

THE
SPEECHES
OF
THE HON. THOMAS ERSKINE
(NOW LORD ERSKINE),
WHEN AT THE BAR,
ON
SUBJECTS
CONNECTED WITH
THE LIBERTY OF THE PRESS,
AND AGAINST
Constructive Treasons.

COLLECTED BY
JAMES RIDGWAY.

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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.

Of Easter Term, in the 32d Year of King George the Third.

London, (to wit.) Be it remembered, that Sir Archibald Macdonald, Knight, Attorney General of our present Sovereign Lord King George the Third, who, for our present Sovereign Lord the King, prosecutes in this behalf in his own proper person, comes into the Court of our said present Sovereign Lord the King, before the King himself, at Westminster, in the county of Middlesex, on Friday next after one month from the feast-day of Easter in this same term; and for our said Lord the King giveth the Court here to understand and be informed, that THOMAS PAINE, late of London, gentleman, 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 domi-

nions 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 right and interest 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, cun-

ning, 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 discontent 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, 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, 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 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 presi-*
 " *dent. 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 court-
 " tiers, send for a Dutch Stadtholder or a German
 " Elector, but they referred the whole matter to the
 " sense and interest of the country," (thereby mean-
 ing 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 Elec-
 tor of Hanover, to take upon themselves respectively
 the regal government of the said kingdom and do-
 minions, 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), "*exhi-*
 "*bits 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 constitution, but only of re-*
 "*strictions 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 autho-*

"thority by which it acted. A few persons got to-
 "gether, and called themselves by that name; se-
 "veral 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, in-
 titled, "An Act, declaring the Rights and Liberties
 "of the Subject, and settling the Succession of the
 "Crown"), "and more so since the corruption intro-
 "duced 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 peti-
 "tioning. Where then is the constitution either that
 "gives or that restrains power? It is not because
 "a part of the government" (meaning the govern-
 ment 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 repre-
 "sentation, and the candidates are candidates for
 "despotism." And in another part thereof, accord-
 ing 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 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. 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 fol-
lowing ; (that is to say,) *" With respect to the two
" Houses of which the English Parliament" (mean-*
ing 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 Par-
liament of this kingdom) " sleeps obedience. But
" if 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 power where there
" can be no certainty of the judgment to use it.
" Wretched as the state of representation is in Eng-
" land" (meaning the state of representation of the
Commons of this kingdom), *" it is manhood com-
" pared 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 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 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 Eng-
“ land 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 de-
“ testable; the one” (meaning the said King Wil-
liam) “ 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 Wil-
liam 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 the Third had done, and bought
“ the Dutoky of Brëmen 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 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 chi-
 “ valry, 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 it-
 “ self 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 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 go-
 “ vernment 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, 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.

ster, 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 interest 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 Elec-

tor 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), "*ashits 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 Success-

"sion 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 Tem-
 poral, and Commons, herein before mentioned) "was
 "a thing that made itself, and then made the au-
 "thority by which it acted. A few persons got to-
 "gether, and called themselves by that name; se-
 "veral 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, in-
 titled, "An Act, declaring the Rights and Liberties
 "of the Subject, and settling the Succession of the
 "Crown"), "and more so since the corruption intro-
 "duced 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 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 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 Par-
 liament of this kingdom) *“ sleeps obedience. But*
“ if 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 power where there
“ can be no certainty of the judgment to use it.
“ Wretched as the state of representation is in Eng-
“ land” (meaning the state of representation of the
 Commons of this kingdom), *“ it is manhood com-*
“ pared with what is called the House of Lords
 (meaning the Lords Spiritual and Temporal in Par-
 liament assembled); *“ and so little is this nick-named*
“ House” (meaning the House of Lords) *“ re-*
“ garded, 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, ac-
 cording to the tenour and effect following, viz. *“ Hav-*
“ ing 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 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 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 late 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 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 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 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 chi-
“ valry, 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 it-
“ self 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 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 go-
“ vernment 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
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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, sedi-
tious, and ill-disposed person, and wickedly, sedi-
tiously, and maliciously intending to scandalize, tra-
duce, and vilify the character of the said late Sove-
reign Lord, King William the Third, and the said
late happy Revolution, and the Parliament of Eng-

land, 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 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) "endea-
 "voured 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 Eng-
 land) "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 di-
 "vide 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 properly a Bill of Wrongs and of insult.*
 " *As to what is called the Convention Parliament*"
 (meaning the aforesaid Parliament of England, com-
 monly called the Convention Parliament), " *it*"
 (meaning the aforesaid Parliament of England, com-
 monly 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 Eng-
 land) " *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 suc-*
 " *cession*" (meaning the succession of the heirs of
 the Princess Sophia, Electress and Duchess Dowager
 of Hanover, to the crown and dignity of this king-
 dom), " *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 ac-*
 " *knowledges 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 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 ex-

cite 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
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 (meaning England) "*preferred what it thought least,*
" since from circumstances it must take one. The
" act called the Bill of Rights" (meaning the said
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" 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,
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" rest. And with respect to the nation" (meaning Eng-
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" of petitioning.—This being the case, the Bill of
" Rights" (meaning the said last-mentioned statute)
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" As to what is called the Convention Parliament"
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“ 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
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 (meaning the succession of the heirs of the Princess
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 to the crown and dignity of this kingdom) “ by the
 “ agency of Walpole ; that” (meaning the said spe-
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 “ 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 consti-
 “ tution either that gives, or that restrains power ? It
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 “ sess afterwards, as a Parliament, unlimited powers.
 “ Election in this case becomes separated from re-
 “ presentation, 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, 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 mil-
 " lion sterling a year, the business of which consists
 " in receiving the money. Whether the person" (mean-
 ing 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" (mean-
 ing the subjects of this kingdom) " must be hood-
 " winked, and held in superstitious ignorance by some
 " bugbear or other; and what is called the Crown"
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 " 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"
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 " to the nation" (meaning, amongst others, this king-
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sending, 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 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 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 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 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 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 Wil-*

“ liam” (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
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“ pense 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”* (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*

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(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 fol-
 “ lowing that of chivalry, and Mr. Burke is dress-
 “ ing 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 said King William the Third, and
 King George the First), “ at the expense of a mil-
 “ lion 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
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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, 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 the Third, and the said King George the First, and the said Revolution, according to the tenour and

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dom), “ *are now beginning to be too well understood*
“ *to promise them any long career. The farce of*
“ *monarchy and aristocracy in all countries is fol-*
“ *lowing that of chivalry, and Mr. Burke is dress-*
“ *ing 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 said King William the Third and King
George the First) “ *at the expense of a million a*
“ *year, who understood neither her laws, her lan-*
“ *guage, 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 pur-*
“ *poses may be found in every town and village in*
“ *England.*” In contempt of our 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. Whereupon the said Attorney General
of our said Lord the King, who for our said Lord
the King in this behalf prosecuteth for our said
Lord the King, prayeth the consideration of the

Court here in the premises, and that due process of law may be awarded against him the said Thomas Paine in this behalf, to make him answer to our said Lord the King touching and concerning the 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. That publication, although extremely reprehensible, and such as, perhaps, I was not entirely warranted in overlooking, I did overlook, upon this principle, that it may not be fitting and prudent at all times, for a public prosecutor to be sharp in his prosecutions, or to have it said that he is instrumental in preventing any manner of discussion coming under the public eye, although, in his own estimation, it may be very far indeed from that which is legitimate and proper discussion. Reprehensible as that book was, ex-

tremely so, in my opinion, yet it was ushered into the world under circumstances that led me to conceive that it would be confined to the judicious reader, and when confined to the judicious reader, it appeared to me that such a man would refute as he went along.

