeseen consequences, in spite of reason and truth?—Is it their object to hang the millstone of prejudice around his innocent neck to sink him?—If there be such men, may Heaven forgive them for the attempt, and inspire you with fortitude and wisdom, to discharge your duty with calm, steady, and reflecting minds.

Gentlemen, I have no manner of doubt that you will.—I am sure you cannot but see, notwithstanding my great inability, increased by a perturbation of mind (arising, thank God! from no dishonest cause), that there has been not only no evidence on the part of the Crown, to fix the guilt of the late commotions upon the Prisoner, but that, on the contrary, we have been able to resist the *probability*, I might almost say the *possibility*—of the charge, not only by living witnesses, whom we only ceased to call, because the trial would never have ended, but by the evidence of all the blood that has paid the forfeit of that guilt already; an evidence that I will take upon me to say is the strongest, and most unanswerable, which the combination of natural events ever brought together since the beginning of the world for the deliverance of the oppressed. Since in the late numerous

trials for acts of violence and depredation, though conducted by the ablest servants of the Crown, with a laudable eye to the investigation of the subject which now engages us, no one fact appeared, which showed any plan,—any object,—any leader.—Since out of forty-four thousand persons, who signed the petition of the Protestants, *not one* was to be found among those who were convicted, tried, or even apprehended on suspicion;—and since out of all the felons, who were let loose from prisons, and who assisted in the destruction of our property, not a single wretch was to be found, who could even attempt to save his own life, by the plausible promise of giving evidence to-day.

What can overturn such a proof as this?—Surely a good man might, without superstition, believe, that such an union of events was something more than natural, and that the Divine Providence was watchful for the protection of innocence and truth.

I may now therefore relieve you from the pain of hearing me any longer, and be myself relieved from speaking on a subject which agitates and distresses me. Since Lord George Gordon stands clear of every hostile act or purpose against the Legislature of his country, or the properties of his fellow-subjects—since the whole tenour of his conduct repels the belief of the *traitorous intention* charged by the indictment—my task is finished. I shall make no address to your passions—I will not remind you of the long and rigorous imprisonment he has suffered;—I will not speak to you of his great youth, of his illustrious birth, and of his uniformly animated and generous zeal in Parliament for the constitution of his country. Such topics might be useful in the balance of a doubtful case; yet even then I should have trusted to the honest hearts of Englishmen to have felt them without excitation. At present, the plain and rigid rules of justice and truth are sufficient to entitle me to your verdict.

SPEECH *of the Honourable Thomas Erskine, at Shrewsbury, August the Sixth, A. D.* 1784, *for the Rev.* WILLIAM DAVIES SHIPLEY, *Dean of St. Asaph, on his Trial for publishing a seditious Libel.*

## THE SUBJECT.

*IN the year* 1783, *soon after the conclusion of the calamitous war in America, the public attention was very warmly and generally turned throughout this country towards the necessity of a reform in the representation of the people in the House of Commons. Several societies were formed in different parts of England and Wales for the promotion of it; and the Duke of Richmond, and Mr. Pitt, the then Minister, took the lead in bringing the subject before Parliament.*

*To render this great national object intelligible to the ordinary ranks of the people, Sir William Jones, then an eminent barrister in London, and afterwards one of the Judges of the Supreme Court of Judicature at Bengal, composed a Dialogue between a Scholar and a Farmer, as a vehicle for explaining to common capacities the great principles of society and government, and for shewing the defects in the representation of the people in the British Parliament. Sir William Jones having married a sister of the Dean of St. Asaph, he became acquainted with, and interested in this Dialogue, and recommended it strongly to a committee of gentlemen of Flintshire, who were at that time associated for the object of reform, where it was read, and made the subject of a vote of approbation. The Court party on the other hand having made a violent attack upon this committee for the countenance thus given to the Dialogue, the Dean of St. Asaph, considering* (as he himself expressed it) *that the best means of justifying the composition, and those who were attacked for their approbation of it, was to render it public, that the world might decide the controversy, sent it to be printed, prefixing to it the following advertisement:*

"A short defence hath been thought necessary against a violent and groundless attack upon the Flintshire Committee, for having testified their approbation of the following Dialogue, which hath been publicly branded with the most injurious epithets; and it is conceived that the sure way to vindicate this little tract from so unjust a character, will be to publicly to produce it. The friends of the Revolution will instantly see, that

" it contains no principle which has not the support of the high-
" est authority, as well as the clearest reason.

" If the doctrines which it slightly touches in a manner suited to the nature of the Dialogue, be 'seditious, treasonable, and " diabolical,' Lord Somers was an incendiary, Locke a traitor, " and the Convention Parliament a pandæmonium; but if those " names are the glory and boast of England, and if that Conven-" tion secured our liberty and happiness, then the doctrines in " question, are not only just and rational, but constitutional and " salutary: and the reproachful epithets belong wholly to the sys-" tem of those who so grossly misapplied it."

*The Dialogue being published, the late Mr. Fitzmaurice, brother to the late Marquis of Lansdowne, preferred a bill of indictment against the Dean for a libel, at the great sessions for Denbighshire, where the cause stood to be tried at Wrexham assizes, in the summer of* 1783, *but was put off by an application to the Court, founded upon the circulation of papers to prejudice the trial. At the Spring assizes for Wrexham in* 1784, *the cause again stood for trial, and the Defendant attended by his Counsel a second time, when it was removed by the Prosecutor into the Court of King's Bench, and came on at last to be tried at Shrewsbury, as being in the next adjacent* English *county.*

*The indictment set forth,* " *That William Davies Shipley, late of* " *Llannerch Park, in the parish of Henllan in the county of Den-* " *bigh, clerk, being a person of a wicked and turbulent disposition,* " *and maliciously designing and intending to excite and diffuse,* " *amongst the subjects of this realm, discontents, jealousies, and* " *suspicions of our Lord the King, and his government, and dis-* " *affection and disloyalty to the person and government of our* " *Lord the now King; and to raise very dangerous seditions and* " *tumults within this kingdom; and to draw the government of* " *this kingdom into great scandal, infamy, and disgrace; and to in-* " *cite the subjects of our Lord the King to attempt, by force and* " *violence, and with arms, to make alterations in the government,* " *state, and constitution of this kingdom, on the first day of April,* " *in the twenty-third year of the reign of our Sovereign Lord George* " *the Third, now King of Great Britain, and so forth, at Wrexham,* " *in the county of Denbigh aforesaid, wickedly and seditiously pub-* " *lished and caused and procured to be published a certain false,* " *wicked, malicious, seditious, and scandalous libel of and concern-* " *ing our said Lord the King, and the government of this realm,* " *in the form of a Dialogue between a supposed gentleman and a* " *supposed farmer, wherein the part of the supposed gentleman,* " *in the supposed Dialogue, is denoted by the letter G, and the* " *part of the supposed farmer in such supposed Dialogue, is* " *denoted by the letter F, entitled,* 'The Principles of Govern-" ment, in a Dialogue between a Gentleman and a Farmer.' *In which*

*" said libel are contained the false, wicked, malicious, seditious, and " scandalous matters following," (to wit.)*

*The indictment then set forth verbatim the following Dialogue, without any averments or innuendos, except those above mentioned, viz. that by* " G." *throughout the Dialogue was meant Gentleman, and by* " F." *Farmer—By* " The King" (when it occurred,) THE KING OF GREAT BRITAIN; *and by* " PARLIAMENT" (when it occurred,) THE PARLIAMENT OF THIS KINGDOM. *The Dialogue therefore as it follows is in fact the whole indictment, only without the constant repetition that F. means Farmer, K. King, and P. Parliament.*

THE PRINCIPLES OF GOVERNMENT IN A DIALOGUE BETWEEN A GENTLEMAN AND A FARMER.

F. Why should humble men, like me, sign or set marks to petitions of this nature? It is better for us farmers to mind our husbandry, and leave what we cannot comprehend to the King and Parliament.

G. You can comprehend more than you imagine; and as a free member of a free state, have higher things to mind than you may conceive.

F. If by free you mean out of prison, I hope to continue so, as long as I can pay my rent to the squire's bailiff; but what is meant by a free state?

G. Tell me first what is meant by a club in the village, of which I know you to be a member?

F. It is an assembly of men, who meet after work every Saturday to be merry and happy for a few hours in the week.

G. Have you no other object but mirth?

F. Yes; we have a box, into which we contribute equally from our monthly or weekly savings, and out of which any members of the club are to be relieved in sickness or poverty; for the parish officers are so cruel and insolent, that it were better to starve than apply to them for relief.

G. Did they, or the squire, or the parson, or all together, compel you to form this society?

F. Oh! no; we could not be compelled; we formed it by our choice.

G. You did right—But have you not some head or president of your club?

F. The master for each night is chosen by all the company present the week before.

G. Does he make laws to bind you in case of ill-temper or misbehaviour?

F. He make laws! He bind us! No; we have all agreed to a set of equal rules, which are signed by every new comer, and were

written in a strange hand by young Spelman, the lawyer's clerk, whose uncle is a member.

G. What should you do, if any member were to insist on becoming perpetual master, and altering your rules at his arbitrary will and pleasure?

F. We should expel him.

G. What, if he were to bring a serjeant's guard, when the militia are quartered in your neighbourhood, and insist upon your obeying him?

F. We would resist if we could; if not, the society would be broken up.

G. Suppose that, with his serjeant's guard, he were to take the money out of the box, or out of your pockets?

F. Would not that be a robbery?

G. I am seeking information from you. How should you act upon such an occasion?

F. We should submit perhaps, at that time; but should afterwards try to apprehend the robbers.

G. What if you could not apprehend them?

F. We might kill them, I should think; and if the King would not pardon us, God would.

G. How could you either apprehend them, or, if they resisted, kill them, without a sufficient force in your own hands?

F. Oh! we are all good players at single-stick, and each of us has a stout cudgel or quarter-staff in the corner of his room.

G. Suppose that a few of the club were to domineer over the rest, and insist upon making laws for them?

F. We must take the same course; except it would be easier to restrain one man than a number; but we should be the majority with justice on our side.

G. A word or two on another head. Some of you, I presume, are no great accountants?

F. Few of us understand accounts; but we trust old Lilly, the schoolmaster, whom we believe to be an honest man; and he keeps the key of our box.

G. If your money should, in time, amount to a large sum, it might not, perhaps, be safe to keep it at his house, or in any private house.

F. Where else should we keep it?

G. You might choose to put it into the funds, or to lend it the squire, who has lost so much lately at Newmarket, taking his bond on some of his fields, as your security for payment, with interest.

F. We must, in that case, confide in young Spelman, who will soon set up for himself, and, if a lawyer can be honest, will be an honest lawyer.

G. What power do you give to Lilly, or should you give to Spelman, in the case supposed?

F. No power; we should give them both a due allowance for their trouble, and should expect a faithful account of all they had done for us.

G. Honest men may change their nature. What if both or either of them were to deceive you?

F. We should remove them, put our trust in better men, and try to repair our loss.

G. Did it never occur to you, that every state or nation was only a great club?

F. Nothing ever occurred to me on the subject; for I never thought about it.

G. Though you never thought before on the subject, yet you may be able to tell me why you suppose men to have assembled, and to have formed nations, communities, or states, which all mean the same thing?

F. In order, I should imagine, to be as happy as they can while they live.

G. By happy, do you mean merry only?

F. To be as merry as they can without hurting themselves or their neighbours, but chiefly to secure themselves from danger, and to relieve their wants.

G. Do you believe that any King or Emperor compelled them to associate?

F. How could one man compel a multitude? a King or an Emperor, I presume, is not born with a hundred hands.

G. When a prince of the blood shall, in any country, be so distinguished by nature, I shall then, and then only, conceive him to be a greater man than you; but might not an army, with a King or General at their head, have compelled them to assemble?

F. Yes; but the army must have been formed by their own choice; one man of a few can never govern many without their consent.

G. Suppose, however, that a multitude of men assembled in a town or city, were to choose a King or Governor; might they not give him high power and authority?

F. To be sure; but they would never be so mad, I hope, as to give him a power of making their laws.

G. Who else would make them?

F. The whole nation or people.

G. What if they disagreed?

F. The opinion of the greater number, as in our village-clubs, must be taken, and prevail.

G. What could be done, if the society were so large that all could not meet at the same place?

F. A greater number must choose a less.

G. Who should be the choosers?

F. All who are not upon the parish in our club. If a man

asks relief of the overseer, he ceases to be one of us, because he must depend upon the overseer.

G. Could not a few men, one in seven, for instance, choose the assembly of law-makers as well as a larger number?

F. As conveniently, perhaps; but I would not suffer any man to choose another who was to make laws, by which my money or my life might be taken from me.

G. Have you a freehold in any county of forty shillings a year?

F. I have nothing in the world but my cattle, implements of husbandry, and household goods, together with my farm, for which I pay a fixed rent to the squire.

G. Have you a vote in any city or borough?

F. I have no vote at all; but am able, by my honest labour, to support my wife and four children; and whilst I act honestly, I may defy the laws.

G. Can you be ignorant, that the Parliament to which members are sent by this county, and by the next market-town, have power to make new laws, by which you and your family may be stripped of your goods, thrown into prison, and even deprived of life?

F. A dreadful power! Having business of my own, I never made inquiries concerning the business of Parliament; but imagined the laws had been fixed for many hundred years.

G. The common laws to which you refer, are equal, just, and humane; but the King and Parliament may alter them when they please.

F. The King ought therefore to be a good man, and the Parliament to consist of men equally good.

G. The King alone can do no harm; but who must judge the goodness of Parliament men?

F. All those whose property, freedom, and lives, may be affected by their laws.

G. Yet six men in seven, who inhabit this kingdom, have, like you, no votes; and the petition which I desired you to sign, has nothing for its object but the restoration of you all, to the right of choosing those law-makers, by whom your money or your lives may be taken from you: attend while I read it distinctly.

F. Give me your pen. I never wrote my name, ill as it may be written, with greater eagerness.

G. I applaud you, and trust that your example will be followed by millions. Another word before we part. Recollect your opinion about your club in the village, and tell me what ought to be the consequence, if the King alone were to insist on making laws, or on altering them at his will and pleasure.

F. He too must be expelled.

G. Oh! but think of his standing army, and of the militia, which now are his in substance, though ours in form.

F. If he were to employ that force against the nation, they would, and ought to resist him, or the state would cease to be a state.

G. What if the great accountants, and great lawyers, the Lillys and Spelmans of the nation, were to abuse their trust, and cruelly injure, instead of faithfully serving the public?

F. We must request the King to remove them, and make trial of others; but none should implicitly be trusted.

G. But what if a few great Lords or wealthy men were to keep the King himself in subjection, yet exert his force, lavish his treasure, and misuse his name, so as to domineer over the people, and manage the Parliament?

F. We must fight for the King and ourselves.

G. You talk of fighting, as if you were speaking of some rustic engagement at a wake; but your quarter-staffs would avail you little against bayonets.

F. We might easily provide ourselves with better arms.

G. Not so easily. When the moment of resistance came, you would be deprived of all arms; and those who should furnish you with them, or exhort you to take them up, would be called traitors, and probably put to death.

F. We ought always therefore to be ready, and keep each of us a strong firelock in the corner of his bedroom.

G. That would be legal as well as rational. Are you, my honest friend, provided with a musket?

F. I will contribute no more to the club, and purchase a firelock with my savings.

G. It is not necessary. I have two, and will make you a present of one, with complete accoutrements.

F. I accept it thankfully, and will converse with you at your leisure on other subjects of this kind,

G. In the meanwhile, spend an hour every morning in the next fortnight, in learning to prime and load expeditiously, and to fire and charge with bayonet firmly and regularly. I say every morning, because if you exercise too late in the evening, you may fall into some of the legal snares, which have been spread for you by those gentlemen, who would rather secure game for their table, than liberty for their nation.

F. Some of my neighbours, who have served in the militia, will readily teach me; and perhaps the whole village may be persuaded to procure arms, and learn their exercise.

G. It cannot be expected that the villagers should purchase arms; but they might easily be supplied, if the gentry of the nation would spare a little from their vices and luxury.

F. May they turn to some sense of honour and virtue!

G. Farewell, at present, and remember, That a free state is only a more numerous and more powerful club; and that he only is a free man who is a member of such a state.

F. Good morning, Sir, you have made me wiser and better than I was yesterday; and yet methinks, I had some knowledge in my own mind of this great subject, and have been a politician all my life without perceiving it.

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*This Dialogue (as above set forth verbatim from the indictment,) with the intentions, as alleged in the introductory part, constituted the charge, and the publication of it by the Dean's direction constituted the proof.*

*On the Dean's part, the abovementioned advertisement prefixed to it, was given in evidence to show with what intention he published it; and his conduct in general relating to it was proved. Witnesses were also called to his general character as a good subject.*

*Mr. Bearcroft, as Counsel for the Crown, having addressed the Jury in a very able and judicious speech, and the evidence being closed for the Crown, Mr. Erskine spoke as follows for the Dean of St. Asaph.*

# SPEECH

FOR THE

# DEAN OF ST. ASAPH.

GENTLEMEN OF THE JURY,

MY learned and respectable friend having informed the Court that he means to call no other witnesses to support the prosecution, you are now in possession of the whole of the evidence, on which the Prosecutor has ventured to charge my reverend Client, the Dean of St. Asaph, with a seditious purpose to excite disloyalty and disaffection to the person of his King, and an armed rebellion against the state and constitution of his country; which evidence is nothing more than his direction to another to publish this Dialogue, containing in itself nothing seditious, with an advertisement prefixed to it, containing a solemn protest against all sedition.

The only difficulty therefore, which I feel in resisting so false and malevolent an accusation, is to be able to repress the feeling excited by its folly and injustice, within those bounds which may leave my faculties their natural and unclouded operations; for I solemnly declare to you, that if he had been indicted as a libeller of our holy religion, only for publishing that the world was made by its Almighty Author, my astonishment could not have been greater than it is at this moment, to see the little book, which I hold in my hand, presented by a Grand Jury of English subjects, as a libel upon the government of England. Every sentiment contained in it (if the interpretations of words are to be settled, not according to fancy, but by the common rules of language) is to be found in the brightest pages of English literature, and in the most sacred volumes of English laws; if any one sentence from the beginning to the end of it be seditious or li-

bellous, the Bill of Rights (to use the language of the advertisement prefixed to it) was a seditious libel;—the Revolution was a wicked rebellion;—the existing government is a traitorous conspiracy against the hereditary monarchy of England;—and our gracious Sovereign, whose title, I am persuaded, we are all of us prepared to defend with our blood, is an usurper of the crowns of these kingdoms.

That all these absurd, preposterous, and treasonable conclusions, follow necessarily and unavoidably from a conclusion *upon this evidence*,—that this Dialogue is a libel,—following the example of my learned friend, who has pledged *his* personal veracity in support of his sentiments, I assert, upon *my* honour, to be my unaltered, and I believe I may say, unalterable opinion, formed upon the most mature deliberation; and I choose to place that opinion in the very front of my address to you, that you may not, in the course of it, mistake the energies of truth and freedom for the zeal of professional duty.

This declaration of my own sentiments, even if my friend had not set me the example by giving you his, I should have considered to be my duty in this cause; for although, in ordinary cases, where the private right of the party accused is alone in discussion, and no general consequences can follow from the decision, the advocate and the private man ought in sound discretion to be kept asunder; yet there are occasions, when such separation would be treachery and meanness. In a case where the dearest rights of society are involved in the resistance of a prosecution,—where the party accused is (as in this instance) but a mere name,—where the whole community is wounded through his sides,—and where the conviction of the private individual is the subversion or surrender of public privileges, the advocate has a more extensive charge:—the duty of the patriot citizen then mixes itself with his obligation to his client, and he disgraces himself, dishonours his profession, and betrays his country, if he does not step forth in his personal character, and vindicate the right of all his fellow-citizens, which are attacked through the medium of the man he is defending. Gentlemen, I do not mean to shrink from that responsibility upon this occasion; I desire to be considered the fellow-criminal of the Defendant, if by your verdict he should be found one, by publishing in advised speaking (which is substantially equal in guilt to the publication that he is accused of before you,) my hearty approbation of every sentiment contained in this little book; promising here, in the face of the world, to pub-

lish them upon every suitable occasion, amongst that part of the community within the reach of my precept, influence, and example. If there be any more prosecutors of this denomination abroad among us, they know how to take advantage of these declarations.*

Gentlemen, when I reflect upon the danger which has often attended the liberty of the press in former times, from the arbitrary proceedings of abject, unprincipled, and dependant Judges, raised to their situations without abilities or worth, in proportion to their servility to power, I cannot help congratulating the public that you are to try this indictment with the assistance of the learned Judge before you;—much too instructed in the laws of this land to mislead you by mistake, and too conscientious to misinstruct you by design.

The days indeed I hope are now past, when Judges and Jurymen upon state trials, were constantly pulling in different directions; the Court endeavouring to annihilate altogether the province of the Jury, and the Jury in return listening with disgust, jealousy, and alienation, to the directions of the Court. Now they may be expected to be tried with that harmony which is the beauty of our legal constitution;—the Jury preserving their independence in judging of the intention, which is the essence of every crime; but listening to the opinion of the Judge upon the evidence, and upon the law, with that respect and attention, which dignity, learning, and honest intention in a magistrate must and ought always to carry along with them.

Having received my earliest information in my profession from the learned Judge himself,† and having daily occasion to observe his able administration of justice; you may believe that I anticipate nothing from the Bench unfavourable to innocence; and I have experienced his regard in too many instances, not to be sure of every indulgence that is personal to myself.

These considerations enable me with more freedom to make my address to you upon the merits of this prosecution, in the issue of which your own general rights, as members of a free state, are not less involved, than the private rights of the individual I am defending.

* It will be seen hereafter, that when the Dialogue was brought before the Court, by Mr. Erskine's motion to arrest the judgment, the Court was obliged to declare that it contained no illegal matter.

† Mr. Erskine was for some time one of the Judge's pupils as a special pleader, before he was raised to the bench.

Gentlemen, my reverend friend stands before you under circumstances new and extraordinary, and I might add harsh and cruel; he is not to be tried in the forum *where he lives*, according to the wise and just provisions of our ancient laws; —he is not to be tried by the vicinage, who, from their knowledge of general character and conduct, were held by our wise and humane ancestors to be the fittest, or rather the only judges in criminal cases:—he has been deprived of that privilege by the arts of the Prosecutor, and is called before *you*, who live in *another* part of the country, and who, except by vague reputation, are utter strangers to him.

But the prosecution itself, abandoned by the public, and left, as you cannot but know it is, in the hands of an individual, is a circumstance not less extraordinary and unjust, —unless as it palpably refutes the truth of the accusation.— For, if this little book be a libel at all, it is a libel upon *the state and constitution of the nation*, and *not* upon any person under the protection of its laws: it attacks the character of no man in this or any other country; and therefore no man is *individually or personally* injured or offended by it. If it contain matter dangerous or offensive, *the state alone* can be endangered or offended.

And are we then reduced to that miserable condition in this country, that, if discontent and sedition be publicly exciting amongst the people, the charge of suppressing it devolves upon Mr. Jones? My learned friend, if he would have you believe that this Dialogue is seditious and dangerous, must be driven to acknowledge, that Government has grossly neglected its trust; for if, as he says, it has an evident tendency in critical times to stir up alarming commotions, and to procure a reform in the representation of the people, by violence and force of arms;—and if, as he likewise says, a public prosecution is a proceeding calculated to prevent these probable consequences; what excuse is he prepared to make for the Government, which, when, according to the evidence of his own witness, an application was made to it for that express purpose, positively, and on deliberation refused to prosecute?—What will he say for one learned gentleman,* who dead is lamented, and for another,† who living is honoured by the whole profession; both of whom, on the appearance of this Dialogue, were charged with the duty of prosecuting all offenders against the state,

* Mr. Wallace, then Attorney General.
† Mr. Lee, late Attorney, then Solicitor General.

yet who not only read it day after day in pamphlets and newspapers, without stirring against the publishers, but who, on receiving it from the Lords of the Treasury by official reference, opposed a prosecution at the national expense?—What will he say of the successors of those gentlemen, who hold their offices at this hour, and who have ratified the opinions of their predecessors by their own conduct?—And what, lastly, will he say in vindication of Majesty itself, to my knowledge not unacquainted with the subject, yet from whence no orders issued to the inferior servants of the state?

So that, after Mr. Fitzmaurice, representing this Dialogue as big with ruin to the public, has been laughed at by the King's Ministers at the Treasury;—by the King himself, of whom he had an audience;—and by those appointed by his wisdom to conduct all prosecutions; you are called upon to believe that it is a libel dangerous and destructive;—and that while the state, neglected by those who are charged with its preservation, is tottering to its centre, the falling constitution of this ancient nation is happily supported by Mr. Jones, who, like another Atlas, bears it upon his shoulders.*

Mr. Jones then, who sits before you, is the only man in England who accuses the Defendant. He alone takes upon himself the important office of dictating to his Majesty,—of reprobating the proceedings of his Ministers,—and of superseding the Attorney and Solicitor General;—and shall I insult your understandings by supposing that this accusation proceeds from pure patriotism and public spirit in him, *or more properly in that other gentleman, whose deputy upon this occasion he is well known to be?* Whether such a supposition would not indeed be an insult, his conduct as a public prosecutor will best illustrate.

He originally put the indictment in a a regular course of trial in the very neighbourhood, where its operations must have been most felt, and where, if criminal in its objects, the criminality must have been the most obvious. A Jury of that vicinage was assembled to try it, and the Dean having required my assistance on the occasion, I travelled two hundred miles with great inconvenience to myself, to do him that justice which he was entitled to as my friend, and to pay to my

* Mr. Jones, the present Marshal of the King's Bench, became entangled in the prosecution as the attorney of Mr. Fitzmaurice, brother to the late Marquis of Lansdown—he is esteemed a very worthy man, and has since lived in habits of intimacy and regard with Lord Erskine.

country that tribute which is due from every man when the LIBERTY OF THE PRESS is invaded.

The Jury thus assembled, was formed from the first characters in their county:—men who would have most willingly condemned disaffection to the person of the King, or rebellion against his government: yet when such a Jury was empannelled, and such names were found upon it as Sir Watkyn Williams Wynne, and others not less respectable, this *public-spirited Prosecutor, who had no other object than public justice*, was confounded and appalled.—He said to himself, This will never do.—All these gentlemen know, not only that this paper is not in itself a libel, but that it neither was nor could be published by the Dean with a libellous intention; what is worse than all, they are men of too proud an honour to act, upon any persuasion or authority, against the conviction of their own consciences. But how shall I get rid of them?—They are already struck and empannelled, and unfortunately neither integrity nor sense are challenges to jurors.

Gentlemen, in this dilemma, he produced an affidavit, which appeared to me not very sufficient for the purpose of evading the trial; but as those, who upon that occasion had to decide that question upon their oaths, were of a different opinion, I shall not support my own by any arguments, meaning to conduct myself, with the utmost reverence for the administration of justice. I shall therefore content myself with stating, that the affidavit contained no other matter, than that there had been published at Wrexham an extract from Dr. Towers's Biography, containing accounts of trials for libels published above a century ago, from which the Jurors (if it had fallen in their way, which was not even deposed to) might have been informed of their right to judge their fellow-citizens, for crimes affecting their liberties or their lives;—a doctrine not often disputed, and never without the vindication of it, by the greatest and most illustrious names in the law. But, says this *public-spirited* Prosecutor, IF THE JURY are to try this, I must withdraw my prosecution; for they are men of honour and sense;—they know the constitution of their country, and they know the Dean of Saint Asaph; and I have therefore nothing left but to apply to the Judges, suggesting that the minds of the Special Jury are so prejudiced, by being told that they are Englishmen, and that they have the power of acquitting a defendant accused of a crime, if they think him innocent, that they are unfit to sit in judgment upon him. Gentlemen, the scheme succeeded; and I was put in my chaise, and wheeled back again, with the matter in my pocket which had post-

poned the trial;—matter which was to be found in every shop in London, and which had been equally within the reach of every man, who had sat upon a jury since the times of King Charles the Second.

In this manner, above a year ago, the Prosecutor deprived my reverend friend of an honourable acquittal in his own country. It is a circumstance material in the consideration of this indictment, because, in administering public justice, you will, I am persuaded, watch with jealousy to discover, whether public justice be the end and object of the prosecution: and in trying, whether my reverend Client proceeded *malo animo* in the publication of this Dialogue, you will certainly obtain some light from examining, *quo animo* the Prosecutor has arraigned him before you.

When the indictment was brought down again to trial at the next following assizes, there were no more pamphlets to form a pretext for procrastination. I was surprised, indeed, that they did not employ some of their own party to publish one, and have recourse to the same device which had been so successful before; but this mode either did not strike, or was thought to be but fruitlessly delaying that acquittal, which could not be ultimately prevented.

The Prosecutor, therefore, secretly sued out a writ of *certiorari* from the Court of King's Bench, the effect of which was to remove the indictment from the Court of Great Sessions in Wales, and to bring it to trial as an English record in an English county. Armed with this secret weapon to defeat the honest and open arm of justice, he appeared at Wrexham, and gave notice of trial, saying to himself, "I will take no "notice that I have the King's writ, till I see the complexion "of the jury;—if I find them men fit for my purpose, either "as the prostitutes of power, or as men of little minds, or "from their insignificance equally subject to the frown of "authority, and the blandishments of corruption, so that I "may reasonably look for a sacrifice, instead of a trial, I will "then keep the *certiorari* in my pocket, and the proceedings "will of course go forward:—but if, on the contrary, I find "such names as I found before;—if the gentlemen of the "county are to meet me; I will then, with His Majesty's "writ in my hand, discharge them from giving that verdict of "acquittal, which their understandings would dictate, and "their consciences impose."

Such, without any figure, I may assert to have been the secret language of Mr. Jones to himself, unless he means to slander those gentlemen in the face of this Court, by saying

that the jurors, from whose jurisdiction he, by his *certiorari* withdrew the indictment, were not impartial, intelligent, and independent men;—a sentiment which he dares not presume even to whisper, because in public or in private he would be silenced by all who heard it.

From such a tribunal this public-spirited Prosecutor shrunk a second time: and just as I was getting out of my chaise at Wrexham, after another journey from the other side of the island, without even notice of an intention to postpone the trial, he himself in person (his counsel having, from a sense of honour and decency, refused it) presented the King's writ to the Chief Justice of Chester, which dismissed the Dean for ever from the judgment of his neighbours and countrymen, and which brings him before you to-day.

What opinion then must the Prosecutor entertain of your honour, and your virtues, since he evidently expects from you a verdict, which it is manifest from his conduct he did not venture to hope for, from such a jury as I have described to you?

Gentlemen, I observe an honest indignation rising in all your countenances on the subject, which, with the arts of an advocate, I might easily press into the service of my friend: but as his defence does not require the support of your resentments, or even of those honest prejudices to which liberal minds are but too open without excitation, I shall draw a veil over all that may seduce you from the correctest and the severest judgment.

Gentlemen, the Dean of St. Asaph is indicted by the Prosecutor, not for having published this little book;—that is not the charge:—he is indicted for publishing a false, scandalous, and malicious libel, and for publishing it (I am now going to read the very words of the charge) "with a malicious "design and intention to diffuse among the subjects of this "realm jealousies and suspicions of the King and his Gov- "ernment;—to create disaffection to his person;—to raise "seditions and tumults within the kingdom;—and to excite "His Majesty's subjects to attempt, by armed rebellion and "violence, to subvert the state and constitution of the nation."

These are not words of *form*, but of the very essence of the charge. The Defendant pleads that he is not guilty, and puts himself upon you his country; and it is fit therefore, that you should be distinctly informed of the effect of a general verdict of guilty on such an issue, before you venture to pronounce it.—By such a verdict you do not merely find, that the Defendant *published the paper in question*; for if that

were the whole scope of such a finding, involving no examination into the *merits* of the thing published, the term *guilty* might be wholly inapplicable and unjust, because the publication of that which is not criminal cannot be a crime, and because a man cannot be *guilty* of publishing that which contains in it nothing which constitutes guilt. This observation is confirmed by the language of the record; for if the verdict of guilty involved no other consideration than the simple fact of publication, the legal term would be, *that the Defendant* PUBLISHED, not that he was GUILTY of publishing:—yet they, who tell you that a general verdict of guilty comprehends nothing more than the fact of publishing, are forced in the same moment to confess, that if you found *that fact alone*, without applying to it the epithet of *guilty*, no judgment or punishment could follow from your verdict; and they therefore call upon you to pronounce that guilt, which they forbid you to examine into, acknowledging at the same time, that it can be legally pronounced by NONE BUT YOU:—a position shocking to conscience, and insulting to common sense.

Indeed every part of the record exposes the absurdity of a verdict of *guilty*, which is not founded on a previous judgment that the matter indicted is a libel, and that the Defendant published it with a criminal intention; for if you pronounce the word *guilty*, without meaning to find sedition in the thing published, or in the mind of the publisher, you expose to shame and punishment the innocence which you mean to protect; since the instant that you say the Defendant is *guilty*, the gentleman who sits under the Judge is bound by law to record him *guilty in manner and form as he is accused*; i. e. guilty of publishing a seditious libel, with a seditious intention; and the Court above is likewise bound to put the same construction on your finding. Thus, without inquiry into the only circumstance which can constitute *guilt*, and without meaning to find the Defendant *guilty*, you may be seduced into a judgment which your consciences may revolt at, and your speech to the world deny; but which the authors of this system have resolved that you shall not explain to the Court, when it is proceeding to punish the Defendant on the authority of your intended verdict of acquittal.

As a proof that this is the plain and simple state of the question, I might venture to ask the learned Judge, what answer I should receive from the Court of King's Bench, if you were this day to find the Dean of St. Asaph guilty, but without

meaning to find it a libel, or that he published it with a wicked and seditious purpose; and I, on the foundation of your wishes and opinions, should address myself thus to the Court when he was called up for judgment:

"My Lords, I hope that in mitigation of my Client's "punishment, you will consider that he published it with "perfect innocence of intention, believing on the highest authorities, that every thing contained in it was agreeable "to the laws and constitution of his country; and that your "Lordships will further recollect that the Jury, at the "trial, gave no contrary opinion, finding only *the fact of publication.*"

Gentlemen, if the patience and forbearance of the Judges permitted me to get to the conclusion of such an absurd speech, I should hear this sort of language from the Court in answer to it: "We are surprised, Mr. Erskine, at every "thing we have heard from you. You ought to know your "profession better, after seven years practice of it, than to "hold such a language to the Court: *you are estopped by "the verdict of guilty, from saying he did not publish with "a seditious intention;* and we cannot listen to the declarations of jurors in contradiction to their recorded "judgment."

Such would be the reception of that defence;—and thus you are asked to deliver over the Dean of St. Asaph into the hands of the Judges, humane and liberal indeed, but who could not betray *their* oaths, because you had set them the example by betraying *yours*, and who would therefore be bound to believe him criminal, because *you* had said so on the record, though in violation of your opinions—opinions which, as ministers of the law, they could not act upon,—to the existence of which they could not even advert.

The conduct of my friend Mr. Bearcroft, upon this occasion, which was marked with wisdom and discretion, is a farther confirmation of the truth of all these observations:—for, if your duty had been confined to the simple question of publication, his address to you would have been nothing more, than that he would call his witness to prove *the fact that the Dean published this paper*, instead of enlarging to you, as he has done with great ability, on the libellous nature of the publication. There is, therefore, a gross inconsistency in his address to you,—not from want of his usual precision, but because he is hampered by his good sense in stating an absurd argument, which happens to be necessary for his purpose; for he sets out with saying, that if you shall be of

opinion it has no tendency to excite sedition, you must find him *not guilty;* and ends with telling you, that whether it *has* or *has not* such tendency, is a question of *law for the Court*, and foreign to the present consideration.—It requires, therefore, no other faculty than that of keeping awake, to see through the fallacy of such doctrines; and I shall therefore proceed to lay before you the observations I have made upon this Dialogue, which you are desired to censure as a libel.

I have already observed, and it is indeed on all hands admitted, that if it be libellous at all, it is a libel on the public government, and not the slander of any private man.

Now to constitute a libel upon the government, one of two things appears to me to be absolutely necessary. The publication must either arraign and misrepresent the general principles, on which the constitution is founded, with a design to render the people turbulent and discontented under it:—or, admitting the good principles of the government in the abstract, must accuse the existing administration with a departure from them,—in such a manner too, as to convince a Jury of an evil design in the writer.

Let us try this little pamphlet by these touchstones, and let the Defendant stand or fall by the test.

The beginning of this pamphlet, and indeed the evident and universal scope of it, is to render our happy constitution, and the principles on which it is founded well understood, by all that part of the community which are out of the pale of that knowledge by liberal studies and scientific reflections;—a purpose truly public-spirited, and which could not be better effected, than by having recourse to familiar comparisons drawn from common life, more suited to the frame of unlettered minds than abstract observations.

It was this consideration that led Sir William Jones,* a gentleman of great learning and excellent principles, to compose this Dialogue, and who immediately after avowing himself to be the author, was appointed by the King to be one of the Supreme Judges of our Asiatic empire; where, he would hardly have been selected to preside, if his work had been thought seditious. Of this I am sure, that his intentions were directly the contrary. He thought and felt, as all men of sense must feel and think, that there was no mode so likely

* Sir William Jones is now dead, but his name will live for ever in the grateful memory of his country.

to inculcate obedience to government in an Englishman, as to make him acquainted with its principles; since the English constitution must always be cherished, and revered exactly in the proportion that it is understood.

He therefore divested his mind of all those classical refinements which so remarkably characterize it, and composed this simple and natural Dialogue between a Gentleman and a Farmer: in which the Gentleman, meaning to illustrate the great principles of public government, by comparing them with the lesser combinations of society, asks the Farmer, what is the object of the little club in the village of which he is a member and if he is a member of it on compulsion or by his free consent?—If the president is self-appointed, or rules by election?—If he would submit to his taking the money from the box without the vote of the members?—with many other questions of a similar tendency; and being answered in the negative, he very luminously brings forward the analogy by making the Gentleman say to him, "did it never occur to "you that every state is but a great club?" or, in other words, that the greater as well as the lesser societies of mankind are held together by social compacts, and that the government of which you are a subject, is not the rod of oppression in the hands of the strongest, but is of your own creation;—a voluntary emanation from yourself, and directed to your own advantage.

Mr. Bearcroft, sensible that this is the just and natural construction of that part of the Dialogue, was very desirous to make you believe that the other part of it, touching the reform in the representation of the people in Parliament, had no reference to that context; but that it was to be connected with all that follows about bearing arms. I must therefore beg your attention to that part of the publication, which will speak plainly for itself.

The Gentleman says to the Farmer, on his telling him he had no vote, "Do you know that six men in seven have, like "you, no voice in the election of those who make the laws "which bind your property and life?" And then asks him to sign a petition which has for its object to render elections co-extensive with the trusts which they repose.—And is there a man upon the Jury, who does not feel that all the other advantages of our constitution are lost to us, until this salutary object is attained; or who is not ready to applaud every man who seeks to attain it by means that are constitutional?

But, according to my friend, the means proposed were not constitutional, but rebellious. I will give you his own words,

as I took them down: "The gentleman was saying, very "intelligibly,—Sir, I desire you to rebel,—to clothe yourself "in armour, for you are cheated of your inheritance. How "are you to rectify this?—How are you to right yourselves? "—Learn the Prussian exercise."

But, how does my friend collect these expressions from the words of the passages, which are shortly these: "And the "petition which I desired you to sign has only for its object "the restoration of your right to choose your law-makers." I confess I am at a loss to conceive how the Prussian exercise finds its way into this sentence. It is a most martial way of describing pen and ink.—Cannot a man sign a petition without tossing a firelock? I, who have been a soldier, can do either;—but I do not sign my name with a gun. There is, besides, another difficulty in my friend's construction of the sentence. The object of the petition is the choosing of law-makers; but according to him, there is to be an end of all law-makers, and of all laws: for neither can exist under the Prussian exercise. He must be a whimsical scholar, who tells a Farmer to sign a petition for the improvement of government, his real purpose being to set it upon the die of a rebellion, whether there should be any government at all.

But, let me ask you, Gentlemen, whether such strained constructions are to be tolerated in a criminal prosecution, when the simple and natural construction of language falls in directly with the fact? You cannot but know, that, at the time when this Dialogue was written, the table of the House of Commons groaned with petitions presented to the House from the most illustrious names and characters, representing the most important communities in the nation;—not with the threat of the Prussian exercise, but with the prayer of humility and respect to the Legislature, that some immediate step should be taken to avert that ruin, which the defect in the representation of the people must sooner or later bring upon this falling empire. I do not choose to enter into political discussions here. But we all know, that the calamities which have fallen upon this country have proceeded from that fatal source; and every wise man must be therefore sensible, that a reform, if it can be attained without confusion, is a most desirable object.—But whether it be or be not desirable, is an idle speculation;—because, at all events, the subject has a right to petition for what he *thinks* beneficial; however visionary, therefore, you may think his petition, you cannot deny it to be constitutional and legal; and I may venture to assert, that this Dialogue is the *first abstract speculative*

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*writing, which has been attacked as a libel since the Revolution;* and from Mr. Bearcroft's admission, that the proceeding is not prudent, I may venture to foretel that it will be the last.

If you pursue this part of the Dialogue to the conclusion, the false and unjust construction put upon it becomes more palpable: "Give me your pen," said the Farmer; "I never "wrote my name, ill as it may be written, with greater ea- "gerness." Upon which the Gentleman says, "I applaud "you, and trust that your example will be followed by mil- "lions." What example?—Arms?—Rebellion?—Disaffection? No!—but that others might add their names to the petition, which he had advised him to sign, until the voice of the whole nation reached Parliament on the subject. This is the plain and obvious construction; and it is not long since that those persons in Parliament with whom my friend associates, and with whom he acts, affected at least to hold the voice of the people of England to be the rule and guide of Parliament; and the Gentleman in the Dialogue, knowing that the universal voice of the community could not be wisely neglected by the Legislature, only expressed his wish, that the petitions should not be partial, but universal.

With the expression of this wish every thing in the Dialogue upon the subject of representation finally closes; and if you will only honour me with your attentions for a few moments longer, I will show you, that the rest of the pamphlet is the most abstract speculation on government to be found in print; and that I was well warranted when I told you some time ago, that all its doctrines were to be found in the brightest pages of English learning, and in the most sacred volumes of English laws.

The subject of the petition being finished, the Gentleman says, "Another word before we part. "What ought to be "the consequence, if THE KING ALONE were to insist on ma- "king laws, or on altering them at his will and pleasure?" To which the Farmer answers, "He too must be expelled."— "Oh, but think of his standing army," says the Gentleman, "and of the militia, which now are his in substance, though "ours in form." Farmer, "If he were to employ that force "against the nation, they would, and ought to resist him, or "the state would cease to be a state." And now you will see that I am not countenancing rebellion; for if this were pointed to excite resistance to the King's authority, and to lead the people to believe that His Majesty was, in the present course of his government, breaking through the laws, and therefore,

on the principles of the constitution, was subject to expulsion, I admit that my Client ought to be expelled from this and every other community. But is this proved?—No! It is not even asserted. I say this in the hearing of a Judge deeply learned in the laws, and who is bound to tell you, that there is nothing in the indictment, which even charges such an application of the general doctrine. The gentleman who drew it is also very learned in his profession; and if he had intended such a charge, he would have followed the rules delivered by the twelve judges in the House of Lords, in the case of the King against Horne*, and would have set out with saying, that, at the time of publishing the libel in question, there were petitions from all parts of England, desiring a reform in the representation of the people in Parliament;—and that the Defendant knowing this, and intending to stir up rebellion, and to make the people believe, that His Majesty was ruling contrary to law, and ought to be expelled, caused to be published the Dialogue. This would have been the introduction to such a charge; and then when he came to the words, "He "too must be expelled," he would have said, by way of innuendo, *meaning thereby to insinuate, that the King was governing contrary to law, and ought to be expelled;* which innuendo, though void in itself, without antecedent matter by way of introduction, would, when coupled with the introductory averment on the record, have made the charge complete.—I should have then known what I had to defend my Client against, and should have been prepared with witnesses to show you the absurdity of supposing that the Dean ever imagined, or meant to insinuate, that the present King was governing contrary to law. But the penner of the indictment, well knowing that you never could have found such an application, and that, if it had been averred as the true meaning of the Dialogue, the indictment must have fallen to the ground for want of such finding, prudently omitted the innuendo:—yet you are desired by Mr. Bearcroft, to take that to be the true construction, which the Prosecutor durst not venture to submit to you by an averment in the indictment, and which not being averred, is not at[illegible]fore you.

But [illegible]u attend to what follows, you will observe that the writ[illegible]*rely speculative*, comprehending *all* the modes by wh[illegible]overnment may be dissolved; for it is followed with the speculative case of injury to a government from bad ministers, and its constitutional remedy. Says the Gen-

* See Mr. H. Cowper's Reports.

tleman, "What if the great accountants and great lawyers of "the nation were to abuse their trust, and cruelly injure, in- "stead of faithfully serving the public, what in such case are "you to do?" Farmer, we must request the King to remove "them, and make trial of others, but none should implicitly "be trusted." Request *the King* to remove them! why, according to Mr. Bearcroft, you had expelled *him* the moment before.

Then follows a third speculation of a government dissolved by an aristocracy, the King remaining faithful to his trust; for the Gentleman proceeds thus; "But what, if a few great "lords or wealthy men were to keep the King himself in sub- "jection, yet exert his force, lavish his treasure, and misuse "his name, so as to domineer over the people and manage "the Parliament?" Says the Farmer, "We must fight for "the King and for ourselves." What? for the fugitive King whom the Dean of St. Asaph had before expelled from the crown of these kingdoms! Here again the ridicule of Mr. Bearcroft's construction stares you in the face; but taking it as an abstract speculation of the ruin of a state by aristocracy, it is perfectly plain. When he first puts the possible case of regal tyranny, he states the remedy of expulsion;—when of bad ministers to a good King, the remedy of petition to the throne;—and when he supposes the throne to be over- powered by aristocratic dominion, he then says, "We must "fight for the King and for ourselves."—If there had been but one speculation; viz. of regal tyranny, there might have been plausibility at least in Mr. Bearcroft's argument; but when so many different propositions are put, altogether repugnant to and inconsistent with each other, common sense tells every man that the writer is speculative, since no state of facts can suit them all.

Gentlemen, these observations, striking as they are, must lose much of their force, unless you carry along with you the writing from which they arise; and therefore I am persuaded that you will be permitted to-day to do what Juries have been directed by Courts to do on the most solemn occasions, that is, to take the supposed libel with you out of court, and to judge for yourselves whether it be possible for any conscientious or reasonable man to fasten upon it any other interpretation, than that which I have laid before you.

If the Dialogue is pursued a little further, it will be seen, that all the exhortations to arms are pointed to the protection of the King's government, and the liberty of the people de- rived from it. Says the Gentleman, "You talk of fighting

"as if you were speaking of some rustic engagement; but "your quarter-staff would avail you little against bayonets." Farmer, "We might easily provide ourselves with better "arms."—"Not so easily," says the Gentleman; "you ought "to have a strong firelock." What to do? look at the context,—For God's sake do not violate all the rules of grammar, by refusing to look at the next antecedent!—take care to have a firelock. For what purpose? "to fight for the King and "yourself," in case the King, who is the fountain of legal government, should be kept in subjection by those great and wealthy lords, who might abuse his authority and insult his title. This, I assert, is not only the genuine and natural construction, but the only legal one it can receive from the Court on this record; since, in order to charge all this to be not merely speculative and abstract, but pointing to the King and his government, to the expulsion of our gracious Sovereign, whom my reverend friend respects and loves, and whose government he reverences as much as any man who hears me, there should have been such an introduction as I have already adverted to, viz. that there were such views and intentions in *others*, and that *He*, *knowing it*, *and intending to improve and foment them*, *wrote so and so*; and then on coming to the words, *that the King must be expelled*, the sense and application should have been pointed by an averment, *that he thereby meant to insinuate to the people of England*, *that the present King ought in fact to be expelled*; and not speculatively, that under such circumstances it would be lawful to expel a King.

Gentlemen, if I am well founded in thus asserting, that neither in law nor in fact is there any seditious application of those general principles, there is nothing further left for consideration, than to see whether they be warranted in the abstract;—a discussion hardly necessary under the government of his present Majesty, who holds his crown under the act of settlement, made in consequence of the compact between the King and people at the Revolution. What part you or I, Gentlemen, might have taken, if we had lived in the days of the Stuarts, and in the unhappiest of their days which brought on the Revolution, is foreign to the present question;—whether we should have been found among those glorious names, who from well-directed principle supported that memorable æra, or amongst those who from mistaken principle opposed it, cannot affect our judgments to-day:—whatever part we may conceive we should or ought to have acted, we are bound by the acts of our ancestors, who de-

termined that there existed an original compact between King and people,—who declared, that King James had broken it,—and who bestowed the crown upon another,—The principle of that memorable revolution is fully explained in the Bill of Rights, and forms the most unanswerable vindication of this little book. The misdeeds of King James are drawn up in the preamble to that famous statute; and it is worth your attention, that one of the principal charges in the catalogue of his offences is, that he caused several of those subjects (whose right to carry arms is to-day denied by this indictment) to be disarmed in defiance of the laws.—Our ancestors having stated all the crimes for which they took the crown from the head of their fugitive sovereign, and having placed it on the brows of their deliverer, mark out the conditions on which he is to wear it. They were not to be betrayed by his great qualities, nor even by the gratitude they owed him, to give him an unconditional inheritance in the throne; but enumerating all their ancient privileges, they tell their new sovereign in the body of the law, that while he maintains these privileges, and no longer than he maintains them, *he is King*.

The same wise caution, which marked the acts of the Revolution, is visible in the act of settlement on the accession of the House of Hanover, by which the crown was again bestowed upon the strict condition of governing according to law,—maintaining the Protestant religion,—and not being married to a Papist.

Under this wholesome entail, *which again vindicates every sentence in this book*, may His Majesty and his posterity hold the crown of these kingdoms for ever!—a wish in which I know I am fervently seconded by my reverend friend, and with which I might call the whole country to vouch for the conformity of his conduct.

But my learned friend, knowing that I was invulnerable here, and afraid to encounter those principles on which his own personal liberty is founded, and on the assertion of which his well-earned character is at stake in the world, says to you with his usual artifice: "Let us admit that there is "no sedition in this Dialogue, let us suppose it to *be* all con-"stitutional and legal, *yet it may do mischief:—why tell the "people so?*

Gentlemen, I am furnished with an answer to this objection, which I hope will satisfy my friend, and put an end to all disputes among us; for upon this head I will give you the opinion of Mr. Locke, the greatest Whig that ever lived

in this country, and likewise of Lord Bolingbroke, the greatest Tory in it; by which you see that Whigs and Tories, who could never accord in any thing else, were perfectly agreed upon the propriety and virtue of enlightening the people on the subject of government.

Mr. Locke on this subject speaks out much stronger than the Dialogue. He says in his Treatise on Government, "Wherever law ends tyranny begins; and whoever, in authority, exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and, acting without authority, may be opposed as any other man, who by force invades the right of another. This is acknowledged in subordinate magistrates. He that hath authority by a legal warrant to seize my person *in the street*, may be opposed as a thief and a robber, if he endeavours to break *into my house* to execute it on me there, although I know he has such a warrant as would have empowered him to arrest me abroad. And why this should not hold in the highest as well as in the most inferior magistrate, I would gladly be informed. For the exceeding the bounds of authority is no more a right in a great than in a petty officer, *in a King* than *in a constable*; but is so much the worse in him, that he has more trust put in him, and more extended evil follows from the abuse of it."

But Mr. Locke, knowing that the most excellent doctrines are often perverted by wicked men, who have their own private objects to lead them to that perversion, or by ignorant men who do not understand them, takes the very objection of my learned friend, Mr. Bearcroft, and puts it as follows into the mouth of his adversary, in order that he may himself answer and expose it: "But there are who say that it "lays a foundation for rebellion,"—Gentlemen, you will do me the honour to attend to this, for one would imagine Mr. Bearcroft had Mr. Locke in his hand when he was speaking.

"But there are who say that it lays a foundation for rebellion, to tell the people that they are absolved from obedience, when illegal attempts are made upon their liberties, and that they may oppose their magistrates when they invade their properties, contrary to the trust put in them; and that, therefore, the doctrine is not to be allowed, as libellous, dangerous, and destructive of the peace of the world."—But that great man instantly answers the objec-

tion, which he had himself raised in order to destroy it, and truly says, "such men might as well say, that the people "should not be told that honest men may oppose robbers or "pirates, lest it should excite to disorder and bloodshed."

What reasoning can be more just?—for if we were to argue from the possibility, that human depravity and folly may turn to evil what is meant for good, all the comforts and blessings which God, the author of indulgent nature, has bestowed upon us, and without which we should neither enjoy nor indeed deserve our existence, would be abolished as pernicious, till we were reduced to the fellowship of beasts.

The Holy Gospels could not be promulgated;—for though they are the foundation of all the moral obligations, which unite men together in society, yet the study of them often conducts weak minds to false opinions, enthusiasm, and madness.

The use of pistols should be forbidden;—for, though they are necessary instruments of self-defence, yet men often turn them revengefully upon one another in private quarrels.—Fire ought to be prohibited; for though, under due regulations, it is not only a luxury but a necessary of life, yet the dwellings of mankind and whole cities are often laid waste and destroyed by it.—Medicines and drugs should not be sold promiscuously;—for though, in the hands of skilful physicians, they are the kind restoratives of nature, yet they may come to be administered by quacks, and operate as poisons. There is nothing, in short, however excellent, which wickedness or folly may not pervert from its intended purpose. But if I tell a man, that if he takes my medicine in the agony of disease, it will expel it by the violence of its operation, will it induce him to destroy his constitution by taking it while he is in health? Just so, when a writer speculates on all the ways by which human governments may be dissolved, and points out the remedies, which the history of the world furnishes from the experience of former ages; is he, therefore, to be supposed to prognosticate instant dissolution in the existing government, and to stir up sedition and rebellion against it?

Having given you the sentiments of Mr. Locke, published three years after the accession of King William, who caressed the author, and raised him to the highest trust in the state, let us look at the sentiments of a Tory, on that subject, not less celebrated in the republic of letters, and on the theatre of the world:—I speak of the great Lord Bolingbroke, who was in arms to restore King James to his forfeited throne, and who was anxious to rescue the Jacobites

from what he thought a scandal on them, namely the imputation, that, because from the union of so many human rights centred in the person of King James, they preferred and supported his hereditary title on the footing of our own ancient civil constitutions, they, therefore believed in his claim to govern *jure divino*, independent of the law.

This doctrine of passive obedience, which the Prosecutor of this libel must successfully maintain to be the law, and which certainly is the law, if this Dialogue be a libel, was resented above half a century ago by this great writer, even in a tract written while an exile in France on account of his treason against the House of Hanover. "The duty of the "people," says his Lordship, "is now settled upon so "clear a foundation, that no man can hesitate how far he is "to obey, or doubt upon what occasions he is to resist. "Conscience can no longer battle with the understanding: "we know that we are to defend the crown with our lives "and fortunes, as long as the crown protects us, and keeps "strictly to the bounds within which the laws have con-"fined it. We know likewise, that we are to do it no "longer."

Having finished three volumes of masterly and eloquent discussions on our government, he concludes, with stating the duty imposed on every enlightened mind to instruct the people on the principles of our government, in the following animated passage: "The whole tendency of these discourses "is to inculcate a rational idea of the nature of our free "government into the minds of all my countrymen, and to "prevent the fatal consequence of those slavish principles, "which are industriously propagated through the kingdom, "by wicked and designing men. He who labours to blind "the people, and to keep them from instruction on those "momentous subjects, may be justly suspected of sedition "and disaffection; but he who makes it his business to open "the understandings of mankind, by laying before them the "true principles of their government, cuts up all faction by "the roots; for it cannot but interest the people in the pre-"servation of their constitution, when they know its excel-"lence and its wisdom."

But, says Mr. Bearcroft, again and again, "are the mul-"titude to be told all this?" I say as often on my part, YES. I say, that nothing can preserve the government of this free and happy country, in which under the blessing of God we live;—that nothing can make it endure to all future ages, but its excellence and its wisdom being known, not only to you

and the higher ranks of men, who may be overborne by a contentious multitude, but also to the great body of the people, by disseminating among them the true principles on which it is established; which show them, that they are not the hewers of wood and the drawers of water to men who avail themselves of their labour and industry;—but that government is a *trust* proceeding from *themselves*;— an emanation from their own strength;—a benefit and a blessing which has stood the test of ages;—that they are governed because they desire to be governed, and yield a voluntary obedience to the laws, because the laws protect them in the liberties they enjoy.

Upon these principles I assert with men of all denominations and parties, who have written on the subject of free governments, that this Dialogue, so far from misrepresenting or endangering the constitution of England, disseminates obedience and affection to it as far as it reaches;—and that the comparison of the great political institutions with the little club in the village, is a decisive mark of the honest intention of its author.

Does a man rebel against the president of his club while he fulfils his trust?—No: because he is of his own appointment, and acting for his comfort and benefit. This safe and simple analogy, lying within the reach of every understanding, is therefore adopted by the scholar as the vehicle of instruction; who wishing the peasant to be sensible of the happy government of this country, and to be acquainted with the deep stake he has in its preservation, truly tells him, that a nation is but a great club, governed by the same consent, and supported by the same voluntary compact; impressing upon his mind the great theory of public freedom, by the most familiar allusions to the little but delightful intercourses of social life, by which men derive those benefits, that come home the nearest to their bosoms.

Such is the wise and innocent scope of this Dialogue, which, after it had been repeatedly published without censure, and without mischief, under the public eye of government in the capital, is gravely supposed to have been circulated by my reverend friend many months afterwards, with a malignant purpose to overturn the monarchy by an armed rebellion.

Gentlemen, if the absurdity of such a conclusion, from the scope of the Dialogue itself, were not self-evident, I might render it more glaring by adverting to the condition of the publisher. The affectionate son of a Reverend Prel-

ate* not more celebrated for his genius and learning than for his warm attachment to the constitution, and in the direct road to the highest honours and emoluments of that very church, which, when the monarchy falls, must be buried in its ruins :—nay, the publisher a dignitary of the same church himself at an early period of his life, and connected in friendship with those, who have the dearest stakes in the preservation of the government, and who, if it continues, may raise him to all the ambitions of his profession. I cannot therefore forbear from wishing that somebody, in the happy moments of fancy, would be so obliging as to invent a reason, in compassion to our dulness, why my reverend friend should aim at the destruction of the present establishment ; since you cannot but see, that the moment he succeeded, down comes his father's mitre, which leans upon the crown ;—away goes his own deanery, with all the rest of his livings ; and neither you nor I have heard any evidence to enable us to guess what he is looking for in their room.—In the face nevertheless of all these absurdities, and without a colour of evidence from his character or conduct in any part of his life, he is accused of sedition, and under the false pretence of public justice, dragged out of his own county, deprived of that trial by his neighbours, which is the right of the meanest man who hears me, and arraigned before you, who are strangers to those public virtues which would in themselves be an answer to this malevolent accusation. But when I mark your sensibility and justice in the anxious attention you are bestowing, when I reflect upon your characters, and observe from the pannel (though I am personally unknown to you) that you are men of rank in this county, I know how these circumstances of injustice will operate :—I freely forgive the Prosecutor for having fled from his original tribunal.

Gentlemen, I come now to a point very material for your consideration ;—on which even my learned friend and I, who are brought here for the express purpose of disagreeing in every thing, can avow no difference of opinion ;—on which judges of old and of modern times, and lawyers of all interests and parties, have ever agreed ; namely, that even if this innocent paper were admitted to be a libel, the publication would not be criminal, if you, the Jury saw reason to believe that it was not published by the Dean with a criminal intention. It is true, that if a paper containing seditious and libellous matter be published, the publisher is *prima facie*

* Dr. Shipley, then Bishop of St Asaph.

guilty of sedition, the bad intention being a legal inference from the act of publishing: but it is equally true, that he may rebut that inference, by showing that he published it innocently.

This was declared by Lord Mansfield, in the case of the King and Woodfall: where his Lordship said, that the fact of publication would in that instance have constituted guilt, if the paper was a libel: because the Defendant had given no evidence to the Jury to repel the legal inference of guilt, as arising from the publication; but he said at the same time, in the words that I shall read to you, that such legal inference was to be repelled by proof.

"There may be cases where the fact of the publication "even of a libel, may be justified or excused as lawful or "innocent; for no fact which is not criminal, even though "the paper be a libel, can amount to a publication of which "a Defendant ought to be found guilty."

I read these words from Burrow's Reports, published under the eye of the Court, and they open to me a decisive defence of the Dean of St. Asaph upon the present occasion, and give you an evident jurisdiction to acquit him, even if the law upon libels were as it is laid down to you by Mr. Bearcroft: for if I show you, that the publication arose from motives that were innocent, and not seditious, he is not a criminal publisher, even if the Dialogue were a libel, and, according even to Lord Mansfield, ought not to be found guilty.

The Dean of St. Asaph was one of a great many respectable gentlemen, who, impressed with the dangers impending over the public credit of the nation, exhausted by a long war, and oppressed with grievous taxes, formed themselves into a committee, according to the example of other counties, to petition the Legislature to observe great caution in the expenditure of the public money. This Dialogue, written by Sir William Jones, a near relation of the Dean by marriage, was either sent, or found its way to him in the course of public circulation. He knew the character of the author; he had no reason to suspect him of sedition or disaffection; and believed it to be, what I at this hour believe, and have represented it to you, a plain, easy manner of showing the people the great interest they had in petitioning Parliament for reforms beneficial to the public. It was accordingly the opinion of the Flintshire committee, and not particularly of the Dean as an individual, that the Dialogue should be translated into Welsh, and published. It was accordingly deliv-

ered, at the desire of the committee, to a Mr. Jones, for the purpose of translation. This gentleman, who will be called as a witness, told the Dean a few days afterwards, that there were persons, not indeed from their real sentiments, but from spleen and opposition, who represented it as likely to do mischief, from ignorance and misconception, if translated and circulated in Wales,

Now, what would have been the language of the Defendant upon this communication, if his purpose had been that which is charged upon him by the indictment? He would have said, "If what you tell me is well-founded, *hasten the* "*publication*; I am sure I shall never raise discontent here, "by the dissemination of such a pamphlet in English:— "therefore let it be instantly translated, if the ignorant in- "habitants of the mountains are likely to collect from it, that "it is time to take up arms."

But Mr. Jones will tell you, that, on the contrary, the instant he suggested that such an idea, absurd and unfounded as he felt it, had presented itself, from any motives, to the mind of any man, the Dean, impressed as he was with its innocence and its safety, instantly acquiesced;—he recalled, even on his own authority, the intended publication by the committee; and it never was translated into the Welsh tongue at all.

Here the Dean's connexion with this Dialogue would have ended, if Mr. Fitzmaurice, who never lost any occasion of defaming and misrepresenting him, had not thought fit, near three months after the idea of translation was abandoned, to reprobate and condemn the Dean's conduct at the public meetings of the county in the severest terms, for his former intention of circulating the Dialogue in Welsh,—declaring that its doctrines were *seditious, treasonable, and repugnant to the principles of our government.*

It was upon this occasion that the Dean, naturally anxious to redeem his character from the unjust aspersions of having intended to undermine the constitution of his country,—conscious that the epithets applied to the Dialogue were false and unfounded,—and thinking that the production of it would be the most decisive refutation of the groundless calumny cast upon him, directed a few English copies of it to be published in vindication of his former opinions and intentions, prefixing an advertisement to it, which plainly marks the spirit in which he published it. For he there complains of the injurious misrepresentations I have adverted to, and impressed with the sincerest conviction of the innocence, or rather the

merit of the Dialogue, makes his appeal to the friends of the Revolution in his justification.

[*Mr. Erskine here read the advertisement to the Jury, as prefixed to the Dialogue.*]

Now, Gentlemen, if you shall believe upon the evidence of the witness to these facts, and of the advertisement prefixed to the publication itself (which is artfully kept back, and forms no part of the indictment), that the Dean, upon the authority of Sir William Jones who wrote it,—of the other great writers on the principles of our government,—and of the history of the country itself, really thought the Dialogue innocent and meritorious, and that his single purpose in publishing the English copies, after the Welsh edition had been abandoned, was the vindication of his character from the imputation of sedition,—then he is not guilty upon this indictment, which charges the publication with a wicked intent to excite disaffection to the King, and rebellion against his government.

*Actus non facit reum nisi mens sit rea*, is the great maxim of penal justice, and stands at the top of the criminal page, in every volume of our humane and sensible laws. The hostile *mind* is the crime which it is your duty to decipher;—a duty which I am sure you will discharge with the charity of Christians;—refusing to adopt a harsh and cruel construction, when one that is fair and honourable is more reconcilable, not only with all probabilities, but with the evidence which you are sworn to make the foundation of your verdict. The Prosecutor rests on the single fact of publication, without the advertisement, and without being able to cast an imputation upon the Defendant's conduct;—or even an observation to assign a motive to give verisimilitude to the charge.

Gentlemen, after the length of time, which, very contrary to my inclination, I have detained you, I am sure you will be happy to hear that there is but one other point to which my duty obliges me to direct your attention. I should, perhaps, have said nothing more concerning the particular province of a Jury upon this occasion, than the little I touched upon it at the beginning, if my friend Mr. Bearcroft had not compelled me to it, by drawing a line around you, saying (I hope with the same effect that King Canute said to the sea), "Thus far shalt thou go." But since he has thought proper to coop you in, it is my business to let you out:—and to give the greater weight to what I am about to say to you, I have no objection that every thing which I may utter shall be considered as proceeding from my own private opinions; and that not only my

professional character, but my more valuable reputation as a man, may stand or fall, by the principles which I shall lay down for the regulation of your judgments.

This is certainly a bold thing to say, since what I am about to deliver may clash in some degree (*though certainly it will not throughout*) with the decision of a great and reverend Judge, who has administered the justice of this country for above half a century with singular advantage to the public, and distinguished reputation to himself; but whose extraordinary faculties and general integrity, which I should be lost to all sensibility and justice if I did not acknowledge with reverence and affection, could not protect him from severe animadversion when he appeared as the supporter of those doctrines which I am about to controvert. I shall certainly never join in the calumny that followed them, because I believe he acted upon that, as upon all other occasions, with the strictest integrity;—an admission which it is my duty to make, which I render with great satisfaction, and which proves nothing more, than that the greatest of men are fallible in their judgments, and warns us to judge from the essences of things, and not from the authority of names, however imposing.

Gentlemen, the opinion I allude to is, that *libel or not libel* is a question of *law* for the Judge, *your* jurisdiction being confined to the *fact of publication.* And if this were all that was meant by the position (though I could never admit it to be consonant with reason or law); it would not affect me in the present instance, since all that it would amount to would be, that the Judge, and not you, would deliver the only opinion which can be delivered from that quarter upon this subject. But what I am afraid of upon this occasion is, that *neither of you are to give it;* for so my friend has expressly put it. "My Lord," says he, "will probably not give you "his opinion whether it be a libel or not, because, as he will "tell you, it is a question open upon the record, and that if "Mr. Erskine thinks the publication innocent, he may move "to arrest the judgment." Now this is the most artful and the most mortal stab that can be given to justice, and to my innocent Client. All I wish for is, that the judgment of the Court should be a guide to yours in determining, whether this pamphlet be or be not a libel;—because, knowing the scope of the learned Judge's understanding and professional ability, I have a moral certainty that his opinion would be favourable. If therefore libel or no libel be a question of law, as is asserted by Mr. Bearcroft, I call for his Lordship's judgment upon that

question, according to the regular course of all trials, where the law and the fact are blended; in all which cases the notorious office of the Judge is to instruct the consciences of the Jury, to draw a correct legal conclusion from the facts in evidence before them. A Jury are no more bound to return a special verdict in cases of libel, than upon other trials criminal and civil, where law is mixed with fact:—they are to find generally upon both, receiving, as they constantly do in every Court at Westminster, the opinion of the Judge both on the evidence and the law.

Say the contrary who will, I assert this to be the genuine, unrepealed constitution of England; and therefore, if the learned Judge shall tell you that this pamphlet is in the abstract a libel; though I shall not agree that you are therefore *bound* to find the Defendant guilty unless you think so likewise, yet I admit his opinion ought to have very great weight with you, and that you should not rashly, nor without great consideration, go against it.—But, if *you* are only to find the *fact of publishing*, which is not even disputed; and the Judge is to tell you, that the matter of libel being on the record, *he shall shut himself up in silence, and give no opinion at all as to the libellous and seditious tendency of the paper, and yet shall nevertheless expect you to affix the epithet of* GUILTY *to the publication of a thing, the* GUILT *of which* YOU *are forbid, and* HE *refuses to examine;*—miserable indeed is the condition into which we are fallen! Since if you, following such directions, bring in a verdict of guilty, without finding the publication to be a libel, or the publisher seditious; and I afterwards, in mitigation of punishment, shall apply to that humanity and mercy which is never deaf, when it can be addressed consistently with the law; I shall be told in the language I before put in the mouths of the Judges, "You are "estopped, Sir, by the verdict: we cannot hear you say your "Client was mistaken, but NOT GUILTY; for, had *that* been "the opinion of the Jury, they had a jurisdiction to *acquit* "him."

Such is the way in which the liberties of Englishmen are by this new doctrine to be shuffled about from jury to court, without having any solid foundation to rest on. I call this the effect of *new* doctrines, because I do not find them supported by that current of ancient precedents which constitutes English law. The history of seditious libels is perhaps one of the most interesting subjects which can agitate a Court of Justice, and my friend thought it prudent to touch but very slightly upon it.

We all know, that by the immemorial usage of this country, no man in a criminal case could ever be compelled to plead a special plea;—for although our ancestors settled an accurate boundary between law and fact, obliging the party defendant who could not deny the latter to show his justification to the Court; yet a man accused of a crime had always a right to throw himself by a general plea upon the justice of his peers; and on such general issue, his evidence to the Jury might ever be as broad and general as if he had pleaded a special justification. The reason of this distinction is obvious.—The rights of property depend upon various intricate rules, which require much learning to adjust, and much precision to give them stability; but CRIMES consist wholly in intention; and of that which passes in the breast of an Englishman as the motives of his actions, none but an English Jury shall judge.—It is therefore impossible, in most criminal cases, to separate law from fact; and consequently whether a writing be or be not a libel, *never can be an abstract legal question for Judges.* And this position is proved by the immemorial practice of courts, the forms of which are founded upon legal reasoning; for that very libel, over which it seems you are not to entertain any jurisdiction, is always read, and often delivered to you out of Court for your consideration.

The administration of criminal justice in the hands of the people, is the basis of all freedom. While that remains there can be no tyranny, because the people will not execute tyrannical laws on themselves. Whenever it is lost, liberty must fall along with it, because the sword of justice falls into the hands of men, who, however independent, have no common interest with the mass of the people. Our whole history is therefore chequered with the struggles of our ancestors to maintain this important privilege, which in cases of libel has been too often a shameful and disgraceful subject of controversy.

The ancient government of this country not being founded, like the modern, upon public consent and opinion, but supported by ancient superstitions, and the lash of power, saw the seeds of its destruction in a free press. Printing therefore, upon the revival of letters, when the lights of philosophy led to the detection of prescriptive usurpations, was considered as a matter of state, and subjected to the controul of licencers appointed by the Crown: and although our ancestors had stipulated by Magna Charta, that no freeman should be judged but by his peers, the Courts of Star-chamber and High Commission, consisting of privy-counsellors erected

during pleasure, opposed themselves to that freedom of conscience and civil opinion, which *even then* were laying the foundations of the Revolution. Whoever wrote on the principles of government was pilloried in the Star-chamber, and whoever exposed the errors of a false religion was persecuted in the Commission-court. But no power can supersede the privileges of men in society, when once the lights of learning and science have arisen amongst them. The prerogatives which former princes exercised with safety, and even with popularity, were not to be tolerated in the days of the First Charles, and our ancestors insisted that these arbitrary tribunals should be abolished. Why did they insist upon their abolition?—Was it that the question of libel, which was their principal jurisdiction, should be determined only by the Judges at Westminster?—In the present times even such a reform, though very defective, might be consistent with reason, because the Judges are now, honourable, independent, and sagacious men; but in those days they were often wretches,—libels upon all judicature;—and instead of admiring the wisdom of our ancestors, if that had been their policy, I should have held them up as lunatics, to the scoff of posterity; since in the times when these unconstitutional tribunals were supplanted, the Courts of Westminster Hall were filled with men who were equally the tools of power with those in the Star-chamber;—and the whole policy of the change consisted in that principle, which was then never disputed, viz. That the Judges at Westminster in criminal cases were but a part of the Court, and could only administer justice through the medium of a Jury.

When the people, by the aid of an upright Parliament, had thus succeeded in reviving the constitutional trial by the country, the next course taken by the ministers of the Crown, was to pollute what they could not destroy.—Sheriffs devoted to power were appointed, and corrupt Juries packed to sacrifice the rights of their fellow-citizens, under the mask of a popular trial. This was practised by Charles the Second: and was made one of the charges against King James, for which he was expelled the kingdom.

When Juries could not be found to their minds, Judges were daring enough to browbeat the Jurors and to dictate to them what they called the law; and in Charles the Second's time an attempt was made, which, if it had proved successful, would have been decisive. In the year 1670, Penn and Mead, two Quakers, being indicted for *seditiously* preaching to a multitude *tumultuously* assembled in Gracechurch Street,

were tried before the Recorder of London, who told the Jury that they had nothing to do but to find whether the Defendants had preached or not; for that, whether the matter or the intention of their preaching were seditious, were questions of law and not of fact, which they were to keep to at their peril. The Jury, after some debate, found Penn guilty of speaking to people in Gracechurch Street; and on the Recorder's telling them that they meant, no doubt, that he was speaking to a *tumult* of people there; he was informed by the foreman, that they allowed of no such words in their finding, but adhered to their former verdict. The Recorder refused to receive it, and desired them to withdraw, on which they again retired and brought in a general verdict of acquittal; which the Court considering as a contempt, set a fine of forty marks upon each of them, and condemned them to lie in prison till it was paid. Edward Bushel, one of the Jurors (to whom we are almost as much indebted as to Mr. Hampden, who brought the case of ship-money before the Court of Exchequer) refused to pay his fine, and being imprisoned in consequence of the refusal, sued out his writ of Habeas Corpus, which, with the cause of his commitment *(viz. his refusing to find according to the direction of the Court in matter of law,)* was returned by the Sheriffs of London to the Court of Common Pleas; when Lord Chief Justice Vaughan, to his immortal honour, delivered his opinion as follows:—

"We must take off this veil and colour of words, which make "a show of being something, but are in fact nothing. If the "meaning of these words, *finding against the direction of the "Court in matter of law*, be, that if the Judge, having heard "the evidence given in Court (for he knows no other,) "shall tell the Jury upon this evidence, that the law is for "the Crown, and they, under the pain of fine and impri-"sonment, are to find accordingly; every man sees that the "Jury is but a troublesome delay, great charge, and of no "use in determining right and wrong; and therefore the "trials by them may be better abolished than continued; "which were a strange and new-found conclusion, after a "trial so celebrated for many hundreds of years in this "country."

He then applied this sound doctrine with double force to criminal cases, and discharged the upright Juror from his illegal commitment.

This determination of the right of Juries to find a general verdict was never afterwards questioned by succeeding Judges; not even in the great case of the seven Bishops, on

which the dispensing power and personal fate of King James himself in a great measure depended.

These conscientious Prelates were, you know, imprisoned in the Tower, and prosecuted by information for having petioned King James the second to be excused from reading in their churches the declaration of indulgence, which he had published contrary to law. The trial was had at the bar of the Court of King's Bench, when the Attorney General of that day, rather more peremptorily than my learned friend (who is much better qualified for that office, and whom I should be glad to see in it,) told the Jury *that they had nothing to do but with the bare fact of publication*, and said he should therefore make no answer to the arguments of the Bishops' counsel, as to whether the petition was or was not a libel. But Chief Justice Wright (no friend to the liberty of the subject, and with whom I should be as much ashamed to compare my Lord, as Mr. Bearcroft to that Attorney General) interrupted him, and said, "Yes, Mr. Attorney, I will "tell you what they offer, *which it will lie upon you to an-* "*swer:* they would have you show the Jury how this peti- "tion has disturbed the government, or diminished the "King's authority." So say I. I would have Mr. Bearcroft show you, Gentlemen, how this Dialogue has disturbed the King's Government,—excited disloyalty and disaffection to his person,—and stirred up disorders within these kingdoms.

In the case of the Bishops, Mr. Justice Powell followed the Chief Justice, saying to the Jury, "I have given my "opinion; *but the whole matter is before you, gentlemen, and* "*you will judge of it.*" Nor was it withdrawn from their judgment; for although the majority of the Court were of opinion that it was a libel, and had so publicly declared themselves from the Bench, yet by the unanimous decision of all the Judges, after the Court's own opinion had been pronounced by way of charge to the Jury, the petition itself, which contained no innuendos to be filled up as facts, was delivered into their hands to be carried out of Court, for their deliberation. The Jury accordingly withdrew from the bar, carrying the libel with them; and (puzzled I suppose, by the infamous opinion of the Judges) were most of the night in deliberation;—all London surrounding the Court with anxious expectation for that verdict, which was to decide whether Englishmen were to be freemen or slaves. Gentlemen, the decision was in favour of freedom, for the reverend fathers were acquitted; and though acquitted in direct op-

position to the judgment of the Court, yet it never occurred even o those arbitrary Judges who presided in it to cast upon them a censure or a frown. This memorable and never to be forgotten trial is a striking monument of the importance of these rights, which no Juror should ever surrender; for if the legality of the petition had been referred as a question of law to the Court of King's Bench, the Bishops would have been sent back to the Tower,—the dispensing power would have acquired new strength,—and perhaps the glorious æra of the Revolution and our present happy constitution might have been lost.

Gentlemen, I ought not to leave the subject of these doctrines, which in the libels of a few years past were imputed to the noble Earl of whom I formerly spoke, without acknowledging that Lord Mansfield was neither the original composer of them, nor the copier of them from these impure sources: it is my duty to say, that Lord Chief Justice Lee, in the case of the King against Owen, had recently laid down the same opinions before him. But then both of these great Judges always conducted themselves on trials of this sort, as the learned Judge will no doubt conduct himself to-day; they considered the Jury as open to all the arguments of the Defendant's counsel. And in the very case of Owen, who was acquitted against the direction of the Court, the present Lord Camden addressed the Jury, not as I am addressing you, but with all the eloquence for which he is so justly celebrated. The *practice*, therefore, of these great Judges is a sufficient answer to their *opinions*; for if it be the law of England, that the Jury may not decide on the question of libel, the same law ought to extend its authority to prevent their being told by counsel that they may.

There is indeed no end of the absurdities which such a doctrine involves; for suppose that this Prosecutor, instead of indicting my reverend friend for publishing this Dialogue, had indicted him for publishing the Bible, beginning at the first book of Genesis, and ending at the end of the Revelations, without the addition or subtraction of a letter, and without an *innuendo* to point out a libellous application, only putting in at the beginning of the indictment that he published it with a blasphemous intention:—On the trial for such a publication Mr. Bearcroft would gravely say, "Gentlemen "of the jury, you must certainly find by your verdict, that "the Defendant is guilty of this indictment, i. e. guilty of "publishing the Bible with the intentions charged by it. "To be sure, every body will laugh when he hears it, and

" the conviction can do the Defendant no possible harm; for " the Court of King's Bench will determine that it is not a " libel, and he will be discharged from the consequences of " the verdict."—Gentlemen, I defy the most ingenious man living to make a distinction between that case and the present; and in this way you are desired to sport with your oaths, by pronouncing my reverend friend to be a criminal, without either determining yourselves, or having a determination, or even an insinuation from the Judge that any crime has been committed; following strictly that famous and respectable precedent of Rhadamanthus, judge of hell, who punishes first, and afterwards institutes an inquiry into the guilt.

But it seems your verdict would be no punishment, if judgment on it was afterwards arrested. I am sure, if I had thought the Dean so lost to sensibility, as to feel it no punishment, he must have found another counsel to defend him. But I know his nature better. Conscious as he is of his own purity, he would leave the Court hanging down his head in sorrow, if he were held out by your verdict a seditious subject, and a disturber of the peace of his country. The arrest of judgment, which would follow in the term upon his appearance in Court as a convicted criminal, would be a cruel insult upon his innocence, rather than a triumph over the unjust prosecutors of his pretended guilt.

Let me, therefore, conclude with reminding you, Gentlemen, that if you find the Defendant guilty, not believing the thing published to be a libel, or the intention of the publisher seditious, your verdict and your opinions will be at variance, and it will then be between God and your own consciences to reconcile the contradiction.

# SUBJECT

OF THE

## TRIAL OF THE DEAN OF ST. ASAPH.

*TO enable the reader to understand thoroughly the further proceedings in this memorable cause, and more particularly to assist him in appreciating the vast value and importance of the Libel Bill, which it gave rise to, it becomes necessary to insert at full length Mr. Justice Buller's Charge to the Jury, and what passed in Court before the verdict was recorded; by which it will appear that the rights of Juries, as often established by act of Parliament, had been completely abandoned by all the profession except by Mr. Erskine. The doctrine insisted and acted upon was, that the Jury were confined to the mere act of publishing, and were bound by their oaths to convict of a libel, whatever might be the matter written or published:—a course of proceeding which placed the British press entirely in the hands of fixed magistrates, appointed by the Crown. This doctrine, we say, was so completely fastened upon the public, that the reader will find in the fifth volume of Sir James Burrow's Reports upon the trial of Woodfall for publishing the Letters of Junius, alluded to by Mr. Justice Buller in his Charge to the Jury at Shrewsbury, that an objection to that rule of law, as delivered by Lord Mansfield, was considered to be perfectly frivolous:—the next time after that decision when it appears to have been again insisted upon, in the trial of the Rev. Mr. Bate Dudley for a libel in the Morning Herald on the Duke of Richmond, Lord Mansfield told Mr. Erskine the moment he touched upon it in his speech to the Jury, that "it was strange "he should be contesting points now, which the greatest lawyers "in the Court had submitted to for years before he was born." The Jury, however, acquitted Mr. Dudley notwithstanding, and Mr. Erskine continued to oppose the false doctrine, which was at last so completely exposed and disgraced by the following speeches*

*in this cause, that Mr. Fox thought the time at last ripe for the introduction of the Libel Bill, which he moved soon after in the House of Commons, and was seconded by Mr. Erskine. The merits of this most excellent statute, which redeemed and we trust established for ever the liberty of the press, and the rights of British Juries, will be more easily explained and better understood by perusing the following speeches, which produced at the time a perfect unanimity upon the subject. We have as a supplement to this volume printed the Libel Bill itself, and annexed a few observations upon it.*

## MR. JUSTICE BULLER'S CHARGE.

GENTLEMEN OF THE JURY,

THIS is an indictment against William Shipley, for publishing the pamphlet which you have heard, and which the indictment states to be a libel.

The Defendant has pleaded that he is not guilty; and whether he is guilty *of the fact* or not, is the matter for you to decide. On the part of the prosecution to prove the publication, they have called Mr. Edwards, who says, that the words Gentlemen and Farmer in the pamphlet, which he now produces, are the Dean of St. Asaph's hand-writing. He received the pamphlet, which he now produces, from the Dean, with the directions which he has also produced, and which have been read to you: *those directions are for him to get it printed with an advertisement affixed to it, which is contained in that letter which has been read*, which appears to be dated the 24th of January 1783; and in consequence of that letter, which desires him to get the inclosed Dialogue printed, he sent it to Marsh, a printer, according to the directions contained in the letter. John Marsh says, this pamphlet was printed at their office, from what was sent by Mr. Edwards. After some copies were struck off he saw the Dean; he told him Mr. Jones had had several copies. The Dean seemed then quite surprised that any stir should be made about it.—William Jones is then called, who says he bought the second pamphlet produced, from Marsh in the month of February 1783. He says, he is the prosecutor of the indictment; then he told you that he applied to the Treasury about the prosecution, and they did not take it up. This is the whole of the evidence for the prosecution. For the Defendant, Edward Jones has been called, who says, he was a member of the Flintshire committee:—that it was intended by them to print this Dialogue in Welsh:—that the Dean said he had received the pamphlet so late from Sir William Jones, that he had not had time to read it; he says, he told the Dean that he had collected the opinions of gentlemen, which were, that it might do harm: after that the Dean told him, that he was obliged

to him for his information, that he should be sorry to publish any thing that tended to sedition; and it was for this reason that it was not published in Welsh. This passed on the 7th of January 1783. Some time after, Mr. Shipley said he would read it, to show it was not so seditious, but that he read it with a rope about his neck; and when he had read it, he gave his opinion he did not think it quite so bad.

*Mr. Erskine.* I ask your Lordship's pardon. I believe the witness said it was at the county meeting where the Dean said this.

*Mr. Jones.* It was the same day, the 7th of January.

*Mr. Justice Buller.* Yes, afterwards, at the county meeting, he said he would read it to show it was not so seditious, but that he read it with a rope about his neck; when he had read it, he said he did not think it so bad. Then he called five gentlemen who spoke to his character. Sir Watkyn Williams Wynne says, he has known the Defendant eight or nine years; he does not think him a man likely to be guilty of that which is now imputed to him. Sir Roger Mostyn, who is Lord-Lieutenant of Flintshire, says he has known the Defendant several years: that he put him into the commission of the peace, and appointed him a Deputy Lieutenant; that in his opinion he don't think the Defendant capable of stirring up sedition or rebellion. Major Williams says, he has no reason to believe the Defendant capable of being guilty of the crime imputed to him; on the contrary, he thinks he would be the first that would quell sedition. Colonel Myddleton says, he has known the Dean of St. Asaph near twelve years; that he has attended with the Dean at private meetings of the Justices, and at quarter sessions, and in his judgment the King has not a better subject. Bennet Williams likewise says, he has known the Dean many years; that the Defendant is a peaceable man, not capable of stirring up sedition, and he thinks he is as peaceable a subject as any the King has.—Now, Gentlemen, this is the whole of the evidence that has been given on the one side and the other. *As to the several witnesses who have been called to give Mr. Shipley the character of a quiet and peaceable man, not disposed to stir up sedition, that cannot govern the present case, for the question for you to decide is,* WHETHER HE IS OR IS NOT GUILTY OF PUBLISHING THIS PAMPHLET?

You have heard a great deal said which really does not belong to the case, and a part of it has embarrassed me a good deal in what manner to treat it. I cannot subscribe to a great deal I have heard from the Defendant's Counsel, but I do

readily admit the truth and wisdom of that proposition which he stated from Mr. Locke, that, "wherever the law ends, ty-"ranny begins." The question then is, What is the law as applicable to this business? and, to narrow it still more, What is the law in this stage of the business? *You have been pressed very much by the Counsel, and so have I also, to give an opinion upon the question, whether this pamphlet is or is not a libel. Gentlemen, it is my happiness that I find the law so well and so fully settled, that it is impossible for any man who means well to doubt about it;* and the Counsel for the Defendant was so conscious that the law was so settled, that he himself stated what he knew must be the answer which he would receive from me: that is, that the matter appears upon the record; and as such, it is not for me, a single Judge sitting here *at Nisi Prius*, to say whether it is or is not a libel. Those who adopt the contrary doctrine, forget a little to what lengths it would go; for if that were to be allowed, the obvious consequence would be what was stated by the Counsel in reply; namely, that you deprive the subject of that which is one of his dearest birthrights:—you deprive him of his appeal; you deprive him of his writ of error: for if I was to give an opinion here, that it was not a libel, and you adopted that, the matter is closed for ever. The law acts equally and justly, as the pamphlet itself states; it is equal between the Prosecutor and the Defendant; and whatever appears upon the record is not for our decision here, but may be the subject of future consideration in the Court out of which the record comes; and afterwards, if either party thinks fit, they have a right to carry it to the dernier resort, and have the opinion of the House of Lords upon it; and therefore that has been the uniform and established answer, not only in criminal but civil cases: the law is the same in both, and there is not a gentleman round this table who does not know that is the constant and uniform answer which is given in such cases. *You have been addressed by the quotation of a great many cases upon libels. It seems to me that that question is so well settled, that gentlemen should not agitate it again; or at least, when they do agitate it, it should be done by stating fairly and fully what has passed on all sides, not by stating a passage or two from a particular case that may be twisted to the purpose that they want it to answer;* AND HOW THIS DOCTRINE EVER COMES TO BE NOW SERIOUSLY CONTENDED FOR, IS A MATTER OF SOME ASTONISHMENT TO ME; FOR I DO NOT KNOW ANY ONE QUESTION IN THE LAW WHICH IS MORE THOROUGHLY ES-

TABLISHED THAN THAT IS. I know it is not the language of a particular set or party of men, because the very last case that has ever arisen upon a libel, was conducted by a very respectable and a very honourable man, who is as warm a partisan (and upon the same side of the question) as the Counsel for the Defendant, and I believe of what is called the same party. But he stated the case in a few words, which I certainly adopted afterwards, and which I believe, no man ever doubted about the propriety of. That case arose not three weeks ago at Guildhall, upon a question on a libel; and in stating the plaintiff's case, he told the Jury, that there could be but three questions.

The first is, Whether the Defendant is guilty of publishing the libel?

The second, Whether the innuendos or the averments made on the record, are true?

The third, which is a question of law, Whether it is a libel or not?—Therefore, said he,* the two first are the only questions you have to consider: and this, added he very rightly, is clear and undoubted law; it was adopted by me as clear and undoubted law, and it has been so held for considerably more than a century past. It is indeed admitted by the Counsel, that upon great consideration it has been so held in one of the cases he mentioned, by a noble Lord who has presided a great many years, with very distinguished honour, in the first court of criminal justice in this country; and it is worthy of observation, how that case came on. For twenty-eight years past, during which time we have had a vast number of prosecutions in different shapes for libels, the uniform and invariable conduct of that noble Judge has been to state the questions as I have just stated them to you; and though the cases have been defended by Counsel not likely to yield much, yet that point was never found fault with by them; and often as it has been enforced by the Court, they never have attempted yet by any application to set it aside; at last it came on in this way—the noble Judge himself brought it on by stating to the Court what his directions had always been, with a desire to know whether, in their opinions, the direction was right or wrong? The Court was unanimously of opinion that it was right, and that the law bore no question or dispute. It is admitted by the Counsel likewise, that in the time that Lord Chief Justice Lee presided in the Court of King's Bench the same doctrine was laid down as clear and

* Mr. John Lee, then Attorney General.

established; a sounder lawyer, or a more honest man, never sat on the Bench than he was. But if we trace the question farther back, it will be found that about the year 1731 (which I suppose has not escaped the diligence of the Counsel) another Chief Justice held the same doctrine, and in terms which are more observable than those in most of the other cases, because they show pretty clearly when and how it was that this idea was first broached. That was an information against one Franklin, I think, for publishing a libel, called the *Craftsman*. The then Chief Justice stated the three questions to the Jury in the same way I mentioned. He said, "The first is as to the fact of publication. Secondly, "Whether the averments in the information are true or not? "and thirdly, Whether it is a libel?" He says, "There are "but two questions for your consideration; the third is "merely a question of law, with which you the Jury have "nothing to do, as has now of late been thought by some "people who ought to know better; but," says he, "we "must always take care to distinguish between matters of "law and matters of fact, and they are not to be confounded." —With such a train of authorities it is rather extraordinary to hear that matter *now* broached as a question which admits of doubt. And if they go farther back they will find it still clearer; for about the time of the Revolution authorities will be found which go directly to the point. In one of them, which arose within a year or two from the time of the case of the seven Bishops, which the Counsel alluded to, a Defendant in an information for a libel, which was tried at bar, said to the Court, "As the information states this "to be a scandalous and seditious libel, I desire it "may be left to the Jury to say whether it is a scan-"dalous and seditious libel or not." The answer then given by the Court was, "That is matter of law; the Jury "are to decide upon the fact; and if they find you guilty of "the fact, the Court will afterwards consider whether it is or "not a libel."—If one goes still farther back, we find it settled as a principle which admits of no dispute, and laid down so early as the reign of Queen Elizabeth, as a maxim, that "*ad quæstionem facti respondent juratores, ad quæstionem* "*juris respondent judices.*" And in the case that the Counsel has thought fit to allude to under the name of Bushell's case, the same maxim is recognised by the Court negatively, *viz.* "*ad quæstionem facti non respondent judices, ad quæs-*"*tionem legis non respondent juratores;*" for, said the Court unanimously, if it be asked of the Jury what the law is, they

cannot say; if it be asked of the Court what the fact is, they cannot say.—Now so it stands as to legal history upon the business. Suppose there were no authority at all, can any thing be a stronger proof of the impropriety of what is contended for by the Counsel for the Defendant than what they have had recourse to? You have been addressed not as is very usual to address a Jury, which you must know yourselves if you have often served upon them;—you have been addressed upon a question of law, on which they have quoted cases for a century back. Now are you possessed of those cases in your own minds? Are you apprized of the distinctions on which those determinations are founded? Is it not a little extraordinary to require of a Jury that they should carry all the legal determinations in their minds? If one looks a little farther into the constitution, it seems to me that without recourse to authorities it cannot admit of a doubt what is the mode of administering justice in this country.—The Judges are appointed to decide the law, the Juries to decide the fact—How?—both under the solemn obligation of an oath; the Judges are sworn to administer the law faithfully and truly; the Jury are not so sworn, but to give a true verdict according to the evidence. Did ever any man hear of it, or was it ever yet attempted to give evidence of what the law was?—If it were done in one instance it must hold in all. Suppose a Jury should say that which is stated upon a record is high treason or murder; if the facts charged upon the record are not so, it is the duty of the Court to look into the record, and they are bound by their oaths to discharge the Defendant: the consequence, if it were not so, would be, that a man would be liable to be hanged who had offended against no law at all. It is for the Court to say whether it is any offence or not, after the fact is found by the Jury. It would undoubtedly hold in civil cases as well as criminal, and as the Counsel for the prosecution has said in reply, by the same reason in the case of an ejectment, you might give a verdict against law. But was it ever supposed that a Jury was competent to say, what is the operation of a fine, or a recovery, or a warranty, which are mere questions of law? Then the Counsel says, it is a very extraordinary thing if you have nothing else to decide but the fact of the publication; because then the Jury are to do nothing but to decide that which was never disputed. Now there is a great deal of art in that argument, and it was very ingeniously put by the Counsel; but all that arises from the want of distinguishing how the matter comes here, and how it stands now: it is not

true that the Defendant by the issue admits that he ever published it. No, upon the record he denies it, but when he comes here he thinks fit to admit it: but that does not alter the mode of trial. Then it is asserted, that if you go upon the publication only, the Defendant would be found guilty, though he is innocent. But that is by no means the case; and it is only necessary to see how many guards the law has made, to show how fallacious the argument is. If the fact were, that the Defendant never denied the publication, but meant to admit it, and insist that it was not a libel, he had another way in which he should have done it, a way universally known to the profession; he ought to have demurred to the indictment, by which in substance he would have said —I admit the fact of publishing it, but deny that it is any offence. But he is not precluded even now from saying it is not a libel; for if the fact be found by you, that he did publish the pamphlet, and upon future consideration the Court of King's Bench shall be of opinion that it is not a libel, he must then be acquitted.* As to his coming here, it is his own choice.

But, say the Counsel farther, it is clear in point of law, that in a criminal case the Defendant cannot plead specially, therefore he might give any thing in evidence that would be a justification if he could plead specially. I admit it; but what does that amount to? You must plead matter of fact; you cannot plead matter of law, the plea is bad if you do: then admitting that he could give that in evidence upon Not guilty, which would in point of law, if pleaded, amount to an excuse or a defence; the question still is, what are the facts on which the defence is founded? That brings the case to the question of publication, for the innuendos are no more than this: the indictment says, that by the letter G. is meant Gentleman, and by the letter F. is meant Farmer. Now the title of this pamphlet is, "The Principles of Government, "in a Dialogue between a *Gentleman* and a *Farmer*." The first question is, whether the *G.* means *Gentleman*, and the *F. Farmer:* the next question is not upon initials or letters that may be doubtful, but whether *the King*, written at length, means *the King of Great Britain*, and whether *the Parliament* means *the Parliament of Great Britain:* these are points I don't know how to state a question upon; and if you are satisfied as to the

* It must be obvious to every body, that upon this doctrine the press was in the hands of Judges appointed by the Crown.

innuendos, the only remaining question of fact is as to the publication. Whether Mr. Edward Jones's evidence will or will not operate in mitigation of punishment, is not a question for me to give an opinion upon, because it is not for me to inflict the punishment, *if the Defendant is found guilty.* But upon his evidence it stands thus; the Dean had thoughts of printing the pamphlet in Welsh, but upon what was said to him by Mr. Jones and other gentlemen, his friends, he declined it, but he afterwards published it in English; for this conversation is sworn by Jones to be on the 7th of January, and not till the 24th of January does he send this letter to Edwards with the pamphlet, desiring that it might be published; therefore there is no contradiction as to the publication: and if you are satisfied of this in point of fact, it is my duty to tell you in point of law you are bound to find the Defendant guilty. I wish to be as explicit as I can in the directions I give, because if I err in any respect, it is open to the Defendant to have it corrected. As far as it is necessary to give any opinion in point of law upon the subject of the trial, I readily do it; beyond that I don't mean to say a word, because it is not necessary nor proper here. In a future stage of the business, if the Defendant is found guilty, he will have a right to demand my opinion; and if ever that happens, it is my duty to give it, and then I will; but till that happens I do not think it proper, or by any means incumbent upon one who sits where I do, to go out of the case to give an opinion upon a subject, which the present stage of the case does not require; therefore I can only say, that if you are satisfied that the Defendant did publish this pamphlet, and are satisfied as to the truth of the innuendos, in point of law you ought to find him guilty; if you think they are not true, you will of course acquit him.

The Jury withdrew to consider of their verdict, and in about half an hour returned again into Court.

*Associate.* Gentleman, do you find the Defendant guilty or not guilty?

*Foreman.* Guilty of publishing only.

*Mr. Erskine.* You find him guilty of publishing only?

*A Juror.* Guilty only of publishing.

*Mr. Justice Buller.* I believe that is a verdict not quite correct—You must explain that one way or the other as to the meaning of the innuendos. The indictment has stated that G. means Gentleman, F. Farmer; the King the King of Great Britain, and the Parliament the Parliament of Great Britain.

*One of the Jury.* We have no doubt of that.

*Mr. Justice Buller.* If you find him guilty of publishing, you must not say the word *only*.

*Mr. Erskine.* By that they mean to find there was no sedition.

*A. Juror.* We only find him guilty of publishing. We do not find any thing else.

*Mr. Erskine.* I beg your Lordship's pardon with great submission. I am sure I mean nothing that is irregular. I understand they say, We only find him guilty of publishing.

*A Juror.* Certainly, that is all we do find.

*Mr. Broderick.* They have not found that it is a libel of and concerning the King and his Government.

*Mr. Justice Buller.* If you only attend to what is said, there is no question or doubt. If you are satisfied whether the letter G. means Gentleman, whether F. means Farmer, the King means King of Great Britain, the Parliament the Parliament of Great Britain—if they are all satisfied it is so, —is there any other innuendo in the indictment?

*Mr. Leycester.* Yes, there is one more upon the word *votes*.

*Mr. Erskine.* When the Jury came into Court they gave, in the hearing of every man present, the very verdict that was given in the case of the King against Woodfall; they said guilty of publishing only. Gentlemen, I desire to know whether you mean the word *only* to stand in your verdict.

*One of the Jury.* Certainly.

*Another Juror.* Certainly.

*Mr. Justice Buller.* Gentlemen, if you add the word *only*, it will be negativing the innuendos; it will be negativing, that by the word King it means King of Great Britain; by the word Parliament, Parliament of Great Britain; by the letter F. it means Farmer, and G. Gentleman; that I understand you do not mean.

*A Juror.* No.

*Mr. Erskine.* My Lord, I say that will have the effect of a general verdict of Guilty. I desire the verdict may be recorded. I desire your Lordship sitting here as Judge to record the verdict as given by the Jury. If the Jury depart from the word *only*, they alter their verdict.

*Mr. Justice Buller.* I will take the verdict as they mean to give it; it shall not be altered. Gentlemen, if I understand you right, your verdict is this, you mean to say guilty of publishing this libel?

*A Juror.* No; the pamphlet; we do not decide upon its being a libel.

*Mr. Justice Buller.* You say he is guilty of publishing the pamphlet, and that the meaning of the innuendos is as stated in the indictment.

*A Juror.* Certainly.

*Mr. Erskine.* Is the word *only* to stand part of your verdict?

*A Juror.* Certainly.

*Mr. Erskine.* Then I insist it shall be recorded.

*Mr. Justice Buller.* Then the verdict must be misunderstood; let me understand the Jury.

*Mr. Erskine.* The Jury do understand their verdict.

*Mr. Justice Buller.* Sir, I will not be interrupted.

*Mr. Erskine.* I stand here as an advocate for a brother citizen, and I desire that the word *only* may be recorded.

*Mr. Justice Buller.* Sit down, Sir; remember your duty, or I shall be obliged to proceed in another manner.

*Mr. Erskine.* Your Lordship may proceed in what manner you think fit; I know my duty as well as your Lordship knows yours. I shall not alter my conduct.

*Mr. Justice Buller.* Gentlemen, if you say guilty of publishing only, you negative the meaning of the particular words I have mentioned.

*A Juror.* Then we beg to go out.

*Mr. Justice Buller.* If you say guilty of publishing only, the consequence is this, that you negative the meaning of the different words I mentioned to you—That is the operation of the world *only*—They are endeavouring to make you give a verdict in words different from what you mean.

*A Juror.* We should be very glad to be informed how it will operate?

*Mr. Justice Buller.* If you say nothing more but find him guilty of publishing, and leave out the word *only*, the question of law is open upon the record, and they may apply to the Court of King's Bench, and move in arrest of judgment there. If they are not satisfied with the opinion of that Court, either party has a right to go to the House of Lords, if you find nothing more than the simple fact; but if you add the word *only*, you do not find all the facts; you do not find in fact that the letter G. means Gentleman; that F. means Farmer; the King, the King of Great Britain; and Parliament, the Parliament of Great Britain.

*A Juror.* We admit that.

*Mr. Justice Buller.* Then you must leave out the word *only*.

*Mr. Erskine.* I beg pardon. I beg to ask your Lordship this question, Whether, if the Jury find him guilty of publishing, leaving out the world *only*, and if the judgment is not arrested by the Court of King's Bench, whether the sedition does not stand recorded?

*Mr. Justice Buller.* No, it does not, unless the pamphlet be a libel in point of law.

*Mr. Erskine.* True; but can I say that the Defendant did not publish it seditiously, if judgment is not arrested, but entered in the record?

*Mr. Justice Buller.* I say it will not stand as proving the sedition. Gentlemen, I tell it you as law, and this is my particular satisfaction, as I told you when summing up the case; if in what I now say to you I am wrong in any instance, they have a right to move for a new trial. The law is this; if you find him guilty of publishing, without saying more, the question whether libel or not is open for the consideration of the Court.

*A Juror.* That is what we mean.

*Mr. Justice Buller.* If you say, Guilty of publishing only, it is an incomplete verdict, because of the word *only*.

*A Juror.* We certainly mean to leave the matter of libel to the Court.

*Mr. Erskine.* Do you find sedition?

*A Juror.* No; not so. We do not give any verdict upon it.

*Mr. Justice Buller.* I speak from adjudged cases (I will take the verdict when you understand it yourselves in the words you give it:) if you say, Guilty of publishing only, there must be another trial.

*A Juror.* We did not say so; only guilty of publishing.

*Mr. Erskine.* Will your Lordship allow it to be recorded thus, only guilty of publishing?

*Mr. Justice Buller.* It is misunderstood.

*Mr. Erskine.* The Jury say, only guilty of publishing. Once more, I desire that that verdict may be recorded.

*Mr. Justice Buller.* If you say, only guilty of publishing, then it is contrary to the innuendos; if you think the word King means the King of Great Britain; the word Parliament, the Parliament of Great Britain; the G. means Gentleman; and the F. Farmer; *you may say this*, guilty of publishing; but whether a libel or not, the Jury do not find.

*A Juror.* Yes.

*Mr. Erskine.* I asked this question of your Lordship in

the hearing of the Jury, whether, upon the verdict you desire them to find, the sedition which they have not found, will not be inferred by the Court if judgment is not arrested?

*Mr. Justice Buller.* Will you attend? Do you give it in this way, Guilty of the publication, but whether a libel or not, you do not find?

*A Juror.* We do not find it a libel, my Lord; we do not decide upon it.

*Mr. Erskine.* They find it no libel.

*Mr. Justice Buller.* You see what is attempted to be done?

*Mr. Erskine.* There is nothing wrong attempted upon my part. I ask this once again in the hearing of the Jury; and I desire an answer from your Lordship as Judge, whether or no, when I come to move in arrest of judgment, and the Court enter up judgment, and say it is a libel, whether I can afterwards say, in mitigation of punishment, the Defendant was not guilty of publishing it with a seditious intent, when he is found guilty of publishing it in manner and form as stated; and whether the Jury are not thus made to find him guilty of sedition, when in the same moment they say they did not mean to do so. Gentlemen, do you find him guilty of sedition?

*A Juror.* We do not, neither one or the other.

*Mr. Justice Buller.* Take the verdict.

*Associate.* You say, guilty of publishing; but whether a libel or not you do not find?

*A Juror.* That is not the verdict.

*Mr. Justice Buller.* You say, guilty of publishing, but whether a libel or not you do not find; is that your meaning?

*A Juror.* That is our meaning.

*One of the Counsel.* Do you leave the intention to the Court?

*A Juror.* Certainly.

*Mr. Cowper.* The intention arises out of the record.

*Mr. Justice Buller.* And unless it is clear upon record there can be no judgment upon it.

*Mr. Bearcroft.* You mean to leave the law where it is?

*A Juror.* Certainly.

*Mr. Justice Buller.* The first verdict was as clear as could be, they only wanted it to be confounded.

*On the 8th of November, the second day of the ensuing term, Mr. Erskine moved the Court of King's Bench to set aside the verdict, for the misdirection of the Judge in the foregoing Charge to the Jury, and obtained a rule to show cause, why there should not be a new trial. There was no short-hand writer in Court except a gentleman employed by the Editors of the Morning Herald, from which paper of the succeeding day, the following Speech of Mr. Erskine was taken.*

## MR. ERSKINE'S SPEECH, *delivered in the Court of King's Bench, on Monday the 8th of November*, 1784, *on his motion for a new Trial in defence of the* DEAN OF ST. ASAPH.

MR. ERSKINE began by stating to the Court the substance of the indictment against the Dean of St. Asaph, which charged the publication with an intention to incite the people to subvert the government by armed rebellion;—the mere evidence of the publication of the Dialogue which the Prosecutor had relied on to establish that malicious intention,—and the manner in which the Defendant had, by evidence of his real motives for publishing it, as contained in the advertisement, rebutted the truth of the epithets charged by the indictment.

He then stated the substance of his speech to the Jury at Shrewsbury, maintaining the legality of the Dialogue, the right of the Jury to consider that legality; the injustice of a verdict affixing the epithet of *guilty* to a publication, without first considering whether the thing published contained any *guilt;* and above all, the right which the Jury unquestionably had (even upon the authority of those very cases urged against his client) to take the evidence into consideration, by which the Defendant sought to exculpate himself from the seditious intention charged by the indictment.

He said that the substance of Mr. Jones's evidence was, *that it had been the intention of the Flintshire Committee to translate the Dialogue into Welsh;* that it was delivered to him to give to a Mr. Lloyd for that purpose; that *the Dean had just then received it from Sir William Jones*, and had not had time to read it, before he delivered it to the witness. Some days after, Mr. Jones wrote to the Dean, telling him, that he had collected the opinions of some gentlemen that the translation of it into Welsh might do harm; the Dean's answer, (WHO HAD NEVER THEN READ THE THING HIMSELF) was this,

" I am very much obliged to you for what you have communi-
" cated respecting the pamphlet; I should be exceeding sor-
" ry to publish any thing that should tend to sedition." Mr. Erskine contended that this was no admission on the Dean's part that he thought it seditious, for he had never read it; but that his conduct showed that he was not seditiously inclined, since he stopped the publication even in compliance with the affected scruples of men whom he found out, on reading it, to be both wicked and ignorant; and the translation of it into Welsh was accordingly dropped.

Mr. Jones had further said, that many persons afterwards, and particularly Mr. Fitzmaurice, made very free with the Dean's character, for having entertained an idea of translating it into Welsh; it was publicly mentioned at the general meeting of the county, and many opprobrious epithets being fastened on the Dialogue itself, the Dean said, " *I am now* " *called upon to show that it is not seditious, and I read it* " *with a rope about my neck.*"

MR. ERSKINE THEN SPOKE AS FOLLOWS, VERBATIM.

My Lord, although this is not the place for any commentary on the evidence, I cannot help remarking, that this expression was strong proof that the Dean did not think it seditious; for it is absurd to suppose that a man, feeling hurt at the accusation of sedition, should say, I am now called upon to show I am not seditious, and then proceed to read that aloud, which he *felt and believed* to contain sedition. The words which follow, " I read it with a rope about my neck," confirm this construction. The obvious sense of which is—I am now called upon to show that this Dialogue is not seditious;—it has never been read by those who call it so;—I will read it in its own vindication, and in mine—" *I read it* " *with a rope about my neck*," that is—if it be treasonable, as is asserted, it is a misdemeanor to read it; but I am so convinced of its innocence, that I read it notwithstanding—*meo periculo.*

The only part of Mr. Jones's evidence which remains, is as follows: I asked him, " Did you collect, from what the " Dean said, that his opinion was, that the Dialogue was con-
" stitutional and legal?" His answer was; " UNDOUBTEDLY. The Dean said, Now, I have read this, I do not think " it so bad a thing; and I think we ought to publish it, in " *vindication of the committee.*" The question and answer must be taken in fairness together;—the witness was asked if he collected from the Dean, that he thought it innocent

and constitutional, and the first term in the answer is decisive; that the witness did not merely think it LESS criminal than it had been supposed, but *perfectly constitutional*; for he says, "*Undoubtedly I collected that he thought so.*" The Dean said he thought he ought to publish it in vindication of the committee; and it is repugnant to common sense, to believe that if the Dean had supposed the Dialogue *in any degree* criminal, he would have proposed to publish it himself, in vindication of a former intention of publication by the committee.—It would have been a confirmation, not a refutation of the charge.

The learned Judge, after reciting the evidence, which I have just been stating (merely as a matter of form, since afterwards it was laid wholly out of the question,) began by telling the Jury, that he was astonished at a great deal he had heard from the Defendant's Counsel; for that he did not know any one question of law more thoroughly settled than the doctrine of libels, as he proposed to state it to them:—it then became *my turn* to be astonished. Mr. Justice Buller then proceeded to state, that what had fallen from me, namely, that the Jury had a right to consider the libel, *was only the language of a party in this country; but that the contrary of their notions was so well established, that no man who meant well, could doubt concerning it.*

It appeared afterwards that Mr. Lee and myself were members of this party; though my friend was charged with having deserted his colours; as he was the first authority that was cited against me; and what rendered the authority more curious, the learned Judge mentioned, that he had delivered his dictum at Guildhall as counsel for a Plaintiff, when these doctrines might have been convenient for the interests of his Client, and therefore no evidence of his opinion. This quotation, however, had perhaps more weight with the Jury than all that followed, and certainly the novelty of it entitled it to attention.

I hope, however, the sentiments imputed to my friend were not necessary upon that occasion; if they were, his Client was betrayed: for I was myself in the cause alluded to; and I take upon me to affirm, that Mr. Lee *did not, directly or indirectly*, utter any sentiment in the most remote degree resembling that which the learned Judge was pleased to impute to him for the support of his charge. This I shall continue to affirm notwithstanding the Judge's declaration to the contrary, until I am contradicted by Mr. Lee himself,

who is here to answer me if I misrepresent him. [Mr. Lee confirmed Mr. Erskine by remaining silent.]

The learned Judge then said, that as to whether the Dialogue, which was the subject of the prosecution, was criminal or innocent, he should not even hint an opinion: *for that if he should declare it to be no libel, and the Jury, adopting that opinion, should acquit the Defendant, he should thereby deprive the Prosecutor of his right of appeal upon the record; which was one of the dearest birthrights of the subject,* —That the law was equal as between the Prosecutor and Defendant; and that there was no difference between criminal and civil cases.—I am desirous not to interrupt the state of the trial by observations; but cannot help remarking, that justice to the Prosecutor as standing exactly in equal scales with a prisoner, and in the light of an adverse party in a civil suit, was the first reason given by the learned Judge, why the Jury should at all events find the Defendant guilty, without investigating his guilt. This was telling the Jury in the plainest terms, *that they could not find a general verdict in favour of the Defendant, without an act of injustice to the Prosecutor;* who would be shut out by it from his writ of error, which he was entitled to by law, and which was the best birthright of the subject. It was, therefore, an absolute denial of the right of the Jury, and of the Judge also, as no right can exist, which necessarily works a wrong in the exercise of it. If the Prosecutor had by law a right to have the question on the record, the Judge and Jury were both tied up at the trial; the one from directing, and the other from finding a verdict which disappointed that right.

If the Prosecutor had a right to have the question upon the record, for the purpose of appeal, by the Jury's confining themselves to the fact of publication, which would leave that question open, it is impossible to say, that the Jury had a right likewise to judge of the question of libel, and to acquit the Defendant, which would deprive the Prosecutor of that right. There cannot be contradictory rights, the exercise of one destroying and annihilating the other. I shall discuss this new claim of the Prosecutor upon a future occasion; for the present, I will venture to say, that no man has a right,—a property,—or a beneficial interest in the punishment of another. A prosecution at the instance of the Crown has public justice alone, and not private vengeance, for its object:—in prosecutions for murder, and felonies and most other misdemeanors, the Prosecutor can have no such pretence, since the record does not comprehend the offence.—Why he should have it in the case of a libel, I would gladly be informed.

The learned Judge then stated your Lordship's uniform practice, in trying libels, for eight and twenty years,—the acquiescence of parties and their Counsel, and the ratification of the principle, by a judgment of the Court, in the case of the King against Woodfall. He likewise cited a case, which he said, happened within a year or two of the time of the seven Bishops, in which a Defendant, indicted for a seditious libel, desired it might be left to the Jury, whether the paper was seditious; but that the Court said, the Jury were to decide upon *the fact;* and that if they found him guilty of the *fact*, the Court would afterwards decide the question of libel. The learned Judge then cited the maxim, *ad quæstionem facti respondent juratores ad quæstionem juris respondent judices*, and said, that maxim had been confirmed in the sense he put on it in the very case of Bushel, on which I had relied so much for the contrary position.

The learned Judge, after honouring some of my arguments with answers, and saying again, in stronger terms than before, that there was no difference between the province of the Jury in civil and criminal cases, notwithstanding the universality of the general issue instead of special pleadings, told the Jury, *that if they believed that G. meant Gentleman, and F. meant Farmer, the matter for their consideration was reduced to the simple fact of publication.*

The Court will please to recollect, that the advertisements, explaining the Dean's sentiments concerning the pamphlet, and his motives for the publication of it in English, after it had been given up in Welsh, had been read in evidence to the Jury:—that Mr. Jones had been likewise examined to the same effect, to induce the Jury to believe the advertisement to have been prefixed to it *bona fide*, and to have spoken the genuine sentiments and motives of the publisher:—and that several gentlemen, of the first character in the Dean's neighbourhood in Wales, had been called to speak to his general peaceable deportment, in order to strengthen that proof, and to resist the assent of the Jury to the principal averment in the information, viz. *That the Defendant published, intending to excite a revolution in the Government, by armed rebellion.* Whether all this evidence, given for the Defendant, was adequate to its purpose, is foreign to the present inquiry. —I think it was.—*But my objection is, that no part of it was left to the consideration of the Jury, who were the judges of it.* As to the advertisement, which was part of the pamphlet itself, the learned Judge never even named it, but as part of the Prosecutor's proof of the publication, though I had

read it to the Jury, and insisted upon it as sufficient proof of the Defendant's intention, and had called Mr. Jones to confirm the construction I put upon it.

As to Mr. Jones's testimony, Mr. Justice Buller said, "Whether his evidence will or will not operate in mitigation "of punishment, is not a question for me to give an opinion "upon." And he farther declared, that if the Jury were satisfied as to the fact of the publication, they were BOUND to find the Defendant guilty. As to the evidence of character, it was disposed of in the same manner. Mr. Justice Buller said, "As to the several witnesses who have been called to "give Mr. Shipley the character of a quiet and peaceable "man, not disposed to stir up sedition, *that cannot govern* "*the present question: for the question you are to decide on* "*is, Whether he be, or be not, guilty of publishing this* "*pamphlet.*"

This Charge, therefore, contained an express exclusion of the right of the Jury to consider the evidence offered by the Defendant, to rebut the inference of sedition arising from the act of publication.

The learned Judge repeated the same doctrine at the end of his Charge; entirely removing from the Jury the consideration of the whole of the Defendant's evidence, and concluded by telling them, "*That if they were satisfied as to* "*the truth of the innuendos and the fact of publication,* "*they were* BOUND *to find the Defendant guilty.*" The Jury retired to consider of this Charge, and brought in a verdict, "Guilty of publishing ONLY." The learned Judge refused to record it, and I am ready to admit that it was an imperfect verdict. He was not bound to receive it; but when he saw the Jury had no doubt of the truth of the innuendos, and that therefore the word ONLY could not apply to a negation of them; he should have asked them whether they believed the Defendant's witnesses, and meant to negative the seditious purpose? It was the more his duty to have asked that question, as several of the Jury themselves said that they gave no opinion concerning seditious intention: a declaration decisive in the Defendant's favour, who had gone into evidence to rebut the charge of intention, and of which the Judge, who, in the humane theory of the English law, ought to be counsel for the prisoner, should at the least have taken care to obtain an explanation from the Jury, by asking them what *their* opinion was, instead of arguing upon the principle of *his own* Charge, what it necessarily must be, if the innuendos were believed; a position which gave the go-bye to the

difficulties of the Jury. Their intention to exclude the seditious purpose was palpable; and under such circumstances, the excellent remark of the great Mr. Justice Foster never should be forgotten: "When the rigour of the law bordereth "upon injustice, mercy ought to interpose in the administra- "tion. It is not the part of Judges to be perpetually "hunting after forfeitures, while the heart is free from "guilt. They are the ministers of the Crown, appointed for "the ends of public justice, and ought to have written upon "their hearts the obligation which His Majesty is under, to "cause law and justice in mercy to be executed in all his "judgments." This solemn obligation is no doubt written upon the hearts of all the Judges; but it is unfortunate when it happens to be written in so illegible a hand that a Jury cannot possibly read it.

To every part of the learned Judge's directions, I have objections which appear to me to be weighty. I will state them distinctly, and in their order, as shortly, or as much at large as the Court shall require of me.

The first proposition which I mean to maintain as a foundation for a new trial, is this:

That when a bill of indictment is found, or an information filed, charging any crime or misdemeanor known to the law of England, and the party accused, puts himself upon the country by pleading the general issue, Not Guilty:—The Jury are GENERALLY charged with his deliverance from that CRIME, and not SPECIALLY from the fact or facts, in the commission of which the indictment or information charges the crime to consist; much less from any single fact to the exclusion of others charged upon the same record.

Secondly, I mean to maintain, that no act which the law in its general theory holds to be criminal, constitutes in itself a crime abstracted from the mischievous intention of the actor; and that the intention, even where it becomes a simple inference of reason from a fact or facts established, may, and ought to be, collected by the Jury with the Judge's assistance; because the act charged, though established as a fact in a trial on the general issue, does not necessarily and unavoidably establish the criminal intention by any ABSTRACT conclusion of law; the establishment of the fact being still no more than *evidence* of the crime, but not the CRIME ITSELF, unless the Jury render it so themselves by referring it voluntarily to the Court by special verdict.

I wish to explain this proposition.

When a Jury can discover no other reasonable foundation

for judging of the intention, than the inference from the act charged, and doubting what that inference ought to be in law, refer it to the Court by special verdict, the intention becomes by that inference a question of law; but it only becomes so by this voluntary declaration of the Jury, that they mean the party accused shall stand or fall by the abstract legal conclusion from the act charged, not being able to decypher his purpose by any other medium.

But this discretionary reference to the court upon particular occasions, which may render it wise and expedient, does not abridge or contract the power or the duty of a Jury, under other circumstances, to withhold their consent from the intention being taken as a legal consequence of the act; even when they have had no evidence capable of being stated on the face of a special verdict, they may still find a general verdict, founded on their judgment of the crime, and the intention of the party accused of it.

When I say, that the Jury MAY consider the crime, and the intention, I desire to be understood to mean, not merely that they have the POWER to do it without control or punishment, and without the possibility of their acquittal being disannulled by any other authority (for that no man can deny;) but I mean, that they have a constitutional legal RIGHT to do so; a right, in many cases, proper to be exercised, and intended by the wise founders of the English Government to be a protection to the lives and liberties of Englishmen, against the encroachments and perversions of authority in the hands of fixed magistrates.

The establishment of both, or either of these two propositions, must entitle me to a new trial; for if the Jury, on the general issue, had a strictly legal jurisdiction to judge of the libellous nature, or seditious tendency of the paper (taking that nature or tendency to be law or fact,) then the Judge's direction is evidently unwarrantable. If he had said, As libel or no libel requires a legal apprehension of the subject, it is my duty to give you my opinion; and had then said, I think it is a libel, and had left the Jury to find it one under his directions, or otherwise, at their discretion, and had at the same time told them that the criminal intention was an inference from the publication of a libel, which it was their duty to make,—or if, admitting their right in *general*, he had advised a special verdict in the *particular instance*, I should have stood in a very different situation; but he told the Jury (I take the general result of his whole Charge,) that they had no jurisdiction to consider of the libel, or of the intention, both being beyond the compass of their oath.

