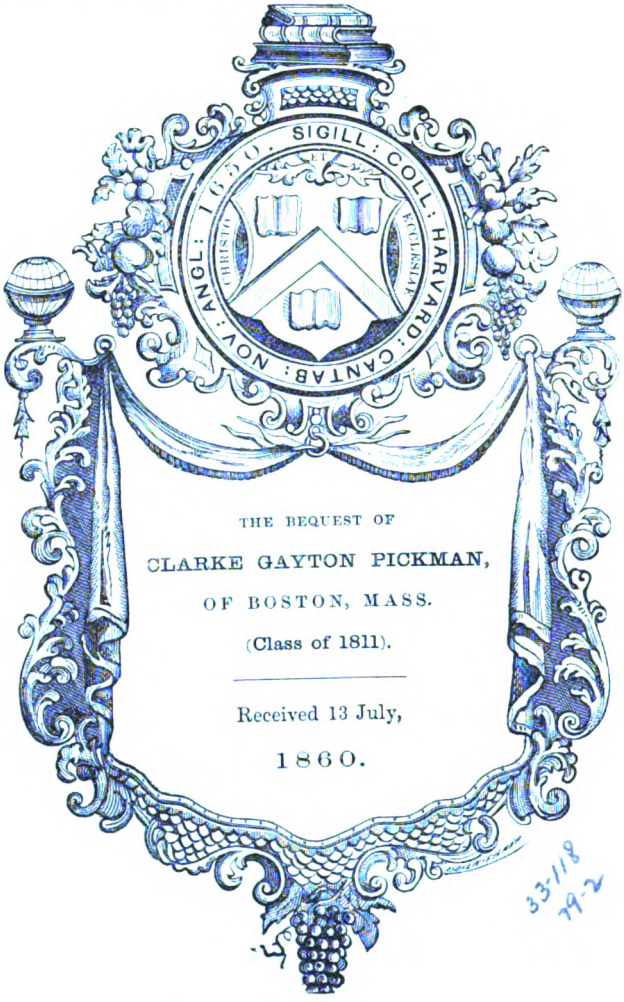
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State Trials

AND

PROCEEDINGS FOR HIGH TREASON AND OTHER CRIMES AND MISDEMEANORS

FROM THE

EARLIEST PERIOD TO THE YEAR 1783,

WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY

T. B. HOWELL, Esq. F.R.S. F.S.A.

AND

CONTINUED

FROM THE YEAR 1783 TO THE PRESENT TIME:

BY

THOMAS JONES HOWELL, Esq.

VOL. XXII.

[BEING VOL. I. OF THE CONTINUATION.]

23—34 GEORGE III.....A. D. 1783—1794.

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THE Proprietors of the New Edition of the State Trials in Twenty-One Volumes Royal Octavo, compiled by the late Thomas Bayly Howell, esq., and brought down to the year 1783, *in presenting to the Public the First Volume of* THE CONTINUATION *of that Work, beg leave briefly to state the measures which they have felt it their duty to take, in order to supply the loss of that gentleman.*

In consequence of the severe illness under which, even from the commencement of his labours, the late Mr. Howell suffered, the active assistance of a zealous and able coadjutor was rendered indispensably necessary to the carrying on of so arduous an undertaking as that in which he was engaged, and the progressive decay of his health disabling him for the conduct of the Work, the execution of this laborious duty depended chiefly upon the exertions of his Son, under whose immediate and exclusive superintendance the latter Volumes were given to the Public.

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LONDON, FEBRUARY, 1817.

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[Connected with these proceedings against Bembridge, are the following extracts from the Minutes of the Board of Treasury:]

WHITEHALL Treasury Chambers, January 14, 1783. Present, Mr. Pitt, chancellor of the exchequer; Mr. Grenville; Mr. Jackson.

Read the auditors state of the final accompts of the late Henry lord Holland, as paymaster-general of the forces, from the 25th December 1764, to the 24th June 1765; and as paymaster of Chelsea Hospital for the same period; wherein it appears there is a balance due from him of 288,529*l.* on the former account, and that he is in surplusage 220,521*l.* 3*s.* 3*d.* on the latter, which leaves a balance against him on the whole of 68,008*l.* 6*s.* 6*d.* due to the public.

Write to John Powell, esq. acting executor to the late lord Holland, to desire he will immediately pay the said balance into the exchequer.

February 14th, 1783. Present, Mr. Pitt, chancellor of the exchequer; Mr. Grenville; Mr. Jackson.

Read the letter from the deputies to lord Sondes, auditor of the imprests, dated 5th inst. acquainting their lordships, that since their delivering the state of the late lord Holland's accompts, on the 30th of November last, on which there was a balance due to the crown of 68,008*l.* 6*s.* 6*d.*, which balance was agreed to by the accountant previous to the delivery of the said state to this board, Mr. Powell (the only acting executor) has voluntarily charged the account with the sum of 48,709*l.* 10*s.* 11*d.*, and is discharged of the sum of 2845*l.* 17*s.* 10*d.* by producing a receipt for so much surcharged on the paymaster, whereby the balance at this time due to the public from the estate of lord Holland is augmented to the sum of 113,961*l.* 19*s.* 7*d.*

Read a letter from the deputy auditor, dated 13th instant, transmitting a state of the additions which have been made to the charge and discharge of the final accompt of lord Holland, late paymaster-general, together with copies of two letters which have passed between the auditor and Mr. Powell on the subject.

Read letter from Mr. Powell, dated 11th instant, with two inclosures respecting the accounts and allowances of Robert Paris Taylor, and Peter Taylor, esqrs. deputies to lord Holland.

Direct Mr. Hughes and Mr. Wigglesworth, deputy auditors of the imprest; Mr. Powell, executor to lord Holland; and Mr. Bembridge, of the pay-office, to attend my lords here on Saturday next the 17th* instant.

15th February, 1783. Present, the earl of Shelburne; Mr. Pitt, chancellor of the exchequer; Mr. Grenville; Mr. Jackson.

My lords resume the consideration of the state of the final accompt of lord Holland, late paymaster-general of the forces, delivered into the office of the auditor of the imprest (lord Sondes) by Mr. Powell (only acting executor to his lordship), on the 11th January, 1782, and transmitted from thence to this board on the 30th of November last, by which it appears the balance on the determination thereof was 68,008*l.* 6*s.* 6*d.*, in consequence of which he received directions to pay the same into the exchequer; and my lords also resume

* So in the original MS., but I do not find that any board was held on the 17th.

the consideration of the letter from the deputies to auditor lord Sondes, dated the 5th of this month, acquainting my lords, that since the above-mentioned balance was agreed to by the accountant, Mr. Powell (the only acting executor) has voluntarily charged himself with the sum of 48,799*l.* 10*s.* 11*d.* and is discharged of another sum of 2,845*l.* 17*s.* 10*d.*

Mr. Hughes and Mr. Wigglesworth deputies to lord Sondes, attending according to order, are called in.

Read letter from them, dated the 13th inst., and a state of the additions made to the charge and discharge of lord Holland's final accompt, subsequent to the delivery of it to them on 11th January, 1772.

The deputy auditors are asked, whether they considered the accompt as closed with respect to the charge previous to their transmitting it to this board? To which they answer in the affirmative, and that they certainly should not have sent it otherwise. They are asked, whether it is usual, after the balance of an accompt is agreed between the accountant and them, and the sum is marked in pencil, for any addition to be made to the charge? They answer, it is not.

They are asked, what occasioned the accompt to be returned to Mr. Powell? To which they answer, they sent it back to him some time between the 11th and 20th December, to have two sums, amounting to 1,368*l.* 9*s.* 3*d.* added to the charge, which they thought were proper to be inserted; that it was delivered back to them on the 4th of last month; and that some time after it was again in their possession, they discovered the before-mentioned sum of 48,799*l.* 10*s.* 11*d.*, was also added to the charge without any notice to them.

They are asked, whether they had any intercourse with the proper officers at the pay-office, between the time of the accompt being delivered to them, and the transmission of it to this board? To which they answer, they had frequent communications with Mr. Bembridge, the accountant there, from the 10th to the 15th of November, or thereabouts, to know if there were any other charges to come into the account; and being told there were none, they drew out the pencil balance, considering the accompt then as finally closed.

Mr. Powell attending, according to order, is called in.

Mr. Powell is asked, whether at the time lord Holland's final accompt was delivered into the auditor's office, he was not aware that many considerable articles were omitted in the charge, whicho ught to have been inserted? He admits he was.

He is asked, whether any of them were of such a nature as to make it at all doubtful whether they should be included in the charge or not? He admits they were not.

He is asked, whether he can then assign any reason why they were omitted? He answered, he did not consider the accompt to be finally closed, as some claims of Mr. Robert Paris Taylor's were depending, which might make an alteration in it.

He is asked, whether those claims had any kind of connexion with the articles which constitute the voluntary charge made by him after the accompt was delivered, and the pencil balance drawn out? He admits they had not.

He was told repeatedly, that not having yet assigned any reason for keeping back those articles, my lords expect he will explain what his inducement was: he replied, he felt himself much embarrassed, as he could not give a satisfactory account of that without injuring a friend: and it being urged to him as a duty incumbent on him in his situation to state his motives for doing what he must have known to be wrong; he said he was prevailed with to keep back the charges from his regard for Mr. Bembridge, the present accountant in the pay-office, who was one of lord Holland's deputies.

Mr. Bembridge, attending according to order, is called in.

Mr. Bembridge is asked the same questions as Mr. Powell was, respecting the omission of the articles of the voluntary charges, and whether any of them were such as to admit a doubt of their being proper to be included; and he answers to the same effect as Mr. Powell did.

He is also asked, whether he can assign any reason for the omission of them? To which he answered, he did not consider the accompt as finally closed.

He is likewise asked, if he was not apprized long ago of the several articles before-mentioned? He admits he was, some years ago.

He is asked, whether it did not fall properly within his duty at the pay-office, to see that the charge was properly made? He answered, it did; but that as Mr. Powell was the accountant before him, he had left it to him to settle and adjust this accompt.

He is asked, if that did not occur to him to be improper, Mr. Powell being himself the person accounting? He answered, it did not.

He was asked, if he could conceive any motive which could induce Mr. Powell to keep back the articles of the voluntary charge? He answered, he could not.

Mr. Hughes and Mr. Wigglesworth are again called in.

They are acquainted that Mr. Powell and Mr. Bembridge, in the course of their examinations, both declared, they did not consider the accompt as finally settled, when the pencil balance was agreed between Mr. Colborne, a clerk in the pay-office, and Mr. Plasted, a clerk under the deputy auditors; they are therefore again asked, whether they understood it to be so? and they repeat, that they made frequent applications to Mr. Powell to know if any more charges were to be added;

acquainting him in conversation, and writing to him that they were about to send the accompt immediately to the treasury, but he transmitted none in consequence thereof.

They are asked, if they ever knew an instance of any voluntary charges being added after the balance was agreed to, and was marked in pencil? They answer, that they do not know of any such instance. They withdrew.

My lords will have this business further under their serious consideration, and will inquire into the circumstances attending the discharge of the sum of 2,845*l.* 17*s.* 10*d.*

Let the several parties have notice to attend again on Tuesday next.

February 22d, 1783.—Present Mr. Pitt, chancellor of the exchequer; Mr. Grenville; Mr. Jackson.

Mr. Rose communicates to my lords a letter he received from Mr. Powell of the pay office, on the 16th instant, saying, that from the distress of his mind the preceding day, he believes he did not close his examination fully; and that he meant to say, the reason for keeping back the charges lately entered in lord Holland's accompt was, the distress of others, that of lord Holland's family, from the debts due from his deputies, among whom is Mr. Bembridge, and hopes that will be permitted to stand as his answer.

Mr. Rose also communicates to my lords a letter received from Mr. Bembridge on the 19th instant, desiring their lordships may be informed, that he will pay the balance due from him as one of the deputies of Henry lord Holland, deceased, in three weeks at farthest.

My lords being of opinion that it is highly proper the paymaster-general should be acquainted with the whole transaction respecting the keeping back the articles of the voluntary charge in the accompts of the late lord Holland, which were inserted after the balance was agreed, as a matter of very serious importance both to the present and future conduct of that office, direct that the minutes of this board, of the 15th instant, and of this day, shall be immediately communicated to the paymaster-general, that he may take such measures thereupon, with respect to his own office as he shall judge expedient and necessary.

My lords are also pleased to direct a full state of the case to be prepared by the solicitor to this board, from the minutes of this day, and the 15th instant, and that the same be laid before the attorney and solicitor general, as soon as possible, for their opinions, to know whether any, and what further proceedings ought to be had in this business.

On the 5th March 1783 at a board of Treasury, a letter was read from Mr. Bembridge dated the 3rd, representing that he had paid the balance due from him as one of the deputies of the late lord Holland, deceased, late paymaster of the forces, to Mr. Powell.

March 6th, 1783.—Present Mr. Pitt, chancellor of the exchequer; Mr. Grenville; Mr. Jackson; Mr. Eliot.

Read report of the paymaster-general, dated 4th instant, acquainting their lordships, that on consideration of the conduct of Mr. Powell and Mr. Bembridge with respect to the keeping back the articles of a voluntary charge in the accompts of the late lord Holland, he had thought it his duty to dismiss the former from his office of cashier of the pay-office, and the latter from his offices of accountant in the pay-office, and deputy-paymaster at Quebec, to the last of which it appears to him unnecessary to appoint a successor, also informing their lordships that Mr. Powell still holds the offices of secretary and register of Chelsea-hospital, and joint agent to the invalids, under commissions signed by his majesty.

My lords are of opinion his majesty's pleasure should be taken respecting the two offices held by Mr. Powell, and direct a copy of the minutes of their examination, &c. to be transmitted to lord Sydney, as the said appointments originate with the secretary of state for the home department.

Read letter from Mr. Bembridge, dated 5th instant, transmitting a declaration from Mr. John Colborne, assistant clerk in the pay-office, that when he delivered the account of the late lord Holland at the auditors office, previous to the late voluntary charge being inserted, he considered it as an open account, agreeable to the constant practice with that office; and that if the last inserted voluntary charges had been omitted, and the account closed without them, it does not appear to him in what manner any one could have been advantaged by it, except the heirs of lord Holland.

Transmit a copy thereof to the paymaster-general.

[By statute 21, Geo. 3, c. 48, after reciting *int. al.* that the commissioners appointed under stat. 20, s. 3, c. 54, to examine, &c. the public accounts of the kingdom, &c. had reported *int. al.* that the sum of two hundred fifty-six thousand four hundred fifty-six pounds two shillings and four pence was remaining in the hands of John Powell, esq. the only acting executor of the late right honourable lord Holland, deceased, late paymaster-general of his majesty's forces—It was enacted (s. 2), that on or before the twenty-fourth day of October, in the year of our Lord one thousand seven hundred and eighty-one, the said sum of two hundred fifty-six thousand four hundred fifty-six pounds two shillings and four pence, remaining in the hands of the said John Powell, the only acting executor of the said late right honourable Henry lord Holland, deceased, or so much thereof as should then remain in

his hands unapplied to the services, charges, and demands to which the same was liable, should be paid into his majesty's exchequer, at Westminster, and be applied to such services as should then have been voted by the Commons of Great Britain in the then present session of parliament; and Powell was thereby directed and required to pay the same accordingly.]

March 18th, 1783, at a board of treasury —Present, Mr. Pitt; Mr. Jackson; Mr. Eliot.

My lords having directed inquiry to be made, whether the balances due from accountants recited in the act of the 21st of his present majesty have been paid into the exchequer as was directed by the said act, find that the state of them is as follows:—

Then follows an enumeration of several items, among which is this—

Imprest monies repaid by the hands of J. Powell, executor of lord Holland.

	£.	s.	d.
Balance in the hands of the accountants according to the act	256,456	2	4
Money paid into the exchequer -	232,515	4	8
Payments into the exchequer less than the sums in the act - - - -	23,940	17	8

Transmit the list to the solicitor with the names of the agents or representatives, and direct him to call upon them immediately to pay the remainder of the balances on pain of process being issued against them, without any delay, apprizing him that the sum due from Mr. Powell turns out to be much more than above stated.

Read the opinion of the attorney and solicitor general on the case laid before them, respecting the conduct of Mr. Powell and Mr. Bembridge in keeping back the articles of charge which they have lately inserted in lord Holland's accompts, and also on the propriety of admitting the voucher produced by Mr. Powell in discharge of the sum of 2,845*l.* 17*s.* 10*d.*

Transmit copies thereof to lord Sydney and the secretary at war. Acquaint the auditor of the imprests that he must not allow the voucher for 2,845*l.* 17*s.* 10*d.* in the final accompt of lord Holland, till further evidence is produced of its authenticity, and direct the solicitor to proceed in the manner recommended by the attorney and solicitor general.

[The following is the Case laid before the attorney and solicitor general, with their opinion thereon.]

CASE.

By an act passed in the 20th year of his present majesty, cap. 54, intituled, "An act for appointing and enabling commissioners to examine, take, and state the public accounts of the kingdom, and to report what balances are in the hands of accountants; it is, among other things, enacted, that it shall and may be lawful to and for the commissioners thereby appointed, or any three of them, and they are thereby empowered, authorized, and required to examine upon oath (which oath they or any three of them are thereby authorized to administer) among others, the paymaster-general and deputy-paymasters of his majesty's army, and all other the officers in the office of the said paymaster. All which officers and persons are thereby directed and required punctually to attend the said commissioners at such time or place as they or any three or more of them shall appoint; and also to observe and execute such orders and directions as the said commissioners or any three or more of them shall make or give for the purposes before mentioned."

Under the authority of this act the commissioners on the 27th September 1780 issued their precept to John Powell, esq. cashier to the paymaster-general of the forces, and only acting executor of the last will and testament of Henry lord Holland deceased, late paymaster of his majesty's forces, directing him to make up an account of the receipts and payments of the said Henry lord Holland as paymaster, and to state the balance of cash then remaining in his hands due to the public upon the account aforesaid.

On the 20th February 1781, Mr. Powell attended the commissioners, in obedience to their summons issued for that purpose, and was examined upon oath respecting the said account, and the nature of his office, and again examined on the 26th February, and the 9th, 12th, 15th, 19th, and 28th March 1781, and his examination reduced into writing, wherein he swears that he is the only acting executor of Henry lord Holland, late paymaster-general of the forces. That the sum of 256,456*l.* 2*s.* 4*d.* mentioned in his return to the precept of the board issued upon the 27th of September last, was, to the best of his knowledge, the whole balance then remaining upon the account of the said Henry lord Holland as paymaster-general of the forces. That lord Holland's accounts ended on the 24th June, 1765, and his final account was delivered into the office of the auditor of the imprest on the 11th January 1772.

The accounts certainly were delivered into the auditors office as early as Mr. Powell has sworn; but the same did not come in course of examination until long afterwards; but an act having passed in the 21st year of his majesty's reign, directing the several accountants, whose balances were reported by the commissioners, to pay in the same; Mr. Powell, in part compliance with the directions of the said act, paid into the exchequer two several sums, amounting together to 232,515*l.* 4*s.* 8*d.*, whereby the balance sworn to by Mr. Powell, and reported by the commissioners, was reduced to the sum of 23,940*l.* 17*s.* 8*d.*

In the mean time the auditor proceeded in the examination of the account, and by the end of November last completed the same,

and struck a balance with the approbation of Mr. Powell, when it appeared that instead of 23,940*l.* 17*s.* 8*d.* the balance amounted to 68,008*l.* 6*s.* 6*d.*, and Mr. Powell having agreed to such balance, the same was wrote in pencil in the margin, as is usual in the office, and a state thereof delivered into the treasury, accompanied with a letter dated the 30th November, from the deputy auditors to the secretary of the treasury, wherein they state, that lord Holland's final account was ready, and might be declared immediately, if the book of account was closed and attested by Mr. Powell, which they had earnestly urged him to do, and with which he had not then complied.

It was natural to have expected that the balance of the account delivered in to the auditors should have corresponded with the balance sworn to by Mr. Powell, especially as the deputy auditors have not disallowed any material articles in the accounts; and though it has turned out otherwise, no further notice was taken than calling on Mr. Powell to come and sign the account and swear to it, as he had agreed to the balance.

There being two articles, amounting together to the sum of 1,368*l.* 9*s.* 3*d.*, with which Mr. Powell admitted he ought to be charged, and which were taken into that account at the time of striking the balance, the book of account was given back to Mr. Powell, in order to have those two articles inserted therein at the end, so as that the same might justify the balance stated to the treasury.

Mr. Powell being repeatedly pressed to finish his account, and pay in the balance, never objected to any miscalculation therein, but evaded it by a suggestion of a dispute between him and one Mr. Robert Paris Taylor, a deputy-paymaster under lord Holland, and accordingly on the 23rd of December 1782, he wrote to the deputy auditors as follows:

"From the memorials presented to the lords of the treasury by Robert Paris Taylor, esq. late a deputy-paymaster in Germany, setting forth, as I understand, reasons why the surcharges on his account, to the amount of 12,052*l.* 13*s.* 10½*d.* should not have been made, and requesting to have the same taken off, one of whose memorials (as you know) has been referred to the auditors of the imprests for their opinion, who have made so judicious and equitable a report thereon as gives me great reason to expect that the said Mr. Paris Taylor will obtain relief from the lords of the treasury, and I do hope it will give strength to his claims when their lordships consider that he voluntarily charged himself in his accounts with a profit to the public of upwards of 73,000*l.* For this reason, together with the opinion of Mr. Woodhouse, attorney to the estate of the late Henry lord Holland (as signified by me in a letter dated the 18th of last month, copy of which I now inclose), will, I am persuaded, be considered by you as a very sufficient reason for my not at present striking the balance."

The following is the letter above referred to.

"Dear Sir; When the demands of the public upon lord Holland's estate respecting the agency of the late Mr. Peter Taylor and Mr. Paris Taylor, his lordships deputies were first under consideration of the lord chancellor, it appeared that large sums were due from them respectively (as it was then supposed) absolutely and ultimately settled and ascertained by the auditors of the imprests, and upon that opinion and authority I applied for and expected to obtain satisfaction out of the assetts of Mr. Peter Taylor in the hands of the executors under the direction and control of the court of Chancery—but Paris Taylor having so far succeeded under a memorial presented to the lords of the Treasury as to obtain a report of the auditors in his favour touching divers sums by him claimed and not allowed, and having a second memorial to their lordships still depending, whereby further deductions or allowances are prayed, the lord chancellor referred it to a master to examine and certify how the demand stands, who does not think himself competent to make his report till the event of the auditors report and the petition to the lords of the Treasury is known by a full and clear decision upon those two points; you will therefore be pleased to object to a declaration of lord Holland's accounts till these matters are brought to a conclusion, for if Mr. Paris Taylor obtains any abatement, the claim upon you (as his lordship's executor) will be so much reduced, and in my apprehension create an embarrassment, instead of accelerating the completion of his lordship's concerns with the public."

The public having nothing to do with the dispute between lord Holland's executor and his sub-accountant, the lords of the Treasury on the 24th of January, sent positive directions to Mr. Powell to pay in the balance of 68,008*l.* 6*s.* 6*d.* which was agreed on between him and the auditors as aforesaid, which Mr. Powell again endeavoured to evade by sending a copy of Mr. Woodhouse's letter and likewise of his own to the auditor, to the secretary of the treasury desiring him to lay the same before their lordships by way of excuse for not complying with their orders.

Sometime before, to wit, about the 4th of January, Mr. Powell returned his account to the auditors, who, concluding that nothing more was added thereto than the two articles agreed upon between them, and which of course would not vary the balance, laid the same aside without looking thereat, but, sometime after, having occasion to look into the same, they were surprised to find that Mr. Powell had on a blank leaf immediately following the charge side of his account, introduced a variety of sums to the amount of 48,799*l.* 10*s.* 11*d.*, as well as the two articles

agreed to be added as aforesaid, which were set down after the other, and had added to the discharge side of his account a payment by Mr. Paris Taylor of 2,845*l.* 17*s.* 10*d.*, which will be observed upon hereafter.

The case being so very extraordinary, they acquainted their principal (lord Sondes) therewith, who wrote to Mr. Powell that he would immediately inform him whether he had any further additions to make to the charge or discharge of the final account of the late lord Holland; to which he received for answer, that he had that day sent his clerk to insert 3 articles, amounting together to the sum of 774*l.* 7*s.* 3*d.*, to the credit of the public, and assured his lordship that, to the best of his knowledge, those were the only outstanding ones, and that no further addition would be made either to the debtor or creditor side of the account. By which additions, instead of there being only a balance of 23,940*l.* 17*s.* 8*d.*, there is now a balance remaining in his hands, after giving him credit for the sum of 2,845*l.* 17*s.* 10*d.*, said to have been paid by Mr. Taylor, the sum of 114,736*l.* 6*s.* 10*d.*

The deputy auditors, as soon as they had observed the additions to the account, immediately apprized the lords of the treasury thereof, who thereupon gave orders that Mr. Hughes and Mr. Wigglesworth, the deputy auditors, and likewise Mr. Powell and Mr. Bembridge, the accountant at the pay-office, to attend them; and they attending on the 15th of February last accordingly, the deputy auditors were called in, and were asked, whether they considered the account as closed, with respect to the charge, previous to their transmitting it to that board? To which they answered in the affirmative.

They were then asked, what occasioned the account to be returned to Mr. Powell? To which they answered, they sent it back to him sometime between the 11th and 20th of December, to have two sums, amounting to 1,368*l.* 9*s.* 3*d.* added to the charge, which they thought were proper to be inserted. That it was delivered back to them on the 4th of January, and that sometime after it was again in their possession, they discovered the before-mentioned sums, amounting together to 48,799*l.* 10*s.* 11*d.*, were also added to the charge without notice to them.

They were asked, whether they had any intercourse with the proper officers at the pay-office between the time of the account being delivered to them, and the transmission of it to that board? To which they answered, they had frequent communication with Mr. Bembridge, the accountant there, from the 10th to the 15th of November, or thereabouts, to know if there were any other charges to come into the account, and being told there were none, they drew out the pencil balance, considering the account then as finally closed.

Mr. Powell was then called in, and being asked whether at the time that lord Holland's final account was delivered in at the auditors office, he was not aware that many considerable articles were omitted in the charge which ought to have been inserted? He admitted he was.

He was asked, whether any of them were of such a nature as to make it at all doubtful whether they should be included in the charge or not? He admitted they were not.

He was then asked, whether he could assign any reason why they were omitted? He answered, he did not consider the account to be finally closed, as some claims of Mr. Paris Taylor's were depending, which might make an alteration in it.

He was asked, whether those claims had any kind of connexion with the articles which constituted the voluntary charge made by him after the account was delivered, and the pencil balance drawn out? He admitted they had not.

He was then told repeatedly, that not having yet assigned any reason for keeping back those articles, their lordships expected he would explain what his inducement was. He replied, he felt himself much embarrassed, as he could not give a satisfactory account of that without injuring a friend; and it being urged to him as a duty incumbent upon him in his situation to state his motives for doing what he must have known to be wrong, he said he was prevailed with to keep back the charges from his regard for Mr. Bembridge, the present accountant in the pay-office, who was one of lord Holland's deputy paymasters.

Mr. Bembridge was then called in and asked the same questions as Mr. Powell, respecting the omission of the articles of the voluntary charge, and whether any of them were such as to admit a doubt of their being proper to be included? and he answered to the same effect as Mr. Powell did.

He was asked, whether he could assign any reason for the omission of them? To which he answered, he did not consider the account to be finally closed.

He was asked, whether he was not long ago apprized of the several articles before-mentioned? He admitted that he was some years ago.

He was asked, whether it did not fall properly within his duty at the pay-office to see that the charge was properly made? He answered, it did, but as Mr. Powell was the accountant before him, he had left it to him to settle and adjust this account.

He was asked, if it did not occur to him to be improper, being himself the person accounting? To which he answered that it did not.

He was then asked, if he could conceive any motive which could induce Mr. Powell to keep back the articles of the voluntary charge? He answered, he could not.

The deputy auditors were then called in and acquainted, that Mr. Powell and Mr. Bembridge in the course of their examination, both declared that they did not consider the account as finally closed when the pencil balance was agreed between Mr. Coleborne, a

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clerk to Mr. Powell, and Mr. Plastead, a clerk under the deputy auditors. They were therefore again asked, whether they understood it to be so? and they repeated, that they made frequent applications to Mr. Powell, to know whether there were any more charges to be added, acquainting him in conversation, and writing to him, that they were about to send the account immediately to the treasury, and that he transmitted none in consequence thereof. They were then asked, if they ever knew an instance of any voluntary charge being added after the balance was agreed and marked in pencil? They answered, that they knew of no such instance.

The next day after the foregoing examination, Mr. Powell wrote to the secretary of the treasury the following letter:—

Sir; From the distress of my mind yesterday, I believe I did not close my examination fully what I meant to say, and hope will be permitted to stand thus: The reason for keeping back the charges late entered into lord Holland's account was the distresses of others, that of lord Holland's family from the debts due from his deputies, among them is Mr. Bembridge. This information I pray you will take the earliest opportunity to lay before their lordships, which will very much oblige, Sir, &c.

And two days after, Mr. Bembridge likewise wrote to the secretary of the treasury, desiring that he would acquaint their lordships, that he would in three weeks at farthest pay the balance due from him as one of the deputy paymasters.

Thus stands the state of facts respecting Mr. Powell's voluntary charges on himself, without the privity of the auditors, after the balance was struck. In respect to the article added by him to his discharge after the balance was struck, it is as follows:—

Paid by Robert Paris Taylor, esq. to Philip Frankell for forage, delivered by him to gen. Elliott's light dragoons, being part of the sum of 12,052*l.* 13*s.* 10½*d.* surcharged upon this account, pursuant to his Majesty's warrant of 18th of June, 1769,—2,845*l.* 17*s.* 10*d.*

Upon this article it is necessary to observe, that Mr. Paris Taylor, who was deputy paymaster under lord Holland, and of course a sub-accountant, in his account delivered in to the auditor had included the above article.

The auditor, in whose office such account was left, upon examining the same on the 12th of August 1777, sent among others the following query to Mr. Paris Taylor. Sir James Cockburn's warrant to Philip Frankell for 30,593*gds.* 8*st.* is not indorsed.

In consequence thereof Mr. Paris Taylor, on the 13th of October 1777, sent the following answer: "Sir James Cockburn delivered to Paris Taylor this warrant payable to Philip Frankell, to repay an advance made by Peter Taylor, to enable the said Philip Frankell to supply the troops with forage, and the said Paris Taylor remitted the value to Peter Taylor. Mr. Frankell has been dead several years, which is the reason the warrant cannot be indorsed.

On the 22nd of December, 1782, Mr. Harris, the deputy auditor in the office where Mr. Paris Taylor's accounts were deposited, delivered over to lord Sondes's deputy, by way of voucher to the above article, the aforesaid warrant accompanied with the two following receipts.

First Receipt.

Received the 29th April, 1763, of Paris Taylor, esq. and for account of Philip Frankell, 5,827*d.* 31*s.*, being the amount of sir James Cockburn's warrant to Philip Frankell. Dated Hanover, 6th day of April 1763.

Keilman.

Second Receipt.

30,598 „ 3.

Received from the right hon. Henry Fox, P. G. of H. B. M. forces, the sum of 30,593*gds.* 7*st.* 14*d.* H. Currency, May, 1763.

30,593 „ 7 „ 14 H. C. Philip Frankell.

Upon the foregoing the deputy auditors have made the following observations:—

The rejection of the first receipt does not require a moment's consideration; it is dated the 24th of April, 1763, quotes the warrant it is given in discharge of, as bearing date the 6th of April, 1763. Sir James Cockburn's warrant to Philip Frankell is dated 26th February, 1763. In other respects this receipt is not admissible as a discharge to Philip Frankell's warrant.

The second receipt demands serious consideration; it is exhibited to the auditors five years after Mr. Taylor's answer to the queries sent him, wherein he says, Mr. Frankell has been dead several years. That such a length of time should have been suffered to elapse, and a document existing of sufficient consequence to relieve the accountant of a surcharge on him of 2,845*l.* 17*s.* 10*d.* is rather mysterious.

The attorney and solicitor-general are desired to give their opinion, whether any and what further proceedings ought to be had in this matter against Mr. Powell and Mr. Bembridge or either of them?

Opinion.

We are of opinion that an information should be filed in the name of the attorney-general against Mr. Powell for a gross neglect of duty, and that a like information should be filed against Bembridge for the same offence in wilfully and corruptly concealing the articles of charge against lord Holland, which it was their duty, as officers of the public, to have stated to the auditors or other persons lawfully authorized to proceed upon the same.

We are likewise of opinion that the oath taken by Powell is, under the circumstances of this case, a sufficient foundation for an indictment for perjury; but doubts being enter-

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tained whether taking a false oath, although administered by lawful authority, unless the same be in a judicial proceeding, is perjury at the common law,* we do not think it prudent at present to advise that mode of prosecution. We think it, however, highly necessary that an information by English Bill should be immediately filed in order to unravel this dark transaction.

Whether, under the circumstances of the case, you would advise the lords of the treasury to order the auditor to allow the article of 2,845*l.* 17*s.* 10*d.* added to the discharge.?

OPINION.

The facts here stated, bring so much suspicion on the authenticity of the second receipt, that we cannot by any means advise the lords of the treasury to direct the auditor to allow this article till the matter shall be fully cleared up. LL. KENYON.
14*th March*, 1783. R. P. ARDEN.

[An Information was accordingly filed by his majesty's attorney-general against Mr. Bembridge, in Trinity Term, 1783. It is as follows:]

Trinity Term, 23d Geo. 3rd.

Middlesex } Be it remembered, that James
to wit. } Wallace, esq., attorney-general of our lord the now king, who, for our said lord the king, in this behalf, prosecuteth in his own proper person, cometh here into the Court of our said lord the king before the king himself, at Westminster, in the said county of Middlesex, on Wednesday next after fifteen days from the feast day of Easter, in this same term, and giveth the Court here to understand and be informed, that Henry Fox, esq., now deceased, in his life time, to wit, on the 26th day of July, in the year of our Lord 1757, and from thence until the demise of the lord George the second, late king of Great Britain, &c. was receiver and paymaster-general of and for his said late majesty's guards, garrisons, and land forces, as well within Great Britain as without, those employed by his said late majesty for his service in Ireland, his marine regiments and such regiments or forces as were under the care and direction of his said late majesty's commissioners of his admiralty, for the time being execpted, that is to say, at Westminster in the said county of Middlesex, and that afterwards, to wit, on the 16th day of April, in the third year of the reign of our lord the now king at Westminster aforesaid, in the said county of Middlesex, the said Henry Fox, became lord Holland, baron of Foxley, in the county of Wilts; and that the said Henry Fox, from the demise of his said late majesty, until he became lord Holland, and afterwards, for a long time, to wit, until the 11th day of June in the 5th year of the reign of our said lord the now king, was receiver and paymaster-general of, and for the guards, garrisons, and land forces of our said present sovereign lord the king, as well within Great Britain, as without, those employed by our said present sovereign lord the king, for his service in Ireland, his marine regiments, and such regiments or forces as were under the care and direction of his present majesty's commissioners of his admiralty for the time being excepted, that is to say, at Westminster aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that during the time that the said Henry Fox was receiver and paymaster-general of and for his said late majesty's guards, garrisons, and land forces as aforesaid, divers sums of money were from time to time received, and also divers sums of money were from time to time paid by the said Henry Fox as such receiver-general and paymaster-general, that is to say, at Westminster aforesaid, in the said county of Middlesex; and also, that during the time the said Henry Fox, as well before as after he became lord Holland, was receiver and paymaster-general of, and for the guards, garrisons, and land forces of our said present sovereign lord the king, as aforesaid, divers sums of money were from time to time received, and also divers sums of money were from time to time paid by the said Henry lord Holland as such receiver and paymaster-general, to wit, at Westminster aforesaid, in the said county of Middlesex; and the said attorney-general of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed that afterwards, to wit, on the 12th day of June, in the fifth year of the reign of our said present sovereign lord the king, at Westminster, aforesaid, the said Henry lord Holland went out of the said office and place of receiver and paymaster-general of the guards, garrisons, and land forces of our said present sovereign lord the king, and was then and there succeeded therein by Charles Townshend, esq., to wit, at Westminster aforesaid; and that the said Charles Townshend afterwards, to wit, on the 21st day of August in the 6th year of the reign of our said lord the present king, at Westminster aforesaid, in the said county of Middlesex, went out of the said office and place of receiver and paymaster-general, and was then and there succeeded therein, by Frederick North esq., commonly called lord North, and George Cooke, esq.; and that the said lord North, afterwards, to wit, on the 9th day of December, in the 8th year of the reign of our said present sovereign lord the king, went out of the said office, and thereupon the said George Cooke, and Thomas Townshend, the younger esq., became receivers and paymasters-general of and for

* See Blackst. Comm., book 4, ch. 10. §. 16.

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the guards, garrisons, and land forces of our said present sovereign lord the king, except as aforesaid, to wit, at Westminster aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand, and be informed, that the said George Cooke, and Thos. Townshend, afterwards, to wit, on the 17th day of June, in the said 8th year of the reign of our said present sovereign lord the king, at Westminster aforesaid, in the said county of Middlesex, went out of the said office and place of receiver, and paymaster-general as aforesaid; and were then and there succeeded therein, by Richard Rigby, esq. And the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that the said Richard Rigby afterwards, to wit, on the 10th day of April, in the 22nd year of the reign of our said present sovereign lord the king, at Westminster, aforesaid, went out of the said place and office of receiver, and paymaster-general as aforesaid, and was succeeded therein, by Edmund Burke, esq.; and the said attorney-general, of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand, and be informed, that the said Edmund Burke afterwards, to wit, on the first day of August, in the 22nd year aforesaid, at Westminster, aforesaid, in the said county of Middlesex, went out of the said place, and office, and was then and there succeeded therein, by Isaac Barrè, esq., who was and continued in the said place and office for divers, to wit, eight months then next following, to wit, at Westminster aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the court here further to understand and be informed, that the place and employment of accountant in the said office and place of receiver, and paymaster-general of and for the guards, garrisons, and land forces aforesaid, during all the time herein-beforementioned, was a place and employment of great public trust and confidence, touching the making up the accounts of the receiver and paymaster-general of and for the guards, garrisons, and land forces aforesaid, and the adjusting and settling the same with the auditor of the imprest, to wit, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general, of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the court here further to understand and be informed, that the accounts of the said Henry lord Holland, as receiver and paymaster-general of and for the guards, garrisons, and land forces, as well of his said late majesty as of our present sovereign lord the king, as aforesaid, had not at the time the said Henry lord Holland went out of the said office and place of receiver and paymaster-general of and for the guards, garrisons, and land forces, of our said present sovereign lord the king, been made up and delivered to the auditors of the imprest, or either of them, in order to be adjusted and settled according to the ancient course of the exchequer; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king giveth the Court here further to understand, and be informed, that afterwards, to wit, on the 11th day of January, in the 12th year of the reign of our said present sovereign lord the king at Westminster aforesaid, in the said county of Middlesex, the accounts of the said Henry lord Holland, as receiver and paymaster-general of and for the guards, garrisons, and land forces, as aforesaid, as well of his said late majesty as of our present sovereign lord the king, were made up by John Powell, esq., then and there being accountant in the said office of receiver and paymaster-general, of and for the guards, garrisons, and land forces of our said present sovereign lord the king as aforesaid, and that the said accounts so made up by the said John Powell, as accountant, as aforesaid, were afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, in the said county of Middlesex, delivered to the auditors of the imprest, that is to say, part of the said accounts to William Aislabie, esq. then and there being one of the auditors of the imprest, and the residue thereof, including the final account of the said Henry lord Holland to Lewis lord Sondes, then and there being the other auditor of the imprest, in order to be adjusted, settled, and passed according to the ancient course of the exchequer; which said accounts, for the convenience of keeping the accounts of the office and place of receiver and paymaster-general, as aforesaid, were made to commence the 25th day of June, in the year of our lord 1757, before the said Henry lord Holland came into the said office and place of receiver and paymaster-general of and for the guards, garrisons, and land forces, of his said late majesty, as aforesaid, and to end the 24th day of June, in the 5th year of the reign of our said present sovereign lord the king, after the said Henry lord Holland went out of the said office and place of receiver and paymaster-general, of the said guards, garrisons, and land forces, of our said present sovereign lord the king, as aforesaid, to wit, at Westminster aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court, here further to understand, and be informed, that divers sums of money ought to have been inserted in the said accounts of the said Henry lord Holland, so

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delivered in to the said auditors, as aforesaid, as charges upon the said Henry lord Holland, that is to say, the several sums of 243*l.* 19*s.* 9*d.*—446*l.* 5*s.*—158*l.* 9*s.* 7*d.*—1,566*l.* 14*s.*—4,000*l.*—1,705*l.* 15*s.* 10*d.*—912*l.* 0*s.* 11*d.*—and 386*l.* 19*s.* 8*d.*, received by one Abraham Mortier; and 384*l.* 16*s.*, received by one Thomas Saul; and the sum of 627*l.* 8*s.* 8*d.*, received by one Robert Porter; and the several sums of 1019*l.* 10*s.* 0*d.*—956*l.* 1*s.* 2*d.*—326*l.* 13*s.* 7*d.*—1,000*l.*—400*l.*—500*l.* and 2,187*l.* 6*s* 1½*d.*, received by one Thomas Barrow; and the sum of 2,333*l.* 6*s.* 8*d.*, received by one John Luke Nicoll; and the sum of 100*l.*, received by one Wrightson, which said several sums of money received by the said Abraham Mortier, Thomas Saul, Robert Porter, Thomas Barrow, John Luke Nicoll, and Wrightson were received by them under the authority, and for the use of the said Henry lord Holland, as receiver and paymaster-general of and for the guards, garrisons, and land forces aforesaid, that is to say, part of the said sums under the authority, and for the use of the said Henry lord Holland, as receiver and paymaster-general of the guards, garrisons, and land forces, of his said late majesty, and the residue thereof, under the authority and for the use of the said Henry lord Holland, as receiver and paymaster-general of the guards, garrisons, and land forces, of his present majesty; and the sum of 6,854*l.* 7*s.* 6½*d.* retained by the said Henry lord Holland, as receiver and paymaster-general of the guards, garrisons, and land forces aforesaid, by the hands of his deputy, for provisions delivered to the forces at Quebec, in north America; and the sum of 4,879*l.* 9*s.* 9*d.*, retained by the said Henry lord Holland, by the hands of his deputy for provisions delivered to the forces at New York, in north America; and the sum of 1,808*l.* 3*s.* 11½*d.*, retained by the said Henry lord Holland, as receiver and paymaster-general of and for the guards, garrisons, and land forces aforesaid, by the hands of his deputy, for provisions delivered to the forces at Nova Scotia, in North America; and the sum of 1,761*l.* 1*s.* 8*d.* retained by the said Henry lord Holland, as receiver and paymaster-general of and for the guards, garrisons, and land forces aforesaid, by the hands of his deputy for provisions delivered to the forces at Louisburg; and the sum of 4,722*l.* 16*s.* 6½*d.* retained by the said Henry lord Holland, as receiver and paymaster-general of and for the guards, garrisons, and land forces aforesaid, by the hands of his deputy, for provisions delivered to the forces at Montreal; and the sum of 2,136*l.* 17*s.* 2*d.*, being profit on remittances made by the said Henry lord Holland to Peter Taylor, esq., deputy-paymaster of the forces of our said late king, and our lord the now king in Germany; and the sum of 7,381*l.* 7*s.* 5*d.*, being profit on remittances made to the said Peter Taylor, deputy-paymaster of the forces in Germany, of our said late king and our lord the now king, for the extraordinaries of the forces there: Which said several sums of money which so ought to have been inserted in the said accounts, as aforesaid, were omitted to be inserted in the said accounts as charges upon the said Henry lord Holland, and were not in any manner brought into or taken notice of in the said accounts or any of them, to wit, at Westminster, aforesaid, in the said county of Middlesex. And the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that after the delivery of the said accounts of the said Henry lord Holland to the auditors of the imprest, as aforesaid, and before the said final account was adjusted and settled by the said Lewis lord Sondes, one of the auditors of the imprest, to whom the same had been delivered as aforesaid, to wit, on the 31st day of March, in the 16th year of the reign of our said present sovereign lord the king, at Westminster, aforesaid, in the said county of Middlesex, Charles Bembridge, esq. became and was accountant in the office and place of receiver and paymaster-general of and for the guards, garrisons, and land forces, of our said present sovereign lord the king, as aforesaid, and continued such accountant for a long time, to wit, until the twenty-second day of February, in the twenty-third year of the reign of our present sovereign lord the king, that is to say, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that the said final account of the said Henry lord Holland was, and continued open and unsettled for a long time after the said Charles Bembridge became, and whilst he was accountant, as aforesaid, that is to say, for the space of six years and upwards, to wit, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that it was the duty of the said Charles Bembridge, as accountant, as aforesaid, to disclose and make known to the said Lewis lord Sondes, the auditor of the imprest, to whom the said final account of the said Henry lord Holland had been delivered, as aforesaid, any charges upon the said Henry lord Holland as such receiver and paymaster-general, as aforesaid, which had been omitted to be inserted in the said accounts so delivered to the auditors, as aforesaid, within the knowledge of him the said Charles Bembridge, in order that the same might be inserted in the said final account of the said Henry lord Holland, to wit, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord

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the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed that the said Charles Bembridge, after he became and whilst he continued accountant, as aforesaid, and whilst the said final account of the said Henry lord Holland remained open and unsettled, as aforesaid, that is to say, on the thirty-first day of March, in the sixteenth year of the reign of our said present sovereign lord the king, and on divers other days and times between that day and the twenty-third day of December, in the twenty-third year of the reign of our lord the now king, was requested by the said lord Sondes to discover and make known to him any charges upon the said Henry lord Holland, within the knowledge of him the said Charles Bembridge, which ought to have been inserted in the said accounts, or some of them, and which had been omitted therein, to wit, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that the said Charles Bembridge, before and at the said days and times when he was so requested by the said Lewis lord Sondes to discover and make known to him any charges upon the said Henry lord Holland, within the knowledge of him the said Charles Bembridge, which ought to have been inserted in the said accounts or some of them and which had been omitted out of the same, well knew that the said several sums of money herein-beforementioned to have been omitted in the said accounts, ought to have been inserted in the said accounts, were not included therein, but were omitted to be inserted in the said accounts as charges on the said Henry lord Holland, to wit, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed that the said Charles Bembridge, late of Westminster in the said county of Middlesex, esquire, being such accountant, as aforesaid, wrongfully, unjustly, and fraudulently contriving and intending to conceal from the said Lewis lord Sondes, the said auditor of the imprest, to whom the said final account of the said Henry lord Holland was delivered, as aforesaid, the said several sums of money which ought to have been charged upon the said Henry lord Holland as aforesaid, and to cheat and defraud our said present sovereign lord the king did not at the several days and times when he was so requested, as aforesaid, or at any of them, discover or make known to the said Lewis lord Sondes, the said several sums of money which ought to have been inserted in the said accounts of the said Henry lord Holland, and had been omitted to be inserted therein, as aforesaid, but wickedly, wilfully, fraudulently knowingly, and corruptly did neglect and refuse to discover or make known the same to the said Lewis lord Sondes, and did permit and suffer the said Lewis lord Sondes to proceed to close the said final account of the said Henry lord Holland without the said sums of money having been brought into the same, or made known to the said Lewis lord Sondes, to wit, at Westminster, aforesaid, in the said county of Middlesex, contrary to the duty of the said Charles Bembridge as such accountant, as aforesaid, to the evil example of all others in the like case offending, to the great injury and deceit of our said lord the present king, and against the peace of our said lord the present king his crown and dignity. And the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed that Henry Fox, esquire, now deceased, in his life time, to wit, on the twenty-sixth day of July, in the year of our lord one thousand seven hundred and fifty-seven, and from thence until the demise of the lord George the second, late king of Great Britain, was receiver and paymaster-general of and for his said late majesty's guards, garrisons, and land forces, as well within great Britain as without (those employed in Ireland, his marine regiments, and such regiments or forces as were under the care and direction of his said late majesty's commissioners of his admiralty for the time being, excepted), that is to say, at Westminster aforesaid, in the said county of Middlesex; and that afterwards, to wit, on the sixteenth day of April, in the third year of the reign of our present sovereign lord the king, at Westminster, aforesaid, in the said county of Middlesex, the said Henry Fox became lord Holland, baron of Foxley, in the county of Wilts, and that the said Henry Fox, from the demise of his said late majesty until he became lord Holland, and afterwards for a long time, to wit, until the twelfth day of June, in the fifth year of the reign of our said present sovereign lord the king, was receiver and paymaster-general of and for the guards, garrisons, and land forces, of our said present sovereign lord the king, as well within Great Britain as without (those employed by our said lord the now king for his service in Ireland, his marine regiments, and such regiments or forces as were under the care and direction of his said present majesty's commissioners of the admiralty for the time being, excepted), that is to say, at Westminster aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that during the time that the said Henry Fox was receiver and paymaster-general of and for his said late majesty's guards, garrisons, and land forces, as aforesaid, divers sums of money were from time to time received, and also divers sums of money were

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from time to time paid by the said Henry Fox as such receiver and paymaster-general, that is to say, at Westminster, aforesaid, in the said county of Middlesex; and also that during the time the said Henry Fox as well before as after he became lord Holland, was receiver and paymaster-general of and for the guards, garrisons, and land forces, of our said present sovereign lord the king, as aforesaid, divers sums of money were from time to time received, and also divers sums of money were from time to time paid by the said Henry lord Holland, as such receiver and paymaster-general, aforesaid, to wit, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that afterwards, to wit, on the twelfth day of June, in the fifth year of the reign of our said present sovereign lord the king, at Westminster, aforesaid, the said Henry lord Holland went out of the said office and place of receiver and paymaster-general, of and for the guards, garrisons, and land forces, of our said present sovereign lord the king, to wit, at Westminster, aforesaid; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that the accounts of the said Henry lord Holland, as receiver and paymaster-general of and for the guards, garrisons, and land forces, as well of his said late majesty, as of our present sovereign lord the king as aforesaid, at the time the said Henry lord Holland went out of the said office and place of receiver and paymaster-general, of and for the guards, garrisons, and land forces of our said present sovereign lord the king, had not been made up and delivered to the auditors of the imprest, or either of them, in order to be adjusted and settled according to the ancient course of the exchequer; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that afterwards, to wit, on the eleventh day of January in the twelfth year of the reign of our said present sovereign lord the king, at Westminster, aforesaid, in the said county of Middlesex, the accounts of the said Henry lord Holland, as receiver and paymaster-general, of and for the guards, garrisons, and land forces, as aforesaid, as well of his said late majesty as of our present sovereign lord the king, were made up by John Powell, esq., then and there being accountant in the said office of receiver and paymaster-general, of and for the guards, garrisons, and land forces, of our said present sovereign lord the king, as aforesaid; and that the said accounts so made up by the said John Powell, as accountant, as aforesaid, were afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, in the said county of Middlesex, delivered to the auditors of the imprest, that is to say, part of the said accounts to William Aislabie, esq., then and there being one of the auditors of the imprest, and the residue thereof, including the final account of the said Henry lord Holland to Lewis lord Sondes, then and there being the other auditor of the imprest, in order to be adjusted, settled, and passed, according to the ancient course of the exchequer; and the said attorney-general of our said present sovereign lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that divers sums of money, that is to say, the several sums of 243*l.* 19*s.* 9*d*—446*l.* 5*s.*—158*l.* 9*s.* 7*d.*—1,866*l.* 14*s.*—4,000*l*—1,705*l.* 15*s.* 10*d.*—9,12*l* 0*s.* 11*d.*—386*l.* 19*s.* 8*d.*—384*l.* 16*s.*—627*l.* 8*s.* 8*d.*—1,019*l.* 10*s.*—956*l.* 1*s.* 2*d.*—326*l.* 18*s.* 7*d.*—1,000*l.*—400*l.*—500*l.*—2,187*l.* 6*s.* 1½*d.*—2,333*l.* 6*s.* 8*d.*—100*l*—2,136*l.* 17*s.* 2*d.*—7,381*l.* 7*s.* 5*d.*—6,854*l.* 7*s.* 6½*d.*—4,879*l.* 9*s.* 9*d.*—1,808*l.* 3*s.* 11½*d.*—1,761*l.* 1*s.* 8*d.*—4,722*l.* 16*s.* 6½*d.* ought to have been included in the said accounts as charges upon the said Henry lord Holland, but were omitted to be inserted, and were not in any manner taken notice of in the said accounts, or any of them, to wit, at Westminster, aforesaid, in the said county of Middlesex: and the said attorney-general, of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that after the delivery of the said accounts of the said Henry lord Holland to the auditors of the imprest, as aforesaid, and before the same were finally passed by the auditors of the imprest, or either of them, to wit, on the 31st day of March, in the 16th year of the reign of our said present sovereign lord the king, at Westminster, in the said county of Middlesex, the said Charles Bembridge, became and was accountant in the office and place of receiver and paymaster-general of and for the guards, garrisons, and land forces, of our said present sovereign lord the king as aforesaid, and continued such accountant for a long time, to wit, until the 22nd day of February, in the 23rd year of the reign of our said present sovereign lord the king, that is to say, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that the said final account of the said Henry lord Holland, was open and unsettled for a long time after the said Charles Bembridge became, and whilst he was accountant as aforesaid, that is to say, for the space of six years and upwards, to wit, at Westminster, aforesaid, in the said county of Middlesex: and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed,

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that it was the duty of the said Charles Bembridge, as accountant, as aforesaid, forthwith to disclose and make known to the said Lewis lord Sondes, the auditor of the imprest, to whom the said final account of the said Henry lord Holland had been delivered, as aforesaid, any omission out of the said account of charges upon the said Henry lord Holland, within the knowledge of him the said Charles Bembridge, to wit, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that the said Charles Bembridge, after he became and whilst he continued accountant, as aforesaid, and whilst the said final account of the said Henry lord Holland remained open and unsettled as aforesaid, that is to say, on the 31st day of March, in the 16th year of the reign of our said present sovereign lord the king, and on divers other days and times, between that day and the 23rd day of December, in the 23rd year of the reign of our said lord the now king, was requested by the said Lewis lord Sondes to discover and make known to him any charges upon the said Henry lord Holland, within the knowledge of him the said Charles Bembridge, which ought to have been inserted in the same accounts, or some of them, and which had been omitted thereout, to wit, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that the said Charles Bembridge, before and at the said days and times when he was so required by the said Lewis lord Sondes, to discover and make known to him any charges upon the said Henry lord Holland, within the knowledge of him the said Charles Bembridge, which ought to have been inserted in the said accounts, or some of them, and which had been omitted out of the same, well knew that the said several sums of money last hereinbefore-mentioned to have been omitted in the said accounts, and which ought to have been inserted in the said accounts, as charges upon the said Henry lord Holland, were not inserted in the said accounts, as charges on the said Henry lord Holland, but were omitted out of the same, to wit, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that the said Charles Bembridge being accountant, as aforesaid, wrongfully, unjustly, and fraudulently, contriving and intending to conceal from the said Lewis lord Sondes, the said auditor of the imprest, to whom the final account of the said Henry lord Holland, was delivered, as aforesaid, the said several sums of money which ought to have been charged upon the said Henry lord Holland, as aforesaid, and to cheat and defraud our said present sovereign lord the king, did not forthwith, after he knew that the said several sums of money had been omitted to be inserted in the said accounts, when he was so requested, as last aforesaid, discover or make known to the said Lewis lord Sondes, the said several sums of money which ought to have been inserted in the said accounts of the said Henry lord Holland, and had been omitted to be inserted therein as aforesaid, but wickedly, fraudulently, knowingly, and corruptly did neglect and refuse to discover or make known the same to the said Lewis lord Sondes, to wit, at Westminster, aforesaid, contrary to the duty of the said Charles Bembridge as such accountant, as aforesaid, to the evil example of all others in the like case offending, to the great injury and deceit of our said lord the present king, 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, giveth the Court here further to understand and be informed, that Henry late lord Holland, deceased, was in his life-time receiver and paymaster-general of and for the guards, garrisons, and land-forces, as well within Great Britain as without, of our present sovereign lord the king (those employed by his said present majesty for his service in Ireland, his marine regiments, and such regiments or forces as were under the care and direction of his said majesty's commissioners of his admiralty for the time being, excepted), that is to say, at Westminster, aforesaid, in the county aforesaid; and the said attorney-general of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that, after the said Henry lord Holland went out of the said office, to wit, on the 11th day of January, in the 12th year of the reign of our present sovereign lord the king, at Westminster, aforesaid, the final account of the said Henry lord Holland as such receiver and paymaster-general was made up by John Powell, esquire, then and there being accountant in the said office of receiver and paymaster-general of the guards, garrisons, and land-forces, of our said lord the king, aforesaid, and the said final account was afterwards, to wit, on the same day and year last aforesaid, at Westminster, aforesaid, delivered to Lewis lord Sondes, he, the said Lewis lord Sondes, then and there being one of the auditors of the imprest, to be adjusted and settled; and the said attorney-general of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that afterwards and after the death of the said Henry lord Holland, to wit, on the 31st day of March, in the 16th year of the reign of our present sovereign lord the king, at Westminster, aforesaid, the said Charles Bembridge became accountant in the said office of receiver and pay-

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master-general of his present majesty's guards, garrisons, and land forces aforesaid, and continued such accountant for a long time, to wit, for the space of six years and upwards, that is to say, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed that the said final account of the said Henry lord Holland, at the time when the said Charles Bembridge became accountant, as aforesaid, and for a long time, to wit, for the space of six years, whilst he the said Charles Bembridge was and continued such accountant, as aforesaid, remained open and unsettled, whereof the said Charles Bembridge, during that time at Westminster, aforesaid, in the said county of Middlesex, had notice; and the said attorney-general of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that it was the duty of the said Charles Bembridge, as such accountant, as aforesaid, forthwith to have discovered and made known to the said Lewis lord Sondes, being such auditor, as aforesaid, any charges against the said Henry lord Holland, as such receiver and paymaster as last aforesaid, which had not been brought into or inserted in the said final account, or any other account of the said Henry lord Holland, as such receiver and paymaster, as aforesaid, delivered to the auditors of the imprest, or either of them, within the knowledge of him the said Charles Bembridge, that is to say, at Westminster, aforesaid, in the said county of Middlesex; and the said attorney-general of our said lord the king, for our said lord the king, giveth the Court here further to understand and be informed, that divers sums of money, to wit, the sum of 243*l.* 19*s.* 9*d.*; 446*l.* 5*s.*; 158*l.* 9*s.* 7*d.*; 1,566*l.* 14*s.*; 4,000*l.*; 1,705*l.* 15*s.* 10*d.*; 912*l.* 0*s.* 11*d.*; 386*l.* 19*s.* 8*d.*; 627*l.* 8*s.* 8*d.*; 1,019*l.* 10*s.*; 956*l.* 1*s.* 2*d.*; 326*l.* 13*s.* 7*d.*; 1,000*l.*; 400*l.*; 500*l.*; 2,187*l.* 6*s.* 1½*d.*; 2,333*l.* 6*s.* 8*d.*; 100*l.*; 2,136*l.* 17*s.* 2*d.*; 7,381*l.* 7*s.* 5*d.*; 384*l.* 16*s.*; 6,854*l.* 7*s.* 6½*d.*; 4,879*l.* 9*s.* 9*d.*; 1,808*l.* 3*s.* 11½*d.*; 1,761*l.* 1*s.* 8*d.*; 4,722*l.* 16*s.* 6½*d.*; which ought to have been inserted in the said final account, or in some other account of the said Henry lord Holland, which had been delivered to the auditors of the imprest, or one of them, had not been brought into the said final account, or any other account of the said Henry lord Holland, as such receiver and paymaster-general as last aforesaid, delivered to the auditors of the imprest, or either of them; and the said attorney-general of our said present sovereign lord the king, for our said present sovereign lord the king, giveth the Court here further to understand and be informed, that the said Charles Bembridge, whilst he was accountant, as aforesaid, to wit, on the 2nd day of April, in the 16th year of the reign of our lord the now king, at Westminster, aforesaid, well knew that the said several last-mentioned sums of money ought to have been inserted in the said final account of the said Henry lord Holland, or in some other accounts of the said Henry lord Holland, as the receiver and paymaster-general as last aforesaid, delivered to the auditors of exchequer, or one of them, and that the said sums of money last-mentioned or any of them had not been brought into the said final account, or any other accounts of the said Henry lord Holland, as receiver and paymaster-general, as aforesaid, delivered to the auditors of the imprest, or either of them, as charges upon the said Henry lord Holland; yet the said Charles Bembridge wickedly, wrongfully, and unjustly, and, as far as in him lay, contriving and intending that the said several charges should be concealed from the said Lewis lord Sondes, and that our said present sovereign lord the king should be defrauded, did not forthwith discover or make known to the said Lewis lord Sondes the said omissions, or any of them, as it was his duty as such accountant as aforesaid to have done, but wickedly, fraudulently, knowingly, and wilfully, did withhold from the said Lewis lord Sondes the information of the said omissions for a long time, to wit, for the space of six years after he the said Charles Bembridge knew thereof, and continued such accountant as last aforesaid, that is to say, at Westminster, aforesaid, contrary to the duty of the said Charles Bembridge as such accountant, as aforesaid, to the evil and pernicious example of all others in the like case offending, to the great injury and deceit of our said lord the king, and against the peace of our said lord the king, his crown, and dignity: Wherefore 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 Charles Bembridge in this behalf, to make him answer to our said lord the king touching and concerning the premises aforesaid.

THE FOLLOWING REPORT OF THE PROCEEDINGS IN THIS CASE WAS TAKEN IN SHORT HAND BY MR. GURNEY, AND HAS NEVER BEEN PRINTED. FOR THE COMMUNICATION OF THE MS., I AM INDEBTED TO MR. LITCHFIELD, NOW (1816) SOLICITOR TO HIS MAJESTY'S BOARD OF TREASURY.

It is necessary to acquaint the Reader that this Report appears never to have been revised for publication. In the original MS. therefore, as in all rough transcripts from the Notes of a Short Hand Writer, are numerous errors; of these I have corrected the more obvious: in cases where the alteration might be doubtful, I have retained the original text, not trusting the uncertainty of conjecture, lest I should incur the charge of misrepresentation.

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The KING *versus* CHARLES BEMBRIDGE.

Proceedings on the Trial of this information, before the Right Hon. the Earl of Mansfield, in the Court of King's-bench, Westminster, July 18, 1783.

The information was opened by Mr. Baldwin.

Mr. *Solicitor General* [John Lee].—Gentlemen of the Jury; I am called upon by the duty of my situation, to open to you a cause in the event of which it is conceived, in my humble judgment very rightly conceived, that the public is highly interested, and that it very much behoved the persons who conducted the affairs of the public, to bring it before the judicature that is by-and-by to have the deciding of it.

Gentlemen, every person must agree with me that in any state of a country, but especially in the present state of our own, it is incumbent on persons who superintend the conduct of public officers, especially of those employed in the management of the public finance and monies, to see that great care, providence, and fidelity, be exercised and enforced in the persons who possess offices of importance to the public service, that their conduct should be narrowly watched, and every departure from their duty, when it is detected, ought to be brought to the public justice of the country, that it may be censured and punished.

Gentlemen, this prosecution is instituted against the defendant, Mr. Bembridge, for a supposed violation of his duty in a very important office, in a matter in which he has been supposed to have misbehaved to a very great extent, and it was not for want of all necessary and all possible circumspection;—nothing less than a wilful, voluntary departure from his known duty, could possibly have produced that which is the subject matter of the present charge. Mr. Bembridge was, a long time ago, a clerk in the pay-office; in the month of March, in the year 1776, upon the advancement of the late Mr. Powell from accountant to be cashier, Mr. Bembridge was appointed accountant to the paymaster-general of the forces; and as such accountant, he received a settled salary of 150*l.* a year, with fees and perquisites to about 1,300*l.* more; such fees, perquisites, and salary, seem naturally enough to call for (for they surely sufficiently compensate and reward) a great degree of merit, diligence, and fidelity in office: part of the duty of this accountant, and for which he is so paid, is, to pass the accounts of the different paymasters-general while they are in office, and after they have gone out of office, it is their practice and their duty so to do.

Gentlemen, Mr. Fox, the late lord Holland, was appointed, I think by patent bearing date the 26th day of July, in the year 1757, paymaster of the forces, and he continued in that office till the 11th of June 1765. It is the custom of that office (and it seems to be a convenient one enough), for the sake of making up the accounts) to suppose the paymaster to make up his accounts to the Midsummer-day next subsequent—to the 24th of June; so that the accounts of the receipts and payments of the successor commenced from Midsummer-day after the removal of my lord Holland. Mr. Powell, being accountant, made up my lord Holland's accounts, and delivered them into the office of my lord Sondes, who is one of the auditors of the imprest; upon the 11th of June, 1772, he delivered in a final account of my lord Holland down to the expiration of his office of pay-master, that is down to the 24th of June, 1765. This final account, when it was delivered in, had many blanks in it, and was in a very imperfect state; before the auditor had proceeded in any examination of it, in March 1776 (which you see is four years after the final account was thus delivered in), Mr. Powell was appointed cashier, and the defendant, Mr. Bembridge, accountant-general in the pay-office in his room; in consequence of this appointment, it, at this time, became his duty to attend to the settling of lord Holland's accounts. All monies received by his lordship, on account of the public service, were given credit for, and the account was finally closed. Mr. Bembridge having succeeded Mr. Powell in the character and situation of accountant-general, it became more particularly his duty to see to the settling this account; for the leaving it to Mr. Powell to do it would have been a monstrous thing indeed, for Mr. Powell had not only been the preceding accountant, but had then become the personal representative of lord Holland—he was one of his executors, and the only acting executor; therefore it certainly behoved Mr. Bembridge, his successor in that office, to take care that Mr. Powell should not be the sole check upon himself.

Gentlemen, the defendant Mr. Bembridge himself and his clerks attended, from time to time, at the auditors office, in order to assist the completion of this account, and several articles were added either by himself, or certainly with his privity, both to the charge and the discharge side of the account. The defendant Mr. Bembridge, upon many applications made to him from the auditors office, having declared that there was nothing farther to add, either by way of charge or discharge to the account, about the middle of November last, this account was closed, and a balance taken, which amounted to 68,008*l.* 6*s.* 6*d.*; a note of this was made with a pencil in the margin of the account, by the accountant-general himself, as is usual; and a state of this account was delivered into the treasury about the middle of November last. Soon after Christmas, the auditors permitted the book of accounts to be taken from the auditor's-office to the pay-office, for the purpose of rectifying a mistake, for at the time the ba-

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lance of 68,000*l.* was taken, it was said there was a mistake in some miscalculation of two articles, that amounted to 1,300*l.* odd; on this account, the book was sent to the pay-office, that it might be seen whether at the auditors-office they were right in their idea about that 1,300*l.*; upon search, it was agreed they were so; the account was rectified, settled, and closed, and sent to the treasury. Soon after Christmas last, the book of the account was left at the auditors-office with an under clerk, without any letter or message, and the deputy-auditor, to whom this book was afterwards delivered, concluding that nothing more had been added than the two articles amounting to 1,300*l.*, which could not, of course, vary the balance, he laid the book aside without looking into it; but some short time after, having occasion to look into the account, he was much surprised to find a variety of sums introduced upon the charged side of the account, amounting together to 48,799*l.* 19*s.* 11*d.*, over and besides those two articles that had been pointed out at the auditors-office, and agreed to be added at the pay-office.

Gentlemen, over and above this 1,300*l.* there was introduced into the charged side of the account the sum of 48,799*l.* 19*s.* 11*d.* The deputy-auditors were exceedingly alarmed at this addition, after the defendant had repeatedly told them that there were no other articles whatever to be added to the charged side of the account, and after, upon the credit of his so informing them, this balance had been struck, and the treasury acquainted with its amount. They being alarmed at this discovery, immediately acquainted their principal my lord Sondes, the auditor, with it; his lordship wrote to Mr. Powell to inform him immediately, whether he had any farther addition to make to the charged or discharged side of the account of lord Holland; his lordship immediately received for answer, that they had sent their clerk to insert three articles, amounting to the further sum of 774*l.* to the credit of the public, which was added accordingly: so that this sum of 48,700*l.* and odd was added by Mr. Powell after this balance had been struck, and he had over and over again told them that there was nothing to add, but that the estate of lord Holland was charged to the full amount of that which they ought to charge him.

Now, gentlemen, I expect to hear my learned friend say—Why, this is an information against Mr. Bembridge for not doing that, which according to the state of the fact, he did—that is, for returning this 48,799*l.* 19*s.* 11d., a charge upon lord Holland.

Gentlemen, it will appear to you, that these sums, must all and every one of them, have been artfully, and designedly concealed, because the evidence of these sums were all in their own hands; but I shall prove to you, by Mr. Bembridge's admission, by his own declaration, that at the very time when he declared that this account contained all the sums chargeable on lord Holland's estate; that he knew of every one of those items, but that he had reasons for suppressing them; what those reasons were, my learned friend will be able to inform you; some reasons, you see, are obvious; he had his reasons for concealing them, for he was well aware of them at the time.

Gentlemen, I will tell you what I imagine to be the reason; it is but conjecture, but it is so strong, that there is, in my apprehension, no other way of accounting for it. A very little before this time, about Christmas, the then lords of the treasury (very properly, in my opinion) had come to a resolution to look carefully into the state of the public accounts, and to send to all the sub-accountants, as well as to the persons who filled great offices, to know what was the state of their accounts with the public, what they had received, and how they had disposed of it. It will appear in evidence to you, that this was very well known, and indeed, the gentleman who sits near me, Mr. Chamberlayne, the solicitor for the treasury, had about that time received orders to sue out a process against such accountants, in order to bring to the public use, as well as the public view, all that money which the public was entitled to: then it occurred to Mr. Bembridge—Why, if they write to these sub-accountants who have received such and such sums of money, which have been paid into the pay-office, consequently it will appear that the principal accountant, the pay-master, owes so much; this naturally suggested to him, that now was the time to bring forward, though he had so long, so industriously, and repeatedly concealed this enormous sum of 48,000*l.*;—then, and not till then, did he ever bring one of these articles to light. Now, it happening just at such a time, carries to my apprehension, a most entire conviction, that as these sums had been concealed so artfully, and so long, they would have been concealed for ever if it had not been known, that an inquiry was instituted, which would per force bring them to the public inspection. Though this conjecture is, in my opinion, exceedingly strong and convincing to every rational man, yet it is not at all necessary to pass for evidence to maintain this indictment, which is for a very gross omission of duty in a public officer, appointed by men in public station, and paid very large sums out of the public revenue; for over and above this 150*l.* a year, and 1,300*l.* fees and perquisites, what do you think, gentlemen, that Mr. Bembridge has had for the making up of this very account, which he has done so unfaithfully, as I have stated to you? I do not wish to use harsh words, for they do no good; but he has had 2,650*l.* for settling this very account, in which there is an omission of 48,000*l.* due to the public. Why, gentlemen, I am told, that it is meant gravely to be contended, that Mr.

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Bembridge is not a public officer, but a private clerk, appointed by the private gentleman who shall happen to be in the office of paymaster to the forces; then, I do not know what it is that constitutes a public officer; that paymaster could not appoint him as a private man before he was in office, nor could he continue him when he went out of office, but he is appointed in consequence of a public situation, for public purposes, and paid by the public purse; therefore, in my apprehension, there cannot be a colour for saying, that this gentleman, whose whole business is public duty, who is appointed by a public officer, and as such is paid out of the public revenue, that he is not accountable to the public for the faithful discharge of his duty: as little reason is there for saying, that a known violation of his duty, in which the public are interested, is not a matter for which he ought to be answerable.

Gentlemen, I shall state to you the time when he was appointed, the duty of his office, and what he did in it, to show he considered it as his duty. I shall prove what he did not do in it—that he was called upon over and over again, to know whether this was the sum total charge upon lord Holland's estate; he said, yes, he had nothing more to add to it, it was complete; and after all, acknowledging himself, as I shall prove by the testimony of the witnesses, that he knew, and was perfectly aware at the time these concealments were made, that they were concealed, and ought to be brought forward. This is the evidence with which this cause will be attended, and I am sure, when you have heard it, you will do that which is right upon it.

Lord *Mansfield*. Give me the dates. [The dates were handed up to his lordship, extracted from the records.]

EVIDENCE FOR THE CROWN.

Mr. *Hughes* sworn.—Examined by Sir *Thomas Davenport*.

Have you the patent of the appointment of Mr. Fox to the office of paymaster?

Lord *Mansfield*. Mr. Bearcroft, do you put them upon the proof of that?

Mr. *Bearcroft*. Being of counsel for a defendant in a criminal information, I desire they will put them in; I shall not trouble your lordship with reading them.

Lord *Mansfield*. They are facts that we all know.

Mr. *Solicitor General*. The copies have all been examined at the Rolls in the common form.

Sir *T. Davenport*. Have you here the several accounts of lord Holland that were delivered into the office of lord Sondes?—I have.

Sir *T. Davenport*. Produce them all. [They were produced by Mr. Hughes.]

Sir *T. Davenport*. Now read the titles.

—This is the account of the right hon. Henry lord Holland, paymaster of his Majesty's guards, garrisons, and land forces, &c.; of all monies received and paid by him for the use of the said forces, commencing the 25th of December, 1758, to the 25th of December, 1759.

Sir *T. Davenport*. Mr. Hughes does not carry all these accounts in; Mr. Harris and Mr. Hughes carry them in alternately.

Mr. *Charles Harris, jun.* sworn.—Examined by Sir *T. Davenport*.

Have you the accounts of lord Holland that were delivered into Mr. ———'s office?—Yes. [They were produced by Mr. Harris.]

Mr. *Harris*. This is the account of the right hon. Henry lord Holland, paymaster-general, &c. for one year and a half, commencing the 25th of June, 1757, and ending the 25th of December, 1758.

Here is another, commencing the 25th of December, 1759, ending the 24th of December, 1760.

Here is another, for one year, commencing the 25th of December, 1760, ending the 24th of December, 1761.

Lord *Mansfield*. I do not see what use you make of the titles.

Mr. *Bearcroft*. It is only showing the full support of the allegation in the information.

Mr. *Solicitor General*. That is all.

Mr. *Bearcroft*. I shall not put them to read the titles of every one of these books; I see they have here all the books of lord Holland's accounts; if they were not here, I should object; I wish they would turn to the last.

Mr. *Hughes*. The account of the right hon. Henry lord Holland, paymaster-general of his Majesty's guards, garrisons, and land-forces of Great Britain, &c. for half a year, commencing the 25th of December, 1764, and ending the 24th of June, 1765; this is the final account.

Sir *T. Davenport*. Did you know Mr. Bembridge, the defendant?—Very well.

Had you any communication with him about the final account between the time of its being delivered into lord Sondes's office, and the transmission of that account to the treasury?—Frequently.

Lord *Mansfield*. What is your office?—I am now deputy-auditor in lord Sondes's office; I was at the time this account was delivered in, second clerk.

Sir *T. Davenport*. Do you recollect in what month this communication was had between you?—The principal communication I have had has been only since I was appointed deputy-auditor, which was in July, 1782.

Did you, at any time, apply to him to know whether there were any other charges to be inserted in the account, than those you found in the account delivered?—The method with our office is to make our observations as they arise in examining the account, and then to transmit them to the accountant in the pay-

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office, in order for him to give answers; sometimes they take a pretty long time before they return answers to these observations, or before the observations that we make to them are properly rectified and inserted in the books; as to the particular times I might have called upon Mr. Bembridge for it, I cannot immediately tell, but I believe I could tell by referring to our observations in the book, which are dated.

Lord *Mansfield*. About what time was it?—It was between the months of September and November, in the last year; I believe it was about the month of October that we called upon Mr. Bembridge very peremptorily to settle and close the book; upon pressing Mr. Bembridge very close to have the matter settled, he referred us to Mr. Powell.

Sir *T. Davenport*. You talk of settling and closing the account, had there been any balance drawn before that time?—No; he referred me to Mr. Powell, saying he could do no more in it; upon which we applied to Mr. Powell, and had the book of account then sent from lord Sondes's office to the pay-office, in order to insert two items, amounting to about 1,300*l*., one was 900*l*. the other 400*l*. odd; the book of accounts was returned to the auditor's office.

Whether those articles of 1,300*l*. were surcharges?—They were surcharges doubtless; one arose from miscomputation, and the other was from a double credit, they had been credited in Mr. Carteret's office and lord Holland's; the book was returned to the auditor with the stated balance in penciled figures, amounting to 68,000*l*. and odd.

Lord *Mansfield*. Do you know whose hand the penciled figures were in?—No; the two items that were to be inserted, were not at that time inserted, though admitted in that balance to be inserted, I suppose they wanted to be better satisfied about the computation; upon which, the auditor drew out a state of the account, and delivered it to Mr. Rose, who was at that time the secretary to the treasury, in order to be laid before the lords of the treasury.

Sir *T. Davenport*. Whether before you transmitted it to the treasury, either the accountant himself, his deputy, or any of his agents, had been examining this account at the auditor's office?—Mr. Powell was well acquainted with the state of the account that we had then prepared to deliver to the treasury.

Lord *Mansfield*. That is nothing to the defendant.

Had any agent of Mr. Bembridge, or any deputy in the pay-office attended to compare this balance and strike it?—It was made out, I suppose by Mr. Bembridge's order, by Mr. Colborne, the acting clerk in the pay-office under Mr. Bembridge; he was the person that generally made the addition to the accounts, from time to time, according to the observations that we made, which were to be answered.

Counsel for the Defendant. Did you see him do that?—I did not see him do that, but Mr. Colborne brought the book; after the balance was struck, I asked him if he agreed with the balance as we made it in our office.

Lord *Mansfield*. No matter.

Sir *T. Davenport*. Was Mr. Colborne, or any person in the pay-office, apprized that you were going to transmit it to the treasury?—As Mr. Bembridge referred us to Mr. Powell, saying, he could not do any thing more in it, Mr. Powell being the acting executor of lord Holland, we applied to him, and acquainted him that we were going to transmit the account to the treasury; we then pressed Mr. Powell, as we supposed the account was finally closed, to attest it, it is usual for the accountant in the office to attest and swear to his account before one of the barons of the Exchequer; Mr. Powell did not pay any attention to it immediately, and, therefore, we wrote him a letter by direction of lord Sondes.

Before the account was transmitted to the treasury, and after you apprized Mr. Powell that it was going to be transmitted to the treasury, was there any objection made to transmitting it by any person?—None at all.

In the course of the office, is the account ever transmitted to the treasury before it is closed?—It is not usual, but we found it very necessary to do it in this case.

I am not speaking now of attestation, but of the balancing and closing the account, as far as figures go. Is it in the course of the office ever transmitted to the treasury before the account is thus closed?—No.

Sir *T. Davenport*. My lord, we will call Mr. Winter to produce that account.

Mr. *Matthew Winter*, being sworn, produced the state of the account as it was given in penciled figures.

Mr. *Bearcroft*. That is taken, I suppose, from some original account?—From the book account.

Mr. *Bearcroft*. Is the book here?—It is.

Have you compared it with the book?—I have.

Lord *Mansfield*. Where are the penciled figures?—They are all struck out; there are no traces of them to be found now.

Sir *T. Davenport*. The pencil was in the book, and is rubbed out. What passed after this account was taken out of the book, and was transmitted to the treasury?—After that, the book of account was returned from the auditor's-office to the pay-office. The book of account never was transmitted to the treasury, it was sent from the auditor's-office to the pay-office to have those two items of 1,300*l*. and odd, inserted in it; I thought it remained rather longer at the pay-office than usual, and I desired my colleague, the deputy-auditor, to inquire where the book was, and why it was not returned.

Who is your colleague?—Mr. Winsworth: I was informed the book had been returned,

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and delivered to one of our junior clerks in the office, Mr. Gibbs.

Mr. *Scott*. Were you present?—No.

Mr. *Scott*. You must only speak of your own knowledge.

Lord *Mansfield*. It is only to inform you how the book came back, he will tell you in a moment, he found it there; it is of no consequence how the book came back.

Mr. *Hughes*. When I saw the book, I looked to see if those two items were inserted, and found they were; but between those two items, and the last entered sum, in the charged part of the account, I found entries had been made of various sums to the amount of upwards of 48,000*l*., the discovery of which, I confess, very much alarmed me, and my brother deputy also; upon which, we drew out a fresh state of the account, and delivered it at the treasury.

Sir *T. Davenport*. I believe you know in whose hand-writing the additional articles so inserted were?—I cannot pretend to say that.

When you observed those additional articles inserted, was the pencil balance standing then?—No; it was rubbed out then, so as to leave no traces.

Had those additional articles the office mark of having been examined?—No; that was the reason I discovered them; finding they had not the official mark of having been examined, I called the clerk and asked him how that was; he said they were all new items added since the book had been at the pay-office.

Did you make out the new articles to send to the treasury, or did you acquaint the lords of the treasury with the transaction?—I will not be sure whether we gave them the particular items, or only gave them the amount of the items.

In substance, you acquainted them with the transaction?—Yes.

Is there any particular view of the account that will show where the articles of thirteen hundred and odd pounds were added; were they inserted amongst those other articles?—They were then the last entered sums. Upon finding these sums added, lord Sondes himself wrote a letter to Mr. Powell, to desire to know if he had any farther sums to add to the charge or discharge of the account; Mr. Powell wrote an answer to lord Sondes.

Lord *Mansfield*. You need not give an account of what Mr. Powell did.

Mr. *Hughes*. This paper contains the new articles; this account is dated February the 13th 1783,—the state of the additions made to the charge and discharge of the final account of Henry lord Holland.

[The several items were read.]

Mr. *Bearcroft*. I apprehend a letter from Mr. Powell cannot be evidence.

Lord *Mansfield*. It is only proving the fact, that this paper was, upon the discovery, delivered in by them to the treasury; it will not prove that such a letter was written.

Mr. *Hughes* cross-examined by Mr. *Bearcroft*.

I wish you would turn to that book in which the penciled balance was inserted, and show me the place where it stood?—This was the place (pointing it out).

Immediately after the last item, in ink, there was a penciled balance struck?—Yes.

How long have you been in the office of the auditor?—Thirty-six years, pretty nearly.

I presume that balance was put in pencil because it was uncertain, and liable to alteration, or else why was it put in pencil rather than in ink? It is the practice of the office, is it, to put it in pencil?—I don't say so.

Has not 'pencil balance' been a common phrase during the time you have been in the office?—No; but in this case it was, because they were pressed close for a balance; Mr. Powell declined it, in expectation of having some allowances from the treasury respecting Mr. Robert Paris Taylor, I apprehend that was his reason.

Did you ever know of a penciled balance before?—I cannot recollect; there never was one since I have been deputy-auditor; when I was clerk I had not the care of those accounts.

If it is an unusual thing, and you do not recollect an instance of it, did not you, upon observing it being in pencil, conceive the account was not finally closed?—I knew it was not finally closed; but they agreed that the penciled balance was the balance of that account.

You understood, according to the course of office, it was not finally closed till it was attested?—I did.

Which attestation is the person's putting his name to it, and swearing to it?—It is.

If it is not finally closed till then, has it not been the practice in the office for persons to add sums afterwards, before the final attestation?—I do not recollect any instance, after the parties accounting had said that was the balance, of their adding any thing: not that the auditor would have had any objection to it, provided they had produced good authority for it, at any time before the attestation.

Have not you known instances of auditors and paymasters having added items to the account after the balance was settled and delivered in?—I do not recollect any.

I believe you cannot take upon you to say that there exist no such instances?—I cannot be positive.

In truth, they have said, they had nothing more to add, but the account was not in fact finally closed, and they were at liberty to do it?—The auditor has never any objection, before an account is attested, to give the accountant liberty to add to it; but after they had delivered that in, we concluded it was the true balance.

Who said the account was closed, was it not Mr. Powell?—No; Mr. Colborne; I asked him whether they agreed with the

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balance as we had made it? he said yes, they did; then I said we should draw out a state of it, and deliver it to the treasury immediately, for our office had been rather censured, as if we had delayed passing these accounts, and we were willing to show the treasury it was not the fault of the auditors.

I think you said, upon your application to Mr. Bembridge, he referred you to Mr. Powell?—Yes.

And you said, that in consequence of that, you thought Mr. Powell was the man you should apply to?—Yes; and we only applied to Mr. Powell after Mr. Bembridge said he had done all he could, and had referred us to Mr. Powell.

When was that reference to Mr. Powell?—In the month of November.

Mr. Powell was cashier of the pay-office?—Yes.

And acting executor of lord Holland?—Yes.

As cashier of the pay-office, he gave daily attendance there?—I believe so.

As cashier, has he had any thing to do with the accounts of the paymaster?—We never apply from the auditor's-office to the cashier; our directions generally go to the paymaster-general, and then it goes from that office to the proper officer, but we direct our observations to the accountant-general of the pay-office.

You have been thirty-six years in the auditor's-office?—Within about two months.

Do you recollect any persons making up the accounts of dead paymasters, or paymasters out of office, besides the accountants of the office?—Yes; I remember Mr. Winnington's accounts being made up, that was the first account I was put upon (when I came to London, in the year 1747; Mr. Bingham was then the deputy-auditor); Mr. Ingram was the executor of Mr. Winnington, and he applied to Mr. Bingham to make up this account; the book and vouchers were delivered from the pay-office, at Mr. Bingham's house, in Hatton-garden, and I attended, and it was made up and passed in auditor Benson's office, or lord Sondes's; I am not sure whether it was in Mr. Benson's or lord Sondes's time.

Then, in that instance, the paymaster, or any of his clerks or accountants, had nothing to do with it; the deputy auditor, by the direction of the executor of Winnington, made it up entirely?—Yes; the books were all taken from the pay-office, and put into the hands of Mr. Bingham, the deputy-auditor.

They were very considerable accounts?—Very voluminous.

Amounting to large sums?—Yes.

Upon that occasion, neither the paymaster-general, nor his accountant; nor any of the clerks of the office interfered at all?—No more than to answer the muster-roll; there was the officer of the muster to have the muster-roll rectified.

Otherwise they did not interfere in passing the accounts?—None else.

Do you recollect any other instance of a paymaster, or his representative, managing his own accounts without any interference of the auditor?—I believe there have been some before; to my knowledge, I do not recollect any since.

I do not know whether you are sufficiently acquainted with the business of the pay-office, to state correctly the business of the accountant in that office?—I cannot say I am.

Sir *T. Davenport.* You are talking of some allowance Mr. Powell had thought of claiming upon the dispute between himself and Mr. Paris Taylor; had that any thing to do with the charged part of the account, as well as the discharge?—Yes; it went to them both.

You said there was an application from Mr. Ingram to the deputy-auditor Mr. Bingham, to permit him to make out that account of Mr. Winnington's?—Yes.

Suppose no such application had been made, from whence must the account have come—from the auditor's office?—From Mr. Ingram, as acting executor; whether he could have taken the books out of the pay-office for that purpose or not, I do not know; he had a power over them as executor.

Mr. *Bearcroft.* Then, if I understand you, the person acting has a right to employ any person he pleases to manage that account for him?—I apprehend so, and that is a clear instance of it.

For the deputy-auditor has no more to do with it than any other man?—I do not believe the person himself could do it, but the executor of the person I think could.

The account of lord Holland is not closed yet?—No; we have done nothing in it since.

Sir *T. Davenport.* Do you happen to know whether Mr. Ingram, in the case you mention, was paid by the public for passing that account?—I don't know.

Lord *Mansfield.* Ingram was the representative of the accountant; he did not act for the public.

Sir *T. Davenport.* But there is, in this case, an allowance of 2,650*l.* as to a person doing it in his official capacity.

Lord *Mansfield.* So I suppose there was in Mr. Winnington's case?—Yes; I have a warrant in my possession; Mr. Ingram had the allowance; he had 2000*l.*; he has signed his name here.

That was to pay to other people?—To incidents and fees of sundry officers of the treasury and exchequer.

It is an article allowed to the accountant for fees, he must be paid; it therefore amounts to this; Mr. Ingram, in his case, did all the busines; they left it to him, and took their fees for doing nothing.

Mr. *John Wigglesworth* sworn.—Examined by Mr. *Thomas Cowper.*

You are a deputy in lord Sondes's office?—Yes.

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Do you know the defendant, Mr. Bembridge?—Yes.

Do you know Mr. Colborne?—Yes.

In what situation is Mr. Colborne?—Clerk to the accountant in the pay-office; at least we are given to understand so by letters that passed between Mr. Powell and us.

Do you remember the time when the final account, as we call it, was delivered in at the auditor's-office?—I was not at the auditor's-office at that time, but we have brought a paper down with us which will particularly point out the time of the delivery; it was in the year 1772.

Do you remember in the month of November last, your having any communication with Mr. Bembridge or Mr. Colborne, which led you to know whether that account was completed or not?—Yes; with Mr. Bembridge and Mr. Colborne both: on the 27th of October, we transmitted to Mr. Bembridge our observations on examining the final account of lord Holland; those observations were in consequence of our having given the account a thorough examination, and we looked upon it to be the last occasion we should have to make observations on it In the middle of November, I called upon Mr. Bembridge, and requested that he would answer those observations, in order that we might be able to have the account attested, and have a declaration, at Christmas, before the chancellor of the exchequer; Mr. Bembridge then begged that we would, in future, communicate with Mr. Powell; that he acted according to the directions of Mr. Powell, and could, of himself, do nothing in it. We then applied to Mr Powell, we told him we had proceeded on the account as far as we possibly could, and begged he would close it, that we had lord Sondes's particular directions to prepare a state of it, and present it to the treasury; Mr. Powell made no objection to closing the account, only saying there were accounts between him and Mr. Paris Taylor unsettled; these objections we did not deem sufficient to keep an account of such consequence open, and, of course, we transmitted a state of it to the treasury, apprizing Mr. Powell at the same time, that such a state was going in. The account had gone through such a thorough examination, that we always imagined the pay-office exactly agreed with us in the balance, as they never objected to it; the only reason they assigned was, that of Mr. Paris Taylor's account being left open; our intentions of finishing it were well known to them: it must have been about the end of November that we sent the state of it to the treasury; about three weeks after, Mr. Powell wrote a letter to the deputy-auditor, stating that he had made out the account as far as he was able, but there were some matters between him and Mr. Paris Taylor that prevented his closing the account; we were busy then, so the matter lay over till the night of the 10th of January, we then settled lord Holland's account; we missed the book, and on the 11th of January, we sent to the pay-office for it; we then found it had been in our office some time, but on account of the hurry of business, we overlooked it; as we had finished the business for which we wanted it, it had remained there a very considerable time before we discovered the additional articles; I imagine it must have been about the last of January when we discovered the additional articles; for on the 5th of February, we informed the lords of the treasury, that the balance was increased upwards of 48,000*l.* by a number of additional articles being added to the account; this representation produced an order from the lords of the treasury, for us to transmit those particular articles; in consequence of which, we were examined before the lords of the treasury, and Mr. Powell and Mr. Bembridge were examined before them. Since that time, Mr. Powell has paid in 26,000*l.* on account of lord Holland.

Before the book went back, did either Mr. Powell, Mr. Bembridge, or Mr. Colborne, say any thing of those additional articles being to be inserted against lord Holland?—Not a word; they knew we made every exertion we could to settle the account, and we could not suppose they would trifle with us, when they knew we made every exertion, and the occasion was so very important.

Mr. *John Wigglesworth* cross-examined by Mr. *Scott*.

When you requested Mr. Bembridge to answer the observations, he told you, you must in future, communicate with Mr. Powell, that he had nothing to do with it, but under his directions?—Yes.

In consequence of that you afterwards went to Mr. Powell?—Yes; and in consequence, after that, transacted the business with Mr. Powell.

And went no more to Mr. Bembridge about it?—No.

You said you made every exertion you possibly could?—Yes.

One of those exertions was letting the book lie at the pay-office from the 30th of November till the 11th of January, then you sent for it, and found it to have been in your office some time?—We had completed the business in our office, as far as we could go, and had got the account almost ready for the declaration; the declaration was to take place after Christmas, a few hours would complete the business. On the 10th of January at night, we sat about the account to complete it, then we wanted to look into the book to see whether those two articles were inserted.

How long had it been in your office before it was discovered that it was there?—I believe, eight or ten days.

During those eight or ten days you did not choose to be alarmed with those items they had thought proper to put in?—Could we suppose that, after so long a time, they

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should have sent into the office an additional charge of 48,000*l.* without giving us any notice of it?

How came you to let it lie so long?—We had a multiplicity of business.

A multiplicity of business is an excuse in the auditor's-office, but not in the pay-office?—We had several accounts of the pay-office making out at that time.

Mr. *Gibbs* sworn.—Examined by Mr. *Cowper*.

You are a clerk in the auditor's-office?—Yes.

Do you remember Mr. Colborne at any time, and when, bringing back the book to the auditor's-office?—I remember the fact very well, and it is only by a circumstance that I recollect the day, as I did not at that time make any memorandum of the day, but the circumstances are very strong that cause me to recollect that it was on a Saturday, and must have been the 4th of January; it was at about a quarter or half an hour after 3 o'clock that Mr. Colborne came, he brought the book of account that is now the subject of contest, he brought it after the usual office hour, which is 3 o'clock; Mr. Colborne desired particularly—

Mr. *Bearcroft*. What he said surely cannot be evidence; bring us the book.

Lord *Mansfield*. Certainly it cannot. They may examine Mr. Colborne.

Mr. *Cowper*. However, the fact is, he left the book with you?—He did, with a particular desire that the auditor—

Mr. *Bearcroft*. You must not mention what he said.

Mr. *William Plasted* sworn.—Examined by Mr. *Wilson*.

I believe you are a clerk in the auditor's office?—I am.

Do you remember lord Holland's account being brought to the auditor's-office, with a balance struck in pencil?—Yes.

Lord *Mansfield*. Do you examine any more to that?