But, Gentlemen, when I found that another publication was ushered into the world still more reprehensible than the former; that in all shapes, in all sizes, with an industry incredible, it was either totally or partially thrust into the hands of all persons in this country, of subjects of every description; when I found that even children's sweetmeats were wrapped up with parts of this, and delivered into their hands, in the hope that they would read it; when all industry was used, such as I describe to you, in order to obtrude and force this upon that part of the public whose minds cannot be supposed to be conversant with subjects of this sort, and who cannot therefore correct as they go along, I thought it behoved me upon the earliest occasion, which was the first day of the term succeeding this publication, to put a charge upon record against its author.

Now, Gentlemen, permit me to state to you what it is that I impute to this book, and what is the intention that I impute to the writer of this book. Try it by every test that the human mind can possibly suggest, and see whether, when tried by all the variety of those tests, you will not be satis-

fied, in the long run, that it does deserve that description which my duty obliges me to give of it.

Gentlemen, in the first place I impute to it a wilful, deliberate intention to vilify and degrade, and thereby to bring into abhorrence and contempt the whole constitution of the government of this country; not as *introduced*, that I will never admit, but as *explained* and *restored* at the Revolution:—that system of government under which we this day live, and if it shall be attacked by contemptuous expressions,—if by dogmatical dicta,—if by ready-made propositions, offered to the understandings 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, further 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 reason 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 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 tyrannical. An heritable crown, or an heritable throne, 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.”

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 heritable 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 further 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-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.”

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 question was about the “ manner of giving it authority and practice.” The passage beyond that which I call a libel,—“ They “ first directed that the proposed Constitution should “ be published ; secondly, that each State should “ elect a Convention, 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 instances of tyranny as could be acted within the limits to which the nation had restricted it ; the Stuarts endeavoured 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 necessity 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 intro-

“ duced 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 ruffians, 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 suspending of laws, or the execution of laws,
“ by regal authority, 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 Crówn, 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 Parliament, 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 or 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 punishments inflicted.”

“ That Jurors ought to be duly impanelled 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, Parliaments 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 contained, by the force of a law made in due form, by authority 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 kingdom, 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 officers 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 con-

temptuous expression ("for I rather choose to call it
" by this name than the English government), ap-
" pears, 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."

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, exists 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 : further, 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 influenced into one ; and, as a le-
“ gislature, 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 obedience.”

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 in 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 inconsistency of placing power where
“ there can be no certainty 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
“ nicknamed House regarded, that the people
“ scarcely inquire at any time what it is doing. It ap-
“ pears also to be most under influence, and the
“ furthest 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; an 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 business 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 there-
“ fore 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 is exposed in
“ all countries,” including this among the rest, “ is
“ not from any thing that can happen to the man,
“ but from what may happen to the nation—the dan-
“ ger 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 cente-
“ nary of the Revolution of 1688. The characters
“ of William and Mary have always appeared to me
“ detestable; the one seeking to destroy 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 ascribe the whole reputation of it to a
“ man who had undertaken it as a job, and who,
“ besides what he otherwise got, charged six hun-

“dred 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
“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.”

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 go-

“ vernments are now beginning to be too well under-
“ stood 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 Hol-
“ land, 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 intention
"appears evidently to be, to convince the people of
"Great Britain, that they have neither liberty nor a
"constitution; 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 downright usurpers, censures
“ them for having unwisely sent to Holland for a
“ King, denies the existence of a British constitu-
“ tion, and invites the people of England to over-
“ turn their present government, and to erect ano-
“ ther 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 rea-
“ soning 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, attempting to prove that
“ they have a right to form a new constitution ;
“ that it is expedient for them immediately to exer-
“ cise that right, and that in the formation of this
“ constitution 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 sub-
“ ject 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 authority (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 oppressed, 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 society among them ; he should have proved what great advantages they would reap as a nation from such a revolution, 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 further 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 im-
" mediately send a line for me, under cover, to Mr.
" Johnson, St. Paul's Churchyard, who will for-
" ward it to me, upon which I shall come and an-
" swer 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 respecting 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 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 en-

tirely 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 prosecution 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
“ importance to permit me to trouble myself about
“ your prosecution ; 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 reputation, otherwise than
“ to increase the latter ; and with respect to your-
“ self, it is as consistent that you obtain a verdict
“ against the man in the moon, as against me ;
“ neither do I see how you can continue the prose-
“ cution against me as you would have done against
“ one of *your own people*, who had absented him-
“ self 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 opportunity of knowing whether the prosecu-
“ tion was intended against Thomas Paine, or against
“ the rights of the people of England to investi-
“ gate systems and principles of government ; for as
“ I cannot now be the object of the prosecution,
“ 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 how-
“ ever you may choose to interpret them, they pro-
“ ceed from a good heart. The time, Sir, is be-
“ coming too serious to play with Court prosecu-
“ tions, and sport with national rights. The terrible
“ examples that have taken place here upon men
“ who, less than a year ago, thought themselves as
“ secure as any prosecuting Judge, Jury, or Attor-
“ ney General, can now do in England, ought to
“ have some weight with men in your situation.”

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 cannot 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 constitutions—“ 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 no- “ thing) 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)—“ BENEVOLENCE ! 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, subscribe as much money as any

“ other man towards supporting 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 published 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 *con-*
ceited 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 further 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 war-
ranted 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 bring-
ing 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 flourish-
ing 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

* Mr. Erskine was then Attorney General to the Prince of Wales.

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 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 advantage 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 accident 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 rage 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 to-day?—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 suspected 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 have a 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 individuals 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 sovereignty 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 further, 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 ra-

ther 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

* Vide vol. i. page 139. and 160.

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;—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 falling 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 investigating 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 errors and procure its repeal, than forcibly to

“ violate it; because 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 governments, or to what are called constitu-
“ tions, and the parts of which they are composed.

“ It is for the good of nations, and not for the
“ emolument or aggrandizement of particular indi-
“ viduals, that government ought to be established,
“ and that mankind are at the expense of supporting
“ it. The defects of every government and consti-
“ tution, both as to principle and form, must, on a
“ parity of reasoning, be as open to discussion as
“ the defects 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 NATION, THAT NATION
“ will reform its government or its constitution in
“ the one case, as the government repealed or re-
“ formed 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 go-
“ verned by it. If it prefer a bad or defective go-
“ vernment 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 discus-
“ sion 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 kingdoms ; 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 dependance cannot be
“ had at this time of day on names and prejudices :
“ the eyes of mankind are opened ; and communi-
“ ties 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 constitu-

tion 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 resorting 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 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 fellow-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 misfortunes, 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 situation in life,
“ will be thought naturally to urge me to promote
“ misery, discord, or confusion, or to exult in the

“ subversion 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, com-
“ pare, and judge for yourselves.

“ But, under all these disheartening circum-
“ stances, 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 delivering my sentiments, not only to all my
“ constituents, but to those likewise not my con-
“ stituents, whom yet, in the large sense, I repre-
“ sent, and am faithfully to serve.