Mr. Bearcroft's position was very different: he addressed the Jury with the honest candour of a Judge, without departing from the proper zeal of an Advocate. He said to the Jury—I cannot honour him more than by repeating his words; they will long be remembered by those who respect *him*, and love the constitution:—

"There is no law in this country," said Mr. Bearcroft, ("thank God, there is not; for it would not be a free constitution if there were,) that prevents a Jury, if they choose "it, from finding a general verdict; I admit it; I rejoice in "it; I admire and reverence the principle, as the palladium "of the constitution. But does it follow, because a Jury *may* "do this, that they *must* do it—that they OUGHT to do it?" He then took notice of the case of the seven Bishops, and honoured the Jury for exercising this right on that occasion.

Mr. Bearcroft's position is therefore manly and intelligible; it is simply this: It is the excellence of the English constitution that you may exert this power when you think the season warrants the exercise of it. The case of the seven Bishops was such a season, this is not.

But Mr. Justice Buller did by no means ratify this doctrine. It is surely not too much to expect that the Judge, who is supposed to be counsel for the prisoner, should keep within the bounds of the counsel for the Crown, when a Crown prosecution is in such hands as Mr. Bearcroft's.—The learned Judge, however, told the Jury from his own authority, and supported it with much history and observation, and many quotations, that they had nothing to do at all with those questions, their jurisdiction over which Mr. Bearcroft had rejoiced in as the palladium of the constitution. He did not tell them this by way of advice, as applied to the particular case before them;—he did not (admitting their right,) advise them to forbear the exercise of it in the *particular instance:* —no! the learned Judge fastened an UNIVERSAL ABSTRACT limitation on the province of the Jury to judge of the crime, or the criminal purpose of the Defendant. His whole speech laid down this limitation UNIVERSALLY, and was so understood by the Jury; he told them these questions were beyond the compass of their oaths, which was confined to the decision of the fact; and he drove them from the law by the terrors of conscience.—The conclusion is short.

If the Jury have no jurisdiction by the law of England, to examine the question of libel, and the criminality or innocence of the intention of the publisher, then the Judge's

Charge was right: but if they have jurisdiction, and if their having it be the palladium of the Government, it must be wrong. For how, in common sense, can that power in a Jury be called the palladium of the constitution, which can never be exerted, but by a breach of those rules of law, which the same constitution has established for their Government?

If in no case a Jury can entertain such a question without stepping beyond their duty, it is an affront to human reason to say, that the safety of the Government depends on men's violating their oaths in the administration of justice. If the Jury have that right, there is no difference between restricting the exercise of it by the terrors of imprisonment or the terrors of conscience. If there be any difference, the second is the most dangerous; an upright Juryman, like Bushel, would despise the first, but his very honesty would render him the dupe of the last.

The two former propositions on which my motion is founded, applying to all criminal cases;—and a distinction having always been taken between libels and other crimes by those who support the doctrines I am combatting;—I mean therefore to maintain, that an indictment for a libel, even where the slander of an individual is the object of it (which is capable of being measured by precedents of justice,) forms no exception to the jurisdiction or duties of Juries, or the practice of Judges in other criminal cases:—that the argument for the difference, viz. because the whole crime always appears upon the record, is false in fact, and, even if true, would form no solid or substantial difference in law.

I said that the record does not always contain sufficient for the Court to judge of a libel. The Crown may indict part of a publication, and omit the rest, which would have explained the author's meaning, and rendered it harmless: it has done so here; the advertisement is part of the publication, but no part of the record.

The famous case put by Algernon Sidney, is the best illustration that can possibly be put.

Suppose a bookseller having published the Bible, was indicted in these words, "That intending to promote atheism "and irreligion, he had blasphemously printed and publish-"ed the following false and profane libel,—There is no God." —The learned Judge said, that a person unjustly accused of publishing a libel might always demur to the indictment; this is an instance to the contrary; on the face of such a record, by which the demurrer can alone be determined, it contains a complete criminal charge. The Defendant therefore would

plead Not guilty, and go down to trial, when the Prosecutor, of course could only produce the Bible to support the charge, by which it would appear to be only a verse in the Proverbs of Solomon, viz. "The fool has said in his heart, There is "no God," and that the context had been omitted to constitute the libel. The Jury, shocked at the imposition, would only wait the Judge's direction to acquit; but consistently with the principles which have governed in the Dean of St. Asaph's trial, how could he be acquitted?—The Judge must say, you have nothing to do but with the fact, that the Defendant published *the words laid in the information.*

But, says the adversary, the distinction is obvious; reading the sacred context to the Jury would enable them to negative the innuendos which are within their province to reject, and which being rejected, would destroy the charge. The answer is obvious: such an indictment would contain no innuendo on which a negative could be put; for if the record charged that the Defendant blasphemously published that there was no God, it would require no innuendo to explain it.

Driven from that argument, the adversary must say, that the Jury by the context would be enabled to negative the epithets contained in the introduction, and could never pronounce it to be blasphemous. But the answer to that is equally conclusive; for it was said in the case of the King against Woodfall, that these epithets were mere formal inferences of law, from the fact of publishing that which on the record was a libel.

When the Defendant was convicted, it could not appear to the Court, that the Defendant only published the Bible. The Court could not look off the record, which says, that the Defendant blasphemously published that there was no God. The Judge maintaining these doctrines, would not, however, forget the respect due to the *religion* of his country, though the law of it had escaped him. He would tell the Jury, that it should be remembered in mitigation of punishment; and the honest bookseller of Paternoster Row, when he came up in custody to receive judgment, would be let off for a small fine, upon the Judge's report that he had only published a new copy of the Bible; but not till he had been a month in the King's Bench prison, while this knotty point of divinity was in discussion. This case has stood invulnerable for above one hundred years, and it remains still for Mr. Bearcroft to answer.

I said, in opening this proposition, that even if it were true that the record did contain the whole charge, it would form no substantial difference in law; and I said so, because, if the position be, that the Court is always to judge of the law, when it can be made to see it upon the record, no case can occur, in which there could be a general verdict, since the law might be always separated from the facts by finding the latter specially, and referring them to the judgment of the Court. By this mode of proceeding, the crime would be equally patent upon the record as by indictment; and if it be patent there, it matters not whether it appears on the front or the back of the Parchment; on the first by the indictment, or on the last by the postea.

People who seek to maintain this doctrine, do not surely see to what length it would go; for if it can be maintained that wherever, as in the case of a libel, the crime appears upon the record, the Court alone, and not the Jury, ought to judge; it must follow, that where a writing is laid as an overt act of high treason (which it may be when coupled with publication,) the Jury might be tied down to find the fact, and the Judges of the Crown might make State criminals at their discretion, by finding the law.

The answer in these mild and independent days of judicature is this, (Mr. Bearcroft indeed gave it at the trial:) Why may not Judges be trusted with our liberties and lives, who determine upon our property and every thing that is dear to us?

The observation was plausible for the moment, and suited to his situation, but he is too wise a man to subscribe to it. Where is the analogy between ordinary civil trials between man and man, where Judges can rarely have an interest, and great State prosecutions, where power and freedom are weighing against each other, the balance being suspended by the servants of the executive Magistrate? If any man can be so lost to reason as to be a sceptic on such a subject, I can furnish him with a cure from an instance directly in point: let him turn to the 199th page of the celebrated Foster, to the melancholy account of Peachum's indictment for treason, for a manuscript sermon found in his closet, never published, reflecting on King James the First's government. The case was too weak to trust without management, even by the Sovereign to the Judges of those days; it was necessary first to sound them; and the great (but on that occasion the contemptible) Lord Bacon was fixed on for the instrument; and his letter to the King remains recorded in history, where,

after telling him his successful practice on the puisne Judges, he says, that when in some dark manner he has hinted this success to Lord Coke, he will not choose to remain singular.

When it is remembered what comprehensive talents and splendid qualifications Lord Bacon was gifted with, it is no indecency to say, that all Judges ought to dread a trust which the constitution never gave them, and which human nature has not always enabled the greatest men to fulfil.

If the Court shall grant me a rule, I mean to contend, 4thly, that a seditious libel contains no question of law; but supposing the Court should deny the legality, of all these propositions, or, admiting their legality, resist the conclusion I have drawn from them, then the last proposition in which I am supported, even by all those authorities on which the learned Judge relies for the doctrines contained in this charge is this:

PROPOSITION V.

That in all cases where the mischievous intention (which is agreed to be the essence of the crime) cannot be collected by simple inference from the fact charged, because the Defendant goes into evidence to rebut such inference, the intention becomes then a pure unmixed question of fact, for the consideration of the Jury.

I said the authorities of the King against Woodfall and Almon were with me. In the case of Rex against Woodfall, 5th Burrow, Lord Mansfield expressed himself thus: "Where an act in itself indifferent, becomes criminal, when "done with a particular intent, there the intent must be pro- "ved and found. But where the act is itself unlawful, as in "the case of a libel, the PROOF of justification or excuse lies "on the Defendant; *and in failure thereof, the law implies a* "*criminal intent.*"—Most luminously expressed to convey this sentiment, viz. That when a man publishes a libel, and has nothing to say for himself,—no explanation or exculpation,—a criminal intention need not be proved: it is an inference of common sense, not of law. But the publication of a libel does not exclusively show criminal intent, but is only an implication of law, in failure of the Defendant's proof. Lord Mansfield immediately afterwards in the same case explains this further: "There may be cases where the publica- "tion may be justified or excused as lawful OR INNOCENT; "FOR NO ACT WHICH IS NOT CRIMINAL, *though the paper* "BE A LIBEL, can amount to SUCH a publication of which a "Defendant ought to be found guilty." But no question of that kind arose at the trial (i. e. trial of Woodfall.) Why?—

Lord Mansfield immediately says why, "*Because* the De-" fendant called no witnesses;" expressly saying, that the publication of a libel is not in itself a crime, unless the intent be criminal; and that it is not merely in mitigation of punishment, but that *such* a publication does not warrant a verdict of Guilty, if the seditious intention be rebutted by evidence.

In the case of the King against Almon, a Magazine containing one of Junius's letters, was sold at Almon's shop; there was proof of that sale at the trial. Mr. Almon called no witnesses, and was found guilty. To found a motion for a new trial, an affidavit was offered from Mr. Almon, that he was not privy to the sale, nor knew that his name was inserted as a publisher, and that this practice of booksellers being inserted as publishers by their correspondents without notice, was common in the trade.

Lord Mansfield said, "Sale of a book in a bookseller's " shop, is *prima facie* evidence of publication by the mas-" ter, and the publication of a libel is *prima facie* evidence " of criminal intent: it stands good till answered by the " Defendant: it must stand till contradicted or explained; " *and if not contradicted, explained, or exculpated,* BECOMES " *tantamount to conclusive when the Defendant calls no wit-" nesses.*"

Mr. Justice Aston said, "*Primâ facie* evidence not an-" swered is sufficient to ground a verdict upon; if the De-" fendant had a sufficient excuse, he might have proved it at " the trial: his having neglected it where there was no " surprise, is no ground for a new one." Mr. Justice Willes and Mr. Justice Ashhurst agreed upon those express principles.

These cases declare the law beyond all controversy to be, that publication, even of a libel, is no *conclusive* proof of guilt, but only *primâ facie* evidence of it till answered; and that if the Defendant can show that his intention was not criminal, he completely rebuts the inference arising from the publication, because, though it remains true that he published, yet it is, according to Lord Mansfield's express words, not such a publication of which a Defendant ought to be *found guilty.* Apply Mr. Justice Buller's summing up to this law, and it does not require even a legal apprehension to distinguish the repugnancy.

The advertisement was proved to convince the Jury of the Dean's motive for publishing; Mr. Jones's testimony went strongly to aid it; and the evidence to character, though not

sufficient in itself, was admissible to be thrown into the scale. But not only no part of this was left to the Jury, *but the whole of it was expressly removed from their consideration*; although in the cases of Woodfall and Almon, it was as expressly laid down to be within their cognizance; and a complete answer to the charge, if satisfactory to the minds of the Jurors.

In support of the learned Judge's Charge, there can be therefore but two arguments:—either that the Defendant's evidence, namely, the advertisement;—Mr. Jones's evidence, in confirmation of its having been published *bonâ fide*;—and the evidence to character to strengthen that construction, were not sufficient proof that the Dean believed the publication meritorious, and published it in vindication of his honest intentions:—or else, that, even admitting it to establish that fact, it did not amount to such an exculpation as to be evidence on not guilty, so as to warrant a verdict.—I give the learned Judge his choice of the alternative.

As to the first, viz. Whether it showed *honest intention* in point of *fact*; that surely was a question for the Jury. If the learned Judge had thought it was not sufficient evidence to warrant the Jury's believing that the Dean's motives were such as he had declared them, he should have given his opinion of it as a point of evidence, and left it there. I cannot condescend to go farther; it would be ridiculous to argue a self-evident proposition.

As to the second, That even if the Jury had believed from the evidence, that the Dean's intention was wholly innocent, it did not amount to an excuse, and therefore should not have been left to them. Does the learned Judge mean to say, that if the Jury had declared, "We find that the Dean published this pamphlet, whether a libel or not we do not find; and we find farther, that believing it in his conscience to be meritorious and innocent, he, *bonâ fide*, published it with the prefixed advertisement, as a vindication of his character from the seditious intentions, and not to excite sedition:" does the Judge mean to say, that on such a special verdict he could have pronounced a criminal judgment?—If, on making the report, he says yes, I shall have leave to argue it.

If he says NO, then why was the consideration of that evidence, by which those facts might have been found, withdrawn from the Jury, even after they had brought in a verdict, guilty of publishing ONLY, which, in the case of the King against Woodfall, was only said not to negative the

criminal intention, because that defendant had called no witnesses? Why did he confine his inquiries to the innuendos? and finding the Jury agreed upon them, why did he declare them to be bound to affix the epithet of Guilty, without asking them if they believed the Defendant's evidence to rebut the criminal inference? Some of the Jury meant to negative the criminal inference, by adding the word *only*, and all would have done it, if they had thought themselves at liberty to enter upon the evidence of the advertisement. *But they were told expressly that they had nothing to do with the consideration of that evidence, which, if believed, would have warranted that verdict.* The conclusion is evident;—If they had a right to consider it, and their consideration might have produced such a verdict, and if such a verdict would have been an acquittal, it must be a misdirection.

It seems to me therefore, that, to support the learned Judge's directions, the very cases relied on in support of them must be abandoned; since, even upon their authority, the criminal intention, though a legal inference from the fact of publishing, in the absence of proof from the Defendant, becomes a question of fact, when he offers proof in exculpation to the Jury;—the foundation of my motion therefore is clear.

I first deny the authority of these modern cases, and rely upon the rights of Juries, as established by the ancient law and custom of England, and hold that the Judge's Charge confines that right, and its exercise, though not the power in the Jury to find a general verdict of acquittal.

I assert farther, that, whatever were the Judge's intentions, the Jury could not but collect that restriction from his Charge;—that all free agency was therefore destroyed in them, from respect to authority, in opposition to reason;—and that therefore the Defendant has had no trial which this court can possibly sanction by supporting the verdict. But if the Court should be resolved to support its own late determinations, I must content myself even with *their* protection; they are certainly not the shield with which, in a contest for freedom, I should wish to combat, but they are sufficient for my protection: it is impossible to reconcile the learned Judge's directions with any of them.

My Lord, I shall detain the Court no longer at present.—The people of England are deeply interested in this great question; and though they are not insensible to that interest, yet they do not feel it in its real extent. The dangerous consequences of the doctrines established on the subject of libel

are obscured from the eyes of many, from their not feeling the immediate effects of them in daily oppression and injustice:—but that security is temporary and fallacious; it depends upon the convenience of Government for the time being, which may not be interested in the sacrifice of individuals, and in the temper of the magistrate who administers the criminal law, as the head of this Court. I am one of those who could almost lull myself by these reflections from the apprehension of *immediate* mischief, even from the law of libel laid down by your Lordship, if YOU were always to continue to administer it yourself. I should feel a protection in the gentleness of your character; in the love of justice which its own intrinsic excellence forces upon a mind enlightened by science, and enlarged by liberal education, and in that dignity of disposition which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security: but such a security is as a shadow which passeth away;—you cannot, my Lord, be immortal, and how can you answer for your successor? if you maintain the doctrines which I seek to overturn, you render yourself responsible for all the abuses that may follow from them to our latest posterity.

My Lord, whatever may become of the liberties of England, it shall never be said that they perished without resistance, when under my protection.

On this motion the Court granted a rule to show cause why there should not be a new trial—and cause was accordingly shown by the Counsel for the Crown on the 15th of November following; their arguments were taken in short-hand by Mr. Blanchard, but were never published;—they relied, however, altogether upon the authorities cited by Mr. Justice Buller, in his Charge to the Jury, and upon the uniform practice of the Court of King's Bench, for more than fifty years. The following Speech, in support of the new trial, which was taken at the same time by Mr. Blanchard, was soon after published by Mr. Erskine's authority, in order to attract the attention of the public to the Libel Bill, which Mr. Fox was then preparing for the consideration of Parliament.

ARGUMENT *in the King's Bench, in support of the Rights of Juries. By the Honourable* THOMAS ERSKINE.

I AM now to have the honour to address myself to your Lordship in support of the rule granted to me by the Court upon Monday last; which, as Mr. Bearcroft has truly said, and seemed to mark the observation with peculiar emphasis, is a rule for a new trial. Much of my argument, according to his notion points another way; whether its direction be true, or its force adequate to the object, it is now my business to show.

In rising to speak at this time, I feel all the advantage conferred by the reply over those whose arguments are to be answered; but I feel a disadvantage likewise which must suggest itself to every intelligent mind. In following the objections of so many learned persons, offered under different arrangements upon a subject so complicated and comprehensive, there is much danger of being drawn from that method and order, which can alone fasten conviction upon unwilling minds, or drive them from the shelter which ingenuity never fails to find in the labyrinth of a desultory discourse.

The sense of that danger, and my own inability to struggle against it, led me originally to deliver to the Court certain written and maturely considered propositions, from the establishment of which I resolved not to depart, nor to be removed, either in substance or in order, in any stage of the proceedings, and by which I must therefore this day unquestionably stand or fall.

Pursuing this system I am vulnerable two ways, and in two ways only. Either it must be shown that my propositions are not valid in law; or, admitting their validity, that the learned Judge's Charge to the Jury at Shrewsbury was not repugnant to them: there can be no other possible objections to my application for a new trial. My duty to-day is therefore obvious and simple; it is, first, to re-maintain those propositions; and then to show, that the Charge delivered to the Jury at Shrewsbury was founded upon the absolute denial and reprobation of them.

I begin, therefore, by saying again in my own original

words, that when a bill of indictment is found, or an information filed, charging any crime or misdemeanor known to the law of England, and the party accused puts himself upon the country by pleading the general issue,—Not guilty;—the Jury are GENERALLY charged with his deliverance from that CRIME, and not SPECIALLY from the *fact or facts*, in the commission of which the indictment or information charges the crime to consist; much less from any single fact, to the exclusion of others charged upon the same record.

Secondly, that no act, which the law in its general theory holds to be criminal, constitutes in itself a crime, abstracted from the mischievous intention of the actor. And that the intention, even where it becomes a simple inference of legal reason from a fact or facts established, may and ought to be collected by the Jury, with the Judge's assistance. Because the act charged, though established as a fact in a trial *on the general issue*, does not necessarily and unavoidably establish the criminal intention by any ABSTRACT conclusion of law: the establishment of the fact being still no more than full evidence of the crime, but not the crime itself; unless the Jury consider it so themselves, by referring it voluntarily to the Court by special verdict.

These two propositions, though worded with cautious precision, and in technical language, to prevent the subtlety of legal disputation in opposition to the plain understanding of the world, neither do nor were intended to convey any other sentiment than this: viz. that in all cases where the law either directs or permits a person accused of a crime to throw himself upon a Jury for deliverance, by pleading *generally* that he is not guilty; the Jury, thus legally appealed to, may acquit him from the accusation by a general verdict of acquittal founded (as in common sense it evidently must be) upon an investigation as general and comprehensive as the charge itself from which it is a general deliverance.

Having said this, I freely confess to the Court, that I am much at a loss for any farther illustration of my subject; because I cannot find any matter by which it might be farther illustrated, so clear, or so indisputable, either in fact or in law, as the very proposition itself which upon this trial has been brought into question. Looking back upon the ancient constitution, and examining with painful research the original jurisdictions of the country, I am utterly at a loss to imagine from what sources these novel limitations of the rights of Juries are derived. Even the Bar is not yet trained to the discipline of maintaining them. My learned friend Mr.

Bearcroft solemnly abjures them:—he repeats to-day what he avowed at the trial, and is even jealous of the imputation of having meant less than he expressed; for when speaking this morning of the *right* of the Jury to judge of the whole charge, your Lordship corrected his expression, by telling him he meant the *power*, and not the *right*; he caught instantly at your words, disavowed your explanation; and, with a consistency which does him honour, declared his adherence to his original admission in its full and obvious extent.—"I "did not mean," said he, "merely to acknowledge that the "Jury have the *power*; for their power nobody ever doubted; and, if a Judge was to tell them they had it not, they "would only have to laugh at him, and convince him of his "error, by finding a general verdict which must be recorded; "I meant, therefore, to consider it as a *right*, as an important privilege, and of great value to the constitution.

Thus Mr. Bearcroft and I are perfectly agreed; I never contended for more than he has voluntarily conceded. I have now his express authority for repeating, in my own former words, that the Jury have not merely the *power* to acquit, upon a view of the whole charge, without control or punishment, and without the possibility of their acquittal being annulled by any other authority; but that they have *a constitutional, legal right to do it; a right fit to be exercised;* and intended by the wise founders of the government, to be a protection to the lives and liberties of Englishmen, against the encroachments and perversions of authority in the hands of fixed magistrates.

But this candid admission on the part of Mr. Bearcroft, though very honourable to himself, is of no importance to me; since, from what has already fallen from your Lordship, I am not to expect a ratification of it from the Court; it is therefore my duty to establish it. I feel all the importance of my subject, and nothing shall lead me to-day to go out of it. I claim all the attention of the Court, and the right to state every authority which applies in my judgment to the argument, without being supposed to introduce them for other purposes than my duty to my Client, and the constitution of my country, warrants and approves.

It is not very usual in an English Court of Justice, to be driven back to the earliest history and original elements of the constitution, in order to establish the first principles which mark and distinguish English law:—they are always assumed, and, like axioms in science, are made the foundations of reasoning without being proved. Of this sort our ancestors, for many centuries, must have conceived the right of an Eng-

lish Jury to decide upon every question which the forms of the law submitted to their final decision; since, though they have immemorially exercised that supreme jurisdiction, we find no trace in any of the ancient books of its ever being brought into question. It is but as yesterday, when compared with the age of the law itself, that Judges, unwarranted by any former judgments of their predecessors, without any new commission from the Crown, or enlargement of judicial authority from the Legislature, have sought to fasten a limitation upon the rights and privileges of Jurors, totally unknown in ancient times, and palpably destructive of the very end and object of their institution.

No fact, my Lord, is of more easy demonstration; for the history and laws of a free country lie open—even to vulgar inspection.

During the whole Saxon æra, and even long after the establishment of the Norman government, the whole administration of justice, criminal and civil, was in the hands of the people, without the control or intervention of any judicial authority, delegated to fixed magistrates by the Crown. The tenants of every manor administered civil justice to one another in the court-baron of their lord; and their crimes were judged of in the leet, every suitor of the manor giving his voice as a juror, and the steward being only the register,—and not the Judge. On appeals from these domestic jurisdictions to the county-court, and to the torn of the sheriff, or in suits and prosecutions originally commenced in either of them, the sheriff's authority extended no farther than to summon the jurors, to compel their attendance, ministerially to regulate their proceedings, and to enforce their decisions; and even where he was specially empowered by the King's writ of *justices* to proceed in causes of superior value, no *judicial* authority was thereby conferred upon himself, but only a more enlarged jurisdiction ON THE JURORS, who were to try the cause mentioned in the writ.

It is true that the sheriff cannot now intermeddle in pleas of the Crown; but with this exception, which brings no restrictions on Juries, these jurisdictions remain untouched at this day:—intricacies of property have introduced other forms of proceeding, but the constitution is the same.

This popular judicature was not confined to particular districts, or to inferior suits and misdemeanors, but pervaded the whole legal constitution; for, when the Conqueror, to increase the influence of his crown, erected that great superintending Court of Justice in his own palace, to receive

appeals criminal and civil from every court in the kingdom, and placed at the head of it the *capitalis justiciarius totius Angliæ*, of whose original authority the Chief Justice of this Court is but a partial and feeble emanation; even that great magistrate was in the *aula regis* merely ministerial; every one of the King's tenants, who owed him service in right of a barony, had a seat and a voice in that high tribunal; and the office of justiciar was but to record and to enforce their judgments.

In the reign of King Edward the First, when this great office was abolished, and the present Courts at Westminster established by a distribution of its powers; the barons preserved that supreme superintending jurisdiction which never belonged to the justiciar, but to themselves only as the jurors in the King's court: a jurisdiction which, when nobility, from being territorial and feudal, became personal and honorary, was assumed and exercised by the peers of England, who, without any delegation of judicial authority from the Crown, form to this day the supreme and final court of English law, judging in the last resort for the whole kingdom, and sitting upon the lives of the peerage, in their ancient and genuine character, as the *pares* of one another.

When the Courts at Westminster were established in their present forms, and when the civilization and commerce of the nation had introduced more intricate questions of justice, the judicial authority in civil cases could not but enlarge its bounds; the rules of property, in a cultivated state of society became by degrees beyond the compass of the unlettered multitude; and in certain well-known restrictions undoubtedly fell to the Judges: yet more perhaps from necessity than by consent, as all judicial proceedings were artfully held in the Norman language, to which the people were strangers.

Of these changes in judicature, immemorial custom, and the acquiescence of the legislature, are the evidence, which establish the jurisdiction of the Courts on the true principle of English law, and measure the extent of it by their ancient practice.

But no such evidence is to be found of the least relinquishment or abridgement of popular judicature *in cases of crimes*; on the contrary, every page of our history is filled with the struggles of our ancestors for its preservation. The law of property changes with new objects, and becomes intricate as it extends its dominion;—but crimes must ever be of the same easy investigation:—they consist wholly in intention, and the more they are multiplied by the policy of those who govern,

the more absolutely the public freedom depends upon the people's preserving the entire administration of criminal justice to themselves. In a question of property between two private individuals, the Crown can have no possible interest in preferring the one to the other: but it may have an interest in crushing both of them together, in defiance of every principle of humanity and justice, if they should put themselves forward in a contention for public liberty, against a government seeking to emancipate itself from the dominion of the laws. No man in the least acquainted with the history of nations, or of his own country, can refuse to acknowledge, that if the administration of criminal justice were left in the hands of the Crown, or its deputies, no greater freedom could possibly exist, than government might choose to tolerate from the convenience or policy of the day.

My Lord, this important truth is no discovery or assertion of mine, but is to be found in every book of the law: whether we go up to the most ancient authorities, or appeal to the writings of men of our own times, we meet with it alike in the most emphatical language. Mr. Justice Blackstone, by no means biassed towards democratical government, having in the third volume of his Commentaries explained the excellence of the trial by Jury in civil cases, expresses himself thus: vol. iv. p. 349: "But it holds much stronger in criminal cases; since in times of difficulty and danger, more is to be apprehended from the violence and partiality of Judges appointed by the Crown, in suits between the King and the subject, than in disputes between one individual and another, to settle the boundaries of private property. Our law has, therefore, wisely placed this strong and two-fold barrier of a presentment and trial by Jury, between the liberties of the people and the prerogative of the Crown: without this barrier, Justices of *oyer* and *terminer* named by the crown, might, as in France or in Turkey, imprison, dispatch, or exile, any man that was obnoxious to government, by an instant declaration that such was their will and pleasure. So that the liberties of England cannot but subsist so long as this palladium remains sacred and inviolate, not only from all open attacks, which none will be so hardy as to make, but also from all secret machinations, which may sap and undermine it."

But this remark, though it derives new force in being adopted by so great an authority, was no more original in Mr. Justice Blackstone than in me: the institution and authority of Juries is to be found in Bracton, who wrote

above five hundred years before him. "The *curia* and "the *pares*," says he, "were necessarily the judges in all "cases of life, limb, crime, and disherison of the heir in "capite. The King could not decide, for then he would "have been both Prosecutor and Judge; neither could his "justices, for they represent him."*

Notwithstanding all this, the learned Judge was pleased to say, at the tri l, that there was no difference between civil and criminal cases. I say, on the contrary, independent of these authorities, that there is not, even to vulgar observation, the remotest similitude between them.

There are four capital distinctions between prosecutions for crimes, and civil actions, every one of which deserves consideration.

First, In the jurisdiction necessary to found the charge.

Secondly, In the manner of the Defendant's pleading to it.

Thirdly, In the authority of the verdict which discharges him.

Fourthly, In the independence and security of the Jury from all consequences in giving it.

As to the first, it is unnecessary to remind your Lordships, that, in a civil case, the party who conceives himself aggrieved, states his complaint to the Court,—avails himself at his own pleasure of its process,—compels an answer from the Defendant by its authority,—or taking the charge *pro confesso* against him on his default, is entitled to final judgment and execution for his debt, without any interposition of a Jury. But in criminal cases it is otherwise; the Court has no cognizance of them, without leave from the people forming a grand inquest. If a man were to commit a capital offence in the face of all the Judges of England, their united authority could not put him upon his trial:—they could file no complaint against him, even upon the records of the supreme criminal Court, but could only commit him for safe custody, which is equally competent to every common Justice of the Peace:—the Grand Jury alone could arraign him, and in their discretion might likewise finally discharge him, by throwing out the bill, with the names of all your Lordships as witnesses on the back of it. If it shall be said, that this exclusive power of the Grand Jury does not extend to lesser misdemeanors, which may be prosecuted by information; I answer, that for that very reason it becomes doubly necessary to

* Vide likewise Mr. Reeves' very ingenious History of the English Law.

preserve the power of the other Jury which is left. In the rules of pleading, there is no distinction between capital and lesser offences; and the Defendant's plea of Not guilty (which universally prevails as the legal answer to every information or indictment, as opposed to special pleas to the Court in civil actions,) and the necessity imposed upon the Crown to join the general issue, are absolutely decisive of the present question.

Every lawyer must admit, that the rules of pleading were originally established to mark and to preserve the distinct jurisdictions of the Court and the Jury, by a separation of the law from the fact, wherever they were intended to be separated. A person charged with owing a debt, or having committed a trespass, &c. &c. if he could not deny the facts on which the actions were founded, was obliged to submit his justification for matter of law by a special plea to the Court upon the record; to which plea the Plaintiff might demur, and submit the legal merits to the Judges. By this arrangement, no power was ever given to the Jury, by an issue joined before them, but when a right of decision, as comprehensive as the issue, went along with it:—if a Defendant in such civil actions pleaded the general issue instead of a special plea, aiming at a general deliverance from the charge, by showing his justification to the Jury at the trial; the Court protected its own jurisdiction, by refusing all evidence of the facts on which such justification was founded. The extension of the general issue beyond its ancient limits, and in deviation from its true principle, has introduced some confusion into this simple and harmonious system; but the law is substantially the same.—No man, at this day, in any of those actions where the ancient forms of our jurisprudence are still wisely preserved, can possibly get at the opinion of a Jury upon any question, not intended by the constitution for their decision. In actions of debt, detinue, breach of covenant, trespass, or replevin, the Defendant can only submit the mere fact to the Jury; the law must be pleaded to the Court: if, dreading the opinion of Judges, he conceals his justification under the cover of a general plea in hopes of a more favourable construction of his defence at the trial; its very existence can never even come within the knowledge of the Jurors; every legal defence must arise out of facts, and the authority of the Judge is interposed, to prevent their appearing before a tribunal which, in such cases, has no competent jurisdiction over them.

By imposing this necessity of pleading every legal justi-

fication to the Court, and by this exclusion of all evidence on the trial beyond the negation of the fact; the Courts indisputably intended to establish, and did in fact effectually secure the judicial authority over legal questions from all encroachment or violation; and it is impossible to find a reason in law, or in common sense, why the same boundaries between the fact and the law should not have been at the same time extended to criminal cases by the same rules of pleading, if the jurisdiction of the Jury had been designed to be limited to the fact, as in civil actions.

But no such boundary was ever made or attempted; on the contrary, every person, charged with any crime by an indictment or information, has been in all times, from the Norman conquest to this hour, not only permitted, but even bound to throw himself upon his country for deliverance, by the general plea of Not guilty; and may submit his whole defence to the Jury, whether it be a negation of the fact, or a justification of it in law; and the Judge has no authority, as in a civil case, to refuse such evidence at the trial, as out of the issue, and as *coram non judice*;—an authority which in common sense he certainly would have, if the Jury had no higher jurisdiction in the one case than in the other. The general plea thus sanctioned by immemorial custom, so blends the law and the fact together, as to be inseparable but by the voluntary act of the Jury in finding a special verdict: the general investigation of the whole charge is therefore before them; and although the Defendant admits the fact laid in the information or indictment, he nevertheless, under his general plea, gives evidence of others which are collateral, referring them to the judgment of the Jury, as a legal excuse or justification, and receives from their verdict a complete, general, and conclusive deliverance.

Mr. Justice Blackstone, in the fourth volume of his Commentaries, page 339, says, "The traitorous or felonious intent are the points and very gist of the indictment, and must be answered directly by the general negative, Not guilty; and the Jury will take notice of any defensive matter, and give their verdict accordingly, as effectually as if it were specially pleaded."

This, therefore, says, Sir Matthew Hale, in his Pleas of the Crown, page 258, is, upon all accounts, the most advantageous plea for the Defendant: "It would be a most unhappy case for the Judge himself, if the prisoner's fate depended upon his directions:—unhappy also for the prisoner; for if the Judge's opinion must rule the verdict, the trial by Jury would be useless."

My Lord, the conclusive operation of the verdict when given, and the security of the Jury from all consequences in giving it, render the contrast between criminal and civil cases striking and complete. No new trial can be granted, as in a civil action:—your Lordships, however you may disapprove of the acquittal, have no authority to award one; for there is no precedent of any such upon record; and the discretion of the Court is circumscribed by the law.

Neither can the Jurors be attainted by the Crown. In Bushel's case, Vaughan's Reports, page 146, that learned and excellent Judge expressed himself thus: "There is no case "in all the law of an attaint for the King, nor any opinion "but that of Thyrning's, 10th of Henry IV., title Attaint, "60 and 64, for which there is no warrant in law, though "there be other specious authority against it, touched by "none that have argued this case."

*Lord Mansfield.* To be sure it is so.

*Mr. Erskine.* Since that is clear, my Lord, I shall not trouble the Court farther upon it: indeed I have not been able to find any one authority for such an attaint but a dictum in Fitzherbert's Natura Brevium, page 107; and on the other hand, the doctrine of Bushel's case is expressly agreed to in very modern times: vide Lord Raymond's Reports, 1st volume, page 469.

If, then, your Lordship reflect but for a moment upon this comparative view of criminal and civil cases which I have laid before you; how can it be seriously contended, not merely that there is no difference, but that there is any the remotest similarity between them? In the one case, the power of accusation begins from the Court;—in the other, from the people only; forming a Grand Jury.—In the one, the Defendant must plead a special justification, the merits of which can only be decided by the Judges;—in the other, he may throw himself for general deliverance upon his country.—In the first the Court may award a new trial, if the verdict for the Defendant be contrary to the evidence or the law;—in the last it is conclusive and unalterable;—and to crown the whole, the King never had that process of attaint which belonged to the meanest of his subjects.

When these things are attentively considered, I might ask those who are still disposed to deny the right of the Jury to investigate the whole charge, whether such a solecism can be conceived to exist in any human government, much less in the most refined and exalted in the world, as that a power of

supreme judicature should be conferred at random by the blind forms of the law, where no right was intended to pass with it; and which was upon no occasion and under no circumstance to be exercised; which, though exerted notwithstanding in every age and in a thousand instances, to the confusion and discomfiture of fixed magistracy, should never be checked by authority, but should continue on from century to century; the revered guardian of liberty and of life, arresting the arm of the most headstrong governments in the worst of times, without any power in the Crown or its Judges, to touch, without its consent, the meanest wretch in the kingdom, or even to ask the reason and principle of the verdict which acquits him.—That such a system should prevail in a country like England, without either the original institution or the acquiescing sanction of the legislature, is impossible. Believe me, my Lord, no talents can reconcile, no authority can sanction such an absurdity;—the common sense of the world revolts at it.

Having established this important right in the Jury beyond all possibility of cavil or controversy, I will now show your Lordship, that its existence is not merely consistent with the theory of the law, but is illustrated and confirmed by the universal practice of all Judges; not even excepting Mr. Justice Forster himself, whose writings have been cited in support of the contrary opinion. How a man expresses his abstract ideas is but of little importance when an appeal can be made to his plain directions to others, and to his own particular conduct: but even none of his expressions, when properly considered and understood, militate against my position.

In his justly celebrated book on the criminal law, page [illegible], he expresses himself thus: "The construction which the law "putteth upon fact STATED AND AGREED OR FOUND by a "Jury, *is in all cases undoubtedly the proper province of the Court.*" Now if the adversary is disposed to stop here, though the author never intended he should, as is evident from the rest of the sentence, yet I am willing to stop with him, and to take it as a substantive proposition; for the slightest attention must discover that it is not repugnant to any thing which I have said. Facts *stated and agreed*, or facts *found*, by a Jury, which amount to the same thing, constitute a special verdict; and whoever supposed that the law upon a special verdict was not the province of the Court? Where in a trial upon a general issue the parties choose to agree upon facts and to state them, or the Jury choose voluntarily to find them without drawing the legal conclusion themselves; who

ever denied that in such instances the Court is to draw it?—That Forster meant nothing more than that the Court was to judge of the law, when the Jury thus voluntarily prays its assistance by special verdict, is evident from his words which follow, for he immediately goes on to say; in cases of doubt and REAL difficulty, it is therefore commonly recommended to the jury to state facts and circumstances in a special verdict: but neither here, nor in any other part of his works, is it said or insinuated that they are *bound* to do so, but at their own free discretion: indeed, the very term *recommended*, admits the contrary, and requires no commentary. I am sure I shall never dispute the wisdom or expediency of such a recommendation in those cases of doubt, because the more I am contending for the existence of such an important right, the less it would become me to be the advocate of rashness and precipitation in the exercise of it. It is no denial of jurisdiction to tell the greatest magistrate upon earth to take good counsel in cases of real doubt and difficulty.—Judges upon trials, whose authority to state the law is indisputable, often refer it to be more solemnly argued before the Court; and this Court itself often holds a meeting of the twelve Judges before it decides on a point upon its own records, of which the others have confessedly no cognizance till it comes before them by the writ of error of one of the parties.—These instances are monuments of wisdom, integrity, and discretion but they do not bear in the remotest degree upon jurisdiction: the sphere of jurisdiction is measured by what may or may not be decided by any given tribunal with legal effect, not by the rectitude or error of the decision. If the Jury, according to the authorities, may determine the whole matter by their verdict, and if the verdict when given is not only final and unalterable, but must be enforced by the authority of the Judges, and executed, if resisted, by the whole power of the state,—upon what principle of government or reason can it be argued not to be law? That the Jury are in this exact predicament is confessed by Forster; for he concludes with saying, that when the law is clear, the Jury, under the direction of the Court, in point of law *may*, and if they are well advised will, *always find a general verdict conformably to such directions.*

This is likewise consistent with my position; if the law be clear, we may presume that the Judge states it clearly to the Jury; and if he does, undoubtedly the Jury, if they are well advised, will find according to such directions; for they have not a capricious discretion to make law at their plea-

sure, but are bound in conscience as well as Judges are to find it truly; and, generally speaking, the learning of the Judge who presides at the trial affords them a safe support and direction.

The same practice of Judges in stating the law to the Jury, as applied to the particular case before them, appears likewise in the case of the King against Oneby, 2d Lord Raymond, page 1494. "On the trial the Judge directs the Jury "thus: If you believe such and such witnesses who have "sworn to such and such facts, *the killing of the deceased* "*appears to be with malice prepense:* but if you do not be- "lieve them, then you ought to find him guilty of man- "slaughter; and the Jury may, if they think proper, give a "general verdict of murder or manslaughter: *but if they de-* "*cline* giving a general verdict, and *will* find the facts spe- "cially, the Court is then to form their judgment from the "facts found, whether the Defendant be guilty or not guilty, "*i. e.* whether the act was done with malice and delibera- "tion or not."—Surely language can express nothing more plainly or unequivocally, than that where the general issue is pleaded to an indictment, the law and the fact are both before the Jury; and that the former can never be separated from the latter, for the judgment of the Court, unless by their own spontaneous act: for the words are, "If they *decline* giving "a general verdict, and *will* find the facts specially, the Court is THEN to form their judgment from the facts found." So that, after a general issue joined, the authority of the Court only commences when the Jury chooses to decline the decision of the law by a general verdict; the right of declining which legal determination, is a privilege conferred upon them by the statute of Westminster 2d, and by no means a restriction of their powers.

But another very important view of the subject remains behind: for supposing I had failed in establishing that contrast between criminal and civil cases, which is now too clear not only to require, but even to justify another observation, the argument would lose nothing by the failure; the similarity between criminal and civil cases derives all its application to the argument from the learned Judge's supposition, that the jurisdiction of the Jury over the law was never contended for in the latter, and consequently on a principle of equality could not be supported in the former; whereas I do contend for it, and can incontestably establish it in both. This application of the argument is plain from the words of the charge: "If the Jury could find the law, it would undoubtedly hold

" in civil cases as well as criminal: but was it ever supposed " that a Jury was competent to say the operation of a fine, " or a recovery, or a warranty, which are mere questions of " law?"

To this question I answer, that the competency of the Jury in such cases is contended for to the full extent of my principle, both by Lyttleton and by Coke: they cannot indeed decide upon them *de plano*, which, as Vaughan truly says, is unintelligible, because an unmixed question of law can by no possibility come before them for decision; but whenever (which very often happens) the operation of a fine, a recovery, a warranty, or any other record or conveyance known to the law of England comes forward, mixed with the fact on the general issue, the Jury have then most unquestionably a right to determine it; and what is more, no other authority possibly can; because, when the general issue is permitted by law, these questions cannot appear on the record for the judgment of the Court, and although it can grant a new trial, yet the same question must ultimately be determined by another Jury. This is not only self-evident to every lawyer, but, as I said, is expressly laid down by Lyttleton in the 368th section. " Also in such case where the inquest " may give their verdict at large, if they will take upon them " the knowledge of the law upon the matter, they may give " their verdict generally as it is put in their charge: as in " the case aforesaid they may well say, that the lessor did " not disseise the lessee if they will." Coke, in his commentary on this section, confirms Lyttleton; saying, that in doubtful cases they should find specially for fear of an attaint: and it is plain that the statute of Westminster the 2d, was made either to give or to confirm the right of the Jury to find the matter specially, leaving their jurisdiction over the law as it stood by the common law. The words of the statute of Westminster 2d, chapter 30th, are, " *Ordinatum* " *est quod justitiarii ad assisas capiendas assignati*, NON " COMPELLANT *juratores dicere precise si sit disseisina vel* " *non; dummodo voluerint dicere veritatem facti et petere* " *auxilium justitiariorum.*" From these words it should appear, that the jurisdiction of the Jury over the law when it came before them on the general issue, was so vested in them by the constitution, that the exercise of it in all cases had been considered to be compulsory upon them, and that this act was a legislative relief from that compulsion in the case of an assize of disseizin: it is equally plain from the remaining words of the act, that their jurisdiction remained as be-

fore: "*sed si sponte velint dicere quod disseisina est vel non, "admittatur eorum veredictum sub suo periculo.*"

But the most material observation upon this statute, as applicable to the present subject is, that the terror of the attaint from which it was passed to relieve them, having (as has been shewn) no existence in cases of crime, the act only extended to relieve the Jury at their discretion from finding the law in civil actions; and consequently it is only from custom, and not from positive law, that they are not *even compellable* to give a general verdict involving a judgment of law on every criminal trial.

These principles and authorities certainly establish that it is the duty of the Judge, on every trial where the general issue is pleaded, to give to the Jury his opinion on the law as applied to the case before them; and that they must find a general verdict comprehending a judgment of law, unless they *choose* to refer it specially to the Court.

But we are here, in a case where it is contended, that the duty of the Judge is the direct contrary of this;—that he is to give no opinion at all to the jury upon the law as applied to the case before them;—that they likewise are to refrain from all consideration of it, and yet that the very same general verdict comprehending both fact and law, is to be given by them as if the whole legal matter had been summed up by the one and found by the other.

I confess I have no organs to comprehend the principle on which such a practice proceeds. I contended for nothing more at the trial than the very practice recommended by Forster and Lord Raymond;—I addressed myself to the jury upon the law with all possible respect and deference, and indeed with very marked personal attention to the learned Judge: so far from urging the Jury, dogmatically to think for themselves without his constitutional assistance, I called for his opinion on the question of libel; saying, that if he should tell them distinctly the paper indicted was libellous, though I should not admit that they were bound at all events to give effect to it if they felt it to be innocent; yet I was ready to agree that they ought not to go against the Charge without great consideration; but that if he should shut himself up in silence, giving no opinion at all upon the criminality of the paper from which alone any guilt could be fastened on the publisher, and should narrow their consideration to the publication, I entered my protest against their finding a verdict affixing the epithet of *guilty* to the mere fact of publishing a paper, the *guilt* of which had not been investigated.

If, after this address to the Jury, the learned Judge had told them, that in his opinion the paper was a libel, but still leaving it to their judgments, and likewise the Defendant's evidence to their consideration, had farther told them, that he thought it did not exculpate the publication; and if in consequence of such directions the Jury had found a verdict for the Crown, I should never have made my present motion for a new trial; because I should have considered such a verdict of Guilty as founded upon the opinion of the Jury on the whole matter as left to their consideration, and must have sought my remedy by arrest of judgment on the record.

But the learned Judge took a direct contrary course:—he gave no opinion at all on the guilt or innocence of the paper;—he took no notice of the Defendant's evidence of intention: he told the Jury, in the most explicit terms, that neither the one nor the other were within their jurisdiction; and upon the mere fact of publication directed a general verdict comprehending the epithet of *Guilty*, after having expressly withdrawn from the Jury every consideration of the merits of the paper published, or the intention of the publisher, from which it is admitted on all hands the *guilt* of publication could alone have any existence.

My motion is therefore founded upon this obvious and simple principle; that the Defendant has had in fact NO TRIAL; having been found *guilty* without any investigation of his *guilt*, and without any power left to the Jury to take cognizance of his innocence. I undertake to show, that the Jury could not possibly conceive or believe from the Judge's Charge, that they had any jurisdiction to acquit him; however they might have been impressed even with the merit of the publication, or convinced of his meritorious intention in publishing it: nay, what is worse, while the learned Judge totally deprived them of their whole jurisdiction over the question of libel and the Defendant's seditious intention, he at the same time directed a general verdict of Guilty, which comprehended a judgment upon both.

When I put this construction on the learned Judge's direction, I found myself wholly on the language in which it was communicated; and it will be no answer to such construction, that no such restraint was meant to be conveyed by it. If the learned Judge's intentions were even the direct contrary of his expressions, yet if, in consequence of that which was expressed though not intended, the Jury were abridged of a jurisdiction which belonged to them by law, and in the exercise of which the Defendant had an interest,

he is equally a sufferer, and the verdict given under such misconception of authority is equally void: my application ought therefore to stand or fall by the Charge itself, upon which I disclaim all disingenuous cavilling. I am certainly bound to show, that from the general result of it, fairly and liberally interpreted, the Jury could not conceive that they had any right to extend their consideration beyond the bare fact of publication, so as to acquit the Defendant by a judgment founded on the legality of the Dialogue, or the honesty of the intention in publishing it.

In order to understand the learned Judge's direction, it must be recollected that it was addressed to them in answer to me, who had contended for nothing more than that these two considerations ought to rule the verdict; and it will be seen, that the Charge, on the contrary, not only excluded both of them by general inference, but by expressions, arguments, and illustrations the most studiously selected to convey that exclusion, and to render it binding on the consciences of the Jury. After telling them in the very beginning of his Charge that the single question for their decision was, whether the Defendant had published the pamphlet? he declared to them, that it was not even *allowed to him, as the Judge trying the cause*, to say whether it was, or was not a libel: for that if he should say it was no libel, and they, following his direction, should acquit the Defendant, they would thereby deprive the Prosecutor of his writ of error upon the record, which was one of his dearest birthrights. The law, he said, was equal between the Prosecutor and the Defendant; that a verdict of acquittal would close the matter for ever, depriving him of his appeal; and that whatever therefore was upon the record *was not for their decision*, but might be carried at the pleasure of either party to the House of Lords.

Surely language could not convey a limitation upon the right of the Jury over the question of libel, or the intention of the publisher, more positive or more universal. It was positive, inasmuch as it held out to them that such a jurisdiction could not be entertained without injustice; and it was universal, because the principle had no special application to the particular circumstances of that trial; but subjected every Defendant upon every prosecution for a libel, to an inevitable conviction on the mere proof of publishing *any thing*, though both Judge and Jury might be convinced that the thing published was innocent and even meritorious.

My Lord, I make this commentary without the hazard of contradiction from any man whose reason is not disordered.

For if the Prosecutor in every case has a birthright by law to have the question of libel left open upon the record, which it can only be by a verdict of conviction on the single fact of publishing; no legal right can at the same time exist in the Jury to shut out that question by a verdict of acquittal founded upon the merits of the publication, or the innocent mind of the publisher. Rights that are repugnant and contradictory cannot be co-existent. The Jury can never have a constitutional right to do an act beneficial to the Defendant, which when done deprives the Prosecutor of a right which the same constitution has vested in him. No right can belong to one person, the exercise of which in *every instance* must necessarily work a wrong to another. If the Prosecutor of a libel has in *every* instance the privilege to try the merits of his prosecution before the Judges, the Jury can have no right in *any* instance to preclude his appeal to them by a general verdict for the Defendant.

The Jury therefore, from this part of the Charge, must necessarily have felt themselves absolutely limited (I might say even in their powers) to the fact of publication; because the highest restraint upon good men is to convince them that they cannot break loose from it without injustice: and the power of a good subject is never more effectually destroyed than when he is made to believe that the exercise of it will be a breach of his duty to the public, and a violation of the laws of his country.

But since equal justice between the Prosecutor and the Defendant is the pretence for this abridgment of jurisdiction, let us examine a little how it is affected by it.—Do the Prosecutor and the Defendant really stand upon an equal footing by this mode of proceeding? With what decency this can be alleged, I leave those to answer who know that it is only by the indulgence of Mr. Bearcroft, of Counsel for the prosecution, that my reverend Client is not at this moment in prison,* while we are discussing this notable equality. Besides, my Lord, the judgment of this Court, though not final in the constitution, and therefore not binding on the Prosecutor, is absolutely conclusive on the Defendant. If your Lordships pronounce the record to contain no libel, and arrest the judgment on the verdict, the Prosecutor may carry it to the

* Lord Mansfield ordered the Dean to be committed on the motion for the new trial; and said, he had no discretion to suffer him to be at large, without consent, after his appearance in Court, on conviction. Upon which, Mr. Bearcroft gave his consent that the Dean should remain at large upon bail.

House of Lords, and pending his writ of error, remains untouched by your Lordship's decision. But, if judgment be against the Defendant, it is only at the discretion of the Crown (as it is said,) and not of right, that he can prosecute any writ of error at all; and even if he finds no obstruction in that quarter, it is but at the best an appeal for the benefit of public liberty, from which he himself can have no personal benefit; for the writ of error being no supersedeas, the punishment is inflicted on him in the mean time. In the case of Mr. Horne*, this Court imprisoned him for publishing a libel upon its own judgment, pending his appeal from its justice; and he had suffered the utmost rigour which the law imposed upon him as a criminal, at the time that the House of Lords, with the assistance of the twelve Judges of England, were gravely assembled to determine, whether he had been guilty of any crime. I do not mention this case as hard or rigorous on Mr. Horne, as an individual: it is the general course of practice, but surely that practice ought to put an end to this argument of equality between Prosecutor and Prisoner. It is adding insult to injury, to tell an innocent man who is in a dungeon, pending his writ of error, and of whose innocence both Judge and Jury were convinced at the trial, that he is in equal scales with his Prosecutor, who is at large, because he has an opportunity of deciding after the expiration of his punishment, that the prosecution had been unfounded, and his sufferings unjust. By parity of reasoning, a prisoner in a capital case might be hanged in the mean time for the benefit of equal justice; leaving his executors to fight the battle out with his Prosecutor upon the record, through every Court in the Kingdom; by which at last his attainder might be reversed, and the blood of his posterity remain uncorrupted.—What justice can be more impartial or equal!

So much for this right of the Prosecutor of a libel to *compel* a Jury in every case, generally to convict a Defendant on the fact of publication, or to find a special verdict;—a right unheard of before since the birth of the constitution;—not even founded upon any equality in fact, even if such a shocking parity could exist in law, and not even contended to exist in any other case, where private men become the Prosecutors of crimes for the ends of public justice. It can have, generally speaking, no existence in any prosecution for felony; because the general description of the crime in such indict-

* Afterwards Mr. Horne Tooke, whose writings do honour to our language and country.

ments, for the most part, shuts out the legal question in the particular instance from appearing on the record: and for the same reason, it can have no place even in appeals of death, &c. the only cases where Prosecutors appear as the revengers of their own private wrongs, and not as the representatives of the Crown.

The learned Judge proceeded next to establish the same universal limitation upon the power of the Jury, from the history of different trials, and the practice of former Judges who presided at them; and while I am complaining of what I conceive to be injustice, I must take care not to be unjust myself. I certainly do not, nor ever did consider the learned Judge's misdirection in his Charge to be peculiar to himself: it was only the resistance of the Defendant's evidence, and what passed after the Jury returned into Court with the verdict, that I ever considered to be a departure from all precedents: the rest had undoubtedly the sanction of several modern cases; and I wish, therefore, to be distinctly understood, that I partly found my motion for a new trial in opposition to these decisions. It is my duty to speak with deference of all the judgments of this Court; and I feel an additional respect for some of those I am about to combat, because they are your Lordship's: but comparing them with the judgments of your predecessors for ages, which is the highest evidence of English law, I must be forgiven if I presume to question their authority.

My Lord, it is necessary that I should take notice of some of them as they occur in the learned Judge's Charge; for although he is not responsible for the rectitude of those precedents which he only cited in support of it, yet the Defendant is unquestionably entitled to a new trial, if their principles are not ratified by the Court: for whenever the learned Judge cited precedents to warrant the limitation on the province of the Jury imposed by his own authority, it was such an adoption of the doctrines they contained, as made them a rule to the Jury in their decision.

First, then, the learned Judge, to overturn my argument with the Jury for their jurisdiction over the whole charge, opposed your Lordship's established practice for eight-and-twenty years; and the weight of this great authority was increased by the general manner in which it was stated; for I find no expressions of your Lordship's in any of the reported cases which go the length contended for. I find the practice, indeed, fully warranted by them: but I do not meet with the principle which can alone vindicate that practice, fairly and

distinctly avowed. The learned Judge, therefore, referred to the charge of Chief Justice Raymond, in the case of the King and Franklin, in which the universal limitation contended for, is indeed laid down, not only in the most unequivocal expressions, but the ancient jurisdiction of Juries, resting upon all the authorities I have cited, treated as a ridiculous notion which had been just taken up a little before the year 1731, and which no man living had ever dreamed of before. The learned Judge observed, that Lord Raymond stated to the Jury on Franklin's trial that there were three questions: the first was, the fact of publishing the Craftsman: secondly, whether the averments in the information were true: but that the third, viz. whether it was a libel, was merely a question of *law*, with which the Jury *had nothing to do*, as had been then of late thought by some people who ought to have known better.

This direction of Lord Raymond's was fully ratified and adopted in all its extent, and given to the Jury, on the present trial, with several others of the same import, as an unerring guide for their conduct; and surely human ingenuity could not frame a more abstract and universal limitation upon their right to acquit the Defendant by a general verdict; for Lord Raymond's expressions amount to an absolute denial of the right of the Jury to find the Defendant not guilty, if the publication and innuendos are proved. "Libel or no libel, "is a question of law, with which you, the Jury, *have nothing* "*to do.*" How then can they have any right to give a general verdict consistently with this declaration?—Can any man in his senses collect that he has a right to decide on that with which he has nothing to do?

But it is needless to comment on these expressions, for the Jury were likewise told by the learned Judge himself, that, if they believed the fact of publication, they were *bound* to find the Defendant guilty; and it will hardly be contended, that a man has a right to refrain from doing that which he is bound to do.

Mr. Cowper, as Counsel for the prosecution, took upon him to explain what was meant by this expression; and I seek for no other construction; "the learned Judge (said he) did "not mean to deny the right of the Jury, but only to convey, "that there was a religious and moral obligation upon them "to refrain from the exercise of it." Now if the principle which imposed that obligation had been alleged to be *special*, applying only to the *particular case of the Dean of St. Asaph*, and consequently consistent with the right of the Jury to a

more enlarged jurisdiction in *other* instances; telling the Jury that they were bound to convict on proof of publication, might be plausibly construed into a recommendation to refrain from the exercise of their right in *that case*, and not to a *general* denial of its existence: but the moment it is recollected, that the principle which bound them was not *particular* to the instance, but abstract and universal, binding alike in *every* prosecution for a libel, it requires no logic to pronounce the expression to be an absolute, unequivocal, and universal denial of the right: common sense tells every man, that to speak of a person's right to do a thing, which yet, in every possible instance where it might be exerted, he is religiously and morally bound not to exert, is not even sophistry, but downright vulgar nonsense. But the Jury were not only limited by these modern precedents, which certainly have an existence; but were in my mind limited with still greater effect by the learned Judge's declaration, that some of those ancient authorities on which I had principally relied for the establishment of their jurisdiction, had not merely been over-ruled, but were altogether inapplicable. I particularly observed how much ground I lost with the Jury, when they were told from the Bench, that even in Bushel's case, on which I had so greatly depended, the very reverse of my doctrine had been expressly established; the Court having said unanimously in that case, according to the learned Judge's statement, that if the Jury be asked what the law is, they cannot say, and having likewise ratified in express terms the maxim, *ad quæstionem legis non respondent juratores.*

My Lord, this declaration from the Bench, which I confess not a little staggered and surprised me, rendered it my duty to look again into Vaughan, where Bushel's case is reported: I have performed that duty, and now take upon me positively to say, that the words of Lord Chief Justice Vaughan, which the learned Judge considered as a judgment of the Court, denying the jurisdiction of the Jury over the law, *where a general issue is joined before them*, were, on the contrary, made use of by that learned and excellent person, to expose the fallacy of such a misapplication of the maxim alluded to, by the Counsel against Bushel; declaring that it had no reference to any case where the law and the fact were incorporated by the plea of Not Guilty, and confirming the right of the Jury to find the law upon every such issue, in terms the most emphatical and expressive. This is manifest from the whole report.

Bushel, one of the Jurors on the trial of Penn and Mead, had been committed by the Court for finding the Defendant not guilty, against the direction of the Court in matter of law; and being brought before the Court of Common Pleas by habeas corpus, this cause of commitment appeared upon the face of the return to the writ. It was contended by the Counsel against Bushel upon the authority of this maxim, that the commitment was legal, since it appeared by the return, that Bushel had taken upon him to find the law against the direction of the Judge, and had been therefore legally imprisoned for that contempt.—It was upon that occasion that Chief Justice Vaughan, with the concurrence of the whole Court, repeated the maxim, *ad quæstionem legis non respondent juratòres*, as cited by the Counsel for the Crown, but denied the application of it to impose any restraint upon jurors trying any crime upon the general issue. His language is too remarkable to be forgotten, and too plain to be misunderstood. Taking the words of the return to the habeas corpus, viz. "That the Jury did acquit against the direction of "the Court in matter of law;" "These words," said this great lawyer, "taken literally and *de plano* are insignificant "and unintelligible, for no issue can be joined of matter of "law;—no Jury can be charged with the trial of matter of "law barely:—no evidence ever was, or can be given to a "Jury of what is law or not; nor any oath given to a Jury "to try matter of law *alone*, nor can any attaint lie for such "a false oath. Therefore we must take off this veil and "colour of words, which make a show of being something, "but are in fact nothing: for if the meaning of these words, "*Finding against the direction of the Court in matter of law*, "be, that if the Judge, having heard the evidence given in "Court (for he knows no other,) shall tell the Jury upon this "evidence, that the law is for the Plaintiff or the Defendant, "and they, under the pain of fine and imprisonment, are to "find accordingly, every one sees that the Jury is but a "troublesome delay, great charge, and of no use in deter-"mining right and wrong; which were a strange and new-"found conclusion, after a trial so celebrated for many hun-"dreds of years in this country."

Lord Chief Justice Vaughan's argument is therefore plainly this. Adverting to the arguments of the Counsel, he says, You talk of the maxim *ad quæstionem legis non respondent juratores*, but it has no sort of application to your subject. The words of your return, viz. that Bushel did acquit against the direction of the Court in matter of law, are unintelligible,

and, as applied to the case, impossible. The Jury could not be asked in the abstract, what was the law: they could not have an issue of the law joined before them: they could not be sworn to try it. *Ad quæstionem legis non respondent juratores:* therefore to say literally and *de plano* that the Jury found the law against the Judge's direction is absurd: they could not be in a situation to find it;—an unmixed question of law could not be before them:—the Judge could not give any positive directions of law upon the trial, for the law can only arise out of facts, and the Judge cannot know what the facts are till the Jury have given their verdict. Therefore, continued the Chief Justice, let us take off this veil and colour of words, which make a show of being something, but are in fact nothing: let us get rid of the fallacy of applying a maxim, which truly describes the jurisdiction of the Courts over issues of law, to destroy the jurisdiction of Jurors, in cases where law and fact are blended together upon a trial:—since, if the Jury at the trial are bound to receive the law from the Judge, every one sees that it is a mere mockery, and of no use in determining right and wrong.—This is the plain common sense of the argument; and it is impossible to suggest a distinction between its application to Bushel's case and to the present; except that the right of imprisoning the Jurors was there contended for, in order to enforce obedience to the directions of the Judge. But this distinction, if it deserves the name, though held up by Mr. Bearcroft as very important, is a distinction without a difference. For if, according to Vaughan, the free agency of the Jury over the whole charge, uncontrolled by the Judge's direction, constitutes the whole of that ancient mode of trial; it signifies nothing by what means that free agency is destroyed: whether by the imprisonment of conscience or of body: by the operation of their virtues or of their fears. Whether they decline exerting their jurisdiction from being told that the exertion of it is a contempt of religious and moral order, or a contempt of the Court punishable by imprisonment; their jurisdiction is equally taken away.

My Lord, I should be very sorry improperly to waste the time of the Court, but I cannot help repeating once again, that if, in consequence of the learned Judge's directions, the Jury, from a just deference to learning and authority, from a nice and modest sense of duty, felt themselves not at liberty to deliver the Defendant from the whole indictment; HE HAS NOT BEEN TRIED: because though he was entitled by law to plead generally that he was not guilty; though he

did in fact plead it accordingly, and went down to trial upon it, yet the Jury have not been permitted to try that issue, but have been directed to find at all events a general verdict of Guilty; with a positive injunction not to investigate the guilt, or even to listen to any evidence of innocence.

My Lord, I cannot help contrasting this trial, with that of Colonel Gordon's but a few sessions past in London. I had in my hand but this moment, an accurate note of Mr. Baron Eyre's* Charge to the Jury on that occasion; I will not detain the Court by looking for it amongst my papers; because I believe I can correctly repeat the substance of it.

*Earl of Mansfield.* The case of the King against Cosmo Gordon?

*Mr. Erskine.* Yes, my Lord: Colonel Gordon was indicted for the murder of General Thomas, whom he had killed in a duel: and the question was, whether, if the Jury were satisfied of that fact, the prisoner was to be convicted of murder? That was, according to Forster, as much a question of law, as libel or no libel: but Mr. Baron Eyre did not therefore feel himself at liberty to withdraw it from the Jury. After stating (greatly to his honour) the hard condition of the prisoner, who was brought to a trial for life, in a case where the positive law and the prevailing manners of the times were so strongly in opposition to one another, that he was afraid the punishment of individuals would never be able to beat down an offence so sanctioned; he addressed the Jury nearly in these words: "Nevertheless, gentlemen, I "am bound to declare to you, what the law is as applied to "this case, in all the different views in which it can be consi-"dered by you upon the evidence. *Of this law and of the "facts as you shall find them, your verdict must be compound-"ed;* and I persuade myself, that it will be such a one as to "give satisfaction to your own consciences."

Now, if Mr. Baron Eyre, instead of telling the jury that a duel, however fairly and honourably fought, was a murder by the law of England, and leaving them to find a general verdict under that direction, had said to them, that whether such a duel was murder or manslaughter, was a question with which neither he nor they had any thing to do, and on which he should therefore deliver no opinion; and had directed them to find that the prisoner was guilty of killing the deceased in a deliberate duel, telling them, that the Court would settle the rest; that would have been directly conso-

* Late Lord Chief Baron.

nant to the case of the Dean of St. Asaph. By this direction, the prisoner would have been in the hands of the Court, and the Judges, not the Jury, would have decided upon the life of Colonel Gordon.

But the two learned Judges differ most essentially indeed. Mr. Baron Eyre conceives himself bound in duty to state the law as applied to the particular facts, and to leave it to the Jury. Mr. Justice Buller says, he is not bound nor even allowed so to state or apply it, and withdraws it entirely from their consideration. Mr. Baron Eyre tells the Jury that their verdict is to be compounded of the fact and the law. Mr. Justice Buller, on the contrary, that it is to be confined to the fact only, the law being the exclusive province of the Court. My Lord, it is not for me to settle differences of opinion between the Judges of England, nor to pronounce which of them is wrong; but since they are contradictory and inconsistent, I may hazard the assertion that they cannot both be right: the authorities which I have cited, and the general sense of mankind which settles every thing else, must determine the rest.

My Lord, I come now to a very important part of the case, untouched I believe before in any of the arguments on this occasion.

I mean to contend that the learned Judge's Charge to the Jury cannot be supported even upon its own principles; for, supposing the Court to be of opinion that all I have said in opposition to these principles is inconclusive, and that the question of libel, and the intention of the publisher, were properly withdrawn from the consideration of the Jury, still I think I can make it appear that such a judgment would only render the misdirection more palpable and striking.

I may safely assume, that the learned Judge must have meant to direct the Jury either to find a general or a special verdict; or, to speak more generally, that one of these two verdicts must be the object of every Charge: because I venture to affirm, that neither the records of the Courts, the reports of their proceedings, nor the writings of lawyers, furnish any account of a third. There can be no middle verdict between both; the Jury must either try the whole issue generally, or find the facts specially, referring the legal conclusion to the Court.

I may affirm with equal certainty, that the general verdict, *ex vi termini*, is universally as comprehensive as the issue, and that consequently such a verdict on an indictment, upon the general issue, Not guilty, universally and unavoidably in-

volves a judgment of law, as well as fact; because the charge comprehends both, and the verdict, as has been said, is co-extensive with it. Both Coke and Lyttleton give this precise definition of a general verdict, for they both say, that if the Jury will find the law, they may do it by a general verdict, which is ever as large as the issue. If this be so, it follows by necessary consequence, that if the Judge means to direct the Jury to find generally against a Defendant, he must leave to their consideration every thing which goes to the constitution of such a general verdict, and is therefore bound to permit them to come to, and to direct them how to form that general conclusion from the law and the fact, which is involved in the term Guilty. For it is ridiculous to say, that guilty is a fact;—it is a conclusion in law from a fact, and therefore can have no place in a special verdict, where the legal conclusion is left to the Court.

In this case the Defendant is charged, not with having published this pamphlet, but with having published a certain false, scandalous, and seditious libel, with a seditious and rebellious intention. He pleads that he is not guilty in manner and form as he is accused; which plea is admitted on all hands to be a denial of the whole charge, and consequently does not merely put in issue the fact of publishing the pamphlet; but the truth of the whole indictment, *i. e.* the publication of the libel set forth in it, with the intention charged by it.

When this issue comes down for trial, the Jury must either find the whole charge or a part of it; and admitting, for argument sake, that the Judge has a right to dictate either of these two courses; he is undoubtedly bound in law to make his direction to the Jury conformable to the one or the other. If he means to confine the Jury to the fact of publishing, considering the guilt of the Defendant to be a legal conclusion for the Court to draw from that fact, specially found on the record, he ought to direct the Jury to find that fact without affixing the epithet of Guilty to the finding. But if he will have a general verdict of Guilty, which involves a judgment of law as well as fact, he must leave the law to the consideration of the Jury; since when the word Guilty is pronounced by them, it is so well understood to comprehend every thing charged by the indictment, that the associate or his clerk instantly records, that the Defendant is guilty in manner and form as he is accused, *i. e.* not simply that he has *published* the pamphlet contained in the indictment;—but

that he is *guilty of publishing the libel* with the wicked intentions charged on him by the record.

Now, if this effect of a general verdict of Guilty is reflected on for a moment, the illegality of directing one upon the bare fact of publishing, will appear in the most glaring colours. The learned Judge says to the Jury, whether this be a libel is not for your consideration; I can give no opinion on that subject without injustice to the Prosecutor; and as to what Mr. Jones swore concerning the Defendant's motives for the publication, that is likewise not before you: for if you are satisfied in point of fact that the Defendant *published* this pamphlet, you are bound to find him *guilty*. Why guilty, My Lord, when the consideration of guilt is withdrawn? He confines the Jury to the finding of a fact, and enjoins them to leave the legal conclusion from it to the Court; yet, instead of directing them to make that fact the subject of a special verdict, he desires them in the same breath to find a general one;—to draw the conclusion without any attention to the premises:—to pronounce a verdict which upon the face of the record includes a judgment upon their oaths that the paper is a libel, and that the publisher's intentions in publishing it were wicked and seditious, although neither the one nor the other made any part of their consideration.—My Lord, such a verdict is a monster in law, without precedent in former times, or root in the constitution. If it be true, on the principle of the Charge itself, that the fact of publication was all that the Jury were to find, and all that was necessary to establish the Defendant's guilt, if the thing published be a libel, why was not that fact found like all other facts upon special verdicts? Why was an epithet, which is a legal conclusion from the fact, extorted from a Jury who were restrained from forming it themselves? The verdict must be taken to be general or special: if general, it has found the whole issue without a co-extensive examination:—if special, the word Guilty, which is a conclusion from facts, can have no place in it. Either this word Guilty is operative or unessential; an epithet of substance, or of form. It is impossible to controvert that proposition, and I give the gentlemen their choice of the alternative. If they admit it to be operative and of real substance, or, to speak more plainly, that the fact of publication found specially, without the epithet of Guilty, would have been an imperfect verdict inconclusive of the Defendant's guilt, and on which no judgment could have followed: then it is impossible to deny that the Defendant has suffered injustice; because such an admission

confesses that a criminal conclusion from a fact has been obtained from the Jury, without permitting them to exercise that judgment which might have led them to a conclusion of innocence: and that the word Guilty has been obtained from them at the trial as a mere matter of form, although the verdict without it, stating only the fact of publication which they were directed to find, to which they thought the finding alone enlarged, and beyond which they had never enlarged their inquiry, would have been an absolute verdict of acquittal. If, on the other hand, to avoid this insuperable objection to the Charge, the word Guilty is to be reduced to a mere word of form, and it is to be contended that the fact of publication found specially would have been tantamount; be it so:—let the verdict be so recorded;—let the word Guilty be expunged from it, and I instantly sit down;—I trouble your Lordships no farther:—I withdraw my motion for a new trial, and will maintain in arrest of judgment, that the Dean is not convicted. But if this is not conceded to me, and the word Guilty, though argued to be but form, and though as such obtained from the Jury, is still preserved upon the record, and made use of against the Defendant as substance; it will then become us (independently of all consideration as lawyers,) to consider a little how that argument is to be made consistent with the honour of gentlemen, or that fairness of dealing which cannot but have place wherever justice is administered.

But in order to establish that the word Guilty is a word of essential substance; that the verdict would have been imperfect without it; and that therefore the Defendant suffers by its insertion; I undertake to show your Lordship, upon every principle and authority of law, that if the fact of publication, which was all that was left to the Jury, had been found by special verdict, no judgment could have been given on it.

My Lord, I will try this by taking the fullest finding which the facts in evidence could possibly have warranted. Supposing then, for instance, that the Jury had found that the Defendant published the paper according to the tenour of the indictment: that it was written of and concerning the King and his Government; and that the innuendos were likewise as averred, K. meaning the present King, and P. the present Parliament of Great Britain: on such a finding, no judgment could have been given by the Court, even if the record had contained a complete charge of a libel. No principle is more unquestionable than that, to warrant any

judgment upon a special verdict, the Court which can presume nothing that is not visible on the record, must see sufficient matter upon the face of it, which, if taken to be true, is conclusive of the Defendant's guilt. They must be able to say, If this record be true, the Defendant cannot be innocent of the crime which it charges on him. But from the facts of such a verdict the Court could arrive at no such legitimate conclusion; for it is admitted on all hands, and indeed expressly laid down by your Lordship in the case of the King against Woodfall, that publication even of a libel is not *conclusive* evidence of guilt; for that the Defendant may give evidence of an innocent publication.

Looking therefore upon a record containing a good indictment of a libel, and a verdict finding that the Defendant published it, but without the epithet of Guilty, the Court could not pronounce that he published it with the malicious intention which is the essence of the crime:—they could not say what might have passed at the trial:—for any thing that appeared to them he might have given such evidence of innocent motive, necessity, or mistake, as might have amounted to excuse or justification. They would say, that the facts stated upon the verdict would have been fully sufficient in the absence of a legal defence to have warranted the Judge to have directed, and the Jury to have given a general verdict of Guilty, comprehending the intention which constitutes the crime: but that to warrant the Bench, which is ignorant of every thing at the trial, to presume that intention, and thereupon to pronounce judgment on the record, the Jury must not merely find full evidence of the crime, but such facts as compose its legal definition. This wise principle is supported by authorities which are perfectly familiar.

If, in an action of trover, the Plaintiff proves property in himself, possession in the Defendant, and a demand and refusal of the thing charged to be converted; this evidence unanswered is full proof of a conversion; and if the Defendant could not show to the Jury why he had refused to deliver the Plaintiff's property on a legal demand of it, the Judge would direct them to find him guilty of the conversion. But on the same facts found by special verdict, no judgment could be given by the Court: the Judges would say, If the special verdict contains the whole of the evidence given at the trial, the Jury should have found the Defendant guilty; for the conversion was fully proved, but we cannot declare these facts to amount to a conversion, for the Defendant's intention was a fact, which the Jury should have found from the evidence,

over which we have no jurisdiction. So in the case put by Lord Coke, I believe in his first Institute 115, If a modus is found to have existed beyond memory till within thirty years before the trial, the Court cannot upon such facts found by special verdict pronounce against the modus: but any one of your Lordships would certainly tell the Jury, that upon such evidence they were warranted in finding against it. In all cases of prescription, the universal practice of Judges is to direct Juries, by analogy to the statute of limitations, to decide against incorporeal rights, which for many years have been relinquished; but such modern relinquishments, if stated upon the record by special verdict, would in no instance warrant a judgment against any prescription. The principle of the difference is obvious and universal: the Court looking at a record can presume nothing; it has nothing to do with reasonable probabilities, but is to establish legal certainties by its judgments. Every crime is, like every other complex idea, capable of a legal definition: if all the component parts which go to its formation are put as facts upon the record, the Court can pronounce the perpetrator of them a criminal: but if any of them are wanting, it is a chasm in fact, and cannot be supplied. Wherever intention goes to the essence of the charge, it must be found by the Jury; it must be either comprehended under the word Guilty in the general verdict, or specifically found as a fact by the special verdict. This was solemnly decided by the Court in Huggins' case, in second Lord Raymond, 1581, which was a special verdict of murder from the Old Bailey.

It was an indictment against John Huggins and James Barnes, for the murder of Edward Arne. The indictment charged that Barnes made an assault upon Edward Arne, being in the custody of the other prisoner Huggins, and detained him for six weeks in a room newly built over the common sewer of the prison, where he languished and died: the indictment further charged, that Barnes and Huggins well knew that the room was unwholesome and dangerous: the indictment then charged that the prisoner Huggins of his malice aforethought was present, aiding, and abetting Barnes, to commit the murder aforesaid. This was the substance of the indictment.

The special verdict found that Huggins was warden of the Fleet by letters patent: that the other prisoner Barnes was servant to Gibbons Huggins, deputy in the care of all the prisoners, and of the deceased a prisoner there. That the prisoner Barnes, on the 7th of September, put the deceased Arne in a room over the common sewer which had been

newly built, knowing it to be newly built, and damp, and situated as laid in the indictment; *and that fifteen days before the prisoner's death,* HUGGINS *likewise well knew that the room was new built, damp, and situated as laid. They found that fifteen days before the death* of the prisoner, Huggins was present in the room, and saw him there under duress of imprisonment, *but then and there turned away, and Barnes locked the door, and that from that time till his death the deceased remained locked up.*

It was argued before the twelve Judges in Serjeants Inn, whether Huggins was guilty of murder. It was agreed that he was not answerable *criminally*, for the act of his deputy, and could not be guilty, unless the criminal intention was brought personally home to himself. And it is remarkable how strongly the Judges required the fact of knowledge and malice, to be stated on the face of the verdict, as opposed to *evidence* of intention, and inference from a fact.

The Court said, It is chiefly relied on that Huggins was present in the room, and saw Arne *sub duritie imprisonamenti, et se avertit;* but he might be present, and not know all the circumstances; the words are VIDIT *sub duritie;* but he might *see* him under duress, and not *know* he was under duress: it was answered, that seeing him under duress evidently means he knew he was under duress; but says the Court, "*We cannot take things by inference in this manner:* "*his seeing is but evidence of his knowledge of these things;* "*and therefore the Jury, if the fact would have borne it,* "*should have found that Huggins knew he was there without* "*his consent; which not being done, we cannot intend these* "*things nor infer them; we must judge of facts, and not from* "*the evidence of facts;*" and cited Kelynge, 78; that whether a man be aiding and abetting a murder is matter of fact, and ought to be expressly found by a Jury.

The application of these last principles and authorities to the case before the Court is obvious and simple.—The criminal intention is a fact, and must be found by the Jury: and that finding can only be expressed upon the record by the general verdict of Guilty which comprehends it, or by the special enumeration of such facts as do not merely amount to evidence of, but which completely and conclusively constitute the crime. But it has been shown, and is indeed admitted, that the publication of a libel is only *primâ facie* evidence of the complex charge in the indictment, and not such a fact as amounts in itself, when specially stated, to conclusive guilt; since, as the Judges cannot tell how the criminal inference

from the fact of publishing a libel, might have been rebutted at the trial; no judgment can follow from a special finding, that the Defendant published the paper indicted, according to the tenour laid in the indictment.—It follows from this, that if the Jury had only found the fact of publication, which was all that was left to them, *without affixing the epithet of Guilty*, which could only be legally affixed by an investigation not permitted to them; a *venire facias de novo* must have been awarded because of the uncertainty of the verdict as to the criminal intention: whereas it will now be argued, that if the Court shall hold the Dialogue to be a libel, the Defendant is fully convicted; because the verdict does not merely find that he PUBLISHED, which is a finding consistent with innocence, but finds him GUILTY of publishing, which is a finding of the criminal publication charged by the indictment.

My Lord, how I shall be able to defend my innocent Client against such an argument I am not prepared to say; I feel all the weight of it; but that feeling surely entitles me to greater attention, when I complain of that which subjects him to it, without the warrant of the law. It is the weight of such an argument that entitles me to a new trial: for the Dean of St. Asaph is not only found guilty, without any investigation of his guilt by the Jury, but without that question being even open to your Lordships on the record. Upon the record the Court can only say the Dialogue is, or is not, a libel; but if it should pronounce it to be one, the criminal intention of the Defendant in publishing it is taken for granted by the word Guilty; although it has not only been tried, but evidently appears from the verdict itself not to have been found by the Jury. Their verdict is, "Guilty of publishing; but whether a libel or not, they do not find." And it is therefore impossible to say that they can have found a criminal motive in publishing a paper, on the criminality of which they have formed no judgment. Printing and publishing that which is legal, contains in it no crime;—the guilt must arise from the publication of a libel; and there is therefore a palpable repugnancy on the face of the verdict itself, which first finds the Dean guilty of publishing, and then renders the finding a nullity, by pronouncing ignorance in the Jury whether the thing published comprehends any guilt.

To conclude this part of the subject, the epithet of Guilty (as I set out with at first) must either be taken to be substance, or form. If it be substance, and, as such, conclusive of the *criminal* intention of the publisher, should the thing published be hereafter adjudged to be a libel, I ask a new trial, because

the Defendant's guilt in that respect has been found without having been tried: if, on the other hand, the word GUILTY is admitted to be but a word of form, then let it be expunged, and I am not hurt by the verdict.

Having now established, according to my two first propositions, that the Jury upon every general issue, joined in a criminal case, have a constitutional jurisdiction over the whole charge, I am next, in support of my third, to contend, that the case of a libel forms no legal exception to the general principles which govern the trial of all other crimes;—that the argument for the difference, viz. because the whole charge always appears on the record, is false in fact, and that, even if true, it would form no substantial difference in law.

As to the first, I still maintain that the whole case does by no means necessarily appear on the record. The Crown may indict part of the publication, which may bear a criminal construction when separated from the context, and the context omitted having no place in the indictment, the Defendant can neither demur to it, nor arrest the judgment after a verdict of Guilty; because the Court is absolutely circumscribed by what appears on the record, and the record contains a legal charge of a libel.

I maintain likewise, that, according to the principles adopted upon this trial, he is equally shut out from such defence before the Jury; for though he may read the explanatory context in evidence, yet he can derive no advantage from reading it, if they are tied down to find him guilty of publishing the matter which is contained in the indictment, however its innocence may be established by a view of the whole work. The only operation which looking at the context can have upon a Jury is, to convince them that the matter upon the record, however libellous when taken by itself, was not intended to convey the meaning which the words indicted import in language, when separated from the general scope of the writing: but upon the principle contended for, they could not acquit the Defendant upon any such opinion, for that would be to take upon them the prohibited question of libel, which is said to be matter of law for the Court.

My learned friend Mr. Bearcroft appealed to his audience with an air of triumph, whether any sober man could believe, that an English Jury, in the case I put from Algernon Sidney, would convict a Defendant of publishing the Bible, should the Crown indict a member of a verse which was blasphemous in itself if separated from the context. My Lord, if my friend had attended to me, he would have

found, that, in considering such supposition as an absurdity, he was only repeating my own words. I never supposed that a Jury would act so wickedly or so absurdly, in a case where the principle contended for by my friend Mr. Bearcroft carried so palpable a face of injustice, as in the instance which I selected to expose it; and which I therefore selected to show, that there were cases in which the supporters of the doctrine were ashamed of it, and obliged to deny its operation: for it is impossible to deny that, if the Jury can look at the context in the case put by Sidney, and acquit the Defendant on the merits of the thing published, they may do it in cases which will directly operate against the principle he seems to support. This will appear from other instances, where the injustice is equal, but not equally striking.

Suppose the Crown were to select some passage from Locke upon Government; as for instance; "that there was no dif-"ference *between the King and the Constable when either* "*of them exceeded their authority.*" That assertion, under certain circumstances, if taken by itself without the context, might be highly seditious, and the question therefore would be *quo animo* it was written:—perhaps the real meaning of the sentence might not be discoverable by the immediate context without a view of the whole chapter,—perhaps of the whole book; therefore to do justice to the Defendant, upon the very principle by which Mr. Bearcroft in answering Sidney's case can alone acquit the publisher of his Bible, the Jury must look into the whole Essay on Government, and form a judgment of the design of the author, and the meaning of his work.

*Lord Mansfield.* To be sure they may judge from the whole work.

*Mr. Erskine.* And what is this, my Lord, but determining the question of libel which is denied to-day? for if a Jury may acquit the publisher of any part of Mr. Locke on Government, from a judgment arising out of a view of the whole book, though there be no innuendos to be filled up as facts in the indictment,—what is it that bound the Jury to convict the Dean of St. Asaph, as the publisher of Sir William Jones's Dialogue, on the bare fact of publication, without the right of saying that his observations as well as Mr. Locke's were speculative, abstract, and legal?

*Lord Mansfield.* They certainly may in all cases go into the whole context.

*Mr. Erskine.* And why may they go into the context;—Clearly, my Lord, to enable them to form a correct judgment

of the meaning of the part indicted, even though no particular meaning be submitted to them by averments in the indictment; and therefore the very permission to look at the context for such a purpose (where there are no innuendos to be filled up by them as facts,) is a palpable admission of all I am contending for, viz. the right of the Jury to judge of the merits of the paper, and the intention of its author.*

But it is said, that though a Jury have a right to decide that a paper criminal as far as it appears on the record, is nevertheless legal when explained by the whole work of which it is a part; yet that they shall have no right to say that the whole work itself, if it happens to be all indicted, is innocent and legal. This proposition, my Lord, upon the bare stating of it, seems too preposterous to be seriously entertained; yet there is no alternative between maintaining it in its full extent, and abandoning the whole argument.

If the Defendant is indicted for publishing part of the verse in the Psalms, "There is no God," it is asserted that the Jury may look at the context, and seeing that the whole verse did not maintain that blasphemous proposition, but only that the fool had said so in his heart, may acquit the Defendant upon a judgment that it is no libel, to impute such imagination to a fool: but if the whole verse had been indicted, viz. "The "fool has said in his heart, There is no God;" the Jury, on the principle contended for, would be restrained from the same judgment of its legality, and must convict of blasphemy on the fact of publishing, leaving the question of libel untouched on the record.

If, in the same manner, only part of this very Dialogue had been indicted instead of the whole, it is said even by your Lordship, that the Jury might have read the context, and then, notwithstanding the fact of publishing, might have collected from the whole, its abstract and speculative nature, and have acquitted the Defendant upon that judgment of it; —and yet it is contended that they have no right to form the same judgment of it upon the present occasion, although the whole be before them upon the face of the indictment,—but are bound to convict the Defendant upon the fact of publishing, notwithstanding they should have come to the same judgment of its legality, which it is admitted they might have come to, on trying an indictment for the publication of a part. Really,

* The right was fully exercised by the Jury who tried and acquitted Mr. Stockdale.

my Lord, the absurdities and gross departures from reason, which must be hazarded to support this doctrine, are endless.

The criminality of the paper is said to be a question of law, yet the meaning of it, from which alone the legal interpretation can arise, is admitted to be a question of fact. If the text be so perplexed and dubious as to require innuendos to explain, to point and to apply obscure expression or construction, the Jury alone, as judges of fact, are to interpret and to say what sentiments the author must have meant to convey by his writing :—yet if the writing be so plain and intelligible as to require no averments of its meaning, it then becomes so obscure and mysterious as to be a question of law, and beyond the reach of the very same men who but a moment before were interpreters for the Judges; and though its object be most obviously peaceable and its author innocent, they are bound to say upon their oaths, that it is wicked and seditious, and the publisher of it guilty.

As a question of fact the Jury are to try the real sense and construction of the words indicted, by comparing them with the context; and yet if that context itself, which affords the comparison, makes part of the indictment, the whole becomes a question of law, and they are then bound down to convict the Defendant on the fact of publishing it, without any jurisdiction over the meaning. To complete the juggle, the intention of the publisher may likewise be shown as a fact, by the evidence of any extrinsic circumstances, such as the context to explain the writing, or the circumstances of mistake or ignorance under which it was published; and yet in the same breath, the intention is pronounced to be an inference of law from the act of publication, which the Jury cannot exclude, but which must depend upon the future judgment of the Court.

But the danger of this system is no less obvious than its absurdity. I do not believe that its authors ever thought of inflicting death upon Englishmen, without the interposition of a Jury; yet its establishment would unquestionably extend to annihilate the substance of that trial in every prosecution for high treason; where the publication of any writing was laid as the overt act. I illustrated this by a case when I moved for a rule, and called upon my friends for an answer to it, but no notice has been taken of it by any of them;—this was just what I expected :—when a convincing answer cannot be found to an objection, those who understand controversy never give strength to it by a weak one.

I said, and I again repeat, that if an indictment charges that a Defendant did traitorously intend, compass, and imagine the death of the King; and, in order to carry such treason into execution, published a paper, which it sets out literatim on the face of the record, the principle which is laid down to-day would subject that person to the pains of death by the single authority of the Judges, without leaving any thing to the Jury, but the bare fact of publishing the paper. For, if that fact were proved and the Defendant called no witnesses, the Judge who tried him would be warranted, nay bound in duty by the principle in question, to say to the Jury, Gentlemen, the overt act of treason charged upon the Defendant, is the publication of this paper, intending to compass the death of the King;—the fact is proved, and you are therefore bound to convict him: the treasonable intention is an inference of law from the act of publishing; and if the thing published does not upon a future examination intrinsically support that inference, the Court will arrest the judgment, and your verdict will not affect the prisoner.

My Lord, I will rest my whole argument upon the analogy between these two cases, and give up every objection to the doctrine when applied to the one, if upon the strictest examination, it shall not be found to apply equally to the other.

If the seditious intention be an inference of law, from the fact of publishing the paper which this indictment charges to be a libel,—is not the treasonable intention equally an inference from the fact of publishing that paper, which the other indictment charges to be an overt act of treason? In the one case as in the other, the writing or publication of a paper is the whole charge; and the substance of the paper so written or published makes all the difference between the two offences.—If that substance be matter of law where it is a seditious libel, it must be matter of law where it is an act of treason: and if because it is law the Jury are excluded from judging it in the one instance, their judgment must suffer an equal abridgment in the other.

The consequence is obvious. If the Jury, by an appeal to their consciences, are to be thus limited in the free exercise of that right which was given them by the constitution, to be a protection against judicial authority, where the weight and majesty of the Crown is put into the scale against an obscure individual,—the freedom of the press is at an end: for how can it be said that the press is free because every

thing may be published without a previous license, if the publisher of the most meritorious work which the united powers of genius and patriotism ever gave to the world, may be prosecuted by information of the King's Attorney General, without the consent of the Grand Jury,—may be convicted by the Petty Jury, on the mere fact of publishing (who indeed, without perjuring themselves, must on this system inevitably convict him,) and must then depend upon Judges, who may be the supporters of the very Administration whose measures are questioned by the Defendant, and who must therefore either give judgment against him or against themselves.

To all this Mr. Bearcroft shortly answers, Are you not in the hands of the same Judges, with respect to your property and even to your life, when special verdicts are found in murder, felony, and treason? In these cases do prisoners run any hazard from the application of the law by the Judges, to the facts found by the Juries? Where can you possibly be safer?

My Lord, this is an argument which I can answer without indelicacy or offence, because your Lordship's mind is much too liberal to suppose, that I insult the Court by general observations on the principles of our legal government:—however safe we might be, or might think ourselves, the constitution never intended to invest Judges with a discretion, which cannot be tried and measured by the plain and palpable standard of law; and in all the cases put by Mr. Bearcroft, no such loose discretion is exercised as must be entertained by a judgment on a seditious libel, and therefore the cases are not parallel.

On a special verdict for murder, the life of the prisoner does not depend upon the religious, moral or philosophical ideas of the Judges, concerning the nature of homicide:—no; precedents are searched for, and if he is condemned at all, he is judged exactly by the same rule as others have been judged by before him; his conduct is brought to a precise, clear, intelligible standard, and cautiously measured by it: it is the law therefore, and not the Judge, which condemns him. It is the same in all indictments, or civil actions, for slander upon individuals.

Reputation is a personal right of the subject, indeed the most valuable of any, and it is therefore secured by law, and all injuries to it clearly ascertained: whatever slander hurts a man in his trade,—subjects him to danger of life, liberty, or loss of property,—or tends to render him infamous, is the subject of an action, and in some instances of an indictment.

But in all these cases, where the *malus animus* is found by the Jury, the Judges are in like manner a safe repository of the legal consequence; because such libels may be brought to a well-known standard of strict and positive law:—they leave no discretion in the Judges:—the determination of what words, when written or spoken of another, are actionable, or the subject of an indictment, leaves no more latitude to a Court sitting in judgment on the record, than a question of title does in a special verdict in ejectment.

But I beseech your Lordship to consider, by what rule the legality or illegality of this Dialogue is to be decided by the Court as a question of law upon the record. Mr. Bearcroft has admitted in the most unequivocal terms (what indeed it was impossible for him to deny,) that every part of it, when viewed in the abstract, was legal; but he says, there is a great distinction to be taken between speculation and exhortation, and that it is this latter which makes it a libel. I readily accede to the truth of the observation; but how your Lordship is to determine that difference as a question of law, is past my comprehension:—for if the Dialogue in its phrase and composition be general, and its libellous tendency arises from the purpose of the writer, to raise discontent by a seditious application of legal doctrines,—that purpose is surely a question of fact if ever there was one, and must therefore be distinctly averred in the indictment, to give the cognizance of it as a fact to the Jury, without which no libel can possibly appear upon the record: this is well known to be the only office of the innuendo; because the Judges can presume nothing, which the strictest rules of grammar do not warrant them to collect intrinsically from the writing itself.

Circumscribed by the record, your Lordship can form no judgment of the tendency of this Dialogue to excite sedition by any thing but the mere words:—you must look at it as if it was an old manuscript dug out of the ruins of Herculaneum;—you can collect nothing from the time when, or the circumstances under which it was published;—the person by whom, and those amongst whom it was circulated; yet these may render a paper at one time, and under some circumstances, dangerously wicked and seditious, which at another time, and under different circumstances, might be innocent and highly meritorious. If puzzled by a task so inconsistent with the real sense and spirit of judicature, your Lordships should spurn the fetters of the record, and, judging with the reason rather than the infirmities of men, should take into your consideration the state of men's minds on the sub-

ject of equal representation at this moment, and the great disposition of the present times to revolution in government:—if, reading the record with these impressions, your Lordships should be led to a judgment not warranted by an abstract consideration of the record, then, besides that such a judgment would be founded on facts not in evidence before the Court, and not within its jurisdiction if they were,—let me further remind your Lordships, that even if those objections to the premises were removed, the conclusion would be no conclusion of law: your decision on the subject might be very sagacious as politicians, as moralists, as philosophers, or as licensers of the press, but they would have no resemblance to the judgments of an English Court of justice, because it could have no warrant from the act of your predecessors, nor afford any precedent to your successors.

But all these objections are perfectly removed, when the seditious tendency of a paper is considered as a question of fact: we are then relieved from the absurdity of legal discussion separated from all the facts from which alone the law can arise; for the Jury can do what (as I observed before) your Lordships cannot do in judging by the record;—they can examine by evidence all those circumstances that tend to establish the seditious tendency of the paper, from which the Court is shut out:—they may know themselves, or it may be proved before them, that it has excited sedition already:—they may collect from witnesses that it has been widely circulated, and seditiously understood; or, if the prosecution (as is wisest) precedes these consequences, and the reasoning must be *à priori*, surely gentlemen living in the county are much better judges than your Lordship, what has or has not a tendency to disturb the neighbourhood in which they live, and that very neighbourhood is the forum of criminal trial.

If they know that the subject of the paper is the topic that agitates the country around them;—if they see danger in that agitation, and have reason to think that the publisher must have intended it; they say he is guilty. If, on the other hand, they consider the paper to be legal, and enlightened in principle;—likely to promote a spirit of activity and liberty in times when the activity of such a spirit is essential to the public safety, and have reason to believe it to be written and published in that spirit, they say, as they ought to do, that the writer or the publisher is not guilty. Whereas your Lordships' judgment upon the language of the record must ever be in the pure abstract;—operating blindly and indiscriminately

upon all times, circumstances and intentions;—making no distinction between the glorious attempts of a Sidney or a Russel, struggling against the terrors of despotism under the Stuarts, and those desperate adventurers of the year forty-five, who libelled the person, and excited rebellion against the mild and gracious government, of our late excellent sovereign King George the Second.

My Lord, if the independent gentlemen of England are thus better qualified to decide from cause of knowledge, it is no offence to the Court to say, that they are full as likely to decide with impartial justice as Judges appointed by the Crown. Your Lordships have but a life interest in the public property, but they have an inheritance in it for their children. Their landed property depends upon the security of the government, and no man who wantonly attacks it can hope or expect to escape from the selfish lenity of a Jury. On the first principles of human action they must lean heavily against him. It is only when the pride of Englishmen is insulted by such doctrines as I am opposing to-day, that they may be betrayed into a verdict delivering the guilty, rather than surrender the rights by which alone innocence in the day of danger can be protected.

I venture therefore to say, in support of one of my original propositions, that where a writing indicted as a libel, neither contains, nor is averred by the indictment to contain, any slander of an individual, so as to fall within those rules of law which protect personal reputation, but whose criminality is charged to consist (as in the present instance) in its tendency to stir up general discontent, that the trial of such an indictment neither involves, nor can in its obvious nature involve, any abstract question of law for the judgment of a Court, but must wholly depend upon the judgment of the Jury on the tendency of the writing itself, to produce such consequences, when connected with all the circumstances which attended its publication.

It is unnecessary to push this part of the argument farther, because I have heard nothing from the Bar against the position which it maintains; none of the gentlemen have, to my recollection, given the Court any one single reason, good or bad, why the *tendency* of a paper to stir up discontent against Government, separated from all the circumstances which are ever shut out from the record, ought to be considered as an abstract question of law: they have not told us where we are to find any matter in the books to enable us to argue such questions before the Court; or where your Lord-

ships yourselves are to find a rule for your judgments on such subjects. I confess that to me it looks more like legislation, or arbitrary power, than English judicature. If the Court can say, this is a criminal writing, *not* because we know that mischief was intended by its author, or is even contained in itself, but because fools believing the one and the other may do mischief in their folly; the suppression of such writings under particular circumstances may be wise policy in a state, but upon what principle it can be criminal law in England to be settled in the abstract by Judges, I confess with humility, that I have no organs to understand.

Mr. Leycester felt the difficulty of maintaining such a proposition by any argument of law, and therefore had recourse to an argument of fact. "If," says my learned friend, "what is or is not a seditious libel, be not a question of law "for the Court, but of fact for the Jury, upon what principle "do Defendants found guilty of such libels by a general ver- "dict, defeat the judgment for error on the record: and what "is still more in point, upon what principle does Mr. Ers- "kine himself, if he fails in his present motion, mean to ask "your Lordships to arrest this very judgment by saying that "the Dialogue is not a libel?"

My Lord, the observation is very ingenious, and God knows the argument requires that it should;—but it is nothing more. The arrest of judgment which follows after a verdict of Guilty for publishing a writing, which on inspection of the record exhibits to the Court no specific offence against the law, is no impeachment of my doctrine. I never denied such a jurisdiction to the Court. My position is, that no man shall be punished for the criminal breach of any law, until a Jury of his equals have pronounced him guilty in mind as well as in act, *Actus non facit reum nisi mens sit rea.*

But I never asserted that a Jury had the power to make criminal law as well as to administer it; and therefore it is clear that they cannot deliver over a man to punishment if it appears by the record of his accusation, which it is the office of judicature to examine, that he has not offended against any positive law; because, however criminal he may have been in his disposition, which is a fact established by the verdict, yet statute and precedents can alone decide what is by law an *indictable* offence.

If, for instance, a man were charged by an indictment with having held a discourse in words highly seditious, and were found guilty by the Jury, it is evident that it is the province of the Court to arrest that judgment; because though

the Jury have found that he spoke the words as laid in the indictment, with the seditious intention charged upon him, which they and they only, could find; yet as the words are not punishable by indictment, as when committed to writing, the Court could not pronounce judgment; the declaration of the Jury, that the Defendant was guilty in manner and form as accused, could evidently never warrant a judgment, if the accusation itself contained no charge of an offence against the law.

In the same manner, if a butcher were indicted for privately putting a sheep to causeless and unnecessary torture in the exercise of his trade, but not in public view, so as to be productive of evil example, and the Jury should find him guilty, I am afraid that no judgment could follow; because though done *malo animo*, yet neither statute nor precedent have perhaps determined it to be an indictable offence;—it would be difficult to draw the line. An indictment would not lie for every inhuman neglect of the sufferings of the smallest innocent animals which Providence has subjected to us.

> "Yet the poor beetle which we tread upon,
> In corporeal suffering feels a pang as great
> As when a giant dies."

A thousand other instances might be brought of acts base and immoral, and prejudicial in their consequences, which are not yet indictable by law.

In the case of the King against Brewer, in Cowper's Reports, it was held that *knowingly* exposing to sale and selling gold under sterling for standard gold, is not indictable; because the act refers to goldsmiths only, and private cheating is not a common-law offence. Here too the declaration of the Jury that the Defendant is guilty in manner and form as accused, does not change the nature of the accusation: the verdict does not go beyond the charge; and if the charge be invalid in law, the verdict must be invalid also. All these cases therefore, and many similar ones which might be put, are clearly consistent with my principle; I do not seek to erect Jurors into Legislators or Judges; there must be a rule of action in every society which it is the duty of the Legislature to create, and of Judicature to expound when created. I only support their right to determine guilt or innocence where the crime charged is blended by the general issue with the intention of the criminal; more especially when the quality of the act itself, even independent of that inten-

tion, is not measureable by any precise principle or precedent of law, but is inseparably connected with the time when, the place where, and the circumstances under which the Defendant acted.

My Lord, in considering libels of this nature as opposed to slander on individuals to be mere questions of fact, or at all events to contain matter fit for the determination of the Jury; I am supported not only by the general practice of Courts, but even of those very practisers themselves, who in prosecuting for the Crown have maintained the contrary doctrine.

Your Lordships will, I am persuaded, admit that the general practice of the profession, more especially of the very heads of it, prosecuting too for the public, is strong evidence of the law. Attorney Generals have seldom entertained such a jealousy of the King's Judges in state prosecutions, as to lead them to make presents of jurisdiction to Juries, which did not belong to them of right by the constitution of the country. Neither can it be supposed, that men in high office and of great experience, should in every instance, though differing from each other in temper, character and talents, uniformly fall into the same absurdity of declaiming to Juries upon topics totally irrelevant, when no such inconsistency is found to disfigure the professional conduct of the same men in other cases. Yet I may appeal to your Lordships' recollection, without having recourse to the state trials, whether upon every prosecution for a seditious libel within living memory, the Attorney General has not uniformly stated such writings at length to the Jury, pointed out their seditious tendency which rendered them criminal, and exerted all his powers to convince them of their illegality, as the very point on which their verdict for the Crown was to be founded.

On the trial of Mr. Horne, for publishing an advertisement in favour of the widows of those American subjects who had been *murdered* by the King's troops at Lexington; did the present Chancellor, then Attorney General, content himself with saying that he had proved the publication, and that the criminal quality of the paper which raised the legal inference of guilt against the Defendant, was matter for the the Court? No, my Lord; he went at great length into its dangerous and pernicious tendency, and applied himself with skill and ability to the understandings and the consciences of the Jurors. This instance is in itself decisive of his opinion: that great magistrate could not have acted thus upon the prin-

ciple contended for to-day:—he never was an idle declaimer;—close and masculine argument is the characteristic of his understanding.

The character and talents of the late Lord Chief Justice De Grey, no less entitle me to infer his opinion from his uniform conduct. In all such prosecutions while he was in office, he held the same language to Juries; and particularly in the case of the King against Woodfall, *to use the expression of a celebrated writer on the occasion*, "he tortured his faculties for "more than two hours, to convince them that Junius' letter "was a libel."

The opinions of another Crown lawyer, who has since passed through the first offices of the law, and filled them with the highest reputation, I am not driven to collect alone from his language as an Attorney General; because he carried them with him to the seat of justice. Yet one case is too remarkable to be omitted.

Lord Camden prosecuting Doctor Shebbeare, told the Jury that he did not desire their verdict upon any other principle, than their solemn conviction of the truth of the information, which charged the Defendant with a wicked design, to alienate the hearts of the subjects of this country from their King upon the throne.

To complete the account: my learned friend Mr. Bearcroft, though last not least in favour, upon this very occasion, spoke above an hour to the Jury at Shrewsbury, to convince them of the libellous tendency of the Dialogue, which soon afterwards the learned Judge desired them wholly to dismiss from their consideration, as matter with which they had no concern. The real fact is, that the doctrine is too absurd to be acted upon;—too distorted in principle, to admit of consistency in practice:—it is contraband in law, and can only be smuggled by those who introduce it:—it requires great talents and great address to hide its deformity:—in vulgar hands it becomes contemptible.

Having supported the rights of Juries, by the uniform practice of Crown lawyers, let us now examine the question of authority, and see how this Court itself, and its Judges, have acted upon trials for libels in former times; for, according to Lord Raymond, in Franklin's case (as cited by Mr. Justice Buller, at Shrewsbury,) the principle I am supporting, had, it seems, been only broached about the year 1731, by some men of party spirit, and then too for the very first time.

My Lord, such an observation in the mouth of Lord Ray-

mond, proves how dangerous it is to take up as doctrine every thing flung out at *Nisi Prius*; above all, upon subjects which engage the passions and interests of Government. The most solemn and important trials with which history makes us acquainted, discussed too at the bar of this Court, when filled with Judges the most devoted to the Crown, afford the most decisive contradiction to such an unfounded and unguarded assertion.

In the famous case of the seven Bishops, the question of libel or no libel was held unanimously by the Court of King's Bench trying the cause at the bar, to be matter for the consideration and determination of the Jury; and the Bishops' petition to the King, which was the subject of the information, was accordingly delivered to them, when they withdrew to consider of their verdict.

Thinking this case decisive, I cited it at the trial, and the answer it received from Mr. Bearcroft was, that it had no relation to the point in dispute between us, for that the Bishops were acquitted not upon the question of libel, but because the delivery of the petition to the King was held to be no publication.

I was not a little surprised at this statement, but my turn of speaking was then past; fortunately to-day it is my privilege to speak last, and I have now lying before me the fifth volume of the State Trials, where the case of the Bishops is printed, and where it appears that the publication was expressly proved,—that nothing turned upon it in the judgment of the Court,—and that the Charge turned wholly upon the question of libel, which was expressly left to the Jury by every one of the Judges. Lord Chief Justice Wright, in summing up the evidence, told them that a question had first arisen about the publication, it being insisted on, that the delivery of the petition to the King had not been proved; that the Court was of the same opinion, and that he was just going to have directed them to find the Bishops not guilty, when in came my Lord President (such sort of witnesses were no doubt always at hand when wanted,) who proved the delivery to His Majesty. "Therefore," continued the Chief Justice, "if you believe it was the same petition, it is a publication "sufficient, and we must therefore come to inquire whether "it be a libel."

He then gave his reasons for thinking it within the case *de libellis famosis*, and concluded by saying to the Jury, "In "short, I must give you my opinion: I do take it to be a li- "bel; if my brothers have any thing to say to it, I suppose

" they will deliver their opinion." What opinion?—not that the Jury had no jurisdiction to judge of the matter, but an opinion for the express purpose of enabling them to give that judgment, which the law required at their hands.

Mr. Justice Holloway then followed the Chief Justice; and so pointedly was the question of libel or no libel, and not the publication, the only matter which remained in doubt, and which the Jury, with the assistance of the Court, were to decide upon; that when the learned Judge went into the facts which had been in evidence, the Chief Justice said to him, " Look you; by the way, brother, I did not ask you " to sum up the evidence, but only to deliver your opinion " to the Jury, whether it be a libel or no." The Chief Justice's remark, though it proves my position, was, however, very unnecessary; for but a moment before, Mr. Justice Holloway had declared he did not think it was a libel, but addressing himself to the Jury had said, " *It is left to you,* " *gentlemen.*"

Mr. Justice Powell, who likewise gave his opinion that it was no libel, said *to the Jury*, " *But the matter of it is be-* " *fore you, and I leave the issue of it to God and your own* " *consciences:*" and so little was it in idea of any one of the Court, that the Jury ought to found their verdict solely upon the evidence of the publication, without attending to the criminality or innocence of the petition;—that the Chief Justice himself consented, on their withdrawing from the bar, that they should carry with them all the materials for coming to a judgment as comprehensive as the charge: and indeed expressly directed that the information,—the libel,—the declarations under the great seal,—and even the statute-book, should be delivered to them.

The happy issue of this memorable trial, in the acquittal of the Bishops by the Jury, exercising jurisdiction over the whole charge, freely admitted to them as legal even by King James' Judges, is admitted by two of the gentlemen to have prepared and forwarded the glorious æra of the Revolution. Mr. Bower, in particular, spoke with singular enthusiasm concerning this verdict, choosing (for reasons sufficiently obvious) to ascribe it to a special miracle wrought for the safety of the nation, rather than to the right lodged in the Jury to save it by its laws and constitution.

My learned friend, finding his argument like nothing upon the earth, was obliged to ascend into heaven to support it:—having admitted that the Jury not only acted like just men towards the Bishops, but as patriot citizens towards their

country, and not being able, without the surrender of his whole argument, to allow either their public spirit or their private justice to have been consonant to the laws, he is driven to make them the instruments of divine Providence to bring good out of evil, and holds them up as men inspired by God to perjure themselves in the administration of justice, in order, by the by, to defeat the effects of that wretched system of judicature, which he is defending to-day as the constitution of England. For if the King's Judges could have decided the petition to be a libel, the Stuarts might yet have been on the throne.

My Lord, this is an argument of a priest, not of a lawyer: and even if faith and not law were to govern the question, I should be as far from subscribing to it as a religious opinion.

No man believes more firmly than I do that God governs the whole universe by the gracious dispensations of his providence, and that all the nations of the earth rise and fall at his command: but then this wonderful system is carried on by the natural, though to us the often hidden, relation between effects and causes, which wisdom adjusted from the beginning, and which foreknowledge at the same time rendered sufficient, without disturbing either the laws of nature or of civil society.

The prosperity and greatness of empires ever depended, and ever must depend, upon the use their inhabitants make of their reason in devising wise laws, and the spirit and virtue with which they watch over their just execution: and it is impious to suppose, that men, who have made no provision for their own happiness or security in their attention to their government, are to be saved by the interposition of Heaven in turning the hearts of their tyrants to protect them.

But if every case in which Judges have left the question of libel to Juries in opposition to law, is to be considered as a miracle, England may vie with Palestine; and Lord Chief Justice Holt steps next into view as an apostle; for that great Judge, in Tutchin's case, left the question of libel to the Jury in the most unambiguous terms:—after summing up the evidence of writing and publishing, he said to them as follows.

"You have now heard the evidence, and you are to con-
"sider whether Mr. Tutchin be guilty. They say they are
"innocent papers, and no libels; and they say nothing is a
"libel but what reflects upon some particular person. But

" this is a very strange doctrine, to say, it is not a libel reflect-
" ing on the government, endeavouring to possess the people
" that the government is mal-administered by corrupt per-
" sons, that are employed in such or such stations either in the
" navy or army.

" To say that corrupt officers are appointed to administer
" affairs, is certainly a reflection on the government. If peo-
" ple should not be called to account for possessing the peo-
" ple with an ill opinion of the government, no government
" can subsist. For it is very necessary for all governments
" that the people should have a good opinion of it: and no-
" thing can be worse to any government, than to endeavour to
" procure animosities, as to the management of it; this has
" been always looked upon as a crime, and no government
" can be safe without it be punished."

Having made these observations, did the Chief Justice tell the Jury, that whether the publication in question fell within that principle so as to be a libel on government, was a matter of law for the Court, with which they had no concern?—Quite the contrary: he considered the seditious tendency of the paper as a question for their sole determination, saying to them.

" Now you are to consider, whether these words I have
" read to you, do not tend to beget an ill opinion of the ad-
" ministration of the government: to tell us, that those that
" are employed know nothing of the matter, and those that
" do know are not employed. Men are not adapted to of-
" fices, but offices to men, out of a particular regard to their
" interest, and not to their fitness for the places. This is
" the purport of these papers."

In citing the words of Judges in judicature I have a right to suppose their discourse to be pertinent and relevant, and that when they state the Defendant's answer to the charge, and make remarks on it, they mean that the Jury should exercise a judgment under their direction: this is the practice we must certainly impute to Lord Holt, if we do him the justice to suppose that he meant to convey the sentiments which he expressed. So that when we come to sum up this case, I do not find myself so far behind the learned gentleman even in point of express authority; putting all reason, and the analogies of law which unite to support me, wholly out of the question.

There is Court of King's Bench against Court of King's Bench;—Chief Justice Wright against Chief Justice Lee;—and Lord Holt against Lord Raymond: as to living authorities,

it would be invidious to class them; but it is a point on which I am satisfied myself, and on which the world will be satisfied likewise if ever it comes to be a question.

But even if I should be mistaken in that particular, I cannot consent implicitly to receive any doctrine as the law of England, though pronounced to be such by magistrates the most respectable, if I find it to be in direct violation of the very first principles of English judicature. The great jurisdictions of the country are unalterable except by Parliament, and until they are changed by that authority, they ought to remain sacred;—the Judges have no power over them. What Parliamentary abridgment has been made upon the rights of Juries since the trial of the Bishops, or since Tutchin's case, when they were fully recognised by this Court?—None. Lord Raymond and Lord Chief Justice Lee ought therefore to have looked there—to their predecessors—for the law, instead of setting up a new one for their successors.

But supposing the Court should deny the legality of all these propositions, or, admitting their legality, should resist the conclusions I have drawn from them; then I have recourse to my last proposition, in which I am supported even by all those authorities, on which the learned Judge relies for the doctrines contained in his Charge; to wit,

"That in all cases where the mischievous intention which is "agreed to be the essence of the crime, cannot be collected by "simple inference from the fact charged, because the Defen- "dant goes into evidence to rebut such inference, the inten- "tion becomes then a pure unmixed question of fact, for the "consideration of the Jury."

I said the authorities of the King against Woodfall and Almon were with me. In the first, which is reported in 5th Burrow, your Lordship expressed yourself thus: "Where "an act, in itself indifferent, becomes criminal when done "with a particular intent, there the intent must be proved and "found. But where the act is itself unlawful, as in the "case of a libel, the PROOF of justification or excuse lies on "the Defendant; *and in failure thereof, the law implies a* "*criminal intent.*" Most luminously expressed to convey this sentiment, viz. that when a man publishes a libel, and has nothing to say for himself,—no explanation or exculpation,—a criminal intention need not be proved:—I freely admit that it need not;—it is an inference of common sense, not of law. But the publication of a libel, does not exclusively show criminal intent, but is only an implication of law, in failure of the Defendant's proof. Your Lordship immediate-

ly afterwards in the same case explained this farther. "There "may be cases where the publication may be justified or "excused as lawful OR INNOCENT; FOR NO FACT "WHICH IS NOT CRIMINAL, *though the paper* BE "A LIBEL, can amount to SUCH a publication of which a "Defendant ought to be found guilty." But no question of that kind arose at the trial (*i. e.* on the trial of Woodfall.)— Why?—Your Lordship immediately explained why—"*Be*"*cause the Defendant called no witnesses;*" expressly saying, that the publication of a libel is not in itself a crime, unless the intent be criminal; and that it is not merely in mitigation of punishment, but that *such* a publication does not warrant a verdict of Guilty.

In the case of the King against Almon, a magazine containing one of Junius' letters, was sold at Almon's shop;— there was proof of that sale at the trial. Mr. Almon called no witnesses, and was found guilty. To found a motion for a new trial, an affidavit was offered from Mr. Almon, that he was not privy to the sale, nor knew his name was inserted as a publisher; and that this practice of booksellers being inserted as publishers by their correspondents without notice, was common in the trade.

Your Lordship said, "Sale of a book in a bookseller's "shop, is *primâ facie* evidence of publication by the master, "and the publication of a libel is *prima facie* evidence of "criminal intent: it stands good till answered by the Defen"dant: it must stand till contradicted or explained; *and if* "*not contradicted, explained, or exculpated,* BECOMES *tan*"*tamount to conclusive, when the Defendant calls no wit*"*nesses.*"

Mr. Justice Aston said, "*Primâ facie* evidence *not an*"*swered* is sufficient to ground a verdict upon: if the De"fendant had a sufficient excuse, he might have proved it at "the trial: his having neglected it where there was no sur"prise, is no ground for a new one." Mr. Justice Willes and Mr. Justice Ashhurst agreed upon those express principles.

These cases declare the law beyond all controversy to be, that publication, even of a libel, is no conclusive proof of guilt, but only *prima facie* evidence of it till answered; and that if the Defendant can show that his intention was not criminal, he completely rebuts the inference arising from the publication; because, though it remains true, that he published, yet according to your Lordship's express words, it is not such a publication of which a Defendant ought to be found guilty.

Apply Mr. Justice Buller's summing up, to this law, and it does not require even a legal apprehension to distinguish the repugnancy.

The advertisement was proved to convince the Jury of the Dean's motive for publishing; Mr. Jones' testimony went strongly to aid it;—and the evidence to character, though not sufficient in itself, was admissible to be thrown into the scale. But not only no part of this was left to the Jury, but the whole of it was expressly removed from their consideration, although, in the cases of Woodfall and Almon, it was as expressly laid down to be within their cognizance, and a complete answer to the charge if satisfactory to the minds of the Jurors.

In support of the learned Judge's Charge, there can be therefore but the two arguments, which I stated on moving for the rule:—either that the Defendant's evidence, namely, the advertisement;—Mr. Jones' evidence in confirmation of its being *bonâ fide*;—and the evidence to character, to strengthen that construction, were not sufficient proof that the Dean believed the publication meritorious, and published it in vindication of his honest intentions:—or else, that, even admitting it to establish that fact, it did not amount to such an exculpation as to be evidence on Not guilty, so as to warrant a verdict.—I still give the learned Judge the choice of the alternative.

As to the first, viz. whether it showed honest intention in point of fact: that was a question for the Jury. If the learned Judge had thought it was not sufficient evidence to warrant the Jury's believing that the Dean's motives were such as he had declared them; I conceive he should have given his opinion of it as a point of evidence, and left it there. I cannot condescend to go farther; it would be ridiculous to argue a self-evident proposition.

As to the second, viz. that even if the Jury had believed from the evidence, that the Dean's intention was wholly innocent, it would not have warranted them in acquitting, and therefore should not have been left to them upon Not guilty;—that argument can never be supported. For, if the Jury had declared, "We find that the Dean published this pamphlet, whether a libel or not we do not find: and we find farther, that, believing it in his conscience to be meritorious and innocent, he, *bonâ fide*, published it with the prefixed advertisement, as a vindication of his character from the reproach of seditious intentions, and not to excite sedition:" it is impossible to say, without ridicule, that on such a

special verdict the Court could have pronounced a criminal judgment.

Then why was the consideration of that evidence, by which those facts might have been found, withdrawn from the Jury, after they brought in a verdict guilty of publishing ONLY, which, in the King against Woodfall, was only said not to negative the criminal intention, because the Defendant called no witnesses?—Why did the learned Judge confine his inquiries to the innuendos, and finding them agreed to, direct the epithet of Guilty, without asking the Jury if they believed the Defendant's evidence to rebut the criminal inference? Some of them positively meant to negative the criminal inference, by adding the word *only*, and all would have done it, if they had thought themselves at liberty to enter upon that evidence. But they were told expressly that they had nothing to do with the consideration of that evidence, which, if believed, would have warranted that verdict. The conclusion is evident;—if they had a right to consider it, and their consideration might have produced such a verdict, and if such a verdict would have been an acquittal, it must be a misdirection.

"But," says Mr. Bower, "if this advertisement, prefixed to the publication, by which the Dean professed his "innocent intention in publishing it, should have been left to "the Jury as evidence of that intention, to found an acquittal "on, even taking the Dialogue to be a libel; no man could "ever be convicted of publishing any thing, however dangerous: for he would only have to tack an advertisement to "it by way of preface, professing the excellence of its principles and the sincerity of his motives, and his defence would "be complete."

My Lord, I never contended for any such position. If a man of education, like the Dean, were to publish a writing so palpably libellous, that no ignorance or misapprehension imputable to such a person could prevent his discovering the mischievous design of the author; no Jury would believe such an advertisement to be *bona fide*, and would therefore be bound in conscience to reject it, as if it had no existence: the effect of such evidence must be to convince the Jury of the Defendant's purity of mind, and must therefore depend upon the nature of the writing itself, and all the circumstances attending its publication.

If, upon reading the paper and considering the whole of the evidence, they have reason to think that the Defendant did not believe it to be illegal, and did not publish it with the

seditious purpose charged by the indictment;—he is not guilty upon any principle or authority of law, and would have been acquitted even in the Star-chamber: for it was held by that Court in Lambe's case, in the eighth year of King James the First, as reported by Lord Coke, who then presided in it, that every one who should be convicted of a libel, must be the writer or contriver, or a *malicious* publisher, *knowing* it to be a libel.

This case of Lambe being of too high authority to be opposed, and too much in point to be passed over; Mr. Bower endeavours to avoid its force by giving it a new construction of his own: he says, that not knowing a writing to be a libel, in the sense of that case, means, not knowing the contents of the thing published; as by conveying papers sealed up, or having a sermon and a libel, and delivering one by mistake for the other. In such cases he says, *ignorantia facti excusat*, because the mind does not go with the act; *sed ignorantia legis non excusat;* and therefore if the party knows the contents of the paper which he publishes, his mind goes with the act of publication, though he does not find out any thing criminal, and he is bound to abide by the legal consequences.

This is to make criminality depend upon the consciousness of an act, and not upon the knowledge of its quality, which would involve lunatics and children in all the penalties of criminal law:—for whatever they do is attended with consciousness, though their understanding does not reach to the consciousness of offence.