Mr. *Wilson*. This gentleman was employed to examine the account, were you not?—Yes; I was.

What did you observe?—There was a pencil balance struck, it was inserted balance 65; I found a difference of three farthings and a halfpenny, which the pay-master had charged himself too much; I applied to Mr. Colborne, and told him, that unless he altered those sums, our balance could not agree; he said it was of no consequence, and struck it out. In two or three days after, in farther examining the surplus, I found an error of 900*l.* and odd, owing to a wrong computation of the guilders; I showed Mr. Colborne how that was.

Lord *Mansfield*. What does this signify? I do not see what use you can make of this.

Mr. *Wilson*. Did the book go back to the pay-office after that time?—It did.

Did it come back to the auditor's-office?—It did.

When it came back again, was it in the same state in which it went?

Lord *Mansfield*. Do not ask to that again; the thing is so clear, you may as well ask if the sun shines at noon?

Do you know the hand-writing in which these additional entries, amounting to 48,000*l.* are made?—Yes; I believe it to be the hand-writing of Mr. Colborne, clerk to the accountant.

Who was the accountant at that time?

Lord *Mansfield*. It has been proved that the defendant was.

Mr. *William Plasted* cross-examined by Mr. *Scott*.

You spoke of the penciled balance; who struck that?—It was in the book when it came to me, but I do not know who wrote it.

Mr. *Sol. Gen.* The pay-office books are necessary to be produced, to show that all the articles, which make this great surcharge, are entered in the books of the office, to which, of course, Mr. Bembridge must have had access.

Lord *Mansfield*. That is material, call a witness that has made the examination.

Mr. *Sol. Gen.* I will ask Mr. Chamberlayne that general question, for he has examined every article.

William Chamberlayne, esq. sworn.—Examined by Mr. *Solicitor General*.

You have examined the books of the pay-office with the account that you have in your hand?—Excepting the four sums, which constitute the 20,025*l.* 19*s.* 5¼*d*, I have examined all the sums in the books of the pay-office, and find it correspond in the account; as to the four sums which compose the articles of 20,025*l.* 19*s.* 5¼*d.* they consist of a vast variety of small sums, which constitute the whole, which are contained in the ledger, I suppose; I confess, that after having dipped into the ledger, from time to time, as to those small sums, that I did not look into every one of them.

Mr. *Bearcroft*. When did you examine this?—About seven or eight days ago.

Mr. *Sol. Gen.* Mr. Bearcroft, I suppose you will allow that, without our going through the books?

Mr. *Bearcroft*. No; use your own pleasure.

Mr. *Sol. Gen.* Then we must produce the books.

Lord *Mansfield*. Why, have you not got enough already, when you have proved so many thousand pounds? You show it clearly with respect to 20,000*l.*, the rest are small items that are not worth while.—Don't keep us here for hours longer than it is necessary.

Mr. *Chamberlayne*. The first article is, as to the account of Mr.——who is the deputy-paymaster at New-York.

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Mr. *Bearcroft*. I shall not make it an objection, because I know it is not a legal one, if they do not prove every sum, for it is all under a videlicet.

Mr. *Sol. Gen.* My lord, I will now prove the warrant to pay Mr. Bembridge 2,650*l.*, for doing this very business.

[A warrant under the king's sign-manual, dated St. James's, May 1st. 1781, addressed to lord Mountstuart and lord Sondes, was read, which directed, among other things, that there should be allowed for fees, &c. in making up their accounts—To the accountant-general, Charles Bembridge, esq. 2,650*l.*

To the accountant-general's clerk, Mr. John Colborne 500*l.*

Mr. Charles Bembridge's receipt for the 2,650*l.*, which was at the end of the warrant, was likewise read.]

Mr. *Sol. Gen.* I will now call Mr. Molleson to prove the examination, upon oath, of Mr. Bembridge, before the commissioners of account, on the 22d of March, 1781; the material article for which I produce it, is, that Mr. Bembridge there says, that he carries on, and makes up the account of the paymasters after they are out of office, as well as the paymaster's in office.

Mr. *Molleson* sworn.—Examined by Mr. *Baldwin*.

You are, I believe, secretary to the commissioners of account?—I am.

Do you remember Mr. Bembridge being examined upon oath, before the commissioners of account?—Yes, very well.

Mr. *Baldwin*. Please to produce a copy of the examination.

Mr. *Molleson* produced the examination of Charles Bembridge, esq. taken on the 20th and 22nd of March, 1781.

'This examinant saith, that he carries on 'and makes up the accounts of the pay-'masters after they are out of office, as well 'as those of the paymasters in office.'—Then he goes on to say,—'The only obstacle to 'the adjustment of the late lord Holland's 'accounts, is a dispute relative to the balance 'in the hands of Mr. [Robert] Paris Taylor, 'who was one of his deputies.'

'An examination of Mr. Bembridge, taken 'from the 16th of May, to the 13th of July, '1781.—This examinant saith, that he has 'been accountant for the paymaster-general, 'from March, 1776, and has been in the 'pay-office above twenty years.'

Lord *Mansfield*. That is proved already.

Mr. *Sol. Gen.* to Mr. *Hughes*. You know what is the practice and usage at the pay-office, with respect to making out the accounts of a paymaster who goes out of his office either before or after Midsummer-day; in what manner are the accounts settled with respect to him?

Lord *Mansfield*. How does that bear?

Mr. *Sol. Gen.* It is an allegation in the information.

Mr. *Bearcroft*. I admit it.

George Rose, esq. sworn.—Examined by Mr. *Solicitor General*.

I believe you were secretary to the Treasury in the months of December and January last?—I was.

About what time was it that the defendant, Mr. Bembridge, was before the board of treasury upon the subject of any omission in his account?—I believe, a clerk from the treasury attends with the minutes in my own handwriting; I would rather speak from those minutes.

Mr. *Bearcroft*. You must use them as memorandums.

Lord *Mansfield*. For dates especially.

[Mr. Rose refers to his minutes.]

When was Mr. Bembridge asked about the omission which constitutes this charge?—On the 15th of February, 1783.

Please to inform my lord and the jury, whether those articles, which constitute this balance of 48,000*l.* being stated to him; whether he said any thing about his having known or having been ignorant of them antecedent to the time of their being entered in the account?—Mr. Bembridge admitted at the board of treasury at which I was present, that he was perfectly apprized of those articles in the voluntary charge, making forty-eight thousand odd pounds, long previous to the penciled balance, as they call it at the auditors-office, being drawn out; I then asked him how he came not to see that they were inserted in that account; he said, that he left it to Mr. Powell, who had been accountant before him, to make up the account. I then asked him if he was not aware that it was his duty, as accountant, to see that all the articles, which ought to be brought in charge against the pay-master, were included in the account; he admitted that he knew it was his duty; I then asked him, if it did not occur to him to be peculiarly improper to devolve upon the person accounting that check, which the constitution of the office had vested in him; he answered, it did not. In the course of the examination, Mr. Bembridge had mentioned, as the gentleman had done before him, in the same examination, that he did not consider the account as final. Upon being asked, why?—he mentioned a dispute still subsisting between Paris Taylor, and the executor of my lord Holland; but it was admitted that that account had nothing to do with any one of those articles in the voluntary charge; I asked, repeatedly, whether that dispute between Paris Taylor and my lord Holland's executor, had any thing to do with those articles, and could justify keeping back those articles; it was admitted, it had nothing to do with them at all.

Did any thing pass between Mr. Bembridge and you upon this occasion, with respect to those articles, or any of them, being of that nature, that it was at all doubtful in his mind, whether they ought or not to have been in-

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serted?—I asked Mr. Bembridge, whether he had a doubt about the propriety of including any one of those articles in the account?—He said—no.

Did he say, he had for weeks, months, or years, or any time, known of those articles that ought to be included in this account?—I asked him, if he did not know long before, that they ought to be inserted in this account; he said, he did; I did not think to ask him to a month or day.

George Rose, esq. cross-examined by Mr. *Erskine*.

I observe, in looking over a minute I have of the proceedings of the treasury-chamber. at the time you are speaking of, that there is no mention made, directly or indirectly, of some of those circumstances which you have spoken to?—Probably not; I included, in these minutes, every thing I thought material or important. I read over the minutes after I had taken them to Mr. Bembridge, Mr. Powell, and the two deputy auditors; I mentioned every thing in the minutes, that appeared to me important at the time.

Because, as Mr. Powell was examined at the same time as Mr. Bembridge, and touching the same matters, perhaps you may have confounded the answers of one with the answers of the other; for I have no trace of what you have mentioned; for instance, about Paris Taylor's account?—It was certainly examined; Mr. Powell, was the principal person at that time, considered to be a culprit.

I observe, in looking at the examination of Mr. Powell, several of those circumstances, that you refer to Mr. Bembridge?—As well as my memory can go, I asked, I believe uniformly, of Mr. Bembridge, the same questions that I asked of Mr. Powell.

Did you take a minute?—A very rough one; the minute that Mr. Winter has in his hand, I took in the evening; and as I did not take it at the time, I thought it important to the parties to read the minute carefully and deliberately over, to each of them. The minute was taken on the Saturday; and on the Monday or Tuesday following, I read it to the parties, and the only thing Mr. Powell or Mr. Bembridge at all hesitated to admit, according to the minutes I had taken of what they had said, was as to the account being final; they harped upon that; they both of them then said that, relative to the account not being final.

Did Mr. Bembridge say, that what he had done was under the direction of Mr. Powell? He said, that Mr Powell had been the accountant before him, and he referred it to Mr. Powell to make it up.

Do you remember, upon the 24th of January, receiving any letter from Mr. Powell?—I cannot exactly ascertain any date; what letter do you allude to?

In the end of January?—I cannot upon my memory say.

But in answer to a letter you had written to him, subsequent to the period we have been speaking of?—Very likely.

Saying, that 68,000*l.* was not the balance?—I cannot positively say that; if so, it is in the treasury; every letter I received will, of course, be found there.

This was before the examination?—I cannot say.

Before those voluntary articles of charge were introduced, do you remember writing a letter to Mr. Powell to pay in the balance?—Certainly.

And do you not remember receiving a letter from Mr. Powell saying, that 68,000*l.* was not the balance, but that there was more to pay in?—Very likely I might; but I do not recollect there was any such letter.

Do you not recollect, he said in that letter, that if you would turn to the book in the auditor's office, you would find that?—I have no recollection of such a thing.

But he told you it was not the final balance?—He repeatedly told me so; but I never understood the final balance to be otherwise than regarding the dispute between Paris Taylor and my lord Holland.

Mr. *Sol. Gen.* There is one question I forgot to ask you. Be so good as to inform my lord and the jury, about what time it was that there was any known intention, in the board of treasury, to institute an inquiry into the state of the sub-accountants?—Towards the latter end of the last year; it was very early after my coming into my office that I mentioned it as a most desirable thing to be looked into, a point I thought the public would derive very considerable advantage from looking into.

Was that pretty well known, and the subject of much conversation?—A great deal.

Had you proceeded to take any account of the state of the sub-accountant?—I cannot exactly say when there was any proceeding upon it.

Was there any proceeding about the month of December?—Yes; prior to that, there was an inquiry of the money in the hands of several persons unaccounted for.

Were there any drawn out?—There was none drawn out, I believe, so as to proceed officially upon till after Christmas.

Mr. *Sol. Gen.* There is a circumstance I am desired to mention to the Court, that at this very time, Mr. Bembridge admitted, that he had himself, a very large balance in his hands to the amount of fourteen or fifteen thousand pounds.

Lord *Mansfield*. You will show that.

[A letter was put into Court, by Mr. Chamberlayne, dated Pay-office, 19th of Feb., 1773, from Mr. Bembridge to George Rose, esq.—(It was read).—'I shall take it as a 'particular favour, if you would be pleased to 'inform the lords of the treasury, that in 'three weeks at farthest, I certainly will pay 'the balance due from me, as one of the

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'deputies of Henry lord Holland, deceased, 'as paymaster of his majesty's forces.'

Another letter, dated 3d of March, 1783, from Mr. Bembridge to George Rose, esq.—'I request it, as a particular favour, that you 'will be pleased to inform the lords of the 'treasury, that I have paid to Mr. Powell, 'the balance due from me, as one of the 'deputies of Henry lord Holland, deceased, 'late paymaster of his majesty's forces.']

Lord *Mansfield*. How does it appear what the balance was?

Mr. *Baldwin*. In the second letter, your lordship sees, he states that he had paid it to Mr. Powell. Now we will show that three days after, Mr. Powell paid in 20,000*l*.

Lord *Mansfield*. That does not show the sum paid by the defendant, he might have many other sums.

The end of the evidence for the Crown.

FOR THE DEFENDANT.

Mr. *Bearcroft*. May it please your lordship, and gentlemen of the jury; I am counsel for the defendant, Mr. Bembridge, who labours under the weighty misfortune of being the object of a prosecution, by the attorney-general, for a supposed omission of duty in the pay-office, at a time when great pains have been taken to alarm the public, and to turn the eyes of every man upon that office.

I am as willing as Mr. Solicitor-General to contribute my share of praise to the zeal of the lords commissioners of the treasury, to inquire into the state of the public accounts; he praises them much for it; it was an obvious duty, it is a pity that it had not occurred a little earlier; if all public accountants were to be proceeded against, it is somewhat extraordinary that they pounced at once upon my lord Holland's accounts, rather than any other man's; but so it was.* At that end, I cannot call it, but in that middle, they chose to begin.

Gentlemen, you will strip yourselves of all prejudices, and of all clamour, and you will, before you pronounce a verdict against this gentleman, see whether he is guilty of the facts charged by this information, or of any thing that is the fair object of an information, or in other words, whether he is guilty of an indictable offence. I take the liberty to lay it down,—and, I presume, I shall meet with the assent of Mr. Solicitor General to that proposition of law;—that nothing can be the object of a criminal prosecution, by way of information, unless, at the same time, it can be the object of an indictment; the only difference is, that it is the privilege of the attorney-general to proceed by information, without the intervention of a grand jury; in the case of indictment, a grand jury must first find the charge against the defendant; but you will be pleased to take as a main ground, upon which I build much, that I shall offer both to my lord and you upon this occasion, that this is not an offence that can be prosecuted and punished by information, unless, by law, it is liable to be prosecuted and punished by indictment.

Gentlemen, it behoves me, in endeavouring to do my duty to my client, to endeavour that you should be somewhat more particularly and minutely acquainted with the charge contained upon the face of this information, and the effect of it, than, I am sure, at present, you are. The charge in words and in substance that must be made out, is this, that the place of accountant in the office of the paymaster-general, is a place of public trust and confidence, touching the making up the accounts of the receiver and paymaster-general, and the adjusting and settling the same with the auditor of the imprest; these words are very important; and it will be for my lord's direction to you, whether the evidence that has been given of this place of accountant in the pay-office, shows it to be a place within the legal import and description, upon the face of this information.

Gentlemen, they are general words,—a place of great public trust and confidence; the law is more correct, and unless my lord shall tell you, that this place of accountant in the office of the paymaster-general is of such a nature, that the breach of the duty of it, amounts to an indictable offence,—I beg leave to say, that it is not a place within the meaning of this information, of great public trust and confidence. To explain myself, and for his lordship's direction, what I aim at, is this; I do not believe it to be law, that every man, in every public office, that has relation even to the public money, in every breach of his duty commits an offence indictable; there are other ways of punishing that man.

Gentlemen, I ask of my learned friend, to tell me in what book of criminal law, in what adjudged case, he finds that general proposition? For if it be generally true, that every man, that every clerk, that every clerk's clerk in office, whenever he wilfully neglects to do his duty, is liable to an in-

* See in Woodfall's edition of Junius, vol. 1, p. *174 and p. *175 note A, some interesting particulars respecting the accounts of Henry lord Holland, as paymaster-general of the forces, published in consequence of the Address of the city of London presented to his majesty, July 5, 1769, in the following passage of which address lord Holland conceived himself to be alluded to.

"All this they [his majesty's ministers] have been able to effect by corruption; by a scandalous misapplication and embezzlement of the public treasure, and a shameful prostitution of public honours and employments; procuring deficiencies of the civil list to be made good without examination; and, instead of punishing, conferring honours on a paymaster, the public defaulter of unaccounted millions."

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dictment, it is astonishing what an infinite number of the subjects of this kingdom must be comprehended within such a law, and it affects them and no other subjects of the kingdom, in the manner that soldiers are affected by the mutiny-act; there is a severe law that hangs over the heads of men of this description, to infinite numbers, if it be law; I desire not to be misunderstood; I do not mean to contend, that the law of England does not consider the situation of men in offices, and does not punish them for a breach of their duty in their office; but read our books, and look at our precedents, and tell me upon what principles, and how that law is confined. Persons of high trust in judicial offices, if they purposely offend, they are liable to indictments; they are liable to impeachments; and to be prosecuted as criminals. Common law officers, of various kinds, who are necessary for the public administration of justice, are undoubtedly liable; justices of the peace, who pervert the duty of their offices, they shall be punished when they thus offend; even a constable, if he does not obey the warrant of a justice, shall be punished, because the common and original law of this land, has known these offices from ancient time; they are created for the purposes of assisting public government, and it is upon that principle that they may be prosecuted for a criminal offence, when they wilfully do not fulfil their duty. Neither the paymaster nor his clerk, the accountant, nor any of his clerks, come within this description. The paymaster himself, is a modern officer, with respect to the points upon which I now speak, created within about these hundred years;—where do we read of him in our books? Where do we read of any such description of men, that by the common-law is indictable for any offence that he commits? I have tasked my memory and recollection, to go back to what precedents can be found upon this occasion; the first that occurred to my mind, was a Mr. Leheup, who certainly was prosecuted for a public offence, with regard to public money: it struck me the moment I recollected it, that that prosecution was right, and clearly founded in law; for the history of Mr. Leheup was this; he was appointed and named, by special act of parliament, for the purpose of receiving subscriptions for the lottery for the purpose of purchasing the museum; he abused that trust, for finding the tickets bear a premium, he got a parcel of sham names, and represented them as the names of real subscribers and contributors given in to him, by which means, he got possession of the tickets, and sold them to an advantage; I have seen the information that was filed against him (and though it consists of a great number of different charges, I think nine, at least, it will be in the memory of his lordship, I am sure); it turned out to be exactly as I suspected, and the point in the charge, in every one of the counts in that information is, that what he did was contrary to the intent and meaning of the act of parliament that created the offence, and which is recited in the information; and, not content with that, in each count it is included over again, in manifest violation of that act of parliament. It was not clear, that even in that gross offence, Mr. Leheup was guilty of an offence known to the common laws of this country, but that he was upon the statute, no man could doubt. It is a clear principle of criminal law, that if an act of parliament commands a thing to be done, or prohibits it to be done, and does not direct a pecuniary penalty, or a particular mode of prosecution, whoever acts contrary to that act is indictable; Mr. Leheup, upon that occasion, clearly acted contrary to the spirit of the act, for being named as a trustee for the public, he acted for his own benefit, in subversion of the act of parliament. Upon the ground, therefore, of being appointed by the act of parliament, and acting directly in open violation of it (which is perpetually repeated in the indictment), it was, that he was found guilty. I call upon the knowledge and experience of my learned friend, the solicitor-general, to show me a single instance of a prosecution of a clerk in office, by way of information or indictment, for wilfully omitting to do his duty. Gentleman, this is not, and it is fit you should attend to that (and with great submission, I hope my lord will do it too), that this is not a crime of commission; here is nothing done, nothing executed, nothing perfected, no mischief done to the public, no loss whatever follows from it. I ask of my learned friend, then, if he cannot produce a precedent to tell me upon what principle does it stand? Says my learned friend, no man can doubt about it; every man's understanding must teach him, that an officer in the public office of the paymaster, who has to do with public accounts, must be a criminal if he wilfully omits to do his duty. Why must he? because it strikes you to be a wrong thing.—Numerous are the cases I could state to you, that would strike a man infinitely more, concerning which, there is not a colour to say, that they are indictable offences. It is not then the disapprobation of mankind; it is not your saying this thing is not decent or proper, you should not have done so, that makes an indictable offence. It is of the utmost importance to every subject of this country, that somewhere or other, he should be able to learn what the law is upon all subjects, but above all others, upon criminal subjects. Again, I call upon my learned friend, most seriously, to state to me, if he can, a precedent, a principle, a line, or word, that is to be found in any law-book, upon which he can found the legality of the present charge.—I say this for my lord's direction, not that I conceive that even this evidence proves the fact, in the manner in which it is charged against Mr.

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Bembridge, in the present accusation. The charge is this; that it being his duty to disclose these items, he wilfully (which is the essence of this and of every other crime, for no man can commit a crime, unless his will goes with it, and he knows what he is about; perhaps, it is not necessary that he should know, that in point of law, it is a crime, but his will must go along with it, and he must be conscious at the time, that he is doing something grossly wrong) concealed them. Now see what evidence you have of that, the story stated to you is this: lord Holland was a great public accountant; when his lordship went out of office, and still when he died, there was a vast account with the public, in the common and ordinary course of the exchequer; Mr. Powell alone was the acting executor, and the single representative of lord Holland; Mr. Powell was in a very peculiar situation; and, gentlemen, if you will do me the favour, and my client the justice to attend to me, I am persuaded, from that peculiar circumstance of Mr. Powell's situation, you will see a complete excuse for the present defendant. Mr. Powell had been accountant in this office for many years, he was now cashier, but the same Mr. Powell was likewise the executor and representative of my lord Holland; now, what an absurdity would it be to require of a man, who was himself to account, and who was better able to make out the account than any man in England, from the nature of his office; what an absurdity to require him to go and present himself to a man to do that business, who did not understand it so well as himself. The commissioners of the treasury thought they had reduced Mr. Bembridge to an absurdity, when they asked the question, whether it did not occur to him, that it was wrong to suffer Mr. Powell, because he was the person accounting, to draw up the account? Mr. Bembridge said, it did not occur to him; he would not tell the lords that sat at that board, that the reverse was what occurred to him; but to any man, who understands the nature of this office, who would advert to the particular situation of Mr. Powell himself, it would have been an absurdity, if Mr. Bembridge had called upon him, to permit him, Mr. Bembridge, to do that which the other could do so much better.

Gentlemen, it is not an offence charged by the present information the taking fees for not doing the duty of the office, that has been frequently done; in the case of Mr. Winnington, his representatives chose to pass his accounts by a person they employed themselves, the accountant received fees for it, and it never occurred to any man, to prosecute him for it; but that is not this prosecution. There was much stronger reason that Mr. Powell should be permitted to draw up this account; I say, Mr. Powell had a right to do it, and it was not in the power of any man breathing, by any law in existence, to compel it to be done by any other man. This is a strange idea of its being the duty of the accountant, in this pay-office, to settle the accounts of an ex-paymaster out of office, or a dead one with his representative. I desire to learn of my friends, what law, what process there is to enable him to carry this into execution; what duty can there be upon that officer, who either may do it or let it alone, at the option of another person? The charge is, that it is the clear and absolute duty of the office of an accountant to settle the accounts of the paymaster, and to act in adjusting them with the auditor; if this is the ancient course of the exchequer, there is some process which can compel the party to do this; where is that process from the exchequer that can call Mr. Powell, or any body else, to come before the accountant of the pay-office to settle and pass his account? Is there any such law? Is there any such process? No; a paymaster and his representative, like every other accountant for public money, is obliged to account with the exchequer, according to the ancient course of it, and all that process of law to extort an account from those who have public money in their hand, must come from the exchequer, compelling the party to account with the auditor.

Gentlemen, it is perfectly true, that it has been very frequent, in point of fact, for the accountant in the paymaster's office, to assist in making up and adjusting the accounts of ex-paymasters, but it does not, therefore, follow that it is their duty to do it; why the thing has happened, is very easily accounted for; they are the best judges of this kind of account; they can do it quickest, they are the most able at it, and, therefore, it happens, that nineteen times in twenty, for what I know, if it could be traced so far back, the ex-paymasters, or their representatives, have applied to the accountants to do this for them; but they may do the reverse if they think proper. I take the liberty to say, that it was law, till altered by an act* that has passed only this session, that a paymaster, upon going out of office, or, if he was dead, his representative, had a right to take every book, and every scrap of paper that would serve to make up his account, away from the pay-office, to his own closet. I will go farther; I will state a case, and put it in the form of law. If the representative of a dead paymaster had got hold of a book in the office which contained only his accounts, and was going out at the door with it, and the then paymaster was to run after him, and say, 'Sir, I want that 'book, it is mine;' 'no,' says the other, 'it is

* See stat. 23 Geo. 3. c. 50. intituled, "An act for the better regulation of the office of the paymaster-general of his majesty's forces, and the more regular payment of the army; and to repeal an act made in the last session of parliament, stat. 22. Geo. 3. c. 81, intituled 'An act for the better regulation of the office of paymaster-general of his majesty's forces.'"

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'mine, I have a right to make use of it;' if the paymaster, in office, were to snatch that book and take it away, I take the liberty to say, that the representative of the paymaster, out of office, might bring an action of trover for it; it is his absolute property; why, gentlemen, it is the means of his doing that which the law says he is bound to do; the man who receives money, must account with the exchequer; shall he leave all his vouchers, all his books, which enable him to make up that account, in the hands of any man? Such an absurdity requires stronger proof than any that has been adduced to day; 'O!' say, the gentlemen, 'Mr. Bembridge has admitted that it is so.' It has escaped me, if Mr. Bembridge has admitted that it was the duty of the accountants, whether they would or not, to pass the accounts of the ex-paymasters; he has said they make up the accounts; in fact, they do so; and I have accounted to you, rationally, I trust, and fairly, how that happens; but I say, it cannot be their duty, unless it be in their power to enforce it, and my learned friend will tell you, if there be any process of law to compel that.

Now, gentlemen, permit me a word or two more to that which is the essence of this, and and of every crime; and that is the wilfulness of this concealment by Mr. Bembridge. As to the wilfulness, you will recollect the story, and understand it. Mr. Powell, the representative of lord Holland, is to account for great sums of money, delivered into the possession of lord Holland, for the public use; when he is called upon to do it, he delivers in two books to the auditors of the exchequer, one of which is called the final account; Now it is necessary here that I should beg your attention, lest you should be misled, as the public has been, very much, by the abuse and misunderstanding of that phrase, 'final account;' and to do justice to my friend the solicitor-general, he has stated it so; if 'final account' means (which it certainly does) no more than the last book of account; that is, I bring here my last book of account, which comes down to Michaelmas, 1765, which is the close of my account; in that sense it is a final account; but, if it is meant to be said to you, as it has been published all over the world, in all the newspapers, that the account was 'finally closed,' it is perfect nonsense; and then the clerks in the office are wiser than all the world; they think, because there is a penciled balance struck, it is a final account. Now, I ask you, gentlemen, if you do not reason the contrary way; that because it was written in pencil, it was not a final account; it was written in pencil, because it was liable to be altered; indeed, the witnesses, on the part of the prosecution, have said it was not a finally closed account; and they have told you, as the truth is, that their accounts were never considered as a finally closed account, till the party himself, who is the acting person, has set his name to it, and sworn to the truth of it. Now, then, let us see the offence of Mr. Bembridge; it consists in this; Mr. Powell had delivered in many books of accounts; he had omitted several articles, amounting, I confess, to a large sum; Mr. Powell might have inserted them, Mr. Powell ought, if you please (I will go so far), to have inserted them before; Mr. Bembridge knew that they ought to have been inserted before, and Mr. Bembridge did not turn a spy, and go and tell the auditor that his predecessor at his office, Mr. Powell, intended to commit some offence; for if Mr. Bembridge had been base and mean enough to feel it a duty to make some information upon the subject (but how can a man feel such a conduct to be his duty, which he would spurn at the idea of?), if he had been ever so willing to make a charge against Mr. Powell, he could not have put it with any colour of truth, in any other form than this, to my lord Sondes: I believe Mr. Powell intends to commit some offence, some fraud upon the public; why? Because he has omitted to insert, in the proper place, a great number of articles, amounting to a large sum of money; I believe he means to close his account, finally, without doing it;—that would have been Mr. Bembridge's charge; and for not having that trifling merit it is, that he is prosecuted. What a figure would Mr. Bembridge have cut in the world, when, in point of fact, it turned out that the suspicions were false, for that, in truth, Mr. Powell did insert this? 'O!' says my learned friend, 'he did not do it voluntarily; the activity of the then lords commissioners of the treasury frightened all the world, and brought them in.' Gentlemen, it may be so, for any thing that I know; but do you make a criminal charge, not against Mr. Powell, but against Mr. Bembridge, for not telling of Mr. Powell? It would be too hard to take that for granted, and the whole fault of Mr. Bembridge seems to be, that he was not too forward to tell tales, and to create suspicions which were not founded in facts. It is not necessary for the government of this country to be carried on by a generation of spies and informers; it is not the spirit of an Englishman, and I trust, you, gentlemen, who are so, will make due allowance for that. Will you suffer a man to be convicted of a crime for not doing that, which if he had done, all mankind must have hooted and hissed him for doing?

Now a few words as to the wilfulness of it. It must be wilful, say they, because he was in the pay-office, because it appeared in the books, and he must know it. Is that the foundation of the criminality? Is that the essence of the crime? Is it because, receiving money of the public, he knew of something that he might have disclosed, and did not? If so, my friend will have enough to do with informations, for they ought to file criminal informations against every man, from top to

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bottom of the office, who can read, and has access to these books; which furnishes this observation, that it cannot rationally be conceived that Mr. Bembridge meant any mischief in this, for he must know, if he had any common sense, that it was an absolute impossibility to keep the secret; if he did not intend to keep the secret, the crime is vanished in this business; 'but, no,' they will say, 'the crime has once existed; and if I can find a man who has committed a crime, though there is an end of it, and it has had no effect at all—the crime is complete, and I have a right to punish it at any time;' for the only way in which they can make this an offence, is, that Mr. Bembridge kept it back, when he ought to have disclosed that he had reason to suppose a crime was meditated by Mr. Powell.

Gentlemen, I beg you will distinguish between the situation of Mr. Bembridge and Mr. Powell; Mr. Bembridge has nothing to do with the public money; he was not interested in this, and was not advantaged by it at all; if there was a fault, a monstrous crime, as the solicitor-general has stated, that unhappy man, whose name has been mentioned so often, has pronounced and executed a sentence upon himself, severer than the law could inflict;*—there is a sacrifice to public clamour, for it was so at that time. If Mr. Powell had been in existence to answer for his crime, a prosecution against Mr. Bembridge, by the attorney-general, would not have been thought of, for that mere colour of a crime, for more than colour there is not. As to withholding it, if you suppose the great object and design of Mr. Bembridge was to keep this secret, he would have said, when the inquiry was made of him, 'I know, positively, there are no more articles;' if his object had been to have kept it secret, would he have directed them to the man who would disclose it—who ultimately must, and who did disclose it? But at the time, I think, in November, when the clerks were worked up to a little more diligence than they had been before, in the auditor's office, they go to Mr. Bembridge about it; says he, 'I know of no more, I can tell you of no more, go to Mr. Powell;' and the witnesses say, from that period, their constant intercourse, from time to time, was with Mr. Powell and nobody else. Then, in November, Mr. Bembridge was not so forward, as a spy and an informer, as he ought to be in point of law; but he says, apply to my principal, Mr. Powell, I have nothing to do with it; and that was true, Mr. Powell was the acting man, he was making up his accounts; I asked the question, whether Mr. Powell did not succeed to be cashier, after he quitted the office of accountant? the answer was, and the fact is clear, that he was so, and spent many, many hours, every day, at the office; the consequence of that was, that all these books must be there; they were in his custody, seen by Mr. Bembridge; Mr. Bembridge assisted, if you please, with all my heart; but Mr. Bembridge, upon that occasion, not being, what accountants frequently, in fact, have been,—but Mr. Powell himself carried on the account; Mr. Bembridge was not interested with the passing of this account; if for a moment, a day, or a month, he assisted, there was an end of it in November, and then he refers you to Mr. Powell, who was himself passing his own accounts.

Gentlemen, under this circumstance, for God's sake, where is the mischief done to the public? where is the obstinate wilfulness that is to compose this crime? He had not the money; he could get nothing by it; nobody could state the manner in which he was advantaged; and at this moment, the whole business, with respect to the public, stands in the situation in which it did a dozen years ago, with respect to the payment of the money; for though it turns out that Mr. Powell has now acknowledged that there is a debt due to the public of upwards of a hundred thousand pounds, part of which, this additional 48,000*l.* is,—it is not paid, but I can tell you that it is perfectly secure; and even this miserable Mr. Powell, whose character has been so reflected upon (I know it, for I have seen the accounts, that there is a hundred and odd thousand pounds that is a balance due to the country, though it stands upon perfectly as good security as any in this kingdom); Mr. Powell has never altered it, for it stands upon the same mortgages, and the same ample security, of every kind, exactly as it did in lord Holland's life-time. What has been the suggestion against this wretch? why, that he was, all along, cheating the public, and keeping back this account for the sake of making advantage of money, and turning it to his own purposes; it is impossible: it cannot be so: it is out upon the same securities and mortgage (I repeat it again) that it existed upon in the time of my lord Holland; he had not had it in his pocket, he could not play with it, nor did he. To advert still to the point—Mr. Bembridge wilfully assisted in this concealment, for the

* In the General Advertizer of May 28th, 1783, is the following paragraph:

John Powell, Esq.

"Monday night, May 26, a very respectable jury, summoned by the coroner, sat upon the body of John Powell, esq. at his house in Bennet-street, St. James's, who that morning had, through extreme depression of spirits and despondency, put an end to his unhappy life; when it appeared, upon the clearest evidence, given by Mr. Rigby, Mr. Burke, Mr. Woodhouse, and divers other witnesses, that the deceased, since the time of his examination before the lords of the treasury, has been generally in a state of insanity. The jury unanimously brought in their verdict lunacy."

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sake of a man who could get nothing more by it than he did; Mr. Powell, in fact, brought it forwards. Let me now consider of it (with a view to my lord's direction to you) again, what sort of an offence this is, in another way of considering it; I have stated to you, and trust I have satisfied you, that, at the utmost, this was an intent to commit an offence; I take the liberty to lay it down as clear, indubitable law, that an intent to commit an offence, unless that offence be treason, is no crime by the law under which we live, and by which we are governed. If Mr. Powell intended to secrete this from the public, and Mr. Bembridge meant to assist him in it, his offence could not go farther than the principal in this sort of thing, for it was but intention, which intention, in fact, was not carried into execution. I desire to know, what colour there is to say (if it was in proof) to you, that this is an offence criminal and indictable by the common law of this country. 'O! but,' it will be said, 'Mr. Bembridge stands in a peculiar situation, he is to do his duty correctly; if he omits any part of it wilfully, that omission is, in effect, a positive crime.' I know that is the way in which my learned friend will talk to you by-and-by; that is measuring strangely indeed; if that should be conceded to be law, it is a very severe one, and where men prosecute upon a severe law, it behoves them to have their evidence complete and decisive; if the execution of the law is severe in itself, you ought to be perfectly satisfied, before you convict, that you have facts and evidence which prove the crime beyond all doubt. Now, as I have said so often, and cannot repeat it too often, it is the design of the party, the wilfulness, that constitutes this offence, and unless you are perfectly satisfied by the circumstances, that it was absolutely wilful and designed, there is not a colour to convict Mr. Bembridge of this charge. It is contended,—and it may be so, for what I know,—it may be my lord's opinion, and yours, when you come to give your verdict,—that it is the duty of the accountant of the pay-office, to pass these accounts; but the essence of the offence is the wilfulness of the omission; it ought to appear to you, therefore, beyond all doubt, that Mr. Bembridge knew and thought it to be the duty of his office. Can you, after the evidence that has been given, conceive that he was convinced that it was the duty of his office, when the officers from the auditor's-office, which is the proper place to compel the making up this account, tell you, that when they applied to him, he refers them to Mr. Powell himself? Now, some of these gentlemen have been acquainted with the office thirty-six years; did not one of them say, 'what, Mr. Bembridge, would you send us to Mr. Powell to make up and pass his own accounts?'—No. —From Mr. Bembridge's acts, at the moment, it is plain he did not consider it as a part of his duty, but referred them to his principal; Mr. Hughes and Mr. Wigglesworth conceded to it, for away they go, and from that time to this moment, they had no intercourse with Mr. Bembridge at all; but this has been, all of it, extorted at a board of commissioners of the treasury, from the defendant himself. It might be their duty; I dare say, they had nothing but public views in it; they aimed not at particular men or things; all persons of a certain description, you know, never cast their eye upon any thing of that sort. I will admit, if you please, that it was perfectly proper to make the inquiry for the sake of the public, and for the sake of compelling the payment of the balance; but can you conceive that it becomes commissioners of the treasury, if in the course of inquiries of that kind of pursuing money, they stumble and kick up a crime, to send their clerk to give evidence of this? I have no difficulty to say, that I cannot conceive that it was either necessary or becoming. If they were in the prosecution of the money, let them make use of any thing that they think proper to that end; but that sort of inquiry and examination appearing to aim at one thing, and, in truth, looking after another, in my apprehension, does honour to no men, let their characters and stations be what they will; but if they will descend to give the evidence, we must consider it. Now, gentlemen, what is it that Mr. Bembridge says?—I suffered Mr. Powell to pass his own account; and can you conceive, when Mr. Bembridge gave that answer, that he thought he was accusing himself of a crime, whatever the commissioners of the treasury were aiming at upon that occasion? Mr. Bembridge is not a fool; I claim that, therefore, as evidence for the defendant; he answers the questions at once, and states the fact. Consider his situation; had he been conscious of any crime or offence, would he have been so ready to answer the question? he made no difficulty to tell them all. It is necessary for you, therefore, under the circumstances of this case—in the first place, to decide from the whole complexion of it, whether you are satisfied that this was a wilful concealment of this transaction, which was for a time wrong, but is followed by no ill consequences. It will be for my lord to tell you, whether I am right in the law I have taken the liberty to lay down for his lordship's consideration; I am not ashamed of it, I am serious in it, and it does not misbecome an advocate, nor does it misbecome a subject of this country to say, that it is of the utmost importance to every individual in it, that the criminal law of the country may be known and traced, and that it may be found somewhere. I say this law is to be found nowhere, and I have a right to say it, for unless my friend can show it has been determined by some court of law, or is to be found in some book of authority upon the subject of criminal law, I have a right to say there is no such law, and I am satisfied that you will not find any

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principle or precedent of the kind. Gentlemen, I will examine witnesses, who knew the nature and practice of this office for many years; they will tell you what the business of the accountant is, and it certainly is very great and extensive; they will, however, state to you, particularly, the points which are his duty, and they will tell you that they never understood that this was his duty, but that, in truth, it was, as I have contended that it must in point of common sense and law be, that the party accounting, may either make the account out himself, or employ any person he thinks proper to do it for him; that is a strong proof of it in the case of Mr. Winnington's representative; he gives the account to Mr. Bangham, the deputy-auditor, and gives the pay-office the go-by; he chooses his man, but did the paymaster interfere? No. Oh! but he took an allowance for it, and that is to be clear evidence that he did his duty. Gentlemen, I acknowledge that taking fees is evidence, that there is a duty for it, but that is not the crime that is imputed to the present defendant. This is not an information against him for not doing the general duty of his office, and yet the essence of the crime is what I have already mentioned to you, that it was a wilful concealment, in point of fact. I trust, upon the circumstances of the case, from the evidence I shall produce, you will be convinced it is not the duty of the accountant; you will have good reason to think that Mr. Bembridge so apprehended it; it will not stand on your being told, whether it was, or was not his duty, but you will see every reason to think he did not apprehend it to be his duty.

Gentlemen, you observe this is the case of a man who gets nothing by it, who does not touch the money at all, and if there be any thing wrong in his conduct, it is only, at most, an intention to commit an offence, which, in point of fact, never was committed. This is the nature of the case, which I have to lay before you. I trust, that neither in point of fact, have they made out a case upon this record, and if they have, I submit to his lordship, that in point of law, it is not an offence for which an information would lie.

EVIDENCE FOR THE DEFENDANT.

Thomas Bangham, esq. sworn.—Examined by Mr. *Scott*.

You are, I understand, employed in the pay-office?—Yes; I am.

How long have you been employed in that office?—Thirty-three years.

What is your office now?—Ledger-keeper.

Are you acquainted with the duties of the office of accountant-general?—Of the accountant.

Will you be so good as to state to the Court what are the duties of that office?—I take the duties of the accountant of the paymaster-general's office to be—to state and settle the accounts of all regiments, troops, and companies, in the pay of Great Britain; to settle and state the accounts of all the deputy paymasters that are employed abroad by the paymaster-general; to state the pay and clearings of all the garrisons at home and abroad; to settle and correspond with all the deputy-paymasters likewise abroad; to examine all their accounts; to check all receipts that are made out for the general and staff-officers in Great Britain and North America, and to see that the deductions taken therein, are proper; to examine and state the account of extraordinary services every year; in short, the accountant of the paymaster-general's office has the inspection of the whole, the business entirely lies upon him.

What is the duty of the accountant, with respect to making up the accounts of paymasters who are out of office?—I really believe it is entirely at his own option whether he will or will not do it.

Have you always understood that to be so?—I have.

What fact is the reason of your believing that it is at the choice of the paymaster to employ whom he pleases?—I will mention one circumstance; it was before I was in office, to be sure, and that was with regard to Mr. Winnington's account.

Mr. *Sol. Gen.* The witness cannot state that, as of his own knowledge.

Mr. *Bangham.* The deputy-auditor, who made up the account, was a relation of mine, he was employed by Mr. Ingram, who was the executor of Mr. Winnington.

Lord *Mansfield.* It is nothing of your own knowledge?—No.

Then do not say any thing that is not of your own knowledge.

Mr. *Scott.* Did you know Mr. Nicholl?—I did.

Do you know of his being employed in making up the accounts of an ex-paymaster?—I do; he was employed in making up the accounts of the late lord Chatham.

What was Mr. Nicholl?—Accountant in the paymaster-general's office; Mr. Nicholl died; Mr. Sawyer was then cashier in the paymaster-general's office; when Mr. Nicholl died, Mr. Sawyer was employed, and Mr. Sawyer, I believe, employed Mr. Lamb as the principal person to assist him in making up those accounts of my lord Chatham.

And Mr. Sawyer was not accountant at that time?—No; cashier.

Do you know Mr. Bembridge?—I do.

What is his general character?—I never heard any ill of him, never; he is a very honest, good officer.

How long have you known him?—I was in the office before him some years; I have known him ever since he has been in the office, and he has been a very able man, in every department he has been in.

He is an honest, good officer?—Yes; I never heard any objection to him.

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——— *Crawfurd*, esq. sworn.—Examined by Mr. *Erskine*.

I believe you have been in the pay-office for many years?—Ever since November, 1761.

In what situation there?—In different situations.

What situation have you now?—Cashier of half-pay.

You must, of course, be acquainted with the different offices of that department. Do you know the nature of the office of accountant?—I do; I have some memorandums here, if you will permit me to refer to them. [Refers to his memorandums.] I consider the duty of accountant of the pay-office is, to examine and state the accounts of the several garrisons at home and abroad, and to see that the proper deductions are made; to examine and state the claims of the several general and staff-officers, and officers of hospitals at home and abroad, and to see that the proper deductions are made therein; to examine and state the account of the army extraordinaries that annually occur; to settle the several remittances to be made to the paymasters abroad; to examine the accounts of the several deputy paymasters; to examine every memorial and report; to do the official correspondence in general; and he has the general superintendence and direction of the office.

Do you know what is his duty, if he has any duty at all of that sort, relative to the ex-paymaster's accounts?—I always have understood that the making up of the ex-paymaster's accounts rested with himself or his personal representative—if dead, to put his accounts in what hands they pleased.

Did you ever conceive, from any observation you have ever made upon the accountant's-office, or any thing you have ever known of it, that he can compel the ex-paymaster to bring in his accounts before him to be settled?—I have never thought so.

How long have you been acquainted with Mr. Bembridge?—He was abroad when I came into the office; but very soon after I came in, early in 1762, Mr. Bembridge came home, I believe from Belleisle.

And you have been acquainted with him, in office, ever since?—Yes.

As far as your observation has extended, how has Mr. Bembridge conducted himself in that department?—Like a most able and active officer.

Did you ever see any thing that gave you the least reason to doubt of it?—No.

——— *Crawfurd*, esq. cross-examined by Mr. *Solicitor General*.

Mr. Bembridge was deputy paymaster at Belleisle?—Yes.

I will not ask you your opinion about the duty of a man's office, but, perhaps, you can tell me, during your experience, who has, in fact, settled the paymaster's account in the auditor's office?—It has been done by different people.

Has it not, since you came into office, been done by the accountant?—Mr. Nicholl had, I believe, the making up lord Chatham's accounts; he was in various departments; he changed, according to his health, from an active to an office less active, and in all his offices, he continued to conduct the making up lord Chatham's accounts.

Tell me whether the accountant has ordinarily, or as far as you know, always carried in and settled the account with the auditor?—I cannot speak certainly to that; there are few have finally passed.

But whether final or not, in the progress of the accounts have not they been universally the persons?—I believe they are generally the persons that do it, unless the ex-paymaster thinks proper to appoint another.

That is a matter of opinion; but have you ever known a man, who, being paymaster, ever substituted, or attempted to substitute any other person whatever?—I cannot speak certainly to what situation Mr. Nicholl was in when he conducted the accounts.

Then it comes to nothing. I ask you whether, as far forth as this duty has been performed at all, within your knowledge, it has not been by the accountant?—I really do not know who has passed the accounts.

There have been several paymasters in your memory. Now, for instance, do you know who settled and passed Mr. Rigby's accounts, as far as they were ever settled and passed?—They are not passed yet.

None of them?—Not final accounts.

But as far as have been carried in?—Mr. Powell first, and Mr. Bembridge assisted, I understand.

Let us see if we can take things separately. When Mr. Powell was accountant, did he do it for Mr. Rigby?—Yes.

When Mr. Bembridge was accountant, did he do it or no?—I believe, he and Mr. Powell jointly.

In the time of Mr. Townshend, whom were the accounts settled and passed by?—I believe by Mr. Powell.

He being then accountant; now, who was the accountant in the time of lord North and Mr. Cooke?—I believe Mr. Powell too.

Then in all these instances, as far as you know, the person filling the office of accountant did this duty?—I should generally think they would, they are the properest for it,

Mr. *Erskine*. During the times you have spoken of (Mr. Townshend, Mr. Rigby, lord North, and Mr. Cooke), was not Mr. Powell very much experienced in that office?—Yes.

But you say he continued to do this business while cashier, when he was not accountant?—I understand exactly the same; I understood so.

Mr. *Sol. Gen.* You see the witness knows nothing of it.

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Mr. *Erskine.* You have told us, in point of fact, that lord Chatham's accounts were settled by Mr. Nicholl?—I was a young officer at the time, and was very little employed in the business.

One of the Jury. What is your reason for thinking Mr. Powell did all this? You say you understood so?—Because I always saw him busy with the accounts, and have spoken to him upon the business.

Mr. *Erskine.* After he ceased to be accountant?—Yes; I have spoken to him several times upon the business of the accounts, and have carried sections of the accounts to him.

Then you know, that after Mr. Powell ceased to be accountant and was cashier, he was still employed upon those accounts?—Yes; with the assistance of the accountant.

Mr. *John Lamb* sworn.—Examined by Mr. *Adam.*

Were not you employed to pass my lord Chatham's accounts as paymaster?—I was.

Who employed you to pass them?—I was employed by lord Chatham, at the recommendation of Mr. Sawyer, who was, at that time the accountant in the pay-office; I made out the whole of my lord Chatham's accounts.

Did you do the whole of that business of passing lord Chatham's accounts?—I did the whole of it; I had the books of the pay-office.

Did any body interfere in that business, or assist you?—No.

What were you at that time?—I was, at that time, in particular friendship with Mr. Sawyer; I was an army-agent, and not having more than a regiment to be concerned for, I assisted him at the pay-office, and he recommended me, from a knowledge of the business at the pay-office, to make up the account.

Had you frequent intercourse with the auditor's-office, at making up that account?—Mr. Hughes knows, I believe, that there was nobody ever attended them but myself, I appeal for the truth of it to Mr. Hughes.

Mr. *John Lamb* cross-examined by Sir *Thomas Davenport.*

I see you were recommended by the accountant?—Yes; to my lord Chatham.

Why did not the accountant do it himself?—I never conceived it was the accountant's business; I apprehend the business of his office will not allow him to do it.

He had not time and leisure for it?—No.

Otherwise it belonged to him to do it, I suppose?—I do not know that he would.

Then how came the business to prevent his having time?—I do not know.

Mr. *Ingram* sworn.—Examined by Mr. *Scott.*

You were executor of Mr. Winnington?—My father was.

Lord *Mansfield.* You have certainly settled that fact, and need not examine to it.

The Right Hon. Lord *North* sworn.—Examined by Mr. *Scott.*

Do you know the defendant, Mr. Bembridge?—Yes.

How long has your lordship known him?—Ever since the year 1766, when I was appointed joint paymaster with Mr. Cooke.

What do you take his general character to be?—I always understood him to be a very honest, and a very able officer.

The Right Hon. Lord *Sydney* sworn.—Examined by Mr. *Erskine.*

Your lordship was formerly paymaster?—I succeeded lord North as joint-paymaster with Mr. Cooke.

You are acquainted with Mr. Bembridge?—I knew him when I was in that office; I never heard any thing the least to the disparagement of either his integrity or ability; he always appeared to me to be a very honest man, and attended his duty with great punctuality and diligence.

The Right Hon. *Richard Rigby* sworn.—Examined by Mr. *Adam.*

I believe you have known Mr. Bembridge a great many years?—I knew him before I was appointed paymaster-general, which was in the year 1768; from that time down to this, I have had occasion to know him intimately well, and never knew a more industrious, capable officer any where than Mr. Bembridge. It happened in the year 1766, that Mr. Sawyer, who was, at that time, cashier, being grown old and infirm, he wrote to me, and desired to resign his office; I gave the office in succession, and there was no post I thought I disposed better of, than to Mr. Bembridge, because I considered him as capable of filling it; without any disparagement to the gentlemen who are now in the office, I did think him the fittest and ablest that could be put into the office.

The right hon. *Edmund Burke* sworn.—Examined by Mr. *Scott.*

Please to state what you know of the character of Mr. Bembridge.—When I succeeded Mr. Rigby in the office, about last July twelvemonth, I had received from Mr. Rigby the strongest recommendations of Mr. Bembridge's diligence, fidelity, and ability; and in the time that I was in the office, I had all the reason in the world to be persuaded that he perfectly answered that character and description, in every respect. I must farther say, that it having fallen to my lot to do something for what I considered as the improvement and reformation of that office,—the principal fault of which I considered to be, that it had been rather like a private office of account, than a public administration,—I could not have, in my opinion, suc-

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ceeded so well, as I trust I have had the good fortune to have succeeded, without the very great assistance I received from Mr. Bembridge in so doing: I must say this, as a testimony that I think, in honour and conscience, I owe to his disinterestedness, that when it fell to the most unpleasing part of my duty to reduce the emoluments of the principal officers in that office, very much below what they had been before, this measure was so far from meeting any reluctance or opposition from Mr. Bembridge, that I found not only acquiescence but help in it; that after I was out of office by the act not having taken place at that time so as to affect me, I confided the whole management I had of it, and it was a considerable trust of the public, much to Mr. Bembridge, which he executed in so just a manner, as to do himself great credit, and to save me from discredit, when attempts might be made to disparage me.

Thomas Caswall, esq. sworn.—Examined by Mr. *Erskine*.

Be so good as to state what you know of Mr. Bembridge?—I have known him ever since June 1768, at the time that Mr. Rigby did me the honour of appointing me deputy paymaster to him, when he was himself appointed paymaster.

What have you known of Mr. Bembridge's character and conduct while in that office?—During thirteen years, I have seen a great deal of Mr. Bembridge; I attended the office constantly, and can say upon my oath that he was always attentive to the duties of his office, and a very diligent and efficient officer as could possibly be in the office, understanding the office as well as any man possibly could do.

You never saw any thing to lead you to think he is not a man of perfect integrity?—Never, in any transaction I ever had.

—— *Hampern*, esq. sworn.—Examined by Mr. *Adam*.

You know the defendant Mr. Bembridge?—I have, since I had the honour of being appointed deputy paymaster-general in April, 1782. I always found him an able, diligent officer, of great knowledge in his business, and assiduity in his practice, and believe him to be a man of very great integrity.

The end of the evidence for the Defendant.

REPLY.

Mr. *Solicitor General*.—May it please your lordship, and gentlemen of the jury.—In any cause, but especially in a criminal one like this, it is always a matter very unpleasant to me, to be led by any observations of my adversary, at all out of the way of it; and yet my learned friend choosing to mix,—for the sake of jest, I should think, rather than any thing else,—a great many personal observations with the defence of his client, it may be thought, perhaps, a little necessary for me to say a word or two about it.

Gentlemen, I am in the memory of his lordship and of you, whether in my opening I laid any foundation for the supposed panegyric, that my friend ascribed to me, upon his majesty's late ministers. I said (I thought, indeed, I could not say less upon the subject), that the pains they were taking about last Christmas, relative to the sub-accountants, were in my judgment laudable, and that was all I said: and, gentlemen, I will tell you why I said no more; because I do not believe that any one of those ministers are at all candidates for my applause; I assiduously avoided saying any thing more than that upon the subject; I have not the smallest disinclination to do them justice; but they would hardly thank me for it; and as I did say no more in the opening, I little expected my learned friend would have stated me as their panegyrist, holding forth to the eyes of the public, the great and notable benefits that they have done. So much for that; I will say nothing at all about their partialities, that at the time, when they were directing the eyes of the public to matters of general reform, having in their own view nothing but instances of partial reprehension, vexation, or punishment, I say nothing about it, because I know nothing about it; and when I find nothing in a man's act to blame, I do not think it the mark of a generous mind to be assiduous to blame the motive; as far as I know, in this instance, they acted well; sure I am, that in this instance, it has turned out beneficial for the public.

My learned friend seems to have rested his defence of his client, not upon his client's innocence, which is somewhat unfortunate when you are to decide upon a charge of guilt, but upon something totally collateral either to his moral, or to his civil innocence—something, which, if it be well founded, will do as well for my friend, and that is his legal innocence: for, says he, he has done very wrong; I confess, says my friend, that it does appear to me, that he ought to have disclosed these sums which I admit he did not; but my friend said, he would, by-and-by, give a reason why he did not blame him so very much as I did, and that is, because there is something so generous, and so liberal-minded about Mr. Bembridge, that though he ought, says he, to have done it, yet there was a conflict of contrary duties, he could not be a spy and an informer upon the conduct of Mr. Powell. Now, gentlemen, let us examine this matter a little; the fact being admitted, for it is not at all disputed, that Mr. Bembridge, in this office, was, for a long time together, perfectly aware that all these sums ought to have been brought forward in the account of lord Holland, as a charge upon his estate, and he has not disclosed it: why, says my friend, Mr. Powell was his constant associate, his liberal benefactor, his bosom friend, and it is the excuse of a man in a public office, that he con-

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rives at public crimes, because his friend commits them. Now, what an apology is this for a man standing in a public office, and accountable to the public for the accurate performance of his duty; let who will gain by it, let who will lose by it, his duty calls for it, and I think it has appeared, in evidence in this cause, that he is liberally rewarded by the public for other things than the connivance of his associate's crimes. However, gentlemen, this is represented by my learned friend, with an air of great triumph, to be a matter that, however morally guilty he may be, there is no law against; the law written in men's minds, may remonstrate pretty strongly against it,—but my friend says, there is no law of England against it. Undoubtedly, if there is no law against it, not only this man must go unpunished, but all the people in offices, in this kingdom, of the same sort, may do the like with impunity, for, to be sure, there is not one rule of action for Mr. Bembridge, and another for people in the same predicament. My learned friend says, he challenges us to produce a book, an authority, a dictum, any adjudged case in point; I take it to be a clear, fundamental, settled principle; if my friend means to call for a case, in which an accountant of the pay-office was punished, I can hardly do that; but I will tell you what he will find in every law book upon the subject, from the very first, down to, I dare say, Mr. Justice Blackstone's Commentaries, which is one of the latest books containing the elements of the English law, that in all those situations in which men are retained to act for the public, and are paid by the public (all men in offices have duties annexed to those offices), I have learned, from these books, that for what the law calls mis-feazance, or non-feazance, the party is responsible. My friend put numbers of cases, such as a constable not doing his duty when required to do it; what, for instance, was the case of the non-feazance for which a great magistrate,* in London, was punishable lately? he was not active; he sat still in the time of the riots,† or was not so bold, enterprising, vigilant, and active as his duty called upon him to be, that was a misbehaviour in a public station, as such. Gentlemen, it is very singular, that even with respect to the common subjects of England who are not bound by any peculiar duty of their situation, but by the general principles of public law, why, if they omit their duty, even to the degree of letting a road go out of repair, the public being interested in it, it is cause for indictment, be it the inhabitants of a place, or be it any person upon whom that duty lies, even the omission is a cause of an indictment for the non-feazance of it. If this is a public office, it appears to me, to be a principle that it has public duties belonging to it, and the violation of those duties, whether it consists in doing a thing that ought not at all to be done, which is what the law calls mal-feazance; or the doing a thing that may, and ought to be done, and he does it in a way it ought not, which is mis-feazance; in either of these cases, I take it to be a clear principle, universally prevailing, that an indictment will lie for it. My friend and I are at issue upon that matter, for I take the principle of law to be perfectly clear, and so far from its being found in no book, that there is not a book written upon the law, in which it is not to be found; but my learned friend says, that it is not the defendant's duty, at all, to do that which we charge him with not doing. Recollect, gentlemen, what the charge is; it consists in his not disclosing to the auditor of the imprest, that which he was bound, by his duty, to disclose, knowing that the facts existed; the knowledge is not disputed at all; his not doing it is not disputed; but it is said, that it does not lie upon him to do it. Gentlemen, it puts me in mind of a case that I remember was determined before a learned judge, and which, I believe, came here afterwards upon the statute of bribery, which is specifically penal; a man was punished to a certain amount (as this is an arbitrium of the Court); a man was prosecuted for taking a bribe; the statute punishes a man for having, or claiming a right to vote; in this case, the action laid that he had a right to vote; but the learned judge, who tried the cause, was clearly of opinion, that it was not competent for a man, who takes money as a vote, to allege that he had not a right to vote; that was said, I think, by Mr. Justice Yates. Now what a strange thing is it for Mr. Bembridge to say he is no public officer, though, under his hand, you have a receipt for 2,600*l.*, for doing this very business, and now in this court he says, it did not lie upon him to do that, which he has received 2,600*l.* for doing. He has called several witnesses to prove that there is no duty in this office, relative to these matters of guards, and garrisons, and regiments, and deputy-paymasters, employed abroad, and God knows what; however, my friends did not ask any one of those gentlemen, whether it was not part of the defendant's duty to carry in, and settle the accounts, for it is somewhat an unusual thing to call four or five witnesses flatly to contradict their own client himself, in a matter about which he cannot be ignorant, but has the most perfect knowledge; hear Mr. Bembridge himself, speaking upon oath on the subject, after he had been in his office for so many years, employed daily in the duties of it, in the way in which he has performed them. The first description he gives of himself to the commissioners of the public accounts, is, that he carries in and makes up the accounts of the paymasters after they are out of office, as

* Mr. Alderman Kennett.

† See the case of lord George Gordon, ante, vol. 21, p. 485.

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well as of the paymasters who are in office. Now, gentlemen, will you believe the defendant himself, or will you believe no more than what these people have said (I dare say, that which is truth), that it is his duty to look after all these guards, and garrisons, and the like? but none of them will say that it is not his duty to make up these accounts; nay, the last witness confirms Mr. Bembridge and all our witnesses in saying that in every instance within their knowledge, this duty has actually been done, in the time of Mr. Rigby, in the time of lord Sydney, of lord North, and every other paymaster, by the accountants in the very office that Mr. Bembridge filled.

Now, gentlemen, this being stated as part of his employment, for which he is retained, and has a regular salary—not out of the paymaster's pocket, but out of the public purse,—it is the most amazing thing to me, to hear it contended (and I have not yet heard the principle upon which it is contended), that this man is not as really, though not as elevatedly in office as the noble earl before whom I am speaking.

Gentlemen, you will give me leave to make an observation or two upon the manner in which this charge is supported, and the imputations which have been thrown upon certain persons, where they shall not rest, because they ought not; if the reflections are just, they belong to other persons, and should have been directed to another quarter. My learned friend says, that the production of Mr. Rose's evidence was neither necessary nor becoming; he represented it, as if the manner of coming at this evidence was exceedingly insidious, reprehensible, perfectly inquisitorial. Now, gentlemen, I will just say a word or two upon that; I do not mean to make panegyrics, as I said before, but it were a very strange conduct, I should think, in the officers of that day, if finding from lord Sondes, or any other person that just at the time when they are instituting an inquiry into the state of the sub-accountants, there is a return made of 48,000*l.*, that had been concealed for ten or twelve years—for, you observe, all these accounts are from the year 1757, to 1765, so that it is eighteen years ago from the very last of them,—finding, that without notice to any person, but under pretence of rectifying the account, by putting in two articles of 1,300*l.*, there is added to them after all this connivance and secrecy, an additional balance of 48,000*l.*; upon lord Sondes's stating this fact to the treasury, did it not become them to inquire how it came about? Whom should they interrogate? Could they interrogate any but those who knew the fact,—those who were parties in it? Should they not ask for an explanation of it?—Why, Mr. Bembridge, how came you to do this? Pray is this a new discovery? Are they sums of money of which you have only had recent intelligence? Nothing like it, I knew of them long ago. Then tell us if there is any thing in the nature of the articles that made it at all doubtful, whether they should be brought forwards at an earlier period. Not the least doubt in the world.—In my apprehension, it was their bounden duty to do it, and so far am I from blaming them, that I cannot but commend them for it, knowing no more than what I see. I say, not only that there is no harm in it, but, I believe you will agree with me in thinking that they would exceedingly ill have performed,—nay, that they would absolutely have betrayed,—the duty of their stations, if, upon such a fact being revealed to them, by lord Sondes, they had sleeped over it, and made no inquiries about it; my learned friend admits that; then who brings Mr. Rose here to testify this? not the late ministry, they are *of the years beyond the flood*, they have nothing to do with it [a loud laugh]. If there is any, the fault belongs to us; I should be sorry that those gentlemen should have any more than their own imperfections upon their heads; I do not say whether they are enough to press them at all, but it is my duty to take care, that they should not have that offence, if it be one, to answer for, which is mine, and not theirs. We have the conduct of this prosecution, and if there be any thing reprehensible, cruel, or unjust in the management of it, then, to be sure, we are to blame for it. Mr. Rose testifies that which clearly is evidence, which is the best evidence, the account the party voluntarily gave of the matter at the time; I know, very well, that that may be the very worst sort of evidence, but then it must be made so by the means of certain circumstances, concerning which, my friend did not institute an inquiry; had Mr. Bembridge been cajoled into giving this account, had he been terrified into it, had any improper arts been used to obtain it, that would have made the production of it scandalous; but the gentlemen never asked any thing about that; then where was the inquisition? the artifice? and what were the base means employed to bring this matter to the bar of the public? It is the voluntary declaration of the party himself upon this fact being objected to him, and it amounts to this; I did it with my eyes open I knew it long, and many a day, even before the penciled figures, which stated this balance 48,000*l.* less than it really was. Now, gentlemen, what would you, and what would the public have said of me, or of my learned colleague, in whose absence this duty is very imperfectly conducted by me,—what would the public have said, if, possessed of this fact taken from the mouth of the party I had put it into my pocket and not produced it? My learned friend says—(it is the language of the advocate who is feed for it), 'I should have 'commended you much.' Every body must have said, I betrayed my duty, to suppress material, weighty evidence, admissible in point of law, and in a manner absolutely conclusive as to the fact. If a man, conducting

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public prosecution, has a sense of his duty to the public, in my idea, that sense of duty calls for him to produce all the evidence he has. My learned friend says a strange thing, considering what he knows about it, and that it is so recent,—speaking with great pathos upon a subject (of which I said nothing, for reasons which I think might be very obvious), that is, the unfortunate death of the late Mr. Powell, he says, if Mr. Powell, who was a victim to—what shall I call it? public clamour—had not died, Mr. Bembridge never would have been prosecuted. This is the most extraordinary thing that I ever heard in my life, because my learned friend surely was apprized that the prosecutions against both Mr. Powell and Mr. Bembridge went hand-in-hand together; that the name of one was never mentioned without the name of the other, and I am perfectly sure (though my friend ought not to be called upon to say it), that my learned friend, if not retained as counsel for both at the same minute, was certainly retained for Mr. Bembridge, before the death of Mr. Powell. It has been the subject of conversation every where; but I happen to know, that the prosecutions,—though they were instituted not by us, but our predecessors in office—were against both; that is decisive, that the living or dying of Mr. Powell, had nothing to do with the prosecution of Mr. Bembridge; and in the life-time of Mr. Powell, it was a matter of such perfect notoriety, that you must have heard the names of Powell and Bembridge always connected together in the story. There is no foundation or colour for this assertion; for whether Mr. Powell was guilty at all, much less if guilty of a greater offence than Mr. Bembridge, we are not inquiring into. The only matter for you to decide (for the degree of guilt, and the quantum of the punishment, is not in your hands at all), you are to pronounce only, whether the defendant is guilty or innocent of the fact imputed to him, that fact being an omission in the duty, which it was incumbent on him to fulfil, which he states that he was appointed to do, in the very terms objected to him in this record, that is, to settle and adjust the accounts of the paymaster; he acknowledges that it was his duty, and it is clearly and irrefragably proved that he did not do this.

Then my learned friend says, 'Aye, but 'you must do more, it is not enough to prove 'that he has omitted these sums, he must do 'it wilfully;' I wonder my learned friend should waste a minute upon that, for if there is any part of the case that is incontrovertibly proved, it is the wilfulness of it; for he says, 'I knew it well, I knew it long ago, I was 'perfectly aware of it;' he uses an infinite variety of phrase, all expressive of the same idea; there was nothing doubtful in any one of those articles, yet they were not brought forward; then that is a wilful omission, and a wilful omission, give me leave to tell you, in a matter of no small moment—if for eighteen or nineteen years together, the sum of 48,000*l.* is not brought to the account of the public, your imaginations can better conceive, than I can express to you, what immense abuses there must be in every office in the kingdom, if the business of it is conducted in this sort of manner.

Gentlemen, I will trouble you with no farther observations. There are a great many witnesses to a matter concerning which I should be very sorry to say a word, about testimony to character. The gentleman's character is attested by persons of high rank and undoubted honour; I dare say, he always bore a very good character, and, therefore, if his character will do him any good, let it; I shall not make a single observation upon it; he is not prosecuted for the want of character; for any offence in any former part of his life. These noble lords, and the learned gentlemen have said, that they did not know that he had done evil; you are to judge whether you will not believe him, when he says himself, that he has done evil. You will decide according to the weight of the evidence, and will give that verdict which is right.

Summing up.

Lord *Mansfield*. Gentlemen of the Jury.—This is an information against the defendant, which states, that the office of accountant, in the paymaster's office, is a place of important public trust and confidence, and is relative particularly to the passing the accounts of paymasters out of office, as well as paymasters in office: That the defendant was appointed accountant in the year 1776: That the accounts of my lord Holland, then paymaster, had been finally brought in, in the year 1772, before the time he was appointed accountant: That from the year 1776, when he was accountant, down to October or November, 1782, he concealed, wilfully, corruptly, and fraudulently, from the auditor of the imprest, a variety of items, which were a charge upon my lord Holland, amounting, in the total, to the sum of 48,799*l.* 10*s.* 11*d.* From this charge, you see, there are two propositions for you to be satisfied of. The first is, that this place of accountant in the paymaster's office, is a place of public trust and confidence, relative to the passing the accounts of the paymasters out of office, that is, that it is a check upon those who pass the account of a paymaster out of office, that they should be examined, controlled, and surcharged before the auditor, by the accountant; that is the first proposition of fact necessary for you to be satisfied of. The next proposition in point of fact necessary for you to be satisfied of, is, that these concealments were made by the defendant, Bembridge, corruptly and fraudulently. If you are satisfied of these two facts, you are then warranted to find the defendant guilty of the indictment, in point of fact. With regard to the law of the case, when I

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come to state that to you, I will tell you all I think necessary for you to consider upon the subject.

The first fact is with regard to the nature and duty of this office. On the part of the prosecution, they prove, by Mr. Hughes and by Mr. Wigglesworth, two of the deputy auditors, that the business of the office in passing accounts before them is, to send every observation they make, to the accountant; and from the accountant they expect a solution, an explanation, and assistance; that in this particular case, from 1776, the time that the defendant was accountant, they made objections to him, they talked to him, they applied to him, and they considered him as the person who was to answer those objections, &c. Besides that, they have read the examination of the defendant, upon oath, before the commissioners of accounts, in which he expressly says, 'that he, as accountant, carries 'on and makes up, the accounts of the pay-'masters after they are out of office, as well 'as those of the paymasters in office.'—They farther call Mr. Rose, as to his examination before the treasury, and there, upon a question being put to him, he says, 'he knew that 'it was his duty to have discovered those 'items.' Farther, they have produced a warrant for a deduction to be made by the executor of my lord Holland, of the sum of 14,000*l.* for expenses and fees attending the passing of those accounts of lord Holland's, in which, the fees belonging to the defendant relative to those accounts, is 2,600*l.* and to his clerk 500*l.*

In contradiction to this, and to show that it is not the duty of the office, they have first cross-examined Mr. Hughes, who says, that in the case of Mr. Winnington, Mr. Ingram, who was his executor, passed the account and was permitted by Mr. Bangham, who did ask information from the accountant but that Mr. Ingram, himself, and nobody else, passed the account of Mr. Winnington; but, afterwards, the accountant had the fees allowed upon passing those accounts. This comes out from the cross-examination of Mr. Hughes, for Mr. Hughes says, he personally knows of no such instance since that time; but they have called Mr. Bangham, who has been a clerk in the pay-office thirty-three years, and he gives an account of the duty of the office, that makes it a very important office indeed, for you observe the long list and roll that he and Mr. Crawford gave of the duties of the accountant-general, and at last he concluded with saying, that the whole business almost entirely lay upon him, for he keeps all the accounts, extraordinaries and ordinaries, abroad and at home; but as to this particular point, the duty of passing the ex-paymaster's account, he swears expressly, that in his opinion, it is his own option, whether he will or will not make up the accounts of the paymasters out of office; and he says, in my lord Chatham's case, after the death of the accountant, who had begun to pass his account, that the rest of them were passed by Mr. Lamb and not by the accountant.

The next witness is Mr. Crawford, who speaks to the same effect, and enumerates all the other articles of the duty of the accountant; but as to the making up the ex-paymaster's account, he denies that it belongs to him, and that there was an instance, in the time of lord Chatham, where it had been otherwise.

Thus stands the evidence, on both sides, with regard to this first proposition, the nature and importance of this office, relative to passing the ex-paymaster's accounts: if he has nothing to do with passing the accounts of the paymasters out of office, then, to be sure, this information falls, because the basis of the information is, that it is the duty of his office. Supposing you to be of opinion it is the duty of his office, then, the next consideration is, whether this is a wilful, fraudulent, and corrupt concealment. Lord Holland was appointed paymaster in the year 1757, and went out of office in the year 1765, but his accounts come down to the Midsummer following: in 1772, the last, the final accounts were to be filed; what was given in then as a final account, he says, does not mean that no items might not be added to it; at this time, there are in the books of the pay-office, some charges to Paris Taylor, which are not brought in: observations are sent from the auditor's office to the defendant; he is called upon, repeatedly, to give his answers and explanations upon those observations; he sees them, and he does not say a word with regard to any of those items. At last they send to close the account; it is sent to the pay-office; in October or November he is called upon again, and then it is proved, by Mr. Wigglesworth and by Mr. Hughes, that he tells them he has nothing more to say; the books go to the office to have two items, making up thirteen hundred odd pounds, inserted; the defendant tells them he has nothing more to do, but refers them to Mr. Powell; Mr. Powell was the accountant, and, to be sure, referring them to Mr. Powell was saying—I have nothing to charge them with, I have no farther observations to make: they are referred to Mr. Powell, and then comes the account with a penciled balance struck, to about sixty odd thousand pounds, and the two items that the books were sent to have inserted in them, are not inserted, but they are taken into the balance. After this penciled balance is made out, notice is given that the treasury were to have the accounts sent to them, and this is at the end of January, or the beginning of February; the book being sent back for the sake of inserting those items into it, it is returned to the auditor's-office, and it had been in the office, unobserved, for nine or ten days; at last, upon looking into it, they find, between the two items inserted and the last passed item, a number of items,

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amounting to 48,700*l.* inserted as a charge upon lord Holland. To fix this as voluntary upon the defendant, they use several facts and observations; the first is, that every one of the items appeared in the public books, excepting twenty thousand odd hundred pounds, all in small items; the long dependency of the account gave the defendant an opportunity to examine every thing; but the strength of the charge here is, that the defendant being examined before the lords of treasury, owned, that for a long time before the account of the penciled balance was sent back, which account did not contain any of those items, that he knew of all them. Now, with whatever view, whether in ease of Mr. Powell, or for any other improper purpose, if you are satisfied it was a fraudulent concealment, and, to be sure, many purposes might be answered by the concealment—it lessens the balance demanded by the public—it could turn, in a variety of ways, for the benefit of the accountant;—but to convict the defendant of a crime, it is necessary that you should be satisfied that it is wilfully and fraudulently done;—in short, that he does not do that which it was his duty to do, in disclosing this. If, upon these two facts you are satisfied that the charge is made out, with regard to the law of the case, I have very little difficulty in saying what my opinion is; I have not a particle of doubt, that where a man has an office, created by the king's letters patent, immediately or derivatively, which is of important trust and consequence to the public—that for the violation of that office, he is as much indictable as any magistrate or officer that has been alluded to; it is an office, the duty of which the public are interested in, and I have no manner of doubt, *but upon principles*, there is no want of any precedent of the same kind as this; I have no doubt a wilful violation of the duty of that office is indictable, but if it is not indictable, the objection appears upon the record, and judgment will be arrested. Therefore, if you are satisfied in both of the points, you will find the defendant guilty; if you are not satisfied in either of them, then you ought to acquit him.

The jury withdrew for a short time, and then returned into court, with a verdict, finding the defendant, *Guilty*.

The proceedings in the Court of King's-bench, on motion for a new trial, Nov. 10, 1783.

Mr. Bearcroft. In the case of the king and Bembridge, I am to move your lordship for a rule to show cause, why there should not be a new trial. This information was filed, by the attorney-general, against the defendant, for a breach of his duty as accountant in the office of paymaster-general, by an omission of what is supposed to be a part of that duty.

It would be right that I should state the several counts which vary from each other as they stand upon the face of the information, for I think one may perceive, that the very learned and judicious person who drew this information, charged it to the full possible extent that he could conceive of the crime in the first count; he had some doubts about very material parts of that charge in the second, and therefore he dropped it; and in the third, he goes still lower; the verdict, however, is a general verdict—Guilty.—Of course, in order to maintain that verdict, it must be necessary that there should have been evidence to maintain every one of the counts; I conceive so, with great submission to the Court, for the Court is to pronounce judgment upon the record;—upon the record it stands that the jury have found him guilty of each of the three charges; if the first charge, in the first count, be a charge of a crime upon the face of it, whoever looks upon this record, and perceives the judgment given by the Court, must suppose that that discretionary judgment is given for that offence described in the first count;—it is necessary, therefore, that that finding should be warranted by the evidence.

My lord, the first count charges that Mr. Fox was paymaster for a considerable portion of time, which I need not encumber your lordships with; that the place of accountant, in the office, to the receiver and paymaster-general, is of great public trust and confidence, touching the making up the accounts of the receiver and paymaster-general, and the adjusting and settling the same with the auditor of the imprest. That seems to be an essential charge in this count, clearly so considered by the drawer of the information, for that part of the charge is omitted by him in the second count. That charge, it will be remembered, is, that the place of accountant in this office of paymaster, is a place of great public trust and confidence, touching the making up the accounts of the paymaster-general, and the adjusting and settling the same with the auditor of the imprest; it then goes on to state, that the accounts of my lord Holland, when he went out of office, were not closed; that a Mr. John Powell had settled part of them; that others were brought in, which are called the final account, which, being explained, was perfectly understood, on all sides, to be the last paper of account that was produced in the office; that it was left in the office of lord Sondes to be adjusted, and passed according to the course of the exchequer; and that there were many sums of money, amounting to the sum of 48,000*l.*, that ought to have been inserted in that last book of account, the final account, as it is called here, and that it was omitted; and the same count then goes on to make this material allegation, that it was the duty of the defendant, as accountant, to disclose to lord Sondes any charges on Mr. Fox, as paymaster, which had been omitted in such accounts,

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within the knowledge of the defendant, in order that the same might be inserted; that it was his duty, therefore, in this office, to disclose any that he knew that had been omitted; and it goes on to state that whilst he was accountant, application was made on the part of lord Sondes to him to make a discovery, that knowing it, he wilfully and corruptly refused to do it.

This is the way in which the offence is charged in the first count. In the second, it omits the first part, which states it to be the duty of the accountant to make up the accounts, and settle the same with the auditor of the imprest, and it only charges that he wilfully refused to disclose this.

The last count contents itself with barely stating the case thus: that a final account was delivered into the office of the auditor, lord Sondes; that it was the defendant's duty as accountant, to discover any omissions within his knowledge; it is not stated in this count as it is in the first and in the second, that any special application was made to him, requesting him so to do, but it goes on to state the bare fact, that he knew the omissions by Mr. Powell in the account, and, intending to conceal them, did not discover it, and therefore wilfully withheld the information, contrary to his duty as accountant.

These are the several ways in which the case is stated; and I beg, for the present, to suppose, that I am right in contending, that wherever upon the face of an information, or upon the face of an indictment, such as contains a legal description upon the record of an indictable offence, and there is a general verdict and a judgment pronounced by the Court, it must, of necessity, be taken that the Court has pronounced sentence, and that they have given a punishment for that offence so described; and it will not be an answer to say, perhaps the Court did not do so, because they looked into the evidence, and they saw that the evidence would not support the particular count, and, therefore that they did not do it; they must be taken (since the record of the first count does not contain a good legal charge and indictable crime) to have pronounced their sentence in proportion to that. Your lordship sees the reason why I labour that a little, because as the first count is more extensive and more free of its allegations than the others are, it gives me an ample scope to lay my finger upon any defect of evidence as to these allegations; and I do conceive that I have a right to move for a new trial, not only upon every count in this information, but more peculiarly and emphatically upon the first count, that it is a verdict against evidence; for that count, as I have stated, charges (I won't repeat the words of it again,) but twice over, it makes it, in an emphatical way, the duty of the office of accountant to adjust and settle the accounts of the paymaster with the auditor of the imprest. Upon that allegation of the nature of the office, and of the duty of the office, it proceeds to assign the crime, and says, that, contrary to that duty of the office, he did not disclose it. It aggravates it, indeed, in the charge, by saying he did not disclose it upon particular request, which would be evidence of the wilfully doing it; but I submit to your lordships the foundation and support of all the subsequent criminal charge, either in that count, or to be found in any part upon the face of the information, rests, and must be supported there by the evidence, or it falls to the ground; that is to say, that it was the clear indispensable duty of the officer, whoever accepted that office, that it was clearly and indispensably his duty to pass the accounts of the paymaster in the way in which it is said he did, and in the way in which it is said he did not make the proper disclosure. Now, I say, it is a verdict against evidence in that respect, as to which I must refer myself to your lordship's report; I am aware, that it was attempted to be proved, and was proved, that very frequently the accounts of ex-paymasters (as they were called in the course of the cause, that is, paymasters out of office), had most frequently been settled by the accountant general in the office of the paymaster; I agree the fact was proved, that it had been frequently so; but I persuade myself it will appear by your lordship's report of the evidence, that it came out from the cross-examination of every witness, who spoke to that point on the part of the prosecution, that there had been instances of accountants, and their representatives themselves doing it, refusing to let any body in the office have any thing at all to do with it, and the same witnesses acknowledge, that it was perfectly understood in the office, that the books of these accounts, and all the papers relative to them, were the property of the ex-paymaster, that he had a right to take them away from the office, and that, in fact, he did take them away from the office; that the succeeding paymaster had no right to call for them, nor to have them, and, I think, I might venture to say, that the last session of parliament has produced a legislative opinion upon the subject; for an act regulating the pay-office, among other things has an express clause to make that law which was not law before; that is to say, 'that all the books of accounts 'of paymasters going out of office shall be left 'at that office, and shall be, for the future, 'considered as the property of that office, with 'a licence for the persons concerned to have 'recourse to them whenever there was proper 'occasion;' if that be so, I submit that is a verdict against evidence; for, I conceive, it is impossible for any man, rationally speaking, to contend, still less is it fit that a man should be found guilty of a criminal charge upon such a ground, and upon such kind of reasoning, that it is the duty of a man to do that

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which it is not in his power to do. How is it possible that it can have been the duty of the office of the accountant-general in the pay-office to do it, to pass the accounts of the ex-paymaster, when it was perfectly at the option of the ex-paymaster, or dead paymaster's representative, whether he should do it or not?

I took the liberty, at the trial, to state to the jury, and, with submission, to call for his lordship's direction and opinion upon that head, that, upon the evidence, it appeared so clearly that the person acting, or his representative acting, had a right to take all the papers and all the books away, which I ventured to state, * and which I do again, for the consideration of the Court;—that, upon that evidence, it will appear, that if the ex-paymaster or his executors had got the books and papers in his hands and was going out of the door of the pay-office, and the new paymaster ran after him and snatched them from him, the ex-paymaster or his representative might bring an action of trover for them; and I hope it will appear that I did not overstate the case when I stated it so. It cannot be the duty of an officer to do that which it is not in the power of any officer to do, nor is it in the power of any mortal to transfer the power to him of so doing. When we talk of its being the duty of an officer, we suppose that if it is not done, it must be merely his fault; now, in every instance where a paymaster is out of office or dies, if I am right upon that evidence, they have a right to take the books, then he has not wherewithal to do it, he cannot do it; it is impossible; and it appears in evidence, upon the part of the prosecution, that this had been the practice, and cases were stated;—In the case of Mr. Winnington's representative, Mr. Ingram;—In the case of lord Chatham himself, who appointed a Mr. Lamb to do it, who had nothing to do with the pay-office.—In these recent instances, it was stated they did it, and it was understood that they had a right to do it; I do not mean to sink that, undoubtedly, it will appear, by your lordship's report, that the accountant-general had certain fees, which in the ultimate making up that account were allowed him for assisting in making up the account; it was so stated and so understood at the trial; when that evidence comes to be looked into, it will amount only to this, that he had certain fees given him for something relative to these accounts, but for particularly making up the accounts of the arrears that were due, for that they charge here the arrears that are due from the ex-paymaster, there is no gratuity for that: Mr. Bembridge never instructed us to deny that after a paymaster is out of office a great deal of business is done by him; a great many things were stated with regard to the staff officers, and other things (I cannot state very correctly now), that had nothing to do with the making out the accounts of his arrears. When the accounts are ultimately settled, something is allowed to the accountant, which has been given to the accountant in the pay-office, but surely that does not import duty; for your lordship will recollect, that upon a division of a large sum, some thousand pounds, that is allowed,—though it is true the accountant in the pay-office has a large share of it,—upon passing the ultimate accounts of the ex-paymaster, there is a division of very large shares to every officer in the pay-office, down to the door-keeper, and, I believe, the sweeper of the passage; such officers and such situations, that it is utterly impossible, upon the face of it, for any man to tell me that it is their duty to have any thing to do with passing the accounts. The circumstance, therefore, of receiving money does not, by any means, import that he received money for passing the accounts. *Touching the arrears*, that were to be paid by the paymaster: I distinguish that from other parts of his business. I submit to your lordship that sufficient evidence did not appear to prove that it was the duty of his office; if it was not the duty of his office, the charge necessarily falls to the ground; for the charge is this,—It was your duty, as that officer, and you omitted to do it; the first premises must be made out in evidence, or there is no ground for the charge.

I will suppose, for argument's sake, and for argument's sake only,—for I cannot convince my poor judgment that it was made out,—I will suppose, for a moment, it was made out to be the duty of his office; the next question, and a most important one in this and every criminal charge, especially such a charge as this, that one knows no precedent of, one does not find any principles or any precedent in our law books that goes at all to the case, the essence of the crime is the wilfully doing it, by which I do not mean knowing the law, and wilfully breaking the law, but wilfully doing the fact; the present case is short of that, because it is not a wilfully doing it, it is an omission of that duty which is stated to be his, but that omission must be wilful which is the essence of every one of the charges; now, how is that made out? The sum of forty-eight thousand pounds, which ought to have been seven or eight years before in Mr. Powell's accounts, was not there when this last paper of account, called the final account, was delivered in; it is said to Mr. Bembridge, it was your duty to see that in, for you knew it, and have wilfully omitted it; why wilfully omitted it? why, because they have called two witnesses (I state their case as strong, I am sure, as it will appear upon the face of the report), Mr. Hughes and Mr. Wigglesworth of the auditor's-office, who said they went to Mr. Bembridge, at the pay-office, about these accounts, a sort of language which seems to be taken from the

* See ante, p. 54,

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information, *touching* these accounts, that Mr. Bembridge told them he could do nothing more about it, that they must go to Mr. Powell; upon which, immediately, they have recourse to Mr. Powell. From the first instant that they applied to Mr. Bembridge, it appears in evidence, he referred them to Mr. Powell, and from that moment they never afterwards went to Mr. Bembridge; that will, I submit, appear clearly upon the evidence when it comes to be reported; but why was it wilful? the gentlemen will say, undoubtedly, as they did at the trial, there is evidence of wilfulness, because Mr. Bembridge himself admitted, in an examination before the commissioners of the treasury, which is deposed to by Mr. Rose, that he himself knew of those omissions, and that he was of opinion and aware that they ought to have been inserted; this, together with the evidence of the application of Hughes and Wigglesworth is the evidence, I conceive, and the full extent of it, that will be found upon the report, of his wilfully withholding it. Mr. Rose says nothing about *time;* he does not put into the mouth of Mr. Bembridge any thing that relates to the time when he first knew it; on the contrary, I remember perfectly well, either Mr. Solicitor General, or some other of the gentlemen for the prosecution, put a question to Mr. Rose, seeing the difficulty and the want of it; they asked Mr. Rose, whether Mr. Bembridge gave him any idea, by any expression of his (the inquiry was of that sort I will venture to say), as to the time when he knew it? Mr. Rose's answer was a very fair and candid one,—No, I know nothing about that; I believe, he added either years, days, weeks, or something of the sort; he fairly acknowledged that Mr. Bembridge's expression gave him no idea of the time when he knew it: then what is the intent of this evidence? it is, to make it supposed that he knew all this at the time of the application of Mr. Hughes and Mr. Wigglesworth, but unless the time is ascertained when he knew that, no such consequence can be drawn, and it is extremely harsh to suppose such a consequence could be drawn in a case where it is the very gist and essence of the criminality in the business. But it was said, that the items appeared in the books of the pay-office, and Mr. Bembridge must have known it, for they were inserted in books in the office, to which he had daily and hourly access; that he must have known, from the circumstance of these articles appearing there, that they ought to have been inserted; that they were clearly to be seen by any one who looked in the books, and that they were open to every body in the office; that is a different story from its being his duty as accountant. You may say, in this way, it becomes every man who eats the king's bread, receives his wages, as perhaps it does, not to see the public suffer—I agree to that; but where is the lawyer who will stand up and say that composes a crime in the criminal law of this country? Such a conduct in the case of high-treason, would be a misprision of treason, but under these circumstances, I conceive it cannot compose a crime. I submit, that upon the whole complexion of the evidence, it will come out that it was not the indispensable duty of his office; your lordship sees that Mr. Bembridge had not it in his power to do it; and what is this mighty ill behaviour even that he is guilty of? Mr. Powell had been in the office of accountant-general for many, many years; besides that, he was the executor of my lord Holland; he was perfectly conversant with these accounts, and could himself, if he had been so disposed, out of all doubt, have made them up as soon, as readily, as clearly, and as masterly, perhaps more so than any other man that can be named; then the utmost extent of the criminality of Mr. Bembridge was, that he suffered the person who had formerly been in his office, who was equal to it, who was the person acting as executor to lord Holland,—which was thrown, I remember at Mr. Bembridge's head, when examining at the board of treasury, that he ought not to have done it; I trust, it will appear upon the evidence, Mr Powell had a right to have taken them to his own home; he did not, because he had another office, for he was cashier there; he did all his private business as well as his public business of cashier there;—therefore, when Mr. Bembridge says, go to Mr. Powell, they go to him, and have nothing more to do with Mr. Bembridge.

Besides this, the defendant wishes that the opinion of the Court should be taken, whether upon the evidence of his case, taking it in the strongest way that can be collected from that evidence, it contains the proof of any offence at all? for if it does not prove any offence, it cannot prove this fact. Now, the way in which it stood was this: Mr. Bembridge's office is, that he is the clerk of the paymaster, a modern office; who appointed the paymaster did not appear; how Mr. Bembridge was appointed, that appears; it is too notorious, for every body knows, perfectly well, it has happened to this unfortunate gentleman within the course of a few months that he is put out to day, restored to-morrow, and turned out again the next day; this, then, is the mighty office of trust and importance as it stands upon the face of the charge. In truth it came out, and I aver it to be so, the only formality of putting him into his office is, that the paymaster takes any man that he thinks proper by the hand; he carries him into the office, says, hang up your hat upon that peg, and sit down at that desk, you are accountant to the paymaster. I have a serious observation to make upon this; that this is not that known, important, ancient, common law, consequencial, magisterial, or ministerial office that the law takes notice of, and says a breach of it shall be indictable,

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My lord, if there has been such a precedent and such a conviction, again I take the liberty, as I did upon the trial, to call upon my learned friend to produce it; I do not believe yet he has found one; at that time, most undoubtedly, he was not in possession of it; if he has now, we shall hear of it when he comes to show cause, if it is in point; at that time there was no one in point; the only case that was talked of, was the case of Mr. Leheup. I was aware of that, I sent for the information, and in every one of these counts (there is a multiplicity of them) it concluded, *against the form of the statute;* it averred, again and again that it is against the statute; and the very crime was in the teeth of that act of parliament that made him a trustee for receiving subscriptions for the tickets; and I take it to be clear law, and every body knows it, that if a thing is commanded to be done, or is prohibited from being done, the principle upon which that—

Mr. Just. *Buller.* Is that case in print?

Mr. Bearcroft. I believe not;—the principle upon which that stood is the clearest in the world, and no man can doubt it; if any thing is commanded to be done, or prohibited from being done, by a statute, and there is no other mode of punishment, a man who does that, is most undoubtedly liable to be punished by indictment; and it was upon that principle that every one of these counts concluded that it was against the statute. Then it is said, there is a recent case of Mr. Kennett, lord mayor of the city, who was guilty of an offence of omission; that is like the case; for who ever disputed that the office of a justice of peace, which he held, and it was in that way that he was charged, and upon that ground merely, in that situation who ever disputed, that if he breaks the duty of his office, he is liable to an indictment?—Why? Because he is an ancient magisterial officer; we see precedents of doing it every day, every rule to show cause that you grant for an information against a justice of peace, shows that may be done; but I take it, the description of persons is very different;—in a word, what I mean to say about the point of law is this: if Mr. Bembridge, the clerk of the pay-office,—for the paymaster himself is no more, he is not a common law officer, not as an ancient officer accounting with the exchequer; but as a man who has money, and, therefore, must account with the exchequer,—for every man who has public money in his hand must account with the exchequer,—he is a person of a very different description; a constable is indictable for not obeying a warrant;—Why? Because he is a common law officer, very well known, and there is no other way to coerce him; but if Mr. Bembridge, in the situation I have described him to be, is liable to an indictment, for a breach of his duty, there is not a man in the service of government, even an exciseman, that is not indictable for every breach of his duty. These are the grounds upon which I beg leave to doubt whether the case, taking it as strong as any reasonable man can, upon the evidence given for the prosecution, does support the information. Upon these grounds, I trust, at least, the Court will go so far as to think that it is fit to consider this, and that a rule to show cause should be granted.

I would apprize the Court of the situation in which my client stands. Upon the intimation of your lordship, on Saturday, that we might not be surprised, he came immediately to appear in Court to take the judgment of the Court; he never was upon any bail, not the least; it so happens, that in the course of the Court upon informations, he is not upon any bail at all,—it is otherwise upon indictments, they take some small bail,—so that he comes here voluntarily, as your lordship will find upon enquiry. Your lordship sees why I mention that, whatever may have been the practice, whatever may be the propriety of its being so for the future, is not to my purpose; the only use I make of it is, it is a clear mark to your lordship, that this gentleman means to be forthcoming to abide the judgment of the Court; upon that, I would say, I trust, I have laid a ground that will entitle us, I should hope, for a rule to show cause why this motion should not be granted, and mean to add to my prayer, that the Court will not commit the defendant, but will take any bail, which he is ready to give, that the Court think proper. I should hope that the prosecutor will not think it necessary to press for an immediate commitment while the question is under consideration, but will be content with such bail as the Court shall direct.

Mr. *Sol. Gen.* I am in the discretion of your lordship, whether to take it up now or grant a rule as the Court shall think proper.