“ I look upon restoring election and representa-
“ tion 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, re-
“ tain 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. The consequences we have all seen and felt:—America, from an obedient affectionate colony, became an independent nation; and two millions of people, nursed in the very lap of our monarchy, became the willing subjects of a republican constitution.

Gentlemen, in that great and calamitous conflict Edmund Burke and Thomas Paine fought in the same field of reason together; but with very different successes. Mr. Burke spoke to a Parliament in England, such as Sir George Saville describes it, having no ears but for sounds that flattered its 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, further than their own benefit connected them; and by these powerful arguments prepared the minds of the American people for that GLORIOUS, JUST, and HAPPY revolution.

Gentlemen, I have a right to distinguish it by these epithets, 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 deform 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 abet-

“tors 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 Bri-
“tain, there was a great change throughout all
“America. The tide of popular affection, which
“had still set towards the parent country, began
“immediately to turn, and to flow with great ra-
“pidity in a contrary 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 govern-
“ment 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
“voluntarily yield any degree of pre-eminence to
“another, but 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 re-

* *Common Sense*, written by Thomas Paine, in America.

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 :

* Dr. Price.

“ 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 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 people ; 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 upon some compact, tacit or expressed, there is no power existing of force to alter it, without the breach of the covenant, 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 in the kingdom, than doctrines which bid human nature rebel even against that which is the best.—Say to the people of England, 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 further 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 libellers, joined to the intrigues of a few disappointed politicians, 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 discouraging proposition: ‘That we have a very good ministry, but that we are a very bad people;’ that we set ourselves 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 com-

* Lord Ellenborough, then Mr. Law.

“ past as unfounded in its principle, and dangerous
 “ in the application, 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 direct.—‘ It is the will of God that the
 “ ‘ happiness of human life be promoted :’—this is
 “ the first step, and the foundation, not only of this,
 “ but of every moral conclusion. ‘ Civil society
 “ ‘ conduces to that end :’—this is the second pro-
 “ position. ‘ Civil societies cannot be upheld, un-
 “ ‘ less, 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 in-
 “ ‘ terest of the whole society requires it (that is,
 “ ‘ so long as the established government cannot be
 “ ‘ resisted or changed without public inconve-
 “ ‘ niency), it is the will of God (which will univer-
 “ ‘ sally 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 acknow-
 “ ledge no common arbitrator; and it would be ab-
 “ surd to commit the decision to those whose con-
 “ duct 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
 " 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, when-
 " ever expediency requires, either by the ordinary
 " act of the legislature, or, if the occasion deserve
 " it, BY THE INTERPOSITION OF THE PEOPLE."

No man can say that Mr. Paley intended to diffuse
 discontent by this declaration.—He must therefore
 be taken to think with me, that freedom and affec-
 tion, 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 settled, to be no more committed to innova-
“tion or debate; as foundations never to be stirred;
“as the terms and conditions 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 therefore they cannot be at*" "*liberty to begin a new one. Every one is born a*" "*subject to his father, or his prince, and is therefore*" "*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 subjection 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 com-*" "*pact 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 government 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 suggest : they are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to ; and if there be any original defects, or adventitious 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 mitigations and explanations of the feudal law, as are reasonable and equitable; and that the latter involve all the chief outlines of a legal government, and provide for the equal distribution 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 memories, 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 govern-
 " ment ; and this is indication enough to any honest
 " statesman, how he ought to adapt whatever power
 " he finds in his hands to their 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 practically allow me a greater degree of au-
 " thority over them than is consistent with any cor-
 " rect ideas of perfect freedom, 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 pleasure."

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 *bond 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 en-
 tertained them, I shall argue that he had—And al-
 though 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

* Earl of Mansfield.

of caution concerning opinions, where are such lessons to be read?

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 establish 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 religion 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 ances-
 “ tors, elder or later, nor from the modern custom
 “ of any reformed city, or church abroad : but from
 “ the most antichristian council, and the most tyrannous
 “ 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 kind 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 confute, to forewarn and to illustrate. Whereof,
“ what better witness can we expect I should pro-
“ duce, than one of your own, now sitting in Par-
“ liament, the chief of learned men reputed in this
“ land, *Mr. Selden*, whose volume of natural and
“ national laws, proves, not only by great authori-
“ ties brought together, but by exquisite reasons
“ and theorems almost mathematically demonstra-
“ tive, that all opinions, YEA ERRORS, known,
“ read and collated, are of main service and assist-
“ ance 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 commodity of all the knowledge in
“ the land, to mark and license it like our broad
“ cloth and our woolpacks.

“ Nor is it to the common people less than a re-
“ proach; 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
“ estate 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 pre-
“ tend.

“ These corruptions which it seeks to prevent,
 “ break in faster at doors which cannot be shut.
 “ To prevent men thinking and acting for them-
 “ selves, 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: instead 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 forbidden
 “ 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 suppressing of books, do as
“ good as bid you suppress 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 can-
“ not be assigned a truer than your own mild, and
“ free, and humane government. It is the liberty,
“ Lords and Commons, which your own valourous
“ 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 influence of heaven ; this is that which
“ hath enfranchised, enlarged, and lifted up our appre-
“ hensions, 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, oppressive, 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 liberty
 " to know, to utter, and to argue freely according
 " to conscience, 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 ab-
 stract 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 principles account for the great liberty
 " of the press in these kingdoms, beyond what is
 " indulged in any other government. It is appre-
 " hended, 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 rousing this spirit must
 " be employed to prevent that ambition. Nothing
 " is so effectual to this purpose as the liberty 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 naturally 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 Lords, we enjoy, is liberty ; but every good in this life has its alloy of evil—licentiousness 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. Doctor 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 : licentiousness is the alloy of liberty : it is an ebullition, an excrescence ;—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 liberty, that it is not easy to correct the one, without dangerously wounding the other : it is extremely hard to distinguish 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, restored order in
" Rome by restraining licentiousness. God forbid
" we should in this country have order restored or licentiousness 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 seldom 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 removing 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 preparatory
" 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 out-sentries; if we remove them, if we
 " hoodwink them, if we throw them in fetters, the
 " enemy may surprise us."

Gentlemen, this subject was still more lately put
 in the justest and most forcible light by a noble per-
 son high in the magistracy; whose mind is not at
 all tuned to the introduction of disorder by improper
 popular excesses; I mean Lord Loughborough,
 Chief Justice of the Court of Common Pleas. I
 believe I can answer for the correctness of my note;
 which I shall follow up with the opinion of another
 member of the Lords' House of Parliament; the
 present Earl Stanhope; or rather, I shall take Lord
 Stanhope first; as his Lordship introduces the subject
 by adverting to this argument of Lord Loughbo-
 rough's. " If," says Lord Stanhope, " our boasted
 " liberty of the press were to consist only in the
 " liberty to write in *praise* of the constitution, this
 " is a liberty enjoyed under many *arbitrary* govern-
 " ments. I suppose it would not be deemed quite
 " an unpardonable offence, even by the Empress of
 " Russia, if any man were to take into his head to
 " write a panegyric upon the Russian form of go-
 " vernment. Such a liberty as that might therefore
 " properly be termed the *Russian liberty of the*
 " *press*. But, the *English liberty of the press* is of
 " a very different description: for, by the law of

" England, it is not prohibited to publish specula-
 " tive works upon the constitution, whether *they*
 " contain praise or censure."—*Lord Stanhope's De-*
fence of the Libel Bill.