The publication of a libel, not believing it to be one after having read it, is a much more favourable case than publishing it unread by mistake; the one, nine times in ten, is a culpable negligence which is no excuse at all; for a man cannot throw papers about the world without reading them, and afterwards say he did not know their contents were criminal: but if a man reads a paper, and not believing it to contain any thing seditious, having collected nothing of that tendency himself,—publishes it among his neighbours as an innocent and useful work, he cannot be convicted as a criminal publisher. How he is to convince the Jury that his purpose was innocent, though the thing published be a libel, must depend upon circumstances; and these circumstances he may, on the authority of all the cases ancient and modern, lay before the Jury in evidence; because if he can establish the innocence of his mind, he negatives the very gist of the indictment.

"In all crimes," says Lord Hale in his Pleas of the Crown,

" the intention is the principal consideration: it is the mind " that makes the taking of another's goods to be felony, or a " bare trespass only: it is impossible to prescribe all the cir- " cumstances evidencing a felonious intent, or the contrary; " but the same must be left to the attentive consideration of " Judge *and Jury;* wherein the best rule is, *in dubiis,* ra- " ther to incline to acquittal than conviction."

In the same work he says, " By the statute of Philip and " Mary, touching importation of coin counterfeit of foreign " money, it must, to make it treason, be with the intent to " utter and make payment of the same; and the intent in " this case may be tried and found by circumstances of FACT, " by words, letters, and a thousand evidences besides the " bare doing of the fact."

This principle is illustrated by frequent practice, where the intention is found by the Jury as a fact in a special verdict. It occurred not above a year ago, at East Grinstead, on an indictment for burglary, before Mr. Justice Ashhurst, where I was myself counsel for the prisoner. It was clear upon the evidence that he had broken into the house by force in the night, but I contended that it appeared from proof, that he had broken and entered with an intent to rescue his goods, which had been seized that day by the officers of excise; which rescue, though a capital felony by modern statute, was but a trespass, *temp. Henry VIII.* and consequently not a burglary.

Mr. Justice Ashhurst saved this point of law, which the twelve Judges afterwards determined for the prisoner; but, in order to create the point of law, it was necessary that the prisoner's intention should be ascertained as a fact; and for this purpose, the learned Judge directed the Jury to tell him, with what intention they found that the prisoner broke and entered the house, which they did by answering, " To rescue " his goods; which verdict was recorded."

In the same manner, in the case of the King against Pierce, at the Old Bailey, the intention was found by the Jury as a fact in the special verdict. The prisoner having hired a horse and afterwards sold him, was indicted for felony; but the Judges doubting whether it was more than a fraud, unless he originally hired him intending to sell him, recommended it to the Jury to find a special verdict, comprehending their judgment of his intention, from the evidence. Here the quality of the act depended on the intention, which intention it was held to be the exclusive province of the Jury to determine, before the Judges could give the act any legal denomination.

My Lord, I am ashamed to have cited so many authorities to establish the first elements of the law, but it has been my fate to find them disputed. The whole mistake arises from confounding criminal with civil cases. If a printer's servant, without his master's consent or privity, inserts a slanderous article against me in his newspaper, I ought not in justice to indict him; and if I do, the Jury *on such proof* should acquit him; but it is no defence to an action, for he is responsible to me *civiliter* for the damage which I have sustained from the newspaper, which is his property.—Is there any thing new in this principle? so far from it, that every student knows it as applicable to all other cases; but people are resolved, from some fatality or other, to distort every principle of law into nonsense, when they come to apply it to printing; as if none of the rules and maxims which regulate all the transactions of society had any reference to it.

If a man rising in his sleep, walks into a china-shop, and breaks every thing about him; his being asleep is a complete answer to an *indictment* for a trespass; but he must answer in an *action* for every thing he has broken.

If the proprietor of the York coach, though asleep in his bed at that city, has a drunken servant on the box at London, who drives over my leg and breaks it, he is responsible to me in damages for the accident; but I cannot indict him as the criminal author of my misfortune.—What distinction can be more obvious and simple?

Let us only then extend these principles, which were never disputed in other criminal cases, to the crime of publishing a libel; and let us at the same time allow to the Jury, as our forefathers did before us, the same jurisdiction in that instance, which we agree in rejoicing to allow them in all others, and the system of English law will be wise, harmonious, and complete.

My Lord, I have now finished my argument, having answered the several objections to my five original propositions, and established them by all the principles and authorities which appear to me to apply, or to be necessary for their support. In this process I have been unavoidably led into a length not more inconvenient to the Court than to myself, and have been obliged to question several judgments, which had been before questioned and confirmed.

They however who may be disposed to censure me for the zeal which has animated me in this cause, will at least, I hope, have the candour to give me credit for the sincerity of my intentions:—it is surely not my interest to stir opposi-

tion to the decided authorities of the Court in which I practise: with a seat here within the bar, at my time of life, and looking no farther than myself, I should have been contented with the law as I found it, and have considered *how little* might be said with decency, rather than *how much*;—but feeling as I have ever done upon the subject, it was impossible I should act otherwise. It was the first command and counsel to my youth, always to do what my conscience told me to be my duty, and to leave the consequences to God. I shall carry with me the memory, and, I hope, the practice, of this parental lesson to the grave: I have hitherto followed it, and have no reason to complain that the adherence to it has been even a temporal sacrifice;—I have found it, on the contrary, the road to prosperity and wealth, and shall point it out as such to my children. It is impossible in this country to hurt an honest man; but even if it were possible, I should little deserve that title, if I could, upon any principle, have consented to tamper or temporize with a question, which involves in its determination and its consequences, the liberty of the press;—and in that liberty, the very existence of every part of the public freedom.

# SUBJECT

OF THE

# TRIAL OF THE DEAN OF ST. ASAPH.

*BEFORE we go on to the final proceeding in this memorable cause, viz. the application to arrest the judgment, on the ground, that the Dialogue, as set forth in the indictment, did not contain the legal charge of a libel, it may be necessary to insert the judgment delivered by Lord Mansfield on discharging the rule for a new trial;—a judgment which was supported by the rest of the Court, and which confirmed throughout the whole doctrine of Mr. Justice Buller, as delivered upon the trial at Shrewsbury.*

*It was too late in the day, when the Counsel finished, for the Judges to deliver their opinions, and the Court immediately adjourned; the Lord Chief Justice declaring, that, "they were agreed "in the judgment they were to give, and would deliver it the next "morning."*

*Accordingly, next day, the 16th of November, at the opening of the Court, the Earl of Mansfield, Lord Chief Justice, delivered himself as follows:*

IN this case of the King against Dr. Shipley, Dean of St. Asaph, the motion to set aside the verdict, and to grant a new trial, upon account of the misdirection of the Judge, supposes that upon this verdict (either as a general, or as minutes of a special verdict to be reduced into form,) judgment may be given:—for if the verdict was defective, and omitted finding any thing within the province of the Jury to find, there ought to be a *venire de novo*, and consequently this motion is totally improper; therefore, as I said, the motion supposes that judgment may be given upon the verdict; and it rests upon the objections to the direction of the Judge.

I think they may be reduced to four in number, one of which is peculiar to this case, and therefore I begin with it, *viz. That the Judge did not leave the evidence of a lawful excuse or justification to the Jury, as a ground for them to*

*acquit the Defendant upon, or as a matter for their consideration.* This is an objection peculiar to this case, and therefore I begin with it, to dispose of it first. Circumstances merely of alleviation or aggravation are irrelevant upon the trial; they are totally immaterial to the verdict, because they do not prevent or conclude the Jury's finding for or against the Defendant: they may be made use of when judgment is given, to increase or lessen the punishment, but they are totally irrelevant and immaterial upon the trial. Circumstances which amount to a lawful excuse or a justification, are proper upon the trial, and can only be used there. Upon every such defence set up, of a lawful excuse or justification, there necessarily arise two questions, one of law, the other of fact; the first to be decided by the Court, the second by the Jury.

Whether the fact alleged, supposing it true, be a legal excuse, is a question of law; whether the allegation be true, is a question of fact; and, according to this distinction, the Judge ought to direct, and the Jury ought to follow the direction; though by means of a general verdict they are entrusted with a power of blending law and fact, and following the prejudices of their affections or passions.

The first circumstance in evidence in this cause is a letter of the 24th of January to Edwards, and the advertisement that accompanied it; and what was said by Edward Jones in the conversation that he held with the Defendant on the 7th of January. Upon this part of the case we must suppose the paper seditious or criminal; for, if it is neither seditious nor criminal, the Defendant must be acquitted upon the face of the record. Therefore, whether it is an excuse or not, we must suppose the paper to be a libel, or criminal in the eyes of the law. Then how does it stand upon this excuse? why, the Defendant, knowing the paper had been strongly objected to as tending to sedition, or that it might be so understood, publishes it with an advertisement,* avowing and justifying the doctrine: so that he publishes it under the circumstances of avowing and justifying this criminal doctrine.

The next circumstance is from the evidence of Edward Jones, that the Defendant was told and knew that the paper was objected to as having a seditious tendency; that it might do mischief if it was translated into Welsh, and therefore that design was laid aside; that he read it at the county meeting, and said he read it *with a rope about his neck;* and, after he

* For the advertisement prefixed to the Dialogue, vide supra, page 79.

had read it, he said, *it was not so bad.* And this he knew upon the 7th of January; yet he sets this up as an excuse for ordering it to be printed on the 24th of January.

We are all of opinion clearly, that if the writing be criminal, these circumstances are aggravations, and by no means ought to have been left to the Jury as an excuse.

It is a mockery to say it is any excuse. What! when the man himself knows that he read it *with a rope about his neck;* when he says, admitting it to be bad, that it is not *so bad*: when he has told a company of gentlemen, that for fear of its doing mischief to their country, he would not have it translated into Welsh:—all these circumstances plainly showed him that he should not have published it. Therefore we are all of opinion, it is the same as if no such evidence had been given, and that, if it had been offered by way of excuse, it ought not to have been received. The advertisement was read to the Jury, but the Judge did very right not to leave it to them as a matter of excuse, because it was clearly of a contrary tendency.

What was meant by saying the advertisement should have been set out in the indictment, I do not comprehend; much less that blasphemy may be charged on the Scripture by only stating hal the sentence.

If any part of the sentence qualifies what is set forth, it may be given in evidence, as was expressly determined by the Court so long ago as the case of the King and Bere, in Salkeld 417, in the reign of King William. Every circumstance which tends to prove the meaning, is every day given in evidence, and the Jury are the only judges of the meaning, and must find the meaning; for if they do not find the meaning, the verdict is not complete. So far for the objection upon that part which is peculiar to this case.

The second objection is, that the Judge did not give his own opinion, whether the writing was a libel, or seditious, or criminal.

The third, that the Judge told the Jury they ought to leave that question upon record to the Court, if they had no doubt of the meaning and publication.

The fourth and last, that he did not leave the Defendant's intent to the Jury.

The answer to these three objections is, that by the constitution the Jury ought not to decide the question of law, whether such a writing, of such a meaning, published without a lawful excuse, be criminal; and they cannot decide it *finally* against the Defendant, because, after the verdict, it remains

open upon the record; therefore it is the duty of the Judge to advise the Jury to separate the question of fact from the question of law; and, as they ought not to decide the law, and the question remains entire upon the record, the Judge is not called upon necessarily to tell them his own opinion. It is almost peculiar to the form of the prosecution for a libel, that the question of law remains entirely for the Court *upon record*, and that the Jury cannot decide it against the Defendant; so that a general verdict "that the Defendant is "guilty," is equivalent to a special verdict in other cases. It finds all which belongs to the Jury to find; it finds nothing as to the question of law. Therefore when a Jury have been satisfied as to every fact within their province to find, they have been advised to find the Defendant *guilty*, and in that shape they take the opinion of the Court upon the law. No case has been cited of a special verdict in a prosecution for a libel, leaving the question of law upon the record to the Court, though, to be sure, it might be left in that form; but the other is simpler and better.

As to the last objection upon the *intent:* A criminal intent, from doing a thing criminal in itself without a lawful excuse, is an inference of law, and a conclusive inference of law, not to be contradicted but by an excuse, which I have fully gone through. Where an *innocent act* is made criminal, when done with a particular intent, there the intent is a *material* fact to constitute the crime. This is the answer that is given these three last objections to the direction of the Judge. The first I said was peculiar to this case.

The subject matter of these three objections has arisen upon every trial for a libel since the Revolution, which is now near one hundred years ago. In every reign there have been many such trials both of a private and a public nature. In every reign there have been several defended with all the acrimony of party animosity, and a spirit ready to contest every point, and to admit nothing. During all this time, as far as it can be traced, one may venture to say, that the direction of every Judge has been consonant to the doctrine of Mr. Justice Buller; and no counsel has complained of it by any application to the Court. The Counsel for the Crown, to remove the prejudices of a Jury, and to satisfy the bystanders, have expatiated upon the enormity of the libels; Judges, with the same view, have sometimes done the same thing; both have done it wisely, with another view—to obviate the captivating harangues of the Defendant's counsel to the Jury, tending to shew that they can or ought to find that in law the paper is no libel.

But the formal direction of every Judge (under which every lawyer for near one hundred years, has so far acquiesced as not to complain of it to the Court) seems to me, ever since the Revolution, to have been agreeable to the direction of Mr. Justice Buller. It is difficult to cite cases; the trials are not printed. Unless particular questions arise, notes are not taken: nobody takes a note of a direction of course not disputed. We must, as in all cases of tradition, trace backwards, and presume, from the usage which is remembered, that the precedent usage was the same. We know there were many trials for libels in the reign of King William; there is no trace that I know of, of any report, that at all bears upon the question during that reign, but the case of the King and Bere, which is in Salkeld; that was in the reign of King William, and the only thing there applicable to the present question is, that the Court were of opinion that the writing complained of must be set out *according to the tenour:* Why? That the Court may judge of the very words themselves; whereas, if it was to be *according to the effect*, that judgment must be left to the Jury. But there it was determined, and under that authority ever since, the writing complained of is set out according to the tenour.

During the reign of Queen Anne we know several trials were had for libels, but the only one cited is in the year 1704; and there the direction (though Lord Holt, who is said to have done it in several cases, goes into the enormity of the libel) to the Jury was, "If you find *the publication* in London" "you must find the Defendant guilty." Thus it stands, as to all that can be found precisely and particularly, in the reigns of King William and Queen Anne. We know that in the reign of George I. there were several trials for libels, but I have seen no note or traces of them, nor any question concerning them. In the reign of King George II. there were others; but the first of which there is a note (for which I am obliged to Mr. Manley,*) was in February 1729—the King and Clarke—which was tried before Lord C. J. Raymond; and there he lays it down expressly (there being no question about an excuse, or about the meaning,) he lays it down, *the fact of printing and publishing only is in issue.*

The *Craftsman* was a celebrated party-paper, wrote in opposition to the ministry of Sir Robert Walpole, by many men of high rank and great talents: the whole party espoused it. It was thought proper to prosecute the famous *Hague* letter.

* One of the counsel for the prosecution in this cause.

I was present at the trial, it was in the year 1731. It happens to be printed in the State Trials. There was a great concourse of people; it was a matter of great expectation, and many persons of high rank were present to countenance the Defendant. Mr. Fazakerly and Mr. Bootle (afterwards Sir Thomas Bootle) were the leading counsel for the Defendant. They started every objection and laboured every point. When the Judge over-ruled them, he usually said, "If I am "wrong, you know where to apply." The Judge was my Lord Raymond, C. J. who had been eminent at the bar in the reign of Queen Anne, had been Solicitor and Attorney General in the reign of George I. and was intimately connected with Sir Edward Northey, so that he must have known what the ancient practice had been. The case itself was of great expectation, as I have stated to you, and it was so blended with party passion, that it required his utmost attention; yet, when he came to sum up and direct the Jury, he does it as of course, just in the same manner as Mr. Justice Buller did, "that there were three points for consideration: the fact "of publication; the meaning (those two for the Jury;) the "question of law or criminality, for the Court upon the "record." Mr. Fazakerly and Mr. Bootle were, as we all know, able lawyers; they were connected in party with the writers of the *Craftsman*. They never thought of complaining to the Court of a misdirection: they would not say it was not law: they never did complain. It never was complained of, nor did any idea enter their heads, that it was not agreeable to law. Except that case in 1729 that is mentioned, and this, the trials for libels before my Lord Raymond are not printed, nor to be found in any notes. But, to be sure, his direction in all was to the same effect. I by accident (from memory only I speak now) recollect one where the *Craftsman* was acquitted; and I recollect it from a famous, witty, and ingenious ballad that was made at the time by Mr. Pulteney; and though it is a ballad, I will cite the stanza I remember from it, because it will show you the idea of the able men in opposition, and the leaders of the popular party in those days. They had not an idea of assuming that the Jury had a right to determine upon a question of law, but they put it upon another and much better ground. The stanza I allude to is this:

For Sir Philip* well knows
That his *innuendos*
Will serve him no longer
In verse or in prose;
For twelve honest men have decided the cause,
Who are judges of fact, though not judges of laws.

It was the admission of the whole of that party: they put it right; they put it upon the *meaning* of the *innuendos*: upon *that* the Jury acquitted the Defendant; and they never put up a pretence of any other power, except when talking to the Jury themselves.

There are no notes as I know of (and I think the Bar would have found them out upon this occasion, if there had been any that were material,) there are no notes of the trials for libels before my Lord Hardwicke. I am sure there are none before Lord C. J. Lee till the year 1752, when the case of the King and Owen came on before him. This happens to be printed in the State Trials, though it is incorrect, but sufficient for the present purpose. I attended that trial as Solicitor General. Lord C. Justice Lee was the most scrupulous observer and follower of precedents, and he directed the Jury, *as of course*, in the same way Mr. Justice Buller has done.

When I was Attorney-General, I prosecuted some libels; one I remember from the condition and circumstances of the Defendant; he was found guilty. He was a common councilman of the city of London: and I remember another circumstance, it was the first conviction in the city of London that had been for 27 years. It was the case of the King and Nutt; and there he was convicted, under the very same direction, before Lord Chief Justice Ryder.

In the year 1756 I came into the office I now hold. Upon the first prosecution for a libel which stood in my paper, I think (but I am not sure,) but I think it was the case of the King and Shebbeare, I made up my mind as to the direction I ought to give. I have uniformly given the same in all, al-

* Sir Philip Yorke, afterwards Lord Chancellor Hardwicke, then Attorney General.

It appears by a pamphlet printed in 1754, that Lord Mansfield is mistaken. The verse runs thus:

Sir Philip well knows,
That his innuendo's
Will serve him no longer in verse or in prose;
For twelve honest men have determin'd the cause,
Who are judges alike of the facts, and the laws.

most in the same form of words. No counsel ever complained of it to the Court. Upon every Defendant being brought up for judgment, I have always stated the direction I gave; and the Court has always assented to it. The defence of a *lawful excuse* never existed in any case before me; therefore I have told the Jury if they were satisfied with the evidence of the publication, and that the meanings of the *innuendos* were as stated, they ought to find the Defendant guilty; that the question of law was upon record for the judgment of the Court. This direction being *as of course*, and no question ever raised concerning it in Court (though I have had the misfortune to try many libels in very warm times, against Defendants most obstinately and factitiously defended,) yet the direction being *as of course*, and no objection made, it passed as of course, and there are no notes of what passed. In one case of the King and Woodfall, on account of a very different kind of question (but, upon account of another question,) there happens to be a report, and there the direction I have stated, is adopted by the whole Court as right, and the doctrine of Mr. Justice Buller is laid down in express terms. Such a judicial practice in the precise point from the Revolution, as I think, down to the present day, is not to be shaken by arguments of general theory, or popular declamation. Every species of criminal prosecution has something peculiar in the mode of procedure; therefore general propositions, applied to all, tend only to complicate and embarrass the question. No deduction or conclusion can be drawn from what a Jury *may* do, from the form of procedure, to what they *ought* to do upon the fundamental principles of the constitution and the reason of the thing, if they will act with integrity and good conscience.

The fundamental definition of trial by Jury depends upon a universal maxim that is without an exception. Though a definition or maxim in law, without an exception, it is said, is hardly to be found, yet this I take to be a maxim without an exception: *Ad quæstionem juris non respondent juratores; ad quæstionem facti non respondent judices.*

Where a question can be severed by the form of pleading, the distinction is preserved upon the face of the record, and the Jury cannot encroach upon the jurisdiction of the Court; where, by the form of pleading, the two questions are blended together, and cannot be separated upon the face of the record, the distinction is preserved by the honesty of the Jury. The constitution trusts, that, under the direction of a Judge, they will not usurp a jurisdiction which is

not in their province. They do not know, and are not presumed to know the law; they are not sworn to decide the law; they are not required to decide the law. If it appears upon the record, they ought to leave it there, or they may find the facts subject to the opinion of the Court upon the law. But farther, upon the reason of the thing, and the eternal principles of justice, the Jury ought not to assume the jurisdiction of the law. As I said before, they do not know, and are not presumed to know any thing of the matter; they do not understand the language in which it is conceived, or the meaning of the terms. They have no rule to go by but their affections and wishes. It is said, if a man gives a *right* sentence upon hearing one side only, he is a wicked Judge, because he is right by chance only, and has neglected taking the proper method to be informed; so the Jury who usurp the judicature of law, though they happen to be right, are themselves wrong, because they are right by chance only, and have not taken the constitutional way of deciding the question. It is the duty of the Judge, in all cases of general justice, to tell the Jury how to do right, though they have it *in their power* to do wrong, which is a matter entirely between God and their own consciences.

To be free, is to live under a government by law. The *liberty of the press* consists in printing without any previous license, subject to the consequences of law. The *licentiousness* of the press is *Pandora's* box, the source of every evil. Miserable is the condition of individuals, dangerous is the condition of the State, if there is no certain law, or, which is the same thing, no certain administration of law to protect individuals, or to guard the State.

Jealousy of leaving the law to the Court, as in other cases, so in the case of libels, is now, in the present state of things, puerile rant and declamation. The Judges are totally independent of the ministers that may happen to be, and of the King himself. Their temptation is rather to the popularity of the day. But I agree with the observation cited by Mr. Cowper* from Mr. J. Forster, "that a *popular* Judge is an "odious and a pernicious character."

The judgment of the Court is not final; in the last resort it may be reviewed in the House of Lords, where the opinion of all the Judges is taken.

In opposition to this, what is contended for? That the law shall be in every particular cause what any twelve men, who

* One for the counsel for the prosecution.

shall happen to be the Jury, shall be inclined to think, liable to no review, and subject to no control, under all the prejudices of the popular cry of the day, and under all the bias of interest in this town, where thousands, more or less, are concerned in the publication of newspapers, paragraphs and pamphlets. Under such an administration of law, no man could tell, no counsel could advise, whether a paper was or was not punishable.

I am glad that I am not bound to subscribe to such an absurdity, such a solecism in politics; but that, agreeable to the *uniform* judicial practice since the Revolution, warranted by the fundamental principles of the constitution, of the trial by Jury, and upon the reason and fitness of the thing, we are all of opinion that this motion should be rejected, and the rule discharged.*

* Although the Court was unanimous in discharging the rule, Mr. Justice Willes, in delivering his opinion, sanctioned by his authority Mr. Erskine's argument, that upon a plea of Not guilty, or upon the general issue on an indictment or information for a libel, the Jury had not only the *power*, but a constitutional *right*, to examine, if they thought fit, the criminality or innocence of the paper charged as a libel; declaring it to be his settled opinion, that, notwithstanding the production of sufficient proof of the publication, the Jury might upon such examination acquit the Defendant generally, though in opposition to the directions of the Judge, without rendering themselves liable either to attaint, fine, or imprisonment, and that such verdict of deliverance could in no way be set aside by the Court.

# SUBJECT

OF THE

# TRIAL OF THE DEAN OF ST. ASAPH.

*THIS judgment may be considered as most fortunate for the public, since, in consequence of the very general interest taken in this cause, the public mind was at last fully ripe for the Libel Bill; which was soon after moved in the House of Commons by Mr. Fox, and seconded by Mr. Erskine.*

*The venerable and learned Chief Justice undoubtedly established by his argument, that the doctrine so soon afterwards condemned by the unanimous sense of the Legislature when it passed the Libel Act, did not originate with himself; and that he only pronounced the law as he found it, established by a train of* modern *decisions. But, supported as we now are by this judgment of Parliament, we must venture humbly to differ from so truly great an authority. The Libel Bill does not confer upon the Jury any jurisdiction over the law, inconsistent with the general principle of the constitution: but considering that the question of libel or no libel is frequently a question of fact rather than of law, and in many cases of fact and law almost inseparably blended together,—it directs the Judge, as in other cases, to deliver his opinion to the Jury upon the whole matter, including of course the question of libel or no libel, leaving them at the same time to found their verdicts upon such whole matter so brought before them as in all other criminal cases.*

* This act—viz. 32 Geo. III. c. 60, runs thus:

"Whereas doubts have arisen, whether, on the trial of any indictment or "information for the making or publishing any libel, where an issue or is- "sues are joined between the King and the Defendant or Defendants, on the "plea of Not guilty pleaded, it be competent to the Jury impannelled to try "the same to give their verdict upon the whole matter in issue: Be it there- "fore declared and enacted, by, &c. That on every such trial the Jury "sworn to try the issue, may give a general verdict of Guilty or Not guilty, "upon the whole matter put to issue on such indictment or information, "and shall not be required or directed by the Court or Judge, before whom "such indictment or information shall be tried, to find the Defendant or "Defendants guilty, merely on the proof of the publication by such Defen- "dant or Defendants of the paper charged to be a libel, and of the sense as- "cribed to the same in such indictment or information.

*best answer to the apprehensions of the great and eminent Justice, regarding this course of proceeding, as then con- for by Mr. Erskine, and now established by the Libel Act, experience of seventeen years since that act passed.*

*re the statute it was not difficult for the most abandoned and ate libeller, guilty even of the most malignant slander upon men, to connect his cause with the great privileges of the to protect innocence. Upon the Judge directing the Jury, ing to the old system, to find a verdict of Guilty upon the f publication,—shutting out altogether from their considera- e quality of the matter published;—ingenious counsel used e that occasion to shelter a guilty individual under the mask porting great public right; and Juries, to show that they ot implicitly bound to find verdicts of Guilty upon such evi- alone, were too successfully incited to find improper verdicts uittal: but since the passing of the Libel Act, when the matter has been brought under their consideration,—when ality of the matter published has been exposed when crimi- nd defended when just or innocent, Juries have listened to dge with attention and reverence without being bound in consciences (except in matters of abstract law.) to follow inion, and instead of that uncertainty anticipated by Lord field, the administration of justice has been in general most uctory, and the public authority been vindicated against un- ttacks with much greater security and more supported by opinion, than when Juries were instruments in the hands fixed magistrates; whilst at the same time public liberty en secured by leaving the whole matter in all public libels judgment and consideration of the people. This reformed f the law, as it regards the liberty of the press, is now so uni- ly acknowledged, that the highest magistrates have declared House of Lords that no new laws are necessary either to support ute, or protect the people.*

*e following argument in arrest of judgment is copied from a aper of the succeeding day.*

Provided always, that on every such trial, the Court or Judge before m such [illegible]ctment or information shall be tried, shall, according to r or his [illegible]cretion, give their or his opinion or directions to the Jury he matter in issue between the King and the Defendant or Defen- s in like manner as in all other criminal cases.

I. Provided also, that nothing herein shall extend, or be construed extend, to prevent the Jury finding a special verdict at their discre- , as in other criminal cases.

[illegible]vided also, that in case the Jury find the Defendant or Defendants t shall and may be lawful for the said Defendant or Defendants to e an arrest of judgment on such ground and in such manner as by he or they might have done before the passing of this act;—any thing in contained to the contrary notwithstanding."

# MR. ERSKINE'S SPEECH

IN

## ARREST OF JUDGMENT.

MR. ERSKINE moved the Court to arrest the judgment in the case of the King against the Dean of St. Asaph upon two grounds; first, because even if the indictment sufficiently charged a libel, the verdict given by the Jury was not sufficient to warrant the judgment of the Court; and secondly, because the indictment did not contain any sufficient charge of a libel.

On the first objection, he again insisted on the right of the Jury to find a general verdict on the merit of the writing charged on the record as a libel, notwithstanding the late judgment of the Court;—and declared he should maintain it there, and every where else, as long as he lived, till the contrary should be settled by act of Parliament. He then argued at considerable length, that the verdict, as given by the Jury, was neither a general, nor a special verdict, and complained of the alteration made upon the record without the authority of the Court.

He said, that the only reason for his insisting on his first objection at such length, was the importance of the principle which it involved, and the danger of the precedent it established; although he was so certain of prevailing upon his second objection, that he considered it to be almost injustice to the Court to argue it. All who knew him in and out of the profession, could witness for him, that he had ever treated the idea of ultimately prevailing against him, upon such an indictment, to be perfectly ridiculous, and that his only object in all the trouble which he had given to the Court and to himself, in discussing the expediency of a new trial, was to

resist a precedent, which he originally thought and still continued to think was illegal and unjustifiable :—the warfare was safe for his Client, because he knew he could put an end to the prosecution any hour he pleased, by the objection he would now at last submit to the Court. It did not require the eye of a lawyer to see that even if the Dialogue, instead of being innocent and meritorious, as he thought it, had been the foulest libel ever composed or published; the Indictment was drawn in such a manner as to render judgment absolutely impossible. He said, that if he had been answering in his own person to the charge of publishing the Dialogue complained of, he should have rejected with scorn the protection of a deficient Indictment, would have boldly met the general question, and holding out defiance to the Prosecutor, would have called upon his Counsel to show what sentence, or word, though wrested with all the force ingenuity could apply to confound grammar, and distort language, could be tortured into a violation of any one principle of the government:—but that, standing as Counsel for another, he should not rest his defence even upon that strong foundation, but, after having maintained as he had done at the trial, the innocence, or rather the merit of the Dialogue, should entrench himself behind every objection which the forms of law enabled him to cast up.

The second objection was, that the indictment did not contain a sufficient charge of a libel of and concerning the King and his government:—that though the Court, by judging of libels of that nature, invested itself with a very large discretion; yet it, nevertheless, was a discretion capable of being measured by very intelligible rules of law, and within which rules he was persuaded the Court would strictly confine itself.

The first was, that the Court, in judging of the libellous or seditious nature of the paper in question, could only collect it from the Indictment itself, and could supply nothing from any extrinsic source; and that, therefore, whatever circumstances were necessary to constitute the crime imputed, could not be supplied from any report of the evidence nor from any inference from the verdict, but must be set out upon the record.

That rule was founded in great wisdom, and formed the boundary between the provinces of the Jury and the Court; because, if any extrinsic circumstances, independent of the plain and ordinary meaning of the writing, were necessary to explain it, and point its criminal application; those facts must be put upon the record, for three reasons:

First, that the charge might contain such a description of the crime, that the Defendant might know, what crime he was called upon to answer.

Secondly, that the application of the writing to those circumstances which constituted its criminality might be submitted as facts to the Jury, who were the sole judges of any meaning, which depended upon extrinsic proof.

Thirdly, that the Court might see such a definite crime, that they might apply the punishment which the law inflicted.

He admitted, that wherever a writing was expressed in such clear and unambiguous words as in itself to constitute a libel, without the help of any explanation, all averments and innuendos were unnecessary;—and therefore, if it could be established that the pamphlet in question, if taken off the dusty shelves of a library, and looked at in the pure abstract, without attention to times or circumstances, without application to any facts not upon record, and without any light cast upon it from without, contained false, pernicious, illegal, and unconstitutional doctrines, in their tendency destructive of the government, it would unquestionably be a libel. But if the terms of the writing were general, and the criminality imputed to it consisted in criminal allusions or references to matter dehors the writing; then, although every man who reads such a writing might put the same construction on it; yet when it was the charge of a crime, and the party was liable to be punished for it, there wanted something more.

It ought to receive a juridical sense on the record, and, as the facts were to be decided by the Jury, they only could decide whether the application of general expressions, or terms of reference, or allusions, as the case might be, to matters extrinsic, was just, nor could the general expressions themselves be extended, even by the Jury, beyond their ordinary meaning, without an averment to give them cognizance of such extended import;—nor could the Court, even after a verdict of Guilty, without such averment infer any thing from the finding, but must pronounce strictly according to the just and grammatical sense of the language on the record. The Court, by declaring libel or not libel, to be a question of law, must be supposed by that declaration not to assume any jurisdiction over facts, which was the province of the Jury; but, only to determine that, if the words of the writing without averment, or with averments found to be true by the Jury, contained criminal matter, it would be pronounced to be a libel according to the rules of law:—where-

as, if the libel could only be inferred from its application to something extrinsic, however reasonable or probable such application might be,—no Court could possibly make it for want of the averment, without which the Jury could have no jurisdiction over the facts extrinsic, by reference to which only the writing became criminal.

The next question was, how the application of the writing to any particular object was to be made upon the record: that was likewise settled in the case of the King and Horne.

"In all cases those facts which are descriptive of the charge "must be introduced on the record by averments, in op- "position to argument and inference."

He said, that where facts were necessary in order to apply the matter of the libel to them, it was done introductorily. And where no new fact was necessary, but only ambiguous words were to be explained, it was done by the innuendo. But that the innuendo could not in itself enlarge the matter which it was employed to explain, without an antecedent introduction to refer to; but coupled with such introductory matter it could.

He said, nothing remained but to apply those unquestionable principles to the present indictment, and that application divided itself into two heads:

First, whether the words of the Dialogue, considered purely in the abstract, without being taken to be a seditious exhortation addressed to the people, in consequence of the present state of the nation, as connected with the subject matter of it, could possibly be considered to be a libel on the King and his government.

Secondly, whether, if such reference or illusion was necessary to render it criminal, there were sufficient averments on the record to enable the Court to make the criminal application of otherwise innocent doctrines consistently with the rules of law.

He said he should therefore take the Dialogue, and show the Court that the whole scope and every particular part of it were meritorious.

Here Lord Mansfield said to Mr. Erskine, that having laid down his principles of judgment, the Counsel for the prosecution should point out the parts they insisted on as sufficiently charged to be libellous, and that he would be heard in reply. On which Mr. Bearcroft, Mr. Cowper, Mr. Leicester, and Mr. Bower, were all heard; and endeavoured with great ingenuity to show that the Dialogue was on the face of it a libel; but on Mr. Erskine's rising to reply, the

Court said they would not give him any farther trouble, as they were unanimously of opinion, that the indictment was defective, and that the judgment should be arrested.

The Court went upon the principles of the case of the King against Horne, cited by Mr. Erskine; saying there were no averments to point the application of the paper as a libel on the King and his government; and the Dean is therefore finally discharged from the prosecution.

Mr. Justice Willes threw out, that if the indictment had been properly drawn, it might have been supported. But Lord Mansfield and Mr. Justice Buller did not give any such opinion, confining themselves strictly to the question before the Court.

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*The judgment was accordingly arrested, and no new proceedings were ever had upon the subject against the Dean or the Printer employed by him. His adversaries were, it is believed, sufficiently disposed to distress him; but they were probably aware of the consequences of bringing the doctrines maintained by the Court of King's Bench into a second public examination.*

# PREFACE TO THE TRIAL

OF

# THOMAS PAINE

## *FOR A LIBEL.*

*THOMAS Paine's work, entitled, The rights of Man, is so justly odious in England, from the scurrility and indecency with which it reviles and ridicules the principles which have for so many years supported and illustrated the excellent form of government established in this country,—that the Editor has been induced to vary from his former plan; and, instead of selecting the passages contained in the Information, has prefaced the following Speech of Mr. Erskine for the Defendant with a copy of the Information itself, including the charges of their evil tendency, which were confirmed by the verdict of the Jury:—and with the Speech of the Attorney General in condemnation of the work, which contain in fact all the proceedings material to the cause:—the proof of publication, and the reading of the passages selected in the Information, being all the evidence adduced at the trial;—and the Jury having convicted the Defendant, without calling for any reply on the part of the Crown or any summing up from the Judge.*

*It ought, however, to be noticed, that the letter from Thomas Paine to the Attorney General, part of which was read by the Attorney General in the course of his address to the Jury, was read in evidence;—the objections taken to it by Mr. Erskine having been overruled by the Court. This letter, in addition to those inserted in the argument for the Crown, contained passages replete with most scurrilous matter against the King and Prince*

*of Wales, which we have purposely avoided printing, as they formed no part of the charge which the Jury had to try.*

*The effect of the following trial upon every enlightened mind, must be an increased admiration of that free constitution, which permitted such a man and such a work to be so defended.*

# THE INFORMATION.

## EASTER TERM, IN THE THIRTY-SECOND YEAR OF KING GEORGE THE THIRD.

*ondon,* (*to wit.*) Be it remembered, that Sir Archibald Mac-ıld, Knight, Attorney General of our present Sovereign Lord ş George the Third, who, for our present Sovereign Lord the ş, prosecutes in this behalf in his own proper person, comes the Court of our said present Sovereign Lord the King, before King himself, at Westminster, in the county of Middlesex, on lay next after one month from the feast-day of Easter in this : term: and for our said Lord the King giveth the Court to understand and be informed, that Thomas Paine, late of don, gentleman, being a wicked, malicious, seditious, and ill-osed person, and being greatly disaffected to our said Sovereign l the now King, and to the happy constitution and government is kingdom, and most unlawfully, wickedly, seditiously, and mali-sly devising, contriving, and intending to scandalize, traduce, and y the late happy Revolution, providentially brought about and ef-d under the wise and prudent conduct of His Highness William, tofore Prince of Orange, and afterwards King of England, ıce, and Ireland, and the dominions thereunto belonging; and ıcceptance of the crown and royal dignity of King and Queen of land, France, and Ireland, and the dominions thereunto belonging, lis said Highness William, and her Highness Mary, heretofore ce and Princess of Orange; and the means by which the : Revolution was accomplished to the happiness and welfare ıis realm; and to scandalize, traduce, and vilify the Conven-of the Lords Spiritual and Temporal, and Commons, at whose est, and by whose advice, Their said Majesties did accept, said crown and royal dignity; and to scandalize, traduce, and y the act of the Parliament holden at Westminster in the first of the reign of Their said Majesties King William and Queen y, intituled "*An Act declaring the Rights and Liberties of the Sub-and settling the succession of the Crown,*" and the declaration of ts and liberties in the said act contained; and also the limita-ı and settlements of the crown and regal government of the said doms and dominions as by law established; and also by most :ed, cunning, and artful insinuations to represent, suggest, and e it to be believed, that the said Revolution, and the said set-ents and limitations of the crown and regal government of the

said kingdoms and dominions, and, the said declaration of the rights and liberties of the subject, were contrary to the right and interests of the subjects of this kingdom in general; and that the hereditary regal government of this kingdom was a tyranny. And also by most wicked, cunning, and artful insinuations, to represent, suggest, and cause it to be believed, that the Parliament of this kingdom was a wicked, corrupt, useless, and unnecessary establishment; and that the King, and the Lords Spiritual and Temporal, and Commons, in Parliament assembled, wickedly tyrannized over and oppressed the subjects of this kingdom in general; and to infuse into the minds of the subjects of this kingdom groundless and unreasonable discontents and prejudices against our present Sovereign Lord the King and the Parliament of this kingdom, and the constitution, laws, and government thereof, and to bring them into hatred and contempt, on the sixteenth day of February, in the thirty-second year of the reign of our said present Sovereign Lord the King, with force and arms, at London aforesaid, to wit, in the parish of Saint Mary le Bow, in the ward of Cheap, he the said Thomas, wickedly, maliciously and seditiously did write and publish, and cause to be written and published, a certain false, scandalous, malicious, and seditious libel, of and concerning the said late happy Revolution, and the said settlements and limitations of the crown and regal government of the said kingdoms and dominions; and the said act, declaring the rights and liberties of the subject; and the said declaration of the rights and liberties of the subject therein contained, and the hereditary regal government of the said kingdoms and dominions; and also of and concerning the legislature, constitution, government, and laws of this kingdom; of and concerning our present Sovereign Lord the King that now is; and of and concerning the Parliament of this kingdom, intituled, "*Rights of Man, Part the Second; combining Principle and* "*Practice; by Thomas Paine, Secretary for Foreign Affairs to* "*Congress, in the American War, and Author of the Work, in-*" *tituled Common Sense, and the First Part of the Rights of Man;* "*the Second Edition, London, printed for J. S. Jordan, No.* 166, "*Fleet-Street,* 1792;" in which said libel are contained, amongst other things, divers false, scandalous, malicious, and seditious matters. In one part thereof, according to the tenour and effect following, that is to say, "*All hereditary government is in its nature* "*tyranny. An heritable crown*" (meaning, amongst others, the crown of this kingdom) "*or an heritable throne*" (meaning, amongst others, the throne of this kingdom,) "*or by what other fanciful* "*name such things may be called, have no other significant ex-*" *planation than that mankind are heritable property. To inhe-*" *rit a government, is to inherit the people, as if they were flocks* "*and herds.*" And in another part thereof, according to the tenour and effect following: (that is to say,) "*This Convention met at* "*Philadelphia, in May* 1787, *of which General Washington was elect-*

"*ed president. He was not at that time connected with any of the State* "*Governments, or with Congress. He delivered up his commission* "*when the war ended, and since then had lived a private citizen. The* "*Convention went deeply into all the subjects, and having, after a* "*variety of debate and investigation, agreed among themselves upon* "*the several parts of a Federal Constitution, the next question was* "*the manner of giving it authority and practice. For this pur-* "*pose, they did not, like a cabal of courtiers, send for a Dutch* "*Stadtholder or a German Elector, but they referred the whole mat-* "*ter to the sense and interest of the country,*" (thereby meaning and intending that it should be believed that a cabal of courtiers had sent for the said Prince of Orange and King George the First, heretofore Elector of Hanover, to take upon themselves respectively the regal government of the said kingdom and dominions, without referring to the sense and interest of the subjects of the said kingdoms.) And in another part thereof, according to the tenour and effect following; (that is to say,) "*The history of the Edwards and* "*Henries*" (meaning Edwards and Henries, heretofore Kings of England,) "*and up to the commencement of the Stuarts*" (meaning Stuarts, heretofore Kings of England,) "*exhibits as many instances* "*of tyranny as could be acted within the limits to which the nation* "*had restricted it. The Stuarts*" (meaning Stuarts, heretofore Kings of England) "*endeavoured to pass these limits, and their fate* "*is well known. In all those instances, we see nothing of a consti-* "*tution, but only of restrictions on assumed power. After this,* "*another William*" (meaning the said William Prince of Orange, afterwards King of England,) "*descended from the same stock, and* "*claiming from the same origin, gained possession*" (meaning possession of the Crown of England;) "*and of the two evils, James and* "*William*" (meaning James the Second, heretofore King of England, and the said William Prince of Orange, afterwards King of England,) "*the nation preferred what it thought the least; since from* "*circumstances it must take one. The act called the Bill of Rights*" (meaning the said act of Parliament, intituled, "An Act declaring the "Rights and Liberties of the Subject, and settling the Succession "of the Crown") "*comes here into view; what is it*" (meaning the said act of Parliament last mentioned) "*but a bargain which the* "*parts of the government made with each other to divide powers,* "*profits, and privileges?*" (meaning that the last-mentioned act of Parliament was a bargain which the parts of the government in England made with each other to divide powers, profits, and privileges.) "*You shall have so much, and I will have the rest; and with respect* "*to the nation it said,* For your share you shall have the right of "petitioning. *This being the case, the Bill of Rights*" (meaning the said last-mentioned act of Parliament) "*is more properly a Bill* "*of Wrongs and of Insult. As to what is called the Convention* "*Parliament, it*" (meaning the said Convention of Lords Spiritual

and Temporal, and Commons, herein before mentioned) "*was a* "*thing that made itself, and then made the authority by which it* "*acted. A few persons got together, and called themselves by that* "*name; several of them had never been elected, and none of them* "*for the purpose. From the time of William*" (meaning the said King William the Third,) "*a species of government arose, issu-* "*ing out of this coalition Bill of Rights*" (meaning the said act, intituled, "An Act, declaring the Rights and Liberties of the Sub- "ject, and settling the Succession of the Crown,") "*and may, so* "*since the corruption introduced at the Hanover succession*" (meaning the succession of the heirs of the Princess Sophia, Electress and Duchess Dowager of Hanover, to the crown and dignity of this kingdom) "*by the agency of Walpole, that*" (meaning the said species of government) "*can be described by no other name than a despotic le-* "*gislation. Though the parts may embarrass each other, the* "*whole has no bounds; and the only right it acknowledges out of* "*itself is the right of petitioning. Where then is the constitution* "*either that gives or that restrains power? It is not become a* "*part of the government*" (meaning the government of this kingdom) "*is elective, that makes it less a despotism, if the persons so* "*elected possess afterwards, as a Parliament, unlimited powers;* "*election in this case becomes separated from representation, and* "*the candidates are candidates for despotism.*" And in another "part thereof, according to the tenour and effect following; (that is to say,) "*The attention of the government of England, (for* "*I rather choose to call it by this name than the English govern-* "*ment) appears, since its political connexion with Germany, to* "*have been so completely engrossed and absorbed by foreign af-* "*fairs, and the means of raising taxes, that it seems to exist for no* "*other purposes. Domestic concerns are neglected; and with* "*respect to regular laws, there is scarcely such a thing.*" And in another part thereof, according to the tenour and effect following, (that is to say,) "*With respect to the two Houses of which the* "*English Parliament*" (meaning the Parliament of this kingdom) "*is composed, they appear to be effectually influenced into one,* "*and, as a legislature, to have no temper of its own. The minister*" (meaning the minister employed by the King of this realm in the administration of the government thereof,) "*whoever he at any time* "*may be, touches it*" (meaning the two Houses of Parliament of this kingdom) "*as with an opium wand; and it*" (meaning the said Houses of Parliament of this kingdom) "*sleeps obedience. When* "*we look at the distinct abilities of the two Houses*" (meaning the two Houses of Parliament of this kingdom,) "*the difference will* "*appear so great, as to show the inconsistency of placing them* "*where there can be no certainty of the judgment to use it. It is* "*ed as the state of representation is in England*" (meaning the state of representation of the Commons of this kingdom,) "*it is mon-*

"*hood compared with what is called the House of Lords* (meaning the Lords Spiritual and Temporal in Parliament assembled;) "*and so little is this nick-named House,*" (meaning the House of Lords) "*regarded, that the people scarcely inquire at any* "*time what it is doing. It* (meaning the said House of Lords) "*appears also to be most under influence, and the furthest removed* "*from the general interest of the nation.*" And in another part thereof, according to the tenour and effect following, viz. "*Having* "*thus glanced at some of the defects of the two Houses of Parliament*" (meaning the Parliament of this kingdom,) "*I proceed to* "*what is called the Crown*" (meaning the Crown of this kingdom,) "*upon which I shall be very concise. It*" (meaning the crown of this kingdom) "*signifies a nominal office of a million sterling* "*a year, the business of which consists in receiving the money.* "*Whether the person*" (meaning the King of this realm) "*be wise* "*or foolish, sane or insane, a native or a foreigner, matters not.* "*Every ministry*" (meaning the ministry employed by the King of this realm in the administration of the government thereof) "*acts* "*upon the same idea that Mr. Burke writes; namely, that the peo-* "*ple* (meaning the subjects of this kingdom) "*must be hoodwinked,* "*and held in superstitious ignorance by some bugbear or other;* "*and what is called the Crown*" (meaning the crown of this kingdom) "*answers this purpose, and therefore it answers all the* "*purposes to be expected from it. This is more than can be* "*said of the other two branches. The hazard to which this* "*office*" (meaning, amongst others, the office of King of this realm) "*is exposed in all countries*" (meaning, amongst others, this kingdom,) "*is not from any thing that can happen to the man*" (meaning the King,) "*but from what may happen to the nation*" (meaning amongst others, this kingdom;) "*the danger of its coming* "*to its senses.*" And in another part thereof, according to the tenour and effect following; (that is to say,) "*I happened to be in* "*England at the celebration of the centenary of the Revolution* "*of* 1688. *The characters of William and Mary*" (meaning the said late King William and Queen Mary) "*have always appeared* "*to me detestable; the one*" (meaning the said King William) "*seek-* "*ing to destroy his uncle, and the other*" (meaning the said Queen Mary) "*her father, to get possession of power themselves; yet as* "*the nation was disposed to think something of that event, I felt* "*hurt at seeing it ascribe the whole reputation of it to a man*" (meaning the said late King William the Third) "*who had under-* "*taken it as a job, and who, besides what he otherwise got, charged six* "*hundred thousand pounds for the expense of the little fleet that brought* "*him from Holland. George the First*" (meaning George the First, late King of Great Britain, &c.) "*acted the same close-fisted part as Wil-* "*liam the Third had done, and bought the Dutchy of Bremen with the* "*money he got from England, two hundred and fifty thousand pounds*

" *over and above his pay as King; and having thus purchased it* " *at the expense of England, added it to his Hanoverian dominions* " *for his own private profit.—In fact, every nation that does not* " *govern itself is governed as a job; England has been the prey* " *of jobs ever since the Revolution.*" And in another part thereof, " according to the tenour and effect following: (that is to say,) " *The fraud, hypocrisy, and imposition of Governments*" (meaning, amongst others, the government of this kingdom,) " *are now be-* " *ginning to be too well understood to promise them any long ca-* " *reer. The farce of monarchy and aristocracy in all countries* " *is following that of chivalry, and Mr. Burke is dressing for* " *the funeral. Let it then pass quietly to the tomb of all other* " *follies, and the mourners be comforted. The time is not very* " *distant when England will laugh at itself for sending to Hol-* " *land, Hanover, Zell, or Brunswick, for men*" (meaning the Kings of these realms, born out of the same, who have acceded to the crown thereof at and since the Revolution,) " *at the expense of a* " *million a year, who understood neither her laws, her language,* " *nor her interest; and whose capacities would scarcely have fit-* " *ted them for the office of a parish constable. If government* " *could be trusted to such hands, it must be some easy and sim-* " *ple thing indeed; and materials fit for all the purposes may be* " *found in every town and village in England.*" In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our said Lord the King, further gives the Court here to understand and be informed, that the said THOMAS PAINE, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said Sovereign Lord the now King, and to the happy constitution and government of this kingdom, and most unlawfully, wickedly, seditiously, and maliciously devising, contriving, and intending to scandalize, traduce, and vilify the late happy Revolution, providentially brought about and effected under the wise and prudent conduct of His Highness William, heretofore Prince of Orange, and afterwards King of England, France, and Ireland, and the dominions thereunto belonging; and the acceptance of the crown and royal dignity of King and Queen of England, France, and Ireland, and the dominions thereunto belonging, by His said Highness William, and her Highness Mary, heretofore Prince and Princess of Orange; and the means by which the same Revolution was accomplished to the happiness and welfare of this realm; and to scandalize, traduce, and vilify the Convention of the Lords Spiritual and Temporal, and Commons, at whose request, and by whose advice, Their said Majesties did accept, the said crown and royal dignity; and to scandalize, traduce, and vilify the act of the Parliament holden at Westminster in the first

year of the reign of Their said Majesties King William and Queen Mary, intituled "*An Act declaring the Rights and Liberties of the Subject, and settling the succession of the Crown,*" and the declaration of rights and liberties in the said act contained; and also the limitations and settlements of the crown and regal government of the said kingdoms and dominions as by law established; and also by most wicked, cunning, and artful insinuations to represent, suggest, and cause it to be believed, that the said Revolution, and the said settlements and limitations of the crown and regal government of the said kingdoms and dominions, and the said declaration of the rights and liberties of the subject, were contrary to the rights and interests of the subjects of this kingdom in general; and that the regal government of this kingdom was a tyranny. And also by most wicked, cunning, and artful insinuations, to represent, suggest, and cause it to be believed, that the Parliament of this kingdom was a wicked, corrupt, useless, and unnecessary establishment; and that the King, and Lords Spiritual and Temporal, and Commons, in Parliament assembled, wickedly tyrannized over and oppressed the subjects of this kingdom in general; and to infuse into the minds of the subjects of this kingdom groundless and unreasonable discontents and prejudices against our present Sovereign Lord the King and the Parliament of this kingdom, and the constitution, laws, and government thereof, and to bring them into hatred and contempt, on the sixteenth day of February, in the thirty-second year of the reign of our said present Sovereign Lord the King, by force and arms, at London aforesaid, to wit, in the parish of Saint Mary le Bow, in the ward of Cheap, he the said Thomas, wickedly, maliciously and seditiously did print and publish, and cause to be printed and published, a certain false, scandalous, malicious, and seditious libel, of and concerning the said late happy Revolution, and the said settlements and limitations of the crown and regal government of the said kingdoms and dominions; and the said act, declaring the rights and liberties of the subject; and the said declaration of the rights and liberties of the subject therein contained, and the hereditary regal government of the said kingdoms and dominions; and also of and concerning the legislature, constitution, government, and laws of this kingdom; and of and concerning our present Sovereign Lord the King that now is, and of and concerning the Parliament of this kingdom, intituled, "*Rights of Man, Part the Second, combining Principle and Practice; by Thomas Paine, Secretary for Foreign Affairs to Congress in the American War, and Author of the Work, intituled, Common Sense, and the First Part of the Rights of Man; the Second Edition; London, Printed for J. S. Jordan, No.* 166, *Fleet-Street.*" *In which said libel are contained, amongst other things, divers false, scandalous, malicious, and seditious matters. In one part* thereof, according to the tenour and effect following; (that is to say,)

" *All hereditary government is in its nature tyranny. An heritable crown*" (meaning, amongst others, the crown of this kingdom,) " *or an heritable throne*" (meaning, amongst others, the throne of this kingdom,) " *or by what other fanciful name such things may be called, have no other significant explanation than that mankind are heritable property. To inherit a government, is to inherit the people, as if they were flocks and herds.*" And in another part thereof, according to the tenour and effect following; (that is to say,) " *This Convention met at Philadelphia, in May* 1787, *of which General Washington was elected president. He was not at that time connected with any of the State Governments, or with Congress. He delivered up his commission when the war ended, and since then had lived a private citizen. The Convention went deeply into all the subjects, and having, after a variety of debate and investigation, agreed among themselves upon the several parts of a Federal Constitution, the next question was the manner of giving it authority and practice. For this purpose, they did not, like a cabal of courtiers, send for a Dutch Stadtholder or a German Elector, but they referred the whole matter to the sense and interest of the country*" (thereby meaning, and intending that it should be believed, that a cabal of courtiers had sent for the said Prince of Orange and King George the First, heretofore Elector of Hanover, to take upon themselves respectively the regal government of the said kingdoms and dominions, without referring to the sense and interest of the subjects of the said kingdoms.) And in another part thereof, according to the tenour and effect following; (that is to say,) " *The history of the Edwards and Henries*" (meaning Edwards and Henries, heretofore Kings of England,) " *and up to the commencement of the Stuarts*" (meaning Stuarts, heretofore Kings of England,) " *exhibits as many instances of tyranny as could be acted within the limits to which the nation had restricted it. The Stuarts*" (meaning Stuarts, heretofore Kings of England) " *endeavoured to pass those limits, and their fate is well known. In all those instances, we see nothing of a constitution, but only of restrictions on assumed power. After this, another William*" (meaning the said William Prince of Orange, afterwards King of England,) " *descended from the same stock, and claiming from the same origin, gained possession*" (meaning possession of the crown of England;) " *and of the two evils, James and William*" (meaning James the Second, heretofore King of England, and the said William Prince of Orange, afterwards King of England,) " *the nation preferred what it thought the least; since from circumstances it must take one. The act called the Bill of Rights*" (meaning the said act of Parliament, intituled, " An Act declaring the Rights and Liberties of the Subject, " and settling the Succession of the Crown") " *comes here into view; what is it*" (meaning the said act of Parliament last mentioned) " *but a bargain which the parts of the government made with each other to divide powers, profits, and privileges?*" (meaning that the said last-mentioned act of Parliament was a bargain which the parts of the

government in England made with each other to divide powers, profits, and privileges.) "*You shall have so much, and I will have the rest;* "*and with respect to the nation it said, For your share you shall have* "*the right of petitioning. This being the case, the Bill of Rights*" (meaning the said last-mentioned act of Parliament) "*is more pro-* "*perly a Bill of Wrongs and of insult. As to what is called the* "*Convention Parliament, it*" (meaning the said Convention of Lords Spiritual and Temporal, and Commons, herein before mentioned) "*was a thing that made itself, and then made the authority by which* "*it acted. A few persons got together, and called themselves by that* "*name; several of them had never been elected, and none of them for* "*the purpose. From the time of William*" (meaning the said King William the Third,) "*a species of government arose, issuing out of* "*this coalition Bill of Rights*" (meaning the said act, intituled, "An "Act, declaring the Rights and Liberties of the Subject, and set-"tling the Succession of the Crown,") "*and more so since the cor-* "*ruption introduced at the Hanover succession*" (meaning the succession of the heirs of the Princess Sophia, Electress and Duchess Dowager of Hanover, to the crown and dignity of this kingdom) "*by the agency of Walpole, that*" (meaning the said species of government) "*can be described by no other name than a despotic* "*legislation. Though the parts may embarrass each other, the* "*whole has no bounds; and the only right it acknowledges out of* "*itself is the right of petitioning. Where then is the constitution* "*either that gives or that restrains power? It is not because a part* "*of the government*" (meaning the government of this kingdom) "*is* "*elective, that makes it less a despotism, if the persons so elected* "*possess afterwards, as a Parliament, unlimited powers; election* "*in this case becomes separated from representation, and the candi-* "*dates are candidates for despotism.*" And in another part thereof, according to the tenour and effect following; (that is to say,) "*The atten-* "*tion of the government of England (for I rather choose to call it by* "*this name than the English government) appears, since its political* "*connexion with Germany, to have been so completely engrossed and* "*absorbed by foreign affairs, and the means of raising taxes, that* "*it seems to exist for no other purposes. Domestic concerns are* "*neglected; and with respect to regular law, there is scarcely* "*such a thing.*" And in another part thereof, according to the tenour and effect following; (that is to say,) "*With respect to* "*the two Houses of which the English Parliament*" (meaning the Parliament of this kingdom) "*is composed, they appear* "*to be effectually influenced into one; and, as a legislature,* "*to have no temper of its own. The minister*" (meaning the minister employed by the King of this realm in the administration of the government thereof,) "*whoever he at any time may be, touches* "*it*" (meaning the two Houses of Parliament of this kingdom) "*as* "*with an opium wand; and it*" (meaning the two Houses of Parlia-

ment of this kingdom) " *sleeps obedience. But if we look at the dis-* " *tinct abilities of the two Houses*" (meaning the two Houses of Parliament of this kingdom,) " *the difference will appear so great, as to* " *show the inconsistency of placing power where there can be no cer-* " *tainty of the judgment to use it. Wretched as the state of repre-* " *sentation is in England*" (meaning the state of representation of the Commons of this kingdom,) " *it is manhood compared with what* " *is called the House of Lords*" (meaning the Lords Spiritual and Temporal in Parliament assembled;) " *and so little is this nick-na-* " *med House*" (meaning the House of Lords) " *regarded, that the* " *people scarcely inquire at any time what it is doing. It*" (meaning the said House of Lords) " *appears also to be most under influ-* " *ence, and the furthest removed from the general interest of the na-* " *tion.*" And in another part thereof, according to the tenour and effect following, viz. " *Having thus glanced at some of the defects of* " *the two Houses of Parliament*" (meaning the Parliament of this kingdom,) " *I proceed to what is called the Crown*" (meaning the crown of this kingdom,) " *upon which I shall be very concise. It*" (meaning the crown of this kingdom " *signifies a nominal office of* " *a million sterling a year, the business of which consists in receiv-* " *ing the money. Whether the person*" (meaning the King of this realm) " *be wise or foolish, sane or insane, a native or a foreigner,* " *matters not. Every ministry*" (meaning the ministry employed by the King of this realm in the administration of the government thereof) " *acts upon the same idea that Mr. Burke writes; namely,* " *that the people* (meaning the subjects of this kingdom) " *must be* " *hoodwinked and held in superstitious ignorance by some bugbear* " *or other; and what is called the Crown*" (meaning the Crown of this kingdom) " *answers this purpose, and therefore it answers all* " *the purposes to be expected from it. This is more than can be* " *said of the other two branches. The hazard to which this office*" (meaning, amongst others, the office of King of this realm) " *is ex-* " *posed in all countries*" (meaning, amongst others, this kingdom,) " *is not from any thing that can happen to the man*" (meaning the King,) " *but from what may happen to the nation*" (meaning, amongst others, this kingdom;) " *the danger of its coming to its* " *senses.*" And in another part thereof, according to the tenour and effect following; (that is to say,) " *I happened to be in England at* " *the celebration of the centenary of the Revolution of* 1688. *The* " *characters of William and Mary*" (meaning the said late King William and Queen Mary) " *have always appeared to me detestable;* " *the one*" (meaning the said late King William) " *seeking to des-* " *troy his uncle, and the other*" (meaning the said Queen Mary) " *her father, to get possession of power themselves; yet as the nation* " *was disposed to think something of that event, I felt hurt at seeing* " *it ascribe the whole reputation of it to a man*" (meaning the said late " King William the Third) " *who had undertaken it as a job, and*

" *who, besides what he otherwise got, charged six hundred thousand* " *pounds for the expense of the little fleet that brought him from Hol-* " *land. George the First*" (meaning George the First, late King of Great Britain, &c.) *acted the same close-fisted part as William*" (meaning the said King William the Third) " *had done, and bought the Dut-* " *chy of Bremen with the money he got from England, two hundred* " *and fifty thousand pounds over and above his pay as King; and* " *having thus purchased it at the expense of England, added it to his* " *Hanoverian dominions for his own private profit.—In fact, every* " *nation that does not govern itself is governed as a job: England* " *has been the prey of jobs ever since the Revolution.*" And in another part thereof, according to the tenour and effect following, (that is to say,) " *The fraud, hypocrisy, and imposition of govern-* " *ments*" (meaning, amongst others, the government of this kingdom,) " *are now beginning to be too well understood to promise them any* " *long career. The farce of monarchy and aristocracy in all coun-* " *tries is following that of chivalry, and Mr. Burke is dressing for* " *the funeral. Let it then pass quietly to the tomb of all other follies,* " *and the mourners be comforted. The time is not very distant when* " *England will laugh at itself for sending to Holland, Hanover,* " *Zell, or Brunswick, for men*" (meaning the Kings of these realms, born out of the same, who have acceded to the crown thereof at and since the Revolution,) " *at the expense of a million a year, who under-* " *stood neither her laws, her language, nor her interest; and whose* " *capacities would scarcely have fitted them for the office of a parish* " *constable. If government could be trusted to such hands, it must be* " *some easy and simple thing indeed; and materials fit for all the* " *purposes may be found in every town and village in England.*" In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our said Lord the King, further gives the Court here to understand and be informed, that the said Thomas Paine, being a wicked, seditious, and ill-disposed person, and wickedly, seditiously, and maliciously intending to scandalize, traduce, and vilify the character of the said late Sovereign Lord, King William the Third, and the said late happy Revolution, and the Parliament of England, by whose means the same was established, commonly called the Convention Parliament; and the laws and statutes of this realm limiting and establishing the succession of the crown of this kingdom, and the statute declaring the rights and liberties of the subject, commonly called the Bill of Rights, and the happy constitution and government of this kingdom, as by law established, and to bring the constitution, legislation, and government of this kingdom into hatred and contempt with His Majesty's subjects; and to stir up and excite discontents and seditions among His Majesty's sub-

ment of this kingdom) " *sleeps obedience. But if we look at the dis-* " *tinct abilities of the two Houses*" (meaning the two Houses of Parliament of this kingdom,) " *the difference will appear so great, as to* " *show the inconsistency of placing power where there can be no cer-* " *tainty of the judgment to use it. Wretched as the state of repre-* " *sentation is in England*" (meaning the state of representation of the Commons of this kingdom,) " *it is manhood compared with what* " *is called the House of Lords*" (meaning the Lords Spiritual and Temporal in Parliament assembled;) " *and so little is this nick-na-* " *med House*" (meaning the House of Lords) " *regarded, that the* " *people scarcely inquire at any time what it is doing. It*" (meaning the said House of Lords) " *appears also to be most under influ-* " *ence, and the furthest removed from the general interest of the na-* " *tion.*" And in another part thereof, according to the tenour and effect following, viz. " *Having thus glanced at some of the defects of* " *the two Houses of Parliament*" (meaning the Parliament of this kingdom,) " *I proceed to what is called the Crown*" (meaning the crown of this kingdom,) " *upon which I shall be very concise. It*" (meaning the crown of this kingdom " *signifies a nominal office of* " *a million sterling a year, the business of which consists in receiv-* " *ing the money. Whether the person*" (meaning the King of this realm) " *be wise or foolish, sane or insane, a native or a foreigner,* " *matters not. Every ministry*" (meaning the ministry employed by the King of this realm in the administration of the government thereof) " *acts upon the same idea that Mr. Burke writes; namely,* " *that the people* (meaning the subjects of this kingdom) " *must be* " *hoodwinked and held in superstitious ignorance by some bugbear* " *or other; and what is called the Crown*" (meaning the Crown of this kingdom) " *answers this purpose, and therefore it answers all* " *the purposes to be expected from it. This is more than can be* " *said of the other two branches. The hazard to which this office*" (meaning, amongst others, the office of King of this realm) " *is ex-* " *posed in all countries*" (meaning, amongst others, this kingdom,) " *is not from any thing that can happen to the man*" (meaning the King,) " *but from what may happen to the nation*" (meaning, amongst others, this kingdom;) " *the danger of its coming to its* " *senses.*" And in another part thereof, according to the tenour and effect following; (that is to say,) " *I happened to be in England at* " *the celebration of the centenary of the Revolution of* 1688. *The* " *characters of William and Mary*" (meaning the said late King William and Queen Mary) " *have always appeared to me detestable;* " *the one*" (meaning the said late King William) " *seeking to des-* " *troy his uncle, and the other*" (meaning the said Queen Mary) " *her father, to get possession of power themselves; yet as the nation* " *was disposed to think something of that event, I felt hurt at seeing* " *it ascribe the whole reputation of it to a man*" (meaning the said late " King William the Third) " *who had undertaken it as a job and*

" *who, besides what he otherwise got, charged six hundred thousand* " *pounds for the expense of the little fleet that brought him from Hol-* " *land. George the First*" (meaning George the First, late King of Great Britain, &c.) *acted the same close-fisted part as William*" (meaning the said King William the Third) " *had done, and bought the Dut-* " *chy of Bremen with the money he got from England, two hundred* " *and fifty thousand pounds over and above his pay as King; and* " *having thus purchased it at the expense of England, added it to his* " *Hanoverian dominions for his own private profit.—In fact, every* " *nation that does not govern itself is governed as a job: England* " *has been the prey of jobs ever since the Revolution.*" And in another part thereof, according to the tenour and effect following, (that is to say,) " *The fraud, hypocrisy, and imposition of govern-* " *ments*" (meaning, amongst others, the government of this kingdom,) " *are now beginning to be too well understood to promise them any* " *long career. The farce of monarchy and aristocracy in all coun-* " *tries is following that of chivalry, and Mr. Burke is dressing for* " *the funeral. Let it then pass quietly to the tomb of all other follies,* " *and the mourners be comforted. The time is not very distant when* " *England will laugh at itself for sending to Holland, Hanover,* " *Zell, or Brunswick, for men*" (meaning the Kings of these realms, born out of the same, who have acceded to the crown thereof at and since the Revolution,) " *at the expense of a million a year, who under-* " *stood neither her laws, her language, nor her interest; and whose* " *capacities would scarcely have fitted them for the office of a parish* " *constable. If government could be trusted to such hands, it must be* " *some easy and simple thing indeed; and materials fit for all the* " *purposes may be found in every town and village in England.*" In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our said Lord the King, further gives the Court here to understand and be informed, that the said Thomas Paine, being a wicked, seditious, and ill-disposed person, and wickedly, seditiously, and maliciously intending to scandalize, traduce, and vilify the character of the said late Sovereign Lord, King William the Third, and the said late happy Revolution, and the Parliament of England, by whose means the same was established, commonly called the Convention Parliament; and the laws and statutes of this realm limiting and establishing the succession of the crown of this kingdom, and the statute declaring the rights and liberties of the subject, commonly called the Bill of Rights, and the happy constitution and government of this kingdom, as by law established, and to bring the constitution, legislation, and government of this kingdom into hatred and contempt with His Majesty's subjects; and to stir up and excite discontents and seditions among His Majesty's sub-

jects; and to fulfil, perfect, and bring to effect his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year aforesaid, at London aforesaid, in the parish and ward aforesaid, he the said Thomas Paine, wickedly, maliciously, and seditiously did write and publish, and cause and procure to be written and published, a certain other false, scandalous, malicious and seditious libel, in which, amongst other things, are contained certain false, scandalous, malicious and seditious matters, of and concerning the character of the said late Sovereign Lord King William the Third and the said Revolution and the said Parliament, and the laws and statutes of this realm, and the happy constitution and government thereof, as by law established, according to the tenour and effect following; (that is to say,) "*The history of the Edwards and Henries*" (meaning Edwards and Henries, heretofore Kings of England,) "*and up to the commencement of the Stuarts,*" (meaning Stuarts, heretofore Kings of England,) "*exhibits as many instances of tyranny as could be acted* "*within the limits to which the nation*" (meaning England) "*had* "*restricted it. The Stuarts*" (meaning Stuarts, heretofore Kings of England) "*endeavoured to pass those limits, and their fate is well* "*known. In all those instances we see nothing of a constitution,* "*but only of restrictions on assumed power. After this another* "*William*" (meaning the said late King William the Third) "*descended from the same stock, and claiming from the same origin,* "*gained possession*" (meaning possession of the crown of England;) "*and of the two evils, James and William,*" (meaning James the Second, heretofore King of England, and the said King William the Third,) "*the nation*" (meaning England) "*preferred what it* "*thought the least, since from circumstances they must take one.* "*The act called the Bill of Rights*" (meaning the said statute, declaring the rights and liberties of the subject, commonly called the Bill of Rights) "*comes here into view. What is it*" (meaning the said last-mentioned statute) "*but a bargain which the parts of the* "*government made with each other to divide powers, profits, and* "*privileges?*" (meaning that the said last-mentioned statute was a bargain which the parts of government in England made with each other to divide powers, profits, and privileges.) "*You shall* "*have so much, and I will have the rest. And with respect to* "*the nation*" (meaning England) "*it said, For your share you* "*shall have the right of petitioning. This being the case, the Bill* "*of Rights*" (meaning the said last-mentioned statute) "*is more pro-* "*perly a Bill of Wrongs and of insult. As to what is called the* "*Convention Parliament*" (meaning the aforesaid Parliament of England, commonly called the Convention Parliament,) "*it*" (meaning the aforesaid Parliament of England, commonly called the Convention Parliament) "*was a thing that made itself, and then made* "*the authority by which it acted. A few persons got together, and*

"*called themselves by that name. Several of them had never been* "*elected, and none of them for the purpose. From the time of Wil-* "*liam*" (meaning the said King William the Third,) "" *a species of* "*government*" (meaning the government of England) "*arose is-* "*suing out of this coalition Bill of Rights*" (meaning the said statute, declaring the rights and liberties of the subject;) "*and* "" *more so since the corruption introduced at the Hanover succession*" (meaning the succession of the heirs of the Princess Sophia, Electress and Duchess Dowager of Hanover, to the crown and dignity of this kingdom,) "*by the agency of Walpole, that*" (meaning the said species of government) "*can be described by no other* "*name than a despotic legislation. Though the parts may embar-* "*rass each other, the whole has no bounds; and the only right* "*it acknowledges out of itself, is the right of petitioning. Where* "*then is the constitution either that gives or that restrains power?* "*It is not because a part of government*" (meaning the government of this kingdom) "*is elective, that makes it less a despotism.* "*If the persons so elected possess afterwards, as a Parliament,* "*unlimited powers, election, in this case, becomes separated from* "*representation, and the candidates are candidates for despotism.*" In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our said Lord the King, further gives the Court here to understand and be informed, that the said Thomas Paine, being a wicked, seditious, and ill-disposed person, and wickedly, seditiously, and maliciously intending to scandalize, traduce and vilify the character of the said late Sovereign Lord King William the Third, and the said late happy revolution, and the Parliament of England, by whose means the same was established, commonly called the Convention Parliament; and the laws and statutes of this realm, limiting and establishing the succession to the crown of this kingdom; and the statute declaring the rights and liberties of the subject, commonly called the Bill of Rights; and the happy constitution and government of this kingdom as by law established; and to bring the constitution, legislation, and government of this kingdom into hatred and contempt with his Majesty's subjects; and to stir up and excite discontents and seditions among his Majesty's subjects; and to fulfil, perfect, and bring to effect his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year aforesaid, at London aforesaid, in the parish and ward aforesaid, he, the said Thomas Paine, wickedly, maliciously, and seditiously, did print and publish, and cause and procure to be printed and published, a certain other false, scandalous, malicious, and seditious libel, in which, amongst other things, are contained certain false, scandalous, malicious, and seditious

matters, of and concerning the character of the said late Sovereign Lord King William the Third, and the said Revolution, and the said Parliament, and the laws and statutes of this realm, and the happy constitution and government thereof, as by law established, according to the tenour and effect following; (that is to say,) "*The history of the Edwards and the Henries*" (meaning Edwards and Henries, heretofore Kings of England,) "*and up to the commencement of the Stuarts,*" (meaning Stuarts, heretofore Kings of England,) "*exhibits as many instances of tyranny as could be acted within the limits to which the nation*" (meaning England) "*had restricted it. The Stuarts*" (meaning Stuarts, heretofore Kings of England) "*endeavoured to pass those limits, and their fate is well known. In all those instances we see nothing of a constitution, but only of restrictions on assumed power. After this another William*" (meaning the said late King William the Third) "*descended from the same stock, and claiming from the same origin, gained possession*" (meaning possession of the crown of England;) "*and of the two evils, James and William,*" (meaning James the Second, heretofore King of England, and the said King William the Third,) "*the nation*" (meaning England) "*preferred what it thought least, since from circumstances it must take one. The act called the Bill of Rights*" (meaning the said statute, declaring the rights and liberties of the subject, commonly called the Bill of Rights) "*comes here into view. What is it*" (meaning the said late-mentioned statute) "*but a bargain which the parts of the government made with each other to divide powers, profits, and privileges?*" (meaning that the said last-mentioned statute was a bargain which the parts of the government in England made with each other to divide powers, profits, and privileges.) "*You shall have so much, and I will have the rest. And with respect to the nation*" (meaning England) "*it said, For your share you shall have the right of petitioning.—This being the case, the Bill of Rights*" (meaning the said last-mentioned statute) "*is more properly a Bill of Wrongs and of insult. As to what is called the Convention Parliament*" (meaning the aforesaid Parliament of England) "*it*" (meaning the aforesaid Parliament of England, commonly called the Convention Parliament) "*was a thing that made itself, and then made the authority by which it acted. A few persons got together, and called themselves by that name. Several of them had never been elected, and none of them for the purpose. From the time of William*" (meaning the said King William the Third,) "*a species of government*" (meaning the government of England) "*arose, issuing out of this coalition, Bill of Rights*" (meaning the said statute, declaring the rights and liberties of the subject;) "*and more so since the corruption introduced at the Hanover succession*" (meaning the succession of the heirs of the Princess Sophia, Electress and Duchess Dowager of Hanover, to the crown and dignity of this

kingdom) "*by the agency of Walpole, that*" (meaning the said species of government) "*can be described by no other name than a despotic "legislation. Though the parts may embarrass each other, the "whole has no bounds; and the only right it acknowledges out of "itself is the right of petitioning. Where then is the constitution "either that gives or that restrains power? It is not because a part "of the government*" (meaning the government of this kingdom) "*is "elective, that makes it less a despotism, if the persons so elected "possess afterwards, as a Parliament, unlimited powers; election "in this case becomes separated from representation, and the can-"didates are candidates for despotism.*" In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our said Lord the King, further gives the Court here to understand and be informed, that the said Thomas Paine, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said present Sovereign Lord the King, and wickedly, maliciously, and seditiously intending, devising, and contriving to traduce, and vilify our Sovereign Lord the King, and the two Houses of Parliament of this kingdom, and the constitution and government of this kingdom, and the administration of the government thereof, and to stir up and excite discontents and seditions amongst his Majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of His said Majesty's subjects from His said Majesty; and to fulfil, perfect, and bring to effect his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year aforesaid, at London aforesaid, in the parish and ward aforesaid, he the said Thomas Paine, wickedly, seditiously, and maliciously, did write and publish, and cause to be written and published, a certain other false, scandalous, malicious and seditious libel; in which libel, amongst other things, are contained certain false, scandalous, malicious and seditious matters, of and concerning the Crown of this Kingdom, and the King's administration of the government thereof, and of and concerning the King and the two Houses of Parliament of this kingdom, according to the tenour and effect following, viz. "*Having thus glanced at some of the "defects of the two Houses of Parliament*" (meaning the Parliament of this kingdom,) "*I proceed to what is called the Crown*" (meaning the crown of this kingdom,) "*upon which I shall be very concise. It*" (meaning the crown of this kingdom "*signifies a nominal office of "a million sterling a year, the business of which consists in receiv-"ing the money. Whether the person*" (meaning the King of this realm) "*be wise or foolish, sane or insane, a native or a foreigner, "matters not. Every ministry*" (meaning the ministry employed by the King of this realm in the administration of the government

thereof) "*acts upon the same idea that Mr. Burke writes, namely,* "*that the people* (meaning the subjects of this kingdom) "*must be* "*hoodwinked and held in superstitious ignorance by some bugbear* "*or other; and what is called the Crown*" (meaning the Crown of this kingdom) "*answers this purpose, and therefore it answers all* "*the purposes to be expected from it. This is more than can be* "*said of the other two branches. The hazard to which this office*" (meaning, amongst others, the office of King of this realm) "*is ex-* "*posed in all countries*" (meaning, amongst others, this kingdom,) "*is not from any thing that can happen to the man*" (meaning the King,) "*but from what may happen to the nation*" (meaning, amongst others, this kingdom;) "*the danger of its coming to its* "*senses.*" In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our Lord the King, further gives the Court here to understand and be informed, that the said Thomas Paine, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said present Sovereign Lord the King, and wickedly, maliciously, and seditiously intending, devising, and contriving to traduce and vilify our Sovereign Lord the King, and the two Houses of Parliament of this kingdom, and the constitution and government of this kingdom, and the administration of the government thereof, and to stir up and excite discontents and seditions amongst His Majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of His said Majesty's subjects from His said Majesty; and to fulfil, perfect, and bring to effect his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year aforesaid, at London aforesaid, in the parish and ward aforesaid, he, the said Thomas Paine, wickedly, seditiously and maliciously did print and publish, and cause to be printed and published, a certain other false, scandalous, malicious and seditious libel; in which libel, amongst other things, are contained certain false, scandalous, malicious, and seditious matters, of and concerning the Crown of this kingdom, and the King's administration of the government thereof, and of and concerning the King and the two Houses of Parliament of this kingdom, according to the tenour and effect, following, viz. "*Having thus glanced* "*at some of the defects of the two Houses of Parliament*" (meaning of the Parliament of this kingdom,) "*I proceed to what is cal-* "*led the Crown*" (meaning the Crown of this kingdom,) "*upon* "*which I shall be very concise. It*" (meaning the crown of this kingdom) "*signifies a nominal office of a million sterling* "*a year, the business of which consists in receiving the money.* "*Whether the person*" (meaning the King of this realm) "*be wise* "*or foolish, sane or insane, a native or a foreigner, matters not.*

"*Every ministry*" (meaning the ministry employed by the King of this realm in the administration of the government thereof) "*acts* "*upon the same idea that Mr. Burke writes; namely, that the peo-*"*ple* (meaning the subjects of this kingdom) "*must be hoodwinked* "*and held in superstitious ignorance by some bugbear or other;* "*and what is called the Crown*" (meaning the crown of this kingdom) "*answers this purpose, and therefore it answers all the* "*purposes to be expected from it. This is more than can be* "*said of the other two branches. The hazard to which this* "*office*" (meaning, amongst others, the office of King of this realm) "*is exposed in all countries*" (meaning, amongst others, this kingdom,) "*is not from any thing that can happen to the man*" (meaning the King,) "*but from what may happen to the nation*" (meaning amongst others, this kingdom;) "*the danger of its coming* "*to its senses.*" In contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our said Lord the King, further giveth the Court here to understand and be informed, that the said Thomas Paine, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said Lord the King, and the constitution and government of this kingdom, and wickedly, maliciously, and seditiously intending, devising, and contriving to asperse, defame, and vilify the characters of the late Sovereign Lord and Lady William and Mary, heretofore King and Queen of England, and of George the First, heretofore King of Great-Britain, &c. and to asperse, defame, and vilify the happy Revolution, providentially effected under the wise and prudent conduct of the said King William and Queen Mary, and to bring the said Revolution, and the characters of the said King William and Queen Mary, and King George the First, into hatred and contempt with the subjects of this realm, and to stir up and excite discontents and seditions among His Majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of his Majesty's subjects from His said present Majesty; and to fulfil, perfect, and to bring to effect his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year of the reign of our Lord the now King, at London aforesaid, in the parish and ward aforesaid, wickedly, maliciously, and seditiously, did write and publish, and cause to be written and published, a certain other false, wicked, malicious, scandalous, and seditious libel; in which same libel, amongst other things, are contained certain false, wicked, malicious, scandalous, and seditious matters, of and concerning the said King William and Queen Mary, and the said King George the First, and the said Revolution, according to the tenour and effect following; (that is to say,) "*I happened to be in England at the*

" *celebration of the centenary of the Revolution of* 1688" (meaning the said Revolution.) *The characters of William and Mary*" (meaning the said late King William and Queen Mary) " *have always* " *appeared to me detestable; the one*" (meaning the said King William) " *seeking to destroy his uncle, and the other*" (meaning the said Queen Mary) "*her father, to get possession of power themselves;* " *yet, as the nation was disposed to think something of that event, I* " *felt hurt at seeing it ascribe the whole reputation of it to a man*" (meaning the said late King William the Third) " *who had under-* " *taken it as a job; and who, besides what he otherwise got, charged* " *six hundred thousand pounds for the expense of the little fleet that* " *brought him from Holland. George the First*" (meaning George the First, late King of Great Britain, &c.) " *acted the same close-fisted part* " *as Willam*" (meaning the said King William the Third) " *had done,* " *and bought the Duchy of Bremen with the money he got from England* " *two hundred and fifty thousand pounds over and above his pay as* " *King; and having thus purchased it at the expense of England,* " *added it to his Hanoverian dominions for his own private profit.* " *In fact, every nation that does not govern itself is governed as a* " *job. England has been the prey of jobs ever since the Revolution*" (meaning the aforesaid Revolution.) In contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our said Lord the King, further gives the Court here to understand and be informed, that the said Thomas Paine, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said Lord the King, and the constitution and government of this kingdom, and wickedly, maliciously, and seditiously intending, devising, and contriving to asperse, defame, and vilify the characters of the late Sovereign Lord and Lady, William and Mary, heretofore King and Queen of England, and of George the First, heretofore King of Great Britain, &c. and to asperse, defame, and vilify the happy Revolution, providentially effected under the wise and prudent conduct of the said King William and Queen Mary, and to bring the said Revolution, and the characters of the said King William and Queen Mary, and King George the First, into hatred and contempt with the subjects of this realm, and to stir up and excite discontents and seditions among His Majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of His Majesty's subjects from His said present Majesty, and to fulfil, perfect, and bring to effect, his wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year of the reign of our Lord the now King, at London aforesaid, in the parish and ward aforesaid, wickedly, maliciously, and seditiously did print and publish, and cause to be printed and published, a certain other false, wicked, malicious, scandalous, and seditious libel; in

which same libel, amongst other things, are contained certain false wicked, malicious, scandalous, and seditious matters, of and concerning the said King William and Queen Mary, and the said King George the First, and the said Revolution, according to the tenour and effect following; (that is to say,) "*I happened to be in* "*England at the celebration of the centenary of the Revolution* "*of* 1688" (meaning the said Revolution.) "*The characters of* "*William and Mary*" (meaning the said late King William and Queen Mary) "*have always appeared to me detestable; the one*" (meaning the said King William) "*seeking to destroy his uncle, and* "*the other*" (meaning the said Queen Mary) "*her father, to get* "*possession of power themselves; yet, as the nation was disposed* "*to think something of that event, I felt hurt at seeing it as-* "*cribe the whole reputation of it to a man*" (meaning the said late King William the Third) "*who had undertaken it as a job, and* "*who, besides what he otherwise got, charged six hundred* "*thousand pounds for the expense of the little fleet that brought* "*him from Holland. George the First*" (meaning George the First, late King of Great Britain, &c.) "*acted the same close-fisted* "*part as William*" (meaning the said King William the Third) "*had done, and bought the Duchy of Bremen with the money* "*he got from England, two hundred and fifty thousand pounds* "*over and above his pay as King; and having thus purchased it* "*at the expense of England, added it to his Hanoverian dominions* "*for his own private profit. In fact, every nation that does not* "*govern itself is governed as a job. England has been the prey* "*of jobs ever since the Revolution*" (meaning the aforesaid Revolution.) In contempt of our said Lord the King and his laws, to the evil and pernicious example of all others in the like case offending and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our said Lord the King, further gives the Court here to understand and be informed, that the said Thomas Paine being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said Lord the King, and the constitution and government of this kingdom, and wickedly, maliciously, and seditiously intending, devising, and contriving to asperse, defame and vilify the character of the late Sovereign Lord William, heretofore King of England, and of George the First, heretofore King of Great-Britain, &c. and to asperse, defame, and vilify the happy Revolution providentially effected under the wise and prudent conduct of the said King William; and to bring the said Revolution and the characters of the said King William and King George the First into hatred and contempt with the subjects of this realm; and to stir up and excite discontents and seditions among his Majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of His Majesty's subjects from His

said present Majesty; and to fulfil, perfect, and bring to effect his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year of the reign of our Lord the now King, at London aforesaid, in the parish and ward aforesaid, wickedly and maliciously did write and publish, and cause to be written and published, a certain other false, wicked, malicious, scandalous, and seditious libel; in which same libel, amongst other things, are contained certain false, wicked, malicious, scandalous, and seditious matters, of and concerning the said King William the Third, and the said King George the First, and the said Revolution, according to the tenour and effect following: (that is to say,) "*The fraud, hypocrisy, and imposition of Governments*" (meaning, amongst others, the government of this kingdom,) "*are now beginning to be too well understood to promise them any long career. The farce of monarchy and aristocracy in all countries is following that of chivalry, and Mr. Burke is dressing for the funeral. Let it then pass quietly to the tomb of all other follies, and the mourners be comforted. The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick, for men*" (meaning the said King William the Third, and King George the First,) "*at the expense of a million a year, who understood neither her laws, her language, nor her interest; and whose capacities would scarcely have fitted them for the office of a parish constable. If government could be trusted to such hands, it must be some easy and simple thing indeed; and materials fit for all the purposes may be found in every town and village in England.*" In contempt of said Lord the now King and his laws, to the evil example of all others in the like case offending, and against the peace of our said Lord the King, his crown and dignity. And the said Attorney General of our said Lord the King, for our said Lord the King, further gives the Court here to understand and be informed, that the said Thomas Paine, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said Lord the King, and the constitution and government of this kingdom, and wickedly, maliciously, and seditiously intending, devising, and contriving to asperse, defame, and vilify the character of the late Sovereign Lord William, heretofore King of England, and of George the First, heretofore King of Great Britain, &c. and to asperse, defame, and vilify the happy Revolution providentially effected under the wise and prudent conduct of the said King William, and to bring the said Revolution and the characters of the said King William and King George the First into hatred and contempt, with the subjects of this realm; and to stir up and excite discontents and seditions among His Majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of His Majesty's subjects from His said present Majesty; and

il, perfect, and bring to effect his said wicked, malicious, editious intentions, on the said sixteenth day of February, thirty-second year of the reign of our Lord the now King, ndon aforesaid, in the parish and ward aforesaid, wickedly, masly, and seditiously, did print and publish, and cause to inted and published, a certain other false, wicked, malis scandalous, and seditious libel; in which same libel, gst other things, are contained certain false, wicked, mali- scandalous, and seditious matters of and concerning the King William the Third, and the said King George the and the said Revolution, according to the tenour and effollowing, (that is to say;) "*The fraud, hypocrisy, and osition of governments*" (meaning, among others, the governnt of this kingdom,) "*are now beginning to be too well erstood to promise them any long career. The farce of narchy and aristocracy in all countries is following that chivalry, and Mr. Burke is dressing for the funeral. Let then pass quietly to the tomb of all other follies and the urners be comforted. The time is not very distant when gland will laugh at itself for sending to Holland, Hanover, tz, or Brunswick, for men*" (meaning the said King William Third and King George the First,) "*at the expense of a llion a year, who understood neither her laws, her language, r her interest; and whose capacities would scarcely have ted them for the office of a parish constable. If government uld be trusted to such hands, it must be some easy and simple ng indeed; and materials fit for all the purposes may be und in every town and village in England.*" In contempt of said Lord the now King and his laws, to the evil exam- of all others in the like case offending, and against the e of our said Lord the King, his crown and dignity. Where- the said Attorney General, of our said Lord the King, for our said Lord the King in this behalf prosecuteth our said Lord the King, prayeth the consideration of the rt here in the premises, and that due process of law may be ded against him the said Thomas Paine in this behalf, to e him answer to our said Lord the King touching and concern- he premises aforesaid.

*(The Information was opened by Mr.* PERCEVAL.*)*

Mr. ATTORNEY GENERAL then proceeded as follows:

GENTLEMEN OF THE JURY,

You will permit me to solicit, and for no long space of time, in the present stage of this business, somewhat of your attention to a cause which, considering it on its own merits only, is, in my humble judgment, a plain, a clear, a short, and indisputable case. Were it not, Gentlemen, that certain circumstances have rendered it a case of more expectation than ordinary, I do assure you that I should literally have contented myself this day with conducting myself in the manner that I did upon the last occasion that I was called upon to address a Jury upon this sort of subject, namely, by simply reading to you the passages which I have selected, and leaving it entirely to your judgment. But, Gentlemen, it so happens that the accumulated mischief which has arisen from the particular book that is now before you, and the consequences, which every body is acquainted with, which have followed from this publication, have rendered it necessary, perhaps, that I should say a few words more in the opening than it would have been my intention to have done, had it not been for those circumstances.

Gentlemen, in the first place, you will permit me, without the imputation, I think, of speaking of myself (a very trifling subject, and always a disgusting one to others,) to obviate a rumour which I have heard, namely, that this prosecution does not correspond with my private judgment; that has been said, and has reached my ears from various quarters. The refutation that I shall give to it is this: that I should think I deserved to be with disgrace expelled from the situation with which His Majesty has honoured me in your service, and that of all my fellow-subjects, had I, as far as my private judgment goes, hesitated for one instant to bring this enormous offender, as I consider him, before a Jury of his country.

Gentlemen, the publication in question was not the first of its kind which this Defendant sent forth into the world. This particular publication was preceded by one upon the same subjects, and handling, in some measure, the same topics.

ublication, although extremely reprehensible, and such haps, I was not entirely warranted in overlooking, I rlook, upon this principle, that it may not be fitting ident at all times, for a public prosecutor to be sharp in secutions, or to have it said that he is instrumental in ing any manner of discussion coming under the public hough, in his own estimation, it may be very far indeed at which is legitimate and proper discussion. Repre- e as that book was, extremely so, in my opinion, yet ushered into the world under circumstances that led conceive that it would be confined to the judicious and when confined to the judicious reader, it ap- to me that such a man would refute as he went

Gentlemen, when I found that another publication ered into the world still more reprehensible than the ; that in all shapes, in all sizes, with an industry in- , it was either totally or partially thrust into the hands ersons in this country, of subjects of every descrip- hen I found that even children's sweetmeats were d up with parts of this, and delivered into their hands, ope that they would read it; when all industry was uch as I describe to you, in order to obtrude and force on that part of the public whose minds cannot be sup- o be conversant with subjects of this sort, and who therefore correct as they go along, I thought it behoved n the earliest occasion, which was the first day of the cceeding this publication, to put a charge upon record its author.

, Gentlemen, permit me to state to you what it is that e to this book, and what is the intention that I impute riter of this book. Try it by every test that the hu- nd can possibly suggest, and see whether, when tried he variety of those tests, you will not be satisfied, in run, that it does deserve that description which my liges me to give of it.

lemen, in the first place I impute to it a wilful, delibe- ention to vilify and degrade, and thereby to bring into nce and contempt the whole constitution of the govern- f this country; not as *introduced*, that I will never ut as *explained* and *restored* at the Revolution :—that of government under which we this day live, and if be attacked by contemptuous expressions,—if by dog- dicta,—if by ready made propositions, offered to the andings of men solicitous about the nature of their

constitution, properly so (God forbid they ever should be otherwise,) but who, at the same time, may be easily imposed upon to their own destruction, they may be brought to have diffidence and even abhorrence (for this book goes all that length) of that, which is the salvation of the public, and every thing that is dear to them.

I impute then to this book a deliberate design to eradicate from the minds of the people of this country that enthusiastic love which they have hitherto had for that constitution, and thereby to do the utmost work of mischief that any human being can do in this society.

Gentlemen, farther I impute to it that, *in terms*, the regal part of the government of this country, bounded and limited as it is, is represented as an oppressive and an abominable tyranny.

*Thirdly*, That the whole legislature of this country is directly an usurpation.

Again, with respect to the laws of this realm, which hitherto have been our boast, indiscriminately and without one single exception, that they are grounded upon this usurped authority, and are therefore in themselves null, or, to use his own words —that there is little or no law in this country.

Then, Gentlemen, is it to be held out to a community of ten or twelve millions of people, is it to be held out, as well to the lower as to the better informed classes of these ten or twelve millions, that there is nothing in this society that is binding upon their conduct, excepting such portion of religion or morality as they may individually and respectively entertain?

Gentlemen, are we then a lawless banditti? Have we neither laws to secure our property, our persons, or our reputations?—Is it so that every man's arms are unbound, and that he may do whatever he pleases in the society?—Are we reduced back again to that savage state of nature?—I ask you the question! You, Gentlemen, know well what the answer is; but, Gentlemen, are we to say, that a man who holds this out to those who are not furnished with the means of giving the answer which I know you, and every Gentleman who hears me at this moment, will give, is discussing a question? Can any thing add to his slander upon the constitution; and upon the separate parts of the government, so constituted as ours is, more than that sweeping imputation upon the whole system of law that binds us together—namely, that it is null and void, and that there is in reality no such thing to be found?

Gentlemen, in the several passages which I shall read to you, I impute this to him also, that he uses an artifice gross to those who can observe it, but dangerous in the extreme to those whose minds perhaps are not sufficiently cultivated and habituated to reading, to enable them to discover it: the artifice, in order to create disgust, is neither more nor less than this—it is stating all the objections that can possibly be urged to monarchy, separately and solely considered, and to pure and simple aristocracy; he never chooses to say a single syllable with respect to those two as combined with a democracy, forbearing also to state, and industriously keeping out of the way, every circumstance that regards that worst of all governments, an unbalanced democracy, which is necessarily pregnant with a democratical tyranny. This is the gross artifice; and when you come to dissect the book in the careful manner that I have done, I believe you and every other reader will easily detect that artifice.

Gentlemen, to whom are the positions that are contained in this book addressed? They are addressed, Gentlemen, to the ignorant, to the credulous, to the desperate: to the desperate, all government is irksome; nothing can be so palatable to their ears as the comfortable doctrine that there is neither law nor government amongst us.

The ignorant and the credulous, we all know to exist in all countries: and perhaps exactly in proportion as their hearts are good and simple, are they an easy prey to the crafty who have the cruelty to deceive them.

Gentlemen, in judging of the malignant intention which I must impute to this author, you will be pleased to take into your consideration the phrase and the manner as well as the matter. The phrase I state to be insidious and artful, the manner in many instances scoffing and contemptuous, a short argument, often a prevalent one, with the ignorant or the credulous. With respect to the *matter*, in my conscience I call it treason, though technically, according to the laws of the country, it is not—for, Gentlemen, balance the inconvenience to society of that which is technically treason, and in this country, we must not, thank God, extend it, but keep it within its most narrow and circumscribed definitions, but consider the comparative difference of the mischief that may happen from spreading doctrines of this sort, and that which may happen from any treason whatever.

In the case of the utmost degree of treason, even perpetrating the death of a prince upon the throne, the law has found the means of supplying that calamity in a manner that

may save the country from any permanent injury. In many periods of the history of this country, which you may easily recollect, it is true that the reign of a good prince has been interrupted by violence,—a great evil!—but not so great as this: the chasm is filled up instantly by the constitution of this country, even if that last of treasons should be committed.

But where is the power upon earth that can fill up the chasm of a constitution that has been growing—not for seven hundred years, as Mr. Paine would have you believe, from the Norman conquest—but from time almost eternal,—impossible to trace; that has been growing, as appears from the symptoms Julius Cæsar observed when he found our ancestors nearly savages in the country, from that period until it was consummated at the Revolution, and shone forth in all its splendour?

In addition to this, this gentleman thinks fit even to impute to the existence of that constitution, such as I have described it, the very evils inseparable from human society, or even from human nature itself: all these are imputed to that scandalous, that wicked, that usurped constitution under which we, the subjects of this country, have hitherto mistakenly conceived that we lived happy and free.

Gentlemen, I apprehend it to be no very difficult operation of the human mind to distinguish reasoning and well-meant discussion from a deliberate design to calumniate the law and constitution under which we live, and to withdraw men's allegiance from that constitution; it is the operation of good sense: it is therefore no difficult operation for a Jury of the City of London: therefore, you will be pleased to observe whether the whole of this book, I should rather say, such part as I am at present at liberty to advert to, is not of this description, that it is by no means calculated to discuss and to convince, but to perform the shorter process of inflammation; not to reason upon any subject, but to dictate; and, Gentlemen, as I stated to you before, to dictate in such a manner, and in such phrase, and with all such circumstances as cannot, in my humble apprehension, leave the most remote doubt upon your minds of what was passing in the heart of that man who composed that book.

Gentlemen, you will permit me now to say a word or two upon those passages, which I have selected to you, first describing a little what those passages are. I have thought it much more becoming, much more beneficial to the public, than any

other course that I could take, to select six or seven, and no more (not wishing to load the record unnecessarily,) of those two passages that go to the very root of our constitution, that is the nature of the passages which I have selected; and, Gentlemen, the first of them is in page 21, where you will find this doctrine:

"All hereditary government is in its nature tyranny. An "heritable crown, or an heritable throne, or by what other "fanciful name such things may be called, have no other signi- "ficant explanation than that mankind are heritable property. "To inherit a government is to inherit the people, as if they "were flocks and herds."

Now, Gentlemen, what is the tendency of this passage—"All hereditary government is in its nature tyranny?" So that no qualification whatever, not even the subordination to the law of the country, which is the only paramount thing that we know of in this country, can take it out of the description of tyranny; the regal office being neither more nor less than a trust executed for the subjects of this country; the person who fills the regal office being understood, in this country, to be neither more nor less than the chief executive magistrate heading the whole gradation of magistracy.

But without any qualification he states it roundly, that under all circumstances whatever hereditary government must in its nature be tyranny: what is that but to hold out to the people of this country that they are nought but slaves? to be sure, if they are living under a tyranny, it is impossible to draw any other consequence.

This is one of those short propositions that are crammed down the throat of every man that is accessible to their arts in this country; this is one of those propositions, which, if he believes, must have the due effect upon his mind, of saying, The case is come when I understand I am oppressed; I can bear it no longer.

"An heritable crown." Ours is an heritable crown, and therefore it is comprehended in this dogma: "Or by what other fanciful name such things may be called." Is that discussion? Contemptuous, vilifying, and degrading expressions of that sort are applied to that which we are accustomed to look to with reverence, namely, the representation of the whole body of magistracy and of the law—"have no "other significant explanation than that mankind are heri- "table property. To inherit a government is to inherit "the people, as if they were flocks and herds."

Why, Gentlemen, are the people of England to be told, without farther ceremony, that they are inherited by a King of this country, and that they are precisely in the case of sheep and oxen? I leave you to judge if such gross, contemptible, and abominable falsehood is delivered out in bits and scraps of this sort, whether that does not call aloud for punishment?

Gentlemen, only look at the truth; the converse is directly the case. The King of this country inherits an office under the law; he does not inherit persons; we are not in a state of villenage; the direct reverse to what is here pointed out is the truth of the matter; the King inherits an office, but as to any inheritance of his people, none, you know, belongs to him, and I am ashamed to say any thing more upon it.

The next is in page 47, in which this man is speaking of the Congress at Philadelphia in 1787, which was held because the government of that country was found to be extremely defective as at first established.

"This Convention met at Philadelphia, in May 1787, of "which General Washington was elected president; he was "not at that time connected with any of the State-govern- "ments or with Congress. He delivered up his commis- "sion when the war ended, and since then had lived a pri- "vate citizen.

"The Convention went deeply into all the subjects, and "having, after a variety of debate and investigation, agreed "among themselves upon the several parts of a federal con- "stitution, the next question was the manner of giving it "authority and practice."

What is the conclusion of that?—They certainly agreed upon an appointment of their federal constitution in 1787. I should have thought that a man, meaning nothing more than history, would have been very well contented to have stated what actually did happen upon that occasion; but, in order to discuss (as possibly it may be called) something that formerly did pass in this country, he chose to do it in these inflaming and contemptuous terms:

"For this purpose they did not, like a cabal of courtiers, send for a Dutch Stadtholder or a German Elector; but they referred the whole matter to the sense and interest of the country."

Here again the Revolution and the Act of Settlement stare us in the face, as if the interest and the sense of the country were in no way consulted; but, on the contrary, it was

nothing more than a mere cabal of courtiers.—Whether that is or is not to be endured in this country, your verdict will show; but, in order to show you how totally unnecessary this passage was, except for the deliberate purpose of calumny; if this passage had been left out, the narration would have been quite perfect. I will read three or four lines just to show how perfect it would have been:—"The next ques- "tion was about the manner of giving it authority and prac- "tice." The passage beyond that which I call a libel,—"They "first directed that the proposed Constitution should be pub- "lished; secondly, that each State should elect a Conven- "tion, for the purpose of taking it into consideration, and "of ratifying or rejecting it;" and so the story goes on—but, in order to explain what I mean by a dogma thrust in, I call your attention to this, as one of those which has no earthly connexion with the subject he was then speaking of.

Does not this passage stand insulated between the two parts of the connected story, officiously and designedly thrust in for the purposes of mischief? Gentlemen, the artifice of that book consists also in this: the different wicked passages that are meant to do mischief in this country, are spread throughout it, and stuck in here and there, in a manner, that, in order to see the whole malignity of it, it is necessary to have a recollection of several preceding passages; but these passages, when brought together, manifestly show the full design of the writer, and therefore extracts of it may be made to contain the whole marrow; and at the same time that each passage, taken by itself, will do mischief enough, any man reading them together, will see that mischief come out much clearer than by a mere transient reading.

The next passage I have to observe upon is in page 52, and in page 52 he is pleased to express himself in this manner: he says,

"The history of the Edwards and the Henries, and up "to the commencement of the Stuarts, exhibits as many in- "stances of tyranny as could be acted within the limits to "which the nation had restricted it; the Stuarts endeavour- "ed to pass those limits, and their fate is well known. In "all these instances we see nothing of a constitution, but "only of restrictions on assumed power."

Then, Gentlemen, from the reign of the Edwards and the Henries down to the Revolution, it was a regular progression of tyranny, not a progression of liberty but of tyranny, till the Stuarts stepped a little beyond the line in the gradation that was going forwards, and that begot a neces-

sity for a revolution; but of the Edwards I should have thought, at least, he might have spared the great founder of our jurisprudence, King Edward the First, beside many other Princes, the glory and the boast of this country, and many of them regarders of its freedom and constitution; but instead of that, this author would have the people of this country believe, that up to that time it was a progressive tyranny, and that there was nothing of a constitution, only restrictions on assumed power;—so that all the power that existed at that time was assumption and usurpation.

He thus proceeds: "After this another William, descended from the same stock, and claiming from the same origin, gained possession; and of the two evils, James and William, the nation preferred what it thought the least." So that the deliverance of this country by the Prince of Orange was an evil, but the least of the two, "since from circumstances it must take one. The Act called the Bill of Rights comes here into view. What is it but a bargain which the parts of the government made with each other to divide powers, profits, and privileges? You shall have so much, and I will have the rest. And with respect to the nation, it said, For *your share* YOU *shall have the right of petitioning*. This being the case, the Bill of Rights is more properly a BILL OF WRONGS AND OF INSULT. As to what is called the Convention Parliament, it was a thing that made itself, and then made the authority by which it acted; a few persons got together, and called themselves by that name; several of them had never been elected, and none of them for the purpose."

"From the time of William a species of government arose, issuing out of this coalition Bill of Rights, and more so since the corruption introduced at the Hanover succession by the agency of Walpole, that can be described by no other name than a despotic legislation.

Now, Gentlemen, this is the description that this man holds out of that on which rest the property, the lives, and liberties, and the privileges of the people of this country. I wonder to God, Gentlemen, that any British man (for such this man certainly was, and still is) could utter such a sentence, and that, to use the language of our own poet, when he spoke these words, "A BILL OF WRONGS, A BILL OF INSULT," they did not "stick in his throat." What is that Bill of Rights? It can never be too often read. I will make no comment upon it, because your own heads and hearts will make that comment. You have a posterity to look to. Are desperate ruf-

tians, who are to be found in every country, thus to attack the unalienable rights and privileges which are to descend undiminished to that posterity?

Are YOU not to take care that this shall be sacred to your posterity? Is it not a trust in YOUR hands? It is a trust in YOUR hands as much as the execution of the law is a trust in the hands of the Crown; each has its guardians in this community, but you are the guardians of the Bill of Rights.

Gentlemen, it is this, "That the pretended power of sus-
"pending of laws, or the execution of laws, by legal autho-
"rity, without consent of Parliament is illegal.

"That the pretended power of dispensing with laws, or the
"execution of laws, by the regal authority, as it hath been
"assumed and exercised of late, is illegal."

That is, the law is above all.

"That levying money for, or to the use of, the Crown, by
"pretence of prerogative, without grant of Parliament, for
"longer time, or in other manner than the same is or shall be
"granted, is illegal."

"That it is the right of the subjects to petition the King;
"and all commitments and prosecutions for such petitions are
"illegal."

All that you get by the Bill of Rights, according to this man's doctrine, is, that the Commons of this country have the right of petitioning. We all know this alludes to the case of the seven Bishops; that was a gross violation of the rights of those subjects of this country; therefore he states falsely and maliciously, according to the language of the Information, which is perfectly correct in the present case, that the whole that was obtained by the subjects of this country was the right of petitioning; whereas it is declared to be their unalterable right, and ever to have been so, and adverts, as I before stated to a gross violation of it in a recent case.

"That the raising or keeping a standing army within the
"kingdom in time of peace, unless it be with consent of Par-
"liament, is against law."

"That the subjects, which are Protestants, may have arms
"for their defence, suitable to their conditions, and as allowed
"by law."

"That elections of members of Parliament ought to be
"free."

"That the freedom of speech, and debates of proceedings
"in Parliament ought not to be impeached, or questioned, in
"any Court or place out of Parliament."

"That excessive bail ought not to be required, nor

" excessive fines imposed, nor cruel and unusual punish-
" ments inflicted."

" That Jurors ought to be duly impannelled and returned;
" and Jurors which pass upon men in trials for high treason
" ought to be freeholders."

" That all grants and promises of fines and forfeitures
" of particular persons, before conviction, are illegal and
" void."

" And that for the redress of all grievances, and for the
" amending, strengthening, and preserving of the laws, Par-
" liaments ought to be held frequently."

Further, Gentlemen, this Bill goes on to say, " For the
" ratifying, confirming, and establishing the said Declaration,
" and the articles, clauses, matters, and things, therein con-
" tained, by the force of a law made in due form, by autho-
" rity of Parliament, do pray it may be declared and enacted,
" that all and singular the rights and liberties asserted and
" claimed in the said Declaration are the true, ancient, and
" indubitable rights and liberties of the people of this king-
" dom, and so shall be esteemed, allowed, adjudged, deemed,
" and taken to be: and that all and every the particulars
" aforesaid shall be firmly and strictly holden and observed,
" as they are expressed in the said Declaration; and all of-
" ficers and ministers whatsoever shall serve Their Majesties
" and their successors, according to the same in all times to
" come."

Such, Gentlemen, is the Bill of Wrongs and of Insult. I shall not profane it by saying one more word upon it.

Now, Gentlemen, I would ask you, whether what is said by this man be reasoning or discussion: or whether it is nothing else but deception, and that deception consisting of a most abominable and complete suppression? Is there a word of this Act quoted? Has the poor mechanic, to whom this passage is addressed, who is told that he has been wronged and insulted at the Revolution, has he this statute by him to read? Would it not have been fair, at least to have stated what it was? But instead of that, unsight, unseen (to use a very vulgar expression,) this proposition is tendered to the very lowest man in this country, namely, that the Bill of Rights is a Bill of Wrongs and of Insult.

Pass we then on to another; if you will please to make a memorandum of page 56, you will find that in the same spirit, and with the same design, this man tells you that—" The intention of the government of England," here comes in another contemptuous expression (" for I rather choose to call it

" by this name than the English government,) appears since " its political connexion with Germany, to have been so com- " pletely engrossed and absorbed by foreign affairs, and the " means of raising taxes, that it seems to exist for no other " purposes."

The government of the country then does not exist for the purpose of preserving our lives and properties; but the government, I mean the constitution of the country, King, Lords, and Commons, exist for no purpose but to be the instruments of raising taxes. To enter into any discussion of that, is taking up your time unnecessarily—I only beg to draw your attention to the dogmatical and cavalier manner in which these things are asserted: farther, he says—" Domestic concerns " are neglected; and with respect to regular law, there is " scarcely such a thing."

I stand in the city of London; I am addressing myself to gentlemen eminent in that city; whether the legislature, since the revolution has or has not, adverted to domestic concerns, I think I may appeal to the growing prosperity of this country, from the moment that the nightmare has been taken off its stomach, which pressed upon it up to that moment.

We then proceed to page 63, where, after the whole constitution of this country has been thus treated in gross, he proceeds a little to dissect and consider the component parts of that constitution; and in page 63, in a dogma, we have this:

" With respect to the two Houses of which the English " Parliament is composed, they appear to be effectually in- " fluenced into one; and, as a legislature, to have no temper " of its own. The minister, whoever he at any time may " be, touches it, as with an opium wand, and it sleeps obe- " dience."

Now, gentlemen, here is another dogma without a single fact, without a single argument; but it is held out to the subjects of this country, that there is no energy or activity in either the aristocratical or democratical parts of this constitution but that they are asleep, and you might just as well have statues there; it is not merely said that it is so now, but it is the nature of things, says he, that it should be so.

" But if we look at the distinct abilities of the two Houses, " the difference will appear so great as to show the inconsis- " tency of placing power where there can be no certainty of " the judgment to use it. Wretched as the state of repre- " sentation is in England, it is manhood compared with what " is called the house of Lords; and so little is this nick-

" named House regarded, that the people scarcely inquire at " any time what it is doing. It appears also to be most " under influence, and the farthest removed from the general " interest of the nation."

Now, Gentlemen, this is again speaking in this man's contemptuous manner, at the expense of the aristocratical part of our constitution of government; and essentially beneficial part, whose great and permanent interest in the country renders it a firm barrier against any encroachment. I am not to suppose that you are so ignorant of the history of your country, as not to know the great and brilliant characters that have sat in that House. No particular period of time is alluded to in this passage. He surely cannot mean the present time; but I conceive he speaks of all times, and that from the very nature of our government it must everlastingly be so. Slander upon that very great and illustrious part of the Legislature (untrue at any period,) written in this scurrilous and contemptuous manner, is distinguished greatly indeed from any sober discussion of, whether an aristocratical part of government is a good or bad thing, and is calculated only to mislead and inflame.

If you look next to page 107, there you will find that two of the component parts of the Legislature having been thus disposed of, we come up to the throne itself, and this man says very truly of himself:

" Having thus GLANCED at some of the defects of the two " Houses of Parliament, I proceed to *what is called the* " *Crown*, upon which I shall be very concise:

" It signifies a nominal office of a million a year, the busi- " ness of which consists in receiving the money; whether " the person be wise or foolish, sane or insane, a native or a " foreigner, matters not. Every minister acts upon the " same idea that Mr. Burke writes; namely, that the people " must be hoodwinked, and held in superstitious ignorance " by some bugbear or other: and what is called the Crown " answers this purpose, and therefore it answers all the pur- " poses to be expected from it.—This is more than can be " said of the other two branches.

" The hazard to which this office is exposed in all coun- " tries," including this among the rest, " is not from any " thing that can happen to the man, but from what may hap- " pen to the nation—the danger of its coming to its senses."

Then, Gentlemen, we have been insane for these seven or eight hundred years: and I shall just dismiss this with this observation, that this insanity having subsisted so long, I trust in God that it is incurable.

In page 116, you have this note—"I happened to be in "England at the celebration of the centenary of the Revo- "lution of 1688. The characters of William and Mary have "always appeared to me detestable; the one seeking to des- "troy his uncle, and the other her father, to get possession "of power themselves; yet as the nation was disposed to "think something of that event, I felt hurt at seeing it as- "cribe the whole reputation of it to a man who had under- "taken it as a job, and who, besides what he otherwise got, "charged six hundred thousand pounds for the expense of a "little fleet that brought him from Holland.—George the "First acted the same close-fisted part as William had done, "and bought the Dutchy of Bremen with the money he got "from England, two hundred and fifty thousand pounds over "and above his pay as King; and having thus purchased it "at the expense of England, added it to his Hanoverian do- "minions for his own private profit.—In fact, every nation "that does not govern itself, is governed as a job. England "has been the prey of jobs ever since the Revolution."

Then, Gentlemen, what he calls a nation governing itself is something extremely different from a nation having consented from time immemorial to be governed by a democracy, an aristocracy, and an hereditary executive supreme magistrate; and moreover, by a law paramount, which all are bound to obey: he conceives, I say, that sort of government not to be a government of the people themselves, but he denominates that sort of government a job, and not a government.

Gentlemen, such are the passages which I have selected to you, as those that disclose the most offensive doctrines in the book; that is, such as go fundamentally to the overturning the government of this country. I beg pardon—I have omitted one which contains more of direct invitation than any thing I have yet stated.—It is in page 161; it is said, "the "fraud, hypocrisy, and imposition of governments are now "beginning to be too well understood to promise them any "long career. The farce of monarchy and aristocracy in all "countries is following that of chivalry, and Mr. Burke is "dressing for the funeral—let it then pass quietly to the tomb "of all other follies, and the mourner be comforted. The "time is not very distant when England will laugh at itself "for sending to Holland, Hanover, Zell, or Brunswick, for "men, at the expense of a million a year, who understood "neither her laws, her language, nor her interest, and whose "capacities would scarcely have fitted them for the office of "parish constable."

This is said of William the Third—this is said of two very illustrious Princes of the House of Brunswick, George the First and Second, and extends to the present Sovereign upon the throne.

" If government could be trusted to such hands, it must " be some easy and simple thing indeed; and materials fit for " all the purposes may be found in every town and village in " England."

The policy of the constitution of this country has ever avoided, excepting when driven to it by melancholy necessity, to disturb the hereditary succession to the throne; and it has wisely thought it more fitting to pursue that system, even though a foreigner should be seated on the throne of these realms, than to break through it.—This would insinuate, that the necessary defects of an hereditary monarchy are such as outweigh the advantages attending that which I have stated. Is that so? I would ask any man who hears me, in point of history, whether it is not the permanent defect of elective monarchies, that the sovereigns are seldom men of any consideration, and for an obvious reason; most frequently it has happened, that turbulent factions, after having desolated their country, one of them (it has so happened, at least in most instances as far as my recollection goes) sets up a tool whom the successful faction can themselves govern at pleasure.—Often has it happened that such factions, when a civil war arises, which must almost necessarily be the case in elective monarchies, not choosing to come to the conclusion of an armed contest, have chosen a very weak person, each in hope of strengthening his party by the time the periodical civil war should come round. I believe, upon examination, this will be found to be generally the case, and to have prevailed in elective monarchies to a greater degree than any inconveniences that may have ever arisen from the natural infirmities of princes who succeeded to their thrones by hereditary right, in the constitution of Great Britain; for to that, this man alludes.

Has he stated with any sort of fairness, or has he at all stated or adverted to the many, many remedies we have for any defect of that sort? Has he stated the numerous councils of a King? His council of Parliament—his council of his Judges in matters of law—his Privy Council? Has he stated the responsibility of all those councils? Some in point of character, some of personal responsibility. Has he stated the responsibility of those immediate servants who conduct his executive government? Has he stated the appointment of

regents? Has he stated all this, which is indispensably necessary towards a fair and honest discussion (which this book will possibly be called) of this point of his insuperable objection to hereditary monarchy? Can this be called any other than gross suppression and wilful mis-statement, to raise discontent in half-informed minds?

There does come across my mind at this moment, unquestionably, one illustrious exception to that doctrine I have stated, of men not the most capable of government having in general been chosen in the case of elective monarchies; and that is a man whom no indignities, no misfortunes, no disappointments, no civil commotions, no provocations, ever forced from the full and steady possession of a strong mind, which has always risen with elasticity under all the pressures that I have stated; and he, though not in one sense of that word a great *prince*, yet is certainly a great *man*, who will go down as such to the latest posterity: I mean the King of Poland. Don't imagine, Gentlemen, that my adverting to this illustrious character is useless. Every gentleman who hears me, knows he had a considerable part of his matured education in this country. Here he familiarized himself with the constitution of this country. Here he became informed of the provisions of what this man calls the Bill of Wrongs and Insults, without disparagement to him, for I believe him to be a just and wise prince, of great natural faculties. Here it was that he saw, and could alone learn how the regal government of a free people was conducted, and that under a Prince of the House of Brunswick.

Gentlemen, having stated thus much to you, I will now, for want of suitable expressions (for mine are very feeble,) borrow from another; I certainly have formed an opinion upon this subject precisely similar; to deliver it in plain words would exhaust the utmost of my powers, but I will borrow the words of a very able writer, who has most properly, for fear some ill-impression should be made by this book on the weaker part of mankind in America, given an answer to this book of Mr. Paine. That distinguished gentleman, I have reason to believe, though not the chief magistrate in that country, is the second in the executive government of it; that is, he is second in the exercise of the regal part of the government of that country. He takes care to confute accurately what Mr. Paine says with respect to America; but, borrowing his *words*, I beg to be understood, that this is my *opinion* of the work before you, and which I humbly offer for your consideration and adoption. He says, "His inten-

" tion appears evidently to be, to convince the people of " Great Britain, that they have neither liberty nor a consti- " tution; that their only possible means to produce those " blessings to themselves, is to topple down headlong their " present government, and follow implicitly the example of " the French."

Gentlemen, the next passage, which I beg to be understood as mine (I wish I could express it as well myself,) is this:—" Mr. Paine, in reply, cuts the Gordian knot at " once, declares the Parliament of 1688 to have been down- " right usurpers, censures them for having unwisely sent to " Holland for a King, denies the existence of a British con- " stitution, and invites the people of England to overturn " their present government, and to erect another upon the " broad basis of national sovereignty and government by " representation. As Mr. Paine has departed altogether " from the principles of the Revolution, and has torn up by " the roots all reasoning from the British constitution, by " the denial of its existence, it becomes necessary to examine " his work upon the grounds which he has chosen to assume. " If we judge of the production from its apparent tendency, " we may call it an address to the English nation, attempt- " ing to prove that they have a right to form a new consti- " tution; that it is expedient for them immediately to exer- " cise that right, and that in the formation of this consti- " tution they can do no better than to imitate the model set " before them by the French National Assembly. However " immethodical his production is, I believe the whole of its " argumentative part may be referred to these three points; " if the subject were to affect only the British nation, we " might leave them to reason and act for themselves; but " these are concerns equally important to all mankind; and " the citizens of America are called upon, from high au- " thority (he alludes to a gentleman in a high situation in " that country, who has published an opinion of this book,) " to rally round the standard of this champion of revolutions. " I shall, therefore, now proceed to examine the reasons;" and so he goes on.

Gentlemen, I would adopt, with your permission, a few more words from this publication:—" When Mr. Paine invited " the people of England to destroy their present government, " and form another constitution, he should have given them " sober reasoning, and not flippant witticisms." Whether that is or is not the case, what I have read to you to-day will enable you to judge. " He should have explained to them

" the nature of the grievances by which they are oppres-
" sed, and demonstrated the impossibility of reforming the
" government in its present organization. He should have
" pointed out some possible method for them to act, in their
" original character, without a total dissolution of civil so-
" ciety among them; he should have proved what great ad-
" vantages they would reap as a nation from such a revolu-
" tion, without disguising the great dangers and formidable
" difficulties with which it must be attended." So much for the passages themselves, and this interpretation, which I humbly submit to your consideration.

The next matter upon which I shall proceed is the evidence which I propose to adduce, and that evidence will go to show, not only the fact of this man's being the writer of this book, by his own repeated admission, and by letters under his own hand, but will likewise go directly to show what is his intent in such publication, which appears I think most clearly; and over and above that I shall produce to you a letter, which this man was pleased to address to myself, in which letter he avows himself in so many words the author, and I shall prove it to be his hand-writing; and farther than that, there is matter in that letter, apparently showing the intention with which that book was written, namely, to vilify this constitution, and to injure this country irretrievably.

Two letters I shall be under the necessity of reading to you, in which he has stated himself the author. The one is a letter to a person of the name of Jordan, in which he expresses himself in this manner:

" February 16, 1792" (that was the day on which the book was published:) " For your satisfaction and my own I send
" you the inclosed, though I do not apprehend there will be
" any occasion to use it: if in case there should, you will
" immediately send a line for me, under cover, to Mr. John-
" son, St. Paul's Churchyard, who will forward it to me, up-
" on which I shall come and answer personally for the
" work; send also for Mr. Horne Tooke."

" T. P."