Lord *Mansfield.* I will state the evidence. The defendant, at the trial, had a most excellent character given him. It certainly very much imports the public that the crime should be defined, and that it should appear, for a certainty, whether it is, or is not an indictable crime; the two questions left to the jury, and upon which the trial turned, were, first, whether it was the duty of his office, as accountant, to make up ex-paymasters' accounts; if it was his duty, as accountant, to make up the paymasters' accounts, then whether the concealment for so many years, and till after the whole account was seemingly closed,—not really closed, because it had not been attested, but so far closed as to have the balance put down in pencil, and so done, barely with a view to some alterations that might arise from an allowance, in the case of Paris Taylor;—whether, under these circumstances, he, as accountant, concealing, for so many years, items which he was perfectly apprized of, to the amount of 48,000*l.*, was contrary to the duty of that office, or not. There was another

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point that Mr. Bearcroft made, very properly, at the trial, that is, take the fact as I have now stated it, whether it is an indictable crime, or not. The two first questions were left to the jury; as to the last, whether it is an indictable crime, I believe I intimated a bias of opinion, but I told the jury that appeared upon the record, and that neither I nor they had any thing to do with it; but a motion in arrest of judgment would avail the defendant, if it should be the opinion of the Court that it was not an indictable offence. Having premised this, I will now state, as accurately as I am able, what passed at the trial. I have looked over the several papers that were produced, since, to refresh my memory; but it will not be necessary to state to the Court a great many things that were produced, that nothing turned upon.

The first witness they called, was a Mr. Hughes, who produced the books of lord Holland's accounts, which had been delivered at the auditor's office for a great many years back, and they ended the 24th of June 1765; that shows how long the accounts had been depending; then Hughes said, I had often conversation with the defendant about these accounts, since I have been the deputy-auditor; he had been second clerk in the auditor's office, and in the month of July, 1782, he was made deputy-auditor; says he, our method at the auditors office is, to transmit our objections upon the account to the accountant, to have them cleared; between September and November last, I often attended the defendant; in the month of October last, I called upon him peremptorily to settle and close the account; upon pressing him very close to have the matter settled, he referred us to Mr. Powell, saying he could do no more in it; we applied to Mr. Powell; the accounts were sent from the auditor's to the pay-office to insert two items, which were surcharges, one of 900*l.*, and the other 400*l.* and odd, both amounting to 1,368*l.*; the books were returned to the auditor's office with a stated balance in penciled figures, of 68,000*l.*, odd money; the two items of surcharges were not actually inserted in the account, but they were carried into the balance; the auditor, upon this, drew out a state of the account, considering it as almost closed, and delivered it to Mr. Rose, the secretary of the treasury, to be laid before the lords of the treasury. Mr. Colborne, who was an acting clerk, under the defendant, brought the book with the balance struck; we informed Mr. Powell to whom the defendant referred us, of all our proceedings, and, particularly, that we were to transmit a state of the account to the treasury; we pressed Mr. Powell to attest and to swear to his accounts, which he neglecting, we wrote to him; no objection was made, by any person, to transmitting to the treasury this account; it is never usual to transmit the account till the account is closed and the balance struck, but we thought it necessary, now, to deliver the account, which we did from that which had been sent to us in penciled figures: and then that account is produced in court, taken from the penciled figures; after the transmission to the treasury of this account with the penciled balance, the books of accounts were returned from the auditor's-office to the pay-office to have the two items, which had been carried into the balance, of 1,368*l.* inserted in the account—for no other purpose. I thought the book remained in the pay-office too long, and I desired my colleague to inquire why it was not returned; upon this inquiry, we found it had been returned to one of our clerks; I looked into the book to see if the two items, amounting to 1,368*l.* were inserted; I found they were; but between these two items, and the last entered sum, I found various entries made of sums, amounting to above 48,000*l.*, which alarmed us; we drew out a fresh state of the account, and delivered it to the treasury; in this account, to which the 48,000*l.* was added, the penciled balance was erased, and it had no official marks, they were all new items: and that account was produced in court, which answered the account that the witness gave of it. Upon the 13th of February, 1783, a fresh state was delivered into the treasury; upon this delivery and the new items of surcharge, upon his cross-examination, he says, I have been thirty years in the office; the balance was penciled, because, I believe, that Mr. Powell expected some allowance to be made him, with respect to Paris Taylor's accounts; but an account is not closed till attested; but the pencil was, to all intents and purposes, an agreement to the balance, but till attestation, the account is not closed; I recollect no instance of adding an item after the balance is agreed; but till the account is attested, I think it may be corrected: the defendant said he had done all he could, and referred us to Mr. Powell; we never applied to the cashier, the accountant is the officer to whom we applied. Mr. Winnington's accounts were made up without the intervention of any officer of the pay-office; there is no instance since, that I know of, where they have been made up otherwise than by the accountant.

Then Wigglesworth was called: he says, that so long ago as the year 1772, lord Holland's final accounts were delivered in. Upon the 27th of October last, we transmitted to the defendant our observations as on the final account; in the middle of November I called on the defendant, and requested that he would answer our observations; he referred us, in future, to Mr. Powell; he said, he acted under the direction of Mr. Powell, and, of himself, could do nothing in it; we then applied to Mr. Powell, and begged him to close the account, we wanted to draw out a state of it to send to the treasury; he said, by way of excuse, that the accounts with Paris Taylor were unsettled; we transmitted

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a state of it to the treasury, apprizing him before-hand. We always understood that we had agreed in the balance, the only objection that was ever made, was the accounts depending with Paris Taylor. At the end of November, we sent the account to the pay-office; the 11th of January, we sent to the pay-office for the book, but it had been returned, and on the last of January, we discovered the additional articles.

Then they called Mr. Gibbs, who is a clerk to the auditor; he says, upon the 4th of Jan., Mr. Colborne, the defendant's clerk, brought that book of account to the auditors office.

Then they call William Plasted, who is a clerk in the auditor's office; he says, he discovered a mistake in the account, owing to a wrong computation; that he sent it back to the pay-office to be rectified; that when it was returned again to the auditors office, he saw that there were additional entries, to the amount of 48,000*l.*, which were in the handwriting of Mr. Colborne, the defendant's acting clerk.

Mr. Chamberlayne is called; and he says, all the additional items are entered in the pay-office books, except about 20,000*l.*, consisting of small items which he did not examine.

Then they produce a warrant of an allowance to the defendant for passing the account; they produce a memorial of John Powell, acting executor to lord Holland, praying an allowance to the officers of the pay-office, for making up the account of lord Holland, from the 15th of June, 1757, to the 12th of June, 1765; and he claimed allowances to these several officers, which are allowed in his account, and among the rest, there is to the deputy paymaster a large sum; the cashier had a sum; and then the accountant-general, Charles Bembridge, 2,650*l.*; the accountant-general's clerk had a sum of 500*l.* allowed him; and then there are sums to the other officers; and this is an allowance that is made by the public to the accountant-general, for the passing of my lord Holland's account. Then, which I need not trouble the Court with, they produced a receipt from the defendant, for this money. Mr. Molleson, the secretary to the commissioners of the public accounts, produced a signed examination of the defendant, before the commissioners of accounts, dated the 22nd of March, 1781; so far as it is material to the present question, the defendant tells the commissioners, that he, as accountant in the pay-office, carries on and makes up the accounts of the pay-masters after they are out of office, as well as those of the pay-masters in office; he likewise tells them, that the only obstacle to the final adjustment of lord Holland's accounts, is a dispute relative to the balance in the hands of Paris Taylor, who was one of his deputies; this was on the 22nd of March, 1781. Upon another examination of his, he says, that he has been in the pay-office twenty years.

The next witness they call is Mr. Rose, secretary to the treasury: he says, that upon the 15th of February, 1783, the defendant owned before the lords of the treasury (I shall state this particularly), that he was perfectly apprized of these additional articles, which were brought into the account, long previous to the penciled balance being drawn out. I then asked him how he came not to get them inserted in that account; he said, he left it to Mr. Powell, who had been accountant before him, to make up the account. I asked him if he was not aware that it was his duty, as accountant, to see that all the articles to charge, were included; he admitted, he knew it was his duty; I then asked, if it did not occur to him, to be peculiarly improper to devolve upon the person acting that check which the constitution of the office had vested in him; he answered, it did not occur to him: he said, in the course of his examination, that he did not consider the account as final; being asked why, he mentioned the accounts still subsisting between Paris Taylor and the executors of lord Holland, but which, he admitted, had no relation to these articles; I asked him, whether he had a doubt about any of the additional articles; he said, no, he had none.

Then they produced a letter from the defendant to Mr. Rose, in which he states the balance due from the defendant; and then they produced another letter, dated March 3, 1783, to show that that balance has since been paid in.

On the part of the defendant, Mr. Bearcroft called Mr. Bangham, who had been a clerk at the pay-office for 33 years, and he says it is the duty of the accountant to make up the accounts of all deputy-paymasters abroad; the pay and clearings of all the garrisons; to settle and correspond with all deputy paymasters; to examine all their accounts; to check all the receipts that are made out for the general and staff-officers of Great Britain and North America; to examine and state the account of extraordinary service every year; that, in short, the accountant had the inspection of the whole business; it lies entirely upon him; I believe it is entirely at his own option whether he will, or not, make up the accounts of the paymasters out of office: Mr. Winnington's were passed by another person; Mr. Nicholl, the accountant died, and Mr. Sawyer, the cashier, was employed to make up the accounts of lord Chatham.

Then they called Mr. Crawford: he says, he has been in the pay-office ever since the year 1761, and he states the duty of the accountant in many articles.

Then they called John Lamb: he says, he was employed to pass lord Chatham's accounts, by his lordship, at the recommendation of Mr. Sawyer, the cashier, and the accountant did not pass his account. This is the substance of the evidence given on both sides.

Mr. *Scott*. It becomes my duty, somewhat

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earlier than I expected, to submit, likewise, to your lordship some reasons for the hope which we entertain, that the Court, in this cause, will be pleased to grant a new trial to the present defendant; and, my lord, in stating what I conceive to be the grounds upon which the motion is to be supported, I shall very anxiously avoid troubling the Court, in any sort, with respect to the degree of guilt which may be imputed to Mr. Bembridge. My lord, I have no doubt that your lordships will draw no inference which bears hard upon that gentleman's character, from the turn which any argument now to be submitted to you may take: when the proper occasion offers, it will be fit enough to submit to your lordship, that a more respectable character was never proved in a court of justice by more respectable witnesses; that this is the first and the single error of a life spent in places of great trust, discharged with much and very honourable fidelity; and that in your lordship's sentence, at least, the public opinion will stand very much corrected, and the world will, at last, know that this gentleman has been treated with severity much beyond what the nature of his crime required. Having laid in my claim to apply to your lordship in mitigation hereafter, I shall now proceed to state to the Court what I conceive to be the grounds upon which this motion is to be supported.

Lord *Mansfield*. You had better take the whole together.

Mr. *Scott*. Then I shall defer at present speaking in mitigation, till I have laid before your lordship, what I conceive to be the grounds upon which the motion must be supported. If the evidence, in this cause, does not support a proposition, which your lordship was pleased to tell the jury they must be satisfied of, before they could find the defendant guilty, namely, that it was the duty of Mr. Bembridge, as the accountant of the pay-office, to settle and make up the accounts, I apprehend this conviction cannot stand. If the nature of Mr. Bembridge's guilt, if the species of it is not that which is charged in the information, a conviction, upon such an information, ought not to lead to his punishment; if it should appear, even in Mr. Bembridge's case, that his guilt hath been of a different species; if I were even to admit that there were any guilt in his case, that there were some guilt in it, yet, if it is not of the species stated in the information, it is impossible that this conviction can stand. My lord, I shall, therefore, proceed to examine what, at most, can be said to be the nature of his guilt, with a view to show your lordship that it is not of the nature stated in this information.

My lord, the proposition which the prosecutor undertakes to make out, is this; that, to Mr. Bembridge's office of accountant, in the pay-office, there is annexed this duty, namely, that he shall settle and adjust the accounts of the paymasters out of office; it charges him with a breach of that duty: and, my lord, I beg leave to submit to the Court, that there is not evidence to support the conclusion that he did violate that duty; and not only to submit to the Court, that there is not evidence to support that proposition, but I beg to contend farther, that evidence, very important has been received, and heard in this cause by the jury, which ought not to have been received, and which they ought not to have heard, because its tendency, if it is to prove any thing, is to prove a different species of guilt from that stated in the information, with a view to induce the jury to believe that that guilt, which is stated in the information, exists in Mr. Bembridge's case. I would explain myself, by saying this, that if it appears upon this evidence, or if your lordship's recollection shall justify me in saying, that it was pressed to the jury, that if Mr. Bembridge had this duty imposed upon him, not as accountant in the pay-office, but as having received money for the discharge of the duty, as being something extraordinary, and besides and beyond the duty of the accountant, that evidence of his having been paid for such an assumed duty, which does not belong to the office of accountant will not support the charge in this information: that is, I contend, that if Mr. Bembridge received the 2,600*l*., which your lordship will recollect was mentioned in the evidence, relied upon by the prosecutor, and stated by your lordship to the jury, that he received that sum as a consideration for his doing this duty; I say, that if he had violated a duty, which duty he imposed upon himself, by receiving the money, he could not be convicted upon this information, because paying him that sum of 2,600*l*., is the circumstance which creates the duty which he violated, and it follows, necessarily, and of course, that the duty which he violated, in that case, was not a duty belonging to his office, but a new acquired duty which he assumed to himself; and of that species of duty, and of that species of violation of duty there is not one word charged in this information. I think I shall be able, by examining this evidence, to show your lordship, that that sum of 2,600*l*. though paid into his hands, ought not to be considered, in a court of justice, as paid to him; that it is, in fact, a payment, out of an allowance by government to the ex-paymaster, who gives it to Mr. Bembridge, as a proportion of a larger sum allowed by government to him for a duty, which in point of law, he, the ex-paymaster, must be taken to do by the hands of his mere clerks, and his mere servants; and in that way of viewing the case, I shall contend, in aid of what Mr. Bearcroft has said, that this cannot be an indictable offence in Mr. Bembridge.

If I were to allow to the solicitor-general, the principles he laid down, that every man who contracts with the public for pay, im-

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poses upon himself a duty, the violation of which forms a subject to be prosecuted by indictment, or information; still, if the real circumstances of this case show that the ex-paymaster is the person contracting with the public, and not that accountant, who, for this purpose, is the mere servant of the ex-paymaster, there is, then, no contract between Mr. Bembridge and the public; and having violated no engagement to the public, he cannot be criminally punished.

The first proposition, the information undertakes to make out, is this; that it is the business of Mr. Bembridge, as accountant of the pay-office, to make out, settle, and adjust the accounts of ex-paymasters. Now, I submit to your lordship, that the evidence, so far from proving that, if it does not prove the direct contrary, at least leaves it exceedingly doubtful, whether it is his duty, or not; but I submit that it proves the direct contrary. It cannot be so in point of law, and it has not been so in point of fact;—in point of law, it never can be said to be so, for it is impossible that the law should impose upon me a duty which, in point of fact, I cannot execute; it is impossible that it can be the duty of the accountant, in this office, to settle the accounts of ex-paymasters, when the ex-paymaster, or his representative, may, the moment he undertakes to do it, say he shall not do it, and which in many cases, they have said, he shall not do; it cannot be the duty of the accountant to settle and adjust those accounts officially, because how can he compel the production of those books, papers, and vouchers, the examination of which is necessary to settle the account? the law has furnished him with no process to enable him to come at them, and the party may refuse to produce them whenever he requests them; if it were necessary to establish what the notion of the law upon this subject is, by saying what the law at this day is, your lordship will look at the last act for regulating the duty of paymasters, and there, for the first time, the books of the ex-paymasters are made the property of the public; but till that act, which is known by the name of Mr. Burke's act, passed, it was impossible that Mr. Bembridge, or any other accountant, could compel the production of them, and if he could not compel the production of the accounts and the vouchers which are to establish those accounts, it is impossible he could be bound to settle the accounts.

In point of fact, the representatives of the ex-paymasters, have constantly settled their accounts, if they thought fit; and not only in the instances spoken to by Hughes and Wigglesworth have they settled their accounts, but even when they did themselves settle their accounts by themselves or persons in the pay-office, even then, those allowances were made to the servants in the pay-office, upon the memorials of the ex-paymasters, those sums being divided according to the pleasure of the ex-paymaster when they were allowed to him; what does the conduct of all the witnesses themselves prove, who were examined on the part of the prosecution? Let it be observed here, that if there is any propriety in the maxim that 'Cuilibet in suâ 'arte est credendum; et omnes prudentes illa 'admittere solent quæ probantur iis qui in suâ 'arte bene versati sunt,' our witnesses ought to receive much greater respect (for they are men who have spent their whole lives in the office) than the witnesses for the prosecution, who were engaged in another office: but take their ideas of the duty of this office, from the conduct they pursue? what must have been their knowledge of it? they go to Mr. Bembridge, whom they knew to be Mr. Powell's clerk, and nothing else, in the execution of this business; as soon as they go to him, he refers them to Mr. Powell, who was, at that moment too, not accountant in the office, though cashier in the office, in which character he could not do the duty; at that moment, he was executor of lord Holland, was making up the accounts of lord North, and some other paymaster; if it had been the duty of Mr. Bembridge to make up those accounts, how happened it that Mr. Powell, as executor of lord Holland, was, at that time, making up lord Holland's; and how happened he to be still continuing and adjusting those accounts, Mr. Bembridge having no power either over his accounts or the papers which were to enable him to make up the accounts?

But great stress has been laid in this cause, much has Mr. Bembridge been traduced, on account of his own declarations, which are taken in this cause, to decide the matters between us. Recollect the situation in which Mr. Bembridge stood at that time; I will not follow Mr. Bearcroft in saying he stood before an inquisition, at that time, but will venture to say that he stood before something more like an inquisition than any thing that has been seen in this country since the years before the flood. Party zeal, which, like Cæsar's, in this case, will not be satiated even with blood, was pursuing it; they hunt him down; and a disposition to find the acknowledgment of guilt in every thing he has said, has found it in every expression, capable, in my opinion, of establishing even his innocence.

My lord, if the examination before the commissioners is to be taken as the evidence of the confession of his guilt, it is nothing more than the evidence, not of his duty, not what he conceived to be his duty, but of the fact; he says he makes up the accounts; why, when a man makes an admission, you are not to imply that he makes the admission in a sense in which it is impossible he himself could understand it; for Mr. Bembridge, who had been in this office twenty-five years, who knew what was the fact in the case of Winnington's executors, who knew what was the fact with respect to lord Chatham, who

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knew what was the fact with respect to Mr. Powell, who knew that, in point of fact, the accountant never had made up the accounts of the ex-paymasters, he cannot be supposed to be acknowledging what was his duty, but the fact. But supposing that an acknowledgment of his duty; if Mr. Bembridge had said, it is not my duty, and the facts in evidence had proved it was his duty, he could not have availed himself of that acknowledgment in a criminal prosecution; if he has said it was his duty, and the facts, proved in evidence, show it was founded in mistake, is he to be bound by that, and that too in a case where the whole context of his admission proves he had no idea that he was infected with guilt at the time? Mr. Rose asks him very gravely, did you not consider it as extremely improper, as Mr. Powell was the person who was himself to charge himself in favour of the public, that he should settle them?—No; I did not.—How could he? Mr. Powell had been trusted by persons of great honour in private life; he had executed his duty towards the public, till the moment, without default; he has executed his duty at least with not half so much injury to the public, as the public perhaps has done him, for it has suffered no injury eventually. Mr. Bembridge had received great obligations from Mr. Powell, he knew the habits of his private life to be founded in great integrity;—and though I do not mean to excuse Mr. Bembridge, on the score of gratitude, for in circumstances where the public are concerned, I admit, with the solicitor-general, it is a fault; but if it is, it is like another fault, it approximates very nearly to a virtue in this case;—he trusts Mr. Powell to do,—what? not to send in the final account, for in his notion of the final account, it never is final till it is attested upon oath; and the whole confidence he reposed in Mr. Powell, and which he asserts to Mr. Rose, he did not think himself wrong in reposing in him, is this, namely, I had not the least doubt that, before Mr. Powell attested this account, he would do, what, in point of fact, he has done, he would insert those omitted articles; what was Mr. Bembridge to do in that case? Was he to go and charge Mr. Powell with an intention to commit a crime, which intention he had no reason to think he had, unless he did suppose he, in that instance of his life, was acting on principles directly contrary to those which had regulated his conduct in the whole prior part of his life? He acknowledges, to Mr. Rose, that he knew it was his duty to have had those articles inserted, and so it was every man's, when the account was finally settled.

The whole of his admission is this: I did trust Mr. Powell would do his duty; I had no reason to think otherwise; in that I am not eventually mistaken, but had abundant reason to think the account would not be finally closed before the articles were inserted. The nature of my guilt is, that I did not compel him to insert the articles before it was necessary he should. If this is the nature of the evidence, that it was not the duty of the accountant; still, if the result of it is that it was his duty, still, there is, I submit to your lordship, a satisfactory ground for a new trial, and that is this; that evidence was received to prove that Mr. Bembridge received a sum of 2,600*l.* as a consideration for doing this duty; that in consequence of his receiving that consideration, the duty was imposed upon him; if the duty arises from the receipt of the consideration, as that is not allowed to Mr. Bembridge, as accountant, as it is no part of his regular salary as accountant, it is a duty which does not arise out of that character, which the information states it to arise out of, but it is a duty of a different nature from that charged in the information; and a violation of that different duty, cannot warrant a conviction upon this information. That it was paid him in a different character, and, in truth, that it was not paid him upon this account, appears extremely clear, because your lordship will recollect that this was not a demand which he made upon the public, for doing the duty; that it was not a demand which any person, being an officer of the public at the time, made upon the public for the performance of the duty; but that Mr. Powell, being then the representative of an ex-paymaster, Mr. Powell having then no patent-office, as such, in that character of the representative of an ex-paymaster, he prefers a memorial to the lords of the treasury, praying an allowance for his servants; they give an allowance to his servants, a large sum of money which he distributes in such proportions as he thinks proper, and in the objects of that distribution are comprehended the lowest menial servants of the office: it might as well be contended that it was the public duty of the housekeeper to settle those accounts: but if it was received on account of his settling and adjusting those accounts, still, if the duty arises from that circumstance, it is not the duty which he is charged with the breach of, in this information, but a different duty, the breach of which he was not concerned to defend here. Lord Chatham's accounts were settled by persons not in the pay-office, and the same allowance was made to the persons in the pay-office, which shows the allowance was not made in respect of this duty done, but other duty done, which can be done only by other persons remaining in the office. This 2,600*l.*, was not paid him on account then of settling lord Holland's accounts; but if it had been, it is not the species of duty, with the violation of which he is charged in this information, and there is no count upon such an assumed duty. But, suppose now that he is guilty of the charge stated in the information, as it is laid in the information, still we wish to avail ourselves of the arguments which have been already submitted to the Court,

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and which I should hope to have enforced more largely, if I had had an opportunity of looking into the cases upon the subject, before I was called upon to state my poor sentiments upon it. We hope this is not an indictable offence. In the first place, it is not proved that Mr. Bembridge holds this office by any patent, or creation whatever, unless it is because Mr. Powell nominates him to it *pro hâc vice*.

Lord *Mansfield*. Who nominated Mr. Powell?

Mr. *Scott*. Mr. Powell, for this purpose, nominated Mr. Bembridge; but suppose he was nominated by the paymaster, how is it proved that the paymaster's office itself, is a patent office? How is it proved in this cause, what is the nature of his office? How is it proved that his office is such as implies a contract, on his part, with the public, the breach of which contract is criminal?

In cases where there are indictments for breaches of enacting clauses in acts of parliament, the indictment arises from an implied contract, which every man, who lives under government, is supposed to have made with the public; namely, that whatever the public has ordained, and considers as his duty, shall be so considered; such as the case of Leheup, who was supposed to enter into an express contract with the public, it could not be doubted; and in the case of Kennett, it cannot be doubted that he was answerable criminally, because he was an officer in whom the public repose a duty,—he takes upon him the office to which the duty is annexed, and if he is guilty of a violation of that duty, he breaks his contract with the public. It might be said, if Mr. Bembridge was the servant of the paymaster, and the paymaster has himself entered into such a contract with the public, that the paymaster might be guilty of a great offence in employing persons who negligently or fraudulently made up those accounts; but if the paymaster is the person, who entered into contract with the public, are the consequences of his contract with the public, to be affixed and attached to every contract which he makes, with every clerk who is to serve him as his clerk, and not as an officer with the public? I might admit, to the solicitor general, that where there is a contract with the public for pay for doing a duty,—a public office, that in such case, if that contract is violated an officer is punishable by indictment; but I deny that in the case of Mr. Bembridge there is any such contract, for if he makes a contract at all, it is with the ex-paymaster, to do the business of the ex-paymaster, for the non-feasance, the non-performance of which, the ex-paymaster is answerable to the public, and his clerks never can be.

The next ground upon which we trouble your lordship is, that in this case there is not evidence to prove, on the part of Mr. Bembridge, that fraudulent intent, that wilful criminality with which the information charges him. Take the whole of the evidence together, can your lordship say, that there is any proof here of the corrupt motive which the information insinuates? Has it been attempted to be proved in evidence, that he either had, or was to have any thing in respect of his complying with this omission of Mr. Powell? Is it possible for your lordship to say, that the degree of his guilt was greater than this, that he reposed a confidence in Mr. Powell, which he thought Mr. Powell would not abuse, and which it has turned out eventually that Mr. Powell did not abuse?

There is no pretence to say, that Mr. Powell held out to him any motives of interest; there is no pretence to say, that he acted upon any motives of interest; and the utmost criminality he can be charged with, if he can be charged with any, is this, that he trusted Mr. Powell, in whom he had all the reason in the world to repose a confidence.

I shall not trouble your lordship with adverting to what the witnesses said, with respect to the character of Mr. Bembridge; it will be in your lordship's memory, that a more respectable character never was given to a man in a court of justice, and if your lordships see in the cause no direct proof, or no proof that goes to establish any positive corruption; your lordships will, at least, incline to think, from the character that was given him, that the utmost guilt which Mr. Bembridge can have, was allowing Mr. Powell to be guilty in a case where he could not possibly suppose he would be so.

Lord *Mansfield*. In the account, he states a variety of things as the duty of the accountant, but he does not state the passing the accounts of the ex-paymasters; as to the defect of the evidence of the payment of the money, there was no separate ground, neither was it urged so at the trial, that supposing it not the duty of his office, yet, in respect of the money that was paid him, it should be charged; it was only offered in evidence, to show it was the duty of his office, to which the several answers Mr. Scott has now made, were given, that he would have had that whether he had taken the trouble, or not; that other accountants had it; it was only offered in evidence, as being the duty of his office.

The hon. *Thomas Erskine*.* My duty at present, according to the common practice of the Court, I conceive to be, to offer grounds to your lordship for having a review of this verdict; and I shall not enter at all into the punishment, which your lordships, in your discretion——

Lord *Mansfield*. You had better take the whole, as I told Mr. Scott.

* In the original report of this Argument, there were a few errors; in correcting them I have had the assistance of the very learned and eloquent person who delivered it.

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Mr. *Erskine*. Then I shall first take the liberty, notwithstanding how much has been said already, to remind your lordship of the charge which this information contains against the defendant, because your lordship is certainly not inquiring now whether the conduct of Mr. Bembridge has been, upon the whole, that of a good subject,—under the particular circumstances in which he stood, and in which he acted as accountant of the pay-office,—but whether he be guilty or not guilty of the particular criminal charge made against him by this information.

My lord, the information makes this positive averment, 'that the place and employment of accountant, in the office of the paymaster, is a place of great public trust and confidence, touching the making up the accounts of the paymaster-general, and the adjusting and settling of the same with the Auditor of the Imprest.' Your lordship, at the trial, told the jury, in the most precise and unequivocal terms, that, unless that averment were substantiated by the evidence, the information, of course, fell to the ground, for that all the other propositions and averments contained in it were merely corollary to that first proposition, and that if the foundation were removed, they of course were taken away; for, undoubtedly, no man could be guilty of any misprision, unless the thing which the other person had done, and which he ought to have discovered, were part of his own duty. Now I conceive that the meaning of this averment in the information (if it has any meaning at all), is this; that the place and office of accountant to the paymaster, is an official check, provided by the wisdom and discretion of the government, upon paymasters both in and out of office, against those frauds which might be committed by persons having such immense sums of the public money in their hands, and for such long periods; it is not enough to entitle the crown to a verdict in this cause, that it has been *the custom* of the accountants to make up these accounts, but that *it is their official duty*;—and if it be their official duty, so as to make the breach of it an indictable offence, it must be, as I said before, an official check, constituted by the public for that express purpose;—that the public intrust *him* with the duty, and that the paymaster is not himself intrusted and responsible for the rectitude of his accounts, but that another man is intrusted with that check; that the public looks to him, and him alone, for a check upon the duty of the paymaster. If, then, that averment be as I have taken the liberty, in point of law, to suppose it, it would follow as a necessary consequence, that if it had turned out in point of fact, that Mr. Powell, without any knowledge in Mr. Bembridge, had been guilty of a fraud upon the public, Mr. Bembridge would have been equally subject to an information, at the suit of the crown, for suffering that public loss arising from the fraud of another's doing that duty which the public imposed upon him; and I contend, that it is impossible to say that Mr. Bembridge is guilty of any misprision in point of law, although he knew, in point of fact, of these items being held back, unless it would have been criminal in Mr. Bembridge to have suffered Mr. Powell to act at all, and unless he would have been liable to an information, for the wilful omission in Mr. Powell, although he had not known of any such omission; for if the public look upon Mr. Bembridge's office as a check upon the office of the paymaster, it would have been a crime in Mr. Bembridge to have suffered Mr. Powell to do it at all; and if it had been a crime, then all paymasters, and all accountants have been in the habit of committing it; for it is in evidence, that lord Chatham and Mr. Winnington made up their accounts by particular persons, employed by themselves, and not by the accountants.

Then, if the averment be as I have stated it, that this is the official duty of the accountant, and that the information charges it to be his official duty, and so much his duty, as to render it criminal,—as Mr. Rose thought, for he went so far in his evidence,—as to make it criminal in Mr. Bembridge, to intrust Mr. Powell to do it, then to establish such an averment, the evidence must go the whole length, as your lordship laid down the law to the jury, it must go the whole length, unequivocally, to establish this proposition, that Mr. Bembridge was bound, at all events, to do that duty to the public himself, which, in point of fact, was done by Mr. Powell, and therefore was responsible, at all events, whether he had been guilty of this wilful misprision, or not.

The next material consideration, therefore, is, to see how the evidence does support that averment. Your lordship has had nothing of the original nature and institution of this office laid before you, and it is surprising to me, that when the gist of this information was the particular official duty of a man in a public office, and one of the most important public offices of this country, that the officers of the crown, coming into a court of justice with a criminal charge were not able to show to your lordship any one document, any one instrument of appointment, any one record, any thing, in short, written, to establish what is his duty, but are obliged to trust to the loose opinions of witnesses who are called to support their cause. There is nothing before the Court from which your lordships can see what is the official duty of the accountant; there is nothing before the Court to lead your lordships to think that he is placed there as a check upon the ex-paymaster by the discretion of the government; but the whole proof arises upon the testimony of witnesses. I agree with Mr. Scott, that that evidence, so far from substantiating that proposition, proves the direct contrary, and

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the very first and most material witness called on the part of the prosecution, entirely overturned the first averment in the information. Mr. Hughes stated, that he was sent to Mr. Bembridge, by the auditor of the imprest, after having written a letter without any effect; that, in the very first instance of his applicatisn to Mr. Bembridge, he was referred, by him, to Mr. Powell. What would have been the answer of the auditor of the imprest, or of his deputy, if the observations I have made to the Court be well founded? for, if I am right in saying, that if Mr. Bembridge be criminal in this wilful misprision (taking that wilful misprision to be proved), he must likewise, if the first averment be true, have been criminal for Mr. Powell's guilt, *even if he had not known it;* because he would have been criminal by intrusting to another person that which it was his own duty to fulfil. If that be so, how was it possible for Mr. Hughes to say to him what he did?—he would have said to him as Mr. Rose did—are you aware that we are entitled to call upon *you* for these accounts? But, no: in the very first instance, and at least two or three times afterwards, they went to *Mr. Powell;* they corresponded with Mr. Powell, Mr. Powell considered it as his own duty, he never referred them back again to Mr. Bembridge; the auditor of the imprest never went back again to Mr. Bembridge, but the whole was conducted between them and Mr. Powell; this clearly shows, out of the mouth of that witness, that he himself, at that time (whatever new lights he might have had upon the subject before he came into court), that he did, *at that time,* believe it to be the duty of Mr. Powell, and not of Mr. Bembridge. He said that Mr. Powell, as executor of lord Holland, was making up the accounts; he referred him to Mr. Powell as a person responsible for them, and there was no answer made, either by Mr. Hughes, at that time, or by lord Sondes, telling Mr. Bembridge that *he* was the man responsible, and not Mr. Powell, to whom he had referred them: the evidence of Mr. Hughes seems to me to go a great deal farther, for he states a case that is absolutely incompatible with the averment in the information; he says, Mr. Ingram was the executor of Mr. Winnington, who was paymaster, that *as such* he had the books delivered to him from the pay-office to make up his accounts, and the witness added:—I made them up, and they were delivered to the auditor; and, upon his cross-examination, he said, Ingram had leave from Bangham, the deputy auditor, to take the book, and that he had a power over it as executor.

Will your lordship, then, permit me only to call the attention of the Court to this? If these be the books which contain the paymaster's accounts, and for which the accountant is answerable, how came the Auditor of the Imprest to deliver them to Mr. Ingram without any order from the accountant? It seems a strange proposition, that if an accountant in the pay-office had conceived himself (and it is a strange sort of presumption, that neither that officer, nor any of his predecessors, ever knew any thing of their duties);—if the accountant, I say, had conceived himself to be bound to make up these accounts, and was answerable for their rectitude, how should it have been in the power of the auditor to put them into any other hands? The information charges, that it is the duty of the accountant to make up these accounts, with the auditor of the imprest; and it would therefore have been a high breach of trust in that auditor, knowing it to be the duty of the accountant to make up these books, and knowing that he was criminally responsible, either for wilful misprisions, or even for mistakes in them whoever made them up; it would, I say, have been criminal in him to have delivered them up to any person but the accountant.

The witness swore that the deputy-auditor delivered the books to him, and that he made up the accounts, and delivered the books back again. Now, how can the accountant be responsible for an act, which it was not in his power to prevent, unless the paymaster gave him leave to do it? If Ingram had a right to those books, as the executor of Winnington, demanded them as executor, and received them from the auditor as executor; if he, the witness, made up those accounts, and delivered them to him, without any communication with the accountant; how can the accountant be criminal for not doing that which another man had a right to put out of his power to do? It is not at all immaterial what Mr. Bearcroft stated, respecting the late act of parliament; which seems to show the sense of the legislature, that these books were not formerly considered as the property of the pay-office, nor as public books, but as the property of the paymaster, whose accounts were contained in them; and therefore, seeing the inconvenience which arose from that, they made the law otherwise, for the future, and enacted that the books should be the property of the public, and should not be taken out of the pay-office. Surely, then, the first proposition in the information is not maintained, even on the evidence for the crown; and your lordship will recollect, likewise, that *we* called a witness who confirmed Hughes in his testimony, with respect to the accounts of lord Chatham; viz. that they were made up by a person appointed by himself, without any communication with the officers of the pay-office; and he said it was in the power of the ex-paymaster to make up his accounts by any private hands he thought fit. Where, then, is the evidence to be found that is to confirm this first proposition? where is it to be found except, as I shall presently remark, out of the mouth of the defendant, Mr. Bembridge himself, which was the great pressure at the trial?

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Suppose the defendant had not been examined, either by the commissioners of accounts or the lords of the treasury; supposing Mr. Bembridge not to have been examined at all; and that his confession had been entirely out of the case, it would have then been impossible, for a moment, to have said that the first proposition in the information, upon which all the others depend, had been substantiated, because it entirely depends upon the evidence of Hughes and Wigglesworth, both agreeing in that proposition, namely, that though in point of fact the accountant hath often made up these accounts, yet, that it was in the power of the ex-paymaster to put his own accounts into private hands, a proposition utterly inconsistent with its being the duty of the accountant.

The matter then to be considered is, how the defendant, Mr. Bembridge's testimony weighs against himself; whether it be so unequivocal, so clear, and precise an admission of his duty, as shall be taken to be decisive against him, notwithstanding the witnesses, even on the part of the prosecution, carry the testimony the other way: now before the commissioners of accounts, Mr. Bembridge, admitted nothing like that.

Mr. Justice *Willes*. Was his examination before the commissioners of accounts upon oath, or not?

Mr. *Sol. Gen.* Upon oath.

Mr. *Erskine*. I hope that the few observations I have made, go the length of establishing this proposition; that if Mr. Bembridge's evidence were out of the question; if there were nothing to be taken against himself from his own admission, there is not sufficient matter to convict him of the crime charged by this information; because the first averment falling to the ground, all the other propositions, which are merely corollary, must fall to the ground likewise. Mr. Bembridge was not asked by the commissioners of the public accounts, whether it was his duty to make up the accounts of the paymasters out of office, as well as the accounts of the paymasters in office; he was asked no such question, and it is impossible that a man's answer can be taken to extend beyond the limits of the question put to him; and your lordship will never take an admission of that sort in a case where, if a man had any criminality, he would have been earnest to conceal it, and where no man could have bound him to reveal it; and it is decisive that he did not conceive himself in his own heart to be guilty, otherwise he would have held his tongue. If he had thought any of these answers he gave, would have gone to have criminated him here or elsewhere, most unquestionably he would not have given them; his admissions, therefore, prove the idea he had of the rectitude of his own conduct. The account he gave was, that as accountant of the pay-office, he carried on and made up the accounts of paymasters, not that it was his duty to do so.

Lord *Mansfield*. What was the question upon the examination?

Mr. *Chamberlayne*. He gives in his examination upon oath; it is a narrative; there are no questions.

Mr. *Erskine*. The words are,—"That he carries on and makes up the accounts of the paymasters, after they are out of office, as well as those of the paymasters *in* office."—He does not say, that he does this as accountant; he says in the outset, undoubtedly, that he is accountant: he is called before the commissioners of accounts, as accountant of the pay-office, and he describes himself to be accountant; but when he gives in this narrative, he says, he carries on and makes up the accounts of paymasters in, as well as out of office; that is, that in point of *fact*, he does it; not that it is his *official duty* to do so; not that he could be indicted if he did not do it; for this averment goes so far as to maintain, that if Mr. Bembridge had refused to make up these accounts, he would have been subject to an information for that refusal. Now, all that he says is, that he carries on and makes up these accounts. He says true; for he had carried on and made up the accounts of other paymasters out of office; but as it is in the power of any paymaster out of office, to intrust the making up those accounts to any other person out of the office, or to have left it to be done by his executor at his death, then it is not the *duty* of the accountant; because that never can be the duty of the accountant which another man can prevent him from doing; and the whole evidence goes to establish the proposition, that in point of fact, other paymasters have made up their accounts by other hands; and that, the auditor has had the books, without any interference with the accountant.

Then if Mr. Bembridge's examination may be taken consistent with his own innocence, your lordship will surely not wrest it to convict him; you will not take a voluntary confession of any man conceiving that he was not drawing himself into a snare, in a sense to operate to his conviction, if it can possibly be made consistent with his innocence, if it can be taken in any possible sense consistent with his innocence, though not the most obvious one, most undoubtedly your lordship will adopt that construction; and it seems to me, with great submission to the Court, to be perfectly consistent with it, for Mr. Bembridge did make up the accounts of several paymasters, though not of lord Holland. And why did he not make up the accounts of lord Holland? *Because lord Holland had put those accounts into other hands;* and the information does not state that Mr. Bembridge ever made up those accounts, nor does it state that it was his duty to have made up those accounts; it only states that it was his duty to adjust and make up those accounts *with the auditor of the imprest;* which may be thus; it was his duty, if he was ordered to do it; it was his duty, if he undertook it; it was

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his duty, if the paymaster had imposed it upon him; and if it had appeared, in point of fact, that he had had the making up of lord Holland's accounts imposed upon him; then, taking it to be his duty in point of law, and having it imposed upon him, it might be a wilful misprision. But the information does not make any such charge; it states that the office of accountant, in the paymaster's office, is a place of important public trust and confidence, and is relative particularly to the passing the accounts of paymasters out of office, as well as paymasters in office. It then states that lord Holland went out of office; that John Powell, being then accountant, made up and delivered the account of lord Holland to the auditor of the imprest; that Mr. Bembridge succeeded as accountant, and that it was his duty to disclose certain items omitted in the account by Mr. Powell. But if Mr. Bembridge never was charged with making up this account, and it was not his duty to make it up, this narrative, upon his examination before the commissioners of accounts, seems perfectly consistent with his innocence, for it only says this: I do make up these accounts: but suppose he had gone farther, and had said—It is the duty of the accountant to make up these accounts, and pass them with the auditor of the imprest; that is to say,—which must be implied from the whole examination,—if the paymaster, who is the head of the office, chooses to order it, *then only* it becomes his official duty, and then taking upon him *de facto* to fulfil it, I admit he is responsible

Most unquestionably, if a man takes upon himself the doing of any thing, in which the public has an interest, and is guilty either of a wilful omission, or of any neglect in the performance of it, he cannot say then that it was not his official duty, because he has taken it upon himself, and the public trusts him upon his assumption of the trust; *but in this case, neither the information charges,—nor would the evidence have warranted* the charge that Mr. Bembridge was ever directed to take upon him the adjusting and settling this account, as the accountant of the pay-office, or that he ever took it upon himself.—It was intrusted to Mr. Powell, in virtue of his office—Mr. Powell made it up—Mr. Powell delivered it in to the auditor of the imprest; and the only charge against Mr. Bembridge is, the concealing those omissions which the information only charges to have been made by Mr. Powell.

The examination before the lords of the treasury, seems not to go much farther than that before the commissioners of accounts, for it applies chiefly to the second part of the information; viz. to the wilful concealment, more than to the duty of his office. It says, he was perfectly apprized of these particular articles, long before the pencil balance was drawn out; but it says, he left it to Mr. Powell. It is true, he said it was the duty of the accountant to make up the accounts; but that could only be if he was ever directed by the paymaster, or had ever charged himself to make them out; in that case it is admitted to have been his duty, but if the paymaster, who is the head of that office, does not direct the accountant to make it up, and if he chooses to trust a private individual, and that private individual has a right to take away those books, without the leave of the accountant,—and, as Mr. Bearcroft has truly observed, might maintain an action of trover against him, if he detained them, then how can it be said that this officer is the official check, provided by the wisdom of government over a paymaster's accounts, and is responsible for all the errors contained in them? Your lordship has nothing in support of the charges in this information from any written document; from any patent of office; from any matter of record; it all rests upon parole evidence, the whole of which concurs in maintaining a proposition directly the contrary of that which it is necessary for the prosecutor to maintain, before he can be entitled to hold this verdict.

One argument more has been pressed into the service upon this occasion, to show that this is the official duty of Mr. Bembridge, and to show that he was the officer looked to by the public, for officially making up and adjusting these accounts;—for I hope your lordship will always keep in view the great difference between its being the *custom* for the accountant to do so, and its being his *duty*, if commanded by the paymaster, or if he takes upon himself to do it;—for although a man cannot be called upon to take upon himself any public office, unless he has accepted of a patent, or some commission from the crown, which makes him responsible for the execution of the duty of it,—yet if he voluntarily takes it upon himself, he is responsible for the due discharge of it; but Mr. Bembridge never took this upon him; he says, it was intrusted to Mr. Powell, and his only offence, as stated by the information, is a wilful concealment. Now, in point of law, I firmly maintain, that unless Mr. Solicitor General, when he rises, is able to show your lordships, upon the evidence given on the trial of this information, that if Mr. Bembridge had trusted Mr. Powell to insert, or not to insert these items, and had kept his mind from all knowledge of what was there; if he had been perfectly ignorant of any of the charges against lord Holland; if he had known nothing contained in the accounts, yet, that he would still have been subject to a criminal information in this court, if, in point of fact, Mr. Powell had been guilty of any wilful omission, because being charged with an official duty by the public, he had trusted to another that which he ought to have done himself, by which means the public received a material injury by the fraud of Mr. Powell;—I say Mr. Solicitor General must maintain that proposition, because there can be no misprision at law, except in the case of high-treason,

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but from a man's neglect *of his own duty*. Unless, therefore, Mr. Bembridge was *bound todo the thing himself, which Mr. Powell did not do*, he cannot be subject to an information for not having disclosed this fraud, or the omission.—If, indeed, he was the check the public had provided; if being intrusted to make up these accounts; if, though it was his duty to make them up, he had intrusted it to another to do it, whose duty it was not; in such a case, whether he knew of the criminal neglect or not, he would be a criminal for having intrusted that to another which he ought to have done himself. Then, is there any thing upon the evidence that can warrant the court to say, that the jury have not done wrong in drawing such a conclusion? If it was the office of Mr. Bembridge, as accountant under any circumstances to make up these accounts, so that Mr. Powell could not make them up; if it was even criminal in Mr. Bembridge to suffer him to do it, what a number of criminals there must have been in this office, from its first institution! and if we should not be so happy as to persuade your lordships to give us a review of this cause, it will avail me at least to say, when I come to the other part of the subject, in mitigation of punishment, that he has only been doing that which the most upright men have constantly done before him—which lord Chatham did—which Mr. Winnington did—which the auditor of the imprest suffered him to do—and which would have been a great breach of the duty of the public auditor so to trust the books into private hands, if it was the official duty of the accountant to have made up this account himself; if every thing found on such accounts from which the public may suffer, shall be chargeable on an accountant, how can it be in the power of that auditor of the imprest, without consulting him to deliver it to another? And, you see, the witnesses come here, and say, 'I accepted from Mr. Bembridge a reference to another, when I knew 'it was criminal of me to do so. I left the 'man, who I knew was responsible to the 'public, because the man who was so, thought 'fit to shove it off his own shoulders, and 'desired me to go to another, to whom we 'were not called upon to look!' I never can forget the distinction which I laid down, that if Mr. Bembridge is criminal for this misprision, he must have been criminal *even if it had not been a misprision*, he must have been criminal for the omission of the man to whom he intrusted it, if the public suffered for it: yet, in the whole course of the negociation with those persons who were called upon to animadvert upon this misdemeanor,—and which they most undoubtedly were, if my argument is true,—not one of them ever said to Mr. Bembridge, 'you are referring us to 'another, to whom you ought not to refer us.' It is plain Mr. Powell thought himself responsible; there are many calamitous reasons why the Court will take it for granted, that he thought himself so; if he had thought Mr. Bembridge responsible, would he not have been happy to have referred them back to Mr. Bembridge? Would not he have said, why has Mr. Bembridge referred you to me? *he* is the accountant, it is *his* duty? he made no such reference back to Mr. Bembridge, and Mr. Hughes never went back to Mr. Bembridge, but the whole of the negociation went through Mr. Powell.

Upon these grounds, I hope that the first averment in the information, is not supported; if it be not supported, as your lordship told the jury, and have again said to-day, the other propositions will fall to the ground: but I hope, though it should be supported, that there are other considerations for your lordships in the present stage of the business; for there is another averment that he *wilfully and corruptly concealed*. Now it appears upon the evidence, as plainly as I ever saw any thing appear upon any trial, that all these items, which were not introduced into the charge upon lord Holland by Mr. Powell, were open to public view in the pay-office; every man saw them;—every man knew that they existed,—and when the witness was asked, why they were not introduced? Mr. Powell said the question was, whether lord Holland should ultimately be charged with them, because there were accounts respecting Paris Taylor, and until these were adjusted, he did not know whether he should be called upon to introduce them, as charges against lord Holland.

The items themselves, as they afterwards were put in the balance, were open; every person saw them; and how could Mr. Bembridge hope to conceal that, which there was not a clerk in the office who could not have instantly detected? and if I, or your lordship, were disposed to go into that office, there was not one of these charges that we should not have seen; but if you had asked Mr. Colborne,—who, though he was clerk under Mr. Bembridge, was employed by Mr. Powell, and not by Mr. Bembridge, for that purpose,—if you had asked him, why the items were not introduced, he must have given the answer Mr. Powell gave, when he was referred to, viz. that these accounts were not adjusted. Is it fair, then, upon this evidence, to say that when lord Holland appointed his own executor to make up his accounts; when Mr. Bembridge saw that Mr. Powell was responsible for them; and that he was the person making them up with the public,—and when he might not know, besides, how far Mr. Powell had a right to keep back these items until these points were adjusted,—how can the Court, or a jury suppose, without any sort of evidence of a motive of corruption in Mr. Bembridge, that he *wilfully, and with an intent to defraud the public*, kept back these articles? There is not a syllable of evidence to support so cruel a conclusion against him, for it appears most palpably, through the whole of the testimony,

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that these items were kept back by Mr. Powell, upon these considerations.

Lord *Mansfield.* Not upon Paris Taylor's consideration, because his accounts were questioned, as to what allowance was to be made and there was no relation to that. These items go to the discharge of lord Holland; Paris Taylor had nothing to do with that.

Mr. *Erskine.* Though the account of Paris Taylor had no relation to these particular items, yet it does not follow from thence, that Mr. Bembridge knowing there was something to keep the accounts open, was guilty of any wilful omission in not letting the public know there were these particular items; since the account was not closed, nor could be till the considerations of these items of Paris Taylor's account could be closed also. Therefore, it is evident that he had no corrupt motive for not doing that; for he knew there was an account, with respect to Paris Taylor, to a large amount, which was not finally settled; and as it was not known what allowance should be made to lord Holland, upon that account, he might naturally think Mr. Powell would deliver in these items as soon as the account of Paris Taylor should be finally settled. Nor is there any evidence to show that Mr. Powell could derive one farthing advantage from any such concealment.

Upon these two grounds, even if there were not a third, I should hope that your lordship would be inclined to grant this rule; but I shall certainly not forsake the ground that has been taken by my friends who spoke before me, namely, that this is not an indictable offence; and I am sure, that I should be the last man in the world to stand up to contend in any court, much less in a court filled as this is, that any person trusted by the public, either by the general imposition of the common law, or by any statute, any magistrate, in short, who has a name, or an existence in the constitution of the realm, be he what he may, should not be subject to an information, or to an indictment for a criminal neglect of duty. I certainly shall not contend that; my only reason, as my learned friends have contended before me, and in which I shall follow them, is, that Mr. Bembridge does not appear to be such an officer, or such a magistrate, as either the general law of the country takes any cognisance of, or by the specific institution of any statute, I think, to make this an indictable offence, they must maintain, not merely that the manual labour of making up these accounts was thrown upon him, as a clerk in the office, but that he was *the official check;* that the paymaster was not the person looked to by the public,—that *he* was not the person who was responsible to the public for the rectitude of his own accounts; whereas the office of the paymaster is a most important office, he is appointed by patent, and then he is an officer that the law takes notice of; and when the public issues money to a paymaster, the public expects from that paymaster, an account of the expenditure; but surely an officer of that magnitude is entitled to have an accountant and clerks, and to have several persons under him, who are, perhaps, entitled to have fees and perquisites; but still the paymaster, himself, is the *responsible person* to the public, and the accountant is not the check the public has imposed over him; it does not, in my humble conception, fall within the meaning of the word *magistrate,* nor is he that public man whom the law looks to for that particular responsibility; and although he might be subject to an indictment, if he refused the labour of making up these accounts, yet the question would still remain, whether he was answerable by indictment, or by information, for not giving intelligence of something that another person had done or had left undone relating to his own office? Now, none of the cases that have been cited by the gentlemen on the other side, at the trial, go this length. In the case of Mr. Leheup, it was an indictable offence; it was contrary to the form of the lottery act. In the case of Mr. Kennett there was a duty laid upon him by the statute, to read the riot act; but suppose there had been no duty laid upon him by the statute, yet a man who is a common law officer, has a duty imposed upon him; what I mean is, that there is nothing specific in the duty of this officer, which can lead the Court to think that he is that official check upon the paymaster, and that he ought to have made up these accounts himself, so as to be answerable for the omission of another.

The sum of 2,600*l.* seems not to me to be considered as any salary paid by the public; it is part of the account of the paymaster; it is deducted from his funds, and is distributed, not only to the accountant, but to all the menial servants in the office; the paymaster is the person who pays it, and it seems that the paymaster being responsible to the public, he has a sum of money issued to him, out of which he makes these deductions. Supposing the accountant and paymaster to be two distinct persons, and that the accountant is not subordinate, but superior to the paymaster, which he ought according to the information to be, if he is a check upon him; then certain sums of money would be issued to the paymaster, and certain sums to the accountant, for performing that duty; whereas he is considered as subordinate, and certain sums are deducted out of the paymaster's account, according to the abuse (as it should seem to me) of office; therefore, I should hope, that your lordship will not conceive this to be an indictable offence.

It does not appear by the evidence, that it was Mr. Bembridge's official duty to make up and adjust these accounts with the auditor of the imprest; and it not being his official duty, he himself could not be answerable for

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an omission in another,—inasmuch as there can be no misprision in the English law, except in treason,—for another person's concealing a thing, omitted to be done by another, which it was his duty to do himself.

But inasmuch as your lordship has said, that we ought in this stage of the business, to consider what the discretion of the Court would dictate as a punishment if we shall have been so unfortunate as not to prevail in the objections we have taken to the verdict. In that case I am sure we may safely rely not only upon the humanity, but even upon the most rigid justice of the Court, when the sentence is to fall upon a man, not only respected and beloved in his private life, but who stands upon the evidence as a most intelligent and faithful servant of the public for a long series of years. Under such circumstances, your lordships will not suffer any consideration of the prevalence and the danger of abuses in public offices (which, probably, led astray the jury in forming their conclusion) to affect your more calm and deliberate judgments if his offence is not tainted with the corruption imputed to him; and it is quite impossible the Court can believe that if he had been conscious of even criminal neglect, much less of a foul and sordid misdemeanor, he would have spontaneously poured out a laboured accusation against himself before inquisitors who had no right to demand from him any admissions, which could criminate himself. God alone can look into the hearts of men, but judges have a constant recourse to the most lenient constructions of human conduct when they sit in judgment upon their fellow-creatures; and even when they are brought to the most manifest conclusions of guilt, however heinous, administer justice in mercy. I am aware that a solemn duty is cast upon your lordships when you are executing the laws, that guard the public revenue above all in times which call loudly for its support; but in a case like this, even the officers of the Crown, who are its guardians, will feel themselves justified in leaving to the Court the full measure of merciful consideration, which it is always so pleasant to your lordships to exercise—but I conclude with expressing my hope, that the painful duty of punishment will be spared altogether by your finding that there is no guilt in the defendant to be punished.

Lord *Mansfield*. I take it for granted, Mr. Bearcroft, that you have no intention or wish to file any affidavit.

Mr. *Bearcroft*. I was furnished with an affidavit; but I had some doubt whether we could make use of it in this stage, because it goes to contradict the evidence given.

Lord *Mansfield*. When I asked the question; I meant those sort of affidavits that are commonly made in criminal cases; whether you have any wish?

Mr. *Bearcroft*. I do not consider the defendant, now, as brought up for judgment.

Lord *Mansfield*. I do.

Mr. *Bearcroft*. I am not prepared with any thing of that kind, in mitigation.

Lord *Mansfield*. Have you any wish to have an opportunity to make affidavits? you can say, yes or no; or that you cannot tell.

Mr. *Bearcroft*. Most undoubtedly we shall wish to do so, in case we are brought up for judgment.

Lord *Mansfield*. If the Court should be against you, upon all your grounds, I consider you as brought up for judgment most undoubtedly. Mr. Solicitor General, it is impossible to go through now, I see another gentleman starting up, upon the same side; besides we shall have such a noise presently, you will not be able to be heard; * and there are other motions; I propose to adjourn this till Saturday; have you any objection, that, in the mean time, the defendant should continue as he is, that he should not be committed?

Mr. *Sol. Gen.* I have no objection to whatever the Court may think right to be done.

Lord *Mansfield*. This is a matter of consent; he comes here voluntarily; he is under no bail; the consideration is, whether you consent?

Mr. *Sol. Gen.* If your lordship puts it upon me, I do not think, in a matter upon which the public eye is, and ought to be directed, that it would become my situation to consent that Mr. Bembridge should go without bail; but if the Court see no objection to his being upon bail, I have no objection to that.

Mr. *Blake*. We have bail here.

Lord *Mansfield*. Let the defendant give bail for his appearing here next Saturday, and at such farther time as the Court shall direct; himself in two thousand pounds, and two sureties in one thousand pounds each. Mr. Solicitor General, if you had not consented, the Court must have committed him.

The proper officer took the bail as above directed by the Court.

Mr. *Adam*. If I were confident that I could add any thing to what has been said by the learned gentlemen who have preceded me, to give weight to the arguments that have been urged,—especially when I reflect I am called here, rather unprepared upon the subject, from an apprehension it would not have been gone into to-day,—I should have requested your lordship, standing as I do, very young in a Court of justice, to have postponed to another opportunity, my delivering any argument or sentiment upon this subject; but, as by that means, I should only make myself more responsible to my client, without adding any thing perhaps to the points that have been urged, I shall take the liberty of stating, very shortly, what has occurred to me upon this subject.

* It being lord-mayor's day, and the lord-mayor then in the hall.

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It has been stated by your lordship, that the first question at the trial was, whether it was the duty of the accountant at the pay-office, to make up the ex-paymaster's accounts. That you stated to the jury,—that if they did not find it to be the official duty of the accountant, at the pay-office to make up the ex-paymaster's accounts——

Lord *Mansfield*. Mr. Bearcroft, I meant to direct, that if you had any affidavits, that you would be prepared with them on Saturday; you understood that?

Mr. *Bearcroft*. I did.

Mr. *Adam*.—That if the jury did not find it to be the official duty of the accountant, to make up the ex-paymaster's accounts, it would be incumbent upon them to find the defendant not guilty; but if they understood it to be the official duty of the accountant to make up the ex-paymaster's accounts, then, to find him guilty. To that point, I shall beg to make one or two observations.

First of all, the proof that was brought, that it was the duty of the accountant to make up the ex-paymaster's accounts, was from the accountant's own confession, in two different places; first of all, from his confession upon oath before the commissioners of public accounts; and secondly, his confession before the lords of the treasury. There is a material difference in his account at these two places; for in the place where he was examined upon oath, and had warning that he was to be examined as to the duties of his office, he merely states the point of fact, that he did make up the accounts of the paymasters out of office, and that he was, at that time, employed in making up the accounts of the paymasters out of office. In the other situation, where, from the circumstances of the case, he was necessarily and naturally agitated, when he had not time to recollect himself particularly, when the questions were put to him in a style to extort from him a confession which he did not mean to make, he states it, there, to be *his duty* to make up the ex-paymaster's accounts. Then in such case I conceive, if we can produce proof that this was no part of the duty of the accountant, this confession, extorted in such a manner, ought to be taken with such grains of allowance, as to have induced the jury to rest their judgment of the fact upon what was said before the commissioners of accounts, and not on what was said before the lords of the treasury. I do think, that what has been said by the learned gentlemen who have gone before me, with respect to the duty of this office, is perfectly correct; that it was no more than this, that he was bound, manually to make out that by order of the ex-paymaster, if he chose it; but the ex paymaster had it in his power to put that duty into the hands of another person; therefore, I conceive it never can be taken to be an essential official duty upon his part, especially when I join to that this circumstance, that there is no process whatever, to compel him to make out those accounts; that if there is any neglect whatever, in making out those accounts, the process issues from the exchequer, not against the accountant of the pay-office, but against the principal accountant himself, the paymaster out of office, or his executor. When I consider that, I think it fortifies this argument that it is not the duty of an accountant of the pay-office, to make up the accounts of a paymaster out of office.

Then the case reduces itself to this, that if it was not his duty, he took it upon him, first of all, by acting in that capacity by the orders of Mr. Powell, and afterwards by receiving a sum of money for having done that duty. Now, let us refer to the state of the information upon the subject, and I apprehend your lordship will find that there is not any count whatever in the information, that states it as a duty that he himself took upon him, for which he was to be rewarded, for which he actually was rewarded, and of which he committed a breach; there is no count to that purpose; the information confines itself merely to its being his official duty, as accountant of the pay-office; therefore, all the evidence that is adduced to show he took that duty upon him, was not, I apprehend, warranted by the information; and, therefore, ought not to have had any effect in this cause.

I will venture to state another circumstance to your lordships, which strikes me as very material in this cause,—as a very strong evidence, that in spite of Mr. Bembridge's declarations before the treasury, made in the manner which I have already stated to the Court, that he actually did not conceive it to be his official duty, nor did the deputy-auditor of the imprest conceive it to be his official duty, to make out those accounts.—When Mr. Bembridge is spoken to by Mr. Hughes and Mr. Wigglesworth, relative to the giving in these items, and making up and passing the account, he refers them, as has been already stated by the learned gentlemen who preceded me, to Mr. Powell for that purpose; these gentlemen never returned to Mr. Bembridge; they never conceived it to be his official duty; he never states it to be so; and they rest perfectly satisfied with his answer upon the subject. Therefore, though he stated in his examination, that he did make out the accounts of the ex paymasters, and though he did make out the accounts of lord North and others, yet that does not stamp him with being authorized officially, and consequently responsible criminally for a duty which belonged to that office of accountant of the pay-office: it remains, no doubt, for an information to be brought against Mr. Bembridge, for the purpose of charging him with having taken upon himself a duty which he did not execute faithfully, and evidence may be brought to that point perhaps upon a future occasion;

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but I take it for granted, there is not a single count, in this information, that proves the point attempted to be proved, that he was responsible for making up the accounts of the ex-paymasters.

I shall, with the same degree of want of preparation that I had upon the other head, say a very few words relative to the mitigation of punishment. If your lordships consider the situation Mr. Bembridge has been in; if you consider the manner in which he was proved upon the trial, to have acted during every part of his preceding conduct at the pay-office; if you consider the respect he has been held in by all who knew him; if you consider the fidelity with which he has always acted;—I conceive your lordships will (if we should ultimately fail in the application for a new trial) render the punishment very mild against him, if you add this very material circumstance, that the public has not been injured, in any one iota, by what he has done; that the account could not have been made up sooner, even if he had done what he has said he thought to be his official duty, by bringing forward those items, at an earlier period of time; that that account could not be made up sooner; that the balances could not be paid in sooner; that he, and the persons connected with him in office, received no benefit from that concealment;—when you consider these circumstances, that he acted agreeably to what he thought the duty of his office; that he acted as others had before him; that if there has been any abuse in this office, he did not introduce it; therefore I conceive your lordships will not inflict a severe punishment upon Mr. Bembridge: that if you cannot set aside the verdict that has been given, you will, at least, cause the punishment to be as mild as possible.

Lord *Mansfield*. Are there any books, any directions given about the paymasters' paying in their balances?

Mr. *Sol. Gen*. Directions have been given for paying in the balances remaining in the hands of different persons.

Lord *Mansfield*. Do you know, Mr. Chamberlayne, whether there are any regulations by act of parliament?

Mr. *Chamberlayne*. No; there have not been with respect to this office.

Lord *Mansfield*. Do you know whether any of the acts give directions about paying in balances?

Mr. *Chamberlayne*. There is an act directing balances to be paid in, pending the accounts, upon an examination taken before the commissioners of accounts; that act has passed within these two years.

Lord *Mansfield*. I mean a general act?

Mr. *Chamberlayne*. No.

Mr. *Adam*. That act passed the last session of the last parliament.

Mr. *Chamberlayne*. It was but two sessions ago. Upon the commissioners reports, stating balances of the several accountants, then comes the act of parliament, and directs those balances to be paid into the Exchequer, in which, my lord Holland's balances are mentioned.

Proceedings in the Court of King's-Bench, November 22nd, 1783.

Lord *Mansfield*. I will, for the sake of the bar and of the auditors, state the contents of the papers produced, which before I only just mentioned. All the accounts given in on the part of my lord Holland, were produced in court; but to save trouble, a paper was read, containing the dates when they were given in, and when they were attested, and the period of time which they comprised, and I think it proper to state to you an account of them.

The first account was from the 25th of June, 1757, to the 24th of December, 1758, which was given in on the 17th of May, 1768, and attested upon the 3rd of November, 1778; a like account, from the 25th of December, 1758, to the 24th of December, 1759, was given in upon the 28th of July, 1768, and attested upon the 7th of March, 1772; a like account, from the 25th of December, 1759, to the 24th of December, 1760, was given in on the 30th of March, 1769, attested the 5th of March, 1773; a like account, from the 25th of December, 1760, and ending the 24th of December, 1761, was given in on the 12th of July 1769, attested the 4th of March, 1774; a like account, from the 25th of December, 1761, to the 24th of December, 1762, was given in on the 15th of December, 1769, attested by Mr. Powell, on the 21st of December, 1774; a like account, from the 25th of December, 1762, to the 24th of December, 1763, was given in on the 27th of October, 1770, attested by Mr. Powell, the 27th of June, 1775; a like account, from the 25th of December, 1763, to the 24th of December, 1764, was given in on the 7th of May, 1771, attested by Mr. Powell, on the 27th of February, 1776; the final account being half a year from the 25th of December, 1764, to the 24th of June, 1765, was given in on the 11th of January 1772, never attested; this is the last and final account, which was never attested. The defendant came in as accountant, in the year 1776. The next paper, I think particularly proper to read to you, contains the additional articles with which the account was surcharged, after the book of accounts with the penciled balance was sent to the defendant, and returned by him: besides three new items surcharged, and the two items which the book was sent back to have inserted, that is, of 900*l*. and 465*l*. there are inserted the articles in question, amounting to 48,799*l*. and a fraction; and it is material to state when these items were received, they were received in 1769, in 1760, 1761, 1762, 1763, 1764, and the last was in 1765; so, you see, that the times when they were

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received were far antecedent to the former accounts, many of them; and all of them, before the final account was given in, which was in 1772.

The warrant for the allowances to be made to the defendant, I have stated to you. The form of attestation is a matter of law and practice exceedingly well known, they go before one of the Barons of the Court of Exchequer, and the form is this: they say, upon oath, before one of the Barons,—'This book,' (or so and so, describing the account) is a just 'and true account, to the best of my know-'ledge and belief.' I thought it necessary, for the information of those who are present, to state these papers more particularly than I did the other day, upon the report. Now you will please to go on.

Mr. *Att. Gen.* [John Lee]. My lord; I am called upon to show cause against an application made by Mr. Bearcroft on the part of Mr. Bembridge, which involves in it, as I conceive, two or three rules. Besides an address to your lordship upon the effect of what the judgment ought to be, if the court should be of opinion that upon the circumstances of the case they must give judgment for the crown, a great part of the argument of the learned gentlemen went, as I conceive, in arrest of judgment upon this information. There was a motion for a new trial, and there was also an address to your lordship, in mitigation of the offence.

My lord, the first matter in order, as it seems to me, is the motion in arrest of judgment; for my learned friend, Mr. Bearcroft, contended very seriously,—and so did all the gentlemen after him,—that the offence, as charged in this information, is in point of law, no crime at all.

My lords; Mr. Bearcroft observed, at the outset of his address to the Court, that the drawer of this information had varied his charge in different counts of it so much, that though it contains, seemingly, some serious charge upon Mr. Bembridge, yet before the close of the information, it is almost dwindled to nothing.

Your lordship knows the manner in which these informations and indictments are drawn, is, that in the first count, they state with great particularity, all those facts and all those circumstances which it seems are necessary to be proved in order to make the person answerable for the crime, supposing in truth, in point of law, it be a crime. All this preliminary matter, stating for instance, that lord Holland was paymaster; what was the nature of the office; and that it was a patent office, and the like, which, by-the-by, my learned friend, Mr. Scott, took notice, in the argument, was not proved, or did not appear: your lordship will recollect, they were all distinctly proved, or the papers, being in court, were admitted by Mr. Bearcroft, and taken down as read, every fact, and every date. Then the fact stated is, that Mr. Bembridge was in the office of accountant to the pay-office, a place of trust and confidence; part of his duty,—nay all his duty, as far as respects this information,—being to make up the account of the paymaster; and that in making up that paymaster's account, it was his duty, of course, to disclose and make known the true state of it; and that he, knowing it to be his duty, did not so do: that is the outline of the charge. In the first place it was said, that this is no office at all, for the misbehaviour in which any man whatever is punishable; that was gravely and seriously contended; Mr. Bearcroft said, at the same time, that 'as he had, at the 'trial, so he did then, lay in his claim to call 'upon the counsel for the crown to produce 'a case, an authority, or a dictum, import-'ing so generally, that every man intrusted 'with a public trust,—which might be the 'case of a sheriff, or of a constable,—but 'that an officer, in a public trust, as such, 'was punishable for misconduct.' I took the liberty, upon a former occasion, to state what your lordship, with much greater authority, laid down as the law of the case, to the jury; taking notice, certainly, as your lordship did, that if this were an objection, it was an objection upon the record, but stating that you had not the smallest particle of doubt that, where a man has an office created by the king's letters patent, immediately or derivatively, which is of important trust and confidence to the public; that, for the violation of the duty of that office, he is as much indictable as any magistrate or any officers that have been alluded to in the argument. I have looked a little into the matter, as far as the leisure I had would permit, and I do not believe that that thought ever suggested itself before to any human being. I take the principle to be this, which appears to me to be recognized in cases without number, that is, that wherever a man's business has a public aspect, and an improper conduct in it injures not A, B, or C, but the community in general, that that itself is indictable by the common law; I take that to be a principle laid down over and over. My lord, I conceive that it is upon that principle, that where persons owe such a duty to the public —for instance, the repair of a highway,— that an omission to do that duty, because it respects the public, and for that reason only, is considered as an offence against the public, and indictable. I would just mention to your lordships, two or three cases, where it is so taken for granted, that there can be no question, I should conceive, about it. In Salkeld's Reports, vol. 1, page 380,—the Queen versus Wyat—which was an indictment, setting forth, that one Nash was convicted of deer stealing, upon the 3d and 4th of William and Mary, chapter 10, before a justice of peace; and, that the defendant being a constable, the justice directed his warrant to him to levy the penalty, and that he had levied the

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penalty, and had not returned his warrant, nor made any return, or certificate at all; the defendant was found guilty, and the indictment removed by *certiorari*. The second point* resolved by the court, is this, that where an officer neglects a duty incumbent on him, either by common law or statute, he is, for his default, indictable: then he says, in this case, the indictment was not laid *contrd formam statuti*, nor need it have been, though the constable had been named in the statute, because the constable is an officer of common law, and when a statute requires him to do what, without requiring, had been his duty, and he must have done, it is not imposing a new duty, and he is indictable at common law for it. I know, my learned friend will say to this, that I have selected an instance, in which the general principle was laid down, that that was one of the instances in which he admitted the law to be as I have stated it, but the same principle runs through every case, even where it does not admit of that argument.

In 2 Lutwyche, 1523, Wilkes *versus* Kirby, it is said, that even if a man has a port belonging to him, and if he did not repair it that he may be indicted for not doing it, because it concerns the public. There is another instance in Comberbach, 243, where it is said, a woman was there indicted, for that she being duly required to watch and ward, she did not watch and ward; there was no objection to this as an indictable offence; but the indictment, it is said, was quashed, because it did not say—*nor procure one to do it for her*—which, says the Court, she might, by law, have done. I do not find an intimation of doubt about this, in any one book, or in any one author; your lordship will find it laid down in Lord Chief Baron Comyns† as a general, universal principle, that an information will lie against any officer whatever, that either abuses or neglects his authority; I take it, there can be no doubt at all about the principle.

Thus much (and more than enough I should think) I thought it necessary to say to your lordship upon this idea: but your lordship threw out, that there was no occasion for precedents, that it was as clear upon principle as any thing could possibly be made to be. If we were to look into any common-place book, under the head of non-feazance in any public officer, we should find there a constant set of principles; that where a man misbehaves, does that which he ought not to do, or omits to do that which he ought to do in any public station, in which the public is concerned, the proper remedy is by indictment or information. But it is said, Mr. Bembridge is in no trust at all; is no public officer; is a mere clerk, removable at pleasure. I think several of my learned friends said that because he is removable at pleasure, he is not punishable for misbehaviour, till that pleasure comes; that principle will go a very great way indeed. Your lordship knows that some of the most important offices in the kingdom—some that are now, that always were, and probably are like to continue places during pleasure, during the pleasure of the crown, at least; did any body ever hear that a judge was not impeachable or punishable for misbehaviour, in his office, before the statute of king William gave him a tenure in his office? or that it altered, in any degree, his responsibility to the public for that which was improper conduct? Can any body contend that there is any difference between that situation now and what it was then; or in the situation of a person in the office I unworthily hold, that if I misbehave in my office, because I am removable at pleasure, that I am not responsible?

But it is said, this is not such an office as that the defendant has any thing to do which this information supposes. Now, for a moment, let us see how the evidence stands; Mr. Bembridge has instructed his counsel now, to be sure,—and it is natural that he should,—there is no imputation upon him, that he should instruct them to state that for him, which should answer the purpose of a convicted criminal. Let us hear what Mr. Bembridge says of himself, before he was charged, when he was examined before the persons who had a competent authority to examine him, and when that examination too was solemn and upon oath. Mr. Bembridge is asked what he is? Why, says he, I am accountant in the pay-office. What is your duty? Why, says he, I make up the accounts, —This examinant saith, that 'he carries on 'and makes up the accounts of the pay-'masters after they are out of office, as well as 'those of the paymasters in office.' Now, that is the account that Mr. Bembridge gives of his own office, and of the nature of it, solemnly upon oath. Would Mr. Bearcroft, and the other gentlemen, persuade your lordships that he did not know his business, or his duty, or his employment? Or did he mean to say, for so my learned friend, it seems, means to contend,—Why, I allow that I do it, but I have no business to do it; I am paid for it 150*l.* a year, as it appears, and 1,300*l.* in perquisites, besides the prodigious sum he was paid for this specific business, which was never done, 2,650*l.*? But I do not mean, says my friend, in this, to describe the nature and the duty of my office; but I only tell them what I do officiously, in the popular sense of that word, without any reference to my duty, voluntarily; spontaneously I do make up the accounts of the paymasters in office, as well as those who are out of office; but, in truth, I have no business, I have no employment, I have no duty

* This case of Reg. *v.* Wyatt is reported at length in 2nd Lord Raymond, 1189. See too Fortescue, 127.

† 4 Com. Dig. 398. ed. of 1800.

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at all. It is impossible for any man who reads this, not to be impressed with a notion that Mr. Bembridge is telling these gentlemen what his office and duty is; if you want the man who is to make up the paymaster's accounts in office, and those who are gone out of office, I am he: but, says my learned friend, I admit, that in general, it has been done by him, but there are some exceptions; in the case of Mr. Winnington and lord Chatham, who chose their own private people, and not the accountant, to make up their accounts; I think, there was nobody who was able to state, as far as I recollect, at the trial, what became of the fees in the case of Mr. Winnington:

Lord *Mansfield.* Yes; they went to the officers.

Mr. *Attorney General.* I understand they did in lord Chatham's, and they did too, now I understand, in Winnington's; what does the fact turn out to be? Why, that the officer was paid for neglecting his duty, and permitting another man to do that which it was his own duty to do, that is the whole amount of the evidence. Upon what pretence did he take this fee for another man's work and labour, if it was not his duty to do it? If they had come to 500*l.* or 600*l.*, and the man whom Mr. Winnington or lord Chatham had employed, had taken the money, this man would have brought an action for money had and received to his use; he would have said, if Mr. Winnington has a mind to employ you, I have no objection to your saving me the trouble, but I will be paid for it, for I claim it as part of the perquisites of my office; if you do not do it, I am bound to do it; and though you do it, you shall not be paid, for I myself in the situation of accountant have a title to do it, have a title to be paid for it, and no man coming in officiously, being desired by the ex-paymaster so to do, shall deprive me of the perquisites and salary of my office, merely because he wishes to save me a little trouble.

In this case, what is strongest of all, Mr Bembridge, acting in this business, is applied to, from time to time, as appears in the evidence; your lordships will recollect how that came out; for in fact, as has been just now stated by the papers, your lordships see here has been a failure of the production of this sum to the public, for now many, many years, it was unseen and unsuspected, on account of the negligence of these officers; there had been an order, in consequence of an act that had passed, for bringing in balances; orders were sent by the solicitor of the treasury, to the sub-accountants, to pay in their balances; the necessary consequences of that order would be, that all those men, whose sums constitute those items, that make up, in the whole, 48,000*l.*, would be instantly applied to; the answer they would have returned would be this: why, I owe the crown nothing; I paid it in to the paymaster two, four, five, six years ago, what do you come to me for? Finding this, and knowing this, for the first time these omitted articles are introduced, amounting to this large sum; as soon as this is seen, Mr. Bembridge is called upon himself, to explain this; and, to be sure, my lord, there may be some censure, there has been some censure thrown out upon the subject, which, if it lights upon any body, in my apprehension, ought to fall upon me; for certainly, if the evidence was what has been represented, reprobated particularly as it was by my learned friend Mr. Scott, I think, as a public prosecutor, some degree of blame falls upon me; but I cannot say that I feel much upon that head: what was the consequence of this? They find the sum of 48,000*l.*, that ought to have been returned years ago, and it is now, for the first time, introduced; why, says he, Mr. Bembridge, how comes this about? Pray were you aware, at the time that this final account was sent, and as a final account to the auditor of the imprest, that none of this ought to be included? Yes; I was perfectly aware of it.—Why, had you any notion that any of the articles were of that doubtful nature, as to make it questionable, whether they ought to be inserted or not? Not the smallest doubt about any of them.—Why, then, how came you to do it? Why, I left it to Mr. Powell, and I thought but little about it; besides, I considered the account as not finally settled. That is his answer. Now these questions, and the answers given to them, are stated, truly, by my learned friend Mr. Scott, as more like the proceedings in the inquisition than any thing that has happened in modern times. I formerly read the history of the proceedings of that court, and confess I was much surprised to find this assimilated to them, for it is the case of the conduct which every private man, in consequence of the duty owing to himself, to his friend, or the public, either would, or could not but have pursued in the like case. I am perfectly sure, that if my learned friend had had a servant whom he had found reasonable ground to suspect had purloined any thing, he would have said, how comes this? Did you know that my things were in your box? Yes; I knew it very well. Where is there any thing very oppressive? If Mr. Bembridge had been won upon by any insinuation; if he had been seduced by any artifice; if he had been cajoled by any promise; if he had been intimidated by any power; then I should have thought there would have been matter of imputation on the proceedings in this inquiry; but there was nothing of that sort. The question was asked, how comes this about? and he tells them, why, I know that perfectly well. It amounts to this; I do not pretend to have been active in the discharge of my duty; I know I did very wrong; I had some little leaning to a brother officer, and trusted Mr. Powell would see it all right in time, and, in truth, I was perfectly well aware, that

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when I did it, I did wrong, when I did not do it, I omitted to do my duty. It seems to me it is not possible for any mortal man, to produce evidence in any case more decisive, that the duty was not performed; equally decisive at the same time, that it was not performed, voluntarily, knowingly, and with the most thorough consciousness that, at that time, he was doing wrong.

My learned friends seemed to intimate that it was but an offence of omission at the most, and therefore was not very criminal and deserving of very severe punishment. I confess, myself, that it strikes me, that in any state of a country, but I am sure in the present state of our own, this sort of thing cannot be treated as a light matter. It was observed, and it was observed very truly, that Mr. Bembridge had an exceeding good character, as ever man had: my lord, I never heard any thing against it, but this fact; and I should be very sorry to deprive him even of that consolation to his mind, that may arise from the consciousness, that in every instance of his life, except this, he may have deserved the good opinion of the wisest and the worthiest man in life; that may be a great satisfaction to him, but it is no argument to the justice of a country, upon a matter clearly made out by evidence, that my learned friends hardly attempted to observe upon: they did not deny the accuracy of the representation, Mr. Bembridge does not deny it, I will venture to say, that he would not. There is an affidavit, I find, but he will pay a great deal more attention to the character he has hitherto had in life, than to say, that (however well he behaved) after the evidence in this case, he could think, in his own mind, that he had behaved well in this instance; it is impossible. Then, this being a fact undoubted, and confessed by himself, proved beyond a possibility of doubt, Mr. Bembridge has received, in his pocket, for this very thing which my friend says is a non-entity, which nobody can tell what to make of, —an accountant is nothing at all, he is here to-day, gone to-morrow, verbally nominated, verbally dismissed, is entitled to no profits, and liable to no duties or obligations.—Mr. Bembridge, in a paper which was given in evidence, in which there are cravings for all the business done on the score of all these accounts, naming all the officers, with the particular sums annexed to each, and signed by himself too, there is to the cashier, Mr. Powell, 2,650*l.*; accountant, Charles Bembridge, 2,650*l.* signed by himself; and then go through all the clerks to the lowest clerk in the office, and they divide the sum of cravings among them; in that proportion this 2,650*l.*, was paid for this very thing that was not done; so, it is plain, that he received this sum for settling those very accounts, upon which he now rests his defence 'I did not settle 'them; I have been paid for them, it is true; 'but I never did settle them; I was not bound 'to settle them; I have no duty; am a mere 'servant; in no public responsible situation or 'station at all; therefore, though I did pocket 'this money, yet, I neither admit to have any 'obligation upon me, nor is this any evidence 'that I had any obligation upon me to do this 'act;' that is too much, I conceive, to be heard in any court of justice.

Mr. Erskine, in arguing for this gentleman, said, 'I do admit that the paymaster may be 'guilty of a great offence, indictable, in appointing negligent people to do the work.' Why, my lord, if that be so, and to be sure, if he did it knowing that they would be negligent, he certainly would be indictable; but it would be a strange thing to say, that a man should be indicted for appointing a negligent person to do a public duty, and that the very person, himself, who neglects to do the duty, and is in the office and station, should not be indictable for not doing it; that would be a singular proposition, that a man put into the office for doing it, stating himself to be that officer, and that person shall not be punishable for not doing that duty that it was incumbent upon him to do, when another man should be indictable for ordering him to do it, if he omits to do it; and admitting that, seems to me to be admitting a great deal more than is necessary for the maintenance of this prosecution.

My learned friend, stated, I believe, in one part of his argument;—but I am rather inclined to believe I misunderstood him;—I thought he meant to state, that if any one of these counts were not sustained by proof, that this not being good in point of law, that this being a general verdict, the whole prosecution would fall to the ground. I take the contrary of these propositions to be perfectly clear; I have always so understood; I shall not cite any cases or authorities about it, because I take it to be a settled principle, there is good reason why it should be otherwise in the case of a civil action, where I take it, that if there are a number of counts—

Lord *Mansfield.* I have always doubted that.

Mr. Just. *Buller.* It is only in one species of civil actions; I don't take it universally so in civil actions; if it is an action upon the case where you can recover nothing but damages, it is upon this ground, because, if a general verdict is found, the Court cannot take upon themselves to say upon which count the jury have given those damages; but, suppose an action for debt, where each demand is specific, and there is a verdict, if four or five counts are bad, they may give judgment upon the rest.

Mr. *Attorney General.* I have known it in cases of slander, where one count has been thought not to be actionable; if there is a general verdict, it is conceived, if one count is bad, all the rest will fall to the ground. I should rather have thought there was more reason in this, that a general verdict, which

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finds the whole, finds all the parts, and if there are any of the parts good, the party shall have his remedy; I should have thought it would be more reasonable and sensible so to argue: but in criminal cases I take it to be good, the proposition involving no more than this, that this gentleman was in a public station, which is proved, which he has not denied; that it was his duty to do it, which he has not only said, but sworn that he did not do it, which is confessed by himself; and that it is a matter of public trust and confidence, because it respects no private man; the paymaster cannot appoint him as a private gentleman, it is derived from his public office, just as much so as any officer your lordship would appoint in your judicial character here, which could not be appointed in your personal character, if the judicial character were at an end. So it seems to me, there is no difference between the one count and the other, that this man being in a situation, to which a public duty is annexed, has not done it, but has very wilfully and injuriously neglected to do it.

Your lordship desired the whole case might be gone into, that they might offer what could be in mitigation, as well as on a motion for arrest of judgment, and a new trial. I have always thought when a person has been tried before a Court and a jury, and comes up for judgment, that it is not a very becoming thing for the officers of the Crown to press for any specific punishment; I believe, in former times, it was done; there was a good deal of indecorum when it used to be, I mean in very bad times and very remote ones, when the judgment seemed to be little more than what the Crown officers prayed; but that, thank God, has not been the case a great while, and I am persuaded, from what I know of the Court, and what I know of myself, that the criminal is, for the public as well as for himself, in far better hands in the court, than in any other.

Your lordships know what sort of an offence this is; of how dangerous an example; and what an encouragement it will be in a country that has offices out of number, and duties as various as the stars of heaven, vastly complicated and extensive, and of various importance to the nation, if an offence, to this amount, were either to meet with impunity, or with a trifling and small animadversion; it would certainly be a great encouragement to people to do the like; and if it were, it would operate to prodigious burthens upon the subject, and in the end, to great oppression, and perhaps persecution to private persons.

What your lordship may think to do with the gentleman, I cannot say, nor have I any wish about it; I am persuaded, your lordship will do what you think right; and I am sure nobody in the world, will conceive that there can be a tribunal where that right is more likely to be seen, to be fully discovered and acted upon, than here; what that may be, I submit to your lordship, in general, praying the judgment of the Court.

Sir *Thomas Davenport.* I am, of counsel on the same side; I think it my duty, to state to the Court, any observation that occurs to me as essential in this prosecution; and, if I rightly understand the objections, and the form in which they are made, the first is, that Mr. Bembridge is no officer accountable at all, but if he was, that the account was not closed, not finally closed, and, therefore, this information is not made out; but, thirdly, if he was an officer, and if it were contrary to the duty of his office, and a closed account, yet, it is not indictable, and therefore, not liable to this prosecution by information.

As to its being an office, and he being the officer, as these matters are involved in the same question, I would only state to the Court, the first description of himself, and his office, upon oath, under an act too, as it was said in the case of Leheup, that he became a statute officer in the case of lottery-tickets, that it was his duty, under that act, to have done directly contrary to what he did do. There were commissioners, by an act of parliament, appointed to examine and state the public accounts of the kingdom; they cannot take, examine, nor state the public accounts without going to the officers, who are the sub-accountants, or the original accountants; they go to the pay-office, the first person is Mr. Powell, as cashier; then Mr. Powell, as cashier, upon his oath, gives them the account to enable them so to examine, to take and state to parliament, and to the public; and the next person they come to is Mr. Bembridge (this is under act of parliament too) the title is, 'The examination of 'Charles Bembridge, esq.; accountant to the 'paymaster-general of the forces;' when he is examined, he says, I carry on and make up the accounts of the paymasters, after they are out of office, as well as those of the paymasters in office; the only obstacle to the final adjustment of the late lord Holland's accounts is, a dispute relative to the balance in the hands of Paris Taylor, one of his deputies, the final adjustment by him; why by him? Mr. Paris Taylor is the only objection; has this any thing to do with Paris Taylor, or with his accounts? Then there was no obstacle to the going on of this account, to the closing and finally settling of it, because the only obstacle was, what related to Paris Taylor, and this does not. Then he gives the history of his duty, and of the several transactions that ought to be comprehended in the performance of that duty, and the mode in which it can only be performed; the accounts of the paymaster-general are sent from the pay-office to the auditor of the imprest, to have all the payments inserted that came, at that time, to the knowledge of the auditor; if any doubt arises, queries are made against them; if they are not answered to his satisfaction,

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he surcharges the paymaster with them, and they are returned to the pay-office. Who had the charge? why, who was to have the charge? Mr. Bembridge, as accountant, and such articles of discharge as were not before inserted in it, are then sent to the auditor's-office for examination, after which, the pay-office again adds the totals and strikes the balance.

Now, let us examine the evidence to support this prosecution with this account, upon oath of himself and his office.—The account was sent to the office of the auditor of the imprest; it was examined by the auditor and his deputy; doubts did arise; queries were sent; they were not answered to satisfaction; there was a surcharge of 1,300*l.* odd, consisting of two items, a 600*l.* and a 700*l.*; it is sent again to the auditors-office for examination; when returned to the pay-office, they add the discharge, and such articles of discharge, not before inserted, which is sent to the auditor's-office for examination, the pay-office adds totals, and strikes the balance; then it is returned again; by whom? by Mr. Bembridge; for I call Mr. Colborne, his clerk and deputy, I call him Mr. Bembridge, and to be sure he is so. Then here is a man, who being no officer at all has an efficient deputy to do all the business; that is a curious sort of deputy to a man who is no officer; but that Mr. Colborne does add the total, he does strike the balance; then all the parts of his duty are described by him, as things to be done; he states that he has done those things; the question will be, how he has done them? Then that he is a public officer; that upon oath, he so states himself to those authorized, by act of parliament, to examine him as such; he submits to the examination as such; he afterwards sends all those different accounts, in the manner that I have before stated them, with the penciled balance, which is sworn to have been brought to the office by Mr. Colborne, his own deputy, who inserted articles in Mr. Colborne's, that deputy's own hand-writing; now, how came the inserted articles, how came they inserted totally out of their place? that is most certain, for they come between the first and the second item of the 1,300*l.* odd: they are forced to have a great quantity of new paper for the purpose, in order to separate those two items by a space large enough to admit the insertion of the articles comprising the 48,000*l.*; why, my lord, these were not one, two, three, four items, not relating to any one particular account itself, but several items, some large, some small, but a variety of items and articles, arising in no less than six different years. Then, my lord, these officers, for I now lay out of the case at present, only in describing him the officer, before the secretary to the treasury, because that comes upon the second part of it, whether this was contrary to his duty, whether it was wilful, and whether he knew, at the time, that the articles were omitted and ought to have been inserted, and that it was his duty to have inserted them.

Upon the second part of the case, I think that there could be no doubt, that the gentleman would not make a doubt, if he is an officer; and, I submit, after these assertions of his, that it is impossible for him to say he is not the officer, or for those who speak for him, to say, that he is not the officer who has thus said; he is before the public commissioners appointed to see that the public were not defrauded and cheated; the object of this omission being to defraud and cheat the public, and the items are produced and brought in, upon a circumstance that happened, which would have led to a detection, —it was impossible any longer to keep back the omission, which circumstance was the resolution of the lords of the treasury, to call all the sub-accountants with their vouchers and their payments. The moment these sub-accountants had come with the items that composed the 48,000*l.*, the moment those items had been delivered in, this account must have been discovered; the moment he knew, which, is not only from his admission to the treasury to a gentleman whose testimony I should conceive could not be doubted upon that, head Mr. Rose; but it was impossible to be otherwise than known to him; he had the books in his hand; he could not do his duty, as an accountant, without seeing these articles; it is not possible that he could, having the books in his hand, have done his duty without seeing these articles, it could not be an oversight, it is proved to have been within his knowledge.

My lord, I am very free to own, that if this had been an omission, though he had passed the account, by blunder merely, and that the articles had never come to his knowledge, God forbid, that that should be the subject of a criminal prosecution against him; what it might have been for a neglect, and how far that neglect might have been culpable, is quite another question; but this is no neglect, it is a wilful withholding and keeping back that information which he was bound, by act of parliament, to give upon oath, to the commissioners of the public accounts. It is not merely a neglect in not doing it, though for myself, I should be very loth to give up that idea, that any neglect of a public accountant, or to say, that I was negligent merely, or forgot it, I should, for one, contend that that would be indictable, and the subject of an information; the degree of neglect, the manner of it, how it arose, are all matters of exculpation or of aggravation; but here it is not neglect, and whatever the motives are, to which it is attributed, friendship or gratitude, or whatever it is, it was said, Mr. Bembridge has, and, I believe, no man had a better character, or was more highly intrusted; just so much the worse, that character gives him a greater op-

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portunity; what, would they trust a man in such a way of business as this is, with a public loaded as this is, that this gentleman should be permitted to say a consideration, no matter how far affecting his gratitude, or how deep it went in his humanity to Mr. Powell, what answer is that in a public officer to the public, who ought to be more dear to him, who pay him to be honest, to tell them the truth? and he sends them in a false account; so much for the wilfulness of the transaction.

Then it is said, it is not an indictable offence. I do own that though I was infinitely astonished at the idea of his being no officer, after what we have seen and heard proved and sworn, but that if he was, it was not contrary to his duty; but, I am still more surprised to hear that if it be his duty, and this was contrary to his duty, that it is not an indictable crime, a crime known to the law, cognizable by the law, or by this mode of information. Why, is there a public principle better known here than, that this court has a controlling, superintending jurisdiction over all the nation, all the subjects of his majesty, in matters that concern the public weal? I know that doctrine has never been denied, and has been established over and over, and over again; and that the aspect, as the attorney general calls it, to the public weal,—but it has a great deal more than aspect, it has a real concern in the public weal, one way or the other, whether taxes are to be laid, to the amount of an omission of 48,000*l.* Is another million to be raised upon the public, and this money that would pay the interest of it to be embezzled, and is that no public offence? I cannot conceive upon what the argument is founded; I have no idea upon what the argument is founded; why it concludes, as all these things must do, to evil example; do not we know many, many cases in this Court, where even an individual is the mere sufferer, and yet where the public example, and the evil example is most certainly matter that would mix with the transaction itself, and would, most certainly, make it indictable? I need only quote the common case of a note, a bill, a bond, snatched out of the hands of the party, torn, or obliterated, and returned defaced, what, is not that indictable; and yet nobody actually suffers or loses by it but the party who is the owner of the note, the bill, or the bond? but it is not indictable to deprive a particular man of that which would be his benefit, but to deprive him in a way that is criminal: that cannot be permitted for public good, and for public example cannot be permitted. Why, what was the case of the six clerk, Wilkinson I think is the name, who, with the other five clerks, had entered into an agreement to divide their profits amongst themselves, and Mr. Wilkinson, pretending to look at this agreement, takes hold of it, and tears his name off, leaving the other five, and obliterates that part of it? He was indicted for it, and no doubt he was convicted for it. What had the public to do with the agreement of the six clerks? It was private amongst themselves; but is the great criminal jurisdiction of this country, that exists and resides in this court, to sit still and see such a fraud as that committed? The gentlemen seem to me totally to have forgotten all that relates to fraud; a private mischief is done, a private loss is sustained, but the fraud is the crime, and if that fraud is of a size and of a nature that goes to the bad example of the subjects in general, the circumstances I have mentioned of tearing and snatching away the bill, the note, and the bond, this example of the six clerks (it is in Vidian's Entries, 215); these all go to show, and to make up the principle. Then I come to another thing, which is certainly very curious; indeed I have no understanding at all to comprehend upon what the idea is founded. It was supposed that the receipt of 2,650*l.* created the duty; so that till he had received the money, the duty was not created; why, there is nothing to do after he had received the money; the duty was all before, for the performance of which duty he is paid, and for the neglect or wilful omission of which, he is to be punished. To say that that creates a duty, and that that makes a different species of offence,—which the gentlemen seemed to admit would be a species of offence, and, perhaps, indictable;—but it is a new species of offence, not upon this charge, or upon the face of this information; that was not at all the aspect that the evidence bore; it was part of the evidence to make up the charge: not only the giving it in, as an accountant, carrying it in penciled balance, authorized the auditor, and led him into a trap, to send it to the treasury as closed; you have not only done this, but you have taken your reward, and a pretty large one too, for this supposed duty of yours, what you supposed your duty; —give me leave to take it up upon that ground only,—that *he thought* it was his duty, it concerns the public, every body admits; then, if he had never had the appointment as an officer, but had been merely permitted to do it, and had thought it was his duty, and omitted to do it, in a matter that concerns the public so highly as this does, is that no crime indictable? in short, if it is criminal, it follows that it is indictable.