You see therefore, as far as the general principle goes, I am supported by the opinion of Lord Stanhope, for otherwise the Noble Lord has written a libel himself, by exciting other people to write *what-
 ever they may think*, be it good or evil, of the constitution of the country. As to the other high authority, Lord Loughborough, I will read what applies to this subject—" Every man," said Lord Loughborough, " may publish at his discretion his
 " opinions concerning forms and systems of go-
 " vernment. If they be wise and enlightening, the
 " world will gain by them ; if they be weak and ab-
 " surd, they will be laughed at and forgotten ; and
 " if they be *bona fide*, *they cannot be criminal, how-*
ever ERRONEOUS. On the other hand, the purpose
 " and the direction may give a different turn to wri-
 " tings whose common construction is harmless, or
 " even meritorious. Suppose men, assembled in
 " disturbance of the peace, to pull down mills or
 " turnpikes, or to do any other mischief, and that
 " a mischievous person should disperse among them
 " an excitation to the planned mischief known to
 " both writer and reader, *To your tents, O Israel ;*
 " that publication would be criminal ;—not as a
 " libel, 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 jurisdiction 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 con-
 “ struction of the writing, the averment should be,
 “ in the case as I have instanced, that certain per-
 “ sons 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 evidenced 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 pro-
 tected 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 ju-
 risdiction 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, recol-
 lecting 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 ~~aid~~ 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 unquestionable 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 over-awing 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 tyrannical. An hereditary crown, or an hereditary throne, or by what other fanciful name such things may be called, have no other significant explanation than that mankind are hereditary 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 combating 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 ar-

* This expression was provoked by the conduct of one of the Jury; which this rebuke put an end to.—ED.

gument, 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 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 convention." The sentence selected stands thus: "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 sub-
“ jects ; 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 Ger-
“ man Elector ; but they referred the whole matter
“ to the sense and interest 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 parity 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 usurped 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 Runnymede?—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 follow-

ing 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 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, *notwithstanding the numerous panegyrics on ANCIENT English liberty*, must very much depend on the administration.”

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
" attention 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 com-
" pletely 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 unproved 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 western 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 influenced 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 obedience. But if we look at the distinct abilities of the

* A late eminent and pious minister at York.

“ two Houses, the difference will appear so great, as
 “ to show the inconsistency of placing power where
 “ there can be no certainty 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 furthest
 “ removed from the general interest 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 Informa-
 tion, 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 ma-
 “ jority was sixty-three.”

The terms, however, in which Mr. Burke speaks
 of the House of Lords, are still more expressive.
 “ It is something, 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. In-
 deed his opinion of BOTH THE HOUSES OF PARLIA-
 MENT, which I am about to read to you, was origin-

ally 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 sus-
 “taining the part of that intermediate cause. How-
 “ever 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 asserting 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 states-

* Mr. Burke's Thoughts on the Cause of the present Discontents, published in 1775.

“ man, 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 ARBITRARY GOVERNMENT, WERE THINGS NOT ALTOGETHER INCOMPATIBLE.

“ The power of the Crown, almost dead and rotten as prerogative, has grown up anew, with much more strength and 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 renovation ; and which the distresses and the prosperity of the country equally tend to augment,—was an admirable substitute for a prerogative, that, being only the offspring of antiquated prejudices, had moulded in its original stamina irresistible principles of decay and dissolution. The ignorance 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 politics, the end at which they aimed, as well as the INSTRUMENT 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 Prerogative, and
 “ made a lodgment in the strong-hold of Parlia-
 “ ment 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 beginning to the end ; and the*
 “ *power of obtaining their object absolute ; and the*
 “ *safety in the proceeding perfect ; no rules to con-*
 “ *fine, 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 par-
 “ take in every considerable act of government ; 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 redress, in the last century; in this, the distempers of Parliament."

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 appear 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, instead 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 sum-

med 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
 “ authority 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 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

* Mr. Pitt.

† Mr. Erskine took up a book.

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 legislature is competent
“ to decide.

“ And whereas no man is, or can be actually re-
“ presented who hath not a vote in the election of
“ his representative.

“ And whereas it is the right of every Commoner
“ of this realm (infants, persons of insane mind,
“ and criminals incapacitated by law, only excepted)
“ to have a vote in the election 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, 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 represent-
“ atives; and the consent of the majority of the
“ whole community to the passing of laws, is given
“ by persons whom they have not delegated for such
“ purposes; and to which the said majority have
“ not in fact consented by themselves or by their re-
“ presentatives.

“ And whereas the state of election of members
“ of the House of Commons, hath in process of
“ time so grossly deviated from its simple and natural
“ principle of representation 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 nation 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 their 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
“ properly 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 Ita-
“ lian eunuch, a mountebank, a fiddler, a player, or
“ any regular practitioner of that tribe. The Ro-
“ man Emperors, almost from the beginning, threw
“ themselves into such hands ; and the mischief in-
“ creased every day, till its decline, and its final
“ ruin. It is, therefore, of very great importance
“ (provided the thing is not overdone), to contrive
“ such an establishment as must, almost whether a
“ prince will or not, bring into daily and hourly of-
“ fices 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 neverthe-
less, he is to be kept as a necessary evil, and his pro-

pensities 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 mail 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 Heralds' 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 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

* A pamphlet had been published just before, putting T. Paine and Harrington on the same footing—as obscure blackguards.

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 reasoning." 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 plagiarist 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 as sprightly up, as that it has not only wherewith to guard well its own freedom and safety, but to spare, and to bestow upon the solidest and sublimest points of controversy and new invention, it betokens us not degenerated nor drooping to a fatal decay, but

" casting off the old and wrinkled skin of corrup-
 " tion, to outlive these pangs, and wax young
 " again, entering the glorious ways of truth and
 " prosperous virtue, destined 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 muing her mighty youth, and kindling her
 " undazzled eyes at the full mid-day beam; purging
 " and unscaling her long-abused sight at the foun-
 " tain 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 prognosticate 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: me-
 thinks I see this noble and puissant nation, not de-
 generated 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 re-
 collect 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 na-

tion 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;—but happening to hint a doubt, Jupiter turned hastily round and threatened him with his thunder.—“ Ah !
 “ ah !” says the countryman, “ now, Jupiter, I know
 “ that you are wrong ; you are always wrong when
 “ you appeal to your thunder.”

This is the case with me—I can reason with the

people of England, but I cannot fight against the thunder of authority.

Gentlemen, this is my defence for free opinions. With regard to myself, I am, and always have been, obedient and affectionate to *the law* :—to that rule of action, as long as I exist, I shall ever give my voice and my conduct ; but I shall ever do as I have done to-day, maintain the dignity of my high profession, and perform as I understand them, all its important duties.

[Mr. Attorney General arose immediately to reply to Mr. Erskine, when Mr. Campbell (the foreman of the Jury) said,—My Lord, I am authorized by the Jury, to inform the Attorney General, that a reply is not necessary for them, unless the Attorney General wishes to make it, or your Lordship.—Mr. Attorney General sat down, and the Jury gave in their verdict,—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.