The letter inclosed was this; addressed to the same man, Jordan, the bookseller:—" Sir, should any person, under
" the sanction of any kind of authority, inquire of you re-
" specting the author and publisher of the Rights of Man,
" you will please to mention me as the author and publisher
" of that work, and show to such person this letter. I will,

" as soon as I am acquainted with it, appear and answer for " the work personally."

Gentlemen, with respect to his letter written to me, it is in these terms.

*Mr. Erskine.* My Lord, the Attorney General states a letter in the hand-writing of Mr. Paine, which establishes that he is the author. I desire to know whether he means to read a letter which may be the subject of a substantive and distinct prosecution; I do not mean to dispute the publication, or even to give him the trouble of proving the letters which he has just stated; whether the Attorney General will think it consistent with the situation in which he is placed, at this moment, to read a letter written at a time long subsequent to the publication, containing, as I understand (if I am not mistaken in that, I withdraw my objection), but containing distinct, clear, and unequivocal libellous matter, and which I, in my address to the Jury, if I am not deceived in what I have heard, shall admit to be upon every principle of the English law a libel. Therefore, if that should turn out to be the case, will your Lordship suffer the mind of the Jury to be entirely put aside from that matter which is the subject of the prosecution, and to go into matter which hereafter may be, and I cannot but suppose would be, if the Defendant were within the reach of the law of this country, the subject of a distinct and independent prosecution.

*Lord Kenyon.* If that letter goes a jot to prove that he is the author of this publication, I cannot reject that evidence; in prosecutions for high treason, where overt acts are laid, you may prove overt acts not laid, to prove those that are laid; if it goes to prove him the author of the book, I am bound to admit it.

*Mr. Attorney General.*

The letter is thus:

" *Paris, 11th of November, First year of the Republic.*

" Sir, as there can be no personal resentment between two " strangers, I write this letter to you, as to a man against " whom I have no animosity.

" You have, as Attorney General, commenced a prose- " cution against me as the author of the Rights of Man. " Had not my duty in consequence of my being elected a " member of the National Convention of France, called me " from England, I should have staid to have contested the " injustice of that prosecution; not upon my own account,

" for I cared not about the prosecution, but to defend the " principles I had advanced in the work.

" The duty I am now engaged in is of too much impor- " tance to permit me to trouble myself about your prosecu- " tion; when I have leisure, I shall have no objection to " meet you on that ground: but, as I now stand, whether " you go on with the prosecution, or whether you do not, or " whether you obtain a verdict, or not, is a matter of the " most perfect indifference to me as an individual. If you " obtain one (which you are welcome to if you can get it,) " it cannot affect me, either in person, property, or reputa- " tion, otherwise than to increase the latter; and with re- " spect to yourself, it is as consistent that you obtain a ver- " dict against the man in the moon, as against me; neither " do I see how you can continue the prosecution against me " as you would have done against one of *your own people*, " who had absented himself because he was prosecuted; " what passed at Dover, proves that my departure from " England was no secret.

" My necessary absence from your country affords the op- " portunity of knowing whether the prosecution was intend- " ed against Thomas Paine, or against the rights of the peo- " ple of England to investigate systems and principles of " government; for as I cannot now be the object of the pro- " secution, the going on with the prosecution will show that " something else was the object, and that something else " can be no other than the people of England; for it is " against *their rights*, and not against me, that a verdict or " sentence can operate, if it can operate at all. Be then so " candid as to tell the Jury (if you choose to continue the " process) whom it is you are prosecuting, and on whom it " is that the verdict is to fall."

Gentlemen, I certainly will comply with this request. I am prosecuting both him and his work; and if I succeed in this prosecution, he shall never return to this country otherwise than *in vinculis*, for I will outlaw him.

" But I have other reasons than those I have mentioned " for writing you this letter; and however you may choose " to interpret them, they proceed from a good heart. The " time, Sir, is becoming too serious to play with Court pro- " secutions, and sport with national rights. The terrible ex- " amples that have taken place here upon men who, less than " a year ago, thought themselves as secure as any prosecu- " ting Judge, Jury, or Attorney General, can now do in Eng- " land, ought to have some weight with men in your situa- " tion."

Now, Gentlemen, I do not think that Mr. Paine judges very well of mankind—I do not think that it is a fair conclusion of Mr. Paine, that men such as you and myself, who are quietly living in obedience to the laws of the land which they inhabit, exercising their several functions peaceably, and I hope with a moderate share of reputation: I do not conceive that men called upon to think, and in the habit of reflection, are the most likely men to be immediately thrown off the hinges by menaces and threats; and I doubt whether men exercising public functions, as you and I do in the face of our country, could have the courage to run away. All I can tell Mr. Paine is this—if any of his assassins are here in London, and there is some ground to suppose they may be, or the assassins of those with whom he is connected; if they are here, I tell them, that I do in my conscience think, that for a man to die of doing his duty, is just as good a thing as dying of a raging fever, or under the tortures of the stone. Let him not think, that not to be an incendiary is to be a coward.

He says—"That the government of England is as great, if "not the greatest perfection of fraud and corruption, that "ever took place since governments began, is what you can- "not be a stranger to; unless the constant habit of seeing it "has blinded your sense." Upon my word, Gentlemen, I am stone blind, I am not sorry for it.—"But though you "may not choose to see it, the people are seeing it very fast, "and the progress is beyond what you may choose to "believe, or that reason can make any other man believe, "that the capacity of such a man as Mr. Guelph, or any "of his profligate sons, is necessary to the government of a "nation."

Now, Gentlemen, with respect to this passage, I have this to say, it is contemptuous, scandalous, false, cruel.—Why, Gentlemen, is Mr. Paine, in addition to the political doctrines that he is teaching us in this country; is he to teach us the morality and religion of IMPLACABILITY? Is he to teach human creatures, whose moments of existence depend upon the permission of a Being, merciful, long suffering, and of great goodness, that those youthful errors from which even royalty is not exempted, are to be treasured up in a vindictive memory, and are to receive sentence of irremissible sin at HIS hands? Are they all to be confounded in these slanderous terms, shocking for British ears to hear, and I am sure distressing to their hearts? He is a barbarian, who could use such profligate expressions uncalled for by any thing which

could be the object of his letter addressed to me. If giving me pain was his object, he has that hellish gratification. Would this man destroy that great auxiliary of all human laws and constitution—" to judge of others as we would be " judged ourselves?"—This is the bill of wrongs and insults of the Christian religion. I presume it is considered as that bill of wrongs and insults, in the heart of that man who can have the barbarity to use those expressions, and address them to me in a way by which I could not but receive them.

Gentlemen, there is not perhaps in the world a more beneficial analogy, nor a finer rule to judge by in public matters, than by assimilating them to what passes in domestic life. A family is a small kingdom, a kingdom is a large family. Suppose this to have happened in private life, judge of the good heart of this man, who thrusts into my hands, the grateful servant of a kind and beneficent master, and that too through the unavoidable trick of the common post, slander upon that master, and slander upon his whole offspring. Lay your hands upon your hearts, and tell me what is *your* verdict with respect to his heart.—I *see* it!

Gentlemen, he has the audacity to say, " I speak to you as " one man ought to speak to another." Does he speak to me of those august Personages as one man ought to speak to another? Had he spoken those words to me personally, I will not answer for it, whether I should not have forgot the duties of my office, and the dignity of my station, by being hurried into a violation of that peace, the breach of which I am compelled to punish in others. He says, " And I know " also, that I speak, what other people are beginning to think, " That you cannot obtain a verdict (and if you do, it will " signify nothing) without *packing a Jury*, and we *both* know " that such tricks are practised, is what I have very good " reason to believe."—*Mentiris impudentissime.*—Gentlemen, I know of no such practice; I know, indeed, that no such practice exists, nor can exist; I know the very contrary of this to be true: and I know too that this letter, containing this dangerous falsehood, was destined for future publication; that I have no doubt of, and therefore I dwell thus long upon it.

" I have gone into coffee-houses, and places where I was " unknown, on purpose to learn the currency of opinion." Whether the sense of this *nation* is to be had in some pot-houses and coffee-houses in this town of his own choosing, is a matter I leave to your judgment. " And I never yet saw

" any company of twelve men that condemned the book; but " I have often found a greater number than twelve approving " it; and this I think is *a fair way of collecting the natural* " *currency of opinion.* Do not then, Sir, be the instrument " of drawing twelve men into a situation that may be *injurious* " to them afterwards."—Injurious to them afterwards!—those words speak for themselves. He proceeds thus:

" I do not speak this from policy," (what then?) but from" —(Gentlemen, I will give you a hundred guesses)—" BENE- " VOLENCE! But if you choose to go on with the process, I " make it my request that you would read this letter in Court, " after which the Judge and the Jury may do as they please. " As I do not consider myself the object of the prosecution, " neither can I be affected by the issue one way or the " other. I shall, though a foreigner in your country, sub- " scribe as much money as any other man towards sup- " porting the right of the nation against the prosecution; " and it is for this purpose only that I shall do it.—THOMAS " PAINE."

So it is a subscription defence you hear.

" P. S. I intended, had I staid in England, to have pub- " lished the Information, with my remarks upon it"—that would have been a decent thing—" before the trial came on; " but as I am otherwise engaged, I reserve myself till the " trial is over, when I shall reply fully to every thing you " shall advance."—I hope in God he will not omit any one single word that I have uttered to-day, or shall utter in my future address to you. This *conceited* menace I despise, as I do those of a nature more *cut-throat.*

Gentlemen, I do not think that I need to trouble you any farther for the present: according as you shall be of opinion, that the necessarily mischievous tendency and intent of this book is that which I have taken the liberty (at more length than I am warranted perhaps) to state to you; according as you shall or shall not be of that opinion, so necessarily will be your verdict. I have done my duty in bringing before a Jury an offender of this magnitude. Be the event what it may, I have done MY duty; I am satisfied with having placed this great and flourishing community under the powerful shield of your protection.

*The publication having been proved, and a letter from Mr. Paine acknowledging it; the letter to the Attorney General mentioned in the preface, and the passages selected in the Information, having been read; Mr.* ERSKINE, *as Counsel for the Defendant, spoke as follows:*

GENTLEMEN OF THE JURY,

THE Attorney General, in that part of his address which referred to a letter, supposed to have been written to him from France, exhibited signs of strong sensibility and emotion.—I do not, I am sure, charge him with acting a part to seduce you;—on the contrary, I am persuaded, from my own feelings, and from my acquaintance with my friend from our childhood upwards, that HE expressed himself as he felt. But, Gentlemen, if he felt those painful embarrassments, you may imagine what MINE must be:—he can only feel for the august character whom he represents in this place, as a subject for his Sovereign, too far removed by custom from the intercourses which generate affections, to produce any other sentiments than those that flow from a relation common to us all: but it will be remembered, that I stand in the same relation* towards another great person more deeply implicated by this supposed letter; who, not restrained from the cultivation of personal attachments by those qualifications which must always secure them, has exalted my duty to a Prince, into a warm and honest affection between man and man. Thus circumstanced, I certainly should have been glad to have had an earlier opportunity of knowing correctly the contents of this letter, and whether (which I positively deny) it proceeded from the Defendant. Coming thus suddenly upon us, I see but too plainly the impression it has made upon *you* who are to try the cause, and I feel its weight upon *myself*, who am to conduct it; but this shall neither detach me from my duty, nor enervate me (if I can help it) in the discharge of it.

If the Attorney General be well founded in the commentaries he has made to you upon the book which he prosecutes;—if he be warranted by the law of England, in repressing its circulation, from the illegal and dangerous matters contained in it;—if that suppression be, as he avows it, and as in common sense it must be, the sole object of the prosecution, the public has great reason to lament that this letter should have been at all brought into the service of the cause:—It is no part of the charge upon the record;—it had no existence

* Mr. Erskine was then Attorney General to the Prince of Wales.

for months after the work was composed and published;—it was not written by the Defendant, if written by him at all, till after he had been in a manner insultingly expelled from the country by the influence of government; it was not even written till he had become the subject of another country. It cannot, therefore, by any fair inference decipher the mind of the author when he composed his work: still less can it affect the construction of the language in which it is written. The introduction of this letter at all is, therefore, not only a departure from the charge, but a dereliction of the object of the prosecution, which is to condemn *the book*:—since, if the condemnation of the author is to be obtained, *not by the work itself*, but by *collateral matter* not even existing when it was written, nor known to its various publishers throughout the kingdom, how can a verdict upon *such* grounds condemn the work, or criminate *other* publishers, strangers to the collateral matter on which the conviction may be obtained to-day? I maintain, therefore, upon every principle of sound policy, as it affects the interests of the Crown and upon every rule of justice, as it affects the author of The Rights of Man, that the letter should be wholly dismissed from your consideration.

Gentlemen, the Attorney General has thought it necessary to inform you, that a rumour had been spread, and had reached his ears, that he only carried on the prosecution as a *public* prosecutor, but without the concurrence of his own judgment; and therefore to add the just weight of his *private* character to his public duty, and to repel what he thinks a calumny, he tells you that he should have deserved to have been driven from society, if he had not arraigned the work and the author before you. Here too we stand in situations very different:—I have no doubt of the existence of such a rumour, and of its having reached his ears, because he says so; but for the narrow circle in which any rumour, personally implicating my learned friend's character, has extended, I might appeal to the multitudes who surround us, and ask, which of them all, except the few connected in office with the Crown, ever heard of its existence. But with regard to myself, every man within hearing at this moment, nay, the whole people of England, have been witnesses to the calumnious clamour that, by every art, has been raised and kept up against me: in every place, where business or pleasure collect the public together, day after day my name and character have been the topics of injurious reflection. And for what?—only for not having shrunk from the discharge of a duty, which no personal ad-

vantage recommended, and which a thousand difficulties repelled. But, Gentlemen, I have no complaint to make, either against the printers of these libels, nor even against their authors:—the greater part of them, hurried perhaps away by honest prejudices, may have believed they were serving their *country* by rendering *me* the object of its suspicion and contempt; and if there have been amongst them others who have mixed in it from personal malice and unkindness, I thank God I can forgive *them* also.—Little indeed did they know me, who thought that such calumnies would influence my conduct: I will for ever, at all hazards, assert the dignity, independence, and integrity of the ENGLISH BAR; without which, impartial justice, the most valuable part of the English constitution, can have no existence. From the moment that any advocate can be permitted to say, that he *will* or will *not* stand between the Crown and the subject arraigned in the Court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend, from what *he may think* of the charge or of the defence, he assumes the character of the Judge; nay, he assumes it before the hour of judgment; and in proportion to his rank and reputation, puts the heavy influence of, perhaps, a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very Judge to be his Counsel.

Gentlemen, it is now my duty to address myself without digression to the defence.

The first thing which presents itself in the discussion of any subject, is to state distinctly, and with precision, what the question is, and, where prejudice and misrepresentation have been exerted, to distinguish it accurately from what it is NOT. The question then is NOT, whether the constitution of our fathers, under which we live—under which I present myself before you, and under which alone you have any jurisdiction to hear me—be or be not preferable to the constitution of America or France, or any other human constitution. For upon what principle can a Court, constituted by the authority of any government, and administering a positive system of law, under it, pronounce a decision against the constitution which creates its authority; or the rule of action which its jurisdiction is to enforce?—The common sense of the most uninformed person must revolt at such an absurd supposition.

I have no difficulty, therefore, in admitting, that if by ac-

cident some or all of you were alienated in opinion and affection from the forms and principles of the English government, and were impressed with the value of that unmixed representative constitution which this work recommends and inculcates, you could not, *on that account*, acquit the Defendant. Nay, to speak out plainly, I freely admit that even if you were avowed enemies to monarchy, and devoted to republicanism, you would be nevertheless bound by your oaths, as a Jury sworn to administer justice according to the English law, to convict the author of The Rights of Man, if it were brought home to your consciences, that he had exceeded those widely extended bounds which the ancient wisdom and liberal policy of the English constitution have allotted to the range of a free press. I freely concede this, because you have no jurisdiction to judge either the author or the work, by any rule but that of English law, which is the source of your authority. But having made this large concession, it follows, by a consequence so inevitable as to be invulnerable to all argument or artifice, that if, on the other hand, you should be impressed (which I know you to be) not only with a dutiful regard, but with an enthusiasm, for the whole form and substance of your own government; and though you should think that this work, in its circulation amongst classes of men unequal to political researches, may tend to alienate opinion; still you cannot, *upon such grounds*, without a similar breach of duty, convict the Defendant of a libel,—unless he has clearly stepped beyond that extended range of communication which the same ancient wisdom and liberal policy of the British constitution has allotted for the liberty of the press.

Gentlemen, I admit, with the Attorney General, that in every case where a Court has to estimate the quality of a writing, the *mind* and *intention* of the writer must be taken into the account;—the *bona* or *mala fides*, as lawyers express it, must be examined: for a writing may undoubtedly proceed from a motive, and be directed to a purpose, not to be deciphered by the mere construction of the thing written. But wherever a writing is arraigned as seditious or slanderous, not upon its ordinary construction in language, nor from the necessary consequences of its publication, under *any* circumstances and at *all* times, but that the criminality springs from some *extrinsic matter*, not visible upon the page itself, nor universally operative, but capable only of being connected with it by evidence, so as to demonstrate the effect of the publication, and the design of the publisher; such a writing, not

libellous PER SE, cannot be arraigned as the author's work is arraigned upon the record before the Court. I maintain, without the hazard of contradiction, that the law of England positively requires, for the security of the subject, that every charge of a libel complicated with *extrinsic facts and circumstances, dehors the writing*, must appear literally upon the record by an averment of such extrinsic facts and circumstances, that the Defendant may know what crime he is called upon to answer, and how to stand upon his defence. What crime is it that the Defendant comes to answer for today?—what is the notice that I, who am his Counsel, have from this parchment of the crime alleged against him?—I come to defend his having written *this book*. The record states nothing else:—the general charge of sedition in the introduction is notoriously paper and packthread; because the innuendos cannot enlarge the sense, or natural construction of the text. The record does not state any one *extrinsic fact or circumstance*, to render the work criminal, at *one* time more than *another*; it states no peculiarity of time or season, or intention, not proveable from the writing itself, which is the naked charge upon record. There is nothing therefore which gives you any jurisdiction beyond the construction of the *work itself*; and you cannot be justified in finding it criminal because published at *this* time, unless it would have been a criminal publication under any circumstances, or at *any other* time.

The law of England then, both in its forms and substance, being the only rule by which the author or the work can be justified or condemned, and the charge upon the record being the naked charge of a libel, the cause resolves itself into a question of the deepest importance to us all, THE NATURE AND EXTENT OF THE LIBERTY OF THE ENGLISH PRESS.

But before I enter upon it, I wish to fulfil a duty to the Defendant, which, if I do not deceive myself, is at this moment peculiarly necessary to his impartial trial.—If an advocate entertains sentiments injurious to the defence he is engaged in, he is not only justified, but bound in duty, to conceal them; so, on the other hand, if his own genuine sentiments, or any thing connected with his character or situation, can add strength to his professional assistance, he is bound to throw them into the scale. In addressing myself, therefore, to gentlemen not only zealous for the honour of English government, but *visibly* indignant at any attack upon its principles, and who would, perhaps, be impatient of arguments from a sus-

pected quarter, I give my client the benefit of declaring, that I am, and ever have been, attached to the genuine principles of the British government; and that, however the Court or you may reject the application, I defend him upon principles not only consistent with its permanence and security, but without the establishment of which, it never could have had an existence.

The proposition which I mean to maintain as the basis of the liberty of the press, and without which it is an empty sound, is this;—that every man, not intending to mislead, but seeking to enlighten others with what his own reason and conscience, however erroneously, have dictated to him as truth, may address himself to the universal reason of a whole nation, either upon the subject of governments in general, or upon that of our own particular country:—that he may analyze the principles of its constitution,—point out its errors and defects,—examine and publish its corruptions,—warn his fellow-citizens against their ruinous consequences,—and exert his whole faculties in pointing out the most advantageous changes in establishments which he considers to be radically defective, or sliding from their object by abuse.—All this every subject of this country has a right to do, if he contemplates only what he thinks would be for its advantage, and but seeks to change the public mind by the conviction which flows from reasonings dictated by conscience.

If, indeed, he writes *what he does not think*;—if, contemplating the misery of others, he wickedly condemns what his own understanding approves;—or, even admitting his real disgust against the government or its corruptions, if he *calumniates living magistrates*,—or holds out to individuals, that they a have right to run before the public mind in their *conduct*,—that they may oppose by contumacy or force what private reason only disapproves;—that they may disobey the law, because their judgment condemns it;—or resist the public will, because they honestly wish to change it—he is then a criminal upon every principle of rational policy, as well as upon the immemorial precedents of English justice; because such a person seeks to disunite individuals from their duty to the whole, and excites to overt acts of *misconduct* in a part of the community, instead of endeavouring to change, by the impulse of reason, that universal assent which, in this and in every country, constitutes the law for all.

I have therefore no difficulty in admitting, that, if, upon an attentive perusal of this work, it shall be found that the Defendant has promulgated any doctrines which excite indi-

viduals to withdraw from their subjection to the law by which the whole nation consents to be governed;—if his book shall be found to have warranted or excited that unfortunate criminal who appeared here yesterday to endeavour to relieve himself from imprisonment, by the destruction of a prison, or dictated to him the language of defiance which ran through the whole of his defence;—if throughout the work there shall be found any syllable or letter, which strikes at the security of property, or which hints that any thing less than *the whole nation* can constitute the law, or that the law, be it what it may, is not the inexorable rule of action for every individual, I willingly yield him up to the justice of the Court.

Gentlemen, I say, in the name of Thomas Paine, and in his words as author of the Rights of Man, as written in the very volume that is charged with seeking the destruction of property,

"The end of all political associations is, the preservation "of the rights of man, which rights are liberty, property, "and security; that the nation is the source of all sovereign- "ty derived from it: the right of property being secured and "inviolable, no one ought to be deprived of it, except in "cases of evident public necessity, legally ascertained, and "on condition of a previous just indemnity."

These are undoubtedly the rights of man—the rights for which all governments are established—and the only rights Mr. Paine contends for; but which he thinks (no matter whether right or wrong) are better to be secured by a republican constitution than by the forms of the English government. He instructs me to admit, that, when government is once constituted, no individuals, without rebellion, can withdraw their obedience from it,—that all attempts to excite them to it are highly criminal, for the most obvious reasons of policy and justice,—that nothing short of the will of a WHOLE PEOPLE can change or affect the rule by which a nation is to be governed—and that no private opinion, however honestly inimical to the forms or substance of the law, can justify resistance to its authority, while it remains in force. The author of the Rights of Man not only admits the truth of all this doctrine, but he consents to be convicted, and I also consent for him, unless his work shall be found studiously and painfully to inculcate these great principles of government which it is charged to have been written to destroy.

Let me not, therefore, be suspected to be contending, that it is lawful to write a book pointing out defects in the English government, and exciting individuals to destroy its sanctions, and to refuse obedience. But, on the other hand, I do contend, that it is lawful to address the English nation on these momentous subjects; for had it not been for this unalienable right (thanks be to God and our fathers for establishing it,) how should we have had this constitution which we so loudly boast of?—If, in the march of the human mind, no man could have gone before the establishments of the time he lived in, how could our establishment, by reiterated changes, have become what it is?—If no man could have awakened the public mind to errors and abuses in our government, how could it have passed on from stage to stage, through reformation and revolution, so as to have arrived from barbarism to such a pitch of happiness and perfection, that the Attorney General considers it as profanation to touch it farther, or to look for any future amendment?

In this manner power has reasoned in every age:—government, *in its own estimation*, has been at all times a system of perfection; but a free press has examined and detected its errors, and the people have from time to time reformed them. This freedom has alone made our government what it is; this freedom alone can preserve it; and therefore, under the banners of that freedom, to-day I stand up to defend Thomas Paine.—But how, alas! shall this task be accomplished?—How may I expect from you what human nature has not made man for the performance of?—How am I to address your reasons, or ask them to pause, amidst the torrent of prejudice which has hurried away the public mind on the subject you are to judge?

Was any Englishman ever so brought as a criminal before an English court of justice?—If I were to ask you, Gentlemen of the Jury, what is the choicest fruit that grows upon the tree of English liberty, you would answer, SECURITY UNDER THE LAW. If I were to ask the whole people of England, the return they looked for at the hands of Government, for the burdens under which they bend to support it, I should still be answered, SECURITY UNDER THE LAW; or, in other words, an impartial administration of justice. So sacred, therefore, has the freedom of trial been ever held in England;—so anxiously does Justice guard against every possible bias in her path, that if the public mind has been locally agitated upon any subject in judgment, the forum has

either been changed, or the trial postponed. The circulation of any paper that brings, or can be supposed to bring, prejudice, or even well-founded knowledge, within the reach of a British tribunal, *on the spur of an occasion*, is not only highly criminal, but defeats itself, by leading to put off the trial which its object was to pervert. On this principle, the noble and learned Judge will permit me to remind him, that on the trial of the Dean of St. Asaph for a libel, or rather when he was brought to trial, the circulation of books by a society favourable to his defence, was held by his Lordship, as Chief Justice of Chester, to be a reason for not trying the cause; * although they contained no matter relative to the Dean, nor to the object of his trial; being only extracts from ancient authors of high reputation, on the general rights of juries to consider the innocence as well as the guilt of the accused; yet still, as the recollection of these rights was pressed forward *with a view to affect the proceedings*, the proceedings were postponed.

Is the Defendant then to be the only exception to these admirable provisions?—Is the English law to judge *him*, stript of the armour with which its universal justice encircles *all others?*—Shall we, in the very act of judging him for detracting from the English government, furnish him with ample matter for just reprobation, instead of detraction?—Has not his cause been prejudged through a thousand channels?—Has not the work before you been daily and publicly reviled, and his person held up to derision and reproach?—Has not the public mind been excited, by crying down the very phrase and idea of the Rights of Man? Nay, have not associations of gentlemen, I speak it with regret, because I am persuaded, from what I know of some of them, that they, amongst them at least, thought they were serving the public;—yet have they not, in utter contempt and ignorance of that constitution of which they declare themselves to be the guardians, published the grossest attacks upon the Defendant?—Have they not, even while the cause has been standing here for immediate trial, published a direct protest against the very work now before you; advertising in the same paper, though under the general description of seditious libels, a reward on the conviction of any person who should dare to sell the book itself, to which their own publication was an answer?—The Attorney General has spoken of a forced circulation of this work;—

* Vide page 80 and 92.

but how have these prejudging papers been circulated?—we all know how. They have been thrown into our carriages in every street;—they have met us at every turnpike;—and they lie in the areas of all our houses. To complete the triumph of prejudice, that high tribunal, of which I have the honour to be a member (my learned friends know what I say to be true,) has been drawn into this vortex of slander; and some of its members, I must not speak of the House itself, have thrown the weight of their stations into the same scale. By all these means I maintain that this cause has been prejudged.

It may be said, that I have made no motion to put off the trial for these causes, and that courts of themselves take no cognizance of what passes elsewhere, without facts laid before them. Gentlemen, I know that I should have had equal justice from the Court, if I had brought myself within the rule. But when should I have been better in the present aspect of things? and I only remind you therefore of all these hardships, that you may recollect, that your judgment is to proceed upon that alone which meets you *here*, upon *the evidence* in the cause, and not upon suggestions destructive of every principle of justice.

Having disposed of these foreign prejudices, I hope you will as little regard some arguments that have been offered to you in Court. The letter which has been so repeatedly pressed upon you, ought to be dismissed even from your recollection.—I have already put it out of the question, as having been written long subsequent to the book, and as being a libel on the King, which no part of the Information charges, and which may hereafter be prosecuted as a distinct offence. I consider that letter besides, and indeed have always heard it treated, as a forgery, contrived to injure the merits of the cause, and to embarrass *me personally* in its defence. I have a right so to consider it, because it is unsupported by any thing similar at an earlier period. The Defendant's whole deportment, previous to the publication, has been wholly unexceptionable:—he properly desired to be given up as the author of the book, if any inquiry should take place concerning it; and he is not affected in evidence, directly or indirectly, with any illegal or suspicious conduct; not even with having uttered an indiscreet or taunting expression, nor with any one matter or thing, inconsistent with the duty of the best subject in England. His *opinions* indeed were adverse to our system;—but I maintain that OPINION is free, and that CONDUCT alone is amenable to the law.

You are next desired to judge of the author's mind and intention, by the modes and extent of the circulation of his work. The FIRST Part of the Rights of Man, Mr. Attorney General tells you, he did not prosecute, although it was in circulation through the country for a year and a half together, because it seems it circulated only amongst what he styles the judicious part of the public, who possessed in their capacities and experience an antidote to the poison; but that with regard to the SECOND Part now before you, its circulation had been forced into every corner of society; had been printed and reprinted for cheapness even upon whited brown paper, and had crept into the very nurseries of children, as a wrapper for their sweetmeats.

In answer to this statement, which after all stands only upon Mr. Attorney General's own assertion, unsupported by any kind of proof (no witness having proved the author's personal interference with the sale,) I still maintain, that, if he had the most anxiously promoted it, the question would remain exactly THE SAME: the question would still be, whether at the time when Paine composed his work, and promoted the most extensive purchase of it, he believed or disbelieved what he had written,—and whether he contemplated the happiness or the misery of the English nation, to which it is addressed; and whichever of these intentions may be evidenced to your judgments upon reading the book itself, I confess I am utterly at a loss to comprehend how a writer can be supposed to mean something different from what he has written, by proof of an anxiety (common I believe to all authors) that his work should be generally read. Remember, I am not asking your opinions of the *doctrines themselves*;—you have given them already pretty visibly since I began to address you;—but I shall appeal not only to you, but to those who, without our leave, will hereafter judge, and without appeal, of all that we are doing to-day,—whether, upon the matter which I hasten to lay before you, you can refuse to pronounce, that from his education—from the accidents and habits of his life—from the time and occasion of the publication—from the circumstances attending it—and from every line and letter of the work itself, and from all his other writings, his conscience and understanding *(no matter whether erroneously or not)* were deeply and solemnly impressed with the matters contained in his book,—that he addressed it to the reason of the nation at large, and not to the passions of individuals,—and that, in the issue of its influence, he contemplated only what appeared to *him (though it may*

*not to us)* to be the interest and happiness of England, and of the whole human race. In drawing the one or the other of these conclusions, the book stands first in order, and it shall now speak for itself.

Gentlemen, *the whole of it* is in evidence before you; the particular parts arraigned having only been read by my consent, upon the presumption, that, on retiring from the Court, you would carefully compare them with the context, and all the parts with the WHOLE VIEWED TOGETHER.—You cannot, indeed do justice without it.—The most common letter, even in the ordinary course of business, cannot be read in a cause to prove an obligation for twenty shillings without THE WHOLE being read, that the writer's meaning may be seen without deception. But in a criminal charge comprehending only four pages and a half, out of a work containing nearly two hundred, you cannot, with even the appearance of common decency, pronounce a judgment without the most deliberate and cautious comparison. I observe that the noble and learned Judge confirms me in this observation.

If any given part of a work be legally explanatory of every other part of it, the Preface, *à fortiori*, is the most material; because the Preface is the author's own key to his writing:—it is *there* that he takes the reader by the hand, and introduces him to his subject:—it is there that the spirit and intention of the whole is laid before him by way of prologue. A preface is meant by the author as a clue to ignorant or careless readers:—the author says by it, to every man who chooses to begin where he ought, Look at my plan—attend to my distinctions—mark the purpose and limitations of the matter I lay before you.

Let then the calumniators of Thomas Paine now attend to his Preface, where, to leave no excuse for ignorance or misrepresentation, he expresses himself thus:

" I have differed from some professional gentlemen on " the subject of prosecutions, and I since find they are fall- " ing into my opinion, which I will here state as fully, but " as concisely as I can.

" I will first put a case with respect to any law, and then " compare it with a government, or with what in England is, " or has been called, a constitution.

" It would be an act of despotism, or what in England is " called arbitrary power, to make a law to prohibit inves- " tigating the principles, good or bad, on which such a " law, or any other, is founded.

" If a law be bad, it is one thing to *oppose the practice* " of it, but it is quite a different thing to *expose its errors*, " to *reason* on its defects, and to *show cause* why it should " be repealed, or why another ought to be substituted in its " place. I have always held it an opinion (making it also " my practice,) that it is better to obey a bad law, making " use at the same time of every argument to show its er- " rors and procure its repeal, than forcibly to violate it; be- " cause the precedent of breaking a bad law might weaken " the force, and lead to a discretionary violation, of those " which are good.

" The case is the same with principles and forms of gov- " ernments, or to what are called constitutions, and the parts " of which they are composed.

" It is for the good of nations, and not for the emolument " or aggrandizement of particular individuals, that govern- " ment ought to be established, and that mankind are at the " expense of supporting it. The defects of every govern- " ment and constitution, both as to principle and form, must " on a parity of reasoning, be as open to discussion as the de- " fects of a law, and it is a duty which every man owes to " society to point them out. When those defects, and the " means of remedying them, are generally seen by a NA- " TION, THAT NATION will reform its government or its " constitution in the one case, as the government repealed or " reformed the law in the other."

Gentlemen, you must undoubtedly wish to deal with every man who comes before you in judgment, as you would be dealt by; and surely you will not lay it down to-day as a law to be binding hereafter even upon yourselves, that if you should publish any opinion concerning existing abuses in your country's government, and point out to the whole public the means of amendment, you are to be acquitted or convicted as any twelve men may happen to agree with you in your *opinions*. Yet this is precisely what you are asked to do to another:—it is precisely the case before you:—Mr. Paine expressly says, I obey a law until it is repealed;—obedience is not only my principle but my practice, since my disobedience of a law from thinking it *bad*, might apply to justify another man in the disobedience of a *good one*; and thus individuals would give the rule for themselves, and not society for all. You will presently see that the same principle pervades the whole work; and I am the more anxious to call your attention to it, however repetition may tire you, because it unfolds the whole principle of my argument: for, if you find a

sentence in the whole book that invests any individual, or any number of individuals, or any community short of the WHOLE NATION, with a power of changing any part of the law or constitution I abandon the cause—YES, I freely abandon it, because I will not affront the majesty of a court of justice by maintaining propositions which, even upon the surface of them, are false. Mr. Paine, page 162—168, goes on thus:

"When a NATION changes its opinion and habits of thinking, it is no longer to be governed as before; but it would not only be wrong, but bad policy, to attempt by force what ought to be accomplished by reason. Rebellion consists in forcibly opposing the general will of a nation, whether by a party or by a government. There ought therefore, to be, in every nation, a method of occasionally ascertaining the state of public opinion with respect to government.

"There is, therefore, no power but the voluntary will of the people, that has a right to act in any matter respecting a general reform; and, by the same right that two persons can confer on such a subject, a thousand may. The object in all such preliminary proceedings is, to find out what the GENERAL SENSE OF A NATION is, and to be governed by it. If it prefer a bad or defective government to a reform, or choose to pay ten times more taxes than there is occasion for, it has a right so to do; and, so long as the majority do not impose conditions on the minority different to what they impose on themselves, though there may be much error, there is no injustice; neither will the error continue long. Reason and discussion will soon bring things right, however wrong they may begin. By such a process no tumult is to be apprehended. The poor in all countries, are naturally both peaceable and grateful in all reforms in which their interest and happiness are included. It is only by neglecting and rejecting them that they become tumultuous."

Gentlemen, these are the sentiments of the author of the Rights of Man; and, whatever *his* opinions may be of the defects in our government, it never can change ours concerning it, if our sentiments are just; and a writing can never be seditious in the sense of the English law, which states that the government leans on the UNIVERSAL WILL for its support.

This universal will is the best and securest title which his Majesty and his family have to the throne of these king-

doms; and in proportion to the wisdom of our institutions, the title must in common sense become the stronger: so little idea, indeed, have I of any other, that in my place in Parliament, not a week ago, I considered it as the best way of expressing my reverence to the constitution, as established at the Revolution, to declare (I believe in the presence of the Heir apparent to the Crown, to whom I have the greatest personal attachment) that his Majesty reigned in England, by choice and consent, as the magistrate of the English people;—not indeed a consent and choice by personal election, like a king of Poland, the worst of all possible constitutions; but by the election of a family for great national objects, in defiance of that hereditary right, which only becomes tyranny, in the sense of Mr. Paine, when it claims to inherit a nation, instead of governing by their consent, and continuing for its benefit. This sentiment has the advantage of Mr. Burke's high authority, who says with great truth, in a Letter to his Constituents, "Too little dependence cannot be had at this "time of day on names and prejudices: the eyes of mankind "are opened; and communities must be held together by "a visible and solid interest." I believe, Gentlemen of the Jury, that the Prince of Wales will always render this title dear to the people. The Attorney General can only tell you what he *believes* of him; I can tell you what I KNOW, and what I am bound to declare, since this Prince may be traduced in every part of the kingdom, without its coming in question, till brought in to load a defence with matter collateral to the charge. I therefore, *assert* what the Attorney General can only *hope*, that whenever that Prince shall come to the throne of this country (which I pray, but by the course of nature, may never happen,) he will make the constitution of Great Britain the foundation of all his conduct.

Having now established the author's general intention by his own introduction, which is the best and fairest exposition, let us next look at the occasion which gave it birth.

The Attorney General throughout the whole course of his address to you (I knew it would be so,) has avoided the most distant notice or hint of any circumstance having led to the appearance of the author in the political world, after a silence of so many years:—he has not even pronounced, or even glanced at the name of Mr. Burke,—but has left you to take it for granted that the Defendant volunteered this delicate and momentous subject, and, without being led to it by the provocation of political controversy, had seized a favourable

moment to stigmatize, from mere malice, and against his own confirmed opinions, the constitution of this country.

Gentlemen, my learned friend knows too well my respect and value for him to suppose that I am charging him with a wilful suppression; I know him to be incapable of it; he knew it would come from me; he will permit me, however, to lament that it should have been left for me to inform you, at this late period of the cause, that not only the work before you, but the First Part, of which it is a natural continuation, were written *avowedly and upon the face of them*, IN ANSWER TO MR. BURKE. They were written besides under circumstances to be explained hereafter, in the course of which explanation I may have occasion to cite a few passages from the works of that celebrated person. And I shall speak of him with the highest respect:—for, with whatever contempt he may delight to look down upon my humble talents,—however he may disparage the principles which direct my public conduct, he shall never force me to forget the regard which this country owes to him for the writings, which he has left upon record as an inheritance to our most distant posterity. After the gratitude which we owe to God for the divine gifts of reason and understanding, our next thanks are due to those from the fountains of whose enlightened minds they are fed and fructified: but pleading, as I do, the cause of freedom of opinions, I shall not give offence by remarking that this great author has been thought to have changed some of his: and, if Thomas Paine had not thought so, I should not now be addressing you, because the book which is my subject would never have been written. Who may be right and who in the wrong, in the contention of doctrines, I have repeatedly disclaimed to be the question; I can only say that Mr. Paine may be right THROUGHOUT, but that Mr. Burke CANNOT;—Mr. Paine has been UNIFORM in *his* opinions, but Mr. Burke HAS NOT; Mr. Burke can only be right in part; but, should Mr. Paine be even mistaken in the whole, still I am not removed from the principle of his defence. My defence has nothing to do with the rectitude of his doctrines. I admit Mr. Paine to be a republican;—you shall soon see what made him one:—I do not seek to shade or qualify his attack upon our constitution; I put my defence on no such matter,—he undoubtedly means to declare it to be defective in its forms, and contaminated with abuses, which, in his judgment, will one day or other bring on the ruin of us all:—it is in vain to mince the matter;—this is the scope of his work. But still,

if it contain no attack upon the King's Majesty, nor upon any other LIVING MAGISTRATE;—if it excite to no resistance to magistracy, but, on the contrary, if it even studiously inculcate obedience, then, whatever may be its defects, the question continues as before, and ever must remain an unmixed question of the liberty of the press. I have therefore considered it as no breach of professional duty, nor injurious to the cause I am defending, to express my own admiration of the real principles of our constitution;—a constitution which I hope may never give way to any other,—a constitution which has been productive of many benefits, and which will produce many more hereafter, if we have wisdom enough to pluck up the weeds that grow in the richest soils and amongst the brightest flowers. I agree with the merchants of London, in a late Declaration, that the English government is equal to the reformation of its own abuses; and, as an inhabitant of the city, I would have signed it, if I had known, *of my own knowledge*, the facts recited in its preamble; but abuses the English constitution unquestionably has, which call loudly for reformation, the existence of which has been the theme of our greatest statesmen, which have too plainly formed the principles of the Defendant, and may have led to the very conjuncture which produced his book.

Gentlemen, we all but too well remember the calamitous situation in which our country stood but a few years ago,—a situation which no man can look back upon without horror, nor feel himself safe from relapsing into again, while the causes remain which produced it. The event I allude to you must know to be the American war, and the still existing causes of it, the corruptions of this government.—In those days it was not thought virtue by the patriots of England to conceal the existence of them from the people;—but then, as now, authority condemned them as disaffected subjects, and defeated the ends they sought by their promulgation.

Hear the opinion of Sir George Saville—not his speculative opinion concerning the structure of our government in the *abstract*, but his opinion of the settled abuses which prevailed in *his own time*, and which continue at *this moment*. But first let me remind you who Sir George Saville was—I fear we shall hardly look upon his like again—How shall I describe him to you?—In my own words I cannot. I was lately commended by Mr. Burke in the House of Commons for strengthening my own language by an appeal to Dr. Johnson. Were the Honourable Gentleman present at this moment, he would no doubt doubly applaud my choice in re-

sorting to *his own works* for the description of Sir George Saville:

" His fortune is among the largest; a fortune which, " wholly unincumbered as it is, without one single charge " from luxury, vanity, or excess, sinks under the benevolence " of its dispenser. This private benevolence, expanding " itself into patriotism, renders his whole being the estate of " the public, in which he has not reserved a *peculium* for " himself of profit, diversion, or relaxation. During the " session, the first in, and the last out of the House of " Commons, he passes from the senate to the camp; and, " seldom seeing the seat of his ancestors, he is always " in Parliament to serve his country, or in the field to defend " it."

It is impossible to ascribe to such a character any principle but patriotism, when he expressed himself as follows:

" I return to you baffled and dispirited, and I am sorry " that truth obliges me to add, with hardly a ray of hope of " seeing any change in the miserable course of public cala- " mities.

" On this melancholy day of account, in rendering up to " you my trust, I deliver to you your share of a country " maimed and weakened; its treasure lavished and mis- " spent; its honours faded; and its conduct the laughing- " stock of Europe: our nation in a manner without allies or " friends, except such as we have hired to destroy our fel- " low subjects, and to ravage a country, in which we once " claimed an invaluable share. I return to you some of " your principal privileges impeached and mangled. And, " lastly, I leave you, as I conceive, at this hour and moment, " fully, effectually, and absolutely, under the discretion and " power of a military force, which is to act without waiting " for the authority of the civil magistrates.

" Some have been accused of exaggerating the public mis- " fortunes, nay, of having endeavoured to help forward the " mischief, that they might afterwards raise discontents. I " am willing to hope, that neither my temper, nor my situa- " tion in life, will be thought naturally to urge me to promote " misery, discord, or confusion, or to exult in the subver- " sion of order, or in the ruin of property. I have no rea- " son to contemplate with pleasure the poverty of our coun- " try, the increase of our debts and of our taxes, or the de- " cay of our commerce.—Trust not, however, to my report: " reflect, compare, and judge for yourselves.

" But, under all these disheartening circumstances, I could " yet entertain a cheerful hope, and undertake again the " commission with alacrity, as well as zeal, if I could see " any effectual steps taken to remove the original cause of " the mischief—' Then would there be a hope.'

" But, till the purity of the constituent body, and thereby " that of the representative, be restored, there is NONE.

" I gladly embrace this most public opportunity of deliver- " ing my sentiments, not only to all my constituents, but to " those likewise not my constituents, whom yet, in the large " sense, I represent, and am faithfully to serve.

" I look upon restoring election and representation in some " degree (for I expect no miracles) to their original purity, " to be that, without which all other efforts will be vain and " ridiculous.

" If something be not done, you may, indeed, retain the " OUTWARD FORM of your constitution, but not the POWER " thereof."

Such were the words of that great good man, lost with those of many others of his time, and his fame, as far as power could hurt it, put in the shade along with them. T consequences we have all seen and felt:—America, from obedient affectionate colony, became an independent natio and two millions of people, nursed in the very lap of our mo narchy, became the willing subjects of a republican constitu tion.

Gentlemen, in that great and calamitous conflict Edmu Burke and Thomas Paine fought in the same field of rea together; but with very different successes. Mr. Bur spoke to a Parliament in England, such as Sir George Savi describes it, having no ears but for sounds that flattered corruptions. Mr. Paine, on the other hand, spoke TO A PEOPLE;—reasoned with them,—told them that they were bound by no subjection to any sovereignty, farther than their own benefit connected them; and by these powerful argu- ments prepared the minds of the American people for that GLORIOUS, JUST, and HAPPY revolution.

Gentlemen, I have a right to distinguish it by these epi- thets, because I aver that at this moment there is as sacred a regard to property;—as inviolable a security to all the rights of individuals;—lower taxes;—fewer grievances:—less to deplore, and more to admire, in the constitution of America, than that of any other country under heaven. I wish indeed to except our own, but I cannot even do that, till it shall be purged of those abuses which, though they obscure and de-

form the surface, have not as yet, *thank God*, destroyed the vital parts.

Why then is Mr. Paine to be calumniated, and reviled, because, out of a people consisting of near three millions, *he alone* did not remain attached *in opinion* to a monarchy? Remember, that all the blood which was shed in America, and to which he was for years a melancholy and indignant witness, was shed by the authority of the Crown of Great Britain, under the influence of a Parliament, such as Sir George Saville has described it; and such as Mr. Burke himself will be called upon by and by in more glowing colours to paint it. How then can it be wondered at, that Mr. Paine should return to this country in his heart a republican? —Was he not equally a republican when he wrote Common Sense?—Yet that volume has been sold without restraint or prosecution in every shop in England ever since, and which nevertheless *(I appeal to the book, which I have in Court, and which is in every body's hands)* contains every one principle of government, and every abuse in the British constitution, which is to be found in the Rights of Man. Yet Mr. Burke himself saw no reason to be alarmed at that publication, nor to cry down its contents; even when America, which was swayed by it, was in arms against the Crown of Great Britain. You shall hear his opinion of it, in his Letter to the Sheriffs of Bristol, pages 33 and 34.

" The Court gazette accomplished what the abettors of " independence had attempted in vain. When that disingenuous compilation, and strange medley of railing and flattery, was adduced, as a proof of the united sentiments of " the people of Great Britain, there was a great change " throughout all America. The tide of popular affection, " which had still set towards the parent country, began im- " mediately to turn, and to flow with great rapidity in a con- " trary course. Far from concealing these wild declarations " of enmity, *the author of the celebrated pamphlet* which* " *prepared the minds of the people for independence*, insists " largely on the multitude and the spirit of these addresses; " and draws an argument from them, which (if the fact were " as he supposes) must be irresistible. For I never knew a " writer on the theory of government so partial to authority, " as not to allow, that the hostile mind of the rulers to their " people, did fully justify a change of government; nor can " any reason whatever be given, why one people should vo- " luntarily yield any degree of pre-eminence to another, but

* Common Sense, written by Thomas Paine, in America.

" on a supposition of great affection and benevolence towards " them. Unfortunately, your rulers, trusting to other things, " took no notice of this great principle of connexion."

Such were the sentiments of Mr. Burke—but there is a time it seems for all things.

Gentlemen, the consequences of this mighty revolution are too notorious to require illustration. No audience would sit to *hear* (what every body has *seen* and *felt*,) how the independence of America notoriously produced, not by remote and circuitous effect, but directly and palpably, the revolutions which now agitate Europe, and which portend such mighty changes over the face of the earth.—Let governments take warning.—The revolution in France was the consequence of her incurably corrupt and profligate government. God forbid that I should be thought to lean, by this declaration, upon her unfortunate monarch,—bending, perhaps at this moment, under afflictions which my heart sinks within me to think of:—when I speak with detestation of the former politics of the French court, I fasten as little of them upon that fallen and unhappy prince, as I impute to our gracious Sovereign the corruptions of our own. I desire, indeed, in the distinctest manner, to be understood that I mean to speak of his Majesty, not only with that obedience and duty which I owe to him as a subject, but with that justice which I think is due to him from all men who examine his conduct either in public or private life.

Gentlemen, Mr. Paine happened to be in England when the French revolution took place, and notwithstanding what he must be supposed and allowed from his own history to have felt upon such a subject he remained wholly silent and inactive. The people of this country too, appeared to be indifferent spectators of the animating scene. They saw, without visible emotion,—despotism destroyed, and the King of France, by his own consent, become the first magistrate of a free people. Certainly, at least, it produced none of those effects which are so deprecated by Government at present; nor, most probably, ever would, if it had not occurred to the celebrated person, whose name I must so often mention, voluntarily to provoke the subject:—a subject which if dangerous to be discussed, HE should not have led to the discussion of: for, surely, it is not to be endured, that any private man shall publish a creed for a whole nation:—shall tell us that we are not to think for ourselves—shall impose his own fetters upon the human mind—shall dogmatize at discretion—and yet that no man shall sit down to

answer him without being guilty of a libel. I assert, that if it be a libel to mistake our constitution—to attempt the support of it by means that tend to destroy it—and to choose the most dangerous season for doing so, Mr. Burke is that libeller; but not therefore the object of a criminal prosecution:—whilst I am defending the motives of one man, I have neither right nor disposition to criminate the motives of another. All I contend for, is a fact that cannot be controverted, viz. that *this officious interference was the origin of Mr. Paine's book.* I put my cause upon its being the origin of it—the avowed origin—as will abundantly appear from the introduction and preface to both Parts, and from the whole body of the work; nay, from the very work of Mr. Burke himself, to which both of them are answers.

For the history of that celebrated work, I appeal to itself.

When the French revolution had arrived at some of its early stages, a few, and but a few persons, (not to be named when compared with the nation) took a visible interest in these mighty events;—an interest well worthy of Englishmen. They saw a pernicious system of government which had led to desolating wars, and had been for ages the scourge of Great Britain, giving way to a system which seemed to promise harmony and peace amongst nations. They saw this with virtuous and peaceable satisfaction; and a reverend divine,* eminent for his eloquence, recollecting that the issues of life are in the hands of God, saw no profaneness in mixing the subject with public thanksgiving;—by reminding the people of this country of their own glorious deliverance in former ages. It happened also, that a society of gentlemen, France being then a neutral nation, and her own monarch swearing almost daily upon her altars to maintain the new constitution, thought they infringed no law by sending a general congratulation. Their numbers, indeed, were very inconsiderable; so much so, that Mr. Burke, with more truth than wisdom, begins his volume with a sarcasm upon their insignificance:

"Until very lately he had never heard of such a club. "It certainly never occupied a moment of his thoughts; "nor, he believed, those of any person out of their own "set."

Why then make their proceedings the subject of alarm throughout England?—There had been no prosecution against them, nor any charge founded even upon suspicion

* Dr. [redacted]

of disaffection against any of their body. But Mr. Burke thought it was reserved for his eloquence to whip these curs of faction to their kennels. How he has succeeded, I appeal to all that has happened since the introduction of his schism in the British Empire, by giving to the King, whose title was questioned by no man, a title which it is his Majesty's most solemn interest to disclaim.

After having in his first work, lashed Dr. Price in a strain of eloquent irony for considering the monarchy to be elective, which he could not but know Dr. Price, *in the literal sense of election*, neither did or could possibly consider it, Mr. Burke published a second treatise; in which, after reprinting many passages from Mr. Paine's former work, he ridicules and denies the supposed right of the people to change their governments, in the following words:

"The French revolution, *say they*," (speaking of the English societies,) "was the act of the majority of the peo-
"ple; and if the majority of any other people, *the people of*
"*England for instance*, wish to make the same change, they
"have the same right; just the same undoubtedly; that is,
"None *at all*."

And then, after speaking of the subserviency of will to duty (in which I agree with him,) he, in a substantive sentence, maintains the same doctrine; thus:

"The constitution of a country being once settled up-
"on some compact tacit, or expressed, there is no power
"existing of force to alter it, without the breach of the cove-
"nant, or the consent of all the parties. Such is the nature
"of a contract.

So that if reason, or even revelation itself, were now to demonstrate to us, that our constitution was mischievous in its effects,—if, to use Mr. Attorney General's expression, we had been insane for the many centuries we have supported it; yet that still, if the King had not forfeited his title to the Crown, nor the Lords their privileges, *the universal voice of the people of England* could not build up a new government upon a legitimate basis.

Passing by, for the present, the absurdity of such a proposition, and supposing it could, beyond all controversy, be maintained; for Heaven's sake, let wisdom never utter it!—Let policy and prudence for ever conceal it! If you seek the stability of the English government, rather put the book of Mr. Paine, which calls it bad, into every hand of the kingdom, than doctrines which bid human nature rebel even against that which is the best.—Say to the people of Eng-

land, Look at your constitution, there it lies before you—the work of your pious fathers,—handed down as a sacred deposit from generation to generation,—the result of wisdom and virtue,—and its parts cemented together with kindred blood; there are, indeed a few spots upon its surface; but the same principle which reared the structure will brush them all away:—You may preserve your government—you may destroy it.—To such an address, what would be the answer? A chorus of the nation—YES, WE WILL PRESERVE IT. But say to the *same* nation, even of the very *same* constitution, It is yours, such as it is, for better or for worse;—it is strapped upon your backs, to carry it as beasts of burden,—you have no jurisdiction to cast it off. Let *this* be your position, and you instantly raise up (I appeal to every man's consciousness of his own nature) a spirit of uneasiness and discontent. It is this spirit alone, that has pointed most of the passages arraigned before you.

But let the prudence of Mr. Burke's argument be what it may, the argument itself is untenable. His Majesty undoubtedly was not elected to the throne. No man can be supposed, in the teeth of fact, to have contended it;—but did not the people of England elect King William, and break the hereditary succession?—and does not his Majesty's title grow out of that election?—It is one of the charges against the Defendant, his having denied the Parliament which called the Prince of Orange to the throne to have been a legal convention of the whole people; and is not the very foundation of that charge, that it *was* such a legal convention, and that it was intended to be so? And *if it was so*, did not the people then confer the Crown upon King William without any regard to hereditary right?—Did they not cut off the Prince of Wales, who stood directly in the line of succession, and who had incurred no personal forfeiture?—Did they not give their deliverer an estate in the Crown totally new and unprecedented in the law or history of the country?—And, lastly, might they not by the same authority, have given the royal inheritance to the family of a stranger?—Mr. Justice Blackstone, in his Commentaries, asserts in terms *that they might;* and ascribes their choice of King William, and the subsequent limitations of the Crown, not to want of jurisdiction, but to their true origin, to prudence and discretion in not disturbing a valuable institution farther than public safety and necessity dictated.

The English government stands then on this public consent, the true root of all governments. And I agree with

Mr. Burke, that, while it is well administered, it is not in the power of factions or libels to disturb it; though, when ministers are in fault, they are sure to set down all disturbances to these causes. This is most justly and eloquently exemplified in his own Thoughts on the Cause of the present Discontents, page 5 and 6.

" Ministers contend that no adequate provocation has been " given for so spreading a discontent, our affairs having " been conducted throughout with remarkable temper and " consummate wisdom. The wicked industry of some li- " bellers, joined to the intrigues of a few disappointed po- " liticians, have, in their opinion, been able to produce " this unnatural ferment in the nation.

" Nothing, indeed, can be more unnatural than the present " convulsions of this country, if the above account be a true " one. I confess I shall assent to it with great reluctance, and " only on the compulsion of the clearest and firmest proofs; " because their account resolves itself into this short but dis- " couraging proposition: ' That we have a very good minis- " ' try, but that we are a very bad people;' that we set our- " selves to bite the hand that feeds us; and, with a malignant " insanity, oppose the measures, and ungratefully vilify the " persons of those whose sole object is our own peace and " prosperity. If a few puny libellers, acting under a knot of " factious politicians, without virtue, parts, or character (for " such they are constantly represented by these gentlemen,) " are sufficient to excite this disturbance, very perverse must " be the disposition of that people, amongst whom such a " disturbance can be excited by such means."

He says true: never were serious disturbances excited by such means!

But to return to the argument.—Let us now see how the rights of the people stand upon authorities. Let us examine whether this great source of government insisted on by Thomas Paine, be not maintained by persons on whom my friend will find it difficult to fasten the character of libellers.

I shall begin with the most modern author on the subject of government—whose work lies spread out before me, as it often does at home for my delight and instruction in my leisure hours. I have also the honour of his personal acquaintance. He is a man, perhaps more than any other, devoted to the real constitution of this country, as will be found throughout his valuable work; he is a person, besides, of great learning, which enabled him to infuse much useful

knowledge into my learned friend now near me, who introduced me to him.* I speak of Mr. Paley, Archdeacon of Carlisle, and of his work, entitled, The Principles of Political and Moral Philosophy, in which he investigates the first principles of all governments—a discussion not thought dangerous *till lately*.—I hope we shall soon get rid of this ridiculous panic.

Mr. Paley professes to think of governments what the Christian religion was thought of by its first teachers:—'*If it be of God it will stand;*' and he puts the duties of obedience to them upon free will and moral duty.—After dissenting from Mr. Locke as to the origin of governments in compact, he says:

"Wherefore, rejecting the intervention of a compact as "unfounded in its principle, and dangerous in the appli- "cation, we assign for the only ground of the subjects' "obligation, THE WILL OF GOD, AS COLLECTED FROM "EXPEDIENCY.

The steps by which the argument proceeds are few and di- "rect.—'It is the will of God that the happiness of human "'life be promoted:'—this is the first step, and the founda- "tion, not only of this, but of every moral conclusion. "'Civil society conduces to that end:'—this is the second "proposition. 'Civil societies cannot be upheld, unless, in "'each, the interest of the whole society be binding upon "'every part and member of it:'—this is the third step, and "conducts us to the conclusion, namely,—'That, so long as "'the interest of the whole society requires it (that is, so "'long as the established government cannot be resisted "'or changed without public inconveniency,) it is the will "'of God (which will universally determines our duty) "'that the established government be obeyed,'—*and no* "'*longer*.

"But who shall judge of this? We answer, '*Every man* "'*for himself*.' In contentions between the sovereign and "the subject, the parties acknowledge no common arbitrator; "and it would be absurd to commit the decision to those "whose conduct has provoked the question, and whose own "interest, authority, and fate, are immediately concerned in "it. The danger of error and abuse is no objection to the "rule of expediency, because every other rule is liable to the "same or greater; and every rule that can be propounded "upon the subject (like all rules which appeal to or bind the

* Lord Ellenborough, then Mr. Law.

" conscience,) must, in the application, depend upon private " judgment. It may be observed, however, that it ought " equally to be accounted the exercise of a man's private " judgment, whether he determines by reasonings and " conclusions of his own, or submits to be directed by " the advice of others, provided he be free to choose his " guide."

He then proceeds in a manner rather inconsistent with the principles entertained by my learned friend in his opening to you:—

" No usage, law, or authority whatever, is so binding, that " it need or ought to be continued, when it may be changed " with advantage to the community. The family of the " prince—the order of succession—the prerogative of the " crown—the form and parts of the legislature—together " with the respective powers, office, duration, and mutual " dependency of the several parts; are all only so many " laws, mutable, like other laws, whenever expediency re- " quires, either by the ordinary act of the legislature, or, " if the occasion deserve it, BY THE INTERPOSITION OF THE " PEOPLE."

No man can cay that Mr. Paley intended to diffuse discontent by this declaration.—He must therefore be taken to think with me, that freedom and affection, and the sense of advantage, are the best and the only supports of government. On the same principle he then goes on to say— " These points are wont to be approached with a kind of " awe; they are represented to the mind as principles of " the constitution, settled by our ancestors; and, being set- " tled, to be no more committed to innovation or debate; " as foundations never to be stirred; as the terms and con- " ditions of the social compact, to which every citizen of " the state has engaged his fidelity, by virtue of a promise " which he cannot now recall. Such reasons have no place in " our system."

These are the sentiments of this excellent author; and there is no part of Mr. Paine's work, from the one end of it to the other, that advances any other proposition.

But the Attorney General will say, these are the grave speculative opinions of a friend to the English government; whereas Mr. Paine is its professed enemy—what then?—The principle is, that every man, while he obeys the laws, is to think for himself, and to communicate what he thinks.—The very ends of society exact this licence, and the policy of the law, in its provisions for its security, has tacitly sanctioned

it.—The real fact is, that writings against a free and well-proportioned government, need not be guarded against by laws. They cannot often exist, and never with effect. The just and awful principles of society are rarely brought forward, but when they are insulted and denied, or abused in practice: Mr. Locke's Essay on Government, we owe to Sir Robert Filmer, as we owe Mr. Paine's to Mr. Burke;—indeed, between the arguments of Filmer and Burke, I see no essential difference; since it is not worth disputing, whether a King exists by *divine* right, or by *indissoluble human* compact, if he exists whether we will or no. If his existence be without our consent, and is to continue without benefit, it matters not, whether his title be from God or from man.

That his title is from man, and from every generation of man, without regard to the determination of former ones, hear from Mr. Locke: "*All men*," say they (i. e. Filmer and his adherents,) "*are* BORN *under government, and there-*
"*fore they cannot be at liberty to begin a new one. Every*
"*one is born a subject to his father, or his prince, and is there-*
"*fore under the perpetual tie of subjection and allegiance.*
"It is plain, mankind never owned nor considered any such
"natural *subjection that they were born in*, to one or the
"other, that tied them, without their own consents, to a sub-
"jection to them and their heirs."

"It is true, that whatever engagements or promises any
"one has made for himself, he is under the obligation of
"them, but cannot, by any compact whatsoever, bind his
"children or posterity: for his son, when a man, being
"altogether as free as the father, any *act of the father can no*
"*more give away the liberty of the son*, than it can of any
"body else."

So much for Mr. Locke's opinion of the rights of man.—Let us now examine his ideas of the supposed danger of trusting him with them.

"Perhaps it will be said, that the people being ignorant,
"and always discontented, to lay the foundation of govern-
"ment in the unsteady opinion and uncertain humour of the
"people, is to expose it to certain ruin: and no government
"will be able long to subsist, if the people may set up a new
"legislature, whenever they take offence at the old one.
"To this, I answer—Quite the contrary: people are not so
"easily got out of their old forms, as some are apt to sug-
"gest: they are hardly to be prevailed with to amend the
"acknowledged faults in the frame they have been accustom-

" ed to; and if there be any original defects, or adventi-
" tious ones introduced by time, or corruption, it is not an
" easy thing to be changed, even when all the world sees there
" is an opportunity for it. This slowness and aversion in
" the people to quit their old constitutions, has in the many
" revolutions which have been seen in this kingdom in this
" and former ages, still kept us to, or, after some interval of
" fruitless attempts, still brought us back again to our old
" legislative of kings, lords and commons: and whatever
" provocations have made the crown be taken from some of
" our princes' heads, they never carried the people so far as
" to place it in another line."

Gentlemen, I wish I had strength to go on with all that follows, but I have read enough not only to maintain the true principles of government, but to put to shame the narrow system of distrusting the people.

It may be said, that Mr. Locke went great lengths in his positions, to beat down the contrary doctrine of divine right, which was then endangering the new establishment. But that cannot be objected to David Hume, who maintains the same doctrine. Speaking of the Magna Charta in his History, vol. ii. page 88, he says, " It must be confessed, that the
" former articles of the great charter contain such mitiga-
" tions and explanations of the feudal law, as are reasonable
" and equitable; and that the latter involve all the chief out-
" lines of a legal government, and provide for the equal dis-
" tribution of justice and free enjoyment of property; the
" great object for which political society was founded by men,
" *which the people have a perpetual and unalienable right to*
" *recall; and which no time, nor precedent, nor statute, nor*
" *positive institution, ought to deter them from keeping ever*
" *uppermost in their thoughts and attention.*"

These authorities are sufficient to rest on; yet I cannot omit Mr. Burke himself, who is, if possible, still more distinct on the subject. Speaking not of the ancient people of England, but of colonies planted almost within our memory, he says, " If there be one fact in the world perfectly clear, it
" is this; that the disposition of the people of America is
" wholly averse to any other than a free government; and
" this is indication enough to any honest statesman, how he
" ought to adapt whatever power he finds in his hands to this
" case. If any ask me what a free government is, I answer,
" THAT IT IS WHAT THE PEOPLE THINK SO; AND THAT
" THEY, AND NOT I, ARE THE NATURAL, LAWFUL, AND
" COMPETENT JUDGES OF THIS MATTER. If they practi-

" cally allow me a greater degree of authority over them " than is consistent with any correct ideas of perfect free- " dom, I ought to thank them for so great a trust, and not " to endeavour to prove from thence, that they have " reasoned amiss, and that having gone so far, by analogy, " they must hereafter have no enjoyment but by my plea- " sure."

Gentlemen, all that I have been stating hitherto, has been only to show, that there is not that *novelty* in the opinions of the Defendant, as to lead you to think he does not *bona fide* entertain them, much less when connected with the history of his life, which I therefore brought in review before you.—But still the great question remains unargued—Had he a right to promulgate these opinions? If he entertained them, I shall argue that he had—And although my arguments upon the liberty of the press, may not to-day be honoured with your, or the Court's approbation, I shall retire not at all disheartened, consoling myself with the reflection, that a season may arrive for their reception.—The most essential liberties of mankind have been but slowly and gradually received, and so very late, indeed, do some of them come to maturity, that, notwithstanding the Attorney General tells you that the very question I am now agitating is most peculiarly for *your* consideration, AS A JURY, under our ANCIENT constitution, yet I must remind both YOU and HIM that your jurisdiction to consider and deal with it at all in judgment, is but A YEAR OLD.—Before that late period, I ventured to maintain this very RIGHT OF A JURY over the question of Libel under the same *ancient* constitution (I do not mean before the noble Judge now present, for the matter was gone to rest in the Courts, long before he came to sit where he does, but) before a Noble and Reverend Magistrate of the most exalted understanding, and of the most uncorrupted integrity;* he treated me, not with contempt indeed, for of that his nature was incapable; but he put me aside with indulgence, as you do a child while it is lisping its prattle out of season; and if this cause had been tried *then*, instead of *now*, the Defendant must have been instantly convicted on the proof of the publication, whatever *you* might have thought of his case.—Yet, I have lived to see it resolved, by an almost unanimous vote of the whole Parliament of England, that I had all along been in the right.—If this be not an awful lesson of caution concerning opinions, where are such lessons to be read?

* Earl of Mansfield.

Gentlemen, I have insisted, at great length, upon the origin of governments, and detailed the authorities which you have heard upon the subject, because I consider it to be not only an essential support, but the very foundation of the liberty of the press. If Mr. Burke be right in HIS principles of government, I admit that the press, in my sense of its freedom, ought not to be free, *nor free in any sense at all*; and that all addresses to the people upon the subject of government,—and all speculations of amendment, of what kind or nature soever, are illegal and criminal;—since, if the people have, without possible recall, delegated all their authorities, they have no jurisdiction to act, and therefore none to think or write upon such subjects;—and it would be a libel to arraign government or any of its acts, before those that have no jurisdiction to correct them. But on the other hand, as it is a settled rule in the law of England, that the subject may always address a competent jurisdiction; no legal argument can shake the freedom of the press in my sense of it, if I am supported in my doctrines concerning the great unalienable right of the people, to reform or to change their governments.

It is because the liberty of the press resolves itself into this great issue, that it has been, in every country, the last liberty which subjects have been able to wrest from power.—Other liberties are held *under* governments, but the liberty of opinion keeps GOVERNMENTS THEMSELVES in due subjection to their duties. This has produced the martyrdom of truth in every age, and the world has been only purged from ignorance with the innocent blood of those who have enlightened it.

Gentlemen, my strength and time are wasted,—and I can only make this melancholy history pass like a shadow before you.

I shall begin with the grand type and example.

The universal God of nature,—the Saviour of mankind,—the Fountain of all light, who came to pluck the world from eternal darkness, expired upon a cross,—the scoff of infidel scorn; and his blessed Apostles followed him in the train of martyrs. When he came in the flesh, he might have come like the Mahometan Prophet, as a powerful sovereign, and propagated his religion with an unconquerable sword, which even now, after the lapse of ages, is but slowly advancing under the influence of reason, over the face of the earth:—but such a process would have been inconsistent with his mission, which was to confound the pride, and to es-

tablish the universal rights of men;—he came therefore in that lowly state which is represented in the Gospel, and preached his consolations to the poor.

When the foundation of this religion was discovered to be invulnerable and immortal, we find political power taking the church into partnership;—thus began the corruptions both of religious and civil power, and, hand in hand together what havoc have they not made in the world!—ruling by ignorance and the persecution of truth: but this very persecution only hastened the revival of letters and liberty. Nay, you will find, that in the exact proportion that knowledge and learning have been beat down and fettered, they have destroyed the governments which bound them.—The Court of Star Chamber, the first restriction of the press of England, was erected, previous to all the great changes in the constitution. From that moment no man could legally write without an Imprimatur from the State;—but truth and freedom found their way with greater force through secret channels; and the unhappy Charles, *unwarned by a free press*, was brought to an ignominious death. When men can freely communicate their thoughts and their sufferings, real or imaginary, their passions spend themselves in air, like gunpowder scattered upon the surface;—but pent up by terrors, they work unseen, burst forth in a moment, and destroy every thing in their course. Let reason be opposed to reason, and argument to argument, and every good government will be safe.

The Usurper Cromwell, pursued the same system of restraint in support of his government, and the end of it speedily followed.

At the restoration of Charles the Second, the Star Chamber Ordinance of 1637, was worked up into an Act of Parliament, and was followed up during that reign, and the short one that followed it, by the most sanguinary prosecutions:—but what fact in history is more notorious, than that this blind and contemptible policy prepared and hastened the Revolution? At that great æra these cobwebs were all brushed away:—the freedom of the press was regenerated,—and the country, ruled by its affections, has since enjoyed a century of tranquillity and glory. Thus I have maintained, by English history, that, in proportion as the press has been free, English government has been secure.

Gentlemen, the same important truth may be illustrated by great authorities. Upon a subject of this kind, resort cannot be had to law cases. The ancient law of England knew

nothing of such libels;—they began, and should have ended, with the Star Chamber. What writings are slanderous of *individuals*, must be looked for where these prosecutions are recorded; but upon *general* subjects we must go to *general* writers. If, indeed, I were to refer to obscure authors, I might be answered, that my very authorities were libels, instead of justifications or examples; but this cannot be said with effect of great men, whose works are classics in our language,—taught in our schools,—and repeatedly printed under the eye of Government.

I shall begin with the poet Milton, a great authority in all learning. It may be said, indeed, he was a republican, but that would only prove that republicanism is not incompatible with virtue;—it may be said too, that the work which I cite was written against previous licensing, which is not contended for to-day. But, if every work were to be adjudged a libel, which was adverse to the wishes of government, or to the opinions of those who may compose it, the revival of a licenser would be a security to the public.—If I present my book to a magistrate appointed by law, and he rejects it, I have only to forbear from the publication:—in the forbearance I am safe;—and he too is answerable to law for the abuse of his authority. But, upon the argument of to-day, a man must print at his peril, without any guide to the principles of judgment, upon which his work may be afterwards prosecuted and condemned. Milton's argument therefore applies, and was meant to apply, to every interruption to writing, which, while they oppress the individual, endanger the state.

"We have them not," says Milton, "that can be heard "of, from any ancient state, or polity, or church, nor by "any statute left us by our ancestors, elder or later, nor from "the modern custom of any reformed city or church abroad; "but from the most antichristian council, and the most ty"rannous inquisition that ever existed. Till *then*, books "were ever as freely admitted into the world as any other "birth; *the issue of the brain was no more stifled than the* "*issue of the womb.*

"To the pure all things are pure; not only meats and "drinks, but all kinds of knowledge whether good or evil; "the knowledge cannot defile, nor consequently the books, "if the will and conscience be not defiled.

"Bad books serve in many respects to discover, to con"fute, to forewarn and to illustrate. Whereof, what bet"ter witness can we expect I should produce, than one of

" your own, now sitting in Parliament, the chief of learn-
" ed men reputed in this land, *Mr. Selden*, whose volume
" of natural and national laws, proves, not only by great au-
" thorities brought together, but by exquisite reasons and
" theorems almost mathematically demonstrative, that all
" opinions, YEA ERRORS known, read and collated, are of main
" service and assistance toward the speedy attainment of what
" is truest.

" Opinions and understanding are not such wares as to
" be monopolized and traded in by tickets, and statutes and
" standards. We must not think to make a staple commo-
" dity of all the knowledge in the land, to mark and li-
" cense it like our broad cloth and our wool-packs.

" Nor is it to the common people less than a reproach;
" for if we be so jealous over them that we cannot trust them
" with an English pamphlet, what do we but censure them,
" for a giddy, vicious, and ungrounded people; in such a
" sick and weak state of faith and discretion, as to be able
" to take nothing down but through the pipe of a licenser?
" That this is care or love of them, we cannot pretend.

" Those corruptions which it seeks to prevent, break in
" faster at doors which cannot be shut. To prevent men think-
" ing and acting for themselves, by restraints on the press, is
" like to the exploits of that gallant man who thought to pound
" up the crows by shutting his park gate.

" This obstructing violence meets for the most part with
" an event, utterly opposite to the end which it drives at; in-
" stead of suppressing books, it raises them, and invests
" them with a reputation: the punishment of wits enhances
" their authority, saith the Viscount St. Albans; and a for-
" bidden writing is thought to be a certain spark of truth,
" that flies up in the face of them who seek to tread it
" out."

He then adverts to his visit to the famous Galileo, whom he found and visited in the Inquisition, " for not thinking in " astronomy with the Franciscan and Dominican monks." And what event ought more deeply to interest and affect us? THE VERY LAWS OF NATURE were to bend under the rod of a licenser;—this illustrious astronomer ended his life within the bars of a prison, because, in seeing the phases of Venus through his newly invented telescope, he pronounced that she shone with borrowed light, and from the sun as the centre of the universe. This was the *mighty crime*, the placing the sun in the centre:—that sun which now inhabits it upon the foundation of mathematical truth, which enables

us to traverse the pathless ocean, and to carry our line and rule amongst other worlds, which but for Galileo we had never known perhaps even to the recesses of an infinite and eternal God.

Milton then, in his most eloquent address to the Parliament, puts the liberty of the press on its true and most honourable foundation:

"Believe it, Lords and Commons, they who counsel ye "to such a suppression of books, do as good as bid you sup- "press yourselves; and I will soon show how.

"If it be desired to know the immediate cause of all this "free writing and free speaking, there cannot be assigned a "truer than your own mild, and free, and humane govern- "ment. It is the liberty, Lords and Commons, which your "own valorous and happy counsels have purchased us; "liberty, which is the nurse of all great wits: this is that "which hath rarefied and enlightened our spirits like the in- "fluence of heaven; this is that which hath enfranchised, "enlarged, and lifted up our apprehensions, degrees above "themselves. Ye cannot make us now less capable, less "knowing, less eagerly pursuing the truth, unless ye first "make yourselves, that made us so, less the lovers, less "the founders of our true liberty. We can grow ignorant "again, brutish, formal, and slavish, as ye found us; but "you then must first become that which ye cannot be, op- "pressive, arbitrary, and tyrannous, as they were from "whom ye have freed us. That our hearts are now more "capacious, our thoughts now more erected to the search "and expectation of greatest and exactest things, is the issue "of your own virtue propagated in us. Give me the liber- "ty to know, to utter, and to argue freely according to con- "science, above all liberties.

Gentlemen, I will yet refer you to another author, whose opinion you may think more in point, as having lived in our own times, and as holding the highest monarchical principles of government. I speak of Mr. Hume, who nevertheless, considers, that this liberty of the press extends not only to abstract speculation, but to keep the public on their guard against all the acts of their government.

After showing the advantages of a monarchy to public freedom, provided it is duly controlled and watched by the popular part of the constitution, he says, "These prin- "ciples account for the great liberty of the press in these "kingdoms, beyond what is indulged in any other govern- "ment. It is apprehended, that arbitrary power would steal

" in upon us, were we not careful to prevent its progress, " and were there not an easy method of conveying the " alarm from one end of the kingdom to the other. *The* " *spirit of the people must frequently be roused, in order* " *to curb the ambition of the Court;* and the dread of arous- " ing this spirit must be employed to prevent that am- " bition. Nothing is so effectual to this purpose as the li- " berty of THE PRESS, by which all the learning, wit, and " genius of the nation, may be employed on the side of " freedom; and every one be animated to its defence. *As* " *long, therefore, as the republican part of our government* " *can maintain itself against the monarchical, it will natu-* " *rally be careful to keep the press open, as of importance* " *to its own preservation.*"

There is another authority contemporary with the last;—a splendid speaker in the upper House of Parliament, and who held during most of his time high offices under the King.—I speak of the Earl of Chesterfield, who thus expressed himself in the House of Lords:—" One of the " greatest blessings, my Lord, we enjoy, is liberty; but " every good in this life has its alloy of evil—licentious- " ness is the alloy of liberty, it is ——"

*Lord Kenyon.* Doctor Johnson claims to pluck that *feather* from Lord Chesterfield's wing; he speaks, I believe, of the eye of the political body.

*Mr. Erskine.* My Lord, I am happy that it is admitted to be a feather; I have heard it said, that Lord Chesterfield borrowed that which I was just about to state, and which his Lordship has anticipated.

*Lord Kenyon.* That very speech which did Lord Chesterfield so much honour, is supposed to have been written by Doctor Johnson.

*Mr. Erskine.* Gentlemen, I believe it was so, and I am much obliged to his Lordship for giving me a far higher authority for my doctrine. For though Lord Chesterfield was a man of great wit, he was undoubtedly far inferior in learning, and what, is more to the purpose, in *monarchical* opinion, to the celebrated writer to whom my Lord has now delivered the work by his authority. Dr. Johnson then says, " One of the greatest blessings we enjoy, one of the greatest " blessings a people, my Lords, can enjoy, is liberty; but " every good in this life has its alloy of evil: licentious- " ness is the alloy of liberty: it is an ebullition, an ex- " crescence;—it is a speck upon the eye of the political " body, but which I can never touch but with a gentle, with

" a trembling hand, lest I destroy the body, lest I injure " the eye upon which it is apt to appear.

" There is such a connexion between licentiousness and li- " berty, that it is not easy to correct the one, without dan- " gerously wounding the other: it is extremely hard to dis- " tinguish the true limit between them: like a changeable " silk, we can easily see there are two different colours, but " we cannot easily discover where the one ends, or where " the other begins."

I confess, I cannot help agreeing with this learned author. THE DANGER OF TOUCHING THE PRESS IS THE DIFFICULTY OF MARKING ITS LIMITS. My learned friend, who has just gone out of Court, has drawn no line, and unfolded no principle. He has not told us, if *this* book is condemned, *what* book may be written. If I may not write against the existence of a monarchy, and recommend a republic, may I write against any part of the government? May I say that we should be better without a House of Lords, or a House of Commons, or a Court of Chancery, or any other given part of our establishment? Or if, as has been hinted, a work may be libellous for stating even *legal* matter with *sarcastic* phrase, the difficulty becomes the greater, and the liberty of the press more impossible to define.

The same author, pursuing the subject, and speaking of the fall of Roman liberty, says, " But this sort of liberty " came soon after to be called licentiousness; for we are told " that Augustus, after having established his empire, restor- " ed order in Rome by restraining licentiousness. God for- " bid we should in this country have order restored or licen- " tiousness restrained, at so dear a rate as the people of Rome " paid for it to Augustus!

" Let us consider, my Lords, that arbitrary power has sel- " dom or never been introduced into any country at once. It " must be introduced by slow degrees, and as it were step by " step, lest the people should see its approach. The barriers " and fences of the people's liberty must be plucked up one " by one, and some plausible pretences must be found for re- " moving or hoodwinking, one after another, those sentries " who are posted by the constitution of a free country, for " warning the people of their danger. When these prepara- " tory steps are once made, the people may then, indeed, " with regret, see slavery and arbitrary power making long " strides over their land; but it will be too late to think of " preventing or avoiding the impending ruin."

" The stage, my Lords, and the press, are two of our

-sentries; if we remove them, if we hoodwink them, ve throw them in fetters, the enemy may surprise us."
ıtlemen, this subject was still more lately put in the t and most forcible light by a noble person high in the tracy; whose mind is not at all tuned to the introduc- f disorder by improper popular excesses; I mean Lord hborough, Chief Justice of the Court of Common Pleas. ɛve I can answer for the correctness of my note, which l follow up with the opinion of another member of the ı' House of Parliament; the present Earl Stanhope; or ', I shall take Lord Stanhope first, as his Lordship in- ces the subject by adverting to this argument of Lord hborough's. "If," says Lord Stanhope, "our boasted ırty of the press were to consist only in the liberty to te *in praise* of the constitution, this is a liberty enjoyed ler many *arbitrary* governments. I suppose it would be deemed quite an unpardonable offence, even by the ıpress of Russia, if any man were to take into his head write a panegyric upon the Russian form of govern- nt. Such a liberty as that might therefore properly be med the *Russian liberty of the press. But, the English rty of the press* is of a very different description: for, the law of England, it is not prohibited to publish spe- ative works upon the constitution, whether *they contain ise or censure.*"—*Lord Stanhope's Defence of the Libel*

u see therefore, as far as the general principle goes, I pported by the opinion of Lord Stanhope, for otherwise loble Lord has written a libel himself, by exciting other e to write *whatever they may think*, be it good or evil, ɛ constitution of the country. As to the other high au- y, Lord Loughborough, I will read what applies to this ct.—"Every man," said Lord Loughborough, "may ɔlish at his discretion, his opinions concerning forms and tems of government. If they be wise and enlightening, world will gain by them; if they be weak and absurd, y will be laughed at and forgotten; and if they be *bona ɛ, they cannot be criminal, however* ERRONEOUS. On other hand, the purpose and the direction may give a ferent turn to writings whose common construction is mless, or even meritorious. Suppose men, assembled disturbance of the peace, to pull down mills or turnpikes, to do any other mischief, and that a mischievous per- ı should disperse among them an excitation to the planned schief known to both writer and reader, *To your tents*,

" *O Israel;* that publication would be criminal;—not as a li-
" bel, not as an abstract writing, but as an act; and the act
" being the crime, *it must be stated as a fact extrinsic on the*
" *record:* for otherwise, a Court of Error could have no ju-
" risdiction but over the *natural construction of the writing;*
" nor would the Defendant have any notice of such matter
" at the trial, without a charge on the record. To give the
" Jury cognizance of any matter beyond the construction of
" the writing, the averment should be, in the case as I have
" instanced, that certain persons were, as I have described,
" assembled; and that the publisher, intending to excite these
" persons so assembled, wrote *so and so.* Here the crime is
" complete, and consists in an *overt-act of wickedness evi-*
" *denced by a writing.*"

In answer to all these authorities, the Attorney General may say, that, if Mr. Paine had written his observations with the views of those high persons and under other circumstances, he would be protected and acquitted:—to which I can only answer, that no facts or circumstances attending his work are either *charged or proved;*—that you have *no* jurisdiction whatever, but over the natural construction of the work before you,—and that I am therefore brought without a flaw to the support of the passages which are the particular subject of complaint.

Gentlemen, I am not unmindful how long I have already trespassed upon your patience; and, recollecting the nature of the human mind, and how much, for a thousand reasons, I have to struggle against at this moment, I shall not be disconcerted if any of you should appear anxious to retire from the pain of hearing me farther. It has been said, in the newspapers, that my vanity has forwarded my zeal in this cause;—but I might appeal even to the authors of those paragraphs, whether a situation ever existed which vanity would have been fonder to fly from—the task of speaking against every known prepossession;—with every countenance, as it were, planted and lifted up against me. But I stand at this bar to give to a criminal arraigned before it, the defence which the law of the country entitles him to. If any of my arguments be indecent, or unfit for the Court to hear, —the noble Judge presides to interrupt them; if all, or any of them, are capable of an answer,—they will be answered: or if they be so unfounded in your own minds, who are to judge of them, as not to call for refutation,—your verdict in a moment will overthrow all that has been said;—we shall then have all discharged our duties.—It is your unquestiona-

ble province to judge, and mine not less unquestionable to address your judgments.

When the noble Judge and myself were Counsel for Lord George Gordon in 1781, it was not considered by that Jury, nor imputed to us by any body, that we were contending for the privileges of overawing the House of Commons, or recommending the conflagration of this city; *I* am doing the same duty now, which *my Lord and I* then did in concert together; and, whatever may become of the cause, *I expect to be heard:* conscious that no just obloquy can be, or will in the end be cast upon me for having done my duty in the manner I have endeavoured to perform it.—Sir, I shall name you presently.*

Gentlemen, I come now to observe on the passages selected by the information; and with regard to the first, I shall dispose of it in a moment.

" All *hereditary* government is in its nature tyranny. An " hereditable crown, or an hereditable throne, or by what " other fanciful name such things may be called, have no " other significant explanation than that mankind are heredi- " table *property.* To *inherit* a government is to *inherit* the " *people*, as if they were flocks and herds."

And is it to be endured, says the Attorney General, that the people of this country are to be told that they are driven like oxen or sheep?—Certainly not.—I am of opinion that a more dangerous doctrine cannot be instilled into the people of England. But who instils such a doctrine? I deny that it is instilled by Paine.—When he maintains that hereditary monarchy inherits a people like flocks and herds, it is clear from the context *(which is kept out of view,)* that he is combatting the proposition in Mr. Burke's book, which asserts, that the hereditary monarchy of England is fastened upon the people of England by *indissoluble compact.* Mr. Paine, on the contrary, asserts the King of England to be the *magistrate of the people*, existing by their consent, which is utterly incompatible with their being driven like herds. His argument, therefore, is this, and it retorts on his adversary: he says, Such a king as *you*, Mr. Burke, represent the King of England to be, inheriting the people by virtue of conquest, or of some compact, which, having once existed, cannot be dissolved while the original terms of it are kept, *is an inheritance like flocks and herds.* But I deny

* This expression was provoked by the conduct of one of the Jury; which this rebuke put an end to.—Ed.

that to be the King of England's title.—He is *the magistrate of the people*, and that title I respect. It is to your own imaginary King of England therefore, and not to his Majesty, that your unfounded innuendos apply. It is the Monarchs of Russia and Prussia, and all governments fastened upon unwilling subjects by hereditary indefeasible titles, who are stigmatized by Paine as inheriting the people like flocks. The sentence, therefore, must either be taken in the pure abstract, and then it is not only merely speculative, but the application of it to our own government fails altogether, or it must be taken connected with the matter which constitutes the application, and then it is MR. BURKE'S KING OF ENGLAND, and NOT his Majesty, whose title is denied.

I pass therefore to the next passage, which appears to be an extraordinary selection. It is taken at a leap from page 21 to page 47, and breaks in at the words, "This Con- "vention." The sentence selected stands thus: "This con- "vention met at Philadelphia in May 1787, of which Gen- "eral Washington was elected president. He was not at "that time connected with any of the state governments, or "with Congress. He delivered up his commission when, "the war ended, and since then had lived a private ci- "tizen.

"The convention went deeply into all the subjects; and "having, after a variety of debate and investigation, agreed "among themselves upon the several parts of a federal con- "stitution, the next question was, the manner of giving it "authority and practice.

"For this purpose, they did not, like a cabal of cour- "tiers, send for a Dutch Stadtholder, or a German Elector; "but they referred the whole matter to the sense and inter- "est of the country."

This sentence, standing thus by itself, may appear to be a mere sarcasm on King William, upon those who effected the Revolution, and upon the Revolution itself, without any reasoning or deduction: but when the context and sequel are looked at and compared, it will appear to be a serious historical comparison between the Revolution effected in England in 1688, and the late one in America when she established her independence; and no man can doubt that his judgment on that comparison was sincere. But where is the libel on the constitution? For whether King William was brought over here by the sincerest and justest motives of the whole people of England, each man acting for himself, or from the motives and through the agencies imputed by the

Defendant, it signifies not one farthing at this time of day to the establishment itself. Blackstone properly warns us not to fix our obedience or affection to the government on the motives of our ancestors, or the rectitude of their proceedings, but to be satisfied with what is established. This is safe reasoning, and for my own part, I should not be differently affected to the constitution of my country, which my own understanding approved, whether angels or demons had given it birth.

Do any of you love the Reformation the less because Henry the Eighth was the author of it? or because lust and poverty, and not religion, were his motives? He had squandered the treasures of his father, and he preferred Anne Bullen to his Queen: these were the causes which produced it.—What then?—Does that affect the purity of our reformed religion?—Does it undermine its establishment or shake the King's title, to the exclusion of those who held by the religion it had abolished?—Will the Attorney General affirm, that I could be convicted of a libel for a whole volume of asperity against Henry the Eighth, merely because he effected the Reformation; and if not, why against King William, who effected the Revolution?—Where is the line to be drawn?—Are one, two, or three centuries to constitute the statute of limitation?—Nay, do not our own historians detail this very cabal of courtiers, from the records of our own country?—If you will turn to Hume's History, volume the eighth, page 188, &c. &c. you will find that he states at great length, the whole detail of intrigues which paved the way for the Revolution, and the interested coalition of parties which gave it effect.

But what of all this, concerning the motives of parties, which is recorded by Hume? The question is, *What is the thing brought about—Not,* HOW *it was brought about.* If it stands, as Blackstone argues it, upon the consent of our ancestors, followed up by our own, no individual can withdraw his obedience. If he dislikes the establishment, let him seek elsewhere for another; I am not contending for uncontrolled *conduct*, but for freedom of *opinion.*

With regard to what has been stated of the *Edwards* and *Henries*, and the other princes under which the author can only discover "*restrictions on power but nothing of a* "*constitution:*" surely my friend is not in earnest when he selects that passage as a libel.

Paine insists, that there was no constitution under these princes, and that English liberty was obtained from usurp-

ed power by the struggles of the people, so SAY I. And I think it for the honour and advantage of the country that it should be known. Was there any freedom after the original establishment of the Normans by conquest ?—Was not the MAGNA CHARTA wrested from John by *open force of arms* at Runnymead ?—Was it not again re-enacted whilst menacing arms were in the hands of the people ? Were not its stipulations broken through, and two and forty times re-enacted by Parliament, upon the firm demand of the people, in the following reigns ?—I protest it fills me with astonishment to hear these truths brought in question.

I was formerly called upon, under the discipline of a college, to maintain them, and was rewarded for being thought to have successfully maintained that our present constitution was by no means a remnant of Saxon liberty, nor any other institution of liberty, but the pure consequence of the oppression of the Norman tenures, which spreading the spirit of freedom from one end of the kingdom to another, enabled our brave fathers, inch by inch, not to reconquer, *but for the first time to obtain* those privileges which are the unalienable inheritance of all mankind.

But why do we speak of the Edwards and Henries, when Hume himself expressly says, notwithstanding all we have heard to-day of the antiquity of our constitution, that our monarchy was nearly absolute till the middle of the last century. It is his Essay on the Liberty of the Press, vol. i. page 15.

" All absolute governments, and such in a great measure " was England, till the middle of the last century, *not-* " *withstanding the numerous panegyrics on* ANCIENT *Eng-* " *lish liberty*, must very much depend on the administra- " tion."

This is Hume's opinion; the conclusion of a grave historian from all that he finds recorded as the materials for history; and shall it be said that Mr. Paine is to be punished for writing to-day what was before written by another, who is now a distinguished classic in the language ?—all the verdicts in the world will not make such injustice palatable to an impartial public, or to posterity.

The next passage arraigned, is this: p. 56. " The atten- " tion of the government of England (for I rather choose to " call it by this name, than the English government) appears, " since its political connexion with Germany, to have been " so completely engrossed and absorbed by foreign affairs, " and the means of raising taxes, that it seems to exist for

" no other purposes. Domestic concerns are neglected;
" and with respect to regular law, there is scarcely such a
" thing."

That the government of this country has, in consequence of its connexion with the continent, and the continental wars which it has occasioned, been continually loaded with grievous taxes, no man can dispute; and I appeal to your justice, whether this subject has not been, for years together, the constant topic of unreproved declamation and grumbling.

As to what he says with regard to there hardly existing such a thing as regular law, he speaks *in the abstract* of the complexity of our system;—he does not arraign the administration of justice *in its practice*. But with regard to criticisms and strictures on the general system of our government, it has been echoed over and over again by various authors; and even from the pulpits of our country. I have a sermon in Court written during the American war, by a person of great eloquence and piety, in which he looks forward to an exemption from the intolerable grievances of our old legal system in the infant establishment of the new world.

" It may be in the purposes of Providence, on yon wes-
" tern shores, to raise the bulwark of a purer reformation
" than ever Britain patronized; to found a less burdensome,
" more auspicious, stable, and incorruptible government than
" ever Britain has enjoyed; and to establish there a system
" of law more just and simple in its principles, less intricate,
" dubious, and dilatory in its proceedings, more mild and
" equitable in its sanctions, more easy and more certain in
" its execution; wherein no man can err through ignorance
" of what concerns him, or want justice through poverty or
" weakness, or escape it by legal artifice, or civil privileges,
" or interposing power; wherein the rule of conduct shall
" not be hidden or disguised in the language of principles
" and customs that died with the barbarism which gave
" them birth; wherein hasty formulas shall not dissipate the
" reverence that is due to the tribunals and transactions of
" justice; wherein obsolete prescripts shall not pervert, nor
" entangle, nor impede the administration of it, nor in any
" instance expose it to derision or to disregard; wherein
" misrepresentation shall have no share in deciding upon right
" and truth; and under which no man shall grow great by the
" wages of chicanery, or thrive by the quarrels that are
" ruinous to his employers."

This is ten times stronger than Mr. Paine; but who ever thought of prosecuting Mr. Cappe?*

In various other instances you will find defects in our jurisprudence pointed out and lamented, and not seldom by persons called upon by their situations to deliver the law in the seat of magistracy: therefore, the author's *general* observation does not appear to be that species of attack upon the magistracy of the country, as to fall within the description of a libel.

With respect to the two Houses of Parliament, I believe I shall be able to show you that the very person who introduced this controversy, and who certainly is considered by those who now administer the government, as a man usefully devoted to maintain the constitution of the country in the present crisis, has himself made remarks upon these assemblies, that upon comparison you will think more severe than those which are the subject of the Attorney General's animadversion. The passage in Mr. Paine runs thus:

"With respect to *the two Houses*, of which the English "Parliament is composed, they appear to be effectually in- "fluenced into one, and, as a legislature, to have no temper "of its own. The minister, whoever he at any time may "be, touches it as with an opium wand, and it sleeps obe- "dience.

"But if we look at the distinct abilities of the two "Houses, the difference will appear so great, as to show the "inconsistency of placing power where there can be no cer- "tainty of the judgment to use it. Wretched as the state of "representation is in England, it is manhood compared with "what is called the House of Lords; and so little is this nick- "named House regarded, that the people scarcely inquire at "any time what it is doing. It appears also to be most under "influence, and the farthest removed from the general inte- "rest of the nation."

The conclusion of the sentence, and which was meant by Paine as evidence of the previous assertion, the Attorney General has omitted in the Information, and in his speech; it is this: "In the debate on engaging in the Russian and "Turkish war, the majority in the House of Peers in favour "of it was upwards of ninety, when in the other House, "which is more than double its numbers, the majority was "sixty-three."

* A late eminent and pious minister at York.

The terms, however, in which Mr. Burke speaks of the House of Lords, are still more expressive. "It is some- "thing more than a century ago, since we voted the House "of Lords useless. They have now voted themselves so, "and the whole hope of reformation *(speaking of the House "of Commons)* is cast upon us." This sentiment Mr. Burke not only expressed in his place in Parliament, where no man can call him to an account; but it has been since repeatedly printed amongst his works. Indeed his opinion of BOTH THE HOUSES OF PARLIAMENT, which I am about to read to you, was originally published as a separate pamphlet, and applied to the settled habitual abuses of these high assemblies. Remember, I do not use them as *argumenta ad hominem*, or *ad invidiam* against the author; for if I did, it could be no defence of Mr. Paine. But I use them as high authority, the work * having been the just foundation of substantial and lasting reputation. Would to God that any part of it were capable of being denied or doubted!

"Against the being of Parliament I am satisfied no designs "have ever been entertained since the Revolution. Every "one must perceive that it is strongly the interest of the "Court to have some second cause interposed between the "ministers and the people. The gentlemen of the House of "Commons have an interest equally strong, in sustaining the "part of that intermediate cause. However they may hire "out the *usufruct* of their voices, they never will part with "the *fee and inheritance.* Accordingly those who have been "of the most known devotion to the will and pleasure of a "Court, have at the same time been most forward in assert- "ing an high authority in the House of Commons. *When "they knew who were to use that authority, and how it was "to be employed, they thought it never could be carried too "far.* It must be always the wish of an unconstitutional "statesman, that an House of Commons, *who are entirely "dependent upon him, should have every right of the people "dependent upon their pleasure.* FOR IT WAS DISCOVERED "THAT THE FORMS OF A FREE, AND THE ENDS OF AN AR- "BITRARY GOVERNMENT, WERE THINGS NOT ALTOGETHER "INCOMPATIBLE.

"The power of the Crown, almost dead and rotten as pre- "rogative, has grown up anew, with much more strength and

* Mr. Burke's Thoughts on the Cause of the present Discontents, published in 1775.

" far less odium, under the name of influence. An influence, " which operates without noise and violence,—which converts " the very antagonist into the instrument of power,—which " contains in itself a perpetual principle of growth and reno- " vation; and which the distresses and the prosperity of the " country equally tend to augment,—was an admirable sub- " stitute for a prerogative, that, being only the offspring of " antiquated prejudices, had moulded in its original stamina " irresistible principles of decay and dissolution. The igno- " rance of the people is a bottom but for a temporary system; " but the interest of active men in the state is a foundation " perpetual and infallible."

Mr. Burke, therefore, in page 66, speaking of the same court party, says:

" Parliament was indeed the great object of all these poli- " tics, the end at which they aimed, as well as the INSTRU- " MENT by which they were to operate."

And pursuing the subject in page 70, proceeds as follows:

" They who will not conform their conduct to the public " good, and cannot support it by the prerogative of the " Crown, have adopted a new plan. They have totally " abandoned the shattered and old-fashioned fortress of Pre- " rogative, and made a lodgment in the strong-hold of Par- " liament itself. If they have any evil design to which there " is no ordinary legal power commensurate, they bring it into " Parliament. *There the whole is executed from the begin-* " *ning to the end; and the power of obtaining their object* " *absolute; and the safety in the proceeding perfect; no rules* " *to confine, nor after-reckonings to terrify.* For Parlia- " ment cannot with any great propriety punish others for " things in which they themselves have been ACCOMPLICES. " Thus its control upon the executory power is lost; because " it is made to partake in every considerable act of govern- " ment; *and impeachment, that great guardian of the purity* " *of the constitution, is in danger of being lost even to the* " *idea of it.*"

" Until this time, the opinion of the people, through the " power of an Assembly, still in some sort popular, led to " the greatest honours and emoluments in the gift of the " Crown. Now the principle is reversed; and the favour " of the Court is the only sure way of obtaining and holding " those honours which ought to be IN THE DISPOSAL OF THE " PEOPLE."

Mr. Burke, in page 100, observes with great truth, that the mischiefs he complained of, did not, at all arise from the

monarchy, but from the Parliament, and that it was the duty of the people to look to it. He says, "The distempers of "monarchy were the great subjects of apprehension and re- "dress, in the *last century; in this*, the distempers of Par- "liament."

Not the distempers of Parliament in this year or the last, but in *this century*, i. e. its settled habitual distemper. "It "is not in Parliament alone that the remedy for parliamentary "disorders can be completed; and hardly indeed can it begin "there. Until a confidence in government is re-established, "the people ought to be *excited* to a more strict and detailed "attention to the conduct of their representatives. Standards "for judging more systematically upon their conduct ought "to be settled in the meetings of counties and corporations, "and frequent and correct lists of the voters in all important "questions ought to be procured.

"By such means something may be done, since it may ap- "pear who those are, that, by an indiscriminate support of "all administrations, have totally banished all integrity and "confidence out of public proceedings; have confounded the "best men with the worst; and weakened and dissolved, in- "stead of strengthening and compacting, the general frame "of government."

I wish it was possible to read the whole of this most important volume—but the consequences of these truths contained in it were all eloquently summed up by the author in his speech upon the reform of the household.

"But what I confess was uppermost with me, what I "bent the whole course of my mind to, was the reduction "of that corrupt influence which is itself the perennial spring "of all prodigality and disorder; which loads us more than "millions of debt; which takes away vigour from our "arms, wisdom from our councils, and every shadow of au- "thority and credit from the most venerable parts of our "constitution."

The same important truths were held out to the whole public, upon a still later occasion, by the person now at the head of His Majesty's councils; and so high (as it appears) in the confidence of the nation.* *He*, not in the *abstract*, like the author before you, but upon the *spur of the occasion*, and in the teeth of what had been just declared in the House of Commons, came to, and acted upon resolutions which are

* Mr. Pitt.

contained in this book †—resolutions pointed to the purification of a Parliament, dangerously corrupted into the very state described by Mr. Paine. Remember here too, that I impute no censurable conduct to Mr. Pitt. It was the most brilliant passage in his life, and I should have thought his life a better one, if he had continued uniform in the support of opinions, which it is said he has not changed, and which certainly have had nothing to change them. But at all events, I have a right to make use of the authority of his splendid talents and high situation, not merely to protect the Defendant, but the public, by resisting the precedent, —that what one man may do in England with approbation and glory, shall conduct another man to a pillory or a prison.

The abuses pointed out by the man before you, led that Right Hon. Gentleman to associate with many others of high rank, under the banners of the Duke of Richmond, whose name stands at the head of the list, and to pass various public resolutions, concerning the absolute necessity of purifying the House of Commons; and we collect the plan from a preamble entered in the book: "Whereas the life, liberty, "and property of every man is or may be affected by the law "of the land in which he lives, and every man is bound to "pay obedience to the same.

"And whereas, by the constitution of this kingdom, the "right of making laws is vested in three estates, of King, "Lords, and Commons, in Parliament assembled, and the "consent of all the three said estates, comprehending the "whole community, is necessary to make laws to bind the "whole community. And whereas the House of Commons "represents all the Commons of the realm, and the consent "of the House of Commons binds the consent of all the "Commons of the realm, and in all cases on which the legis-"lature is competent to decide.

"And whereas no man is, or can be actually repre-"sented who hath not a vote in the election of his represen-"tative.

"And whereas it is the right of every Commoner of this "realm (infants, persons of insane mind, and criminals inca-"pacitated by law, only excepted) to have a vote in the elec-"tion of the representative who is to give his consent to the "making of laws by which he is to be bound.

"And whereas the number of persons who are suffered to "vote for electing the members of the House of Commons,

† Mr. Erskine took up a book.

" do not at this time amount to one sixth part of the whole " Commons of this realm, whereby far the greater part of " the said Commons are deprived of their right to elect their " representatives; and the consent of the majority of the " whole community to the passing of laws, is given by per- " sons whom they have not delegated for such purposes; and " to which the said majority have not in fact consented by " themselves or by their representatives.

" And whereas the state of election of members of the " House of Commons, hath in process of time so grossly de- " viated from its simple and natural principle of representa- " tion and equality, that in several places the members are " returned by the property of one man; that the smallest " boroughs send as many members as the largest counties, " and that a majority of the representatives of the whole na- " tion are chosen by a number of votes not exceeding twelve " thousand."

These, with many others, were published, not as *abstract, speculative writings*, but within a few days after the House of Commons had declared that no such rights existed, and that no alteration was necessary in the representation.—It was *then* that they met at the Thatched House, and published their opinions and resolutions to the country at large.—Were any of them prosecuted for these proceedings?—Certainly not, (for they were legal proceedings.) But I desire you, as men of honour and truth, to compare all this with Mr. Paine's expression of the Minister's touching Parliament with his opiate wand, and let equal justice be done—*that is all I ask*—let all be punished, or none—do not let Mr. Paine be held out to the contempt of the public upon the score of his observations on Parliament, while others are enjoying all the sweets which attend a supposed attachment to their country, who have not only expressed the same sentiments, but have reduced their opinions to practice.

But *now* every man is to be cried down for such opinions. I observed that my learned friend significantly raised his voice in naming Mr. Horne Tooke, as if to connect him with Paine, or Paine with him. This is exactly the same course of justice; —for after all he said nothing of Mr. Tooke. What could he have said, but that he was a man of great talents, and a subscriber with the great names I have read in proceedings which they have thought fit to desert?

Gentlemen, let others hold their opinions, and change them at their pleasure; I shall ever maintain it to be the dearest privilege of the people of Great Britain to watch over every thing that affects their happiness, either in the system

of government, or in the practice; and that for this purpose THE PRESS MUST BE FREE. It has always been so, and much evil has been corrected by it.—If Government finds itself annoyed by it, let it examine its own conduct, and it will find the cause,—let it amend it, and it will find the remedy.

Gentlemen, I am no friend to sarcasms in the discussion of grave subjects, but you must take writers according to the view of the mind at the moment; Mr. Burke as often as any body indulges in it:—hear his reason in his speech on reform, for not taking away the salaries from Lords who attend upon the British Court. "You would," said he, have the Court "deserted by all the nobility of the kingdom.

"Sir, the most serious mischiefs would follow from such "a desertion. Kings are naturally lovers of low company; "they are so elevated above all the rest of mankind, that they "must look upon all their subjects as on a level: they "are rather apt to hate than to love their nobility on account "of the occasional resistance to their will, which will be "made by their virtue, their petulance, or their pride. It "must indeed be admitted, that many of the nobility are as "perfectly willing to act the part of flatterers, tale-bearers, "parasites, pimps, and buffoons, as any of the lowest and "vilest of mankind can possibly be. But they are not pro "perly qualified for this object of their ambition. The "want of a regular education, and early habits, with some "lurking remains of their dignity, will never permit them to "become a match for an Italian eunuch, a mountebank, a fid- "dler, a player, or any regular practitioner of that tribe. "The Roman Emperors, almost from the beginning, threw "themselves into such hands; and the mischief increased "every day, till its decline, and its final ruin. It is there- "fore, of very great importance (provided the thing is not "overdone,) to contrive such an establishment as must, al- "most whether a prince will or not, bring into daily and "hourly offices about his person, a great number of his first "nobility: and it is rather an useful prejudice that gives "them a pride in such a servitude: though they are not "much the better for a Court, a Court will be much the "better for them. I have, therefore, not attempted to "reform any of the offices of honour about the King's "person."

What is all this but saying that a King is an animal so incurably addicted to low company, as generally to bring on by it the ruin of nations; but nevertheless, he is to be kept as a

necessary evil, and his propensities bridled by surrounding him with a parcel of miscreants still worse if possible, but better than those he would choose for himself. This, therefore, if taken by itself, would be a most abominable and libellous sarcasm on kings and nobility; but look at the whole speech, and you observe a great system of regulation; and no man, I believe, ever doubted Mr. Burke's attachment to monarchy. To judge, therefore, of any part of a writing, THE WHOLE MUST BE READ.

With the same view I will read to you the beginning of Harrington's Oceana: but it is impossible to name this well-known author without exposing to just contempt and ridicule the ignorant or profligate misrepresentations which are vomited forth upon the public, to bear down every man as desperately wicked, who in any age or country has countenanced a republic, for the mean purpose of prejudging this trial.

[*Mr. Erskine took up a book, but laid it down again without reading from it, saying something to the gentleman who sat near him, in a low voice, which the reporter did not hear.*]

Is this the way to support the English constitution?—Are these the means by which Englishmen are to be taught to cherish it?—I say, if the man upon trial were stained with blood instead of ink,—if he were covered over with crimes which human nature would start at the naming of, the means employed against him would not be the less disgraceful.

For this notable purpose then, Harrington, *not above a week ago**, was handed out to us as a low, obscure wretch, involved in the murder of the Monarch, and the destruction of the monarchy, and as addressing his despicable works at the shrine of an usurper. Yet this very Harrington, this low blackguard, was descended (you may see his pedigree at the Herald's Office for sixpence) from eight dukes, three marquisses, seventy earls, twenty-seven viscounts, and thirty-six barons, sixteen of whom were Knights of the Garter; a descent which I think would save a man from disgrace in any of the circles of Germany. But what was he besides? —A BLOOD-STAINED RUFFIAN?—Oh brutal ignorance of the history of the country! He was the most affectionate servant of Charles the First, from whom he never concealed his opinions; for it is observed by Wood, that the King

* A Pamphlet had been published just before, putting T. Paine and Harrington on the same footing—as obscure blackguards.

greatly affected his company; but when they happened to talk of a commonwealth, he would scarcely endure it.—"I know not," says Toland, "which most to commend; "the King for trusting an honest man, though a republican; "or Harrington for owning his principles while he served a "King."

But did his opinions affect his conduct?—Let history again answer.—He preserved his fidelity to his unhappy Prince to the very last, after all his fawning courtiers had left him to his enraged subjects. He staid with him while a prisoner in the Isle of Wight;—came up by stealth to follow the fortunes of his monarch and master;—even hid himself in the boot of the coach when he was conveyed to Windsor;—and ending as he began, fell into his arms and fainted on the scaffold.

After Charles's death, the Oceana was written, and, as if it were written from justice and affection to his memory; for it breathes the same noble and spirited regard, and asserts that it was not CHARLES that brought on the destruction of the *monarchy*, but the feeble and ill-constituted nature of monarchy *itself*.

But the book was a flattery to Cromwell.—Once more and finally let history decide.—The Oceana was seized by the Usurper as a libel, and the way it was recovered is remarkable. I mention it to show that Cromwell was a wise man in himself, and knew on what governments must stand for their support.

Harrington waited on the Protector's daughter to beg for his book, which her father had taken, and on entering her apartment, snatched up her child and ran away.—On her following him with surprise and terror, he turned to her and said, "I know what you feel as a mother, feel then for ME: "your father has got MY child:" meaning the Oceana. The Oceana was afterwards restored on her petition: Cromwell answering with the sagacity of a sound politician, "Let him "have his book; if my government is made to stand, it has "nothing to fear from PAPER SHOT."—He said true. No GOOD government will ever be battered by paper shot. Montesquieu says, "that in a free nation, it matters not whether "individuals reason well or ill; it is sufficient that they *do* "reason. Truth arises from the collision, and from hence "springs liberty, which is a security from the effect of rea-"soning." The Attorney General has read extracts from Mr. Adams's answer to this book. Let others write answers to it, like Mr. Adams; I am not insisting upon the infallibility of

Mr. Paine's doctrines; if they are erroneous, let them be answered, and truth will spring from the collision.

Milton wisely says, that a disposition in a nation to this species of controversy, is no proof of sedition or degeneracy, but quite the reverse [I omitted to cite the passage with the others.] In speaking of this subject, he rises into that inexpressibly sublime style of writing, wholly peculiar to himself. He was indeed no plagiary from any thing human: he looked up for light and expression, as he himself wonderfully describes it, by devout prayer to that great Being, who is the source of all utterance and knowledge; and who sendeth out his seraphim with the hallowed fire of his altar to touch and purify the lips of whom he pleases. "When the cheerfulness "of the people," says this mighty poet, "is so sprightly up, as "that it hath not only wherewith to guard well its own free- "dom and safety, but to spare, and to bestow upon the solid- "est and sublimest points of controversy and new invention, "it betokens us not degenerated nor drooping to a fatal de- "cay, but casting off the old and wrinkled skin of corrup- "tion, to outlive these pangs and wax young again, enter- "ing the glorious ways of truth and prosperous virtue, des- "tined to become great and honourable in these latter ages. "Methinks I see, in my mind, a noble and puissant nation "rousing herself, like a strong man after sleep, and shaking "her invincible locks: methinks I see her as an eagle mu- "ing her mighty youth, and kindling her undazzled eyes at "the full mid day beam; purging and unscaling her long abu- "sed sight at the fountain itself of heavenly radiance; while "the whole noise of timorous and flocking birds, with those "also that love the twilight, flutter about, amazed at what "she means, and in their envious gabble would prognosti- "cate a year of sects and schisms."

Gentlemen, what Milton only saw in his mighty imagination, I see in fact; what he expected, but which never came to pass, I see now fulfilling: methinks I see this noble and puissant nation, not degenerated and drooping to a fatal decay, but casting off the wrinkled skin of corruption to put on again the vigour of her youth. And it is, because others as well as myself see this, that we have all this uproar:—France and its constitution are the mere pretences. It is, because Britons begin to recollect the inheritance of their own constitution, left them by their ancestors:—it is, because they are awakened to the corruptions which have fallen upon its most valuable parts, that forsooth the nation is in danger of being destroyed by a single pamphlet.—I have marked the

course of this alarm: it began with the renovation of those exertions for the public, which the alarmists themselves had originated and deserted; and they became louder and louder when they saw them avowed and supported by my admirable friend Mr. Fox; the most eminently honest and enlightened statesman, that history brings us acquainted with: a man whom to name is to honour, but whom in attempting adequately to describe, I must fly to Mr. Burke, my constant refuge when eloquence is necessary:—a man, who to relieve the sufferings of the most distant nation, "put to the "hazard his ease, his security, his interest, his power, even "his darling popularity for the benefit of a people whom he "had never seen." How much more then for the inhabitants of his native country!—yet this is the man who has been censured and disavowed in the manner we have lately seen.

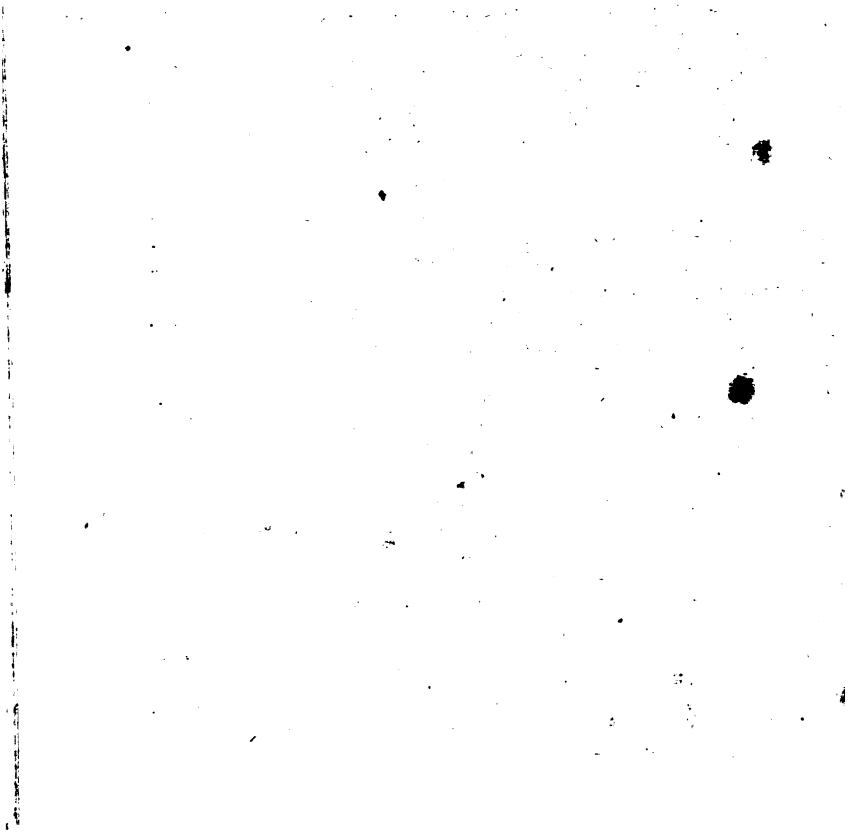
Gentlemen, I have but a few more words to trouble you with: I take my leave of you with declaring, that all this freedom which I have been endeavouring to assert, is no more than the ancient freedom which belongs to our own inbred constitution: I have not asked you to acquit Thomas Paine upon any new lights, or upon any principle but that of the law, which you are sworn to administer;—my great object has been to inculcate, that wisdom and policy, which are the parents of the Government of Great Britain, forbid this jealous eye over her subjects; and that, on the contrary, they cry aloud in the language of the poet, adverted to by Lord Chatham on the memorable subject of America, *unfortunately without effect.*

"Be to their faults a little blind,
"Be to their virtues very kind;
"Let all their thoughts be unconfin'd,
"And clap your padlock on the mind."

Engage the people by their affections, convince their reason,—and they will be loyal from the only principle that can make loyalty sincere, vigorous, or rational,—a conviction that it is their truest interest, and that their government is for their good. Constraint is the natural parent of resistance, and a pregnant proof, that reason is not on the side of those who use it. You must all remember Lucian's pleasant story; Jupiter and a countryman, were walking together, conversing with great freedom and familiarity upon the subject of heaven and earth. The countryman listened with attention and acquiescence, while Jupiter strove only to convince him;—

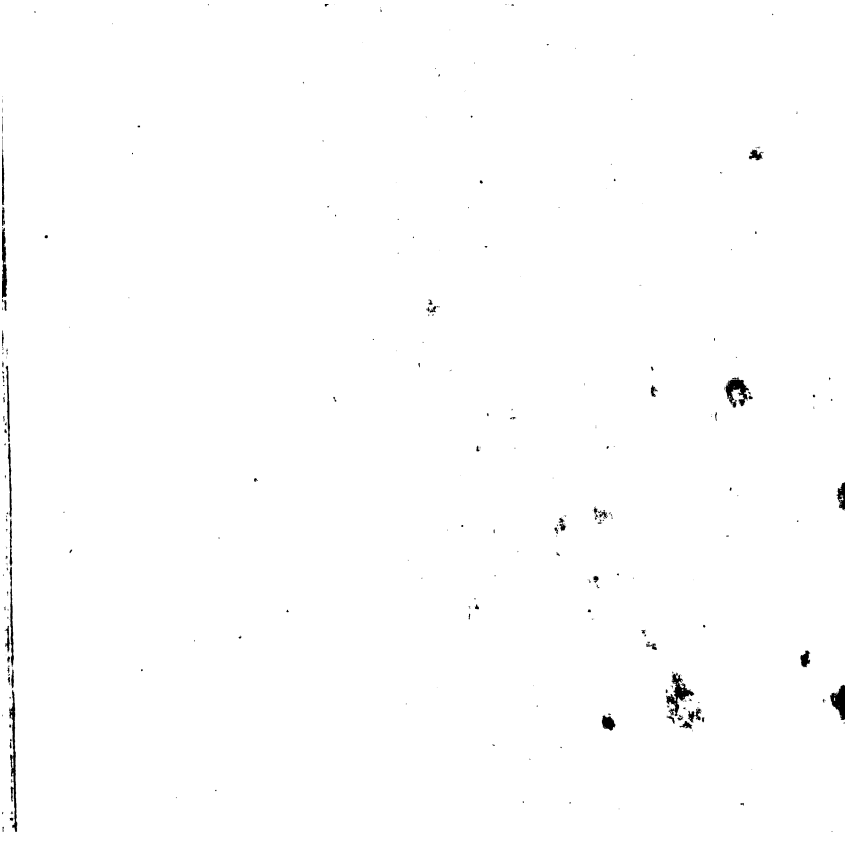
appening to hint a doubt, Jupiter turned hastily round threatened him with his thunder.—" Ah! ah!" says ountryman, " now, Jupiter, I know that you are wrong; u are always wrong when you appeal to your thunder." his is the case with me—I can reason with the people of land, but I cannot fight against the thunder of authority. emlemen, this is my defence for free opinions. With rd to myself, I am, and always have been, obedient affectionate to *the law*;—to that rule of action, as long exist, I shall ever give my voice and my conduct; but all ever do as I have done to-day, maintain the dignity y high profession, and perform as I understand them, all nportant duties.

Mr. Attorney General arose immediately to reply to Mr. tine, when Mr. Campbell (the foreman of the jury) said, ly Lord, I am authorized by the Jury, to inform the Atey General, that a reply is not necessary for them, unless Attorney General wishes to make it, or your Lordship.— Attorney General sat down, and the Jury gave in their lict—GUILTY.]



*TO the trial of Thomas Paine, we subjoin Lord Erskine's Speech on the prosecution of the printer and publisher of the Age of Reason, written by the same Author. We print it in this place, though much out of the chronological order; as it appears to have been delivered in the year* 1797—*for two reasons—first, because, in preserving arguments illustrating the principles of British liberty, we are desirous not to be considered as in any manner sanctioning invectives against our admirable constitution;—secondly, because we owe it to Lord Erskine himself, whose Speech upon the following prosecution may be considered as containing his own opinions and principles; it appearing to have been spoken more in his own personal character, than as an advocate; and the result seems rather to be against the full application of the arguments maintained by his Lordship, in defending the publication of the Rights of Man. Because, if it be law, that though a man may reason upon controversial points of divinity, however directly his reasonings may contravene the Scriptures as they are received and interpreted by our ecclesiastical establishment; yet that he may not, without being guilty of a misdemeanor, revile, in gross and indecent terms, the authority and doctrines of the Gospel;—it seems to follow, that Thomas Paine, though he might legally have impugned by argument the principles of the British Government,—yet could not, without being guilty of a libel, defame and ridicule the very foundation of it, in the gross and indecent terms, which characterize the Second Part of the Rights of Man, for which Mr. Paine was indicted. We conceive, therefore, that we have the authority of Lord Erskine himself, to deny the application of his own unquestionable principles to the support of his argument, in the case of the Rights of Man; which we can only consider as the argument of an advocate, bound to give the best assistance to a client.*

*It would be disgusting and indecent, to bring before the reader the matter contained in the Age of Reason, even as it appears in the terms of the Indictment;—and the more so, as it is unnecessary to the understanding the case. It is sufficient to say, that it was by no means an argumentative consideration of the authority of the Old and New Testament;—but an attack upon their authenticity, in language the most shocking and opprobrious. Lord Erskine laid the case before the Jury, as follows.*



# SPEECH

OF THE

# HON. T. ERSKINE,

ON THE PROSECUTION OF THE

## *PUBLISHER OF THE AGE OF REASON.*

GENTLEMEN OF THE JURY,

THE charge of blasphemy, which is put upon the record gainst the publisher of this publication is not an accusation the servants of the Crown, but comes before you sanctioned y the oaths of a Grand Jury of the country. It stood for ial upon a former day; but it happening, as it frequently oes, without any imputation upon the gentlemen named in ie pannel, that a sufficient number did not appear to consti- ite a full Special Jury, I thought it my duty to withdraw ie cause from trial, till I could have the opportunity of ldressing myself to *you*, who were originally appointed to y it.