Upon these considerations, as it strikes me, it seems to me there can be no doubt upon any one of the three heads, whether he is an officer, whether it is contrary to his duty, and if it be, if he is indictable.

The next consideration is, the punishment, which, as my learned friend the attorney-general has stated, is better in the hands of the Court, for the public, for the criminal, for every body; all that I can say is, that it is not an error, it is a predetermined act to screen somebody. I should be glad to ask the question, who is punishable if Mr.

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Bembridge is not? Mr. Powell was not certainly, for he did not send in the penciled balance, though he enabled Mr. Bembridge to do it; is the paymaster criminal? no doubt,—he must make up his account the moment the error is discovered; then here is a crime committed and nobody punishable.

Lord *Mansfield*. What do you say to the attesting the former account?

Sir *T. Davenport*. I apprehend, if it had ever got to the length of attestation, I submit, that the account, *quoad* Bembridge, was closed, that it was in evidence particularly——

Lord *Mansfield*. What I mentioned is this:—This final account was not attested; if it had been attested, it would have been attested in the very same words—"A just and true account, to the best of my knowledge and belief;"—In case the attester knew of these charges omitted, how can the account be just and true when there are great sums left out in the deed he signs?

Sir *T. Davenport*. I have stated that this information charges Mr. Bembridge to have done, in the prosecution of this fraud, as much as in him lay; now his duty goes no farther, nor his office.

Lord *Mansfield*. I want to know if there is any salvo that justifies such an attestation? the use is to be made of it afterwards; but in the course of your argument, whether there is any salvo (it will bear a great many ways), to justify such an attestation?

Sir *T. Davenport*. I was going to state, first, the facts as I understand them. I understand that the accountant in the office, goes no farther than the close of that account,—if I may be permitted to use the expression,—the close of the account, to authorize the auditor of the imprest to send it to the treasury; that is the fact; when it comes to be attested, before one of the barons of the exchequer, the paymaster, if living, or his executor, if dead, and he has taken any part of that execution or burthen upon him, of inspecting the account, somebody must attest; I apprehend, the accountant does not attest; I conceive, that the account is closed, as far as this office, and the duty of it goes; I see most clearly that in the attestation of the former accounts of 1770, 1772, 1773, 1774, 1775, and in short, all of them that were attested, except the last account of 1764 to Midsummer 1765, that in the attestation of all of these accounts, no doubt of it, the omissions were made at the time that these attestations were made, and wilfully, by somebody, and I suppose that might be one reason why Mr. Bearcroft laid considerable stress upon Mr. Rose's ignorance of the time when Mr. Bembridge got at the knowledge of these omitted articles.

In a former part of my observations, I stated that it was impossible for him, as accountant,—for he was accountant during some of those years when the attestations were made,—that it was impossible for any body to go through the books, which were in his hands; and the power of an executor or any body else, to take them out of his hand, is beside this question totally; for they are left in his hands, he is to form the account out of the books, they are in the books, but he suffers the last account to go as the former had, and to go as far as in him lay, to the attestation; though the attestation might not fall upon himself; he permits them to go to the length of attestation, because though the account will not be passed, the moment it is allowed at the treasury, there is an end of altering that account: and though it might never have been attested, I conceive this crime would be complete in him to go as far as his office, his duty, or the duty of any man in the place in which he stood can go. He has done that too wilfully, withheld from the public items in all those books, in the former accounts, though not attested, and though not brought forward in this; and the parties attesting, were guilty of false attestation, from the moment of the first attested account; none of these were true; it would beget a prosecution of another nature, against those who signed such attestation; but if it be true that somebody else has warranted the attestation of the former accounts, if it be true that somebody else has warranted that attestation, it may be said, that nobody else is to disclose or to discover; I conceive, that to the end of the accountant's final account, that before the very last item of it is completed, at some part or other, those items should come in: if they had thought Mr. Paris Taylor's accounts were to come in, they should have stated it a true account, as far as they could go; but these accounts, in these attestations, were known by Mr. Bembridge not to be inserted, and here was a final close of lord Holland's account, whether it ever went the length of attestation; now, it never can have it, from the death both of the executor and the principal, it never can go to attestation; that crime can never be less, which, as far as it goes, in the man committing it, is complete, and complete without farther act done.

I conceive that it was equally the duty, in this account, to disclose errors, if I may call them by their milder name, but wilful omissions in the former accounts, that it was his duty to bring this forward, as much as it was to take the year's account from 1764 to 1765; that that was as much a part of his duty to bring forth the errors apparent upon the book, and which he knew; for, though he is not to attest within his knowledge, and those who have falsely attested that it is a true account, as to every thing within their knowledge, yet, this gentleman, when he delivers in this, *as all that came to his knowledge*, in lord Holland's account,—I contend, that it was as much his duty to bring them forward in the very last close of the account, up to

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the last minute in which lord Holland went out. In the course of the account, I see they carry on the account, in the form of it, a month or six weeks, or more, after the party had gone out of office; but they take it up at the end, and if there is the same space of time in the next paymaster, it is carried on to the next ex-paymaster, and so till the successor comes in. I submit, that it was as much a part of his duty, in the penciled balance of the account, to have brought forward all that he knew of error or omission in former books, and former accounts, respecting that ex-paymaster; that it was his duty to disclose to the public, the concealment; and not revealing that, makes as much a part of the crime, as if those items had happened in the very last year in which that account, so given in, comprehends the items of the particular space of time; I take it, that all that went before, as much goes into the final close and balance, and that knowing that it was so much his duty, and as wilful a transgression of it, as it would have been in omitting any one article or account in 1764 or 1765.

Mr. *Cowper*. Recollecting the many hours that your lordship has already hitherto sat in this Court, during the course of this term, and being apprized of the great load of business which still remains for discussion before you, and decision by you, I am aware that it becomes me, and every one else, to trouble the Court upon each occasion as little as may be; I shall not, therefore, detain your lordships many minutes upon the present occasion. When the motion was made by Mr. Bearcroft, I own I did not understand him as moving in arrest of judgment, upon the idea that if there was one bad count in the information—

Lord *Mansfield*. No, he moved for a new trial.

Mr. *Cowper*. So I understood; and that Mr. Bearcroft's objection is pointed in this way, but upon a motion for a new trial, where there is a general verdict upon an information, there must be evidence laid before the jury to sustain every count, and, of course, the most ample count in that declaration. I do not conceive that upon the question that is now before the court, there can arise any doubt whatever, in point of law, that the whole which your lordships will have to consider and to determine upon, will be, whether the information that is before the Court, has been well proved or not. When I find it charged in the information that the place and employment of accountant, in the said office, to the receiver and paymaster-general of the forces, guards, garrisons, &c. was a place and employment of great public trust and confidence; when the information charges Mr. Bembridge to be in that office, charges Mr. Bembridge with a wilful omission of his duty in that office, there can be no question before the Court, but whether these allegations are, in point of fact, made out.

My lord, whether it is an office, place, and employment of great public trust and confidence, will depend upon the question, What is the nature of the business of that office? Of that business, Mr. Bembridge himself has given an account; and he gave it at a time when there was no inquisition sitting to extort from him answers that might be turned to his prejudice;—the observation was made by Mr. Scott, and made with less moderation than generally distinguishes the observations that fall from that very learned and very worthy gentleman;—it was made at a time when there was not a conception of charging Mr. Bembridge with any criminality whatever; it was his own voluntary declaration; and though he does not say it is his duty, and it seems to me an abuse of words to argue from the want of the introduction of these words, his not saying it is the duty of his office, when he is giving an account of his office;—what is his duty? why, that which he does;—he is not in a conversation over a bottle at a table, giving a person a history of his life; he is giving an account to the commissioners, who are judicially inquiring of his official character; and then he says, he carries in and makes up the accounts; can any man of common sense, interpret these words in any other way than this, it is my duty to make up these accounts? Others, it has been said, might have done them; I heard an observation, yesterday, by the Court, and which decided upon the business; where a man is charged upon penalties, if a man does not know what his own description is, who should know it? The printer from Manchester yesterday, had entered himself as a printer; your lordship said, I do not know that there is evidence before the Court, that he is a printer; but I take it for granted he knew it himself, and I will not take upon me to be wiser than he was. This is Mr. Bembridge's own description of his office; and I beg to take the liberty to ask, if it will become your lordship to say he did not know what the duty of his office was?

Another exception to the good sense with which that gentleman always talks, as the other was to his moderation, was this, *but if he had said it had not been his duty, it would not have been evidence for him.* I take it, a man's saying he is not guilty, which he generally does, when he pleads at the Old Bailey, is not evidence of his innocence; yet, when, without any improper circumstances inducing him to do it, he confesses himself to be guilty, it is taken as evidence against him. I see, added to the instances the attorney-general produced, in 12 Modern, 434, an information against a gaoler for permitting a person to escape who was confined upon a writ of *excommunicato capiendo;* there, the conviction goes against the gaoler, because the injury done is done to the public. Either an information

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against the gaoler for a public offence, in the case of a man escaping for a crime, or an action at the suit of the party, if he was detained for a civil suit, would unquestionably lie.

Who appoints to this office?—The paymaster of the forces; and the appointment is verbal, therefore it is not a public office! The highest officers in the kingdom are appointed by a word, and dismissed by a word; there are many offices to which the very word alone appoints, where there is not a warrant, much less a patent,—for instance, the secretary of the treasury. The delivery of the great seal, I believe, appoints the lord chancellor; there is no appointment, or patent whatever of appointment; the taking that instrument from him, is a discontinuance of his office. There are several others I could name, if I were to think much of them, where the appointment is verbal, and the dismission may be instantaneous.

With regard to the business of the attestation, to which the Court alluded, I cannot conceive it is any abatement of Mr. Bembridge's criminality, upon the present occasion, that the account was not, as they call it, closed; every degree of criminality that Mr. Bembridge could incur was incurred at the time when he returned this with the penciled balance; and the paymaster acting upon the faith of Mr. Bembridge's accuracy in his office, would then have solemnly sworn to the best of his belief, because he so received it from Mr. Bembridge, that that account was a perfect and a true one.

This is the situation in which Mr. Bembridge stands. As to character, a great deal has been said upon it; a very excellent one was given Mr. Bembridge at the trial; I am sure, no persons concerned for the Crown wish to deprive Mr. Bembridge of any degree of comfort which he derives from the good opinion which the very respectable persons, who appeared for him, entertained and expressed upon the trial, much less to deprive him of the greater comfort of being conscious that he deserved that good opinion. If a person is never trusted, he can never be guilty of a breach of trust, it is that character that enables him to commit the crime, and I have heard it said, as a common profligate observation of colonel Charteris, that he would give 20,000*l.* to be thought an honest man, though he would not give twenty farthings to be one.

Lord *Mansfield.* His money could not have been worse laid out, for he would have lost his good character in half an hour afterwards.

Mr. *Cowper.* It went to the guilt or the innocence of Mr. Bembridge; the jury have judged upon that guilt or innocence; and I submit, the crime is well charged in the information, and that the evidence has sustained every material part of that charge; and that there is no ground, whatever, to have a re-hearing of that business. As to the measure of punishment, the Court I am sure will, in their wisdom, proportion the punishment to the criminality.

Mr. *Wilson.* My lords, I am on the same side. There must be some officer or other to superintend, settle, and adjust the ex-paymasters' accounts; it is a duty of the first importance to the public, and I conceive that man may be fairly taken to be the officer who undertakes the duty, and is paid for the performance of it; and if he be the officer, it is his duty to do this matter truly; if he does not, the public are the sufferers, and unless he is punishable by indictment, he is not responsible in any way at all; for there is no person of whom I know, who can maintain an action against him for not doing this duty; if he is not punishable by indictment if he neglects the duty, he is not responsible and punishable at all; and I conceive that having undertaken and been paid for it, it would be a solecism in our law, if he would not be punishable, in some way or other, if he does not do it.

I will trouble the Court with a word or two upon what has fallen respecting the prior settling of the former accounts. This is clear, that Mr. Bembridge, when he was examined, does not say, 'these articles ought to 'have been in another account, which I had 'nothing to do with;' but his answer is, 'I 'thought this account was not yet final;' and another thing, the accounts respecting Mr. Paris Taylor, and that dispute, were several of them prior to several of the previous settlements, and they were not put in, every body knew they were not, and of course I conceive, that the prior settlements are to be understood, both they and the prior attestations, thus; all the articles that are in this account are true, not that the party who attests means to swear that every thing is inserted, because, in so large and monstrously complicated ooncerns it is impossible to insert every thing; and yet accounts must be given in, from time to time, that the paymaster may show in what manner he has laid out such and such sums of money; so that when he attests this account, he attests that every thing he has stated to have been paid, has been paid, but till he comes finally to settle and close it, it is not necessary to——

Lord *Mansfield.* The last attestation is *verbatim* the same; the form of the office is so.

Mr. *Wilson.* I take it, from the nature of the subject, where it is the last it must include every thing.

Lord *Mansfield.* I take it, it is not; the stating is *verbatim* the same.

Mr. *Wilson.* I take it so, but let it be so; where it is the last, it must include every thing, or it will not be a full, true, and perfect account.

Lord *Mansfield.* The words are the same.

Mr. *Wilson.* But the nature of the subject

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may vary the construction of them; and if it is so understood in the office, it does vary the construction of them, or otherwise it is not possible to say that these people have not been guilty of perjury, and the others knew it and understood it, stood by, and were acquainted with it; one can hardly suppose, that with men of any description, in any office, that would be the course of the office; and therefore, in order to explain it at all, it seems to me it might be done in some such way.

Lord *Mansfield*. You do not understand it; there is no such thing in the office; the question is, whether there is any salvo? For, to be sure, a just and true account can never be sworn, to my knowledge and belief, if I know of 100,000*l*. being left out.

Mr. *Wilson*. Not unless it is understood by the party.

Lord *Mansfield*. I want to hear if there is any salvo upon it; but, in the course of the office, the words are the same in every one, and no other; it requires precision, not imagination; but the attestations in every account are all in that form, and it is very easy to add new items; the accountant does not know of them, then there is no objection, it is very right; the objection arises from this, if I know that there is a vast sum omitted, how can I swear it to be a just and true account? It is like ———'s defence, who swore to one side of the account; he swore the man was indebted to him, and justified by one side of the account being the debt and not the balance.

Mr. *Wilson*. Unless, to be sure, there be some salvo, and some understanding about it.

Lord *Mansfield*. It was from the other side I wanted the salvo; it is not your business to point it out; but I have particularly from the exchequer, and the office inquired, and the form of attestation is exactly the same; if there is any gentleman here who knows otherwise, he will do well to set me right, if I am not rightly informed.

Mr. *Wilson*. These are all, I understand, attested by the paymaster.

Lord *Mansfield*. They are attested by the debtor; if the real debtor is dead, they are attested by the representative; and any body can attest, you observe, for it speaks only to knowledge and belief; the only question is, whether it is directly in his knowledge, or not within his knowledge?

Mr. *Wilson*. In this case, these articles were known to Mr. Bembridge; there is no doubt about that; there is no doubt but that they ought to be inserted in some account or other; there is no doubt but that Mr. Bembridge thought they ought to be inserted in the account, because, when an alarm was spread that the sub-paymasters would be written to, they are inserted in this account. If, my lord, it would have been any excuse to Mr. Bembridge that they ought to have been inserted in former accounts, there would have been no occasion to have inserted them in this last; indeed, his excuse would have been, when questioned upon this matter, 'You are 'now talking to me about transactions in 'former times, I have nothing to do with 'them.' He says no such thing; 'I consider 'the account as not finally closed;' and yet, in another part of the evidence at the trial, it did appear as if Mr. Bembridge himself considered as if the account was finally closed; he said to some of the witnesses, upon application to him, 'I can do no more in it, you 'must go to Mr. Powell;' that imported Mr. Powell's being the person to attest, that he had fully done all that it was his duty to do. Now, that was not so, because he had omitted to insert those several articles, which ought to have been inserted in the account, and were afterwards inserted; it seems to me, therefore, that there can be no doubt at all, that if this be an indictable offence, Mr. Bembridge is fully brought within it by the facts which were stated, and by his own admissions.

Mr. *Baldwin*. I am on the same side; I am equally apprized, as Mr. Cowper was, of the business of the Court; I shall make the like promise, and hope I shall perform it better than he did.

On the motion for a new trial, Mr. Bearcroft alleges that this was not Mr. Bembridge's duty; in answer to which I say, that there was evidence before the jury, at the time of the trial, that it had always been done by the accountant; there was also evidence before the jury, that Mr. Bembridge had admitted upon oath, that it was his duty; upon this, the jury decided it; and I hope your lordship will not think now, in this case, where the jury have decided, and decided properly, that there is any ground for a new trial.

As to this, relative to the attestation, nothing was said about it at the time of the trial; the import of it, if I understand it, is this, that Mr. Bembridge has done wrong to permit other persons to attest former accounts; this last has never been attested at all.

Lord *Mansfield*. The former accounts were attested before Mr. Bembridge had any thing to do with it.

Mr. *Baldwin*. I don't understand the nature of your lordship's objection, and it does not seem to me, that any body before me understood it much better. I can only say this, that it does appear to me, that this is a distinct idea, that attestations have nothing to do with it, this has never been attested, and therefore that the crime has been substantially and fully proved.

REPLY.

Mr. *Bearcroft*. I hope I am not mistaken when I suppose, as I do, that I am in a more than ordinary manner entitled to ask for, and hope to receive the particular attention of the court, as to what I shall submit in answer to

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the gentlemen's arguments. The title I plead to that is the course which this proceeding has taken; I don't feel the least inclination to complain of it, it is strictly regular, but it is not common; the effect of it has been unfortunate indeed to my client, for instead, as in the ordinary way it would have been, of his having the advantage of the observations of all and each of his counsel, in answer to the counsel for the Crown, he can claim the assistance of only one, and that the least able.

Lord *Mansfield*. He will never lose while it is in your hands.

Mr. *Bearcroft*.—In a cause too, where all the counsel for the crown have tried, as well as they can, the points of their daggers against the defendant now before the Court for judgment, except indeed the last of them, who in a little scuffle seemed to quarrel with and wound one of his friends; I am rather sorry that that fell upon the gentleman whom it did, because I have an obligation to him which I don't feel to the rest, which is, that he (Mr Cowper) did understand my objection just as I made it.—I trust I explained myself to the Court so that they comprehended it, and it was this,—not so absurd a one as to object to the judgment of this Court, upon an indictment containing several counts, because one contained no criminal matter; but my objection was this, in which I am serious, and I wish for the sake of the profession, that it may be understood whether it is founded, aye or no. My lord, I say this; this is an information containing three different variations of a charge of one transaction; I admit the verdict is general; it must be taken, therefore, that the jury have found the defendant guilty of that charge, which, as Mr. Cowper very properly called it, is the most ample. I say, that after your lordships shall have pronounced judgment (if that should be the misfortune of my client), in this case, whoever looks with a lawyer's eye at this record, will have a right to say, this Court has pronounced this discretionary judgment upon the ground that the jury have found the defendant guilty of this first count. I will put a familiar instance that happens in practice every day—an indictment for false imprisonment; what is the mode of drawing it constantly? the first count charging an assault and the false imprisonment, the second count charging the simple assault; but if the evidence does not prove the false imprisonment, but does prove the assault, how is the verdict taken? negativing the first count, not guilty—and finding him guilty upon the last—the assault only. Why is that? because if it was found generally, it must be taken that upon the face of the record, the party was found guilty upon the charge of false imprisonment, whereas, the evidence was not so. The conclusion I would draw from that is this, that it is of great importance that men should find the law of the land in the safest and the best repository, calculated by the constitution to preserve and hand down to posterity the records of the courts of common law. I say therefore, that it is of importance to see whether or not the verdict by a jury, being taken, that the defendant is guilty of all the charges that appear upon the face of this indictment; whether your lordship is warranted, by the report of the evidence, to find it so. I conceive, therefore, I have a right to put this question to the Court; does the evidence support the charge which is found by the jury, as stated by the attorney-general in the first count of the information? for I am not so absurd as to be contending here that, because in point of form it appears that there are three different offences, that therefore there must be evidence to support three different offences. In favour of the defendant the Court most undoubtedly will say, this is what is the foundation of different counts, universally in indictments and informations; it is the attempt to state the crime in various ways, because the transaction, when it comes out in evidence, may bear various complexions; therefore it is, that in indictments for forgery I have seen (though I have always been sorry to see it, I think it is carrying it to too great a length), no less than twenty counts for forgery, and the variations are, an indictment for the actual forgery, to defraud A; the immediate variation upon that is, for publishing it, knowing it to be forged (which is another offence equally capital), with an intent to defraud A, the same person; but the nature of the transaction proves it tends to defraud several different persons, and therefore a man who is careful in drawing those indictments, varies those two charges, which are themselves different from each other, as often as the case, in fact, may be construed to tend to defraud any other persons whatever. What is the consequence of that? I am ashamed to say what the practice is, though I know it is so, for it is a slovenliness in the profession, which, in my apprehension, it is high time to leave off. I know very well, that the practice upon those trials even for life is, that if the jury say they find him guilty, generally, they enter the verdict so generally guilty; whereas, the judge who takes the verdict, the counsel who are concerned for and against him say that the point put to the jury is, perhaps, whether he is not guilty of the publication, knowing it be forged, where there is not a colour to say he is guilty of the forgery: then, perhaps, the question will be asked me, Why are you so slovenly? Why do you take the verdict in that way? the only excuse for the counsel for the prisoner in suffering it to be done, is, that he has looked at the indictment, and sees clearly beyond all doubt, that every one of the counts is sufficient, in point of form, to contain a capital offence, and then it matters nothing with regard to the rest. I cannot account for the practice in any other way; but permit me to suggest this for the sake of other practi-

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tioners it will be always proper for the counsel to ask the jury, What do you find him guilty of? Is it of the forgery or publication to defraud A.? Take it *guilty* upon that count, and *not guilty* upon all the rest; the advantage is this, it may turn out that that count, upon which only you are entitled to enter the verdict, may be wrong in point of form.

I feel a repentance, in my own mind, that I sometimes have not done it myself; I make this observation by way of meeting any answer that may be attempted to be given to me, with respect to the practise; I know the practice is so, but it is slovenliness and inattention; and your lordship has repeatedly said, when motions have been made here in arrest of judgment, in an action upon the case for damages, in which there has been a general verdict, 'here is a wrong count; why did 'not you look at the declaration, and take it 'right at the time? The counsel are to blame.' I trust no argument, therefore, from the practice will have any weight; but that the principle and the law of the land will be looked to, which is this, that if I find upon the indictment, a general verdict, and find a charge in any one count that imports criminality, I have a right to object to the standing of that verdict, if I can show the Court that there was not sufficient evidence to support that count.

It is in that way therefore I stand, making my ground of objection to the present verdict, to the first count: your lordship will be so good as to understand me; if I have not a right to do that, for God's sake, how came it to be the practice of that able hand that drew the present indictment, in this instance, to vary it at all? It is for this reason, he conceives that a circumstance that is stated in the first count, may not be proved, therefore he leaves it out in the second; he conceives that two or three circumstances in the second may not be proved, and therefore he leaves them out in the third.

I will suppose therefore that I have made this my ground, that the charges, especially those that I shall lay my finger upon in the first count, must have been supported by the evidence given, or that this verdict must be set aside. Now, I will tell your lordship, in a word, why it is that I labour this ground; it is this; I say it is an important, essential allegation, the foundation of all the rest of the superstructure of the criminal accusation here, the allegation of the nature of the duty of the place of accountant, and that is stated in these words;—'The place and employment of ac-'countant, in the said office and place of re-'ceiver and paymaster-general is of great pub-'lic trust and confidence, touching the making 'up the accounts of the receiver and paymas-'ter-general, and the adjusting and settling the 'same with the auditor of the imprest.' Now, is not this the foundation of the whole charge? undoubtedly it is, in point of fact; for all the evidence tends to show this (and it must have been successful to show this, or it proves nothing at all against my client), that it is, and was before Mr. Bembridge was born if the office existed before, the duty of the person in that station of accountant-general to the pay-office, not only to settle the accounts of the ex-paymasters, but to have to do with the auditors, touching the settling of these accounts; for it is an essential part of the allegation, not only that he is to do it as a trust and confidence from the public, touching the making up the accounts of the paymaster, but touching the adjusting and settling the same with the auditor of the imprest. That stands in the first count. Now my lord, let us see whether I am not perfectly right in making my objection,—not in arrest of judgment, for I never did; I know perfectly well, if I had made my objection in arrest of judgment, I must have taken every thing that is charged here, to be proved in point of fact, most undoubtedly, the objection, if well grounded, goes to a new trial,—and to say this, that the charge which stands in the first count, is not supported by evidence.

My lord, a great deal has been said about Mr. Bembridge's examination, which has been given in evidence, and said with a degree of cheerfulness and wit, which I am glad to see, it betokens good humour in the prosecutor, which I trust will rise yet higher, if any sentence is to be pronounced. It is said that his evidence is decisive against himself, because you may believe what a man says of himself; and it is thought to be a good joke to conclude a man, that he never shall be admitted to explain what he says, but it shall be taken, as he puts it, against him, though whatever he says for himself shall not be taken for him: This is a harsh and severe rule and ought not to be extended by practice; but it is extended indeed, if it is to be carried so far as this, that a man shall not be permitted to explain his own words, that he shall not be permitted to show, if the fact exists, that plain as he has stated the fact, though it is against himself, it is untrue, and it is a mistake.

Estoppels, in criminal law, I never yet met with; I allow the force of an observation against any man who admits a circumstance against himself; I feel the strength of the presumption that arises against him, but, like every other presumption, it will admit of explanation; and I beg leave to say, that if the case exists, that a defendant had in the broadest and most incontrovertible terms, stated a fact which decides that he is guilty; yet if he could prove, in point of fact, that that is not true, that he should be permitted to do it; it is a burthen, I admit, but it may be done in some cases, and I trust it will be done in this.

I am not so absurd as to be contending that when that examination is read, it does not at first import a very strong idea that he is stating the duty of his office; I agree that it does; but if it will bear another interpretation, and the evidence shows that that interpretation is

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fair, are not every man's expressions to be taken, when you are about to charge him with a crime, in the milder sense? It is perfectly true that he has to do with the paymaster's accounts;—and your lordship will see if there be occasion for me to produce an affidavit, which I trust there will not, in a subsequent proceeding, if your lordship should be against me upon the present proceedings;—and it appeared in evidence upon the trial, that, out of all doubt, he had to do with the ex-paymasters' business, for there is a great deal of business which, in the nature of it, after displacing the paymaster, must be carried on by him, and by his agents; but he is no longer paymaster; the accountant who continued in the office, under the new paymaster, is no longer his servant; if therefore he does the business, keeping the accounts of the staff-officers, and other matters, not settling the accounts, but going on with the business, which is actually carried on by the ex-paymaster, it is fit he should be paid by the ex-paymaster; in describing therefore the duty of the ex-paymaster, he might, properly enough say he goes on with the accounts, and does the business of the ex-paymaster; it seems to me to import no more than that.

Mr. Justice *Buller*. Do you state that from the first count, as to its being an office of great public trust and confidence, touching the making up the accounts?

Mr. *Bearcroft*. Yes. While I am considering this evidence, that is given against Mr. Bembridge, out of his own mouth, I do again complain of its being given; I will not use that reprehensible word, the inquisition, for which, according to my memory, I am answerable; yet, my learned friend is attacked about it;—but I do say, that I verily believe that, if the examination had happened since April last, whereas it happened before, the learned gentleman who conducts this prosecution, would have felt that he had somewhat more power, and somewhat more jurisdiction over him than he thought as the case was, and that he would, in his own judgment and propriety, hardly have produced it, and I will tell your lordship why. It is true he was examined in a mode of inquiry in which it was not improper, perhaps, to examine him; but it cannot be doubted that the persons who did examine him, saw that the questions that they put upon that occasion, tended to criminate the person under that examination. What does your lordship do in that situation? What does every judge do, even down to the lowest justice of the peace, even to committee men upon elections, whenever a question of that sort is asked of a witness?—'Stop; understand 'that you are at your own discretion whether 'you will answer that question or not; you 'need not accuse yourself;'—the law of England is, that no man is bound to accuse himself, and the man who administers that law best, always takes care to give that caution; therefore, evidence got at in that way, I am sure my learned friend would not wish to produce. Take it in another line—were the proceedings, as in truth they were, for the crimination of Mr. Powell? was not there an idea, that Mr. Bembridge was in the nature of an accomplice to the guilt? Did we ever, till to-day, hear of evidence extracted from an accomplice, given against himself?

My lord, these are hardships; I do not object to them in point of competency, I cannot do it, I could not do it at the time; but I claim this consequence from these observations, if they are founded, that they entitle me to ask of the Court to be still more careful and more attentive to construe those expressions in the mildest sense that can be; I would make use of them only in that way.

I was a little surprised, and I confess somewhat hurt, when Mr. Attorney General, in his strong way said, 'I do not believe that the 'doubt of this being an offence, in point of 'law, ever suggested itself to any human 'being.' My lord, I am not ashamed to be that, if I am that, first human being; but I have a right to retort the observation; for I have a right to say, and it is a truth, that I believe it never did occur to any human being before, to make such an accusation as this; if it did, it is to be found upon some record; and none is produced. I beg leave to say, that the cases which have been quoted, do not, in any degree, apply to the principle. I am in your lordship's recollection and memory, whether I did not forestall, by admission, every thing that these cases go to prove: did I not say, that I admit that a constable, an ancient common law-officer, is bound to obey the warrants of the justice of peace? I did not quote any case to warrant that admission, I made it. Did I not say, that justices of the peace, if they pervert their office and their power, contrary to the duty of it, are clearly liable to be punished? But this is the question that I asked, and to this question, yet, I am furnished with no answer. Where is the precedent that shows me, that every crime against the public, the omission of duty by a petty clerk in office, is punishable in a court of justice? That is the question I have asked, and it is not yet answered; for as to the cases that have been quoted, they do not amount to it at all. A man, for not repairing a highway, is punishable; how? *because it is a common nuisance*, and it must be laid so; I could arrest the judgment in a prosecution for not repairing a highway, unless it were laid to be a common nuisance; then that is classed,—you know in what order and rank of offences that it is to be found; so in the case of a port, upon the same principle undoubtedly, a port the public have an interest in; and it is exactly upon the same principle as suffering a highway to go out of repair.

As to the case in Comberbach, it will be a sufficient answer to say, that that was quashed upon another objection, that the point in this

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case was not considered; but I am glad the case was quoted, because it shows the distress my learned friends were put to when they were called upon for a case, that they could not find one which answers the purpose, except one that was quashed.

Mr. Attorney General to-day, as he did before, said something about it being a non-feazance; I agree to that, but it does not go to the question at all; I know a man may be guilty of an indictable offence by an omission as well as he may by a commission; the observation therefore, of giving it that old fashioned term, non-feazance, does not mend the case at all, for it remains to be made out, that this person, in this situation, and (what is of more importance a great deal) hundreds of others, in the same situation, are besides being turned out of the office, to have all the thunder of the exchequer, and the terror of the green wax; are liable to informations from the attorney-general, to prosecutions, for years to come; not so many, I hope, unless my learned friend rises higher; not so frequent as they have been when the attorney-general, as he says, dictated the punishment to the Court.

Now to see whether this is an important offence; I take the liberty to say, if it be so, a clerk in office, down to the lowest exciseman, is a subject in a peculiar condition. I said, and it is true, that soldiers are governed by the mutiny act, a law that does not affect other subjects: but then, hard and severe as that law is, it is contained in a small volume; every man may read it, and every man may understand it: but where is this law that takes all the clerks in office, from top to bottom, in what statute is it? Certainly none; it is at common law, that the principle is to be found; and he supposes the principle is to be found in the case in Salkeld; I beg leave to deny it. Nothing is more necessary for the honour and for the character of judges, than that when their *dicta* are quoted, you might have something of the matter stated upon which they are speaking, and what they are speaking.—Constables are common law-officers. Will any man say, the judges *then* had such a case as this in law? undoubtedly they had not. I beg to say, in point of fact, in point of precedent, it is a new case; in point of principle, the question is, whether it is or is not indictable? and if your lordship shall be of opinion that it is liable to a criminal prosecution, the defendant hopes and the world will expect (with great deference be it spoken to the Court), that that principle should be laid down correctly, and defined exactly, that if there be a common law that comprehends vast numbers of the king's subjects, and puts them in a condition different from the rest, that it must be known and understood for the future.

What must the principle be? Is it this:—that every man who has any thing to do with the accounts of the public, is liable to an indictment if he swerves from his office, in any one article? Is that the principle? That will take in every man, for every little peccadillo: surely there can be no such law as this; it ought to be made out therefore here clearly, that this is a case that falls in with some principle of such importance to the public, that every man, when it is stated, will feel it, and say this must be law, it were nonsense if it were not. I wait to hear whether any such principle will be laid down from my friends; most undoubtedly, I have not heard it from any one of them; for will it be said to be this, that every man who is a clerk's clerk in office, where the head officer has a place under the great seal, is answerable by indictment, for every fault he commits? If that be the ruling principle, it is a strange thing we find that in no book whatever.

I will tell your lordship why I laboured the description of this officer; I meant to say, that he is that sort of man to whom the law cannot be supposed to advert, or to take any notice of his little faults in office; I meant to say this, that he is a mere clerk, appointed to-day and turned out to-morrow; in point of fact it is the history of this unfortunate gentleman,—he was put out one day, in the course of a fortnight restored, and in a few days put out again. Is this the sort of great officer whom the law, over and above all other, hangs over this kind of prosecution? It seems to me, he is not a subject worthy of such kind of solicitude; unless, therefore, there is some broad principle that comprehends every clerk's clerk, every deputy substituted, ten degrees down from the principal, in every office that has to do with the account of public money, Mr. Bembridge is not within it. What is the offence that is charged to him, in the utmost way that any man can state it? It is this: he knew, that at the time Powell gave in the account (I avoid any phrase that may create doubts at this moment, an account), that he ought to have inserted this 48,000*l.*; he knew it. It was the duty of his office to have to do with the auditor of the imprest, whose duty, out of all doubt, it is, to adjust all accounts with people having the public money, and he ought to have informed him of that; what is his duty with the auditor of the imprest? Does your lordship find that in the examination? There is not a word of it, that that was his duty. When was this office of his created? What had been the practice before? Is it set down in any law book, or in the books of the office, what the duty of this office was? No evidence of that sort is stated, but it is to be taken for granted, without evidence, as it should seem to me, that he had to do with the auditor of the imprest in the making up this account.

What is the offence, when you come to state it fairly, reasonably, and candidly? Mr. Powell, the person who ought to have accounted for the public money; Powell would

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give in that account himself, he kept the books, he had been in the same office with Mr. Bembridge, he perfectly understood it; and this gentleman, though he knew the fact, that he had not inserted the money and ought to do it, did not tell it when general questions were asked: but, what did he do? He referred to Mr. Powell, and from that time, they went immediately to Mr. Powell, and had nothing more to do with him. Then, from that piece of evidence alone, have I not, with great submission to the Court, a right to infer that it appeared negatively, in this case, that he had not to do with the auditor of the imprest? For, when this message, upon which all stands, comes to the auditor of the imprest, to his clerk, or somebody in the office, he goes to Mr. Powell, and was never after referred to Mr. Bembridge. Upon that evidence, it must be taken that he insists he had nothing to do with the auditor, he refers to Mr. Powell. Sir Thomas Davenport said, Mr. Bembridge by his clerk Colborne; surely, in exculpating Mr. Bembridge, I have a right to say, the auditor by his clerk Wigglesworth. Another point, upon which not a word has been said, is this: it cannot be Mr. Bembridge's duty to do that which it is not in his power to do. I mean, it has been argued over and over again, that it was in proof that the party who has the public money in his hands, the executor of the accounting person, has a right to take the books away; I put the case in trover, as your lordship recollects, and not a syllable has been said upon that subject, and that is, because it cannot be answered in point of fact. In point of fact, then, I have a right to take it, that the person accounting has a right to make up the account himself; if he has a right to say to the same accountant-general, you have nothing to do with it, and I will do it myself; how, then, can it be the duty of the office to do that which depends upon the will and pleasure of another person? If it is the duty of the office to do it, so that you shall punish a man, at common law, for not doing it, then I have a right to ask, where is the common law process, where the arms and the instruments, which the law gives this person, to compel him to do it? It is an absolute solecism, that it is by common law and custom the duty of a man to do that which he never can do, if the parties are not so disposed.—Oh! but it is said, your mouth is shut; you, in this instance received 2,600*l.* for doing it, therefore it is the duty of the office; and my learned friend affected not to understand Mr. Scott's argument upon that head; I think I understand it, and I think it a considerable one; it is one thing to be the duty of an office, it is another that a party, in a particular occasion, undertakes to do it; my objection, be it remembered, all through, is this: that this answer is not proved; that his answer is not that Mr. Bembridge undertook to do it, and did not do it; not that he had a great sum of money for doing it, and did not do it, *but that it is the duty of his office to do it;* if my arguments have succeeded to create a doubt whether it is the duty of his office, his receiving this sum does not prove it at all; it only proves that he received money for doing that which he did not do, and it may be recovered back again; that sum of money is given, according to my apprehension, and I trust it will appear from the memorial, in a way that confirms this argument of Mr. Scott's, for it is a large sum of money allowed to the person accounting; it was said, that cannot be, but the person accounting must account at his own charge.

Lord *Mansfield*. All the items are given in particularly; the memorial claims it in this way—for himself, as cashier, the accountant, clerks, and under officers employed in drawing out and settling lord Holland's accounts with the auditor of the imprest.

Mr. *Bearcroft*. The observation that I meant to make upon that, was this, that the allowance was not made nor paid by government to these gentlemen directly, but it is an allowance to the party accounting. Whether they had a good claim or a bad claim against it, seems to me not material to the question, to whom does the government pay the money. He might have employed any body else, he did do it himself, and did employ others.

Lord *Mansfield*. They all give receipts to him, which are vouchers for his having paid it; and Bembridge's and Colborne's receipts were produced.

Mr. *Bearcroft*. But to that, I say the same thing that I said to his examination; you are not, to look to appearances,—to what appears from expressions out of the mouth of the defendant, if the contrary is the fact; now, it appears, from the prosecutor's evidence, that this money is allowed to the person accounting for getting it done by somebody else, and he makes a present to those persons; it seems to me, therefore, that it can never be argued, because money is allowed to the accounting person, and he chooses to give part of it to those clerks, that it is the duty of those clerks to do it; the contrary appears to be the case; this proceeding adds to my argument. I conceive, so far from proving it is the office of the accountant-general, it shows it cannot be his office, and it is not in his power to do it if the other does not think proper to let him do it.

These are the objections which strike me, to the verdict upon the evidence. It is my duty, because I am so directed by the Court, to say a word hypothetically, if the Court should be of opinion this verdict ought to stand, and that they ought to pronounce judgment. In obedience to the direction of the Court, I have this to say, and I confess I have not the smallest expectation that there is any man breathing, that has attended to the circumstances of the case, that will ever feel a contradiction in his mind to what I am

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about to assert; I say, if this is an offence, it is true it always was one, but it is newly found out: your lordships have sat with some degree of attention to consider the objection; —your lordships will take it, then, that this gentleman, at the time he was, I will call it, guilty of the omission, that he knew he was doing an illegal thing; in my apprehension, every offence which is to meet with the discretionary judgment of the Court, will be highly aggravated, if there are recent examples and punishments; there too the *evil example* comes in very materially, as my friend mentioned; on the contrary, I contend, that it is a very great mitigation of an offence, if it has not generally been understood to be one, and there has been no example, demonstrating to the subject, that it is one, and has been so treated by courts of justice: almost every topic of mitigation, every ground for mercy in judgment exists upon the present occasion that can exist. In point of law, shall it be said that Mr. Bembridge ought to have done this? What a situation was he in! he was to go to the auditor and say thus (he must have done it in a whisper, for no man could speak aloud), he must have said this: 'My lord Sondes, I 'suspect that this Mr. Powell, my old fellow 'clerk, my benefactor intends mischief to 'the public;' he could not state it stronger. I believe the fact, that Mr. Powell did meditate a fraud upon the public, and he had not courage to go through with it, I suspect that to be the case myself; when we talk about the attestation, I wish to lay my idea before the Court, and with great deference I speak of it; I take it up from the ground where I ought to take it, that is the evidence in the cause; it stood in this way, that this was only a final account, in this sense of it, that it was the last book delivered, and purported to be the last book of account then given, but it was by no means a final account, and so said Hughes and Wigglesworth, till attested, which they explained to be, till it was finally put down, and the party attesting swore to it, and signed it with his name. It passed at the time of the trial; and the attorney-general so opened it, according to his instructions, that that was the final attestation; then what was the great crime of waiting a little longer than this time, and that he should not run, the first instant he could, with his suspicions? that is the whole amount of the crime. Another ingredient I mean to suggest; the discretionary punishment of the Court will be greater where public mischief has actually ensued, for these items were added to the account; the public can never lose a shilling by it; the public could never have got a shilling by his being earlier, for thus was the fact, and thus I think it appeared upon the trial; for if Mr. Powell could not pay immediately 68,000*l.*, he was not likely to pay it immediately with the addition of 48,000*l.*; I have the pleasure to say, for I know it, that the public will never suffer either by the default of Mr. Bembridge or Mr. Powell, for there are standing securities for the balance of all lord Holland's accounts, amounting to upwards of 100,000*l.*, upon landed security, the same securities that they stood upon at the time of lord Holland's death; it is perfectly clear, therefore, that the public cannot lose by this. If your lordship should be of opinion that it is wrong, that it is against principles, and for the sake of the public it is right to draw a line, Mr. Bembridge is unfortunate, in point of law he may be criminal; I have an affidavit in my hand, to offer to your lordship, which explains the nature of his business in the way I have shortly stated it.

Lord *Mansfield.* You cannot read it.

Mr. *Bearcroft.* Then I shall not press it, but the fact is as I have stated, that he has been already turned in and out of his office, in the manner I have stated; that fact is extremely important, when your lordships have to consider of the guilt of omission in such a party.

Lord *Mansfield.* Though the principle upon which this prosecution is instituted, may be as old as the constitution, yet the specific case is new, and no instance, precisely and exactly the same, is found upon the records of Westminster-hall; therefore, it is not only important to the defendant, but highly important to the kingdom at large, that the facts of this case, the evidence by which they are supported, the guilt which arises out of them, and the law in consequence of that, so far as relates to the present occasion, should be universally understood with accuracy and precision.

The matter now agitated comes before the Court upon two motions—to arrest the judgment, and for a new trial—but I think it will be much more intelligible to invert the natural order of these two motions, and begin with that for a new trial.

The new trial is moved for upon two grounds; the first that the two counts, the second and the third are bad, therefore the verdict cannot be supported upon them, and if it cannot be supported upon them, the Court cannot give judgment, the verdict being general, but it must go to a new trial. I am not satisfied that either the second or the third count is bad, but it is totally immaterial whether they are or not, because I take the law in criminal prosecutions to be quite otherwise; and it is admitted, as to the arresting the judgment, the Court, wherever the punishment is in their discretion, are governed by the judge's report as to the count upon which the verdict was taken, and the evidence which was given to support it; but in this case it is immaterial another way, for it goes upon a supposition that the verdict cannot be supported upon the first count, and that the party to support that, resorts to the second and third; now, they have not argued, it in that way, and I am of opinion it ought

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not to be argued in that way, because, to be sure, my direction to the jury went upon the first count; the jury's verdict was found upon the first count, and as to either of the others they never were considered, and therefore it must stand or fall upon the first count.

That first point is totally immaterial. The second and the material objection, upon which the motion for a new trial is grounded, is an objection to the sufficiency of evidence to maintain the verdict, that is, that it is a verdict against evidence. In behalf of the defendant, they contend that there are two propositions averred in the charge, both which must necessarily be proved, but the proof, as to both, is defective. The two propositions are, first, that the office of accountant was a place and employment of great trust and confidence, touching the making up the accounts of the paymaster, and the adjusting and settling the same with the auditor of the imprest. The second proposition is, that the defendant, contrary to the duty of his office and employment, knowingly, wickedly, and corruptly withheld and concealed from the auditor the sums, stated in the manner in which they are stated in the information; and, most undoubtedly, both these propositions were supported by evidence, or the verdict is not sufficiently grounded.

As to the first, it is denied that the office of accountant is proved to be an office of public trust and confidence to make up, prepare, and settle with the auditors the accounts of the paymaster: it is allowed, on all hands, no money passes through the hands of the accountant, therefore his stipend, and the name of his office and employment, show that his office relates to, and concerns the accounts of others: and the evidence proved, to be sure, a great many other accounts to which his office related; there is no written constitution which enumerates the various branches of his duty; what is his business, then, can only be learned from what he has always done, and been considered as entitled to do in respect of the profit arising from the gratification he may receive, or what he is bound to do in respect of the trouble. Hughes, the deputy-auditor, swears that they always send their observations upon the paymaster's accounts, to the accountant to clear them. Upon the 20th and 22nd of March, 1781, the defendant, upon oath, in his examination before the commissioners of accounts, swears that he carries on and makes up the accounts of the paymasters in and out of office. Many observations have been made upon this, some of which I was sorry to hear, as an arraignment of the commissioners of accounts, under the authority given them by the parliament, to ask the public officers what their business is; for this is all that is asked; it happens the questions are not taken down, so it is a continued examination, and manifestly, from the state of it, giving an account of his office to the commissioners; it is impossible for any ingenuity in the world to torture it into a doubt; 'my business is to make up the accounts of paymasters out of office, as well as 'the paymaster in office,' and it is impossible, notwithstanding the pains that were taken, to extort any other meaning for it, shows that it is not in human power to do it. In opposition to this, it is proved that, in passing Mr. Winnington's and lord Chatham's accounts, the accountant took his fees, while others did the business, which I fear is too often the case of public officers, and therefore proves nothing; had they who took the trouble, received the accountant's fees, it would have been material.

Another objection made is, that it is not in the power of the accountant to settle the accounts with the auditor, because the paymaster may keep the books to himself and lock them up; that would have been a defence, if the accountant had been questioned for not passing them; he is arraigned for not acting honestly in that part which it was in his power to do; if he can defend himself by saying I could not do it, and gives proper notice of that, it is a clear justification and defence; but what would be the consequence to the public if the paymaster were to do that? The moment he told the auditor he could not get the books, they would force the paymaster to produce them by legal process, therefore that is no answer. Bangham swears that it is entirely, as he believes, at the option of the accountant, whether he will make up the accounts of the paymaster out of office; if it is at his option, the defendant has elected and undertaken it from the year 1776, when he was appointed accountant; he has transacted every thing which has been done with the auditor touching the paymaster; when I say 'the paymaster,' I mean those accounts; and when I say 'the king,' or 'public,' I mean the same thing. Touching the passing these accounts, there is no evidence of any thing done by Mr. Powell, nothing was left for Mr. Powell to do but to attest, and as accountant the defendant has received of the public money 2,650*l.*, and his clerk has received 500*l.*, *craved, professedly and expressly for the accountant, clerks, and under officers employed in drawing out and settling these accounts with the auditors of the imprest;* though, besides this 2,650*l.* paid to the accountant, and 500*l.* to his clerk, very large sums are craved for upper and under officers in the pay-office, of every denomination, who do nothing at all; yet, it is under pretence of that business, which is, and can only be done by the accountant. The duty of that capacity in which the defendant acted is very obvious; though paid by the public, he was in the nature of an agent to, and trustee for the king and the paymaster; he was to take all necessary pains to inform himself, and being informed, as an honest man, he was bound to debit the paymaster with every just charge,

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and give him credit for every just allowance; the first steps he must have taken, if he did his duty, were to see what accounts had been given in, and what had been done upon them; to peruse the pay-office books (he could prepare no account without doing that); and to get all the light and information he could from Mr. Powell, who had been accountant before him, and who was the party accounting; if he did so, and he did if he acted honestly and fairly, then he saw that all the accounts, eight in number, had been given in; he saw that the final account from the 25th of December 1764, to the 24th of June 1765, had been given in so long ago as the 11th of January, 1772; he saw that all the accounts, except the last, had been attested; he saw—for it is proved they were visible to be seen,—he saw many items previously entered in the pay-office books, amounting to a large sum, with which the paymaster is not charged; he saw that these articles were receipts prior to the accounts attested, and I have already told you the form of attestation, 'This is a just and true account, according to 'the best of my knowledge and belief.' If Mr. Powell knew of those items, I think there is no justifying his attesting the prior accounts; if he did know, and had a salvo any thing like what Mr. Wilson suggested for his attestation, that salvo would equally do for attesting the last account. If the defendant made this discovery, he could not avoid communicating it to Mr. Powell for an explanation; it is impossible, if he made the discovery, if he did communicate to Powell, and afterwards withheld the discovery from the auditors, consequently from the lords of the treasury and the parliament, but that his motive must be corrupt. That he knew of the omissions and studiously concealed them from the auditors is manifest; for, first, if he did his duty and looked at the pay-office books, he knew of the omission soon after he was made accountant; many years passed and nothing was done; at last, the account is upon the point of being closed, and upon the 15th of May, 1781, a memorial is given in for the allowances, by Mr. Powell, suggesting that the whole was finished and closed, and the order of the lords of the treasury is on the 1st of September, 1781, for payment of all that money, which was received by each of them immediately after.

In September, October, and November 1782, the deputy-auditors often attended the defendant, and pressed him peremptorily, to settle and close the account; the defendant said he could do no more in it, which was a representation that the account was just and true, according to the best of his knowledge and belief: he referred them to Mr. Powell, with whom it rested to do the last act, and finish the whole, by attesting it. If he knew of those items he could do more, because he was to add them to the charge; the account was sent to the defendant to insert two items, one of 900*l.*, and the other 400*l.*, and Colborne, the defendant's clerk, brought back the book with those two items carried into the balance, though not inserted, and the balance struck in penciled figures, 68,000*l.* odd money.

The defendant did not examine Mr. Colborne to explain or qualify this transaction; and as it stands, it is not an omission, it is not a neglect, but a gross and actual deceit, if the defendant knew the truth; for the sending back the penciled balance, after all that had passed, was a solemn averment by him, that all was finished, and that the defendant knew of no error, no item, which ought to be surcharged or falsified.

The book of accounts was returned, to have the two items of 900*l.* and 468*l.* inserted: Upon the 4th of January, as is proved, Colborne, the defendant's clerk, brought back the book of accounts, with the penciled balance effaced, and no official mark, and with the items of surcharge in question, to the amount of 48,799*l.*, and a fraction; all the additional items in the hand-writing of Colborne, the defendant's clerk; Colborne is not examined to explain how, or when, or why he drew out those items, and inserted them.

Upon the 15th of February, 1783, the defendant, in his examination before the lords of the treasury, owned that he was perfectly apprized of those additional articles, long previous to the penciled balance being drawn out; and makes no excuse in respect of his not having full information for many years before; he admitted, likewise, he knew it was his duty to take care that all the articles to charge were included: he makes no excuse, but that he left all to Powell. Now, supposing him to have knowingly deceived and misled the auditor, consequently the lords of the treasury and the parliament, with this concealment, which is a material circumstance, the motive with which it is done, upon the evidence, could only be with a view to defraud the king, either of the whole sum, or of the interest during the time which it would be concealed; if upon the same salvo which warranted Mr. Powell's attesting the prior account, he had actually attested the last, the whole sum omitted might have been lost, but if that never was intended, the money not brought in lay dead, in respect to the public, while money was borrowed by the public at high interest, for the public service.

Universally at the common law, when a large balance appears due to the Crown, though the account is not finally closed the lords of the treasury may call for the whole or part, and inforce the payment of it, so far as the court of exchequer should think proper to be paid; but the situation at that time of a great part of it, was very particular, for an act passed in the year 1780,—long before these material facts happened, which I have been stating, which were at the end of 1782, —an act passed, the 20th of his present

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majesty, c. 54, for appointing commissioners of accounts, who, among other things, were to report what balances were in the hands of accountants which might be applied to the public service; another act passed in the year 1781, the 21st Geo. 3d, c. 48, reciting the report from the commissioners, stating many balances, and among them the balance which appeared in the hands of Mr. Powell, and ordering it to be paid into the exchequer on or before the 24th of October 1781, and to be applied to the public service, this was to be paid on or before the 24th of October 1781, and it is very remarkable, that upon the 22nd of March 1781, the defendant, in his examination before the commissioners of accounts, told them the only obstacle to the final adjustment of Mr. Powell's account, was a dispute relative to the balance in the hands of Paris Taylor, one of his deputies, which was an allowance claimed by Powell, and therefore was so far in his favour, and yet at this time he knew there remained a great sum not brought in, which would increase the balance considerably in his hand, and knew of this act under which the commissioners acted, and the purpose for which they acted. Upon the whole, I think there can be no doubt but that the jury had sufficient evidence to warrant the conclusion they have drawn by their verdict, as to both those material propositions.

What remains is the motion in arrest of judgment, and that comes properly after considering the objections to the verdict, because in arguing the motion in arrest of judgment, we must take the facts charged in the indictment, and found by the verdict to be true; therefore we must find the two propositions that I particularly stated, to be true; the objection then is, that at most this amounts to a breach of trust, a concealment, a fraud of a pecuniary nature, which is a civil injury, and therefore not indictable; that he is accountable,—an agent, a trustee that embezzles money, or by neglect suffers it to be lost, is accountable,—for a civil injury, and not for a public offence; and farther, they add that there is no precedent exactly the same. The law does not consist in particular instances, though it is explained by particular instances and rules, but the law consists of principles which govern specific and individual cases, as they happen to arise. Now, there are two principles which seem to me clearly applicable to this prosecution; the first I will venture to lay down is, that if a man accepts an office of trust and confidence, concerning the public, especially when it is attended with profit, he is answerable to the king for his execution of that office; and he can only answer to the king in a criminal prosecution, for the king cannot otherwise punish his misbehaviour, in acting contrary to the duty of his office, and that this holds equally by whomsoever or howsoever he is appointed to the office, by whomsoever the office is given. There are many offices of a public nature that concern, in various ways, the whole kingdom and the king as the executive part of the constitution, which are not given directly by the king, and not given by letters patent; many that have the grants of offices; the lord steward has the grant of the judge of the marshalsea; the lord chancellor appoints the masters in chancery, and I have the appointment of a great many officers belonging to this court; and there is a precedent in Vidian's Entries,* an information against the *custos brevium* for so negligently keeping the records of the court, that one of them was lost; had that been the steward of a manor, who had lost one of his lord's rolls, an action would have laid; but the duty of this office concerning the public, it was a matter of an information, and yet the office was appointed by the chief justice, not constituted by the king.

There is another principle too, which I think applicable to this prosecution, and that is this; where there is a breach of trust, a fraud, or an imposition in a subject concerning the public, which, as between subject and subject, would only be actionable by a civil action, yet as that concerns the king and the public (I use them as synonimous terms), it is indictable; that is another principle of which you will make the application to the present case, without my losing time in doing it. And there are some authorities; though I should think the principle so essential to the existence of the country and the constitution, that, without any authority, I may fairly say the constitution would not exist without it,—but I think there are authorities that support that principle. So long ago as the reign of Edward the 3d, it was taken to be clear that an indictment would lie for an omission or concealment of a pecuniary nature, to the prejudice of the king; and therefore, that in 27 Assize, Placito 17, it was presented that such and such had levied a hundred marks of the county for the array of certain archers, which money had never come to the profit of the king; had this been between subject and subject, it would have been an action for money had and received; that would have been no crime, but barely keeping the money in his own hands which belonged to another; but concerning the public,—concerning the king,—so long ago as the reign of Edward the 3rd, it was held to be indictable. In first Rolle's Reports, folio 2,† lord Coke says, that either the collector for murage or any other, who collects

* See the information against Pagitt, this *custos brevium*.—Vidian's Entries, 213.

† The following is the passage referred to:
'Et si cest corporation, ou le collector pur 'murage, ou ascun auter que collect ascun 'chose *pro bono publico*, si il ne ceo imploie 'accordantment il poet estre indicte, come 'est en 27 Ass. car la fuit deniers collectes a

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any thing *pro bono publico*, if he does not apply it accordingly, he may be indicted; and refers to that which I have just stated from 27 Assize; the distinction is very clearly taken too in 2d Hawkins, c. 25, § 4; he says in these words, 'all kinds of inferior crimes 'of a public nature, as misprisions, and all 'other contempts, all disturbances of the 'peace, all oppressions, and all other mis-'demeanors whatsoever, of a public evil ex-'ample, against the common law, may be 'indicted;' now I quote that for these words that follow:—'but no injuries of a private 'nature, unless they some way concern the 'king.' In 6 Modern, folio 96, the court says: 'If a man be made an officer by act of 'parliament, and misbehave himself in his 'office, he is indictable for it at common 'law; and any public officer, is indictable 'for misbehaviour in his office,' and there is no doubt but at all times, more especially in this, they whose offices give them such power over the public revenue, the public are extremely interested in; therefore I am of opinion, that the crime found by the jury is an indictable offence.

Mr. Justice *Willes*. I am of the same opinion as to both points; about a new trial, and an arrest of judgment.

Mr. Justice *Buller*. My lord has entered so fully into it, that it is impossible to add any thing to what he has said; therefore, I shall only enter my assent to every thing that has fallen from his lordship.

Mr. Justice *Willes*. Charles Bembridge;—Amidst the various frauds and corruptions which have crept into most of the public offices in this country, and which have long preyed upon the vitals of our constitution, you are the only delinquent of this sort, within my memory, since Peter Leheup was brought up to receive the judgment of this Court,—a court, where neither favour nor interest can protect you; but where punishment will be impartially inflicted, according to every man's demerit; and I am sure, in this age of reformation, when public economy and frugality can alone save this impoverished state; there is no honest man who would wish to screen an officer of public trust, who has betrayed his duty, by endeavouring to defraud his king and country; examples become necessary, *pro salute reipublicæ*. It is not in the power even of this supreme Court of criminal jurisdiction, considering the venality of the times, to cleanse the Augean stable, and therefore our only consolation must be 'est 'aliquod prodire *tenus* si non datur ultra.'

And now, without stating the precise formal charges of the information, I will give you the substance of them:—The information alleges that you as accountant were invested with an office of great public trust and confidence; and that it was your duty, in that employment, to settle the accounts of the paymaster, and to state them with integrity to the auditor of the imprest; in the execution of which duty, you were to take care that no articles of charge were omitted to the detriment of the state. The declaration farther alleges, that you were called upon by the auditor of the imprest, to execute with fidelity this important trust, and to disclose and make known to him any charges against lord Holland's representative, which ought to have been inserted in this account; but that you with an intent to defraud the king, did wilfully, knowingly, and corruptly neglect and refuse to discover and make known the same, and did permit and suffer lord Sondes, one of the auditors, to proceed to close the final accounts, without bringing in the several articles according to the real truth: lord Sondes did actually proceed to close the final account, by sending this imperfect account of yours into the treasury.

That it was the duty of your office, as accountant, to settle the paymaster's balance, you have, in your examination before the commissioners of accounts, and afterwards before the treasury, on the 15th of February 1783, admitted. This examination at the treasury, the counsel have compared to a court of inquisition or star-chamber; but surely the treasury, without this severe and ill-founded reflection, had a right to inquire into the conduct of one of their officers. Evidence indeed was given that, in two instances, the ex-paymaster's accounts were passed without your assistance, though you acknowledge it was your duty, when called upon, to do it. Mr. Bangham, however, seems to think it was at your own option whether you would make up the accounts of ex-paymasters, or not; but it is admitted that whether you were concerned yourself in passing the accounts or not, that there was a fee due to you as accountant; if the fees were not optional, but must be paid on the part of the public, your duty, as receiving it, ought necessarily to be performed, and was not at your own option.

Lord Holland's accounts were immediately under your care, and deserved a more than ordinary attention, as your superior officer Mr. Powell, the cashier, was, as lord Holland's acting executor, the person accounting. You were peremptorily called upon to take care that no charges were omitted; but, instead of complying with the auditor's earnest requisition, you referred him to Mr. Powell, whose interest it was to conceal the truth, or at least to delay the paying in the real balance. As to the allegation that you did this with a view to cheat and defraud the king, I will endeavour to explain the meaning of it; by the 21st of the present king, chap. 48, it appears that the commissioners of accounts had reported that there remained at that time, in Powell's hands, as executor to lord Holland, a balance of 256,466*l.* 2*s.* 4*d.*; and

'furnish archers, et collector indicte pur 'conversion de ceo al son use demesne.'

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the act directs that so much of the balance of such money as remained unapplied, should be paid into the exchequer, on or before the 24th of October, 1781; these accounts, which under that act of parliament, ought to have been passed, and the balance paid on or before the 24th of October, 1781, were not delivered in till the 27th of October, 1782; and, by various arts and subterfuges, the real balance was not disclosed till the 4th of January, 1783; during all which time, Mr. Powell availed himself of the interest and profits of 116,000*l.*, of which the public was defrauded. Can it be said, that was not a fraud on the Crown? You were privy to this cheat, and were at least a principal in the second degree: what share you had in the plunder is best known to yourself; but the Court cannot suppose you were weak enough to be concerned in so gross a fraud without receiving some private advantage from it.

In one respect, your conduct was more criminal than Mr. Powell's, because, to an act of notorious dishonesty, you super-added a breach of trust: that you did this wilfully there can be no doubt, as the accounts lay open in the office, and were obvious to every clerk's inspection in the office, and you yourself acknowledged to Mr. Rose, that you were perfectly apprized of each article.

The jury have likewise found that you did it corruptly, and we think there is evidence sufficient to support that part of the charge; the error, though I ought not to call it so, was not an omission of a few small articles, or one gross sum, but a variety of charges, at different times, amounting to 48,799*l.*, so that there was an omission of half, and near a third, of the balance that was delivered in. Was this a little peccadillo? In the execution of your office, in my opinion also, the delivering in a penciled balance, which could be afterwards easily obliterated, was a proof of a fraudulent intention; and yet, for want of a better, the account, in this imperfect state, was sent by the auditor to the treasury.

Negligence you cannot plead, after having been so often earnestly requested to do your duty. Ignorance is a plea equally false, as the fact of concealment was so notorious; and when the account was afterwards carried in, the penciled balance was rubbed out, and the additional articles inserted in your own clerk Colborne's hand-writing; and this account, at the end of the transactions, was clandestinely given in to the auditors office, and given to one of the clerks, in order, if possible, that it might escape notice. Your collusion and confederacy with Powell, in this iniquitous business, is self-evident and beyond a possibility of doubt; and what aggravates your crime is, that you received as your share for examining this account, 2,600*l.*; whereas you were at that time in league with the defaulter to conceal his omissions.

And now, I cannot help lamenting the unhappy state of this country, that in these times of necessity and public distress, the passing the accounts of a paymaster should cost the state, in fees paid to its officers, the enormous sum of 14,900*l.*, as appears by the warrant read. The right to these extravagant fees ought to be, and I hope will be hereafter, a subject of parliamentary inquiry.

Your good character, as proved by several respectable witnesses, has been mentioned by your counsel as a ground for mitigating your punishment: in a doubtful case, a good character will have some weight with the Court, but in so clear a conviction as yours, it can be of no avail. What remains for me, therefore, is only the irksome task, which falls to my lot, of passing sentence upon you; and the judgment of the Court is—That you, Charles Bembridge, be committed to the custody of the marshal for six calendar months; and that you pay a fine of 2,650*l.*; and that you be imprisoned till you pay your fine.

The proceedings against Messrs. Powell and Bembridge occasioned much animated discussion in the House of Commons, in which Mr. Burke warmly supported the accused. See the New Parl. History, Vol. XXIII. pp. 801 *et seq.* 900 *et seq.* The compassion which on these and all other occasions was manifested by Mr. Burke for the sufferings of those public delinquents, the zeal with which he advocated their cause, and the eagerness with which he endeavoured to extenuate their criminality, have received severe reprehension, and in particular when contrasted with his subsequent conduct in the prosecution of Mr. Hastings.

Respecting the office of paymaster-general of the forces, see the debates on the bills for regulating that office, 23 New Parl. Hist. pp. 134. 988.

I regret that the report of sir Thomas Davenport's argument, p. 126, *et seq.* is not more intelligible; perhaps, however, the confusion observable therein is not wholly to be imputed to the Short Hand Writer.

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569. Proceedings against PHILIP Lord Viscount STRANGFORD for acting criminally and corruptly as a Lord of Parliament in Ireland: 24 GEORGE III. A. D. 1784. [Journals of Lords and Commons in Ireland, and Statute Book of Ireland.]

IT appears by the journal of the House of Lords in Ireland, that a writ of error from the Court of King's-bench, in a cause wherein Gustavus Hume, esq. was plaintiff in error, and William Burton, esq. was defendant in error, had for some time been depending in that House.

On Friday, the 5th day of March, 1784, counsel in the cause having been on that day, as well as on preceding days, heard upon the case, the two following questions were put to the judges:—1st. Whether in a case where the vouchee in a common recovery appears by attorney, the caption of the warrant of attorney, appointing such attorney, appearing upon the record to be taken by the chief justice of the Common pleas out of Court, be conclusive evidence of the capacity of such vouchee, as to the soundness of his mind, to make such attorney and suffer such recovery?

2nd. Whether upon the face of the record which was before the Court of King's-bench, on the issue joined between the plaintiff and the defendant in error, as sent to and now before this House on the present writ of error, there be any and what matter, which in law was conclusive evidence in favour of the defendant in error, so as to preclude the plaintiff from giving the evidence offered in the Court of King's-bench?—And the judges were ordered to give their opinions on the same upon Friday next, the twelfth.

On which day the lord chief justice of the common pleas acquainted the House, that the judges were not prepared to give their opinions upon the questions ordered to be to them on Friday last, and that they desired farther time might be allowed them, for giving their opinions upon the said questions.

Whereupon it was ordered, that the consideration of the said cause be adjourned till Tuesday next, and that the judges do then give their opinions upon the said questions.

On which day the lord chancellor acquainted the House that the lord chief justice of the common pleas had informed him, that the judges differed in their opinions, on the questions proposed to them.

Whereupon it was ordered. that the judges do deliver their opinions *seriatim*, with their reasons, which was accordingly done on the 16th, 17th, and 18th of the same month. Mr. Justice Crookshank, Mr. Baron Metge, Mr. Justice Kelly, Mr. Baron Hamilton, Mr. Baron Power, and the lord chief baron of the Court of exchequer delivered their opinions upon both questions in the negative, assigning their reasons. Mr. Justice Hellens delivered his opinion, that the caption of the warrant, as stated in the first question, is conclusive evidence of the capacity of the vouchee, assigning his reasons. The lord chief justice of the Common pleas delivered his opinion upon both questions in the affirmative, and gave his reasons. The farther consideration of the cause was adjourned until Thursday next, the 25th of March. On Wednesday, the twenty-fourth, a motion being made to reverse the judgment of the Court of King's-bench, to set aside the verdict mentioned in the record to have been given in that Court, and that the parties may proceed to a new trial on the issue before the Court of King's-bench,

A long debate arose thereupon, and the question being put,

The House divided: and the lord viscount Enniskillen reported, that the contents before the bar were 16; and the non-contents in the House were 15.

It was resolved in the affirmative.

	Dissentient.
R. Dublin	Farnham
Char. Cashel	Clifden
J. D. Tuam	G. L. Kilmore
Shannon	R. Cloyne
Bective	Longford
Mount Cashel	Gosford
Ranelagh	Muskerry

Then the following order and judgment was made:—

Whereas, by virtue of his majesty's writ of error, returnable into the House of Lords in parliament assembled, a record of the Court of King's-bench was brought into this House on the 11th day of November last, wherein Gustavus Hume, esq. is plaintiff, and William Burton, esq. is defendant; and counsel having been heard on the 27th of February last, 1st, 2nd, and 5th days of March instant, to argue the errors assigned upon the said writ of error; and the judges who were ordered to attend, having been heard *seriatim*, as well on the 16th, 17th, and 18th days of this instant March, to deliver their opinions, with their reasons, upon two questions of law, to them proposed, and due consideration had of what was offered on either side in this cause:

It is hereby ordered and adjudged by the Lords spiritual and temporal, in parliament assembled, that the said judgment given in the Court of King's-bench be, and the same

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is hereby reversed; and that the verdict, &c. be set aside, and annulled. And it is further ordered, that the parties do proceed to a new trial, upon the issue joined between them, as in the said record, and that the said Court do proceed therein according to law, and that the record be remitted.

The tenour of the judgment to be affixed to the transcript to be remitted, is as follows, viz.

At which day, before the said parliament aforesaid, at Dublin aforesaid, came the parties aforesaid, by their attornies aforesaid; whereupon the said Court of Parliament, having seen and fully understood all and singular the premises, and having diligently examined and inspected the said verdict of the said jurors, the judgment thereupon given, and the said bill of exceptions, under the seals of said justices of our said lord the king, before the king himself, and also the causes and matters above assigned in the said Court of Parliament for errors, by the said Gustavus Hume, in this, that the chief justice, and justices of our lord the king, before the king himself, upon the trial at the bar of the Court of King's-bench to the jury there sworn to try the issue joined between the said Gustavus Hume and the said William Burton, declared and delivered their opinion to the said jury, upon the said trial, that the evidence in the said bill of exceptions mentioned and offered to be given in behalf of the said Gustavus Hume, to prove the facts in issue aforesaid, was illegal and inadmissible evidence to go before the said jury; and declared that the record referred to and mentioned in the said bill of exceptions, and brought here before our lord the king, and the lords spiritual and temporal, upon the writ of error by the said Gustavus Hume against the said William Burton, and now remaining in the Court here, was conclusive evidence to the jury, to find a verdict for the defendant; and the chief justice and justices of the said Court aforesaid accordingly directed the said jury to find a verdict for the defendant; and according to the said direction, the said jury found a verdict for the defendant; without any evidence whatsoever, save the said record, it appears unto the said Court of parliament, that the said verdict of the said jurors ought to be set aside and annulled, and that the judgment thereupon given is erroneous, and that in the record and process aforesaid, and also in giving the aforesaid judgment, there is manifest error; therefore it is considered by the same Court of parliament aforesaid, that the verdict of the said jurors be vacated and annulled; and that the judgment aforesaid, for the errors aforesaid, being in the record and process aforesaid, be reversed, annulled, and altogether held for nought, and that the said Gustavus Hume be restored to every thing he hath lost on occasion of the judgment aforesaid. And it is further considered, that the said parties do proceed to a new trial of the issue joined be tween them, in the said Court of our lord the king, before the king himself; and that the said Court do therein according to law; and the aforesaid record, and also the process had in the said Court of Parliament on the premises, by the said Court of Parliament are sent back to the said Court of the said lord the king, before the king himself, at Dublin aforesaid, to proceed thereupon, and do therein what to law and justice may appertain.

Ordered, that lord viscount Strangford do attend at his place in this House on Friday next.

Ordered, that George Rochfort, esq. do attend this House on Friday next.

On Friday, the 26th March, James Corry being by order called in, was sworn at the bar; and being examined, proved the service of the order of this House of Wednesday last on lord visc. Strangford, to attend in his place.

The Lord Chancellor acquainted the House that he had received a letter to excuse his attendance for a few days.

Ordered, that lord viscount Strangford do attend at his place in this House on this day se'nnight.

Ordered, that George Rochfort esq., do attend this House on this day se'nnight.

On Friday, April 2nd, the lord chancellor acquainted the House, that he had received a letter from lord viscount Strangford, informing him of his being unwell; whereupon it was ordered that Dr. William Harvey, and Geo. Rochfort, esq. should attend the House on the morrow, between three and four o'clock.

And accordingly on Saturday the third, Dr. William Harvey, attending, was called in and sworn at the bar, and proved that lord viscount Strangford had the gout in his stomach on the 31st day of March last, and was not able to attend at his place in the House.

Thereupon it was ordered that lord viscount Strangford should attend at his place in the House on Wednesday next the seventh, and that George Rochfort should attend the House on the same day.

On that day a letter directed to William Watts Gayer, esq., Clerk's-office, House of Lords, signed, "Strangford," being read as follows, viz.

'*South-Hill*, 7 *April*, 1784.

'Sir; The annexed memorial, submitted 'to the Lords spiritual and temporal, could 'not, in my poor opinion, be addressed with 'propriety to any individual peer. Unfortu- 'nately my wretched state of health prevents 'searching the journals, where probably pre- 'cedents might be found. Clear I am that 'in your official department of clerk to the 'House of Lords, every paper transmitted to 'your care is to be delivered either to the noble 'viscount, chairman of the committee of pri- 'vileges, or offered to the consideration of the 'House. For these reasons, I recommend it

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'to your particular care, and am, with esteem,
'Sir, your most humble servant,
'STRANGFORD.'

Then the said Memorial was, by order, read as follows, viz.

'To the Right Honourable the Lords
'spiritual and temporal, in Parliament
'assembled;'

'With the utmost deference, lord Strang-
'ford presumes to lay before their lordships
'his absolute inability to obey their orders,
'having been severely attacked by the gout
'in his stomach, one fit particularly, so re-
'cently as Monday last; for which, and other
'complicated disorders, he is following thrice
'a day a course of Dr. Harvey's prescriptions,
'which might, on attempting to go abroad,
'produce most fatal consequences to the short
'remainder of a very declining life. He still
'trusts, under God, their efficacy will restore
'him to such a portion of health as shall
'release him from present confinement, ren-
'dered infinitely more afflicting by its de-
'priving him of an opportunity of learning
'the real cause of accusation, and conse-
'quently taking the liberty of offering some
'defence in his vindication, to mitigate their
'lordships displeasure, happily never incurred
'before in the course of upwards of forty years
'he had the honour of a seat with their
'lordships.'

James Corry, being by order called in, was sworn at the bar, and proved the service of the order of this House, of Saturday last, on lord viscount Strangford, to attend in his place.

Ordered, that Dr. William Harvey do attend this House to-morrow, at three o'clock.

George Rochfort esq. being by order called in, was sworn at the bar, and proved the receipt of a letter, dated South-Hill, 10th Jan. and signed Strangford.

Ordered, that the order for lord viscount Strangford to attend at his place in the House this day be adjourned till to-morrow.

On Thursday the eighth, the House proceeding to take into consideration the excuse made by the lord viscount Strangford for not attending in his place according to the order of this House, and having examined Dr. William Harvey respecting the same, do conceive such excuse not to be well-founded, and therefore do order, and it is hereby ordered, that the said lord viscount Strangford be taken into the custody of the gentleman usher of the black rod for his contempt of the order of this House.

On Saturday following, the tenth, the gentleman usher of the black rod acquainted the House, that he had taken the lord viscount Strangford into custody according to the order of the House on Thursday last, for his contempt in not obeying the order of this House. Ordered, that the lord viscount Strangford be brought to the bar of this House, by the usher of the black rod.

Whereupon the lord viscount Strangford being brought accordingly, and making an apology for not attending in his place pursuant to the order of the House, he begged pardon of the House for such his disobedience.

Resolved, that the lord viscount Strangford be discharged out of custody for his contempt in not obeying the order of the House.

The House then proceeded to take into consideration the matter of the letter heretofore produced to this House, and remaining with the clerk of the parliament, directed to George Rochfort, esq., with the name, 'Strangford,' appearing at the foot thereof; and the same being produced to the lord viscount Strangford now in his place, he viewed and perused the same, and afterwards the said lord viscount Strangford acknowledged that he wrote the said letter, and sent it as directed, but he declared he had no corrupt motive or intention in so doing.

After which he retired by leave of the House, and the House proceeded further in consideration of the said matter.

The said letter was then read, as follows, viz.

'Dear Sir; As a busy scene is likely to
'open after the recess, which will bring on
'momentous transactions to individuals, I
'could wish by regular attendance to frame a
'right judgment on the different cases will
'be brought forward; but as distressed cir-
'cumstances deprive me of means to appear,
'shall I be deemed too presumptuous in
'looking up once more to that friendship I
'experienced early in life? I am conscious
'that on a former application you assigned
'such reasons for a denial as silenced all
'reply, but as probably since that time, rents
'have been more punctually paid, I am en-
'couraged from that consideration to hope
'forgiveness, by renewing a request produc-
'tive of too many advantages to enumerate:
'200*l.* would fix me in the most enviable
'situation, and one hundred would surmount
'some pressing difficulties, and enable me by
'daily appearance to express my gratitude
'by doing justice, when I flatter myself to see
'success crown the undertaking. Be so good
'to favour with a line one who you may be
'assured is, with the sincerest regard, dear
'Sir, your very faithful and most humble
'servant. STRANGFORD.'
'*South-Hill*, 10 *January*.'

Resolved, by the lords spiritual and temporal in parliament assembled, *nemine dissentiente*, that it appears to this House, that the lord viscount Strangford in writing and sending such letter as aforesaid, hath acted criminally and corruptly.

Resolved, that the lord viscount Strangford be committed to the custody of the gentleman usher of the black rod.

Resolved, that this House will, on Monday next, proceed to take into consideration, what further becomes the justice and dignity of the House to be done on this occasion; and that

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lord viscount Strangford be then brought in custody to the bar of this House.

On which day the House proceeded to take into consideration what further becomes the justice and dignity of this House respecting lord viscount Strangford according to the resolution of Saturday last.

Resolved, by the lords spiritual and temporal in parliament assembled, *nemine dissentiente*, that the lord viscount Strangford ought to be disabled from sitting in parliament, or making any proxy; and that the judges be directed to prepare a bill for that purpose.

Lord viscount Strangford was brought to the bar, and the lord chancellor acquainted him with the resolutions of the House respecting his conduct, and he was then, by order of the House, discharged from the custody of the gentleman usher.

On Wednesday, the 14th, lord Carysfort, presented to the House a bill, for disabling Philip lord viscount Strangford, from sitting in parliament or making any proxy therein, and also from sitting and voting on the trial of any peer.

The said bill was read the first time, and it was ordered that it should be read a second time on the following Saturday the 17th, that lord Strangford should have a copy of the bill, and that notice should be given to him of the said second reading; accordingly on Saturday the 17th, the bill was read a second time. James Corry being by order called in and sworn at the bar, he proved the service of a copy of the said bill on lord viscount Strangford, and that his lordship had notice that the said bill was to be read a second time on that day.

On Tuesday, the 20th, the bill was committed and reported, with some amendments which had been made to it in the committee, and which were agreed to by the House.

On Wednesday the 21st, the bill was read a third time and passed. And 'a message 'was sent to the House of Commons by two 'of the masters in chancery, to carry down 'the said bill, and desire their concurrence 'thereto; and also that the original letter 'from lord viscount Strangford to George 'Rochfort, esq. dated 10th January, together 'with an attested copy of the minutes of 'what passed in this House on the 24th of 'March last, the 8th, 10th, 12th, 14th, and '17th April last, be carried down to the House 'of Commons, and delivered with the said 'bill, as containing the grounds and evidence 'upon which the Lords have proceeded in 'passing the said bill.'

On the following day the Lords gave leave to their clerk-assistant to attend the House of Commons on the morrow, to be examined if necessary upon the bill.

On the same day, April 22nd, in the House of Commons the bill was read a first time, and ordered to be read a second time on the morrow, and also it was ordered that a copy of the said ingrossed bill, and also the order for the reading the same a second time should be forthwith sent to the said Philip lord viscount Strangford.

On the next day, April 23rd, the messenger who served lord Strangford with a copy of the bill, and also with the order for the second reading of the same, was called in, and examined touching the service of the copy of the said bill and order, pursuant to the said order for that purpose.

Then the bill was read a second time, and the clerk-assistant to the House of Peers was called in and examined; and the original letter sent to this House by the Lords, together with the said engrossed bill, was shown to him at the bar, and he declared that he was present in the House of Peers when lord Strangford acknowledged that he wrote the said letter.

The said messenger also said, that there was a cause depending in the House of Lords, wherein Gustavus Hume, esq. was plaintiff, and William Burton, esq. was defendant, which was ordered to be heard on Wednesday the 28th of January last, and that George Rochfort, esq. is the father of the said Gustavus Hume.

The letter was read.

On the next day the bill was committed, several amendments were made to it, and the bill so amended was read a third time and passed.

On the 26th it was returned to the Lords, who on the following day agreed to the Commons' amendments.

And on May 14th, the act received the royal assent.

It is stat. 23 & 24, Geo. 3, cap. 59, and recites, that, whereas a certain cause of great moment was depending in the House of Lords, between Gustavus Hume, esq. and William Burton, esq., which was appointed to be heard on Wednesday, the 28th day of January, 1784; and whereas George Rochfort, esq. is father to the said Gustavus Hume, esq.; and whereas lord viscount Strangford, pending the said cause, sent to the said George Rochfort, a letter all in his own handwriting, bearing date the 10th day of January; [Here the letter is set forth.]

And whereas it hath been resolved by the lords spiritual and temporal in parliament assembled, *nemine dissentiente*, that it appeared to the said House, that the said lord viscount Strangford in writing and sending of the said letter of the 10th of January, directed to the said George Rochfort, esq., hath acted criminally and corruptly; and whereas it was also resolved, by the Lords spiritual and temporal in parliament assembled, *nemine dissentiente*, that the lord viscount Strangford ought to be disabled from sitting in parliament, or making any proxy, and that the judges be directed to prepare a bill for that purpose:

It then proceeds to enact, 'that from and 'after the passing of this act, lord Strangford 'shall be, and is hereby disabled from sitting

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'and voting, in this or any future parliament,* 'and from making a proxy or proxies to act, or 'vote for him in the same, and also from sit- 'ting and voting on the trial of any peer.'

In the Rolls of Parliament is a history of degradation by act of parliament, in the time of Edward 4th, from the peerage. The statute by which this was operated is exhibited in the printed Rolls of Parl. vol. 6, p. 173.

Rotul. Parl. XVII, Edw. IV, memb. 16. Degradatio Georgii Neveli de nomine duc.'

Wher afore this tyme, the kyng oure soverayne lord, for the gret zeell and love he bare to John Nevell, late named marquies Mounttague, and oder considerations hym moved, erecte and made George Nevell, the eldest son of the seid marques, to be duke of Bedford; and at that tyme, for the gret love his seid highnesse bare to the seid John Nevell, purposed and intended to have guyffen to the seid George, for sustentation of the same dignite, sufficiaunt liffelode: and for the grett offences, unkyndnese, and mysbehavyngs that the seid John Nevell hath doon and commytted to his seid highnes as is openly knowen, he hath no cause to departe any liffelode to the seid George. And for so moch, as it is openly knowen that the same George hath not, nor by enheritaunce mey have, eny lyffelode to support the seid name, estate and dignite, or eny name of estate; and ofte tymes it is sen', that when eny lord is called to high estate, and have not liffelode conveniently to support the same dignite, it induces gret poverte, indigens, and causes oftymes grete extortion, embracere, and mayntenaunce to be had, to the grete trouble of all such contres wher such estate shall hape to be inhabitet. Wherfore the kyng by the advyse and assent of his lordes spirituell and temporell, and the comons, in this present parliament assembled, and by the auctorite of the same, ordened, establisith, and enactith, that fro hens forth, the same erection and makyng of duke, and all the names of dignite guyffen to the seid George, or to the seid John Nevell his fader, be from hens forth voyd and of no effecte: and that the same George and his heires, from hens forth be no dukes, nor marques, erle nor baron, nor be reputet nor taken for no dukes, nor marques, erle nor baron, for no erection or creation afor made; bot of that name of duke and marques, erle and baron, in hym and his heirez cesse and be voide, and of non effecte; the seid erection or creation notwithstondyng.

The four following statutes throw some light on the business.

Printed Rolls of Parliament, vol. 5, p. 514.—Rotulus Parliamenti Summoniti apud Westm', XXIX die Aprilis, Anno Regni Regis Edwardi Quarti Tertio, & usque, in Annum Quartum continuati.

Resumptio.—On the 21st day of January, 1464-5, 'for dyvers causes, and considerations 'concernyng the honour and prosperite of 'the kyng our soverayne lord, and also the 'common wele, defence and welfare of this 'reame, and of his subgettes of the same, hit 'is ordeyned, enacte and stablished, by th' 'avis and assent of the lords spūelx and 'temporelx, and of the commons, in this pre- 'sent parlement assembled, and by auctorite 'of the same; that the kyng, fro the fest of 'the purification of oure lady, the yere of oure 'Lord MCCCCLXIIII, have, take, seise, hold and 'joy, all honours, castelles, lordships, townes, 'towneships, maners, londes, tenementes, 'wastes, forestes, chaces, rentes, annuitees, 'reversions, fermes, services, issues, profittes 'and commoditees of Shires, which he had the 'IIIIth day of Marche the first yere of his 'reigne, by reason of his coroune of Englond, 'his duchie of Cornewaill, principalte of Wales, 'and erledome of Chestre, or eny of theym; 'or that he had, or apperteyned or belonged 'to hym, the said IIIIth day of Marche, or eny 'tyme after, afore the seid fest, by reason of 'his duchie of Lancastr', or by the forfeiture 'of Henry the vite, late in dede and not in 'right kyng of Englond, in Englond, Irlond, 'Wales, and marches therof, Guysnes and 'Caleis, and marches therof, and passed from 'hym, the seid IIIIth day of Marche, or eny 'tyme after, and afore the seid fest, by his lres 'patentes to eny persone or persones, in fee 'symple, fee taille, terme of lyfe, or terme of 'yeres. And that the kyng have and joy 'every of the premisses, in like estate and 'condition, as he had theym the seid IIIIth 'day of Marche, or after. And also that all 'yeftes, grauntes and releses, made by the 'kyng the seid IIIIth day of Marche, or eny 'time after, afore the seid fest, to eny persone 'or persones, of eny of the premisses, in fee 'symple, fee taille, terme of lyfe or terme of 'yeres, under eny of his seales, be from the 'seid fest of the purification voide, and of noo 'force nor effecte.'

But from the operation of this enactment of resumption are very many exceptions,* the detailed descriptions of which occupy upwards of thirty three folio pages of the printed Rolls of Parliament, among them is the following: 'That this acte extend not 'to eny graunte or grauntes afore this tyme 'made to eny lord not attainted, of eny rent 'or annuite, for the sustentation of his name 'and estate; nor to noon office nor offices,

* See in the case of the earl of Macclesfield, *ante* vol. xvi, pp. 1401, 1402, the protests entered against negativing the motion, 'That 'the said earl shall never sit in parliament, 'nor come within the verge of the Court.'

* Some of these exceptions seem to be made merely by the king's warrant under his signet, without any special concurrence of the other branches of the legislature.

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'which were office or offices the seid iiiith 'day of Marche or afore, and nedeth actuell 'exercise, graunted the seid iiiith day of 'Marche or after, to eny persone or persones 'for terme of his lyfe or their lyfes, with fees, 'wages and profittes, to the same office or 'offices afore the seid iiiith day of Marche 'due and accustumed.'

And in the Parliament, which met on the 3d of June, 1467, Edw. 4. passed a like act of Resumption with some exceptions (see Rot. Parl. 7 & 8, Edw. 4, mem. 2).—(Printed Rolls Parliament, vol. 5, p. 572).

In this statute the exception corresponding to that which I have above transcribed is expressed as follows, viz.

'Provided, that this acte, nor nothyng con-'teyned therin, extend to eny graunte or 'grauntes afore this tyme made to eny lord not 'attaynted, of eny rent or annuite in or for 'his creation, supportation, or sustentation 'of his name, honour and estate. Nor to 'eny graunte made to eny persone or persones, 'of eny office or offices, which were office or 'offices the seid iiiith day of Marche or afore, 'and nedeth actuell excercise, other than the 'seid offices of sergeaunt of armes, graunted 'the seid iiiith day of Marche or after, to eny 'persone or persones, for terme of his lyfe or 'their lyfes, with fees, wages and profittes, 'to the same office or offices due and accus-'tumed.'—(See Rot. Parl. 7 and 8 Edw. 4, mem. 8; vol. 5, p. 573).

Rotul. Parliament. xiv. Edw. iv. Mem. 16.
Pro duce Glouc'.

The kyng oure sovereigne lord, consideryng the grete and horible treasons and other offenses doon to his highnes, by John Nevile late marquys Mountague, entended by the auctorite of this present parlement, to have atteynted and disabled the said late marquys and his heires for ever, accordyng to his demerites, which to doo the same, oure sovereigne lord, at the humble request and prayer, as well of his right dere brother Richard duc of Gloucestr', and other lordes of his blode, as of other of his lordes, spareth and will no ferther in that behalf procede: Nevertheles the same our sovereigne lord, remembryng the grete and laudable service, that his seid right dere brother Richard duc of Gloucestr' hath dyvers tymes doon to his highnes, by th' advis and assent of the lordes spirituelx and temporelx, and commens, in this present parlement assembled, and by th' auctorite of the same, ordeyneth, establissheth and enacteth, this present xxiii day of Februarie, that his said brother have, hold, possede and enyoie, to him and his heires of his body laufully begoten, also long as there be any heire mayle begoten of the body of the said marquys, the honours, castelx, lordships and maners of Midelham, and Shirefhoton, with all their membres and appurtenaunces, the lordships and maners of Estlillyng, Elvyngton, Skirpenbek, Yaresthorp, Raskell, Houke, Scoreby, Wilberfosse, Stanfordbrig, Hundburton, Knapton, Rise in Holdernes, Sutton upon Derwent, Shirborn in Hertfordlith, Appilton in Ridale, Sutton in Galtresse, and Thorlesthorp, Carleton with Coverdale in Coverdale, West Witton, Wodhall, Ketilwell in Craven, Newbigyng, Thoralby with Bisshopesdale, Burton, Baynbrig with the vale of Wynsladale, Braithwaite, Aykescarth, Crakehall, Busseby, Faceby, Carleton in Clevelond, Little Crakehall, Bowes, Newforest, Arkelgarthdale, Hopes, otherwise called Esthope, Westhope, Multon, Forset, Gillyng, Salkeld, Soureby, Langwathby, Scotby and Carlaton, with all the appurtenauncez; the barony of Worton, fre chace in Wynsladale, ten pound of rent, goyng oute yerely of the castell and maner of Wilton, the toll of Bowes, Leamyng, Difford and Smeton, the wapentakes or baillewykes of Langbergh, Hang, Halikeld and Gillyng; the advousons of the chirches of Moremonketon, Walkyngton and Elvyngton, and of a chaunterrie in the chirch of Appilton, a mille in Richemond, and the issues and profittes of a ferme called Litterme, the half of the soile and wod of Snape, called the Westwode, all homages, rentes, called Castelward, knyght's fees, rentes and services of free tenauntez, to the castell, honour and lordship of Richemond, or to any parcell therof belongyng, perteynyng, or owyng to perteyne; the which honours, castelx, lordships, maners, londes, tenementes, and all other the premisses, late were Richard Nevile late erle of Warwyk, or any other persones or persone to the use of the same erle. Also the kyng oure said sovereigne lord, by the assent and auctorite beforesaid, ordeyneth and enacteth, that his said brother have, hold, possede and enyoie, to hym and his said heires, also long as there be any heire male begoten of the said body of the said late marquys, all other londes, tenementes, rentes, revercions, services and heriditaments whatsoever, the which also were the said late erle's, or any other persone or persones to the use of the said erle, in Shirefhoton, Midelham, Estlillyng, Elvyngton, Skirpenbek, Yaresthorp, Raskell, Houke, Scoreby, Wylberfosse, Stanfordbrig, Hundburton, Knapton, Rise in Holdernes, Sutton upon Derwent, Shirburn in Hertfordlith, Appilton Ridall, Sutton in Galtresse, Moremonkton, Walkyngton, Elvyngton, Catton, Towthorp, Brian Askham, Wedirby, Tenerington, Westlillyng, Riton, Bugthorp, Towthorp uppon the Wold, Wynsladale, Worton, Carleton, Westwitton, Wodhall, Ketilwell in Craven, Newbigyng, Thoralby, Bisshopesdale Burton, Baynbryg, Braithwait, Aykescarth, Crakehall, Busby, Faceby, Carleton in Clevelond, Litle Crakehall, Bowes, Newe Forest, Arkelgarth-dale, Hopes, Multon, Forset, Gillyng, Wilton, Walden, Kerperby, Lyrtyngton, Barnyngham, Stanhowkeld, Bolron, Fegherby, Sowthcouton, Coldconyngstone, Hilderivell, Rand, Neuton, Herlesey, Salkyld, Penreth, Soureby, Lang-

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wathby, Scotby and Carlaton, with their appurtenaunces, and with knyghten fees, advousons of chirches, abbeys, priories, hospitals, chapels, and other benefices of the chirche whatsoever, chaseis, warennez, fraunchesies, liberties, privileges, feyres, merketts, and all other profittes whatsoever, to the said maners and other the premysses belongyng or apperteynyng: Saving to all the kyng's liege people and their heires not atteynted, other then the heires male of the body of the said late marquys begoten, and Isabell late his wyf, and other then oure said sovereigne lord and his heires, and the lordes of whome any of the premysses be holdyn and their heires, as for any ward of any part of the same, by reason of the nonnage of the heires males of the body of the said marques begoten, and the heires of Richard late erle of Salesbury, and the feoffes of the same erle, and the feoffes of Richard late erle of Warwyk, and the feoffes to the use of the said Richard late erle of Salesbury, and the feoffes to the use of the said Richard late erle of Warwyk, and their heires and assignes, and the heires and assignes of every of theym, in and of the premisses and every part therof, such right, title and interesse, as they had or shuld have had if this acte had never been made. Also it is ordeyned by the said auctorite, that if the said issue male of the body of the said John Nevill knyght begoten or comyng, dye withoute issue mayle of their bodies comyng, lyfyng the said duc; that then the said duc to have and enyoie all the premisses for terme of his lyfe.—Printed Rolls Parl. vol. 6, p. 124, 125.