S P E E C H

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 against the publisher of this publication is not an accusation of the servants of the Crown; but comes before you sanctioned by the oaths of a Grand Jury of the country. It stood for trial upon a former day; but it happening, as it frequently does, without any imputation upon the gentlemen named in the pannel, that a sufficient number did not appear to constitute a full Special Jury, I thought it my duty to withdraw the cause from trial, till I could have the opportunity of addressing myself to *you*, who were originally appointed to try it.

I pursued this course, from no jealousy of the common Juries appointed by the laws for the ordinary service of the Court, since my whole life has been

one continued experience of their virtues; but because I thought it of great importance, that those who were to decide upon a cause so very momentous to the public, should have the highest possible qualifications for the decision; that they should not only be men capable from their educations of forming an enlightened judgment, but that their situations should be such as to bring them within the full view of their country, to which, in character and in estimation, they were in their own turns to be responsible.

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 mo-

ment 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? Yet in the King's Court, where His Majesty is himself also sworn 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 dissipated and dispelled; and I recollect that the world, under the banners 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 faiths. This rational and legal course of improvement was recognised 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 in the toleration of religious *opinions*, but liberally extends it to *practice*. It permits every man, EVEN PUBLICLY, to worship God according to his own conscience, though in marked dissent from the national establishment,—so as he professes the general faith, which is the sanction of all our moral duties, and the only pledge of our submission to the system which constitutes the state.

Is not this freedom of controversy, and freedom of worship, sufficient for all the purposes of human happiness and improvement?—Can it be necessary for either, that the law should hold out indemnity to those, who wholly abjure and revile the govern-

ment of their country, or the religion on which it rests for its foundation? I expect to hear, in answer to what I am now saying, much that will offend me. My learned friend, from the difficulties of his situation, which I know, from experience; how to feel for very sincerely, may be driven to advance propositions which it may be my duty, with much freedom, to reply to;—and the law will sanction that freedom.—But will not the ends of justice be completely answered by my exercise of that right; in terms that are decent, and calculated to expose its defects?—Or will my argument suffer, or will public justice be impeded, because neither private honour and justice, nor public decorum, would endure my telling my very learned friend, because I differ from him in opinion, that he is a fool,—a liar,—and a scoundrel, in the face of the Court? This is just the distinction between a book of free legal controversy, and the book which I am arraigning before you. Every man has a right to investigate, with decency, controversial points of the Christian religion;—but no man, consistently with a law which only exists under its sanctions, has a right to deny its very existence, and to pour forth such shocking and insulting invectives, as the lowest establishments in the gradations of civil authority ought not to be subjected to, and which soon would be borne down by insolence and disobedience, if they were.

The same principle pervades the whole system of the law, not merely in its abstract theory, but in its

daily and most applauded practice.—The intercourse between the sexes, which, properly regulated, not only continues, but humanizes and adorns our natures, is the foundation of all the thousand romances, plays, and novels, which are in the hands of every body. Some of them lead to the confirmation of every virtuous principle ;—others, though with the same profession, address 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 declamations 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 track 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 pass'd 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 heav'ns.

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 opi-

nions 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.

*Case of the KING against JOHN STOCKDALE—
Tried in the Court of King's Bench, before
Lord KENYON and a Special Jury at West-
minster, on the ninth of December, A. D.
1789, upon an Information filed against him
by the ATTORNEY GENERAL, for a Libel on
the HOUSE OF COMMONS.*

SUBJECT OF THE TRIAL, &c.

THE trial of Mr. John Stockdale, of Piccadilly, is so immediately connected with the well-known Impeachment of Mr. Hastings, the Governor General of India; that very little preface is necessary for the illustration of Mr. Ershine's defence of him.

When the Commons of Great Britain ordered that Impeachment, the Articles were prepared by Mr. Edmund Burke, who had the lead in all the inquiries which led to it, and, instead of being drawn up in the usual dry method of legal accusation, were expanded into great length, and were characterized by that fervid and affecting language, which distinguishes all the writings of that extraordinary person. The Ar-

ticles so prepared, instead of being confined to the records of the House of Commons, until they were carried up to the Lords for trial—were printed and sold in every shop in the kingdom, without question or obstruction by the Managers of the Impeachment or the House of Commons, and undoubtedly, from the style and manner of their composition, made a very considerable impression against the accused.

To repel the effects of the Articles, thus (according to the reasoning of Mr. Erskine) prematurely published, the Rev. Mr. Logan, one of the ministers of Leith in Scotland, a person eminent for learning, drew up a Review of the Articles of Impeachment (which, as has been already stated, were then in general circulation), and carried them to Mr. Stockdale, an eminent and respectable bookseller in Piccadilly,—who published them in the usual course of his business. Mr. Logan's Review was composed with great accuracy and judgment, but undoubtedly with strong severity of observation against the accusation of Mr. Hastings; and having an immediate, and very extensive sale, was complained of by Mr. Fox, to the House of Commons, and upon the motion of that great and eminent person, then one of the Managers of the Impeachment—the House unanimously voted an address to the King, praying His Majesty to direct his Attorney General to file an Information against Mr. Stockdale, as the publisher of a libel upon the Commons House of Parliament, which was filed accordingly.

It is not necessary to lengthen this preface, by the passages from Mr. Logan'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 or-

dinary 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 forbore 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 prosecution 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 acceptance 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 intitled, "A Review of the principal Charges against Warren Hastings, Esquire, late Governor General 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 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?*"

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 inquisition, rather than a Court of Parliament."

In another part it is said : "The other charges are so insignificant in themselves, or founded on such gross misrepresentations, that they would not affect an obscure individual, much less a public character."

And again : "If success, in any degree, attends

“ the designs 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 ne-
 “ cessity, you do so at the risque of your fortune,
 “ your honour, and your life; if you act with *prò-*
 “ *per 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 zeal-
 “ ous and devoted to support you; you may obtain
 “ a vote of thanks from the House of Commons
 “ for your *services*, and you may read *your history*
 “ *in the eyes of the mob*, by the light of bonfires
 “ and illuminations. 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 Sove-
 “ reign, you may expect the thunders of parliamen-
 “ tary vengeance; you will certainly be impeached,
 “ and probably be undone.”

Another passage is this: “ The office of calm
 “ deliberate justice is to redress grievances as well
 “ as to punish offences. It has been affirmed, that
 “ the natives of India have been deeply injured;
 “ but has any motion been made to make them
 “ compensation for the injuries they have sustained?
 “ —Have the accusers of Mr. Hastings ever pro-
 “ posed 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 Company? Till such measures are
 “ adopted, and in the train of negotiation, the
 “ world has every reason to conclude, that the im-
 “ peachment of Mr. Hastings is carried on”—Now,
 Gentlemen, I leave you to judge what sort of mo-
 tives 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 hacknied 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, ~~as~~ 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. Stookdale, 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 to-day, 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 Attorney 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 asperse, scandalize, and vilify the Commons of Great Britain in Parliament assembled; and most wickedly and audaciously to represent their proceedings as corrupt and unjust, and to make it believed and thought, as if the Commons 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 this 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 innuendoes 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, *bond 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 judg-

ment 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 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 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 Information; 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 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 in-
 “ sition 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, argu-
 “ ment, or conviction. A majority had determined
 “ to impeach ; opposite 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 ex-
 ertion, he makes his last grand stride *over forty-four*
pages more, almost to the end of the book, charg-
 ing 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 connexion 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 na-

tional 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 misrepresent-

ation and violence, had fastened it on an unwilling House of Commons : that, prepossessed with this sentiment (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 further 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 to-day, 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 further 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 weak fallible men, and that even the noble Judges of that high tribunal are clothed beneath their ermines with the common infirmities of man's nature, it will bring us all to a proper temper for considering the book itself, which will in a few moments be laid before you. But first, let me once more remind you, that it was under all these circumstances, and amidst the blaze of passion and prejudice, which the scene I have been endeavouring faintly to describe to you might be supposed likely to produce, that the author, whose name I will now give to you, sat down to compose the book which is prosecuted to-day as a libel.