I pursued this course, from no jealousy of the common aries appointed by the laws for the ordinary service of the ourt, since my whole life has been one continued experience their virtues; but because I thought it of great impor- nce, that those who were to decide upon a cause so very omentous to the public, should have the highest possible ualifications for the decision; that they should not only be ot incapable from their educations of forming an enlightened dgment, but that their situations should be such as to bring em within the full view of their country, to which, in cha- acter and in estimation, they were in their own turns to be esponsible.

Not having the honour, Gentlemen, to be sworn for the King as one of his Counsel, it has fallen much oftener to my lot to defend indictments for libels, than to assist in the prosecution of them; but I feel no embarrassment from that recollection.—I shall not be found to day to express a sentiment, or to utter an expression, inconsistent with those invaluable principles for which I have uniformly contended in the defence of others. Nothing that I have ever said, either professionally or personally, for the liberty of the press, do I mean to-day to contradict or counteract. On the contrary, I desire to preface the very short discourse I have to make to you, with reminding you, that it is your most solemn duty to take care that it suffers no injury in your hands. A free and unlicensed press, *in the just and legal sense of the expression*, has led to all the blessings both of religion and government, which Great Britain or any part of the world at this moment enjoys, and it is calculated to advance mankind to still higher degrees of civilization and happiness.—But this freedom, like every other, must be limited to be enjoyed, and, like every human advantage, may be defeated by its abuse.

Gentlemen, the Defendant stands indicted for having published this book, which I have only read from the obligations of professional duty, and which I rose from the reading of with astonishment and disgust. Standing here with all the privileges belonging to the highest Counsel for the Crown, I shall be entitled to reply to any defence that shall be made for the publication. I shall wait with patience till I hear it.

Indeed, if I were to anticipate the defence which I hear and read of, it would be defaming by anticipation the learned Counsel who is to make it;—since if I am to collect it from a formal notice given to the Prosecutors in the course of the proceedings, I have to expect, that, instead of a defence conducted according to the rules and principles of English law, the foundation of all our laws, and the sanctions of all justice, is to be struck at and insulted. What gives the Court its jurisdiction?—What but the oath which his Lordship, as well as yourselves, have sworn upon the Gospel to fulfil? Yes, in the King's Court, where His Majesty is himself alive [illegible] to administer the justice of England—in the King's Court, who receives his high authority under a solemn oath to maintain the Christian religion, as it is promulgated by God in the Holy Scriptures, I am nevertheless called upon as Counsel for the prosecution to "*produce a certain book described in the*

*Indictment to be* THE HOLY BIBLE." No man deserves to be upon the Rolls, who has dared, as an Attorney, to put his name to such a notice. It is an insult to the authority and dignity of the Court of which he is an officer; since it calls in question the very foundations of its jurisdiction. If this is to be the spirit and temper of the defence;—if, as I collect from that array of books which are spread upon the benches behind me, this publication is to be vindicated by an attack of all the truths which the Christian religion promulgates to mankind, let it be remembered that such an argument was neither suggested nor justified by any thing said by me on the part of the prosecution.

*In this stage of the proceedings*, I shall call for reference to the sacred Scriptures, not from their merits, unbounded as they are, but from their authority in a Christian country—not from the obligations of conscience, but from the rules of law. For my own part, Gentlemen, I have been ever deeply devoted to the truths of Christianity; and my firm belief in the Holy Gospel is by no means owing to the prejudices of education (though I was religiously educated by the best of parents,) but has arisen from the fullest and most continued reflections of my riper years and understanding. It forms at this moment the great consolation of a life, which, as a shadow, passes away; and without it, I should consider my long course of health and prosperity (too long perhaps, and too uninterrupted to be good for any man) only as the dust which the wind scatters, and rather as a snare than as a blessing.

Much, however, as I wish to support the authority of Scripture from a reasoned consideration of it, I shall repress that subject for the present. But if the defence, as I have suspected, shall bring them at all into argument or question, I must then fulfil a duty which I owe not only to the Court, as Counsel for the prosecution, but to the public, and to the world,—to state what I feel and know concerning the evidences of that religion, which is denied without being examined, and reviled without being understood.

I am well aware that by the communications of a FREE PRESS, all the errors of mankind, from age to age, have been [illegible] and dispelled; and I recollect that the world, under the manners of reformed Christianity, has struggled through persecution to the noble eminence on which it stands at this moment,—shedding the blessings of humanity and science upon the nations of the earth.

It may be asked then, by what means the Reformation

would have been effected, if the books of the Reformers had been suppressed, and the errors of now exploded superstitions had been supported by the terrors of an unreformed state? or how, upon such principles, any reformation, civil or religious, can in future be effected? The solution is easy:—Let us examine what are the genuine principles of the liberty of the press, as they regard writings upon general subjects, unconnected with the personal reputations of private men, which are wholly foreign to the present inquiry. They are full of simplicity, and are brought as near perfection, by the law of England, as, perhaps, is attainable by any of the frail institutions of mankind.

Although every community must establish supreme authorities, founded upon fixed principles, and must give high powers to magistrates to administer laws for the preservation of government, and for the security of those who are to be protected by it:—yet, as infallibility and perfection belong neither to human individuals nor to human establishments, it ought to be the policy of all free nations, as it is most peculiarly the principle of our own, to permit the most unbounded freedom of discussion, even to the detection of errors in the constitution of the very government itself; so as that common decorum is observed, which every state must exact from its subjects, and which imposes no restraint upon any intellectual composition, fairly, honestly, and decently addressed to the consciences and understandings of men. Upon this principle, I have an unquestionable right—a right which the best subjects have exercised—to examine the principles and structure of the constitution, and by fair, manly reasoning, to question the practice of its administrators. I have a right to consider and to point out errors in the one or in the other; and not merely to reason upon their existence, but to consider the means of their reformation.

By such free, well-intentioned, modest, and dignified communication of sentiments and opinions, all nations have been gradually improved, and milder laws and purer religions have been established. The same principles, which vindicate civil controversies, honestly directed, extend their protection to the sharpest contentions on the subject of religious faith. This rational and legal course of improvement was recognized and ratified by Lord Kenyon as the law of England, in a late trial at Guildhall, where he looked back with gratitude to the labours of the Reformers, as the fountains of our religious emancipation, and of the civil blessings that followed in their train. The English constitution, indeed, does not stop short

ıe toleration of religious *opinions*, but liberally extends it
·*actice*. It permits every man, EVEN PUBLICLY, to worship
according to his own conscience, though in marked dis-
from the national establishment,—so as he professes the
ral faith, which is the sanction of all our moral duties,
the only pledge of our submission, to the system which
titutes the state.

not this freedom of controversy, and freedom of wor-
, sufficient for all the purposes of human happiness and
ovement?—Can it be necessary for either, that the law
ıld hold out indemnity to those, who wholly abjure and re-
the government of their country, or the religion on which
sts for its foundation? I expect to hear, in answer to
t I am now saying, much that will offend me. My learn-
riend, from the difficulties of his situation, which I know,
ı experience, how to feel for very sincerely, may be
en to advance propositions which it may be my duty,
much freedom, to reply to;—and the law will sanction
freedom.—But will not the ends of justice be completely
rered by my exercise of that right, in terms that are de-
, and calculated to expose its defects?—Or will my ar-
ent suffer, or will public justice be impeded, because
her private honour and justice, nor public decorum,
ld endure my telling my very learned friend, because I
r from him in opinion, that he is a fool,—a liar,—and a
ndrel, in the face of the Court? This is just the dis-
ion between a book of free legal controversy, and the
: which I am arraigning before you. Every man has a
t to investigate, with decency, controversial points of the
stian religion;—but no man, consistently with a law
h only exists under its sanctions, has a right to deny its
existence, and to pour forth such shocking and insulting
ctives, as the lowest establishments in the gradations of
authority ought not to be subjected to, and which soon
ld be borne down by insolence and disobedience, if they
:.

he same principle pervades the whole system of the law,
merely in its abstract theory, but in its daily and most
auded practice.—The intercourse between the sexes,
h, properly regulated, not only continues, but humanizes
dorns our natures, is the foundation of all the thousand
nces, plays, and novels, which are in the hands of every
r. Some of them lead to the confirmation of every vir-
s principle;—others, though with the same profession,
ess the imagination in a manner to lead the passions into

dangerous excesses :—but though the law does not nicely discriminate the various shades which distinguish these works from one another, so as to suffer many to pass, through its liberal spirit, that upon principle ought to be suppressed, would it, or does it tolerate, or does any decent man contend that it ought to pass by unpunished, libels of the most shameless obscenity, manifestly pointed to debauch innocence, and to blast and poison the morals of the rising generation? This is only another illustration to demonstrate the obvious distinction between the work of an author, who fairly exercises the powers of his mind, in investigating the religion or government of any country, and him who attacks the rational existence of every religion or government, and brands with absurdity and folly the state which sanctions, and the obedient tools who cherish the delusion. But this publication appears to me to be as cruel and mischievous in its effects, as it is manifestly illegal in its principles; because it strikes at the best—sometimes, alas! the only refuge and consolation amidst the distresses and afflictions of the world. The poor and humble, whom it affects to pity, may be stabbed to the heart by it.—THEY have more occasion for firm hopes beyond the grave, than the rich and prosperous, who have other comforts to render life delightful. I can conceive a distressed but virtuous man, surrounded by his children, looking up to him for bread when he has none to give them;—sinking under the last day's labour, and unequal to the next,—yet, still supported by confidence in the hour when all tears shall be wiped from the eyes of affliction, bearing the burden laid upon him by a mysterious Providence which he adores, and anticipating with exultation the revealed promises of his Creator, when he shall be greater than the greatest, and happier than the happiest of mankind. What a change in such a mind might be wrought by such a merciless publication!—Gentlemen! whether these remarks are the overcharged declamation of an accusing Counsel, or the just reflections of a man anxious for the public happiness, which is best secured by the morals of a nation, will be soon settled by an appeal to the passages in the work, that are selected by the Indictment for your consideration and judgment. You are at liberty to connect them with every context and sequel, and to bestow upon them the mildest interpretation.

[*Here Mr. Erskine read and commented upon several of the selected passages, and then proceeded as follows:*]

Gentlemen, it would be useless and disgusting to enumerate the other passages within the scope of the Indictment.

How any man can rationally vindicate the publication of such a book, in a country where the Christian religion is the very foundation of the law of the land, I am totally at a loss to conceive, and have no ideas for the discussion of. How is a tribunal, whose whole jurisdiction is founded upon the solemn belief and practice of what is here denied as falsehood, and reprobated as impiety, to deal with such an anomalous defence?—Upon what principle is it even offered to the Court, whose authority is contemned and mocked at?—If the religion proposed to be called in question, is not previously adopted in belief and solemnly acted upon, what authority has the Court to pass any judgment at all of acquittal or condemnation?—Why am I now, or upon any other occasion, to submit to his Lordship's authority?—Why am I now, or at any time, to address twelve of my equals, as I am now addressing you, with reverence and submission?—Under what sanction are the witnesses to give their evidence, without which there can be no trial?—Under what obligations can I call upon you, the Jury representing your country, to administer justice?—Surely upon no other than that you are SWORN TO ADMINISTER IT UNDER THE OATHS YOU HAVE TAKEN. The whole judicial fabric, from the King's sovereign authority to the lowest office of magistracy, has no other foundation. The whole is built, both in form and substance, upon the same oath of every one of its ministers to do justice, as GOD SHALL HELP THEM HEREAFTER? WHAT GOD? and WHAT HEREAFTER? That God, undoubtedly, who has commanded Kings to rule, and Judges to decree justice;—who has said to witnesses, not only by the voice of nature, but in revealed commandments—THOU SHALT NOT BEAR FALSE TESTIMONY AGAINST THY NEIGHBOUR;—and who has enforced obedience to them by the revelation of the unutterable blessings which shall attend their observance, and the awful punishments which shall await upon their transgressions.

But it seems this is an AGE OF REASON, and the time and the person are at last arrived, that are to dissipate the errors which have overspread the past generations of ignorance. The believers in Christianity are many, but it belongs to the few that are wise to correct their credulity. Belief is an act of reason, and superior reason may, therefore dictate to the weak. In running the mind along the long list of sincere and devout Christians, I cannot help lamenting, that Newton had not lived to this day, to have had his shallowness filled up with this new flood of light.—But the subject is too awful for irony. I will speak plainly and directly, Newton

was a Christian!—Newton, whose mind burst forth from the fetters fastened by nature upon our finite conceptions—Newton, whose science was truth, and the foundation of whose knowledge of it was Philosophy—not those visionary and arrogant presumptions, which too often usurp its name, but philosophy resting upon the basis of mathematics, which like figures cannot lie—Newton, who carried the line and rule to the uttermost barriers of creation, and explored the principles by which all created matter exists, and is held together. But this extraordinary man, in the mighty reach of his mind, overlooked, perhaps, the errors, which a minuter investigation of the created things on this earth might have taught him. What shall then be said of the great Mr. Boyle, who looked into the organic structure of all matter, even to the inanimate substances which the foot treads upon?—Such a man may be supposed to have been equally qualified with Mr. Paine to look up through nature to nature's God. Yet the result of all *his* contemplations was the most confirmed and devout belief in all which the other holds in contempt, as despicable and drivelling superstition.—But this error might, perhaps, arise from a want of due attention to the foundations of human judgment, and the structure of that understanding which God has given us for the investigation of truth.—Let that question be answered by Mr. Locke, who, to the highest pitch of devotion and adoration, was a Christian—Mr. Locke, whose office was to detect the errors of thinking, by going up to the very fountains of thought, and to direct into the proper tract of reasoning, the devious mind of man, by showing him its whole process, from the first perceptions of sense to the last conclusions of ratiocination:—putting a rein upon false opinion, by practical rules for the conduct of human judgment.

But these men, it may be said, were only deep thinkers, and lived in their closets, unaccustomed to the traffic of the world, and to the laws which practically regulate mankind. Gentlemen! in the place where we now sit to administer the justice of this great country, the never-to-be-forgotten Sir Matthew Hale presided;—whose faith in Christianity is an exalted commentary upon its truth and reason, and whose life was a glorious example of its fruits;—whose justice, drawn from the pure fountain of the Christian dispensation, will be, in all ages, a subject of the highest reverence and admiration. But it is said by the author, that the Christian fable is but the tale of the more ancient superstitions of the world, and may be easily detected by a proper understanding

of the mythologies of the Heathens.—Did Milton understand those mythologies?—Was he less versed than Mr. Paine in the superstitions of the world? No,—they were the subject of his immortal song; and though shut out from all recurrence to them, he poured them forth from the stores of a memory rich with all that man ever knew, and laid them in their order as the illustration of real and exalted faith, the unquestionable source of that fervid genius, which has cast a kind of shade upon all the other works of man—

> He passed the bounds of flaming space,
> Where angels tremble while they gaze—
> He saw,—till blasted with excess of light,
> He clos'd his eyes in endless night.

But it was the light of the BODY only that was extinguished; "The CELESTIAL LIGHT shone inward, and enabled "him to justify the ways of God to man."—The result of his thinking was nevertheless, not quite the same as the author's before us. The mysterious incarnation of our blessed Saviour (which this work blasphemes in words so wholly unfit for the mouth of a Christian, or for the ear of a Court of Justice, that I dare not, and will not, give them utterance) Milton made the grand conclusion of his *Paradise Lost*, the rest from his finished labours, and the ultimate hope, expectation, and glory of the world.

> A Virgin is his Mother, but his Sire,
> The power of the Most High;—he shall ascend
> The throne hereditary, and bound his reign
> With earth's wide bounds, his glory with the heavens.

The immortal poet having thus put into the mouth of the angel the prophecy of man's redemption, follows it with that solemn and beautiful admonition, addressed in the Poem to our great first parent, but intended as an address to his posterity through all generations:

> This having learn'd thou hast attain'd the sum
> Of wisdom; hope no higher, though all the stars
> Thou knew'st by name, and all th' ethereal pow'rs,
> All secrets of the deep, all Nature's works,
> Or works of God in heav'n, air, earth or sea,
> And all the riches of this world enjoy'st,
> And all the rule, one empire; only add
> Deeds to thy knowledge answerable, add faith,
> Add virtue, patience, temperance, add love,

> By name to come call'd Charity, the soul
> Of all the rest: then wilt thou not be loth
> To leave this Paradise, but shalt possess
> A Paradise within thee, happier far.

Thus you find all that is great, or wise, or splendid, or illustrious, amongst created beings;—all the minds gifted beyond ordinary nature, if not inspired by its universal Author for the advancement and dignity of the world, though divided by distant ages, and by clashing opinions, yet joining as it were in one sublime chorus, to celebrate the truths of Christianity, and laying upon its holy altars the never-fading offerings of their immortal wisdom.

Against all this concurring testimony, we find suddenly, from the author of this book, that the Bible teaches nothing but "LIES, OBSCENITY, CRUELTY, and INJUSTICE." Had he ever read our Saviour's sermon on the Mount, in which the great principles of our faith and duty are summed up? —Let us all but read and practise it; and lies, obscenity, cruelty and injustice, and all human wickedness, will be banished from the world!

Gentlemen, there is but one consideration more, which I cannot possibly omit, because I confess it affects me very deeply. The author of this book has written largely on public liberty and government; and this last performance, which I am now prosecuting, has, on that account, been more widely circulated, and principally among those who attached themselves from principle to his former works. This circumstance renders a public attack *upon all revealed religion* from *such a writer* infinitely more dangerous. The religious and moral sense of the people of Great Britain is the great anchor, which alone can hold the vessel of the state amidst the storms which agitate the world; and if the mass of the people were debauched from the principles of religion,—the true basis of that humanity, charity, and benevolence, which have been so long the national characteristic; instead of mixing myself, as I sometimes have done, in political reformations,—I would retire to the uttermost corners of the earth, to avoid their agitation; and would bear, not only the imperfections and abuses complained of in our own wise establishment, but even the worst government that ever existed in the world, rather than go to the work of reformation with a multitude set free from all the charities of Christianity, who had no other sense of God's existence, than was to be collected from Mr. Paine's observation of nature, which the

mass of mankind have no leisure to contemplate;—which promises no future rewards, to animate the good in the glorious pursuit of human happiness, nor punishments to deter the wicked from destroying it even in its birth. The people of England are a religious people, and, with the blessing of God, so far as it is in my power, I will lend my aid to keep them so.

I have no objections to the most extended and free discussions upon doctrinal points of the Christian religion; and *though the law of England does not permit it*, I do not dread the reasonings of Deists against the existence of Christianity itself, because, as was said by its divine Author, if it be of God it will stand. An intellectual book, however erroneous, addressed to the intellectual world upon so profound and complicated a subject, can never work the mischief which this Indictment is calculated to repress. Such works will only incite the minds of men enlightened by study, to a deeper investigation of a subject well worthy of their deepest and continued contemplation. The powers of the mind are given for human improvement in the progress of human existence. The changes produced by such reciprocations of lights and intelligences are certain in their progressions, and make their way imperceptibly, by the final and irresistible power of truth. If Christianity be founded in falsehood, let us become Deists in this manner, and I am contented.—But this book has no such object, and no such capacity:—it presents no arguments to the wise and enlightened. On the contrary, it treats the faith and opinions of the wisest with the most shocking contempt, and stirs up men, without the advantages of learning, or sober thinking, to a total disbelief of every thing hitherto held sacred; and consequently to a rejection of all the laws and ordinances of the state, which stand only upon the assumption of their truth.

Gentlemen, I cannot conclude without expressing the deepest regret at all attacks upon the Christian religion by authors who profess to promote the civil liberties of the world. For under what other auspices than Christianity have the lost and subverted liberties of mankind in former ages been re-asserted?—By what zeal, but the warm zeal of devout Christians, have English liberties been redeemed and consecrated?—Under what other sanctions, even in our own days, have liberty and happiness been spreading to the uttermost corners of the earth?—What work of civilization, what commonwealth of greatness, has this bald religion of nature ever established?—We see, on the contrary, the nations that have

no other light than that of nature to direct them, sunk in barbarism, or slaves to arbitrary governments; whilst, under the Christian dispensation, the great career of the world has been slowly, but clearly advancing,—lighter at every step, from the encouraging prophecies of the Gospel, and leading, I trust in the end, to universal and eternal happiness. Each generation of mankind can see but a few revolving links of this mighty and mysterious chain; but by doing our several duties in our allotted stations, we are sure that we are fulfilling the purposes of our existence.—YOU, I trust, will fulfil YOURS this day.

*the* KING *against* JOHN STOCKDALE—*Tried in the t of King's Bench, before Lord* KENYON *and a al Jury at Westminster, on the ninth of December, A. 789, upon an Information filed against him by the* ORNEY GENERAL, *for a Libel on the* HOUSE OF COM-

## SUBJECT OF THE TRIAL, &c.

*rial of Mr. John Stockdale, of Piccadilly, is so immediately cted with the well-known Impeachment of Mr. Hastings, the r General of India; that very little preface is necessary for tration of Mr. Erskine's defence of him.*

*the Commons of Great Britain ordered that Impeachment, les were prepared by Mr. Edmund Burke, who had the lead in quiries which led to it, and, instead of being drawn up in the y method of legal accusation, were expanded into great length, e characterized by that fervid and affecting language, which ishes all the writings of that extraordinary person. The so prepared, instead of being confined to the records of the Commons, until they were carried up to the Lords for trial rinted and sold in every shop in the kingdom, without question uction by the Managers of the Impeachment or the House of s, and undoubtedly, from the style and manner of their com- made a very considerable impression against the accused.*

*el the effects of the Articles, thus (according to the reasoning Erskine) prematurely published, the Rev. Mr. Logan, one of ters of Leith in Scotland, a person eminent for learning, a Review of the Articles of Impeachment (which, as has been stated, were then in general circulation,) and carried them to kdale, an eminent and respectable bookseller in Piccadilly,— lished them in the usual course of his business. Mr. Logan's vas composed with great accuracy and judgment, but undoubt- strong severity of observation against the accusation of Mr. ; and having an immediate, and very extensive sale, was ed of by Mr. Fox, to the House of Commons, and upon the that great and eminent person, then one of the Managers of achment—the House unanimously voted an address to the aying His Majesty to direct his Attorney General to file an ion against Mr. Stockdale, as the publisher of a libel upon ons House of Parliament, which was filed accordingly.*

*ot necessary to lengthen this preface, by the passages from an's book, which were selected by the Attorney General in*

*forming the Information, and which gave the greatest offence to the House of Commons; neither is it necessary to print the Information itself, because the principal passages complained of and contained in it, were read by Lord Chief Baron Macdonald, then Attorney General, in his very fair and able address to the Jury, which we have printed, as well as his judicious reply and the summing up of Lord Chief Justice Kenyon; because this trial, above any other in print, contains the invaluable principles of a free press, and the important privilege of the Jury, since the passing of the memorable Libel Act. The application of these principles to an acquittal or conviction in this particular instance, is not within our province: but we may state as a fact, that the verdict gave very general satisfaction, and what is a proud consideration for the subjects of this country, under our invaluable constitution, neither the highest Court in the kingdom, nor the House of Commons, who were the accusers, had a right to question its authority.*

*The evidence consisted of nothing but the common proof of publication, and is therefore omitted as unnecessary.*

THE ATTORNEY GENERAL OPENED THE CASE AS FOLLOWS:

GENTLEMEN OF THE JURY,

THIS Information, which it has been my duty to file against the Defendant, John Stockdale, comes before you in consequence of an address from the House of Commons. This you may well suppose I do not mention as in any degree to influence the judgment which you are by and by to give upon your oath; I state it as a measure which they have taken, thinking it in their wisdom, as every body must think it—to be the fittest to bring before a Jury of the country an offender against themselves, avoiding thereby what sometimes indeed is unavoidable, but which they wish to avoid, whenever it can be done with propriety—the acting both as judges and accusers; which they must necessarily have done, had they resorted to their own powers, which are great and extensive, for the purpose of vindicating themselves against insult and contempt, but which, in the present instance, they have wisely forborne to exercise, thinking it better to leave the Defendant to be dealt with by a fair and impartial Jury.

The offence which I impute to him is that of calumniating the House of Commons: not in its ordinary legislative character, but when acting in its accusatorial capacity, conceiving it to be their duty, on adequate occasions, to investigate the conduct of persons in high stations, and to leave that conduct to be judged of by the proper constitutional tribunal, the Peers in Parliament assembled.

After due investigation, as it is well known to the public, the Commons of Great Britain thought it their duty to submit the conduct of a servant of this country, who had governed one of its most opulent dependencies for many years, to an inquiry before that tribunal. One would have thought that every good subject of this country would have forborn imputing to the House of Commons motives utterly unworthy of them, and of those whom they represent: instead of this, to so great a degree now has the licentiousness of the press arisen, that motives, the most unbecoming that can actuate any individual who may be concerned in the prosecu-

tion of public justice, are imputed to the representatives of the people. No credit is given to them for meaning to do justice to their country, but on the contrary, private, personal, and malicious motives have been imputed to the Commons of Great Britain.

When such an imputation is made upon the very first tribunal that this country knows; namely, the great inquest of the nation, the Commons in Parliament assembled, carrying a subject, who, as they thought, had offended, to the bar of the House of Lords—I am sure you will think this an attack so dangerous to every tribunal, so dangerous to the whole administration of justice, that if it be well proved you cannot fail to give it your stigma, by a verdict against the Defendant.

Gentlemen, the particular passages which I shall put my finger upon in this libel, it will now be my duty to state. You know very well that it is your duty to consider of the meaning that I have imputed to them by the Information;—if you agree with me in that meaning, you convict; if you disagree with me, of course you acquit.

The rule of your judgment, I apprehend (with submission to his Lordship,) will be the ordinary acceptation of the words, and the plain and obvious sense of the several passages;—if there be doubt, or if there be difficulty;—if there be screwing or ingenuity, or unworthy straining, on the part of a public prosecutor, you certainly will pay no attention to that; but on the contrary, if he who runs may read;—if the meanest capacity must understand the words, in their plain and obvious sense, to be the same as imputed in this Information, in such a case as that, ingenuity on the other side must be laid aside by you, and you will not be over-anxious to give a meaning to words, other than the ordinary and plain one.

In my situation, it does not become me to raise in you more indignation than the words themselves and the plain and simple reading of the libel will do: far be it from me, if it were in my power to do so, to provoke any undue passions or animosity in you, against conduct even such as this. The solemnity of the situation in which I am placed on this occasion, obliges me to address the intellect both of the Court and Jury, and neither their passions nor their prejudices; for that reason I shall content myself with the few observations I have made, and betake myself merely to the words of the libel; and leaving that with you, I am most confident that if you follow the rule of interpretation which you always do upon

such occasions, it cannot possibly happen that you should differ from me, in the construction which I have put upon them.

Gentlemen, this, I should however mention to you, is a libel of a more dangerous nature than the ribaldry that we daily see crowding every one of the prints which appear every morning upon our tables; because it is contained in a work which discovers the author of it to be by no means ignorant of composition, but certainly to be of good understanding, and eminently acquainted with letters. Therefore when calumny of this sort comes so recommended, and addressing itself to the understandings of the most enlightened part of mankind—I mean those who have had the best education—it may sink deep into the minds of those who compose the thinking and the judging part of the community; and, by misleading them, perhaps may be of more real danger than the momentary misleading, or the momentary inflammation of common minds, by the ordinary publications of the day.

This book is entitled, "A Review of the principal Charges "against Warren Hastings, Esquire, late Governor Gene- "ral of Bengal."

One passage in it is this: "The House of Commons has "now given its final decision with regard to the merits and "demerits of Mr. Hastings. The grand inquest of England "have delivered their charges, and preferred their impeach- "ment; their allegations are referred to proof; and from the "appeal to the collective wisdom and justice of the nation in "the Supreme Tribunal of the Kingdom, the question comes "to be determined, whether Mr. Hastings *be guilty or not* "*guilty?*"

Another is this: "What credit can we give to multiplied "and accumulated charges, when we find that they originate "from misrepresentation and falsehood?"

Another is: "An impeachment of *error in judgment* "with regard to the *quantum* of a fine, and for an intention "that never was executed, characterizes a tribunal of inqui- "sition, rather than a Court of Parliament."

In another part it is said: "The other charges are so in- "significant in themselves, or founded on such gross misre- "presentations, that they would not affect an obscure indi- "vidual, much less a public character."

And again: "If success, in any degree, attends the de- "signs of the accusers of Mr. Hastings, the voice of Britain "henceforth to her sons, is, Go and serve your country; "but if you transgress the line of official orders, though

" compelled by necessity, you do so at the risk of your for-
" tune, your honour, and your life; if you act with *proper*
" *prudence* against the interests of the empire, and bring
" calamity and disgrace upon your country, you have only
" to court opposition and coalesce with your enemies, and
" you will find a party zealous and devoted to support you;
" you may obtain a vote of thanks from the House of Com-
" mons for your *services*, and you may *read your history in*
" *the eyes of the mob*, by the light of bonfires and illumina-
" tions. But if, after exerting all your efforts in the cause
" of your country, you return, covered with laurels, and
" crowned with success; if you preserve a loyal attachment
" to your Sovereign, you may expect the thunders of par-
" liamentary vengeance; you will certainly be impeached,
" and probably be undone."

Another passage is this; " The office of calm deliberate
" justice is to address grievances as well as to punish offences.
" It has been affirmed, that the natives of India have been deep-
" ly injured; but has any motion been made to make them
" compensation for the injuries they have sustained?—Have
" the accusers of Mr. Hastings ever proposed to bring back
" the Rohillas to the country from which they were expelled?
" To restore Cheit Sing to the Zemindary of Benares, or to
" return the Nabob of Oude the present which the Governor
" of Bengal received from him for the benefit of the compa-
" ny? Till such measures are adopted, and in the train of
" negotiation, the world has every reason to conclude, that
" the impeachment of Mr. Hastings is carried on."—Now Gentlemen, I leave you to judge what sort of motives are imputed to the House of Commons here—" From motives
" of personal animosity, not from regard to public justice."

The general meaning, without specifying it in technical language, which I have thought it my duty to impute to these words, is shortly this:—That the House of Commons, without consideration, without reading, without hearing, have not been ashamed to accuse a man of distinguished situation; and to pervert their accusatorial character from the purposes of deliberate, thoughtful, considerate justice, to immediate, hasty, passionate, vindictive, personal animosity. The work represents, that the better a man conducts himself—that the more deserving he has rendered himself of his country's favour from his past conduct, the more he exposes himself to the vindictive proceedings of Parliament; and that such a man will be impeached and ruined.

In another passage, PERSONAL ANIMOSITY *(the very words are used)* is imputed to the Commons of Great Britain as the motive of their conduct—these are too plain for you, Gentlemen, to differ with me in the interpretation.

I do not choose to waste *your* time, and that of the Court, in so plain a case, with much observation; but hackneyed as it may be, it is my duty, upon every one of these occasions, to remind you, that the liberty of the press consists in its good regulation,—if it be meant that it should be preserved with benefit to the public, it must be from time to time lopped of its unjust excesses, by reasonable and proper verdicts of Juries, in fit and clear cases.

*The publication having been proved, Mr. Erskine addressed the Jury as follows: first saying,*

I admit that the witness has proved that he bought this book at the shop of Mr. Stockdale—Mr. Stockdale himself being in the shop; from a young man who acted as his servant.

GENTLEMEN OF THE JURY,

MR. STOCKDALE, who is brought as a criminal before you for the publication of this book, has, by employing ME as his advocate, reposed what must appear to many an extraordinary degree of confidence; since, although he well knows that I am personally connected in friendship with most of those, whose conduct and opinions are principally arraigned by its author, he nevertheless commits to MY hands his defence and justification.

From a trust apparently so delicate and singular, vanity is but too apt to whisper an application to some fancied merit of one's own; but it is proper, for the honour of the English Bar, that the world should know that such things happen to all of us daily, and of course; and that the Defendant, without any knowledge of me, or any confidence that was personal, was only not afraid to follow up an accidental retainer, from the knowledge he has of the general character of the profession. Happy indeed is it for this country, that whatever interested divisions may characterize *other places*, of which I may have occasion to speak today, however the councils of the highest departments of the state may be occasionally distracted by personal considerations, they never enter these walls to disturb the administration of justice: whatever may be *our* public principles, or the private habits of *our* lives, they never cast even a shade across the path of our professional duties. If this be the characteristic even of the bar of an English Court of Justice, what sacred impartiality may not every man expect from its Jurors and its Bench?

As, from the indulgence which the Court was yesterday pleased to give to my indisposition, this Information was not proceeded on when you were attending to try it, it is probable you were not altogether inattentive to what passed at the trial of the other indictment, prosecuted also by the House of Commons; and therefore, without a restatement of the same principles, and a similar quotation of authorities to support them, I need only remind you of the law applicable to this subject, as it was then admitted by the Attor-

ney General, in concession to my propositions, and confirmed by the higher authority of the Court, viz.

First, that every information or indictment must contain such a description of the crime, that the Defendant may know what crime it is which he is called upon to answer.

Secondly, that the Jury may appear to be warranted in their conclusion of Guilty or Not Guilty.

And lastly, that the Court may see such a precise and definite transgression upon the record, as to be able to apply the punishment which judicial discretion may dictate, or which positive law may inflict.

It was admitted also to follow as a mere corollary from these propositions, that where an information charges a writing to be composed or published OF AND CONCERNING THE COMMONS OF GREAT BRITAIN, with an intent to bring that body into scandal and disgrace with the public, the author cannot be brought within the scope of such a charge, unless the Jury, on examination and comparison of the *whole matter* written or published, shall be satisfied that the particular passages charged as criminal, when explained by the context, and considered as part of *one entire work*, were meant and intended by the author to vilify the House of Commons *as a body*, and were written *of and concerning them* IN PARLIAMENT ASSEMBLED.

These principles being settled, we are now to see what the present Information is.

It charges, that the Defendant, "unlawfully, wickedly, "and maliciously devising, contriving, and intending to as- "perse, scandalize, and vilify the Commons of Great Bri- "tain in Parliament assembled; and most wickedly and au- "daciously to represent their proceedings as corrupt and "unjust, and to make it believed and thought, as if the Com- "mons of Great Britain in Parliament assembled, were a "most wicked, tyrannical, base, and corrupt set of persons, "and to bring them into disgrace with the public"—the Defendant published—*What?*—*Not* those latter ends of sentences which the Attorney General has read from his brief, as if they had followed one another in order in this book;—*not* those scraps and tails of passages which are patched together upon the record, and pronounced in one breath, as if they existed without intermediate matter in the same page, and without context any where.—*No*—This is not the accusation, even mutilated as it is: for the Information charges, *that, with intention to vilify the House of Commons*, the

Defendant published the whole book, describing it on the record by its title: "A Review of the principal Charges "against Warren Hastings, Esq. late Governor General of "Bengal;" *in which, amongst other things, the matter particularly selected is to be found.* Your inquiry therefore is not confined to, whether the Defendant published *those selected parts of it;* and whether, looking at them as they are distorted by the Information, they carry in fair construction the sense and meaning which the innuendos put upon them; but whether the author of the *entire work*—I say THE AUTHOR, since, if HE could defend himself, THE PUBLISHER unquestionably can,—whether THE AUTHOR wrote the volume which I hold in my hand, as a free, manly, *bona fide* disquisition of criminal charges against his fellow-citizen, or whether the long eloquent discussion of them, which fills so many pages, was a mere cloak and cover for the introduction of the supposed scandal imputed *to the selected passages;* the mind of the writer all along being intent on traducing the House of Commons, and not on *fairly* answering their charges against Mr. Hastings?

This, Gentlemen, is the principal matter for your consideration; and therefore, if after you shall have taken the book itself into the chamber which will be provided for you, and shall have read the whole of it with impartial attention;—if, after the performance of this duty, you can return here, and with clear consciences pronounce upon your oaths that the impression made upon you by these pages is, that the author wrote them with the wicked, seditious, and corrupt intentions charged by the Information;—you have then my full permission to find the Defendant guilty: but if, on the other hand, the general tenour of the composition shall impress you with respect for the author, and point him out to you as a man mistaken perhaps himself, but not seeking to deceive others:—if every line of the work shall present to you an intelligent animated mind, glowing with a Christian compassion towards a fellow man, whom he believed to be innocent, and with a patriot zeal for the liberty of his country, which he considered as wounded through the sides of an oppressed fellow-citizen;—if *this* shall be the impression on your consciences and understandings, when you are called upon to deliver your verdict; then hear from me, that you not only work private injustice, but break up the press of England, and surrender her rights and liberties for ever, if you convict the Defendant.

Gentlemen, to enable you to form a true judgment of the

meaning of this book, and of the intention of its author, and to expose the miserable juggle that is played off in the Information, by the combination of sentences, which in the work itself have no bearing upon one another—I will first give you the publication as it is charged upon the record and presented by the Attorney General in opening the case for the Crown: and I will then, by reading the interjacent matter, which is studiously kept out of view, convince you of its true interpretation.

The Information, beginning with the first page of the book, charges as a libel upon the House of Commons, the following sentence: "The House of Commons has now given its "final decision with regard to the merits and demerits of "Mr. Hastings. The grand inquest of England have de-"livered their Charges, and preferred their Impeachment; "their allegations are referred to proof; and from the appeal "to the collective wisdom and justice of the nation in the "Supreme Tribunal of the kingdom, the question comes to "be determined, whether Mr. Hastings *be guilty or not* "*guilty?*"

It is but fair however to admit, that this first sentence, which the most ingenious malice cannot torture into a criminal construction, is charged by the Information rather as introductory to what is made to follow it, than as libellous in itself; for the Attorney General, from this introductory passage in the first page, goes on at a leap to page *thirteenth*, and reads, almost without a stop, as if it immediately followed the other—this sentence: "What credit can "we give to multiplied and accumulated charges, when "we find that they originate from misrepresentation and "falsehood?"

From these two passages thus standing together, *without the intervenient matter which occupies thirteen pages*, one would imagine, that instead of investigating the probability or improbability of the guilt imputed to Mr. Hastings;—instead of carefully examining the Charges of the Commons, and the defence of them which had been delivered before them, or which was preparing for the Lords; the author had immediately, and in a moment after stating the mere fact of the Impeachment, decided that the act of the Commons originated from misrepresentation and falsehood.

Gentlemen, in the same manner a veil is cast over all that is written *in the next seven pages:* for knowing that the context would help to the true construction, not only of the passages charged before, but of those in the sequel of this Infor-

mation; the Attorney General, aware that it would convince every man who read it that there was no intention in the author to calumniate the House of Commons, passes over, by another leap, *to page twenty;* and in the same manner, without drawing his breath, and as if it directly followed the two former sentences *in the first and thirteenth pages*, reads from page twentieth—" An impeachment of error in judg-
" ment with regard to the quantum of a fine, and for an in-
" tention that never was executed, and never known to the
" offending party, characterizes a tribunal of inquisition rather
" than a Court of Parliament."

From this passage, by another vault, he leaps over *one and thirty pages more, to page fifty-one;* where he reads the following sentence, which he mainly relies on, and upon which I shall by and by trouble you with some observations:
" Thirteen of them passed in the House of Commons, not
" only without investigation, but without being read; and
" the votes were given without inquiry, argument, or
" conviction. A majority had determined to impeach; op-
" posite parties met each other, and '*jostled in the dark*' to
" perplex the political drama, and bring the hero to a tragic
" catastrophe."

From thence, deriving new vigour from every exertion, he makes his last grand stride *over forty-four pages more*, almost to the end of the book, charging a sentence *in the ninety-fifth page.*

So that out of a volume of *one hundred and ten pages*, the Defendant is only charged with a few scattered fragments of sentences, picked out of *three or four.* Out of a work, consisting of about *two thousand five hundred and thirty lines*, of manly, spirited eloquence, only *forty or fifty lines* are culled from different parts of it, and artfully put together, so as to rear up a libel, out of a false context, by a supposed connection of sentences with one another, which are not only entirely independent, but which, when compared with their antecedents, bear a totally different construction. —In this manner the greatest works upon government, the most excellent books of science, the sacred Scriptures themselves, might be distorted into libels; by forsaking the general context, and hanging a meaning upon selected parts;—thus, as in the text put by Algernon Sidney, " The fool
" has said in his heart, There is no God;" the Attorney General, on the principle of the present proceeding against this pamphlet, might indict the publisher of the Bible for blasphemously denying the existence of Heaven, in printing

"*There is no God.*" For these words alone, without the context, would be selected by the Information, and the Bible, like this book, would be *underscored* to meet it. Nor could the Defendant, in such a case, have any possible defence, unless the Jury were permitted to see, BY THE BOOK ITSELF, that the verse, instead of denying the existence of the Divinity, only imputed that imagination to a fool.

Gentlemen, having now gone through the Attorney General's reading, the book shall presently come forward, and speak for itself.—But before I can venture to lay it before you, it is proper to call your attention to how matters stood at the time of its publication: without which the author's meaning and intention cannot possibly be understood.

The Commons of Great-Britain, in Parliament assembled, had accused Mr. Hastings, as Governor General of Bengal, of high crimes and misdemeanors; and their jurisdiction, for that high purpose of national justice, was unquestionably competent. But it is proper you should know the nature of this inquisitorial capacity. The Commons in voting an impeachment, may be compared to a Grand Jury, finding a bill of indictment for the Crown: neither the one nor the other can be supposed to proceed, but upon the matter which is brought before them; neither of them can find guilt without accusation, nor the truth of accusation without evidence. When therefore we speak of the *accuser*, or *accusers*, of a person indicted for any crime, although the Grand Jury are the accusers *in form*, by giving effect to the accusation; yet in common parlance we do not consider *them* as the responsible authors of the prosecution. If I were to write of a most wicked indictment, found against an innocent man, which was preparing for trial, nobody who read it would conceive I meant to stigmatize the Grand Jury that found the bill; but it would be inquired immediately, who was the PROSECUTOR, and who were the WITNESSES on the back of it? In the same manner I mean to contend, that if this book is read with only common attention, the whole scope of it will be discovered to be this: That, in the opinion of the author, Mr. Hastings had been accused of mal-administration in India, from the heat and spleen of political divisions in Parliament, and not from any zeal for national honour or justice: that the Impeachment did not originate from Government, but from a faction banded against it, which, by misrepresentation and violence, had fastened it on an unwilling House of Commons: that prepossessed with this senti-

ment (which, however unfounded, makes no part of the present business, since the publisher is not called before you for defaming individual members of the Commons, but for a contempt of the Commons as a body,) the author pursues the Charges article by article;—enters into a warm and animated vindication of Mr. Hastings, by regular answers to each of them; and that, as far as the mind and soul of a man can be visible, I might almost say, embodied in his writings, his intention throughout the whole volume appears to have been to charge with injustice the *private accusers* of Mr. Hastings, and not the House of Commons as a body: which undoubtedly rather reluctantly gave way to, than heartily adopted the impeachment. This will be found to be the palpable scope of the book; and no man who can read English, and who, at the same time, will have the candour and common sense to take up his impressions from what is written in it, instead of bringing his own along with him to the reading of it, can possibly understand it otherwise.

But it may be said, that admitting this to be the scope and design of the author, what right had he to canvass the merits of an accusation upon the records of the Commons; more especially while it was in the course of legal procedure? This, I confess, might have been a serious question; but the Commons, *as Prosecutors of this Information*, seem to have waived, or forfeited their right to ask it. Before they sent the Attorney General into this place, to punish the publication of *Answers* to their Charges, they should have recollected that their own want of circumspection in the maintenance of their privileges, and in the protection of persons accused before them, had given to the public *the Charges themselves*, which should have been confined to *their own Journals*.—The course and Practice of Parliament might warrant the printing of them for the use of their own members; but there the publication should have stopped, and all farther progress been resisted by authority. If they were resolved to consider *Answers to their Charges* as a contempt of their privileges, and to punish the publication of them by such severe prosecutions, it would have well become them to have begun first with those printers, who, by publishing *the Charges themselves* throughout the whole kingdom, or rather throughout the whole civilized world, were anticipating the passions and judgments of the public against a subject of England upon his trial, so as to make the publication of *Answers* to them not merely a privilege, but a debt and duty to

humanity and justice. The Commons of Great Britain claimed and exercised the privileges of questioning the innocence of Mr. Hastings by their impeachment; but as, however questioned, it was still to be presumed and protected, until guilt was established by a judgment, he whom they had accused had an equal claim upon their justice, to guard him from prejudice and misrepresentation until the hour of trial.

Had the Commons, therefore, by the exercise of their high, necessary, and legal privileges, kept the public aloof from all canvass of their proceedings, by an early punishment of printers, who, without reserve or secrecy, had sent out *the Charges* into the world from a thousand presses in every form of publication, they would have then stood upon ground today, from whence no argument of policy or justice could have removed them; because nothing can be more incompatible with either, than appeals to the many upon subjects of judicature, which by common consent a few are appointed to determine, and which must be determined by facts and principles, which the multitude have neither leisure nor knowledge to investigate. But then let it be remembered, that it is for those who have the authority to accuse and punish, to set the example of, and to enforce this reserve, which is so necessary for the ends of justice. Courts of law therefore, in England never endure the publication of *their* records; and a prosecutor of an indictment would be attached for such a publication; and, upon the same principle, a defendant would be punished for anticipating the justice of his country, by the publication of his defence, the public being no party to it, until the tribunal appointed for its determination be open for its decision.

Gentlemen, you have a right to take judicial notice of these matters, without the proof of them by witnesses; for Jurors may not only, without evidence, found their verdicts on facts that are notorious, but upon what they know privately themselves, after revealing it upon oath to one another; and therefore you are always to remember, that this book was written when the *Charges* against Mr. Hastings, *to which it is an answer*, were, *to the knowledge of the Commons*, (for we cannot presume our watchmen to have been asleep,) publicly hawked about in every pamphlet, magazine, and newspaper in the kingdom.—You well know with what a curious appetite these Charges were devoured by the whole public, interesting as they were, not only from their importance, but from the merit of their composition; certainly not so intended by the honourable and excellent composer to oppress the

accused, but because the commonest subjects swell into eloquence under the touch of his sublime genius. Thus by the remissness of the Commons, *who are now the Prosecutors of this Information*, a subject of England, who was not even charged with contumacious resistance to authority, much less a proclaimed outlaw, and therefore fully entitled to every protection which the customs and statutes of the kingdom hold out for the protection of British liberty, saw himself pierced with the arrows of thousands and ten thousands of libels.

Gentlemen, before I venture to lay the book before you, it must be yet farther remembered (for the fact is equally notorious,) that under these inauspicious circumstances, the trial of Mr. Hastings at the bar of the Lords had actually commenced long before its publication.

There the most august and striking spectacle was daily exhibited, which the world ever witnessed. A vast stage of justice was erected, awful from its high authority, splendid from its illustrious dignity, venerable from the learning and wisdom of its Judges, captivating and affecting from the mighty concourse of all ranks and conditions which daily flocked into it, as into a theatre of pleasure; there, when the whole public mind was at once awed and softened to the impression of every human affection, there appeared, day after day, one after another, men of the most powerful and exalted talents, eclipsing by their accusing eloquence, the most boasted harangues of antiquity;—rousing the pride of national resentment by the boldest invectives against broken faith and violated treaties, and shaking the bosom with alternate pity and horror by the most glowing pictures of insulted nature and humanity;—ever animated and energetic, from the love of fame, which is the inherent passion of genius;—firm and indefatigable, from a strong prepossession of the justice of their cause.

Gentlemen, when the author sat down to write the book now before you, all this terrible, unceasing, exhaustless artillery of warm zeal, matchless vigour of understanding, consuming and devouring eloquence, united with the highest dignity, was daily, and without prospect of conclusion, pouring forth upon one private unprotected man, who was bound to hear it, in the face of the whole people of England, with reverential submission and silence.—I do not complain of this as I did of the publication of the Charges, because it is what the law allowed and sanctioned in the course of a public trial: but when it is remembered that we are not angels, but

allible men, and that even the noble Judges of that ibunal are clothed beneath their ermines with the com-firmities of man's nature, it will bring us all to a pro-ıper for considering the book itself, which will in a ›ments be laid before you. But first, let me once :mind you, that it was under all these circumstances, idst the blaze of passion and prejudice, which the . have been endeavouring faintly to describe to you ›e supposed likely to produce, that the author, whose will now give to you, sat down to compose the book s prosecuted to-day as a libel.

history of it is very short and natural.

Rev. Mr. Logan, Minister of the Gospel at Leith, land, a clergyman of the purest morals, and, as you by and by, of very superior talents, well acquainted e human character, and knowing the difficulty of bring-ı public opinion after it is settled on any subject, took a ınbought, unsolicited interest in the situation of Mr. ;s, and determined, if possible, to arrest and suspend lic judgment concerning him. He felt for the situa-a fellow-citizen, exposed to a trial which, whether · wrong, is undoubtedly a severe one;—a trial, cer-ot confined to a few criminal acts like those we are med to, but comprehending the transactions of a whole d the complicated policies of numerous and distant ;—a trial, which had neither visible limits to its dura-unds to its expense, nor circumscribed compass for ıp of memory or understanding;—a trial, which had 'e broke loose from the common form of decision, and :ome the universal topic of discussion in the world, ding not only every other grave pursuit, but every ıble dissipation.

emen, the question you have therefore to try upon all :ter is extremely simple.—It is neither more nor less ;.—At a time when the Charges against Mr. Hastings the implied consent of the Commons, in every hand, :very table;—when by their Managers, the lightning ıence was incessantly consuming him, and flashing in s of the public;—when every man was with perfect y saying, and writing, and publishing just what he of the supposed plunderer and devastator of nations; t have been criminal *in Mr. Hastings himself* to have d the public that he was a native of this free land, to the common protection of her justice, and that he

had a defence in his turn to offer to them, the outlines of which he implored them in the mean time to receive, as an antidote to the unlimited and unpunished poison in circulation against him?—THIS is, without colour or exaggeration, the true question you are to decide. Because I assert, without the hazard of contradiction, that if Mr. Hastings himself could have stood justified or excused in your eyes for publishing this volume in his own defence, the author, if he wrote it *bona fide* to defend him, must stand equally excused and justified; and if the author be justified, the publisher cannot be criminal, unless you had evidence that it was published by him, with a different spirit and intention from those in which it was written. The question therefore is correctly what I just now stated it to be. Could *Mr. Hastings* have been condemned to infamy for writing this book?

Gentlemen, I tremble with indignation, to be driven to put such a question in England. Shall it be endured, that a subject of this country (instead of being arraigned and tried for some single act in her ordinary courts, where the accusation, as soon at least as it is made public, is followed within a few hours by the decision) may be impeached by the Commons for the transactions of twenty years,—that the accusation shall spread as wide as the region of letters,—that the accused shall stand, day after day, and year after year, as a spectacle before the public, which shall be kept in a perpetual state of inflammation against him; yet that he shall not, without the severest penalties, be permitted to submit any thing to the judgment of mankind in his defence? If this be law (which it is for you to-day to decide,) such a man has no TRIAL; that great hall, built by our fathers for English justice, is no longer a court, but an altar;—and an Englishman instead of being judged in it by GOD AND HIS COUNTRY, is a VICTIM AND A SACRIFICE.

You will carefully remember, that I am not presuming to question either the right or the duty of the Commons of Great Britain to impeach; neither am I arraigning the propriety of their selecting, as they have done, the most extraordinary persons for ability which the age has produced, to manage their Impeachment. Much less am I censuring the Managers themselves, charged with the conduct of it before the Lords, who were undoubtedly bound by their duty to the House, and to the public, to expatiate upon the crimes of the person whom they had accused.—None of these points are questioned by me, nor are in this place questionable. I only desire to have it decided, whether, if the Commons, when national

expediency happens to call in their judgment for an impeachment, shall, *instead of keeping it on their own records, and carrying it with due solemnity to the Peers for trial*, permit it without censure and punishment to be sold like a common newspaper in the shop of my client, so crowded with their own members, that no plain man, without privilege of Parliament, can hope even for a sight of the fire in a winter's day;—every man buying it,—reading it,—and commenting upon it;—the gentleman himself who is the object of it, or his friend in his absence, may not, without stepping beyond the bounds of English freedom, put a copy of what is thus published into his pocket, and send back to the very same shop for publication a *bona fide*, rational, able answer to it, in order that the bane and antidote may circulate together, and the public be kept straight till the day of decision.—If you think, Gentlemen, that this common duty of self-preservation, in the accused himself, which nature writes as a law upon the hearts of even savages and brutes, is nevertheless too high a privilege to be enjoyed by an impeached and suffering Englishman;—or if you think it beyond the offices of humanity and justice, when brought home to the hand of a brother or a friend, you will say so by your verdict of GUILTY—the decision will then be *yours;* and the consolation *mine*, that I laboured to avert it.—A very small part of the misery which will follow from it, is likely to light upon *me;* —the rest will be divided amongst *yourselves and your children.*

Gentlemen, I observe plainly, and with infinite satisfaction, that you are shocked and offended at my even supposing it possible you should pronounce such a detestable judgment; and that you only require of me to make out to your satisfaction *(as I promised)* that the real scope and object of this book is a *bona fide* defence of Mr. Hastings, *and not a cloak and cover for scandal on the House of Commons.*—I engage to do this, and I engage for nothing more.—I shall make an open and manly defence; I mean to torture no expressions from their natural constructions, to dispute no innuendos on the record, should any of them have a fair application; nor to conceal from your notice any unguarded intemperate expressions, which may perhaps be found to chequer the vigorous and animated career of the work.—Such a conduct might, by accident, shelter the Defendant: but it would be the surrender of the very principle on which alone the liberty of the English press can stand; and I shall never defend any man from a temporary imprisonment, by the

permanent loss of my own liberty, and the ruin of my country. I mean therefore to submit to you, that though you should find a few lines in page thirteen, or twenty-one; a few more in page fifty-one, and some others in other places; containing expressions bearing on the House of Commons, even as a body, which, if written as independent paragraphs by themselves, would be indefensible libels, yet that you have a right to pass them over in judgment, provided the substance clearly appears to be a *bonâ fide* conclusion, arising from the honest investigation of a subject which it was lawful to investigate, and the questionable expressions, the visible effusion of a zealous temper, engaged in an honourable and legal pursuit. After this preparation I am not afraid to lay the book in its genuine state before you.

The pamphlet begins thus: "The House of Commons "has now given its final decision with regard to the merits "and demerits of Mr. Hastings. The grand inquest of "England have delivered their charges, and preferred their "impeachment; their allegations are referred to proof; and "from the appeal to the collective wisdom and justice of the "nation in the supreme tribunal of the kingdom, the ques- "tion comes to be determined whether Mr. Hastings *be guil- "ty or not guilty?*"

Now if, immediately after what I have just read to you (which is the first part charged by the Information,) the author had said, "Will accusations, built on such a baseless fa- "bric, prepossess the public in favour of the Impeachment? "What credit can we give to multiplied and accumulated "Charges, when we find that they originate from misrepre- "sentation and falsehood?"

Every man would have been justified in pronouncing that he was attacking the House of Commons, because the groundless accusations mentioned in the second sentence, could have no reference but to the House itself mentioned by name in the first and only sentence which preceded it.

But, Gentlemen, to your astonishment, I will now read *what intervenes between these two passages;* from which you will see, beyond a possibility of doubt, that the author never meant to calumniate the House of Commons, but to say that the accusation of Mr. Hastings before the *whole* House grew out of a *Committee of Secrecy* established some years before, and was afterwards brought forward by the spleen of private enemies, and a faction in the Government. This will appear not only from the grammatical construction of the words, but from what is better than words,—from

the meaning which a person writing as a friend of Mr. Hastings must be supposed to have intended to convey. Why should such a friend attack the House of Commons? Will any man gravely tell me that the House of Commons, *as a body*, ever wished to impeach Mr. Hastings? Do we not all know that they constantly hung back from it, and hardly knew where they were, or what to do, when they found themselves entangled with it? My learned friend the Attorney General is a member of this assembly; perhaps he may tell you by and by what HE thought of it, and whether he ever marked any disposition in the majority of the Commons hostile to Mr. Hastings. But why should I distress my friend by the question?—the fact is sufficiently notorious; and what I am going to read from the book itself (which is left out in the Information,) is too plain for controversy.

"Whatever may be the event of the Impeachment, the "proper exercise of such power is a valuable privilege of "the British constitution, a formidable guardian of the pub- "lic liberty, and the dignity of the nation. *The only dan- "ger is, that from the influence of faction, and the awe which "is annexed to great names, they may be prompted to deter- "mine before they inquire, and to pronounce judgment with- "out examination.*"

Here is the clue to the whole pamphlet. The author trusts to and respects the House of Commons, but is afraid their mature and just examination may be disturbed by *faction*. Now, does he mean Government, by *faction?*—Does he mean the majority of the Commons, by *faction?*—Will the House, which is the Prosecutor here, sanction that application of the phrase;—or will the Attorney General admit the majority to be the true innuendo of *faction?*—I wish he would;—I should then have gained something at least by this extraordinary debate; but I have no expectation of the sort; such a concession would be too great a sacrifice to any prosecution, at a time when every thing is considered as *faction* that disturbs the repose of the Minister in Parliament. But indeed, Gentlemen, some things are too plain for argument.—The author certainly means *my* friends, who, whatever qualifications may belong to them, must be contented with the appellation of *faction*, while they oppose the Minister in the House of Commons;—but the House, having given this meaning to the phrase of *faction* for its own purposes, cannot in decency change the interpretation, in order to convict my client. I take that to be beyond the privilege of Parliament.

The same bearing upon individual members of the Commons, *and not on the Commons as a body*, is obvious throughout. Thus, after saying, in page nine, that the East India Company had thanked Mr. Hastings for his meritorious services (which is unquestionably true,) he adds, "that mankind would abide by their deliberate decision, rather than "by the intemperate assertion of *a Committee*."

This he writes after the Impeachment was found by the Commons at large; but he takes no account of their proceedings; imputing the whole to the original Committee, *i. e. the Committee of Secrecy;* so called, I suppose, from their being the authors of twenty volumes in folio, which will remain a secret to all posterity, as nobody will ever read them.—The same construction is equally plain from what immediately follows:—"The Report of the *Committee* "*of Secrecy* also states, that the happiness of the native "inhabitants of India has been deeply affected, their confi- "dence in English faith and lenity shaken and impaired, "and the character of this nation wantonly and wickedly de- "graded."

Here again you are grossly misled by the omission of near *twenty-one pages.* For the author, though he is here speaking of this Committee *by name*, which brought forward the Charges to the notice of the House, and which he continues to do onward to the next select paragraph; yet, by arbitrarily sinking the whole context, he is taken to be speaking of the House as a *body*, when in the passage next charged by the information, he reproaches the *accusers* of Mr. Hastings; although, so far is he from considering them as the House of Commons, that in the very same page he speaks of the Articles as of the Charges, not even of the Committee, but of Mr. Burke alone, the most active and intelligent member of that body, having been circulated in India by a relation of that gentleman:—"The "Charges of *Mr. Burke* have been carried to Calcutta, and "carefully circulated in India."

Now, if we were considering these passages of the work as calumniating a body of gentlemen, many of whom I must be supposed highly to respect, or as reflecting upon my worthy friend whose name I have mentioned, it would give rise to a totally different inquiry, which it is neither my duty nor yours to agitate; but surely, the more that consideration obtrudes itself upon us, the more clearly it demonstrates that the author's whole direction was against the individual accusers of Mr. Hastings, and not against the House of Com-

mons, which merely trusted to the matter they had collected.

Although, from a caution which my situation dictates as representing another, I thought it my duty thus to point out to you the real intention of the author, as it appears by the fair construction of the work, yet I protest, that in my own apprehension it is very immaterial, whether he speaks of the *Committee* or of the HOUSE, provided you shall think the whole volume a *bonâ fide* defence of Mr. Hastings. This is the great point I am, by all my observations endeavouring to establish, and which I think no man who reads the following short passages can doubt. Very intelligent persons have indeed considered them, if founded in facts, to render every other amplification unnecessary. The first of them is as follows:—"It was known, at that time, that Mr. "Hastings had not only descended from a public to a pri- "vate station, but that he was persecuted with accusations "and impeachments. But none of these *suffering millions* "have sent their complaints to this country; not a sigh nor "a groan has been wafted from India to Britain. On the "contrary, testimonies the most honourable to the charac- "ter and merit of Mr. Hastings, have been transmitted by "those very princes whom he has been supposed to have "loaded with the deepest injuries."

Here, Gentlemen, we must be permitted to pause together a little; for in examining whether these pages were written as an honest answer to the Charges of the Commons, or as a prostituted defence of a notorious criminal, whom the writer believed to be guilty, *truth becomes material at every step.* For if *in any instance* he be detected of a *wilful* misrepresentation, he is no longer an object of your attention.

Will the Attorney General proceed then to detect the hypocrisy of our author, by giving us some details of the proofs by which these personal enormities have been established, and which the writer must he supposed to have been acquainted with? I ask this as the defender of Mr. *Stockdale*, not of Mr. Hastings, with whom I have no concern. I am sorry indeed to be so often obliged to repeat this protest: but I really feel myself embarrassed with those repeated coincidences of defence which thicken on me as I advance, and which were, no doubt, overlooked by the Commons when they directed this interlocutory inquiry into his conduct.—I ask then, *as Counsel for Mr. Stockdale*, whether, when a great state criminal is brought for justice at an im-

mense expense to the public, accused of the most oppressive cruelties, and charged with the robbery of princes, and the destruction of nations,—is it not open to any one to ask, Who are his accusers? What are the sources and the authorities of these shocking complaints?—Where are the ambassadors or memorials of those princes whose revenues he has plundered?—Where are the witnesses for those unhappy men in whose persons the rights of humanity have been violated?—How deeply buried is the blood of the innocent, that it does not rise up in retributive judgment to confound the guilty!—These surely are questions, which, when a fellow-citizen is upon a long, painful, and expensive trial, humanity has a right to propose; which the plain sense of the most unlettered man may be expected to dictate, and which all history must provoke from the more enlightened. When CICERO impeached VERRES before the great tribunal of Rome of similar cruelties and depredations in *her* provinces, the Roman people were not left to such inquiries. ALL SICILY surrounded the Forum, demanding justice upon her plunderer and spoiler, with tears and imprecations.—It was not by the eloquence of the *orator*, but by the cries and tears of the miserable, that Cicero prevailed in that illustrious cause.—VERRES fled from the oaths of his accusers and their witnesses, and not from the voice of TULLY. To preserve the fame of his eloquence, he composed his five celebrated speeches, but they were never delivered against the criminal, because he had fled from the city, appalled with the sight of the persecuted and the oppressed. It may be said, that the cases of Sicily and India are widely different; perhaps they may be;—whether they are or not, is foreign to my purpose. —I am not bound to deny the possibility of answers to such questions; I am only vindicating *the right to ask them.*

Gentlemen, the author in the other passage which I marked out to your attention goes on thus:—"Sir John Macpherson, and Lord Cornwallis, his successors in office, have "given the same voluntary tribute of approbation to his "measures as Governor General of India. A letter from "the former, dated the 10th of August, 1786, gives the "following account of our dominions in Asia: 'The na-"'tive inhabitants of this kingdom are the happiest and best "'protected subjects in India: our native allies and tribu-"'taries confide in our protection; the country powers are "'aspiring to the friendship of the English; and from the "'King of Tidore, towards New Guinea, to Timur Shaw, "'on the banks of the Indus, there is not a state that has

" ' not *lately* given us proofs of confidence and respect.' "

Still pursuing the same test of sincerity, let us examine this defensive allegation.

Will the Attorney General say that he does not believe such a letter from Lord Cornwallis ever existed? No:—for he knows that it is as authentic as any document from India upon the table of the House of Commons.—What then is the letter? The native inhabitants of this kingdom, says Lord Cornwallis, (writing from the very spot,) are the happiest and best protected subjects in India, &c. &c. &c. The inhabitants of *this kingdom!—Of what kingdom?*—Of the very kingdom which Mr. Hastings had just returned from governing for thirteen years, and for the mis-government and desolation of which, he stands every day as a criminal, or rather as a spectacle, before us. This is matter for serious reflection; and fully entitles the author to put the question, which immediately follows: " Does this authentic account " of the administration of Mr. Hastings, and of the state of " India, correspond with the gloomy picture of despotism " and despair drawn by *the Committee of Secrecy?*"

Had that picture been even drawn by the House of Commons itself, he would have been fully justified in asking this question; but you observe it has no bearing on it;—the last words not only entirely destroy that interpretation, but also the meaning of the very next passage, which is selected by the Information as criminal, *viz.* " What credit can we " give to multiplied and accumulated Charges, when we find " that they originate from misrepresentation and falsehood?"

This passage, which is charged as a libel on the Commons, when thus compared with its immediate antecedent, can bear but one construction. It is impossible to contend that it charges misrepresentation on the HOUSE that found the Impeachment, but upon the *Committee of Secrecy* just before adverted to, who were supposed to have selected the matter, and brought it before the whole House for judgment.

I do not mean, as I have often told you, to vindicate any calumny on that honourable Committee, or upon any individual of it, any more than upon the Commons at large;—BUT THE DEFENDANT IS NOT CHARGED BY THIS INFORMATION WITH ANY SUCH OFFENCES.

Let me here pause once more to ask you, whether the book in its genuine state, as far as we have advanced in it,

makes the same impression on your minds now, as when it was first read to you in detached passages; and whether, if I were to tear off the first part of it which I hold in my hand, and give it to you as an entire work, the first and last passages which have been selected as libels on the Commons, would now appear to be so, when blended with the interjacent parts. I do not ask your answer.—I shall have it in your verdict. The question is only put to direct your attention in pursuing the remainder of the volume to this main point,—IS IT AN HONEST SERIOUS DEFENCE?—For this purpose, and as an example for all others, I will read the author's entire answer to the first Article of Charge concerning Cheit Sing, the Zemindar of Benares, and leave it to your impartial judgments to determine, whether it be a mere cloak and cover for the slander imputed by the Information to the concluding sentence of it, which is the only part attacked; or whether, on the contrary, that conclusion itself, when embodied with what goes before it, does not stand explained and justified?

"The first Article of Impeachment," continues our author, "is concerning Cheit Sing, the Zemindar of Benares. Bulwant Sing, the father of this Rajah, was merely an *Aumil*, or farmer and collector of the revenues for Sujah ul Dowlah, Nabob of Oude, and Vizir of the Mogul empire. When, on the decease of his father, Cheit Sing was confirmed in the office of collector for the Vizir, he paid 200,000 pounds as a gift or nuzzeranah, and an additional rent of 30,000 pounds per annum.

"As the father was no more than an *Aumil*, the son succeeded only to his rights and pretensions. But by a sunnud granted to him by the Nabob Sujah Dowlah in September 1773, through the influence of Mr. Hastings, he acquired a legal title to property in the land, and was raised from the office of *Aumil* to the rank of Zemindar. About four years after the death of Bulwant Sing, the Governor General and Council of Bengal obtained the sovereignty paramount of the province of Benares. On the transfer of this sovereignty the Governor and Council proposed a new grant to Cheit Sing, confirming his former privileges, and conferring upon him the addition of the sovereign rights of the Mint, and the powers of criminal justice with regard to life and death. He was then recognised by the Company as one of their Zemindars; a tributary subject, or feudatory vassal, of the British empire in Indostan. The feudal system, which was formerly supposed to be peculiar to

" our Gothic ancestors, has always prevailed in the East. " In every description of that form of government, notwith- " standing accidental variations, there are two associations " expressed or understood; one for internal security, the " other for external defence. The King or Nabob confers " protection on the feudatory baron as tributary prince, on " condition of an annual revenue in the time of peace, and " of military service, partly commutable for money, in the " time of war. The feudal incidents in the middle ages in " Europe, the fine paid to the superior on *marriage*, *wardship*, " *relief*, &c. correspond to the annual tribute in Asia. " Military service in war, and extraordinary aids in the " event of extraordinary emergencies, were common to " both.*

" When the Governor General of Bengal, in 1778, made " an extraordinary demand on the Zemindar of Benares for " five lacks of rupees, the British empire, in that part of the " world, was surrounded with enemies which threatened its " destruction. In 1779, a general confederacy was formed " among the great powers of Indostan for the expulsion of the " English from their Asiatic dominions. At this crisis the " expectation of a French armament augmented the general " calamities of the country. Mr. Hastings is charged by " the Committee with making his first demand under the false " pretence that hostilities had commenced with France. " Such an insidious attempt to pervert a meritorious action " into a crime is new—even in the history of impeachments. " On the 7th of July 1778, Mr. Hastings received private

* " Notwithstanding this analogy, the powers and privileges of a Zemindar " have never been so well ascertained and defined as those of a baron in the " feudal ages. Though the office has usually descended to the posterity of the " Zemindar, under the ceremony of fine and investiture, a material decrease " in the cultivation, or decline in population of the district, has sometimes " been considered as a ground to dispossess him. When Zemindars have fail- " ed in their engagements to the state, though not to the extent to justify " expulsion, supervisors have been often sent into the Zemindaries, who have " farmed out the lands, and exercised authority under the Duannee laws, in- " dependent of the Zemindar. These circumstances strongly mark their " *dependence* on the Nabob. About a year after the departure of Mr. Hastings " from India, the question concerning the rights of Zemindars was agitated at " great length in Calcutta; and after the fullest and most accurate investiga- " tion, the Governor General and Council gave it as their deliberate opinion " to the Court of Directors, that the property of the soil is not in the Zemindar " but in the government: and that a Zemindar is merely an officer of govern- " ment appointed to collect its revenues. Cheit Sing understood himself to " stand in this predicament. 'I am,' said he on various occasions, 'the ser- " vant of the Circar (government,) and ready to obey your orders.' The " name and office of Zemindar is not of Hindoo, but Mogul institution."

" intelligence from an English merchant at Cairo, that war " had been declared by Great Britain on the 23d of March, " and by France on the 30th of April. Upon this intelli- " gence, considered as authentic, it was determined to attack " all the French settlements in India. The information was " afterwards found to be premature; but in the latter end of " August a secret dispatch was received from England, au- " thorizing and appointing Mr. Hastings to take the measures " which he had already adopted in the preceding month. " The Directors and the Board of Control have expressed " their approbation of this transaction, by liberally rewarding " Mr. Baldwyn, the merchant, for sending the earliest in- " telligence he could procure to Bengal. It was *two days* " after Mr. Hastings' information of the French war, that " he formed the resolution of exacting the five lacks of rupees " from Cheit Sing, and would have made *similar exactions* " from all the dependencies of the Company in India, had " they been in the same circumstances. The fact is, that the " great Zemindars of Bengal pay as much to Government " as their lands can afford.—Cheit Sing's collections were " above fifty lacks, and his rent not twenty-four.

" The right of calling for extraordinary aids and milita- " ry service in times of danger, being universally established " in India, as it was formerly in Europe during the feudal " times, the subsequent conduct of Mr. Hastings is explain- " ed and vindicated. The Governor General and Council " of Bengal having made a demand upon a tributary Ze- " mindar for three successive years, and that demand hav- " ing been resisted by their vassal, they are justified in his " punishment. The necessities of the Company, in conse- " quence of the critical situation of their affairs in 1781, call- " ing for a high fine; the ability of the Zemindar, who pos- " sessed near two crores of rupees in money and jewels, to pay " the sum required; his backwardness to comply with the de- " mands of his superiors; his disaffection to the English " interest, and desire of revolt, which even then began to " appear, and were afterwards conspicuous, fully justify " Mr. Hastings in every subsequent step of his conduct. " In the whole of his proceedings it is manifest that he had " not early formed a design hostile to the Zemindar, but was " regulated by events which he could neither foresee nor " control. When the necessary measures which he had ta- " ken for supporting the authority of the Company, by " punishing a refractory vassal, were thwarted and defeat- " ed by the barbarous massacre of the British troops, and

" the rebellion of Cheit Sing, the appeal was made to arms,
" an unavoidable revolution took place in Benares, and
" the Zemindar became the author of his own destruc-
" tion."

Here follows the concluding passage which is arraigned by the Information:

" The decision of the House of Commons on this Charge
" against Mr. Hastings, is one of the most singular to be
" met with in the annals of Parliament. The Minister, who
" was followed by the majority, vindicated him in every
" thing that he had *done*, and found him blameable only for
" what he *intended* to *do*; justified every step of his *conduct*,
" and only criminated his proposed *intention* of converting
" the crimes of the Zemindar to the benefit of the state, by
" a fine of fifty lacks of rupees. An impeachment of *error*
" in *judgment* with regard to the *quantum* of a fine, and
" for an *intention* that never was *executed*, and never known
" to the offending party, characterizes a tribunal of *inquisi-*
" *tion* rather than a Court of Parliament."

Gentlemen, I am ready to admit that this sentiment might have been expressed in language more reserved and guarded; but you will look to the sentiment itself, rather than to its dress;—to the *mind* of the writer, and not to the bluntness with which he may happen to express it. It is obviously the language of a warm man, engaged in the honest defence of his friend, and who is brought to what he thinks a just conclusion in argument, which perhaps becomes offensive in proportion to its truth. Truth is undoubtedly no warrant for writing what is reproachful of any *private* man.—If a member of society lives within the law, then, if he offends, it is against God alone, and man has nothing to do with him; and if he transgress the laws, the libeller should arraign him before them, instead of presuming to try him himself. But as to writings on *general subjects*, which are not charged as an infringement on the rights of individuals, but as of a seditious tendency, it is far otherwise. When, in the progress either of legislation, or of high national justice in Parliament, they who are amenable to no law, are supposed to have adopted through mistake or error a principle which, if drawn into precedent, might be dangerous to the public,—I shall not admit it to be a libel *in the course of a legal and bona fide publication*, to state that such a principle had *in fact* been adopted. The people of England are not to be kept in the dark, touching the proceedings of their

own representatives. Let us therefore coolly examine this supposed offence, and see what it amounts to.

First, was not the conduct of the Right Honourable Gentleman, whose name is here mentioned, exactly what it is represented?—Will the Attorney General, who was present in the House of Commons, say that it was not?—Did not the Minister vindicate Mr. Hastings in what he *had done*, and was not his consent to that Article of the Impeachment founded on the *intention only* of levying a fine on the Zemindar for the service of the State, beyond the quantum which he, the Minister, thought reasonable?—What else is this but an impeachment of error in judgment in the quantum of a fine?

So much for the first part of the sentence, which, regarding Mr. Pitt only, is foreign to our purpose; and as to the last part of it, which imputes the sentiments of the Minister to the majority that followed him with their votes on the question, that appears to me to be giving handsome credit to the majority for having voted from conviction, and not from courtesy to the Minister. To have supposed otherwise, I dare not say, would have been a more *natural* libel, but it would certainly have been a greater one.—The sum and substance therefore of the paragraph is only this: that an impeachment for error in judgment, is not consistent with the theory or the practice of the English Government. So say I.—I say, without reserve, speaking merely in the abstract, and not meaning to decide upon the merits of Mr. Hastings' cause, that an impeachment for an error in judgment is contrary to the whole spirit of English criminal justice, which, though not binding on the House of Commons, ought to be a guide to its proceedings. I say that the extraordinary jurisdiction of impeachment ought never to be assumed to expose error, or to scourge misfortune, but to hold up a terrible example to corruption and *wilful* abuse of authority by extra legal pains. If public men are always punished with due severity, when the source of their misconduct appears to have been *selfishly corrupt and criminal*, the public can never suffer when their errors are treated with gentleness. From such protection to the magistrate, no man can think lightly of the charge of magistracy itself, when he sees, by the language of the saving judgment, that the only title to it is an honest and zealous intention. If at this moment, Gentlemen, or indeed in any other in the whole course of our history, the people of England were to call upon every man in this impeaching House of Commons, who had given his voice on

: questions, or acted in authority civil or military, to
:r for the issues of our councils and our wars, and if
it single intentions for the public service were refused
swers to impeachments, we should have many relations
urn for, and many friends to deplore. For my own
Gentlemen, I feel, I hope, for my country as much as
an that inhabits it; but I would rather see it fall, and
ried in its ruins, than lend my voice to wound any mi-
, or other responsible person, however unfortunate, who
airly followed the lights of his understanding and the
es of his conscience for their preservation.

ntlemen, this is no theory of mine; it is the language
glish law, and the protection which it affords to every
n office, from the highest to the lowest trust of Govern-
—In no one instance that can be named, foreign or
stic, did the Court of King's Bench ever interpose its
ordinary jurisdiction, by information, against any ma-
te for the widest departure from the rule of his duty,
ut *the plainest and clearest proof of corruption.* To
such application, not so supported, the constant answer
een, Go to a Grand Jury with your complaint.—God
l that a magistrate should suffer from an error in judg-
if his purpose was honestly to discharge his trust.—
annot stop the ordinary course of justice; but wherever
Court has a discretion, such a magistrate is entitled to
otection. I appeal to the noble Judge, and to every
who hears me, for the truth and universality of this po-
. And it would be a strange solecism indeed to assert,
n a case where the Supreme Court of criminal justice
e nation would refuse to interpose an *extraordinary*
h a legal jurisdiction, on the principle that the ordinary
ition of the laws should never be exceeded, but for the
hment of malignant guilt, the Commons, in their higher
ity, growing out of the same constitution, should reject
principle, and stretch them still farther by a jurisdiction
nore *eccentric.*—Many impeachments have taken place,
se the law *could not* adequately punish the objects of
; but who ever heard of one being set on foot because
aw upon principle *would not* punish them?—Many im-
iments have been adopted for a *higher* example than a
cution in the ordinary Courts, but surely never for a
*ent* example.—The matter therefore, in the offensive pa-
ph, is not only an indisputable truth, but a truth, in the
igation of which we are all deeply concerned.

hether Mr. Hastings, in the particular instance, acted

from corruption or from zeal for his employers, is what I have nothing to do with;—it is to be decided in judgment; my duty stops with wishing him, as I do, an honourable deliverance. Whether the Minister or the Commons meant to found this Article of the Impeachment, on mere error without corruption, is likewise foreign to the purpose.—The author could only judge from what was said and done on the occasion. He only sought to guard the principle, which is a common interest, and the rights of Mr. Hastings under it.—He was therefore justified in publishing, that an Impeachment, founded in error in judgment, was to all intents and purposes illegal, unconstitutional, and unjust.

Gentlemen, it is now time for us to return again to the work under examination.—The author, having discussed whole of the first Article through so many pages, wit even the imputation of an incorrect or intemperate expre except in the concluding passage, (the meaning of wh trust I have explained,) goes on with the same earnest d sition to the discussion of the second charge respecting the princesses of Oude, which occupies EIGHTEEN pages, not one syllable of which the Attorney General has read, and on which there is not even a glance at the House of Commons. The whole of this Answer is indeed so far from being a mere cloak for the introduction of slander, that I aver it to be one of the most masterly pieces of writing I ever read in my life.—From thence he goes on to the charge of contracts and salaries, which occupies FIVE pages more, in which *there is not a glance at the House of Commons, nor a word read by the Attorney General.*—He afterwards defends Mr. Hastings against the Charges respecting the opium contracts. *Not a glance at the House of Commons; not a word by the Attorney General.* And, in short, in this manner he goes on with the others to the end of the book.

Now is it possible for any human being to believe that a man, having no other intention than to vilify the House of Commons, *(as this Information charges,)* should yet keep his mind thus fixed and settled as the needle to the pole, upon the serious merits of Mr. Hastings' defence, without ever straying into matter even questionable, except in the two or three selected parts out of two or three hundred pages?—This is a forbearance which could not have existed, if calumny and detraction had been the malignant objects which led him to the inquiry and publication.—The whole fallacy, therefore, arises from holding up to view a few detached passages, and carefully concealing the general tenour of the book.

Having now finished most, if not all of these *critical* observations, which it has been my duty to make upon this unfair mode of prosecution; it is but a tribute of common justice to the Attorney General, (and which my personal regard for him makes it more pleasant to pay,) that none of my commentaries reflect in the most distant manner upon him; nor upon the Solicitor for the Crown, who sits near me, who is a person of the most correct honour;—far from it. The Attorney General having orders to prosecute, in consequence of the Address of the House to His Majesty, had no choice in the mode;—no means at all of keeping the Prosecutors before you in countenance, but by the course which has been pursued;—but so far has he been from enlisting into the cause those prejudices, which it is not difficult to slide into a business originating from such exalted authority, he has honourably guarded you against them;—pressing indeed severely upon my Client with the weight of his ability, but not with the glare and trappings of his high office.

Gentlemen, I wish that my strength would enable me to convince you of the author's singleness of intention, and of the merit and ability of his work, by reading the whole that remains of it. But my voice is already nearly exhausted;—I am sorry my client should be a sufferer by my infirmity.—One passage, however, is too striking and important to be passed over; the rest I must trust to your private examination. The author having discussed all the Charges article by article, sums them all up with this striking appeal to his readers:

"The authentic statement of facts which has been given, "and the arguments which have been employed, are, I think, "sufficient to vindicate the character and conduct of Mr. "Hastings, even on the maxims of European policy. When "he was appointed Governor General of Bengal, he was "invested with a discretionary power to promote the interests of the India Company, and of the British empire in "that quarter of the globe. The general instructions sent "to him from his constituents were, '*That in all your deli-*" '*berations and resolutions, you make the safety and prospe-*" '*rity of Bengal your principal object, and fix your atten-*" '*tion on the security of the possessions and revenues of the*" '*Company.*' His superior genius sometimes acted in the "spirit, rather than complied with the letter, of the law; but "he discharged the trust, and preserved the empire committed to his care, in the same way, and with greater splen-

" dour and success than any of his predecessors in office; " his departure from India was marked with the lamentations " of the natives, and the gratitude of his countrymen; and " on his return to England, he received the cordial congra- " tulations of that numerous and respectable society, whose " interests he had promoted, and whose dominions he had " protected and extended."

Gentlemen of the Jury—If this be a wilfully false account of the instructions given to Mr. Hastings for his government, and of his conduct under them, the author and publisher of this defence deserve the severest punishment, for a mercenary imposition on the public.—But if it be true that he was directed to make the *safety and prosperity of Bengal the first object of his attention*, and that, under his administration, it has been safe and prosperous;—if it be true that the security and preservation of our possessions and revenues in Asia were marked out to him as the great leading principle of his government, and that those possessions and revenues, amidst unexampled dangers, have been secured and preserved; then a question may be unaccountably mixed with your consideration, much beyond the consequence of the present prosecution, involving, perhaps, the merit of the impeachment itself which gave it birth;—a question which the Commons, as prosecutors of Mr. Hastings, should in common prudence have avoided; unless, regretting the unwieldy length of their proceedings against him, they wished to afford him the opportunity of this strange anomalous defence.—For although I am neither his counsel, nor desire to have any thing to do with his guilt or innocence; yet, in the collateral defence of my Client, I am driven to state matter which may be considered by many as hostile to the Impeachment. For if our dependencies have been secured, and their interests promoted, I am driven in the defence of my Client to remark, that it is mad and preposterous to bring to the standard of justice and humanity, the exercise of a dominion founded upon violence and terror. It may, and must be true, that Mr. Hastings has repeatedly offended against the rights and privileges of Asiatic government, if he was the faithful deputy of a power which could not maintain itself for an hour without trampling upon both:—he may and must have offended against the laws of God and nature, if he was the faithful viceroy of an empire wrested in blood from the people to whom God and nature had given it:—he may and must have preserved that unjust dominion over timorous and abject nations by a terrifying, overbearing, insulting superiority, if he was the faithful ad-

ministrator of your government, which having no root in consent or affection,—no foundation in similarity of interests,—nor support from any one principle which cements men together in society, could only be upheld by alternate stratagem and force. The unhappy people of India, feeble and effeminate as they are from the softness of their climate, and subdued and broken as they have been by the knavery and strength of civilization, still occasionally start up in all the vigour and intelligence of insulted nature:—to be governed at all, they must be governed with a rod of iron; and our empire in the East would, long since, have been lost to Great Britain, if civil skill and military prowess had not united their efforts to support an authority—which Heaven never gave,—by means which it never can sanction.

Gentlemen, I think I can observe that you are touched with this way of considering the subject; and I can account for it.—I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of them myself amongst reluctant nations submitting to our authority.—I know what they feel, and how such feelings can alone be repressed.—I have heard them in my youth from a naked savage, in the indignant character of a prince surrounded by his subjects, addressing the Governor of a British colony, holding a bundle of sticks in his hand, as the notes of his unlettered eloquence:—Who is it?" said the jealous ruler over the desert, encroached upon by the restless foot of English adventure—"who is it that "causes this river to rise in the high mountains, and to "empty itself into the ocean?—Who is it that causes to "blow the loud winds of winter, and that calms them "again in the summer?—Who is it that rears up the shade "of those lofty forests, and blasts them with the quick "lightning at his pleasure?—The same Being who gave to "you a country on the other side of the waters, and gave "ours to us: and by this title we will defend it," said the warrior, throwing down his tomahawk upon the ground, and raising the war-sound of his nation.—These are the feelings of subjugated man all round the globe; and depend upon it, nothing but fear will control where it is vain to look for affection.

These reflections are the only antidotes to those anathemas of super-human eloquence which have lately shaken these walls that surround us;—but which it unaccountably falls to my province, whether I will or no, a little to stem the

torrent of,—by reminding you that you have a mighty sway in Asia, which cannot be maintained by the finer sympathies of life, or the practice of its charities and affections; what will they do for you when surrounded by two hundred thousand men with artillery, cavalry, and elephants, calling upon you for their dominions which you have robbed them of? Justice may, no doubt, in such a case forbid the levying of a fine to pay a revolting soldiery;—a treaty may stand in the way of increasing a tribute to keep up the very existence of the government;—and delicacy for women may forbid all entrance into a Zenana for money, whatever may be the necessity for taking it.—All these things must ever be occurring.—But under the pressure of such constant difficulties, so dangerous to national honour, it might be better perhaps to think of effectually securing it altogether, by recalling our troops and our merchants, and abandoning our Oriental empire. Until this be done, neither religion nor philosophy can be pressed very far into the aid of reformation and punishment. If England, from a lust of ambition and dominion, will insist on maintaining despotic rule over distant and hostile nations, beyond all comparison more numerous and extended than herself, and gives commission to her viceroys to govern them with no other instructions than to preserve them, and to secure permanently their revenues; with what colour of consistency or reason can she place herself in the moral chair, and affect to be shocked at the execution of her own orders; adverting to the exact measure of wickedness and injustice necessary to their execution, and complaining only of *the excess* as the immorality, considering her authority as a dispensation for breaking the commands of God, and the breach of them as only punishable when contrary to the ordinances of man.

Such a proceeding, Gentlemen, begets serious reflections.—It would be better perhaps for the masters and the servants of all such governments, to join in supplication, that the great Author of violated humanity may not confound them together in one common judgment.

Gentlemen, I find, as I said before, I have not sufficient strength to go on with the remaining parts of the book. I hope, however, that notwithstanding my omissions, you are now completely satisfied, that whatever errors or misconceptions may have misled the writer of these pages, the justification of a person whom he believed to be innocent, and whose accusers had themselves appealed to the public, was the single object of his contemplation. If I have succeed-

ed in that object, every purpose which I had in addressing you has been answered.

It only now remains to remind you, that another consideration has been strongly pressed upon you, and, no doubt, will be insisted on in reply.—You will be told, that the matters which I have been justifying as legal, and even meritorious, have therefore not been made the subject of complaint; and that whatever intrinsic merit parts of the book may be supposed or even admitted to possess, such merit can afford no justification to the selected passages, some of which, even with the context, carry the meaning charged by the Information, and which are indecent animadversions on authority. To this I would answer (still protesting as I do against the application of any one of the innuendos,) that if you are firmly persuaded of the singleness and purity of the author's intentions, you are not bound to subject him to infamy, because, in the zealous career of a just and animated composition, he happens to have tripped with his pen into an intemperate expression in one or two instances of a long work. If this severe duty were binding on your consciences, the liberty of the press would be an empty sound, and no man could venture to write on any subject, however pure his purpose, without an attorney at one elbow, and a counsel at the other.

From minds thus subdued by the terrors of punishment, there could issue no works of genius to expand the empire of human reason, nor any masterly compositions on the general nature of government, by the help of which the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which, from time to time, our own constitution, by the exertion of patriot citizens, has been brought back to its standard.—Under such terrors, all the great lights of science and civilization must be extinguished: for men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of every thing that is great and useful, both in the animate and inanimate world, to be wild and irregular,—and we must be contented to take them with the alloys which belong to them, or live without them. Genius breaks from the fetters of criticism, but its wanderings are sanctioned by its majesty and wisdom, when it advances in its path;—subject it to the critic, and you tame it into dulness. Mighty rivers break down their banks in the winter, sweeping away to death the flocks which are fattened on the soil that they fertilize in the summer: the

few may be saved by embankments from drowning, but the flock must perish for hunger.—Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements, which without them would stagnate into pestilence.—In like manner, Liberty herself, the last and best gift of God to his creatures, must be taken just as she is;—you might pare her down into bashful irregularity, and shape her into a perfect model of severe scrupulous law, but she would then be Liberty no longer; and you must be content to die under the lash of this inexorable justice which you had exchanged for the banners of Freedom.

If it be asked where the line to this indulgence and impunity is to be drawn; the answer is easy.—The liberty of the press *on general subjects* comprehends and implies as much strict observance of positive law as is consistent with perfect purity of intention, and equal and useful society; and what that latitude is, cannot be promulgated in the abstract, but must be judged of in the particular instance, and consequently, upon this occasion, must be judged of by you, without forming any possible precedent for any other case;—and where can the judgment be possibly so safe as with the members of that society which alone can suffer, if the writing is calculated to do mischief to the public? You must therefore try the book by that criterion, and say, whether the publication was premature and offensive, or, in other words, whether the publisher was bound to have suppressed it until the public ear was anticipated and abused, and every avenue to the human heart or understanding secured and blocked up? I see around me those by whom, by and by, Mr. Hastings will be most ably and eloquently defended;* but I am sorry to remind my friends, that, but for the right of suspending the public judgment concerning him till their season of exertion comes round, the tongues of angels would be insufficient for the task.

Gentlemen, I hope I have now performed my duty to my Client—I sincerely hope that I have; for, certainly, if ever there was a man pulled the other way by his interests and affections,—if ever there was a man who should have trembled at the situation in which I have been placed on this occasion, it is myself, who not only love, honour, and respect, but whose future hopes and perferments are linked from free choice with those who, from the mistakes of the author, are treated with

* Mr. Law, now Lord Ellenborough, Mr. Plumer, and Mr. Dallas.

great severity and injustice.—These are strong retardments; but I have been urged on to activity by considerations, which can never be inconsistent with honourable attachments, either in the political or social world,—the love of justice and of liberty, and a zeal for the constitution of my country, which is the inheritance of our posterity, of the public, and of the world. These are the motives which have animated me in defence of this person, who is an entire stranger to me;—whose shop I never go to;—and the author of whose publication, as well as Mr. Hastings, who is the object of it, I never spoke to in my life.

One word more, Gentlemen, and I have done.—Every human tribunal ought to take care to administer justice, as we look hereafter, to have justice administered to ourselves.—Upon the principle on which the Attorney General prays sentence upon my Client—God have mercy upon us!—Instead of standing before him in judgment with the hopes and consolations of Christians, we must call upon the mountains to cover us; for which of us can present, for omniscient examination, a pure, unspotted, and faultless course? But I humbly expect that the benevolent Author of our being will judge us as I have been pointing out for your example.—Holding up the great volume of our lives in his hands, and regarding the general scope of them:—if he discovers benevolence, charity, and good-will to man beating in the heart, where he alone can look;—if he finds that our conduct, though often forced out of the path by our infirmities, has been in general well directed; his all-searching eye will assuredly never pursue us into those little corners of our lives, much less will his justice select them for punishment, without the general context of our existence, by which faults may be sometimes found to have grown out of virtues, and very many of our heaviest offences to have been grafted by human imperfection upon the best and kindest of our affections. No, Gentlemen, believe me, this is not the course of divine justice, or there is no truth in the Gospels of Heaven.—If the general tenour of a man's conduct be such as I have represented it, he may walk through the shadow of death, with all his faults about him, with as much cheerfulness as in the common paths of life; because he knows, that instead of a stern accuser to expose before the Author of his nature those frail passages, which, like the scored matter in the book before you, chequers the volume of the brightest and best-spent life, his mercy will obscure them from the eye of his purity, and our repentance blot them out for ever

All this would, I admit, be perfectly foreign, and irrelevant, if you were sitting here in a case of property between man and man, where a strict rule of law must operate, or there would be an end of civil life and society. It would be equally foreign, and still more irrelevant, if applied to those shameful attacks upon private reputation which are the bane and disgrace of the press; by which whole families have been rendered unhappy during life, by aspersions cruel, scandalous, and unjust. Let SUCH LIBELLERS remember, that no one of my principles of defence can at any time or upon any occasion ever apply to shield THEM from punishment; because such conduct is not only an infringement of the rights of men, as they are defined by strict law, *but is absolutely incompatible with honour, honesty, or mistaken good intention.* —On such men let the Attorney General bring forth all the artillery of his office, and the thanks and blessings of the whole public will follow him. But this is a totally different case. *Whatever private calumny may mark this work, it has not been made the subject of complaint; and we have therefore nothing to do with that, nor any right to consider it.* We are trying whether the public could have been considered as offended and endangered, if Mr. Hastings himself, in whose place the author and publisher have a right to put themselves, had, under all the circumstances which have been considered, composed and published the volume under examination. That question cannot, in common sense, be any thing resembling *a question of* LAW, but is a pure question of FACT, to be decided on the principles which I have humbly recommended. I therefore ask of the Court that the book itself may now be delivered to you. Read it with attention, and as you shall find it, pronounce your verdict.

## REPLY OF THE ATTORNEY GENERAL.

GENTLEMEN OF THE JURY,

MY Learned friend and I stand very much contrasted with each other in this cause.—To him belong infinite eloquence and ingenuity, a gift of persuasion, beyond that which I almost ever knew fall to any man's share, and a power of language greater than that which ever met my ear.

In *his* situation, it is not only permitted to him, but it is commendable;—it is his duty to his Client, to exert all those faculties, to comprehend every possible topic, that by the utmost stretch of ingenuity can possibly be introduced into the most remote connexion with the cause. I, on the other hand, Gentlemen, must disclaim those qualities which I ascribe to my learned friend—namely, that ingenuity, that eloquence, and that power of words;—but if they did belong to me, we stand contrasted also in this circumstance, that I durst not in my present situation use them, whatever little effort I might make to that effect, acting the part simply of an advocate in a private cause. All that I must abandon to-day, recollecting the situation in which I stand, Gentlemen, however unworthily, yet so it is, that I stand in the situation of the first officer of this high Court; therefore the utmost fair dealing, the plainest common sense, the clearest argument, the utmost *bonâ fides* with the Court and Jury, are the duties incumbent upon me. In that spirit therefore, Gentlemen, you will not expect from me the discharge of my duty, in any other way than by the most temperate observation, and by the most correct and the fairest reasoning in my power.

One should have thought, from the general turn of my learned friend's arguments, that I had in this Information imputed it as a crime to the deceased gentleman whom he has named, and whom I think I hardly recollect ever to have heard named before,—that I had imputed it to him as an offence, merely that he reasoned in defence of Mr. Hastings ably and eloquently, as is asserted. My learned friend has said, that I have picked out passages here and there

disconnected and disjointed, and have omitted a vast variety of other passages. I hardly think that his second observation would have been made, had it not been for the sake of his first; but inasmuch as I studiously avoided, and would insert no one single line that consisted of fair reasoning and defence for Mr. Hastings, inasmuch as it was no part of my duty so to do;—so he has exculpated me by saying, that the loading an Information with that which was not immediately to the point, was a thing which I had avoided with propriety.

This book, as my learned friend himself has described it to you, and read the greater part of, consists of many different heads; it consists of an historical narration of facts; with which I do not quarrel.—It consists of extracts from original papers; with which I do not quarrel.—It consists of arguments, of reasoning, and of very good declamation; with that I do not quarrel. But it consists also of a stain, and a deep stain, upon your representatives in Parliament. My learned friend says, that this is written with a friendly zeal for Mr. Hastings.—I commend that zeal; but at the same time you will permit me to distinguish, if that could avail, between the zeal of an author for Mr. Hastings, and the cold lucrative motives of the printer of that author's work. It was the duty of that printer to have the work revised by some one else, if he has not the capacity to do it himself, and to see that poison does not circulate among the public. It was his bounden duty to do that; zeal could not excuse or exculpate even the author, much less the mechanical printer; though perhaps, if this had been shown in manuscript as the work of a zealous friend, great allowance might have been made for that zeal.

My learned friend, for the purposes of argument, deviated into almost every field that it was possible for knowledge such as his—for reading,—experience,—for knowledge of nature, and every thing that belongs to human affairs; he has deviated into them at great length, and nine tenths of his argument consisted of nothing else. Instead of that, what is this question?—The coldest, the dullest, the driest of all possible questions. It is neither more nor less than this, Whether, when the great tribunal of the nation is carrying on its most solemn proceeding for the benefit and for the interests of the public, whether, while it is even depending, and not ripe for judgment, the accusers, the House of Commons, who carry up their Impeachment to the House of Lords, are slandered by being called persons acting from private and interested ani-

mosity;—persons who studiously, when they find a meritorious servant of the country come home crowned with laurels (as it is expressed,) are sure to do what?—To IMPEACH AND TO RUIN HIM.

I shall also studiously avoid any thing respecting politics or party, or any thing respecting the conduct or opinions of any men in another place; and my learned friend will excuse me also, if I do not state my own.—These I avoid for this reason, that when we are within these walls, we are to betake ourselves to the true and genuine principles of our law and constitution; the justest picture of oppression of one man cannot justify the calumniating other men; it may justify the defending that man,—but it will not justify a stain upon the House of Commons of this country. And, Gentlemen, surely this author, considerable as he is as a man acquainted with composition, betrays the cause of Mr. Hastings, as I should think;—at least he does Mr. Hastings no service, by going beyond his defence—by deserting and abandoning the declamation, and the reasoning, of which he seems to be a considerable master, and deviating into slander and calumny upon the House of Commons, his accusers.

My learned friend has used an analogy. He tells you the House of Commons is a Grand Jury:—I close with him in that analogy: I ask you, as lovers of good order, as men desirous of repressing licentiousness, as persons who wish that your country should be decently and well governed, whether you would endure for an instant, if this were an Information against a defendant, who had published that a Grand Jury found a bill, not because they thought it a right thing that the person accused should be put upon his trial, but that they found the Indictment against him because he was meritorious,—that they did it from principles of private animosity, and not with a regard to public justice. If an indictment were brought before you for a slander of that sort upon a Grand Jury, could you hesitate an instant, in saying that it was reprehensible, and a thing not to be endured? Why then, if the whole representatives of the nation are acting in that capacity, if, after many years investigation, they bring charges against an individual, is it any apology (justification it cannot be,) for an author, in his zeal for his friend, to tack to it that which must be a disgrace to the country if it were true, and therefore must not be circulated with impunity? The commendation which even my learned friend has bestowed upon this work, the impassioned and animated manner in which he has recommended it to your perusal, and that of every

man in the country, most manifestly prove what I stated in opening this cause; that when such mischief as this is found in a book, written by a person of no mean abilities, it comes recommended to and in fact misleads the best understandings in the country. I leave any man to judge of the mischievous tendency of such a composition, compared with the squibs, paragraphs, and idle trash of the day, which frequently die away with it. Upon this principle those passages which I selected and put into this Information, and which immediately regard the House of Commons, naturally gave offence to the House;—they felt themselves calumniated and aspersed, and entitled to redress from a Jury.

My learned friend says,—Why don't the House of Commons themselves punish it?—Is that an argument to be used in the mouth of one who recommends clemency?—Does he recommend that the iron hand of power should come down upon a man of this sort, instead of temperately, wisely, and judiciously submitting to the common law of this country, saying, Let him be dealt with by that common law?—THERE he will have a scrupulously impartial trial;—There he will have every advantage that the meanest subject of the country is entitled to.

But, says my learned friend, passages are selected from distant pages, and tacked together; the context between must explain the meaning of those passages; and he compares it to taking one half of a sentence, and tells you, that if any man should say, there is no God, taking that part alone, he would be a blasphemer; whereas taking the whole verse, that the fool hath said in his heart there is no God, in that sense it becomes directly the reverse of blasphemy;—Now, has he found any one garbled sentence in the whole course of this Information?—Is not every one a clear, distinct, and separate proposition? On the contrary, when he himself accuses me, not personally but officially, of not having stated the whole of this volume upon record, and undertaking to supply my defects, he misses this very sentence: "Assertions so hardy, "and accusations so atrocious, ought not to have been intro- "duced into the preamble of an impeachment, before an as- "sembly so respectable as the House of Peers, without the "clearest and most incontrovertible evidence. In all trans- "actions of a political nature there are many concealed move- "ments that escape the detection of the world; but there "are some facts so broad and glaring, so conspicuous and "prominent, as to strike the general eye, and meet the com- "mon level of the human understanding."

Now, Gentlemen, I only adduce this to show, that it is possible that two leaves may be turned over at once on the Defendant's side of the question; and likewise to show you that I have not, for the purpose of accusation, culled and picked out every passage that I might have picked out, or every one that would bear an offensive construction; but have taken those prominent parts where this author has abandoned the purpose my learned friend ascribes to him, that of extenuating the guilt imputed to Mr. Hastings, and of showing that he had merit rather than demerit with the public. The passages were selected to show that I have betaken myself to the fifth head of the work, as I enumerated them before, where the author does not content himself with executing that purpose, but holds out the House of Commons as persons actuated by private malice, not only to the eyes of the subjects of this country, but also to surrounding nations, whose eyes are unquestionably upon us, throughout the whole course of the proceeding.

I ask you, whether any reasonable answer has been given to the interpretation, which I put upon the various passages in this book? The first of them, I admit with my learned friend, is simply an introduction; and is stated in the Information, merely to show that the author himself knew the position and state of things; viz. that the Impeachment had been carried up to the House of Lords, and was there depending for their judgment.

Then, after having reasoned somewhat upon the introduction to these several articles of impeachment, and after having stated that these had been circulated in India, he goes on to say,

" Will accusations, built upon such a baseless fabric, pre-
" possess the public in favour of the impeachment? What
" credit can we give to multiplied and accumulated charges,
" when we find that they originate from misrepresentation
" and falsehood?

My learned friend himself told you, in a subsequent part of his speech, that those accusations originated from an inquiry, which lasted two years and a half, by a Secret Committee of the House of Commons (of which I myself was a pretty laborious member;) if that be so, what pretence is there here for impregnating the public with a belief, that from false, scandalous, and fabricated materials, those Charges did originate? Is not that giving a directly false impression to the public?—Are not those to be protected from slander of this sort, who take so much pains to investigate what

appears to them, in the result, to be a fit matter not for them to decide ultimately upon, but to put in a course of trial where, ultimately, justice will be done?

Has my learned friend attempted any explanation, or other interpretation, to be put upon these words, than that which the Information imputes.

"If, after exerting all your efforts in the cause of your "country, you return covered with laurels, and crowned "with success; if you preserve a loyal attachment to your "Sovereign; you may expect the thunders of Parliamentary "vengeance;—you will certainly be impeached, and probably "be undone."

Is it to be said, and circulated in print all over the world, that the House of Commons is composed of such materials, that exactly in proportion to a man's merit is their injustice and inhuman tyranny?—Is that to be said or printed freely, under the pretext that the author is zealous in the interest of a gentleman under misfortune?—But it is said, there are forty libels every day published against this gentleman, and no one is permitted to defend him:—Let all mankind defend him:—let every man that pleases write what he will, provided he does it within the verge of the law;—if he does it as a manly and good subject, confining himself to reasonable and good argument.

My learned friend says, if you stop this, the press is gagged; that it never can be said with impunity, that the King and the constable are in the same predicament. The King and the constable are in one respect in the same predicament, with great difference indeed in the gradation, and in the comparison; but, without all question, both are magistrates: the one the highest, to whom we look with awe and reverence; and to the other with obedience, when within his sphere; that may be freely said in this country, and ever will be said.—But is it the way to secure the liberty of the press, that at the time when the nation is solemnly engaged in the investigation of the conduct of one of its first servants, that servant should not only be defended by fair argument and reason as far as it goes, but that his accusers are to be charged with malice and personal animosity against him?

If the audacious voice of slander shall go so high as that with impunity, who is there that will ever undertake to be an accuser in this country? I am sure I, for one, who sometimes am called upon (I hope as sparingly as public exigency will admit of) to exercise that odious and disagree-

able task, would with pleasure sacrifice my gown, if I saw it established, that even the highest accusers that the country knows are, under the pretence of the defence of an individual to be vilified and degraded.—If this be permitted, can subordinate accusers expect to escape!

Gentlemen, give me leave again to remind you, that nothing can ever secure a valuable blessing so effectually as by enforcing the temperate legal, and discreet use of it; and it cannot be necessary for the *liberty* of the press, that it should be *licentious* to such an extreme. Believe me, that if this country should be worked up, as I expressed it yesterday, to a paroxysm of disgust against the *licentiousness* of the press, which has attacked all ranks of men, and now at last has mounted up to the legislative body, its liberty perhaps never can be in greater danger:—something may be done in that paroxysm of disgust, which might be the gradual means of sapping the foundation of that best of our liberties,—A FREE PRESS.

Is it not obvious to common sense, that if the whole country is rendered indignant by the licentiousness of the press knowing no bounds, this is the instant of greatest hazard to its freedom? Besides, is the folly of the subjects of Great Britain such, that, in order to enjoy a thing in all its perfection, and to all its good purposes, it is necessary to encourage its extremest licentiousness? If you shall encourage this its extremest licentiousness (I venture to call it such when the great accusatorial body of the nation is slandered in this manner,) if you give it such encouragement to-day, no man can tell where it will reach hereafter.

Therefore, so far from cramping the press, so far from sapping its foundation, so far from doing it an injury; you are, on the contrary, taking the surest means to preserve it, by distinguishing the two parts of this book, and by saying,—True it is, that any man is at liberty to expound and to explain in print the conduct of another,—to justify it, if he pleases, by stating, in a manly way, that which belongs to his subject; but the moment that he steps aside, and slanders an individual, much more the awful body of the representatives of the people, there he has done wrong;—there he has trespassed upon the liberty of the press, and has imminently hazarded its existence.

Gentlemen, lay your hands upon your hearts, ask yourselves as men of honour (because I know that binds you as much as your oaths;) ask yourselves, whether the true meaning of this libel is not, that not from public grounds,—not from convic-

tion,—not with a view to render public service, but from private pique,—from private malice,—from bye motives, which I call corruption, the House of Commons have been induced to send this Gentleman to an inquiry before the proper tribunal, and that too, as the libel expresses it, without even reading it,—without hearing,—without consideration; judge, I say, whether that be not the true exposition of this libel, and then, Gentlemen, consider with yourselves what the effect will be, if you ratify and confirm such an offence, by suffering this Defendant to escape.

LORD KENYON then summed up as follows :—

GENTLEMEN OF THE JURY,

I DO not feel that I am called upon to discuss the nature of this libel, or to state to you what the merit of the composition is, or what the merit of the argument is, but merely to state what the questions are, to which you are to apply your judgment, and the evidence given in support of this Information. It is impossible, when one reads the preface to it, which states that the libel was written to asperse the House of Commons, not to feel that it is a matter of considerable importance; for I do not know how far a fixed general opinion that the House of Commons deserves to have crimes imputed to it, may go; for men that are governed will be thereby much influenced by the confidence which should be reposed in government.—Mankind will never forget that governors are not made for the sake of themselves, but are placed in their respective stations, to discharge the functions of their office for the benefit of the public; and if they should ever conceive that their governors are so inattentive to their duty, as to exercise their functions only to keep themselves in power, and for their own emolument, without attending to the interests of the public, government must be relaxed, and at last crumble into dust; and, therefore, if the case be made out, which is imputed to the Defendant, it is no doubt a most momentous case indeed; but though it is so, it does not follow that the Defendant is guilty; and Juries have been frequently told, and I am bound, in the situation in which I stand, to tell you, that, in forming your judgment upon this case, there are two points for you to attend to, namely :—

Whether the Defendant, who is charged with having published this, did publish it; and whether the sense which the Attorney General, by his innuendos in this Informa-

tion, has affixed to the different passages, is fairly affixed to them.

From any consideration as to the first of these points you are delivered, because it is admitted, that the book was published by the Defendant;—but the other is the material point to which you are to apply your judgment. It has been entered into with wonderful abilities, and much in the detail;—but it is not enough for a man to say, I am innocent;—it belongs alone to the Great Searcher of Hearts to know whether men are innocent or not; *we* are to judge of the guilt or innocence of men (because we have no other rule to go by) by their overt acts,—*i. e.* from what they have done.

In applying the innuendos, I accede entirely to what was laid down by the Counsel for the Defendant, and which was admitted yesterday by the Attorney General, as Counsel for the Crown, that you must, upon this Information, make up your minds, that this was meant as an aspersion upon THE HOUSE OF COMMONS—and I admit also, that, in forming your opinion, you are not bound to confine your inquiry to those detached passages which the Attorney General has selected as offensive matter, and the subject of prosecution.—But let me on the other side warn you, that though there may be much good writing, good argument, morality, and humanity, in many parts of it, yet if there are offensive passages, the good part will not sanctify the bad part.

Having stated that, I ought also to tell you, that in order to see what is the sense to be fairly imputed to those parts that are culled out as the offensive passages, you have a right to look at all the context;—you have a right to look at the whole book; and if you find it has been garbled, and that the passages selected by the Attorney General do not bear the sense imputed to them, the man has a right to be acquitted; and God forbid he should be convicted.—It is for you, upon reading the information, which, if you go out of Court, you will undoubtedly take with you, and by comparing it with this pamphlet, to see whether the sense the Attorney General has affixed, is fairly affixed; always being guided by this, that where it is truly ambiguous and doubtful, the inclination of your judgment should be on the side of innocence;—but if you find you cannot acquit him without distorting sentences, you are to meet this case, and all other cases, as I stated yesterday, with the fortitude of men, feeling that they have a duty upon them superior to all lean-

ing to parties; namely, the administration of justice in the particular cause.

It would be in vain for me to go through this pamphlet which has been just put into my hand, and to say whether the sense affixed is the fair sense or not. As far as disclosed by the Information, these passages afford a strong bias, that the sense affixed to them is the fair sense; but of that you will judge, not from the passages themselves merely, but by reading the context, or the whole book, so much at least as is necessary to enable you to ascertain the true meaning of the author.

If I were prepared to comment upon the pamphlet, in my situation it would be improper for me to do it; my duty is fulfilled when I point out to you what the questions are that are proposed to your judgment, and what the evidence is upon the questions;—the result is yours and yours only.

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*The Jury withdrew for about two hours, when they returned into Court with a verdict finding the Defendant*

NOT GUILTY.

THE

# TRIAL OF JOHN FROST.

*THE following Case of Mr.* JOHN FROST, *an Attorney of the Court of King's Bench, who was tried before Lord Kenyon and a Special Jury, in Hilary Term,* 1793, *for seditious words, requires but little preface, as the whole of the circumstances appear with sufficient clearness in the Speech of the Attorney General, and in the Evidence, which we have prefixed to the Defence by Mr. Erskine as the best illustration of his arguments.*

The Indictment having been opened by Mr. Wood, the ATTORNEY GENERAL spoke as follows:—

GENTLEMEN OF THE JURY,

THOUGH I have the honour to attend you in my official character, it will not have escaped your attention, that this charge is brought against the present Defendant by an Indictment.

Gentlemen, the transaction, with the guilt of which the Defendant is charged, happened upon the 6th of November last. I hope I shall not be thought guilty of stating any thing that can be considered as improper, when I call your attention to a fact that is notorious to the whole country; that about that period public representations had been made, that the minds of men were alienated from that constitution, which had long been the subject of the warmest encomiums of the best informed men in this country; which we have been in the habit of considering as the best birthright which our ancestors could have handed down to us, and which we have been long in the habit of considering as the most valuable inheritance that we had to transmit to our posterity. This constitution had been represented as that from which the affections of the country had become altogether alienated; we were told that this disaffection was moving along the country with the silence of thought; and something like a public challenge was written to meet men who are fond of other systems, by fair appeals to the public, who are finally to decide upon every question between every individual of this country, and the government.

Gentlemen—The Attorney General of that day; who found himself by the duty of his office called upon to watch over, what he considered, a property and inheritance of inestimable value, thought it necessary to meet this sort of observation, by stripping himself of what belonged to him in his official character; and appealing, as far as he could appeal, to the tribunals of the country, which the wisdom of the constitution had established, for the purpose of protecting men from improper accusations; and he did not, therefore call upon those whom he thought proper to prose-

cute, by the exercise of any official authority of his own, putting them and himself at issue upon these points, as it were, before a Jury of the country, but he directed indictments to be carried to the Grand Juries of the country, to take their sense upon the subject, and to have their opinion, whether it was fit that persons propagating such doctrines as this Defendant stands charged with, should, or should not, be suffered in this country to state them with impunity?

Gentlemen, in consequence of this determination the present Defendant stands indicted; and before I state the words to you, I think it my duty to mention to you, that he is now to be tried upon the second indictment which a Grand Jury of this country has found. When the first indictment was carried before the Grand Jury, this Defendant was abroad; a warrant was issued for his apprehension, and he returned to this country in the month of February last: he appeared to the indictment and gave bail to it; by some accident he had been indicted by a name which does not belong to him, and pleaded the misnomer in abatement. Another Indictment was carried before the second Grand Jury, who found that second indictment without any hesitation, and it is in consequence of that proceeding that he is called upon to-day to deny the truth of the charges which this information contains, or to state to you upon what grounds he is to contend, that his conduct as stated in this indictment is to be considered as legal.

Gentlemen, the transaction which the indictment charges him with, happened on the 6th of November last; you will find from the conversation, as it will be given in evidence to you, that Mr. Frost had, I think, returned from France shortly before; that he had dined with a set of gentlemen, whom I believe to be very respectable, at the Percy Coffee-house upon that day; he came into the public coffee-house between nine and ten in the evening, as nearly as I am able to ascertain the time, and a gentleman who had long been acquainted with him, to whom I believe I may venture to say, Mr. Frost was certainly under no disobligations in life, seeing him, addressed him as an acquaintance, asked whether he was lately come from France, and how matters went on in that country? Mr. Frost told him he was lately come from France, and expected soon to go there again; he then added the words that have been read to you from the indictment: "I am for equality; I can see no reason why any man

"should not be upon a footing with another: it is every man's "birthright."

Gentlemen, some persons present in this coffee-room, the general conduct of all of whom, I think, will have some influence upon your judgment, with respect to the mind with which Mr. Frost conducted himself upon that day, immediately asked him what he meant by equality? To which he answered, "*Why I mean* no King."—"What! dare you to "own, in any public or private company in this country, "such sentiments?"—"Yes, *I mean no King*; the constitu- "tion of this country is a bad one."

Gentlemen, what were the other particulars of the conversation that passed I am unable to state to you, but you will find the zeal and anxiety which a number of respectable persons acted with upon this occasion, made it very difficult for Mr. Frost to pursue this sort of conversation any farther; and in what manner Mr. Frost left the coffee-house, and under what feelings and apprehensions in the minds of those who were there, I shall leave to you to collect from the witnesses, rather than attempt to state it myself.

Now, Gentlemen, it is for you to decide, whether, in cases of this nature, prosecutions shall be carried on against defendants who think proper to use language so contemptuous to the Sovereign of the country; and surely I need not in this place contend, that any thing that is contemptuous to the Sovereign of the country, any thing grossly reflecting upon the administration of the magistracy of this country, or persons holding the offices of magistrates, according to the law of this country, such as it is, and such as I hope it will continue to be, has never been suffered with impunity.

Gentlemen, when you consider, not merely whether the prosecution is to produce a verdict of Guilty, but whether the prosecution is expedient and proper, it is not unnecessary to advert to the circumstances of the times, and the temper with which the particular Defendant may have proceeded, who is charged with guilt by an Indictment brought before a Jury of his country.

Gentlemen, this doctrine of Equality and no King has been held in this country, which never did, and which I hope, never will, interfere with the right of free, of temperate, of sober, and of ample discussion, conducted under those restraints, upon every political subject, in which the interests and the happiness of Englishmen can be concerned: but, Gentlemen, when a doctrine of this sort, Equality and

no King—a doctrine which either means this, or it means nothing—that there shall be no distinction of ranks in society, is brought forward, under circumstances so peculiar as those which attended the statement of this doctrine by the Defendant, it becomes the duty of those who are entrusted with watching over the laws of this country under the control of Juries, who are finally to decide between them and individuals who may be charged with a breach of them, at least to do their duty in stating this to the public, that no one *shall dare* to hold language like this, without being prepared to tell a Jury of this country upon what grounds he conceives himself justifiable in holding it under the circumstances of the present case.

Gentlemen, advert a little to the time—this was in November 1792. There does not exist upon the face of the earth, I hope, a man more zealously attached to this doctrine than I am. I mean, that every man in this country, and in every country, has an equal right to equal laws, to an equal protection of personal security, to an equal protection of personal liberty; to an equal protection of that, without which, it requires no reasoning to prove, that neither personal security, nor personal liberty, ever can exist,—I mean to an equal protection of property—that property which the labour of his life, under the blessing of Providence, may have gained to him, or which the superior kindness of Providence may have given him, without bestowing the labour of life in order to acquire it; all this sort of equality *is that which the Constitution of Great Britain has secured to every man who lives under it*, but is not the equality which was connected with the doctrine No King, upon the 6th of November 1792.

Gentlemen, that country, from which it appears, from this conversation, Mr. Frost came, and to which it appears, from this conversation, that he expected to go, in the year 1789, had framed what was called a constitution, and almost every thing that was valuable in it was borrowed from the constitution of this country in which we live, which had provided for the equal rights of man to equal laws; it had laid down in doctrine, however ill or well it supported the principle, the equal right of every man to the protection of his personal liberty, of his personal security, and of his property. But in 1792, that first year of Equality, as it was called, a different system of equality, connected materially with this system of No King, had been established: a system, which, if it meant any thing, meant this—it meant equality of

property, for all other equality had been before provided for.

Gentlemen of the Jury, it is every man's birthright to have a certain species of equality secured to him, but it neither requires reasoning, nor is it consistent with common sense, and cannot be consistent with reason and common sense, because it is not consistent with the nature of things, as established by the Author of nature, that any other system of equality should exist upon the face of the world.

Gentlemen, this equality, recommended by this gentleman, advisedly, as I think you will be satisfied in this transaction of the 6th of November 1792, is a system which has destroyed all ranks—is a system which has destroyed all property—is a system of universal proscription—is a system which is as contrary to the order of moral nature, as it is contrary to the order of political nature—it is a system which cuts up by the roots all the enjoyments that result from the domestic relations of life, or the political relations of life—it is a system which cuts up by the roots every incentive to virtuous and active industry, and holds out to the man, who chooses to live a life of profligacy and idleness, that he may take from him, who has exerted through life a laborious and virtuous conduct, those fruits which the God of justice, and every law of justice, have endeavoured to secure to him. This is the only sort of equality that can be connected with this doctrine of No King, upon the 6th of November 1792.

Gentlemen, I am ready to agree, that where the charge is, that words have been spoken, it is fit for those who prosecute for the public to remember, that in that situation, they are in a certain degree advocates for the Defendant; for no man can do his duty who wishes to press a Defendant, charged upon the part of the public, with acting more improperly than he shall appear, upon the candid examination of the circumstances, to have acted; it is fit for me also to observe, that the degree of criminality of these words will depend very much upon the temper, the circumstances, the *quo animo*, with which this gentleman thought proper to utter them.

Gentlemen, I will not depart from this principle which I have before stated, that if men will dare to utter words, expressions of more serious import than those which produced the mischief to which I have been alluding in other places, it will be the duty of persons in official situations to watch for you and the public over that, which they conceive to be a blessing to you and the public; at least to in-

form those gentlemen that they must account for their conduct; it will be for them, if they can, to account for it satisfactorily.

Gentlemen, you will hear from the witnesses with what temper, with what demeanour, and in what manner, these words were uttered; and I allude again to that which will be described to you, I mean the feelings of the persons present, as some degree of evidence, which will have its due, and not more than its due weight, in your minds.

Gentlemen, I will read to you the words of Mr. Justice Forster, as containing the principle upon which, though the law holds seditious expressions as an exceeding high misdemeanour, it has not thought proper to consider them as a crime of the magnitude of High Treason. He says, "As "to mere words, supposed to be treasonable, they differ "widely from writings in point of real malignity and proper "evidence. They are often the effect of mere heat of blood, "which in some natures, otherwise well disposed, carrieth a "man beyond the bounds of decency or prudence; they are "always liable to great misconstruction from the ignorance "and inattention of the hearers, and too often from a motive "truly criminal." *Loose words, therefore, not relative to any act or design*, are not overt acts of treason, but words of advice or persuasion, and all consultations for the traitorous purposes treated of in this chapter, are certainly so; they are uttered in contemplation of some traitorous purpose, actually on foot or intended, and in prosecution of it.

Gentlemen of the Jury, it is competent to Mr. Frost, and he will give me leave to say, I think it is incumbent upon him, having made use of words of this sort, to state to you, that in the sentiment which that language conveys, he does not express those sentiments by which his general conduct in life is regulated. For aught I know, he is otherwise well disposed; and I am sure, if evidence of that sort is given to you, you will feel the propriety of giving to it, not only a candid, but you have my leave to give it the very utmost consideration that can possibly be given to it. Gentlemen, you observe too, that words are not made treason, because words may be spoken to by witnesses from a motive truly criminal. You will be to judge, whether the evidence of the witnesses to be called to you to day proceeds from motives truly criminal, or whether laudable zeal for the constitution of their country is not their only motive for stating to you the conduct of this Defendant.