Rotul. Parliament. xiv Edw. iv. Memb. 17. Pro duce Claren'.

The kyng oure sovereigne lord, consideryng the grete and horrible treasons and other offenses doon to his highnes, by John Nevile late marquys Mountague, entended by th' auctorite of this present parlement, to have atteynted and disabled the said marquys and his heires for ever, accordyng to his demerites, which to doo the same, oure sovereigne lord, at the humble request and prayer, as well of his right dere brother George duc of Clarence, and other lordes of his blode, as of other his lordes, spareth, and woll no ferther in that behalf procede: Nevertheles the same oure sovereigne lord, remembryng the grete and laudable service, that his said right dere brother George duc of Clarence hath dyvers tymes doon to his highnes, by th' advice and assent of the lordes spirituelx and temporelx, and the commens, in this present parlement assembled, and by th' auctorite of the same, ordeyneth, establissheth and enacteth, this present xxiiii day of Februarie, that his said brother have, hold, possede and enyoie, to hym and his heires of his body laufully begoten, also long as there be any heire mayle begoten of the bodye of the said marquys, the lordship and manere of Claveryng, with the membres and appurtenaunces of the same in the counte of Essex, the mansion or meäse called the Herber, and ii meäses therto annexed, with th' appurtenaunces in the cite of London; the which lordship, maner, mansion and meäses, late were Richard Nevile late erle of Warwyk, or any other persones or persone to th' use of the said erle: Savyng to all the kyng's liege people and their heires not atteynted, other then the heires male of the body of the said late marquys begoten, and Isabell late his wyfe, and other then our said sovereigne lord and his heires, and the lordes of whome any of the premysses be holden and their heires, as for any warde of any part of the same, by reason of the nonnage of the heires males of the body of the said marques begoten, and the heires of Richard late erle of Salesbury, and the feoffes of the same erle, and the feoffes of Richard late erle of Warwyk, and the feoffes to th' use of the said Richard late erle of Salisbury, and the feoffes to th' use of the said Richard late erle of Warwyk, and their heires and assignes, and the heires and assignes of every of theym, in and of the premysses and every part therof, such right, title and interesse, as they had or shuld have had if this acte had never be made. Also it is ordeyned by the said auctorite, that if the said issue male of the body of the said John Nevile knyght begoten or comyng, dye withoute issue male of their bodies comyng, lyfyng the said duc; that then the said duc to have and enyoie all the premisses for terme of his lyfe.—Printed Rolls Parl. vol. 6, p. 125.

Dr. Henry says, 'In a parliament that was 'then (1467) sitting at Westminster, an act 'passed empowering the king to resume the 'estates he had given away (with some ex-'ceptions) since his accession to the throne. 'This act (it is said) was chiefly intended 'against the Neviles, who had obtained 'grants of several forfeited estates, as a re-'ward for their services in raising the king to 'the throne. The king immediately resumed 'two manors which he had granted to the 'archbishop of York, but abstained from the 'further execution of the act for some time.'

It is not necessary here to enter into the particulars of Edward's resumptions of two manors from John, archbishop of York, and the subsequent re-grant of them to him. The account of the conduct of this archbishop as related by the historians, though not so prominent as that of Warwick, yet contains matter of curiosity.

It is not immaterial to notice what is said in the two acts of resumption, concerning grants made to any lord, not attainted, of any rent or annuity in or for his creation, supportation, or sustentation of his name, &c. and the manifest allusion to it in the act of degradation; the following is a short account of the relationship in which the most conspicuous persons of the Nevile family of this period, stood to each other.—Richard, eldest son of Ralph Nevile earl of Westmorland, by

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his second wife Joan daughter of John of Gaunt, married Alice, daughter and heir of Thomas de Montacute, earl of Salisbury. This Richard (4th May, 20 Hen. 6, A. D. 1442,) was created earl of Salisbury. In 1460 he was beheaded at Wakefield. Among other children he had four sons of whom—1. The eldest was Richard, the famous earl of Warwick, who was so created 1447, and succeeded as earl of Salisbury, 1461; he was killed at Barnet.

2. The second son was sir Thomas, who was slain with his father at Wakefield, December 31st, 1460.

3. The third son was John, the person mentioned in the statute of degradation printed above, who was created earl of Northumberland, 4 Edw. 4, and marquis of Montague, in 1470, in which year he was slain a little before the battle of Barnet. His son George, who succeeded as marquis of Montague in 1470, and was created duke of Bedford, was, as we have seen, the person degraded.

4. The fourth son was George, archbishop of York.

Sir Henry Nevile, who was slain at Edgecotefield, 1469, during his father's life-time, was first cousin to Richard, the famous earl of Warwick, being the only son of George Nevile, lord Latimer, who was the third son of Ralph Nevile, earl of Westmorland, and his second wife Joan, mentioned above: this Henry had issue Richard, who succeeded his grandfather as lord Latimer.

From the conspicuous share which the Nevilles had in the transactions of Edward the 4th's reign, copious mention is made of them by the historians; but I do not, either in Stowe or in Hume, find any mention of the degradation of the duke of Bedford. Habington, in his life of Henry the 4th, so far as I have observed, does not at all notice this duke of Bedford.

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570. The Trials of GEORGE GORDON, Esq., commonly called Lord GEORGE GORDON,* for a Libel on the Judges and the Administration of the Law; of THOMAS WILKINS for printing the said Libel; and of the said GEORGE GORDON, Esq. for a Libel on the Queen of France and the French Ambassador. Tried in the Court of King's Bench, Guildhall, before the Hon. FRANCIS BULLER, Esq., one of the Justices of his Majesty's Court of King's Bench, on Wednesday the 6th of June: 27 GEORGE III. A. D. 1787.†

THE INFORMATION.

Of Hilary Term, in the twenty-seventh year of king George the third.

London, to wit. } BE it remembered, that Richard Pepper Arden, esq. attorney general of our present sovereign lord the king, who for our said present sovereign lord the king prosecutes in this behalf, in his proper person comes into the court of our said present sovereign lord the king, before the king himself, at Westminster, on Tuesday next after the octave of St. Hilary in this same term, and for our said lord the king giveth the court here to understand and be informed, that before and at the time of the writing, printing, and publishing of the false, wicked, malicious, scandalous, and seditious libel, hereinafter next mentioned, it was believed and understood by and amongst his said majesty's subjects, that his said majesty was then shortly about to cause to be transported divers felons and other offenders, liable to be transported by the laws of this realm, to a certain place in parts beyond the seas, called Botany Bay, to wit at London aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap: 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 before and at the time of the writing, printing, and publishing of the false, wicked, malicious, scandalous, and seditious libel hereinafter next mentioned, divers persons had been and were confined in divers of his said majesty's gaols within this kingdom, under sentence of death or transportation, for divers crimes by the laws and statutes of this realm punishable with death or transportation; and that George Gordon, late of London aforesaid esq. (commonly called lord George Gordon), well knowing the several premises aforesaid, but being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said present sovereign lord the

* See his trial for high treason *ante* vol. 21, p. 485.

† Taken in short hand by Joseph Gurney.

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king, and to the laws and constitution of this realm, and wickedly, maliciously, and seditiously intending, devising, and contriving to stir up and excite tumults, discontents, insurrections, and seditions, as well in divers of his said majesty's gaols in this kingdom amongst the prisoners confined therein, and then under sentence of death or transportation for divers crimes by the laws and statutes of this realm punishable with death or transportation, as amongst divers others of his said majesty's subjects; and also to insinuate, and cause it to be believed, that divers laws of this realm, whereby sundry crimes are punishable with death, were made contrary to the law of God and the rightful power of the king and parliament of this realm to make such laws, and also unlawfully, wickedly, and maliciously intending, designing, and contriving to excite a general disaffection amongst his said majesty's subjects towards the administration of justice within his said majesty's realm, and to render his said majesty's judges authorized to administer the same suspected of an undue administration thereof, and by means thereof to draw upon his said majesty's judges the general ill-will, contempt, and hatred of his said majesty's subjects, on the twenty-second day of January, in the twenty-seventh year of the reign of our said present sovereign lord the king, with force and arms, at London aforesaid, in the parish of St. Mary le Bow aforesaid, in the ward of Cheap aforesaid, wickedly, maliciously, and seditiously did write, compose, print, and publish, and cause and procure to be written, composed, printed, and published, a certain false, wicked, malicious, scandalous, and seditious libel, intituled, 'The Prisoners 'Petition to the Right Honourable Lord 'George Gordon,' and which said libel is also further intituled, 'The Prisoners Petition to 'the Right Honourable Lord George Gordon, 'to preserve their Lives and Liberties, and 'prevent their Banishment to Botany-bay;' in which said libel is contained according to the tenor and effect following: but we (meaning the supposed prisoners in whose names the said supposed petition purported to have been written) have reason to cry aloud from our dungeons and prison ships, in defence of our lives and liberties in this advanced period of the world (when many kingdoms and commonwealths affect holiness unto the Lord, and profess to take hold out of all languages of the nations, even to take hold of the skirt of him that is a Jew, saying, we will go with you, for we have heard that God is with you); that the just punishment ordained by God for our trespasses of thievery, is profanely altered by men like ourselves; that his adequate judgment of our offences, mingled with mercy, is not executed upon us in righteousness; that the everlasting law of his statutes is changed and perverted to our destruction, and the true record of the Almighty is falsified and erased by the lawyers and judges (who sit with their backs to the words of the living God, and the fear of man before their faces) till the streets of our city have run down with a stream of blood instead of righteousness, as it is at this day; just as if the kingdoms and commonwealths at this advanced era were still aliens from the commonwealth of Israel, and strangers from the covenants of promise, having no hope, and without God in the world. How long, O Lord! shall these whited walls of council, who sit to judge the people after the law (meaning his said majesty's judges), command us to be hanged contrary to the law? They (meaning his said majesty's judges) tithe mint and rue, and all manner of herbs, by making long charges to the juries with a show of justice and religion, and afterwards pass over judgment and the love of God by pronouncing the sentence of death upon us (meaning upon such of the said prisoners as had been sentenced to death as aforesaid) and shedding our innocent blood (meaning the blood of such prisoners as last aforesaid) for expiable trespasses which do not require our cutting off from the people (meaning the capital punishment of such prisoners as last aforesaid). Surely then shall the blood of our lives (meaning the lives of such prisoners as last aforesaid) be required at their hands (meaning the hands of his said majesty's judges), life for life, banishment for banishment: Whoso sheddeth man's blood by man shall his blood be shed; for in the image of God made he man. There is now but a step between us and eternity; it behoves therefore to be instant in speaking the truth, and to demand speedy justice: the hangman and the scaffolding of the new drop is already prepared for our executions on one hand, and governor Phillip and military tyranny at Botany-bay (meaning the said place in parts beyond the seas, called Botany-bay) awaits us on the other; and in which said libel is also contained according to the tenor and effect following: we look with concern and abhorrence on the bloody hue of the felony laws, and the frequent executions in England in this reign under a nominal administration of justice (meaning that justice had not been truly administered in England during his said majesty's reign) since the time our eyes have been open to the expectation of salvation, pardon, expiation, and deliverance in this world, through the divine providence, justice, and mercy of God's holy law in favour of our cases, annulling the rigour of our sentences, and in arrest of the perverted judgments pronounced upon us; in contempt of our said lord the king, in open violation of the laws of this kingdom, 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 further gives the court here to understand and be

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informed, that before and at the time of the printing and publishing of a certain other false, wicked, malicious, scandalous, and seditious libel herein-after next mentioned, it was believed and understood by and amongst his said majesty's subjects, that his said majesty was then shortly about to cause to be transported divers felons and other offenders liable to be transported by the laws of this realm to a certain place in parts beyond the seas, called Botany-bay, to wit, at London aforesaid, in the parish and ward aforesaid: 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 before and at the time of the printing and publishing of a certain other false, wicked, malicious, scandalous, and seditious libel hereinafter next mentioned, divers persons had been and were confined in divers of his majesty's gaols within this kingdom, under sentence of death or transportation, for divers crimes by the laws and statutes of this realm punishable with death or transportation; and that the said George Gordon, late of London aforesaid, esq., (commonly called lord George Gordon), well knowing the several premises aforesaid, but being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said present sovereign lord the king, and to the laws and constitution of this realm, and unlawfully, wickedly, maliciously, and seditiously intending, devising, and contriving to stir up and excite tumults, discontents, insurrections, and seditions, as well in divers of his said majesty's gaols in this kingdom amongst the prisoners confined therein, and then under sentence of death or transportation for divers crimes by the laws and statutes of this realm punishable with death or transportation, as amongst divers others of his said majesty's subjects; and also to insinuate, and cause it to be believed, that divers laws of this realm, whereby sundry crimes are punishable with death, were made contrary to the law of God and the rightful power of the king and parliament of this realm to make such laws; and also unlawfully, wickedly, and maliciously intending, designing, and contriving to excite a general disaffection amongst his said majesty's subjects towards the administration of justice within his said majesty's realm, and to render his said majesty's judges authorized to administer the same suspected of an undue administration thereof, and by means thereof to draw upon his said majesty's judges the general ill-will, contempt, and hatred of his said majesty's subjects, on the said twenty-second day of January, in the said twenty-seventh year of the reign of our said present sovereign lord the king, with force and arms, at London aforesaid, in the parish and ward aforesaid, wickedly, maliciously, and seditiously did print and publish, and cause and procure to be printed and published a certain other false, wicked, malicious, scandalous, and seditious libel, intituled, 'The Prisoners Petition to the Right Honourable Lord George Gordon,' and which said libel is also further intituled, 'The Prisoners Petition to the Right Honourable Lord George Gordon, to preserve their Lives and Liberties, and prevent their Banishment to Botany-Bay;' and in which said last-mentioned libel is contained according to the tenor and effect following: but we (meaning the said supposed prisoners in whose names the said supposed petition purported to have been written) have reason to cry aloud from our dungeons and prison-ships in defence of our lives and liberties in this advanced period of the world (when many kingdoms and common-wealths affect holiness unto the Lord, and profess to take hold out of all languages of the nations, even to take hold of the skirt of him that is a Jew, saying, we will go with you, for we have heard that God is with you); that the just punishment ordained by God for our trespasses of thievery is profanely altered by men like ourselves; that his adequate judgment of our offences, mingled with mercy, is not executed upon us in righteousness; that the everlasting law of his statutes is changed and perverted to our destruction; and the true record of the Almighty is falsified by the lawyers and judges (who sit with their backs to the words of the living God, and the fear of man before their faces) till the streets of our city have run down with a stream of blood instead of righteousness, as it is at this day; just as if the kingdoms and commonwealths at this advanced era were still aliens from the commonwealth of Israel, and strangers from the covenants of promise, having no hope, and without God in the world. How long, O Lord! shall these whited walls of council, who sit to judge the people after the law, (meaning his said majesty's judges) command us to be hanged contrary to the law? They (meaning his said majesty's judges) tithe mint and rue, and all manner of herbs, by making long charges to the juries with a show of justice and religion, and afterwards pass over judgment and the love of God by pronouncing the sentence of death upon us (meaning upon such of the said last-mentioned prisoners as had been sentenced to death as last aforesaid), and shedding our innocent blood (meaning the blood of such prisoners as last aforesaid) for expiable trespasses, which do not require our cutting off from the people (meaning the capital punishment of such prisoners as last aforesaid). Surely then shall the blood of our lives (meaning the lives of such prisoners as last aforesaid) be required at their hands, (meaning the hands of his said majesty's judges), life for life, banishment for banishment: whoso sheddeth man's blood by man shall his blood be shed; for in the image of God made he man. There is now but a step between us and eternity; it behoves there-

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fore to be instant in speaking the truth, and to demand speedy justice: the hangman and the scaffolding of the new drop is already prepared for our executions on one hand, and governor Phillip and military tyranny at Botany-bay (meaning the said place in parts beyond the seas, called Botany-bay) awaits us on the other; and in which said last-mentioned libel is also contained according to the tenour and effect following: We look with concern and abhorrence on the bloody hue of the felony laws, and the frequent executions in England in this reign, under a nominal administration of justice (meaning that justice had not been truly administered in England during his said majesty's reign), since the time our eyes have been opened to the expectation of salvation, pardon, expiation, and deliverance in this world through the divine providence, justice, and mercy of God's holy law in favour of our cases, and annulling the rigour of our sentences, and in arrest of the perverted judgment pronounced upon us;—in contempt of our said lord the king, in open violation of the laws of this kingdom, to the evil example of all others in the like case offending, and against the peace of our said sovereign 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 George Gordon, esq., commonly called lord George Gordon, being such person as aforesaid, and again unlawfully, wickedly, maliciously, and seditiously intending, devising, and contriving to stir up and excite tumults, discontents, insurrections, and seditions amongst divers of his said majesty's subjects, and to render divers laws and statutes of this realm then and still in force within the same, as also his said majesty's judges employed by his said majesty in the due administration and execution thereof, the objects of detestation, hatred, and contempt, by and amongst divers of his said majesty's subjects, to wit, on the said twenty-second day of January, in the twenty-seventh year aforesaid, with force and arms, at London aforesaid, in the parish and ward aforesaid, wickedly, maliciously, and seditiously printed and published, and caused and procured to be printed and published, a certain other false, wicked, malicious, scandalous, and seditious libel, intituled, 'The Prisoners 'Petition to the Right Honourable Lord 'George Gordon,' and also further intituled, 'The Prisoners Petition to the Right Honour-'able Lord George Gordon, to preserve their 'Lives and Liberties, and prevent their Ba-'nishment to Botany-bay,' of and concerning his said majesty, and the laws and statutes now in force within this realm for the inflicting of capital punishment in certain cases, and of and concerning the administration and execution of justice within this realm by his said majesty's judges authorized to administer and execute the same; in which said libel is contained according to the tenour and effect following, that is to say, How long, O Lord! shall these whited walls of council, who sit to judge the people after the law (meaning his said majesty's judges), command us (meaning such of the said prisoners by whom the said libel purported to have been written as were then under sentence of death) to be hanged contrary to the law? They (again meaning his said majesty's judges) tithe mint and rue, and all manner of herbs, by making long charges to the juries with a show of justice and religion, and afterwards pass over judgment and the love of God, by pronouncing the sentence of death upon us (again meaning upon such prisoners as last aforesaid), and shedding our innocent blood (meaning the blood of such prisoners as last aforesaid) for expiable trespasses, which do not require our cutting off from the people (meaning the infliction of capital punishment upon such prisoners as last aforesaid). Surely then shall the blood of our lives (meaning the lives of such prisoners as last aforesaid) be required at their hands (meaning the hands of his said majesty's judges), life for life, banishment for banishment: whoso sheddeth man's blood by man shall his blood be shed; for in the image of God made he man;—in contempt of our said lord the king, in open violation of the laws of this kingdom, to the evil example of all others in like case offending, and against the peace of our said sovereign 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 George Gordon, esq, commonly called lord George Gordon, being such person as aforesaid, and again unlawfully, wickedly, maliciously, and seditiously intending, devising, and contriving as last aforesaid, afterwards, to wit, on the twenty-second day of January, in the twenty-seventh year aforesaid, with force and arms, at London aforesaid, in the parish and ward aforesaid, wickedly, maliciously, and seditiously printed and published, and caused and procured to be printed and published, a certain other false, wicked, malicious, scandalous, and seditious libel, intituled, 'The Prisoners Petition to 'the Right Honourable Lord George Gor-'don;' and which said libel is also further intituled, 'The Prisoners Petition to the 'Right Honourable Lord George Gordon, to 'preserve their Lives and Liberties, and pre-'vent their Banishment to Botany-bay,' of and concerning his said majesty, and the laws and statutes now in force within this realm for the inflicting of capital punishment in certain cases, and of and concerning the administration and execution of justice within this realm by his said majesty's judges authorized to administer and execute the same; in which said last-mentioned libel is contained according to the tenour and effect following, that is to say, we (meaning the supposed prisoners

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by whom the said last-mentioned libel purported to have been written) look with concern and abhorrence on the bloody hue of the felony laws, and the frequent executions in England in this reign, under a nominal administration of justice (meaning that justice was not truly administered in England during his majesty's reign), since the time our eyes (meaning the eyes of such prisoners as last aforesaid) have been opened to the expectation of salvation, pardon, expiation, and deliverance in this world, through the divine providence, justice, and mercy of God's holy law in favour of our cases (meaning the cases of such prisoners as last aforesaid), annulling the rigour of our sentences (meaning the sentences passed upon such prisoners as last aforesaid), and in arrest of the perverted judgments pronounced upon us (meaning the judgments pronounced upon such prisoners as last aforesaid);—in contempt of our said lord the king, in open violation of the laws of this kingdom, to the evil example of all others in like case offending, and against the peace of our said sovereign lord the king, his crown and dignity: whereupon the said attorney-general of our said lord, who for our said present sovereign lord the king prosecutes in this behalf, prays the consideration of the Court here in the premises, and that due process of law may be awarded against him the said George Gordon in this behalf, to make him answer to our said present sovereign lord the king touching and concerning the premises aforesaid, &c.

Counsel for the Crown—Mr. Attorney General [R. P. Arden, afterwards lord Alvanley]; Mr Solicitor General [Archibald Macdonald, afterwards Lord Chief Baron]; Mr Bearcroft, The hon. Thomas Erskine, Mr Baldwin, Mr. Law.

Solicitors — Messrs. Chamberlayne and White.

[The Information was opened by Mr. *Law*.]

Mr. *Attorney General*. May it please your lordship, and you gentlemen of the jury:

This is an information against the noble lord, the defendant, for a libel of as mischievous and seditious a nature as any I can possibly conceive.

If you have attended to this publication as it was opened by my learned friend, you observe that it is supposed to be addressed to his lordship by the prisoners then confined in gaol, but that it never was so addressed by any person but himself. The object of it is to infuse into the minds of those unhappy wretches whose lives or liberties were forfeit to the laws of their country, that those who pronounced the sentences upon them had no right to pronounce such sentences, and therefore calling upon them (instead of their calling upon him) to resist the execution of those laws that they had broken: and as far as he was able he dispersed them without doors when he was not able to disperse them within the doors of Newgate, to provoke his majesty's subjects to rise in defence of what he calls those injured subjects, and to oppose the execution of those laws to which their crimes have made them subject.

Gentlemen, the liberty of the press is what we hear much of, and I trust we all know it is an invaluable privilege, which this country I hope will ever enjoy; but no country upon earth can subsist if any subject of that country is permitted to attempt to infuse into the minds of its inhabitants an opinion, that the laws of that country are contrary to the laws of God, and that therefore they ought to be resisted. If there is any man in this country who thinks so of its laws, in God's name let him go somewhere else, let him go to that country where he can find more happy laws, and more liberal notions. He ought not to remain a subject of that country to the laws of which he thinks he ought not to submit, and to which he is determined, as far as in his power, to prevent every other man's submission.

Gentlemen, I do not wish by any thing I shall say to call for your verdict, without I shall establish the proofs I have to give upon a basis that nothing can shake; but I cannot help reminding you of the horrid tendency which this publication bears upon the face of it. It is but seven years ago since the three great gaols of this kingdom were sapped to their foundation, and every prisoner set at liberty.*

Lord *George Gordon*. That has nothing to do with the present charge.

Mr. *Attorney General*. All I say is, that the history of that time would have taught any man (I mean not to apply it particularly) to be extremely cautious of any kind of publication which would, in any degree, lead to the repetition of the same outrages. This publication has for its object the very same attempt; this gross libel carries upon the face of it the language of holy writ; and the scriptures of God are made use of to induce the people of this country to resist its laws.

Gentlemen, I will pass over many of the expressions in which it is couched (for it must be read to you in the course of the evidence), and you will have the information to compare with it afterwards if you should think fit.

The pamphlet, after having begun with quotations from scripture, states, that 'the 'true record of the Almighty is falsified and 'erased by the lawyers and judges, who sit 'with their backs to the words of the living 'God, and the fear of man before their faces, 'till the streets of our city have ran down 'with a stream of blood instead of righteous-'ness, as it is at this day.'—'How long, O

* See some account of these transactions in the trial of this same lord George Gordon, for high treason, *ante* vol. xxi, p. 504.

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Lord! shall these whited walls of council, 'who sit to judge the people after the law, 'command us to be hanged contrary to the 'law? They tithe the mint and rue, and all 'manner of herbs, by making long charges 'to the juries with a show of justice and reli- 'gion, and afterwards pass over judgment and 'the love of God, by pronouncing the sen- 'tence of death upon us, and shedding our in- 'nocent blood for expiable trespasses, which 'do not require our cutting off from the 'people. Surely then shall the blood of our 'lives be required at their hands, life for life, 'banishment for banishment: whoso shed- 'deth man's blood by man shall his blood be 'shed; for in the image of God made he man. 'There is now but a step between us and 'eternity; it behoves us therefore to be in- 'stant in speaking the truth, and to demand 'speedy justice: the hangman and the scaf- 'folding of the new drop is already prepared 'for our executions on one hand, and governor 'Phillip and military tyranny at Botany-bay 'awaits us on the other. We are accounted 'as sheep for the slaughter, as men of death 'in the eye of the law of England, copied 'from the laws of Draco, written in blood.'

Now, gentlemen, the object of this is clearly to persuade every man in this country that our laws are unjust, and that the legislature have usurped a power which does not belong to them, of inflicting the punishment of death, or even banishment, for the crimes for which the convicts were then confined in their respective prisons.

I need not comment before gentlemen of your description upon the tendency of such a publication. If there are any men so weak as to be affected by arguments like these with respect to the power of taking away life, except in cases where life has been taken away, let them only consider, that the reason why executions are more frequent in England than elsewhere is, because the laws are milder. We know nothing of tortures; God forbid we ever should practise them: and no man can be convicted in this country of an offence but in cases where the guilt must be so apparent that it is hardly possible to suppose a conviction where innocence can exist.

After having written this pamphlet addressed to himself, and not by the prisoners addressed to him, the noble lord in the months of January and February paid very frequent visits to Newgate; a place I should have thought his lordship would have abstained from ever visiting. In those visits he had frequent conversations with Mr. Pitt the turnkey, and repeatedly requested to be admitted to the cells, to talk with the prisoners about the sentences under which they respectively laboured, stating to him, that it was extremely unjust that they should have received those sentences, and wishing, if Mr. Pitt would have permitted him to have gone into the gaol, to have conversed with the prisoners upon that subject. Mr. Pitt knew his duty too well to permit that.

His lordship being refused admittance, some time after came his lordship's own footman, with three of these pamphlets, addressed to Mr. Pitt, on the felons side of Newgate, with lord George Gordon's compliments. The footman told Mr. Pitt that he came from lord George Gordon, and he left three of the pamphlets; one directed to him; another to Mr. Villette, the ordinary of Newgate; and a third to another Mr. Pitt, the turnkey on the debtors side.

One of these pamphlets was very properly put into the hands of the sheriffs, who have the immediate custody of the gaol: they very properly thought it their duty to lay it before the person who has now the honour to address you; and I thought it my duty, upon hearing of such an attempt (and indeed I should not have been worthy to wear the gown I do if I had hesitated a moment upon its being communicated to me), to bring the noble lord before the first court of criminal jurisdiction in this country; and in that Court, before a jury, to answer for so seditious an attempt.

Lord George Gordon, after being disappointed in his attempt upon the persons immediately employed in the custody of Newgate, sent two persons to the door of Newgate, with an intent, if they could, to have found entrance into the gaol, which I believe they were not able to effect. Not being able to get admittance into the gaol, they dispersed these pamphlets about the streets before the gaol of Newgate to every person that came by, or that was likely to have access into the gaol.

Mr. Pitt waited upon lord George Gordon. His lordship avowed his having sent the three pamphlets to Newgate by his footman. Indeed, when he went to his lordship's house, he was let in by the same footman that brought them to him.

Mr. Pitt went to his lordship, to ask him who those persons were that had dispersed the pamphlets before the gaol, and to remonstrate with him upon his conduct with respect to the prisoners. His lordship told him the names of the persons whom he had so employed; and, in short, did then that which God forbid he should do now, and I hope he will not now attempt it; he justified what he had done, and insisted he had a right to make this address to the prisoners, which he is now called upon to answer for.

Gentlemen, I have stated to you, that no man in this country can be convicted by any other means than by evidence immediately applying to the crime he is charged with. I shall produce the evidence I have stated respecting these different conversations. I shall then prove his lordship's acknowledgment. Indeed, these several addresses to the turnkeys are in his own hand-writing. When I have done that, I know not whether there will be any necessity for me to address you any more upon this information: most probably not.

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If there is a man who can entertain the ideas that this noble lord would have you suppose he does, I am sure he is not a fit subject for this kingdom; I believe for no other upon the face of the earth: for it would be impossible that government should subsist, if such notions were admitted to be disseminated among the people.

God be thanked! this libel did not attain its end, and I hope and trust there will be always vigour enough in the government of this country to resist any such attempts, and to keep that peace upon which depends our prosperity, and which if we keep among ourselves I believe we may long be a happy and a flourishing people.

EVIDENCE FOR THE CROWN.

John Pitt sworn.—Examined by Mr. *Solicitor General.*

Were you employed in the gaol of Newgate at any time in December last?—Yes.

In what capacity?—As turnkey to Mr. Akerman.

Did you about that time receive any pamphlets respecting the prisoners in gaol?—Yes; but I cannot say the day of the month when I received them. I received three pamphlets from lord George Gordon's servant.

Did you receive them in the month of December?—I cannot say that it was in the month of December.

Did you know lord George Gordon?—I did.

Lord *George Gordon.* He has known me many years.

Pitt. No, I have not known you a twelvemonth; it was in the latter end of the year 1766: lord George Gordon came into the taproom; it was before the tap was taken away.

Is that a part of the prison?—Yes.

How often had his lordship come to you before the receipt of those pamphlets you spoke of?—I dare say he had been there half a dozen times.

What was the object of those visits?—He used to come in and say 'Don't you think 'it is cruel that so much blood should be spilt? 'Don't you think it is very hard so many 'should suffer?' I said I could not help it, nor he neither I believed. He said 'No man 'ought to suffer death without he spilt 'blood.'

You said you received three pamphlets from lord George Gordon's servant: did you receive any more at any other time?—On the 4th of January, when we were moving the prisoners for trial, I met a woman in the passage with some pamphlets. I asked her where she got them; she said I might get enough at the door. There was an old man there: he told me he had those pamphlets to deliver from lord George Gordon. I asked him to give them to me.

Did you afterwards receive any pamphlets yourself?—Yes; from lord George Gordon, at his own house.

Were any of these pamphlets sent to any persons in Newgate?—Yes; lord George Gordon sent three: one directed to me; one to my brother Thomas, on the debtors side; and one to Mr. Villette, the ordinary of Newgate.

Is that the pamphlet (handing it to the witness) which was directed to you?—It is; I wrote my name at the top of it.

Do you know the hand-writing of the direction?—Yes.

Whose hand-writing is it?—Lord George Gordon's.

Have you seen his lordship write?—I have. One of the pamphlets is directed to Mr. Akerman; I saw lord George Gordon write that in his own parlour. His lordship often wanted to go in to the condemned convicts: I told him I could not let him in without an order from Mr. Akerman or the sheriffs. He frequently asked me how he was to apply to get admittance into the gaol: I told him he must apply to the sheriffs, or to Mr. Akerman.

Did you at any time go to lord George Gordon's house?—Yes, I did, on Friday the 26th of January.

Relate what passed then.—I knocked at the door; the footman that brought the three pamphlets came down and opened the door. I asked if his lordship was at home: he said he was. I said give my compliments to his lordship, tell him my name is Pitt, and that I come from Newgate; that I should be glad to speak with him. His lordship sent for me up stairs. I told him there was a sad piece of work about these pamphlets: he said, 'Don't you mind it; I am ready for them, 'let them begin as soon as they will.' I sat down, and had a glass of rum and water. I looked behind me; there I saw a pile of these pamphlets. I said there are some of them here: he said 'Yes; has Mr. Aker-'man had one?' I said I cannot say that he has. He said 'Will you be so kind as to 'take him one?' I said I will; will you write your compliments upon the back of it? His lordship then wrote his compliments to Mr. Akerman on the back of one of the pamphlets, and gave it me: he gave me one or two more.

Did you ask his lordship any questions respecting the two persons you mentioned, as dispersing these pamphlets?—I asked him where they lived, and then he wrote down their directions

Look at that paper?—This is the direction; I saw lord George Gordon write it.

The following exhibits were read by the Associate:

'Lord George Gordon's compliments to 'Mr. Akerman, January 26, 1787,' written upon one of the pamphlets.

The Address of the persons who delivered the Pamphlets.

'Mr. Mowatt, at the hat-maker's, Long's-'court, St. Martin's.

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'Mr. De Fleury and Miss De Fleury, at 'Mr. Tashmaker's.'

John Pitt.—Cross-examined by Lord *George Gordon.*

I desire you to tell me whether any conversation I ever had with you was to stir up the prisoners to any violence of conduct, or whether it was not after I had told you and your brother that I thought that the felony laws were too sanguine, and also that they had not had their effect by deterring people from committing thefts in all parts of the kingdom, and that you said also that you was tired with seeing of Bloodshed?—I never said any such word. If I must tell the truth I was always glad to get away from you; I often made use of many feints; I would not hold you in discourse.

You said I said let them go on. Do you think I meant the prisoners or the king's servants to go on?—I can't tell who you meant.

You say I made use of those words?—Yes.

Whether you were not sent for by government about these pamphlets?—No.

Did not somebody come to you on the part of government to inquire about it?—Yes.

And then you came and told me there was a deal of inquiries about this pamphlet?—Yes.

And then I said let them go on, I am ready for them?—Yes.

It did not relate to the prisoners you see?—I can't tell what it related to.

[The libel read as follows.]

The Prisoners Petition to the Right Hon. Lord George Gordon, to preserve their Lives and Liberties, and prevent their banishment to Botany-bay. London: Printed by Thomas Wilkins, No. 23 Aldermanbury, 1786.

My lord; we the prisoners whose names are under-written, galled with fetters of iron, and appointed to death in England, or condemned to perpetual exile and arbitrary government in a barbarous country abroad, where the remainder of our lives is determined to be made bitter with hard bondage, most earnestly intreat your lordship to hear our sighs and groans, and to let the distresses of your fellow-creatures, whose afflictions have found no profit, help, alleviation, or benefit of the clergy, penetrate to your compassion, and incline your heart, and direct your will to preserve us, if you have the power, from the dread execution of the doom and sentence pronounced on our trespasses.

We are not so shameless of face, or hardened, as to say that we are righteous, and have done no sin; for verily we have sinned, we have been guilty, we have deceived, we have spoken falsely, we have way-laid the unwary in his footpath, we have arrested the traveller on the highway, we have robbed, we have committed iniquity and wickedness, we have infested the streets of the city, we have done violence, we have caused the terror by night, we have occasioned distress by day, we have erred and set bad examples, we have led a rising generation astray, we have been suffered to grow up as a plague to the people, for their sins, as a pest in their play-houses, in their churches, in their courts of justice, and at their executions; our young ones also swarm and nestle in their avenues; even the king's companies are dishonoured by thieves and plunderers: we have departed from the commandments of God, and refused to keep his laws.—Blessed art thou, O Lord our God, King of the Universe, that thou bestowest graciousness, confession, and repentance to sinners!

We are neither so ignorant or so presumptuous as to imagine to escape the just judgments of God in this world, for our public wrongs and offences against our neighbours, by a mere confession of our faults with penitence and contrition; for in our present humiliation and mourning before him, for our trespasses of thievery, the thoughts of our rent hearts are not proudly set against the lawgiver, to require one jot or one tittle of mitigation of our own deserved punishment from our rulers, or to change or alter the decree of his appointed law. The law of the Lord is perfect, converting the soul; the judgments of the Lord are true and righteous altogether. With righteousness shall he judge the world, and the people with equity. Till heaven and earth pass, one jot or one tittle shall in no wise pass from the law, till all be fulfilled. Kings shall not add thereto nor diminish from it. For the Lord is our God, the Lord is our judge, the Lord is our lawgiver: may his will be done on earth as it is in heaven, and his kingdom come quickly in our days!

But we have reason to cry aloud from our dungeons and prison-ships, in defence of our lives and liberties, in this advanced period of the world (when many kingdoms and common-wealths affect holiness unto the Lord, and profess to take hold out of all languages of the nations, even to take hold of the skirt of him that is a jew, saying, We will go with you, for we have heard that God is with you), that the just punishment ordained by God for our trespasses of thievery, is profanely altered by men like ourselves, that his adequate judgment of our offences, mingled with mercy, is not executed upon us in righteousness; that the everlasting law of his statutes is changed and perverted to our destruction, and the true record of the Almighty, is falsified and erased by the lawyers and judges (who sit with their backs to the words of the living God, and the fear of man before their faces) till the streets of our city have run down with a stream of blood, instead of righteousness, as it is at this day; just as if the kingdoms and common-wealths at this advanced era, were still aliens from the common-wealth of Israel, and strangers from the

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covenants of promise, having no hope, and without God in the world. How long, O Lord! shall these whited walls of council, who sit to judge the people after the law, command us to be hanged, contrary to the law? They tithe mint and rue and all manner of herbs, by making long charges to the juries, with a show of justice and religion, and afterwards pass over judgment and the love of God, by pronouncing the sentence of death upon us, and shedding our innocent blood for expiable trespasses which do not require our cutting off from the people. Surely then shall the blood of our lives be required at their hands, life for life, banishment for banishment. Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man.

There is now but a step between us and eternity, it behoves us therefore to be instant in speaking the truth, and to demand speedy justice: the hangman and the scaffolding of the new drop is already prepared for our executions on one hand, and governor Philip, and military tyranny at Botany-bay, awaits us on the other; we are accounted as sheep for the slaughter, as men of death in the eye of the law of England, copied from the laws of Draco, written in blood, the Athenian laws, the Heathen laws, the Roman laws, the Goths laws, the laws of bloody king Henry the 1st, since whose reign the stealing above the value of twelve-pence (which sum was the standard in the time of king Athelstan, eight hundred years ago) is at common law regularly death. Which, considering the great intermediate alteration in the price or denomination of money, is undoubtedly a very barbarous constitution; and made the humane Sir Henry Spelman (above a century since, when money was at twice its present rate) complain, that while every thing else was risen in its nominal value, and become dearer, the life of man had continually grown cheaper. From such horrid and blasphemous precedents of heathen legislators, as well as from the unreasonableness and inefficacy of the practice, many learned and pious men in Europe, like sir Henry Spelman, have questioned the propriety and lawfulness of inflicting capital punishment for theft. The system of satisfactions proposed by sir Thomas More, and the marquis de Beccaria, at the distance of more than two centuries, were much nearer an obedience to the infallible law of God, than the sanguinary statutes of any of the christian kingdoms are at this day. The pride and stubbornness of the hearts of the kings, their ecclesiastics, and sycophants, have continually despised the lawgiver, and blasphemed with Pharaoh, saying, Who is the Lord, that we should obey his voice to let Israel go? We know not the Lord, neither will we let Israel go. Thus notwithstanding all the remonstrances, sufferings, and protestations of honest and good men for many ages past, and the false pretences of benevolence and justice among the ecclesiastics and kings, the punishment of theft still continues, throughout the greatest part of Europe, to be capital. Puffendorff also, and sir Matthew Hale, two arrogant lawyers, both presumed to sport the same heathen opinion, puffed up with human learning and the wisdom of man, that it might be lawful on all occasions to refer to the decision of earthly legislators to judge (instead of God) when crimes required the sanguinary punishment of dividing the soul from the body. These are they who have devoured Jacob, their sins are as scarlet, the people's blood have they shed like water, they have defiled the royal law of liberty by their forcible entries with heathen institutes. Wherefore should they longer say, Where is our God? Let him be known among the heathen in our sight by the revenging of the blood of his servants which is shed. Let the sighing of the prisoner come before thee, O Lord! according to the greatness of thy power preserve thou those that are appointed to die!

We look with concern and abhorrence on the bloody hue of the felony laws, and the frequent executions in England, in this reign, under a nominal administration of justice, since the time our eyes have been opened to the expectation of salvation, pardon, expiation, and deliverance in this world, through the divine providence, justice, and mercy of God's holy law, in favour of our cases, annulling the rigour of our sentences, and in arrest of the perverted judgments pronounced upon us. It would be blasphemy to compare the laws of the nations with the laws of God, or to set up the rebellious judgments of men against the decree of the Almighty. The Lord is a God of judgment, blessed are all they that wait for him. Save us, O Lord our God! and send enlargement, that we may give praise unto thy holy name, and be made stedfast in thy commandments and perfect in thy law: O hide not thyself from us in times like these, but cause us to return unto thee, O our King! and we shall return; renew the days as of old, when thou broughtest thy people out of the land of Egypt, out of the house of bondage, and talkest with them from heaven, and gavedst them true statutes and judgments, in which all the nations of the earth shall be blessed: restore thy righteous judges as at the first, and thy wise counsellors as at the beginning!

We shall not be contradicted in asserting, that plunderers and thieves of all ranks, denominations, and ages, have been increased, instead of diminished, by substituting heathen cruelties, in England, in place of the merciful punishment of God's appointment; even as the plagues were multiplied and came up into the courts and chambers of Pharaoh and his counsellors, who were hardened to destruction. Nor have these sinful commutations of his judgments and statutes, these pre-

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sumptuous perversions of the sure ways of the Almighty, who seeth the end of all matters at their first beginning, nor these mischiefs framed by laws, availed England in our days. God is just in all the rebellions, plots, tumults, discontents, corruption, revolt of colonies, fires, dearness of provisions, factions, loss of trade, grievous taxes, felonies, murders, perjuries, evil counsellors about the throne, and a general diminishing, that are come upon the nation; for he hath dealt truly and we have done wickedly; our king, our princes, our judges, our lawyers, our parliament, and our people, in despising the counsel of the God in heaven above and upon earth beneath, and trusting in the counsel of man, whose breath is in his nostrils. Cease ye from man, for wherein is he to be accounted of? What is he, What is his life? What is his piety? What is his righteousness? What is his help? What is his strength, What is his power? What is his law? Behold the mighty men are as nothing before God, and the most famous kings as if they were not: and the wise men as if they had no knowledge: and the intelligent as though void of understanding: for the greater part of their actions are emptiness, and the days of their lives but vanity in his presence: the nations also are reputed as nothing before him, and the isles as a very little thing.

If any atheists, infidels, or idolaters, should say that by abolishing all the heathen cruelties and practices remaining in the European laws, at this moment, and returning in faith to the good old paths, the healing ways of the most high God, that in the present ill-educated and disobedient generations throughout the kingdoms, the difficulties and perplexities of their respective governors would increase, and that the distresses and terrors of society would be enlarged—We beg leave to answer by reminding them, that in a former rebellion (when the people forgot God their Saviour, which had done great things in Egypt, and believed not his word, but murmured against the law and altered it, that he lifted up his hand against them also, to overthrow them, to incorporate them with strange nations their natural enemies, and to scatter them in their lands, because they had joined themselves to Baal-Perazin, the god of divisions and dissipation, and did eat the sacrifices of the dead, and shed innocent blood till the land was polluted with blood, and provoked him to anger with their innovations and inventions, till plagues broke in upon them); that even then, when Phinehas stood up, like a new chief justice, in the midst of their calamities, and executed judgment with righteousness, all their plagues were stayed immediately. In returning and confidence they were saved. At other times too of famine, sore sicknesses, earthquakes, seditions, privy conspiracy, assassins, and all troubles, God has delivered the lovers of his law from death, prisons, captivity, and banishment, and redeemed them in wars from the power of the sword. Yea, he has even extended the covenant of his mercy and peace in this world, and accounted everlasting righteousness to well-disposed individuals and their families who like the harlot Rahab, have showed kindness to his people who lift up and rejoice in his laws in the midst of the nations. The secret of the Lord is continually with them that fear him even in our days, as it was in the beginning, is now and ever will be, there shall no evil befall them, neither shall any plague come nigh their dwellings, for he shall give his angels charge over them, to keep them in all their ways. He will be with them in trouble, he will deliver them, and honour them, his truth shall be their shield and buckler, they shall not be afraid for the terror by night, nor for the pestilence that walketh in darkness, nor for the destruction that wasteth at noon-day; thousands shall fall at their side, and ten thousands at their right hand, but it shall not come nigh them, only with their eyes shall they behold and see the reward of the wicked, the perverters of his judgments.—Except the Lord keep the kings, the governments, the judges, the cities, the courts, and the chambers, the watchman waketh but in vain.

If we had committed capital crimes and were to be judged and executed according to God's law, our souls would then be justly cut off from the face of the earth, from the bosom of Abraham, and from the presence and pardon of God to all eternity; souls should not in that case answer for our souls; but let not our blood fall to the earth before the face of the Lord for the pardonable trespasses of thievery, for which the Saviour does not require our blood. O sovereign God! who sittest on the throne of compassion, grant us the remission of our iniquities, causing them to pass away in their order. May our neighbours judge not our lives to the cutting off or to banishment, contrary to the law, lest the just One judge their souls to the cutting off, or to exile, agreeable to the promise; but let them forgive us our trespasses of the law, in love, fulfilling the law of trespass, as we shall forgive them their unlawful trespasses against our lives and liberties, in the day of our restitution and atonement in righteousness before the Lord, and in mutual forgiveness and reconciliation as brethren. Be wise now therefore, O ye kings; be instructed, ye judges of the earth. A true law hath the Almighty given to his people, by the hand of Moses his servant, the faithful in his house. The Almighty will never change or alter his law. May he give grace and truth to our rulers, judges, and lawyers, to fulfil it towards us in righteousness, and not to destroy it, otherwise they shall in no case enter into the kingdom of heaven. May the kings of the nations speedily become as patterns of faith, life, and manners to their subjects, righteous before God, walking in all the com-

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mandments and ordinances of the Lord blameless; may they take heed to themselves that their hearts be not beguiled, and they turn aside and serve other gods, and bow down unto them, and the anger of the Lord be kindled against them, and they perish quickly. May they love the Lord our God with all their hearts, with all their souls, and with all their might, and diligently teach his statutes and judgments unto their children, and remember all the commandments of the Lord, and do them. May they consider it in their hearts that the Lord he is the God and there is none beside him, and that he that speaketh evil of his brother, and judgeth his brother, speaketh evil of the law, and judgeth the law: but if thou judge the law, thou art not a doer of the law, but a judge. There is one lawgiver who is able to save and to destroy; who art thou that judgest another?

We again intreat your lordship to become our good intercessor with the king and the rulers, and to exert your strongest endeavours to save our lives and liberties, and to prevent our banishment to Botany-bay.

So shall your petitioners ever pray for your lordship, &c. &c. &c.

Mr. *Richard Akerman* sworn.—Examined by Mr. *Bearcroft*.

I believe about the time of the publication of this pamphlet that has been given in evidence, it was a general talk that there was a design to transport persons under sentence to Botany-bay?—There was.

Mr. *Joseph Roberts* sworn.—Examined by Mr. *Bearcroft*.

Mr. Roberts, have you examined these copies with the original records at the proper office?—I have.

Are they true copies?—They are.

Mr. *Bearcroft*. These are office copies of the records of the conviction of several persons who were confined in Newgate and in the New Gaol. We produce them to support the allegation in the information, that at the time of the publishing this libel there were divers persons confined in divers gaols in this kingdom under sentence of death or transportation.

They were read by the Associate, and were,

An office copy of the record of the conviction of James Watts and Francis Hardy, for a highway robbery in the county of Middlesex, who both received sentence of death;

An office copy of the record of the conviction of Hugh Macdonald, for shop-lifting in the county of Middlesex, who received sentence of death;

An office copy of the record of the conviction of Charles King and Thomas Thompson, for a burglary in the city of London, who received sentence of death;

An office copy of the record of the conviction of John Christmas, for felony in the county of Surry, who received sentence of transportation for seven years;

An office copy of the record of the conviction of William Yardley, for felony in the county of Surrey, who received sentence of transportation for seven years.

To Mr. *Richard Akerman*. Was James Watts in your custody under that sentence?—He was: he was convicted in the December session.

Was Francis Hardy likewise in your custody?—He was.

Was Hugh Macdonald in your custody?—He was.

Were Charles King and Thomas Thompson in your custody?—Yes.

Mr. *Richard Akerman*.—Cross-examined by Lord *George Gordon*.

Had I the smallest connexion with those prisoners that they have asked you about?—Not that I know of.

Had I any connexion in sending the petitions to any particular prisoners? or did I direct them to you, to the two turnkeys, and Mr. Villette, the ordinary of Newgate?—I got one of them; I read it, and desired they would not deliver any.

Did you understand that I had the smallest connexion with the prisoners?—I never heard that you had. I heard you had been at the debtors side, and had seen a debtor in the lodge, but not to go into the prison.

How long was that before this time?—A great while before.

Mr. *Hall* sworn.—Examined by Mr. *Erskine*.

You are the keeper of the New Gaol?—Yes.

Had you John Christmas in your custody?—I had.

Had you William Yardley in your custody?—I had.

Mr. *Hall*.—Cross-examined by Lord *George Gordon*.

Do you know me by sight?—I do not know the gentleman.

You are the keeper of the New Gaol, are you?—Yes.

Did lord George Gordon ever send any petitions to you?—No.

Did he send any to any of your prisoners?—Not that I know of.

Had he ever any connexion or intercourse with either of the persons whose names you have repeated now?—Not that I know of.

Were there any papers delivered at your gaol to stir up your prisoners to sedition?—I heard there were papers delivered at Newgate, but I did not hear of any being delivered at my prison.

The end of the evidence for the Crown.

Lord GEORGE GORDON.

Gentlemen of the jury;—The reason of my having turned my mind particularly to the laws of theft in this country, particularly

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with respect to their being various from God's laws, and the consequence of their being put into execution, was on this wise: I had a theft committed by one of my own servants; and when he was detected in it, and was going to be discharged for it, he declared himself actuated by the devil, or some evil spirit, and that he could not help himself in what he did; and he begged I would not discharge him, and make his crime notorious, but that I would excuse him for it. The matter was not great; it was only about eighteen pence in four and sixpence: he was sent to buy a thing, he charged four shillings and sixpence, and I think he only gave three shillings for it; the person he bought it of told me: he came afterwards, and asked me how I liked the article, because he thought it was very cheap; it was a fowl. Having occasion always to observe the same rule in my private family by the law of God as I do in my public conduct, some people told him in my house he would be hanged, if my lord chose it; this frightened him very much, and to turn him away with a character of that kind I did not choose to do it.

I looked into the law of God, and found it required no man's blood to be taken away; and there are many other countries besides this where no man's blood is shed for the trespass of thievery. Having considered this, and the number of persons whose blood is shed in this country, and that it did not deter others from thievery, and that the judges are obliged to send them into a foreign country, and not to execute their own law upon them, (for the law is death, if it is above a shilling) therefore they have drawn up those laws to send them to Botany Bay, where a military government is established for them, as is set forth in this paper; there is neither judge, jury, nor counsel allowed to the prisoners, whatever offences they may commit, at Botany-bay.

Having turned these things in my mind, and having heard how much the hearts of the judges were melted and softened by pronouncing the sentence of death by the imposition of human laws, contrary to God's law, and those laws, though there is much human wisdom in them, having not any effect, I chose to communicate my sentiments before I did it to the public or the prisoners themselves. I went to lord Mansfield, but could gain no admittance. I went next to judge Gould; mentioned my business; he desired me to stay breakfast with him, and converse more fully with him; and there were tears in his eyes when I was talking about it: and he desired me to put my sentiments upon paper in a proper way, that they might be known, and that they might come before the legislature and the government of the country; because, as the laws now stand, the judges are shut up to pronounce according to the letter of the law.

Having heard judge Gould say that, I also went to the recorder. This was about the middle of December. The recorder said also he wished the legislature would take up this business, and alter the laws, and that the gaols all over the kingdom were crowded; and judge Gould said it had no effect at all, for some man had been hanged in Holborn (Walker I think it was), and a gold watch was picked out of a gentleman's pocket whilst sentence was executing. He said, they were contrary to the law of God, but agreeable to the law of the land; and the judges are bound to pronounce according to the evidence brought of a prisoner's having committed those crimes.

From this I went to sheriff Le Mesurier to ask for permission to speak to some of the most prudent persons who were under sentence of death for small thefts, thought to be objects of mercy, or thought to be included in being transported to Botany-bay. Mr. Le Mesurier did not know me; I only simply went into the sheriffs office. First I went to Newgate, to ask if they would allow me to see any of the prisoners: they said no, not without an order from the sheriffs. I went to sheriff Le Mesurier; he said he would make out an order for my admission: he, while he was making out the order said, What is your name? I told him: then he stopped all of a sudden. He said 'You have some reason for going there?' I told him I had, that I had been with judge Gould and the recorder upon the subject, and my heart was full of it, and the heart of every man ought to be full of it, to see the lives of fellow creatures taken away, contrary to the law of God. He said, 'Pooh, pooh, I 'shall not attend to it at all.' Having made use of these words, I took him up in a solemn language; I addressed myself to him in such a manner that I made him beg my pardon three times before his own clerks in the office, not by any threats of beating, or the like, but by language applied to his heart. Finding I could get no access to speak to any of the particular prisoners, I spoke to Mr. Pitt and Mr. Villette, the ordinary of Newgate, and he agreed with me that the laws of God were exactly as I said, but he thought it was not his duty to tell the people when they were dying, that the laws of God were contrary to the laws they were going to be executed upon. I told him he did not do his duty to God if he did not. After this I went home to my own house, and put some of my sentiments upon paper. You will observe that there is no proof brought of my having written it at all. They say I have written it and published it, &c.; they have proved the publication of it in a manner.

The information says, it was written maliciously, scandalously, and with such views which were not in my heart at all. I have told my lord, and the jury, the motives that were in my heart; and you see, that so far from my ideas, as the attorney-general has

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wickedly insinuated, having tended to subvert order in the country, he himself, and his associates, and the government, and the parliament, have drawn up a bill to alter the law in this case as much as I could wish it to be altered; it is from death to milder punishment.

So far from any man having committed any crime in supporting the law of God in preference to the law of man upon all occasions, that in last Saturday night's Gazette the king states in his proclamation that the strict observation of God's law is absolutely necessary for his subjects of all ranks to bring a blessing upon his people and government. I could have brought in evidence, that the king, in his own proclamation, has said no more than I have said in this. I wish God's laws to be established in this country as I do all over the world, that people's hearts may be glad. I do wish God to be not only over this country but over the whole world, and it is time God's law should be over the whole world.

Gentlemen, the attorney-general said it was with a seditious view, and that the visits to the prisoners were at the time of the publication of the pamphlets. The visits to the prisoners were at the time I have mentioned, and not at the time of the publication of the pamphlets; and that such pamphlets as were upon the subject of the prisoners were not sent in to the prisoners to stir them up, or sent to them during the execution, when the parson would be obliged to eat up all he said, or to lye before the people. That would have been the time to stir them up; but I did no such thing, I sent them to Mr. Pitt and his brother, and when Mr. Pitt came to my house for some, he said, why did not your lordship send one to Mr. Akerman, he is a good sort of a man, and he will think it very odd. I declare to God these are the words, he will think it very odd you should send us the pamphlets, and not send one to him, who is the keeper of the gaol; which I did.

You see they do not prove the smallest connexion between me and those prisoners; whatever their sentences were, whether death or banishment, I don't know which, though they state in their information that I published and wrote it, and stirred them up in several gaols. There is only one gaol with which they prove the smallest connexion at all; with the New Gaol in the Borough they prove no kind of connexion whatever.

There is another thing, and this is a very serious part I am going to say now, that either the judge, I don't know very properly that I may call judge Buller the judge in the beginning of the proceedings, because there was a senior judge then in the Court of King's-bench—that either the judge and the Court of King's-bench are wrong in the manner in which they have suffered this proceeding to go on, or the attorney and solicitor-general are wrong in the way they have gone on; both these informations are brought against me: this one is sixteen months ago; the other information which you are to try also, the French information, is ten months ago, August 1786.

The informations *ex officio* are brought to trial without any previous finding by the grand jury, only upon the information of the attorney-general, and no previous finding by the way of indictment; therefore there is no criminality passed by any evidence upon this prosecution against my conduct as yet, and the only legal methods of these informations is this: 'Informations are of two sorts; first, 'those which are partly at the suit of the 'king, and partly at that of a subject; and 'secondly, such as are only in the name of 'the king: the former are usually brought 'upon penal statutes, which inflict a penalty 'upon conviction of the offender, one part to 'the use of the king, and another to the use 'of the informer, and are a sort of *qui tam* 'actions (the nature of which was explained 'in a former volume) only carried on by a 'criminal instead of a civil process, upon 'which I shall therefore only observe, that 'by the statute 31 Eliz. cap. 5. no prosecution 'upon any penal statute, the suit and benefit 'whereof are limited in part to the king, and 'in part to the prosecutor, can be brought by 'any common informer after one year is ex-'pired since the commission of the offence, 'nor on behalf of the crown after the lapse 'of two years longer; nor where the for-'feiture is originally given only to the king 'can such prosecution be had after the expi-'ration of two years from the commission of 'the offence.

'The informations that are exhibited in 'the name of the king alone are also of two 'kinds; first, those which are truly and pro-'perly his own suits, and filed *ex officio* by 'his own immediate officer, the attorney-'general; secondly, those in which though 'the king is the nominal prosecutor, yet it is 'at the relation of some private person or 'common informer, and they are filed by the 'king's coroner and attorney in the Court of 'King's-bench, usually called the Master of 'the Crown-office, who is for this purpose 'the standing officer of the public.' I should state to the jury that this is in judge Blackstone's book,* which I believe all the judges approve of upon this subject:—"The objects 'of the king's own prosecutions, filed *ex officio* 'by his own attorney-general, are properly 'such enormous misdemesnors as peculiarly 'tend to disturb or endanger his government 'or to molest or affront him in the regular 'discharge of his royal functions: for offences 'so high and dangerous, in the punishment 'or prevention of which a moment's delay 'would be fatal, the law has given to the 'crown the power of an immediate prosecu-'tion, without waiting for any previous appli-'cation to any other tribunal;'—That is,

* Commentaries, vol. IV. pp. 308, et seq.

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without waiting for any previous finding by an indictment, to take the person immediately, supposing he has government and the laws in such a way that if you don't take him in the act he will turn them over so in a moment; and in such a case the attorney-general has a right to attach such a person for fear he should put his intentions into execution; that if you don't take him immediately the government is subverted, and there is a good reason for keeping those informations *ex officio* upon the statute books: I do not say they are contrary to the laws of the land, but are very necessary when executed with judgment, and not with views of harassing and vexation.

They have been above ten months in the first cause, and six months in the second: now there are many grand juries have sat within ten and within six months, and I have been at large all the time, and might communicate with whoever I pleased; whereas, if they had proceeded properly in the business, my offence ought to have been so high that I ought to have been taken into custody immediately, and tried in the immediate summary proceeding of the judges, as it is in this case, without waiting for the previous finding of a grand jury:—'Which power, thus necessary 'not only to the ease and safety, but even to 'the very existence of the executive magis-'trate, was originally reserved in the great 'plan of the English constitution, wherein 'provision is wisely made for the due preser-'vation of all its parts. The objects of the 'other species of informations, filed by the 'master of the Crown-office, upon the com-'plaint or relation of a private subject, 'are any gross and notorious misdemesnors, 'riots, batteries, libels, and other immoralities 'of an atrocious kind, not peculiarly tending 'to disturb the government (for these are 'left to the care of the attorney-general), but 'which on account of their magnitude or per-'nicious example deserve the most public 'animadversion; and when an information 'is filed either thus, or by the attorney-gene-'ral *ex officio*, it must be tried by a petit jury 'of the county where the offence arises; 'after which, if the defendant be found guil-'ty, the Court must be resorted to for his 'punishment.' Judge Blackstone further adds, 'There can be no doubt but that this 'mode of prosecution by information (or sug-'gestion), filed on record by the king's attor-'ney-general, or by his coroner or master of 'the Crown-office in the Court of King's-'bench, is as ancient as the common law 'itself: for as the king was bound to prose-'cute, or at least to lend the sanction of his 'name to a prosecutor, whenever a grand jury 'informed him upon their oaths that there 'was a sufficient ground for instituting a 'criminal suit, so when these his immediate 'officers were otherwise sufficiently assured 'that a man had committed a gross misde-'mesnor, either personally against the king 'or his government, or against the public 'peace and good order, they were at liberty, 'without waiting for any farther intelligence, 'to convey that information to the Court of 'King's-bench by a suggestion on record, 'and to carry on the prosecution in his ma-'jesty's name. But these informations (of 'every kind) are confined by the constitu-'tional law to misdemesnors only, for wher-'ever any capital offence is charged, the 'same law requires that the accusation be 'warranted by the oath of twelve men before 'the party shall be put to answer it. And 'as to those offences in which informations 'were allowed as well as indictments, so 'long as they were confined to this high and 'respectable jurisdiction, and were carried on 'in a legal and regular course in his majesty's 'Court of King's-bench, the subject had no 'reason to complain."

No man can have reason to complain if brought to an immediatete trial without waiting for the accusation being found by the grand jury, and that was the way I understood I ought to have been tried; and I want to know whether the court has winked at the manner of the attorney-general's going out of the mode of prosecuting it; for if the Court countenances the attorney-general in prosecuting in a way that states the offence to be so great that a person must be prosecuted immediately without waiting for a verisimilitude of being found by a grand jury to be put upon trial by their peers, for if the judges agree to that, that grand juries should be entirely left off in this country, as they have done in Botany-Bay, where there is no previous finding at all; the men are brought to trials there by the military, but here if they are brought to a civil tribunal out of the common form I am sure a judge of your lordship's character will not countenance it, and therefore I want to know at what time it was the Court winked at this prosecution not being brought forward immediately, the offence being so atrocious that there was not time to wait for the finding of a grand jury.—'The same notice was 'given, the same process was issued, the 'same pleas were allowed, the same trial by 'jury was had, the same judgment was 'given by the same judges, as if the pro-'secution had originally been by indictment. 'But when the statute 3 Hen. 7th. cap. 1, 'had extended the jurisdiction of the Court 'of Star-chamber, the members of which 'were the sole judges of the law, the fact, 'and the penalty;'—Here is another thing I have heard, that you hold this doctrine, this pernicious doctrine, that the jury are not the judges whether the libel is scandalous, false, and seditious, but that the jury are only to judge whether the facts are proved or not: that does not relate to my case; I only give Mr. Justice Buller this opportunity in his charge to the jury, to say whether the jury are not also the judges whether the libel is false, scandalous, and seditious, or whether

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the jury are merely confined to say whether the facts stated are proved or not, because I hold, and Mr. Erskine, and some of the judges, judge Gould I believe, holds, that the jury are to judge whether the libel itself is false, scandalous, and seditious, as well as whether the libel is proved to be published by the person.* I hold it to be necessary to prove that: but I only mention this because I have a perfect opinion of Mr. Justice Buller's integrity; I have no doubt about his being a man of integrity as well as of penetration and discernment.—'And when the statute 11 Hen. 7th, cap. 3, had permitted informations to be brought by any informer upon any penal statute, not extending to life or member, at the assizes, or before the justices of the peace, who were to hear and determine the same according to their own discretion; then it was that the legal and orderly jurisdiction of the Court of King's-bench fell into disuse and oblivion; and Empson and Dudley (the wicked instruments of king Hen. 7th,) by hunting out obsolete penalties, and this tyrannical mode of prosecution, with other oppressive devices, continually harassed the subject, and shamefully enriched the crown. The latter of these acts was soon indeed repealed by statute 1 Hen. 8th, cap. 6; but the Court of Star-chamber continued in high vigour, and daily increasing its authority, for more than a century longer, till finally abolished by statute 16, Car. 1st. cap. 10.'

This practice was entirely put an end to in this illegal method by Empson and Dudley† at the time of the revolution, but the power is still in the constitution to proceed summarily in this manner, having the whole course of the laws and constitution upon their side; but then they must do it quickly, agreeable to the method of the prosecution. Now they have taken the method of prosecution long and harassing to me for ten months together, without taking the matter of the prosecution which is to bring it to an immediate trial: because if a man is taken up to be tried without any previous finding by a jury, it is a comfort to him he is tried directly upon it; whereas if you give it a verisimilitude to an accusation by a grand jury, then you take the ordinary course of trial; but this is a summary proceeding lodged in the executive government, which upon great occasions, such as the attorney-general has stated mine to be, but which it is not, where a man had an intention to overturn the government, and that if he was not taken into custody immediately, the government was gone. Now they should prove that I did stir up the people, that I did prevent the Botany-bay scheme being carried into execution. Now I did nothing more than state upon paper such terms, wishing them to come into consideration, as judge Gould and the recorder wished to come under consideration also, that the penal laws evidently wanted alteration; which is proved by the parliament and the judges drawing up this new act to send them to Botany-bay.

I do not know that I shall trouble the Court with any thing farther, because, to speak the truth, I have not a paper.—I meant if I had time, to bring my books with me to prove that every word of that pamphlet is in the bible, and that it is consistent with the sentiments of the most humane and best-hearted men now—such as judge Gould and the recorder,—to have an alteration made in the felony laws; but what that alteration is, is left, as the judges and the people stand at present, to the wisdom of parliament; for by the laws, as they now stand, if a person steals a shilling and the fact is proved, the sentence is invariably death.

I should have made a much better defence, if I had had leave to subpœna my witnesses; and should also have shown you something about the New Gaol, which would have surprised you: that when these gentlemen, these wicked gentlemen, wicked, false, scandalous defamers—when they wanted to prove this business upon me, and thought there was a deal of crime in it, an art they practised at Mr. Clark's the king's messenger in Mount-row: all these people were to be summoned as witnesses. I shall give a short account; the jury, perhaps, will believe what I say. Mr. Clark, the king's messenger, sent for Richard Hicks, at the New Inn at Westminster-bridge; he is a poor man. When he came to him, he gave him a letter to lord George Gordon, Welbeck-street, and told him to carry that letter to lord George, and deliver it into his own hand; and tell lord George that he came from the New Goal in the Borough, from the prisoners, and that he was to get copies of this petition, as many as his lordship could spare, and bring them back to the prisoners in the Borough. I opened the letter; it was a forged letter—I went to justice Bond the day afterwards in Bow-street—it was a forged letter, saying, 'We your lordship's friends and admirers, '&c. the prisoners in the New Gaol in the 'Borough, having heard of a petition—so 'and so—do request of your lordship to send 'so many by the bearer, who is a trusty 'person.'

Upon reading the paper it came into my heart immediately, that this was some falsehood, for I had no acquaintance with any prisoner at all in the Borough. I sent for the man up stairs. When he came up, I began questioning him who gave him that letter, and who he came from. He began trembling, and was much frightened. I rang for the maid-servant to come up stairs. When she came into the room, and the man servant too, I bid the man not to be frightened, but tell the whole truth. He said, To tell the

* See the case of the Dean of St. Asaph, vol. 21, p. 847.

† See their case, *ante*, vol 1, p. 283.

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truth, Mr. Clark the king's messenger sent for me to his house to give you this letter, and say, I came from the prisoners in the New Gaol; and when I have got the petitions I am to go back to the One Tun in One Tun-court, and ask for captain Macdonald, and deliver the petitions to him.—So then you did not come from the New Gaol?—No, I did not, says he.—Nor are you to carry them back again there?—He said, no; but to captain Macdonald. I said, I would go with him there. I went with him: it is a very blackguard-house, known to all the public offices, where the king's servants meet with the people they want to bring informations against. I went up to the front room, and asked for captain Macdonald. Immediately the woman of the House showed me into a back room. When I came to the door of the back room, a person came out—Who wants captain Macdonald? I said, I want him. Is your name Macdonald? He said, no; his name was not Macdonald, it was Hamilton: he went by a false name. There were four or five people in the room. I asked the man, Is this the company you were to come to? Yes, says he, and there sits the king's messenger. Clark was in the company, William Drummond, esq. was in the company, and two or three more. Some would give me their names, and some would not; but the king's messenger refused to give me his name, and denied he was of that name, though the people of the House knew him.

I went next day to Bow-street to justice Bond: he said there was no occasion to take notice of it: he said he had heard of that Clark, that he was an infamous man.

Clark hired two men to follow me constantly, well-dressed people, to follow me every where: if I went into a coffee-house, to go into the coffee-house; if I took a coach, to take a coach and follow me; to live at the public-house opposite to me, and to make written accounts every day, and carry them to the treasury at night, and particularly to mark what officers pulled off their hats to me; to mark down every man's name that came into my house, or out of it; where I went to, and how long I stayed. Mr. Nepean, a clerk of the treasury, paid them, and lord Sydney had the management of it. If their accounts were not full enough they were told, You must be more particular, it must be every hour.—There were a variety upon me; they used to relieve one another.

This man, King, came to me in the summer after he had been employed. He said, My lord, my heart is so full I can no longer bare to conceal it from you. I was employed with another man in the winter. I am surprised you never saw us, we used to follow you in the street, and into every coffee-house. I was paid by Clark of the treasury; and was turned off for not being particular enough in this business, of relating who spoke to you, pulled off their hats to you, and the houses you went into.

I state this to show how they tried to get evidence of my delivering this to the keeper of the New Prison. You would have had all these people before you, if I had not been interrupted in serving my subpœnas. I was interrupted and taken into custody by the guards, when offering to subpœna the marquis of Carmarthen. I was soon ordered to be let go, and the marquis said he would meet me at his father's at five o'clock; and begged I would not make a disturbance at St. James's. At five o'clock I saw the marquis, and he assured me every thing should be done, and that he could bring that letter from the French ambassador to me upon the other information.

And here I beg his lordship will by-and-by tell me what is to become of the first information? The same jury is to try them both; and I don't understand they mean to bring on the first; for they cannot bring it on till these witnesses come; and the jury cannot sit and do justice in that case.

I have nothing further to say, gentlemen, than to show that they wish by every art and every means to make me a publisher in a seditious manner in the New Gaol; but I did not comply with any such thing: but as I meant nothing but that the law in that case might be corrected, which you see was in the heart of the king and his parliament, as they have made an alteration in the law with respect to the people that were condemned.

I sent some of these pamphlets to the judges as soon as they were wrote, to the heads, the keepers of the gaols, and the minister of the gaol, without any view to to raise sedition and tumult among the people: if I had, I would have gone on the day of the execution and told the people, when he was confessing them and telling them that it was just and conformable to God's law, I would have told them it was no such thing, if that had been my intention; but I hope as they have made an act to send these people to Botany-bay, that there will be some means devised by the legislature to alter the laws of theft in this country.

I can make no better defence now, because my witnesses are not present; and therefore you must take it upon my word what I say relative to this business; what judge Gould and the recorder said in December;—and this petition was not printed till this year.—There is not the smallest connexion of any of the prisoners that are mentioned as condemned with me; or that I had any particular connexion with them, only that there were such prisoners condemned to death and transportation for thefts; and that his majesty and the parliament had altered their punishments just as much as I wished to alter them by that act.

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There is a word left out in the recital part in the record, but I don't mean to pin my defence upon any thing of that kind.

Court. If there is any thing you think material, point it out to me, and I will look at it.

Lord *George Gordon.* 'Having no hope 'without God in the world'—it should be, 'Having no hope *and* without God in the 'world:'—it is a thing I don't pin much upon; it is right in the printed pamphlet.

Court. I have examined it, it is a mistake in the copy—it is right in the record.

SUMMING UP.

Mr. Justice *Buller.* Gentlemen of the Jury;—This is an information which has been filed against the defendant for a libel—the libel has been read to you—there are two questions upon the record for your determination.

First, Whether the defendant either wrote and composed, or printed and published this libel? and

Secondly, Whether the averments that are made on the part of the Crown in this record, are proved to your satisfaction or not?*

With respect to the first question, it has been proved by John Pitt, that he received three of the pamphlets about the month of December, but he cannot tell the exact day, from lord George Gordon's servant; that my lord George Gordon frequently came into the lodge at Newgate; that he was there six times at least before the pamphlets were brought. He asked the witness, whether he did not think it hard that so many persons should suffer; and that no man ought to suffer, who had not spilt blood. He says the defendant sent three pamphlets; one directed to him, one to his brother the turnkey, and one to Mr. Villette, the ordinary.

Then he produces that which was directed to him; and he says the direction is in lord George Gordon's hand-writing. He says the defendant often wanted to go in to the condemned people, but the witness refused it.

On the 26th of January, he went to the defendant's house; the same footman opened the door to him as brought the pamphlets. The witness went up stairs, and he told the defendant that there was a sad piece of work about these pamphlets; upon which the defendant said, 'Don't you mind—let them 'go on—I am ready for them, let them begin 'as soon as they will.' He says at that time there was a large pile of the pamphlets lying in the room. The defendant took up one, directed it to Mr. Akerman, and delivered it to the witness. He produces two other papers, both of which, he says, were directed by lord George Gordon. One is that pamphlet which he directed to Mr. Akerman; the other is a note mentioning the names of the persons who were to disperse the pamphlets.

Mr. Akerman says, that previous to the publication of the paper, there was a general understanding, that the prisoners were to be sent to Botany-bay.

They then produced records of several convictions, some sentenced to death, others to transportation, both in London, Middlesex, and Surrey.

Mr. Akerman says, the defendant had no connection with these prisoners as he knows of.

Hall, who is the keeper of the New Gaol, says, William Yardley and John Christmas were in his custody. He says he does not know the defendant; the defendant never sent any of these petitions to him, or his prisoners as he knows of.

The defendant has said, that there is no evidence of his having actually written this pamphlet; at the same time he tells you he did write it, for he committed his thoughts upon paper.

If you see any reason to distinguish between writing and composing, and the printing and publishing, you will say so; for there are different counts, some for writing and composing, and others for printing and publishing. You find a large parcel of the pamphlets were all together in his custody, and in his room.

When you have disposed of that fact, the only one that remains is, whether the averments in this information are proved or not.

Now the information sets out with stating, that it was generally understood, that the king was about to cause to be transported several felons and other offenders liable to be transported to Botany-bay.—To prove that they call Mr. Akerman who tells you the fact was so understood.

The second averment in the information is, that divers persons were confined in divers gaols under sentence of death and transportation. To prove that fact, they produce several copies of convictions; and they call Mr. Akerman and Mr. Hall, who tell you, that the prisoners whose names are mentioned in those convictions, then continued in their custody.

The defendant, upon his cross-examination of the witnesses, desired particularly to know whether he had any connexion with either of those prisoners whose names are mentioned in the copies of the records of conviction: it is not stated that he has. The charge is not that he entered into any combination with those particular persons, but it is laid as a general offence, not confined to those particular persons; and therefore that observation does not apply at all to the case.

If therefore the offence is proved to your satisfaction, you will find the defendant guilty; if not, you will acquit him.

There are two or three inuendos hardly

* See Woodfall's case, vol. 20, p. 895. Dean of St. Asaph's case, vol. 21, p. 847. But now see stat. 32, Geo. 3, c. 60.

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worthy of observation, viz. whether *us* and *our*, mentioned in the petition purporting to be sent by the prisoners, means the prisoners; And whether, where it speaks of the bloody hue of the felony laws, and the frequent executions in this reign under a nominal administration of justice, it is meant to insinuate that justice had not been truly administered during the king's reign.

The jury immediately pronounced the defendant Guilty.

THE TRIAL OF THOMAS WILKINS

FOR PRINTING AND PUBLISHING THE FOREGOING LIBEL.

The Information was opened by Mr. *Law.*

Mr. *Attorney General.* May it please your lordship, and you gentlemen of the jury:

I do not know, gentlemen, whether you were present at the last trial; if you were, it might save some time in stating the nature of the libel, for the publication of which the present information is filed. As possibly you may have been absent, I must state over again shortly what I stated then; namely, that this is an information against the defendant for publishing a pamphlet charged to be a libel upon the administration of justice in this kingdom. It purports to be a petition from the prisoners to lord George Gordon, though in fact it was written by himself. It alleges, apparently from the mouths of the prisoners who were unfortunately then labouring under sentences of death and transportation, that their respective sentences were unjust and iniquitous; and it calls upon his lordship to protect them from the execution of the sentences of the law, to which their crimes had subjected them.

So great a noise prevailed when my learned friend who opened the cause was stating the information, that perhaps you might not be able to hear it accurately. The pamphlet is called, 'The Prisoners Petition to the Right 'Honourable Lord George Gordon to preserve 'their Rights and Liberties, and prevent their 'Banishment to Botany-bay. London: printed 'by Thomas Wilkins, No. 22, Aldermanbury;' who is the present unfortunate defendant.

I think it is pretty plain with what view this was published. To talk of its being a discussion of the propriety of the laws of England, addressed to those who only have the right to alter them, is contrary to the fact: it appears in the shape of a petition addressed from the prisoners themselves, and is sold at a public shop. The very fact refutes the defence which might have been, and which was just now insisted upon by the noble lord.

In short, gentlemen, the question you have to try is—Whether the present unfortunate defendant has or has not in this case been made the instrument of publishing a libel of a most gross and malignant tendency? He is not the casual seller (though he would then certainly in point of law, and necessarily in point of justice, be subjected to the same consequences as the original publisher), but he is the person who was employed by the noble lord whose trial has just passed, to print this, and to sell it to all his majesty's subjects who thought it worth while to give sixpence for it. —I hope he had not much custom.

The noble lord, the author of it, has been convicted. This poor man (for I dare say he is so) has been made his instrument in the publication of it. It is absolutely necessary that the printers or publishers of libels should be brought to punishment, or else these publications can never be put a stop to; for there may always be found men wicked enough to write, and rash enough to run the risk which they do by such publications as these, if they can find instruments to vend them. And if there are men so misled by them as to be their instruments, it is my duty in the situation I am in, to make an example of such persons; because it is the only means to prevent rash men from disseminating sedition among the people.

This pamphlet asserts that justice has not been administered during his majesty's reign; that every infliction of capital punishment, nay even of banishment, is totally illegal, and contrary to the laws of God. I know of no laws that forbid it; but I know that in the Mosaic law capital punishments were inflicted for other crimes than murder: however, that consideration has nothing to do in this cause. If there are men who think the laws of this country are intolerable, for God's sake let them remove to another; but so long as they are here, they must be subject to the laws; and those who have the administration of the laws must be protected from the insults which are daily offered them: and in this pamphlet, more notoriously than in any that I can remember, the laws are arraigned, and the criminals under sentence of death are called upon (for, as I said before, it is no petition of the prisoners) to complain of the justice of their sentences, which every honest, wise, and just, as well as truly pious, man would advise them to submit to with resignation as the only expiation they can make to the offended laws of their country.

It is unnecessary for me, addressing myself to gentlemen of your character in a commercial country, to take up your time in showing the absurdity of such a law as is contended for in this pamphlet; it is perfectly ridicu-

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lous, and no government could exist in this country if that were the law.

I shall prove to you that it was in contemplation to transport to Botany-bay persons liable to transportation, and that at that time this pamphlet was printed and published by the defendant, who has put his name to it.

EVIDENCE FOR THE CROWN.

John Bolts sworn.—Examined by Mr. *Solicitor General.*

Do you know the defendant Thomas Wilkins?—Yes.

Do you know his house?—Yes.

Have you been there?—I have.

What business does he carry on?—A printer.

Where does he live?—At the next house to the George Inn, Aldermanbury.

Were you there upon the 8th of January last?—I was.

Did you buy any pamphlet there?—I did.

Was that the one you purchased (showing the witness a pamphlet)?—It was.

[The pamphlet read.]

Mr. Joseph Roberts produced office-copies of the records of the conviction of several persons who were confined in Newgate and in the New Gaol.

They were read by the Associate, and were,

An office-copy of the record of the conviction of James Watts and Francis Hardy, for a highway robbery in the county of Middlesex, who both received sentence of death.

An office-copy of the record of the conviction of Hugh Macdonald, for shop-lifting in the county of Middlesex, who received sentence of death.

An office-copy of the record of the conviction of Charles King and Thomas Thompson, for a burglary in the city of London, who received sentence of death.

An office-copy of the record of the conviction of John Christmas, for felony in the county of Surrey, who received sentence of transportation for seven years.

An office-copy of the record of the conviction of William Yardley, for felony in the county of Surrey, who received sentence of transportation for seven years.

John Pitt sworn.—Examined by Mr. *Baldwin.*

You are the turnkey at Newgate?—Yes.

Did you know James Watts, Francis Hardy, Hugh Macdonald, Charles King, and Thomas Thompson?—Yes, all of them.

Were they in Newgate in January last?—They were—they are there now: they are under respites.

Where did you understand the transports were to be sent to at that time?—To Botany-bay.

Mr. *Hall* sworn.—Examined by Mr. *Law.*

You are the keeper of the New Gaol?—I am.

Were John Christmas and William Yardley in your custody in January last?—They were.

Were they under any sentence?—Yes, sentence of transportation: they were tried the March before.

Court (to the defendant). Have you any counsel?

Defendant. I have no counsel.

Court. Will you say any thing for yourself?

Defendant. Yes.

Thomas Wilkins. Gentlemen of the jury;—In December last, my lord George Gordon sent a copy of these pamphlets to my house to be printed. I never read it myself before it was absolutely printed; for we had it in detached pieces, and as I had printed things for my lord before, when I saw his lordship respecting this business, I asked him if it was of any evil tendency. He said, none at all; and told me not to be frightened, for that he would indemnify me, whatever evil should accrue from it. I was rather fearful when I read the proof respecting the prisoners petition. I did not know, nor I do not know now to the contrary, but that it came directly from the prisoners. As to publishing it, I never published it myself at all; and I understood from my servants, that only two went out of the house except what were sent to my lord. Had I had the least idea that it was of an evil tendency, that I could come to any harm respecting the business, it is not reasonable that I should risk my liberty as well as my property, in receiving a sum of perhaps four, five, or six pounds, which is about the expense of print and paper; therefore what has been in the public prints already respecting the business has been of great evil to me.

My creditors supposed that I should be cast in this business, and perhaps inflicted with a large fine, and perhaps imprisonment. Various of them have come and demanded their dues before the regular time of credit, which has greatly hurt me. And as I only printed this pamphlet as a printer, without having any concern at all with sending it about or being connected with my lord, whether it was from a good or an evil intent I cannot say; and if a man in his business which he gets his bread by, is to be punished for printing, what is to become of our families? Parochial and government taxes are so great, that if we were to say, we won't print this, and won't print the other, we might starve.

I see no evil tendency at all in it myself. I do not pretend to know law, or any thing of the matter; but I did it for my lord, and he promised to indemnify me, whatever evil might accrue from it; and that is all I can say in my defence.

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I do not know that it is of any avail; but in the information it is said for printing and publishing in the parish of St. Mary-le-Bow, in the ward of Cheap; whereas I live in Aldermanbury, and in the ward of Cripplegate. I must leave it to the discretion of the jury.

SUMMING UP.

Mr. Just. *Buller.* Gentlemen of the Jury! This defendant has made one objection in point of form. I will dismiss that first.

The information states, that he lives in the parish of St. Mary-le-Bow, in the ward of Cheap, whereas he lives in some other parish or ward: that is perfectly immaterial. If he printed it any where in the city of London, that is enough, and it is proved he did so.

On the part of the prosecution they have proved, that the paper produced was bought at the defendant's shop.

They have called Pitt and another witness, who prove that it was expected at that time that the prisoners would be transported to Botany-bay. They likewise proved, that several prisoners were under conviction for transportation, some in Middlesex, some in London, and some in Surrey. As to the inuendos, they infer that *us* and *our* means the prisoners. It concludes with saying, that by the words 'we look with concern and abhor-'rence on the bloody hue of the felony laws, 'and the frequent executions in England in 'this reign, under a nominal administration of 'justice,' be meant that justice had not been truly administered in England during his majesty's reign.

Respecting the defence, you will not expect any observations from me; for it goes to give a general licence to printers to print whatever they may think proper; which cannot be endured in this or in any other country.

The jury immediately pronounced the defendant—Guilty.

THE TRIAL OF GEORGE GORDON, Esq.

COMMONLY CALLED

LORD GEORGE GORDON

FOR A LIBEL ON THE QUEEN OF FRANCE AND ON THE FRENCH AMBASSADOR.

THE INFORMATION.

Of Michaelmas Term, in the Twenty-seventh Year of the Reign of King George the Third.

London, } Be it remembered, that Richard
to wit. } Pepper Arden, esq. attorney-general of our sovereign lord the now king, who for our said lord the king in this behalf prosecutes in his own proper person, comes here into the court of our said lord the king, before the king himself, at Westminster, on Tuesday next after fifteen days from the day of St. Martin in this same term, and for our said lord the king gives the Court here to understand and be informed, that whereas there now is, and before and at the time of the publishing of the false, scandalous, malicious, and defamatory libels herein-after mentioned, there subsisted between our said sovereign lord the king and his most christian majesty, and the subjects of their said majesties respectively, great friendship, amity, peace, and concord: and whereas the most high, mighty, and puissant princess Maria Antonietta, the august and royal consort of his said most christian majesty, hath always from the time of her birth hitherto been a great and illustrious princess, eminently distinguished and renowned for her wisdom, prudence, justice, clemency, and every other princely virtue and endowment: and whereas before and at the time of the publishing of the said false, scandalous, malicious, and defamatory libels herein-after mentioned, François Barthelemy was and still is charged with the affairs of France with his Britannic majesty, in the absence of his excellency Jean Balthazar D'Adhemar, his most christian majesty's ambassador extraordinary and plenipotentiary to his Britannic majesty, and was, and is, and always hath been, from the time of his birth hitherto, of good fame, character, and reputation: yet George Gordon, late of London, esq. commonly called lord George Gordon, well-knowing the premises, but contriving, and wrongfully, and unjustly and wickedly intending most unjustly, wickedly, maliciously, and scandalously, to asperse, defame, traduce, and vilify her said most christian majesty, and to cause it to be believed that her said most christian majesty had been guilty of great injustice, oppression, cruelty, and persecution towards the subjects of his most christian majesty, and thereby to alienate their affections from his said most christian majesty's government; and also to asperse, defame, vilify, and traduce, the said François Barthelemy, then and there being so charged with the affairs of France as aforesaid, and to bring the said François Barthelemy into great contempt, distrust, infamy, and disgrace; and also as much as in him the said George Gordon lay to interrupt, disturb, and destroy the friendship, good-will, peace, harmony, and concord subsisting between our said sovereign lord the king and his most christian majesty, and their said respective subjects; and to create, stir up, and excite animosities, hatred, jealousy, and discord, between our said lord the king and his subjects, and his said most christian majesty and his

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subjects, on the twenty-second day of August, in the year of our Lord one thousand seven hundred and eighty-six, at London aforesaid, to wit, in the parish of St. Mary-le-Bow, in the ward of Cheap, did publish, and did cause and procure to be published in a certain public newspaper, called The Public Advertiser, a most wicked, false, scandalous, malicious, and defamatory libel, of and concerning her said most christian majesty, and of and concerning the said François Barthelemy, according the tenour following: that is to say, Mr. Barthelemy (meaning the said François Barthelemy) who conducts the affairs of France in the absence of comte Dazimer (meaning the said Jean Balthazar d'Adhemar, the ambassador as aforesaid, having sent Mr. Daragon with a message to comte de Cagliostro, in Sloane-street, intimating that he (meaning the said François Barthelemy) had received orders from the court of Versailles to communicate to comte de Cagliostro that he (meaning the said comte de Cagliostro) had now permission to return to France; yesterday morning the comte (meaning the said comte de Cagliostro) accompanied by lord George Gordon (meaning the said George Gordon), and Mr. Bergeret de Frouville, waited upon Mr. Barthelemy (meaning the said François Barthelemy) at the hotel of France in Piccadilly, for an eclaircissement upon the subject of this message from the court of France, delivered to Mr. Barthelemy (meaning the said François Barthelemy) relative to the permission granted to the comte de Cagliostro to return to Paris. Mr. Barthelemy (meaning the aforesaid François Barthelemy) the comte de Cambise, and Mr. Daragon, seemed much surprised to see comte de Cagliostro arrive in lord George Gordon's (meaning the said George Gordon's) coach with his lordship (meaning the said George Gordon) and Mr. Frouville; and having expressed their desire that the comte de Cagliostro alone should speak with Mr. Barthelemy (meaning the said François Barthelemy), they were informed that lord George Gordon (meaning the said George Gordon) and Mr. Bergeret de Frouville were there on purpose to attend their friend (meaning the said comte de Cagliostro), and that the comte de Cagliostro would not dispense with lord George Gordon's (meaning the said George Gordon's) absence from the conference. Will any friend to liberty blame comte de Cagliostro, after ten months imprisonment in a dungeon, for having his (meaning the said comte de Cagliostro's) friends near him (meaning the said comte de Cagliostro) when insidious proposals are made to him (meaning the said comte de Cagliostro) by the faction of Breteuil and the supporters of the Bastile? men who have already sought his (meaning the said comte de Cagliostro's) destruction; and after his (meaning the said comte de Cagliostro's) innocence was declared by the judgment of the parliament of Paris, embezzled a great part of his (meaning the said comte de Cagliostro's) fortune, and exiled him (meaning the said comte de Cagliostro) from France. Mr. Barthelemy (meaning the said François Barthelemy) seeing the determination of the comte's (meaning the comte de Cagliostro's) friends, then read the letter from Mr. Breteuil; but upon the comte de Cagliostro desiring a copy, Mr. Barthelemy (meaning the said François Barthelemy) refused it. A great deal of conversation then ensued upon the subject, which in all probability will give rise to a full representation to the king of France, who is certainly very much imposed on. The queen's (meaning her said most christian majesty's) party is still violent against comte de Cagliostro, the friend of mankind; and De Breteuil, le sieur De Launey, Titon, De Brunieres, Maitre-Chesnon, Barthelemy (meaning the said François Barthelemy) and Dazimer (meaning the said Jean Balthazar D'Adhemar) are the mere instruments of that faction. The honour of the king of France, the justice and judgment of the parliament of Paris, the good faith of the citizens, and the good name of the nation, are all attainted by the village and detention of the property of comte de Cagliostro. The thousands of good citizens whose acclamations shook the Bastile upon the declaration of his (meaning the said comte de Cagliostro's) innocence, might very possibly give rise to his (meaning the said comte de Cagliostro's) exile, by increasing the jealousy and fear of an arbitrary government. But why detain the fortune of a stranger, after his (meaning the said comte de Cagliostro's) innocence is declared? This is a very base proceeding indeed, Mr. de Breteuil, and brings contempt and reproach upon all concerned in it—to the great indignity, scandal, and dishonour of her said most christian majesty; to the great infamy and disgrace of the said François Barthelemy; to the great disturbance of the public peace, good order and government of this kingdom; to the great danger of creating discord between our said lord the king and his subjects, and his most christian majesty and his subjects; 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 who prosecutes as aforesaid, further gives the Court here to understand, and be informed that the said George Gordon being such person as aforesaid, and not only contriving and intending, as much as in him lay, to offend as aforesaid, but also to cause it to be understood and believed, that her said most christian majesty had been guilty of great injustice, oppression, cruelty, and persecution; and also to bring the said François Barthelemy, being so charged with the affairs of France as aforesaid, into great scandal, infamy, and disgrace; afterwards, to wit,

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the twenty-fourth day of August, in the said year of our Lord one thousand seven hundred and eighty-six, at London aforesaid, in the parish and ward aforesaid, did unlawfully, wickedly, and maliciously publish, and did cause and procure to be published, in a certain other public newspaper, called The Public Advertiser, a certain other most wicked, scandalous, malicious, and defamatory libel, of and concerning her said most christian majesty, and the said François Barthelemy, according to the tenour following: (that is to say) Count de Cagliostro has declared (meaning the said comte de Cagliostro) he will hold no intercourse with any of le sieur Breteuil's messengers from France, except in the presence of lord George Gordon (meaning the said George Gordon). The gang of French spies in London, who are linked in with Monsieur De Morand and the sieurs Barthelemy (meaning the said François Barthelemy), Dazimer (meaning the said Jean Balthazar D'Adhemer, the ambassador as aforesaid) Cambise, and the queen's (meaning her said most christian majesty's) Bastile party at Paris, are trying the most insidious arts to entrap the comte (meaning the said comte de Cagliostro) and comtesse, (meaning the comtesse de Cagliostro) and have the effrontery and audaciousness to persecute them (meaning the said comte de Cagliostro and the said comtesse de Cagliostro) publicly, and vilify their (meaning the said comte de Cagliostro's and the said comtesse de Cagliostro's) characters even in this free country, where these noble strangers are come to seek protection in the arms of a generous people. The friendship and benevolence of comte de Cagliostro, in advising the poor prince Louis de Rohan to be upon his (meaning the said prince Louis de Rohan's) guard against the comtesse de Valois and the intrigues of the queen's (meaning her said most christian majesty's) faction, who still seek the destruction of that noble prince, (meaning the said prince Louis de Rohan) has brought upon the comte (meaning the said comte de Cagliostro) and his (meaning the said comte de Cagliostro's) amiable comtesse, the hateful revenge and perfidious cruelties of a tyrannical government (meaning the government of his said most christian majesty). The story of the diamonds has never been properly explained to the public in France: it would discover too much of the base arts practised to destroy prince Louis, (meaning the said prince Louis de Rohan) and involve in guilt persons not safe to name in an arbitrary kingdom;—to the great indignity, scandal, and dishonour of her said most christian majesty; to the great infamy and disgrace of the said François Barthelemy, he the said François Barthelemy then and there being charged with the affairs of France as aforesaid; to the great disturbance of the public peace, good order, and government of this kingdom; to the great danger of creating discord between our said lord the king and his subjects, and his said most christian majesty and his subjects; 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, who prosecutes for our said lord the king, gives the Court of our said lord the king, before the king himself here, further to understand, and be informed, that the said George Gordon being such person as aforesaid; and not only contriving and intending as much as in him lay to offend as aforesaid, but also to cause it to be understood and believed, that her said most christian majesty had been guilty of great injustice, oppression, cruelty, and persecution; and also to bring the said François Barthelemy into great scandal, infamy and disgrace; afterwards, to wit, on the said twenty-second day of August, in the said year of our Lord one thousand seven hundred and eighty-six, at London aforesaid, in the parish and ward aforesaid, did unlawfully, wickedly, and maliciously write and publish, and did cause and procure to be written and published, a certain other most wicked, scandalous, malicious, and defamatory libel of and concerning her most christian majesty, and of and concerning the said François Barthelemy, according to the tenour following: that is to say, Mr. Barthelemy (meaning the said François Barthelemy), who conducts the affairs of France in the absence of the count Dazimer, (meaning the said Jean Balthazar D'Adhemar, the ambassador as aforesaid), having sent Mr. Daragon with a message to count de Cagliostro, in Sloane-street, intimating that he (meaning the said François Barthelemy) had received orders from the court of Versailles to communicate to the comte de Cagliostro, (meaning the said comte de Cagliostro) that he (meaning the said comte de Cagliostro) had now permission to return to France; yesterday morning the comte (meaning the said comte de Cagliostro), accompanied by lord George Gordon (meaning the said George Gordon) and Mr. Bergeret de Frouville, waited upon Mr. Barthelemy (meaning the said François Barthelemy) at the hotel of France, in Piccadilly, for an eclaircissement upon the subject of this message from the court of France, delivered by Mr. Barthelemy (meaning the said François Barthelemy), relative to the permission granted to the comte de Cagliostro to return to Paris. Mr. Barthelemy (meaning the said Francois Barthelemy), the comte de Cambise, and Mr. Daragon, seemed much surprised to see comte de Cagliostro arrive in lord George Gordon's (meaning the said George Gordon's) coach, with his lordship (meaning the said George Gordon) and Mr. Frouville; and having expressed their desire that the comte de Cagliostro alone should speak with

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Mr. Barthelemy (meaning the said François Barthelemy), they were informed that lord George Gordon (meaning the said George Gordon) and Mr. Bergeret de Frouville were thereon purpose to attend their friend (meaning the said comte de Cagliostro), and that the comte de Cagliostro would not dispense with lord George Gordon's (meaning the said George Gordon's) absence from the conference. Will any friend to liberty blame comte de Cagliostro, after ten months imprisonment in a dungeon, for having his (meaning the said comte de Cagliostro's) friends near him, (meaning the said comte de Cagliostro) when insidious proposals are made to him (meaning the said comte de Cagliostro) by the faction of Breteuil, and the supporters of the Bastile? men who have already sought his (meaning the said comte de Cagliostro's) destruction; and after his (meaning the said comte de Cagliostro's) innocence was declared by the judgment of the parliament of Paris, embezzled a great part of his (meaning the said comte de Cagliostro's) fortune, and exiled him (meaning the said comte de Cagliostro) from France. Mr. Barthelemy (meaning the said François Barthelemy) seeing the determination of the comte's (meaning the said comte de Cagliostro's) friends, then read the letter from Mr. Breteuil; but upon the comte de Cagliostro desiring a copy, Mr. Barthelemy (meaning the said François Barthelemy) refused it. A great deal of conversation then ensued upon the subject, which in all probability will give rise to a full representation to the king of France, who is certainly very much imposed on. The queen's (meaning her said most christian majesty's) party is still violent against comte de Cagliostro, the friend of mankind, and De Breteuil, le sieur de Launey, Titon, De Brunieres, Maitre Chesnon, Barthelemy (meaning the said François Barthelemy), and Dazimer, (meaning the said Jean Balthazar D'Adhemar) are the mere instruments of that faction. The honour of the king of France, the justice and judgment of the parliament of Paris, the good faith of the citizens, and the good name of the nation, are all attainted by the pillage and detention of the property of comte de Cagliostro. The thousands of good citizens, whose acclamations shook the Bastile upon the declaration of his (meaning the said comte de Cagliostro's) innocence, might very possibly give rise to his (meaning the said comte de Cagliostro's) exile, by occasioning the jealousy and fear of an arbitrary government; but why detain the fortune of a stranger, after his (meaning the said comte de Cagliostro's) innocence is declared? This is a very base proceeding indeed, Mr. De Breteil, and brings contempt and reproach upon all concerned in it—to the great indignity, scandal and dishonour of her said most christian majesty; to the great infamy and disgrace of the said François Barthelemy; to the great disturbance of the public peace, good order and government of this kingdom; to the great danger of creating discord between our said lord the king and his subjects, and his most christian majesty and his subjects; 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 now king, his crown and dignity. And the said attorney-general of our said lord the king, who prosecutes as aforesaid, further gives the Court here to understand and be informed, That the said George Gordon being such person as aforesaid, and not only contriving and intending as much as in him lay to offend as aforesaid, but also to cause it to be understood and believed, that her said most christian majesty had been guilty of great injustice, oppression, cruelty, and persecution; and also to bring the said François Barthelemy, being so charged with the affairs of France as aforesaid, into great scandal, infamy, and disgrace; afterwards, to wit, on the said twenty-fourth day of August, in the said year of our Lord one thousand seven hundred and eighty six, at London aforesaid, in the parish and ward aforesaid, did unlawfully, wickedly, and maliciously write and publish, and did cause and procure to be written and published, a certain other most wicked, scandalous, malicious, and defamatory libel of and concerning her most christian majesty, and of and concerning the said François Barthelemy, according to the tenour following: that is to say, comte de Cagliostro has declared he (meaning the said comte de Cagliostro) will hold no intercourse with any of le sieur Breteuil's messengers from France, except in the presence of lord George Gordon, (meaning the said George Gordon). The gang of French spies in London, who are linked in with Monsieur De Morand, and the sieurs Barthelemy (meaning the said François Barthelemy), Dazimer (meaning the said Jean Balthazar D'Adhemar, the ambassador as aforesaid), Cambise, and the queen's (meaning her said most christian majesty's) Bastile party at Paris, are trying the most insidious arts to entrap the comte (meaning the said comte de Cagliostro) and comtesse (meaning the comtesse de Cagliostro), and have the effrontery and audaciousness to persecute them (meaning the said comte de Cagliostro and the said comtesse de Cagliostro) publicly, and vilify their (meaning the said comte de Cagliostro, and the said comtesse de Cagliostro's) characters, even in this free country, where these noble strangers are come to seek protection in the arms of a generous people. The friendship and benevolence of comte de Cagliostro, in advising the poor prince Louis de Rohan to be upon his (meaning the said prince Louis de Rohan's) guard against the comtesse de Valois, and the intrigues of the queen's (meaning her said most christian majesty's)

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faction, who still seek the destruction of that noble prince (meaning the said prince Louis de Rohan), has brought upon the comte (meaning the said comte de Cagliostro) and his (meaning the said comte de Cagliostro's) amiable comtesse, the hateful revenge and perfidious cruelties of a tyrannical government. The story of the diamonds has never been properly explained to the public in France. It would discover too much of the base arts practised to destroy prince Louis (meaning the said prince Louis de Rohan) and involve in guilt persons not safe to name in an arbitrary kingdom—to the great indignity, scandal, and dishonour of her most christian majesty; to the great infamy and disgrace of the said François Barthelemy, he the said Francois Barthelemy then and there being charged with the affairs of France as aforesaid; to the great disturbance of the public peace, good order, and government of this kingdom; to the great danger of creating discord between our said lord the king and his subjects, and his said most christian majesty and his subjects; 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 now king, his crown, and dignity. Whereupon the said attorney-general of our said lord the king, who for our said lord 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 George Gordon, commonly called lord George Gordon; to make him answer to our said lord the king touching and concerning the premises aforesaid.