The history of it is very short and natural.

The Rev. Mr. Logan, Minister of the Gospel at Leith, in Scotland, a clergyman of the purest morals, and, as you will see by and by, of very superior talents, well acquainted with the human character, and knowing the difficulty of bringing back public opinion after it is settled on any subject, took a warm, unbought, unsolicited interest in the situation of Mr. Hastings, and determined, if possible, to arrest and suspend the public judgment concern-

ing him. He felt for the situation of a fellow-citizen, exposed to a trial which, whether right or wrong, is undoubtedly a severe one;—a trial, certainly not confined to a few criminal acts like those we are accustomed to, but comprehending the transactions of a whole life, and the complicated policies of numerous and distant nations;—a trial, which had neither visible limits to its duration, bounds to its expense, nor circumscribed compass for the grasp of memory or understanding;—a trial, which had therefore broke loose from the common form of decision, and had become the universal topic of discussion in the world, superseding not only every other grave pursuit, but every fashionable dissipation.

Gentlemen, the question you have therefore to try upon all this matter is extremely simple.—It is neither more nor less than this.—At a time when the Charges against Mr. Hastings were, by the implied consent of the Commons, in every hand, and on every table;—when by their Managers, the lightning of eloquence was incessantly consuming him, and flashing in the eyes of the public;—when every man was with perfect impunity saying, and writing, and publishing just what he pleased of the supposed plunderer and devastator of nations; would it have been criminal *in Mr. Hastings himself* to have reminded the public that he was a native of this free land, entitled 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 *bond 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 *bond 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 *bond 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 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 *bond 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 Com-

“ mons 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 king-
 “ dom, the question comes to be determined, whe-
 “ ther Mr. Hastings *be guilty 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 fabric, 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 misrepresentation 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 public liberty, and the dignity of
“the nation. *The only danger 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*
“*without 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 confidence in English faith and lenity " shaken and impaired, and the character of this nation wantonly and wickedly degraded."

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 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 Commons, which merely trusted to the matter they had collected.

Although, from a caution which my situation dictates as representing another, I have 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 *bond 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 private 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 character 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 detail of the proofs by which these personal enormities have been established, and which the writer must be 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 re-

peated 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 immense expense to the public, accused of the most oppressive cruelties, and charged with the robbery of princes and the destruction of nations,—it is 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 VERRÉS 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 native inhabitants of this kingdom are the happiest and best protected subjects in India: our native allies and tributaries 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
“ spond 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 so-
 “ vereign 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, notwithstanding acci-
 “ dental variations, there are two associations ex-
 “ pressed 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 re-
 “ venue in the time of peace, and of military ser-
 “ vice, 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 extraordi-
 “ nary emergencies, were common to both *.

* “ 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

" When the Governor General of Bengal, in
 " 1778, made an extraordinary demand on the Ze-
 " mindar of Benares for five lacks of rupees, the
 " British empire, in that part of the world, was
 " surrounded with enemies which threatened its de-
 " struction. In 1779, a general confederacy was
 " formed among the great powers of Indostan for
 " the expulsion of the English from their Asiatic do-
 " minions. At this crisis the expectation of a French
 " armament augmented the general calamities of the

" usually descended to the posterity of the Zemindar, under the
 " ceremony of fine and investiture, a material decrease in the cul-
 " tivation, or decline in the population of the district, has some-
 " times been considered as a ground to dispossess him. When
 " Zemindars have failed 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, independent
 " of the Zemindar. These circumstances strongly mark their de-
 " pendence 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 investigation, 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 government appointed to collect its re-
 " venues. Cheit Sing understood himself to stand in this predi-
 " cament. 'I am,' said he on various occasions, 'the servant
 " 'of the Circar (government), and ready to obey your orders.'
 " The name and office of Zemindar is not of Hindoo, but
 " Mogul institution."

“ country. Mr. Hastings is charged by the Committee
“ with making his first demand under the false pre-
“ tence 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 intelligence from an
“ English merchant at Cairo, that war had been de-
“ clared by Great Britain on the 23d of March, and
“ by France on the 30th of April. Upon this in-
“ telligence, considered as authentic, it was deter-
“ mined 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. Bald-
“ wyn, the merchant, for sending the earliest in-
“ telligence he could procure to Bengal. It was
“ *two days* after Mr. Hastings’s information of the
“ French war, that he formed the resolution of exact-
“ ing the five lacks of rupees from Cheit Sing, and
“ *would have made similar exactions* from all the de-
“ pendencies 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 Go-
“ vernment 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
“ military service in times of danger, being univer-
“ sally established in India, as it was formerly in
“ Europe during the feudal times, the subsequent
“ conduct of Mr. Hastings is explained and vindic-
“ cated. The Governor General and Council of
“ Bengal having made a demand upon a tributary
“ Zemindar for three successive years, and that de-
“ mand having been resisted by their vassal, they
“ are justified in his punishment. The necessities
“ of the Company, in consequence of the critical
“ situation of their affairs in 1781, calling for a
“ high fine; the ability of the Zemindar, who
“ possessed near two crores of rupees in money
“ and jewels, to pay the sum required; his back-
“ wardness to comply with the demands of his su-
“ periors; 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 taken
“ for supporting the authority of the Company,
“ by punishing a refractory vassal, were thwarted
“ and defeated by the barbarous massacre of the

“ British troops, and the rebellion of Cheit Sing,
 “ the appeal was made to arms, an unavoidable re-
 “ volution took place in Benares, and the Zemindar
 “ became the author of his own destruction.”

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 Par-
 “ liament. 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 *con-*
 “ *duct*, 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 ruppes.
 “ 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 of-
 “ fending party, characterizes a tribunal of *inquisition*
 “ rather than a Court of Parliament.”

Gentlemen, I am ready to admit that this senti-
 ment might have been expressed in language more
 reserved and guarded ; but you will look to the sen-
 timent 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 de-
 fence 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 bonâ 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's 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 public questions, or acted in authority civil or military, to answer for the issues of our councils and our wars, and if honest single intentions for the public service were refused as answers to impeachments, we should have many relations to mourn for, and many friends to deplore. For my own part, Gentlemen, I feel, I hope, for my country as much as any man that inhabits it; but I would rather see it fall, and be buried in its ruins, than lend my voice to wound any minister, or other responsible person, however unfortunate, who had fairly followed the lights of his understanding and the dictates of his conscience for their preservation.