Gentlemen, there is another circumstance.—I will say but a word to you upon it; that is this; that the propriety of prosecuting for words of this sort depends a *great deal upon the time and season* at which those words are uttered.

Gentlemen, we know, that in this country the legislature found it necessary to interfere, and by a positive law to enact, that any man who should dare to affirm that the King and Parliament could not regulate the succession to the Crown, should be guilty of High Treason; God forbid the time should ever come, and I do not believe it ever can come, when the legislature, acting upon the same principle, shall be obliged to say, that if it is at this hour High Treason for men deliberately to affirm that the King and Parliament of this country cannot regulate the succession to the Crown, it shall be innocent for men to say that the King and Parliament of this country have no right to continue any government in this country. Why then, Gentlemen, if this doctrine of Equality and No King has been attended with such consequences as it is notorious to all mankind it has been attended with, the notoriety of the fact renders it incumbent upon those, whose duty it is to bring such Defendants before a Jury of their country, for that Jury to say, as between the country and individuals, whether, under such circumstances as will be laid before you, he is to be publicly permitted to hold such doctrines as those which are stated, in a manner that seems to evince that they are not stated for any useful purpose; but that they are stated for the purpose of trying, whether there is any law in this country that will secure the government of the country from attacks, which mean nothing but to display the audacity with which men dare to attack that government? And if you shall be convinced, upon the whole of the evidence before you, that the case is such as I have stated it to be, this I am sure of, that you will duly weigh the consequences of the verdict, however you shall be disposed to give it, for the Crown, or for the Defendant; and I am sure, *the Crown, upon the temperate consideration of what the Jury does, will not be dissatisfied with that verdict*, let it be what it may. The constitution of this country, if it be excellent, if it has really handed down to us those great and invaluable blessings, which, I believe, ninety-nine persons out of a hundred are convinced it has, and if it be a matter of anxiety to transmit them to our posterity, you will remember that the stability of those blessings finally and ultimately

depends upon the conduct of Juries. It is with them, by their verdicts, to establish their fellow-subjects in the enjoyment of those rights; it is with them to say in what cases those rights have been invaded; and the same constitution that has left it to them to say in what cases those rights have been invaded, has also bound every honest man to say, that when they have given their decision upon it, they have acted properly between the country and the individual who is charged with the offence.

Gentlemen, under these circumstances, I shall proceed to lay the case before you, and I have only again to repeat, if you shall find, upon a due consideration of this case, that this is an hasty, an unguarded, and unadvised expression of a gentleman otherwise well disposed, and who meant no real mischief to the country, you will be pleased, with my consent, to deal with the Defendant as a person under those circumstances ought to be dealt with. I never will press a Jury for a verdict, in a case in which, whatever may be the strictness of the law as between man and man, acting upon moral and candid feelings, it ought not to be asked for; and having given you my sentiments, I leave the Defendant in your hands.

## *EVIDENCE FOR THE CROWN.*

JOHN TAITT, of Oxford Street, Upholsterer, sworn.—*Examined by Mr.* SOLICITOR GENERAL.

Q. Do you know Mr. John Frost?
A. I never saw him but *that evening* in my life.
Q. What evening?
A. The 6th of November last.
Q. Where were you that evening?
A. In the Percy Coffee-house.
Q. Who was with you?
A. Mr. Paul Savignac.
Q. Were there any other persons in the coffee-house?
A. Yes, several gentlemen.
Q. Can you name any?
A. Mr. Yatman was there, Mr. Bullock, there were not many that I knew.

Q. Did you see Mr. Frost there?

A. Yes.

Q. At what time?

A. About ten in the evening.

Q. Where did Mr. Frost come from?

A. He came from a room above stairs with several gentlemen into the coffee-room.

Q. What did you first perceive with respect to Mr. Frost?

A. He addressed himself, I think, first to Mr. Yatman, but that I am not certain; he was asked how long he had been returned from France.

*Lord Kenyon.* Was he asked that by Mr. Yatman?

A. By Mr. Yatman or some of the other gentlemen; he said, he was very lately returned.

*Mr. Solicitor General.* What did he say more?

A. He asked him what they were doing there, and he said, things were going on very well there, they were doing very well.

Q. Did you hear him say any thing more?

A. That he should very shortly return there.

Q. What more?

A. There was nothing more, till a few minutes after, he went into the body of the coffee room, two or three boxes from where I was; I heard him exalting his voice, and he was for equality—I am for "equality"—upon which I got off my seat, and I went forward, and inquired, "Who are you, Sir?"

*Lord Kenyon.* You asked him?

A. Yes, because I did not know him. Mr. Yatman answered, That is Mr. Frost; upon which I asked him, how he dared to utter such words? He *still continued*, "I am "for equality and no King." Mr. Yatman asked him, if he meant no King in this country, and he said, Yes, no King or no Kings; I rather think it was in the plural number. That the constitution of this country was a *very* bad one.

Q. Did he say any thing more?

A. He said nothing more. I said, he ought to be turned out of the coffee-room; upon which he walked up the room and placed his back to the fire, and wished, I believe, rather to retract, if he could have retracted, what he had said; but he still continued he was for no King and he was for equality. He quitted the room very shortly after by a general hiss from all the company.

Q. How long did he continue there?

A. I suppose not above five minutes.

JOHN TAITT—*cross examined by* MR. ERSKINE.

Q. You went, I suppose, to the coffee-house just in the ordinary course of your recreation, I take for granted?

A. It is a coffee-house I very seldom go to.

Q. How came you there that night?

A. I went there to sup.

Q. You have been there often?

A. Very often.

Q. Then of course you went to have your supper and read the newspaper?

A. Exactly so.

Q. I take it you remember all the conversation that passed between Mr. Savignac and you that night?

A. I believe Mr. Savignac wrote down to the same effect.

Q. I dare say you wrote down this?

A. I wrote none down.

Q. But do you recollect the conversation between Mr. Savignac and you?

A. No.

Q. Mr. Frost had been above stairs?

A. Yes.

Q. With whom he was dining you do not know?

A. No.

Q. Can you get out of that room without going through the coffee-room?

A. I don't know.

Q. Don't you know the contrary?

A. I do not.

Q. You must have seen people coming from above stairs, having frequented that house?

A. Yes.

Q. Then you know the way from up stairs is through the coffee-room?

A. Yes.

Q. You say, you are not certain that Mr. Frost addressed himself first to Mr. Yatman?

A. No. I am not.

Q. *The first of the conversation, you will venture to swear to, was a question put by Yatman to him?*

A. *Yes.*

Q. Will you venture to swear, that when Mr. Frost came down stairs, he was not going straight through the coffee-

house into the street, till Mr. Yatman stopped him, and asked him that question?

A. That I cannot say.

Q. What time was it?

A. About ten in the evening, rather before than after.

Q. Mr. Frost was perfectly sober, I suppose?

A. I cannot say whether he was or not.

Q. There was a good dinner, where a number of gentlemen had been present?

A. *I cannot say.*

Q. You saw other gentlemen come down?

A. Yes.

Q. Were they not all drunk?

A. They might be, I don't know.

Q. He asked Mr. Frost how long he had been from France, and he told him he was lately returned; *the conversation went about France?*

A. Yes.

Q. Will you venture to swear, the conversation did not continue between Mr. Yatman and Mr. Frost from the time it first began till the time you heard him say, he was for equality?

A. I cannot say, I did not attend to it till he exalted his voice, and said, he was for equality.

Q. Then what question was put to him, and what turn the conversation was taking, you don't know, till you heard him exalt his voice?

A. No.

Q. Then you did not know whether the conversation respected France or England; but hearing the word Equality, you was all a-gog?

A. No, I was not all a-gog.

Q. You was in another part of the coffee-house?

A. I was in the next box.

Q. By your own account you don't appear to have been very attentive; but hearing his voice louder than before, you immediately went up, and asked him, how he dared to utter such words?

A. Yes.

Q. You said that in a tone of voice that showed that you felt yourself insulted?

A. Yes.

Q. Before you knew to what his words alluded; for he had been talking about France, you know, and how things went on there, and you immediately then interfered. I

believe several other persons interfered in the same insulting manner?

A. Yes, I believe they did.

Q. At this time you make use of an expression which probably may be owing to my dulness, but I cannot understand you. You said, he seemed to wish to retract, but still continued to do the same thing over again?

A. He did not say much.

Q. You said, he ought to be put upon the fire, you know?

A. Yes.

Q. Somebody talked of sending for a constable?

A. Yes; and *he said, every man there was a constable.*

*Mr. Solicitor General.* Did Mr. Frost appear to be disabled by liquor?

A. If I had known him before, I should have been better able to say, but I think there was hardly a doubt but he might; but as I don't know, I cannot say whether he was or no, but I rather believe he was.

Q. Did he repeat the words more than once?

A. I don't think he did.

Q. You said, he wished to retract, but still continued, that he was for no King and Equality?

A. He did not repeat that *twice.*

Q. What did you mean by saying, he wished to retract?

A. I rather thought he was sorry for what he had said; that is what I mean by it.

PAUL SAVIGNAC, of Carshalton, in Surry, sworn.—*Examined by Mr.* BEARCROFT.

Q. Do you remember being at the Percy coffee-house with Mr. Taitt, upon the 6th of November last?

A. Yes.

Q. Do you remember seeing Mr. Frost there?

A. I saw a person whom they called Mr. Frost, but I never saw him before nor since.

Q. That gentleman that sits there?—*(pointing to Mr. Frost.)*

A. I cannot say.

Q. What time in the evening did you see him in the room?

A. Between nine and ten.

Q. Did you hear any particular expressions he made use of?

A. When he passed the box I was sitting in, he was in the company of Mr. Yatman, and I heard him say, "I am for equality and no King."

*Lord Kenyon.* What did he say?

A. He was not in the box; he was walking up the middle of the coffee-room, and he said, "I am for equality and no King." I heard Mr. Yatman, pressing his brow, say, "What! equality and no King in this country?" Upon which Mr. Frost answered, "Yes, no King; there ought to be no "King." I heard nothing more in conversation pass. I stepped from the box, and asked him, how he dared to hold a doctrine of that kind in a public coffee-room? He made some reply as before, that he was for equality and no King. I told him, if he was not under the protection of the very King he was then reviling, I would kick him out of the coffee-room. Upon which he asked me, if I doubted his courage. I told him, certainly he would not have made use of such expressions without, because I should have supposed it to be an insult to make use of such expressions in a public coffee-house. He was then handled by other gentlemen, and I sat down; but very soon afterwards he left the room, under the execrations and hisses of all the room.

Q. Did you see him when he first came down into the public coffee-room?

A. I don't know that I might. I saw him soon after I saw Mr. Yatman.

Q. Recollect yourself, and tell me how long you can speak to it, as near as you can—recollect how long he was in the public coffee-room before he went away.

A. Not ten minutes, not more I am sure.

Q. I would ask you whether this conduct and these expressions of his produced any, and what kind of notice in the company?

A. That every gentlemen there was under the same idea with me, that he ought to be kicked out of the coffee-room.

PAUL SAVIGNAC—*cross examined by Mr. Serjeant* RUNNINGTON.

Q. You don't live in that neighbourhood, do you?

A. No, in Carshalton, in Surry.

Q. How long had you been in the coffee-room, before you saw Mr. Frost come in?

A. He was up stairs.

Q. Was he obliged to come through the coffee-room from up stairs to go into the street?

A. I cannot say.

Q. How far were you from Mr. Yatman?

A. They were walking up the coffee-room close to me.

Q. Did any thing pass from Mr. Yatman to Mr. Frost?

A. Yes.

Q. Before Mr. Frost spoke at all?

A. No.

Q. Do you recollect Mr. Yatman saying, as he came down stairs, "Well, Mr. Equality, where are you going to?"

A. No, I do not.

MATTHEW YATMAN, of Percy-street, sworn.—*Examined by* MR. BALDWIN.

Q. Was you at the Percy coffee-house, on the 6th of November, in the evening?

A. I was.

Q. Did you see Mr. Frost there?

A. I did.

Q. You have long known Mr. Frost?

A. Mr. Frost was in the commission for watching and lighting the street in which I live, and I am one of the commissioners.

Tell us what passed between Mr. Frost and you at the Percy coffee-house?

A. *He came from the room where he dined*, into the coffee-room; he came up to where I was, and knowing he was lately come from France, *I said Well, how do they go on in France?* He seemed to be *stimulated at the question*, and he extended his arm, and exalted his voice sufficiently to be heard up stairs, if the door had been opened, "I am "for equality, and no King."—What!" *says I*, "*no King* "*in this country?*"—No *King!*" as loud as he could hollow.

Q. Did any thing more pass between you and your *old friend?*

A. No, I had enough. Upon this, the gentlemen in the coffee-room seemed to be *stimulated* with anger, and Mr. Taitt and Mr. Savignac got up, and so enraged at him, I supposed they would have kicked him out of the coffee-room, and I believe it would have been done, but one gentleman got him to the door, and *prevailed* on him to go out.

Q. Did he say any thing more that you recollect?
A. No, it was all confusion after that.
Q. And the manner of it was as you have described it?
A. Yes.
Q. With vehemence?
A. Yes, he was very warm.

MATTHEW YATMAN—*cross examined by* MR. ERSKINE.

Q. It was all general confusion after Mr. Taitt had interfered?
A. Yes.
Q. I believe Mr. Frost said this extremely loud, that he might have been heard up stairs?
A. I am just of that opinion.
Q. And then it was that Mr. Taitt interfered?
A. Yes.
Q. After that all was confusion?
A. Yes.
*Mr. Baldwin.* Though there was confusion afterwards, there was not when he spoke those words?
A. No.
Q. Did he speak it coolly or otherwise, excepting the warmth with which you have spoken? How was he in his understanding?
A. *He spoke it very distinctly, and wished to be heard by every body.*
Q. Was he sober or no?
A. Certainly he was not drunk.
*Mr. Erskine.* It was ten o'clock, was it not?
A. Between nine and ten. I don't know whether it was quite ten.
Q. Do you mean to say he was just as sober as he might be at twelve o'clock in the day?
A. That *he walked.*
Q. Do you mean to stake your character and your *honour* before the Jury, by saying he was as sober as if you had seen him before dinner?
A. I don't say he was sober.
Q. I ask you whether you mean to stake your *character* and your honour before the Jury, by saying that he was as sober as at twelve o'clock at day?
A. I should not have known that he was not by his conversation and *his walk: whether he was in his right senses when he used these words, is another thing.*

Q. Do you mean to say he spoke in the manner and the pitch of voice like a sober man?

A. He was *stimulated.*

Q. He extended his arm?

A. Yes.

Q. You think that a mark of sobriety, do you?

A. I do not think it a mark of good sense.

—— BULLOCK, of sworn.—*Examined by* MR. WOOD.

Q. Was you at the Percy coffee-house on the 6th of November last?

A. I was.

Q. Did you see Mr. Frost there?

A. I did.

Q. Be so good as tell us whether you heard him say any thing, and what it was?

A. I did not attend to the conversation, till I heard what I thought very treasonable words, upon which I committed them to paper: I wrote it at the time with an idea of having it signed.

Q. Be so good as to read it slowly.

A. *(Reads.)* Percy coffee-house, 6th of November, 1792. We, the undermentioned, do hereby certify, that at about ten o'clock this evening, Mr. John Frost came into this coffee-room, and did then, and in our presence, openly declare, *that he wished to see equality prevail in this country*, and no King, in a loud and *factious* way; and upon being asked whether he meant that there should be no King in this country, he answered, *Yes.*—That is all I recollect of *seditious words.*

*Lord Kenyon.* You put this down with a view that they might have been signed?

A. I did.

*Mr. Wood.* Was Mr. Frost drunk or sober at that time?

A. I never saw Mr. Frost before that time, but he did not appear to me to be a man in liquor, not in the least so.

Q. Have you ever seen him at any other time?

A. I have frequently since.

Q. Where may that be?

A. In Paris.

Q. How soon after this was it?

A. I arrived at Paris on the 27th of December, I think, to the best of my recollection; and I saw him a few days after my arrival there.

*Mr. Erskine.* We have surely nothing to do with what passed in Paris?

*Lord Kenyon.* I think I may hear it: if words in this country constituting a different offence, that might be prosecuted here——; but this is quite a new question. In common slander this is always allowed.

*Mr. Erskine.* I confess I cannot help entering my protest against it, and upon this plain principle, that it may be recollected that that question did arise, and that the Defendant may have the benefit of it.

*Mr. Attorney General.* I believe Mr. Erskine has misunderstood what I meant by putting the question. I meant merely whether he had ever seen Mr. Frost at any future time any where, and whether, from any conversation he had with him, he can take upon him to judge of the state in which Mr. Frost was upon the 6th of November 1792; that is comparing his modes of conversing at future times, near or distant from that 6th of November 1792. I dont wish to ask a single question respecting Mr. Frost's conversation since that time, whatever the law may be upon the subject. I have a still more important reason for not asking it.

*Mr. Erskine.* My objection is by no means cured, but still more important. The question was this, whether the witness shall be allowed to say from conversations with Mr. Frost—

*Mr. Bullock.* I believe I can save you a great deal of trouble. I know nothing about it.

*Lord Kenyon.* I am clearly of opinion that it might have been asked in the way in which the Attorney General put it, if by his general deportment afterwards he could judge whether he was in liquor or not. I have not the least particle of doubt.

*Mr. Erskine.* Neither have I certainly upon that point, my Lord.

Q. Where have you seen him since?

A. At Calais [redacted]rst time.

*Lord Kenyon.* I will not have all his life and conversation brought forward; I would not have him give evidence from conjecture or knowledge of what he was doing at Paris; all that I mean to allow is, whether from his general deportment at other times, he thinks he was sober at that time?

Q. How many times might you see him, think you?

A. It is impossible to say; I have frequently seen him at a coffee-house.

**Q.** Are you able to judge from that, whether he was sober or not when you saw him at Percy street coffee-house?

**A.** He was what you may call a sober man.

*Mr. Erskine.* Was he like a man that had been drinking?

**A.** Drinking moderately.

**Q.** Two bottles of port, what do you say to that?

**A.** I cannot say.

**Q.** It is very difficult to judge by weights and scales.

**A.** I thought he was sober by his manner.

## MR. ERSKINE.

GENTLEMEN OF THE JURY,

I RISE to address you under circumstances so peculiar that I consider myself entitled not only for the Defendant arraigned before you, but personally for myself, to the utmost indulgence of the Court. I came down this morning with no other notice of the duty cast upon me in this cause, nor any other direction for the premeditation necessary to its performance, than that which I have ever considered to be the safest and the best, namely, the records of the Court, as they are entered here for trial, where for the ends of justice the charge must always appear with the most accurate precision, that the accused may know what crime he is called upon to answer and his Counsel how he may defend him. Finding therefore upon the record which arraigns the Defendant, a simple, unqualified charge of seditious words, unconnected, and uncomplicated with any extrinsic events, I little imagined that the conduct of my Client was to receive its colour and construction from the present state of France, or rather of all Europe, as affecting the condition of England; I little dreamed that the 6th day of November (which, reading the Indictment, I had a right to consider like any other day in the calendar) was to turn out an epoch in this country (for so it is styled in the argument,) and that instead of having to deal with idle, thoughtless words, uttered over wine, through the passage of a coffee-house, with whatever *at any time* might belong to them, I was to meet a charge,

of which I had no notice, or conception, and to find the *loose dialogue*, which, even upon the face of the record itself, exhibits nothing more than a casual sudden conversation, exalted to an accusation of the most premeditated, serious, and alarming nature,—verging upon high treason itself, by its connexion with the most hostile purposes to the state,—and assuming a shape still more interesting from its dangerous connexion with certain mysterious conspiracies, which, in confederacy with French republicans, threaten, *it seems*, the constitution of our once happy country.

Gentlemen, I confess myself much unprepared for a discussion of this nature, and a little disconcerted at being so;—for though (as I have said) I had no notice from the record, that the politics of Europe were to be the subject of discourse, yet experience ought to have taught me to expect it;—for what act of Government has for a long time past been carried on by any other means;—*when* or *where* has been the debate, or *what* has been the object of authority, in which the affairs of France have not taken the lead?—The affairs of France have indeed become the common stalking-horse for all state purposes. I know the honour of my learned friend too well to impute to him the introduction of them for any improper or dishonourable purpose; I am sure he connects them in his own mind with the subject, and thinks them legally before you —I am bound to think so, because the general tenour of his address to you has been manly and candid. But I assert, that neither the actual condition of France, nor the supposed condition of this country, are, or can be, in any shape before you,—and that upon the trial of this Indictment, supported only by the evidence you have heard, the words must be judged of as if spoken by any man or woman in the kingdom, at any time from the Norman conquest, to the moment I am addressing you.

I admit indeed, that the particular time in which words are spoken, or acts committed, *may* most essentially alter their quality and construction, and give to expressions, or conduct, which in another season might have been innocent, or at least indifferent, the highest and most enormous guilt:—but for that very reason the supposed particularity of the present times as applicable to the matter before you, is absolutely shut out from your consideration, shut out upon the plainest and most obvious principle of justice and law;—because, wherever *time* or *occasion* mix with an act,—affect its quality,—and constitute or enhance its criminality, they then become an essential part of the misdemeanor itself, and must conse-

quently be charged as such upon the record. I plainly discover I have his Lordship's assent to this proposition.—If therefore the Crown had considered this cause originally in the serious light which it considers it to-day, it has wholly mistaken its course. If it had considered the government of France as actively engaged in the encouragement of disaffection to the monarchy of England, and that her newly-erected Republic was set up by her as the great type for imitation and example here;—if it had considered that numbers, and even classes of our countrymen were ripe for disaffection, if not for rebellion,—and that the Defendant, as an emissary of France, had spoken the words with the premeditated design of undermining our Government;—this situation of things might and ought to have been put *as facts upon the record*, and as facts established by evidence, instead of resting as they do to-day upon assertion. By such a course the crime indeed would have become of the magnitude represented; but on the other hand, as the conviction could only have followed from the proof, *the Defendant upon the evidence of to-day must have an hour ago been acquitted;* since not a syllable has been proved of any emissaries from France to debauch our monarchical principles;—not even an insinuation *in evidence, that, if there were any such, the Defendant was one of them;* —not a syllable of proof, either directly or indirectly, that the condition of the country, when the words were uttered, differed from its ordinary condition in times of prosperity and peace. It is therefore a new and most compendious mode of justice, that the facts which wholly constitute, or at all events lift up the dignity and danger of the offence, should not be charged upon record,—*because they could not be proved;* —but are to be taken for granted in the argument, so as to produce the same effect upon the trial, and in the punishment, as if they had been actually charged, and completely established. If the affairs of France, as they are supposed to affect this country, had been introduced without a warrant from the charge or the evidence, I should have been wholly silent concerning them; but as they have been already mixed with the subject in a manner so eloquent and affecting, as too probably to have made a strong impression, it becomes my duty to endeavour at least to remove it.

The late revolutions in France have been represented to you as not only ruinous to their authors, and to the inhabitants of that country, but as likely to shake and disturb the principles of this and all other governments;—you have been

told, that though the English people are generally well affected to their government—ninety-nine out of one hundred, upon Mr. Attorney General's own statement—yet that wicked and designing men have long been labouring to overturn it,—and that nothing short of the wise and spirited exertions of the present Government (of which this prosecution is, it seems, one of the instances), have hitherto averted, or can continue to avert the dangerous contagion, which misrule and anarchy are spreading over the world;—that bodies of Englishmen, forgetting their duty to their own country and its constitution, have congratulated the Convention of France upon the formation of their monstrous government;—and that the conduct of the Defendant must be considered as a part of a deep-laid system of disaffection, which threatened the establishments of this kingdom.

Gentlemen, this state of things having no support whatever from any evidence before you, and resting only upon *opinion;* I have an equal right to *mine;*—having the same means of observation with other people of what passes in the world; and as I have a very clear one upon this subject, I will give it you in a few words.

I am of opinion then, that there is not the smallest foundation for the alarm which has been so industriously propagated; in which I am so far from being singular, that I verily believe the authors of it are themselves *privately* of the same way of thinking;—but it was convenient for *certain persons*, who had changed their principles, to find some plausible pretext for changing them;—it was convenient for those, who when *out of* power had endeavoured to lead the public mind to the necessity of reforming the corruptions of our own government, to find *any* reasons for their continuance and confirmation, when they operated as engines to support themselves in the exercise of powers, which were only odious when in *other hands.* For this honourable purpose the sober, reflecting, and temperate character of the English nation, was to be represented as fermenting into sedition, and into an insane contempt for the revered institutions of their ancestors:—for this honourable purpose the wisest men,—the most eminent for virtue,—the most splendid in talents,—the most independent for rank and property in the country, were, for no other crime than their perseverance in those sentiments which *certain persons had originated and abandoned,* to be given up to the licentious pens and tongues of hired defamation,—to be stabbed in the dark by anonymous accusation, and to be held out to England and to the whole world, as

ing under the auspices of cut-throats to overturn eve-
ʒ sacred in religion, and venerable in the ancient go-
nt of our country. Certain it is, that the whole sys-
government, of which the business we are now enga-
is no mean specimen, came upon the public with the
ness of a clap of thunder, without one act to give it
ion, *from the very moment that notice was given of a*
*in Parliament, to reform the representation of the peo-*
ong, long before that time the Rights of Man and
ooks though not complained of, had been written ;—
long before it, the addresses to the French govern-
which have created such a panic, had existed ;—but
is a give and take in this world, they passed unre-
Leave but the *practical* corruptions, and they are
ed to wink at the *speculations* of theorists and the
nents of public-spirited civility ; but the moment the
l attention was awakened *to look to things in practice,*
*eek to reform corruptions at home,* from that moment,
ie ringing of a bell, the whole hive began to swarm,
ry man in his turn has been stung.

Gentlemen, is the real state of the case ; and I am so
n pushing the observation beyond its bearing for the
of a Client, that I am ready to admit Mr. Frost in
duct has not been wholly invulnerable, and that in
easure he has brought this prosecution upon himself.
lemen, Mr. Frost must forgive me, if I take the li-
say that with the best intentions in the world, he
y pushed his observations and conduct respecting
ment farther than many would be disposed to follow
I cannot disguise or conceal from you, that I find his
this green book,* as associated with Mr. Pitt and

rskine read the following minutes from Mr. Pitt's hand-writing.)

*Thatched House Tavern, May 18th, 1782.*

merous and respectable meeting of Members of Parliament, friend-
nstitutional reformation, and of members of several committees of
and cities,

| | | |
|---|---|---|
| e of Richmond | Sir C. Turner | Dr. John Jebb |
| ry | Mr. Taylor | Major Cartwright |
| ion | Mr. Amherst | Mr. Hill |
| l Mayor | Mr. Duncombe | Mr. Baynes |
| . Pitt | Mr. J. Martin | Mr. Shove |
| in Lewes | Mr. Ald. Townsend | Mr. Churchill |
| Wyvill | Mr. Ald. Creichton | Mr. Tooke |
| ner | Mr. Ald. Wilkes | Mr. Horne |

the Duke of Richmond, at the Thatched House Tavern, in St. James's Street; that I find him also the correspondent of the former, and that I discover in their publications on the structure and conduct of the House of Commons expressions, which, however merited, and in my opinion commendable, would now be considered not merely as intemperate and unguarded, but as highly criminal*.

| | | |
|---|---|---|
| Mr. Redman | Rev. Mr. Bromley | Mr. Frost |
| Mr. Withers | Mr. B. Hollis | Mr. Trevanion |
| Mr. Bodely | Mr. Disney Fitche | Dr. Brocklesby |
| Mr. Vardy | Mr. Edmunds | Rev. Dr. Rycroft |
| Mr. Sheridan | General Hale | Colonel Byron |
| Mr. Alderman Turner | Sir Cecil Wray | Major Parry |
| Mr. Trecothick | Mr. B. Hayes | Mr. Green |
| Mr. Vincent | Sir J. Norcliffe | &c. &c. &c. |

Resolved unanimously,

That the motion of the Honourable William Pitt on the 7th instant, for the appointment of a committee of the House of Commons, to inquire into the state of the representation of the People of Great Britain in Parliament, and to report the same to the House, and also what steps it might be proper in their opinion to take thereupon, having been defeated by a motion made for the order of the day, it is become indispensably necessary that application should be made to parliament, by petitions from the collective body of the people in their respective districts, requesting a substantial reformation of the Commons House of Parliament.

Resolved unanimously,

That this meeting, considering that a general application by the collective body of the Commons House of Parliament cannot be made before the close of the present session, is of opinion, that the sense of the people should be taken at such times as may be convenient this summer, in order to lay their several petitions before Parliament early in the next session, when their proposition for a parliamentary reformation, *without which neither the liberty of the nation can be preserved, nor the permanence of a wise and virtuous administration can be secured,* may receive that ample and mature discussion which so momentous a question demands.

Resolved unanimously,

That the thanks of this Meeting be given to the Honourable William Pitt for moving, John Sawbridge, Esq. for seconding, and the 141 other Members who supported the motion for a committee to inquire into the state of Parliamentary representation, and to suggest what in their opinion ought to be done thereupon: as well as to the duke of Richmond, Lord John Cavendish, Mr. Secretary Fox, and every other Member of the present Ministry, or of either House of Parliament, who has in any way promoted the necessary reform that was the object of the foregoing motion.

Wm. Plomer, Chairman.

And they resolved to have another meeting at the same place on Saturday, June 1st.

*(COPY)

Dear Sir,

I am extremely sorry that I was not at home, when you and the other gentlemen from the Westminster Committee did me the honour to call.

Gentlemen, the fashion of this world speedily passeth away.—We find these glorious restorers of equal representation, determined, *as ministers*, that, so far from every man being an elector, the metropolis of the kingdom should have no election at all: but should submit to the power or to the softer allurements of the Crown. Certain it is, that, for a short season, Mr. Frost being engaged *professionally as agent for the Government candidate*, did not (indeed he could not) oppose this inconsistency between the doctrine and practice of his friends, and *in this interregnum of public spirit*, he was, in the opinion of Government, a perfect patriot, a faithful friend to the British constitution. As a member of the law he was therefore trusted with Government business in matters of revenue, and was, in short, what all the friends of Government of course are, the best and most approved;—to save words, he was like all the rest of them,—just what he should be. But the election being over, and with it, professional agency, and Mr. Frost, as he lawfully might, continuing to hold his former opinions which were still avowed and gloried in, though not acted on, by his ancient friends, he unfortunately did not change them the other day, when they were thrown off by others; on the contrary, he rather seems to have taken fire with the prospect of reducing them to practice; and being, as I have shown you, bred in a school which took the lead in boldness of remonstrance of all other reformers before or since, he fell, in the heat and levity of wine, into expressions which have no correspondence with

May I beg the favour of you to express, that I am truly happy to find that the motion of Tuesday last has the approbation of such zealous friends to the public, and to assure the Committee, that my exertions shall never be wanting in support of a measure, *which I agree with them in thinking essentially necessary to the independence of Parliament and the liberty of the people.*

I have the honour to be, with great respect and esteem,

Sir,

Your most obedient and most humble servant,

Lincoln's Inn, W. Pitt.

Friday May 10th.

*John Frost, Esq. Percy Street.*

Sir, *Lincoln's Inn, May 12th, 1782.*

I have received the favour of your note, and shall be proud to receive the honour intended me by the gentlemen of the Middlesex Committee, at the time you mention.

I am, with great regard,

Sir,

Your most humble servant,

W. Pitt.

*John Frost, Esq. Percy Street.*

his sober judgment;—which would have been passed over or laughed at in you or me, but which coming from him were never to be forgiven by Government. This is the genuine history of his offence,—for this he is to be the subject of prosecution,—not the prosecution of my learned friend,—not the prosecution of the Attorney General,—not the prosecution of His Majesty; but the prosecution of Mr. Yatman, who wishes to show you his great loyalty to the state and constitution, which were in danger of falling, had it not been for the drugs of this worthy apothecary.

With regard to the new government of France, since the subject has been introduced, all I can say of it is this:—that the good or evil of it belongs to themselves:—that they had a right, like every other people upon earth, to change their government:—that the system destroyed was a system disgraceful to free and rational beings, and if they have neither substituted, nor shall hereafter substitute a better in its stead, they must eat the bitter fruits of their own errors and crimes. As to the horrors which now disfigure and desolate that fine country, all good men must undoubtedly agree in condemning and deploring them, but they may differ nevertheless in decyphering their causes;—men to the full as wise as those who pretend to be wiser than Providence, and stronger than the order of things, may perhaps reflect that a great fabric of unwarrantable power and corruption could not fall to the ground without a mighty convulsion,—that the agitation must ever be in proportion to the surface agitated,—that the passions and errors inseparable from humanity must heighten and swell the confusion, and that perhaps the crimes and ambition of other nations, under the mask of self-defence and humanity, may have contributed not a little to aggravate them,—may have tended to embitter the spirits and to multiply the evils which they condemn,—to increase the misrule and anarchy which they seek to disembroil, and in the end to endanger their own governments, which by carnage and bloodshed, instead of by peace, improvement, and wise administration, they profess to protect from the contagion of revolution.

As to the part which bodies of men in England have taken, though it might in some instances be imprudent and irregular, yet I see nothing to condemn, or to support the declamation which we daily hear upon the subject. The congratulations of Englishmen were directed to the fall of corrupt and despotic power in France, and were animated by a wish of a milder and freer government,—happier for that country, and

safer for this; they were besides addressed to France when she was at peace with England, and when no law was therefore broken by the expression of opinion or satisfaction. They were not congratulations on the murders which have since been committed, nor on the desolations which have since overspread so large a portion of the earth, neither were they traitorous to the government of this country. This we may safely take in trust, *since not one of them, even in the rage of prosecution, has been brought before a criminal court.* For myself, I never joined in any of these addresses, but what I have delivered concerning them is all I have been able to discover; and Government itself, as far as evidence extends, has not been more successful. I would therefore recommend it to His Majesty's servants, to attend to the reflections of an eloquent writer, at present high in their confidence and esteem, who has admirably exposed the danger and injustice of general accusations. " *This way of proscribing the citi-* " *zens by denominations and general descriptions*, dignified by " the name of reason of state, and security for constitutions " and commonwealths, is nothing better at bottom than the " miserable invention of an ungenerous ambition, which " would fain hold the sacred trust of power, without any of " the virtues or energies that give a title to it; a receipt of " policy, made up of a detestable compound of malice, " cowardice, and sloth. They would govern men against " their will; but in that, Government would be discharged " from the exercise of vigilance, providence, and fortitude; " and therefore that they may sleep on their watch, consent " to take some one division of the society into partnership " of the tyranny over the rest. But let government, in " whatever form it may be, comprehend the whole in its " justice, and restrain the suspicious by its vigilance; let it " keep watch and ward; let it discover by its sagacity, and " punish by its firmness, all delinquency against its power, " whenever it exists in the overt acts, and then it will be as " safe as God and nature intended it should be. Crimes are " the acts of individuals, and not of denominations; and " therefore arbitrarily to class men under general descrip- " tions, in order to proscribe and punish them in the lump for " a presumed delinquency, of which perhaps but a part, per- " haps none at all, are guilty, is indeed a compendious " method, and saves a world of trouble about proof; but " such a method, instead of being law, is an act of unna- " tural rebellion against the legal dominion of reason and " justice; and a vice, in any constitution that entertains

" it, which at one time or other will certainly bring on its " ruin.*"

Gentlemen, let us now address ourselves to the cause disembarrassed by foreign considerations;—let us examine what the charge upon the record is, and see how it is supported by the proofs;—for, unless the whole indictment, or some one count of it, be in form and substance supported by the evidence, the Defendant must be acquitted, however in other respects you may be dissatisfied with his imprudence and indiscretion. The indictment charges, " *That the Defendant being a person of an impious, depraved,* " *seditious disposition, and maliciously intending to disturb the* " *peace of the kingdom; to bring our most serene Sovereign* " *into hatred and contempt with all the subjects of the realm,* " *and to excite them to discontent against the government;* " HE, THE SAID DEFENDANT, HIS AFORESAID WICKED " CONTRIVANCES AND INTENTIONS TO COMPLETE, PER- " FECT, AND RENDER EFFECTUAL, ON THE 6TH DAY OF " NOVEMBER," spoke the words imputed to him by the Crown. This is the Indictment, and it is drawn with a precision which marks the true principle of English criminal law. It does not merely charge the speaking of the words, leaving the wicked intention to be supplied and collected by necessary and unavoidable inference, because such inference may or may not follow from the words themselves, according to circumstances, which the evidence alone can disclose; it charges therefore the wicked intention *as a fact*, and as constituting the very essence of the crime, stating as it must state, to apprise the Defendant of the crime alleged against him, the overt act, by which such malicious purpose was displayed, and by which he sought to render it effectual. No man can be criminal without a criminal intention,—*actus non facit reum nisi mens sit rea.* God alone can look into the heart, and man, could he look into it, has no jurisdiction over it, until society is disturbed by its actions; but the criminal mind being the source of all criminality, the law seeks only to punish actions which it can trace to evil disposition: —it pities our errors and mistakes,—makes allowances for our passions, and scourges only our crimes.

Gentlemen, my learned friend, the Attorney General, in the conclusion of his address to you, did more than ratify these propositions; for, with a liberality and candour very honourable to himself, and highly advantageous to the public which he represents, he said to you, that if the expres-

* Edmund Burke.

sions charged upon the Defendant, should turn out in your opinion to be unadvised and unguarded, arising on the sudden, and unconnected with previous bad intention, he should not even insist upon the strictness of the law, whatever it might be, nor ask a verdict, but such as between man and man, acting upon moral and candid feelings, ought to be asked and expected. These were the suggestions of his own just and manly disposition, and he confirmed them by the authority of Mr. Justice Forster, whose works are so deservedly celebrated; but judging of my unfortunate Client, not from his own charity, but from the false information of others, he puts a construction upon an expression of this great author, which destroys much of the intended effect of his doctrine;—a doctrine which I will myself read again to you, and by the right interpretation of which I desire the Defendant may stand or fall. In the passage read to you, Forster says, "as to mere words, they differ widely from wri-"tings in point of REAL MALIGNITY AND PROPER EVI-"DENCE; they are often the effect of mere heat of blood, "which in some natures, otherwise well disposed, carrieth the "man beyond the bounds of prudence: they are always lia-"ble to great misconstruction, from the ignorance or in-"attention of the hearers, and too often from a motive "truly criminal." Forster afterwards goes on to contrast such loose words "*not relative to any act or design*," for so he expresses himself, with "words of advice and persua-"sion *in contemplation of some traitorous purpose actually* "*on foot or intended, and in prosecution of it.*"—Comparing this rule of judgment with the evidence given,—one would have expected a consent to the most favourable judgment,—one would have almost considered the quotation as a tacit consent to an acquittal:—but Mr. Attorney General, still looking through the false medium of other men's prejudices, lays hold of the words, "*otherwise well disposed*," and engrafts upon them this most extraordinary requisition. Show me, he says, that Mr. Frost is *otherwise well disposed*.—Let him bring himself within the meaning of Forster, and *then* I consent that he shall have the fullest benefit of his indulgent principle of judgment. Good God, Gentlemen, are we in an English Court of Justice?—Are we sitting in judgment before the Chief Justice of England, with the assistance of a Jury of Englishmen? and am I in such a presence to be called upon to prove the good disposition of my Client, before I can be entitled to the protection of those rules of evidence, which apply equally to the just and to the unjust, and by which an evil disposition must be proved before it shall

even be suspected? I came here to resist and to deny the existence of legitimate and credible proof of disloyalty and disaffection; and am I to be called upon to prove that my Client has *not* been, nor is disloyal or disaffected?—Are we to be deafened with panegyrics upon the English constitution, and yet to be deprived of its first and distinguishing feature, that innocence is to be presumed until guilt be established? Of what avail is that sacred maxim, if, upon the bare assertion and imputation of guilt, a man may be deprived of a rule of evidence, the suggestion of wisdom and humanity, as if the rule applied only to those who need no protection, and who were never accused? If Mr. Frost, by any *previous overt acts*, by which alone any disposition, good or evil, can be proved, had shown a disposition leading to the offence in question, it was evidence for the Crown. Mr. Wood, whose learning is unquestionable, undoubtedly thought so, when, with the view of crimination, he asked where Mr. Frost had been before the time in question, for he is much too correct to have put an irregular and illegal question in a criminal case; I must therefore suppose his right to ask it, appeared to him quite clear and established, and I have no doubt that it was so. Why then did he not go on and follow it up, by asking what he had done in France?—what declarations he had made *there*,—or what part he proposed to act *here*, upon his return?—The charge upon the record is, that the words were uttered with malice and premeditation; and Mr. Attorney General properly disclaims a conviction upon any other footing. Surely then it was open to the Crown, upon every principle of common sense, to have proved the previous malice by all previous discourses and previous conduct, *connected with the accusation*; and yet, after having wholly and absolutely failed in this most important part of the proof, we are gravely told, that the Crown having failed in the *affirmative*, we must set about establishing the *negative*, for that otherwise we are not within the pale or protection of the very first and paramount principles of the law and government of the country.

Having disposed of this stumbling-block in the way of sound and indulgent judgment, we may now venture to examine THIS *mighty offence as it is proved by the witnesses for the Crown, supposing the facts neither to have been mistated from misapprehension, nor wilfully exaggerated.*

Mr. Frost, the Defendant, a gentleman, who upon the evidence stands wholly unimpeached of any design against the public peace, or any indisposition to the constitution of the kingdom, appears to have dined at the tavern over the Percy coffee-house,—not even with a company met upon any political occasion, good or evil, but, as has been admitted in the opening, with a society for the *Encouragement of Agriculture*, —consisting of most reputable and inoffensive persons, neither talking nor thinking about government, or its concerns; —so much for the preface to this dangerous conspiracy. The company did not retire till the bottle had made many merry circles; and it appears upon the evidence for the Crown, that Mr. Frost, *to say the least*, had drunk very freely: but was it then, that, with the evil intention imputed to him, he went into this coffee-house to circulate his opinions, and to give effect to designs he had premeditated?—*He could not possibly go home without passing through it;* for it is proved that there was no other passage into the street from the room where he had dined: but having got there by accident, did he even then stop by design and collect an audience to scatter sedition?—So far from it, that Mr. Yatman, the very witness against him, admits, that he interrupted him as he passed in silence towards the street, and fastened the subject of France upon *him;* and every word which passed *(for the whole is charged upon the very record as a dialogue with this witness,)* in answer to his *entrapping questions*, introduced with the familiarity of a very old acquaintance, and in a sort of banter too, which gave a turn to the conversation, which renders it ridiculous as well as wicked, to convert it into a serious plan of mischief;—"Well," says Mr. Yatman, "well, Mr. "Equality, so you have been in France—when did you ar- "rive? I suppose you are for equality, and no Kings?"— "O yes," says Mr. Frost, "certainly I am for equality; I "am for no Kings." Now beyond all question, when this answer was made, whether in jest or in earnest, whether when drunk or sober, it neither had, nor *could* have the remotest relation to ENGLAND OR ITS GOVERNMENT:—France had just abolished its new constitution of monarchy, and set up a republic;—she was at that moment divided and in civil confusion on the subject; the question therefore, and the answer, as they applied to France, were sensible and relevant; but to England or to English affairs they had not (except in the *ensnaring* sequel) the remotest application. Had Yatman therefore ended here, the conversation would have

ended, and Mr. Frost would have been the next moment in the street;—but still the question is forced upon him, and he is asked,—"What! no Kings in England?" although his first answer had no connexion with England; the question, therefore, was self-evidently a snare; to which he answered, "No Kings in England,"—which seemed to be all that was wanted, for in a moment every thing was confusion and uproar; Mr. Frost, who had neither delivered nor meant to deliver any serious opinion concerning government, and finding himself injuriously set upon, wished, as was most natural, to explain himself, by stating to those around him what I have been just stating to you;—but all in vain: they were in pursuit of the immortal fame of the very business we are engaged in at this moment, and were resolved to hold their advantage—his voice was immediately drowned by the clamours of insult and brutality,—he was baited on all sides like a bull, and left the coffee-house without the possibility of being heard either in explanation or defence. An indictment was immediately preferred against him, and from that moment the public ear has been grossly and wickedly abused upon the subject;—his character shamefully calumniated,—and *his cause prejudged before the day of trial.*

Gentlemen, it is impossible for me to form any other judgment of the impression which such a proceeding altogether is likely to make upon your minds, but from that which it makes upon *my own.* In the first place, is society to be protected by the breach of those confidences, and in the destruction of that security and tranquillity, which constitute its very essence every where, but which, till of late, most emphatically characterized the life of an Englishman?—Is government to derive dignity and safety by means which render it impossible for any man who has the least spark of honour to step forward to serve it?—Is the time come when obedience to the law and correctness of conduct are not a sufficient protection to the subject, but that he must measure his steps, select his expressions, and adjust his very looks in the most common and private intercourses of life?—Must an English gentleman in future fill his wine by a measure, lest, in the openness of his soul, and whilst believing his neighbours are joining with him in that happy relaxation and freedom of thought, which is the prime blessing of life, he should find his character blasted, and his person in a prison?—Does any man put such constraint upon himself in the most private mo-

ment of his life, that he would be contented to have his loosest and lightest words recorded, and set in array against him in a Court of Justice? Thank God, the world lives very differently, or it would not be worth living in. There are moments when jarring opinions may be given without inconsistency,—when Truth herself may be sported with without the breach of veracity—and where well-imagined nonsense is not only superior to, but is the very index to wit and wisdom. I might safely assert, taking too for the standard of my assertion, the most honourably correct and enlightened societies in the kingdom, that if malignant spies were properly posted, scarcely a dinner would end without a duel and an indictment.

When I came down this morning, and found, contrary to my expectation, that we were to be stuffed into this miserable hole in the wall,* to consume our constitutions:—suppose I had muttered along through the gloomy passages—What, is this cursed trial of Hastings going again?—Are we to have no respite?—Are we to die of the asthma in this damned corner?—I wish to God that the roof would come down and abate the Impeachment, Lords, Commons and all together. *Such a wish proceeding from the mind,* would be desperate wickedness, and the serious expression of it a high and criminal contempt of Parliament. Perhaps the bare utterance of such words, even without meaning, would be irreverend and foolish;—but still, if such expressions had been gravely imputed to me as the result of a malignant mind, seeking the destruction of the Lords and Commons of England, how would they have been treated in the House of Commons, on a motion for my expulsion?—How!—The witness would have been laughed out of the House before he had half finished his evidence, and would have been voted to be too great a blockhead to deserve a worse character. Many things are indeed wrong and reprehensible, that neither do nor can become the objects of criminal justice, because the happiness and security of social life, which are the very end and object of all law and justice, forbid the communication of them?—because the spirit of a gentleman, which is the most refined morality, either shuts men's ears against what should not be heard, or closes their lips with the sacred seal of honour.

* The King's Bench sat in the small Court of Common Pleas—the Impeachment having shut up its own Court. EDIT.

This tacit but well-understood and delightful compact of social life is perfectly consistent with its safety.—The security of free governments and the unsuspecting confidence of every man who lives under them, are not only compatible but inseparable. It is easy to distinguish where the public duty calls for the violation of the private one;—criminal intention, but not indecent levities,—not even grave opinions unconnected with conduct, are to be exposed to the magistrate; and when men, which happens but seldom, without the honour or the sense to make the due distinctions, force complaints upon governments, which they can neither approve of nor refuse to act upon,—it becomes the office of Juries,—as it is yours to-day,—to draw the true line in their judgments, measuring men's conduct by the safe standards of human life and experience.

Gentlemen, the misery and disgrace of society, under the lash of informers, running before the law and hunting men through the privacies of domestic life, is described by a celebrated speaker* with such force and beauty of eloquence, that I will close my observations on this part of the subject, by repeating what cannot, I am persuaded, be uttered amongst Englishmen without sinking deep into their hearts: "A mercenary informer knows no distinction. Under such a system, the obnoxious people are "slaves, not only to the government, but they live at the "mercy of every individual; they are at once the slaves "of the whole community and of every part of it, and the "worst and most unmerciful men are those on whose goodness they most depend.

"In this situation men not only shrink from the frowns "of a stern magistrate, but are obliged to fly from their very species. The seeds of destruction are sown in civil intercourse, and in social habitudes. The blood of wholesome "kindred is infected. Their tables and beds are surrounded with snares. All the means given by Providence to "make life safe and comfortable are perverted into instruments of terror and torment. This species of universal "subserviency, that makes the very servant who waits "behind your chair, the arbiter of your life and fortune, "has such a tendency to degrade and abase mankind, and to "deprive them of that assured and liberal state of mind "which alone can make us what we ought to be, that I "vow to God, I would sooner bring myself to put a man

* Edmund Burke.

" to immediate death for opinions I disliked, and so to get " rid of the man and his opinions at once, than to fret him " with a feverish being, tainted with the jail distemper of a " contagious servitude, to keep him above ground, an ani- " mated mass of putrefaction, corrupted himself, and corrupt- " ing all about him."

If these sentiments apply so justly to the reprobation of persecution for opinions—even for opinions which the laws, however absurdly, inhibit,—for opinions though certainly and maturely entertained,—though publicly professed, and though followed up by corresponding conduct;—how irresistibly do they devote to contempt and execration all evesdropping attacks upon loose conversations, casual or convivial, more especially when proceeding from persons conforming to all the religious and civil institutions of the state, unsupported by general and avowed profession, and not merely unconnected with conduct, but scarcely attended with recollection or consciousness! Such a vexatious system of inquisition, the disturber of household peace, began and ended with the Star-Chamber;—the venerable law of England never knew it;—her noble, dignified, and humane policy soars above the little irregularities of our lives, and disdains to enter our closets without a warrant founded upon complaint. Constructed by man to regulate human infirmities, and not by God to guard the purity of angels, it leaves to us our thoughts, our opinions, and our conversations, and punishes only overt acts of contempt and disobedience to her authority.

Gentlemen, this is not the specious phrase of an advocate for his Client;—it is not even my exposition of the spirit of our constitution;—but it is the phrase and letter of the law itself. In the most critical conjunctures of our history, when government was legislating for its own existence and continuance, it never overstepped this wise moderation. To give stability to establishments, it occasionally bridled opinions concerning them, but its punishments, though sanguinary, *laid no snares for thoughtless life*, and took no man by surprise.

Of this the act of Queen Anne, which made it high treason to deny the right of Parliament to alter the succession, is a striking example. The hereditary descent of the Crown had been recently broken at the Revolution by a minority of the nation, with the aid of a foreign force, and a new inheritance had been created by the authority of the new establishment, which had but just established itself. Queen

Anne's title and the peaceable settlement of the kingdom under it, depended wholly upon the constitutional power of Parliament to make this change;—the superstitions of the world, and reverence for antiquity, which deserves a better name, were against this power and the use which had been made of it;—the dethroned King of England was living in hostile state at our very doors, supported by a powerful monarch at the head of a rival nation,—and our own kingdom itself, full of factious plots and conspiracies, which soon after showed themselves in open rebellion.

If ever, therefore, there was a season when a narrow jealousy could have been excusable in a government;—if ever there was a time when the sacrifice of some private liberty to common security would have been prudent in a people, it was at such a conjuncture; yet mark the reserve of the Crown and the prudence of our ancestors in the wording of the statute. Although the denial of the right of Parliament to alter the succession was tantamount to the denial of all legitimate authority in the kingdom, and might be considered as a sort of abjuration to the laws, yet the statute looked at the nature of man and to the private security of individuals in society, while it sought to support the public society itself;—it did not therefore dog men into taverns and coffee-houses, nor lurk for them at corners, nor watch for them in their domestic enjoyments. The act provides, "That every "person who should maliciously, advisedly, and directly, "by *writing or printing*, affirm, that the Queen was not the "rightful Queen of these realms, or that the Pretender had "any right or title to the Crown, or that any other person "had any right or title, otherwise than according to the acts "passed since the Revolution for settling the succession, or "that the legislature hath not sufficient authority to make "laws for limiting the succession, should be guilty of high "treason, and suffer as a traitor;" and then enacts, "That "if any person shall *maliciously*, and *directly*, by *preaching*, "*teaching*, or *advised speaking*, declare and maintain the "same, he shall incur the penalties of a *præmunire*."

"I will make a short observation or two," says Forster, "on the act. First, the positions condemned by them had "as direct a tendency to involve these nations in the miseries of an intestine war, to incite Her Majesty's subjects "to withdraw their allegiance from her, and to deprive her "of her crown and royal dignity, as any general doctrine, "any declaration *not relative to actions or designs*, could "possibly have; and yet in the case of bare words, positions

" of this dangerous tendency, though maintained *maliciously*, " *advisedly, and directly*, and even in the solemnities of " *preaching and teaching*, are not considered as overt-acts " of treason.

" Secondly, In no case can a man be *argued* into the pe- " nalties of the act by inferences and conclusions drawn from " what he hath affirmed; the criminal position must be *di-* " *rectly* maintained, to bring him within the compass of the " act.

" Thirdly, Nor will every rash, hasty, or unguarded ex- " pression, owing perhaps to natural warmth, or thrown out " in the heat of disputation, render any person criminal with- " in the act; the criminal doctrine must be maintained *mali-* " *ciously and advisedly.*"

He afterwards adds, " Seditious writings are permanent " things, and if published, they scatter the poison far and " wide. They are acts of deliberation, capable of satisfac- " tory proof, and not ordinarily liable to misconstruction; " at least they are submitted to the judgment of the Court, " naked and undisguised, as they came out of the author's " hands. Words are transient and fleeting as the wind; the " poison they scatter is, at the worst, confined to the narrow " circle of a few hearers; they are frequently the effect of a " sudden transport, easily misunderstood, and often mis- " reported."

Gentlemen, these distinctions, like all the dictates of sound policy, are as obvious to reason, as they are salutary in practice. What a man writes that is criminal and pernicious, and disseminates when written, is conclusive of his purpose;—he manifestly must have deliberated on what he wrote, and the distribution is also an act of deliberation;—*intention in such cases* is not therefore matter of legal proof but of reasonable *inference*, unless the accused, by proof on his side, can rebut what reason must otherwise infer: since he who writes to others, undoubtedly seeks to bring over other minds to assimilate with his own. So he who advisedly speaks to others upon momentous subjects, may be presumed to have the same intention, but yet so frail is memory,—so imperfect are our natures,—so dangerous would it be to place *words*, which, to use the language of Forster, are transient and fleeting, upon a footing with deliberate *conduct*, that the criminating letter of the law itself interposes the check and excludes the danger of a rash judgment, by curiously selecting from the whole circle of language an expression which cannot be mistaken; for nothing said upon the sudden without the evidence

of a context, and sequel in thought or conduct, can in common sense deserve the title of advised speaking. Try the matter before you upon the principle of the statute of Queen Anne, and examine it with the caution of Forster.

Suppose then, that, instead of the words imputed by this record, the Defendant, coming half drunk through this coffee-house, had, in his conversation with Yatman, denied the right of Parliament to alter the succession. Could he have been adjudged to suffer death for high treason under the statute of Queen Anne?—Reason and humanity equally revolt at the position, and yet the decision asked from you is precisely that decision; for if you could not have found advised speaking to bring it within that statute of treason, so neither can you find it as the necessary evidence of the intention charged upon the present Indictment, which intention constitutes the misdemeanor.

If any thing were wanting to confirm these principles of the law and the commentaries of its ablest judges, as applicable to words,—they are in another way emphatically furnished by the instance before us;—for in the zeal of these coffee-house politicians to preserve the Defendant's expressions, they were instantly to be put down in writing, and signed by the persons present;—yet the paper read by Colonel Bullock, and written, as he tells you, at the very moment with that intention, contains hardly a single word, from the beginning to the end of it, either in meaning or expression, the same as has been related by the witnesses;—it sinks in the first place the questions put to the Defendant, and the whole dialogue, which is the best clue to the business, and records, "*that Mr. Frost came into the coffee-house, and declared,*" an expression which he never used, and which wears the colour of deliberation, "*that he wished to see equality prevail in this country.*"—Another expression, which it is now agreed on all hands he never uttered, and which conveys a very different idea from saying in answer to an impertinent or a taunting question, "Oh yes, I am for equality."—I impute nothing at all to Colonel Bullock, who did not appear to me to give his evidence unfairly;—he read his paper as he wrote; but this is the very strength of my observation: for suppose the case had not come for months to trial, the other, witnesses (and honestly too) might have let their memories lean on the written evidence, and thus you would have been trying, and perhaps condemning the Defendant for speaking words, stript too of their explanatory concomitants, which it stands *confessed at this moment were never spoken at all.*

Gentlemen, the disposition which has of late prevailed to depart from the wise moderation of our laws and constitution, under the pretext, or from the zeal of preserving them, and which has been the parent of so many prosecutions, is an awful monument of human weakness. These Associators to prosecute, who keep watch of late upon our words and upon our looks, are associated, it seems, to preserve our excellent constitution from the contagion of France, where an arbitrary and tyrannous democracy, under the colour of popular freedom, destroys all the securities and blessings of life;—but how does it destroy them? How, but by the very means that these new partners of executive power would themselves employ, if we would let them—by inflicting, from a mistaken and barbarous state necessity, the severest punishments for offences never defined by the law;—by inflicting them upon suspicion instead of evidence, and in the blind, furious and indiscriminate zeal of persecution, instead of by the administration of a sober and impartial jurisprudence. Subtracting the horrors of invading armies which France cannot help, what other mischief has she inflicted upon herself? From what has she suffered but from this undisciplined and cruel spirit of accusation and rash judgment?—A spirit that will look at nothing dispassionately, and which, though proceeding from a zeal and enthusiasm for the most part honest and sincere, is nevertheless as pernicious as the wicked fury of dæmons, when it is loosened from the sober dominion of slow and deliberate justice. What is it that has lately united all hearts and voices in lamentation?—What but these judicial executions, which we have a right to style murders, when we see the axe falling, and the prison closing upon the genuine expressions of the inoffensive heart;—sometimes for private letters to friends, unconnected with conduct or intention;—sometimes for momentary exclamations in favour of royalty, or some other denomination of government different from that which is established.

These are the miseries of France,—the unhappy attendants upon revolution; and united as we all are in deploring them, upon what principle of common sense shall we vex and terrify the subjects of our own country in the very bosom of peace, and disgust them with the Government, which we wish them to cherish, by unusual, irritating, and degrading prosecutions?

Indeed, I am very sorry to say that we *hear* of late too much of the excellence of the British Government, and *feel*

but too little of its benefits. They, too, who pronounce its panegyrics, are those who alone prevent the entire public from acceding to them;—the eulogium comes from a suspected quarter, when it is pronounced by persons enjoying every honour from the Crown, and treating the people upon all occasions with suspicion and contempt. The three estates of the kingdom are co-ordinate, all alike representing the dignity, and jointly executing the authority of the nation; yet all our loyalty seems to be wasted upon one of them. How happens it else, that we are so exquisitely sensible, so tremblingly alive to every attack upon the CROWN, OR THE NOBLES that surround it, yet so completely careless of what regards THE ONCE RESPECTED AND AWFUL COMMONS OF GREAT BRITAIN?

If Mr. Frost had gone into every coffee-house, from Charing-cross to the Exchange,—lamenting the dangers of popular government,—reprobating the peevishness of opposition in Parliament, and wishing in the most advised terms, that we could look up to the Throne and its excellent Ministers alone, for quiet and comfortable government, do you think that we should have had an indictment?—I ask pardon for the supposition; I can discover that you are laughing at me for its absurdity. Indeed, I might ask you whether it is not the notorious language of the highest men, in and out of Parliament, to justify the alienation of the popular part of the Government from the spirit and principle of its trust and office, and to prognosticate the very ruin and downfall of England, from a free and uncorrupted representation of the great body of the people? I solemnly declare to you, that I think the whole of this system leads inevitably to the dangers we seek to avert;—it divides the higher and the lower classes of the nation into adverse parties, instead of uniting and compounding them into one harmonious whole;—it embitters the people against authority, which, when they are made to feel and know is but their own security, they must, from the very nature of man, unite to support and cherish. I do not believe that there is any set of men to be named in England, I might say, that I do not know an individual, who seriously wishes to touch the Crown, or any branch of our excellent constitution; and when we hear peevish and disrespectful expressions concerning any of its functions, depend upon it, it proceeds from some practical variance between its theory and its practice. These variances are the fatal springs of disorder and disgust;—they lost America, and in that unfortu-

nate separation laid the foundation of all that we have to fear; yet, instead of treading back our steps, we seek recovery in the system which brought us into peril. Let government in England always take care to make its administration correspond with the true spirit of our genuine constitution,—and nothing will ever endanger it. Let it seek to maintain its corruptions by severity and coercion,—and neither laws nor arms will support it;—These are my sentiments and I advise you, however unpopular they may be at this moment, to consider them, before you repel them.

If the Defendant, amongst others, has judged too lightly of the advantages of our government, reform his errors by a beneficial experience of them; above all, let him feel its excellence to-day in its beneficence;—let him compare in his trial the condition of an English subject with that of a citizen of France, which he is supposed in theory to prefer. These are the true criterions by which, in the long run, individuals and nations become affectionate to governments, or revolt against them;—for men are neither to be talked nor written into the belief of happiness and security, when they do not practically feel them, nor talked or written out of them, when they are in the full enjoyment of their blessings; but if you condemn the Defendant upon this sort of evidence, depend upon it, he must have his adherents, and, as far as that goes, I must be one of them.

Gentlemen, I will detain you no longer, being satisfied to leave you, as conscientious men, to judge the Defendant as you yourselves would be judged; and if there be any amongst you, who can say to the rest, that he has no weak or inconsiderate moments,—that all *his* words and actions, even in the most thoughtless passages of his life, are fit for the inspection of God and man, he will be the fittest person to take the lead in a judgment of Guilty, and the properest Foreman to deliver it with good faith and firmness to the Court.

I know the privilege that belongs to the Attorney General to reply to all that has been said; but perhaps, as I have called no witnesses, he may think it a privilege to be waived. It is, however, pleasant to recollect, that if it should be exercised, even with his superior talents, his honour and candour will guard it from abuse.

## REPLY.

MR. ATTORNEY GENERAL.

GENTLEMEN OF THE JURY,

THE experience of some years has taught me, that in the useful administration of justice, as it is administered by the Juries in this country, little more is necessary than to lay before them correctly the facts upon which they are to form their judgment, with such observations as naturally arise out of those facts.

Gentlemen, feeling that very strongly at present, I am certainly bound in some measure to account to you, why I feel it my duty in this stage of this proceeding to avail myself of that liberty which my learned friend has stated to belong to me in addressing you again.

Gentlemen, my learned friend has thought proper to state this prosecution as the prosecution of informers,—of men whom he cannot call mercenary informers, but certainly whom he has been anxious to represent as officious informers, as a prosecution which it was my duty, independently of any considerations that I might feel myself upon the subject, to bring before you,—that it was what I could not approve of, but what I was bound to persevere in till I received your verdict.

Gentlemen, with respect to bringing the cause before the Court, my learned friend has not confined his observations to that point. He has stated also,—and every thing that falls from him, and more especially in a case that concerns the Crown and an individual, deserves, and must have an answer from me,—He has given you a comment upon words, upon which I likewise offered you some humble observations;—I mean the words, "otherwise well-disposed." I remarked, that where words in their natural meaning did import a seditious mind, it would be competent to a Defendant to show upon a general principle, that, whatever might be the words uttered, the circumstances attending the expression of them might be stated to the Jury, in order to give a different sense to them from their primary import.

Gentlemen, I hold it to be my duty, standing here responsible to the public for the acts that I do—deeply impressed with a consciousness that I am so responsible, to state to you, that I must be extremely guilty of a breach of my duty, if I should now call upon you for a verdict, or if I should now take your opinion; because there is not a single tittle of evidence before you which was not before me when the Indictment was laid. I protest against that doctrine, that the Attorney General of England is bound to prosecute because some other set of men choose to recommend it to him to prosecute, he disapproving of that prosecution. I know he has it in his power to choose whether he will or not, and he will act according to his sense of duty. Do not understand me to be using a language so impertinent, as to say, that the opinions of sober-minded persons in any station in life, as to the necessity that calls for a prosecution, ought not deeply to affect his judgment. But I say, it is his duty to regulate his judgment by a conscientious pursuance of that which is recommended to him to do. And if any thing is recommended to him, which is thought by other persons to be for the good of the country, but which he thinks is not for the good of the country, no man ought to be in the office who would hesitate to say, My conscience must direct me, your judgment shall not direct me. And I know I can do this—I can retire into a situation in which I shall enjoy, what, under the blessings of that constitution thus reviled, is perhaps the best proof of its being a valuable constitution,—I mean the fair fruits of an humble industry, anxiously and conscientiously exercised in the fair and honourable pursuits of life. I state, therefore, to my learned friend, that I cannot accept that compliment which he paid me, when he supposed it was not my act to bring this prosecution before you; because it was not what I myself could approve. Certainly, this prosecution was not instituted by me—but it was instituted by a person, whose conduct in the human exercise of his duty is well known; and I speak in the presence of many who have been long and often witnesses to it: and when it devolved upon me to examine the merits of this prosecution, it was my bounden duty to examine, and it was my bounden duty to see if this was a breach of the sweet confidences of private life. If this is a story brought from behind this gentleman's chair by his servants, I can hardly figure to myself the case in which the public necessity and expediency of a prosecution should be so strong as to break in upon the relations of private life. But, good God! is this prosecution to

be so represented—when a man goes into a coffee-house, who is from his profession certainly not ignorant of the respect which the laws of his country require from him, as much as from any other man; and when he, in that public coffee-house (provided it was an advised speaking,) uses a language, which I admit it is clear upon the evidence given you to-day, provoked the indignation (if you please so to call it) of all who heard it—when persons, one, two, three, or more, come to ask him what he meant by it, when he gives them the explanation, and when he makes the offensive words still more offensive by the explanation that he repeatedly gives—will any man tell me, that if he goes into a public coffee-house, whether he comes into it from up stairs, or whether he goes into it from the street, that he is entitled to the protection that belongs to the confidences of private life, or that it is a breach of the duties that result out of the confidences of private life?

Gentlemen, I call upon you seriously to consider the case, to act with candour, to act with indulgence to him, if you please, but at the same time to act with firmness as between him and the country. My learned friend has tried me in some measure to-day; now I avow it again—when *respectable persons* will state to me that such circumstances did pass, I will not take upon myself to say, that it is consistent with my duty to the king, or that it is consistent with my duty to the country, for whose benefit it is that he is King, that I should hear that such things have passed unnoticed. And when it is stated by such men as these are,—unimpeached,—feeling something, though their political theories are not the same as those of this Defendant, surely they may be allowed to feel and to express at least with zeal their indignation, if not to assert with industry their right to what they enjoyed through the blessing of Providence, and the constitution under which they lived. It was a case which excited the honest zeal and the fair and reasonable indignation of a great number of gentlemen;—all respectable men, and competent to sit in that jury-box, as between this or any other individual and the justice of the country. But, Gentlemen, according to my learned friend, I was to do one of these things: I was to say to Mr. Frost, which I certainly should have been glad to have said to him, or any man who stands in the situation of a Defendant, if I could do it with propriety, What is this story, Mr. Frost? Can I ask a Defendant, whom I am to prosecute upon the *primâ facie* evidence laid before me what he is to say for himself in that

stage of the business? It was open to Mr. Frost in every stage of the business to have explained his conduct. He does not come upon this record to say, as many persons have said, I admit I spoke the words, I will not give you the trouble to prove the words: I spoke them in a degree of heat. I am (what he has never yet said, for he only seemed to retract,) I am sorry for the words I have used.

Gentlemen, my learned friend says, I should have said nothing to you upon the subject of France, and he particularly alludes to a question put by my learned friend, who will do me the justice to say, that I had no communication with him upon any such question. But I will explain myself upon that, as I think I ought to do upon every thing which occurs in a cause.

Gentlemen, if words of this sort spoken in France are a crime, I know from his Lordship's authority, as well as the authority of every principle of settled law, that I cannot give them in evidence; and if acts done in France amount to a crime against the law of this country, I know also, I ought not to give in evidence upon an indictment, such as this is, any evidence with respect to the acts so done. They ought to be the subject of a separate prosecution: and if my opinion had risen higher upon that subject than it does, I would not in the prosecution of this case have even risked such a question as that, whether certain acts can be done and declarations made in another country by a subject of this country, without his being amenable to the law of this country? It is a question that ought to be tried, if it is to be tried at all, in a more solemn form than taken as a mere collateral point in evidence. But was not I entitled to speak about France? Did not this gentleman state, that things were going on well in France;—that he had come from France;—that it was his intention to go again to France, and that, according to that intention, he did go to France? Is not this evidence, that he knew what he was saying;—that he was speaking that which his future acts confirmed? Then how does it appear, that he was drunk, or at least so much so, that he could not speak about any thing;—that he could not correctly speak his opinion? It is clear, that he stated a fact with respect to what he was to do, that the future act of his life corresponded with; and yet my learned friend says, he did not speak advisedly at all.

Gentlemen, another observation that fell from my learned friend was, with respect to what I have stated as to the

words, "otherwise well-disposed." Gentlemen, give me leave, in the first place, to call your attention as far as my Lord may think your attention ought to be called to it, to what I take to be a clear distinction in the law of England. Gentlemen, if words of their own efficacy and import manifest a seditious intention, the uttering those words is a misdemeanor. I do not desire you to try this question in that manner, because I again repeat what I said towards the conclusion of what I before addressed to you, that if you should be of opinion, that Mr. Frost did not utter the words advisedly and knowingly, and with an intention to work the mischief this record imputes to him, I do not desire his conviction; but I will say this, that it is a very clear distinction in law, with respect to words as they amount to high treason. What did the Legislature say in those just and beautiful passages that were read to you by Mr. Erskine, from Mr. Justice Forster's Reports—that the penalties in high treason are so exceedingly great, that, although treasonable words were spoken, yet if not spoken with such intention, they would not, as in the case of high treason, expose the subject to those pains and penalties;—did they mean to say, they should be no offence at all, if the conscience of the Jury should be satisfied that they were used in a way to make them criminal? By no means. But if you are of opinion that these words were advisedly spoken, if the words themselves import that seditious intent which this record ascribes to them, I say it falls directly within the principle of Mr. Justice Forster, namely, that it would be competent to the Defendant to give evidence of his general demeanour as a good subject of the country, to show that he had not that meaning, which is the *prima facie* sense of the words: if that principle be just, I say that Mr. Frost has not found in the company below stairs, nor has he found upon the face of the earth, a single person to state to you, that from his general demeanour, when he uttered these words, he must not have had the fair use of that judgment and disposition, which conducts him through general life; I say no more about it; I am sure it would have been competent to him to have produced such witnesses. Gentlemen, it would not only have been competent to him, but, from the turn the cause has taken, it was made almost necessary. If Mr. Frost was drunk, as my learned friend wishes you to believe, from what Mr. Taitt said, though I think his evidence will bear no such sense;—was there no man up stairs who could have stated it? Was there no man who saw Mr. Frost in the course of that evening that could

have stated it? Then what is it that Mr. Taitt says upon the subject? He does not mean to say that he had not drunk; he says he might be in liquor, and he did say, he did not doubt but he was in liquor, but he had not seen him before. The question is, whether, when he made use of those expressions, he made use of them as expressing his judgment upon the subject, and with the intent that this record ascribes to him, or whether he was so far bereaved of his judgment by ebriety as to stand before you, entitling himself to the benefit of this excuse, that he ought not to be answerable for the consequences of these acts upon that ground? and it would be extremely strange if a Jury upon this ground could acquit Mr. Frost. Here are these gentlemen, *respectable in their situation*, and what have they done? According to to what they conceived to be their duty as subjects of the country, they have been furnishing the means of this prosecution, and they have not thought that it would disgrace them, to bring before a Jury of their country Mr. Frost, to relate this story, that he stood in that situation of mind, in which my learned friend's cross-examination would endeavour to place him. Whatever is your verdict, it is contrary to my duty to press for it against your impression of the real nature of the case; but the true question will be (and here I will not avail myself at any length of that privilege my learned friend says belongs to me), whether these words were advisedly spoken? Mr. Frost goes into a public coffee-room, asserts that they were doing very well in France, and at the same time he asserts, that it was because there was a doctrine of Equality, and a doctrine of no King, at that time established;—but was it an Equality such as my learned friend has stated to you? No;—the Equality of right to personal security, to personal liberty and property, and a right to equal laws, was asserted indeed in the constitution of the year 1789; it was an Equality which left every man in possession of that situation which the constitution assigned him, from the King on the throne to the meanest subject; who would be equally entitled to the benefit of the law of the country as any man in it; but that Equality did not live till the 6th of November 1792.—Why then, Equality might mean one thing, or it might mean another; it might mean the Equality of 1789, or it might mean the Equality of 1792. Then a stranger comes up to Mr. Frost, and feeling a great deal of indignation at hearing this doctrine held, he says, Sir, what do you mean by Equality? Now did the Duke of Richmond;—did Mr. Pitt,

the present Minister of State, who has been alluded to;—did my learned friend, and the other persons, who are very respectable men, as I readily admit them to be, did they ever give such an answer as Mr. Frost gave? I am free to declare this is a country in which every man has a right to his opinion temperately discussed. I am free to say with respect to my learned friend, I believe, he and some of the most respectable persons in the country, have their opinions upon that subject. I believe the actual quantum of political happiness that is enjoyed in this country, is, upon the present system of government, far beyond that which the providence and favour of God has ever dispensed to any nation that ever lived upon the face of the earth. I have never been able to find in the discordant systems of those respectable persons, argument enough to lead my mind to doubt for a moment, whether I should not sacrifice my duty to my country, if I risked a change upon any principles that they have stated; but Gentlemen, do not understand me to say, that I am wiser than they—far from it; but I say it is my duty to exercise my best judgment, and act according to it.

Gentlemen, what was the answer that Mr. Frost gave? "I will tell you what I mean by Equality; "I mean no King." Have any of those gentlemen stated such language? But that is not all; for that which is no act of deliberation is followed up by another question: "Why surely you cannot "mean that there is to be no King in this country?" Says Mr. Frost, "Yes, no King in any country." Why, Gentlemen, the single question is, Is it the law of England that these words can be spoken under such circumstances with impunity? I am free to say, that, upon the best information I can give myself upon the subject, I cannot feel a doubt that the law of England does not permit it. I say it is the law of England, that where men will hold language of this sort, they shall be deemed guilty of an offence against the law of England. Why then, what am I to do, if I, standing in this situation, am to govern myself by the wisdom of the law? I say it is my duty to submit to your decision the fact upon the law as it stands; if my learned friend is satisfied that the law is not so, he has one course before him, or if he thinks that the law ought not to be so, he has another before him. But is the Attorney General of this country to say, I will, in the regulation of my official conduct, take upon me to say, that I am wiser than the Legislature of this country; I will enforce what I please, let the exigency of the country be what it may?

Gentlemen, in the first place it is to be observed, that the language of that act of Parliament is exceedingly strong, with respect to malicious and advised speaking, and it points out to a Jury, that they are to have distinct evidence of the intention. This species of the intention may fall under a different consideration; but I do not wish to examine it upon a different consideration, because, if in this case the words import the intent that the record attributes to them, you have that case in point of law, that justifies you in finding the Defendant guilty.

Gentlemen, having stated thus much, rather with a view of explaining my conduct to you, than for the purpose of troubling you with particular observations upon the evidence, I will leave the case here. I think, upon the best consideration that I can give the case, that the late Attorney General did right to bring it before the public. I should not have appeared here to-day, if I had not thought it right so far as to bring it before the public; and the reason I do it is, that when a considerable number of his Majesty's subjects in a *respectable situation* feel—my learned friend says, your verdict is to secure us from being in a situation like France—but when they feel that these words were uttered in a manner that has led them to think, that some of the most valuable blessings they enjoy under the constitution of this country, wedded to it as they are, in danger, when this language is publicly held; I say it is fit, as between the Attorney General and such persons, that a Jury of the country should say, whether such words shall be spoke with absolute impunity? It does appear to me that they ought not to escape with absolute impunity; but if you have any doubt in your minds, you will find a verdict for the Defendant.

Lord KENYON having summed up the evidence, the Jury retired for an hour and a half, and then returned with a verdict,

GUILTY.

# TRIAL

OF

# MR. PERRY AND MR. LAMBERT,

EDITOR AND PRINTER

OF

## THE MORNING CHRONICLE.

FOR

## A LIBEL.

### SUBJECT, &c.

*THE following Speech for Mr. Perry and Mr. Lambert, the editor and printer of the Morning Chronicle, strongly illustrates our observation in the Preface, concerning the difficulty of access to genuine trials at distant periods.*

*These Gentlemen were tried for the publication of a libel, on the information of the Attorney General, on the 9th of December, A. D. 1793, and the trial was at the time in very general circulation. Yet it was so wholly out of print, that it made no part of the present work, as originally prepared for the press; but on its being referred to by Mr. Perry in his able defence of himself on his late trial, we procured from him the copy (the only one to be found,) from which we have printed the following pages.*

*The Attorney General's Information charged the Defendants, Mr. Perry and Mr. Lambert, as editor and printer of the Morning Chronicle, with publishing an address of a society for political information, held at the Talbot Inn, at Derby, which had been sent to the Morning Chronicle for insertion, in the ordinary course of business; neither Mr. Perry nor Mr. Lambert having had any kind of connection or correspondence with the authors.*

*This trial being the first after the passing of the Libel Act, we have thought it best to print the whole of it, as originally published, with the Advertisement prefixed to it, by Mr. Perry.*

## ADVERTISEMENT.

In presenting the following trial to the public, at a period the most critical, perhaps with respect to prosecutions, that ever occurred in the annals of this country, the editor was chiefly influenced by two considerations:

First, the question which arose in an early stage of the proceedings, with respect to juries, determined a very important rule of practice, namely, *that the first special jury, struck and reduced according to law, must try the issue joined between parties.* This decision of a controverted point, in the manner most consistent with common sense, and, as appeared from the pleadings, agreeable to the ancient practice of the Courts, and founded upon the statute law of the realm, is certainly to be estimated as an acquisition of no common magnitude to the subject.

Secondly, this is the first trial, since the Libel Bill passed into a law, completely conducted upon the principles of that bill, and may serve as the best illustration of the wise and excellent provisions of the law, as it now stands, with respect to libel: a law admirably calculated to remove obscurity, to defeat improper influence, to facilitate the ends of justice, by simplifying its operations, and to afford additional security for the full enjoyment of the most valuable privilege of Englishmen.

Impressed then with the view of this trial, as connected with great principles, and involving consequences the most important, both to the present age and to posterity, I have been anxious to render the following statement of the proceedings as full and correct as possible. Fidelity and accuracy are the only merits of a reporter; these I have carefully studied; it is not allowed to him who transmits the sentiments of others, to boast of his labours, or to claim the reward of public approbation: in this instance I find myself sufficiently repaid, with the pleasing reflection that I have been called, *in an age of prosecutions*, to record *one verdict* gained to the cause of freedom.

*We print the parts of the Address selected by the Attorney General from the Information itself, with the innuendos, which run as follows:*

" We, meaning the society aforesaid) " feel too much not " to believe that deep and alarming abuses exist in the Bri- " tish government" (meaning His said Majesty's govern-

ment of this kingdom;) yet we are at the same time "fully sensible that our situation is comfortable compared "with that of the people of many European kingdoms, and "that as the times are, in some degree moderate, they ought "to be free from riot and confusion. III. Yet we think "there is sufficient cause to inquire into the necessity of the "payment of seventeen millions of annual taxes, exclusive "of poor rates, county rates, expenses of collection, &c. "&c. by seven millions of people: we think that these ex-"penses may be reduced, without lessening the true dignity "of the nation" (meaning this kingdom) "or the govern-"ment" (meaning the government of this kingdom,) and "therefore wish for satisfaction in this important matter. "IV. We view with concern the frequency of wars" (meaning, amongst others, the wars of his said Majesty and his subjects with foreign powers;) "we are persuaded "that the interests of the poor can never be promoted by ac-"cession of territory, when bought at the expense of their "labour and blood; and we must say, in the language of a "celebrated author, we who are only the people, but who "pay for wars with our substance and our blood, will "not cease to tell kings or governments, that to them "alone wars are profitable; that the true and just con-"quests are those which each makes at home by comfort-"ing the peasantry, by promoting agriculture and manu-"factories, by multiplying men and the other productions "of nature; that then it is that kings may call themselves "the image of God, whose will is perpetually directed to the "creation of new beings; if they continue to make us fight "and kill one another in uniform, we will continue to write "and speak until nations shall be cured of this folly. We "are certain our present heavy burdens" (meaning burdens of the subjects of this kingdom) "are owing, in a great "measure, to cruel and impolitic wars" (meaning cruel and impolitic wars entered into by His said Majesty against foreign powers,) and therefore we will do all on our part, as "peaceable citizens, who have the good of the community at "heart, to enlighten each other, and protest against them. "V. The present state of the representation of the people" (meaning the representation of the people of this kingdom in the Parliament thereof) "calls for the particular attention of "every man who has humanity sufficient to feel for the hon-"our and happiness of his country, to the defects and cor-"ruptions of which we are inclined to attribute unnecessary "wars, &c. &c. We think it a deplorable case when the poor

(meaning the poor of this kingdom) " must support a cor-
" ruption" (meaning corruption of the representation of the people of this kingdom in the Parliament thereof) " which is
" calculated to oppress them" (meaning the poor of this kingdom,) " when the labourer must give his money to afford
" the means of preventing him having a voice in its disposal,
" when the lower classes may say, We give you our money
" for which we have toiled and sweat, and which would save
" our families from cold and hunger, but we think it more
" hard that there is nobody whom we have delegated to see
" that it is not improperly and wickedly spent: we have none
" to watch over our interests, the rich only are represented:
" the form of government" (meaning the government of this kingdom,) " since the Revolution, is in somo" (meaning some) " respects changed for the worse, by the triennial and
" septennial acts" (meaning acts of the Parliament of this kingdom;) " we lost annual Parliaments; besides which, the
" wholesome provisions for obligsno" (meaning obliging)
" privy consellors to subscribe thair" (meaning their) advice
" with their names, and against placemen and pensioners
" sitting in Pailiament" (meaning the Parliament of this kingdom,) " have been repealed. It is said that the voice of
" the people is the constitutional control of Parliament" (meaning the Parliament of this kingdom;) " but what is
" this but saying that the representatives" (meaning the representatives of the people in the Parliament of this kingdom)
" are naturally inclined to support wrong measures, and that
" the people most" (meaning must) " be constantly assemb-
" ling to oblige them to do their duty. An equal and uncor-
" rupt representation" (meaning representation in the Parliament of this kingdom) " would, we are persuaded, save us
" from heavy expenses, and deliver us from many oppres-
" sions; we will therefore do our duty to procure this re-
" form, which appears to us of the utmost importance. VI.
" In short, we see with the most lively concern an army of
" placemen, pensioners" (meaning persons holding places and pensions under the government of this kingdom,) &c.
" fighting in the cause of corruption and prejudice, and
" spreading the contagion far and wide; a large and highly
" expensive military establishment" (meaning the military establishment of this kingdom,) " though we have a well-re-
" gulated militia; the increase of all kinds of robberies,
" riots, executions, &c. though the nation" (meaning this kingdom) " pays taxes equal to the whole land retail" (meaning rental) " of the kingdom, in order to have his property

" protected and secured; and is also obliged to enter into " separate associations against felonious depredations—a " criminal code of laws" (meaning the criminal code of laws of this kingdom) " sanguine and inefficacious—a civil code" (meaning the civil code of laws of this kingdom) " so volu- " minous and mysterious as to puzzle the best understand- " ings; by which means justice is denied to the poor" (meaning the poor of this kingdom,) " on account of the expense " attending the obtaining it. Corporations" (meaning corporations of this kingdom) " under ministerial or party in- " fluence, swallowing up the importance, and acting against " the voice of the people" (meaning the people of this kingdom;) " penaltie" (meaning penalties) " inflicted on those " who accept of offices without conforming to the violation " of their consciences and their rights, the voice of free in- " quiry drowned in prosecutions, and the clamours of the " pensioned and interested; and we view with the most " poignant sorrow a part of the people" (meaning the people of this kingdom) " deluded by a cry of the constitution and " church in danger, fighting with the weapons of savages " under the banners of prejudice against those who have " their true interest at heart—we see with equal sensibility " the present outcry against reforms, and a proclamation" (meaning His said Majesty's royal proclamation) " tending " to cramp the liberty of the press, and discredit the true " friends of the people, receiving the support of numbers of " our countrymen—we see the continuation of oppressive " game laws" (meaning the game laws of this kingdom) " and destructive monopolies; we see the education and " comfort of the poor" (meaning the poor of this kingdom) " neglected, notwithstanding the enormous weight of the " poor rates; we see burdens multiplied, the lower classes" (meaning the lower classes of the subjects of this kingdom) " sinking into poverty, disgrace, and excesses; and the means " of these shocking abuses increased for the purposes of re- " venue for the same, and the excise laws" (meaning the excise laws of this kingdom,) " those badges and sources of " oppression, kept up and multiplied; and when we cast our " eyes on a people just formed in a free community, with- " out having had time to grow rich under a government by " which justice is duly administered, the poor taught and " comforted, property protected, taxes few and easy; and " at an expense as small as that of our pension list—we ask " ourselves, are we in England? Have our forefathers fought,

" and bled, and conquered, for liberty? And did they not " think that the fruits of their patriotism would be more abun- " dant in peace, plenty, and happiness? Are we always to " stand still, or go backward? Are our burdens" (meaning the burdens of the subjects of this kingdom) " to be as heavy " as the most enslaved people? Is the condition of the poor" (meaning the poor of this kingdom) " never to be improved? " Great Britain must have arrived at the highest degree of " national happiness and prosperity, and our situation must " be too good to be mended, or the present outcry against " reforms and improvements is inhuman and criminal; but " we hope our condition will be speedily improved, and to " obtain so desirable a good is the object of our present as- " sociation, au" (meaning an) " union founded on princi- " ples of benevolence and humanity, disclaiming all connex- " ion with riots and disorders, but firm in our purpose, and " warm in our affections for liberty. VII. Lastly, We in- " vite the friends of freedom throughout Great Britain to " form similar societies, and to act with unanimity and firm- " ness, till the people" (meaning the people of Great Britain) " be too wise to be imposed upon, and their influence in the " government be commensurate with their dignity and im- " portance; then shall we be free and happy. By order of " the society, S. Eyre, chairman" (meaning the chairman to the said society.)

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In Trinity Term a Rule was made in the usual way, on the motion of the Prosecutor, for a special jury. Forty-eight jurors were struck; and in Easter Term they were reduced by the parties to twenty-four. In the sittings after Easter, the cause came on, and seven of the special jurors came into the box. Sir John Scott, the then Attorney General, did not pray a tales, and the trial went off as a *remanet pro defectu juratorum.*

In Michaelmas Term the Prosecutor, on a motion of course, took out a rule for a new special jury. This the Defendants thought irregular.

On Friday, the 15th day of November, the Hon. *Thomas Erskine* moved the Court as follows:

My Lord, the motion which I am about to address to the Court, will deserve your Lordship's particular attention, as it relates to one of the most essential rights and liberties of the subject, the trial by jury.

Your Lordship may recollect, that at the sittings after the last term in this place, an information, filed by the Attorney General, against the proprietors and printer of the Morning Chronicle, for a supposed libel in that newspaper, was called on for trial in the ordinary course of things. Seven of the special jurors, struck under the rule obtained by the Crown itself for the trial of the cause, appeared and came into the box to be sworn; but the Attorney General did not think proper to pray a tales to complete the pannel.—The cause, therefore, of course, went off, *pro defectu juratorum.*

My Lord, if any special reason existed why the jury so appearing should not be permitted to try the Information, when it came on again for trial, and the Crown had moved, upon such special matter, verified by affidavit, to discharge the original rule under which the jury was appointed, I should, according to the nature of the objections, have been prepared to give them an answer. But, My Lord, no such proceedings have been had or attempted. The Crown has made no objection to the jurors, nor any motion in Court to discharge the original rule under which the jury was impannelled: but assuming it to be the law that the rule was spent and expired, by the trial going over, for defect of jurors, they have, as a motion of course, (drawn up, upon the signature of counsel out of Court), obtained a second rule for striking a jury, as if no former rule had ever existed, and as if no jury had been struck under it.

I confess I was not a little surprised at this attempt to impannel a jury, without the consent of the Defendants, between whom and the Crown the former had been reduced and ascertained under the first rule.—On their part, I therefore now object to the proceeding, as totally illegal and hostile to the freedom of trial; and I humbly move that this new rule may be discharged.

I do not know that I am able to state, at this moment, any direct precedent for my motion, nor is it necessary that I should, because I found my application upon the whole statute law of the kingdom respecting the trial by jury, which is positive and unequivocal on the subject, which no practice can shake, and which no decisions of the Court, if there were any, could repeal or overrule.

*Lord Kenyon.* The application crosses all my ideas of the law upon the subject. It would be highly dangerous to impartial trial, if the juries were known to the parties so long before the trial. It is very strange if the law be so.

*Mr. Erskine.* My Lord, the authors of our laws seem to have thought very differently on this subject. They seem to have entertained no jealousy, that the trial by the country, which was instituted for the people's protection, could ever be too favourable to them; on the contrary, the most ancient statutes of the kingdom express no fears for the Crown, but for the subject only, and provide that jurors shall be struck so long before the day of trial, that the Defendant may know them, and be prepared to take his challenges. The act of the 42d of Edward III. chap. 11, expressly gives this reason. After stating that divers of the people had been disheartened and oppressed, from not having had knowledge beforehand of those who were to pass in the inquest, it enacts, that the names of the jurors should be returned into Court in the term before the assizes, and that, in the mean time, the parties, on demand, should view the same.

The whole statute law, from that period, speaks the same language, down to the famous statutes of King William and Queen Anne, which give to Defendants accused of high treason, the names and abodes not merely of the jurors, but of the very witnesses to be examined against them on the trial. So far, indeed, is it from being true, that by the common law, a jury, once summoned, and not attending, could not be distrained again to appear at a future day, as is supposed by Mr. Justice Page, in Masterman's note, that they were bound to give their attendance from assizes to assizes, *in infinitum*, until the reign of William the Third.

The statute of the 13th Edward I. chap. 30, had expressly directed, that upon the default of jurors, the justices should put in the inquest no other than those first summoned; and this regulation was so much the settled law, that *the act of William, for the ease of jurors, and the regulation of trial*, recites, that, as the law then stood, it often happened, that upon causes going off at the assizes, for defect of jurors, the same jurors were obliged to attend again and again at the trial of one and the same cause, to their great expense and trouble; and after this preamble, a new *venire facias*, for the first time in the history of the law, was given to the parties, to bring in a new jury, upon the default of those impannelled under the first writ. It is therefore only by the effect of this statute, that a jury, once summoned, is discharged before trial; and the statute not extending nor indeed relating at all to special juries, they remain upon the old footing. Special juries do not exist, as many people seem

to suppose, by the authority of a statute; on the contrary, they are as ancient as the law itself, and were always struck, as they are at this day, by direction of the Court, when trials were had at the bar and not at *nisi prius*: the act of the 3d of George II. chap. 25, having no relation to such juries, except as it removes a doubt with regard to the legality of striking them for the trial of misdemeanors. This legality the statute recognizes; and putting special juries, struck in the Crown Office, on the same footing with those in civil cases, directs them to be struck by rule, as they anciently were in cases of trials at bar, and enacts, that *the* jury so struck, *shall be the jury to try the cause.*

Indeed, so notorious is it, that a jury summoned, and not attending, could be distrained to appear again (till the law, as far it related to common juries, was altered by the statute of King William,)—that we know that the whole jury process of the Courts at this day, is founded upon that law; for the *venire* is always returnable on the last day of the term before trial, at which day it is entered on record, as of course that default was made by the jurors summoned; and then the *distringas* issues to bring them in on the day in banc, in the term following, unless the Justices shall come to the assizes in the interval; under which clause of *nisi prius*, the trials are all had. So that the process at this day, building fiction on reality, to give precision and uniformity to practice, ratifies that which is supposed now to have been contrary to all practice whatsoever. In ancient times, every man, in a civil cause, knew, upon the return of the *venire* in term, the jury that was to come at the assizes. The Sheriff now, by the act of the 3d of George II. returns one pannel for all, which effectually prevents a defect of jurors; but special juries remain untouched by that statute. The reason and justice of the thing moreover support my construction. The Attorney General alone can pray a tales in a criminal cause; for the statutes go no farther than to give Defendants a right to pray the tales in penal actions, prosecuted *qui tam* with the Crown, but not in cases where the Crown is the prosecutor alone. It is true that the Attorney General now grants his warrant of course to a defendant to pray one, but he may legally refuse it; and the subject's liberties are not to rest upon the courtesies of the officers of the Crown. What, then, is contended for in this right to change the jury? Why, nothing short of this, that if the Attorney General does not like his jury,

he may forbear to pray a *tales* himself; he may also refuse his warrant, without which the Defendant cannot pray one; and this he may do, *toties quoties*, until he has got a jury to his fancy. I am not arguing that Mr. Attorney General is likely to attempt this practice for such purposes; but the country is not to hold its rights upon the courtesy of the prerogative, or the honesty of those who may occasionally represent it.

*Mr. Erskine* then proceeded to state the modern cases, which clearly showed that the practice of the Court bore him out in the law on the subject. He stated the King v. Hart, and the King v. Joddrell; but he relied implicitly, he said, on the law.

One of the officers of the Crown office handed up to Mr. Justice Buller, an opinion of Judge Page, in the 13th of George II. that a new jury ought to be granted; but Mr. Justice Buller said, the Defendants should take a rule to show cause, as it was of great importance to be argued and ascertained.

*Lord Kenyon* said, he thought it scarcely necessary; but granted they might take a rule. A rule was therefore granted.

On Monday, the 25th of November 1792, the rule came on to be argued.

*Mr. Bearcroft*, on the part of the Crown, contended that the cases cited by Mr. Erskine were not in point. In the case of the King against Hart, the special jury of forty-eight had not been reduced to twenty-four by the parties, and the jurors has not come into Court. In the case of the King against Joliffe, the cause had been put off on account of some publications which might have influenced the jury. In the next term a new jury was struck, so that the case was in point for the Crown, and it was so much the more so, as the new jury was moved for by a solicitor as well versed in the general practice as any solicitor of that Court. Their Lordships would agree with him in this description, when they heard that the solicitor for the Defendant in that cause was Mr. Lowten, and he was solicitor also for the present Defendants. In that cause, then, Mr. Lowten had moved for a new trial, and here he opposed a new jury.—[Mr. Bearcroft was set right in the case of Joliffe. In that instance the trial first went off, because, from the publications which had been made, the Court thought that the jury might be influenced. In the term after this, the cause came on again, and both parties agreed to have a

new jury. A second time it was put off, through the delicacy of Mr. Justice Gould; and on the third time it was brought on again, and the Prosecutor moved for a new jury, without any pretext of influence, or of any other argument for a new jury. This Mr. Lowten, as solicitor for the Defendant (and who had not been employed in the beginning of the cause,) objected to, and the Court *refused.*]

*Mr. Bearcroft* read from the notes of the late Mr. Masterman, one of the secondaries of the Crown Office, a case, where it was his opinion, that a new Jury was conformable to the practice; and he quoted also a cause against Lord Charles Fitzroy, where Mr. Lowten had also, as solicitor for the Defendant, moved for a new Jury, and had succeeded; but he owned, that in this case it had been consented to by both parties.

*Mr. Bearcroft* then said he would argue the question on the *reason* of the rule. It struck him as a most important point indeed, that juries should not be continued from term to term, as they might be tampered with by the parties; a thing so outrageous to justice, and so opposite to the spirit of our jurisprudence, that it had been ever the study of the Courts, and indeed the very aim of Parliament, in making the statute of the 3d of George II. to prevent juries from becoming permanent, or from being so long known beforehand, as to be subject to influence. That in regard to the prayer for a *tales*, though undoubtedly the Defendant must have the *warrant* of the Attorney General to enable him to pray a *tales*, yet the Attorney General never denied such a warrant. Another argument against the continuance of a jury was, that it must subject gentlemen to great inconvenience—they never would know when they were to be discharged. Here seven of them attended to do their duty, and they were again to be called upon; eleven of them might attend, and still be subject to be called again: there was no end of this, and he owned he did not know how they could call upon them again, for he did not know an instance of an *alias distringas* to bring up special jurors.

*Mr. Adam* stated, on the part of the Defendants, that there were many instances in the books, especially in Brooke's Abridgment, where an *alias distringas* had gone to compel the attendance of jurors of all descriptions.

*Mr. Justice Buller* said, that as this case comprehended so important a rule of practice, he had taken pains to inform himself on the point, and he had found a case which, in his mind, determined the rule. He would read it, and then Mr.

Bearcroft would see what he could make of the argument. Mr. Justice Buller then read a manuscript note of the case, the King v. Franklin, the publisher of the famous paper called the *Craftsman*. It was important to remark the time and the Judges—it was the 5th of George II. only three years after the law recognising special juries in misdemeanors had passed, and the Judges on the bench were Mr. Justice, afterwards Lord Chief Justice Lee, Mr. Justice Page, * &c. and the Crown lawyers were men of the first eminence. Franklin was convicted of printing and publishing a libel in the Craftsman. The case was only so far different from the present, that the Defendant there moved the Court to reverse the judgment, because the cause, after being put off from one term to another, had not been tried by a new Jury. Here the Defendants moved to continue the same Jury. The doctrine was the same in both cases, only that in this case, it is upon the application of the Attorney General that the new jury is required; in that case the Attorney General or the Crown contended that the old jury should continue. Chief Justice Lee pronounced the opinion of the Court, which Mr. Justice Buller read. The opinion of the Court was, that the words of the statute were express, and could not be departed from, unless cause could be shown that there had been some irregularity in the striking of the jury, or in the reducing, or in some part of the proceeding, or in the writ of *venire*, or otherwise. The words of the statute were, "that the jury so struck and so reduced, shall be "the jury to try the issue joined in such cause." The jury were not dissolved until the cause was determined, and an *alias distringas* might issue. The opinion was at great length, and detailed the practice of striking juries by the ancient statutes downwards, and showed, that by the act then recently passed, the 11th of George II. the alteration with respect to juries related only to the common jury, and left the practice as to special jurors exactly as it stood by the ancient law, except as it declared that special jurors might be demanded by the Crown in cases of misdemeanor. In regard to common juries, it was thought hard and severe to compel their attendance from time to time; but the special jury was left by that act precisely as it stood before. This opinion, Mr. Justice Buller said, delivered so soon after the act had passed, so solemnly and argumentatively, in a question

* The same Judges who are supposed to have decided the case of the King against Waring.

discussed by such great legal characters, must, in his mind, determine the question. He concluded with saying, that he could not see how the Crown officers could go on without creating error on the record.

*Lord Chief Justice Kenyon* said, he must bow to such great authority, though the inclination of his disposition was the other way. But a point so solemnly argued (and where such a man as Mr. Pulteney, Earl of Bath, being implicated, error *would* have been pleaded, if they could have found error on the record,) must decide the present case. He made no inquiry at all, and did not take into his consideration the merits of the question at issue between the present parties; but it was, in his opinion, of the utmost interest to criminal jurisprudence, that juries should not be subject to influence. It was that consideration which gave rise to the law for the balloting-box. Every lawyer knew the necessity that there was for that statute; as all the provisions which had been previously made to guard against influence, had proved ineffectual, though any person convicted of trying to influence jurors, was subject to a penalty of ten times the amount of the object at issue in the cause. What held good as to civil suits was equally applicable to criminal prosecutions. The principle of the balloting-box was equally applicable to both; but it was impossible to resist the precedent, standing as it did upon so high authority.

*Mr. Justice Grose* and *Mr. Justice Ashurst* were of the same opinion.

The case of the King v. Franklin,* therefore, decided

* In consequence of that case, viz. *the King v. Franklin*, it became unnecessary for Mr. Erskine and Mr. Adam, as counsel for the Defendants, to say any thing on the part of the Defendants; but it may not be unacceptable to know, by a short statement, how far the old practice confirms the good sense and authority of the case the King v. Franklin.

Special juries existed long before the statute of the 3d of Geo. II. by the act of the parties; and that as well in misdemeanor as in other cases. One party applied for a special jury, and the other party consented; so that the special jury was then the result of compact between the parties. But when the parties had so contracted, the authority of the Court was necessary to give validity to the compact. Accordingly the Court, upon application, made a rule for a special jury; and that rule ran in the same words before the statute, that are used now since the statute: an observation, very material, especially in considering the last words. The rule ordered then, and it orders now, that 48 shall be returned; that the Prosecutor shall strike 12 and the Defendant 12; *and that* 24, *the remainder of the* 48, *shall be the jury returned for the trial of the issue joined in that cause.*

This being agreed between the parties, and enforced by a rule of Court, the parties, before the statute, chose their forum, and by this forum, their own

**this question; and the Court determined, that the rule for another special jury, obtained upon the motion of the Crown lawyers, must be discharged.**

compact and the authority of the rule of Court compelled them to abide; insomuch, that they could not get quit of the jury by the common mode of *challenging the array*; that is, challenging the whole pannel of jurors: such challenge, after the rule of Court, being deemed, like every other breach of the authority of the Court, a contempt, by the party who should so challenge.

This had met with a decision in several cases, but particularly in the case of the King v. Burridge, for a misdemeanor, which came before the Court of King's Bench, in Trinity Term, 10 Geo. I. a very short time before the passing of the act respecting special juries.

That case is reported in Lord Strange's Reports, vol. i. p. 593; in Lord Raymond, 1364; in Andrew's Reports, 52; in Eight Modern Reports, 245; and in many other books; and the case, as reported in all of them, not only confirms the argument and statement above given, but explains the only remaining difficulty in the case, viz. the meaning to be put upon the words in the rule of Court *that the 24 shall be the jury returned for the trial of the issue in that cause.*

For the judges, in the reports given of their opinions, consider as synonimous, and meaning the same thing, the above phrase; and that they shall be the jury who shall actually try the cause; contrary to the construction contended for by the Crown, on the present occasion, where it was pressed that the statute and the rule were both satisfied, when the jury had been returned, although they had not actually tried the cause.

Soon after this case, that is, in the 3d of Geo. II. came the statute; and it is very material to observe, that the statute transcribes verbatim the latter words of the rule used before the statute. Therefore, whatever was the construction of those words in the rule, the same must be their construction in the statute.

It has been shown in what sense the Judges considered the words in the rule, and it will not be contended that the words in the statute, "which said jury, so struck, shall be the jury returned" for the trial of the said issue," can bear a different construction. There is, therefore, judicial authority, added to that of common sense, to settle the meaning of these words. The only other consideration in this case is, what change the statute made in the rights of the parties, if it made none from the words of the rule; and it is evident, that it did no more than convert into a statutory obligation, carried into execution by a rule of Court, what had been a matter of compact, executed by a rule of Court; but that in all other respects, except that the one party was, after the statute, bound to agree to a special jury, if the other proposed it, the consequences were the same.

The disobedience to the rule remained a contempt, and the rule remained valid, unless the Court, for particular cause of corruption, or undue interference, properly verified, should see ground to have another jury; but that otherwise, the jury of compact or statute must continue.

This was the more material, because of the Attorney General's power to refuse the Defendant a warrant to have a *tales*, to make up the special jury, if deficient, and of the common jury; which was so far from being an idle right, as mentioned by Mr. Bearcroft, that there was a case in which it was solemnly agitated, and which formed a ground of decision that the Attorney *could* and *ought*, in certain cases, to exercise the right. The King v. Jacob Banks, Sixth Modern Reports, p. 246, as follows:

On the 9th of December, 1793, the cause having been called on for trial, Mr. ATTORNEY GENERAL opened the case for the Crown as follows:

GENTLEMEN OF THE JURY,

THE Information charges the Defendants with having printed and published a seditious libel, the contents of which you have now heard stated. The Information originally was not filed by me, but by my predecessor in office, who then was, as you now are, sworn to discharge an important duty to the public, according to the best of his judgment. It has since fallen to my lot to execute that duty, in stating to you the grounds upon which this Information has been filed. And I have no difficulty in saying, that, previous to my coming forward for this purpose, I thought it incumbent upon me to consider, whether, in the office which I now hold, I should, of my own accord, have instituted this prosecution; because I thought that it became me not merely to follow up the measures of that highly respectable character, and to bring his opinion before a Jury, but to be able, in so doing, to say that I approved of those measures, and concurred in that opinion; and to act exactly as he had done, according to the best of my judgment, for the public. Had I been clearly of opinion that this paper was not fit for the consideration of a Jury, I have no hesitation in confessing that I should certainly have discontinued the prosecution. You, Gentlemen of the Jury, I am sure, will do me the justice to believe that I am not capable of the impertinence of saying, that because I may think this paper fit for prosecution, and may think the Defendants guilty, you therefore must think so too. The prosecution does nothing more than declare, that the paper is a proper subject for the discussion of a Jury, and as such, that I consider myself as bound to bring it forward in the course of my professional duty. With respect to the guilt or innocence of the Defendants in publishing this paper, that

And as to another objection that was made, "that such a course, if tolera-
"ted, would be of great mischief; for then most profligate offenders would
"get themselves acquitted by surprise, or over-hastening the trial, without
"allowing the Queen convenient time to manage her prosecution:"

It was answered, "that there could be none, because in Crown causes there
"cannot be *nisi prius* or *tales*, without a warrant from the Attorney General,
"*who shall be sure to grant none if he find any such danger.*" And that such a thing may be at least by consent appears 1 Keb. 195. Rex v. Jones. And the granting a *nisi prius* amounts to a consent.

question which falls to your consideration, I am perfectly satisfied to leave to your decision. This is a cause of the highest importance, as, indeed, every cause which involves a criminal charge must be important, but this more particularly so from the nature of the charge. It is connected with the press, which has ever been deemed the great palladium of British freedom. In every case in which it is concerned, it is natural, therefore, that the most watchful attention of Englishmen should be excited. It is of great consequence, then, in the first instance, to ascertain what properly constitutes the liberty of the press;—what are its bounds, and how far it extends;—and on this subject I shall take the liberty of reading to you the sentiments of a character of the highest legal authority, namely, the late Mr. Justice Blackstone.

"In this and the other instances which we have lately considered, where blasphemous, immoral, treasonable, schismatical, seditious, or scandalous libels are punished by the English law, some with a greater, others with a less degree of severity, the *liberty of the press*, properly understood, is by no means infringed or violated. The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter, when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government; but to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus the will of individuals is still left free; the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry; liberty of private sentiment is still left; the disseminating or making public of bad sentiments, destructive of the ends of society, is the crime which society corrects. A man (says a

" fine writer on this subject) may be allowed to keep poi-
" sons in his closet, but not publicly to vend them as cordials.
" And to this we may add, that the only plausible argument
" heretofore used for the restraining the just freedom of the
" press, 'that it was necessary to prevent the daily abuse of
" it,' will entirely lose its force, when it is shown (by a sea-
" sonable exertion of the laws) that the press cannot be abu-
" sed to any bad purpose, without incurring a suitable pu-
" nishment; whereas it never can be used to any good one,
" when under the control of an inspector. So true will it be
" found, that to censure the licentiousness, is to maintain the
" liberty of the press.*"

These principles of the law of England, thus laid down by this great man, must be admitted to be incontrovertible. The law allowed Defendants in this, as in every other case, a fair impartial trial, upon the result of which they were to be adjudged guilty or acquitted of the charge exhibited against them; and this principle has been explained by the last act of Parliament, for removing doubts of the functions of juries in cases of libel; the meaning of which act I take to be, that the jury shall try these charges of libels precisely as they try any other charge of a criminal nature;—that they shall hear the case with attention, and hear it impartially;—that they shall hear the advice of the bench in point of law, and then apply the law, as they understand it, to the facts that appear in evidence, and then they shall acquit or find guilty, as to them shall appear right. The question in this case is, " Whether, upon the facts, as they shall " appear in evidence under the law, as you shall understand " it, after the advice of the learned Judge, the Defendants be " guilty, as the information charges them to be ?" With respect to the fact, the paper stated in the information, appeared in the Morning Chronicle on the 25th of December 1792. And here I must particularly beg the attention of the Jury to the date of the libel. This paper, charged to be the libel, is dated at the Talbot Inn, at Derby, on the 16th of July 1792, and it did not appear in the Morning Chronicle till the 25th of December 1792. Thus you will observe, that the date of the paper preceded its appearance in the Morning Chronicle six months. Having said this upon the paper itself, it is now my duty to the Defendants to state, that it appeared not to be a publication actually composed by the Defendants, but was said to be,

* Blackstone's Commentaries, vol. iv. page 151, 8vo. edition, 1791.

with what truth I do not know, composed and agreed to at a Society for Political Information, held at the Talbot Inn, Derby, signed S. Eyre, chairman. Whether there was such a person, or, if there was, whether he was the author, is to me entirely unknown. It was said to be unanimously agreed to by the persons holding the meeting, and ordered to be printed; how it happened that that order was not executed till the 25th of December, I am unable to explain to you. But be that circumstance as it may, the Defendants are the persons interested in the property and management of the newspaper in which this publication appeared. And I apprehend that the proprietors, printers, and publishers of a newspaper are responsible for whatever it may contain, unless it be admitted as a doctrine, that men may carry on a trade, which is a source of great profit and emolument, entirely through the medium of servants, without being themselves in the smallest degree accountable. Can it be deemed a sufficient apology for the evil tendency of a publication, of which they reap the advantage, that they are not its authors, or that they had no immediate hand in its insertion, and therefore are not bound to answer for what they themselves did not actually commit? On the contrary, I apprehend, that by adopting any publication, they become liable in law for the consequences of that publication, as much as if they were themselves the authors. It is true, that there are many circumstances to be considered, either by me in moving judgment, or when it comes to be determined by the Court, what ought to be the nature and extent of the penalty. The consideration of the degree of guilt incurred by the particular act, might then be attended to, independent of the law of the case. Negligence, omission, inadvertence, all of which, however, constituted a degree of criminality, might then, perhaps, properly be urged as circumstances of extenuation. Though this paper, therefore appeared in the Morning Chronicle, not as the projected act of the Defendants, or of either of them, but as an advertisement signed by a Mr. Eyre, still it was a publication, for which the Defendants, in their capacity, as connected with this paper, were clearly answerable. Another circumstance which deserves your attention, is the time at which this advertisement was brought forward; you will find in the same paper in which it appeared, a vast number of advertisements from various associations in different parts of the kingdom, stating that

there had lately been many seditious writings circulated with the greatest industry, and from the worst intentions, which had already done much mischief, and expressing a determination to take every method in future to discountenance and suppress such publications. You are then to consider how far these advertisements might operate as an antidote to the statement contained in this publication, you are to take into review the whole of the paper and advertisements, that you may be able to judge fairly of the tendency of the contents, and the intention of the writers; you will then decide whether this paper was published with a peaceable temper, and from upright intentions. I have nothing to say, in order to exaggerate the case, or influence your decision; I have never had occasion to do so in any instance; it is neither my duty nor my wish in the present, and I trust that no man in my situation will ever do so upon any future occasion. All cases of which the law takes cognizance, and which are to be determined by ascertaining facts, and applying the law to them, are, thank God, safe in the hands of a Jury, the best guardians of our rights. Every thing in this country that deserves to be called a blessing, is indisputably deposited in their hands, as well as the power to apply a remedy, wherever their interference was called for to check the progress of an evil. It was from our blessings being vested in their hands, that we derived our security for their enjoyment, and our confidence in their duration. It is for you, Gentlemen of the Jury, exercising your privilege in its full extent, from the facts which I shall now lay before you, to judge of the tendency of this paper, which is the subject of prosecution; from the Bench you will hear laid down, from the most respectable authority, the law which you are to apply to those facts. The right of every man to represent what he may conceive to be an abuse or grievance existing in the government of the country, if his intentions in so doing be honest, and the statement made upon fair and open grounds, can never for a moment be questioned. I shall never think it my duty to prosecute any person for writing, printing, and publishing fair and conscientious opinions on the system of the government and constitution of this country; nor for pointing out what he may honestly conceive to be grievances; nor for proposing legal means of redress. But was this the case with respect to the present publication? Did the mode in which the writers exposed what they considered as the abuses of the constitution,

indicate a peaceable temper, or honest intentions, and a desire only to obtain redress by legal and constitutional means? Did not this paper, on the contrary, describe the whole system as one mass of abuse, grievances, misery, corruption, and despair, not so much as bringing forward one alleviating circumstance, or affording even a ray of hope? (Here Mr. Attorney General read some extracts from the paper.) It attacked the government in every branch, in its legislature, in its courts of justice, which had ever been deemed sacred, and, in short, represented all as equally corrupt and oppressive. There was no circumstance mentioned fairly, that the public might be left to judge freely upon their situation. What could be the tendency of such a representation, but to excite murmurs and inflame discontent, without effecting one good purpose? If a man wishes to state honestly what he conceives to be a grievance, let him do it candidly, and propose what he conceives to be the proper means of redress. Let him not take one side of the picture only, or confine himself entirely to an unfavourable view of the subject, but let him balance the good with the evil, let him enumerate the blessings as well as the inconveniences of the system, and while he points out abuses and errors, not forget, likewise, to enumerate wise and salutary regulations; such a conduct only could answer the purposes of candid and useful discussion. The contrary conduct adopted in this paper could only have a tendency to unsettle men's minds, and stir up sedition and anarchy in the kingdom. I never will dispute the right of any man, fully to discuss topics respecting government, and honestly to point out what he may consider as a proper remedy of grievances; every man has a right so to do, if the discussion be fairly and temperately conducted; I never will stand against such a person, even though I should differ with him in my opinion of the grievance, or disapprove of the proposed means of remedy. But when men publish on these points, they must not, as in the present instance, do it unfairly and partially; they must not paint the evil in the most glowing colours, while they draw a veil over the good. The writers of this paper, in describing the government of this country as productive only of one scene of misery, must have acted contrary to their own knowledge of its blessings, and in opposition to the sense which they could not but perceive was entertained by the people at large of the happiness of their condition. To what motives, I will ask, can such a representation be ascribed, or what are the effects to which it is naturally calculated to lead? Are the motives such only as

can be set down to fair and honest intention, and the effects only such as can terminate in a legal and peaceable line of conduct? We are to consider too, that this mode of representation is adopted with respect to a constitution which has been the admiration of the wisest and best men in all ages, who have thought it barely possible that a constitution should exist so nearly approaching to a model of perfection. It is a constitution under which a greater degree of happiness has been enjoyed than by the subjects of any government whatever; and the sense entertained of its blessings depends not upon the vague result of theory, but the solid conviction of experience. These blessings have, in a great measure, sprung from the properly regulated freedom of the press; a freedom therefore, which it is most dangerous to abuse; and on maintaining that freedom on its proper principles chiefly depends our security for the enjoyment of those blessings. That this country has enjoyed a greater sum of happiness under its present constitution than any other, depends not merely upon the testimony of our own experience; let us recur to the evidence of history, we shall be more deeply impressed with a sense of our present felicity; let us take a view of the situation of the subjects of the other European governments, we shall be more strongly convinced of the superiority of our own. What then do the writers of this paper mean, when they say "that we feel too much "not to believe, that deep and alarming abuses exist in the "British government; yet we are at the same time fully "sensible, that our situation is comfortable, compared with "that of the people of many European kingdoms; and that "as the times are in some degree moderate, they ought to "be free from riot and confusion." Let this paragraph be taken by way of illustration. When they talk of our situation being comfortable compared with that of *many* European kingdoms, what need, I will ask, for this qualification? Is there any European government that in point of real liberty and actual comfort can be compared with the British constitution? In this country we have the fullest security for the possession of our liberty and the enjoyment of our property, the acquisition of which must be the greatest spur to every honest and laudable exertion. But on the 25th December 1792, while this country was actually experiencing the blessings resulting from its admirable constitution, the principles which this paper seemed to recommend were producing very different effects in a neighbouring country. The effects

which had there been produced did not surely hold out to British subjects any encouragement, to adopt a system of experiment and innovation. The result of this in my mind, is, that no man should be at liberty, without a specific object, to state truly or falsely what appears to him to be a grievance merely for the purpose of exciting a spirit of general discontent, which I will venture to say, never can be called into action without endangering the public prosperity and happiness. We have always been in the habit of regarding the Revolution as the greatest blessing that ever befell this country. But how do the writers of this paper reason with respect to this event? They enumerate all the abuses which they pretend have since crept into the constitution, while they mention none of the many improvements which have taken place since that period. Is this, I will ask, a fair mode of stating the question? Besides, they show themselves ignorant of that Revolution, by talking of the annual Parliaments which we then lost. What was the end of all this? The cause of truth and justice can never be hurt by fair and temperate discussion; if you, Gentlemen of the Jury, consider this paper as coming under that description, you will of course acquit the Defendants. Look at the beginning and conclusion of their paper. You will find that they set out with declaring *that they are in pursuit of truth in a peaceable, calm, and unbiassed manner, and from an opinion that the cause of truth and of justice can never be hurt by temperate and honest discussion, that they claim the right to associate together merrly for the communication of thoughts, the formation of opinions, and to promote the general happiness.* You will find that they conclude thus: "We hope our condition will be speedily improved, and "to obtain so desirable a good is the object of our pre-"sent association; an union founded on principles of ben-"evolence and humanity; disclaiming all connexion with "riots and disorder, but firm in our purpose, and warm "in our affections for liberty." It is with you to decide whether you think the general tenour of this paper consistent with the principles assumed at the beginning and asserted at the end. If you shall judge that it contains matter very inconsistent with these principles, you are then to consider whether, in a case like this, *humble language ought to ransom strong faults.* If you shall be clearly of opinion that the paper has a different tendency from that which is professed in the outset and conclu-

sion, and that the Defendants themselves were aware of this tendency, you are then bound by your oath, and by the law of the country, to find the Defendants guilty. Once more, as to the contents of this paper; you will find that the taxes are loudly complained of, but that not a word is said of the general wealth and prosperity of the kingdom. But let a deduction be made of the national taxes from the amount of the national wealth, and I am confident that this country will appear in a higher state of opulence and prosperity than it ever was at any former period. What purpose then can such partial and unfair statements answer, except to inflame the discontented and encourage the seditious? Whatever I have said of the tendency of this paper, I have stated only as my own opinion; it does not follow that the Society at Derby might not view the subject in a very different light. All that my duty demands is, solemnly to declare that I considered this prosecution, though not originating with myself, as a proper case to be submitted to the consideration of a Jury. You have now heard from me almost all that I intended to say at present, or thought necessary to submit to you, except what may fall from my learned friend shall require me to add some farther observations in reply. You will hear from the evidence all the facts which the Defendants have to urge in their own justification, and from his Lordship all that shall appear to him to be the law on this subject. I now leave the matter to your decision. If you think the Defendants ought to be acquitted, I shall retire from the Court with a full conviction, not inconsistent however with that respect which I owe to your decision, that, in bringing this matter before you, I have acted according to the best of my judgment.

Mr. Wood, the junior Counsel on the part of the prosecution, was then proceeding to call witnesses, and Mr. Berry was called, when the Counsel for the Defendants said he was instructed to save the Court all this trouble, as the Defendants were anxious to try the question on its own merits. As Counsel for the Defendants, he therefore admitted that *John Lambert*, charged in the Information as printer of the Morning Chronicle, was in fact printer of that paper; that the paper was purchased at the printing-house; and that the Defendants, James Perry and James Gray, charged in the Information as proprie-

tors of the same paper, were in fact so. If these were the facts meant to be ascertained by witnesses, they would spare the Court unnecessary time and trouble, by admitting them fully and unequivocally.

The Attorney General said these were all the facts they meant to establish by proof; he thanked his learned friend for the admission.

*The Honourable Thomas Erskine then rose for the Defendants.*

WITH the two gentlemen charged in the Information, as proprietors of the Morning Chronicle, I have been long and well acquainted. Of Mr. John Lambert, who conducts the mechanical part of the printing business, I have no personal knowledge; but from my intimate acquaintance with the other two, I have no difficulty in saying, that if I had in my soul the slightest idea that they were guilty, as charged in the Information, of malicious and wicked designs against the state, I should leave the task of defending them to others.—Not that I conceive I have a right to refuse my professional assistance to any man who demands it; but I have for a day or two past been so extremely indisposed, that I feel myself scarcely equal to the common exertion of addressing the Court; and it is only from the fullest confidence in the innocence of the Defendants that I come forward for a very short space to solicit the attention of the Jury. YOU, Gentlemen, indeed, are the sole arbitrators in this cause, and to YOU it belongs to decide on the whole merits of the question. Mr. Attorney General has already given a history of the prosecution, which was originally taken up by his predecessor, now called to a high situation in his profession. I do not mean by any thing I shall say to impute unbecoming conduct to either of those respectable gentlemen for the part which they have taken in this business: they no doubt brought it forward, because they considered it as a proper matter for the discussion of a Jury. I take it for granted that they would not have acted so, but from a sense of duty: be this however as it may, the weight of their characters ought to have no influence upon your minds against the Defendants. It would

be dangerous to justice indeed, if, because a charge was brought by a respectable Attorney General, it were to be received as an evidence of guilt which ought at all to bias the judgment or affect the decision of the Jury.—It is the privilege of every British subject to have his conduct tried by his peers, and his guilt or innocence determined by them. In this case Mr. Attorney General has given no judgment; —he has taken up the business merely in the course of his professional duty.—The whole of the matter comes before you, Gentlemen of the Jury, who of course will reject every thing that can have a tendency to influence your decision independently of the merits of the cause; you will suffer no observation that may fall from my Learned Friend, or from myself, to interfere with your own honest and unbiassed judgments. You are to take every thing that relates to the case into *your own* consideration;—you are to consult only *your own* judgments;—you are to decide, as you are bound by your duty, according to your own consciences; and your right to decide fully, on every point, is clearly ascertained by the law of libels. To the act lately passed you are to look as the only rule of your conduct in the exercise of your functions.