[The Information was opened by Mr. Law.*]

Mr. *Att. Gen.* May it please your lordship, and you gentlemen of the jury:

This is an information against lord George Gordon, for an offence for which, I believe, not many informations have been filed; but it is for an offence which as much concerns the peace of this country as any which can possibly be stated: and indeed it is absolutely necessary such an offence should be prevented; for the consequences of its prevailing must be, that no man whatever can be sent upon a public embassy to the British court, without being liable, as they have for months past been, to be insulted and vilified in the public papers of that nation in which they sustain the character of a sovereign in amity with us.

Gentlemen, it is called the French information. I suppose something is meant by these words, as if it were not an English information.

I, as his majesty's attorney-general, in the prosecution of a duty incumbent on me, have brought this information before you for an offence described by the learned judge, in the book that has been quoted by the defendant upon the former information, as most materially and immediately affecting the king's government and his honour.

Gentlemen, the information charges, that at the time this libel was published in The Public Advertiser, there did exist (as we all know there did) a peace and amity between the two courts of Great Britain and France. —That Monsieur Barthelemy, in the absence of the count d'Adhemar, the ambassador from France, was charged with the affairs of that court, and, in his absence, filled in every respect the character of the French minister. —That, being in that situation, the noble lord, the defendant, thought fit in a public newspaper, circulated about this town, to cause to be published the subject of this information.—It is a publication which could not possibly have any other effect in an English newspaper, but that of vilifying the high persons mentioned, without one possible good effect that could arise from it.

It is astonishing how any person in the noble lord's situation, should think himself justified in going so much out of the way, as, amongst other of his writings, to fix upon a foreign minister, resident at this court, as a proper object to level his insidious attacks upon.

The French ambassador had submitted a

* According to an account of this Trial which is inserted in the European Magazine, vol. 11, p. 446, the defendant, for the purpose of putting off his trial, presented an affidavit, stating, 'that he had on Monday and 'Tuesday been violently repulsed from the 'door of Mrs. Fitzherbert, near Grosvenor-'square, by which he was prevented from 'serving a *subpœnâ*. He therefore prayed 'that the trial might be deferred, as he con-'sidered her testimony as essential to his de-'fence.

'The attorney-general said, that he could 'not possibly allow the merits of this affida-'vit. The notice of trial had been given near 'three weeks since, therefore an ineffectual 'attempt to serve a *subpœnâ* but two days 'since could not form a sufficient claim to 'any farther delay. He wished also to know 'to what parts of his lordship's defence the 'evidence of Mrs. Fitzherbert would be ap-'plicable.

'Lord George Gordon replied, by mention-'ing a conversation which he said he had at 'Paris with Mrs. Fitzherbert, with the rela-'tion of which he intermingled so many 'allusions to the situation of that lady, either 'too indelicate or too absurd for our repeti-'tion, that judge Buller was compelled to in-'terpose. His lordship with some difficulty 'was silenced, and it was then ordered that 'the trial should proceed.'

A similar account of this attempt to defer the trial will be found in a very inferior report of these proceedings against lord George Gordon, purporting to be taken in short-hand by 'J. Johnson, esq. of the Temple.'

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considerable time to these sorts of insults, which, I am sorry to say it, has been said must be submitted to in England. It was submitted to till it could be borne no longer; and no person will serve any foreign prince, in the character of an ambassador to this country, if he is to be attacked in this manner by any man who chooses to vilify him. I am sure no good man would wish that such should be the character of the English nation. I need not state more than this to show, that if there is any person who has particularly a right to be protected from scandal, it is one, who, coming from his country in a public character, resides here for the purpose of transacting the affairs of his own court.

The noble lord, the defendant, has complained of the lapse of time before these informations were filed.

The information which has been tried, was filed immediately upon the publication's being found out. I did not lose a moment. As soon as I could put the charge upon parchment, and have it compared carefully with the libel, which you know is necessary, it was filed—it was filed of the same term.

With respect to the present publication, the French minister having suffered a great deal of scandal and insult from the noble lord, who pestered him continually with his visits, he saw himself at last most grossly attacked in The Public Advertiser—the queen of France, and the French minister accused of that, which could be calculated for no other purpose than venting the noble lord's malice, or the malice of some other person.

This being the case, the French minister would have taken upon himself to prosecute the defendant; but when government knew how much it affected the mind of the high and honourable person whom it concerned, it would have been a shabby part indeed, in government, to have suffered a foreign minister to come here as a private prosecutor, to protect himself against the attack of a British subject, appearing publicly at noon-day and avowing it.

Mr. Woodfall, the printer of the newspaper, having been sent to, he gave up lord George Gordon as the author of the libel: I believe he did so with his lordship's permission; for I will say for the noble lord, that he appears very openly to avow what he does. How far that extenuates the offence, will be for consideration in another place. The consequence of Mr. Woodfall's giving up lord George Gordon as the author is, that he is not brought before you.

I confess I should, if I could possibly have got evidence to have affected both, have prosecuted Mr. Woodfall as well as the noble lord, because if I could prevent the publication, I should prevent the offence; but Mr. Woodfall having immediately given up the author, it would not, after having made use of him as a witness, have been a proper thing to have prosecuted him.

You perceive, gentlemen, that this is a very delicate thing; and the only objection that I know of to bringing forward this prosecution is, that it gives a man an opportunity to be insolent once more, if he thinks fit; but I cannot, as his majesty's attorney-general, sit still and see a foreign minister abused from day to day in a public newspaper, without exerting that power which is put into my hands only to be used in the prosecution of great offences, but more particularly those which concern his majesty's government.

The facts are these: The noble lord (the defendant) thought fit to attend comte de Cagliostro to the French minister, Monsieur Barthelemy (comte d'Adhemar being absent), who had a letter to communicate to comte de Cagliostro relative to his return to France: he there introduced himself into a conversation between the French minister and comte de Cagliostro. The noble lord, the next morning, causes to be published in the newspaper this libel:

'Yesterday morning the comte de Cagli-
'ostro, accompanied by lord George Gordon
'and Mr. Bergeret de Frouville, waited on
'Mr. Barthelemy, at the hotel of France, in
'Piccadilly, for an eclaircissement upon the
'subject of this message from the court of
'France delivered by Mr. Barthelemy, re-
'lating to the permission granted to the
'comte de Cagliostro to return to Paris. Mr.
'Barthelemy, the comte de Cambise, and
'Mr. Daragon, seemed much surprised to see
'comte de Cagliostro arrive in lord George
'Gordon's coach with his lordship and Mr.
'Frouville.'—No wonder that they did: I dare say it caused great surprise to the French ambassador to see the comte de Cagliostro, who came to him upon a message from his court, come accompanied with lord George Gordon.—'And having expressed their desire
'that the comte de Cagliostro alone should
'speak with Mr. Barthelemy, they were in-
'formed that lord George Gordon and Mr.
'Bergeret de Frouville were there on pur-
'pose to attend their friend, and that the
'comte de Cagliostro would not dispense
'with lord George Gordon's absence from the
'conference. Will any friend to liberty
'blame comte de Cagliostro, after ten months
'imprisonment in a dungeon, for having his
'friends near him, when insidious proposals
'were made to him by the faction of Breteuil,
'and the supporters of the Bastile? men who
'have already sought his destruction, and,
'after his innocence was declared by the par-
'liament of Paris, embezzled a great part of
'his fortune, and exiled him from France.
'Mr. Barthelemy (seeing the determination
'of the comte's friends) then read the letter
'from Mr. Breteuil; but upon the comte de
'Cagliostro desiring a copy, Mr. Barthelemy
'refused it. A great deal of conversation
'then ensued on the subject, which in all pro-
'bability will give rise to a full representa-
'tion to the king of France, who is certainly

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'very much imposed on. The queen's party 'is still violent against comte de Cagliostro, 'the friend of mankind: and De Breteuil, 'le sieur De Launey, Titon, De Brunieres, 'Maitre-Chesnon, Barthelemy, and Dazimer,' —which we allege to mean D'Adhemar, as undoubtedly it does—'are the mere instru-'ments of that faction. The honour of the 'king of France, the justice and judgment of 'the parliament of Paris, the good faith of 'the citizens, and the good faith of the nation, 'are all attainted by the pillage and detention 'of the property of comte de Cagliostro. The 'thousands of good citizens whose acclama-'tions shook the Bastile upon the declaration 'of his innocence, might very possibly give 'rise to his exile, by increasing the jealousy 'and fear of an arbitrary government. But 'why detain the fortune of a stranger, after 'his innocence is declared? This is a very 'base proceeding, indeed, Mr. De Breteuil, 'and brings contempt and reproach upon all 'concerned in it.'

And this, gentlemen, we allege to be to the great disturbance of the peace of this country, and to the great scandal of the French court, and of its minister resident here. Now there could be no other object in this publication than to cast reflexions upon a person sustaining a high character from a foreign court; for it could be to no purpose to apprize the people of this country of what he supposed were the private wrongs of comte de Cagliostro. But this not being thought sufficient, in another paper appeared this libel:

'Comte de Cagliostro has declared he will 'hold no intercourse with any of le sieurs 'messengers from France, except in the pre-'sence of lord George Gordon. The gang of 'French spies in London, who are linked in 'with monsieur De Morand, and the sieurs 'Barthelemy, Dazimer, and the queen's Bas-'tile party at Paris, are trying the most insi-'dious arts to entrap the comte and com-'tesse.'

Gentlemen, this is the offence I accuse my lord George Gordon of, that he has caused to be printed in a public newspaper, a most scandalous libel, grossly reflecting upon high characters; among the rest, that of Monsieur Barthelemy, charged with high offices at the British court.

Gentlemen, I will not insult your understanding so much, as to suppose you can doubt for a moment the propriety of a prosecution of this nature. I have told you before what must have been the inevitable consequence, if such libels may be published with impunity. The laws of England protect every man's character from reproach. Public appeals cannot be made respecting particular persons with any good intent: this, of all others, is destitute of every defence whatever. A public character demands protection more particularly than one of his majesty's subjects; and if the same accusation had been made against any one of you, that you were spies in this country, or with those epithets which are bestowed upon monsieur Barthelemy, you would have a right to appeal to the laws of your country for redress.

It would be below the minister of France to bring an action against any person: but he had a right to call upon the laws, if there are any, upon his majesty's officers, if there are any, and a jury, to vindicate him from those gross aspersions which are the subjects of the present prosecution.

I have no more to do now than to prove this publication by lord George Gordon, which from his manner and behaviour I suppose he will not deny. When that fact is proved, if you are satisfied that the persons mentioned here mean the persons that the information states they do; that monsieur Barthelemy is the person intrusted with the affairs of the French court; that Dazimer and Dagimer mean count D'Adhemar, the French ambassador; then I am satisfied, you will with great cheerfulness find the defendant guilty.

EVIDENCE FOR THE CROWN.

John Bolts sworn.—Examined by Mr. *Solicitor General.*

Did you purchase these news-papers (showing them to the witness)?—I did.

Where did you purchase them?—Of Henry Sampson Woodfall.

Where does he live?—No. 1, Ivy-Lane.

Mr. *Henry Sampson Woodfall* sworn.—Examined by Mr. *Bearcroft.*

Did you print and publish these two news-papers? (showing them to the witness)—I imagine I did.

By whose directions? — Lord George Gordon's.

Did you see him or hear from him upon the subject?—I heard from him.

In writing I presume?—Yes, I did.

Look at these papers. (The manuscripts of the paragraphs, and two notes from lord George Gordon).—These I received from lord George Gordon.

They were read by the Associate, and were as follow:

'Dear Sir; I will pay the whole expenses 'of any prosecution against you for articles of 'intelligence that come from me. We have 'sufficient proofs of their being spies.—They 'dare not do any thing.—The time is very 'critical, and I beg you will look over what is 'inclosed, and give it publication on Monday. '—Your much obliged friend and servant,

'*Saturday night.* G. GORDON.'

To Mr. H. S. Woodfall, *Public Advertiser.*

'Lord George Gordon having been in-'formed, that very serious consequences were 'likely to ensue from the publication of the 'intelligence in Thursday's paper, speaking

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'of Mr. Barthelemy and others as spies—the 'printer at the time not knowing that Mr. 'Barthelemy was chargé d'affaires,—his 'lordship has promised to pay all the ex- 'penses and costs of defending Mr. Woodfall, 'or any other printer, against whatever pro- 'secutions may follow from the insertion of 'articles in favour of his friend the comte de 'Cagliostro.'

Paragraph read from The Public Advertiser.

"Mr. Barthelemy, who conducts the affairs of France in the absence of comte Dazimer, having sent Mr. Daragon with a message to comte de Cagliostro, in Sloane-street, intimating that he had received orders from the court of Versailles to communicate to comte de Cagliostro that he had now permission to return to France, yesterday morning the comte, accompanied by lord George Gordon and Mr. Bergeret de Frouville, waited upon Mr. Barthelemy at the hotel of France, in Piccadilly, for an eclaircissement upon the subject of this message from the court of France, delivered by Mr. Barthelemy, relative to the permission granted to the comte de Cagliostro to return to Paris. Mr. Barthelemy, the comte de Cambise, and Mr. Daragon, seemed much surprised to see comte de Cagliostro arrive in lord George Gordon's coach, with his lordship and Mr. Frouville; and having expressed their desire that the comte de Cagliostro alone should speak with Mr. Barthelemy, they were informed that lord George Gordon and Mr. Bergeret de Frouville were there on purpose to attend their friend, and that the comte de Cagliostro would not dispense with lord George Gordon's absence from the conference. Will any friend to liberty blame comte de Cagliostro, after ten months imprisonment in a dungeon, for having his friends near him, when insidious proposals are made to him by the faction of Breteuil, and the supporters of the Bastile? men who have already been his destruction, and, after his innocence was declared by the parliament of Paris, embezzled a great part of his fortune, and exiled him from France. Mr. Barthelemy, seeing the determination of the comte's friends, then read the letter from Mr. Breteuil; but, upon the comte de Cagliostro desiring a copy, Mr. Barthelemy refused it. A great deal of conversation then ensued upon the subject, which in all probability will give rise to a full representation to the king of France, who is certainly very much imposed on. The queen's party is still violent against comte de Cagliostro, the friend of mankind: and De Breteuil—le sieur De Launey—Titon—De Brunieres—Maitre Chesnon—Barthelemy—and Dazimer, are the mere instruments of that faction. The honour of the king of France, the justice and judgment of the parliament of Paris, the good faith of the citizens, and the good name of the nation, are all attainted by the pillage and detention of the property of comte de Cagliostro. The thousands of good citizens whose acclamations shook the Bastile upon the declaration of his innocence, might very possibly give rise to his exile, by increasing the jealousy and fear of an arbitrary government. But why detain the fortune of a stranger; after his innocence is declared? This is a very base proceeding indeed, Mr. De Breteuil,' and brings contempt and reproach upon all concerned in it."

Paragraph read from The Public Advertiser.

"Comte de Cagliostro has declared he will hold no intercourse with any of le sieur Breteuil's messengers from France, except in the presence of lord George Gordon. The gang of French spies in London, who are linked with monsieur De Morand, and the sieurs Barthelemy, Dazimer, Cambise, and the queen's Bastile party at Paris, are trying the most insidious arts to entrap the comte and comtesse, have the effrontery and audaciousness to persecute them publicly, and vilify their characters even in this free country, where these noble strangers are come to seek protection in the arms of a generous people. The friendship and benevolence of comte de Cagliostro in advising the poor prince Louis de Rohan to be upon his guard against the comtesse de Valois, and the intrigues of the queen's faction (who still seek the destruction of that noble prince), has brought upon the comte and his amiable comtesse the hateful revenge and perfidious cruelties of a tyrannical government. The story of the diamonds has never been properly explained to the public in France. It would discover too much of the base arts practised to destroy prince Louis, and involve in guilt persons not safe to name in an arbitrary kingdom."

Mr. *Henry Sampson Woodfall.*—Cross-examined by *Lord George Gordon.*

You have known me for some years—I ask you, whether there was any misunderstanding between us relating to any affairs inserted in your paper, Whether I did not always act in this fair manner?—Always.

I ask Mr. Woodfall, as a man of learning, Whether, when he published that in his newspaper, he thought it a libel?

Court. That is not a proper question.

William Fraser, esq. sworn.—Examined by Mr. *Solicitor General.*

You are one of his majesty's under-secretaries of state?—I am.

What character did the comte d'Adhemar sustain in this country previous to August last?—Ambassador from the court of France.

Was he regularly credented to lord Carmarthen's office?—He was.

Who became chargé des affaires of the court of France when he went to France?—Monsieur Barthelemy. He was regularly introduced to the secretary of state by the

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comte d'Adhemar as chargé des affaires upon taking leave.

Is that the usual form in which chargé des affaires are announced, upon ambassadors taking leave?—It is.

And as such he was received?—He was.

Did monsieur Barthelemy correspond with the French court, and do business at your office?—He did business at our office: I suppose therefore he corresponded with the French court.

William Fraser, esq.—Cross-examined by Lord *George Gordon*.

Whether you know the comte d'Adhemar's character in France?—That he is comte d'Adhemar in France; that is all I know of him; and that he is so in his credentials.

Do you know any thing about his family?—No.

You say he is comte d'Adhemar:—both in writing and printing it is put Dazimer.—Did you receive a letter from me to deliver to the king?—I know nothing of it.

Did not one of the king's messengers at the marquis of Carmarthen's office bring you a letter?—I do not recollect.

Did you hear of it?—No.

Did you know that a note from the French ambassador to me through your office reached the king?—Not through my hands.

Was not there a letter?—I do not recollect.

The end of the evidence for the Crown.

Lord *George Gordon*.—Count de Cagliostro requested me to go with him, knowing these proposals to be insidious, because we had news from the friends of liberty in France that he was exiled by order of the king though the order of the king was done by the queen's party. His exile was that—and a copy of this exile is sent to all the foreign ports: they look if they have an order of exile against such a person, and then they do not admit him.

They wanted to get him back into that country, for the purpose of imprisonment, because he was determined to stir up the disaffection of the French people to the French government, and to destroy the Bastile.

They were curious to find out the parties they were acting with, and his friends were as curious to find out the proceedings of the queen's party against him, under the name of the king always; and they sent him word that his letter to return was only a private letter from monsieur De Breteuil the minister, to be read to him, but not to be given to him; so that if he came into France, he could show no counter order to the order of exile: and they cautioned him by no means to be entrapped insidiously to get into France again, but to wait till the order was counter-ordered by the king, the same authority that gave it.

Upon this he communicated it to me, and he and his wife desired me to be his friend in this country, and to protect them as much as lay in my power from attacks in this country, particularly from a French paper the Courier de l'Europe, printed by De Morand, under the daily inspection of the French minister.

I took him in my coach. We had with us Mr. Frouville, an officer in the French service. He went with me. He desired me to state the case plainly to the English nation, to clear up the insidious attack that followed him, and damaged him in the prosecution he commenced for the recovery of his goods, his diamonds, jewels, and plate, and every thing that was seized and never returned to him; and that prosecution was going on in France at the time; and he thought he should be much prejudiced by the writings in this country under the direction of the French ambassador.

I did not put Dazimer meaning to avoid any imputation against count D'Adhemar; I certainly did mean the person who is here under the name of count D'Adhemar, when I said Dazimer. The French party desired he might be always called Dazimer. The Dazimer family is not like the D'Adhemar family; but he is a clever man, like our Jenkinson, a good education, a clever penetrating man, and a man of address, which always noble families have not.

This person, whose name is Dazimer, got married to one of the first families in France; his name was changed then to D'Adhemar, which is one of the first families in France; but this has not hurt the old nobility of France.

SUMMING UP.

Mr. Just. *Buller*. Gentlemen of the jury; this is an information against the defendant for publishing two libels.—You have heard them read in evidence.

There are counts in the information for both of them; first upon the written one, and then upon the printed one; in which there is a mistake in the name—it is written Cambise, and it is printed Cambire; but in both respects the information agrees with the evidence—for it has stated the written libel as it is, and the printed libel as it is.

With respect to this libel coming from the defendant:

Henry Sampson Woodfall says he printed the papers by the direction of the defendant, and the papers which he produces, are the originals he received from the defendant; and besides that he produced a note, which was written by the defendant, in which the defendant engaged to pay all the costs he might be put to in defending himself against any prosecution.

With respect to the other parts of the information, the averments are very few in number.—The first is, that there was a peace subsisting between England and France.—That is a matter of public notoriety, and therefore no evidence was necessary of that.

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It next states, that count D'Adhemar was ambassador from France.—The information, in stating the libel, has the word Dazimer instead of D'Adhemar; and that the information avers means count D'Adhemar, who was the ambassador here. That indeed is admitted by the defendant now—for he says he was the person whom he alluded to; and the language of the paper imports it, because it speaks of Mr. Barthelemy as the person conducting the affairs of France in the absence of Dazimer.

Then the only thing remaining is, that Mr. Barthelemy was the chargé des affaires.—That fact is proved by Mr. Fraser, who says he was introduced as such by count D'Adhemar, and afterwards did business in their office as such.

There is no other inuendo in the information, but respecting the names.—If you are satisfied of the guilt of the defendant, you will find him guilty;—if not, you will acquit him.

The Jury immediately pronounced the defendant Guilty.

Note. The three informations were tried by a special jury of merchants of the city of London.

On the 27th of June, 1787, Thomas Wilkins received the judgment of the court of King's-bench to be imprisoned in the gaol of Newgate for two years.*

On the 28th of January, 1788†, lord George Gordon was brought into the court of King's-bench in custody of the gaoler of his majesty's gaol of Newgate, by virtue of a rule of court.

Mr. Justice Buller made a report of the evidence given on the trial—when Mr. Attorney-general on the part of the Crown, and Mr. Wood and Mr. Dallas (of counsel for the defendant) respectively addressed the Court.

Mr. Justice *Ashhurst*.—George Gordon, commonly called lord George Gordon; you have been tried and found guilty upon very clear evidence of the publication of two very scandalous and seditious libels; the one intituled, 'The Prisoners Petition to the Right Hon. 'Lord George Gordon, to preserve their Lives 'and Liberties, and prevent their Banishment 'to Botany-bay,"—the other, a publication by way of paragraph in The Public Advertiser.

The first, (which as to its address to yourself is merely fictitious, and of your own fabrication) is manifestly calculated to stir up and excite tumults, discontents and seditions, amongst the prisoners confined under sentence of death or transportation in the several gaols of this kingdom; and to propagate in the minds of his majesty's subjects an hatred, contempt, and abhorrence of the criminal laws of this country (of all others the most famed for their lenity); and to traduce those who are intrusted with the administration of them.

The other of these libels is calculated most daringly to asperse the character of her most christian majesty the queen of France, by imputing to her great tyranny and oppression; and to vilify the character of monsieur De Barthelemy (the chargé des affaires of the court of France) as being the tool employed in carrying on such supposed arbitrary and oppressive measures.

The several informations upon which your convictions are founded, have already been publicly read, in which the libels are stated at large; and it would be doing too much honour to the publications, were I to recapitulate all the fanatical jargon contained in the one—or the low, scurrilous, and indecent abuse contained in the other.

In regard to the first of these (styled 'The 'Prisoners Petition') it were to be wished that you would make a better use of your reading in the Bible, than merely to apply and make use of the Scripture style and phrase to the wicked purpose of promoting mutiny and sedition, and undermining the laws of this kingdom.

If you had read the Scriptures to any good purpose, and with any serious intentions of learning your duty, you would have found that one of the great ends of religion is to promote peace and harmony in the world, and to teach men submission to government, and an obedience to the laws;—and it would be of great advantage to yourself, as well as to the public, if you would learn to regulate your own practice in conformity to its precepts.

One is sorry that you, who are descended from an illustrious line of ancestry, should sully the lustre of that family by deviating from those paths of honourable conduct to which they were at first indebted for those marks of royal favour and distinction conferred upon them by their sovereigns;—and that instead thereof you should prefer the mean and false ambition of being popular amongst a low and unprincipled rabble—(amongst thieves and pickpockets) and standing forth as the champion of mischief, anarchy, and confusion.

As to that part of the libel which relates to the judges, they would (as far as respects

* On July 11, 1788, Wilkins received his majesty's free pardon. See the Annual Register for that year, Chronicle, p. 208.

† It appears that to avoid sentence, lord George Gordon had, subsequently to his trial, retired to Holland; but having been ordered by the burgomasters of Amsterdam to quit that country, he returned to England, where he lived in concealment until Dec. 7, 1787, when he was apprehended at a jew's house in Birmingham, for a contempt of the court of King's-bench. Being afterwards brought before Mr. Justice Buller, he was under a warrant from him lodged in the King's-bench prison.

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themselves personally) have been contented to pass it over with that contempt which it deserves;—but it highly concerns the good of the community, that the dignity of the station should be vindicated against the attempts of wicked and evil-minded people, who, by endeavouring to depreciate the characters of those who are intrusted with the administration of the laws, hope by degrees to bring the law itself into contempt and abhorrence; and to sap and undermine the foundation of all order and government.

In regard to the second of those libels contained in The Public Advertiser, it appears to be written with the same spirit of malevolence and wicked intention.—Every good subject must certainly be happy to see peace and tranquillity again restored to this kingdom, after having been engaged for a long time in a scene of war with the kingdom of France and other powers.

It has been the business of parliament to endeavour to cement a friendly correspondence between the two nations, by establishing a treaty of commerce calculated for the mutual benefit of each country, and by that means to obliterate the traces of former enmity.

This prospect of tranquillity (so pleasing to the mind of every good subject) you could not behold with satisfaction, and therefore, as far as in you lay, you endeavoured to rekindle an animosity between the two nations, by a personal abuse of the sovereign of one of them; for it certainly is a high degree of abuse to suppose the queen to be at the head of a party who are unjustly persecuting and trying to intrap the comte de Cagliostro, who is supposed to have been guilty of crimes which made him obnoxious to the laws of his own country;—and it is likewise an abuse upon the minister of that country, who represents the sovereign of that state from which he is sent, and therefore every insult upon him is a degree of insult upon the state which he represents.

It was highly necessary that the governing powers of this country should take upon themselves the prosecution of so daring an offender.—Other nations (who do not know how much that greatest of all blessings—Liberty, and particularly the Liberty of the Press—may be perverted in the hands of wicked men), can hardly be induced to believe that such daring and atrocious publications as yours could ever go forth into the world without the connivance (at least) of that state in which they are published:*—and well might they harbour such suspicions if the author of such publications were not brought forth to exemplary punishment as far as the laws of the country would admit.

It is beyond the power of the law to rectify men's minds and to infuse into them that noble fire which burns in the breasts of good men and prompts them to doing of praise-worthy actions and promoting the happiness of their country, and the good of their fellow creatures; but it is in the power of the law to take from evil-minded men the ability of doing mischief and to restrain them of that liberty which they so grossly abuse; and we should ill-discharge the trust reposed in us, if, by the punishment we inflict, we did not endeavour to secure the peace of the country, by taking from you the power, at least for a time, of disturbing its tranquillity.

And though the advocates for the crown have admitted, that your behaviour, since you have been under confinement, has been peaceable and decent which may operate somewhat in your favour, yet still your crimes are of such a nature as certainly merit an exemplary degree of punishment; and whatever our feelings may be for your situation, we should be criminal if we were too much to give way to those feelings.

Your offences being in their nature several, as they are for two different publications, and which are made the subject of two several informations, the forms of law require two several and distinct judgments.*

Therefore, you being now brought here into Court, in custody of the gaoler of his majesty's gaol of Newgate, by virtue of a rule of this Court, and being convicted of certain trespasses, contempts, and misdemeanors, in writing, composing, printing, and publishing, and causing, and procuring to be written, composed, printed, and published, a certain false, wicked, malicious, scandalous, and seditious libel, intituled, 'The Prisoners 'Petition to Lord George Gordon;' and which said libel is also further intituled, 'The 'Prisoners Petition to the Right Honourable 'Lord George Gordon, to preserve their, 'Lives and Liberties, and prevent their 'Banishment to Botany-bay,'—and other scandalous and seditious libels in the information in that behalf specified, whereof you are impeached:

This Court doth order and adjudge, that for your offences aforesaid, you be imprisoned in his majesty's gaol of Newgate for the term of three years, now next ensuing; and that you be now remanded to his majesty's said gaol of Newgate, to be there kept in safe custody, in execution of the judgment aforesaid.

And you being now brought here into Court in custody of the keeper of his majesty's gaol of Newgate, by virtue of a rule of this Court, and being convicted of certain trespasses, contempts and misdemeanors, in publishing,

* As to this, see Mr. Starkie's Treatise on the Law of Slander and Libel, p. 540, ed. of 1813, and in this Collection the case of Peltier, A. D. 1803, *post*.

* As to this, see vol. 19, pp. 1083, 1132, 1136. See too the sentence passed upon Waddington, 1 East 172.

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and causing and procuring to be published, in a certain public newspaper, called The Public Advertiser, a most wicked, false, scandalous, malicious, and defamatory libel, of and concerning her most Christian majesty, and of and concerning monsieur Barthelemy, the chargé des affaires of the court of France, and other scandalous libels in the information in that behalf specified; and having also been convicted of certain other trespasses, contempts, and misdemeanors, by writing, composing, printing, and publishing, and causing and procuring to be written, composed, printed, and published, a scandalous and malicious libel, (intituled, 'The Pri-'soners Petition to the Right Honourable 'Lord George Gordon, to preserve their 'Lives and Liberties, and to prevent their 'Banishment to Botany-bay') for which you have this day been sentenced and ordered by this Court to be imprisoned in his majesty's gaol of Newgate for three years.

This Court doth now order and adjudge, that for your trespasses, contempts, and misdemeanors, first above-mentioned, in publishing, and causing to be published the said libels in that behalf mentioned, you do pay a fine to our sovereign lord the king of 500*l.*, of lawful money of Great Britain; and that you be further imprisoned in his majesty's said gaol of Newgate for the space of two years, to be computed from and after the determination of your aforesaid imprisonment for writing, composing, printing, and publishing the said other libel, intituled, 'The Pri-'soners Petition to the Right Honourable 'Lord George Gordon,' and other scandalous and seditious libels in the information in that behalf specified.

And this Court doth further order, that you shall give security for your good behaviour for the space of fourteen years, to be computed from and after the expiration of the said two years, for which you are now sentenced to be imprisoned.

Such security to be, yourself in 10,000*l.* and two sufficient sureties in 2,500*l.* each.

And lastly it is ordered, that you be now remanded to his majesty's said gaol of Newgate, to be there kept in safe custody in execution of this judgment and until you shall have paid the said fine and given such security as aforesaid.

January 18th, 1793. This day, lord George Gordon, the term of his lordship's imprisonment having expired, was brought into the court of King's-bench for the purpose of being admitted to bail; he was accompanied by the keeper, two men as his bail, and several Jews. He had a large slouched hat on his head, and an enormous beard. He was ordered to take off his hat, which he refused. The Court directed the crier to take it off, which he did accordingly. Lord George desired the Court to take notice, that his hat had been taken off by violence. He then deliberately took out of his pocket a white cap, which he put upon his head and tied a handkerchief over it; after which, he produced a paper, intituled, 'The petition 'of Israel Abraham George Gordon, com-'monly called Lord George Gordon.' He said, the petition was an apology for appearing with his head covered agreeably to the custom of the Jews. By a conformity to this custom, he meant no disrespect to the Court, as it arose purely from the tenderness of his conscience, since he had entered into the 'holy covenant of circumcision.' The petition was read by the officer of the Court, and contained many arguments drawn from the Jewish writers in favour of appearing with his head covered before all men. The sentence against him for the libels was, at his request, read, after which he read a written paper; the substance of which was, that he had been imprisoned for five years among murderers, thieves, &c. and that all the consolation he had, arose from his trust in God; that he was compelled to find security for his good behaviour for 14 years, himself in 5,000*l.* and two sureties in 2,500*l.* each. He said, that lord Kenyon, who had been his counsel when he was tried for high treason, well knew the amount of his income, he had only an annuity of 500*l.* a year, which was not assignable, but granted merely for his aliment. He was obliged to his brother, the duke of Gordon, for the loan of 500*l.* with which he was then ready to pay the fine amounting to that sum. In order to obtain his enlargement, he had brought two persons into Court who were ready to become his bail; but the attorney-general objecting to the bail proposed, and producing affidavits of their incompetency, his lordship was remanded to prison.*

Being unable to provide the requisite security for his good behaviour, lord George Gordon remained in confinement until his death, which happened on the 1st of November 1793.

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* Ann. Reg. Vol. XXXV. Chron. p. 3.

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571[Proceedings on the Trial of an Information exhibited Ex-Officio, by the King's Attorney-General, against JOHN STOCKDALE for a Libel on the House of Commons; tried in the Court of King's-Bench Westminster, before the Right Hon. LLOYD Lord KENYON, Chief Justice of England, on Wednesday the Ninth of December: 30 GEORGE III. A. D. 1789. [Taken in Short-hand by Joseph Gurney.]*]

[The pamphlet which gave rise to the following trial, was written by the Rev. Mr. Logan, some time one of the ministers of Leith, near Edinburgh;—"A gentleman formed to be the ornament and instructor of the age in which he lived: all his writings are distinguished by the sagacity of their reasonings, the brilliancy of their imaginations, and the depth of their philosophical principles. Though cut off in the flower of his age, while the prosecution against his publisher was depending, he left behind him several respectable productions, and particularly Elements of Lectures upon the Philosophy of Ancient History; which though imperfect, and unfinished, will afford to the discerning, sufficient reason to regret that his talents did not remain to be matured by age, and expanded by the fostering breath of public applause."

Such is the character, given of Mr. Logan in the last New Annual Register; but as his review of the charges against Mr. Hastings has made so much noise in the world, it may not be uninteresting to state by what means he became so intimately acquainted with the politics of India.

For some time previous to his decease, Mr. Logan was the principal author of that part of the English Review which gives the general state of foreign and domestic politics. The inquiries in the House of Commons which led to the impeachment of Mr. Hastings, formed very naturally the most material part of that Review for a considerable time; and his strictures upon the arguments and the decision on the Benares and the Begum charges, are written with great force and elegance; and contain reflections infinitely more pointed than any of those which Mr. Fox objected to in his pamphlet.

Having qualified himself by the information that he had acquired from intense application, to give to the world what he conceived to be a fair and impartial account of the administration of Mr. Hastings, he sat down voluntarily, without a wish or prospect of personal advantage, to examine those articles which had been presented to the House of Commons by the managers, then a committee of secresy, and which now form the articles before the Lords. When he had compleated his pamphlet, he submitted it in manuscript to the perusal of a gentleman who is intimately connected with Mr. Hastings. That gentleman was certainly very ill qualified to advice him as a lawyer; it never having entered into his imagination, that after the torrent of abuse that had been poured out upon Mr. Hastings, for years, any thing said in reply could be deemed libellous, and therefore he merely examined whether Mr. Logan was correct in his statement of facts, and communicated to him every particular relative to the last thirteen articles. Not satisfied with this communication, Mr. Logan examined the votes and the speeches as printed and circulated throughout Great Britain. After an accurate investigation, he thought himself justified in inserting in his pamphlet what a member had said in the House, that the Commons had voted thirteen out of twenty articles, without reading them.

The bookseller to whom Mr. Logan originally presented his pamphlet offered a sum for it which he conceived so inadequate to its importance, that he carried it to Mr. Stockdale, to whom he gave it; taking for himself a few copies only, which were sent in his name to men of the first eminence in letters, both in London and Edinburgh.

After it had been some time in circulation and read with great avidity, it was publicly complained of by Mr. Fox. That gentleman quoted what he conceived to be the libellous passages. The following day he moved an address to his majesty, to direct his attorney-general to prosecute the authors and publishers, and the motion was catried *nemine contradicente;* but owing to the sickness of the principal witness the trial was deferred for nearly two years. This prosecution which has been attended with a very heavy expense to Mr. Stockdale, and has been nearly two years

* In this case I have also availed myself of the Report inserted in the second edition of Erskine's Speeches, by Ridgeway.

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depending, hath excited universal attention.

The acknowledged accuracy of Mr. Gurney is too well known to require any particular praise on this occasion; but it never was more remarkable than in the present instance; yet the eloquent and excellent speech of Mr. Erskine will appear to great disadvantage to those who had the good fortune to hear it, so much even the best speeches depend upon the power of delivery. It was spoke in as crowded a court, as ever appeared in the King's-bench. The exertions of that gentleman in support of his clients are too well known, to acquire new force from any thing that can be said of him here; but on no occasion and at no period, did he display those wonderful abilities that he possesses in a higher degree, and Mr. Erskine will be quoted as the steady friend, and supporter of the constitutional rights of the people of Great Britain, as long as the sacred flame of liberty shall animate the breast of an Englishman.

The result of this trial proves how dangerous to public liberty it would be, were any body of men parties and judges in their own cause. No good subject will call into question unnecessarily, any of the privileges claimed by the House of Commons; but if in the instance before us the House, consulting former precedents, had taken upon itself to state the crime and to pronounce judgment, a British subject might have been seized and imprisoned some months, probably to the ruin of himself and his family, without the possibility of reparation. It may therefore with the greatest truth be observed, that by the exertions of Mr. Erskine, and by the decision on this prosecution, the freedom of the press, and the liberty of the subject, are fully secured.—January 13th, 1790.—*Orig. Ed.*]

[For the proceedings in the House of Commons on February 14th and 15th, 1788, in consequence of which the following trial took place, see the New Parliamentary History, Vol. XXVII. pp. 1. 7.]

THE INFORMATION.

Of Easter Term, in the Twenty-eighth Year of the Reign of King George the Third.

Middlesex, } BE it remembered, that Richard
to wit. } Pepper Arden, esq. attorney-general of our present sovereign lord the king, who for our present sovereign lord the king in this behalf prosecuteth, in his own proper person comes here into the Court of our said lord the king, before the king himself, at Westminster, on Wednesday next after fifteen days from the feast day of Easter in the same term, and for our said lord the king giveth the Court here to understand and be informed. that before the printing and publishing of the several false, scandalous, infamous, wicked, malicious, and seditious libels, hereinafter mentioned, the Commons of Great Britain in parliament assembled had, at the bar of the House of Lords, impeached Warren Hastings, esq., late governor-general of Bengal, of high crimes and misdemeanors, and had there exhibited divers articles of impeachment of high crimes and misdemeanors against the said Warren Hastings, to wit, at Westminster aforesaid, in the county of Middlesex aforesaid; yet John Stockdale, late of the parish of St. James's, Westminster, in the county of Middlesex, bookseller, well knowing the premises, but being a wicked, seditious, and ill-disposed person, and having no regard for the laws of this realm or for the public peace and tranquillity of this kingdom, and most 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 in parliament as corrupt and unjust, and to make it to be believed and thought as if the majority of the Commons of Great Britain in parliament assembled, were a most wicked, tyrannical, base, and corrupt set of persons, and to bring the Commons of Great Britain in parliament assembled into hatred and contempt with the subjects of this kingdom, and to raise, excite, and create most groundless distrusts in the minds of all the king's subjects, as if from the profligacy and wickedness of the Commons of Great Britain in parliament assembled, great injustice would be done to the said Warren Hastings on the fifteenth day of February, in the twenty-eighth year of the reign of our said present sovereign lord the king, at Westminster aforesaid, in the county of Middlesex aforesaid, with force and arms, unlawfully, wickedly, maliciously, and seditiously printed and published, and caused and procured to be printed and published, in a certain book, or pamphlet, intituled, 'A Review of the Principal Charges 'against Warren Hastings, esq., late Governor 'General of Bengal,' a certain false, scandalous, wicked, seditious, and malicious libel of and concerning the said impeachment of the said Warren Hastings, so exhibited as aforesaid, and of and concerning the Commons of Great Britain in parliament assembled, containing amongst other things divers false, scandalous, seditious, and malicious matters of and concerning the said impeachment, and of and concerning the Commons of Great Britain in parliament assembled, according to the tenour and effect following, to wit: the House of Commons (meaning the Commons of Great Britain in parliament assembled) has now given its final decision with regard to the merits and demerits of Mr.

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Hastings (meaning the said Warren Hastings, esq., late governor-general of Bengal). The grand inquest of England (meaning the said Commons of Great Britain in parliament assembled) have delivered their charges (meaning the charges of the said Commons of Great Britain in parliament assembled) and preferred their impeachment (meaning their impeachment of the said Warren Hastings); 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 (meaning the lords spiritual and temporal in parliament assembled), the question comes to be determined, whether Mr. Hastings (meaning the said Warren Hastings, esq.) be guilty or not guilty? What credit can we give to multiplied and accumulated charges (meaning the said charges of high crimes and misdemeanors so exhibited by the Commons of Great Britain in parliament assembled as aforesaid, against the said Warren Hastings), when we find that they (meaning the said charges of high crimes and misdemeanors so exhibited by the Commons of Great Britain in parliament assembled as aforesaid, against the said Warren Hastings) originate from misrepresentation and falsehood (meaning thereby to cause it to be believed and understood, that the said charges of high crimes and misdemeanors so exhibited by the Commons of Great Britain in parliament assembled as aforesaid, did originate from misrepresentation and falsehood); and in another part thereof according to the tenour and effect following, to wit: 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, characterises a tribunal inquisition rather than a court of parliament (meaning thereby to cause it to be believed and understood that the Commons of Great Britain in parliament assembled had proceeded in the said impeachment of the said Warren Hastings in a manner unjust and unworthy of a House of parliament of Great Britain); and in another part thereof, according to the tenour and effect following, to wit: The other charges (meaning divers of the charges of the said impeachment against the said Warren Hastings, esq.) are so insignificant in themselves, or founded on such gross misrepresentations, that they would not affect an obscure individual, much less a public character; they are merely added to swell the catalogue of accusations, as if the boldness of calumny would insure its success, and a multiplicity of charges were an accumulation of crimes. Thirteen of them (meaning thirteen of the said charges so exhibited by the Commons of Great Britain in parliament assembled against the said Warren Hastings, esq., as aforesaid) passed in the House of Commons (meaning the said Commons of Great Britain in parliament assembled) not only without investigation, but without being read; and the votes (meaning the votes of the Commons of Great Britain in parliament assembled) were given without inquiry, argument, or conviction; a majority (meaning a majority of the Commons of Great Britain in parliament assembled) had determined to impeach; opposite parties met each other and justled in the dark, to perplex the political drama and bring the hero (meaning the said Warren Hastings, esq.), to a tragic catastrophe; and in another part thereof, according to the tenour and effect following, to wit: But if, after exerting all your efforts in the cause of your country, you return covered with laurels and crowned with success, if you preserve a loyal attachment to your sovereign, you may expect the thunders of parliamentary vengeance; you will certainly be impeached, and probably be undone (meaning thereby to cause it to be believed and understood, that the Commons of Great Britain in parliament assembled had impeached the said Warren Hastings of high crimes and misdemeanors, not from motives of justice, but because the said Warren Hastings had exerted all his efforts in the cause of his country, and returned covered with laurels and crowned with success, and preserved a loyal attachment to our said present sovereign lord the king); and in another part thereof, according to the tenour and effect following, to wit: 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 (meaning the said Warren Hastings, esq.) ever proposed to bring back the Rohillas to the country from which they were expelled? To restore Cheit Sing to the zemindary of Benares? or to return to 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 negociation the world has every reason to conclude that the impeachment of Mr. Hastings (meaning the said impeachment so exhibited by the said Commons of Great Britain in parliament assembled against the said Warren Hastings, esq.) is carried on from motives of personal animosity, not from regard to public justice; to the great scandal and dishonour of the Commons of Great Britain in parliament assembled and in high contempt of their authority; to the great disturbance of the public peace and tranquillity of this kingdom; in contempt of our present sovereign lord the king and his laws; to the evil and pernicious example of all others in the like case offending; and also against the peace of our said sovereign lord the king, his crown and dignity. And the said attorney-general of our said present lord the king, for our said lord the king, further giveth the Court here to understand and be informed, that the said John

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Stockdale, being such person as aforesaid, and contriving, and wickedly and maliciously devising and intending as aforesaid, afterwards, to wit, on the fifteenth day of February, in the twenty-eighth year aforesaid, at Westminster aforesaid, in the county aforesaid, with force and arms, unlawfully, wickedly, maliciously and seditiously printed and published, and caused to be printed and published, in a certain other book, or pamphlet, intituled, 'A Review of the Principal Charges 'against Warren Hastings, esq., late Governor 'General of Bengal,' a certain other false, scandalous, wicked, seditious, and malicious libel, of and concerning the said impeachment of the said Warren Hastings, so exhibited as aforesaid, and of and concerning the Commons of Great Britain in parliament assembled, containing, amongst other things, according to the tenour, and effect following to wit: What credit can we give to the multiplied and accumulated charges (meaning the said charges of high crimes and misdemeanors, so exhibited by the Commons of Great Britain in parliament assembled as aforesaid, against the said Warren Hastings), when we find that they (meaning the said charges of high crimes and misdemeanors, so exhibited by the Commons of Great Britain in parliament assembled as aforesaid, against the said Warren Hastings) originate from misrepresentation and falsehood (meaning thereby to cause it to be believed and understood, that the said charges of high crimes and misdemeanors, so exhibited by the Commons of Great Britain in parliament assembled as aforesaid, did originate from misrepresentation and falsehood, to the great scandal and dishonour of the Commons of Great Britain in parliament assembled, and in high contempt of their authority; to the great disturbance of the public peace and tranquillity of this kingdom; in contempt of our present sovereign lord the king and his laws; to the evil and pernicious example of all others in the like case offending; and also, against the peace of our said present sovereign 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 John Stockdale, being such person as aforesaid, and contriving and wickedly and maliciously devising and intending as aforesaid, afterwards, to wit, on the fifteenth day of February, in the twenty-eighth year aforesaid, at Westminster aforesaid, in the county aforesaid, with force and arms, unlawfully, wickedly, maliciously and seditiously printed and published, and caused to be printed and published, in a certain other book, or pamphlet, intituled, 'A Review of the 'Principal Charges against Warren Hastings, 'esq, late Governor General of Bengal,' a certain other false, scandalous, wicked, seditious, and malicious libel, of and concerning the said impeachment of the said Warren Hastings, so exhibited as aforesaid, and of and concerning the Commons of Great Britain in parliament assembled, containing, amongst other things, according to the tenour and effect following, to wit: 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, characterises a tribunal inquisition, rather than a court of parliament (meaning thereby to cause it to be believed and understood, that the Commons of Great Britain in parliament assembled, had proceeded in the said impeachment of the said Warren Hast ings, in a manner unjust, and unworthy of a House of parliament of Great Britain): to the great scandal and dishonour of the Commons of Great Britain in parliament assembled, and in high contempt of their authority; to the great disturbance of the public peace and tranquillity of this kingdom; in contempt of our said present sovereign lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and also, against the peace of our said present sovereign lord the king, his crown and dignity, &c. 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 John Stockdale, being such person as aforesaid, and contriving and wickedly and maliciously devising and intending as aforesaid, afterwards, to wit, on the said fifteenth day of February, in the twenty-eighth year aforesaid, at Westminster aforesaid, in the county aforesaid, with force and arms, unlawfully, wickedly, maliciously, and seditiously, printed and published, and caused to be printed and published, in a certain other book, or pamphlet, intituled, 'A Review of the Principal 'Charges against Warren Hastings, esq., late 'Governor General of Bengal,' a certain other false, scandalous, wicked, seditious, and malicious libel, of and concerning the said impeachment of the said Warren Hastings, so exhibited as aforesaid, and of and concerning the Commons of Great Britain in parliament assembled, containing, amongst other things, according to the tenour and effect following, to wit: The other charges (meaning divers of the charges of the said impeachment against the said Warren Hastings, esq.) are so insignificant in themselves, or founded on such gross misrepresentations, that they would not affect an obscure individual, much less a public character; they are merely added to swell the catalogue of accusations, as if the boldness of calumny could ensure its success, and a multiplicity of charges were an accumulation of crimes; thirteen of them (meaning thirteen of the said charges so exhibited by the Commons of Great Britain in parliament assembled, against the said Warren Hastings, esq., as aforesaid) passed in the House of Commons (meaning the Commons of Great Britain in parliament assembled) not

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only without investigation, but without being read, and the votes (meaning the votes of the Commons of Great Britain in parliament assembled) were given without inquiry, argument, or conviction: a majority (meaning a majority of the Commons of Great Britain in parliament assembled) had determined to impeach; opposite parties met each other and justled in the dark, to perplex the political drama, and bring the hero (meaning the said Warren Hastings, esq.) to a tragic catastrophe; to the great scandal and dishonour of the Commons of Great Britain in parliament assembled, and in high contempt of their authority; to the great disturbance of the public peace and tranquillity of this kingdom; in contempt of our present sovereign lord the king and his laws; to the evil and pernicious example of all others in the like case offending, and also against the peace of our said present sovereign lord the king, his crown and dignity, &c. 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 John Stockdale, being such person as aforesaid, and contriving and wickedly and maliciously devising and intending as aforesaid, afterwards, to wit, on the said fifteenth day of February, in the twenty-eighth year aforesaid, at Westminster aforesaid, in the county aforesaid, with force and arms, unlawfully, wickedly, maliciously, and seditiously, printed and published, and caused and procured to be printed and published, in a certain other book, or pamphlet, intituled, 'A Review of the Prin-'cipal Charges against Warren Hastings, esq. 'late Governor General of Bengal,' a certain other false, scandalous, wicked, seditious, and malicious libel, of and concerning the said impeachment of the said Warren Hastings, so exhibited as aforesaid, and of and concerning the Commons of Great Britain in parliament assembled, containing, amongst other things, according to the tenour and effect following, to wit: But if after exerting all your efforts in the cause of your country, you return covered with laurels, and crowned with success; if you preserve a loyal attachment to your sovereign, you may expect the thunders of parliamentary vengeance; you will certainly be impeached, and probably be undone (meaning thereby to cause it to be believed and understood, that the Commons of Great Britain in parliament assembled, had impeached the said Warren Hastings of high crimes and misdemeanors, not from motives of justice, but because the said Warren Hastings had exerted all his efforts in the cause of his country, and returned covered with laurels and crowned with success, and preserved a loyal attachment to our sovereign lord the present king); to the great scandal and dishonour of the Commons of Great Britain in parliament assembled, and in high contempt of their authority; to the great disturbance of the public peace and tranquillity of this kingdom; in contempt of our present sovereign lord the king, and his laws; to the pernicious example of all others in the like case offending; and also, against the peace of our said present sovereign lord the king, his crown and dignity, &c. 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 John Stockdale, being such person as aforesaid, and contriving, and wickedly and maliciously devising and intending as aforesaid, afterwards, to wit, on the said fifteenth day of February, in the twenty-eighth year aforesaid, at Westminster aforesaid, in the county aforesaid, with force and arms, unlawfully, wickedly, and seditiously printed and published, and caused and procured to be printed and published, in a certain other book, or pamphlet, intituled, 'A Review of the Principal 'Charges against Warren Hastings, esq. late 'Governor General of Bengal,' a certain other false, scandalous, wicked, seditious, and malicious libel, of and concerning the said impeachment of the said Warren Hastings, so exhibited as aforesaid, and of and concerning the Commons of Great Britain in parliament assembled, containing, amongst other things, according to the tenor and effect following, to wit: 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 (meaning the said Warren Hastings, esq.) ever proposed to bring back the Rohillas to the country from which they were expelled? to restore Cheit Sing to the zemindary of Benares? or to return to the nahob 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 negociation, the world has every reason to conclude that the impeachment of Mr. Hastings (meaning the said impeachment so exhibited by the Commons of Great Britain in parliament assembled, against the said Warren Hastings, esq., is carried on from motives of personal animosity, not from regard to public justice; to the great scandal and dishonour of the Commons of Great Britain in parliament assembled, and in high contempt of their authority; to the great disturbance of the public peace and tranquillity of this kingdom; in contempt of the present sovereign lord the king, and his laws; to the evil and pernicious example of all others in the like case offending; and also against the peace of our said lord the present king, his crown and dignity, &c. 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

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be awarded against him the said John Stockdale, in this behalf, to make him answer to our said lord the king, touching and concerning the premises aforesaid.

Counsel against Mr. Stockdale—The Attorney General [Sir Archibald Macdonald, afterwards Lord Chief Baron]; the Solicitor General [Sir John Scott, afterwards successively C. J. C. B. and Lord Chancellor]; Mr. Bearcroft, and Mr. Wood.

Solicitors—Messrs. Chamberlyne and White, Solicitors for the Affairs of his Majesty's Treasury.

Counsel for Mr. Stockdale——The Hon. Thomas Erskine, and Mr. Dayrell.

Solicitor—Mr. Samuel Harman, Jermyn-street.

The Information having been opened by Mr. Wood, the *Attorney General* stated the case as follows:*

May it please your lordship, and 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 oaths; 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, and against their honour, 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 very great and very extensive, for the purpose of vindicating themselves against insult and contempt, but which, in the present instance, they have wisely forborne to exercise, thinking it better to leave the defendant to be dealt with by a fair and impartial jury.*

The offence which I impute to him is that of calumniating the House of Commons: not in its ordinary legislative character, but when acting in its accusatorial capacity, conceiving it to be their duty, on adequate occasions, to investigate the conduct of persons in high stations, and to leave that conduct to be judged of by the proper constitutional tribunal, the Peers in parliament assembled.

After due investigation, as it is well known to the public, the Commons of Great Britain thought it their duty to submit the conduct of a servant of this country, who had governed one of its most opulent dependencies for many years, to an inquiry before that tribunal. One would have thought that every good subject of this country would have forborn imputing to the House of Commons motives utterly unworthy of them, and of those whom they represent: instead of this, to so great a degree now has the licentiousness of the press arisen, that motives, the most unbecoming that can actuate even any individual who may be concerned in the prosecution of public justice, are imputed to the representatives of the people of this country

* The Editor of lord Erskine's Speeches introduces this case with the following remarks:

"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. Erskine'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 articles 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 it to Mr. Stockdale, an eminent and respectable bookseller in Piccadilly,—who published it 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." Erskine's Speeches, vol. 2, p. 205, 2nd edition.

* See Starkie on the Law of Slander and Libel, p. 537, edit. of 1813. See also in this Collection, Vol. VIII, p. 88.

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acting in a body. No credit is given to them for meaning to do justice to their country, but on the contrary, private, personal, and malicious motives have been imputed to the Commons of Great Britain.

When such an imputation is made upon the very first tribunal that this country knows; namely, the great inquest of the nation, the Commons in parliament assembled, carrying a subject, who, as they thought, had offended, to the bar of the House of Lords—I am sure you will think this an attack so dangerous to every tribunal, so dangerous to the whole administration of justice, that if it be well proved, you cannot fail to give it your stigma, by a verdict against the defendant.

Gentlemen, the particular passages which I shall put my finger upon in this libel, it will now be my duty to state. You know very well that it is your duty to consider of the meaning that I have imputed to them by the information;—if you agree with me in that meaning, you convict; if you disagree with me, of course you acquit.

The rule of your judgment, I apprehend (with submission to his lordship), will be the ordinary acceptation of the words and the plain and obvious sense of the several passages;—if there be doubt, or if there be difficulty;—if there be screwing 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 those 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 the art 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 intituled, 'A Review of the 'principal Charges against Warren Hastings, 'esq. 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 in-'quest 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: 'What credit can we give to 'multiplied and accumulated charges, when we 'find that they originate from misrepresenta-'tion 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 *inquisi-*'*tion* 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 indi-'vidual, 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 necessity, you 'do so at the risk of your fortune, your 'honour, and your life; if you act with *proper* '*prudence* against the interests of the empire, 'and bring calamity and disgrace upon your 'country, you have only to court opposition 'and coalesce with your enemies, and you 'will find a party zealous and devoted to sup-'port 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

* "Review," &c. p. 3. † "Ibid," p. 13.
‡ "Ibid," p. 20. § "Ibid," p. 51.

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'to your sovereign, you may expect the thun-
'ders of parliamentary vengeance; you will
'certainly be impeached, and probably be
'undone.'*

Another passage is this: 'The office of
'calm deliberate justice is, to redress griev-
'ances 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. Hastiugs ever proposed to
'bring back the Rohillas to the country from
'which they were expelled? to restore Cheit
'Sing to the Zemindary of Benares, or to
'return the nabob of Oude the present
'which the governor of Bengal received from
'him for the benefit of the Company? Till
'such measures are adopted, and in the train
'of negociation, the world has every reason
'to conclude, that the impeachment of Mr.
'Hastings is carried on'—Now, gentlemen, I leave you to judge what sort of motives are imputed to the House of Commons here—'From motives of personal animosity, not 'from regard to public justice.'†

The general meaning, without specifying it in technical language, which I have thought it my duty to impute to these words, is shortly this:—That the House of Commons, without consideration, without reading, without hearing, have not been ashamed to accuse a man of distinguished situation; and to pervert their accusatorial character from the purposes of deliberate, thoughtful, considerate justice, to immediate, hasty, passionate, vindictive, personal animosity. The work represents, that the better a man conducts himself—that the more deserving he has rendered himself of his country's favour from his past conduct, the more he exposes himself to the vindictive proceedings of parliament; and that such a man will be impeached and ruined.

In another passage, PERSONAL ANIMOSITY *(the very words are used)* is imputed to the Commons of Great Britain as the motive of their conduct—these are too plain for you, gentlemen, to differ with me in the interpretation.

I do not choose to waste *your* time, and that of the Court, in so plain a case, with much observation; but hackneyed as it may be, it is my duty, upon every one of these occasions, to remind you, that the liberty of the press consists in its good regulation—if it be meant that it should be preserved with benefit to the public, it must be from time to time lopped of its unjust excesses, by reasonable and proper verdicts of juries, in fit and clear cases.

EVIDENCE FOR THE CROWN.

Mr. *Sol. Gen.* We will prove that the House of Commons impeached Mr. Hastings.

Joseph White, esq. sworn.—Examined by Mr. *Solicitor General.*

What papers have you in your hand?—This is a copy of the Journal of the House of Commons—And this is a copy of the Journal of the House of Lords [producing them]; I examined them with the original manuscript journals.

Mr. *Erskine.* How did you examine them?—I examined them by one of the clerks reading the journal to me, and my reading the copy to him afterwards—I examined them both ways.

Mr. *Erskine.* They need not be read; we all know the fact.

Mr. *Sol. Gen.* Your lordship knows we proved the publication of the paper yesterday.

[On the preceding day, upon the trial of the information against William Perryman, for a libel in the Morning Herald, William Gotobed was called to prove the publication of the newspaper—Mr. Erskine, for the accommodation of the witness, who was very ill, consented that he should at the same time be admitted to give his evidence relative to this trial—when his examination was as follows:

William Gotobed sworn.

I bought this pamphlet [producing it] at Mr. Stockdale's shop in Piccadilly.

Mr. *Erskine.* Who served you with it?—A boy who was in the shop.

Mr. *Erskine.* Whether the boy was acting regularly as a servant in the shop?—Mr. Stockdale was in the shop at the time I bought it, and the boy was acting as his servant.

Mr. *Erskine.* 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.

DEFENCE.

The hon. *Thomas Erskine.** Gentlemen of

* "Review," &c. p. 94.
† "Review," &c. p. 101.

* Of this defence, the admirable sagacity of construction and the irresistible power of execution are finely pourtrayed in the Edinburgh Review:—'The fact of publication was 'admitted; and Mr. Erskine then delivered 'the finest of all his orations,—whether we 'regard the wonderful skill with which the 'argument is conducted,—the soundness of 'the principles laid down, and their happy 'application to the case,—or the exquisite 'fancy with which they are embellished and 'illustrated,—and the powerful and touching 'language in which they are conveyed. It 'is justly regarded by all English lawyers, as 'a consummate specimen of the art of ad-'dressing a jury;—as a standard, a sort of 'precedent for treating cases of libel, by

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the jury;—Mr. Stockdale, who is brought as a criminal before you for the publication of this book, has, by employing ME as his advocate, reposed what must appear to many an extraordinary degree of confidence; since, although he well knows that I am personally connected in friendship with most of those, whose conduct and opinions are principally arraigned by its author, he nevertheless commits to MY hands his defence and justification.

From a trust apparently so delicate and singular, vanity is but too apt to whisper an application to some fancied merit of one's own; but it is proper, for the honour of the English bar, that the world should know that such things happen to all of us daily, and of course; and that the defendant, without any knowledge of me, or any confidence that was personal, was only not afraid to follow up an accidental retainer, from the knowledge he has of the general character of the profession. Happy indeed is it for this country, that whatever interested divisions may characterize *other places*, of which I may have occasion to speak to-day; however the counsels 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, con-'triving, and intending to asperse, scandalize, 'and vilify the Commons of Great Britain in 'parliament assembled; and most wickedly 'and audaciously to represent their proceed-'ings 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 dis-'grace 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

'keeping which in his eye, a man may hope 'to succeed in special pleading his client's 'case within its principle, who is destitute of 'the talent required even to comprehend the 'other and higher merits of his original. By 'those merits, it is recommended to lovers of 'pure diction,—of copious and animated de-'scription,—of lively, picturesque, and fanci-'ful illustration,—of all that constitutes, if 'we may so speak, the poetry of eloquence,—'all for which we admire it, when prevented 'from enjoying its music and its statuary.'—Edinb. Rev. vol. 16, p. 109.

* On the day of the trial the rules of the Court did not permit any farther postponement; and Mr. Erskine was so ill that it is remembered in Westminster-hall, he was scarcely able to stand up to address the jury, and was without that preparation which so important an occasion demanded: but the mind often derives additional energy from the weakness of the body and the necessity of immediate exertion bestows a force beyond the reach of long continued meditation. There is an impetus in spontaneous eloquence which is far superior to a premeditated or even the best written oration.

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published the whole book, describing it on the record by its title: 'A Review of the principal 'Charges against Warren Hastings, esq, late 'Governor General of Bengal;' *in which, amongst other things, the matter particularly selected is to be found.* Your inquiry, therefore, is not confined to whether the defendant published *those selected parts of it;* and whether, looking at them as they are distorted by the information, they carry in fair construction the sense and meaning which the innuendos put upon them; but whether the author of the *entire work*—I say THE AUTHOR, since, if HE could defend himself, THE PUBLISHER unquestionably can,—whether THE AUTHOR wrote the volume which I hold in my hand, as a free, manly, *bonâ fide* disquisition of criminal charges against his fellow-citizen, or whether the long eloquent discussion of them, which fills so many pages, was a mere cloak and cover for the introduction of the supposed scandal imputed *to the selected passages;* the mind of the writer all along being intent on traducing the House of Commons, and not on *fairly* answering their charges against Mr. Hastings?

This, gentlemen, is the principal matter for your consideration; and therefore, if after you shall have taken the book itself into the chamber which will be provided for you, and shall have read the whole of it with impartial attention;—if, after the performance of this duty, you can return here, and with clear consciences pronounce upon your oaths that the impression made upon you by these pages is, that the author wrote them with the wicked, seditious, and corrupt intentions charged by the information;—you have then my full permission to find the defendant guilty: but if, on the other hand, the general tenour of the composition shall impress you with respect for the author, and point him out to you as a man mistaken perhaps himself, but not seeking to deceive others:—if every line of the work shall present to you an intelligent animated mind, glowing with a Christian compassion towards a fellow man whom he believed to be innocent, and with a patriot zeal for the liberty of his country, which he considered as wounded through the sides of an oppressed fellow-citizen;—if *this* shall be the impression on your consciences and understandings, when you are called upon to deliver your verdict; then hear from me, that you not only work private injustice, but break up the press of England, and surrender her rights and liberties for ever, if you convict the defendant.

Gentlemen, to enable you to form a true judgment of the meaning of this book, and of the intention of its author, and to expose the miserable juggle that is played off in the information, by the combination of sentences, which in the work itself have no bearing upon one another—I will first give you the publication as it is charged upon the record and presented by the attorney-general in opening the case for the Crown: and I will then by reading the interjacent matter which is studiously kept out of view, convince you of its true interpretation.

The informarion, 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 in-'quest of England have delivered their 'charges, and preferred their impeachment; 'their allegations are referred to proof; 'and from the appeal to the collective wis-'dom 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 judg-'ment with regard to the quantum of a fine, 'and for an intention that never was exe-'cuted, and never known to the offending 'party, characterizes a tribunal of inquisition 'rather than a court of parliament.'

From this passage, by another vault, he

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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 deter-'mined 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 exertion, he makes his last grand stride *over forty-four pages more*, almost to the end of the book, charging a sentence *in the ninety-fifth page*.

So that out of a volume of *one hundred and ten pages*, the defendant is only charged with a few scattered fragments of sentences picked out of *three or four*.—Out of a work consisting of about *two thousand five hundred and thirty lines* of manly, spirited eloquence, only *forty or fifty lines* are culled from different parts of it, and artfully put together, so as to rear up a libel out of a false context, by a supposed 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*,'—These words alone, without the context, would be selected by the information, and the Bible, like this book, would be *underscored* to meet it; nor could the defendant in such a case have any possible defence, unless the jury were permitted to see, BY THE BOOK ITSELF, that the verse, instead of denying the existence of the divinity, only imputed that imagination to a fool.†

Gentlemen, having now gone through the attorney-general's reading, the book shall presently come forward and speak for itself.—But before I can venture to lay it before you, it is proper to call your attention to how matters stood at the time of its publication: without which the author's meaning and intention cannot possibly be understood.

The Commons of Great Britain, in parliament assembled, had accused Mr. Hastings, as governor-general of Bengal, of high crimes and misdemeanors; and their jurisdiction for that high purpose of national justice, was unquestionably competent; but it is proper you should know the nature of this inquisitorial capacity.—The Commons, in voting an impeachment, may be compared to a grand jury finding a bill of indictment for the crown: neither the one nor the other can be supposed to proceed, but upon the matter which is brought before them; neither of them can find guilt without accusation, nor the truth of accusation without evidence.—When therefore we speak of the *accuser* or *accusers* of a person indicted for any crime, although the grand jury are the accusers *in form*, by giving effect to the accusation; yet in common parlance we do not consider *them* as the responsible authors of the prosecution. If I were to write of a most wicked indictment, found against an innocent man, which was preparing for trial, nobody who read it would conceive that I meant to stigmatize the grand jury that found the bill; but it would be inquired immediately, who was the PROSECUTOR, and who were the WITNESSES on the back of it? In the same manner I mean to contend, that if this book is read with only common attention, the whole scope of it will be discovered to be this: that, in the opinion of the author, Mr. Hastings had been accused of mal-administration in India, from the heat and spleen of political divisions in parliament, and not from any zeal for national honour or justice: that the impeachment did not originate from government, but from a faction banded against it, which, by misrepresentation and violence, had fastened it on an unwilling House of Commons: that, prepossessed with this 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

* See Vol. IX, p. 868.

† This argument was also used by Mr. Erskine in the case of the dean of St. Asaph, *ante* vol. 21, pp. 964. 1003.

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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 Journal*.—The course and practice of parliament might warrant the printing of them for the use of their own members; but there the publication should have stopped, and all farther progress been resisted by authority. If they were resolved to consider *answers to their charges* as a contempt of their privileges, and to punish the publication of them by such severe prosecutions, it would have well become them to have begun first with those printers who, by publishing *the charges themselves* throughout the whole kingdom, or rather throughout the whole civilized world, were anticipating the passions and judgments of the public against a subject of England upon his trial, so as to make the publication of *answers* to them not merely a privilege, but a debt and duty to humanity and justice. The Commons of Great Britain claimed and exercised the privilege 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 security 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, † ere I venture to lay the book

* Edmund Burke.

† The skilful arrangement and application of every circumstance connected with his case, which indeed are observable in all Mr. Erskine's speeches, have in the present instance given rise to the following observations:

'He thus introduces his audience to a 'striking view of the grand trial in West-'minster-hall,—not for the sake of making 'fine sentences, or of adorning his speech with 'a beautiful description,—for the speeches of 'this great advocate may be searched through 'by the most crafty special pleader, from be-'ginning to end, and no one instance of such 'useless ornament will be found,—but for the 'solid and important purpose of interesting 'his hearers in the situation of Mr. Hastings, 'and of his defender, the author of the pam-'phlet,—of leading the mind to view the 'prisoner as an oppressed man, overwhelmed 'by the weight of parliamentary resentment, 'and ready to be crushed, in the face of the 'country, by the very forms and solemnities 'of his trial,—of insinuating that the pam-'phlet only ventures to say something in de-'fence of this unhappy person;—and, that in

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before you, it must be yet farther remembered (for the fact is equally notorious), that under these inauspicious circumstances the trial of Mr. Hastings at the bar of the lords had actually commenced long before its publication.

There the most august and striking spectacle was daily exhibited, which the world ever witnessed. A vast stage of justice was erected, awful from its high authority, splendid from its illustrious dignity, venerable from the learning and wisdom of its judges, captivating and affecting from the mighty concourse of all ranks and conditions which daily flocked into it as into a theatre of pleasure;* there, when the whole public mind was at once awed and softened to the impression of every human affection, there appeared, day after day, one after another, men of the most powerful and exalted talents, eclipsing by their accusing eloquence the most boasted harangues of antiquity;—rousing the pride of national resentment by the boldest invectives against broken faith and violated treaties, and shaking the bosom with alternate pity and horror by the most glowing pictures of insulted nature and humanity;—ever animated and energetic, from the love of fame, which is the inherent passion of genius;—firm and indefatigable, from a strong prepossession of the justice of their cause.

Gentlemen, when the author sat down to write the book now before you, all this terrible, unceasing, exhaustless artillery of warm zeal, matchless vigour of understanding, consuming and devouring eloquence, united with the highest dignity, was daily, and without prospect of conclusion, pouring forth upon one private unprotected man, who was bound to hear it, in the face of the whole people of England, with reverential submission and silence.—I do not complain of this as I did of the publication of the charges, because it is what the law allowed and sanctioned in the course of a public trial; but when it is remembered that we are not angels, but 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.

'such an unequal contest, an English jury 'may well excuse a little intemperance in the 'language of such a generous and almost 'hopeless defence.' Ed. Rev. Vol. XVI. p. 110.

* The impeachment was carried on in the great hall of Westminster.

The history of it is very short and natural.

The reverend 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 concerning 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 broken loose from the common forms 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

* Mr. Logan died on the 25th of December 1788, nearly a year before this trial took place; besides the pamphlet in question, he appears to have been the author of various tracts. Prefixed to his 'Sermons'—edition of 1810,—will be found some account of his life and writings, from which I have extracted a passage not inapplicable to the present case:

"The following curious fact is related by Dr. Bisset in his History of the Reign of George the Third. 'The late Mr. Logan,' says he, 'well known for his literary efforts, 'and author of a most masterly defence of 'Mr. Hastings, went that day (the day which 'the eloquence of Sheridan had rendered so 'memorable) to the House of Commons pre-'possessed for the accused and against his ac-'cusers; at the expiration of the first hour 'of Mr. Sheridan's speech, he said to a friend, '*all this is declamation without proof;* when 'the second was finished, *this is a most won-'derful oration;* at the third, *Mr. Hastings 'acted most unjustifiably;* at the fourth, *Mr. 'Hastings is a most atrocious criminal;* and at 'last, *of all monsters of iniquity the most atro-'cious is Warren Hastings.* This I was told 'by Mr. Peter Stewart, proprietor of the Oracle 'who was present.' This fact does not affect the merits of the cause, but it is certainly an evidence of the susceptibility of Logan's feelings, and a pleasing tribute to the eloquence of the Speaker." Account of Logan's life; Sermons, p. VII, *note.*

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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 *bonâ 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; this 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 *bonâ 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 *bonâ 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

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liberty, and the ruin of my country. I mean therefore to submit to you, that though you should find a few lines in page thirteen, or twenty-one; a few more in page fifty-one, and some others in other places; containing expressions bearing on the House of Commons, even as a body, which, if written as independent paragraphs by themselves, would be indefensible libels, yet that you have a right to pass them over in judgment, provided the substance clearly appears to be a *bonâ fide* conclusion, arising from the honest investigation of a subject which it was lawful to investigate; and the questionable expressions, the visible effusion of a zealous temper, engaged in an honourable and legal pursuit. After this preparation I am not afraid to lay the book in its genuine state before you.

The pamphlet begins thus: 'The House 'of Commons has now given its final decision 'with regard to the merits and demerits 'of Mr. Hastings. The grand inquest of 'England have delivered their charges, and 'preferred their impeachment; their allega-'tions 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 deter-'mined, whether 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 accumu-'lated charges when we find that they 'originate from misrepresentation and falso-'hood?' every man would have been justified in pronouncing that he was attacking the House of Commons, because the groundless accusations noticed 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 im-'peachment, 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 na-'tion.'* '*The only danger is, that from the 'influence of faction, and the awe which is 'annexed to great names, they may be prompted 'to determine before they inquire, and to pro-'nounce 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

* Review, &c. pp. 3 & 4.
† Review, &c. pp. 5 & 6.

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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 im-'paired, and the character of this nation 'wantonly and wickedly degraded.'

Here again you are grossly misled by the omission of nearly *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 *bonâ fide* defence of Mr. Hastings.—This is the great point I am, by all my observations, endeavouring to establish, and which I think no man who reads the following short passages can doubt. Very intelligent persons have indeed considered them, if founded in facts, to render every other amplification unnecessary. The first of them is as follows:—'It was known, at that 'time, that Mr Hastings had not only de-'scended 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 with which the writer must be supposed to have been acquainted? 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 obliged so often to repeat this protest; but I really feel myself embarrassed with those repeated coincidences of defence which thicken on me as I advance, and which were, no doubt, overlooked by the Commons when they directed this interlocutory inquiry into his conduct.—I ask then, *as counsel for Mr. Stockdale*, whether, when a great state criminal is brought for justice at an 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, before the great tribunal of Rome, impeached VERRES 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

* "Review," &c. p. 12.

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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 appro-'bation 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 confi-'dence 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 sir John Macpherson 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 sir John Macpherson (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. Hast-'ings, and of the state of India, corres-'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 OFFENCE.

Let me here pause once more to ssk 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, p. 13), '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 reve-'nues 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 50,000 'pounds per annum.

'As the father was no more than an *Aumil*, 'the son succeeded only to his rights and pre-'tensions. But by a sunnud granted to him 'by the nabob Sujah Dowlah in September

* "Review," &c. p. 12.

* "Review," &c. p. 13.

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'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 gover- 'nor-general and council of Bengal obtained 'the sovereignty paramount of the province 'of Benares. On the transfer of this sove- 'reignty the governor and council proposed a 'new grant to Cheit Sing, confirming his 'former privileges, and conferring upon him 'the addition of the sovereign rights of the 'Mint, and the powers of criminal justice 'with regard to life and death. He was then 'recognised by the Company as one of their 'zemindars; a tributary subject, or feudatory 'vassal, of the British empire in Indostan. 'The feudal system, which was formerly sup- 'posed to be peculiar to our Gothic ancestors, 'has always prevailed in the east. In every 'description of that form of government, not- 'withstanding accidental variations, there are 'two associations expressed or understood; 'one for internal security, the other for ex- 'ternal defence. The king or nabob confers 'protection on the feudatory baron as tribu- 'tary prince, on condition of an annual reve- 'nue 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 extraordinary emergen- 'cies, were common to both.*

'When the governor-general of Bengal, in '1778, made an extraordinary demand on the 'zemindar of Benares for five lacks of rupees, 'the British empire, in that part of the world, 'was surrounded with enemies which threa- 'tened its destruction. In 1779, a general 'confederacy was formed among the great 'powers of Indostan for the expulsion of the 'English from their Asiatic dominions. At 'this crisis the expectation of a French arma- 'ment augmented the general calamities of 'the country. Mr. Hastings is charged by 'the committee with making his first demand 'under the false pretence that hostilities had 'commenced with France. Such an insidious 'attempt to pervert a meritorious action into 'a crime is new—even in the history of im- 'peachments. On the 7th of July 1778, Mr. 'Hastings received private intelligence from 'an English merchant at Cairo, that war had 'been declared by Great Britain on the 23rd 'of March, and by France on the 30th of 'April. Upon this intelligence, considered 'as authentic, it was determined to attack all 'the French settlements in India. The in- 'formation was afterwards found to be pre- 'mature; but in the latter end of August a 'secret dispatch was received from England, 'authorizing and appointing Mr. Hastings to 'take the measures which he had already 'adopted in the preceding month. The di- 'rectors and the board of control have ex- 'pressed their approbation of this transaction, 'by liberally rewarding Mr. Baldwyn, the 'merchant, for sending the earliest intelli- 'gence he could procure to Bengal. It was '*two days* after Mr. Hastings's information of 'the French war, that he formed the resolu- 'tion of exacting the five lacks of rupees from 'Cheit Sing, and would have made *similar* '*exactions* from all the dependencies of the 'Company in India, had they been in the 'same circumstances. The fact is, that the 'great zemindars of Bengal pay as much to 'government as their lands can afford.— 'Cheit Sing's collections were above fifty 'lacks, and his rent not twenty-four.

'The right of calling for extraordinary aids 'and military service in times of danger, being 'universally established in India, as it was 'formerly in Europe during the feudal times, 'the subsequent conduct of Mr. Hastings is 'explained and vindicated. The governor- 'general and council of Bengal having made 'a demand upon a tributary zemindar for 'three successive years, and that demand 'having been resisted by their vassal, they 'are justified in his punishment. The neces- 'sities of the Company in consequence of the 'critical situation of their affairs in 1781, 'calling for a high fine, the ability of the

* 'Notwithstanding this analogy, the pow- 'ers and privileges of a zemindar have never 'been so well ascertained and defined as those 'of a baron in the feudal ages. Though the 'office has usually descended to the posterity 'of the zemindar, under the ceremony of fine 'and investiture, a material decrease in the 'cultivation, or decline in the population of 'the district, has sometimes been considered 'as a ground to dispossess him. When ze- 'mindars 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 '*dependence* on the nabob. About a year 'after the departure of Mr. Hastings from In- 'dia, the question concerning the rights of 'zemindars was agitated at great length in 'Calcutta; and after the fullest and most ac- 'curate investigation the governor-general 'and council gave it as their deliberate opi- 'nion to the court of directors, that the pro- 'perty 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 revenues. Cheit Sing under- 'stood himself to stand in this predicament. "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.'

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'zemindar, who possessed near two crores of 'rupees in money and jewels, to pay the sum 'required; his backwardness to comply with 'the demands of his superiors; his disaffec-'tion to the English interest, and desire of 'revolt, which even then began to appear, 'and were afterwards conspicuous, fully jus-'tify Mr. Hastings in every subsequent step 'of his conduct. In the whole of his pro-'ceedings it is manifest that he had not early 'formed a design hostile to the zemindar, but 'was regulated by events which he could nei-'ther foresee nor control. When the neces-'sary measures which he had taken for sup-'porting 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 un-'avoidable revolution 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 parliament. The minister, who 'was followed by the majority, vindicated him 'in every thing that he had *done*, and found 'him blameable only for what he *intended* to 'do; justified every step of his *conduct*, and 'only criminated his proposed *intention* of 'converting the crimes of the zemindar to the 'benefit of the state, by a fine of fifty lacks of 'rupees. An impeachment of *error* in *judg-'ment* 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 *inquisition* rather 'than a court of parliament.'

Gentlemen, I am ready to admit that this sentiment might have been expressed in language more reserved and guarded; but you will look to the sentiment itself, rather than to its dress;—to the *mind* of the writer, and not to the bluntness with which he may happen to express it.—It is obviously the language of a warm man, engaged in the honest defence of his friend, and who is brought to what he thinks a just conclusion in argument, which perhaps becomes offensive in proportion to its truth.—Truth is undoubtedly no warrant for writing what is reproachful of any *private* man. If a member of society lives within the law, then, if he offends, it is against God alone, and man has nothing to do with him; and if he transgress the laws, the libeller should arraign him before them, instead of presuming to try him himself; but as to writings on *general subjects*, which are not charged as an infringement on the rights of individuals, but as of a seditious tendency, it is far otherwise.—When, in the progress either of legislation or of high national justice in parliament, they who are amenable to no law are supposed to have adopted through mistake or error a principle which, if drawn into precedent, might be dangerous to the public, I shall not admit it to be a libel *in the course of a legal and boná 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.—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

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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 who 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 its 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 yet 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 on 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 in 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 contract. *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 tenor 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

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the address of the House to his majesty, had no choice in the mode;—no means at all of keeping the prosecutors before you in countenance, but by the course which has been pursued;—but so far has he been from enlisting into the cause those prejudices, which it is not difficult to slide into a business originating from such exalted authority, he has honourably guarded you against them;—pressing indeed severely upon my client with the weight of his ability, but not with the glare and trappings of his high office.

Gentlemen, I wish that my strength would enable me to convince you of the author's singleness of intention, and of the merit and ability of his work, by reading the whole that remains of it. But my voice is already nearly exhausted;—I am sorry my client should be a sufferer by my infirmity.—One passage however is too striking and important to be passed over; the rest I must trust to your private examination. The author having discussed all the charges, article by article, sums them all up with this striking appeal to his readers:

'The authentic statement of facts which 'has been given, and the arguments which 'have been employed, are, I think, sufficient 'to vindicate the character and conduct 'of Mr. Hastings, even on the maxims of 'European policy. When he was appointed 'governor-general of Bengal, he was invested 'with a discretionary power to promote the 'interests of the India company, and of the 'British empire in that quarter of the globe. 'The general instructions sent to him from 'his constituents were, "*That in all your 'deliberations and resolutions, you make the 'safety and prosperity of Bengal your principal 'object, and fix your attention on the security 'of the possessions and revenues of the com-'pany.*" His superior genius sometimes 'acted in the spirit, rather than complied with 'the letter, of the law; but he discharged the 'trust, and preserved the empire committed 'to his care, in the same way, and with 'greater splendour and success than any of 'his predecessors in office; his departure 'from India was marked with the lamenta-'tions of the natives, and the gratitude of 'his countrymen; and on his return to Eng-'land, he received the cordial congratulations '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; since 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 touched with this way of considering the subject; and I can account for it.—I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion,

* "Review," &c. p. 54.

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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 the walls that surround us;—but of which it unaccountably falls to my province, whether I will or no, a little to stem the torrent—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 re-

* 'He at last envelopes this delicate part 'of his subject,—Hastings,—India,—the book 'and all, in a blaze of imagery and declama- 'tion, which overpowers the understandings 'of his audience. We give this wonderful 'passage entire,—premising that the tradi- 'tional accounts of its effects are to be 'credited, not even by those who now read 'it,—if they have not also experienced the 'witchery of this extraordinary man's voice, 'eye, and action.' Ed. Rev. Vol. XVI, p. 114.

* 'In considering this passage,' observes the elegant and judicious writer whom I have so frequently quoted, 'we earnestly entreat the 'reader, whoever he may be, to reflect on the 'moral of it, as it bears on the great question 'of East Indian policy; but, as far as relates 'to the character of Mr. Erskine's eloquence, 'we would point out, as the most remarkable 'feature in it, that in no one sentence is the 'subject—the business in hand—the case—'the client—the verdict, lost sight of; and 'that the fire of that oratory, or rather that '*rhetoric* (for it was quite under discipline), 'which was melting the hearts, and dazzling 'the understandings of his hearers, had not 'the power to touch for an instant the hard 'head of the *Nisi Prius lawyer*, from which 'it radiated; or to make him swerve, by one 'hairbreadth even, from the minuter details 'most befitting his purpose, and the alternate 'admissions and disavowals best adapted to 'put his *case* in the *safest position*. This, 'indeed, was the grand secret of Mr. Erskine's 'unparalleled success at the English bar. 'Without it, he might have filled Westmin- 'ster-hall with his sentences, and obtained a 'reputation for eloquence, somewhat like 'the fame of a popular preacher or a dis- 'tinguished actor;—but his fortunes—aye, 'and the liberties of his country—are built 'on the matchless skill with which he could 'subdue the genius of a first rate orator to 'the uses of the most consummate advocate 'of the age.'—Ed. Rev. Vol. XVI, p. 116.

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maining 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 innuendos), that if you are firmly persuaded of the singleness and purity of the author's intentions, you are not bound to subject him to infamy because, in the zealous career of a just and animated composition, he happens to have tripped with his pen into an intemperate expression in one or two instances of a long work.—If this severe duty were binding on your consciences, the liberty of the press would be an empty sound, and no man could venture to write on any subject, however pure his purpose, without an attorney at one elbow, and a counsel at the other.

From minds thus subdued by the terrors of punishment, there could issue no works of genius to expand the empire of human reason, nor any masterly compositions on the general nature of government, by the help of which, the great common-wealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which, from time to time, our own constitution, by the exertion of patriot citizens, has been brought back to its standard.—Under such terrors, all the great lights of science and civilization must be extinguished: for men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of every thing that is great and useful, both in the animate and inanimate world, to be wild and irregular,—and we must be contented to take them with the alloys which belong to them, or live without them.—Genius breaks from the fetters of criticism, but its wanderings are sanctioned by its majesty and wisdom when it advances in its path;—subject it to the critic, and you tame it into dulness.—Mighty rivers break down their banks in the winter, sweeping away to death the flocks which are fattened on the soil that they fertilize in the summer: the few may be saved by embankments from drowning, but the flock must perish for hunger.—Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements, which without them would stagnate into pestilence.—In like manner, Liberty herself, the last and best gift of God to his creatures, must be taken just as she is;—you might pare her down into bashful 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 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

* Lord Erskine was now so ill, that he could scarcely stand up while he addressed the jury.—*Note to Erskine's Speeches.*

† * Mr. Law, now lord Ellenborough, Mr. Plumer, now vice-chancellor, and Mr. Dallas, now one of the judges of the court of Common Pleas.