Gentlemen, this is no theory of mine; it is the language of English law, and the protection which it affords to every man in office, from the highest to the lowest trust of Government.—In no one instance that can be named, foreign or domestic, did the

Court of King's Bench ever interpose its extraordinary jurisdiction, by information, against any magistrate for the widest departure from the rule of his duty, without *the plainest and clearest proof of corruption*. To every such application, not so supported, the constant answer has been, Go to a Grand Jury with your complaint.—God forbid that a magistrate should suffer from an error in judgment, if his purpose was honestly to discharge his trust.—We cannot stop the ordinary course of justice; but wherever the Court has a discretion, such a magistrate is entitled to its protection. I appeal to the noble Judge, and to every man who hears me, for the truth and universality of this position. And it would be a strange solecism indeed to assert, that in a case where the Supreme Court of criminal justice in the nation would refuse to interpose an *extraordinary* though a legal jurisdiction, on the principle that the ordinary execution of the laws should never be exceeded, but for the punishment of malignant guilt, the Commons, in their higher capacity, growing out of the same constitution, should reject that principle, and stretch them still further by a jurisdiction still more *eccentric*.—Many impeachments have taken place, because the law *could not* adequately punish the objects of them; but who ever heard of one being set on foot because the law upon principle *would not* punish them?—Many impeachments have been adopted for a *higher* example than a prosecution in the ordinary Courts, but surely never

for a *different* example.—The matter therefore, in the offensive paragraph, is not only an indisputable truth, but a truth, in the propagation of which we are all deeply concerned.

Whether 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 the whole of the first Article through so many pages, without even the imputation of an incorrect or intemperate expression, except in the concluding passage (the meaning of which I trust I have explained), goes on with the same earnest disposition 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's 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 consti-
“ tuents were, ‘ *That in all your deliberations and*
“ ‘ *resolutions, you make the safety and prosperity*
“ ‘ *of Bengal your principal object, and fix your at-*
“ ‘ *tention on the security of the possessions and re-*
“ ‘ *venues of the Company.*’ His superior genius
“ sometimes acted in the spirit, rather than com-
“ plied with the letter, of the law; but he dis-
“ charged the trust, and preserved the empire com-
“ mitted to his care, in the same way, and with
“ greater splendour 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 con-
“ gratulations 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 administrator 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

touchèd 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 tomohawk 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 succeeded 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 innuendoes), 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 establish-

ments; 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 regularity, 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

* Mr. Law, now Lord Ellenborough, Mr. Plumer, and Mr. Dallas.

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 preferments are linked from free choice with those who, from the mistakes of the author, are treated with 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 fail

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 *bona 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 animosity ;—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 indict-

ment 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 ar-

gument 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 introduced into the preamble of an impeachment, before an assembly 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 movements 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 common 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, 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 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 un-
“ done.”

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 exeroise that odious and disagreeable 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 coun-

try 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 its to 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 conviction,—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 Information, 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 leaning 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.

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 prosecute, 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 men-

tion 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 birth-right."

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 constitution 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 further; 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 birth-right 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 inform 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 writ-

ings 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 miscon-
“ struction 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 in-

dividuals, 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 probaby 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 gentleman 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.

Q. 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 coun- " try?"—"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 those 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 *sedition* 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 don't 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 the first 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 consequently 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 small-

est 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 conspiring under the auspices of cut-throats to overturn every thing sacred in religion, and venerable in the ancient government of our country. Certain it is, that

the whole system of government, of which the business we are now engaged in is no mean specimen, came upon the public with the suddenness of a clap of thunder, without one act to give it foundation, *from the very moment that notice was given of a motion in Parliament, to reform the representation of the people.* Long, long before that time the Rights of Man and other books, though not complained of, had been written;—equally long before it, the addresses to the French government, which have created such a panic, had existed;—but as there is a give and take in this world, they passed unregarded. Leave but the *practical* corruptions, and they are contented to wink at the *speculations* of theorists, and the compliments of public-spirited civility; but the moment the national attention was awakened *to look to things in practice, and to seek to reform corruptions at home,* from that moment, as at the ringing of a bell, the whole hive began to swarm, and every man in his turn has been stung.

This, Gentlemen, is the real state of the case; and I am so far from pushing the observation beyond its bearing for the defence of a Client, that I am ready to admit Mr. Frost in his conduct has not been wholly invulnerable, and that in some measure he has brought this prosecution upon himself.

Gentlemen, Mr. Frost must forgive me, if I take the liberty to say, that, with the best intentions in the world, he formerly pushed his observations and conduct respecting Government further than many

would be disposed to follow him. I cannot disguise or conceal from you, that I find his name in this green book *, as associated with Mr. Pitt and the

(* Mr. Erskine read the following minutes from Mr. Pitt's hand-writing.)

Thatched House Tavern, May 18th, 1782.

At a numerous and respectable meeting of Members of Parliament, friendly to a constitutional reformation, and of members of several committees of counties and cities,

| | | |
|----------------------|--------------------|------------------|
| The Duke of Richmond | Sir C. Turner | Dr. John Jebb |
| Lord Surry | Mr. Taylor | Major Cartwright |
| Lord Mahon | Mr. Amherst | Mr. Hill |
| The Lord Mayor | Mr. Duncombe | Mr. Baynes |
| Hon. Wm. Pitt | Mr. J. Martin | Mr. Shove |
| Sir Watkin Lewes | Mr. Ald. Townsend | Mr. Churchill |
| Rev. Mr. Wyvill | Mr. Ald. Creighton | Mr. Tooke |
| Mr. Falconer | Mr. Ald. Wilkes | Mr. Horne |
| Mr. Redman | Rev. Mr. Bromley | Mr. Frost |
| Mr. Withers | Mr. B. Hollis | Mr. Trevanion |
| Mr. Bodely | Mr. Disney Fitch | Dr. Brooksbury |
| 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

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

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, to 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 1.

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 *.

† (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.

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.

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 le-

vity of wine, into expressions which have no correspondence with 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 deploping them, but they may differ nevertheless in ascribing 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, nei-

ther 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 citizens 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 descriptions, in
“ order to proscribe and punish them in the lump
“ for a presumed delinquency, of which perhaps
“ but a part, perhaps 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 unnatural 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 disembarassed 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, de-*

* Edmund Burke.

“ *praved, seditious disposition, and maliciously in-*
 “ *tending 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,
 “ PERFECT, 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 prin-
 ciple 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 inten-
 tion *as a fact*, and as constituting the very essence
 of the crime, stating as it must state, to apprize the
 Defendant of the crime alleged against him, the
 overt act, by which such malicious purpose was dis-
 played; 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 disposi-

tion :—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 expressions 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 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 the
 “ man beyond the bounds of prudence : they are
 “ always liable to great misconstruction, from the
 “ ignorance or inattention of the hearers, and too
 “ often from a motive truly criminal.” Forster af-
 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 persuasion 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 ac-
 quittal :—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 re-
 quisition. 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 in-offensive 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 arrive ? 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 moment 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 on 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*

* The King's Bench sat in the small Court of Common Pleas—the Impeachment having shut up its own Court. EDIT.

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.

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 de-

* Edmund Burke,

“struction are sown in civil intercourse, and in
“social habitudes. The blood of wholesome kin-
“dred is infected. Their tables and beds are sur-
“rounded with snares. All the means given by Provi-
“dence to make life safe and comfortable are per-
“verted 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 ten-
“dency to degrade and abase mankind, and to de-
“prive 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 my-
“self to put a man 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 conta-
“gious servitude, to keep him above-ground, an
“animated mass of putrefaction, corrupted him-
“self, and corrupting 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 factionous 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 penalties of the act by inferences and conclusions drawn from what he hath affirmed ; the criminal position must be *directly* maintained, to bring him within the compass of the act.