With respect to the interpretation of that act, I must confess that my Learned Friend and I materially differ. In one principle, however, we entirely agree,—that a case of libel is to be tried exactly as any other criminal case: this point indeed he has most correctly stated.—When a man accused of a libel is brought before a Jury, they are to consider only the mind and intention with which the matter was written, and accordingly as they shall find that, they are to form their decision of guilt or innocence. They are to dismiss every other consideration, and allow themselves to be biassed by no motive of party or political convenience. There is this essential difference between criminal and civil cases: in criminal cases, the Jury have the subject entirely in their own hands; they are to form their judgment upon the whole of it, not only upon the act alleged to be criminal, but the motive by which it was influenced; the intention with which it was committed; and according to their natural sense of the transaction, they ought to find a man innocent or guilty: and their verdict is conclusive. Not so in civil cases:—In these the Jury are bound to abide in their decision by the law as explained by the Judge; they are not at liberty to follow their own opinions. For instance, if I am deprived of any part of my property, the loss of my property lays a founda-

tion for an action, and the fact being found, the Jury are bound to find a verdict against the person who has occasioned my loss, whatever might be his intentions. Here the Judge pronounces the law, the Jury only find the fact. The law and the fact are as distinct and separate, as light from darkness; nor can any verdict of a Jury pass for a farthing in opposition to the law, as laid down by the Judge, since the Courts have a power to set such a verdict aside. But in criminal cases, the very reverse has been immemorially established, the law and the fact have been inseparably joined; the intention of the party accused is the very gist of the case. We are CRIMINAL only in the eyes of God and man, as far as the mind and intention in committing any act has departed from the great principles of rectitude, by which we are bound as moral agents, and by the indispensable duties of civil society. It is not the act itself, but the motive from which it proceeds, that constitutes guilt, and the general plea therefore in all criminal cases is Not Guilty. Such is the answer which the justice and clemency of our laws have put into the mouth of the accused; leaving him the right of acquittal, if the circumstances of the transaction shall be found to exculpate his motives.

The criminality of a person under the Libel Act, is not to be taken as an inference of law from the fact, as Mr. Attorney General has stated it; but (if, as one of the authors of that bill, I may be allowed to interpret its meaning) it connects and involves the law and the fact together, and obliges the Jury to find in this crime, as in all others, by extrinsic as well as intrinsic means, the mind and intention with which the fact was committed. Nothing can be more simple than the doctrine. It goes directly to the reason of the thing. Two men, for instance, are in company, and one of them is killed. It is not an inference in the law from the fact of the killing that the person was guilty of murder—it might be manslaughter, justifiable homicide, chance-medley, or it might be murder:—the fact does not infer the crime: it is the intention with which the act was committed, and this the Jury are bound to discover and decide upon from all the accompanying circumstances. If I had been wrong in holding this opinion, all my opposition to that great luminary of the law now departed, but who will always live in public memory, was wrong and false; I revered his venerable authority, I admired the splendour of his talents which illustrated the age he lived in, and perhaps ages will pass without producing his rival. I still opposed him, in the meridian of his fame, on

the doctrine that the law of libel was an inference from the fact, and now the Legislature have solemnly confirmed my opinion, that the law and fact are compounded together, and are both to be found by the Jury. I could not have held up my head in this Court, nor in the world, if it had been adjudged otherwise; and how my Learned Friend can hold an opinion that the question of libel is to be tried precisely like all other criminal cases, and yet that criminal intent is an inference of law, I am utterly at a loss to comprehend. I aver that you are solemnly set in judgment on the hearts of the Defendants, in the publication of this paper; you are to search for their intention by every mean which can suggest itself to you,—you are bound to believe in your consciences that they are guilty of malicious and wicked designs, before you can pronounce the verdict of GUILTY.—It is not because one of them published the paper, or because the others are proprietors of it, but because they were, or were not, actuated by an evil mind, and had seditious intentions, that you must find them guilty or not guilty. Such was the opinion of the venerable Hale. He clearly stated that such should be the charge given to you by the Judge. It is their sacred function to explain to you their opinion, but not to force it upon you as a RULE for yours. A Jury will always listen with reverence to the solemn opinion of the Judge, but they are bound to examine that opinion as rigorously as that of an advocate at the bar;—they cannot, and they ought not, to forget that a Judge is human, like themselves, and of course not exempt from the infirmities of man. I do not say this to inspire you with any jealousy of the explanations which may be given you by the Noble and Learned Judge, who presides here with so much wisdom, integrity, and candour, and whose ability in explaining the law derives both force and lustre from the impartiality which so eminently distinguishes him in the discharge of the duties of his office.

I now come to the consideration of the question—What is the charge against the Defendants? Let us look to the Indictment, which sets out with referring to His Majesty's proclamation which had appeared against all seditious writings, previous to the publication of the libel. I will not here talk of the propriety of that proclamation:—It is not now my business here to enter into political questions;—I have a privilege to discuss them in another place.—I will suppose the proclamation to have been dictated by a wise and prudent policy;—I will give credit to it as a measure of salu-

tary precaution and useful tendency. I will only remind its authors when it was issued. It was issued at a period the most extraordinary and eventful which ever occurred in the annals of mankind; at a period when we beheld ancient and powerful monarchies overturned—crumbled into dust, and republics rising upon their ruins; when we beheld despotic monarchy succeeded by the despotism of anarchy. In this state of alarm, confusion, and devastation in other countries, the Defendants are accused by this Information of wickedly, maliciously, and seditiously endeavouring to discharge His Majesty from the hearts of his subjects, and to alienate the people of England from what their affections were rivetted on—a limited and well-regulated monarchy. The proclamation appeared professedly to check a spirit of innovation, which had already displayed itself by such alarming effects in a neighbouring country, and which it was feared, by its authors, might in its progress become fatal to all establishments.—How, then, can this paper be deemed seditious, in the spirit of that proclamation? It was not surely against a reform in our own constitution, which this paper recommends, that the proclamation was pointed, but against those who, in imitation of that neighbouring country, wished to establish a republican anarchy. Can any man produce a single expression which, in the smallest degree, countenances such a system?—How then can this paper be urged to be published in defiance of His Majesty's authority, or to have a tendency to alienate the minds of his subjects from his government? A proclamation is always considered as the act of Ministers; it becomes the fair subject of discussion; nor do the contents of this paper at all breathe a spirit, either disrespectful to His Majesty's person, or injurious to his government.

If you, Gentlemen of the Jury, can think that the Defendants were actuated by the criminal motive, not of wishing to reform and restore the beautiful fabric of our constitution somewhat impaired by time, but to destroy and subvert it, and to raise on its ruins a democracy or anarchy—an idea at which the mind of every honest man must shudder,—you will find them guilty. Nay, if any one man knows or believes them to be capable of entertaining such a wish, or will say he ever heard or had cause to know, that one sentence intimating any thing of that nature ever fell from the lips of any one of them. I will give them up. How they came to be so charged upon the record, I cannot tell; there are not among His Majesty's subjects men better disposed to the government under which they live than the Defendants. There have ap-

peared in the Morning Chronicle, day after day, advertisements to a vast number, warning the people of this country against seditious persons, and against the effects of seditious publications. How any Jury can be brought to think the Defendants are what they are stated to be on the record, I know not. The Information states, that the Defendants being wicked, malicious, seditious, and ill-disposed persons, did *wilfully*, *wickedly*, *maliciously*, *and seditiously*, publish a certain *malicious*, *scandalous*, *and seditious* libel against the government of this kingdom, against its peace and tranquillity, and to stir up revolt, and to encourage His Majesty's subjects to resistance against his person and government. This is the charge. All records have run in this form from the most remote antiquity in the law of England, for the purpose of charging the Defendant expressly and emphatically with an evil intention. So we charge a man accused of treason;—so of murder;—so of all worst and most dangerous crimes; first we begin with the intention, and then we state the overt act as evidence of that intention which constitutes the crime.—Now the record charges these Defendants with this evil intention, and that, in order to give effect to that intention, they did publish the paper now before the Jury.—Such is the charge. Mr. Attorney General has stated to you in his opening, that if it shall appear to you, that the paper in question was not *written with a good intention by its authors*, then the Defendants are guilty of the crime imputed to them upon the record. This I deny. Your Lordship will recollect the case of the King and Stockdale, and I shall leave to the Jury in *this*, as your Lordship did in *that* case, the question of the intention of the party from the context of the whole publication, and the circumstances attending it; and upon this I will maintain that it is not sufficient that it should appear the paper was written with a criminal intention by its author, or that the paper itself was criminal, but that it must also appear that the Defendants *published it with a criminal intention.* Here, as in every other case, the great maxim of the law is to be recollected: *actus non facit reum*; the mere act, taken by itself, and separated from the intention, can never in any instance constitute guilt. There is no evidence who are the authors of this paper; the Attorney General has not proved, or shown in any way that the person who composed the paper, was of the description which the record states the Defendants to be. If the design of

the writers of this paper was so mischievous, then the Society that gave it birth, were seditious and evil disposed men.—What steps have been taken to discover, and hunt out this treason? Have the Society been prosecuted, or any of its members?—Has the writer been sought after and punished?—No such thing. At Derby all is quiet. No sedition has been found lurking there,—no prosecution has been instituted against any person whatever for this paper.—But it has been said, the paper itself will prove the seditious design. After reading it over and over again, and paying to it all the attention possible, I protest I cannot discover any such tendency; on the contrary, I can very well conceive, that the man who wrote it, might honestly be induced to write and circulate it, not only with the most unblemished intentions, but from motives of the purest attachment to the constitution of the country, and the most ardent wishes for the happiness of the people.

I can conceive that he had no other object in pointing out the defects of the constitution, than to show the necessity of a reform which might bring it back to its ancient principles, and establish it in its original purity. Animated by those wishes, the author was naturally enough led to advert to what was passing on the continent of Europe, and to consider how far it might affect the interests of his country and the attainment of his favourite object. He was thence led to conclude, that nothing could be more fatal to us, or more likely to increase the calamities under which we have already suffered, than an interference in those destructive wars which were ravaging Europe, and against which every good citizen, as well as every friend to humanity, ought to enter his protest. This may be gathered from the conclusion of the fourth section of the paper; "*We are certain our present heavy burdens are* "*owing, in a great measure to cruel and impolitic wars,* "*and therefore we will do all on our part, as peaceable* "*citizens who have the good of the community at heart, to* "*enlighten each other, and to protest against them.*" Here it is evident that the author considers the state of the representation as the cause of our present evils, and to a constitutional reform of Parliament he looks as their remedy.—In the conclusion of the fifth section he thus explicitly states his sentiments:

"*An equal and uncorrupt representation would, we are* "*persuaded, save us from heavy expenses, and deliver us* "*from many oppressions; we will therefore do our duty to*

"*procure this reform, which appears to us of the utmost im-*
"*portance.*" How is it proposed to procure this reform? Why, "by constitutional means;—by the circulation of truth in a "peaceable, calm, unbiassed manner." Can this then be maliciously intended? Does it fall within the Attorney General's description of sedition? Is it fit that a subject of this country should be convicted of a crime, and subjected to heavy punishment for publishing, that abuses subsist in the government of this country; and arguing from thence the necessity for reform? Mr. Attorney General seems to admit that a man may publish, if he pleases, the evils which appear to him to subsist; but he qualifies it by saying, that when he points out the defects, he should point out also the advantages arising from our representation;—that he should state the blessings we enjoy from the mixed nature of our monarchy;—that if he draws the gloomy part, he should present us also with the bright side of the picture, in order that we may see the whole together, and be able to compare what is beautiful with what is deformed in the structure of our government. I must own I was rather surprised to hear such an argument from my Learned Friend: I can hardly think the observation fair, or by any means worthy of his enlightened understanding. He must know that when a zealous man pours out his thoughts, intent on urging a particular point, HE confines himself to the question he has in view;—he directs his whole attention to illustrate and enforce it, and does not think it necessary to run into every angle and corner, to rake together heterogeneous materials, which, though they may be connected with the general subject, are foreign to his particular purpose.

No man, if he felt himself goaded by the excise laws, could be expected, in his petition for redress, to state all the advantages which arose to the state out of the other branches of the revenue. If this were to be adopted as a rule, a man could not complain of a grievance, however intolerable he felt it to himself, without also stating the comforts which were enjoyed by others. Is a man not to be permitted to seek redress, from any part of the government under which he lives, and to support which he contributes so much, unless, in enumerating his particular grievance, he enters into a general panegyric on the constitution? Will Mr. Attorney General say to-day, that this is the law of libel?

This very point has been most admirably touched upon by a person who ranks in the highest class of genius, and

whose splendid and powerful talents, once exerted in the cause of the people, may possibly bear away the palm in the minds of posterity from the most illustrious names of Greece and Rome.

Mr. Burke, in his Reflections on the Affairs of France, at the commencement of the revolution, most justly observes, that when a man has any particular thing in view, he loses sight for a time even of his own sentiments on former occasions: when that Right Honourable Gentleman was asked, by those who had so often listened to his eloquence in favour of the people, why he had excluded his former favourite topic from a share in his work, and made monarchy the sole subject of his vindication and panegyric?—Whatever may belong to the work itself, the answer which he gave upon that occasion must be admitted to be sound and forcible.—When the rights of the people appeared to him to be in danger, from the increasing and overpowering influence of the Crown, he brought forward, he said, sentiments favourable to such rights.—But when monarchy was in danger, monarchy became the object of his protection; the rights of the people were nothing to him then; they did not form the subject of his book; his object was, to show where the danger lay; and the beautiful illustration from Homer, relative to the death of Hector, was most applicable: "When his "body was placed before the aged king, his other sons sur- "rounded him, anxious to afford that consolation which so "great a calamity required; the unhappy father, as if of- "fended with their tenderness, flung his affectionate off- "spring from him like a pestilence. Was it that the inani- "mate and useless corpse was dearer to the parent than the "living children?—No. But his mind was so absorbed, so "buried in the fate of Hector, that he was for a while in- "capable of entertaining any other impression."—So said the author of that book; and it was well said; for when a man writes upon a particular subject he centres his mind in, he calls forth all its powers and energy to the discussion, and allows nothing, that has not an immediate relation to the object he has in view, to divide his feelings or distract his attention.—But if the observations of Mr. Attorney General are to be adopted as a rule, it will be impossible to discuss any point of a question, without entering into the whole merits; no man will dare to complain of any abuse of the constitution, without, at the same time, enumerating all its excellencies, or venture to touch upon a topic of grievance, without bringing forward a recital of blessings. A paragraph

would be swelled to a pamphlet, and an essay expanded to a dissertation.

But it seems the circumstances of the times render any opinion in favour of a reform of Parliament peculiarly improper, and even dangerous, and that the recommendation of it, as the only remedy for our grievances, must, therefore, in the present moment, be ascribed to mischievous intentions. Were I impressed with a sense of that corruption, which has, to a certain degree, impaired and defaced the fair fabric of our constitution, and which, if not stopped in its progress, may lead to its decay and ruin;—were I to address you, Gentlemen of the Jury, to petition for a reform of Parliament, I would address you particularly NOW, as the season most fit for the purpose; I would address you NOW, because we have seen in other countries the effect of suffering evils to prevail so long in a government, and to increase to such a pitch, that it became impossible to correct them, without bringing on greater evils than those, which it was the first object of the people to remove;—that it became impossible to remedy abuses without opening a door to revolution and anarchy. There are many diseases which might be removed by gentle medicines in their beginning, and even corrected by timely regimen, which, when neglected, are sure to bring their victims to the grave. A slight wound, which may be certainly cured by the simplest application seasonably administered, if left to itself will end in gangrene, mortification, and death. If experience can be of any service to warn men of their danger, and to instruct them how to avoid it, this is the season to teach men the best sort of wisdom,—that wisdom which comes in time to be useful. I have myself no hesitation in subscribing to all the great points in this declaration of the meeting at Derby. To the abuses of our representative system they ascribe our unnecessary war,—our heavy burdens,—our many national calamities. And at what period have not the best and wisest men, whom this country ever produced, adopted the same sentiments, and employed the same language? The illustrious Earl of Chatham has dignified the cause by the noblest specimens of eloquence. And who has not read the beautiful and energetic Letter of Sir George Saville, to his constituents, on the same subject, a letter which is so much in point that I must beg leave to repeat it to you.

"I return to you baffled and dispirited, and I am sorry "that truth obliges me to add, with hardly a ray of hope "of seeing any change in the miserable course of public "calamities.

"On this melancholy day of account, in rendering up to "you my trust, I deliver to you your share of a country "maimed and weakened; its treasure lavished and mis-"spent; its honours faded; and its conduct the laughing-"stock of Europe: our nation in a manner without allies or "friends, except such as we have hired to destroy our fel-"low-subjects, and to ravage a country, in which we once "claimed an invaluable share. I return to you some of "your principal privileges impeached and mangled. And, "lastly, I leave you, as I conceive, at this hour and moment, "fully, effectually, and absolutely, under the discretion and "power of a military force, which is to act without waiting "for the authority of the civil magistrates.

"Some have been accused of exaggerating the public mis-"fortunes, nay, of having endeavoured to help forward the "mischief, that they might afterwards raise discontents. "I am willing to hope, that neither my temper, nor my si-"tuation in life, will be thought naturally to urge me to pro-"mote misery, discord, or confusion, or to exult in the sub-"version of order, or in the ruin of property. I have no "reason to contemplate with pleasure the poverty of our "country, the increase of our debts, and of our taxes; "or the decay of our commerce.—Trust not, however, "to my report: reflect, compare, and judge for your-"selves.

"But, under all these disheartening circumstances, "I could yet entertain a cheerful hope, and undertake "again the commission with alacrity, as well as zeal, if "I could see any effectual steps taken to remove the "original cause of the mischief—Then would there be a "hope.

"But, till the purity of the constituent body, and "thereby that of the representative, be restored, there "is NONE.

"I gladly embrace this most public opportunity of de-"livering my sentiments, not only to all my constituents, "but to those likewise not my constituents, whom yet, "in the large sense, I represent, and am faithfully to "serve.

"I look upon restoring election and representation in some "degree (for I expect no miracles) to their original purity, "to be that, without which all other efforts will be vain and "ridiculous.

"If something be not done, you may, indeed, retain the "outward form of your constitution, but not the power "thereof."

Such were the words of that great and good man, surely equally forcible with any of those employed in the declaration of the meeting at Derby, yet, who ever imputed to him mischievous intentions, or suspected him of sedition? Yet this letter he published and circulated, not only among his constituents in the extensive county of York, but addressed it to the nation at large, and recommended it to their attention. Who does not recollect the conduct which had been adopted on the same subject by the persons now nearest His Majesty's person, and highest in his counsels?—Had not the same truths published in this declaration been repeatedly asserted and enforced by them? Names it is unnecessary to mention; the proceedings to which I refer are sufficiently known: but at the same time, I beg leave to be understood, to convey no personal reflection or reproach. I am the more anxious, in this instance, to guard against misrepresentation from what happened to me upon a late occasion, when, in consequence of my argument being misunderstood, an observation was put into my mouth, which would have disgraced the lips of an idiot. It was ascribed to me to have said, that if any man had written a libel; and could prove the publication of the same libel by another person before, he might justify himself under that previous publication. I cannot conceive how so egregious a blunder could have been committed; what I said was, that a man may show he was misled by another in adopting his opinion, and may use that circumstance as evidence of the innocence of his intention in a publication, or where the writing is not defamatory of an individual which may be brought to a known standard of positive law, but is only criminal from a supposed tendency, in fact to excite sedition and disorder;—he may repel that tendency, by showing the Jury, who alone are to judge of it, that the same writing had before been in extensive circulation, without either producing, or being supposed to produce, sedition; and he may also repel the inference of criminal intention, by showing that the wisest and most virtuous men in other times had maintained the same doctrines, not merely with impunity, but with the approbation and rewards of the public. This I maintained to be the law in the case of Mr. Holt the printer, and this I shall continue to maintain upon every suitable occasion.

To bring home the application. The first men in the present government have held and published every doctrine contained in this paper. I studiously avoid all allusion which may seem to convey reproach to the high persons to whom I have referred, on account of any change apparent in their

conduct and sentiments, because I conceive it to be unnecessary to my present argument, and because I have a privilege to discuss their conduct in another place, where they are themselves present to answer. Besides, a man has a right to his sentiments, and he has a right to change them;—on that score I attack no man, I only defend my Clients. But thus far I am entitled to say, that if they published sentiments without having it imputed to them, that they were seditious, evil-minded, and wicked, it is but fair and reasonable to allege, that others, in bringing forward the same sentiments, may be equally exempted from impure motives. I repeat that every man has a right to publish what he thinks upon matters of public concern, to point out the impolicy of wars, or the weight of taxes, to complain of grievances, and to expose abuses. It is a right which has ever been exercised, and which cannot be annihilated, without at the same time putting an end to all freedom of discussion. If we talk of the circumstances of the times; do the present afford less ground for remonstrance and complaints than former periods? I might read you many extracts from the writings of Mr. Burke, who, to eloquence, the fame of modern times, adds the most extensive and univeral acquaintance with the history both of his own country and of every other. Mr. Burke (it is a merit I never can forget,) with no less vehemence, and in language not less pointed and forcible than we find in this declaration, exposes the same abuses, and laments the same evils. What HE wrote during the American war, are not the writers of this declaration justified in writing at present? To the defects and abuses of our system of representation, may in my opinion be ascribed all the calamities that we then suffered, that we are now suffering, or are still apparently doomed to suffer. The evils which we now lament, originated from the same source with those which we formerly suffered. To the defects of our representation we owe the present war, as to them also we owe that disastrous and unprincipled conflict which ended in the separation of Great Britain from her colonies. The events indeed were nearly connected: that mighty republic beyond the Atlantic gave birth to the new republic in Europe, with which we are at present engaged in hostilities. From all the consequences, which we have already experienced, which we now suffer, and which we have yet to anticipate in reserve, I will venture to say, that a reform in the representation, applied seasonably, would have effectually saved the country. Is it likely, while this fruitful source of misfortune remains, that we shall not continue to

suffer? and if a man really entertains this opinion, is it not his duty to publish his thoughts, and to urge the adoption of a fair and legal remedy?—Is he to be set down as a seditious and evil-minded man because he speaks the truth and loves his country? Of the war in which this country is engaged, I will here say nothing; it will soon come to be discussed in another place, where I have not failed to exercise that privilege, which I there possess, to deliver my opinion of its dreadful consequences. But of all these consequences, there is none which I conceive to be more dreadful and alarming than, that I CAN SEE NO END TO IT; and I believe wiser persons than myself are equally at a loss to predict its termination. This paper, which so justly reprobates wars, is rumoured to come from the pen of a writer, whose productions justly entitle him to rank as the first poet of the age;—who has enlarged the circle of the pleasures of taste, and embellished with new flowers the regions of fancy. It was brought forward in a meeting, in a legal and peaceable manner, and I have never heard that either the author, or any of the members present at the meeting, have been prosecuted, or that the smallest censure has fallen upon their conduct. But even if *they* had been made the objects of the prosecution, sanctioned as they are in what they have written, by every principle of the constitution, and supported in their conduct by its best and most virtuous defenders in all times, I should have had little difficulty in defending them. How much less, in the case of the Defendants, who are not stated to be the authors of this paper, who only published it in the course of their business, and who published it under such peculiar circumstances, as, even if the contents could have admitted any criminal interpretation, must have done away on their part all imputation of any criminal intention. They have in a manly way instructed me, however, to meet the question upon its own merits; not because they could not have proved a very peculiar alleviation, but because they have always presented a fair and unequivocal responsibility for the conduct of their paper. Let me particularly call your attention to this circumstance, that for the number of years during which the Defendants have conducted a newspaper, they have never before, in a single instance, been tried for any offence, either against an individual, or against the state: they have, in the execution of their task, assiduously endeavoured to enlighten the minds of their fellow-subjects, while they have avoided every thing that might tend to endanger their morals. They have displayed, in the conduct of their paper, a degree of learning, taste, and genius, superior

to what has distinguished any similar undertaking. They have done their fellow-citizens a most essential service, by presenting them with the most full and correct intelligence of what has been passing on the political theatre of Europe, neither sullied by prejudice, nor disguised by misrepresentation. The attention which they have paid to the important occurrences which have taken place in a neighbouring country, and the impartiality with which they have stated them, do them the greatest credit. I trust that it will be no objection to them in their character of editors, that they have sought only for the truth, and, wherever they have found facts, have not hesitated to bring them before the public. They have thus enabled their readers to judge for themselves, and have furnished them with the means to form a proper judgment. This is the true value of a free press. The more men are enlightened, the better will they be qualified to be good subjects of a good government; and the British constitution, as it has nothing to fear from comparison, so it can receive no support from those arts which disguise or suppress the truth respecting other nations. Wherever they have been called to deliver their sentiments upon public occurrences, they have equally avoided being misled by the credulity of alarm, and the frenzy of innovation; and have reprobated, with the same spirit and boldness, the abuse of freedom and the perversion of power,—the outrages of a sanguinary mob, and the oppressions of an unprincipled despot. Whatever may have been their political partialities, they are such as cannot but do them the highest honour, and their partialities have been the result of honest conviction.—Though uniformly consistent in their friendships, they have never been accused by those who know them of being partizans for interest. Their opinions have been honest, as well as steady; and through life they have maintained and asserted the pure principles of rational freedom, and given the most strenuous support to the best interests of man.—They have, in their daily task, ever preserved reverence for private character, and in no instance violated the decorums of life, by low ribaldry or wanton defamation. Though adverse in their sentiments to Ministers and their measures, they have confined themselves to manly discussion, and fair argument; and never descended to indecent attack, or scurrilous abuse.

My Learned Friend cannot produce a single instance in the course of seventeen years (the term of my acquaintance with them,) in which they have been charged in any Court with public libel, or with private defamation;

and I challenge the world to exhibit a single instance in which they have made their journals the vehicles of slander, or where from interest or malice, or any other base motive, they have published a single paragraph to disturb the happiness of private life, to wound the sensibility of innocence, or to outrage the decencies of well regulated society. I defy the world to produce a single instance.—Men who have so conducted themselves, are entitled to protection from any government, but certainly they are particularly entitled to it, where a free press is part of the system. In the fair and liberal management of their paper, fifteen shillings out of every guinea which they receive flows directly into the public Exchequer; and besides the incessant toil, and the unwearied watching, all the expenses by which this great gain to Government is produced, are borne exclusively by them. They essentially contribute therefore by their labours, to the support of Government, and they are as honestly and fervently attached to the true principles of the British constitution, to the Crown, and to the mixed system of our Government, as any subject of his Majesty; but at the same time they are ready to acknowledge that they ever have been advocates for a temperate and seasonable reform of the abuses which have crept into our system.—Their minds are to be taken from the whole view of their conduct.—It is a curious, and I will venture to say in times so convulsed, an unexampled thing, that in all the productions of my friends, that in all the variety of their daily miscellany, the Crown officers have been able to pick out but one solitary advertisement from all that they have published, on which to bring a charge of sedition; and of this advertisement, if they thought fit to go into the detail, they could show even by internal evidence, that it was inserted at a very busy moment, without revision or correction, and at the very time that this advertisement appeared, seven hundred declarations in support of the King's government appeared in the same paper, which they revised and corrected for publication.—You are not therefore to take one advertisement, inserted in their paper, as a criterion of their principles, but to take likewise the other advertisements which appeared along with it. Would the readers then of this paper, while they read in this advertisement a recital of the abuses of the constitution, not be in possession of a sufficient antidote from the enumeration of its blessings? While the admirers of the constitution came forward with an unqualified panegyric of its excellencies, were not the friends

of reform justified in coming forward with a fair statement of grievances? If it is alleged, that the pecuniary interest which the proprietors have in a newspaper, ought to subject them to a severe responsibility for its contents, let it be recollected, that they have only an interest in common with the public. I again call upon Mr. Attorney General to state, whether the fact appears to him clearly established, that the writers of this paper were influenced by seditious motives. I put it to YOU, Gentlemen of the Jury, as honest men, as candid judges of the conduct, as fair interpreters of the sentiments of others, whether you do not in your hearts and consciences believe, that these men felt as they wrote; —that they complained of grievances which they actually experienced, and expressed sentiments with the truth of which they were deeply impressed. If you grant this— if you give them the credit of honest feelings and upright intentions, on my part any farther defence is unnecessary; we are already in possession of your verdict; you have already pronounced them not guilty; for you will not condemn the conduct when you have acquitted the heart. You will rather desire that British justice should resemble that attribute of Heaven which looks not to the outward act, but the principle from which it proceeds—to the intention by which it is directed.

In summing up for the Crown, I would never wish to carry the principles of liberty farther than Mr. Attorney General has done, when he asserted the right of political discussion, and desired you only to look to the temper and spirit with which such discussion was made;—when he asserted, that it was right to expose abuses, to complain of grievances, provided always that it were done with an honest and fair intention. Upon this principle, I appeal to you, whether this advertisement might not be written with a *bonâ fide* intention, and inserted among a thousand others, without any seditious purpose, or desire to disturb the public peace.

Undoubtedly our first duty is the love of our country; but this love of our country does not consist in a servile attachment and blind adulation to authority. It was not so that our ancestors loved their country; because they loved it, they sought to discover the defects of its government; because they loved it, they endeavoured to apply the remedy. They regarded the constitution not as slaves with a constrained and involuntary homage, but they loved it with the generous and enlightened ardour of freemen. Their attachment was founded upon a conviction of its ex-

cellence, and they secured its permanence by freeing it from blemish. Such was the love of our ancestors for the constitution, and their posterity surely do not become criminal by emulating their example. I appeal to you, whether the abuses stated in this paper do not exist in the constitution, and whether their existence has not been admitted by all parties, both by the friends and enemies of reform. Both, I have no doubt, are honest in their opinions, and God forbid that honest opinion in either party, should ever become a crime. In their opinion of the necessity of a reform, as the best and perhaps only remedy of the abuses of the constitution, the writers of this paper coincide with the most eminent and enlightened men. On this ground I leave the question,—secure that your verdict will be appreciable to the dictates of your consciences, and be directed by a sound and unbiassed judgment.

Mr. Attorney General.—There are some propositions which my Learned Friend (Mr. Erskine) has brought forward for the Defendants, which not only I do not mean to dispute, as an officer of the Crown, carrying on this prosecution, but which I will also admit to their full extent. Every individual is certainly in a considerable degree interested in this prosecution; at the same time I must observe, that I should have, in my own opinion, betrayed my duty to the Crown, if I had not brought this subject for the consideration of a Jury. Considering, however, every individual as under my protection, I think it a duty which I owe to the Defendants, to acknowledge, that in no one instance before this time were they brought to the bar of any Court, to answer for any offence either against Government or a private individual.—This is the only solitary instance in which they have given occasion for such charge to be brought against them. In every thing, therefore, that I know of the Defendants, you are to take them as men standing perfectly free from any imputation but the present; and I will also say, from all I have ever heard of the Defendants, and from all I have ever observed of their morals in the conduct of their paper, I honestly and candidly believe them to be men incapable of wilfully publishing any slander on individuals, or of prostituting their paper to defamation or indecency. But my Learned Friend, Mr. Erskine, has stated some points, which my duty calls upon me to take notice of. I bound myself by the contents of the paper only; I

did not know the author of it. I did not know any Society from which the paper purported to have originated; it is said to be the production of a man of great abilities; I do not know that he is the author: at any rate, this is the first time I ever heard of that circumstance. There is one fact, on which we are all agreed, that the paper itself was dated on the 16th of July 1792, and that it appeared in the Morning Chronicle on the 25th of December 1792. It was then presented to the public with a variety of other advertisements, which it will be proper for you to peruse, and for that purpose you will carry out the paper with you, if you find it necessary to withdraw, in order to see what the intent of the Defendants was in publishing this paper. A bill, I also admit, passed into a law, the last session of Parliament, upon the subject of libels; but it would be exceedingly unfortunate for the subjects of this country, if my Learned Friend and myself were to be allowed to give evidence in a court of justice of what was our intention in passing that bill. The bill has now become a solemn act of the Legislature, and must speak for itself by its contents; but, however, it has, in my opinion, done what it was intended to do. It refers the question of guilt to the Jury in cases of libels, precisely as in every other criminal case. My Learned Friend has insisted, that criminal intention is matter of fact mixed with matter of law. I agree to this description; but then the law says that such and such facts are evidence of such and such intention. Treason, for instance, depends upon intention; but such and such acts are evidence of a criminal intention; and if the Jury entertain any doubts upon any part of the charge, his Lordship will only do his duty by giving them his advice and direction, which will be, that he who does such and such things, if he does them with a criminal intention, is amenable to the law, and that such and such acts are evidence of the criminal intention; and then the Jury must decide upon that evidence, and upon that advice, whether the Defendant was or was not guilty: so says Mr. Erskine, and so I say; for it is a matter of plain common sense, coming home to the understanding of every man. Mr. Erskine has contended, that the Jury must not draw the inference of criminal intention from the mere fact of publishing a paper. Certainly not; but they may draw the inference of guilty intention, if they discover in the contents of the paper a wicked and malicious spirit, evidently pursuing a bad object by unwarrantable means. If I should put a paper into the hands of the Jury, desiring them to put my Learned Friend to death, would not that prove an evil in-

tention against my Friend's life? In all cases of publication, containing any thing improper, the bad intention of the person publishing was clear, unless on his own part he could prove the contrary. Such has always been the law of England, in criminal cases of this description. Mr. Erskine has desired you to carry out the paper, and look at the other advertisements; upon this I am bound to remark, that there is not one of them, except that in question, which is not dated in the month of December, while this advertisement is dated on the 16th of July, though it did not find its way into the Morning Chronicle until the end of the month of December. How that came to happen I cannot tell; it must be left to you to determine; but it does appear that at a very critical moment to the constitution of this country, it was brought out to counteract the intention and effect of all the other declarations in support of Government. At what time the Defendants received the paper in question, they had not attempted to prove. Why, if they received it in July, they did not then insert it, they did not say. They had brought no exculpatory evidence whatever to account for the delay. It was urged that the Defendants only published it in the way of business, as an advertisement, and therefore they could not be said to be guilty; if I should be brought to admit this as a sufficient answer, and never institute a prosecution where such was the case, I should, in so doing, deliver the Jury, and every man in this country, to the mercy of every newspaper printer in this kingdom, to be traduced and vilified, just as the malice of any man, who chose to pay for vending his own scandal, should dictate; I therefore entreat you to bring the case home to your own bosoms, and to act for the public, as in such an instance you would wish to act for yourselves. I must likewise say, that if you are to look at the intention of the Defendants in the other matter contained in the same paper, you will find various strong and even intemperate things. Among others, you will find the following, which, if it did not show a seditious, did not breathe a very temperate spirit; "Well might Mr. Fox "call this the most momentous crisis that he ever heard of in "the history of England; for we will venture to say, there is "not any one species of tyranny, which might not, in the pre-"sent day, be tried with impunity; no sort of oppression "which would not find, not merely advocates, but supporters; "and never, never in the most agitated moments of our his-"tory, were men so universally tame, or so despicably feeble."

This paragraph is no advertisement; it came from no Society; and will, I take it for granted, not be disavowed by the Defendant.

Upon the question of a reform of Parliament, I remain of the same opinion which I have always entertained; and whatever may have been said or thought by Mr. Fox, Mr. Pitt, the Duke of Richmond, the late Earl of Chatham, or the late Sir George Saville, or by any man, let his authority have been ever so great, never while I live will I consent to vote for a reform in Parliament, until I see something specific to be done, and can be very sure that the good to be gained will make it worth while to hazard the experiment.

In this way of thinking I am the more confirmed, from the circumstance, that of all the wise and excellent men who have at different times agitated the question of reform, none of them have ever been able to agree upon any one specific plan. And I declare, that I would rather suffer death than consent to open a door for such alterations in the government of this country, as chance or bad men might direct; or even good men, misled by bad, might, in the first instance, be inclined to adopt. I shudder, indeed, when I reflect on what have been the consequences of innovation in a neighbouring country. The many excellent men who there began to try experiments on government, confining their views within certain limits of moderation, and having no other object than the public good, little did they foresee in their outset the excesses and crimes which would follow in the progress of that revolution, of which they were the authors, and of which they were themselves destined to become the victims. They are now lying in the sepulchres of the dead, and the tombs of mortality; and most willingly, I am persuaded, would they have consigned themselves to their fate, if, by their death, they could have saved their unhappy country from the horrors and miseries of that dreadful anarchy into which it has fallen. Never, with such examples before my eyes, will I stake the blessings which we possess under the government of this country, upon the precarious consequences of innovation; nor consent to any alteration, of which, whatever may be stated as its object, the precise effects can never be ascertained. Indeed, I must think that my friend Mr. Erskine, in his propositions with respect to a reform, allows himself to talk like a child, and does not sufficiently consult that excellent judgment which he displays upon every other occasion. But let me entreat him to reflect on the situation in which both of us are now placed, and which, if, twenty years ago, any person told me I should have attained, I should have regarded it as madness. If we, by our industry (my Friend, indeed, with the advantage of his superior talents), have acquired a degree of opulence and dis-

tinction, which we could not reasonably have looked for, let us be thankful to that government to whose protection and favour we are, in a great measure, indebted for our success. And do not let us, by any rash attempt upon our constitution, put it out of the power of our children to rise to similar situations, or deprive them of those blessings which we have ourselves so signally experienced. Do not let us pull down a fabric which has been the admiration of ages, and which it may be impossible to erect anew. Let me again call your attention to the paper upon which this prosecution is founded. (Here Mr. Attorney General read several extracts from the Declaration.) After what you have heard, I think it is impossible to doubt of the libellous tendency of this publication. It states, as I have already said, the whole of our government as one mass of grievances and abuse; while it does not so much as enumerate a single blessing or advantage with which it is attended. It represents it as corrupt and oppressive in every branch, as polluted in its very source, its legislature, and its courts of justice. What, I ask, can be supposed to be the spirit by which such representations are dictated, and the consequences to which they are calculated to lead? Can you admit such representations to have been brought forward *bonâ fide*, and from no other motive, than the wish to procure a peaceable and legal redress of grievances? If you can admit this, you will of course find the Defendants not guilty. But if it shall appear otherwise, let me remind you of that duty which you owe to the public, with whose safety and protection you are intrusted, and whose interests you are to consult in the verdict which you shall give. Let me remind you of the necessity of checking, in proper time, the spirit of sedition, and frustrating the designs of the factious, before it be too late. Let me conclude with observing, that I have brought forward this prosecution as a servant of the public, influenced by my own judgment, and acting from what I conceived to be my duty. I had no other view than the public advantage; and should you be of opinion that the Defendants ought to be declared not guilty, I trust you will acquit me of any intention of acting either impertinently with respect to you, or oppressively to the Defendants. I shall then retire, conscious of having done my duty in having stated my opinion, though inclined, in deference to your verdict, to suppose myself mistaken.

*Lord Kenyon then gave a Charge, in substance as follows:*

GENTLEMEN OF THE JURY,

THERE are no cases which call forth greater exertions of great abilities than those that relate to political libels. And as this cause, both on the part of the prosecution, and also on behalf of the Defendants, has been so amply discussed that the subject is exhausted, I should have satisfied myself with what has been already said, if there was not a duty lying on me, which by the law of the land it is incumbent on me to discharge.

The liberty of the press has always been and has justly been a favourite topic with Englishmen. They have looked at it with jealousy whenever it has been invaded; and though a licenser was put over the press, and was suffered to exist for some years after the coming of William, and after the Revolution, yet the reluctant spirit of English liberty called for a repeal of that law; and from that time to this it has not been shackled and limited more than it ought to be.

Gentlemen, it is placed as the sentinel to alarm us, when any attempt is made on our liberties; and we ought to be watchful, and to take care that the sentinel is not abused and converted into a traitor. It can only be protected by being kept within due limits, and by our doing those things which we ought, and watching over the liberties of the people; but the instant it degenerates into licentiousness, we ought not to suffer it to exist without punishment. It is therefore for the protection of liberty, that its licentiousness is brought to punishment.

A great deal has been said respecting a reform of Parliament, that is, an alteration of Parliament. If I were called upon to decide on that point, before I would pull down the fabric, or presume to disturb one stone in the structure, I would consider what those benefits are which it seeks, and whether they, to the extent to which they are asked, ought to be hazarded; whether any imaginary reform ought to be adopted, however virtuous the breast, or however able the head, that might attempt such a reform. I should be a little afraid, that when the water was let out, nobody could tell how to stop it; if the lion was once let into the house, who would be found to shut the door? I should first feel the greater benefits of a reform, and should not hazard our

present blessings out of a capricious humour to bring about such a measure.

The merits or demerits of the late law respecting libels I shall not enter into. It is enough for me that it is the law of the land, which by my oath I am bound to give effect to, and it commands me to state to Juries what my opinion is respecting this or any other paper brought into judgment before them. In forming my opinion on this paper, or on any other, before I arrive at a positive decision on that point, I would look about and see what the times were when the publication took place. I would look at all the attendant circumstances, and, with that assistance I would set about to expound the paper. The observations which this cause calls for, form a part of the notorious history of the country. How long this paper was penned before it appeared in this newsper, I know not; the 25th of December is the day when it was published, and it is dated the 16th of July 1792.

Gentlemen, you will recollect the appearance of public affairs, and the feelings of every mind in the country at the time that Parliament met, and for some time after, in December last. I do not know whether I colour the picture right, when I say very gloomy sensations had pervaded the whole country. It is for you to say whether at that time there were not emissaries from a neighbouring country making their way, as well as they could, in this country. It is for you to say, looking at the great anarchy and confusion of France, whether they did not wish to agitate the minds of all orders of men, in all countries, and to plant their tree of liberty in every kingdom in Europe. It is for you to say whether their intention was not to eradicate every kind of government that was not sympathetic with their own. I am bound, Gentlemen, to declare my opinion on this paper, and to do so I must take within my consideration all the circumstances of the time when it appeared. I have no hesitation in saying then, that they were most gloomy;—The country was torn to its centre by emissaries from France. It was a notorious fact—every man knows it—I could neither open my eyes nor my ears without seeing and hearing them. Weighing thus all the circumstances, that, though dated in July, it was not published till December, when those emissaries were spreading their horrid doctrines; and believing there was a great gloominess in the country,—and I must shut my eyes and ears if I did not believe that there was;—believing also that there were emissaries from France, wishing to spread the maxims

prevalent in that country, in this;—believing that the minds of the people of this country were much agitated by these political topics, of which the mass of the population never can form a true judgment;—and reading this paper, which appears to be calculated to put the people in a state of discontent with every thing done in this country:—I am bound on my oath to answer, that I think this paper was published with a wicked, malicious intent to vilify the government, and to make the people discontented with the constitution under which they live.—That is the matter charged in the Information;—that it was done with a view to vilify the constitution, the laws, and the government of this country, and to infuse into the minds of his Majesty's subjects a belief that they were oppressed, and on this ground I consider it as a gross and seditious libel. This is the question put to you to decide.

It is admitted the Defendants are the proprietors of the paper in which this address was published.

There is one topic more. It is said they were not the authors of the address, and that it got inadvertently into their paper. It never was doubted, and I suppose it never will be doubted, that the publishers of a newspaper are answerable for the contents of it. Those who think most favourably for the Defendants, will go no farther than to say, that the parties publishing ought to give an account how they published it, and if there is any thing baneful in the contents, to show how it came to them, and whether it was inserted inadvertently or otherwise. If any thing of that sort had been offered, I certainly should have received it as evidence. But nothing of the kind has been offered, and the Defendants stand as the proprietors and publishers of the paper, without the slightest evidence in alleviation being offered in their favour.

It is not for human judgment to dive into the heart of man, to know whether his intentions are good or evil. We must draw our conclusions with regard to his intentions from overt acts; and if an evil tendency is apparent on the face of any particular paper, it can only be traced by human judgment *primâ facie* to a bad intention, unless evidence is brought to prove its innocence. This cause is destitute of any proof of that kind.

It is said that this paper contains other advertisements and paragraphs; and therefore from the moral good tendency of the whole, for aught I know to the contrary, you are to extract an opinion that the meaning was not bad. I cannot say that

the travelling into advertisements, which have nothing to do with this business, is exactly the errand you are to go upon. From this paper itself, and all the contents of it, you will extract the meaning; and if upon the whole you should think the tendency of it is good, in my opinion, the parties ought to be acquitted. But it is not sufficient that there should be in this paper detached good morals in part of it, unless they gave an explanation of the rest. The charge will be done away, if those parts which the Attorney General has stated are so explained as to leave nothing excepted.

There may be morality and virtue in this paper; and yet, apparently, *latet anguis in herbâ*. There may be much that is good in it, and yet there may be much to censure. I have told you my opinion. Gentlemen, the constitution has intrusted it to you, and it is your duty to have only one point in view—Without fear, favour, or affection, without regard either to the Prosecutor or the Defendants, look at the question before you, and on that decide on the guilt or innocence of the Defendants.

The Jury then withdrew: it was two o'clock in the afternoon. The Noble and Learned Judge, understanding that they were divided and likely to be some time in making up their minds, retired from the bench, and directed Mr. *Lowten* to take the verdict. At seven in the evening they gave notice that they had agreed on a special verdict, which Mr. *Lowten* could not receive; they went up in coaches, each attended by an officer, to Lord *Kenyon's* house; the special verdict was

*Guilty of publishing, but with no malicious intent.*

Lord KENYON.—I cannot record this verdict; it is no verdict at all.

The Jury then withdrew—and, after sitting in discussion till within a few minutes of five in the morning, they found a general verdict of—NOT GUILTY.

# SPEECH

FOR

# JAMES HADFIELD

## IN THE COURT OF KING'S BENCH, ON A TRIAL AT BAR,

ON THE 26th OF APRIL, A. D. 1800.

## PREFACE.

*THE occasion of the trial of James Hadfield for high treason, in shooting at the King, at Drury-Lane play-house, is too well remembered to require much preface. All the facts, besides, which led to the Prosecution, and which ended in the acquittal of the Defendant, on the ground of his having committed the act under the dominion of insanity, are fully detailed in the following defence by his Counsel.*

*The successful issue of this trial, notwithstanding the warm and just interest which the whole nation took in the life of a Prince, who had reigned in their affections for so many years, must ever be considered as a most striking instance of that cool, deliberate, and impartial administration of justice, which, since the glorious Revolution (for we can go no higher,) has distinguished this country. What renders this Speech the more interesting and important, is the few instances which have occurred in our Courts, where it has become necessary to consider, and* with the utmost precision *to determine,* in what cases *mental derangement ought to be held to emancipate such unhappy persons from responsibility to the laws, for acts of great atrocity and violence. It is by no means every departure from sound reason and intellect, though sufficient to ground a commission of lunacy, and to deprive an individual of the management of his concerns that would deliver him from an indictment of murder, or other criminal act of violence;* the act itself *must appear to have been committed under the full dominion of insanity; and Lord Erskine therefore took his stand upon the surest and safest ground, as it related to the safety of the public; and, therefore, the surest and safest for the unhappy Prisoner; having, probably, a full security in bringing his case within his principle, as appeared by the*

*result of the trial, he took his claim of impunity* as low as possible, *and properly maintained the privilege of indemnity for these distempered persons* ONLY, *who commit crimes under the dominion of* morbid delusions; *but by no means extending to those whose insanity,* without delusion, *is principally characterised by* violence and turbulent passion. *The principle is of the utmost importance, and the more so from the assent which it received from the Court of King's Bench, on a solemn trial at the Bar, Lord Kenyon appeared much against the Prisoner, in the course of the evidence for the Crown; but after the disclosure of the principal on which his defence was grounded, and the statement of the evidence which would be given to support it, he became convinced, as it was proceeded on; and on its coming up to the principal facts detailed in the following Speech, his Lordship with that justice and feeling which eminently marked his character, delivered his opinion to the Attorney General (as the opinion of the whole Court,) that the trial should not be farther proceeded in; which being acquiesced in by the present Lord Redesdale, then Attorney-General, and the other Counsel for the Crown, no reply was made to the Prisoner's defence—and he was acquitted.*

*It was said at the time that the very learned Counsel for the Crown were not entirely satisfied with the view taken of the case by the Court (but of the truth of which we have no means of information.) Be that, however as it may—it is one of the noblest features in the practice of our criminal law, that although Counsel are by no means bound to acquiesce in an opinion by the Judges, adverse to a Prisoner upon a capital trial; yet when the opinion is in favour of life—above all, upon the view taken, even by a single Judge, much more by a whole Court,* upon the evidence of the party accused; *it would not be considered consonant to the mild characteristic of our laws for the ministers of the Crown to step beyond the Judges in the demand of criminal justice.*

## MR. ERSKINE'S SPEECH FOR JAMES HADFIELD.

GENTLEMEN OF THE JURY,

THE scene which we are engaged in, and the duty which I am not merely *privileged*, but *appointed* by the authority of the Court to perform, exhibits to the whole civilized world a perpetual monument of our national justice.

The transaction, indeed, in every part of it, as it stands recorded in the evidence already before us, places our country, and its government, and its inhabitants, upon the highest pinnacle of human elevation. It appears, that upon the 15th day of May last, his Majesty, after a reign of forty years, not merely in sovereign *power*, but spontaneously in the very hearts of his people, was openly shot at (or to all appearance shot at) in a public theatre in the centre of his capital, and amidst the loyal plaudits of his subjects, YET NOT A HAIR OF THE HEAD OF THE SUPPOSED ASSASSIN WAS TOUCHED. In this unparalleled scene of calm forbearance, the King himself, though he stood first in personal interest and feeling as well as in command, was a singular and fortunate example.—The least appearance of emotion on the part of that august personage must unavoidably have produced a scene quite different, and far less honourable than the Court is now witnessing; but his Majesty remained unmoved, and the person *apparently* offending was only secured, without injury or reproach, for the business of this day.

Gentlemen, I agree with the Attorney-General (indeed there can be no possible doubt,) that if the same pistol had been maliciously fired by the Prisoner in the same theatre, at the meanest man within its walls, he would have been brought to *immediate* trial, and, if guilty, to immediate execution. He would have heard the charge against him for the first time when the indictment was read upon his arraignment.—He would have been a stranger to the names and even to the existence of those who were to sit in judgment upon him, and of those who were to be the witnesses against him; but upon the charge of even this *murderous* attack upon the King himself, he is covered all over with the armour of the law. He has been provi-

ded with Counsel by the King's own Judges, and not of *their* choice, but of *his own*. He has had a copy of the indictment ten days before this trial.—He has had the names, descriptions, and abodes of all the Jurors returned to the Court; and the highest privilege of peremptory challenges derived from, and safely directed by that indulgence. He has had the same description of every witness who could be received to accuse him; and there must at this hour be *twice* the testimony against him as would be legally competent to establish his guilt on a similar prosecution by the meanest and most helpless of mankind.

Gentlemen, when this melancholy catastrophe happened, and the Prisoner was arraigned for trial, I remember to have said to some now present, that it was, at first view, difficult to bring those indulgent exceptions to the general rules of trial within the principle which dictated them to our humane ancestors in cases of treasons against the political government, or of *rebellious* conspiracy against the person of the King. In *these* cases, the passions and interests of great bodies of powerful men being engaged and agitated, a counterpoise became necessary to give composure and impartiality to criminal tribunals; but a *mere murderous* attack upon the King's person, not at all connected with his political character, seemed a case to be ranged and dealt with like a similar attack upon any private man.

But the wisdom of the law is greater than any man's wisdom; how much more, therefore, than mine! An attack upon the King is considered to be parricide against the state, and the Jury and the witnesses, and even the Judges, are the children. It is fit, on that account, that there should be a solemn pause before we rush to judgment; and what can be a more sublime spectacle of justice than to see a statutable disqualification of a whole nation for a limited period, a fifteen day's *quarantine* before trial, lest the mind should be subject to the contagion of partial affections!*

From a prisoner so protected by the benevolence of our institutions, the utmost good faith would, on his part, be due to the public if he had consciousness and reason to reflect upon the obligation.—The duty, therefore, devolves on *me*, and *upon my honour*, it shall be fulfilled. I will employ no artifices of speech.—I claim only the strictest protection of the law for the unhappy man before you.—I should in-

* There must be fifteen days between arraignment and trial.

deed be ashamed if I were to say any thing of the rule *in the abstract* by which he is to be judged, which I did not honestly feel; and I am sorry, therefore, that the subject is so difficult to handle with brevity and precision. Indeed, if it could be brought to a clear and simple criterion, which could admit of a dry admission or contradiction, there might be very little difference, *perhaps none at all*, between the Attorney-General and myself, upon the principles which ought to govern your verdict; but this is not possible, and I am, therefore, under the necessity of submitting to you, and to the Judges, for their direction (and at greater length than I wish,) how I understand this difficult and momentous subject.

The law, as it regards this most unfortunate infirmity of the human mind, like the law in all its branches, aims at the utmost degree of precision; but there are some subjects, as I have just observed to you, and the present is one of them, upon which it is extremely difficult to be precise. The general principle is clear, but the application is most difficult.

It is agreed by all jurists, and is established by the law of this, and every other country, that it is the REASON OF MAN which makes him accountable for his actions; and that the deprivation of reason acquits him of crime.—This principle is indisputable; yet so fearfully and wonderfully are we made, so infinitely subtle is the spiritual part of our being, so difficult is it to trace with accuracy the effect of diseased intellect upon human action, that I may appeal to all who hear me, whether there are any causes more difficult, or which, indeed, so often confound the learning of the Judges themselves, as when insanity, or the effects and consequences of insanity, become the subjects of legal consideration and judgment. I shall pursue the subject as the Attorney General has properly discussed it. I shall consider insanity, as it annuls a man's dominion over property; as it dissolves his contracts and other acts, which otherwise would be binding; and as it takes away his responsibility for crimes. If I could draw the line in a moment between these two views of the subject, I am sure the Judges will do me the justice to believe, that I would fairly and candidly do so; but great difficulties press upon my mind, which oblige me to take a different course.

I agree with the Attorney General, that the law, in neither civil nor criminal cases, will measure the degrees of men's understandings; and that a *weak* man, however much below the ordinary standard of human intellect, is not only respon-

sible for crimes, but is bound by his contracts, and may exercise dominion over his property. Sir Joseph Jekyll, in the Duchess of Cleveland's case, took the clear legal distinction, when he said, "*The law will not measure the sizes of "men's capacities, so as they be* COMPOS MENTIS."

Lord Coke, in speaking of the expression NON COMPOS MENTIS, says, "*Many times, as here, the Latin word expres-"ses the true sense, and calleth him not amens, demens, furi-"osus, lunaticus, fatuus, stultus, or the like, for non compos "mentis is the most sure and legal.*" He then says, "*Non "compos mentis is of four sorts: first, ideota, which, from "his nativity, by a perpetual infirmity, is* NON COMPOS MEN-"TIS; *secondly, he that by sickness, grief, or other accident, "wholly loses his memory and understanding; third, a lunatic "that hath sometimes his understanding, and sometimes not; "aliquando gaudet lucidis intervallis; and therefore he "is called non compos mentis so long as he hath not under-"standing.*"

But notwithstanding the precision with which this great author points out the different kinds of this unhappy malady, the nature of his work, in this part of it, did not open to any illustration which it can now be useful to consider. In his Fourth Institute he is more particular; but the admirable work of Lord Chief Justice Hale, in which he refers to Lord Coke's Pleas of the Crown, renders all other authorities unnecessary.

Lord Hale says, "There is a partial insanity of mind, and "a total insanity. The former is either in respect to things, "quoad hoc vel illud insanire. Some persons, that have a "competent use of reason in respect of some subjects, are "yet under a particular dementia in respect of some parti-"cular discourses, subjects, or applications: or else it is "partial in respect of degrees; and this is the condition of "very many, especially melancholy persons, who for the "most part discover their defect in excessive fears and "griefs, and yet are not wholly destitute of the use of rea-"son; and this partial insanity seems not to excuse them in "the committing of any offence for its matter capital; for "doubtless most persons, that are felons of themselves and "others, are under a degree of partial insanity, when they "commit these offences. It is very difficult to define the in-"visible line that divides perfect and partial insanity; but it "must rest upon circumstances duly to be weighed and con-"sidered both by Judge and Jury, lest on the one side there be "a kind of inhumanity towards the defects of human nature;

"or, on the other side, too great an indulgence given to great "crimes."

Nothing, Gentlemen, can be more accurately nor more humanely expressed; but the application of the rule is often most difficult. I am bound, besides, to admit that there is a wide distinction between civil and criminal cases.—If, in the former, a man appears, upon the evidence, to be *non compos mentis*, the law avoids his act, though it cannot be traced or connected with the morbid imagination which constitutes his disease, and which may be extremely partial in its influence upon conduct; but to deliver a man from responsability for crimes, above all, for crimes of great atrocity and wickedness, I am by no means prepared to apply this rule however well established, when property only is concerned.

In the very recent instance of Mr. Greenwood (which must be fresh in his Lordship's recollection,) the rule in civil cases was considered to be settled. That gentleman, whilst insane, took up an idea that a most affectionate brother had administered poison to him.—Indeed, it was the prominent feature of his insanity.—In a few months he recovered his senses.—He returned to his profession as an advocate; was sound and eminent in his practice, and in all respects a most intelligent and useful member of society; but he could never dislodge from his mind the morbid delusion which disturbed it; and under the pressure, no doubt, of that diseased prepossession, he disinherited his brother. The cause to avoid this will was tried here.—We are not now upon the evidence, but upon the principle adopted as the law. The Noble and Learned Judge, who presides upon this trial, and who presided upon that, told the Jury, that if they believed Mr. Greenwood, when he made the will, to have been *insane*, the will could not be supported, whether it had disinherited his brother, or not; that the act, no doubt, strongly confirmed the existence of the false idea which, if believed by the Jury to amount to *madness*, would equally have affected his testament, if the brother, instead of being disinherited, had been in his grave; and that, on the other hand, if the unfounded notion did not amount to madness, its influence could not vacate the devise.* This principle of law appears to be sound and reasonable, as it applies to civil cases, from the extreme difficulty of tracing with precision the secret mo-

* N. B. The Jury found for the will; but after a contrary verdict in the Common Pleas, a compromise took place.

tions of a mind, deprived by disease of its soundness and strength.

Whenever, therefore, a person may be considered non compos mentis, all his *civil* acts are void, whether they can be referred, or not, to the morbid impulse of his malady, or even though, to all *visible appearances*, totally separated from it; but I agree with Mr. Justice Tracey, that it is not every man of an idle, frantic appearance and behaviour, who is to be considered as a lunatic, either as it regards obligations or crimes; but that he must appear to the Jury to be *non compos mentis*, in the legal acceptation of the term; and that, not at any *anterior period*, which can have no bearing upon any case whatsoever, but at *the moment* when the contract was entered into, or the crime committed.

The Attorney General, standing undoubtedly upon the most revered authorities of the law, has laid it down, that to protect a man from *criminal responsibility*, there must be a TOTAL *deprivation of memory and understanding*. I admit that this is the very expression used, both by Lord Coke and by Lord Hale; but the true interpretation of it deserves the utmost attention and consideration of the Court. If a TOTAL *deprivation of memory* was intended by these great lawyers to be taken in the *literal* sense of the words:—if it was meant, that, to protect a man from punishment, he must be in such a state of prostrated intellect, as not to know his name, nor his condition, nor his relation towards others—that if a husband, he should not know he was married; or, if a father, could not remember that he had children; nor know the road to his house, nor his property in it—then no such madness ever existed in the world. It is IDEOCY alone which places a man in this helpless condition; where, from an *original* mal-organization, there is the human frame alone without the human capacity; and which, indeed, meets the very definition of Lord Hale himself, when, referring to Fitzherbert, he says: "Ideocy or fatuity *à nativitate, vel dementia naturalis*, is such a "one as described by Fitzherbert, who knows not to tell "twenty shillings, nor knows his own age, or who was his "father." But in all the cases which have filled Westminster Hall with the most complicated considerations—the lunatics, and other insane persons who have been the subjects of them, have not only had memory, *in my sense of the expression*—they have not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have, in general, been remarkable for subtlety and acuteness. Defects

in their reasonings have seldom been traceable—the disease consisting in the delusive sources of thought:—all their deductions within the scope of the malady, being founded upon the *immoveable* assumption of matters as *realities*, either without any foundation whatsoever, or so distorted and disfigured by fancy, as to be almost nearly the same thing as their creation. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy; these unhappy sufferers, however, are not so much considered, by physicians, as maniacs; but to be in a state of delirium as from fever. There, indeed, all the ideas are overwhelmed—for reason is not merely disturbed, *but driven wholly from her seat.*—Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects; or, at least, are wholly incapable of considering their relations. Such persons, *and such persons alone* (except ideots), *are wholly deprived of their* UNDERSTANDINGS, in the Attorney General's seeming sense of that expression. But these cases are not only extremely rare, but never can become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases, Reason is not driven from her seat, but distraction sits down upon it along with her, holds her, trembling, upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the place of realities, as not to be dislodged and shaken by the organs of perception and sense: in such cases the images frequently vary, but in the same subject are generally of the same terrific character. Here too, no judicial difficulties can present themselves; for who could balance upon the judgment to be pronounced in cases of such extreme disease? Another class, branching out into almost infinite subdivisions, under which, indeed, the former, and every case of insanity may be classed, is, where the delusions are not of that frightful character—but infinitely various, and often extremely *circumscribed;* yet where imagination *(within the bounds of the malady)* still holds the most uncontrollable dominion over reality and fact: *and these are the cases which frequently mock the wisdom of the wisest in judicial trials;* because such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind: their conclusions are just, and frequently profound; but the *premises from which they reason,* WHEN WITHIN THE RANGE OF THE MALADY, are uniformly false:—not false from any defect of knowledge or judgment; but, be-

cause a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack.

*Delusion*, therefore, where there is no frenzy or raving madness, is the true character of insanity; and where it cannot be predicated of a man standing for life or death for a crime, he ought not, in my opinion, to be acquitted; and if Courts of law were to be governed by any other principle, every departure from sober, rational conduct would be an emancipation from criminal justice. I shall place my claim to your verdict upon no such dangerous foundation.—I must convince you, not only that the unhappy prisoner was a lunatic, within my own definition of lunacy, but that the act in question was the IMMEDIATE UNQUALIFIED OFFSPRING OF THE DISEASE. In *civil* cases, as I have already said, the law avoids every act of the lunatic during the period of the lunacy; although the delusion may be extremely circumscribed; although the mind may be quite sound in all that is not within the shades of the very partial eclipse; and although the act to be avoided can in no way be connected with the influence of the insanity;—but to deliver a lunatic from responsibility to *criminal* justice, above all, in a case of such atrocity as the present, the relation between the disease and the act should be apparent. Where the connection is doubtful, the judgment should certainly be most indulgent, from the great difficulty of diving into the secret sources of a disordered mind:—but still I think, that as a doctrine of law, the delusion and the act should be connected.

You perceive, therefore, Gentlemen, that the Prisoner, in naming me for his Counsel, has not obtained the assistance of a person who is disposed to carry the doctrine of insanity in his defence, so far as even the books would warrant me in carrying it. Some of the cases, that of Lord Ferrers for instance, which I shall consider hereafter, distinguished from the present, would not in my mind, bear the shadow of an argument, as a defence against an indictment for murder; I cannot allow the protection of insanity to a man who only exhibits violent passions, and malignant resentments, acting upon *real circumstances*; who is impelled to evil from no morbid delusions; but who proceeds upon the ordinary perceptions of the mind.—I cannot consider such a man as falling within the protection which the law gives and is bound to give, to those whom it has pleased God, for mysterious causes, to visit with this most afflicting calamity.

He alone can be so emancipated, whose disease (call it what you will) consists not merely in seeing with a prejudiced eye, or with odd and absurd particularities, differing, in many respects, from the contemplations of sober sense, upon the actual existences of things; but, *he only* whose whole reasoning and corresponding conduct, though governed by the ordinary dictates of reason, proceed upon something which has no foundation or existence.

Gentlemen, it has pleased God so to visit the unhappy man before you;—to shake his reason in its citadel;—to cause him to build up as realities, the most impossible phantoms of the mind, and to be impelled by them as motives *irresistable*: the whole fabric being no thing but the unhappy vision of his disease—existing no where else—having no foundation whatsoever in the very nature of things.

Gentlemen, it has been stated by the Attorney General, and established by evidence, which I am in no condition to contradict, nor have, indeed, any interest in contradicting, that, when the prisoner bought the pistol which he discharged at, or *towards* His Majesty, he was well acquainted with the nature and use of it;—that, as a soldier, he could not but know that in his hands it was a sure instrument of death;—that when he bought the gunpowder, he knew it would prepare the pistol for its use;—that when he went to the playhouse, he knew he was going there, and every thing connected with the scene as perfectly as any other person.—I freely admit all this: I admit, also, that every person who listened to his conversation and observed his deportment upon his apprehension, must have given precisely the evidence delivered by his Royal Highness the Duke of York; and that nothing like insanity appeared to those who examined him. But what then? I conceive, Gentlemen, that *I* am more in the habit of examination, than either that illustrious person, or the witnesses from whom you have heard this account; yet I well remember (indeed I never can forget it,) that since the Noble and Learned Judge has presided in this Court, I examined, for the greater part of a day, in this very place, an unfortunate gentleman who had indicted a most affectionate brother, together with the keeper of a mad-house at Hoxton, for having imprisoned him as a lunatic; whilst, according to his evidence, he was in his perfect senses. I was, unfortunately, not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact;

but, not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe that I left no means unemployed which long experience dictated: but without the smallest effect. The day was wasted, and the Prosecutor, by the most affecting history of unmerited suffering, appeared to the Judge and Jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression; at last Dr. Sims came into Court, who had been prevented, by business, from an earlier attendance; and whose name by the bye, I observe to-day in the list of the witnesses for the Crown. From Dr. Sims I soon learned that the very man whom I had been above an hour examining, and with every possible effort which Counsel are so much in the habit of exerting, believed himself to be *the Lord and Saviour of mankind*; not merely *at the time of his confinement*, which was alone necessary for my defence; *but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease.* I then affected to lament the indecency of my ignorant examination, when he expressed his forgiveness, and said, with the utmost gravity and emphasis, in the face of the whole Court, "I AM THE "CHRIST;" and so the cause ended. Gentlemen, this is not the only instance of the power of concealing this malady; I could consume the day if I were to enumerate them; but there is one so extremely remarkable, that I cannot help stating it.

Being engaged to attend the assizes at Chester upon a question of lunacy, and having been told that there had been a memorable case tried before Lord Mansfield in this place, I was anxious to procure a report of it; and from that great man himself (who within these walls will ever be reverenced, being then retired in his extreme old age, to his seat near London, in my own neighbourhood) I obtained the following account of it: "A man of the name of Wood," said Lord Mansfield, "had indicted Dr. Monro for keeping him as a prisoner (I believe in the same mad-house at Hoxton) when he was sane. He underwent the most severe examination by the Defendant's Counsel without exposing his complaint; but Doctor Battye, having come upon the Bench by me, and having desired me to ask him what was become of the PRINCESS whom he had corresponded with in cherry-juice, he showed in a moment what he was. He answered, that there was nothing at all in that, because, having been (as every body knew) imprisoned in a high tower, and being debarred the use

of ink, he had no other means of correspondence but by writing his letters in cherry-juice, and throwing them into the river which surrounded the tower, where the Princess received them in a boat. There existed, of course, no tower, no imprisonment, no writing in cherry-juice, no river, no boat; but the whole the inveterate phantom of a morbid imagination.—I immediately," continued Lord Mansfield, "directed Dr. Monro to be acquitted; but this man, Wood, being a merchant in Philpot Lane, and having been carried through the city in his way to the mad-house, he indicted Dr. Monro over again, for the trespass and imprisonment *in London*, knowing that he had lost his cause by speaking of the Princess at Westminster; and such," said Lord Mansfield, "is the extraordinary subtlety and cunning of madmen, that when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the Bar, and all the authority of the Court, could not make him say a single syllable upon that topic, which had put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but, conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back."*

Now, Gentlemen, let us look to the application of these cases. I am not examining, *for the present*, whether either of these persons ought to have been acquitted, *if they had stood in the place of the Prisoner now before you;* that is quite a distinct consideration, which we shall come to hereafter.—The direct application of them is *only this:* that if I bring before you such evidence of the Prisoner's insanity as, *if believed to have really existed*, shall, in the opinion of the Court, as the rule for your verdict in point of law, be sufficient for his deliverance, then that you ought not to be shaken in giving full credit to such evidence, notwithstanding the report of those who were present at his apprehension, *who describe him as discovering no symptom whatever of mental incapacity or disorder:* because I have shown you that insane persons frequently appear in the utmost state of ability and composure, even in the highest paroxysms of insanity, except when frenzy is the characteristic of the disease. In this respect, the cases I have cited to you, have the most *decided application;* because they apply to the overthrow of the whole of the evi-

* This evidence at Westminster was then proved against him by the short-hand writer.

dence (admitting at the same time the truth of it,) by which the Prisoner's case can alone be encountered.

But it is said, that whatever delusions may overshadow the mind, every person ought to be responsible for crimes, *who has the knowledge of good and evil.* I think I can presently convince you, that there is something too general in this mode of considering the subject; and you do not, therefore, find any such proposition in the language of the celebrated writer alluded to by the Attorney-General in his speech. Let me suppose that the character of an insane delusion consisted in the belief that some given person was any brute animal, or an inanimate being (and such cases have existed,) and that upon the trial of such a lunatic for murder, you firmly, upon your oaths, were convinced, upon the uncontradicted evidence of an hundred persons, that he believed the man he had destroyed, to have been a potter's vessel; that it was quite impossible to doubt that fact, *although to all other intents and purposes he was sane;* conversing, reasoning, and acting, as men not in any manner tainted with insanity, converse, and reason, and conduct themselves: suppose further, that he believed the man whom he destroyed, but whom he destroyed as a potter's vessel, to be the property of another; and that he had malice against such supposed person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious, and that, in short, he had full knowledge of all the principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of his disease, he was ignorant of the relation he stood in to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being? I only put this case, and many others might be brought as examples to illustrate, that the knowledge of good and evil is too general a description.

I really think, however, that the Attorney General and myself do not, in substance, very materially differ; because, from the whole of his most able Speech, taken together, his meaning may, I think, be thus collected; that where the act which is criminal, is done under the dominion of malicious mischief and wicked intention, although such insanity might exist in a corner of the mind, as might avoid the acts of the delinquent as a lunatic in a civil case, yet that he ought not to be protected, if malicious mischief, and not insanity, had impelled him to the act for which he was criminally to answer; because, in such a case, the act might be justly ascribed to malignant motives, and not to the dominion of disease.—I am

not disposed to dispute such a proposition, in a case which would apply to it, and I can well conceive such cases may exist. The question, therefore, which you will have to try, is this: Whether, when this unhappy man discharged the pistol in a direction which convinced, and ought to convince, every person that it was pointed at the person of the King, he meditated mischief and violence to His Majesty, or whether he came to the theatre *(which it is my purpose to establish)* under the dominion of the most melancholy insanity that ever degraded and overpowered the faculties of man. I admit that when he bought the pistol, and the gunpowder to load it, and when he loaded it, and came with it to the theatre, and lastly, when he discharged it; every one of these acts would be overt acts of compassing the King's death, if at all or *any* of these periods he was actuated by that *mind and intention*, which would have constituted murder in the case of an individual, if the individual had been actually killed.—I admit also, that the mischievous, and, in this case, the traitorous intention must be inferred from all these acts, unless *I can rebut the inferences by proof.* If I were to fire a pistol *towards* you, Gentlemen, where you are now sitting, the act would undoubtedly infer the malice. *The whole proof, therefore, is undoubtedly cast upon* ME.

In every case of treason, or murder, which are precisely the same, except that the unconsummated intention in the case of the King, is the same as the actual murder of a private man, the Jury must impute to the person whom they condemn by their verdict, *the motive* which constitutes the crime; and your province to-day will, therefore, be to decide, whether the Prisoner, when he did the act, was under the uncontrollable dominion of insanity, and was impelled to it by a *morbid delusion;* or whether it was the act of a man, who, though occasionally mad, or even at the time not perfectly collected, was yet not actuated by the disease, but by the suggestion of a wicked and malignant disposition.

I admit therefore, freely, that if, after you have heard the evidence which I hasten to lay before you, of the state of the Prisoner's mind, and close up to the very time of this catastrophe, you shall still not feel yourselves clearly justified in negativing the wicked motives imputed by this Indictment, I shall leave you in the hands of the Learned Judges to declare to you the law of the land, and shall not seek to place society in a state of uncertainty by any appeal addressed only to your compassion: I am appointed by the Court to claim

for the Prisoner the full protection of the law, but not to misrepresent it in his protection.

Gentlemen, the facts of this melancholy case lie within a narrow compass.

The unfortunate person before you was a soldier. He became so, I believe, in the year 1793—and is now about twenty-nine years of age. He served in Flanders under the Duke of York, as appears by His Royal Highness' evidence; and being a most approved soldier, he was one of those singled out as an orderly man to attend upon the person of the commander-in-Chief. You have been witnesses, Gentlemen, to the calmness with which the Prisoner has sitten in his place during the trial.—There was but one exception to it.—You saw the emotion which overpowered him when the illustrious person now in Court, took his seat upon the Bench. Can you then believe, from the evidence, for I do not ask you to judge as physiognomists, or to give the rein to compassionate fancy; but can there be any doubt that it was the generous emotion of the mind, on seeing the Prince, under whom he had served with so much bravery and honour? Every man certainly must judge for himself: —I am Counsel, not a witness, in the cause; but it is a most striking circumstance, when you find from the Crown's evidence, that when he was dragged through the orchestra under the stage, and charged with an act for which he considered his life as forfeited, he addressed the Duke of York with the same enthusiasm which has marked the demeanour I am adverting to:—Mr. Richardson, who showed no disposition in his evidence to help the Prisoner, but who spoke with the calmness and circumspection of truth, and who had no idea that the person he was examining was a lunatic, has given you the account of the burst of affection on his first seeing the Duke of York, against whose father and sovereign he was supposed to have had the consciousness of treason. —The King himself, whom he was supposed to have so malignantly attacked, never had a more gallant, loyal, or suffering soldier. His gallantry and loyalty will be proved; his sufferings speak for themselves.

About five miles from Lisle, upon the attack made on the British army, this unfortunate soldier was in the fifteenth light dragoons in the thickest of the ranks, exposing his life for his Prince, whom he is supposed to-day to have sought to murder:—the first wound he received is most materially connected with the subject we are considering; you may see

the effect of it now.* The point of a sword was impelled against him with all the force of a man urging his horse in battle. When the Court put the Prisoner under my protection, I thought it my duty to bring Mr. Cline to inspect him in Newgate; and it will appear by the evidence of that excellent and conscientious person, who is known to be one of the first anatomists in the world, that from this wound one of two things must have happened: either, that by the immediate operation of surgery this displaced part of the skull must have been taken away, or been forced inward on the brain. The second stroke, also, speaks for itself: you may now see its effects.—*(Here Mr. Erskine touched the head of the Prisoner.)* He was cut across all the nerves which give sensibility and animation to the body, and his head hung down almost dissevered, until by the act of surgery it was placed in the position you now see it; but thus, almost destroyed, he still recollected his duty, and continued to maintain the glory of his country, when a sword divided the membrane of his neck where it terminates in the head; yet he still kept his place though his helmet had been thrown off by the blow which I secondly described, when by another sword he was cut into the very brain—you may now see its membrane uncovered. Mr. Cline will tell you that he examined these wounds, and he can better describe them; I have myself seen them, but am no surgeon: from his evidence you will have to consider their consequences. It may be said that many soldiers receive grievous wounds without their producing insanity. So they may undoubtedly; but we are here upon *the fact.* There was a discussion the other day, on whether a man, who had been seemingly hurt by a fall beyond remedy, could get up and walk: the people around said it was impossible; but he did get up and walk, and so there was an end to the impossibility. The effects of the Prisoner's wounds were known by the *immediate* event of insanity, and Mr. Cline will tell you that it would have been strange indeed if any other event had followed. We are not here upon a case of insanity arising from the spiritual part of man, as it may be affected by hereditary taint—by intemperance, or by violent passions, the operations of which are various and uncertain; but we have to deal with a species of insanity more resembling what has been described as ideocy, proceeding from

* Mr. Erskine put his hand to the Prisoner's head, who stood by him at the Bar of the Court.

original mal-organization. *There* the disease is, from its very nature, *incurable;* and so where a man *(like the Prisoner)* has become insane from *violence to the brain, which permanently affects its structure,* however such a man may appear occasionally to others, his disease is *immovable;* and if the Prisoner, therefore, were to live a thousand years, he *never* could recover from the consequence of that day.

But this is not all. Another blow was still aimed at him, which he held up his arm to avoid, when his hand was cut into the bone. It is an afflicting subject, Gentlemen, and better to be spoken of by those who understand it; and, to end all farther description, he was then thrust almost through and through the body with a bayonet, and left in a ditch amongst the slain.

He was afterwards carried to an hospital, where he was known by his tongue to one of his countrymen, who will be examined as a witness, who found him, not merely as a wounded soldier deprived of the powers of his body, but bereft of his senses forever.

He was affected, from the very beginning, with that species of madness, which, from violent agitation, fills the mind with the most inconceivable imaginations, wholly unfitting it for all dealing with human affairs according to the sober estimate and standard of reason. He imagined that he had constant intercourse with the almighty Author of all things; that the world was coming to a conclusion; and that, like our blessed Saviour, he was to sacrifice himself for its salvation; and so obstinately did this morbid image continue, that you will be convinced he went to the theatre to perform, as he imagined, that blessed sacrifice; and, because he would not be guilty of suicide, though called upon by the imperious voice of Heaven, he wished that by the appearance of crime his life might be taken away from him by others. This bewildered, extravagant species of madness appeared immediately after his wounds on his first entering the hospital, and on the very same account he was discharged from the army on his return to England, which the Attorney General very honourably and candidly seemed to intimate.

To proceed with the proofs of his insanity *down to the very period of his supposed guilt.* This unfortunate man before you, is the father of an infant of eight months; and I have no doubt, that if the boy had been brought into Court *(but this is a grave place for the consideration of justice, and not a theatre for stage effect)*—I say, I have no doubt whatever.

that if this poor infant had been brought into Court, you would have seen the unhappy father wrung with all the emotions of parental affection: yet, upon the Tuesday preceding the Thursday when he went to the playhouse, you will find his disease still urging him forward, with the impression *that the time was come*, when he must be destroyed for the benefit of mankind; and in the confusion, or rather *delirium* of this wild conception, he came to the bed of the mother, who had this infant in her arms, and endeavoured to dash out its brains against the wall. The family was alarmed—and the neighbours being called in, the child was, with difficulty, rescued from the unhappy parent, who, in his madness, would have destroyed it.

Now let me, for a moment, suppose that he had succeeded in the accomplishment of his insane purpose; and the question had been, whether he was guilty of murder. Surely the affection for this infant, up to the very moment of his distracted violence, would have been conclusive in his favour: but not more so than his loyalty to the King, and his attachment to the Duke of York, as applicable to the case before us; yet at that very period, even of extreme distraction, he conversed as rationally on all other subjects, as he did to the Duke of York at the theatre. The Prisoner knew perfectly that he was the husband of the woman, and the father of the child;—the tears of affection ran down his face at the very moment that he was about to accomplish its destruction; but during the whole of this scene of horror, he was not at all deprived of memory, in the Attorney-General's sense of the expression: he could have communicated, at that moment, every circumstance of his past life, and every thing connected with his present condition, *except only the quality of the act he was meditating*. In *that*, he was under the over-ruling dominion of a morbid imagination, and conceived that he was acting against the dictates of nature, in obedience to the superior commands of Heaven, which had told him, that the moment he was dead, and the infant with him, all nature was to be changed, and all mankind were to be redeemed by his dissolution.—There was not an idea in his mind, from the beginning to the end, of the destruction of the King; on the contrary, he always maintained his loyalty—lamented that he could not go again to fight his battles in the field—and it will be proved, that only a few days before the period in question, being present when a song was sung, indecent, as it regarded the person and condition of His Majesty, he left the room with loud expressions of indignation, and immediately sung,

God save the King, with all the enthusiasm of an old soldier, who had bled in the service of his country.

I confess to you, Gentlemen, that this last circumstance, which may, to some, appear insignificant, is, in my mind, most momentous testimony; because, if this man had been in the habit of associating with persons inimical to the government of our country, so that mischief might have been fairly argued to have mixed itself with madness (which, by the bye, it frequently does;) if it could in any way have been collected, that from his disorder, more easily inflamed and worked upon, he had been led away by disaffected persons, to become the instrument of wickedness; if it could have been established that such had been his companions and his habits, I should have been ashamed to lift up my voice in his defence.—I should have felt, that, however his mind might have been weak and disordered, yet if his understanding sufficiently existed, to be methodically acted upon as an instrument of malice, I could not have asked for an acquittal: but you find, on the contrary, in the case before you, that, notwithstanding the opportunity which the Crown has had, and which, upon all such occasions, it justly employs to detect treason, either against the person of the King, or against his government; *not one witness* has been able to fix upon the Prisoner before you, any one companion, of even a doubtful description, or any one expression from which disloyalty could be inferred; whilst the whole history of his life repels the imputation. His courage in defence of the King and his dominions, and his affection for his son, in such unanswerable evidence, all speak aloud against the presumption that he went to the theatre with a mischievous intention.

To recur again to the evidence of Mr. Richardson, who delivered most honourable and impartial testimony: I certainly am obliged to admit, that what a prisoner says for himself, when coupled at the very time with an overt act of wickedness, is no evidence whatever to alter the obvious quality of the act he has committed.—If, for instance, I who am now addressing you, had fired the same pistol towards the box of the King—and, having been dragged under the orchestra, and secured for criminal justice, I had said, that I had no intention to kill the King, but was weary of my life, and meant to be condemned as guilty; would any man who was not himself insane, consider that as a defence? Certainly not; because it would be without the whole foundation of the Prisoner's previous condition; part of which it is even difficult to apply closely and directly by strict evidence, without taking

his undoubted insanity into consideration; because it is his unquestionable insanity which alone stamps the effusions of his mind with sincerity and truth.

The idea which had impressed itself, but in most confused images, upon this unfortunate man, was, *that he must be destroyed, but ought not to destroy himself.* He once had the idea of firing over the King's carriage in the street; but then he imagined he should be immediately killed, which was not the mode of propitiation for the world—and as our Saviour, before his passion, had gone into the garden to pray, this fallen and afflicted being, after he had taken the infant out of bed to destroy it, returned also to the garden, saying, as he afterwards said to the Duke of York, "that all was not "over—that a great work was to be finished:"—and there he remained in prayer, the victim of the same melancholy visitation.

Gentlemen, these are the facts, freed from even the possibility of artifice or disguise; because the testimony to support them will be beyond all doubt; and in contemplating the law of the country, and the precedents of its justice, to which they must be applied, I find nothing to challenge or question —I approve of them throughout—I subscribe to all that is written by Lord Hale—I agree with all the authorities, cited by the Attorney General, from Lord Coke; but above all, I do most cordially agree in the instance of convictions by which he illustrated them in his able address. I have now lying before me the case of Earl Ferrers: unquestionably there could not be a shadow of doubt, and none appears to have been entertained, of his guilt.—I wish, indeed, nothing more than to contrast the two cases; and so far am I from disputing either the principle of that condemnation, or the evidence that was the foundation of it, that I invite you to examine whether any two instances in the whole body of the criminal law, are more diametrically opposite to each other, than the case of Earl Ferrers and that now before you. Lord Ferrers was divorced from his wife by act of Parliament; and a person of the name of Johnson, who had been his steward, had taken part with the lady in that proceeding, and had conducted the business in carrying the act through the two Houses. Lord Ferrers consequently wished to turn him out of a farm which he occupied under him; but his estate being in trust, Johnson was supported by the trustees in his possession: there were, also, some differences respecting coal-mines; and in consequence of both transactions, Lord Ferrers took up the most violent resentment against him. Let

me here observe, Gentlemen, that this was not a resentment founded upon any *illusion;* not a resentment forced upon a distempered mind by fallacious images, but depending upon *actual circumstances and real facts;* and acting like any other man under the influence of malignant passions, he repeatedly declared that he would be revenged on Mr. Johnson, particularly for the part he had taken in depriving him of a contract respecting the mines.

Now suppose Lord Ferrers could have showed that no difference with Mr. Johnson had ever existed regarding his wife at all—that Mr. Johnson had never been his steward—and that he had only, from delusion, believed so when his situation in life was quite different. Suppose, farther, that an *illusive imagination* had *alone* suggested to him that he had been thwarted by Johnson in his contract for these coal-mines, there never having been any contract at all for coal-mines; in short, that the whole basis of his enmity was without any foundation in nature, and had been shown to have been a *morbid image* imperiously fastened upon his mind.—Such a case as that would have exhibited a character of insanity in Lord Ferrers, extremely different from that in which it was presented by the evidence to HIS PEERS. Before THEM, he only appeared as a man of turbulent passions; whose mind was disturbed by no fallacious images of things without existence; whose quarrel with Johnson was founded *upon no illusions*, but upon existing facts; and whose resentment proceeded to the fatal consummation with all the ordinary indications of mischief and malice; and who conducted his own defence with the greatest dexterity and skill. WHO THEN COULD DOUBT THAT LORD FERRERS WAS A MURDERER? When the act was done, he said, "I am glad I have done it. He was a villain, and I am revenged;" but when he afterwards saw that the wound was probably mortal, and that it involved consequences fatal to himself, he desired the surgeon to take all possible care of his patient—and, conscious of his crime, kept at bay the men who came with arms to arrest him; showing, from the beginning to the end, nothing that does not generally accompany the crime for which he was condemned. He was proved, to be sure, to be a man subject to unreasonable prejudices, addicted to absurd practices, and agitated by violent passions; but the act was not done under the dominion of uncontrollable disease; and whether the mischief and malice were substantive, or marked in the mind of a man whose passions bordered upon, or even amounted to insanity, it did not convince the Lords, that, un-

der all the circumstances of the case, he was not a fit object of criminal justice.

In the same manner, Arnold, who shot at Lord Onslow, and who was tried at Kingston soon after the Black Act passed on the accession of George I. Lord Onslow having been very vigilant as a magistrate in suppressing clubs, which were supposed to have been set on foot to disturb the new government, Arnold had frequently been heard to declare, that Lord Onslow would ruin his country; and although he appeared, from the evidence, to be a man of most wild and turbulent manners, yet the people round Guildford, who knew him, did not, in general, consider him to be insane.—His Counsel could not show, that any morbid *delusion* had ever overshadowed his understanding.—They could not show, *as I shall*, that just before he shot at Lord Onslow, he had endeavoured to destroy his own beloved child. It was a case of *human resentment*.

I might instance, also, the case of Oliver, who was indicted for the murder of Mr. Wood, a potter, in Staffordshire. Mr. Wood had refused his daughter to this man in marriage. My friend Mr. Milles was Counsel for him at the assizes. He had been employed as a surgeon and apothecary by the father, who forbid him his house, and desired him to bring in his bill for payment; when, in the agony of disappointment, and brooding over the injury he had suffered, on his being admitted to Mr. Wood to receive payment, he shot him upon the spot. The trial occupied great part of the day; yet, for my own part, I cannot conceive that there was any thing in the case for a Jury to deliberate on.—He was a man acting upon *existing facts*, and upon *human resentments* connected with them. He was at the very time carrying on his business, which required learning and reflection, and, indeed, a reach of mind beyond the ordinary standard, being trusted by all who knew him, as a practiser in medicine. Neither did he go to Mr. Wood's under the influence of *illusion*; but he went to destroy the life of a man who was placed exactly in the circumstances which the mind of the criminal represented him. He went to execute vengeance on him for refusing his daughter. In such a case there might, no doubt, be passion approaching to frenzy; but there wanted that characteristic of madness to emancipate him from criminal justice.

There was another instance of this description in the case of a most unhappy woman, who was tried in Essex for the murder of Mr. Errington, who had seduced and abandoned her and the children she had borne to him. It must be a consolation to those

who prosecuted her, that she was acquitted, as she is at this time in a most undoubted and deplorable state of insanity; but I confess, if I had been upon the Jury who tried her, I should have entertained great doubts and difficulties: for although the unhappy woman had before exhibited strong marks of insanity arising from grief and disappointment; yet she acted upon *facts and circumstances*, which had an *existence*, and which were calculated, upon the ordinary principles of human action, to produce the most violent resentment. Mr. Errington having just cast her off, and married another woman, or taken her under his protection, her jealousy was excited to such a pitch as occasionally to overpower her understanding; but, when she went to Mr. Errington's house, where she shot him, she went with the express and deliberate purpose of shooting him. That fact was unquestionable; she went there with a resentment long rankling in her bosom, bottomed on an existing foundation: she did not act under *a delusion, that he had deserted her* when he had not, but took revenge upon him for an actual desertion; but still the Jury, in the humane consideration of her sufferings, pronounced the insanity to be predominant over resentment, and they acquitted her.

But let me suppose (which would liken it to the case before us,) that she had never cohabited with Mr. Errington; that she never had had children by him; and, consequently, that he neither had, nor could possibly have deserted or injured her.—Let me suppose, in short, that she had never seen him in her life, but that her resentment had been founded on the morbid delusion that Mr. Errington, who had never seen her, had been the author of all her wrongs and sorrows; and that, under that *diseased* impression, she had shot him. If that had been the case, Gentlemen, she would have been acquitted upon the opening, and no Judge would have sat to try such a cause: the *act itself* would have been decisively characteristic of madness, because, being founded upon nothing existing, it could not have proceeded from malice, which the law requires to be charged and proved, in every case of murder, as the foundation of a conviction.

Let us now recur to the cause we are engaged in, and examine it upon those principles by which I am ready to stand or fall, in the judgment of the Court.

You have a man before you who will appear, upon the evidence, to have received those almost deadly wounds which I described to you, producing the immediate and immoveable effects which the eminent surgeon, whose name I have men-

tioned, will prove that they could not but have produced; it will appear, that from that period he was visited with the severest paroxysms of madness, and was repeatedly confined with all the coercion which it is necessary to practise upon lunatics; yet what is quite decisive against the imputation of treason against the person of the King, his loyalty never forsook him.—Sane or insane, it was his very characteristic to love his sovereign and his country, although the delusions which distracted him were sometimes, *in other respects*, as contradictory as they were violent.

Of this inconsistency there was a most striking instance on only the Tuesday before the Thursday in question, when it will be proved, that he went to see one Truelet, who had been committed by the Duke of Portland as a lunatic. This man had taken up an idea that our Saviour's second advent, and the dissolution of all human things, were at hand; and conversed in this strain of madness: this mixing itself with the insane delusion of the Prisoner, he immediately broke out upon the subject of his own propitiation and sacrifice for mankind, although only the day before he had exclaimed, that the Virgin Mary was a whore; that Christ was a bastard; that God was a thief; and that he and this Truelet were to live with him at White Conduit House, and there to be enthroned together. His mind, in short, was overpowered and overwhelmed with distraction.

The charge against the Prisoner is the overt act of compassing the death of the King, in firing a pistol at His Majesty—an act which only differs from murder inasmuch as the bare compassing is equal to the accomplishment of the malignant purpose; and it will be *your* office, under the advice of the Judge, to decide by your verdict to which of the two impulses of the mind you refer the act in question: you will have to decide, whether you attribute it wholly to mischief and malice, or wholly to insanity, or to the one mixing itself with the other. If you find it attributable to mischief and malice *only*, LET THE MAN DIE. The law demands his death for the public safety.—If you consider it as conscious malice and mischief mixing itself with insanity, I leave him in the hands of the Court, to say how he is to be dealt with; it is a question too difficult for me.—I do not stand here to disturb the order of society, or to bring confusion upon my country; but, if you find that the act was committed wholly under the dominion of insanity; if you are satisfied that he went to the theatre contemplating his own destruction only; and that, when he fired the pistol, he did not *maliciously* aim

at the person of the King—you will then be bound, even upon the principle which the Attorney General himself humanely and honourably stated to you, to acquit this most unhappy Prisoner.

If, in bringing these considerations hereafter to the standard of the evidence, any doubts should occur to you on the subject, the question for your decision will then be, which of the two alternatives is the most probable—a duty which you will perform by the exercise of that reason of which, for wise purposes, it has pleased God to deprive the unfortunate man whom you are trying; your sound understandings will easily enable you to distinguish *infirmities*, which are *misfortunes*, from *motives*, which are crimes. Before the day ends the evidence will be decisive upon this subject.

There is, however, another consideration which I ought distinctly to present to you; because I think that more turns upon it than any other view of the subject: namely, whether the Prisoner's defence can be impeached for artifice or fraud; because I admit, that if, at the moment when he was apprehended, there can be fairly imputed to him any pretence or counterfeit of insanity, it would taint the whole case, and leave him without protection; but for such a suspicion there is not even a shadow of foundation.—It is repelled by the whole history and character of his disease, as well as of his life, independent of it. If you were trying a man under the Black Act, for shooting at another, and there was a doubt upon the question of malice; would it not be important, or rather decicive evidence, that the Prisoner had no resentment against the Prosecutor—but that, on the contrary, he was a man whom he had always loved and served? Now the Prisoner was maimed, cut down, and destroyed, in the service of the King.

Gentlemen, another reflection presses very strongly on my mind, which I find it difficult to suppress. In every state there are political differences and parties, and individuals disaffected to the system of government under which they live as subjects. There are not many such, I trust, in this country; but whether there are many or any of such persons, there is one circumstance which has peculiarly distinguished his Majesty's life and reign, and which is in itself as a host in the Prisoner's defence:—since, amidst all the treasons and all the seditions which have been charged on reformers of government as conspiracies to disturb it, no hand or voice has been lifted up against the person of the King; there have, indeed, been unhappy lunatics who, from

ideas too often mixing themselves with insanity, have intruded themselves into the palace—but no malicious attack has ever been made upon the King, to be settled by a trial: his Majesty's character and conduct have been a safer shield than guards or than laws.—Gentlemen, I wish to continue to that sacred life that best of all securities; I seek to continue it under that protection where it has been so long protected.—We are not to do evil that good may come of it; we are not to stretch the laws to hedge round the life of the King with a greater security than that which the Divine Providence has so happily realized.

Perhaps there is no principle of religion more strongly inculcated by the sacred Scriptures than by that beautiful and encouraging lesson of our Saviour himself upon confidence in the divine protection: "Take no heed for your life, what "ye shall eat, or what ye shall drink, or wherewithal ye "shall be clothed; but seek ye first the kingdom of God, "and all these things shall be added unto you." By which it is undoubtedly not intended that we are to disregard the conservation of life, or to neglect the means necessary for its sustentation; nor that we are to be careless of whatever may contribute to our comfort and happiness—but that we should be contented to receive them as they are given to us, and not seek them in the violation of the rule and order appointed for the government of the world.—On this principle nothing can more tend to the security of his Majesty and his government, than the scene which this day exhibits in the calm, humane, and impartial administration of justice;—and if, in my part of this solemn duty, I have in any manner trespassed upon the just security provided for the public happiness, I wish to be corrected. I declare to you, solemnly, that my only aim has been to secure for the Prisoner at the bar, whose life and death are in the balance, that he should be judged rigidly by the evidence and the law.—I have made no appeal to your passions—you have no right to exercise them. This is not even a case in which, if the Prisoner be found guilty, the royal mercy should be counselled to interfere: he is either an accountable being, or not accountable; if he was *unconscious* of the mischief he was engaged in, the law is a corollary, and he is not guilty; but if, when the evidence closes, you think he was conscious, and maliciously meditated the treason he is charged with, it is impossible to conceive a crime more vile and detestable; and I should consider the King's life to be ill attended to indeed, if

not protected by the full vigour of the laws, which are watchful over the security of the meanest of his subjects. It is a most important consideration, both as it regards the Prisoner and the community of which he is a member.—Gentlemen, I leave it with you.

# SPEECH

FOR

GEORGE STRATTON, HENRY BROOKE, CHARLES FLOYER, AND GEORGE MACKAY, ESQUIRES;

AS DELIVERED IN THE COURT OF KING'S BENCH, ON THE 5TH DAY OF FEBRUARY 1780.

*THE following Speech was one of the earliest of Lord Erskine's appearances at the Bar, having been delivered in the Court of King's Bench on the 5th of February* 1780. *It was not comprehended in the former volumes, because the subject did not range within the title of that collection.*

*Time now begins to cast into the shade a proceeding which occupied at the moment a great deal of public interest and attention, viz. the arrest and imprisonment of Lord Pigot, Governor of Madras, by the Majority of the Council of that settlement, in the year* 1776.

*On their recall to Europe by the Directors of the East India Company, a motion was made in the House of Commons, for their prosecution by the Attorney-General, for a high misdemeanor.*

*Admiral Pigot, the brother of Lord Pigot, being at that time a member of the House, and a most amiable man, connected in political life with the Opposition party in Parliament, an extraordinary degree of acrimony arose upon the subject, and the House of Commons came to a resolution to prosecute Messrs. Stratton, and others, in the Court of King's Bench; and an Information was accordingly filed against them by the Attorney-General. They were defended by Mr. Dunning, and the other leading advocates of that time, but were found guilty; and, on their being brought up to receive the judgment of the Court, Mr. Erskine, who was then only junior Counsel, made the following Speech in mitigation of their punishment.*

*The principle of the mitigation, as maintained by Mr. Erskine, may be thus shortly described. Lord Pigot, considering himself, as President of the Government of Madras, to be* an integral part of it, independent of the Council, *refused to put a question for decision*

*by the Board, which the members of the Council contended it was his duty ministerially to have done; and he also unduly suspended two of them, to make up a majority in favour of his proceedings. This act of Lord Pigot was held by the Majority of the Council to be a subversion and usurpation of the government, which they contended was vested in the President* and Council, *and not in the President* only; *and to vindicate the powers of the government, thus claimed to reside in them, they caused Lord Pigot to be arrested and suspended, and directed the act of the Majority of Council, which Lord Pigot refused to execute, to be carried into execution. It was, of course, admitted that this act was not legally justifiable; that the Defendants were properly convicted, and must, therefore, receive* some *punishment from the Court; but it was contended in the following Speech, that the Court was bound to remember and respect the principles which governed our ancestors at the Revolution, and which had dictated so many acts of indemnity by parliament, when persons, impelled by imminent necessity, had disobeyed the laws.*

*The Defendants were only fined one thousand pounds, without any sentence of imprisonment.*

# SPEECH

FOR THE

# COUNCIL OF MADRAS,

IN MITIGATION OF PUNISHMENT.

My Lord,

I REALLY do not know how to ask or even to expect, the attention of the Court; I am sure it is no gratification to me, to try your Lordships' patience on a subject so completely exhausted; I feel besides, that the array of Counsel assembled on this occasion, gives an importance and solemnity to the conviction which it little deserves, and carries the air of a painful resistance of an expected punishment, which it would be a libel on the wisdom and justice of the Court to expect.

But in causes, that, from their public nature, have attracted the public notice, and in which public prejudices have been industriously propagated and inflamed, it is very natural for the objects of them to feel a pleasure in seeing their actions (if they will bear a naked inspection) repeatedly stripped of the disguise with which the arts of their enemies had covered them, and to expect their Counsel to be, as it were, the heralds of their innocence, even after the minds of the Judges are convinced. They are apt, likewise, and with some reason, to think, that, in *this* stage of a prosecution, surplussage is less offensive, the degree of punishment not being reducible to a point like a legal justification, but subject to be softened and shaded away by the variety of views in which the same facts may be favourably and justly presented, both to the understanding and the heart. Such feelings, my Lord, which I more than guess are the feelings of my injured Clients, must be my apology for adding any thing to what my learned leaders have already, I think, unanswerably urged in their favour. It will be, however, unneces-

sary for me to fatigue your Lordship with a minute recapitulation of the facts; I shall confine myself to the prominent features of the cause.

The Defendants are convicted of having assumed to themselves the power of the Government of Madras, and with having assaulted and imprisoned Lord Pigot. I say, they are convicted of *that*, because, although I am aware that the general verdict of Guilty includes, likewise the truth of the first count of the Information, which charges the obstruction of Lord Pigot in carrying into execution the specific orders of the Company, yet it is impossible that the general verdict can at all embarrass the Court in pronouncing judgment, it being notorious on the face of the evidence, first, that there were no direct or specific orders of the Company touching the points which occasioned either the original or final differences, the Rajah of Tanjore being, before the disputes arose, even beyond the letter of the instructions, restored and secured. Secondly, that the instructions, whatever they were, or however to be construed, were not given to the single construction of Lord Pigot, but to him *and his Council, like all the other general instructions of that Government.*

The Company inclined that the Rajah of Tanjore should be restored without infringing the rights of the Nabob of the Carnatic; but *how* such restoration and security of the Rajah could, or was to be effected without the infringement of those rights of the Nabob which were not to be violated, the Company did not leave to the single discretion of Lord Pigot, but to the determination of the ordinary powers of the Government of Fort Saint George, acting to the best of their understandings, responsible only, like all other magistrates and rulers, for the purity of their intentions.

" It is not pretended that the Company's instructions directed to the Rajah's security to be effected by the residence of a civil chief and council in Tanjore, or by any other civil establishment whatsoever: on the contrary, they disavow such appropriation of any part of the revenues of that country; *yet the resisting a civil establishment in the person of Lord Pigot's son-in-law, Mr. Russel, destined too by the Company for a different and incompatible service, is the specific obstruction which is the burden of the first count of the Information, and which is there attempted to be brought forward as an aggravation of the assumption of the general powers of the government;* the obstruction of what was not

only *not* ordered by the Company, but of which their orders implied, and in public Council were admitted by one of Lord Pigot's adherents to imply, a *disapprobation and prohibition.*

The claims of Mr. Benfield, the subject of so much slanderous declamation without proof, or attempt of proof, and, what is more extraordinary, without even charge or accusation, are subject to the same observations: the orders to restore the Rajah to the possession of his country, certainly did not express, and, if my judgment does not mislead me, could not imply, a restitution of the crops sown with the Prince's money, advanced to the inhabitants on the credit of the harvest, without which, universal famine would have ensued.

Had the Nabob, indeed, seized upon Tanjore in defiance of the Company, or even without its countenance and protection, he would, no doubt, have been a *malâ fide* possessor *quoad* all transactions concerning it with the Company's servants, whatever the justice of this title to it might in reality have been; and the Company's governors, in restoring the Rajah, paying no respect to such usurped possession, would have been justifiable in telling any European who had lent his money on the security of Tanjore—Sir, you have lent your money with your eyes open, to a person, whose title you knew not to be ratified by our approbation, and we cannot, therefore, consider either his claim or yours derived from it. But when the Nabob was put into possession by the Company's troops; when that possession, so obtained, was ratified in Europe, at least by the silence of the Company, no matter whether wisely or unwisely, justly or unjustly; and, after the Nabob had been publicly congratulated upon such possession, by the King's plenipotentiary in the presence of all the neighbouring princes in India; I confess I am at a loss to discover the *absurdity* (as it has been called) of the Nabob's pretensions; and it must be remembered, that Mr. Benfield's derivative title was not the subject of dispute, but the title of the Nabob, his principal, from whence it was derived; I am, therefore, supported by the report of the evidence, in saying, that it does not appear that the differences in Council arose, were continued, or brought to a crisis, on points where Lord Pigot had the Company's orders, either express or implied, to give any weight to his single opinion beyond the ordinary weight allotted to it by the constitution of the settlement, so as to justify the Court to consider the dissent of the Majority from *his measures*, to be either a criminal resistance of the

President, or a disobedience of the Company's specific or general instructions.

Thus perishes the first count of the information, even if it had been matter of charge! But much remains behind. I know it is not enough that the Company's orders were not specific touching any of the points on which the differences arose, or that they were silent touching the property of the crop of Tanjore, or that the Nabob's claim to it had the semblance, or even the reality of justice; I admit that it is not sufficient that the Defendants had the largest and most liberal discretion to exercise, if that discretion should appear to have been warped by bad, corrupt, or selfish motives; I am aware, that it would be no argument to say, that the acts charged upon them were done in resistance of Lord Pigot's illegal subversion, if it could be replied upon me, and that reply be supported by evidence, that such subversive acts of Lord Pigot, though neither justifiable nor legal, were in laudable opposition to their corrupt combinations. I freely admit that, if such a case were established against me, I should be obliged to abandon their defence; because I could apply none of the great principles of government to their protection; but, if they are clear of such imputations, then I *can* and *will* apply them *all.*

My Lord, of this bad intention there is no proof; no proof did I say? there is no charge!—I cannot reply to *slander* here. I will not debase the purity of the Court by fighting with the phantoms of prejudice and party, that are invisible to the sedate and sober eye of justice! If it had been a private cause, I would not have suffered my Clients, as far as my advice could have influenced, to have filed a single affidavit in support of that integrity which no complaint attached upon, and which no evidence had impeached; but, since they were bound like public victims, and cast into this furnace, we wished them to come forth pure and white; their innocence is, therefore, witnessed before your Lordships, and before the world, by their most solemn oaths; and it is surely no great boon, to ask credit for facts averred under the most sacred obligations of religion, and subject to criminal retribution *even here*, which you are bound, in the absence of proof, not only in duty as Judges, but in charity as men, to believe without any oaths at all.

They have denied every corrupt motive and purpose, and every interest, directly or indirectly, with Mr. Benfield, or his claims.—But, says Mr. Rous, Benfield was a man of straw set up by *the Nabob*; be it so;—they have positively

sworn that they had no interest, directly or indirectly, in the claims of *the Nabob himself;* no interest, directly or indirectly, in the property of the crop of Tanjore; no interest, directly or indirectly, beyond their duty, in the preference of Colonel Stuart's appointment to Mr. Russel's; nor any interest, direct or indirect, in any one act which is the subject of the prosecution, or which can, by the most collateral direction, be brought to bear upon it. Such are the affidavits; and if they be defective, the defect is in us. They protested their innocence to us, their Counsel, and, telling us that there was no form in which language could convey asseverations of the purity of their motives, which they could not with a safe conscience subscribe to, they left it *to us* to frame them in terms to exclude all evasion.

But *circumstances* come in aid of their credit stronger than all oaths: men may swear falsely; men may be perjured, though a court of justice cannot presume it; but human nature cannot be perjured. They did not do the very thing, when they got the government for which they are supposed to have usurped it. The history of the world does not afford an instance of men wading through guilt for a purpose which, when within their grasp, they never seized or looked that way it lay.

When Mr. Benfield first laid his claims before the Board, Lord Pigot was absent in Tanjore, and Mr. Stratton was the legal governor during his absence, who might therefore have, in strict regularity, proceeded to the discussion of them; *but he referred them back to Lord Pigot, and postponed that discussion till his return;* when, on that discussion, they were declared valid by a legal majority, they neither forced them, nor threatened to force them on the Rajah, but only recommended it to him to do justice, leaving the time and the manner to himself; and, when at last they assumed the government, they did not change their tone with their power; the Rajah was left unrestrained as before, and, *at this hour*, the claims remain in the same situation in which they stood at the commencement of the disputes; neither the Nabob nor Mr. Benfield have derived the smallest advantage or support from the revolution in the government.

This puts an end to all discussion of Indian politics, which have been artfully introduced to puzzle and perplex the simple merits of this cause; I have no more to do with the first or second *Tanjore* war, than with the first or second *Carthaginian* war; I am sorry, however, my absence yesterday in the House of Commons prevented me from hearing

the history of them, because, I am told, Mr. Rous spoke with great ability, and, I am convinced from what I know of his upright temper, with a zeal, that, for the moment, justified what he said to his own bosom; but, if I am not misinformed, his zeal was his only brief; his imagination and resentment spurned the fetters both of fact and accusation, and his acquaintance with Indian affairs enabled him to give a variety to the cause, by plausible circumstances, beyond the reach of vulgar, ignorant malice to invent. It was calculated to do much mischief, for it was too long to be remembered, and too unintelligible to be refuted; yet I am contented to demand judgment on my Clients on Mr. Rous' terms: he tells your Lordship, that their intentions cannot be known till that time when the secrets of all human hearts shall be revealed, and then, in the very same breath, he calls for a punishment as if they were revealed already. It is a new, ingenious, and summary mode of proceeding—*festinum remedium*, an assize of conscience.—If it should become the practice, which, from the weight of my Learned Friend, I have no manner of doubt it will, we shall hear such addresses to Juries in criminal courts as this:—Gentlemen, I am Counsel for the prosecution, and I must be candid enough to admit that the charge is not proved against the Defendants; there is certainly no legal evidence before you to entitle the Crown to your verdict; but, as there is little reason to doubt that they are guilty, and as this deficiency in the evidence will probably be supplied at the day of judgment, you are well warranted in convicting them; and; if, when the day of judgment comes, both you and I should turn out to be mistaken, they may move for a new trial.

This was the *general* argument of guilt; and, in the *particulars*, the reasoning was equally close and logical. How, says Mr. Rous, can it be believed that the Tanjore crop was not the corrupt foundation of the Defendants' conduct, when it appears from day to day, on the face of all the consultations, as the single object of dispute? That it was the object of dispute, I shall, for argument's sake, admit; but does Mr. Rous' conclusion follow from the admission of his premises? I will tell him why it does not; it is so very plain a reason, that, when he hears it, he will be astonished he did not discover it himself. Let me remind him, then, that all the inferences which connexions with the *Nabob* so amply supplied on the *one hand*, connexions with the *Rajah* would as amply have supplied on the *other*. If the Tanjore crop was the bone of contention, the Rajah, by *keeping* it, had surely the same op-

portunity of gratitude to his adherents, that the Nabob had to his by *snatching it from him.* The appointment of Mr. RUSSEL, to the residency of Tanjore—Mr. RUSSEL, the friend, the confidant, the son-in-law of Lord Pigot—was surely as good a butt for insinuation as *Colonel Stuart*, for the *whole Council.* The ball might, therefore, have been thrown back with redoubled violence; and I need not remind the Court, that the cause was conducted on our part by a gentleman whose powers of throwing it back it would be folly in me to speak of; but he nobly disdained it; he said he would not hire out his talents to scatter insinuation and abuse, when the administration of right and justice did not require it; and his Clients, while they received the full, faithful, and energetic exercise of his great abilities, admired and applauded the delicate, manly rectitude of his conduct; they felt that their cause derived a dignity and a security from the MAN, greater than the *advocate*, and even than *such* an advocate, could bestow.

I shall follow the example of Mr. Dunning. God forbid, my Lord, that I should insult the ashes of a brave man, who, in other respects, deserved well of his country; but let me remind the gentlemen on the other side, that the honour of the LIVING is as sacred a call on humanity and justice as the memory of the DEAD.

My Lord, the case, thus stripped of the false colours thrown upon it by party defamation, stands upon plain and simple principles, and I shall, therefore, discuss it in the same arrangement which your Lordships pursued in summing up the evidence to the Jury at the trial, only substituting alleviation for justification.

First, In whom did the ordinary powers of the government of Madras reside?

Secondly, What acts were done by Lord Pigot, subversive of that government?

Thirdly, What degree of criminality belongs to the confessedly illegal act of the Defendants, in assuming to themselves the whole powers of the government, *so subverted?* I say, *so subverted;* for I must keep it constantly in the eye of the Court, that the government was subverted, and was admitted by your Lordship, at the trial, to have been subverted *by Lord Pigot*, before it was assumed by *the Majority of the Council.*

First, then, in whom did the government of Fort Saint George reside? And, in deciding this question, it will not be necessary to go, as some have done, into the general principles

of government, or to compare the deputation of a company of merchants with great political governments, either ancient or modern. The East India Company, being incorporated by act of Parliament, derived an authority from their charter of incorporation, to constitute inferior governments, dependant on them for the purposes of managing their concerns in those distant parts:—had the Company, at the time the charter was granted, been such an immense and powerful body as it has since become from the trade and prosperity of the empire, it might have happened that the forms of these governments would have been accurately chalked out by Parliament, and been made part of the charter; in which case, the charter itself would have been the only place to have resorted to for the solution of any question respecting the powers of such governments, because the Company, by the general law of all corporations, could have made no by-laws, or standing orders, repugnant to it; but, on the other hand, the charter having left them at liberty, in this instance, and not having prescribed constitutions for their territorial governments in India, there can be no possible place to resort to for the solution of such questions, but to the commissions of government granted by the Company; their standing orders, which may be considered as fundamental constitutions; and such explanatory instructions as they may, from time to time, have transmitted to their servants for the regulation of their conduct;—by these, and these alone, must every dispute arising in the governments of India be determined, except such as fall within the cognizance of the act of the thirteenth of George the Third, for the regulation of the Company's affairs, as well in India as in Europe.

First, then, as to the commission of government, where the clause, on which they build the most, is made to run thus: "And to the end that he might be the better enabled to "manage all the affairs of them the said Company, they ap- "pointed certain persons, therein named, to be of their Coun- "cil at Fort Saint George." These words would certainly imply the President to be an integral and substantive part distinct from the Council; but, unfortunately, no such words are contained in the commission of government, which speaks a very different language, almost in itself conclusive against the proposition they wish to establish. The words are, "And to "the end that the said George Lord Pigot might be the better "enabled to manage all the affairs of us the said Company, "we do constitute and ordain George Stratton, Esq. to be "SECOND in our Council of Fort Saint George, to wit, TO BE

"NEXT IN THE COUNCIL after our said President George Lord "Pigot." It is impossible for the English language more plainly to mark out the President to be merely *the first in Council*, and not an integral substantive part, *assisted by a Council*; for, in such case, Mr. Stratton, the senior Counsellor, would, it is apprehended, be called the *first in Council*, instead of the *second* in Council, to wit, next after the President; and this clause in the commission, so explained, not only goes far by itself to resist the claim of independence in the President, but takes off from the ambiguity and uncertainty which would otherwise cloud the construction of the clause that follows, viz. "And we do hereby give and grant "unto our said President and Governor George Lord Pigot, "*and to our Council aforenamed*, or the major part of *them*, "full power and authority, &c." The President and Council being here named distinctly, the word *them*, without the foregoing clause, might seem to constitute the President an integral part, and separate from the Council; but the President, having been before *constructively* named as the *first in Council*; Mr. Stratton, though the senior Counsellor, being expressly named the *second*, it is plain the word *them* signifies *the majority of such Council, of which the President is the first*, and who is named distinctly, not only by way of pre-eminence, but because all public bodies are called and described by their corporate names, and all their acts witnessed by their common seals, whatever their internal constitutions may be. No heads of corporations have, by the common law of England, any negative on the proceedings of the other constituent parts, unless by express provision in their charters; yet all their powers are given to them, and exercised by them, in their corporate names, which ever makes the head a party, although he may be dissentient from the act that receives authority from his name.

The standing orders of the company, published in 1687, and 1702, which may be considered as fundamental constitutions, are plain and unequivocal; they enjoin, "That all "their affairs shall be transacted IN COUNCIL, and order-"ed and managed as the MAJORITY OF THE COUNCIL shall "determine and not otherwise on any pretence whatsoever." And again, "That whatever is agreed on by the MAJORITY "shall be the order by which each one is to act; and ev-"ery individual person, *even the dissenters themselves*, are "to perform their parts in the prosecution thereof."

The agreement of the Majority being denominated an ORDER, shows as clearly as language can do, that obe-

dience is expected to their determination; and it is equally plain, that no constituent member of that government can frustrate or counteract such order, since each individual, *even the dissenters themselves*, are commanded to act in conformity to it, and to perform their parts in the prosecution thereof. In speaking to dispassionate men, it is almost needless to add any arguments to show that the President's claim to refuse to put a question, adopted by a Majority of Council, stands upon the very same grounds as his claim to a negative on their proceedings, and that, if the first be overturned, the second must fall along with it; for if he be not an integral part of the government, and his concurrence be consequently not necessary to constitute an act of it, then his office as President, *with respect to putting questions*, must necessarily be only ministerial, and he cannot obstruct the proceedings by refusing to put them; for, if he could, his power would be equal in effect to that of an integral part; and it would be a strange solecism indeed, if, at the same time that all the affairs of the government were to be managed and ordered by the opinions of a Majority, the President could prevent such opinions from ever being collected; and, at the same time that their acts would bind him, could prevent such acts from ever taking place. But it is altogether unnecessary to explain, by argument and inference, that which the Company, who are certainly the best judges of their own meaning, have explained in absolute and unequivocal terms by their instructions sent by Mr. Whitehill to Madras, explanatory of the new commission, by which they expressly declare the government to be in the *major part of the Council*, giving the President, or the senior Counsellor in his absence, a casting vote, and directing *that every question proposed in writing by any member of Council, shall be put by the Governor, or in his absence, by the senior member acting as President for the time being; and that every question, carried by a majority, shall be deemed the act of the President and Council.* Indeed, the uniform determinations of the Directors on every occasion where this question has been referred to them, have been in favour of the Majority of Council; even so late as the 21st of April 1777, *subsequent to the disturbances at Madras*, it will be found upon their records to have been resolved by ballot, "*That the powers contended* "*for and assumed by Lord Pigot, are neither known in the* "*constitution of the company, nor authorized by charter, nor* "*warranted by any orders or instructions of the Court of* "*Directors.*" It is clear therefore, beyond all controversy,

that the President and Council were, at all times, bound and concluded by the decision of the Majority, and that it was his duty to put every question proposed by any member of the Board.

Had these regulations been made part of the *new* commission, they might have been considered as a *new* establishment and not as a recognition of the *former* government; and consequently such regulations subsequent to the disturbances, could be no protection for the Majority acting under the *former* commission; but the caution of the East India Company, to exclude the possibility of such a construction, is most striking and remarkable: sitting down to frame a new commission under the immediate pressure of the difficulties that had arisen from the equivocal expressions of the former; they, nevertheless, adopt and preserve the very same words in all the parts on which the dispute arose, the two commissions differing in nothing except in the special preamble restoring Lord Pigot; and the object of this caution is self-evident, because, if, instead of thus preserving the same form, and sending out collateral instructions to explain it, they had rendered the new commission more precise and unequivocal by *new modes of expression*, it would have carried the appearance of a *new* establishment of what the government should *in future be*, and not as a recognition and definition of what it *always had been*; but by thus using the same form of commission, and accompanying it with explanatory regulations, they, beyond all dispute, pronounced the former commission always to have implied what they expressly declare the latter to be, as it is impossible to suppose that the Company would make use of the same form of words to express delegations of authority diametrically opposite to each other. But, taking it for argument's sake, to be a new establishment rather than a recognition, still it is a strong protection to the Defendants. If the question, indeed, was concerning the regularity of an act done by the Majority, without the President, coming before the Court by a person claiming a franchise under it, or in any other *civil* shape where the constitution of the government was in issue, my argument, I admit, would not hold; the Court would certainly, *in such case*, be obliged to confine itself strictly to the commission of government, and such explanatory constitutions as were precedent to the act, the regularity of which was the subject of discussion; but it is very different when men are prosecuted *criminally* for subverting a constitution, and abusing delegated authority: they are not to be punish-

ed, I trust, for the obscurity of their employers' commissions, if they have been fortunate enough, notwithstanding such obscurity, to construe them as they were intended by their authors: if their employers declare, even after an act done, *This is what we meant should be our government*, that ought to be sufficient to sanction previous acts that correspond with such declarations, more especially declarations made on the spur of the occasion which such previous acts had produced; for otherwise this monstrous supposition must be admitted, viz. That the Company had enlarged the power of their servants, because they had, in defiance of their orders, assumed them when they had them not; whereas, the reasonable construction of the Company's subsequent proceeding, is this: *It is necessary that our Council, on the President's refusing to perform his duty, should have such powers of acting* WITHOUT HIM, *as they have assumed in the late emergency; the obscurity of our commissions and instructions has afforded a pretence of resistance, which has obliged our servants either to surrender the spirit of their trusts, or to violate the form; to prevent such disputes in future, we do that,* HITHERTO UNKNOWN: *we make a regular form of government; and, at the same time, prescribe a rule of action in case it should not act up to the end of its present institution, to prevent an exercise of discretion always, if possible, to be avoided in every government, but more especially in such as are subordinate.* Therefore, my Lord, whether the late instructions be considered as explanatory, or enacting, they ought to be a protection to the Defendants *in a criminal court*, unless when their employers are the prosecutors. Neither Parliament, nor the Crown, ought to interfere; but, as they have done it, no evidence ought to have convicted them of assuming the power of government, and obstructing the Company's service, but the evidence of the Directors of that Company under whom they acted. They ought not to be judged by blind records and parchments, *whilst the authors of them are at hand to explain them.* It is a shocking absurdity to see men convicted of abusing trusts, when the persons who gave them are neither prosecutors nor witnesses against them.

The ordinary powers of the government of Madras being thus proved to have resided in the Majority of the Council, it now only remains to show, by a short state of the evidence, the necessity which impelled the extraordinary, and otherwise unwarrantable exercise of such powers in suspending and imprisoning Lord Pigot; for they once more enter a protest against being thought to have assumed and exercised such

power as incident to their commission, while the government subsisted. It is their business to show, that, as long as the government continued to subsist, they faithfully acted their parts in it; and that it was not till after a total subversion of it, by an arbitrary suspension of the governing powers, that they asserted their own rights, and restored the government by resuming them.

On the 8th of July, Lord Pigot refused, as President, *to put a question* to the Board (upon the regular motion of a member,) for rescinding a resolution before entered into. This refusal left the Majority no choice between an absolute surrender of their trusts, and an exercise of them without his ministerial assistance; there was no other alternative *in the absence of a superior coercive authority, to compel him to a specific performance of his duty;* but they proceeded no farther than the necessity justified; they did not extend the irregularity (if any there was) beyond the political urgency of the occasion.—Although their constitutional rights were infringed by the President's claim, they formed no plan for their general vindication; but contented themselves with declaring, on that particular occasion, that, as the government resided *in them*, the President ought not to refuse putting the question, and that the resolution ought to be rescinded.