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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 frail passages, which, like the scored matter in the book before you, chequer 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.*

* 'The speech which we are inclined to 'rank the next in importance, but the first in 'oratorical talent, and happily the most accurately reported and revised, is the cele'brated defence of Stockdale, whose trial may 'be termed the Case of Libels; for in it we 'have clearly laid down, and most powerfully 'enforced, the doctrine which now enters 'into every such question,—viz. that if, 'taking all the parts of a composition toge'ther, it shall not be found to exceed the 'bounds of a free and fair discussion,—so fair 'as a regard to good order, the peace of so'ciety, and the security of the government re'quires, but so free as the nature of our happy 'constitution, and the unalienable right of 'Englishmen to canvass public affairs, allows; '—if, in short, the discussion be, upon the 'whole, sufficiently decent in its language, 'and peaceable in its import, although marked 'with great freedom of opinion, and couched 'in terms as animated as a free man can use 'on a subject that interests him deeply;—'although even a great share of heat should 'be found in the expression, and such invec'tive as, surpassing the bounds of candour 'and of charity, can only be excused by the 'violence of honest feelings;—nay, although 'detached passages may be pitched upon, in 'their nature and separate capacity amounting

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[Reply.

Mr. *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

'to libels;—yet these also shall be over-'looked, and the defendant acquitted, on the 'ground, that he has only used the grand 'right of political discussion with uncommon 'vehemence. This great doctrine, now on 'the whole generally received, was first fully 'expounded in the defence of Stockdale; and 'it forms obviously the foundation of what-'ever is more than a mere name in the liberty 'of the press,—the first and proudest pre-'eminence of this country over all the rest of 'Europe.' Edinburgh Review, Vol. XVI. p. 108.

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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 regard to public justice:—If an indictment were brought before you for a slander of that sort upon a grand jury, could you hesitate an instant, in saying that it was reprehensible, and a thing not to be endured? Why then, if the whole representatives of the nation are acting in that capacity, if, after many years investigation, they bring charges against an individual, is it any apology (justification it cannot be), for an author, in his zeal for his friend, to tack to it that which must be a disgrace to the country if it were true, and therefore must not be circulated with impunity? The commendation which even my learned friend has bestowed upon this work, the impassioned and animated manner in which he has recommended it to your perusal, and that of every man in the country, most manifestly prove what I stated in opening this cause; that when such mischief as this is found in a book, written by a person of no mean abilities, it comes recommended to, and in fact misleads, the best understandings in the country. I leave any man to judge of the mischievous tendency of such a composition compared with the squibs, paragraphs, and idle trash of the day, which frequently die away with it. Upon this principle those passages which I selected and put into this information, and which immediately regard the House of Commons, naturally gave offence to the House—they felt themselves calumniated and aspersed, and entitled to redress from a jury.

My learned friend says,—Why don't the House of Commons themselves punish it?—Is that an argument to be used in the mouth of one who recommends clemency?—Does he recommend that the iron hand of power should come down upon a man of this sort, instead of temperately, wisely, and judiciously submitting to the common law of this country, saying, Let him be dealt with by that common law?—THERE he will have a scrupulously impartial trial;—there he will have every advantage that the meanest subject of the country is entitled to.

But, says my learned friend, passages are selected from distant pages, and tacked together; the context between must explain the meaning of those passages; and he compares it to taking one half of a sentence, and tells you, that if any man should say, there is no God, taking that part alone, he would be a blasphemer; whereas taking the whole verse, that the fool hath said in his heart there is no God, in that sense it becomes directly the reverse of blasphemy;—Now, has he found any one garbled sentence in the whole course of this information?—Is not every one a clear, distinct, and separate proposition? On the contrary, when he himself accuses me, not personally but officially, of not having stated the whole of this volume upon record, and undertaking to supply my defects, he misses this very sentence: 'Asser-'tions 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 incon-'trovertible evidence. In all transactions 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 under-'standing.'*

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

* "Review," &c. p. 7.

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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 it 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 base-'less 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 mis-'representation and falsehood?'*

My learned friend himself told you, in a subsequent part of his speech, that those accusations originated from an inquiry which lasted two years and a half, by a secret committee of the House of Commons (of which I myself was a pretty laborious member): if that be so, what pretence is there here for impregnating the public with a belief, that from false, scandalous, and fabricated materials, those charges did originate? Is not that giving a directly false impression to the public?—Are not those to be protected from slander of this sort, who take so much pains to investigate what appears to them in the result to be a fit matter not for them to decide ultimately upon, but to put in a course of trial, where, ultimately, justice will be done?

Has my learned friend attempted any explanation, or other interpretation, to be put upon these words, than that which the information imputes?

'If, after exerting all your efforts in the 'cause of your country, you return covered 'with laurels, and crowned with success; if 'you preserve a loyal attachment to your 'sovereign; you may expect the thunders 'of parliamentary vengeance;—you will 'certainly be impeached, and probably be 'undone.'

Is it to be said, and circulated in print all over the world, that the House of Commons is composed of such materials, that exactly in proportion to a man's merit is their injustice and inhuman tyranny? Is that to be said or printed freely, under the pretext that the author is zealous in the interest of a gentleman under misfortune? But it is said, there are forty libels every day published against this gentleman, and no one is permitted to defend him:—let all mankind defend him:—let every man that pleases write what he will, provided he does it within the verge of the law; if he does it as a manly and good subject, confining himself to reasonable and good argument.

My learned friend says, If you stop this, the press is gagged; that it never can be said with impunity, that the king and the constable are in the same predicament.—The king and the constable are in one respect in the same predicament, with great difference indeed in the gradation, and in the comparison; but, without all question, both are magistrates: the one the highest, to whom we look with awe and reverence; and to the other, with obedience, when within his sphere: that may be freely said in this country, and ever will be said.—But is it the way to secure the liberty of the press, that at the time when the nation is solemnly engaged in the investigation of the conduct of one of its first servants, that servant should not only be defended by fair argument and reason, as far as it goes, but that his accusers are to be charged with malice and personal animosity against him?

If the audacious voice of slander shall go so high as that with impunity, who is there that will ever undertake to be an accuser in this country? I am sure I, for one, who sometimes am called upon (I hope as sparingly as public exigency will admit of) to exercise that odious and 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 enforcing the temperate, legal, and discreet use of it; and it cannot be necessary for the *liberty* of the press, that it should be *licentious* to such an extreme. Believe me, that if this country should be worked up, as I expressed it yesterday, to a paroxysm of disgust against the *licentiousness* of the press, which has attacked all ranks of men, and now at last has mounted up to the legislative body, its liberty perhaps never can be in greater danger:—something may be done in that paroxysm of disgust, which might be the gradual means of sapping the foundation of that best of our liberties—A FREE PRESS.

Is it not obvious to common sense, that if the whole country is rendered indignant by the licentiousness of the press knowing no bounds, this is the instant of greatest hazard to its freedom? Besides, is the folly of the subjects of Great Britain such, that, in order to enjoy a thing in all its perfection, and to all its good purposes, it is necessary to encourage its extremest licentiousness? If you shall encourage this its extremest licentiousness (I

* "Review," &c. p. 13.

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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 by-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

* With respect to the question for the consideration of the jury, see Bushell's case, Vol. VI, p. 1013; the note in Vol. VIII, p. 35; the Seven Bishops' case, Vol. XII, p. 183; Bayard's case, Vol. XIV, p. 502; Fuller's case, Vol. XIV, p. 517; Tutchin's case, Vol. XIV, p. 1095; Francklin's case, Vol. XVII, p. 625; Zenger's case, Vol. XVII, p. 675; Owen's case, Vol. XVIII, p. 1203; Wilkes's case, Vol. XIX, p. 1075: Almon's case, Vol. XX, p. 803; Miller's case, Vol. XX, p. 869; Woodfall's case, Vol. XX, p. 895; and the dean of St. Asaph's case, Vol. XXI, p. 847. As to the right of the Jury 'to decide not only the fact itself, but also 'the intention with which it was committed, 'and its legality or illegality,' see in addition to the references in the above-mentioned cases, Eden's Principles of Penal Law, ch. 15, s. 4; lord chief justice King's Address to the Jury in the case of Cook and Woodburne [*ante*, Vol. XIV, p. 502] there cited; Mr. Baron Maseres's Observations on the Doctrine of Libels, published in his 'Occasional 'Essays,' p. 183; and the proceedings in the House of Lords on the Libel Bills, inserted at the end of this case.

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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.*

Stockdale's being the last trial for a libel [in this collection], antecedent to stat. 32, Geo. 3, c. 60, I here insert from the Journal the proceedings which took place in the House of Lords preparatory to the enactment of that celebrated law.

"31 Geo. 3rd, A. D. 1791.

"*Die Jovis*, 2° *Junii*.—A message was brought from the House of Commons by Mr. Fox and others; with a bill intituled, 'An 'Act to remove doubts respecting the functions of Juries in cases of Libel;' to which they desire the concurrence of this House.

"The said bill was read the first time.

"Ordered, That said bill be printed.

"*Veneris*, 3° *Junii*.—Ordered that the bill, intituled 'An Act to remove doubts respecting the functions of Juries in cases of Libel,' be read a second time on Wednesday next.

"*Mercurii*, 8° *Junii*.—The order of the day being read for the second reading of the bill, intituled 'An Act to remove doubts respecting the functions of Juries in cases of 'Libel:'

"Moved, 'That the said bill be now read a 'second time.'

"Which being objected to;

"After debate, an amendment was proposed to be made to the said motion, by leaving out the word 'now,' and inserting instead thereof 'this day month.'

"Moved, 'To adjourn the debate for half an 'hour.'

"The question was put thereupon;

"It was resolved in the negative.

"Then the question was put, 'Whether 'the word 'now' shall stand part of the 'motion?'

"It was resolved in the negative.

"Then the question was put, 'Whether the 'words 'this day month' shall be there in-'serted?'

"It was resolved in the affirmative.

"Dissentient.

1st. "Because we hold it to be an unalienable right of the people, that in cases of libel (as well as in all criminal cases) the jury should decide upon the whole matter that may constitute the guilt or innocence of the person accused; and that in cases of libel, the jury ought not to be directed by the judge to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the said paper in the indictment or information:

2dly. "And because we conceive that the said right of the people is of the utmost consequence to the freedom of this nation and to that great bulwark of its rights the liberty of the press:

3dly. "And because we conceive that the bill sent from the Commons is well calcu-

* To the report of this case, originally published by the defendant, was subjoined lord Erskine's excellent 'Argument in support of 'the Rights of Juries,' which see in the case of the dean of St. Asaph, *ante*, Vol. XXI, p. [illegible].

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lated to convey a parliamentary declaration, and enactment of the said important right of the people, and because we conceive that every delay of such declaration and enactment to be in the highest degree dangerous to the safety of the subject:

4thly. "And because we conceive that we cannot with propriety refuse our immediate assent to propositions which no person in the debate did deny to be salutary, and because we conceive that this delay tends to give countenance to doubts that we apprehend to be utterly ill founded, and to encourage a contest of jurisdiction that can only be injurious to the regular and impartial administration of justice in this kingdom.

"STANHOPE.

"For the first and second reasons.

"RADNOR."

"Dissentient for the following reasons:

1st. "Because we conceive that the bill sent from the Commons is of the highest importance for the preservation of the rights of juries, and that considering the different opinions which have prevailed of late years with respect to this subject, we conceive every delay of a parliamentary declaration and enactment to be dangerous in the highest degree to the safety of the subject:

2d. "Because whatever difference of opinion may subsist in regard to the existing law, there seems to be so general a concurrence with respect to what ought to be the law in future, that we cannot with propriety refuse our immediate assent to provisions which are admitted to be salutary, on the ground of requiring time to ascertain how far the late practice of the courts is or is not justifiable by the law of the land.

"WENTWORTH FITZWILLIAM.
"LAUDERDALE.
"PORCHESTER.
"PORTLAND.
"HAY."

"Ordered, That the said bill be read a second time, on this day month."

N. B. The session of parliament terminated on the 10th of June.

"32 Geo. 3rd, A. D. 1792.

"*Die Martis*, 14° *Februarii*.—A message was brought from the House of Commons by Mr. Fox and others; with a bill, intituled 'An 'Act to remove doubts respecting the functions of Juries in cases of Libel;' to which they desire the concurrence of this House.

"*Jovis*, 1° *Martii*.—Hodie 1ª vice lecta est billa, intituled 'An act to remove doubts respecting the functions of Juries in cases of 'Libel.'

"Ordered, That the said bill be printed.

"*Lunæ*, 12° *Martii*.—Ordered, that all the Lords be summoned to attend the service of the House, on Tuesday the 20th day of this instant, March.

"*Martis*, 20° *Martii*.—The order of the day being read for the lords to be summoned;

"It was moved, That the bill intituled 'An 'Act to remove doubts respecting the functions of Juries in cases of Libel,' be read a second time.'

"Then an amendment was proposed to be made to the said motion, by adding thereto the words 'on Tuesday the 24th of April 'next.'

"Which being objected to;

"After debate, the question was put 'Whether the said words shall be added to the said 'motion?'

"It was resolved in the affirmative.

"Ordered, that the said bill be read a second time on Tuesday the 24th of April next.

"*Lunæ*, 23° *Aprilis*.—Ordered, That the second reading of the bill, intituled, 'An 'Act to remove doubts respecting the functions of Juries in cases of Libel,' which stands appointed for to-morrow, be put off to Friday next.

"*Martis*, 24° *Aprilis*.—Ordered, That all the lords be summoned to attend the service of the House on Friday next.

"*Veneris*, 27° *Aprilis*.—The order of the day being read for the second reading of the bill, intituled, 'An Act to remove doubts respecting the functions of Juries in cases of libels;' and for the lords to be summoned.

"It was proposed, 'That the following 'questions be put to the judges,' *videlicit*:

1. "On the trial of an information or indictment for a libel, is the criminality or innocence of the paper set forth in such information or indictment as the libel, matter of fact, or matter of law, where no evidence is given for the defendant?

2. "Is the truth or falsehood of the written or printed paper material, or to be left to the jury, upon the trial of an indictment or information for a libel; and does it make any difference in this respect, whether the epithet 'false' be or be not used in the indictment or information?

3. "Upon the trial of an indictment for a libel, the publication being clearly proved, and the innocence of the paper as clearly manifest, is it competent and legal for the judge to direct or recommend to the jury, to give a verdict for the defendant?

4. "Is a witness produced before a jury in a trial as above by the plaintiff, for the purpose of proving the criminal intentions of the writer, or by the defendant to rebut the imputation, admissible to be heard as a competent witness in such trial before the jury?

5. "Whether upon the trial of an indictment for sending a threatening letter, the meaning of the letter set forth in the indictment be matter of law or of fact?

6. "Whether on the trial of an indictment for high treason, the criminality or innocence of letters or papers set forth as overt acts of

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treason, or produced as evidence of an overt act of treason be matter of law or of fact?

7. "Whether, if a judge on a trial on an indictment or information for a libel, shall give his opinion on the law to the jury, and leave that opinion, together with the evidence of the publication, and the application of the innuendos to persons and things, to the jury, such direction would be according to law?"

"After debate the same were agreed to;

"And the said questions were accordingly ordered to be put to the judges.

"Ordered, That the further consideration of the said bill be put off to Friday the 4th day of May next; and that the judges do then attend to deliver their opinions upon the said questions.

"*Mercurii*, 2° *Maii*.—It was moved, That the order made on Friday last, for the further consideration of the bill, intitutled, 'An Act 'to remove doubts respecting the functions of 'Juries in cases of Libel,' on Friday next; and for the judges then to attend to deliver their opinions upon the questions put to them, be now read.

"The same was accordingly read by the clerk.

"Ordered, That the said order be discharged.

"Ordered, That the further consideration of the said bill be put off to Friday the 11th day of this inst. May, and that the judges do then attend to deliver their opinions upon the said questions; and that the lords be summoned,

"*Veneris*, 11° *Maii*.—The order of the day being read for the further consideration of the bill, intituled, 'An Act to remove doubts re-'specting the functions of Juries in cases of Libel;' and for the judges to deliver their opinions upon the questions put to them on the 27th of April last:

"The lord chief baron of the court of Exchequer [Eyre] delivered the unanimous opinion of the judges upon the said questions; and gave his reasons, which reasons are as follow, *videlicet*.

"My lords; the judges have taken the questions seven in number, which your lordships have been pleased to propose to them, into their consideration; they have conferred together, and have agreed upon answers, which I am now to submit to your lordships.

"Your lordships' first question is, 'On the 'trial of an information or indictment for a 'libel, is the criminality or innocence of the 'paper set forth in such information or indict-'ment as the libel, matter of fact, or matter of 'law, where no evidence is given for the de-'fendant?'

"Preliminary to all which we have to offer to your lordships, we state as a fundamental principle, that the general criminal law of England is the law of libel; and that the very few particularities which occur in legal proceedings upon libel, are not peculiar to the proceedings upon libel, but do or may occur in cases where the *corpus delicti* is especially stated upon the record; the case of an indictment for publishing a forged promissory note may be put as a pregnant instance.

"The matter of your lordships' first question has no particular application to libel.

"We answer, 'That the criminality or inno-'cence of any act done (which includes any 'paper written) is the result of the judgment 'which the law pronounces upon that act and 'must therefore be, in all cases and under all 'circumstances, matter of law, and not matter 'of fact; and this, as well where evidence is 'given, as where it is not given for the defen-'dant: the effect of evidence given for the de-'fendant as to this question, being nothing 'more than to introduce facts or circumstances 'into the case, which the prosecutor had left 'out of it, upon which it will still be for the 'law to pronounce, whether the act done be 'criminal or innocent.'

"Your lordships' second question is, 'Is the 'truth or falsehood of the written or printed 'paper material, or to be left to the jury, on 'the trial of an indictment or information for a 'libel; and does it make any difference in this 'respect, whether the epithet 'false' be or be 'not used in the indictment or information?'

"This question consists of two branches.

"Our answer to the first branch of this question is, that the truth or falsehood of a written or printed paper is not material, or to be left to a jury, upon the trial of an indictment or information for a libel.

"We consider this doctrine as so firmly settled, and so essentially necessary to the maintenace of the king's peace, and the good order of society, that it cannot now be drawn into debate.

"If it be asked, why the word *false* is to be found in indictments or informations for libel? We answer, That we find it in the ancient forms of our legal proceedings, and therefore that it is retained; but that it hath, in all times, been the duty of judges, when they come to the proof, to separate the substance of the crime from the formality with which it is attended, and too frequently loaded, and to confine the proof to the substance.

"The epithet *false* is not applied to the propositions contained in the paper, but to the aggregate criminal result—Libel. We say, *falsus libellus*, as we say *falsus proditor* in high treason.

"In point of substance, the alteration in the description of the offence would hardly be felt, if the epithet were *verus* instead of *falsus*.

"In the action for libel, the plaintiff is not put to prove the matter of the libel to be false, which is decisive to show that the falsehood is not part of the substance of the complaint; and though the defendant may insist in his defence, and may prove that the matter of the libel is true, it is not done in the way of contradicting what is asserted by the plaintiff, for then it might be done under the general issue: Whereas if the defendant means

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to insist that the matter of the libel is true, he must plead it by way of justification. As between him and the plaintiff seeking to recover damages for the private injury, the truth of the matter of the libel is a bar to the action for damages, the crime, and consequently the *falsus libellus*, remaining still in full force against him.

"The second branch of the question is, 'Does it make any difference in this respect, 'i. e. in respect of the materiality of the truth 'or falsehood, or its being to be left to the 'jury, whether the epithet 'false' be or be 'not used in the indictment or information?'

"Our answer will be very short. It can make no difference in this respect. We are not called upon to give any opinion, and we desire to be understood, not to give any opinion as to the difference in any other respect which the omission of a formal epithet, in an indictment or information may make.

Your lordships' third question is, 'Upon the 'trial of an indictment for a libel, the publi- 'cation being clearly proved, and the inno- 'cence of the paper being as clearly mani- 'fest, is it competent and legal for the judge 'to direct or recommend to the jury to give a 'verdict for the defendant?'

"We answer, That upon the trial of an indictment for a libel, the publication being clearly proved, and the innocence of the paper being as clearly manifest, it is competent and legal for the judge to direct or recommend to the jury to give a verdict for the defendant. But we add, that no case has occurred in which it would have been, in sound discretion, fit for a judge, sitting at Nisi Prius, to have given such a direction or recommendation to the jury.

"It is a term in the question, that the innocence shall be clearly manifest. This must be in the opinion of the judge. But the ablest judges have been sometimes decidedly of an opinion which has upon further investigation been discovered to be erroneous, and it is to be considered, that the effect of such a direction or recommendation would be, unnecessarily to exclude all further discussion of the matter of law in the court from which the record of Nisi Prius was sent, in Courts of Error, and before your lordships in the dernier resort.

"Very clear indeed, therefore, ought to be the case in which such a direction or recommendation shall be given. In a criminal case, which is in any degree doubtful, it must be a very great relief to a judge and jury, and a great ease to them in the administration of criminal justice, to have the means of obtaining a better and fuller investigation of the doubt, upon the solution of which a right verdict, or a right judgment, is to depend.

"A special verdict would, in many cases, be the only means where the offence is described by some one or two technical terms comprehending the whole offence, the law and the fact combined; such as the words 'feloniously 'did steal.' The combination must be decomposed by a special verdict, separating the facts from the legal qualities ascribed to them, and presenting them in detail to the eye of the judge, to enable him to declare, whether the legal quality ascribed to them be well ascribed to them or not.

"There may be a special verdict in all cases where doubts arise on the matter of law, but it is not necessary in all cases. In some criminal proceedings (the proceedings in libel, and the publication of forged papers, for instance), some of the facts are detailed in the indictment; and if the doubt in law should happen to arise out of the fact so detailed, we say it is upon the record. The question might have been discussed upon demurrer without going to a jury at all; and after verdict it may be discussed on a motion in arrest of judgment. In such cases a special verdict is not necessary. The verdict 'guilty' will have the effect of a special verdict, without the expense and delay of it, establishing all the facts, and leaving the question of law open to discussion.

"There are three situations in which a defendant, charged with a libel, may stand before a judge and jury in a court of Nisi Prius. First, the matter of law may be doubtful; in that case there ought to be a special verdict, or a verdict which shall operate as a special verdict. Secondly, the case may, in the opinion of the judge, be clear against the defendant. If the verdict is special in form or in effect, he has no reason to complain; his case comes before the Court from which the record is sent, without the prejudice of an authority against him. The third situation is, that the opinion of the judge may be clear in favour of the defendant. In that case, whenever it shall happen, we have offered it as our opinion, that it will be competent and legal for the judge to direct an acquittal.

"Your lordships' fourth question is, 'Is a 'witness produced before a jury in a trial as 'above, by the plaintiff, for the purpose of 'proving the criminal intentions of the writer, 'or by the defendant, to rebut the imputation, 'admissible to be heard as a competent wit- 'ness in such trial before the jury?'

"This question is put so generally, that we find it impossible to give a direct answer to it.

"The criminal intention charged upon the defendant in legal proceedings on libel is generally matter of form, requiring no proof on the part of the prosecutor, and admitting of no proof on the part of the defendant to rebut it.

"The crime consists in publishing a libel; a criminal intention in the writer is no part of the definition of the crime of libel at the common law. 'He who scattereth firebrands, 'arrows, and death' (which, if not an accurate definition, is a very intelligible description of a libel), is *eâ ratione* criminal; it is not incumbent on the prosecutor to prove his in-

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tent, and on his part he shall not be heard to say, 'Am I not in sport?' But inasmuch as a criminal intention may conduce to the proof of the publication of all libels, and inasmuch as the criminal intention is of the substance of the crime of libel in some cases by statute, cases may be put where a witness is competent and admissible to prove the criminal intention on the part of the prosecutor; and it may be stated as a general rule, that in all cases where a witness is competent and admissible to prove the criminal intention, a witness will also be competent to rebut the imputation.

"Your lordships' fifth question is, 'Whether 'upon the trial of an indictment for sending a 'threatening letter, the meaning of the letter 'set forth in the indictment be matter of law 'or of fact?'

"We find ourselves embarrassed by the terms in which this question is proposed to us. We find no difficulty in answering, that the exposition of the words of the letter, set forth in an indictment for sending a threatening letter, would belong to the Court, either on a demurrer, or in an arrest of judgment; and we have no difficulty in going a step further, and saying, that if a jury upon the trial of such an indictment were to find the letter according to its tenour, it would be for the Court to expound the letter.

"And whether the letter (the sense of it being thus ascertained) be a threatening letter within the meaning of the law, is answered by our answer to the first question. This we state distinctly to be matter of law; it is the judgment of the law pronouncing whether the paper be criminal or innocent.

"But your lordships ask us, 'Whether the 'sense of the letter be matter of law, or of 'fact?'

"We find a difficulty in separating the sense of the letter from the letter; the paper without the sense is not a letter.

"Whether there exists such a letter is, doubtless, matter of fact; as much as, whether it was sent to the prosecutor of the indictment. It is also matter of fact, whether an act of parliament, public or private, exists. And the same may be said of every other writing, from records of the highest nature down to any scrap of paper, wherein words are written which can be qualified with crim[illegible]or civil obligation. This goes no way towards ascertaining what belongs to a jury in an indictment for sending a threatening letter, to which we apprehend your lordships' question was intended to point.

"The existence of a public act of parliament, your lordships know, is not submitted to a jury at all; private acts and records may be *sub modo*; other instruments and papers are; but all, without exception, are expounded by the judges, and the legal effect of them declared by the judges.

"This does not rest merely on the authority of lawyers; in the nature of things it must be, that the judges must expound or collect the sense of the paper, in order to their declaring the operation of it in law.

"The sense of a threatening letter, or of any other words reduced into writing, is nothing more than the meaning which the words do, according to the common acceptation of words, import, and which every reader will put upon them. Judges are in this respect but readers. They must read and understand before they can pronounce upon criminality or innocence, which it belongs to them to do. It is a necessary and inseparable incident to their jurisdiction. If they could resort to a jury to interpret for them in the first instance, who shall interpret the interpretation, which, like the threatening letter, will be but words upon a paper?

"We shall not be understood to be speaking of that sense of a paper which is to be collected from matter *dehors* the paper, which, in legal proceedings, must be stated by way of averment; which averment would be to be established in point of fact, before the judges could proceed to construe a paper. On a demurrer, or on motion in arrest of judgment, these averments would stand confessed upon the record. If the general issue is pleaded, they are to be found by the jury. Judges have no means of knowing matters of fact *dehors* the paper, but by the confession of the party, or the finding of the jury; but they can collect the intrinsic sense and meaning of a paper in the same manner as other readers do; and they can resort to grammars and glossaries, if they want such assistance.

"These principles lead to the same conclusion for juries as for judges, in all points belonging to threatening letters, or to any other series of words reduced into writing, which fall within the province of juries. For instance: upon a general issue on an indictment for sending a threatening letter, a jury is to inquire, whether such a paper as the paper charged in the indictment exists? They must read, or hear read, and understand the paper charged, and the paper produced to them in evidence, in order to their finding that the paper charged does exist. The jury cannot know that they are the same papers without comparing both the words and the sense. But, when the jury have read, and sufficiently understood the paper charged, and the paper produced, so as to be enabled to pronounce that they are the same papers; when the averments have been examined and found to be true; when the context (if there be a context not set forth) has been seen, and understood, and found not to alter the sense of the paper produced, and to put a different sense upon it than that which the paper charged imports; and when the sending of the supposed threatening letter is found as charged, then all inquiry before the jury ends; the rest is matter of legal conclusion.

"Your lordships' sixth question is, 'Whether, 'on the trial of an indictment for high treason,

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'the criminality or innocence of letters or 'papers set forth as overt acts of treason, or 'produced as evidence of an overt act of 'treason, be matter of law or of fact?'

"We have said in our answer to the first question, that in all cases, and under all circumstances, the criminality or innocence of an act done is matter of law, and not of fact.

"We find nothing in the two cases now put which should lead us to narrow the generality of that proposition, or to except either of those cases out of it.

"But that we may not be misunderstood, we add, that this opinion does not go the length of taking from the jury the application of the evidence to the overt act of which it is evidence. It only tends to fix the legal character of it in the only way in which it can be fixed. And we take this occasion also to observe, that we have offered no opinion to your lordships which will have the effect of taking matter of law out of a general issue, or out of a general verdict.

"We know that it is often so combined with both, as to be inseparable from them; and we disclaim the folly of endeavouring to prove, that a jury, who can find a general verdict, cannot take upon themselves to deal with matter of law arising in a general issue, and to hazard a verdict made up of the fact, and of the matter of law, according to their conception of the law, against all direction by the judge.

"Our aim has been to trace the boundary line between matter of law and fact, as distinctly as we could. We believe that this is all that is necessary to be known. We have found jurors in general desirous of keeping within their province, which is, to examine into matter of fact, and cordially disposed to take their directions in matter of law from those whose education and habits enable them to declare the law, and to whom the law and constitution of the country have committed that important trust.

"Your lordships' last question is, 'Whether, 'if a judge on a trial on an indictment or in- 'formation for a libel, shall give his opinion 'on the law to the jury, and leave that opi- 'nion together with the evidence of the pub- 'lication, and the application of the *innuendos* 'to persons and things, to the jury, such di- 'rection would be according to law?'

"If we do not misunderstand this question, it is substantially answered in our answer to the third question.

"We mean to answer this question in the affirmative; but, that we may be clearly understood, we desire to be permitted in our answer to substitute the words 'declare the law,' instead of 'give his opinion of the law;' and the word 'declaration' instead of 'opinion,' where the word opinion occurs again in the question; our answer will then stand thus:

"If a judge, on a trial on an indictment, or information for a libel, shall declare the law to the jury, and leave that declaration, together with the evidence of the publication and the application of *innuendos*, to persons and things, to the jury, such direction would be according to law.

"If by the words 'leave that opinion to the 'jury,' is meant, in any manner, to refer to the jury the consideration of what the law is, in any view of the particular case in evidence, we are of opinion, that such a direction would not be according to law; conceiving the law to be, that the judge is to declare to the jury what the law is; and conceiving that it is the duty of the jury, if they will find a general verdict upon the whole matter in issue, to compound that verdict of the fact as it appears in evidence before them, and of the law as it is declared to them by the judge.

"We prefaced our answers with stating, that the general criminal law of England was the law of libel. We conclude what we have to offer to your lordships with stating, that the line marked out by the law for the conduct of a jury giving a general verdict, has an universal application to general verdicts on general issues, in all cases civil and criminal; for we cannot distinguish between the office and authority of a jury in civil and criminal cases, whatever difference there may be as to their responsibility. We desire to put your lordships in mind, that it hath been the modern policy to bring almost all questions upon men's dearest and most valuable rights, to be decided on a general issue, and it will be for your lordships' consideration, whether the line we have pointed out, which we take to be established in law and in reason, is not a great and essential security to the life, liberty, and property of all the king's subjects, from the highest to the lowest.

"Ordered, That the further consideration of the said bill be put off to Wednesday next; and that the Lords be summoned.

"*Lunæ* 14° *Maii*.—It was moved, That the order made on Wednesday last, for the further consideration of the bill, intituled, 'An Act 'to remove doubts respecting the functions of 'Juries in cases of Libel,' on Wednesday next, be now read."

"The same was accordingly read by the clerk.

"Ordered, That the said order be discharged.

"Ordered, That the further consideration of the said bill, be put off to Friday next; and that the Lords be summoned.

"Ordered, That the questions put to the judges upon the second reading of the said bill; and the judges' opinions upon the said questions, as delivered by the lord chief baron of the Court of Exchequer, be printed.

"*Veneris* 18° *Maii*.—The order of the day being read for the further consideration of the bill, intituled, 'An Act to remove doubts re- 'specting the functions of Juries in cases of 'Libel;' and for the Lords to be summoned:

"It was moved, 'That the said bill be now 'read a second time.'

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"The said bill was accordingly read a second time.

"Then it was moved, 'That the said bill be 'committed to a committee of the whole 'House.'

"Which being objected to;

"After debate; it was moved, 'That the 'further consideration of the said bill, and 'debate thereupon, be adjourned to Monday 'next; and that the Lords be summoned.'

"The same was agreed to, and ordered accordingly.

"*Lunæ*, 21° *Maii* 1792.—The order of the day being read for the further consideration of the bill, intituled, 'An Act to remove 'doubts respecting the functions of Juries in 'cases of Libel;' and the adjourned debate thereupon; and for the Lords to be summoned.

"The House proceeded to take the said bill into further consideration.

"After long debate, the question was put, 'Whether the said bill shall be committed?' It was resolved in the affirmative.

"Ordered, That the said bill be committed to a committee of the whole House.

"Ordered, That the House be put into a committee upon the said bill on Friday next.

"*Veneris*, 25° *Maii*.—The order of the day being read for the House to be put into a committee upon the bill, intituled, 'An Act to 'remove doubts respecting the functions of 'Juries in cases of Libel,'

"Ordered, That the House be put into a committee upon the said bill on Friday next.

"*Veneris*, 1° *Junii*.—The order of the day being read, for the House to be put into a committee upon the bill, intituled, 'An Act 'to remove doubts respecting the functions of 'Juries in cases of Libel,'

The House was adjourned during pleasure, and put into a committee upon the said bill.

"After some time, the House was resumed: and the lord Cathcart reported from the committee, 'That they had gone through the bill, 'and directed him to report the same to the 'House, without any amendment.'

"*Martis*, 5° *Junii*.—Ordered, that the bill, intituled, 'An Act to remove doubts respect-'ing the functions of Juries in cases of Libel,' be read the third time on Monday next; and that the Lords be summoned.

"*Lunæ* 11° *Junii*.—The order of the day being read for the third reading of the bill, intituled, 'An Act to remove doubts respect-'ing the functions of Juries in cases of Libel;' and for the Lords to be summoned:

The said bill was accordingly read the third time.

"Moved, 'That the bill do pass.'

"Which being objected to;

"After debate, the question was put, 'Whether this bill shall pass?'

"It was resolved in the affirmative.

"Dissentient

1st. "Because the rule laid down by the bill, contrary to the unanimous opinion of the judges, and the unvaried practice of ages, subverts a fundamental and important principle of English jurisprudence; which leaving to the jury the trial of the fact, reserves to the Court the decision of the law. It was truly said by lord Hardwicke, in the court of King's-bench, that, if these come to be confounded, it will prove the confusion and destruction of the law of England.

2nd. "Because juries can in no case decide whether the matter of a record be sufficient, upon which to found a judgment. The bill admits the criminality of the writing set forth in the indictment, or information, to be matter of law whereupon judgment may be arrested, notwithstanding the jury have found the defendant guilty. This shows that the question is upon the record, and distinctly separated from the province of the jury, which is only to try facts.

3rd. "Because by confining the rule to an indictment or information for a libel, it is admitted that it does not apply to the trial of the general issue in an action for the same libel, or any sort of action, or any other sort of indictment or information: but as the same principle and the same rule must apply to all general issues, or to none, the rule as declared by the bill is manifestly erroneous.

"THURLOW. C. BATHURST.
"KENYON. ABINGDON.
"WALSINGHAM. JOHN,* BANGOR."

"A message was sent to the House of Commons by the former messengers [Mr. Eames and Mr. Spranger]:

"To acquaint them, That the Lords have agreed to the said bill without any amendment.

"The bill together with others received the royal assent, Veneris, 15° Junii 1792,—and is as follows:

"An Act to remove doubts respecting the functions of Juries in cases of Libel.

"Whereas doubts have arisen, whether on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the king and the defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury impanelled to try the same to give their verdict upon the whole matter in issue: Be it therefore declared and enacted by the king's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, that on every such trial the jury sworn to try the issue may give a general verdict of Guilty or Not Guilty upon the whole matter put in issue upon such indict-

* Warren: See his case in this Collection, A. D. 1796, *post*.

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ment or information; and shall not be required or directed, by the Court or judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information.

"Provided always, that, on every such trial the Court or Judge before whom such indictment or information shall be tried, shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue between the king and the defendant or defendants in like manner as in other criminal cases.

"Provided also that nothing herein contained shall extend or be construed to extend, to prevent the jury from finding a special verdict, in their discretion as in other criminal cases.

"Provided also that in case the jury shall find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move in arrest of judgment, on such ground and in such manner as by law he or they might have done before the passing of this act; any thing herein contained to the contrary notwithstanding."

Antecedent to the enactment of the above statute, an ineffectual attempt had been made in the House of Commons, (March 7th 1771), by Mr. Dowdeswell, to introduce a bill to remove doubts as to the right of juries in trials for libel. Mr. Dowdeswell's motion for bringing in his bill was seconded by sir George Savile, and warmly supported by Edmund Burke. See the debate thereon, Vol. XVII., New Parl. Hist. p. 43. Mr. Burke's speech will be found in Vol. X., p. 109 of Burke's Works, 8vo. edit. of 1812. The following was Mr. Dowdeswell's bill:

"Whereas doubts and controversies have arisen at various times concerning the right of jurors to try the whole matter laid in indictments and informations for seditious and others libels: And whereas trial by juries would be of none or imperfect effect, if the juries were not held to be competent to try the whole matter aforesaid; for settling and clearing such doubts and controversies, and for securing to the subject the effectual and complete benefit of trial by juries in such indictments and informations; Be it enacted, &c. That jurors duly empannelled and sworn to try the issue between the king and the defendant upon any indictment or information for a seditious libel, or a libel under any other denomination or description, shall be held and reputed competent to all intents and purposes, in law and in right, to try every part of the matter laid or charged in said indictment or information, comprehending the criminal intention of the defendant, and the evil tendency of the libel charged, as well as the mere fact of the publication thereof, and the application by innuendo of blanks, initial letters, pictures, and other devices; any opinion, question, ambiguity or doubt to the contrary notwithstanding."

A prosecution was likewise instituted, in consequence of an address from the House of Commons, against the printer and publisher of 'The World' for a libel contained in some remarks on the tardiness with which that House proceeded in the business of Hastings's impeachment. See 44 Comm. Journal, 463. Bostock the printer of the libel, was brought to trial in May 1790, and found guilty.

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572. Proceedings in the Case of JOHN FRITH, for High Treason, at Justice Hall in the Old Bailey, on Saturday, April 17th: 30 GEORGE III. A. D. 1790.*

[1790, January 21st. As his majesty was going in state to the House of Peers, on passing the corner opposite Carlton-house, in St. James's Park, a stone was thrown at the coach by a tall man dressed in a scarlet coat, black breeches, a striped waistcoat, a cocked hat, with an orange-coloured cockade; he was immediately apprehended and taken to Mr. Grenville's office, in the treasury, Whitehall, where he underwent an examination by the attorney-general and sir Sampson Wright, before Mr. Pitt, Mr. Grenville, the duke of Leeds, earl of Chatham, and others, which lasted four hours, when he was committed to prison for further examination. He proves to be the same person who wrote a libel against his majesty, and stuck it on the whalebone in the court-yard, St. James's, about a fortnight since, and signed his name John Frith, lieutenant of the second battalion of royals. After undergoing several other examinations, he was committed to Newgate for trial on a charge of high treason. Ann. Reg. Chron. p. 194.]

On March 1st, a bill of indictment was

* Taken in short hand by E. Hodgson, and published by authority in the Sessions paper of the above date.

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found by the grand jury against John Frith for high treason; and on April 17th the following proceedings took place:—

AT the Sessions House in the Old Bailey, before the right honourable William Pickett, lord mayor of the city of London; the right honourable Lloyd lord Kenyon, lord chief justice of his majesty's Court of King's-bench; sir Beaumont Hotham, knight, one of the barons of his majesty's Court of Exchequer; the honourable John Heath, esq. one of the justices of his majesty's Court of Common Pleas; John William Rose, esq. serjeant at law, recorder of the said city, and others his majesty's justices of Oyer and Terminer of the city of London, and justices of goal delivery of Newgate, holden for the said city, and county of Middlesex.

JURY.

William George	Thomas Hill
Dutton Greenwood	William Matthews
Wm. Aug. Mitchell	Francis Osliffe
Rains Ford	William Ramsden
John Dell	William Sedcole
William May	Laban Tilbrooke.

Counsel for the Crown.—Mr. Attorney-General [Sir A. Macdonald, afterwards Lord Chief Baron]; Mr. Solicitor-General [Sir John Scott, afterwards successively Lord Chief Justice, C. B. and Lord Chancellor]; Mr. Law [now (1816) Lord Chief Justice, B. R.]; Mr. Silvester [now Recorder of London].

Counsel for the Prisoner.—Mr. Shepherd [now Solicitor-General]; Mr. Garrow [now Attorney-General].

The prisoner being put to the bar, the clerk began to arraign him, 'John Frith, 'you stand indicted by the name of John 'Frith;'—when Mr. *Shepherd*, one of his counsel, addressed the Court as follows;

My lord; before the prisoner is arraigned I wish to make an application. To-day my friend Mr. Garrow and myself are counsel for the defendant, Mr. Frith; and though we are furnished with what we think a sufficient defence, yet we should feel ourselves deficient, if while we thought so, there were other evidence that could be brought forward, (and we think there is some very important evidence which might be procured before the next sessions,) on behalf of Mr. Frith: on that account, we, as counsel for him, apply to the humanity of the attorney-general, to beg he would consent to the postponing this trial to the next sessions.

In this case we exercise our duty as counsel: Mr. Frith is entitled to the best of our judgment: whether he will choose to be guided by that is certainly a consideration for his own mind. Mr. Attorney-general always will attend to applications of this sort; we therefore do hope that he will consent.

Court. This application is made on your judgment?

Mr. *Garrow.* I entirely concur with my learned friend. We certainly, as counsel, are suitors to Mr. Attorney-general's humanity, that more time may be allowed for the prisoner's defence. Whether Mr. Frith himself will or will not consent, I do not know.

Mr. *Garrow* to Mr. *Frith.* Mr. Frith, we have been applying to the Court, or to Mr. Attorney-general, to permit your trial to stand over till next sessions, upon our judgment; it appearing to us that it will be better, and your defence better arranged.

Prisoner. I object to it, on account of my health being in a bad state through long confinement. I should rather meet it now: it is depriving a subject of his liberty, and endangering his health.

Mr. *Att. Gen.* Notwithstanding what this unhappy gentleman has said, I am given to understand that there may be some circumstances in his situation; and likewise that he is not very well able in point of pecuniary concerns, to be so ready in the collection of materials for his defence, as many other prisoners are: therefore if my friends are of opinion that he must go to his trial now under great disadvantages, possibly arising from the last cause, as well as the other, I shall have no objection to give the gentlemen such time as will enable them to collect such evidence as they may choose.

Prisoner. Then I shall make an application to some member of parliament or the legislature. I therefore totally appeal against such power of putting off the trial any farther; and whoever dares to oppose me in that respect, I will represent him to the legislature, or some member of parliament; either to general North, or some gentlemen whom I have the honour of knowing.

Mr. *Garrow.* My lord, we are put into an arduous situation. But for one, I feel it to be my duty to take upon myself in opposition to the prisoner, for the prisoner's benefit, to pray that the court, or rather the attorney-general will consent to postponing this trial.

Court. Mr. Attorney-General has conducted himself on this occasion as he always does, exceedingly liberally and properly; and is ready to give all that indulgence which humanity calls for, because justice could not be attained without reasonable delay interposing, therefore it must stand over till next sessions.

Prisoner. I do not admit of it. And I shall make an application to parliament, that I have been here three months in disagreeable confinement; and the king has broken the mutual obligation between him and the subject; and the assault is of such a simple kind of manner; and what I have met with is of such a nature, that I desire to speak by way of extenuation, and to plead guilty or not guilty to the facts. I then shall make an application as being illegally detained in prison, that you will not admit a British subject to plead to the indictment: I therefore

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shall make an application to the legislature, that you are violating the laws of this kingdom. I will not put it in the power of the gentlemen that are employed for me to put it off.

Court. It is impossible for the most inattentive observer not to be aware that there may in this case be a previous inquiry necessary: such is the humanity of the law of England, that in all stages both when the act is committed, at the time when the prisoner makes his defence, and even at the day of execution, it is important to settle what his state of mind is*; and at the time he is called to plead, if there are circumstances that suggest to one's mind that he is not in the possession of his reason, we must certainly be careful that nothing is introduced into the administration of justice, but what belongs to that administration. The justice of the law has provided a remedy in such cases; therefore I think there ought now to be an inquiry made, touching the sanity of this man at this time; whether he is in a situation of mind to say what his grounds of defence here are. I know it is untrodden ground though it is constitutional: then get a jury together to inquire into the present state of his mind; the twelve men that are here will do.

Prisoner to Mr. *Garrow.* I beg the favour to speak to you.

Mr. *Garrow.* By all means, sir.

Prisoner. The privy council were pleased to send the king's physician to me, after I had appeared before my lord Kenyon on the 22nd of January. I was examined at the privy council by lord Camden; and they sent the king's physician to me. I made dates and memorandums of the physician's visits, likewise remarks that I spoke to him at various times; and of the apothecary's visits also: they persevered in my being in perfect health, fit to meet my trial; and I have put down the conversations.

Mr. Justice *Heath.* The jury will take notice of that.

The Jury sworn as follows:—'You shall 'diligently inquire, and true presentment 'make for, and on behalf of our sovereign 'lord the king, whether John Frith, the 'now prisoner at the bar, who stands indicted 'for high treason, be of sound mind and un-'derstanding or not, and a true verdict give 'according to the best of your understanding, 'so help you God.'

Mr. *Shepherd.* Mr Frith, you are aware that the gentlemen of the jury who have been just sworn, are going to inquire whether you are in a fit situation to plead at this time, and to be tried. Now I wish you would state to these gentlemen what reasons you have to give, to induce them to think you are, and to produce any memorandums.

Prisoner. I have had a physician attended me two months past. On the 22nd of January, I came into these circumstances: and they were pleased to send the king's physician to examine me, whether I was perfectly in my senses: I persevered in being so, and would take no drugs from the apothecary. I begged him to attend as a friend to me, to protect me from insult, supposing there was any possibility that I could be insulted in this great prison: but if I had not been well, I would have had my own physician, Dr. Heberden, who attended my father formerly, when living: I looked upon him as a friend attending me, to prove that I was in my senses or any thing else. I made memorandums of his visits, and the various conversations that we had together. I made memorandums likewise of letters: a letter which I wrote to Messrs. Cox and Greenwood; and I have a copy of it, and one that I wrote about the 24th of February, during the time that the last sessions was here, when I thought I might be tried; I then re-copied it again. I then mentioned that a disagreeable thing had happened, that general Clarke is coming home in disgrace. To hide that infamy that has happened, they wished to give it out that I was out of my senses. The agents who had immediately freed me from the inconveniences I was under, they were ordered to deny the subject the liberty of drawing on his agent, on the house where he had money to answer his bills. They acknowledged me to have been perfectly in my senses at the time when I first came to England; I drew on them, and I have totally freed myself from the inconvenience I was under, from being improperly detained in the county of Cheshire. I was writing a letter of what was publicly given out concerning the subject: I then wrote to Messrs. Cox, Cox and Greenwood to beg they would send down some gentlemen here to prove how the liberty of the subject was invaded in 1787, in June; and such letters will prove that the 24th of last February I was right in my mind then; and that now I re-copied it again about a fortnight ago: and it went through my attorney to Messrs. Cox, Cox and Greenwood's house; that will prove the state of my mind at that period of time.

Mr. *Garrow.* Will you have the goodness Mr. Frith to state to the Jury the circumstance that took place on your arrival at Liverpool, about the clergyman.

Prisoner. When I first arrived at Liverpool I perceived I had some powers like those which St. Paul had; and the sun that St. Paul gives a description of in the Testament;

* As to this see the case of Bateman, *ante* Vol. XI, p. 467: Sir John Hawles's Remarks on that case, p. 476 of the same Volume, and the authorities there cited. See also 4 Blackst. Comm., pp. 24, 395, and Christian's notes; and in this collection the case of Purchase, Vol. XV, p. 689, that of Edward Arnold, Vol. XVI, p. 695, the note to that case, Vol. XVI, p. 765, the case of earl Ferrers, Vol. XIX, p. 865; and the case of Hadfield, April 26th, A. D. 1800.

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an extraordinary power that came down upon me—the power of Christ; in consequence of my persecution and being ill-used, the public wanted to receive me as a most extraordinary kind of a man; they would have received me in any manner that I pleased. When I went to St. Thomas's church I was there surprised to hear the clergyman preach a most extraordinary sermon upon me as if I was a god: I found my friends wanted me to support that kind of fanaticism in this country; this sermon was printed afterwards by Eyre the printer at Warrington; when I came to London to the king concerning some military business I told him nothing about any supernatural abilities or the power of God. When I went to the Infirmary over Westminster-bridge, to the Asylum, I was surprised to hear general Washington's late chaplain Mr. Duché; he said, I remember the words he said, "See him clothed in grace," pointing to me; there were some supernatural appearances at that time, therefore I could wish the privy council when I came to England or the parliament, might be witnesses that I did not want to set up any kind of powers to the public; but there are such extraordinary appearances that attend me at this moment that it is singular; and all I do daily is to make memorandums, daily to prove myself in my senses: some friends in Cheshire wanted me to set up some kind of fanaticism, some new branch of religion.

Mr. *Garrow.* Would you be so good Mr. Frith to inform the Court as you have an opportunity now, of the complaint you made to me of the effect your confinement has upon you, and the pain in your ear?

Prisoner. In respect to the body of people, St. Paul when he was at Jerusalem, the same kind of power then came down on the public; there is both a kind of good and evil power, which we are all liable to in this world; in consequence of that I feel myself in a particularly disagreeable situation in confinement; I am under a state of suffocation almost, the divine ordinances weighing so very low down that I am entirely reduced to a shadow almost, that is all to me as if it was a death seemingly, I am so in a state of confinement.

The Rev. Mr. *Villette* sworn.

Mr. *Garrow.* I believe Sir, you have had an opportunity of conversing with this gentleman since he has been in custody?—Yes.

State the impressions that such conversations made on your mind?—The first time I saw him I really thought from the appearance he had, that he was deranged in his mind; I took notice so to the man who had the care of him; some time after he sent for a bible; I sent him one; then we had some conversation, and he told me he had a pocket volume of that book, but that they took it from him when he was before the privy council; he said 'I am much obliged to you.' I went to him a few days ago, he was reading, he said it was the psalms; I then talked about his trial, and he then entered into such conversation as you have heard about St. Paul and Christ.

This conversation is not new, you have heard it before?—Yes.

Prisoner. I said it was when I was landed at Liverpool, and was giving a narrative.

Mr. *Garrow.* From the whole of your intercourse with him, did it appear to you that he was insane?—I really thought so.

You think so now?—I do.

Richard Akerman, esq. sworn.

You have had frequent opportunities of seeing Mr. Frith?—I have frequently seen Mr. Frith; I have been with him frequently.

State from the conversation you have had with him, and his conduct on the whole what your opinion is of the state of his mind.—It is very hard I should be called upon; I have heard such conversation as you have heard in court.

Mr. *Garrow.* I will not trouble Mr. Akerman.

Prisoner. I have been very silent and close for many reasons, and to protect my person; I have read the psalms, my lord, as I had no other books.

Mr. Sheriff *Newman* sworn.

Mr. *Shepherd.* Have you had any conversation with Mr. Frith since he has been in custody?—Very frequently; I went the second day after he was in Newgate; I went entirely out of curiosity; I found him a subject of great compassion. He began talking to me very deranged for the first ten minutes. I asked him, why he went over to Holland? he said he went eastward in pursuit of the light. I said, what light? he said, why, you have read the scriptures? I said, yes; says he, the same light that fell upon St. Paul when he went to Damascus; I said, what brought you back? why, says he, when I got there I found the light was in the west as well as in the east. He desired to have the liberty of walking in the yard; and I consulted Mr. Akerman; and he said, there was an order concerning him. I found him every time in the same way. I was there once when Dr. Millan came down; I met him there; he for the first five minutes had doubts; but before he went away he was perfectly satisfied the prisoner was insane; I have not the least doubt, nor possibly can have a doubt. I frequently found him reading in the book of Kings, and he told me he was learning the art of war, and he should come to be a general, and he should like to understand the art of making war as the ancients did.

Prisoner. I do not remember speaking about that, and I made memorandums of my conversations with Mr. Newman. I never spoke about particular lights; I said, when I went over to Holland, as the ministers neg-

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lected doing their duty to me as a subject, in protecting me from the insults of the body of people; stirring up licentiousness, aiming at me; they drove me out of the kingdom; I went to Holland to shelter myself from the body of the people, but I do not remember saying any thing of following the light.

To Mr. *Newman.* Do you think it was absolute incapacity of mind, or feigned or assumed?—I believe absolutely that he is totally deranged, and not in the use of his senses for ten minutes together; every day I saw him he was so, and of that there is not a doubt; I went at different times merely to make observations.

Mr. *Garrow.* Mr. Frith, are you acquainted with Mr. Burnsell the auctioneer?—Yes; he took an extraordinary liberty in putting into the Public Advertiser, the 3rd of February, a letter, dated the 1st, declaring me insane, a most extraordinary liberty; I thought it prudent to keep a copy: I have made memorandums, but they have been taken from me by colonel Amherst, the same as Mr. Wilkes's papers were seized,* a kind of alteration of the laws of the land, a kind of scheme to make a man appear insane, to totally disguise, to undo the liberty of the British subject; in fact, it is such a concealed evil that I do not know where it will end.

Had Mr. Burnsell any ill-will to you?—None at all; he was only employed to hide the mutiny that those applauses of the clergymen had occasioned: he went to a person that lives with Mrs. Dowdeswell, in upper Brook-street; he had a letter, and was perhaps feed; the clergyman declared me as a god, the body of the people as a man insane; myself applying to the king merely to get my birth again; when I went to my friend Mr. Burnsell, I spoke of no powers of God or Christ.

Was that before the complaint with which you were afflicted in your ear?—Before that, the pain in my ear, shall I finish with respect to Mr. Burnsell?

If you please.—I found he wished to suppose me not right in my senses, and that he could produce no proof; he has declared in the public papers, that I behaved in such a violent manner in his house, as totally to prove myself out of my senses; I have the facts now on one side put down, that I can find no one circumstance of the kind, and to put such a letter into the newspaper! if they wish to make a man appear insane, he should be taken before the lord chancellor, and there make a general declaration some way or other; but it is done to interfere with the liberty of the subject.

Mr. Frith, how long were you afflicted with that complaint in your ear?—I endured it; I supposed it merely as a trifling thing; but that complaint arises from a power of witchcraft, which existed about a hundred years ago in this country; there is a power which women are now afflicted with; there is a power that rules now, that women can torment men if they are in a room; over your head they may annoy you by speaking in your ear; I have had a noise in my ear like speech; it is in the power of women to annoy men publicly, even throughout the whole continent.

Could you satisfy one of the jury, that such a noise exists in your ear at this time?—That there is a noise in my ear at this time?

Yes.—No; I am free from it now.

Oh! you are free from it now?—Yes; but it is the power and effects of what they call witchcraft, or some kind of communication between women and men; but I have remained such a chaste man for these four years, that it has fallen upon me particularly; and the physician, by leaving me a month ago and visiting me as a friend, will totally speak to the fact; the last time he visited me was on the 19th of March; says he, I hope you will be restored and fit to take your trial; but I know your friend Mr. Hogarth—I have seen him; and some people that are in court will be able to declare me in my senses; I have said little or nothing at all lately, and been totally silent, so that it is impossible for me to be in that state. Shall I beg the favour to address my lord?

Lord Chief Justice. If you please, Sir.

Prisoner. Do you recollect me in the year 1773, when I applied to you in person on a case of some landed property between me and one Entwistle at Cheshire? when you were a counsel and were one of my counsel, with one Mr. Hughes—knowing me then, and likewise in October, at the assizes, respecting some contested property—some landed property I have in Cheshire? Now that circumstance may corroborate my declaration of the state of my mind.

L. C. J. I do not recollect it.

Mr. *Fuller* sworn.

I have frequently seen Mr. Frith since he came from the East Indies; I have had opportunities of conversing with him at particular times.

Mr. *Shepherd.* Do you recollect any thing particular in his conversation that induced you to take notice of the state of his mind?—Yes, several times; on Christmas eve was two years, I spent four hours with him; I conversed with him for three hours before I knew any thing was the matter with him; and upon asking him a question respecting the matters he had mentioned before, concerning his ill-treatment by major Amherst and ensign Steward, in the West Indies, he declared then the reason he was ill-treated was, that he wished to reveal what the government wished to conceal; for that he saw a cloud come down from heaven; that it cemented into a rock, and out of that sprung a false island of Jamaica, and because he wished to reveal it, he had, he said, been

* See Vol. XIX of this Collection.

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confined one hundred and sixty-three days; and they had taken different means; that he had taken an oath of this before sir Sampson Wright, a copy of which he gave me, and he wanted to have it published, but Woodfall, the printer, refused; and he said, he hoped that I, as one of his friends, would make it a conversation, in hopes it would reach the ears of the king; I thought that the speech of a madman; and he said, that he had wrote to the king and to sir George Young, the secretary at war, and could receive no redress, and that they had reduced him to half-pay; I understood that a gentleman of the name of Garrow was employed as his counsel; and I sent the copy of this oath enclosed in a letter to inform him of it; I last Chrismas day, by chance, went into the same friend's house, at No. 22, in Frith-street; there I drank tea with Mr. Frith; he then told me he was worse used than common; that he was persecuted, and that they wanted to set him up as Anti-Christ, or a fourth person in the Godhead, and that he looked upon to be blasphemy, or else he might have a good living; that and many other instances I can prove if necessary.

Did you believe him to be in his senses?—No, upon my oath; and upon that one subject of his conceiving himself to be in his senses, and ill-treated, and particularly by government.

If I understand you rightly, the last conversation that happened was about a month before the circumstance happened for which he was taken up?—Yes, Sir; and there were four people more that heard it.

Court. Gentlemen of the jury; the inquiry which you are now called upon, is not whether the prisoner was in this unfortunate state of mind when the accident happened, nor is it necessary to discuss or inquire at all what effect his present state of mind may have whenever that question comes to be discussed: but the humanity of the law of England falling into that which common humanity, without any written law would suggest, has prescribed, that no man shall be called upon to make his defence at a time when his mind is in that situation as not to appear capable of so doing; for, however guilty he may be, the inquiring into his guilt must be postponed to that season, when by collecting together his intellects, and having them entire, he shall be able so to model his defence as to ward off the punishment of the law; it is for you therefore to inquire, whether the prisoner is now in that state of mind; and inasmuch as artful men may put on appearances which are not the reality of the case, I think the counsel for the prisoner have judged extremely proper for your satisfaction and the public's, not to suffer your judgment to proceed on that which he has now said, though that is extremely pregnant with observation; but they have called witnesses, and gone back to the earlier period of his life, and stated to you at the time when the two letters were written, the language of which you have heard, which seems to me not to leave any doubt on any man's mind; therefore the question the Court proposes to you now is, whether he is at this time in a sane or an insane state of mind?

Prisoner. Permit me to speak; the physician is the most principal person, who has visited me as a friend; he can tell more than from any other private person's declarations whatever; I appeal as a British subject.

Jury. My lord, we are all of opinion that the prisoner is quite insane.

Court. He must be remanded for the present.

Prisoner. Then I must call on that physician, who said on the 19th I was perfectly in my senses.

The prisoner was then removed from the bar.

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573. The Trial of Patrick William Duffin and Thomas Lloyd, for a Seditious Libel, 17th December: 33 George III. A. D. 1792.*

At the sittings of Nisi Prius, held at Guildhall, for the city of London, December 17th, 1792; before lord chief justice Kenyon, and a special jury. The jury consisted of the following persons:

Samuel House, of Size-lane.
Jonathan Delver, Fell-street.
Richard Montford, Lad-lane
Michael Heathcot, Milk-street.
William Harriman, Allhallow-lane.
Isaac Osborn, Laurence-Poultney-hill.
Benjamin Bickerston, Jewin-street.
Benjamin Luthins, Copper-Office-lane.
And four talesmen.

The information, filed *ex officio* by the attorney-general, was read by the clerk, and stated, that Patrick William Duffin and Thomas Lloyd were wicked, seditious, and ill-disposed persons, and greatly disaffected to the king, and the government and consti-

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* From the original publication which, although evidently a partial report of the case, is the best I have seen.

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tution of this kingdom; and with force and arms did unlawfully and wickedly conspire, combine, confederate, and agree together to escape and go at large out of the Fleet prison; and to excite and stir up divers other prisoners to break open the said prison, and also to escape and go at large out of the said prison; —in pursuance of the said unlawful and seditious conspiracy, combination, confederacy, and agreement, and with intent to carry the same into effect, afterward did, unlawfully and wickedly, fix and put up, and caused to be fixed and put up, on the door of the chapel of the said prison, and thereby published and caused to be published, an infamous, wicked, and seditious libel, concerning the said prison, and the government of this kingdom, according to the tenor and effect following; viz. This house (meaning the said prison) to let, peaceable possession will be given by the present tenants on or before the 1st day of January, 1793, being the commencement of the first year of liberty in Great Britain!!! The republic of France having rooted out despotism, their glorious example and success against tyrants renders infamous bastiles (meaning amongst other prisons the said prison of the Fleet) no longer necessary in Europe. In contempt of the king, and open violation of the laws of this kingdom, to the great obstruction of justice, to the evil and pernicious example of all others, in the like case offending, and against the peace of the king, his crown and dignity.

Second Count.—That being such persons as aforesaid, they did unlawfully, wickedly, and seditiously devising, contriving, and intending to excite and stir up divers prisoners to break open the said prison, and to escape and go at large with force and arms in the Fleet prison, wickedly, maliciously publish and cause to be published, a wicked, infamous, and seditious libel. This house (meaning the said prison) to let, &c. as before charged in the first count.

Mr. *Bearcroft* said, that he appeared on the part of the prosecution, in the absence of the attorney-general, against the two defendants, Duffin and Lloyd. You know, gentlemen of the jury, that the charges against the defendants are, for conspiring and agreeing to escape out of the Fleet prison, where they were legally confined for debt; and that they excited other prisoners to effect their escape likewise. In pursuance of which conspiracy and agreement, and in order to effect the same, they pasted up in the prison a seditious libel. If, gentlemen, there should not appear sufficient evidence to prove that they conspired to escape, and liberate the others, there is a second and separate charge, omitting the charge of conspiracy, and confining the crime to the publication of the libel only, on which point you can have no doubt, after hearing the evidence I shall adduce.

I shall take up very little of your time in stating this case, or enlarging on the criminality of such offences as those with which they stand charged; especially as I understand that they are to be their own advocates, not having employed any person on their behalf. I shall therefore rest the prosecution upon the evidence of two or three witnesses; by their testimony you will find the charges well supported. It will be found, that Duffin and Lloyd were lawfully confined in the Fleet prison; and it will be in proof, that Lloyd was seen writing the libel, which was seen afterwards pasted up in the prison. And it will be further proved, that Duffin was the person who actually pasted the libels up: Lloyd was also heard to read it aloud, and thereby published it to many bystanders. That upon Lloyd's being interrogated and charged with the fact, he did not hesitate to justify it, but even gloried in the sentiments the libel contained; this will also be in proof; and if I understand the evidence aright, it will amount at least to this, that the publication was the joint act of both the defendants.

As to the object of that paper I shall say nothing more, than only to beg you to be so good as to hear it read, and then see whether it does not clearly extend to justify the constructions as they are charged.—The words are:

'This house to let; peaceable possession 'will be given by the present tenants, on or 'before the 1st day of January, 1793, being 'the commencement of the first year of li-'berty in Great Britain.

'The republic of France having rooted out 'despotism, their glorious example and suc-'cess against tyrants, render infamous bas-'tiles no longer necessary in Europe.'

The meaning of this paper is too plain to render it necessary for me to enter into any explanation thereof, before gentlemen of such respectability and understanding as those whom I have the honour to address; indeed it would be utterly impossible to affix to it any other meaning than that charged in the information.

William Jefferies sworn.

He proved that the commitments of the defendants were signed by Mr. Justice Gould.

Mr. *Bearcroft* said, this witness proved the legality of their imprisonment; but this evidence was no more than mere matter of form.

Thomas Hoskins sworn.

Mr. *Duffin* objected to this witness, as Hoskins was one of the under turnkeys of the Fleet prison, and as a servant of Mr. Eyles's, he might be suspected of partiality.

The Judge answered, That the objection was insufficient; servants were admissible witnesses; the English law excluded none but men's wives and interested persons. If the defendant had any other ground of objection to take, it should be heard, and every

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justice done which the peculiarity of the case required.

One of the counsel, holding a quarter of a sheet of paper in his hand, said to Hoskins, Look at this paper; did you ever see it before?—*Hoskins* took it in his hand, and answered, Yes.

When?—I saw it on the 28th of last October, when Mr. Duffin came down the steps of the north door of the Fleet prison, on Sunday afternoon, with that paper in his hand, and he went from there up the steps to the chapel door, which is at that end of the prison that he came from; when he got to the door of the chapel he stuck that paper upon it.

Did you take it down?—Yes; it appeared to be stuck on with size or paste. I kept the paper in my possession till the evening, and then I gave it to the warden.

The Judge told the defendants they might now ask the witness any questions that they had to put to him.

Mr. *Duffin* thanked his lordship for the information, and proceeded to ask Hoskins, Do you recollect my being confined in the strong room?—Yes, very well.

Do you recollect of any inquiry made either of the warden or among the turnkeys, from the secretary of state's office, or by the attorney-general, in consequence of a letter I wrote to the secretary of state?—No, sir; I do not know of any.

Had you orders to prevent all intercourse with me, and to let nobody into the room to me, nor open the door but three times a day?—Yes.

Did you not hear of my loud and frequent complaints respecting the oppressions of the officers of the prison?—I know of no oppressions carried on there.

Mr. *Lloyd* asked Hoskins if he knew of two gentlemen of the law, who called to see him, being refused even admittance into the prison, at any time while he was confined in the strong room?—*Hoskins.* No; I know nothing of the matter.

I believe it was not you, it was one Shott, another of the turnkeys. Pray do you know, is Mr. Shott in court?—No, I believe not.

John Eyles, Warden of the Fleet Prison, sworn.

One of the Counsel said, Had you any conversation with Mr. Lloyd about this transaction? What was it, and when was it?—I do not recollect the day, but I think it was two or three days after the papers had been pasted up; it was the 31st of October.

Tell that conversation.—I sent for him down to the lodge, and I told him I wished to talk to him, in order to discourage him from seeking a reform in the government. He then entered into arguments tending to defend his tenets.

What did he say about the hand-bills?—After talking about the hand-bills, we went into a long conversation, and he told me to take notice, that he did not admit the hand-bills were his; but from the conversation I thought he admitted it in so many words, after having argued on the propriety of the hand-bills, and the doctrine laid down in them.

Did you charge him with being concerned in them?—Yes, I did.—I told him how dangerous these things were, and to what consequences they might lead; they might bring about the most horrid scenes of plunder, bloodshed, and murder. He said that he thought otherwise, that a reform might be brought about without them. It was in private that I said this. He said he could not be convinced, and that his ideas were different from mine. I told him then, that he must go to the place called the strong room, as a punishment to deter others, that they might not be drawn away by his example. He said he was glad of it, and thought I could not do otherwise.—He said such measures might bring the contest to a point, or to a crisis, or some such like expression. He said that we understood one another, but I don't know what he meant. There was a good deal more conversation, but I do not recollect it.

Mr. *Lloyd* then said to Mr. Eyles, he would endeavour to assist his recollection, which appeared to him to be a very weak one. Perhaps when I jog your memory, you will remember, said he, that on my coming into the room where you were, you told me that you were convinced I was the writer and publisher of a paper then lying on your desk, and therefore you did not mean to make of me any inquiry whether I wrote it or not, but as a punishment, ordered me to the strong room. That I asked you whether this order was to inflict a punishment, and whether I was to be inhumanly treated on this account? That you answered, No. That I then reminded you, that as I had no friend present to witness a conversation I wished to have with you, I requested, if you accorded with this wish, that you might order your gang of turnkeys out of the place.—*Eyles.* I remember we were left alone, but I did not refuse to inquire of you whether you were concerned in the hand-bills.

Lloyd. Your memory is too short for me, I have therefore done with you.

Mr. *Duffin.* Pray Mr. Eyles did you ever hear that either Mr. Lloyd or I intended to escape from the prison?—No, I never heard so.

Or that we excited others to escape, or break the prison?—No.

Did you think yourself that we, or any of the prisoners, ever contemplated such a measure?—No otherwise than as I inferred from the hand-bills which had been stuck up; I thought the paper might have that tendency.

Did you ever hear that I complained of impositions and abuses, practised by your servants in the Fleet prison?—I did.

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And did you not hear I intended to complain to the Court of such impositions?—I did not hear that.

Do not you usually commit any person to the strong room under some flimsy pretence, who has spirit enough to resist your impositions?—I never confine any person in the strong room without cause.

Was not a gentleman murdered by your confining him in the strong room within these three years, and the cruelty of the treatment he received there?

The Judge told Mr. Duffin his question was an improper one; that no man would be allowed by the laws of England to give testimony to criminate himself.

Mr. *Duffin* said, he did not wish to persist, if his lordship thought the question unanswerable.

Michael Schoole sworn.

One of the Counsel said, You were a prisoner in the Fleet; you remember Duffin there; he had a part of your room, had he not?—Yes.

Do you know of a club that was established there, and that Duffin and Lloyd belonged to it?—No, I do not; I heard there was a club.

Did you belong to it?—No.

Do you know who did?—No, I cannot say I do. Seeing that I am called here, and I never was in a more disagreeable situation in my life, I will go on, and state all I know of this business: I remember Mr. Lloyd came into our room, or rather I saw him there.

What was he doing when you saw him there?—If the gentlemen please I will go on to state all I know of the matter.

The Judge then said, do so, Mr. Schoole; but we know that you have not come here voluntarily.

Schoole. It was on Sunday, the 28th of October, I had the misfortune to come into my own room, and there I saw Mr. Lloyd writing a paper at my table; the writing was a feigned hand, and out of the common way, and therefore made it more noticeable. I saw it afterwards pasted up in the coffee gallery in the prison.

One of the Counsel then took up a whole sheet of paper, ornamented with festoons, the writing on which was in a large bold round hand, and handed it to Schoole, asking whether that was the paper?

Schoole, having it in his hand, said, 'I believe this to be the same paper, but I am not 'positive, but I really think it is the same; 'the paper was not finished when I saw Mr. 'Lloyd writing it; but I saw it afterwards, 'and I believe it is the same.'

Counsel. Did not you hear it read aloud by Lloyd?—Yes; I heard him read it when it was stuck up by the coffee-room door: there were a great number of persons there; and I heard several others as well as Mr. Lloyd read it aloud also.

Mr. *Lloyd* asked the witness, What time it was when he saw him writing that paper; whether it was not dark?—No, it was not dark, for there was no candle alight.

Was it not late in the evening, and at least three or four hours after the small hand-bills had been stuck up?—Yes, it was some hours after that one on the chapel door had been taken down.

One of the Counsel then put the small hand-bill, which Hoskins swore he saw Duffin put up on the chapel-door, into Mr. Schoole's hands, and asked him if he did not think that was Lloyd's writing?—No; I do no not know; I rather think it is not.

Mr. *Lloyd.* It was only a copy then you saw me taking?—I do not know; I said I only believed the other one to be the paper you were writing, and that I cannot be positive it is the same.

Mr. *Duffin.* Did you not see a great many other persons take copies of the bills that evening?—Yes; a great many.

Mr. *Bearcroft* observed to the jury, that the papers were duplicates, and that the charge laid in the information contained a *verbatim et literatim* copy of the same.

Mr. Duffin being called upon to make his defence, stated the prosecution to be unfounded and malicious; and calculated only to protect and perpetuate the abuses and oppressions of one of the officers of a court of justice, the warden of the Fleet prison; it was not instituted, until that officer feared for his own safety; nor dare he even then lay the subject before a grand jury, which at that time was sitting. No, it was managed by the attorney-general by way of information, a relic of the detestable court of Star Chamber, under an impression, as he apprehended, that no grand jury could be found base enough to countenance such a frivolous and vexatious prosecution.

The paper charged against him was made public on the 28th of October, but was not noticed by the warden till the 31st of the same month, who then closely confined him for twenty-two days. On the 10th of November, however, he applied to the secretary of state to inquire into and redress his wrongs; it was nothing but the fear of an attack that made the warden then come forward. He conjured his lordship (if in his power) or the parliament, to restrain the keepers of gaols, from inflicting punishment on prisoners at their own discretion, a power they greatly abused; and hoped the jury would this day by their verdict, discountenance for ever, such infamous and oppressive prosecutions as the present. To show that the warden was induced to act in consequence of his letter, he begged of his lordship permission to read it, which was as follows:

"*To the* SECRETARY *of* STATE."

"When injustice is rendered in the case of an individual, without even the sanction of

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law, by the officers of a court of judicature, it is in vain to apply for redress or satisfaction to the officers of that court; because (as is too well known to render particular proof necessary) all the officers of such court incline to support each other, especially if the practice complained of should be one of those which their habits have rendered familiar to them. They are too much disposed to countenance a custom, under the idea of its forming part of the common law; but a custom can never become part of the common law of England, if it is a violation of the fundamental principles of ethics; nor can it be part of such law if it violates the principles acknowledged by Magna Charta, or the Bill of Rights; nay, even an act of parliament cannot establish a regulation infringent or subversive of that principle.

"Now, it is a right strictly natural, that every person have the liberty which consists in the power of loco-motion, of changing situation, or moving one's self to whatever place one's inclination may direct; and it is declared and enacted by Magna Charta, the Petition of Rights, &c. that no man shall be taken, imprisoned, or detained, by suggestion, or petition, or without cause shown, to which he may answer according to law. Hence it results, that this right can never be abridged at the mere discretion of the magistrate, nay not even the chief executive officer; for if once it were left in the power of any, there would soon be an end to all other rights and immunities. Yet it has so happened, that the discretion of the warden of the prison of the court of Common Pleas has, upon suggestion, without cause shown, confined me in the strong cell of that gaol, and exposed me to every inconvenience and hardship incidental to such confinement; refusing to furnish any convenience or necessary to preserve life or health, in a dismal vaulted cell, flagged with stone; and this not being thought punishment enough, I am debarred of all intercourse with my friends.

"Thus circumstanced, I call upon you, as the superintendant of the execution of the municipal laws, to inquire into, and redress the evil; to this end I subjoin a statement of the case.—About six weeks ago I was committed to the Fleet prison for a debt of 500*l.*, charged on the oath of a man I never knew, nor could I learn where he lives, or if such a man exists, though I applied for that purpose to his attorney, George Crossley. Being thus deprived of the dearest blessing, Liberty,—through the medium of perjury, and confined in this mansion of the oppressed, it happened, that on Sunday the 28th of October last, a written paper of the following purport, was stuck up on the walls [The same as charged in the information]. On the Wednesday following I was ordered by the warden to be close confined to my room, on suspicion of having published the above. There I continued locked up, with an iron bar across my door, until Friday evening last, when, at a late hour, I was removed to a cell, called the strong room, without an opportunity of accommodating myself (even at my own charge) with a bed or other conveniency. In that cell I found an American gentleman, who had then been confined there ten days on the like suspicion. He appeared to be badly accommodated; notwithstanding, yesterday evening an under turnkey stripped the cell of every article he had had therein, not leaving a jug for water, or even an urinal. In this situation we are now locked up together, and so completely excluded from society, that we may perish without it ever being known to our friends or relatives what has befallen us. A detail of the cruelties inflicted on us would pang the heart of humanity, and rouse the indignation of the community, especially as such punishments are illegal, and tend to brand with infamy the nation which permits, or connives at such enormities.

"PATRICK WILLIAM DUFFIN.
formerly of the city of Dublin,
now of Piccadilly, London.

"Dated from the strong cell in the Fleet prison, 10th November, 1792, at night.

"*To the Secretary of State for the Home Department.*"

Mr. *Lloyd* being now called upon by the Judge to make his defence, entered upon it as follows:

The enormous expense attending the conduct of a suit at law in this country, has deterred me, under my present embarrassed circumstances, from attempting to engage either attorney, solicitor, or counsel in my behalf: I am therefore left alone to support myself against disciplined veterans of the bar, and to submit the determination of my defeat or victory to the judgment of a Court, perhaps unused to decide upon, or even to listen to, arguments bottomed solely upon the pure principles of distributive justice, without a particular allusion to municipal regulations: standing in this predicament, I enter upon the arduous task with conscious diffidence, and while I claim the patient indulgence of the Court, I entertain a hope that you will rather aid than obstruct, the operation of my reasoning on the minds of the gentlemen, who are selected to verify the truth of the information recently given to the Court, or to falsify what I am persuaded the attorney-general is incapable of proving.

I am well apprized, that it is the duty of the judge to state and interpret the law, in cases where it is not clearly understood by the jury; but I trust a discerning jury will not consent implicitly to receive any doctrine as the law of England, though pronounced to be such, by magistrates of the most respectability, if they find it to be in direct violation of the very first principles of natural law and English jurisprudence. It is notorious, that

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the interpretations of judges have been frequently erroneous, and the recent instance of Mr. Fox's Libel Bill, points out a particular case, in which the legislature were obliged to interfere for the purpose of altering and correcting a practice introduced extrajuridically.—And although when I was brought up on the sudden to plead to an information, after twenty-two days close confinement in the strong room of the Fleet prison, I was told by the judge, that my opinion on the subject of admitting me to bail, which bail I then offered, and had then present in court, would weigh as a feather in his mind. Yet I have now the pleasure to find that on a particular examination a jury, and not the judge of the court, will ultimately determine on the case before them; and then will be seen whether his opinion or mine, on the nature, principles, and construction of the law, be most compatible with the declarations of the law itself.

And here I have to express a desire, that my words may be taken in their most favourable sense, and not tortured into a contempt of the Court; for I once for all declare, that nothing is more foreign from my intentions, although my language may seem to bear with some asperity, not only on those who have administered the law, but on practices which have been long considered and acted upon, as if they had formed part of the legal code of this nation.

In order to abate any surprise which this declaration, or my subsequent arguments may occasion, I consider it requisite to state briefly, That I am a citizen of the United States of America; and here permit me to digress a moment, in order to mention a step which I had intended to have taken on my trial, but which I apprehend I am now precluded from: when I was brought by a Habeas Corpus to the Crown-office on the 3rd instant, to be present at nominating the special jury, I stated to the treasury solicitor and attorney, my objection to a jury of this nature, and informed them that being an alien, I would claim a jury *de medietate linguae*, in order to have a question decided by the Court, how far special juries could be granted in cases where an alien is a party; to show that this was a question undecided I shall read an extract from 3 Black. p. 360, 361.

"The array by the ancient law may also be challenged, if an alien be party to the suit; and, upon a rule obtained by his motion to the Court for a jury *de medietate linguae*, such a one be not returned by the sheriff, pursuant to the statute 28 Edward 3, c. 13, enforced by 8 Hen. 6, c. 29, which enact, that where either party is an alien born, the jury shall be one half denizens, and the other aliens (if so many be forthcoming in the place), for the more impartial trial. A privilege indulged to strangers in no other country in the world; but which is as ancient with us as the time of king Ethelred, in whose statute *de monticolis Walliae* (then aliens to the crown of England), cap. 3, it is ordained, that 'duodeni legales 'homines, quorum sex Walli et sex Angli 'erunt, Anglis et Wallis jus dicunto.' But where both parties are aliens, no partiality is to be presumed to one more than another; and therefore it was resolved, soon after the statute 8 Hen. 6, that where the issue is joined between two aliens (unless the plea be had before the mayor of the staple, and thereby subject to the restrictions of statute 27 Edw. 3, st. 2, c. 8), the jury shall all be denizens. And it now might be a question how far the statute 3 Geo. 2, c. 25 (before referred to), hath, in civil causes, undesignedly abridged this privilege of foreigners, by the positive directions therein given concerning the manner of impanelling jurors, and the persons to be returned in such panel. So that (unless this statute is to be construed by the same equity, which the statute 8 Hen. 6, c. 29, declared to be the rule of interpreting the statute 2 Hen. 5, st. 2, c. 3, concerning the landed qualification of jurors in suits to which aliens were parties) a court might perhaps hesitate, whether it has now a power to direct a panel to be returned *de medietate linguae*, and thereby alter the method prescribed for striking a special jury, or balloting for common juries."

Lord *Kenyon* here informed Mr. Lloyd, that the time was passed in which he might have made that claim: and Mr. Lloyd proceeded.—He said he had suspected as much; he should therefore quit the subject with just adding, that unused to the practice of courts of justice, he was taken unaware by the rapidity of the officer who swore in and impannelled the jury, which was begun and nearly ended before he was well in his place.

But to return. I had stated, said he, that I am a citizen of the United States, and was called, last winter, on a family occasion to London from Philadelphia;—some disappointments and unexpected expenses, rendered me incapable of discharging, on the moment of demand, two debts I had contracted; on which account being arrested, I removed myself for my better accommodation to the Fleet prison (after waiting fifteen or sixteen days, in last September, for the arrival of a judge in town). My conduct there, as well as in every other situation of life, has been such as not to furnish an occasion for a blush in my countenance; if at any time I have given pain to those who knew me, I may regret the effect, but I am certain I can justify the cause. In the information laid by the attorney-general, I am stated to be a person greatly disaffected to a monarchical government, and to the constitution of this country; with respect to the British constitution, I shall state a few ideas, when I come to that part of my arguments where I consider they will best apply; but as for my want of attachment to monarchy, it ought never to be imputed to me as a crime; from my early youth I have been trained in

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republican principles, and my manhood has been employed in procuring their establishment in regions more extensive than any European kingdom; and the event has shown, in contradiction to the opinion of even the great Montesquieu, that it is not the natural property of large empires to be swayed by a despotic prince, for an American government, which is a republic on the principle of representation, it was necessary to form calculations on a scale commensurate to a large portion of the globe; yet you will find individual happiness and national prosperity, better promoted by such a system of government in that nation, than we are capable of discovering to have been the case in any other country, from historic research or visual inspection. If the charge is simply disaffection to the king, or in other words, a want of zeal for his service, there appears nothing proved under the information to convict me thereof.

With respect to the crime, as it is termed by the attorney-general, in the understanding he took upon himself to give to the court of King's-bench, on the 21st ultimo, I have little to say, and that little I shall wave for the present, with only this remark, that conscious of never having written or pasted up, the *jeu d'esprit* complained of, in anywise, or as charged against me; and conscious that I never contemplated an escape from the Fleet prison, nor ever suggested such a measure for the benefit of the other prisoners, I have hitherto been at a loss to conceive what evidence was intended to be adduced in support of such abominable falsehoods; under this perplexity it may readily be supposed, that I am not prepared with testimony to rebut what has been brought before you by the prosecutor, nor do I believe, now I have heard it, that any will be necessary.

But now, for argument sake, taking it for granted, that I had intended to escape and break down the walls of that prison, which are forty feet high, and mounted at top with iron railing *chevaux de frize*, and six feet thick, with force and arms, and in pursuance of this terribly wicked intention, I had stuck up the seditious pasquinade alleged against me, I think I can demonstrate that I was warranted to pursue such object to effect, without its being imputed to me as a crime. To accomplish this end, I solicit your particular attention to the arguments I am about to urge; hoping, for your own honour and justification, that you will weigh them with care and candour, and by your verdict determine their cogency and conclusiveness.

[Here one of the jurors interrupted Mr. Lloyd with saying, that the jury was bound by oath to determine. Mr. Lloyd replied, that he had as leave appeal to the virtue and honour of a man of integrity as to his oath. It was on this account that he had preferred the phraseology which the gentleman remarked upon.]

The first thing which I mean to submit to your consideration is, any inquiry into the justice, constitutionality and legality of imprisonment for debt. If such imprisonment should appear to you unwarranted by the law of nature, the English constitution and the municipal laws, you will undoubtedly conclude with me, that it is such an act of oppression, as to authorize, nay to require, resistance on the part of those who are so unjustifiably immured within the walls of prisons, more gloomy than were the *ci-devant* bastilles of the grand monarque.

Before I enter upon my argument on this subject, I would wish to satisfy the Court, that I am not alone in the opinions I entertain; as they may discover, upon attending to the judgment of seven of queen Anne's judges, delivered by chief justice Holt.

"If one be imprisoned upon unlawful authority, it is a sufficient provocation to excuse even homicide, and all people, out of compassion, ought to aid therein, much more so when it is done under colour of justice: and when the liberty of the subject is invaded, it is a provocation to all the subjects of England. A man ought to be concerned for Magna Charta and the laws; and if any one against law imprison a man, he is an offender against Magna Charta."

I hope to make it appear, upon examination, that imprisonment for debt, is not only unjustifiable, but that it is a crime against the natural, imprescriptable, and unalienable rights of man; and in Great Britain, a crime also against what is called the great charter of English liberty, as well as against many other subsequent statutes, obtained in order the better to secure the liberties and privileges of the inhabitants against the encroachments of monarchs, who pretended to govern the nation by the right of conquest.

In order to show that imprisonment for debt is a crime against the unalienable rights of man, permit me to state, as an axiom self-evident, that "the end of all associations is the preservation of the natural and imprescriptable rights of man: and those rights are liberty, property, security, and resistance of oppression." Personal liberty, the dearest blessing which the Creator has bestowed upon mankind, made inherent in us by birth, when we were endued with the faculty of free will, consists "in the power of removing one's person to whatever place one's inclination may direct." It is a right annexed to the person of man, and cannot be parted with, even by one's own consent, while man is considered a free agent, endowed with discernment to know good from evil, and with the power of choosing those measures which appear to him to be the most desirable.

It is true, that every man when he enters into society, gives up a part of his natural liberty, in order to secure to himself the remainder of those absolute rights which were vested in him by the immutable laws of na-

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ture, and which could not be preserved in peace without that mutual assistance and intercouse, which is gained by the institution of friendly and social communities: but then it is equally true, that he parts with no more of his natural liberty than is sufficient to attain that end. While this maxim is kept in mind, the acts of the legislative, judicial and executive powers of government, will be capable of being compared with the end of the political institution.

A celebrated commentator on the laws of England asserts upon this ground, and very justly, "That personal liberty is a natural, inherent right, which cannot be surrendered or forfeited, unless by the commission of some great and atrocious crime."* This being another self-evident proposition, requires no elucidation.—It follows then as a natural consequence, that unless the circumstance of owing a sum of money, be a great and atrocious crime, one's personal liberty cannot be surrendered or forfeited for it.

The law cannot authorize imprisonment on any other account than that of criminality in the party—nor ought personal liberty to be abridged even in the case of crimes, without the special and previous permission of the municipal law.—It is not, however, intended to contend, that an absolute exemption from imprisonment in all cases of debt is proper, for it is admitted that such an exemption may be inconsistent with political society, as it might destroy civil liberty, by rendering its protection incomplete. But it is contended, that personal liberty ought never to be abridged for a debt contracted, unless the contract was obtained by fraud or force, which being a crime against civil liberty, is of course punishable by imprisonment.

In order to understand what is hear meant by civil liberty, it may be proper to insert the definition of the term as it is given by the writers on the law of nature and of nations. "It is no other than natural liberty, so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public."

The question now becomes serious and important.

Is the imprisonment of a debtor, who has become such in consequence of a debt contracted without fraud or force? or, in other words, is the imprisonment of a person neither charged with nor convicted of a crime—necessary and expedient for the general advantage of the community?

In consequence of some severe strictures, recently made by the attorney-general, before the court of King's-bench, at Westminster-hall, at the last trial at bar, on the conduct of debtors, as well as in support of the ground I have taken, it will be proper to show, that they are not to be classed among the most vicious and abandoned part of our species, as was attempted to be insinuated: they are not to be considered as public robbers or pick-pockets! In short, a debt contracted without fraud, attaches no greater crime to the debtor, who unfortunately is rendered incapable of discharging it, than to the creditor is attached a crime on account of his unguarded confidence.

In support of this opinion, I refer to the bankrupt laws of this nation; to what is called the Lords' Act; to the frequent acts of insolvency which have been passed by the legislature; to the charitable societies, instituted for the relief of insolvent debtors, and to popular opinion.

The reason assigned for the provision made in favour of a debtor by the bankrupt laws, is, that "trade cannot be carried on without mutual credit on both sides: the contracting of debts is therefore here, not only justifiable but necessary." Now let me ask, Can any of the affairs of men in this age be carried on without mutual credit? Look around you, gentlemen; amidst the infinite variety of mutual and reciprocal dependencies, which you discover in every situation of life, select me one case where the fair contraction of a debt requires justification?—No one is to be found, for mutual credit is by common consent declared to be necessary! and as every man of us may be liable to the pressure of unforeseen calamities, shall misfortunes be deemed crimes in those who are already borne down to the earth, by their accumulated weight.

The principle of the Lords' Act, is precisely the same as that on which the bankrupt laws are founded; notwithstanding the absurdity of the clause, which declares, that every man has a right, at the expense of 2*s.* 4*d.* per week, to gratify a vicious propensity, by the imprisonment of his debtor, thus enabling a spiteful, dishonest, or designing individual, to defeat a law enacted on humane principles.

By acts of insolvency, the legislature has frequently declared its concurrence with the sense I have pointed out, to be the just one annexed to the Bankrupt and Lords' Acts, (twenty-four acts of insolvency have passed since Charles 2nd's time, making on the average one for every four and a half years) these measures have been dictated by motives either of mercy or justice; mercy cannot be extended by the legislature but to criminal cases; acts of mercy, are the public pardon of public crimes, but debtors have never been accused of, tried for, or convicted of a crime. As acts of justice they have not been considered by the parliament, because it would be inconsistent in them; for then they must allow, that all practices of imprisoning debtors, were acts of high injustice and oppression, and ought in future to be prevented by legislative interference, which that body has not lately attempted to do; the community are still to be oppressed, are still to be insulted with the occasional display of

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* See 3 Black. Comm. 133.

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what are termed acts of mercy, where it has a right to the justice of the legislature.

The popular opinion is notorious, from a variety of circumstances; but gentlemen may think that popular opinion is of little importance; yet I venture to assure them, that all laws not founded in popular opinion, in this enlightened period, are little likely to be supported and carried into full effect. In all cases of popular commotion in this as well as other countries, one of the first attempts made in order to redress the people's wrongs, is the liberation of debtors from the public prisons; and here permit me to observe, that the first act of insolvency was passed when England became a commonwealth, after the execution of Charles the 1st. The people are also ever inclined to mitigate and remove the hardships of imprisonment for debt, by entering into societies, and furnishing money for those purposes. There must be something wrong in the administration of a government, when the deliberate collected charity of humane associations is seen making efforts to raise up—not a fallen individual, but a whole body of men, whom the administrators of the law have caused to be thrown down. Nothing can be more convincing than this circumstance; that debtors confined in prisons are considered by all men, as persons suffering unjustly; that they are not viewed as criminals, but as unfortunates.—A robber, a pickpocket, under the sentence of the law, may meet with compassion as an individual, but no measures have yet been taken, in consequence of the collective sense of the community of the injustice done them, to abridge the rigour of the law in respect to the whole gang; but the mitigation of the punishment of debtors is contemplated by the whole society of the people, and intended to affect the whole body of those unhappy men who are left to the mercy of individuals, to atone for, at most, what can be considered only as a venial fault, an inability to pay a sum of money at the moment it is demanded.

If these considerations are not deemed sufficient to establish the position in the minds of all men, that suffering debtors are rather considered, and justly too, as unfortunate men, than as criminals, I shall add nothing more in its support,—but for the sake of humanity and Christian benevolence, I will proceed on my subject, under the impression that you, gentlemen of the jury, at least agree with me in the sentiment; and that it was adding insult to injury to observe that debtors ought to be considered as little or nothing short of felons—an assertion which could only be made by him, who knows, that if the Great Charter and the constitutional rights of Englishmen should one day recover their original force (and I think I see the dawn of that bright day appearing in the east) that then will the most important and the most lucrative branch of the usurped jurisdiction of the court of King's-bench tumble to the ground—the liberty and happiness of thousands will be restored, but the golden stream, which so long has flowed through that channel, will flow no more.

The question still recurs, Is the imprisonment of an honest debtor necessary and expedient for the general advantage of the community? It may be answered, as it has heretofore been asserted, that credit is essentially necessary in a commercial country; and it cannot be effectually supported by any other means than that of imprisonment for debt.

The necessity of credit to the inhabitants of a country like England, possessing few staple commodities, on which to bottom a foreign commerce; but which notwithstanding is, from certain adventitious circumstances, a trading nation has been so sedulously asserted and maintained by several late popular writers, that to question their judgment would occasion a suspicion of the want of understanding in the inquirer, or be deemed an act of uncommon temerity.—Prudence, and not the want of ability to maintain the converse of the proposition, will therefore guide me in giving it the go-by for the present; with only one or two observations.—Probably the necessity of an extensive credit, would not have yet become the fashionable position, had not the government of England, ever since the coming in of William of Orange, always found it convenient and extremely advantageous to the members of each administration, to anticipate the national revenues; they thereby, having an opportunity of providing money to disburse among their friends and relatives, under the shape of army, navy, and lottery contractors, military and naval officers, placemen on the civil list, pensioners, &c.—By this scheme of credit the enormous anticipations had very little sensible effect upon the property of the inhabitants at the moment.—Had not your ancestors been deceived by this wretched scheme of anticipations, and the false appearances held out to them from time to time, by ministerial adventurers, they never would contentedly have borne the burthens.—Had all the money, wantonly lavished, in supporting fanciful balances of power in Europe, Asia, Africa, and America, been taken out of their pockets by the prompt payment of each wanton demand, you would not now be saddled with a debt of two hundred and fifty millions of pounds sterling; in order to keep down the interest of which, and to compensate the industry of officers who receive and enjoy the public contributions, you are obliged to pay annually about twenty-three millions of money, or about the average price of eighty days labour for every man in the nation.—Had your ancestors contemplated the sufferings devolved upon their wretched posterity, they would not have given rise to the assumed position of an almost incredible necessity of credit! Let any candid person inquire into the effects of public credit in this nation, and they will find abundant

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reason to curse the cause.—To it is owing the national debt and taxes before-mentioned, which have in their natural consequences thrown such a weight of power into the executive scale of government, as cannot be thought was intended by your patriot ancestors, who gloriously struggled for the abolition of the then formidable part of the prerogative; but who, by an unaccountable want of foresight, established this system in their stead.