“ Thirdly. Nor will every rash, hasty, or unguarded expression, owing perhaps to natural warmth, or thrown out in the heat of disputation, render any person criminal within the act ; the criminal doctrine must be maintained *maliciously 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 satisfactory 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 unfortunate 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.

R E P L Y.

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 in-

formers,—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 humane 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, Gen-

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 *prima 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 at-

tention 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 be-

fore 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 would acquit Mr. Frost. Here are these gentlemen *respectable in their situation*, and what have they done? According 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 coun-

try, wedded to it as they are, 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 connexion 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 innuendoes, which run as follow:

“ We” (meaning the society aforesaid) “ feel too much not to believe that deep and alarming abuses exist in the British government” (meaning

His said Majesty's government 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 expenses
 " may be reduced, without lessening the true dignity
 " of the nation" (meaning this kingdom) " or the
 " government" (meaning the government of this
 kingdom), " and therefore wish for satisfaction in
 " this important matter. IV. We view with con-
 " cern 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
 " accession of territory, when bought at the ex-
 " pense 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 conquests are
 " those which each makes at home by comforting the
 " peasantry, by promoting agriculture and manufac-
 " tories, by multiplying men and the other productions

“ of nature ; that then it is that kings may call them-
 “ selves the image of God, whose will is perpetually
 “ directed to the creation of new beings ; if they con-
 “ tinue 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 cer-
 “ tain 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 there-
 “ fore we will do all on our part, as peaceable citi-
 “ zens, 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 honour and
 “ happiness of his country, to the defects and cor-
 “ ruptions of which we are inclined to attribute un-
 “ necessary wars, &c. &c.. We think it a deplorable
 “ case when the poor” (meaning the poor of this
 kingdom) “ must support a corruption” (meaning
 corruption of the representation of the people of this
 kingdom in the Parliament thereof) “ which is cal-
 “ culated to oppress them”. (meaning the poor of
 this kingdom), “ when the labourer must give his
 “ money to afford the means of preventing him hav-
 “ ing 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 some"
 (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 pro-
 " visions for obliging" (meaning obliging) " privy
 " counsellors to subscribe thair" (meaning their)
 " advice with their names, and against placemen and
 " pensioners sitting in Pailliament" (meaning the
 Parliament of this kingdom), " have been repealed.
 " It is said that the voice of the people is the consti-
 " tutional control of Parliament" (meaning the Par-
 liament of this kingdom); " but what is this but
 " saying that the representatives" (meaning the re-
 presentatives 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 assembling to oblige them to
 " do their duty. An equal and uncorrupt repre-
 " sentation" (meaning representation in the Parlia-
 ment of this kingdom) " 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 importance. VI. In short, we see with
 “ the most lively concern an army of placemen, pen-
 “ sioners” (meaning persons holding places and pen-
 sions 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-regulated 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 se-
 “ parate associations against felonious depredations
 “ —a criminal code of laws” (meaning the criminal
 code of laws of this kingdom) “ sanguine and ineffi-
 “ cacious—a civil code” (meaning the civil code of
 laws of this kingdom) “ so voluminous and myste-
 “ rious as to puzzle the best understandings ; by
 “ which means justice is denied to the poor” (meaning
 the poor of this kingdom), “ on account of the ex-
 “ pense attending the obtaining it. Corporations”
 (meaning corporations of this kingdom) “ under
 “ ministerial or party influence, 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 inquiry 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 oppres-
 “ sive 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 revenue for the same, and the ex-
 “ cise laws” (meaning the excise laws of this king-
 dom), “ 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 govern-
 " ment 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 abundant in peace, plenty, and happi-
 " ness? Are we always to stand still, or go back-
 " ward? 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 re-
 " forms and improvements is inhuman and criminal;
 " but we hope our condition will be speedily im-
 " proved, and to obtain so desirable a good is the
 " object of our present association, au" (meaning an)
 " union founded on principles of benevolence and
 " humanity, disclaiming all connexion with riots and
 " disorders, but firm in our purpose, and warm in
 " our affections for liberty. VII. Lastly, We invite
 " the friends of freedom throughout Great Britain
 " to form similar societies, and to act with unanimity
 " and firmness, 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 importance ; then shall we be free and happy. By order of the society, S. Eyre, chairman” (meaning the chairman to the said society).

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 Prosecntor, 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 impanel 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 before.

hand 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 impanelled 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 recognises; 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 as 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 had not come into Court. In the case of the King against Jodrell, 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 *Jokiffe*. 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

* The same Judges who are supposed to have decided the case of the *King* against *Waring*.

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 argu-

mentatively, in a question 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,

* 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 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. Burrige*, for a misdemeanor, which came before the Court of King's Bench, in Trinity Term, 10

decided this question; and the Court determined, that the rule for another special jury, obtained upon

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 synonymous, 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

the motion of the Crown lawyers, must be discharged.

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. Berrcroft, 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:

And as to another objection that was made, "that such a course, if tolerated, 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.

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 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 on violated. The liberty of the
 " press is indeed essential to the nature of a free
 " state; but this consists in laying no *previous* re-
 " straints 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 contro-
 " verted points in learning, religion, and govern-
 " ment; 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 founda-
 " tions 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 senti-

"ments, 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
 "poisons 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
 "seasonable exertion of the laws) that the press
 "cannot be abused to any bad purpose, without in-
 "curring a suitable punishment; 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 in-
 controvertible. 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 cri-
 minal nature;—that they shall hear the case with

* Blackstone's Commentaries, vol. iv. page 151, 8vo. edi-
 tion, 1791.

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, 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 cri-

minality, 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 consi-

tution 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 more 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 merely 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 present association; an union founded on "principles of benevolence and humanity; disclaim- "ing 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 mat-

ter 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 conclusion, 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 observa-

tions 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 proprietors 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 foundation 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 salutary 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 as-

thors, 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 appeared 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 importance.”* 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 par-

ticular 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 dan-

ger 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 surrounded him, anxious
“ to afford that consolation which so great a calamity
“ required ; the unhappy father, as if offended with
“ their tenderness, flung his affectionate offspring
“ from him like a pestilence. Was it that the in-
“ animate 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 incapable 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 pe-

cularly 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 render-
 “ ing 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 fellow-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 abso-

“lutely, under the discretion and power of a military
“force, which is to act without waiting for the au-
“thority of the civil magistrates.

“Some have been accused of exaggerating the
“public misfortunes, nay, of having endeavoured to
“help forward the mischief, that they might after-
“wards raise discontents. I am willing to hope,
“that neither my temper, nor my situation in life,
“will be thought naturally to urge me to promote
“misery, discord, or confusion, or to exult in the
“subversion 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, com-
“pare, and judge for yourselves.

“But, under all these disheartening circumstances,
“I could yet entertain a cheerful hope, and under-
“take again the commission with alacrity, as well as
“zeal, if I could see any effectual steps taken to re-
“move 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 delivering my sentiments, not only to all my
“constituents, but to those likewise not my con-
“stituents, whom yet, in the large sense, I repre-
“sent, 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 universal 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 them-

selves, 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 *bona 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 free men. Their attachment was founded upon a conviction of its excellence, 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 agreeable 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, de-

siring them to put my Learned Friend to death, would not that prove an evil intention 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 present 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 history, 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 distinction, 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 *bond 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 newspaper, 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 *prima 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 herba*. 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.