When the President again refused to put the question in the month following, for taking into consideration the draughts of instructions to Colonel Stuart, (which was the immediate cause of all the disturbances that followed,) they again preserved the same moderation, and never dreamt of any farther vindication of their authority, thus usurped, than should become absolutely necessary for the performance of the trusts delegated to them by the Company, which they considered it to be treachery to desert. They lamented the necessity of departing even from form; and, therefore, although the President's resolution to emancipate himself from their constitutional controul, was avowed upon the public minutes of the consultations, they first adjourned without coming to any resolution at all, in hopes of obtaining formality and regularity to their proceedings, by the President's concurrence:—disappointed in that hope by his persevering to refuse, and driven to the necessity of either surrendering their legal authority, or of devising some other means of exercising it without his personal concurrence, *having (as before observed) no process to compel him to give it*, they passed a vote approving of the instructions, and

wrote a letter to Colonel Harper, containing orders to deliver the command to Colonel Stuart; but they did not proceed to sign it at that consultation, still hoping, by an adjournment, to gain Lord Pigot's sanction to acts legal in all points by the constitution of the government, except, perhaps, in wanting that *form* which it was his duty to give them.

The use which Lord Pigot made of this slowness of the Majority to vindicate the divided rights and spirit of the Government, by a departure from even its undecided forms, notwithstanding the political necessity which arose singly from his own illegal refusal, is very luckily recorded by one of his Lordship's particular friends in Council, and a party to the transaction, as it would have been, otherwise, too much to have expected full credit to it from the most impartial mind.

"It had been discussed," says Mr. Dalrymple, before the "Council met, what measures could be taken to support the "government established by the Company, in case the Majority should still persist in their resolution to come to no "compromise or reference of the matter in question, to the "decision of the Court of Directors, but to carry things to "extremity. One mode occurred to Lord Pigot, viz. by "putting Colonel Stuart in arrest if he obeyed an order "without the Governor's concurrence. To this many objections arose. Colonel Stuart might contrive to receive the "orders WITHOUT the garrison, and, consequently, by the "new military regulations, not be liable to the Governor's "arrest: if he WAS arrested, the Majority would, of course, "refuse to issue a warrant for a court-martial, and confusion "and disgrace must be the consequence.

"The only expendient that occurred to any of us, was, to "ground a charge in case of making their declaration in the "name of the council, instead of the President and Council; "but here an apprehension arose, that they would see this "impropriety, and express their order, not in the name of "the Council, as they had hinted, but in the name of the "President and Council, maintaining that the Majority constituted the efficient Board of President and Council. In "this case, we could devise no measure to be pursued consistent with the rules of the service; but Lord Pigot said "there was no fear of this, as he insisted the Secretary "would not dare to issue any order in his name when he forbade it. It was impossible to know, whether Sir Robert "Fletcher would attend, or not; it was necessary to have

" every thing prepared, that nothing might be to be done in " Council; the Company's orders required the charge to be " in writing; THE GOVERNOR, THEREFORE, HAD IN HIS " POCKET CHARGES PREPARED FOR EVERY PROBABLE CON- " TINGENCY, whether they began at the eldest or the young- " est, and whether the form was an order from themselves, " or an order to the Secretary; and whether Sir Robert " Fletcher was present, or not. It was agreed, that the first " of us to whom the paper was presented for signing, should " immediately hand it to the President, who was then to pro- " duce the charge; the standing orders directing that mem- " bers, against whom a charge is made, should have no seat; " the members charged were, of course, deprived of their " votes. As our ideas went no farther than relieving the " Governor from the compulsion the Majority wanted to lay " him under, it was determined to suspend no more than the " necessity of the circumstance required."

With this snare laid for them during the interval of that adjournment, *which their moderation had led them to*, the Council met on the 22d of August, and, after having recorded their dissent from the President's illegal claim, to a negative on their proceedings, by refusing to perform his part in the prosecution of them (though strictly enjoined thereto by the standing orders of the Company,) and in which refusal he still obstinately persisted, they entered a minute, declaring it as their opinion, that the resolution of the Council should be carried into execution without farther delay, and that the instructions to Colonel Stuart, and the letter to Colonel Harper, should be signed by the Secretary by order of Council.

This minute was regularly signed by a majority, and the President having again positively refused his concurrence, they prepared a letter to Mr. Secretary Sullivan, approving of the instructions to Colonel Stuart, and the letter to Lieutenant-colonel Harper.

The letter thus written, *in the name of the Majority*, and under their most public and avowed auspices, it was the immediate purpose of *all of them* to have signed in pursuance of the minute they had just before delivered in, expressive of their authority to that purpose; but the President, according to the *ingenious* plan preconcerted during the adjournment, snatched the paper from Mr. Brooke after he and Mr. Stratton had signed it, before the rest of the Majority could put their names to it, and pulling a written accusation out of his pocket, charged them as being guilty of an act subversive of

the government; put the question of suspension on both at once, and ordered the Secretary to take neither of their votes, which, according to Mr. Dalrymple's *economical* scheme of illegality, exactly got rid of the Majority, by his own *(the accuser's)* casting vote.

The weakness and absurdity of the *principle* (if it deserves the name) on which this suspension was founded, creates a difficulty in seriously exposing it by argument; yet, as it produced all the consequences that followed, I cannot dismiss it without the following remarks:

First, It was a gross violation of the constitution of the government, even admitting Lord Pigot to have been that integral part of it, which he assumed to be, as the establishment of that claim could only have given him a negative on the proceedings of a Majority, but never could have enabled him to fabricate one so as to do positive acts without one; the sudden charge and suspension of Messrs. Stratton and Brooke, and breaking the Majority by putting the question on both at once, would, therefore, have been irregular, even supposing the concurrence of the Majority to the act which constituted the charge against them, to have been unknown to Lord Pigot, and the Minority who voted with him; but when their concurrence was perfectly known; when the Majority of the Board had just before publicly delivered in a minute, expressive of their right to authorize the Secretary to sign the order, if the President refused to do it; when the order was avowedly drawn out in pursuance of that minute, which made the whole *one act*, and was in the regular course of signing by the Majority, who had just before declared their authority to sign it; the snatching the paper under such circumstances, while unfinished, and arraigning those who had already signed it under the auspices of the Majority, as being guilty of an act subversive of the government, lodged in that Majority, and turning it into a Minority by excluding the votes of the parties charged, was a trick upon the governing powers which they could neither have submitted to with honour to themselves, or duty to their employers.

Such a power, however, Lord Pigot assumed over the government of Fort Saint George, by converting an act of the Majority, rendered necessary by his refusal to do his duty, into a criminal charge against two members acting under their authority, and by a device too shallow to impose on the meanest understanding, cut them off from acting as part of that Majority, by which the powers of the government were subverted, and passed away from them while they were in the very act of saving them from subversion.

It is unnecessary to say, that they were neither called upon in duty, nor even authorized, had they been willing, to attend the summons of a Board so constituted by the foulest usurpation; a Board at which they must either have sacrificed their consciences and judgments, or become the vain opposers of measures destructive to the interests of their employers; they therefore assembled, and answered the illegal summons, by a public protest against the usurped authority by which it issued. To this Council, assembled for the single purpose of sending such protest, they did not, indeed, summon the subverters of the government against whom it was levelled; affairs were arrived at too dangerous a crisis to sacrifice substance to forms, which it was impossible should have been regarded. Lord Pigot and his associates, on receiving the protest against the proceedings of the 22d of August, completed the subversion of the constitution, by the suspension of the rest of the Majority of the Council, and ordered Sir Robert Fletcher, the Commander-in-chief, to be put under arrest, to be tried by a *court-martial*, for asserting the rights of the *civil* government as a member of the Council. This is positively sworn to have been done by Lord Pigot before their assumption of the government. Here then was a crisis in which it was necessary to act with decision, and, in asserting their rights by civil authority, to save the impending consequences of tumult and blood.—The period of temporizing was past, and there was no doubt of what it was their duty to do. Charged with the powers of the government, they could not surrender them with honour, and it was impossible to maintain them with safety or effect, while their legal authority was treated as usurpation and rebellion. They, therefore, held a Council, and agreed that the fortress and garrison should be in their hands, and under their command, as the legal representatives of the Company, and, as there was every thing to dread from the intemperance of Lord Pigot's disposition, they, at the same time, authorized Colonel Stuart to arrest his person if he thought it necessary to preserve the peace of the settlement; Colonel Stuart *did* think it necessary, and his person was accordingly arrested; but, during his necessary confinement, he was treated with every mark of tenderness and respect.

Such, my Lord, is the case—and it is much to the honour of the Defendants, that not a single fact appeared, or was attempted to be made appear, at the trial, that did not stand avowed upon the face of their public proceedings; I say, literally none; for I will not wheel into Court that miserable

post-chaise, nor its flogged postillion, the only living birth of this mountain which has been two years in its labour; every thing, and the reason and motive of every thing, appeared, and still appear, to speak and plead for themselves. No cabals;—no private meetings;—no coming prepared for all possible events;—no secret manufacture of charges;—no tricks to overcome majorities;—but every thing fair, open, and manly, to be judged of by the justice of their employers, the equity of their country, and the candour and humanity of the civilized world. As long as the government subsisted, their parts appear to have been acted in it with regularity and fidelity, nor was it till after a total subversion of it, by the arbitrary suspension of the governing powers, *(and in the absence of all superior visitation,)* that they asserted their own rights, and restored the government by resuming them. The powers so assumed, appear to have been exercised with dignity and moderation; the necessary restraint of Lord Pigot's person was not tainted with any unnecessary rigour, but alleviated (notwithstanding the dangerous folly of his friends) with every enlargement of intercourse, and every token of respect; the most jealous disinterestedness was observed by Mr. Stratton in not receiving even the lawful profits of magistracy; and the temporary authority, thus exerted for the benefit of their employers, was resigned back into their hands with cheerfulness and submission; resigned, not like rapacious usurpers with exhausted revenues, disordered dependencies, and distracted councils, but with such large investments, and such harmonious dispositions, as have been hitherto unknown in the Company's affairs in any settlement in the East.

Your Lordships are, therefore, to decide this day on a question never before decided, or even agitated in any English Court of Justice; you are to decide upon the merits of A REVOLUTION—which, as all revolutions must be, was contrary to established law, and not legally to be justified. The only revolutions which have happened in this land, have been, when Heaven was the only Court of Appeal, because their authors had no human superiors; and so rapidly has this little island branched itself out into a great empire, that I believe it has never occurred that any disorder in any of its foreign *civil* dependencies, has been the subject of judicial inquiry; but, I apprehend that, since the empire has thus expanded itself, and established governments *at distances inaccessible to its own ordinary visitation and superintendance*, all such subordinate governments,

all political emanations from them, must be regulated by the same spirit and principles which animate and direct the parent state. Human laws neither do, nor can make provision for cases which suppose the governments they establish to fall off from the ends of their institutions; and, therefore, on such extraordinary emergencies, when *forms* can no longer operate, from the absence of a superior power to compel their operation, it strikes me to be the duty of the component parts of such governments, to take such steps as will best enable them to preserve the *spirit* of their trust; in no event whatsoever to surrender them, or submit to their subversion; and, by considering themselves as an epitome of the constitution of their country, to keep in mind the principles by which that constitution has been preserved, and on which it is established.

These are surely fair premises to argue from, when the question is not *technical justification*, but *palliation* and *excuse*. The Members of the Council, in the Majority of which the efficient government of Madras resided, were certainly as deeply responsible to the India Company in conscience, and on every principle of society, for the preservation of *its* constitution, from an undue extension of Lord Pigot's power, as the other component parts of *this* government are answerable to the people of this country for keeping the King's prerogative within its legal limits; there can be no difference but that which I have stated, namely, that the one is subordinate and the other supreme. But as, in the total absence of the superior power, subordination to it can only operate by an appeal to it for the ratification or annulment of acts already done, and not for directions what to do (otherwise, on every emergency, government must entirely cease,) I trust it is not a strained proposition, to assert, that there can be no better rule of action, when subordinate rulers must act somehow, owing to their distance from the fountain of authority, than the history of similar emergencies in the government of their country, of which they are a type and an emanation.

Now, my Lord, I believe there is no doctrine more exploded, or more repugnant to the spirit of the British government, because the revolution is built upon its ruin, than that there must be an eminent political necessity, analogous to natural necessity, to justify the resistance of the other component parts of the government, if one steps out of its delegation, and subverts the constitution; I am not speaking of technical justification.—It would be nonsense to speak of law and a

revolution in the same sentence.—But I say the British constitution, which is a government of law, knows no greater state necessity than the inviolate preservation of the spirit of a public trust from subversion or encroachment, no matter whether the country would fall into anarchy or blood, if such subversion or encroachment were suffered to pass unresisted.—A good Whig would swoon to hear such a qualification of resistance, even of the resistance of an integral part of legislation, much less of a part merely ministerial, which, in all governments, must be subordinate to the legislature, wherever it resides. Such a state necessity, analogous to natural necessity, may be necessary to call out a private man, but is not at all applicable to the powers of a government. The Defendants did not act as *private* men, but as *governing powers*; for, although they were not, technically speaking, the government, when not assembled by the President; yet they were in the spirit of law, and on every principle of human society, the rulers of the settlement. —The Information charges the act as done by them in the public capacity of Members of the Council, in the Majority of which the government did reside; and their act must, therefore be taken to be a public act, for the preservation of their delegated trusts, from subversion by Lord Pigot, which, on the true principle of British government, is sufficient to render resistance meritorious, though not legal.

Where was the imminent state necessity at the Revolution in this country? King James suspended and dispensed with the laws.—What laws?—Penal laws against both Papist and Protestant Dissenters. Would England have fallen into confusion and blood if the persecuted Papist had been suffered publicly to humbug himself with the mystery of transubstantiation, and the Independent to say his prayers without the mediation of a visible church? —Parliament, on the contrary, immediately after the Revolution, repealed many of those intolerant laws, with a preamble to the act that abolished them, almost copied verbatim from the preamble of the Proclamation by which the King suspended them; yet, that suspension (although King James was, I trust, something more of an integral part of this government than Lord Pigot was of that of Madras) most justly cost him the crown of these kingdoms. What was the principle of the Revolution? I hope it is well known, understood, and revered by all good men. The principle was, that the trustees of the people were not to suffer an infringement of the constitution, *whether for good or for evil.* All

tyrants are plausible and cunning enough to give their encroachments the show of public good.—Our ancestors were not to surrender the *spirit* of their trusts, though at the expense of the *form*, and though urged by no imminent state necessity to defend them; no other, at least, than that which I call, and which the constitution has ever since called the first and most imminent of all state necessities, *the inviolate preservation of delegated trusts from usurpation and subversion.* This is the soul of the British government.—It is the very being of every human institution which deserves the name of government;—without it, the most perfect model of society is a painful and laborious work, which a madman, or a fool, may, in a moment, kick down and destroy.

Now, why does not the principle apply HERE? Why may not inferiors, in the absence of the superior, *justly*, though not legally, at all events without sanguinary punishment, do, by a *temporary act to be annulled, or ratified, by such superior*, that which the superior would do finally, where there is no appeal at all? Will you punish men who were obliged, from their distance from the fountain of authority, to act for themselves, only for having, at all events, refused to surrender their trusts?—only for having saved the government, committed to their charge, from subversion?—only for having acted, as it was the chief glory of our ancestors to have acted? The similitude does not, to be sure, hold throughout; but all the difference is in *our* favour; *our* act was not peremptory and final, but temporary and submissive to annulment; nor is the President of a Council equal only to each other individual in it, with an office, merely ministerial, to be compared with the condensed executive majesty of this great kingly government, with a negative in legislation.

The Majority of the Council was the efficient government of Madras, or, in other words, the legislature of the settlement, whose decisions the Company directed should be the order by which each one was to act, without giving any negative in legislation to the President, whose office was consequently (as I have before said) ministerial. This ministerial office he not only refused to perform, but assumed to himself, in effect, the whole government by dissolving a Majority against him. Let me put this plain question to the Court.—Ought such arbitrary, illegal dissolution to have been submitted to?—Ought the Majority, which was, in fact, the whole government in substance, spirit, and effect, though not in regular form, to have suffered itself to be thus crumbled to

pieces, and destroyed? Was there, in such a case, any safe medium between suffering both spirit and form to go out together, and thus sacrificing the form to preserve the spirit? and could the powers of the government have been assumed or exercised without bloodshed, if Lord Pigot had been left at large? I appeal to your Lordships, whether human ingenuity could have devised a *middle road* in the absence of all superior controul? Ought they to have acquiesced, and waited for the sentence of the Directors, and, on his motion, played at shuttlecock with their trusts across the globe, by referring back questions to Europe, which they were sent out to Asia to decide? Where representatives *doubt* what are the wishes of their constituents, it may be proper to make such appeals; but, if they were subject to punishment for not consenting to them, whenever one of their body proposed them, government would be a mere mockery. It would be in the power of the President, whenever he pleased, to cripple all the proceedings of the Council. It puts me in mind of the embargo once laid upon corn by the Crown, during the recess of Parliament, which was said, in a great assembly, to be but forty days tyranny at the outside; and it equally reminds me of the celebrated constitutional reply which was made on that occasion, which it would be indelicate for me to cite here, but which, I trust, your Lordship has not forgotten. *

This would have been not only forty days tyranny at the outside, but four hundred days tyranny at the inside.—It would have been a base surrender of their trusts, and a cowardly compromising conduct unworthy of magistracy.

But the Defendants are, notwithstanding all this, CONVICTED; surely, then, either the Jury, or I, mistake. If what I have advanced be sound or reasonable in principle, the verdict must be unjust. By no means. All I have said is compatible with the verdict. Had I been on the Jury, I should have found them guilty; but, had I been in the House of Commons, I would have given my voice against the prosecution. CONVICTION! Good God! how could I doubt of conviction, when I know that our patriot ancestors, who assisted in bringing about the glorious Revolution, could not have stood justified in this Court, though King William sat on the throne, but must have stood self-convicted criminals without a plea to offer in their defence, had not Parliament protected them by acts of indemnity!

* Lord Mansfield's Speech in the House of Lords against the dispensing power.

Nothing that I have said could have been uttered without folly to *a Jury*. It could not have been uttered with less folly to your Lordship, sitting in judgment, on this case, on a *special verdict*. They are not arguments of *law*; they are arguments of *state*, and the state ought to have heard them before it awarded the prosecution; but, having awarded it, *your Lordships now sit in their place to do justice*. If the law, indeed, had prescribed a *specific* punishment to the fact charged, the judgment of the law must have followed the conviction of the *fact*, and your Lordship could not have mitigated the sentence. They could only have sued to the state for indemnity. It would, in that case, have been the sentence of the law, not of the Judge. But it is not so here. A Judge, deciding on a misdemeanor, is bound in conscience, in the silence of law, not to allot a punishment beyond his opinion, of what the law, in its distributive justice, would have specifically allotted.

My Lord, if these arguments, drawn from a reflection on the principles of society in general, and of our own government in particular, should, from their uncommonness in a Court of Justice, fail to make that immediate and decided impression, which their justice would otherwise insure to them, I beseech your Lordship to call to mind, that the Defendants who stand here for judgment, stand before you for acts done as the rulers of a valuable, immensely extended, and important country, so placed at the very extremity of the world, that the earth itself travels round her orbit in a shorter time than the Eastern deputy can hear the voice of the European superior; a country surrounded, not only with nations which policy, but which Nature, violated Nature! has made our enemies, and where government must, therefore, be always on the watch, and in full vigour, to maintain dominion over superior numbers by superior policy.—The conduct of men, in such situations, ought not surely to be measured on the narrow scale of municipal law. —*Their* acts must not be judged of like the acts of a little corporation within the reach of a mandamus, or of the executive strength of the state.—I cannot, indeed, help borrowing an expression from a most excellent and eloquent person, when the conduct of one of our colony governments was, like this, rather hastily arraigned in Parliament. "I "am not ripe," said a Member of the House of Commons, "to pass sentence on the gravest public bodies, intrusted with "magistracies of great weight and authority, and charged "with the safety of their fellow-citizens on the very same

"title that I am: I really think, that for wise minds, this "is not judicious; for sober minds, not decent; for minds "tinctured with humanity, not mild and merciful." Who can refuse his assent to such admirable, manly sentiments? —What, indeed, can be so repugnant to humanity, sound policy, decency, or justice, as to punish public men, acting in extremities not provided for by positive institution, without a corrupt motive proved, or even charged upon them? I repeat the words again, that every man's conscience may *force* him to follow me, *without a corrupt motive proved, or even charged upon them.*

Yet it has been said, that PUBLIC EXAMPLE ought to weigh heavily with the Court in pronouncing judgment.—I think so too.—It ought to weigh heavily indeed; but all its weight ought to be placed in the saying, not in the vindictive scale. PUBLIC EXAMPLE requires that men should be secure in the exercise of the great, *public* duties they owe to magistracy, which are paramount, to the obligations of obedience they owe to the laws as *private* men. PUBLIC EXAMPLE requires that no magistrate should be punished for an error in judgment, even in the common course of his duty, which he ought to know, and for which there is a certain rule; much less for an act like this, in which he must either do wrong by seizing the trust of another, or do wrong by surrendering his own.—PUBLIC EXAMPLE requires that a magistrate should stand or fall by his HEART;—that is the only part of a magistrate vulnerable in law in every civilized country in the world.—WHO HAS WOUNDED THE DEFENDANTS THERE? Even in this fertile age of perjury, where oaths may be had cheap, and where false oaths might be safe from the distance of refutation, no one champion of falsehood has stood forth, but the whole evidence was read out of a book *printed by the Defendants themselves, for the inspection of all mankind.*

What, then, has produced this virulence of prosecution in a country so famed for the humanity of its inhabitants, and the mildness of its laws? *The death of Lord Pigot during the Revolution in the Government?* Strange, that malice should conjure up so improbable an insinuation, as that the Defendants were interested in that unfortunate event; no event, indeed, could be to them more truly unfortunate. If Lord Pigot had lived to return to England, this prosecution had never been.—HIS guilt and his popularity, gained by other acts than these, would have been the best protection for THEIR friendless innocence. Lord Pigot, besides many connections in this country, had a brother, who has, and who

deserves to have, many friends in it.—If I can judge of the zeal of his friends, from the respect and friendship I feel for him myself; a zeal which might have misled *me*, as it has many better and wiser than *me*, if my professional duty had not led me to an early opportunity of correcting prejudice by truth.—Indeed, some of the darkest and most dangerous prejudices of men, arise from the most honourable principles of the mind.—When prejudices are caught up from bad passions, the worst of men feel intervals of remorse to soften and disperse them; but when they arise from a generous, though mistaken source, they are hugged closer to the bosom, and the kindest and most compassionate natures feel a pleasure in fostering a blind and unjust resentment.—This is the reason that the Defendants have not met with that protection from many, which their meritorious public conduct entitled them to, and which has given rise to a cabal against them so unworthy the legislature of an enlightened people, a cabal which would stand forth as a striking blot upon its justice, if it were not kept in countenance by a happy uniformity of proceeding, as this falling country can well witness.—I believe, indeed, this is the first instance of a criminal trial in England, canvassed for like an election, supported by defamation, and publicly persisted in, in the face of a Court of Justice, without the smallest shadow of evidence.—This deficiency has compelled the Counsel for the Crown to supply the baldness of the cause with the most foreign invective; foreign, not only in proof, but in accusation.—In justice to them, I use the word *compelled*, as, I believe, none of them would have been inclined, from what I know of their own manners and dispositions, to adopt such a conduct without a most imminent *Westminster-hall necessity*, viz. that of saying something in support of a cause, which nothing but slander and falsehood could support. *Their* duty as *public* and *private* men was, perhaps, as incompatible as the duty of my Clients; and they have chosen, like them, to fulfil the *public* one; and, indeed, nothing less than the great ability and eloquence *(I will not say the propriety)* with which that public duty was fulfilled at the trial, could have saved the prosecution from ridicule and contempt. As for us, I am sure we have lost nothing with the world, or with the Court, by our moderation; nor could the prejudices against us, even if the trial had not dispelled them, reach us within these venerable walls.—Nothing, unsupported by evidence, that has been said here, or any where, will have any other effect upon the Court, than to inspire it with more abundant caution in pronouncing judgment.—Judges in this country

are not expected to shut themselves up from society; and, therefore, when a subject that is to pass in judgment before them, is of a public and popular nature, and base arts have been used to excite prejudices, it will only make wise and just magistrates (such as I know, and rejoice that I am addressing myself to) the more upon their guard, rigidly to confine all their views to the record of the charge which lies before them, and to the evidence by which it has been proved, and to be doubly jealous of every avenue, by which human prejudices can force their way to mislead the soundest understandings, and to harden the most upright hearts.

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The Court, by its judgment, only imposed a fine of One Thousand Pounds upon each of the Defendants; a sentence which, we believe, was considered at the time by the whole profession of the law, and by all others qualified to consider such a subject, as highly just and proper, under all the circumstances of the case. The accusation was weighty, but the Judges were bound, by their oaths, to weigh all the circumstances of mitigation, as they appeared from the facts in evidence, and from the pleadings of the Counsel at the Bar. They were not to pronounce a severe judgment because the House of Commons was the Prosecutor. Mr. Burke, however, who had taken a very warm, and, we have no doubt, an honest part, in the prosecution, took great offence at the lenient conclusion; and repeatedly animadverted upon it in the House of Commons. There can be no doubt of the high value of the privilege possessed by the Representatives of the People, to be public accusers; but for that very reason they can have no right to determine, or to interfere with the judgments of other tribunals, when they themselves are the prosecutors. If Judges, indeed, conduct themselves corruptly, or partially, upon a prosecution by the House of Commons, or upon any other judicial proceeding whatsoever, it is a high and valuable privilege of the People's Representatives in Parliament to proceed against the offenders by impeachment; but it is not the duty of any member of that high assembly, to disparage the decisions of the Judges, by invidious observations, without any public proceeding which may bring their merits, or demerits, into public examination. Such a course is injurious to those who have been the subjects of them; disrespectful to the magistrates who have pronounced them; and contrary to the spirit and character of the British Constitution.

MORTON AGAINST FENN.

# SPEECH

IN THE

## *COURT OF KING'S BENCH*

AGAINST A NEW TRIAL.

## PREFACE.

*THE following Speech may appear, at first glance, to be scarcely worthy of a place in a collection of pleadings upon so many interesting subjects; but it will be found, on examination, to contain very important principles of law. The occasion of it was shortly this. A woman of the name of Morton, who was the Plaintiff, in a Cause tried before Lord Mansfield at the sittings at Guildhall, in London, had hired herself to be Housekeeper to a Mr. Fenn, who was the Defendant, an old and infirm man.—Mrs. Morton, the Plaintiff, was not a young woman, and had no great personal recommendations.—The old gentleman, however, thought otherwise; and, to induce his housekeeper to cohabit with him, had promised to marry her; the breach of which promise was the foundation of an action to recover damages.*

*The Cause was conducted by Lord Erskine, who had not then been long at the Bar.—There is no note of what passed at the Trial, nor is it material; except that, after the Plaintiff's case had been opened, and, after some cross examination of the Witness who proved the promise, with a view to ridicule the person and manners of the Plaintiff, Mr. Wallace, then Attorney General, and*

*who was a very able Nisi Prius advocate, endeavoured, as the lawyers call it, without calling witnesses, to laugh the Cause out of Court, by representing, that neither of the parties to the contract had any loss from the breach of it, as the Plaintiff was an ugly old woman, and the Defendant, who was then in Court, and whom he pointed out to the Jury to make the scene more ludicrous, was not a person, in the loss of whom, as* A HUSBAND, *there could be any claim to more than a* farthing *damages.—The Jury, however, returned a verdict of* TWO THOUSAND POUNDS; *and, in the term which followed, a Rule having been obtained by the Attorney General for setting aside the verdict, and for a new trial, on the ground, that the damages were* EXCESSIVE, *the following very short Speech was made by Mr. Erskine, maintaining his Client's right to the whole money, and denying the jurisdiction of the Court,* in such a case, *to impeach the verdict of the Jury.*

*Perhaps, there is no subject more important in the whole volumes of the law, than that which regards the distinct jurisdictions of Judges and Juries in that mixed form of trial, which is the peculiar and the best feature in the British Constitution.—The subject, as it applies to criminal cases, is treated of in every possible point of view in the Dean of St. Asaph's Case; but it is most important, also (even as it regards* civil *cases,) that the distinct offices of Judges and Juries should be thoroughly understood, and rigidly maintained.—If in civil actions the Court had no jurisdiction to set aside verdicts, and to grant new trials, even in cases where the Jury may either have mistaken the law, or where they may have assessed damages by no means commensurate with the loss of property, or with the injury sustained by the party complaining; if, in cases where Juries may have assessed damages either manifestly and grossly excessive, or unjustly inadequate, the Court had no jurisdiction to send the case to another hearing for more mature consideration, Trial by Jury, the boast and glory of our country, would be as great a national evil, as it is now a benefit and a blessing; but if, on the other hand, revisions of verdicts were suffered to take place, unless in cases of* manifest *injustice; if new trials were to be awarded, because Judges might differ from Juries upon occasions where men of sense and justice might reasonably differ from one another; such a proceeding would be the substitution of judicial authority, in fixed magistrates, for the discretion lodged by the Constitution in the popular jurisdictions of the country. Every pleading, therefore, which accurately marks out, and firmly maintains, those salutary boundaries,* though already very well understood and ascertained, *is worthy of a faithful report. On the present occasion, the Court refused to set aside the verdict, upon the principles contained in the short Speech which follows.*

## MR. ERSKINE'S SPEECH.

My Lord,

THE jurisdiction exercised by the Court in cases of excessive damages stands upon so sensible and so clear a principle, that the bare stating of it must, in itself, be an answer to the rule for a new trial which the Defendant has obtained.

In cases of pecuniary contracts, the damage is matter of *visible* and *certain* calculation; the Court can estimate it as well as the Jury; and though it never interferes, on account of those variations, which may be fairly supposed to have arisen from the different degrees of credit given to the evidence, yet where the Jury steps beyond every possible estimate of the injury arising from the contract broken, the Court must say that the verdict is wrong; because it is a subject upon which there can be no difference of judgment amongst reasonable men; the advantage of a pecuniary contract, and, consequently, the loss following from the breach of it, being a matter of dry calculation.—In such cases, therefore, the Court does not set up a jurisdiction over damages in violation, or controul, of the constitutional rights of Juries, but only prevents the operation of either a visible, certain, palpable mistake, or a wilful act of injustice:—this is the whole—and without such power in the Court, since attaints have gone into disuse, the constitution would be wretchedly defective.

The same principles apply, likewise, to all actions of tort founded on injuries to property; the measure of damages in such actions being equally certain.—As much as the plaintiff's property is diminished in value by the act of the Defendant, so much shall the Defendant pay; for he must place the Plaintiff in the same condition as if the wrong had not been committed:—in such discussions, there must be, likewise, many shades of difference in the judgments of men, respecting the loss and inconvenience suffered by acts injurious to property, and, as far as these differences can have any reasonable operation, Juries have an uncontrouled jurisdiction; as the Court will never set aside their verdict for a difference which might fairly subsist upon the evidence be-

tween intelligent and unprejudiced men: but here, too, when they go beyond the *utmost limits of discreet judgment*, the Court interferes, because there is in all cases of injury to *property*, a *pecuniary* calculation to govern the jurisdiction it exercises; all attacks on property resolving themselves into pecuniary loss, pecuniary damages are easily adjusted.

But there is a catalogue of wrongs over which Juries, where neither favour nor corruption can be alleged against them, ought to have an uncontrouled dominion; not because the Court has not the same superintending jurisdiction in these as in other cases, but because it can rarely have any standard, by which to correct the error of the verdict.

There are other rights which society is instituted to protect as well as the right of property, which are much more valuable than property, and for the deprivation of which no adequate compensation in money can be made.—What Court, for instance, shall say in an action for slandering an honest and virtuous character, that a Jury has over-rated the wrong which honour and sensibility endure at the very shadow of reproach?—If a wife is seduced by the adulterer from her husband, or a daughter from the protection of her father, can the Court say this or that sum of money is too much for villany to pay, or for misery to receive? In neither of these instances can the Jury compel the Defendant to make an adequate atonement, for neither honour nor happiness can be estimated in gold; and the law has only recourse to pecuniary compensation from the want of power to make the sufferer any other.

These principles apply, in a strong degree, to the case before the Court. It is, indeed, a suit for breach of a contract, but not of a *pecuniary* contract;—injury to *property* is an ingredient—but not the *sole* ingredient of the action:—there is much personal wrong; and of a sort that is irreparable; there is, upon the evidence reported by your Lordship, loss of health, loss of happiness, loss of protection from relations and friends, loss of honour which had been before maintained (in itself the full measure of ruin to a woman;) and, added to all these, there is loss of property in the disappointment of a permanent settlement for life:—and for all this, the Jury have given Two Thousand Pounds, not more than a year's interest of the Defendant's property.

I am, therefore, at a loss to discover any circumstance on the face of your Lordship's report, from which alone, the Court must judge of the evidence, that can warrant a judg-

ment that the Jury have done wrong; for, independent of their exclusive right to settle the degrees of credit due to the witnesses, what was there at the trial, or what is there *now*, to bring their credit into question? Their characters stood before the Jury, and stand before the Court, unimpeached; and Mr. Wallace's whole argument, if, indeed, jest is to be considered as reason, hangs upon the inadmissible supposition that the witnesses exaggerated the case; but the *Jury* have decided on their veracity; and, therefore, before the Court can grant a new trial, it must say, that the verdict is excessive and illegal *upon the facts as reported by your Lordship, taking them to be literally as they proceeded from the mouths of the witnesses.*—Upon this state of the case, and it is impossible to remove me from it, I think it is not very difficult to make up the Defendant's bill for Two Thousand Pounds.

The Plaintiff appears to be the daughter of a clergyman, and to have been bred up with the notions of a gentlewoman; she had been before respectably married, in which condition, and during her widowhood, she had preserved her character, and had been protected and respected by her relations and friends. It is probable that her circumstances were very low, from the character in which she was introduced to the Defendant, who, being an old and infirm man, was desirous of some elderly person as a housekeeper; and no imputation can justly be cast upon the Plaintiff for consenting to such an introduction; for, by Mr. Wallace's favour, the Jury had a view of this Defendant, and the very sight of him rebutted every suspicion that could possibly fall upon a woman of any age, constitution, or complexion.—I am sure every body who was in Court must agree with me, that all the diseases catalogued in the dispensatory seemed to be running a race for his life, though the asthma appeared to have completely distanced his competitors, as the fellow was blowing like a smith's bellows the whole time of the trial.—His teeth being all gone, I shall say nothing of his gums; and, as to his shape, to be sure a bass-fiddle is perfect gentility compared with it. I was surprised, therefore, that Mr. Wallace should be the first to point out this mummy to the Jury, and to comment on his imperfections, because they proved to a demonstration, that the Plaintiff could have no other possible inducement or temptation to cohabit with him, but that express and solemn promise of marriage which was the foundation of the action, and the aggravation of the wrong.—But, besides such plain presumption, it is directly *in proof* that she never DID cohabit

with him before, nor until under this express promise and condition; so that the whole argument is, that disease and infirmity are excuses for villany, and extinction of vigour an apology for debauchery.—The age of the Plaintiff, who is a woman towards fifty, was another topic; so that a crime is argued to be *less* in proportion as the temptation to commit it is *diminished.*

It would be in the Defendant's favour if the promise had been improvident and thoughtless; suddenly given, and as suddenly repented; but the very reverse is in evidence, as she lived with him on these terms for several months, and at the end of them, he repeated his promises, and expressed the fullest approbation of her conduct.—It is further in proof, that she fell into bad health on her discovering the imposition practiced on her, and his disposition to abandon her. He himself admitted her vexation on that account to be the cause of her illness, and his behaviour under that impression was base: having determined to get rid of her, he smuggled her out of his own house to her sister's, under pretence that change of air would recover her; and continued to amuse the poor creature with fresh promises and protestations, till, without provocation, and without notice or apology, he married another woman, young enough to be his daughter, and who, I hope, will manifest her affection by furnishing him with a pair of *horns*, sufficient to defend himself against the sheriff when he comes to levy the money upon this verdict.

By this marriage, the poor woman is abandoned to poverty and disgrace; cut off from the society of her relations and friends; and shut out from every prospect of a future settlement in life suitable to her education and her birth; for having neither beauty nor youth to recommend her, she could have no pretensions but in that good conduct and discretion which, by trusting to the honour of the Defendant, she has forfeited and lost.

On all these circumstances, no doubt the Jury calculated the damages, and how can your Lordship unravel or impeach the calculation? They are not like the items in a tradesman's account, or the entries in a banker's book; it is,

For loss of character, so much;—

For loss of health, so much;—

For loss of the society and protection of relations and friends, so much;

And for the loss of a settlement for life, so much.

How is the Court to audit this account, so as to say, that, in every possible state of it, the Jury has done wrong?—

How, my Lord, are my observations, weak as they are as proceeding from me, but strong as supported by the subject, to be answered?—only by ridicule which the facts do not furnish, and at which even folly, when coupled with humanity or justice, cannot smile.—We are, besides, not in a theatre, but in a Court of Law; and when Judges are to draw grave conclusions from facts, which not being under re-examination, cannot be distorted by observation, they will hardly be turned aside from justice by a jest.

I, therefore, claim for the Plaintiff the damages which the Jury gave her under these directions from your Lordship, "*That they were so entirely within* THEIR *province, that you would not lead their judgments by a single observation.*"

*The Rule for a new trial was* DISCHARGED.

THE

# CASE

OF THE

# BISHOP OF BANGOR

## AND OTHERS;

## *INDICTED FOR A RIOT AND AN ASSAULT.*

TRIED AT SHREWSBURY ASSIZES,

ON THE 26th OF JULY, 1796.

*THE exemplary morals and decorum which have so long, to the honour of this country, distinguished the high dignitaries of her national church, bestowed upon the trial of the Right Reverend Prelate, who was the principal object of it, an extraordinary degree of curiosity and interest. Indeed, from a perusal of the whole proceedings, we cannot help thinking, that the Prosecutor might perhaps have been influenced by the expectation that any compromise would have been preferred by the Defendant and his friends, to even a public discussion of such an extraordinary accusation as that of a riot and assault by an English Bishop, assisted by other Clergymen of his diocese, within the very precincts of his own cathedral. The Reverend Prelate, however, was not to be intimidated.—He pleaded Not Guilty to the Indictment, and received the clear acquittal of a Jury of his countrymen.*

*The Indictment was preferred against the Lord Bishop of Bangor, the Rev. Dr. Owen, the Rev. John Roberts, the Rev. John Williams, and Thomas Jones, Gent.; and was prosecuted by Samuel Grindley, the Deputy Registrar of the Bishop's Consistorial Court.*

*The Indictment charged that Samuel Grindley, the Prosecutor, was Deputy Registrar of the Consistorial Court of the Bishopric of Bangor, and that being such, he had of right the occupation of the Registrar's office adjoining to the cathedral; that the Bishop and the other Defendants, intending to disturb the Prosecutor in the execution of his office, and to trouble the peace of the King, unlawfully entered into*

*the office, and stayed there for an hour, against the will of the Prosecutor; and it further charged, that they made a disturbance there against the King's peace, and assaulted Grindley, so being Registrar, with an intent to expel him from the office.*

*The Indictment was originally preferred in the Court of Great Sessions, in Wales, where the offence was charged to have been committed, but for a more impartial hearing was removed into the Court of King's Bench, and sent down for trial in the next adjoining county, before a Special Jury, at Shrewsbury, where Mr. Adam and Mr. Erskine attended on special retainers; the former as Counsel for the Prosecution, and the latter for the Bishop and the other Defendants.*

*In the pursuit of our plan, to preserve some remarkable Speeches of Lord Erskine, when at the Bar, we felt that we could not, upon this singular occasion, have recourse to a better or more impartial preface, than to introduce, at length, the Speech of Mr. Adam, who conducted the prosecutor's case with the greatest zeal, ability, and eloquence; his Address to the Jury containing all the facts intended to be proved and relied on; and as the Speech of Mr. Erskine, for the Bishop, comprehends also, the whole body of the evidence as it remained after the examination and cross-examination of the witnesses, and on which, therefore, he rested his Client's claim to acquittal, having called no witnesses on the part of the Defendants, the whole matter for judgment appears most distinctly, from the two Speeches, without the introduction of the proofs; more especially as we have also printed the summing up of the evidence by the Judge.**

* They who may wish to refer to the proofs themselves, will find them in the printed report of the Trial, as taken in short-hand by Mr. Gurney, from which these speeches are taken, and which was published at the time, by Mr. Stockdale of Piccadilly.

# THE KING v. THE BISHOP OF BANGOR, AND OTHERS.

MR. ELLIS opened the Pleadings.

MR. ADAM for the Prosecution.

MAY IT PLEASE YOUR LORDSHIP

GENTLEMEN OF THE JURY,

YOU have heard from my Learned Friend, who has opened the pleadings to you, that Samuel Grindley is the prosecutor, and that he is Deputy Registrar of the Diocese of Bangor.—You have heard, likewise, that the Defendants are, the Bishop of Bangor, three Clergymen, and a gentleman who is Agent for the Bishop.

In the outset of this cause I have already learned enough, from the manner in which my Learned Friends have received the opening of the pleadings, to show me, that they seem to have an inclination, as it were, to make that a jest, which I can assure you, is a matter of extreme seriousness.—Gentlemen, I introduce it to you with all the anxiety which belongs to a person who is unaccustomed to address you —I introduce it with the anxiety which belongs to a person, who is to maintain a conflict with abilities that are seldom unsuccessful; but I open it to you, I do assure you, in the pure spirit of moderation and of candour; and, if I might say so in a question of this sort, in the pure spirit of the true principles of Christianity; that is, of wishing that all mankind should do unto others as they wish to see done unto themselves.

Gentlemen, I wish to call your attention to it seriously, and will just take the liberty of stating, why *you* are called upon to judge in this cause.—The question to be tried did not happen within your ordinary jurisdiction: it was not in this county that the offence, which is complained of, took place; but an application has been made to remove it here; and it is impossible that such an application might produce some preju-

dice in your minds, as if there had been something in the conduct of the party, for whom I have the honour to appear, which has made it improper to permit the question to be tried where it arose. The application to remove the cause from Wales to the nearest English county, was made upon an affidavit, which I have not seen, and was granted by Lord Chief Justice Kenyon, who undoubtedly exercised his discretion wisely and justly, as he does upon all occasions. He thought, that, under the circumstances stated by those concerned for the Bishop of Bangor, and upon the affidavit made by those who are prosecuted, without any opposition or interference of any sort or kind whatever by the person who appears here as the Prosecutor, that it was fit to remove it.—When he did so, I know he removed it to a tribunal of uprightness, of virtue, and honour.—I know he removed it to a situation where, I am confident, intelligence and integrity will alike prevail; and I am by no means afraid of the mere circumstance of its being removed, having any influence upon minds like yours.

Gentlemen, there may have arisen prejudices in this, as there do arise prejudices in many causes. Undoubtedly, this is not the first time that the matter has been the subject of conversation and discourse; probably it is not the first time that even you, who are impannelled to try the cause, may have heard of it. It is my duty to my Client, it is my duty to the public likewise, if there should have been any such conversation about this prosecution, to remove all those prejudices, to remove all the impressions that may have been received, not only from your minds, were it possible you could have received them, but from all those that stand around. I say it is important to my Client, and it is important to the cause of public justice, that I should endeavour to remove them.

Gentlemen, I beg leave to state to you, in the temperate spirit which I have professed, that this is not a question, in which the general religious establishment of the country is at all involved—it is a question, I can assure you, which is confined to the individuals who appear upon this record. It reaches no farther than *their* conduct, on the *particular* occasion. It is a question which cannot, I am sure, have the least effect to the prejudice of that doctrine, or to the prejudice of that rank and situation in the state, which is so important to the well-being of society, and so essential to bind together, and to sustain, those principles which tend, not only to our happiness hereafter, but to the good government of the world

in which we now live. I pledge myself, then, that, when you come to hear this case, you will find that the facts I shall prove are confined singly and solely to the parties named in this Indictment.

Gentlemen, there is another circumstance to which I could wish to call your attention, before I enter into the merits of the case—namely, that although a Church Dignitary stands in the front of those indicted, *that* is no reason whatever, why this Indictment should not have been preferred; for if the facts which I have to state to you, and which I shall afterwards prove—if the principles of law which, under his Lordship's direction, I shall have the honour to lay down to you, are correct, you will find that the public justice *must* be satisfied by a verdict of Guilty, notwithstanding the rank and situation of the first individual who is indicted.

It is a painful thing to me, not only on account of his rank and his situation, as a Bishop of the Church and as a Peer of Parliament, to address you upon a subject of this sort; but it is more so when I consider, that, in the intercourse of my professional life, I have had frequent occasion to see that person discharging duties in another place, in a judicial and legislative capacity: I have often had the honour, and I will say too the satisfaction, to address him in that station. Gentlemen, I can assure you that I speak with no personal feelings against the Bishop; they are all naturally on the other side. But what is more, I can assure you that my instructions are, to conduct the cause in a pure spirit of temper and moderation, such as I have already described to you.

Gentlemen, this is not the only time that dignitaries of the church have been indicted, and found guilty. You have but to look back to the bead-roll of the State Trials, and you will find many instances of the sort. You have but to reflect a few years back, when a person, upon an indictment, removed in the same manner, though not a Bishop, yet a dignitary in the church, was brought into this Court, for reasons similar to those which bring you now here to try this Indictment. They who heard my Learned Friend* upon that occasion, they who have read the history of that period, cannot forget the uninterrupted stream of splendid eloquence and of powerful ability, which has been rolling on, with increasing force, from that period to the present moment, and which, then almost in its infancy, was exerted in a question similar to that in which I have now the honour to address you, which marks that there

* Mr. Erskine, as Counsel for the Dean of St. Asaph.

was, within our own memory, in this very place, a prosecution of a church dignitary for a misdemeanor, as there is upon the present occasion.

Gentlemen, I will state plainly why this question is tried, and why you are called to deliver a verdict upon it. It is, in the first place, upon principles of public justice, in order that the justice of the country may be satisfied.—The prosecution is likewise proceeded in, on another principle, which I am sure I am warranted by the law of the land to state as a sound one; it is founded in an honest, fair, justifiable attempt, upon the part of this prosecutor, to vindicate his own character, through the medium of this prosecution—I say, when I assert that to you, I state a legitimate ground of prosecution, and one that is consistent with the laws of the country; for it is in the power of any individual to use the name of his Majesty for the purposes of public justice; ay, and for the purpose of vindicating his own character and reputation. It is done every day in the case of libel, and may equally be done in the case of assault, or riot.

The situation of this Prosecutor was, and is, that of a person, who, by industry in his profession, and in the different situations which he held in the part of the country where this offence was committed, gained to himself a livelihood. He found himself at once in the eye of that public where he lives, in the circle of that community and society to which he belongs (if he did not take some method of bringing this matter forward to the public observation of the country, and of bringing these Defendants forward to receive the public justice of the country,) in the risk of being, in all probability, deprived of the honest earnings of his industry, and of the situations which he held for the benefit of himself, and the support of his family.—These are the principles upon which this prosecution is brought forward; these are the principles which do not at all involve any thing of a vindictive spirit; they are principles upon which every honest man daily acts; they are principles upon which every honest man may legally act. Who could have blamed Mr. Grindley if he had brought an action of damages against the Bishop, for the injury he has suffered? What is the situation in which he stands here—not bringing an action for damages indeed, but preferring an indictment? I will venture to say, that, under the circumstances of this crime, and agreeably to the matter charged in this *Indictment*, a prosecution leaves the Defendants more ample means, and a better mode, of defending themselves, than if an *action* had been brought, and

they had been put to plead a justification to that action. These are the points to which I wish to call your attention, in order that your minds may come coolly, deliberately, and without prejudice, to the trial of this cause.

Gentlemen, the Indictment, as you have heard, states, that the parties upon this record were guilty of a riot, by entering into, and doing certain acts in the office which belonged to the Prosecutor, as Deputy Registrar of the diocese of Bangor. It states nothing but a riot. There is no count in this Indictment singly for a common assault, although it is the common mode, in drawing Indictments of this sort, to conclude with the charge of a common assault, with a view of securing a verdict, in case the facts should not come up to the proof of a riot. I wish to call your attention particularly to this, because it shows, there was no spirit to catch, by a hair, these parties, for conduct, which, if it does not amount to a riot, is not the subject of which this Prosecutor means to complain.

It is necessary for me (and I shall do it very shortly indeed, before I enter into the state of facts which I must lay before you) to explain the law upon the subject of riot.—There are various offences which people commit, congregated together, which receive different denominations in law, from the simple offence of an affray, up to that of a riot, which it may be well for you to know, in order that you may be able to apply the evidence when you come to hear it. The case of an affray is a matter which arises accidentally, without any premeditation or intent.—The next in order is an unlawful assembly; that offence consists in persons assembling together, to do some act respecting private property (not concerning the affairs of the public,) and separating without doing any act whatever.—There is another case, commonly denominated a rout, which is, advancing towards the act, without arriving at it.—The highest in order is a riot; in which there must be these ingredients; in the first place, there must be three or more persons engaged in it; in the next place, there must be an intent and purpose in the parties to commit a riot, and in the third place, it is essential that it should have for its object some matter of private concern.—When you come to hear the evidence, you will always bear this definition in your mind; which I am satisfied my Learned Friend will not contradict, and I am equally satisfied, my Lord will support me in, when he comes to address you.

I pledge myself, then, to prove, that the Bishop of Bangor, and the other Defendants upon this record, were guilty of that which I have last described—that there were three or more of them—that they committed a riot, in a matter respecting private property, and that they had an original intent and purpose in the act which they did. With regard to the intent and purpose, you will always observe this—that intent and purpose may either arise from the facts and circumstances that exist at the time of the transaction, which, by inference, establish a necessary presumption of an original intent; or, it may be made still more palpable to you, by showing a line and tissue of conduct which necessarily involves that intent and purpose, and, therefore renders presumption unnecessary, by giving you clear, demonstrative, decided proof, arising from the acts and transactions of the parties establishing a premeditated design, intent, and purpose, in the acts which they did. You will find that this last observation will apply, most materially and forcibly to the evidence I am about to lay before you, and the circumstances I am about to recite.

I profess, Gentlemen, again and again, that I have no object in view, but making you understand this case; and if, in the course of my address to you, I either elevate my voice, or give into a manner of action that is contrary to the utmost moderation, I trust you will attribute it to habit, and not to intention.—I have no wish, but coolly, deliberately, and calmly, to make you masters of the facts, the circumstances, and principles, upon which this important cause must be decided.

Gentlemen, I have already stated to you, that the Prosecutor of this cause was Deputy Registrar of the consistorial Court of the diocese of Bangor.—It is essentially necessary that I should make you acquainted with the nature of that office; and not only that you should become acquainted with the nature of the offices of Registrar and Deputy Registrar, generally, but that you should likewise be made acquainted with the particular circumstances and local situation of the Prosecutor and his office.

The Deputy Registrar is appointed by the Principal Registrar.—The general nature of the office of Registrar is, that he has the custody of all the archives and muniments that relate to the spiritual court of the diocese; that is, he is to register all the acts of a juridical nature; and he is, besides *that*, the Registrar of all the wills and testaments of the persons who die within the diocese.—So that, you observe, it is an office of great importance, and extending to the interest and property

of a vast portion of the community; that it is an office, where the safe custody of the different archives and muniments is of the utmost consequence.—Certainly, according to the law of the land—according to decided cases to which, if it is necessary, I can refer his Lordship, it is competent to appoint a minor to the situation of Registrar; and, accordingly, the present Bishop of Bangor, upon the resignation of the former Principal Registrar, did appoint a nephew of his, a minor, to be Principal Registrar.—As it is competent to the Bishop to appoint a minor to be Principal Registrar, so it is equally competent that that minor should, by some mode, appoint a deputy.

The reason why a minor can, in this case, deviate from the general rule of law, and do an act appointing a deputy, is, because it follows, from necessity, that the business of the office of Registrar *must* be discharged. If the minor could not appoint, of course the duties of the office could not be discharged, and therefore, *ex necessitate rei*, from the necessity of the case, the minor is at liberty to appoint a deputy. But the power of the minor goes no farther—there the law stops. The general rule of law is, that a minor can do no act—that he has no will, because he is not supposed to have understanding to act for himself. The exception, in this particular case, is, that the minor does an act for the purpose of appointing his deputy; but the necessity goes no farther. I have it in my power to state to you, from a very recent decision, as well as from the very nature of the thing itself, that this Registrar cannot remove his deputy; for in this very case an application was made to the Court of King's Bench (and though this may be tedious, it is an important part of this business,) an application was made to the Court of King's Bench for a mandamus, calling upon the present Prosecutor, Mr. Grindley, to deliver over to a person, of the name of Roberts, all the muniments within his power, and to deliver up to him likewise the keys of his office, and thereby give him possession of the place where the business is conducted, and where the muniments are preserved.—The result of that application, for the order of the Court to compel this to be done, was, that it was denied by the Court; and I have the authority to say, from those who heard it, that the ground upon which it was denied was this: Lord Kenyon was of opinion, that it was essentially necessary to apply to the Court of Chancery, to appoint a proper guardian for the minor, that there might be sufficient authority to appoint another Deputy Registrar in the stead of Mr. Grindley; but that he, being in possession of

this office, and Mr. Roberts not showing a right to the possession of the office, it was impossible for the Court to grant the order applied for.

I have, then, established clearly, in the first place, that Mr. Grindley was in possession of the office; and, in the next place, that there was no legal power to remove him.—Consequently, although, from necessity, the minor may appoint in the first instance, yet, if the office of Deputy Registrar is properly discharged, that necessity not existing for the removal, the Deputy Registrar must remain until the Principal arrives at the years of majority; or until he has such a guardian appointed by the Court of Chancery, as is capable of acting in such a subject matter.

Gentlemen, there is one other circumstance I wish to state respecting the law upon this subject—namely, that where a Registrar is appointed by the Bishop, and a Deputy appointed by the Registrar and the Principal Registrar is a person not in a situation to act, there is no power and authority, on the part of the Bishop, to remove the Deputy Registrar.—The Bishop, by law, has no power or authority whatever to remove the Registrar or Deputy Registrar, except in the following manner. If the Registrar, or his Deputy, does any act or acts which are, in their nature, contrary to law; if they do not act consistently with the duties of their office, then, in that case, undoubtedly, the Bishop may suspend, but his suspension is confined to "a year or more;" and it has been decided, that the words, "or more," do not extend indefinitely to any period, but must be confined to a reasonable period subsequent to the year. Gentlemen, I beg you will bear this position of law in your mind, because you will find, throughout the whole of this cause, that the Bishop has had no fault whatever to find with Mr. Grindley, in the discharge of the duties of his office; for he has never thought him amenable to his jurisdiction for the purposes of suspension; that he must have conceived, therefore, that in the discharge of the duties of his office, he has acted like an honest, faithful guardian of his public trust.—If he had not done so, would not this Bishop, who, as I shall prove hereafter, attempted first by art, and afterwards by force, to remove him from that situation, would he not have made use of his suspending power? Would he not, near the period of the minor Registrar coming of age—which would have been in less than a year from these transactions—would he not, I say, have suspended him for a year or more, in order that the trust might not have been discharged improperly? by which means, the minor, when he arrived at that age of

twenty-one, when he would have the free exercise of his own will, might, according to law, have exercised the power of amotion over his Deputy at his pleasure, without assigning any cause whatever for the removal?

Gentlemen, it is material, in the discussion of this cause, and most material to your understanding the evidence, that you should know the particular situation of the office; I mean *the local situation of the place* in which the muniments and records are kept. It is, as I understand, built adjoining to and upon the cathedral church of Bangor; there is a flight of steps arising to it, and you go through a porch, on which there is an outer door.—Having got within the porch, there is an inner door opens to the registrar-office; the office is directly opposite to the Bishop's palace; there is nothing but a courtyard between them; and it is so near, that every voice, perhaps, may be heard from the one place to the other; of that, however, I am by no means certain, but it certainly is within sight of the Bishop's palace, adjoining to, and built upon, the cathedral.

I have stated the duties of this office; I have shown you that they are grave and serious duties: I have stated the responsibilities of this office; I have shown they are grave and serious responsibilities: I have stated the nature of the muniments kept in this office, and the place in which they are kept: and I contend, I think, without the hazard of contradiction by my Learned Friends, that the person who was thus appointed Deputy Registrar, was irremovable, except by the mode of suspension by the Bishop, in the manner I have mentioned. He was not removable by the minor, but through the medium of a guardian, which guardian must be appointed by the Court of Chancery.—The Deputy Registrar, thus invested with this office, so charged with those duties, and these responsibilities, had as good a right and title to possess that office—to possess the house or place which I have described, to maintain it,—to take it again if it was taken from him, and to defend himself in it, as any Englishman has to defend his house, which is emphatically denominated his castle.—It is impossible to compare it more accurately. All the circumstances that belong to the sanctuary of a house, belong to the sanctuary of this office. The sanctuary of our house is for our repose, quiet, and security; it is, that we may protect our families: the sanctuary of this office is not, that the family of an individual may be protected, but is for the protection of the interests of an extensive community; it is,

that all the devises of personal estates, that all the records in the office of a legal and a judicial nature, that all the interests of a large and important diocese, may be protected. Then, all the arguments for a man's maintaining and defending the possession of his house, apply infinitely stronger to an office charged with such responsibilities.—It is impossible that he can secure, it is impossible that he can maintain that, which is essential for him to justify his conduct towards the public, without maintaining possession of the building, where these things are preserved; and every person who attempts to trespass upon it, is a trespasser in the eye of the law; every person who makes a riot in it, is amenable to the justice of his country.

I have described the situation of this office; it is built adjoining to the cathedral; the wall of it runs into the wall of the cathedral.—I have described the nature of it; it is a spiritual office.—Is it possible that any thing can amount more nearly to the description, which the great Roman orator gave as the definition of a house: "Quid enim sanctius, quid "omni religione munitius, quam domus uniuscujusque civis?" What can be more holy? What can be more protected by every principle of religion?—This is a spiritual office—it is a spiritual office carried on in a building annexed, in local situation, to the cathedral church.—Thus annexed by duty, and annexed by situation, it falls in precisely with the comparison I have made; and shows you, that this gentleman, Mr. Grindley, was bound, for his own sake, for the sake of the public, with whose interests he was intrusted—for the sake of the community of the diocese to which he belonged—by the sacred situation of the place of office, to possess, and protect his possession in it, that the muniments and the archives might be preserved.

Gentlemen, I am sorry I have detained you so long in the preliminary part of this case; I hope, however, I have not wandered, but have confined myself accurately to the question before you. I think I have done no more than laid that ground, which is necessary for your understanding the facts: and I now come to state to you, precisely and accurately, what the nature of those facts is. I told you, originally, that I aim only at distinctness. If I have that quality, I have every thing I can wish. In order to be distinct, and in order to show you with what mind and intent this riot was committed, I anxiously entreat your attention to the commencement of the connexion between Mr. Grindley and the Bishop of Bangor.

Early in the year 1792, Mr. Grindley was appointed agent for the Bishop of Bangor. In the month of February of that year, the Bishop appointed his nephew, a minor, to the situation of Registrar of the Consistorial Court of the diocese. In the month of March 1792, Mr. Grindley was appointed Deputy Registrar. He continued to act in the situation of Deputy Registrar, down to the year 1794, when, for the first time, he saw the minor, who confirmed the appointment, and who treated him as his Deputy Registrar. The bargain was, that Mr. Grindley was to pay his principal seventy pounds a year.—He discharged the regular payments.—He continued to act in his office, without any offence to the Bishop; and that he had committed no offence in his office, is clear, otherwise he, the Bishop, must have suspended him. He continued, I say, to act in the discharge of the duties of his office, down to the autumn of 1795. Here then begins the history which gives origin to this prosecution.

The approach of the general election led the Bishop of Bangor to think, that he might perhaps, be serviceable to some of his friends; and he thought those immediately under him were likely to be influenced by him.—He applied to Mr. Grindley, for his interest in the county of Caernarvon. His application did not meet with the reception, or with the answer, he expected. Mr. Grindley thought, as I hope every Englishman thinks, that he had a right to the free exercise of his franchise, and the free exercise of his influence; but although he thought so, I can assure you that he behaved with great temper and moderation.—Mr. Grindley now found that his connexion with the Bishop became a connexion that was not so comfortable, if they were not to agree in their election interests; he thought it right therefore, to resign the office of Agent to the Bishop; and he accordingly resigned his place of Agent in the month of January.—At the time he did so, he signified expressly, that on the 22d of February, he would resign the office of Deputy Registrar.—Now, could any thing be more moderate?—You may, perhaps, ask, why he did not resign the office of Deputy Registrar at the time he resigned the situation of Agent? The reason he assigned was this, and it is a valid and substantial reason—that his year of appointment as Registrar ended upon the 22d of February 1796; that, by retaining the office till that time, he should be enabled to make up his accounts, to settle all his business, and then he would quietly take his departure from it.—Could any

thing be more moderate, could any thing more be wished for by the Bishop? If this Registrar had become obnoxious to him, because he did not obey him in matters with which the Bishop, I must say, ought to have had no interference, either as a Bishop or as a Lord of Parliament; if he wished to get rid of Mr. Grindley, might he not have had that patience which ought peculiarly to belong to the character of those who appear as Defendants upon this indictment? Might he not have had patience for but a little month, till the Deputy Registrar voluntarily resigned his office? There is something in this conduct of the Bishop, which it is almost impossible to account for, unless one were to dive into those speculations, which have led one to know what the motives, and what the feelings of men are, in different situations of life, and in different characters in society.

I recollect a very profound and a very wise saying, equally true as wise, with respect to the clergy. It was said of them, "That they had found, what Archimedes only wanted, an-"other world, on which to fix their fulcrum, by which they "moved this world at their pleasure."—That saying will go far to expound this conduct. In all spiritual matters, it is a wise, a just, a true maxim, calculated to show the true principles upon which the clergy possess, and truly and justly, and eminently and beneficially to the society in which we live, possess that influence upon mankind, which ought to belong to their character and situation in all spiritual affairs —but when they travel from spiritual to temporal concerns —when they quit the affairs of the other, and look only to the concerns of this world; when they interfere in politics above, or in elections below, then that character, which directs their influence in the clerical function, unfortunately follows them into their temporal concerns. If they are disappointed, they cannot brook it.—They have been taught to regard mankind as persons whom they are to govern at their pleasure—they are incapable of smoothing the matter over, as men, more accustomed to the ordinary concerns of life, are; and their spiritual power uniformly follows them into temporal concerns, if they are imprudent enough to mix in them. This is vouched by the history of the world, in all ages; it is vouched peculiarly by the history of this country. Who ever heard of Sherlock or Lowth interfering in such matters? No! They were enabled to move this world at their pleasure, because their lives were spiritual and holy. Who has not heard that Wolsey and Laud were of a different character

and description? The Ego et Rex meus of Wolsey, and the violence of Laud, against the privileges of the people of England, are equally to be collected from that witty, wise, and just maxim to which I have alluded. Such is the situation of the persons concerned.—Gentlemen, it does not signify whether the scene is in the world at large, or in the county of Caernarvon; whether it is transacted in the palace of Whitehall, or in the church-yard of Bangor;—the same causes, in the hand of the Supreme Being, directing this world to its good, will always produce the same effects; and I cannot account for the Bishop not having accepted of this moderate, of this attentive, of this happy proposition (I might almost say, if it had been accepted) of the Deputy Registrar, but that he had deviated, from what he does not, I am sure, often deviate from,—from spiritual to temporal concerns;—that he had forgot the concerns of that pure and humble religion, of which he is an eminent pastor, and that he had been drawn aside by the peculiar interests of friendship, by the strong ties of connexion, or by something else, in order to act in the manner which I have described to you.

In fact, the resignation has not been made at all; and the transactions, which I am about to relate, will show the reasons why it has not been made, and will prove, that it was not possible to have been made with safety. Mr. Grindley found the Bishop had become hostile to him; he found, he was no longer safe in resigning it into hands, that could not legally accept the resignation; he found, he could not have that confidence, which would have taken place, if it had been left to his own freedom and choice; and that, after he had resigned into the hands of a minor, he would, in point of law, have retained all the responsibilities of the office, without being, in fact, in the office, to discharge the duties:—Therefore it is, he has not resigned the office. But the transaction which I am about to state to you, and I am now come to the real question in the cause (though I humbly think, under his Lordship's direction, that nothing I have said is irrevolent)—the transaction I am about to state to you, will unfold the whole.

Between the fourth and the eighth of January 1796, which you see was a month previous to the term of the proposed resignation, these transactions took place.—First of all, the Bishop, in the absence of Mr. Grindley, the Deputy Registrar, sent for the seals; and he obtained one seal. I think the other seal Mr. Grindley's clerk had not in his possession, and it was not delivered.—This was intimated to Mr. Grindley; and Mr. Grindley, imagining that the Bishop, having

obtained one seal, might possibly attempt to obtain the keys; he, therefore, being at that time in Anglesey, wrote to his clerk to beware not to give the Bishop the key of the office if he asked for it. The Bishop did ask for it; and was refused. —Upon the 7th of January, Mr. Grindley returned, and found that his office had been broken into.—He ascertained, as I shall prove, from the Bishop's own mouth, that the Bishop had given directions to break open the window of the office, to take the locks off the door, and put on other locks. —In this situation Mr. Grindley found himself, respecting an office, for the duties of which he was legally responsible; for he is, both in law and in fact, Deputy Registrar, and has been so from the year 1792, down to the present time, without any attempt to cast a slur on his character in the discharge of his duties.

Gentlemen, I come now to the principal facts; and I can assure you I will act in the spirit which I professed at the outset. I wish to state every thing candidly to you; I have nothing to hold back. I do not mean to say that upon every occasion, it is possible to justify persons in their transactions for moderation and for prudence; and yet I think, when you examine the transactions of Mr. Grindley, you will see, under all the circumstances, that they were neither immoderate nor imprudent.—Mr. Grindley's offer of resignation had been scoffed at, and rejected.—He had been treated in such a way as to make it natural to suppose that he would be exposed as a culprit, in the discharge of his duty, to the whole community to which that duty appertains. He found, that it was essentially necessary for him to know in what state the muniments and archives were, which he alone had a right to the possession of.—He found the means of entrance debarred, and, therefore, determined to get admission to the office; and, having got admission, he determined to maintain himself in the possession of it, as he had a full right to do.

In the morning of the 8th of January, Mr. Grindley went to the office, with the means of getting admittance into it.— You will observe, that the first attempt to get possession of the office had been on the part of the Bishop.—You will always recollect, that the Bishop has no earthly right to the possession of the muniments of that office, as long as the Registrar properly discharges the duty of the office.—He has no right to keep the Registrar out of his office, but the Registrar has a right to keep all mankind out of it, except those who come upon business, and except the Bishop when he comes in the discharge of his duty *as Bishop of Bangor*.—Mr.

Grindley imagined, from the violence that had taken place before, that is to say, from the violent breaking into the office originally, and from the offer of compromise on his part, and even of resignation, being wholly rejected, he imagined, and it was natural so to imagine, that force would be opposed to force, when he once got possession of his office; and therefore, undoubtedly, Mr. Grindley went provided, so as to secure himself against the possibility of that force depriving him of his office.—Gentlemen, I insist, that when he was in possession of his office, he had a right so to do. All this will be proved—I say it will be proved: because I know Mr. Grindley, who is the first witness, is a person beyond the suspicion of not acting agreeable to his oath.—The oath is, "that he shall speak the truth, the whole truth, and nothing but the truth."—It has been uniformly expounded, that a person, who does not speak the whole truth in a court of justice, is as criminal as he who speaks a direct falsehood.—I feel myself bound in duty and in conscience, as an advocate, to state to you the whole truth; and Mr. Grindley is a man of that conscience, that he will speak the whole truth in the manner in which the thing happened. It will then be for you to judge, under all the circumstances; and I think that, whatever opinion you may form with regard to Mr. Grindley's rashness in his manner of getting possession of the office, and his determination to maintain possession of it, you will be convinced, that the Bishop and those indicted, were in fact guilty of a riot, for endeavouring to get possession of it, and coming and interrupting him in the manner I shall describe and prove.

Mr. Grindley went with pistols in his pocket; but it will be proved, *these pistols were unloaded.*—Now I can assure my friends (whatever gestures they may make) that I am not in the least afraid of this fact.—I say, his going with *unloaded* pistols, proves, that he had, in regard to getting possession of the office, no intent of offence whatever.—He took powder and shot, with which, when he got possession, he loaded his pistols—which proves that he was determined, being in peaceable possession of his office, to maintain that possession; and I contend, that the Deputy Registrar of the diocese, under the circumstances I state, had a right so to do.—I say, that every argument, every fact which applies to the case of a man's own house being his castle, applies to this case.—Mr. Grindley, after he had opened the outer door in the porch, in order to prevent any riot, and for the purpose of intimidation, threatened one of the persons who came from the Bishop's house to interrupt him, with an unloaded pistol;

for it will be proved, that the pistols were loaded at a *subsequent time*. After this first attempt to disturb him, there was a considerable interval; and during this interval Mr. Grindley got into the inner door. Mr. Grindley being thus in the office, the Bishop and various of his servants arrived.—The Bishop hollowed with a voice so loud (as will be proved to you) that Mr. Grindley did not know it; his passion was so vehement, that it was absolutely impossible to distinguish his voice.—The moment Mr. Grindley knew it was the Bishop, he said he had no objection to the Bishop's being let in, and he desired his servants quietly and peaceably to retire to a farther corner of the room.—Mr. Grindley then came forward, and said, that whatever business was to be done, he was ready to do it; that he considered himself as the legal officer, and he was then in the quiet possession of his office; that, with regard to his Lordship, he was perfectly willing he should come into the office, but he begged that his Lordship's boisterous and tumultuous conduct might cease.—I really wish, rather that the witnesses should describe what passed afterwards, than that I should.—But instead of that tumultuous conduct ceasing, the Bishop approached first to Mr. Grindley, afterwards to his servants, with threatening gestures, and with threatening words, laying his hands upon them; and he was assisted by the four other persons indicted, who afterwards came into the office, whose actions and words were precisely of the same kind and description.

Gentlemen, one of the grounds of riot which you have to try, is this, That here was a person, legally entitled to the possession of his office illegally forced from that office; he had taken possession of this office, and remained in the quiet possession of it.—Now, whether he did so in a manner that a perfectly calm and unconcerned spectator may approve of, as an abstract case, I do not know; but I am addressing myself to persons who have human passions; I am addressing myself to Gentlemen, who know what human nature is; and I am sure, that in an outrage of this sort, committed after a voluntary offer of resignation, such as I have stated; after a conduct so peaceable and quiet, even a worm, if trod upon, would have turned again.—Mr. Grindley had got quietly into the possession of his office, and then, after a lapse of time, this office was again attacked in the riotous, tumultuous, and extraordinary manner which the witnesses will state, but which I forbear detailing, because, in the first place, it is unnecessary for your understanding the cause, and in the next place, it is painful for me to state it. This disturbance went

on a considerable time, and at last it ended only by persons, whose sex and character I have too great a respect for, to introduce them into the cause, more than just to say, that by the intervention of Mrs. Warren and two ladies, the Bishop was at last quieted from his passion, and withdrawn from the riot. There the business ended. Gentlemen, this is the case which you have to try; and I think I can venture to say, that if the facts are proved in the manner I have described, and I take upon me to say I have stated them most correctly, it is impossible for you not to find a verdict for the Prosecutor.

Gentlemen, it would be in vain, and an absurd thing in me, to detain you with any particular address to yourselves. I have the honour of knowing hardly any of you personally, although among the Jury there are some gentlemen whom I have had an opportunity of seeing in another scene in life. I know your characters, and I know that however you may feel yourselves bound to protect the ministers of our church, though I think this prosecution can have no effect upon any but the particular churchmen engaged in this transaction, that you will yet guard yourselves against deviating from those principles according to which you are bound to act, and that you will find according to the evidence.

Gentlemen, there is no principle implanted in the human mind, stronger than the sympathy which we feel for the situation and suffering of persons of high rank and condition: it is one of those principles that bind society together; and is most admirably infused into our nature, for the purposes of good government, and the well-being of civil order.—But whatever the rank may be, that rank can never stand between a defendant and the proof of the fact, with a Jury of Englishmen. They know their duty too well: neither compassion, sympathy, nor any other principle, can possibly affect their minds.—Consider what is the peculiar situation of these Defendants; reflect, that they are set apart by the laws of the land, and the regulations of the Christian religion, for the purpose of preaching the doctrines of Christ. Our law has been so peculiarly cautious with respect to their character, that even when it empowers the civil magistrate to quell a riot by calling to his assistance every other member of the community, it peculiarly excepts, with women and children, the clergy. I have brought before you persons of that description, who, instead of claiming an exemption from being called upon, have themselves been guilty of a riot; for which they are justly amenable to the laws of their country.

*After the examination of the witnesses, and the close of the Prosecutor's case, Mr.* ERSKINE *spoke as follows:*

GENTLEMEN OF THE JURY,

MY Learned Friend, in opening the case on the part of the Prosecution, has, from personal kindness to me, adverted to some successful exertions in the duties of my profession, and particularly in this place. It is true, that I have been in the practice of the law for very many years, and more than once, upon memorable occasions, in this Court; yet, with all the experience which, in that long lapse of time, the most inattentive man may be supposed to have collected, I feel myself wholly at a loss in what manner to address you. I speak unaffectedly when I say, that I never felt myself in so complete a state of embarrassment in the course of my professional life;—indeed, I hardly know how to collect my faculties at all, or in what fashion to deal with this most extraordinary subject. When my Learned Friend, Mr. Adam, spoke from *himself*, and from the emanations of as honourable a mind as ever was bestowed upon any of the human species, I know that he spoke the truth when he declared his wish to conduct the cause with all charity, and in the true spirit of Christianity.—But his duties were scarcely compatible with his intentions; and we shall, therefore, have, in the sequel, to examine how much of his speech was *his own* candid address, proceeding from *himself;* and what part of it may be considered as arrows from the quiver of his CLIENT.—The cause of the Bishop of Bangor can suffer nothing from this tribute, which is equally due to friendship and to justice:—on the contrary, I should have thought it material, at any rate, to advert to the advantage which Mr. Grindley might otherwise derive from being so represented.—I should have thought it right to guard you against blending the Client with the Counsel.—It would have been my duty to warn you, not to confound the one with the other, lest, when you hear a liberal and ingenuous man, dealing, as he does, in humane

and conciliating expressions, and observe him with an aspect of gentleness and moderation, you might be led by sympathy to imagine that such were the feelings, and that such had been the conduct, of the man whom he represents. *—On the contrary, I have no difficulty in asserting, and I shall call upon his Lordship to pronounce the law upon the subject, That you have before you a prosecution, set on foot without the smallest colour or foundation—a prosecution, hatched in mischief and in malice, by a man, who is, by his own confession, a disturber of the public peace; supported throughout by persons who, upon their own testimony, have been his accomplices and who are now leagued with him in a conspiracy to turn the tables of justice upon those, who came to remonstrate against their violence, who honestly, but vainly, endeavoured to recall them to a sense of their duty, whose only object was to preserve the public peace, and to secure even the sanctuaries of religion from the violation of disorder and tumult.

What then is the cause of my embarrassment?—It is this. —In the extraordinary times in which we live; amidst the vast and portentous changes which have shaken, and are shaking the world; I cannot help imagining, in standing up for a Defendant against such Prosecutors, that the religion and order, under which this country has existed for ages, had been subverted: that anarchy had set up her standard; that misrule had usurped the seat of justice, and that the workers of this confusion and uproar had obtained the power to question their superiors, and to subject them to ignominy and reproach, for venturing only to remonstrate against their violence, and for endeavouring to preserve tranquillity, by means not only hitherto accounted legal, but which the law has immemorially exacted as an INDISPENSABLE DUTY from all the subjects of this realm. Hence, it really is, that my embarrassment arises; and, however this may be considered as a strong figure in speaking, and introduced rather to captivate your imaginations, than gravely to solicit your judgments, yet let me ask you, Whether it is not the most natural train of ideas that can occur to any man, who has been eighteen years in the profession of the English law?

* No observation can be more just than this—It is the most consummate art of an advocate, when he knows that an attack is likely to be made upon his Client for turbulence and malice, to make the Jury think, by his whole speech and demeanour, that mildness and justice were his characteristics; and Mr. Adam appears with great ability, to have fulfilled this duty.

In the first place, Gentlemen, WHO are the parties prosecuted and prosecuting?—What are the relations they stand in to each other?—What are the transactions, as they have been proved by themselves?—What is the law upon the subject?—and, What is the spirit and temper, the design and purpose of this nefarious prosecution?

The parties prosecuted are, the Right Reverend Prelate, whose name stands first upon the Indictment, and three ministers and members of his Church, together with another who is added (I know not why) as a Defendant. The person prosecuting is—*(how shall I describe him?)*—For surely my Learned Friend could not be serious, when he stated the relation between this person and the Bishop of Bangor.—He told you, most truly, which renders it less necessary for me to take up your time upon the subject;—that the Bishop is invested with a very large and important jurisdiction—that by the ancient laws of this kingdom, it extends to many of the most material objects in civil life; that is, has the custody and recording of wills, the granting of administrations, and a jurisdiction over many other rights, of the deepest moment to the personal property of the King's subjects.—He told you, also, that all these complicated authorities, subject only to the appellate jurisdiction of the Metropolitan, are vested in the Bishop.—To which he might have added *(and would no doubt, if his cause would have admitted the addition,)* that THE BISHOP HIMSELF, and not his temporary clerk, has, in the eye of the law, the custody of the records of his Church; and that he also is the person whom the law looks to, for the due administration of every thing committed to his care;—his subordinate officers being, of course, responsible to *him* for the execution of what the law requires at *his* hands.

As the King himself, who is the fountain of all jurisdictions, cannot exercise them himself, but only by substitutes, judicial and ministerial, to whom, in the various subordinations of magistracy, his executive authority is delegated; so in the descending scale of ecclesiastical authority, the Bishop also has *his* subordinates to assist him judicially, and who have again *their* subordinate officers and servants for the performance of those duties committed by law to the Bishop himself; but which he exercises through the various deputations which the law sanctions and confirms.

The Consistory Court, of which this man is the Deputy Registrar, is the BISHOP'S COURT.—For the fulfilment of its duties, the law has allowed him his chancellor and su-

perior judges, who have under them, in the different ecclesiastical divisions, their surrogates, who have again their various subordinates; the *lowest*, and *last*, and *least* of whom is the prosecutor of this Indictment; who nevertheless considers the Cathedral Church of Bangor, and the Court of the Bishop's see, as his own CASTLE; and who, under that idea, asserts the possession of it, *even to the exclusion of the Bishop himself*, by violence and armed resistance!—Do you wonder now, Gentlemen, that I found it difficult to handle this preposterous proceeding?—The Registrar himself (putting deputation out of the question) is the very lowest, last, and least of the creatures of the Bishop's jurisdiction; without a shadow of jurisdiction himself, either judicial or ministerial.—He sits, indeed, amongst the records, because he is to register the acts which are there recorded; but he sits there as *an officer of the Bishop*, and the office is held under the chapter part of the cathedral, and within its consecrated precincts, where the Bishop has a jurisdiction, independent of all those which my Friend has stated to you—a jurisdiction, given to him by many ancient statutes, not merely for preserving that tranquillity which civil order demands every where; but to enforce that reverence and solemnity, which religion enjoins, within its sanctuaries, throughout the whole Christian world.

Much has been said of the Registrar's freehold in his office:—but the term which he has in it—*viz.* for life—arose originally from an indulgence to the Bishop who conferred it; and it is an indulgence which still remains, notwithstanding the restraining statute of Elizabeth. The Bishop's appointment of a Registrar is, therefore, binding upon his successor;—but how binding?—Is it binding to exclude the future Bishop from his own cathedral?—Is it true, as this man preposterously supposes, that, because he chooses to put private papers of his own, where no private papers ought to be—because he thinks fit to remove them from his own house, and put them into the office appointed only for the records of the Public—because he mixes his own particular accounts with the archives of the diocese—that therefore, forsooth, he has a right to oust the Bishop from the offices of his own Court, and, with pistols, to resist his entrance, if he comes even to enjoin quiet and decency in his church?—Surely Bedlam is the proper forum to settle the rights of such a claimant.

The Bishop's authority, on the contrary, is so universal throughout his diocese, that it is laid down by Lord Coke,

and followed by all the ecclesiastical writers, down to the present time, that though the freehold in every church is in the parson, yet *that* freehold cannot oust the jurisdiction of the Ordinary, who has a right, not merely to be present to visit the conduct of the incumbent, but to see that the church is fit for the service of religion: and so absolute and paramount is his jurisdiction, that no man, except by prescription, can even set up or take down a monument, without his license; the consent of the parson, though the freehold is in him, being held not to be sufficient. The right therefore, conferred by the Bishop on the Registrar, and binding (as I admit it to be) upon himself and his successor, is the right to perform the functions of the office, and to receive the legal emoluments.—The Registrar may also appoint his Deputy, but not in the manner my Learned Friend has affirmed; for the Registrar can appoint no Deputy without the Bishop's consent and approbation. My Learned Friend has been also totally misinstructed with regard to the late judgment of the Court of King's Bench on the subject.—He was not concerned in the motion; and has only his report of it from his Client.—Mr. Grindley was represented in that motion by a Learned Counsel, who now assists me in this Cause, to whom I desire to appeal.—The Court never pronounced a syllable which touched upon the controversy of to-day; on the contrary, its judgment was wholly destructive of Mr. Grindley's title to be Deputy—for it held, that the infant, and not his *natural* guardian, had, with the Bishop's approbation, the appointment of his Deputy; whereas Mr. Grindley was appointed by his *father only*, and not by the infant at all, which my friend well knew, and, therefore, gave parol evidence of his possession of the office, instead of producing his appointment, which would have been fatal to his title; and the reason why the Court refused the mandamus, was, because Mr. Roberts, who applied for it, was not a legal deputy. It did not decide, that the Prosecutor *was* the legal officer, but only that Mr. Roberts *was not;* and it decided that he *was not*, because he had only the appointment of the infant's father, which was, by the bye, the only title which the Prosecutor had himself: and although the infant was a lunatic, and could no longer act in that respect for himself, yet the Court determined that his authority did not devolve to the father, but to the Court of Chancery, which has, by law, the custody of all lunatics.

This judgment was perfectly correct, and supports my proposition, That the Prosecutor was a mere tenant at will of the

Bishop.—The infant can, indeed, appoint his Deputy, but not *ex necessitate rei*, as my Friend supposes; on the contrary, he will find the reason given by the Court of King's Bench, as far back as the reign of Charles the First, as it is reported by that great magistrate, Mr. Justice Croke. It is there said, that an infant can appoint a deputy, *because the act requires no discretion, the approbation, which is tantamount to the choice, being in the Bishop.*—The continuance must, therefore, in common sense, be in the Bishop also; for otherwise, the infant having no discretion, a proper person might be removed indiscreetly, or an improper person might never be removed at all.—I maintain, therefore, on the authority of the ancient law, confirmed by the late decision of the Court of King's Bench, *in this very case*, that the Prosecutor, who is so forward to maintain a privilege, which he could not have maintained, even if he had been Judge of the Court, and Chancellor of the Diocese, had, in fact, no more title to the office than I have.—He tells you, himself, that he never had any appointment from the infant, but from the father only, with the infant's and the Bishop's approbation; in other words, he was the deputy *de facto*: but, as such, I assert he was a mere tenant at will; and, consequently, became, to all intents and purposes, a private man, from the moment the Bishop signified his determination to put an end to his office; and that the Bishop had signified his determination before the transaction in question, Mr. Grindley has distinctly admitted also. I thought, indeed, I should be more likely to get that truth from him, by concealing from him the drift of my examination; and he, therefore, swore, most eagerly, that the Bishop did not offer him the key at the palace; but that, on the contrary, he had told him distinctly, that he was no longer in the office. He says, besides, that the Bishop expressed the same determination by a letter; in answer to which he had declared his resolution to hold it till the year expired.—I say, therefore, that the Prosecutor, at the time in question, was not Deputy Registrar, and that, the infant being a lunatic, the Bishop had a right to give charge of the office till another was duly appointed.—This point of law I will put on the record, if my Friend desires it.

But why should I exhaust myself with this collateral matter; since, in *my* view of the subject, it signifies nothing to the question we have to consider? It signifies not a farthing to the principles on which I presently mean to rest my defence, whether he was an usurper, or the legal deputy, or the infant himself with his patent in his hand.

Let us now, therefore, attend to what this man did, whatever character belonged to him.—This is principally to be collected from the Prosecutor's own testimony, which is open to several observations. My Learned Friend, who stated to you in his absence, the evidence he expected from him, explained, with great distinctness, the nature and obligation of an oath; and, speaking from *his own* honest sensations, and anticipating the evidence of his Client, from the manner HE would, as a witness, have delivered his own,—he told you, that you would hear from him, a plain, unvarnished statement—that he would keep back from you no circumstance, nor wish to give a colour to any part of the transaction.—What induced my Friend to assure us, with so much solicitude, that his witness would adhere so uniformly to the truth, I cannot imagine, unless he thought that his evidence stood in need of some recommendation.—All I can say is, that he did not in the least deserve the panegyric which was made upon him, for he did not give an *unvarnished* statement of the very beginning of the transaction, which produced all that followed. —I asked him, Whether, in refusing the key, he did not mean to keep an exclusive possession of the office, and to prevent the Bishop even from coming there?—But, observe how the gentleman fenced with this plain question—"*I did not*," he said, "*refuse him the key, but only lest he should take pos-*" *session.*"—I asked him again, "if he did not positively re-" fuse the key?"—and desired the answer to be taken down. —At that moment my friend, Mr. Manly, very seasonably interposed, as such a witness required to be dry-nursed; and at last he said, "*Oh, the key was included.*"

The Bishop, therefore, was actually and wilfully excluded wholly from the office. For, notwithstanding Mr Grindley's hesitation, Mr. Sharpe, who followed him, and who had not heard his evidence, *from the witnesses being kept apart*, swore DISTINCTLY AND AT ONCE, that the key was taken from Dodd because Grindley thought he would let the Bishop have it; and the witness said farther—*(I pledge myself to his words)* —"IT WAS, THEREFORE, DELIVERED INTO MY CUSTODY, AND I REFUSED IT TO THE BISHOP—I DID SO BY MR. GRINDLEY'S DIRECTION, UNDOUBTEDLY."—

The very beginning of the transaction, then, is *the total exclusion of the Bishop from his own court, by a person appointed only to act as Deputy, by his own consent, and during his own will;* WHICH WILL *he had absolutely determined before the time in question.* I am, therefore, all amazement, when it shoots across my mind, that I am exhausting my

strength in defending the Bishop; because, most undoubtedly, I should have been Counsel for *him* as a *Prosecutor*, in bringing his opponents to justice.—According to this new system, I would have THE JUDGES take care how they conduct themselves. The office-keepers of the records of the Courts at Westminster, are held by patent; even the Usher's place of the Court of King's Bench is for life; HE too is allowed to appoint his deputy, who is the man that puts wafers into our boxes, and papers into our drawers, and who hands us our letters in the cleft of a stick.—But, nevertheless, I would have their Lordships take care how they go into the Court of King's Bench, which, it seems, is this man's CASTLE. —If Mr. Hewit were to make a noise and disturb the Court, and Lord Kenyon were to order him to be pushed out. I suppose we should have his Lordship at the next assizes for a riot.—Suppose any of the Judges wished to inspect a record in the Treasury Chamber, and the clerk should not only refuse the key, but maintain his possession with pistols; would any man in his senses argue that it was either indictable or indecent to thrust him out into the street?—yet, where is the the difference between the attendants on a court civil, and a court ecclesiastical? Where is the difference between the Keeper of the Records of the Court of King's Bench, or Common Pleas, and the Registrar of the Consistory of Bangor?

To all this I know it may be answered, That these observations (supposing them to be well founded) only establish the Bishop's right of entry into his office, and the illegal act of the Prosecutor in taking an exclusive possession; but that they do not vindicate the Bishop for having first taken off the lock in his absence, nor for afterwards disturbing him in the possession which he had peaceably regained; that the law was open to him, and that his personal interference was illegal.

To settle this point, we must first have recourse to facts, and then examine how the law applies to them.

It stands admitted, that though Mr. Grindley knew that the Bishop had determined his will, and had insisted on his surrender of his situation, which he never held but by the Bishop's sufferance, he absolutely refused the key, with the design to exclude him from the office.—It was not till *then*, that the Bishop, having no other means of access, ordered the lock to be taken off, and a new key to be made.—Now, whether this act of the Bishop's was legal or illegal, is wholly

beside the question—his Lordship is not charged with any force or illegality on *that* account; he is not accused even in the Counsel's speech, with any impropriety in this proceeding, except an intrusion into this imaginary castle of Mr. Grindley. —It is admitted, in short, that the Bishop took a possession *altogether peaceable.*

His Lordship then, having removed the Deputy Registrar, without due authority, if you please, and being (if you will, for any thing which interests my argument) in possession, contrary to law, let us see what follows.—And in examining this part of the evidence, *upon which, indeed, the whole case depends*, I am not driven to the common address of a Counsel for a Defendant in a criminal prosecution; I am not obliged to entreat you to suspend your judgments till you hear the other side—I am not anxious to caution you to withhold implicit credit from the evidence, till the whole of it is before you.—No, Gentlemen—I am so far from being in that painful predicament, that though I know above half of what you have heard is not true; although I know that the transaction is distorted, perverted, and exaggerated in every limb and member; yet I desire that you will take it as it is, and find your verdict upon the foundation of its truth.—Neither do I desire to seduce your judgments, by reminding you of the delicacy of the case.—My Friend declares he does not know you personally, but that he supposes you must have a natural sympathy in protecting a person in the Bishop's situation against an imputation so extremely inconsistent with the character and dignity of his order.—It is natural, as decent men, that you should; and I, therefore, willingly second my Learned Friend in that part of his address.—I solemnly conjure you also to give an impartial judgment—I call upon you to convict or acquit, according to right and justice.—God forbid, that you should not!—I ask no favour for my Client because he is a prelate, but I claim for him the right of an English subject, to vindicate his conduct under the law of the land.

The Bishop, then, being in peaceable possession, what is the conduct of the Prosecutor, even upon his own confession?—He sends for three men; two of whom he calls domestics; one of them is his *domestic blacksmith.*—He comes with them, and others, to the office with PISTOLS, and provided with POWDER AND SHOT. —Now, *quo animo* did they come?—I was so really diverted with the nice distinction of Mr. Grindley, in his answer to this question, that I could scarcely preserve my gravity.—He

said, " I came it is true with pistols, and with powder and " shot, to take possession; but—mark—I did not *load* my " pistols in order to *take* possession—I did not load them " till *after* I had it, and then only to *keep* the possession I " had peaceably taken."—This would be an admirable defence at the Old Bailey.—A man breaks into my house in the day, to rob me of my plate*—(this is but too apt a quotation, for so I lost the whole of it)—But this felon is a prudent man, and says to himself—I will not *load* my fire arms till I have got into the house and taken the plate, and then *I will load them*, to defend myself against the owner, if I am discovered.—This is Mr. Grindley's law;—and, therefore, the moment he had forced the office, he loaded his pistols, and called aloud repeatedly, that he would blow out the brains of the first man that entered.—A pistol had before been held to the breast of one of the Bishop's servants; and things were in *this* posture when the Bishop came to the spot, and was admitted into the office—The lock which he had affixed he found taken off, the doors forced open, and the apartment occupied by armed men, threatening violence to all who should oppose them.

THIS IS MR. GRINDLEY'S OWN ACCOUNT.—He admits, that he had loaded his pistol *before the Bishop came;* that he had determined to stand, *vi et armis*, to maintain possession by violence, and by death if necessary; and that he had made that open declaration in the hearing of the Bishop of the diocese.—Perhaps Mr. Grindley may wish, hereafter, that he had not made this declaration so public; for, whatever may be the *Bishop's* forbearance, yet the criminal law may yet interpose by other instruments, and by other means.—Indeed, I am truly sorry to be discussing this matter for a *Defendant in July*, which ought to have been the accusation of a *Prosecutor six months ago*, if the public peace of the realm had been duly vindicated.

The Bishop, then, being at the door, and hearing his office was taken possession of by force, and by the very man whom he had displaced, the question is, Did he do *more* than the law warranted in that conjuncture?—I maintain, that from over-forbearance, he did *much less*.—If in this scene of disorder the records of the diocese had been lost, mutilated, or even displaced, the Bishop, if not legally, would at the least have been morally responsible. It was his duty, besides, to

* It seems Lord Erskine's house, in Serjeant's Inn, had been recently broken open, and his plate all stolen.

command decency within the precincts of his church, and to remove at a distance from it all disturbers of the peace. And what, after all did the Bishop do?—He walked up and down demonstrating with the rioters, and desiring them to go out, having before sent for a magistrate to act according to his discretion. It is true Mr. Grindley worked himself up to say, that the Bishop held up his fist so *(describing it;)* but, with all his zeal, he will not venture to swear he did so with a *declaration*, or even with an *appearance* of an intention to strike him. The whole, that he can screw up his conscience to, is, to put the Bishop in an attitude which is contradicted by every one of his own witnesses—who all say, that the Bishop seemed much surprised, and walked to and fro, saying, "This is fine work!"—and moving his hands backwards and forwards, thus *(describing it.)* Does this account at all correspond with Mr. Grindley's? or does it prove an attitude of force, or even an expression of passion? On the contrary, it appears to me the most natural conduct in the world. They may fancy, perhaps, that they expose the Bishop when they impute to him the common feelings, or, if you please, the indignation of A MAN, when all order is insulted in his presence, and a shameless outrage committed in the very sanctuary which he is called upon, by the duty of his office, and the dignity of his station, to protect. But is it required of any man, either by human nature, or by human laws (whatever may be the sanctity of his character,) to look at such a proceeding unmoved? Would it have been wrong, or indecent, if he had even FORCIBLY removed them? I SAY IT WAS HIS DUTY TO HAVE DONE SO, WHOEVER WERE THE OFFENDERS; whether the Deputy Registrar, the Registrar himself, or the highest man in the kingdom.

To come at once to the point: I maintain, that at the time the Bishop came to the door, at which very moment Grindley was threatening to shoot the first person that entered, which made somebody say, "Will you shoot the Bi-" shop?"—I maintain, at that very moment THREE indictable offences were committing, which put every man upon the level of a magistrate with regard to authority, and even prescribed a duty to every man to suppress them. In the first, there was AN AFFRAY; which my Friend did not define to you, but which I will.—Mr. Serjeant Hawkins, transcribing from the ancient authorities, and whose definition is confirmed by every day's practice, defines an affray thus: "It is an affray, though there is neither actual violence nor

" threat of violence, where a man arms himself with danger-
" ous weapons in such a manner as will naturally cause ter-
" ror;"—and this was always an offence at common law, and prohibited by many statutes.

Let us measure Mr. Grindley's conduct, upon his own account of it, by the standard of this law, and examine whether he was guilty of an affray. He certainly threatened violence; but I will throw him *in* that, as I shall examine his threatening when I present him to you in the character of a rioter,—I will suppose, then, that he threatened no violence; yet he was armed with dangerous weapons in such a manner as would naturally create terror.—He tells you, with an air of triumph, that he brought the arms for that express purpose, and that he dispersed those who came to disturb him in his CASTLE. He was, therefore, clearly guilty of an affray.

Let us next see what the law is, as it regards all the King's subjects, when an affray is committed. The same authorities say,—*(I read from Mr. Serjeant Hawkins, who collects the result of them,)* " That any private man may stop and
" resist all persons engaged in an affray, and remove them;
" that if he receive a hurt in thus preserving the peace, he
" may maintain an action for damages; and that, if he una-
" voidably hurt any of the parties offending in doing that
" which the law both allows and commends, he may well jus-
" tify it, for he is no ways in fault."—Setting aside, therefore, the office and authority of the Bishop, and the place where it was committed, and considering him only as a private subject, with no power of magistracy, he had a right to do—not that which he did *(for in fact he did nothing)*—he had a right to remove them by main force, and to call others to assist in removing and securing them. The Bishop, however, did neither of these things; he took a more regular course—he sent for a magistrate to preserve the peace—he had, indeed, sent for him before he came himself; yet, they would have you believe, that he went there for an illegal purpose—as if any man who intended violence, would send for a magistrate to witness the commission of it. When the magistrate came, Mr. Grindley thought fit to behave a little more decently; and so far was the Bishop from acting with passion or resentment, that when those about him were desirous of interfering, and offered their services to turn them out, he said to them: " No! let the law take its course in due season."—His Lordship, by this answer, showed a greater regard for peace than recollection of the law; for the course of the law *did* warrant

their forcible removal; instead of which, he left the Prosecutor, with arms in his hands, in a possession, taken originally by force, and forcibly maintained.

Let us next examine if the Prosecutor, and his witnesses, were engaged in A RIOT.—My Learned Friend will forgive me if I remind him, that there is one part of the legal definition of a riot, which he omitted.—I will, therefore, supply the omission from the same authorities.—"A riot is, where three "persons, or more, assemble together with an intent, mutu- "ally, to assist one another against any who shall oppose "them in the execution of some enterprise of a private na- "ture, and afterwards actually execute the same in a turbu- "lent manner, to the terror of the people, whether the act in- "tended be legal or illegal." But the same authorities add very properly—"It is clearly agreed, that in every riot there "must be some such circumstances, either of actual force and "violence, or of an apparent tending to strike terror into the "people, because a riot must always be laid *in terrorem* "*populi.*"—This most important part of the definition of a riot, which my Friend prudently omitted, points, directly and conclusively, upon the conduct of *his own* Client, and completely excludes *mine*.—The Prosecutor, and his witnesses, *did* assemble mutually to support one another, and executed their purpose *with arms in their hands, and with threats and terror;* which conclusively constitutes a riot, whether he was Registrar, or not, and whatever might be his right of possession.—The Bishop, on the other hand, though he might have no right to remove the Prosecutor, nor any right to possession, could not possibly be a rioter, for he came *without violence or terror, or the means of either*, and, if he had employed them, might lawfully have used them against those who were employing both.

Let us now farther examine, whether I was right in maintaining, that there was an aggravation, from the *place* where the offence was committed, and which invested the Bishop with a distinct character and authority.

By the statute of Edward the Sixth, if persons come tumultuously within the consecrated precincts of the church, the Ordinary has not only a right to repress them, but he may excommunicate the offenders; who are, besides, liable to a severe and ignominious temporal punishment, after a conviction on indictment, even for an indecent brawling within the precincts of the church, without any act at all, which would amount to a riot or an affray.

Let us then, for a moment, reflect, how these solemn authorities, and any possible offence in the Reverend Prelate, can possibly be reconciled; and let us contemplate, also, the condition of England, if it be established as a precedent upon the fact before you, that he is amenable to criminal jurisdiction upon this record.—A riot may arise in the street, the moment after your verdict is pronounced, by persons determined to take and to maintain some possession by force. I may see or hear armed men threatening death to all who shall oppose them; yet I should not venture to interpose to restore the peace, because I cannot try their titles, nor examine to which of the contending parties the matter in controversy may belong.—If this new doctrine is to be established, ask yourselves this question—WHO will in future interfere to maintain that tranquillity, which the magistrate may come too late to preserve, if the rein is given to disorder in the beginning? Although dangerous violence may be committing, though public order may be trampled down within his view, a wise man will keep hereafter within the walls of his own house. Though fearless of danger to his *person*, he may yet justly fear for his *reputation*, since, if he only asks what is the matter, and interposes his authority or counsel, he may be put by the rioters, into an attitude of defiance, and may be subjected to the expense and degradation of a prosecution! The delicate situation of the Bishop, at this moment criminally accused before you, is admitted; but it is hardly more, Gentlemen, than would attach upon persons of many other descriptions. The same situation would not be much less distressing to a Judge, to a Member of Parliament, or to any of you, Gentlemen, whom I am addressing.—What would be the condition of the Public, or your own, if you might be thus dragged to the Assizes as rioters, by the very rioters which your duty had driven you to offend? I assert, that society could not exist for an hour, if its laws were thus calculated to encourage its destroyers, and to punish its protectors.

Gentlemen, there is no man loves freedom better than I do; there is no man, I hope, who would more strenuously oppose himself to proud and insolent domination in men of authority, whether proceeding from ministers of the church, or magistrates of the state.—There is no man, who would feel less disposed to step beyond my absolutely imposed duty as an advocate, to support oppression, or to argue away the privileges of an Englishman.—I admit, that an Englishman's house is his castle; and I recollect and recognise all the liberties he ought to enjoy.—My Friend, and I, are not likely to

differ, as to what an Englishman's freedom consists in. The freedom that HE and I love and contend for, is THE SAME. It is a freedom that grows out of, and stands firm upon, THE LAW—it is a freedom, which rests upon the ancient institutions of our wise forefathers—it is a freedom which is not only consistent with, but which cannot exist without, public order and peace—and, above all, it is a freedom, cemented by morals, and still more exalted by a reverence for religion, which is the parent of that charity, humanity, and mild character, which has formed, for ages, the glory of this country.

Gentlemen, my Learned Friend takes notice, that this cause has been removed from its primitive tribunal, in order to be tried before you at Shrewsbury. He tells you, he never saw the affidavit that was the foundation of its removal; which, however, he with great propriety supposes contained matter which made it appear to Lord Kenyon to be his duty to withdraw the trial from its proper forum in Wales.—But, he is instructed by Mr. Grindley to deny that any thing was done, either by himself, or any other person connected with him, to prejudice that tribunal, or the country which was to supply it. I, on the other hand, assert, that, upon the Prosecutor's *own evidence*, greater injustice and malice never marked any judicial proceeding. I have in my hand a book (no matter by whom written) circulated industriously through all Wales, to prejudice the public mind upon the very question before you. But Mr. Grindley, it seems, is not responsible for the acts of this anonymous libeller.—How far he is responsible, it is for YOU to judge. It is for YOU to settle, how it happened that the author of this book should have it in his power, minutely to narrate every circumstance which Mr. Grindley has himself been swearing to; and that he should happen, besides, to paint them in the very *same* colours, and to swell them with the *same* exaggerations, with which they have been this morning accompanied. It will be for *you* to calculate the *chances* that should bring into the same book, under inverted commas, a long correspondence between the Bishop of Bangor and this very person.—Gentlemen, he admits, upon his oath, "that he furnished the materials from whence that part of the "work, at least, might have reached the author;" and from thence it will be for YOU to guess, what share he had in the remainder. All I know is, that from that time forward the Bishop's character has been torn to pieces, not from this pamphlet alone, but by a pestilential blast of libels, following one another; so that it has been impossible to read a newspaper, without having announced to us this miserable cause, and

the inquiries forsooth to be instituted in Parliament, which were to follow the decision. Gentlemen, the same spirit pursues the cause even into THIS PLACE,—proceeding from the same tainted source. My Friend tempers his discourse with that decorum and respect for religion, which is inseparable from the lips of so good a man.—He tells you, that it has been wittily said of the clergy, and his Client desires him to add, "truly too"—that the clergy have found what Archimedes wished for in vain—"a fulcrum, from whence to move the "world;" he tells you, "that it is recorded of that great "philosopher, that he desired but to have a fulcrum for his "engine, to enable him to accomplish it."—"Churchmen," says Mr. Grindley, by the mouth of Mr. Adam, who cannot abandon him, and who, as a sort of set-off against *his own* honour and moderation, is obliged to inhale the spirit of his Client, "The church," says Mr. Grindley, "has found this "fulcrum in the other world, and it is by playing off *that* "world, they enthrall the world we live in." He admits, indeed, that when they employ their authority to enforce the true purposes of religion, they have a right to that awful fulcrum upon which their engine is placed, and then their office will inspire reverence and submission; but when they make use of it for the lowest and most violent purposes, for ends destructive alike to religion and civil society *(of course the purposes in question,)* THEN it seems it is, that disgrace not only falls upon its individuals, but destruction overtakes the order.

My Learned Friend, by his Client's instruction, then immediately applies this general reflection, and says, "that he "can discover no other reason, why the Bishop would no "longer permit Mr. Grindley to hold the office, than that he "had deviated from his celestial course—had looked to the "vile and sordid affairs of the world, and prostituted the sa-"cred dignity of his character to purposes which would de-"grade men in the lowest situations." My Friend said, across the Court, that he had never seen the pamphlet. Good God! I believe it.—But *I* have seen it; and I have no doubt that one half of it is copied into his brief: it is written in this very spirit—it brings before the Bishop the events of France ----it warns him of the fate of his brethren in that country, as an awful lesson to ecclesiastics of all ranks and denominations, and *reminds* him, that 18 archbishops, 118 bishops, 11,850 canons, 3000 superiors of convents, and a revenue of fifteen millions sterling, were on a sudden swept away. [*Mr. Erskine here read an extract from the pamphlet, and then continued:*]

Gentlemen, all this is mighty well; but he must be but little acquainted with the calamities of France, who believes that this was the source of them.—It was from *no such causes* that those horrors and calamities arose, which have disfigured and dishonoured her revolution, and which have clouded and obscured the otherwise majestic course of freedom;—horrors and calamities which have inspired an alarm into many good men, and furnished a pretext for many wicked ones, in our own country. It was the profligacy and corruption of the French STATE, and not the immorality of her CLERGY, which produced that sudden and extraordinary crisis, in the vortex of which the church, and almost religion itself, were swallowed up. The clergy of France was pulled down *in the very manner of this pamhplet.* A trumpet was blown against their order—the Massacre of St. Bartholomew was acted upon the stage, and the Cardinal of Lorraine introduced upon it, exciting to murder, in the robes of his sacred order. It was asked by a most eloquent writer* (with whom I do not agree in many things, as I do in this,) whether this horrid spectacle was introduced to inspire the French people with a just horror of blood and persecution?—and he answers the question himself by saying, that it was to excite the indignation of the French nation against RELIGION AND ITS OFFICES; and that it had its effect: "That, by such means, "the Archbishop of Paris, a man only known to his flock "by his prayers and benedictions, and the extent of whose "vast revenues could be best ascertained by his unexampled "charity to the unhappy, was to be hunted down like a wild "beast, merely because the Cardinal of Lorraine, in the "sixteenth century, had been a rebel and a murderer."

In the same manner, this pamphlet, through the medium of abuse upon *the Bishop of Bangor*, is obviously calculated to abuse the minds of the lower orders of the people against the CHURCH; and to destroy the best consolation of human life, by bringing the sanctions of religion into doubt and disrepute. I am, myself, no member of the church of England, nor do I know that my Friend is—we were both born in another part of the Island, and educated in other forms of worship; but we respect the offices of religion, in whatever hands they are placed by the laws of our country, and certainly the English clergy never stood higher than they do to-day, when Mr. Adam, so thoroughly acquainted with the history of his country, as far as it is ancient, and who,

* Mr. Burke.

from his personal and professional connections, is so perfectly acquainted with all that passes in the world of our own day, is drawn back to the times of Laud and Wolsey, to search for English Prelates, who have been a reproach to the order; and when he would represent tyranny and oppression in churchmen, is forced back upon an unreformed church, and to ages of darkness and superstition, because it would have been in vain to look for them under the shadow of that mild religion which has promoted such a spirit of humanity, and stamped such a character upon our country, that if it should ever please God to permit her to be agitated like neighbouring nations, the happy difference would be seen between men who reverence religion, and those who set out with destroying it.—The BISHOPS, besides (to do them common justice,) are certainly the *last* of the clergy that should be attacked.—The indulgent spirit of reformed Christianity, recollecting, that, though invested with a divine office, they are men with human passions and affections, permits them to mix in all the customary indulgences, which, without corrupting our morals, constitute much of the comfort and happiness of our lives; yet, they in a manner separate themselves from their own families; and, whilst the other orders of the clergy, even the most dignified, enjoy (without being condemned for it) the amusements which taste and refinement spread before us, no Bishop is found within these haunts of dissipation.—So far from subjecting themselves to be brought to the assizes for riot and disorder, they thus *refuse many of the harmless gratifications*, which perhaps, rather give a grace and ornament to virtue, than disfigure the character of a Christian; and I am sure, the Reverend Prelate, whom I represent, has never overstepped those limits, which a decorum, perhaps overstrained, has by custom imposed upon the whole order. The Bishop's individual character, like every other man's, must be gathered from his life, which I have always understood, has been eminently useful and virtuous. I know he is connected with those whose lives are both; and who must be suffering distress at this moment from these proceedings. He is nearly allied to one,* whose extraordinary knowledge enables him to fulfil the duties of a warm benevolence, in restoring health to the sick, and in bringing back hope and consolation along with it, to families in the bitterness of affliction and distress.—I have, more than once, received that bless-

* The celebrated Dr. Richard Warren.

ing at his hands, which has added not a little, to the anxiety which I now feel.

Gentlemen, I am instructed, and indeed pressed by the anxiety of the Bishop's friends, to call many witnesses, to show, that he was by no means disturbed with passion, as has been represented, and that, so far from it, he even repressed those, whose zeal for order, and whose affection for his person, prompted them to interfere; saying to them, "The law will "interpose in due season." I have witnesses, to a great number, whom I am pressed to call before you, who would contradict Mr. Grindley in the most material parts of his testimony; but then I feel the advantage he would derive from this unnecessary course; he would have an opportunity, from it, to deprive the Reverend Prelate of the testimony and protection of your approbation. He would say, no doubt, "Oh, I made out the case which vindicated my Prosecution, "though it was afterwards overturned by the testimony of "persons in the Bishop's suite, and implicitly devoted to his "service;—I laid facts before the Jury, from which a convic- "tion must have followed, and I am not responsible for the "false glosses by which *his witnesses have perverted them.*" —This would be the language of the Prosecutor; and I am, therefore, extremely anxious that your verdict should proceed *upon the facts as they now stand before the Court*, and that you should repel, with indignation, a charge which is defeated by the very evidence that has been given to support it.—I cannot, besides, endure the humiliation of fighting with a shadow, and the imprudence of giving importance, to what I hold to be *nothing*, by putting *any thing* in the scale against it; a conduct, which would amount to a confession that *something* had been proved which demanded an answer. How far those, from whom my instructions come, may think me warranted in pursuing this course, I do not know; but the decision of that question will not rest with either of us, if your good sense and consciences should, as I am persuaded they will, give an immediate and seasonable sanction to this conclusion of the trial.

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*Mr.* ERSKINE, *after consulting a few minutes with Mr. Plumer, Mr. Leycester, and Mr. Milles, informed the Court he should give no Evidence.*

*Mr. Justice* HEATH *then summed up as follows; which we insert, as the Learned Judge stated the substance of all the Evidence given on the Trial.*

## MR. JUSTICE HEATH.

GENTLEMEN OF THE JURY,

THIS is an Indictment against the Bishop of Bangor, Hugh Owen, John Roberts, John Williams, and Thomas Jones. The Indictment states, "That Samuel Grindley "(who, it seems, is the Prosecutor of this Indictment,) on "the 8th of January last, was Deputy Registrar of the "Episcopal and Consistorial Court of the Bishop of Bangor, "and that, in right of his office, he had the use of a room "adjoining to the cathedral church of Bangor, called the "Registrar's Office, for transacting the business of his of-"fice: that the Defendants, intending to disturb the Prose-"cutor in the execution of his office of Deputy Registrar, on "the 8th of January last, riotously assembled and unlawfully "broke the Registrar's Office, and remained there for an "hour, and continued making a great disturbance, and as-"saulted the Prosecutor, and stirred up a riot."

This, Gentlemen, is the substance of the Indictment.—The definition of a riot has been truly stated to you; it may be collected, indeed, from the indictment itself; and is, when two or more persons assemble together with an intent mutually to assist each other, and to resist all those who should oppose them, and with a farther intent to break the peace;—and it is likewise for a private purpose.

Now, before I sum up the evidence, I shall state those things particularly, to which you should direct your attention; and you will consider how the evidence applies in support of the Indictment. It must be proved, to your satisfaction, that the Prosecutor is Deputy Registrar of this Consistorial Court of the Bishop of Bangor; that, in Right of that office, he had the use of this room to transact his business there; that the Defendants, intending to disturb him in his

office, riotously assembled to disturb the peace, and broke and entered the office-room, and continued there, making a great disturbance, asserting that he had assumed an office which did not belong to him, and making a riot there. These things must be proved to your satisfaction.—I will comment upon the evidence as I shall state it to you.

Samuel Grindley, the Prosecutor, tells you, that in February 1792, he was appointed Agent to the Bishop of Bangor, and that he afterwards held the office of Deputy Registrar, under Mr. Gunning, who it seems, was a minor; that he saw Mr. Gunning, the Registrar, in October 1794; that he paid seventy pounds a year to the Bishop, on account of Mr. Gunning his principal; that the Bishop was the person who made the bargain between him and his principal; that he entered on his office as Deputy.---He says, that he was invited by the Bishop, and that the Bishop introduced him (the Prosecutor) to Mr. Gunning, as the Principal Registrar, and introduced the Principal Registrar to the witness as his Deputy.---He says, that there was no complaint that he had not discharged the duties of his office; and that he continued to discharge the duties of his office till the 22d of February last. He says, that there is an apartment belonging to this office, which, it seems, is under the chapter-house adjoining to the cathedral; that there is a flight of steps going up to it—that he employs his Clerks in the office, and he has a resident Clerk there.—He says, he told the Bishop that he would resign on the 22d of February last; that on the 4th of January he was absent from Bangor, and returned on the 7th, having received information that his office had been broken open; that the Bishop afterwards acknowledged to him, that it had been broken open by his (the Bishop's) servants, under his direction.—He says, that some panes of glass had been taken down, the leads had been removed, and fresh locks had been put upon the doors. All this the Bishop acknowledged.—And then he gives you an account of his coming there; of his breaking open the door, and his entering again.

Let us consider, so far as this, how it applies. In the first place, it certainly does not lie in the mouth of the Bishop to say, that this man was not properly appointed to his office; he was in the exercise of his office; he had made an agreement with his principal, and he paid him seventy pounds a year—the Bishop was the person who negotiated the business; and he gave the Bishop notice that he meant to give up his office on the 22d of February; but you see, between the 4th and the 7th of January, before the time the Prosecutor had appointed for resigning his office, the Bishop thought proper to

go to the office and break open the lock, and then, it is contended on the part of the Defendants, that the Bishop was in peaceable possession; it is contended too, that, as Bishop, he had a jurisdiction in this cathedral—that, because the Deputy Registrar must be confirmed by the Bishop, the Prosecutor is only tenant at will to the Bishop; that he never had a legal appointment, and, therefore, the Bishop had a power of dismissing him.

Now, in the first place, supposing it to be proved, that the Bishop had a power of dismissing him (which does not appear one way or the other,) it does not follow from thence, that he ought to do it by force or violence—he ought to do it by process of law. It happens in this country, that the Lord Chief Justices of the Courts of King's Bench and Common Pleas have a right of appointing officers;—the Judges attending the Court at the Old Bailey, have a right of appointing the officers there;—and questions have frequently arisen concerning this power of appointment, whether rightfully or wrongfully exercised.—What is the mode of deciding it? Each party appoints his officer, and then one brings his action, and it is determined by due course of law. If the Bishop had a right of dispossessing this man, which does not appear to me, because, though the appointment of a Deputy might not be good without the approbation of the Bishop, it does not follow from thence, that the Bishop had a right to withdraw that approbation and that confirmation, after it was given. Whether he can, or cannot, is a question I am not prepared to decide, and it is immaterial to the present question; it is enough to say, that if the Bishop had that right and that power, it behoved him to have caused Mr. Gunning to have appointed another Deputy, and then that Deputy ought to have tried the right.—The question then is, was the Bishop in peaceable possession? *No man is in peaceable possession of any place which he comes to by force and violence;* the Bishop exercised force and violence in *this* respect, in breaking the lock, and in putting on a new lock; therefore, the force and violence was on the part of the Bishop;—he was never in peaceable possession of this place, nor could he have a right to come and put this lock upon the door.

Let us pursue this matter by steps.—The Prosecutor said, he came armed with pistols; that was, I think, improper; he ought not to have armed himself with pistols in that fashion. —He broke open the lock, and he entered; *that* was not improper; he being in possession of this office, it was lawful for him to do so.—Then, it seems, a Mr. Rasbrook came, who is a person exercising some office under the Bishop, his house-

steward, I think; he came, and the Prosecutor presented a pistol to him—that was highly improper. A man has a right to arm himself, and to assemble his friends in defence of his house; but the law allows no *more;* because the house is his sanctuary, he is not to arm himself, and assemble his friends in defence of his close; but ought to have recourse to legal means, if he is injured; and, therefore, the Prosecutor certainly acted with a greater degree of force and violence, in that respect, than he ought to have done. But then that was no legal excuse for the Bishop's coming afterwards in the manner he did. The Prosecutor's presenting a pistol to Rasbrook, could be no inducement to the Bishop, and the other Defendants, because they were not present, and their passions were not provoked by it.

The Bishop, in this case, Gentlemen, seems to have laboured certainly under two very great errors.—First of all, that he had a right to remove the Prosecutor; and, secondly, that he had a right to remove him by *force and violence.*—Then these persons were removed out of the office; the outer door was secured, by some means, by the Prosecutor, and the several persons with him.—It is said that they were guilty of a riot.—I think, certainly, they were guilty of no riot *at this time;* they were guilty of a misdemeanor in arming themselves, but they stood merely upon the defensive.—No person, as I told you before, is justified in arming himself and his servants to defend his close; but if he does arm himself and his servants to defend his close, and opposes no person without the close, then he is guilty of no riot whatever.

The question is, whether or no they are guilty of such a breach of the peace—of an act of so much force and violence, as to constitute a riot.—When there was a knocking at the door, the Prosecutor said he would shoot any one who should enter; which, I said before, he was not warranted in doing. Being told the Bishop was there, he said he would treat him with all possible respect, and he opened the door, and admitted him and his followers; and then, he says, he loaded another pistol.—He tells you the Bishop entered in a great rage. Whether there was any rage or passion, or no, is only material to show whether or no the rest of the story is probable; because, his being in a rage, does not prove him guilty of a breach of the peace. The question is, whether he has committed any acts in breach of the peace?—First of all, the Prosecutor tells you, that he told the Bishop he should behave with proper respect to him, but he should not leave the office—he swears that the Bishop took hold of him; and afterwards he went to William Roberts, an husband-

man belonging to the witness—he then went to another servant, Robert Davis, and attempted to pull him out; that the Bishop returned to William Roberts, collared him, and drew him towards the door; that the Bishop went with his hands clenched towards the witness; and the witness describes the manner in which he (the Bishop) went towards him.—Now his taking hold of the witness IS AN ASSAULT. —He says, he attempted to pull him out; his seizing hold of him IS AN ASSAULT; his returning to William Roberts, and collaring him, and pushing him towards the door, IS ANOTHER ASSAULT; his going with his hands clenched towards him in a menacing way, if he were near enough to strike him, would be an assault; if not near enough to strike him, it would not be an assault; and then he called to his servants to come and pull him out—that is a breach of the peace, coming and removing them all by force and violence.

Then there is that which passes in respect to Mr. Roberts. The Prosecutor and the other witnesses tell you, that Roberts was in a great rage; he cannot say whether he entered before or after the orders given by the Bishop; that he clenched his fist, and said, "If nobody will turn him (meaning the Prosecutor) out, I will do it.—The Bishop said, the Prosecutor had pistols; upon which Roberts said, in an outrageous manner, "Do not shoot the Bishop, shoot me;" and said, that if nobody else would turn the Prosecutor out, he would.—He asked the Prosecutor to go on one side with him, into the church-yard, and said, he was not afraid of him in any place. The witness said, he had something else to attend to; and another of the witnesses said, he promised to meet him at some other time and place. This is, you see, a challenge by Roberts to fight the Prosecutor; why, that is a breach of the peace. The Bishop is present; he is the person who tells Roberts that the Prosecutor had pistols; then the Bishop hears this challenge. They all came upon one design. When several persons come upon an illegal design or purpose, the act of one, especially if in the presence of all, is the act of all.

This, Gentlemen, is the sum of the evidence on the *one side*; and there is *no* evidence on the *other*.

The Bishop, no doubt, is a man of an excellent character; but at this moment he gave way to his temper. He ought to have followed the process of the law, and not so to have done. Thus much I have said affects the Bishop, and affects Roberts. As to Owen, the Prosecutor says

that Owen came into the office; he made a noise, he talked very loud. The witness told him if he had any business, he was there ready to transact it, otherwise he begged they would go about their business. He only speaks to his making a noise. John Williams, he says, was less noisy than the rest. The witness asked what business he had there; and told him to go about his business. He says he staid there against his will; he staid after the rest went away.

Upon this, it is necessary for me to state, as I did before, that the other Defendant's coming with the Bishop upon the same design, by force and violence, to dispossess the Prosecutor, undoubtedly they came with an unlawful intent and purpose; *and, if you believe these witnesses*, they were guilty of the several breaches of the peace which I have stated, in assaulting the prosecutor, in assaulting David Roberts, in assaulting William Roberts, and in the Defendant Roberts challenging the Prosecutor; if you believe these witnesses, it seems to me that the Defendants are guilty of the riot with which they stand charged. As for the force and violence which the Prosecutor made use of, all that may be urged in another place in mitigation of the punishment; it is only for you to determine whether they, or each of them are guilty of this riot.

*Mr. Erskine.*—The two last witnesses stated a direct contradiction.

*Mr. Justice Heath.*—The law is clear and plain; you will apply the law to the facts as I have stated them. You will banish all prejudices that you may have from all publication. It is, indeed, unnecessary to admonish Gentlemen of your enlightened understandings; but at the same time, considering that individuals are to be tried by the law of the land, if they are guilty, notwithstanding the high character they may deservedly have, down to this time, it is your duty to find them guilty. *If you have any reasonable doubt whether they are guilty*,—in that case you will acquit the Defendants.

*In about five minutes the Jury acquitted all the Defendants.*

END OF VOL. I.