Here Mr. Lloyd was stopped by the Judge; who asked, how the arguments he was urging were intended to apply to the case in hand? Mr. Lloyd answered, that he contended against the legality of imprisonment for debt; that the necessity of credit, public as well as private, was considered requisite for the advantage of the community; that if he could show from experience, that credit was rather injurious than beneficial to the nation, it would not follow that imprisonment for debt ought to be allowed, in order to support a scheme which did not render a benefit to the public equal to its disadvantages—and if he could satisfy the jury on the illegality, they could not criminate him for an attempt to escape.

The Judge told him he might proceed.—He then repeated the paragraph to that part where he was interrupted; saying, the jury ought to notice that he was not stopped until he came to apply his remarks to the executive power of the state.—He now continued his argument.

The entire collection and management of so vast a revenue, being placed in the hands of the executive officer, the monarch! have given rise to such a multitude of new officers, created by and removable at his pleasure, that they have extended his influence to every corner of the nation.

To this astonishing necessity of credit, is owing the increased prices of every necessary of life, by which the day-labourer is deprived of two out of his three daily meals of flesh provision, or is obliged to substitute broth for beef, and potatoes for wheaten bread. To it is owing the increase of a paper medium, and the decrease of specie!—To it is owing the circumstance of charging the active and industrious man, who pays his share of the taxes, to maintain the idle and indolent creditor, who receives them!—To it is owing, the numerous swarm of custom-house officers, excisemen, distributors of stamps, receivers, managers, commissioners, secretaries, clerks, and various inspectors of taxes.—Should I become more particular still, the tedious tale might disgust you.

Here one of the jurors said, It very well might. To which Mr. Lloyd replied, He did not doubt it.

The judge told him, he must not ill-treat the gentlemen who were to decide upon his case.—Mr. Lloyd answered the judge, that he apprehended his observation to the jury was not heard by the bench, or they would not suspect him of entertaining an inclination to ill-treat the jury: he would repeat the words; which he did.—When the judge told him to proceed: he then went on, saying, From this view of the subject I trust you do not discover the necessity of adding the additional wrong of imprisonment for debt, in order to give a greater facility to credit.

But, gentlemen, an excessive facility of credit is a vicious facility: when considered in its application to the private walks of life, it does not benefit individuals even in trade, any more than as I have shown you public credit has benefitted the nation; yet this vicious facility of credit, which we ought to deprecate, is rather encouraged than restrained by the practice of imprisonment for debt.—It is a maxim among merchants and political œconomists, that trade is best regulated, when left to regulate itself. It is in its nature like the element of water, it perpetually seeks its own level; the equilibrium which its natural vibrations tend to preserve, is destroyed by the force of legislative regulations;—the factitious aids given by law to facilitate credit, has ruined thousands, without benefiting scarcely a solitary deserving individual, beyond the vortex of the courts of judicature. Here is the great gulf into which millions of money are annually whirled, to serve as prey to the greedy and voracious monsters which infest these deeps: like Sylla and Charibdis, they ruthless feast on the unfortunate voyager sailing on the ocean of life, who happens by the storms of adversity to be driven within the reach of their rapacious and all-devouring jaws.

The cupidity of avarice irresistibly propels men on to seek its gratification by every avenue which ingenuity can lay open to their access; the avarice of commercial states is of an active quality; all the mischiefs which this vice creates are positive and direct mischiefs; it is an incurable disease of the mind! consisting in a disposition to engross the goods of life, to the exclusion of our neighbour; it is an industry at once morbid and excessive; nor is the respected name of industry a sufficient veil to disguise it from popular odium. Permit me briefly to expose its hideous portrait.—You have the opportunity of viewing it in the person of yon trader, who with one hand practises all the arts of monopoly, to prevent the circulation of the blessings of real, substantial, and productive industry; while with the other he spreads far and wide the goods he has engrossed, and with a view of inordinate gain he holds out to the adventurer, in an inferior order of trade, all the temptations of extraordinary credit and confidence. The needy adventurer, in his turn, with a blind and fatal activity, parts with his goods for the mere name of every moneyless prodigal; and the prodigal, allured by the same facility of credit, is encouraged to take a share in the common

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mischief, by contracting debts which he never can discharge. Thus, gentlemen, you behold the rapacious spirit of the trader, acting under the impulse I described; and you will not wonder, if he frequently brings that ruin upon himself which he is certain to bring upon the others of this lamentable groupe.—You have not once seen, in the whole of this circle, an inquiry into the substance or property of the person contracting the debt; and why this necessary precaution has not taken place, I will next endeavour to unfold.

The astonishing number of merchants and traders which this country exhibits in every direction, strikes most forcibly upon the senses of the beholder; where the candidates are so numerous, every strong art must be tried to court, engage, and win the customer: minute inquiry into the circumstances of the purchaser dare not be made, lest, perchance, he leaves the trader in disgust; and, as the trader's existence depends upon his sales, he is inclined to prefer the risk of loss, to the moral certainty of losing a present livelihood: add to this, the forced and fictitious trade, rising out of an inordinate spirit of speculation (which is one of the greatest political evils in this as well as some other commercial countries) and you discover enough to prove, to a moral certainty, that necessary precautions, on the part of the creditor, are omitted from a vicious principle.

The selfish and vicious propensity of monopoly and mercantile avarice, is a great and growing evil, which it may be difficult to restrain; but certainly its exertion ought not to be aided by the laws. An endeavour has frequently been made, by legislative bodies, to encourage the use and prevent the abuse of credit; the latter always proceeds, as I have already shown, as much from him who gives, as from him who receives it. The object of both parties, if traders, is to extend beyond all bounds their several lines of trade; but, in as much as traders deal with persons who are not in trade, in this case it must often be the object only of him who gives the credit. Yet it seems hitherto to have been understood, that the practice of law, in restraining that excess in the operation of credit, by deterring from its abuse, takes notice only of him who receives it, while it ought equally to affect him who gives the credit.

The imprisonment for debt may be thought to discourage a person from taking credit; but it certainly encourages him who has to give it; and so great is the encouragement, that it induces the creditor to forego an examination into the circumstances of the debtor: he rests satisfied, under the impression that the person will contrive to pay the debt contracted, rather than go to gaol. Nor does the creditor's expectation end here; if, in consequence of his power over the person of his debtor, the man is dragged to prison, his friends and relatives are, from motives of benevolence, expected to relieve him by the payment of the demand. To use the emphatical expression of a venerable judge who lately sat in this place—"The creditor expects to torture the compassion of friends, and by that means extort payment from those who are not bound for the debt."

But the learned lawyer, or some one of these gentlemen who surround me, will perhaps represent the agreement between the debtor and creditor as a just contract. They each know their fate under a municipal regulation: the creditor trusts to the consequence, which the debtor agrees to submit to, if he fails in the fulfilment of his engagement.

This, gentlemen, is reasoning in a vicious circle, and your practice derives no aid from the argument.

By one of those honourable restraints which civil liberty puts upon our actions, no possible mode of bargain, transaction, or covenant, nor even hereditaryship, can place two individuals in the relation to each other of master and slave, for every citizen owns a character which may be forfeited by crime, but cannot be surrendered by contract.

It is said to be the constitutional boast of Englishmen, that the public good is an estate in common, of the free possession and enjoyment of which no law can deprive the humblest individual, who is not convicted of a crime. The public good is no such estate to the imprisoned debtor; it is lost to him who is incapable of enjoying it; and the true essence of slavery consists in personal dependence, and the want of those civil rights which others enjoy—the true picture of an imprisoned debtor. I ask you, gentlemen, would it be a lawful contract, for a man to stipulate with his neighbour, that on a certain event he should deprive him of the use of his limbs; or if he failed to pay a sum of money, his person should be locked up in idleness, and his existence rendered insignificant, if not inimical to the public good?

Neither the principle of justice or policy, nor any regular principle whatever that I can discover, shows the effect of civil imprisonment to be salutary or conducive to the general good. If the reverse has been made to appear, as I trust it has, the practice ought not to be suffered to continue another hour, whatever may be its principle.

Under these considerations, I leave it to you to judge, whether the necessity of credit ought to be deemed a sufficient plea to warrant imprisonment for debt; and yet to this maxim, of the necessity of credit, is owing the increased severity of the practice of the courts of judicature relating to debtors.

Taking it however for granted, that credit is expedient for the advantage of the public, it does not follow, either in the theory or the practice of good policy, that it is therefore necessary to imprison the body of the debtor.

In theory—Because in the productive industry of the inhabitants consists the wealth of the nation; the imprisonment of an indus-

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trious individual is not only a diminution of the cause of wealth from the cessation of his industry, but it is likewise a reduction of the mass of national property, inasmuch as the product of the labour of the remaining part of the community is obliged to supply the person in confinement with necessary provision and clothing, and to pay for the useless labour, employed in erecting expensive prisons, &c.

In practice—Because civil process, such as is now carried on in courts of judicature, beside the unnecessary consumption of time it occasions among suitors, witnesses, &c. and the unearned support it renders to the leeches of the law, it does not procure any advantage to the public, by an addition to the capital of the honest and industrious man, who endeavours to recover, and succeeds in obtaining his debt from the indolent debtor; for the aggregate of all the money recovered by legal process does not amount to the sum expended in the prosecution of the several suits annually decided in the nation, which money so expended tends only to promote a vicious industry;—this fact is worthy of particular consideration.

Again—Because it is not intended by what is now administered as law, that the circumstance of imprisonment shall discharge the debt. No, Englishmen, that is not the intention of the Court! the confinement of a debtor (a confinement for life) is considered as the punishment (not a public one for a crime, but a private one to gratify an individual) wisely and humanely apportioned to the offence of not having money in your pocket to pay a debt on the sudden. The law justly considers confinement as the whole of the debtor's punishment, and of the satisfaction made to the creditor! Oh shameful prostitution of terms! What, gentlemen, is seen in these considerations of policy, to point out the necessity of imprisoning the body of a debtor, in order to support an expedient degree of credit? I trust nothing but what is shocking to philanthropy. O ye lovers of mankind, emancipate your brethren by a change of system.

In considering the subject of imprisonment for debt in the abstract, we shall find there is injustice in it, on more accounts than one. The only satisfaction a creditor ought to seek, or is warranted to receive, is a real pecuniary satisfaction; the law renders him injustice in proposing an illusory and fictitious one. Nay, the old Roman law, which gave the creditor a property in his debtor, was more advantageous to both parties, than is the law which intombs a man for life; the creditor and the nation received a benefit from the labour of the debtor when he worked for his master, but neither are advantaged by keeping a man in gaol.

It is an universal principle in trade, that the trader ought to lay on the commodities he vends an advance sufficient to cover the rent of his shop or warehouse, domestic and incidental expenses, together with the interest of his money and credit employed by way of capital, with an allowance for waste, damage, &c. to all which is to be added a premium, to secure him against the probable chance of bad debts, usually calculated from two and a half to five per cent. A trader thus secured (as all ought to be) can have no right in equity to this part of the profit, which belongs to him only in consequence of the moral certainty that some of his customers will make deficit to that amount; hence the aggregate customers pay for the well-calculated delinquents.—Is there a man in business who would refuse to abate this two and a half, or five per cent. as the case may be, to those who purchase for cash, provided his sales were for cash only? If not, and yet he receives of the paying customer the two and a half, or five per cent., and likewise the bad debts he calculated upon contracting, I ask, whether he does not extort two and a half, or five per cent. beyond the fair and honest profit which merchants allow themselves? Or whether he does not employ a bad law to punish improperly the poor debtor, by perpetual imprisonment?—Not to extend this argument farther for the present,

Let us now proceed to examine, whether imprisonment for debt is not a crime against Magna Charta, the Bill of Rights, and other subsequent statutes, extorted by the people at various times, from those who pretended to govern the nation by the right of conquest, or right divine, such as king John, the Henries, the Charleses, and others who have disgraced the throne.

The language of Magna Charta is, "that no freeman shall be taken or imprisoned but by the lawful judgment of his equals, or by the law of the land." Here permit me to ask, has any gentleman present seen the original Magna Charta deposited in the Cottonian library at Oxford? The intention of this question leads to another, Whether they remember it to run, "Nullus liber homo capiatur vel imprisonetur nisi per legale judicium parium suorum, vel per legem terræ;" or whether it does not say, "per legale judicium parium suorum, et per legem terræ." The reasons I make these inquiries are, that I remember to have frequently seen in Philadelphia, in the archives of the state, a copy certified by the keeper and other officers of the Cottonian Library, illumined and ornamented as the original, sent to that country by William Penn, when he was proprietor of the then province of Pensylvania, in which the words were "et per legem terræ."

Mr. Lloyd had waited some time for an answer, when the judge told him to proceed.—Then, said he, I am to take it for granted that the word is stated right; it is 'or' and not 'and,' as conjectured.

Well, gentlemen, we have seen that no law of the land is valid, which takes away or im-

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pairs a natural right, farther than is necessary for the general advantage of the public; consequently, as there appears to be no public advantage arising from confining a debtor in prison, all regulations inimical to his personal liberty are without the meaning of Magna Charta. In order to corroborate this opinion, let me quote a few words from 1st Blackstone, 54. "Those rights which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws, to be more effectually invested in every man than they are; neither do they receive any additional strength, when declared by the municipal laws to be inviolable. On the contrary, no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture." The right being derived from God and nature, no act but against the divine law or law of nature ought to be deemed an act amounting to a forfeiture of a natural right; the law of nature is here out of the question; and the divine law, under the Christian dispensation, commands us to forgive our debtors, if we expect to be forgiven.

The statutes of the 5th Edward 3, chap. 9; the 25th Edward 3, chap. 4; and 28th Edward 3, chap. 3, expressly direct, "that no man shall be taken or imprisoned, unless it be by legal indictment, or the process of common law." It is unnecessary to remark, that process by indictment is never used in actions of debt between individuals. Let us then proceed to view how imprisonment for debt is attempted to be justified in the face of these statutes, under the common law. This legerdemain of the civilians is coloured to the world by the *hocus pocus* and incomprehensible jargon of legal fictions; and so well are some men, who live by these practices, convinced of their propriety, that they hold it as a maxim of the law, that *in fictione juris consistit æquitas;* in plain English, that a legal lie agrees with truth. If this be true, all I can say is, that it is more than falls to the lot of any other species of falsehood which I ever heard of; but there is no general rule without an exception, and here is an additional verification of it.

That law against personal liberty ought to be strictly construed, and not left floating on the wings of airy fiction, is proved by the ancient practice of the courts, is what I shall just point out, and then proceed. Under the statute of Marlebridge, introduced in favour of the barons, whereby their bailiffs might be attached by their bodies, if they failed to account to their lords, is seen the first attempt made in England to authorize by law the imprisonment of a man's body for a civil injury, unaccompanied by force; but it forbade the bailiff's arrest, unless two circumstances concurred, namely, he must not only have first absconded, but also must not possess a freehold estate of even the most trifling value. The construction of this law induced such a degree of caution in applying the remedy, as to render it nugatory or inadequate.

In the reign of Edward 1, a law, introduced for the protection of merchants, seized absolutely upon the person of a debtor; such laws and such practices were unknown to your Saxon ancestors, they were first introduced by the Norman race, but frequently resisted by the people or barons. The Magna Charta, obtained sword in hand (see the effects of stretching power)! was a declaration that the people were never thereafter to be imprisoned for injuries committed without force; it was confirmed by his son Henry.—The statute called Confirmatio Cartarum, whereby the Great Charter is allowed to be the common law, and all judgments contrary to it are declared void after. Notwithstanding these frequent repetitions of the people's right to be free from arrest, it nevertheless was so contrived by the government, that those against whom they entertained any grudge, were always imprisoned; and the exertion of the people to oppose such practice is shown by there being no less than 32 subsequent and corroborative statutes passed from the time of Edward 1, to Henry 4. This is sufficient to evince the disposition of the monarch on the one hand to tyrannize, and of the determination of the men of those days to enjoy their natural liberty, in every case where it might be enjoyed without injury to the community.

Nor dare the courts of judicature, by their countenance and connivance, have contrived to bring about what had been so often frustrated, when attempted to be effected by the executive of the state, had not the people been gradually accustomed to the practice. The idea had lost its novelty, in consequence of the statute of Merchants and Marlebridge; the practice in those special cases had worn off in some degree the horror which had heretofore generally seized the human mind, on hearing or seeing of men confined for debt. Thus it is with every tyrannic regulation; it gets footing in a small degree under the colour of necessity, or of promoting some popular interest; it is afterwards extended to others, and proceeds without observation, till at length it grows insensibly into a common course of execution. Gentlemen, there have been judges who found less enjoyment in their proper jurisdiction, than in the constant exercise of judicial power, however trivial the subject:—the active spirit of industry has been busy even on the bench, and its substantial gains have borne down the dignity of magistracy; but had the age of reason then arrived, a judge would have been stricken with its harpoon, and, like the greedy and voracious shark, the more he strove to extricate himself from the embarrassment which its point occasioned, the deeper it would have penetrated him. The Court will take in good part the observation I have just let fall, when

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they recollect the language of judge Coke, who, after commenting on the destruction of the Jews in England, by the statute De Judaismo, adds, that another kind of Jews were also punished, viz. the judges of the King's-bench and Common Pleas, the barons of the Exchequer, and the judges itinerant. Contrast, gentlemen, this with the present time, and enjoy the relish! At the moment I am speaking of, the courts were busily employed in superseding the legislature, by fictitious contrivances, which operated as new laws; indeed, all their proceedings were expressive, in those days, of what was their object. It was, however, neither the protection of personal liberty, the security of property, the suppression of groundless litigation, nor the peace of the public;—the object appears to have been their private emolument; to aid which was extended imprisonment without law, a thing clearly, and which this Court must acknowledge to be completely unjustifiable. In the reign of Henry 7, these practices, it is said by some, though without foundation, met indirectly with the approbation of the legislature, who attempted to make it legal to extend the imprisonment of defendants upon mere civil actions: but supposing it to be true, what was the time? The spirit of avarice was then seated on the throne of England, and the rights of personal freedom, the independence of integrity, the efforts of industry, even the sacred claims of misfortune, were relentlessly immolated at her shrine.

I have one more remark to make before I quit this subject. The reign of Henry 7, was the petty tyranny of an extortioner, not the sovereignty of a monarch; and the people were taught, by the base ministry of Empson and Dudley* (who were, if I forget not, both afterwards hanged) and the frigid maxims of their master,—and it was then first understood, that a failure in the punctual payment of money was a wrong which no distinctions or circumstances could extenuate. Was the unfortunate debtor put to death, it would not pain him so much as the mercy of those laws which consign him to slavery: but I mistake; —the word 'slavery!' which disgraces your West India laws, is not suffered in this boasted land of freedom. The poor wretch of a debtor is described in milder terms: he is committed to prison, and placed under the power of his creditor, because he is unable to pay him the debt which he owes him. He is not deprived of life or limb, but disabled from enjoying the use of them. Is this not slavery? No, says the civilian:—but how miserably are we led astray from the true nature of things by a sound!

Let us now, gentlemen, proceed to draw up the curtain, and exhibit to the world the art of judiciary conjuration, as performed in this nation for some years past, with such effect as to wring the hearts of even those who have thought themselves uninterested spectators. "No man (says the statute) shall be taken or imprisoned, unless it be by indictment, or the process of the common law." The process of the common law in case of injury done to another without force, ended on having gradually stripped the debtor, by repeated distresses, of all his substance; and if he had no substance, the common law held him incapable of making satisfaction; and therefore looked upon all further process as nugatory.—And besides, even upon feudal principles, the person of a feudatory (a person not free) was not liable to be attached for injuries merely civil, lest thereby his lord should be deprived of his personal services. The state has surely as much interest in a freeman, as ever the lord had in his vassal.—That the lord was not liable to be imprisoned is proved by the continuance of his privilege from arrest, which exists at the present hour. But this old common law is changed, or, to use a word more in repute, the law is reformed, and accommodated to suit the "swinish multitude." This beastly herd having thrown off their necks the yoke of feudal vassalage, and become emancipated men, are now fitted to wear the fetters intended for felons, which fasten for ever round every limb of the unfortunate debtor. The feudal system, which considered men as slaves, permitted them unmolested, for injuries merely civil, to range the verdant field, and breathe the salutary gale; while the reformed system of government acknowledges men to be free, and yet orders them, for injuries merely civil, to be punished by close confinement, in a lonely dungeon, where is sucked in with every breath a deleterious effluvia and tainted air.—And how is the law reformed? Knowing that man ought not to be abridged of his personal liberty, unless for some great and atrocious crime, the practice now is, to suppose and assert that the debtor is prosecuted for breaking the plaintiff's close by force of arms; these are the words of the original and capias: now breaking of a man's close by force of arms was justly deemed, by the old common law, a great and atrocious crime, and as such warranted the forfeiture of personal liberty.—But can this glaring falsehood, this legal fiction, this imaginary armed robber, this giant-slaying man of straw, be allowed to criminate a quiet, peaceable, unfortunate man? —and yet, strange as it may seem, it is for this supposed open and daring assault, aided with instruments of destruction, that tens of thousands of men and women are deprived of personal liberty, and of the opportunity of exercising their industry; their children are prevented from receiving an education to form their minds to the cultivation of those virtues which used to form the character of Britons.

By the means I have just described, the debtor is arrested for a crime he never even contemplated, and brought to prison; he is

* See their case, Vol. I, p. 283.

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suffered afterward, by the connivance of the court, to be prosecuted for any less forceable injury, and is to be detained for life, without ever having perhaps committed a great and atrocious crime of any nature whatsoever.—Nor does the misfortune end here—being once in confinement, the gaoler diminishes the prisoner's liberty, from the yard to the house, from the house to a cell, according to his discretion; he excludes the poor wretch from society, and deprives him of every necessary of life; in fine, all the horrors of the Bastile are incidental to a man's situation who is confined for debt.—I shall add no more on the subject of this farago of deceit, imposture, and legal iniquity, which one might suppose nothing but unblushing confidence, absolute power, and adamantine hearts, occupying the seats of justice, could enforce.—Oh! that the spirit of Alfred, who ordered at one time twelve judges to be executed, for countenancing illegal proceedings, would again visit all corrupt judiciaries, and purge from them those who are a disgrace to that respectable situation!

By the petition of right, the 3d Charles 1, it is declared, "That no freeman shall be imprisoned or detained without cause shown, to which he may answer according to law." The cause shown, ought to be a real and sufficient cause; not a fiction of law, but a real crime; nay, even a shameless magistracy have in one case owned this truth. When summons, which is a warning to appear in court for injuries not against the peace, were disobeyed, and the sheriff had found the defendant upon any of the writs of *capias*, *latitat*, &c. he was obliged to take him into custody. For, not having obeyed the original summons, he had shown a contempt of the court, and ought no longer to be trusted at large: for all contempts of legal proceedings are deemed great and atrocious crimes.—But the change of the English jurisprudence, by letting the summons fall into disuse, and introducing the capias as the first process, which commands the sheriff (as before observed) to take into custody the defendant, for neglecting to obey a summons never issued, was judged to be too hard, as it ordered the sheriff to imprison a man for a contempt which was only supposed, another fiction of the law; but this fiction is said in some measure to be corrected by the interference of the legislature.

I fear that if I continue the narrative of all the legal fictions, my readers will suppose themselves transported to the fabulous age, and wonder as much at the fictitious speeches of the law, as they have done, in their childhood, at the fictitious speeches of birds and beasts, to be found in Æsop and other writers of fables.

If any thing could draw down contempt upon tribunals of justice, it must be a mockery of common sense like what I have endeavoured to point out.

Before I quit this subject, I shall quote a few sentiments from Mr. Burgess of Lincoln's-Inn, whose treatise on the law of insolvency fell into my hands by accident the day before yesterday.—Indeed, I wish that I had had an opportunity of preparing myself for this trial, by an arrangement which would have admitted me the more copious use of this excellent author. He rightly maintains, "that if any person, or any court of justice, usurps a jurisdiction, and by colour thereof arrests or imprisons a man, or, under pretence of any usurped authority, oppresses any man, contrary to Magna Charta, the illegality of the act will call for exemplary punishment." He then goes on to state the several steps which the courts of Marshalsea, of Exchequer, of Common Pleas, and of King's-bench, took to effect their usurpation over the persons of debtors; in which he notes the various arts, devices, frauds, and fictions they severally used; the recital of which not only corroborates every thing I have stated, but more clearly demonstrates than I have been able to do, my general principle, that imprisonment for debt is contrary to the rights of men, and particularly of Englishmen, who are supposed to have their natural rights better secured to them by certain declarations, than the people of other nations have yet been able to attain.—On this point he holds this energetic language: "But the law which is founded in nature, which springs from the primary and indefeasible rights of mankind, should be more respected. Men are not to be hanged, that jurymen may dine; nor are free English citizens wantonly to be imprisoned; the constitution of the county is not to be undermined, that the court of King's-bench may fatten on the spoil."

On a legal fiction, to introduce a defendant to the notice of the court, he says:

"Thus we see the constitutional law was overturned, and an illegal jurisdiction was established, by a decision of the very court which was to derive an advantage from the abuse. This determination, built on an untrue suggestion, has never been contradicted by its subsequent practice, unfounded as it is in reason, opposite as it is to the known rule of law. That rule, which springs from a source, higher and more sacred than the dictum of any judge, is well known; it was even the acknowledged guide of the courts, in all matters which related to others, and which did not interfere with their own immediate interest. So early as the year 1356, Robert de Thorpe, the chief-justice, in the most public and solemn manner declared, 'that inconveniencies must perpetually arise, 'if a man's own deceit shall be allowed to 'aid him; for it is a principle of law, that '*fraus et dolus nemini patrocinatus*; no one, 'therefore, shall be allowed to take advantage 'of his own fraud.' But what was good law for the public, was not considered as such when it interfered with a usurpation of juris-

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diction. The court took upon itself the determination of its own cause: it was at the same time judge and party. The law was sacrificed to interest. The good old maxim of *Boni Judicis est ampliare Justitiam*, venerated by the founders of the constitution, was exchanged for a new doctrine. *Boni Judicis est ampliare Jurisdictionem*, became the favorite motto of the bench. How well the spirit of this rule has been preserved by succeeding judges, the daily experience of mankid will best prove."

My author proceeds to show the measures which were occasionally taken by the legislature, to curb the propensity of the courts to endanger, by their practices, the rights of man. Observing that the benevolence of the legislature was productive of but little advantage, for the operation of the laws were rendered abortive by the politic manœuvres of the courts; and adds, the court of King's-bench proceeded in its course, and exulted in the prolongation of its hour of insolence. All civil causes were violently drawn before it; the greatest encouragement was given both to suitors and attornies, by a connivance in abuses the most shameful and disgraceful to our national character. These enormities were attempted to be restrained by the legislature; but they will continue to be a reproach to the court of King's-bench, and a disgrace to its judges, so long as the records of this kingdom shall remain, so long as Englishmen shall execrate the destroyers of their primary rights.—Let us no longer be insulted with an assumption of power, which, however a continued usage may have made it familiar to the multitude, cannot obtain respect from the accurate and impartial observer.

Having concluded a long and interesting chapter on the subject of the abuses of the courts of judicature, previous to the time of Charles 2nd, this author goes on: "We now enter upon the last stage of our historical deduction, and proceed to lay before the public those recent provisions which the wisdom of the legislature has deemed advisable, for the purpose of ascertaining the opposite interests of creditors and debtors. From the Restoration to the present time, the general aspect of things has received but little alteration. No law has been made to declare the legality of imprisonment for debt, consequently that practice has received no additional sanction. If previous to that period it was illegal, and contradictory to the constitution and to the common law, it still continues in the same predicament, and is equally liable to reprehension."

But I am unwilling to detain gentlemen by a recapitulation of arguments, although they are expressed with animation, and carry along with them absolute conviction. I think I see impatience seated in the visages of some around me—I shall therefore proceed to other observations.

Next then, gentlemen, you will please to behold, judiciary power holds out to the injured and imprisoned debtor a mean of destroying this legal magic: the talisman is no other than the far-famed Habeas Corpus Act, which may, only in those times when administration procures its suspension, be put in motion by the application of the *prima vitæ*; some six or eight guineas will obtain the immediate interposition of this enchanting wand, if its operation is not arrested for want of an *alias* and *pluries*, and the imprisoned debtor will find himself presented in *propria persona* before the very tribunal of whose injustice he complains: he has then to submit to its consideration the legality of his imprisonment! the judges are to determine on their own actions! for it is they who authorize and connive at the measure. Surely it is unnecessary to remark on this boasted charter, the great security Englishmen have for their personal liberty! Whatever good it may render a person confined for supposed crimes, or on what a Court may call unwarrantable authority, as many no doubt have been, it can render no benefit to an unfortunate debtor, confined for the supposed hostile invasion of his neighbour's close, by the connivance of the Court itself!

If the laws respecting debtors were administered according to ancient usage, those unfortunates would become happy. But it must be accompanied with the abatement of the nuisance, which every where intrudes upon your view—the fall of pettifogging attornies, and all their gang. But will lawyers of eminence so far forget *l'esprit de corps*, as to aid such an endeavour; it is to be feared their interests are too nearly connected with the base creatures of the profession, to permit them to join in the support of the cause of liberty. To them then the defendant declines to apply. Shall he apply to parliament? That body has had the question too often before them, without deciding upon the contradictions which appear between the law and the practice. To them then he does not apply; but he applies to a more numerous and to as well-informed a body of men.

Lord *Kenyon* here told the defendant, that he was advancing to the edge of a precipice, of which it was his duty to inform him. The sentiment he was about to express might be taken down, and turned against him, if the language could be construed into an offence against the law.

To which Mr. Lloyd replied, That he was very sure of the ground upon which he trod, and did not fear to proceed to what was thought the edge of a precipice. He knew that his words might be taken down, and perhaps, by some ingenious person, tortured into a crime. He was willing to save any one the first part of this trouble, by furnishing him with a copy of the speech; for he had reduced what he had to say on this head to writing, previous to his coming before the Court.

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I apply, said he, to the great body of patriots who are every where to be found in the nation; let them, for the sake of humanity and their common safety, unitedly and vigorously adopt every constitutional and legal method to root out the evil. Let them remonstrate with the Commons, memorial the Lords, and petition the King; it is for them to obtain the redress of the wrong by an appeal to parliament, and not for me to endeavour it. An individual of another nation has little to do here with the legislature of this; if he sustain wrongs, he has only to complain to the usual tribunal, and if justice is refused him there, he has to seek it at the hands of those who are bound to procure it for him. Independent and gallant nations will never permit perfidy to take advantage of its own wrong. If the energies of the people shall obtain the restoration of their privilege of being free from imprisonment for debt, it may be hoped, that the poor trader will no longer lie rotting in gaol, while the lordling is strutting about the purlieus of St. James's, like the jay in the fable, in the borrowed, or rather, let me say, in the stolen plumage of others.

If, however, the legislative authority of the state is blind to the nation's interests; if courts of justice not only connive at, but vindicate the oppression I have complained of, cannot the voice of humanity and truth find its way to the bosom of the individual?

As men, as Englishmen, as Christians, the voice of beneficence calls upon you! Who is there who is fortunate? Who is happy? Who aboundeth in the good things of this world? Hast thou no sensibility for the distresses of thy fellow-creatures? Canst thou enjoy at liberty the blessings of life, nor feel a pang for the miseries to which thou hast condemned thy debtor? If thou knowest them, thy heart will smite thee, for the day of retribution will surely come, when the God of mercy will require an account at thy hands. If thou knowest them not, turn to the prison-house. Behold the man whom thou hast torn from his weeping family! Do not the tears of his frantic wife, do not the cries of his starving babes, harrow up thy soul? Once they were happy, and kind imagination pictured to them scenes of future pleasure! The father, while he laboured for their provision, hung with parental fondness over his smiling infants, or pressed to his bosom the dear and faithful partner of his life. His toil became a pleasure, it was for them he toiled, and the public welfare by his labour was advanced. See now where he lies. His sunken cheeks, his haggard eye proclaim the misery of his soul. Shut up from liberty and day, confined with the refuse, the most abandoned of mankind, torn from all those he loved, and bankrupt in every view of life, he pines, he dies, the helpless victim of thine avarice. See where his wife and children wander, the outcasts of society. The father's fostering hand is snatched from them; there is no one now to guide their infant steps, to train their minds to virtue and religion. Their welfare in this world is blasted; and who can tell what may be their fate in the next? Prostitution, infamy, disease and death, conspire to terminate their course. The ruffian hand of assuming and presumptuous magistracy is upon them. Their father is guilty of poverty, and his sin brings tenfold vengeance on their heads.

> **Want, worldly Want, that hungry meagre fiend,**
> **Is at their heels, and chases them in view.**
> **Can they bear cold and hunger? Can those limbs,**
> **Fram'd for the tender offices of love,**
> **Endure the bitter gripes of smarting poverty?**
> **Think thou already hear'st their dying screams:**
> **Think that thou see'st their sad distracted mother**
> **Kneeling before thy feet, and begging pity.**
> **Think thou see'st this—and *then consult thy heart.***

Gentlemen of the Jury, I will not endeavour to interest your passions, by presenting to your feeling minds the accurate state of your prisons which I have visited; but allow me the liberty of recommending to your perusal the reports of the benevolent Thatched House Society, the report of a late Committee of the House of Commons—but above all, the works of your own philanthropic and immortal Howard, and let the silent tear expiate your participation in the crime of imprisonment for debt.

Gentlemen of the Jury, although I do not know what your judgments may be at this moment on the arguments I have already laid before you, yet I venture to assert that the more particularly you examine them, the more will be your conviction of their propriety. Their novelty may startle you, but I conjure you not to be guided by your prejudice. I know that the practice of imprisonment for debt is so intimately interwoven and entangled with the laws of this country, that they may suffer by a deprivation of its adhesion; but justice and humanity require your instant endeavours to effect the separation. If my arguments are not solid and substantial, they ought not (to use the phrase of a presiding judge) to weigh as a feather in your minds; but if they are cogent and convincing they will not lose their force by falling even from my lips. But so well am I persuaded of their justness and energy, that I venture to throw the gauntlet to all here present, for any one to take up, and maintain the opposite side of the question. Let us restore the age of chivalry, and the God of Reason will give success to the arms with which I combat.

Gentlemen of the Jury, as I expect that some opposition will be made to the arguments I have already adduced to prove the unconstitutionality of imprisonment for debt, either by the Attorney-general, whose duty I suspect it is to reply to me, or by the judge of the court in summing up the evidence, whose interest requires some exertion, I think it necessary to add a few words on another

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subject, connected with the present, in order that you may not be misled in determining upon the legality of civil imprisonment. I apprehend it will be asserted here, because I know it has been asserted elsewhere, that the practice of civil imprisonment is legalized by acts of parliament and the practice of the courts of judicature. There may be acts of parliament which seem to authorize such a procedure, but I have not yet discovered them, either express or implied; but if there were such acts, they are not to be considered as binding, if they are contrary to Magna Charta.

Gentlemen may be astonished to hear this language; but I conjecture that upon examination, they will incline to agree with me.

It is but a few years since this country rested from an expensive and bloody contest with her quondam colonies, which she had been engaged in, by a weak and injudicious administration, in order to support the supremacy of the British parliament; and the principle of that war was applauded by most of the addressers, in every quarter of the nation. —It is but to-day that like addresses are pouring in from all sides, applauding the British constitution—from this versatility and contrariety of opinion there seems to arise a delicate dilemma—either the British parliament are not omnipotent, as contended at the expense of one hundred and thirty millions of money, and the lives of one hundred thousand men; or the boasted British constitution does not exist: if the power of parliament is supreme, it may infringe, abridge and destroy, every right which the people of England claim as constitutional.—Or if the constitutional rights, secured by Magna Charta, cannot be changed by act of parliament, then is not your parliament supreme, and every act which militates against those rights is null and void. —The Court may take its choice of these alternatives, either insist upon the supremacy of parliament, to destroy a constitutional right derived under Magna Charta, and thereby legalize imprisonment for debt—or admit the rights of the people, as recognized in that Great Charter, and condemn the folly of parliament as expressed in the reasons which induced the dismemberment of the Empire, and the loss of territory in every quarter of the globe.—While this happy and glorious constitution of yours is a subject claiming the admiration of those who are paid for supporting it, its non-exercise is to me, and all those confined by the arbitrary discretion of courts of justice and wardens of gaols, a most serious and unbearable oppression.

I mean now to proceed into an examination of the present prosecution; in which I shall offer some reasons for at least doubting the constitutionality of making formal accusations by way of information. It will not be sufficient that lawyers tell you on this head, as they will probably tell you on the last, that long practice has rendered that lawful now, which might have been held questionable a century ago; but, gentlemen, I solicit you not to be led astray by hoary-headed error; let us leave these crooked and labyrinthic ways, and return to the straight path of rectitude, leading to the only sure and permanent ground which human laws can rest upon: let us regain, rather let me say, let us retain first principles, and examine the reason and propriety of things, abstractedly from the custom and usage of latter times: in which case you will certainly find the necessity of conducting the prosecution of offenders, by a previous finding of the fact by a uniform process, in order to preserve an equal distribution of justice; and you will find, that such was the good old policy of your Saxon ancestors; such was the common law of the nation, previous to the introduction of the abominable despotic court of Star Chamber; and you will find that such continues to be the common law (a law secured to you by charter) at the present moment.

Among the early laws of Ethelred, it was declared that all offenders should be accused by grand juries; they were sworn " quod nolint ullum innocentem accusare, nec aliquem noxium celare," they were not to accuse the innocent, nor screen the guilty;—their duty toward every individual of the community is here pointed out; every person falls within the one or the other class;—and there is left no person on whom an attorney-general may seize; there is no middle ground left unoccupied—the jurisdiction of the grand inquest extends over all cases.

Mr. Justice Blackstone has however given us a different account of this point of law; but he has reference to no authority; he says, that the power of filing informations *ex officio* is given to the crown by the law; and then, instead of showing this, he proceeds to state, that the power was originally reserved in the great plan of the English constitution, wherein provision is wisely made for the due preservation of all its parts.

As I know not to what great plan he alludes, for I know indeed of no plan of the English constitution, I have been unable to discover the ground on which he pretends to bottom the practice of process by information; and therefore cannot clearly show his mistake—but added to this, the circumstance of my close confinement, debarred of every intercourse with mankind for twenty-two days, when I was ordered to be deprived of the use of pen, ink, and paper, and then being sent to Newgate and put into a room with six other persons for four weeks, and it cannot be wondered at, that I am not so fully prepared on this or any other point as I might otherwise have been.

Every person has, no doubt, heard of the famous court of Star Chamber, the prompt tool of a despotic monarch. To this court was given (by that to be sure very excellent prince whom I noticed once before, Henry 7), the power of judging of (in prosecutions by infor-

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mation) the law, the fact, and the punishment. This court, so agreeable to kings, continued in high vigor, through the reigns of the violent and lustful Henry 8.—the boyish Edward 6—the detested Mary—the despotic and imperious Elizabeth—and the silly pedant James 1. It had daily increased its authority for more than a century, when Charles 1st, was compelled by his people to abolish it, who would no longer suffer either his or his ministers' oppression. The exertion of the prerogative of the crown to the injury and oppression of the subject, which by-the-by extended no farther than to obtain annually of the people, for all the purposes of government, about one million of money, prerogatives which had long lain dormant, and now threatened to be carried into practice, aroused the sleeping lion.

The people heard with astonishment doctrines preached from the throne and the pulpit, subversive of liberty and all the natural rights of humanity. They examined into those doctrines, and found them wickedly and fallaciously supported; and common reason assured them, that if the prerogatives contended for by the monarch were of human origin, no constitution could establish them beyond the power of revocation: no precedent could sanctify, no length of time could confirm them.—The nation found they had ability, as well as inclination, to resist the monarch's unjust pretensions, and they succeeded.—Charles, before his execution, gave up the loans and benevolences he had used to extort; conceded the right to exert martial law in time of peace; put down oppressive courts; renounced ship-money and other exactions; yet it has been seen that those concessions were not made with so good a grace as to conciliate the confidence of the people: he had either lost the reputation of sincerity, or had never possessed it, which is as great an unhappiness as can befal a prince: and thus within a few years terminated monarchy and courts of Star Chamber.

Upon the dissolution, says Blackstone, the old common law authority of the court of King's-bench, as the *custos morum* (keeper of the manners) of the nation, being found necessary to reside somewhere, for the peace and good government of the kingdom, was again revived in practice; and it is observable that by the same act of parliament which abolished the court of Star Chamber, a conviction by information is expressly reckoned upon as one of the legal modes of conviction of such persons as should offend a third time against the provisions of that statute.

It is true (adds he) Sir Matthew Hale, who presided in this court soon after the time of such revival, is said to be no friend to this method of prosecution.—But he goes on to suppose, that Hale objected, on account of the abuse of the authority, rather than that he doubted the legality:—But I see no reason for Blackstone's supposition;—That Hale doubted, and that many others have doubted the legality of prosecutions by information is notorious.—The dark and conclave manner of such procedure is contrary to honest policy, and unworthy of freemen—it suits despots, and the greatest tyrants in England have always used it most.—If any gentleman can show me the history of proceedings in cases, of the king against subjects, by way of information, I will venture to predict that it unfolds to view tyrannies and oppressions which should harrow up man's soul.

Finding myself too much fatigued to continue my arguments on the doctrine of informations at the present time, I am compelled, though unwillingly, to abandon the subject in the incomplete state it is in.—I had also prepared myself to combat the construction which the attorney-general has been pleased to give to the paper pasted up in the prison, and to demonstrate that it is no libel, to say that a house is to be let, which is every day letting at fifteen-pence per week for each room, and which is notoriously changing its tenants almost every day in the year. But this and much more I must defer to some other opportunity, if one should ever be furnished to me.

Although I feel a regret in not being able to urge the whole of my arguments, yet as an advantage may result to others, it tends to lessen the regret I feel.—The presiding judge of this court is, I understand, called upon this day at an early hour to preside in the legislative body—it has been held that liberty is insecure where the legislative, executive, and judicial authorities are exercised by the same person, yet no one complains here of an incongruity. The judge will be in time to act his part as a legislator, as I shorten my arguments.

I shall now conclude my defence by a particular examination of the charges laid in the information, and of the evidence brought in support of them.

The first charge is, that we conspired and agreed to escape, and to excite the other prisoners to escape; that in pursuance thereof, and with intent to carry the same into effect, we caused to be stuck upon the chapel door, and thereby published, a paper, denominated by the attorney-general an infamous and seditious libel.

The evidence falls short of proving any thing like a conspiracy or agreement to escape: the warden tells you he never heard that either us or any of the other prisoners contemplated an escape, nor does it even appear from the testimony of any, or all of the witnesses together, that Mr. Duffin and myself ever had an interview: for all that the jury can see to the contrary, we were utter strangers to each other; it will not therefore be contended that the first part of the first charge has the least shadow of foundation.

With respect to the publication of the paper, called a libel, on the chapel door, it is in proof

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that Mr. Duffin was seen to stick it up there, but is there any thing said of my being present? Not one word—how then can the jury infer that we fixed up the pasquinade?

It is true that it appears from the evidence of Mr. Schoole, that three or four hours after the first bill was posted up, and even taken down, I was seen writing a certain large sheet of paper, which however the witness would not positively swear to be the same as this produced in court, for it was unfinished he says when he saw it.—It is true also, that the same witness heard me, in common with several others, read that, or some other paper nearly like that paper aloud, and thereby I presume it will be said that I published it.—But it is not true that all the questions put to him, respecting a club in the Fleet prison, by ingenious counsel were sufficient to extort an answer sufficient to prove a conspiracy or agreement between the defendants.

Now taking it for granted, for argument's sake, that the large paper (not positively sworn to by Schoole) was written and published by me, yet the jury cannot condemn me upon the charges before them.—The first charge must be relinquished with respect to me, because no evidence thereon appears against me. The second states—and here I must set the counsel who opened this cause right; he said the second count dropped the charge of our conspiring to escape and to liberate the other prisoners—the second count only drops the idea of our conspiring to escape, but charges us with contriving, devising, and intending to stir up others to escape, in order to effect which we published the wicked libel before charged.—Now, gentlemen, you have nothing to do but compare the wicked paper said to be written by me, and which is the only one with which I can be supposed to have any concern, with the libel charged in the information, and you will find it to be of a tenor and effect different from what is stated in the information.—If it was proved by a cloud of unerring witnesses that I wrote and published that paper, yet I could not be convicted of another offence on such testimony. I am charged by the attorney-general with one thing, and another thing is attempted to be proved—what, gentlemen, can your verdict be?

Mr. *Bearcroft* asked, if the two papers produced in court, one sworn to have been stuck up by Duffin, and the other to have been read by Lloyd, were not *verbatim et literatim* the same?

Mr. *Lloyd* said, they were not, and if gentlemen would take the trouble of perusing them, they would discover a material difference.

Mr. *Bearcroft* desired the defendant to point out where they differed.

Mr. *Lloyd* said, if any person would hold one copy, he would read the other, and the variation would be discovered to every one present.

Mr. *Bearcroft*. As you know in what the difference lies, point it out.

Mr. Lloyd then read the paper the witness Schoole had reference to in his testimony; and it appeared to vary from what was charged in the indictment by the addition and alteration of the words marked in italics. "This house to let, peaceable possession will be given by the present tenants, on or before the first day of January next, being the commencement of the first year of liberty in Great Britain. The republic of France having rooted out despotism, their glorious example and *complete* success against tyrants *render such* infamous bastiles no longer necessary in Europe."

Mr. Lloyd added, that the evidence of the warden went only to repeat a conversation which took place four days subsequent to the time at which the information charged the publication of the libel, and was only remarkable for not proving any one circumstance for which the defendant was now trying.—Instead of swearing that Lloyd owned himself the publisher, the warden swore he was desired to take notice that he (Lloyd) did not admit himself to be any wise concerned in the transaction.—Here Mr. Lloyd rested the merits of the cause.

The *Chief Justice* summed up the evidence, and allowed the validity of the objection taken by the defendant Lloyd, saying, that if the publication of the paper containing some small variation from the libel charged in the information was the only thing exhibited against him, that the jury must acquit him—but if the jury were satisfied and believed that Lloyd was concerned with Duffin, in publishing the other paper pasted on the chapel door, they would find both the defendants guilty.

Mr. *Lloyd* took up the two hand-bills produced in court, and desired the jury to take them with them when they withdrew, in order to compare them with the charges in the information.

The *Chief Justice* ordered him to sit down, saying, you have no right to dictate here.

Mr. *Lloyd* then requested the judge to order the papers to be sent with the jury, saying, it was a matter of indifference to him whether he was allowed to hand them to the jury, or whether it was done by the special order of the Court—he only desired, for the sake of justice, that the thing might be done.

The *Chief Justice* order him to be quiet, and say no more.

During this altercation, the jury had retired without the papers, and in a few minutes returned, and brought in their verdict, —Both *Guilty*.

Of the judgment passed upon Duffin and Lloyd, I have met with no other account than the following, which is extracted from the Annual Register for 1793, Chronicle:

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" *February 7th.*

" Lloyd, the attorney, who advertised the Fleet prison to let, 'in the first year of English liberty,' enjoyed an hour of notoriety on the pillory opposite the Royal Exchange. During the first quarter of an hour the engine was so loosely placed, that he simply looked through it at his comparative ease; an alteration however was made by order of the sheriff, that it should be shut close.—The concourse of people was very great; but by the assistance of about two hundred constables, good order was preserved during the whole time."

Respecting the punishment of the pillory, see Vol. III, p. 401; Vol. VII, p. 1309; Vol. XIV, p. 446; Vol. XIX, pp. 809, 810; and Vol. XX, p. 781. But now by stat. 56 Geo. 3, c. 138, intituled, " An Act to abolish the punishment of the Pillory, except in certain cases;" the preamble to which states, " that the punishment of the pillory has in many cases been found inexpedient and not fully to answer the purpose for which it was intended;" it is enacted " That from and after the passing of this Act, judgment shall not be given and awarded against any person or persons convicted of any offence, that such person or persons do stand in or upon the pillory, except for the offences hereinafter mentioned; any law, statute, or usage to the contrary notwithstanding: Provided that all laws now in force, whereby any person is subject to punishment for the taking any false oath, or for committing any manner of wilful and corrupt perjury, or for the procuring or suborning any other person so to do, or for wilfully, falsely, and corruptly affirming or declaring, or procuring or suborning any other person so to affirm and declare, in any matter or thing, which if the same had been deposed in the usual form, would have amounted to wilful and corrupt perjury, shall continue and be in full force and effect; and that all persons guilty of any of the said several offences shall incur and suffer the same punishment, penalties, and forfeitures, as such persons were subject to by the laws and statutes of this realm, or any of them, before the passing of this Act, and as if this Act had not been made.

" And be it further enacted, That in all cases where the punishment of the pillory has hitherto formed the whole or a part of the judgment to be pronounced, it shall and may be lawful for the Court before whom such offence is tried, to pass such sentence of fine or imprisonment, or of both, in lieu of the sentence of pillory, as to the said Court shall seem most proper: Provided that nothing herein contained shall extend or be construed to extend in any manner to change, alter, or affect, any punishment whatsoever which may now be by law inflicted in respect of any offence, except only the punishment of pillory, in manner as herein above is enacted."*

* See the Debates respecting this Statute in Hansard's Parl. Deb. Vol. XXXI, pp. 1121—1142.

574. Proceedings on the Trial of an Information against Thomas Paine, for a Libel upon the Revolution and Settlement of the Crown and Regal Government as by Law established; and also upon the Bill of Rights, the Legislature, Government, Laws, and Parliament of this Kingdom; and upon the King. Tried by a Special Jury in the Court of King's-Bench, Guildhall, before the Right Hon. Lord Kenyon, on Tuesday the 18th of December: 33 Geo. III. A. D. 1792. [Taken in Short-hand by Joseph Gurney.*]

Information.

Of Easter Term, in the 32nd year of King George the Third.

London, } Be it remembered, that sir Archi-
to wit. } bald Macdonald, knt. 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 so-

* I have also availed myself of the Report of this Case in Erskine's Speeches, vol. 2, edit. of 1813.

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vereign lord the now king, and to the happy constitution and government of this kingdom, and most unlawfully, wickedly, seditiously, and maliciously devising, contriving, and intending to scandalize, traduce, and vilify the late happy Revolution, providentially brought about and effected under the wise and prudent conduct of his highness William, heretofore prince of Orange, and afterwards king of England, France, and Ireland, and the dominions thereunto belonging; and the acceptance of the crown and royal dignity of king and queen of England, France, and Ireland, and the dominions thereunto belonging, by his said highness William, and her highness Mary, heretofore prince and princess of Orange; and the means by which the same Revolution was accomplished to the happiness and welfare of this realm; and to scandalize, traduce, and vilify the convention of the Lords spiritual and temporal, and Commons, at whose request, and by whose advice, their said majesties did accept the said crown and royal dignity; and to scandalize, traduce, and vilify, the act of the parliament holden at Westminster in the first year of the reign of their said majesties, king William and queen Mary, intituled, "An Act, declaring the rights and liberties of the subject, and settling the Succession of the Crown," and the declaration of rights and liberties in the said act contained; and also the limitations and settlements of the crown and regal government of the said kingdoms and dominions as by law established; and also by most wicked, cunning, and artful insinuations to represent, suggest, and cause it to be believed, that the said Revolution, and the said settlements and limitations of the crown and regal government of the said kingdoms and dominions, and the said declaration of the rights and liberties of the subject, were contrary to the rights and 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, cunning, and artful insinuations, to represent, suggest, and cause it to be believed, that the parliament of this kingdom was a wicked, corrupt, useless, and unnecessary establishment; and that the king and the Lords spiritual and temporal, and Commons, in parliament assembled, wickedly tyrannized over and oppressed the subjects of this kingdom in general, and to infuse into the minds of the subjects of this kingdom groundless and unreasonable discontents and prejudices against our present sovereign lord the king and the parliament of this kingdom, and the constitution, laws, and government thereof; and to bring them into hatred and contempt, on the sixteenth day of February, in the thirty-second year of the reign of our said present sovereign lord the king, with force and arms at London aforesaid, to wit, in the parish of Saint Mary-le-Bow, in the ward of Cheap, he, the said Thomas, wickedly, maliciously, and seditiously, did write and publish, and cause to be written and published, a certain false, scandalous, malicious, and seditious libel, of and concerning the said late happy Revolution, and the said settlements and limitations of the crown and regal government of the said kingdoms and dominions; and the said act, declaring the rights and liberties of the subject; and the said declaration of the rights and liberties of the subject therein contained, and the hereditary regal government of the said kingdoms and dominions; and also of and concerning the legislature, constitution, government, and laws of this kingdom; of and concerning our present sovereign lord the king that now is, and of and concerning the parliament of this kingdom, intituled, "Rights of Man, Part the Second, combining Principle and Practice, by Thomas Paine, Secretary for Foreign Affairs to Congress, in the American War, and Author of the Work, 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 tenor 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 tenor and effect following, that is to say, "This Convention met at Philadelphia, in May, 1787, of which general Washington was elected president. He was not at that time connected with any of the State Governments, or with Congress. He delivered up his commission when the war ended, and since then had lived a private citizen. The Convention went deeply into all the subjects, and having, after a variety of debate and investigation, agreed among themselves upon the several parts of a Federal Constitution, the next question was the manner of giving it authority and practice. For this purpose, they did not, like a cabal of courtiers, send for a Dutch Stadtholder or a German Elector, but they referred the whole matter to the sense and interest of the country," (thereby meaning and intending that it should be believed that a cabal of courtiers had sent for the said prince of Orange and king George the First, heretofore Elector of Hanover, to take upon themselves respectively the regal government of the said kingdom and dominions, without referring to the sense and interest of the subjects of the said kingdoms). And in another part thereof, according to the tenor and effect

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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 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 restrictions on assumed power. After this another William," (meaning the said William prince of Orange, afterwards king of England) "descended from the same stock, and claiming from the same origin, gained possession" (meaning possession of the crown of England) "and of the two evils, James and William" (meaning James the Second, heretofore king of England, and the said William prince of Orange, afterwards king of England) "the nation preferred what it thought the least; since from circumstances it must take one. The act called the Bill of Rights" (meaning the said act of parliament intituled, "An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown) "comes here into view; what is it" (meaning the said act of parliament last mentioned) "but a bargain which the parts of the government made with each other to divide powers, profits, and privileges?" (meaning that the said last-mentioned act of parliament was a bargain which the parts of the government in England made with each other to divide powers, profits, and privileges). "You shall have so much, and I will have the rest; and with respect to the nation it said, for your share *you* shall have the right of petitioning. This being the case, the Bill of Rights" (meaning the said last-mentioned act of parliament) "is more properly a Bill of Wrongs and of insult; as to what is called the Convention Parliament, it" (meaning the said Convention of Lords spiritual and temporal, and Commons herein-before mentioned) "was a thing that made itself, and then made the authority by which it acted. A few persons got together, and called themselves by that name; several of them had never been elected, and none of them for the purpose. From the time of William," (meaning the said king William the Third) "a species of government arose, issuing out of this coalition Bill of Rights; (meaning the said act, intituled, "An Act, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown) "and more so since the corruption introduced at the Hanover succession" (meaning the succession of the heirs of the princess Sophia, electress and duchess dowager of Hanover to the crown and dignity of this kingdom) "by the agency of Walpole, that" (meaning the said species of government) "can be described by no other name than a despotic legislation: Though the parts may embarrass each other, the whole has no bounds; and the only right it acknowledges out of itself is the right of petitioning. Where then is the constitution either that gives or that restrains power? It is not because a part of the government" (meaning the government of this kingdom) "is elective, that makes it less a despotism, if the persons so elected possess afterwards, as a parliament, unlimited powers; election in this case becomes separated from representation, and the candidates are candidates for despotism." And in another part thereof, according to the tenor 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 laws, there is scarcely such a thing:" And in another part thereof, according to the tenor 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 Parliament 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 England," (meaning the state of representation of the Commons of this kingdom) "it is manhood compared with what is called the 'House of Lords (meaning the Lords spiritual and temporal in parliament assembled); "and so little is this nick-name 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 tenor 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

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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 tenor and effect following, (that is to say) " I happened to be in England at the celebration of the centenary of the revolution of 1688. The characters of William and Mary" (meaning the said late king William and queen Mary) " have always appeared to me detestable; the one" (meaning the said king William) " 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 the Third had done, and bought the Duchy of Bremen with the money he got from England, two hundred and fifty thousand pounds over and above his pay as king; and having thus purchased it at the expense of England, added it to his Hanoverian dominions for his own private profit.—In fact, every nation that does not govern itself is governed as a job: England has been the prey of jobs ever since the revolution." And in another part thereof, according to the tenor and effect following, (that is to say)—" The fraud, hypocrisy, and imposition of governments" (meaning, amongst others, the government of this kingdom), " are now beginning to be too well understood to promise them any long career. The farce of monarchy and aristocracy in all countries is following that of chivalry, and Mr. Burke is dressing for the funeral. Let it then pass quietly to the tomb of all other follies, and the mourners be comforted. The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick, for men," (meaning the 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 government could be trusted to such hands, it must be some easy and simple thing indeed; and materials fit for all the purposes may be found in every town and village in England." In contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the said attorney-general of our said lord the king, for our said lord the king, further gives the court here to understand and be informed, that the said Thomas Paine, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said sovereign lord the now king, and to the happy constitution and government of this kingdom, and most unlawfully, wickedly, seditiously and maliciously devising, contriving, and intending to scandalize, traduce, and vilify the late happy revolution, providentially brought about and effected under the wise and prudent conduct of his highness William, heretofore prince of Orange, and afterwards king of England, France, and Ireland, and the dominions thereunto belonging; and the acceptance of the crown and royal dignity of king and queen of England, France, and Ireland, and the dominions thereunto belonging, by his said highness William, and her highness Mary, heretofore prince and princess of Orange, and the means by which the same revolution was accomplished, to the happiness and welfare of this realm; and to scandalize, traduce, and vilify the convention of the Lords spiritual and temporal, and Commons, at whose request, and by whose advice, their said majesties did accept the said crown and royal dignity; and to scandalize, traduce, and vilify the act of the parliament holden at Westminster, in the first year of the reign of their said majesties, king William and queen Mary, intituled, " an act, declaring the rights and liberties of the subject, and settling the succession of the crown," and the declaration of rights and liberties in the said act contained; and also the limitations and settlements of the crown and regal government of the said kingdoms and dominions, as by law established, and also by most wicked, cunning, and artful insinuations, to represent, suggest, and cause it to be believed, that the said revolution, and the said settlements and limitations of the crown and regal government of the said kingdoms and

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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, 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 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 tenor 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 tenor and effect following, (that is to say) "This convention met at Philadelphia in May, 1787, of which general Washington was elected president. He was not at that time connected with any of the state governments, or with Congress; he delivered up his commission when the war ended, and since then had lived a private citizen. The convention went deeply into all the subjects, and having, after a variety of debate and investigation, agreed among themselves upon the several parts of a federal constitution, the next question was the manner of giving it authority and practice. For this purpose they did not, like a cabal of courtiers, send for a Dutch stadtholder or a German elector; but they referred the whole matter to the sense and interest of the country." (thereby meaning and intending that it should be believed that a cabal of courtiers had sent for the said prince of Orange and king George the first, heretofore elector of Hanover, to take upon themselves respectively the regal government of the said kingdoms and dominions, without referring to the sense and interest of the subjects of the said kingdoms.) And in another part thereof, according to the tenor and effect following, (that is to say) "The history of the Edwards and Henries," (meaning Edwards and Henries heretofore kings of England) "and up to the commencement of the Stuarts," (meaning Stuarts, heretofore kings of England) "exhibits as many instances of tyranny as could be acted within the limits to which the nation had restricted it. The Stuarts" (meaning Stuarts, heretofore kings of England) "endeavoured to pass those limits, and their fate is well known. In all those instances, we see nothing of a constitution, but only of restrictions on assumed power. After this, another William," (meaning the said William prince of Orange, afterwards king of England) "descended from the same stock, and claiming from the same origin, gained possession" (meaning possession of the crown of England); "and of the two evils, James and William," (meaning James the second, heretofore king of England; and the said William prince of Orange, afterwards king of England) "the nation preferred what it thought the least; since from circumstances it must take one. The act, called the Bill of Rights," (meaning the said act of parliament, intituled, "An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown") "comes here into view. What is it" (meaning the said act of parliament last mentioned) "but a bargain which the parts of the government made with each other to divide powers, profits, and privileges," (meaning that the said last-mentioned act of parliament was a bargain which the parts of the government in England made with each other to divide powers, profits, and privileges) "You shall have so much and I will have the rest. And with respect to the

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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, hereinbefore mentioned) " was a thing that made itself, and then made the authority by which it acted. A few persons got together, and called themselves by that name; several of them had never been elected, and none of them for the purpose From the time of William," (meaning the said king William the Third) " a species of government arose issuing out of this coalition Bill of Rights;" (meaning the said act, intituled, An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown) " and more so since the corruption introduced at the Hanover succession," (meaning the succession of the heirs of the princess Sophia, electress and duchess dowager of Hanover, to the crown and dignity of this kingdom) " by the agency of Walpole, that" (meaning the said species of government) " can be described by no other name than a despotic legislation. Though the parts may embarrass each other, the whole has no bounds; and the only right it acknowledges out of itself, is the right of petitioning. Where then is the constitution either that gives or that restrains power. It is not because a part of the government" (meaning the government of this kingdom) " is elective, that makes it less a despotism. If the persons so elected possess afterwards, as a parliament, unlimited powers, election, in this case, becomes separated from representation, and the candidates are candidates for despotism." And in another part thereof, according to the tenor 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 tenor 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 Parliament 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 England," (meaning the state of representation of the Commons of this kingdom) " it is manhood, compared with what is called the House of Lords;" (meaning the Lords spiritual and temporal, in parliament assembled) " and so little is this nick-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 farthest removed from the general interest of the nation." And in another part thereof, according to the tenor 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 coming to its senses." And in another part thereof, according to the tenor 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

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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 duchy of Bremen with the money he got from England, two hundred and fifty thousand pounds over and above his pay as king; and having thus purchased it at the expense of England, added it to his Hanoverian dominions for his own private profit. In fact, every nation that does not govern itself is governed as a job. England has been the prey of jobs ever since the revolution." And in another part thereof, according to the tenor and effect following (that is to say) "The fraud, hypocrisy, and imposition of governments" (meaning amongst others, the government of this kingdom) "are now beginning to be too well understood to promise them any long career. The farce of monarchy and aristocracy in all countries is following that of chivalry, and Mr. Burke is dressing for the funeral. Let it, then, pass quietly to the tomb of all other follies, and the mourners be comforted. The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick, for men" (meaning the 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 government could be trusted to such hands, it must be some easy and simple thing indeed, and materials fit for all the purposes may be found in every town and village in England." In contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the said attorney-general of our said lord the king, for our said lord the king, further gives the court here to understand and be informed, that the said Thomas Paine being a wicked, seditious, and ill-disposed, person, and wickedly, seditiously, and maliciously, intending to scandalize, traduce, and vilify, the character of the said late sovereign lord, king William the Third, and the said late happy revolution, and the Parliament of England, by whose means the same was established, commonly called the Convention Parliament; and the laws and statutes of this realm limiting and establishing the succession 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 tenor 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 king of England) "endeavoured to pass those limits, and their fate is well known. In all those instances we see nothing of a constitution, but only of restrictions on assumed power. After this, another William," (meaning the said late king William the Third) "descended from the same stock, and claiming from the same origin, gained possession;" (meaning possession of the crown of England) "and of the two evils, James and William," (meaning James the Second, heretofore king of England, and the said king William the Third) "the nation" (meaning England) "preferred what it thought the least, since from circumstances it must take one. The act called the Bill of Rights" (meaning the said statute, declaring the rights and liberties of the subject, commonly called the Bill of Rights) "comes here into view. What is it" (meaning the said last mentioned statute) "but a bargain which the parts of the government made with each other to divide powers, profits, and privileges?" (Meaning that the said last-mentioned statute was a bargain which the parts of government in England made with each other to divide powers, profits, and privileges) "You shall have so much, and I will have the rest. And with respect to the nation" (meaning England) "it said, for your share you shall have the right of petitioning. This being the case, the Bill of Rights" (meaning

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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 commonly called the Convention Parliament) "it" (meaning the aforesaid parliament of England commonly called the Convention Parliament) "was a thing that made itself, and then made the authority by which it acted. A few persons got together, and called themselves by that name. Several of them had never been elected, and none of them for the purpose. From the time of William," (meaning the said King William the Third) "a species of government" (meaning government of England) "arose, issuing out of this coalition Bill of Rights;" (meaning the said statute, declaring the rights and liberties of the subject) "and more so since the corruption introduced at the Hanover succession," (meaning the succession of the heirs of the princess Sophia, electress and duchess dowager of Hanover, to the crown and dignity of this kingdom) "by the agency of Walpole, that" (meaning the said species of government) "can be described by no other name than a despotic legislation. Though the parts may embarrass each other, the whole has no bounds; and the only right it acknowledges out of itself, is the right of petitioning. Where then is the constitution either that gives or that restrains power? It is not because a part of the government" (meaning the government of this kingdom) is elective, that makes it less a despotism. If the persons so elected possess afterwards, as a parliament, unlimited powers, election, in this case, becomes separated from representation, and the candidates are candidates for despotism." In contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the said attorney-general of our said lord the king, for our said lord the king, further gives the court here to understand and be informed, that the said Thomas Paine being a wicked, seditious, and ill-disposed person, and wickedly, seditiously, and maliciously intending to scandalize, traduce, and vilify the character of the said late sovereign lord king William the Third, and the said late happy revolution, and the parliament of England by whose means the same was established, commonly called the Convention Parliament; and the laws and statutes of this realm, limiting and establishing the succession to the crown of this kingdom; and the statute declaring the rights and liberties of the subject, commonly called the Bill of Rights; and the happy constitution and government of this kingdom as by law established; and to bring the constitution, legislation, and government of this kingdom into hatred and contempt with his majesty's subjects;—and to stir up and excite discontents and seditions among his majesty's subjects; and to fulfil, perfect, and bring to effect his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year aforesaid, at London aforesaid, in the parish and ward aforesaid, he, the said Thomas Paine, wickedly, maliciously and seditiously, did print and publish, and cause and procure to be printed and published a certain other false, scandalous, malicious, and seditious libel, in which, amongst other things, are contained certain false, scandalous, malicious, and seditious, matters, of and concerning the character of the said late sovereign lord king William the Third, and the said revolution, and the said parliament, and the laws and statutes of this realm, and the happy constitution and government thereof, as by law established, according to the tenor 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. 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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 canditates 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 tenor 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." In contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown, and dignity. And the said attorney-general of our said lord the king, for our lord the king, further gives the court here to understand and be informed, that the said Thomas Paine, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said present sovereign lord the king, and wickedly, maliciously, and seditiously intending, devising, and contriving to traduce and vilify our sovereign lord the king, and the two Houses of Parliament of this kingdom, and the constitution and government of this kingdom, and the administration of the government thereof, and to stir up and excite discontents and seditions amongst his majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of his said majesty's subjects from his said majesty; and to fulfil, perfect, and bring to effect his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year aforesaid, at London aforesaid, in the parish and ward aforesaid, he, the said Thomas Paine, wickedly, seditiously, and maliciously did print and publish, and cause to be printed and published, a certain other false, scandalous, malicious, and seditious

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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 tenor 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 William" (meaning the said king William the Third) "had done, and bought the duchy of Bremen with the money he got from England, two hundred and fifty thousand pounds over and above his pay as king; and having thus purchased it at the expense of England, added it to his Hanoverian dominions for his own private profit: in fact, every nation that does not govern itself is governed as a job: England has been the prey of jobs ever since the Revolution" (meaning the aforesaid Revolution). In contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the said attorney-general of our said lord the king, for our said lord the king, further gives the Court here to understand and be informed, that the said Thomas Paine, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said lord the king, and the constitution and government of this kingdom, and wickedly, maliciously, and seditiously intending, devising, and contriving to asperse, defame, and vilify the characters of the late sovereign lord and lady William

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"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 William" (meaning the said king William the Third) "had done, and bought the duchy of Bremen with the money he got from England, two hundred and fifty thousand pounds over and above his pay as king; and having thus purchased it at the expense of England, added it to his Hanoverian dominions for his own private profit: in fact, every nation that does not govern itself is governed as a job: England has been the prey of jobs ever since the Revolution" (meaning the aforesaid Revolution). In contempt of our said lord the king and his laws, to the evil and pernicious example of all others, in the like case offending, and against the peace of our said lord the king, his crown, and dignity. And the said attorney-general of our said lord the king, for our said lord the king, further gives the Court here to understand and be informed, that the said Thomas Paine being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said lord the king, and the constitution and government of this kingdom, and wickedly, maliciously, and seditiously, intending, devising, and contriving, to asperse, defame, and vilify, the character of the late sovereign lord William, heretofore king of England, and of George the First, heretofore king of Great Britain, &c. and to asperse, defame, and vilify, the happy Revolution, providentially effected under the wise and prudent conduct of the said king William; and to bring the said Revolution and the characters of the said king William and king George the First into hatred and contempt with the subjects of this realm; and to stir up and excite discontents and seditions among his majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance, of his majesty's subjects from his said present majesty; and to fulfil, perfect, and bring to effect, his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year of the reign of our lord the now king, at London aforesaid, in the parish and ward aforesaid, wickedly and maliciously did write and publish, and cause to be written and published, a certain other false, wicked, malicious, scandalous, and seditious libel; in which same libel, amongst other things, are contained certain false, wicked, malicious, scandalous, and seditious matters, of and concerning the said king William the Third, and the said king George the First, and the said Revolution, according to the tenor and effect following, that is say, "The fraud, hypocrisy, and imposition of government," (meaning, amongst others, the government of this kingdom) "are now beginning to be too well understood to promise them any long career. The farce of monarchy and aristocracy in all countries is following that of chivalry, and Mr. Burke is dressing for the funeral. Let it then pass quietly to the tomb of all other follies, and the mourners be comforted. The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick, for men," (meaning the said king William the Third, and king George the First) "at the expense of a million a year, who understood neither her laws, her language, nor her interest; and whose capacities would scarcely have fitted them for the office of a parish constable. If government could be trusted to such hands, it must be some easy and simple thing indeed; and materials fit for all the purposes may be found in every town and village in England." In contempt of our said lord the now king and his laws, to the evil example of all others in the like case offend-

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ing, and against the peace of our said lord the king, his crown and dignity. And the said attorney-general of our said lord the king, for our said lord the king, further gives the Court here to understand and be informed, that the said Thomas Paine being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said lord the king, and the constitution and government of this kingdom, and wickedly, maliciously, and seditiously, intending, devising, and contriving, to asperse, defame, and vilify, the character of the late sovereign lord William heretofore king of England, and of George the First heretofore king of Great Britain, &c. and to asperse, defame, and vilify, the happy Revolution, providentially effected under the wise and prudent conduct of the said king William, and to bring the said Revolution and the characters of the said king William and king George the First into hatred and contempt with the subjects of this realm; and to stir up and excite discontents and seditions among his majesty's subjects, and to alienate and withdraw the affection, fidelity, and allegiance of his majesty's subjects from his said present majesty, and to fulfil, perfect, and bring to effect, his said wicked, malicious, and seditious intentions, on the said sixteenth day of February, in the thirty-second year of the reign of our lord the now king, at London aforesaid, in the parish and ward aforesaid, wickedly, 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 tenor and effect following, that is to say, "The fraud, hypocrisy, and imposition, of governments," (meaning, among others, the government of this kingdom) "are now beginning to be too well understood to promise them any long career. The farce of monarchy and aristocracy in all countries is following that of chivalry, and Mr. Burke is dressing for the funeral. Let it then pass quietly to the tomb of all other follies, and the mourners be comforted. The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick, for men" (meaning the said king William the Third, and king George the First) "at the expense of a million a year, who understood neither her laws, her language, nor her interest, and whose capacities would scarcely have fitted them for the office of a parish constable. If government could be trusted to such hands, it must be some easy and simple thing indeed; and materials fit for all the purposes may be found in every town and village in England." In contempt of 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.

To this information the defendant hath appeared, and pleaded Not Guilty, and thereupon issue is joined.

Court of KING'S BENCH, Guildhall, London,

December 18th, 1792,

Before the Right Hon. Lord KENYON.

SPECIAL JURY.

John Campbell,	John Lubbock,
John Lightfoot,	Richard Tuckwell,
Christopher Taddy,	William Porter,
Robert Oliphant,	Thomas Druce,
Cornelius Donovan,	Isaac Railton,
Robert Rolleston,	Henry Evans.

Counsel for the Crown.—Mr. Attorney-General [Sir Archibald Macdonald, in 1793 Lord Chief Baron of the Exchequer]; Mr. Solicitor-General [Sir John Scott, now Lord Chancellor Eldon]; Mr. Bearcroft, Mr. Baldwin, Mr. Wood [afterwards a Baron of the Exchequer]; the hon. Spencer Perceval.

Solicitors.—Messrs. Chamberlayne and White.

Counsel for the Defendant.—The hon. Thomas Erskine, Mr. Piggot, Mr. Shepherd, Mr. Fitzgerald, Mr. F. Vaughan.

Solicitor—Mr. Bonney.

(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,

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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, extremely 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 satisfied, 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, farther I impute to it that, in terms, the regal part of the government of this country, bounded and limited as it is, is represented as an oppressive and an abominable tyranny.

Thirdly, That the whole legislature of this country is directly an usurpation.

Again, with respect to the laws of this realm, which hitherto have been our boast, indiscriminately and without one single exception, that they are grounded upon this usurped authority, and are therefore in themselves null, or, to use his own words—that there is little or no law in this country.

Then, gentlemen, is it to be held out to a community of ten or twelve millions of people, is it to be held out, as well to the lower as to the better informed classes of these ten or twelve millions, that there is nothing in this society that is binding upon their conduct, excepting such portion of religion or morality as they may individually and respectively entertain?

Gentlemen, are we then a lawless banditti? Have we neither laws to secure our property, our persons, or our reputations?—Is it so that every man's arms are unbound, and that he may do whatever he pleases in the society?—

* See Starkie on the law of Slander and Libel, ch. 33.

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Are we reduced back again to that savage state of nature?—I ask you the question: You, gentlemen, know well what the answer is; but, gentlemen, are we to say, that a man who holds this out to those who are not furnished with the means of giving the answer which I know you, and every gentleman who hears me at this moment, will give, is discussing a question? Can any thing add to his slander upon the constitution, and upon the separate parts of the government, so constituted as ours is, more than that sweeping imputation upon the whole system of law that binds us together—namely, that it is null and void, and that there is in reality no such thing to be found?

Gentlemen, in the several passages which I shall read to you, I impute this to him also, that he uses an artifice gross to those who can observe it, but dangerous in the extreme to those whose minds perhaps are not sufficiently cultivated and habituated to reading, to enable them to discover it: the artifice, in order to create disgust, is neither more nor less than this—it is stating all the objections that can possibly be urged to monarchy, separately and solely considered, and to pure and simple aristocracy; he never chooses to say a single syllable with respect to those two as combined with a democracy, forbearing also to state, and industriously keeping out of the way, every circumstance that regards that worst of all governments, an unbalanced democracy, which is necessarily pregnant with a democratical tyranny. This is the gross artifice; and when you come to dissect the book in the careful manner that I have done, I believe you and every other reader will easily detect that artifice.

Gentlemen, to whom are the positions that are contained in this book addressed? They are addressed, gentlemen, to the ignorant, to the credulous, to the desperate; to the desperate all government is irksome; nothing can be so palatable to their ears as the comfortable doctrine that there is neither law nor government amongst us.

The ignorant and the credulous, we all know to exist in all countries; and perhaps exactly in proportion as their hearts are good and simple, are they an easy prey to the crafty who have the cruelty to deceive them.

Gentlemen, in judging of the malignant intention which I must impute to this author, you will be pleased to take into your consideration the phrase and the manner as well as the matter. The phrase I state to be insidious and artful, the manner in many instances scoffing and contemptuous, a short argument, often a prevalent one, with the ignorant or the credulous. With respect to the matter, in my conscience I call it treason, though technically, according to the laws of the country, it is not; for, gentlemen, balance the inconvenience to society of that which is technically treason,—and in this country, we must not, thank God, extend it, but keep it within its most narrow and circumscribed definitions,—but consider the comparative difference of the mischief that may happen from spreading doctrines of this sort, and that which may happen from any treason whatever.

In the case of the utmost degree of treason, even perpetrating the death of a prince upon the throne, the law has found the means of supplying that calamity in a manner that may save the country from any permanent injury. In many periods of the history of this country, which you may easily recollect, it is true that the reign of a good prince has been interrupted by violence,—a great evil!—but not so great as this; the chasm is filled up instantly by the constitution of this country, even if that last of treasons should be committed.

But where is the power upon earth that can fill up the chasm of a constitution that has been growing—not for seven hundred years, as Mr. Paine would have you believe, from the Norman conquest—but from time almost eternal,—impossible to trace; that has been growing, as appears from the symptoms Julius Cæsar observed when he found our ancestors nearly savages in the country, from that period until it was consummated at the Revolution, and shone forth in all its splendour?

In addition to this, this gentleman thinks fit even to impute to the existence of that constitution, such as I have described it, the very evils inseparable from human society, or even from human nature itself: all these are imputed to that scandalous, that wicked, that usurped constitution under which we, the subjects of this country, have hitherto mistakenly conceived that we lived happy and free.

Gentlemen, I apprehend it to be no very difficult operation of the human mind to distinguish reasoning and well meant discussion from a deliberate design to calumniate the law and constitution under which we live, and to withdraw men's allegiance from that constitution; it is the operation of good sense: it is, therefore, no difficult operation for a jury of the city of London: therefore, you will be pleased to observe whether the whole of this book, I should rather say, such part as I am at present at liberty to advert to, is not of this description, that it is by no means calculated to discuss and to convince, but to perform the shorter process of inflammation; not to reason upon any subject, but to dictate; and, gentlemen, as I stated to you before, to dictate in such a manner, and in such phrase, and with all such circumstances as cannot, in my humble apprehension, leave the most remote doubt upon your minds of what was passing in the heart of that man who composed that book.

Gentlemen, you will permit me now to say a word or two upon those passages which I have selected to you, first describing a little

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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 tyranny. 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

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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 introduced at the Hanover succession by the agency of Walpole, that can be described by no other name than a despotic legislation."

Now, Gentlemen, this is the description that this man holds out of that on which rest the property, the lives and liberties, and the privileges of the people of this country. I wonder to God, gentlemen, that any British man (for such this man certainly was, and still is) could utter such a sentence, and that, to use the language of our own poet, when he spoke these words, "A Bill of Wrongs, a Bill of Insult," they did not 'stick in his throat.' What is that Bill of Rights? It can never be too often read. I will make no comment upon it, because your own heads and hearts will make that comment. You have a posterity to look to. Are desperate 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 Bills 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 crown, by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

"That it is the right of the subjects to petition the king; and all commitments and prosecutions for such petitions are illegal."

All that you get by the Bill of Rights, according to this man's doctrine, is, that the Commons of this country have the right of

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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 impannelled and returned; and jurors which pass upon men in trials for high treason ought to be freeholders."

"That all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void."

"And that for the redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently."

Farther, 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 contemptuous expression "(for I rather choose to call it by this name than the English government), appears, since its political connexion with Germany, to have been so 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 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."

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 sta-

* See their case, Vol. XII. p. 183.

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tues 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 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."

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 contemptuos 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 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 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 danger of its coming to its senses."

Then, gentlemen, we have been insane for these seven or eight hundred years: and I shall just dismiss this with this observation, that this insanity having subsisted so long, I trust in God that it is incurable.

In page 116, you have this note—"I happened to be in England at the celebration of the centenary of the 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 hundred thousand pounds for the expense of the little fleet that brought him from Holland.—George the First acted the same close-fisted part as William had done, and bought the duchy of Bremen with the money he got from England, two hundred and fifty thousand pounds over and above his pay as king; and having thus purchased it at the expense of England, added it to his Hanoverian dominions for his own private profit.—In fact, every nation that does not govern itself, is governed as a job. England has been the prey of jobs ever since the Revolution."

Then, gentlemen, what he calls a nation governing itself is something extremely different from a nation having consented from time immemorial to be governed by a democracy, an aristocracy, and an hereditary executive supreme magistrate; and moreover, by a law paramount, which all are bound to obey: he conceives, I say, that sort of government not to be a government of the people themselves, but he denominates that sort of government a job, and not a government.

Gentlemen, such are the passages which I have selected to you, as those that disclose the most offensive doctrines in the book; that is, such as go fundamentally to the overturning the government of this country. I beg pardon—I have omitted one which contains more of direct invitation than any thing I have yet stated. It is in page 161; it is said, "the fraud, hypocrisy, and imposition of governments are now beginning to be too well understood to promise them any long career. The farce of monarchy and aristocracy in all countries is following that of chivalry, and Mr. Burke is dressing for the funeral—let it then pass quietly to the tomb of all other follies, and the mourner be comforted. The time is not very distant when England will laugh at herself for sending to Holland, Hanover, Zell, or Brunswick, for men, at the expense of a million a year, who understood neither her laws, her language, nor her interest, and whose capacities would scarcely have fitted them for the office of parish constable."

This is said of William the Third—this is said of two very illustrious princes of the House of Brunswick, George the First and

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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 misstatement, 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 constitution, and invites the people of England to overturn their present government, and to erect ano-

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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 reasoning from the British constitution, by the denial of its existence, it becomes necessary to examine his work upon the grounds which he has chosen to assume. If we judge of the production from its apparent tendency, we may call it an address to the English nation, attempting to prove that they have a right to form a new constitution; that it is expedient for them immediately to exercise that right, and that in the formation of this constitution they can do no better than to imitate the model set before them hy the French national assembly. However immethodical his production is, I believe the whole of its argumentative part may be referred to these three points: if the subject were to affect only the British nation, we might leave them to reason and act for themselves; but these are concerns equally important to all mankind; and the citizens of America are called upon, from high 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 today 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 handwriting; 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 other letters I shall be under the necessity of reading to you, in which he has stated himself the author. The one is a letter to a person of the name of Jordan, in which he expresses himself in this manner:

"February 16, 1792" (that was the day on which the book was published): "For your satisfaction and my own I send you the inclosed, though I do not apprehend there will be any occasion to use it: if in case there should, you will immediately send a line for me, under cover, to Mr. Johnson, St. Paul's church-yard, who will forward it to me, upon which I shall come and answer personally for the work; send also for Mr. Horne Tooke.

"T. P."

The letter inclosed was this; addressed to the same man, Jordan, the bookseller:—"Sir, should any person, under the sanction of any kind of authority, inquire of you 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, but only to express my doubt, whether the attorney-general can 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), containing distinct, clear, and unequivocal libellous matter, and which I, in my address to the jury, if I am not deceived in what I have heard, shall admit to be upon every principle of the English law a libel. Therefore, if that should turn out to be the case, will your lordship suffer the mind of the jury to be entirely put aside from that matter which is the subject of the prosecution, and to go into matter which hereafter *may be*, and I cannot but suppose *would be*, if the defendant were within the reach of the law of this country, the subject of a distinct and independent prosecution.

Lord *Kenyon*. If that letter goes a jot to prove that he is the author of this publication, I cannot reject that evidence;—in prosecutions for high treason, where overt acts are laid, you may prove overt acts not laid, to

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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 yourself, 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 prosecution against me as you would have done against one of your own people, who had absented himself because he was prosecuted: what passed at Dover, proves that my departure from England was no secret.

"My necessary absence from your country affords the opportunity of knowing whether the prosecution was intended against Thomas Paine, or against the rights of the people of England to investigate 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 however you may choose to interpret them, they proceed from a good heart. The time, Sir, is becoming too serious to play with Court prosecutions, 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 attorney-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. Is it possible that you or I can 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

* See East's Pleas of the Crown, ch. ii, § 54.

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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 nothing) without packing a jury, and we both know that such tricks are practised, is what I have very good reason to believe."—*Mentiris impudentissime.* —Gentlemen, I know of no such practice; I know, indeed, that no such practice exists, nor can exist; I know the very contrary of this to be true; and I know too that this letter, containing this dangerous falsehood, was destined for future publication; that I have no doubt of, and therefore I dwell thus long upon it.

"I have gone into coffee-houses, and places where I was unknown, on purpose to learn the currency of opinion." Whether the sense of this nation is to be had in some pot-houses and coffee-houses in this town of his own choosing, is a matter I leave to your judgment. "And I never yet saw any company of twelve men that condemned the book; but I have often found a greater number than twelve approving it; and this I think is a fair way of collecting the natural currency of opinion. Do not then, Sir, be the instrument of drawing twelve men into a situation that may be injurious to them afterwards."—Injurious to them afterwards!—those words speak for themselves. He proceeds thus:

"I do not speak this from policy," (what then?) "but from"—(Gentlemen, I will give you a hundred guesses)—"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 conceited menace I despise, as I do those of a nature more cut-throat.

Gentlemen, I do not think that I need to trouble you any 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 warranted perhaps) to state to you; according as you shall or shall not be of that opinion, so necessarily will be your verdict. I have done my duty in bringing before a jury an offender of this magnitude. Be the event what it may, I have done my duty; I am satisfied with having placed this great and flourishing community under the powerful shield of your protection.

EVIDENCE FOR THE CROWN.

Thomas Haynes sworn.—Examined by Mr. *Bearcroft*.

Where did you get that book?—At Mr. Jordan's, in Fleet-street

When?—In the month of February, 1792. [It was put into Court.]

Thomas Chapman sworn.—Examined by Mr. *Solicitor General*.

What business are you?—A printer.

Do you know the defendant, Thomas Paine?—I do.

Upon what occasion did you become ac-

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quainted with him?—On the recommendation of Mr. Thomas Christie.

For what purpose was he introduced to you, or you to him?—I was introduced to Mr. Paine, by Mr. Christie, to print some book that he had.

When was that?—I cannot directly say; it was in the year 1791.

What book was that?—The First Part of the Rights of Man.

Are you a publisher as well as a printer?—I am not; merely a printer.

Did you print the First Part of the Rights of Man?—I did.

Who was the selling bookseller of that book?—Mr. Jordan, of Fleet-street.

Had you any intercourse with Mr. Jordan and Mr. Paine concerning that book?—I had.

What was that intercourse relative to?—To the manner of publishing the book.

Did Jordan in fact publish that book?—He did.

Had you any intercourse with Mr. Paine relative to the printing this book which I have in my hand?—[The witness looked at it.]—The first edition of this book I had; I don't think I printed this edition of it. I printed the first edition of it.

Is that the First or Second part?—The Second Part. I printed a part of the Second Part.

Mr. *Erskine*. Can you swear to that very book?—I cannot.

Mr. *Sol. Gen*. You say you printed part of the Second Part of the Rights of Man?—Yes.

What part did you print?—I printed as far as page 112, signature H.

By signature H, you mean the letter H that is at the bottom of the page?—Yes.

Upon whose employment did you print so much of the Second Part?—Mr. Paine's.

Did you print the rest of the work from letter H to the conclusion of it?—I have the copy in my possession as far as 146, I think: the manuscript copy.

Did you print as far as 146, or stop at 112, signature H?—I stopped at 112; but my people had composed to page 146, which was not printed by me.

Had you any conversation with Mr. Paine relative to the printing the remainder of the work, and if you had, what was that conversation?—When I had finished page 112, or sheet H, the proof-sheet I, came into my hand; upon examining sheet I, there was a part, which, in my weak judgment, appeared of a dangerous tendency; I therefore immediately concluded in my mind not to proceed any farther in the work; accordingly I wrote a short note to Mr. Paine; this was about two o'clock in the afternoon, determining to send a letter, with the remainder of the copy. I felt a degree of reluctance from the circumstance of Mr. Paine's civilities that I had experienced as a gentleman and an employer; and I was fearful I should not have courage in the morning to deliver up the copy; but a circumstance occurred in the course of the day, which enabled me to do it with satisfaction to myself. I will relate the circumstance, if you will give me leave.

Was Mr. Paine present when that circumstance happened?—He was: and as it may, in the eyes of the court, exculpate me from a charge that Mr. Paine has thought proper to bring against me, I shall esteem it a favour of the court if they will suffer me to mention every circumstance of that kind.—That very day at six o'clock Mr. Paine called upon me.

Do you recollect the day?—I have a copy of that letter, which is dated the 17th of January, so that he must have called upon me on the 16th. Mr. Paine called upon me, and, as was rather unusual, at least to my knowledge, he was rather intoxicated by liquor. He had, I believe, that day, dined with Mr. Johnson, in St. Paul's Church-yard. Being intoxicated, he introduced a subject we have unfortunately differed on several times; the subject of religion, a favourite subject with him when intoxicated. I am sorry to mention these circumstances; but it will justify me in the eyes of the public, as part of the appendix has done me material injury in my profession. The subject of debate ran very high; he opposed every thing with great virulence, till at length he came to personal abuse, very much so, both to myself and Mrs. Chapman. An observation was made by Mrs. Chapman, late in the evening, I believe near ten o'clock, at which Mr. Paine was particularly offended; rising up in a great passion, he said he had not been so personally affronted in the whole course of his life before.

Mr. *Erskine*. The information charges no offence like this.

Court. This is no offence, it appears only at present to be impertinent.

Mr. *Erskine*. I admit the publication, but I cannot admit that letter.

Mr. *Sol. Gen*. Go on.

Chapman. Mr. Paine accordingly rose in a great passion, declaring that, as I was a dissenter, he had a very bad opinion of dissenters in general; he believed them all to be a pack of hypocrites, and therefore he must deal very cautiously with them, and begged, therefore, that in the morning, before I proceeded any further in his work, we should have a settlement I felt a degree of pleasure in it, as it enabled me, with courage, next morning, to deliver up his copy, which I had before determined. I sent a letter next morning, inclosing the whole of his copy. He called upon me, and made many apologies for what he had said: he said that it was the effect of liquor, and hoped that I would pass it over, and proceed with the work; but being determined on the matter, I would not upon any account.

And did you state to him the reason why you would not go on with the work?—I did. The letter will show the reason.

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You have told us that Mr. Paine was your employer, so far as you did print. Did you ever make any offers to any body to buy the copy of the Secord Part of the Rights of Man?—I did.

To whom?—To Mr. Paine.

When you made these offers, did he accept them or refuse them, or how did he treat the offers?—I made him three separate offers in the different stages of the work; the first, I believe, was a hundred guineas, the second five hundred, and the last was a thousand.

To these offers, what did Mr. Paine answer?—To the best of my recollection, he answered, that as it was his intention to publish a small edition of his work, he wished to reserve it in his own hands.

Have you seen this Mr. Paine write?—I have.

Do you think you know his hand-writing?—I think I do.

Look at that letter, (dated Feb. 16, 1792,) is that his hand-writing?—I think it is.

Look at that (dated Feb. 16, 1792,) enclosed in the above.—I think that is his hand-writing.

Look particularly at this short note, (dated April 21, 1792,) is that his hand-writing?—I believe it is.

Here is an order directed to yourself, (dated Feb. 7, 1792,) look at that, is that his hand-writing?—It is.

Look at that letter, (dated June 29, 1792,) is that Mr. Paine's hand-writing?—I believe it is.

Look at that letter, (the letter to the Attorney-general, dated Paris, the 11th of Nov.) is that Mr. Paine's hand-writing?—I cannot speak with any certainty.

Do you believe that to be his hand-writing?—I am inclined to think it is.

Thomas Chapman, cross-examined by Mr. *Erskine*.

In the first place, how often have you seen Mr. Paine write?—I presume a dozen times.

Did you ever look at him when he was writing, so as particularly to observe how he formed his characters?—Decency would not suffer me to look particularly.

I take for granted, that you did not at that time suppose you should be called upon to prove his hand-writing, and did not of course take any notice of it. Did you, upon your oath, look at it with a view of saying, I will see how this man writes in order that I may know his writing again?—I did not.

Did you ever see any other writing than that you have described?—No.

Then you are only inclined to believe that last letter is his hand-writing?—Yes.

Mr. *Sol. Gen.* Do you believe that that last letter is his hand-writing?—I think it is.

Mr. *Erskine*. Do you mean to say, that you have a firmer belief of it now than you had a moment ago?—Yes.

What has produced this change in your opinion?—By the manner of his signature.

Had not you looked at his signature before?—It struck me that there was something particular in the manner of his writing his signature.

Then you have a firmer belief now than you had a few minutes ago?—Yes.

[The Letters read.]

"Mr. Chapman, please to deliver to Mr. Jordan the remaining sheets of the Rights of Man. THOMAS PAINE."

"*Feb. 7th, 92.*"

"*Feb.* 16, 1792.

"For your satisfaction and my own, I send you the enclosed, tho' I do not apprehend there will be any occasion to use it; if in case there should, you will immediately send a line for me under cover, to Mr. Johnson, St. Paul's Church-yard, who will forward it to me, upon which I shall come and answer personally for the work.—Send also to Mr. Horne Tooke. T. P."

"Mr. Jordan,
No. 166, Fleet-street."

"*Feb.* 16, 1792.

"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 made acquainted with it, appear and answer for the work personally.

"Your humble servant, THOMAS PAINE.

"Mr. Jordan,
No. 166, Fleet-street."

"*April* 21, 1792.

"Mr. Jordan; Please to settle the account of the sale of the pamphlets with Mr. Johnson, as I am at present engaged in getting forward another small work for publication.

"Your's, &c. THOMAS PAINE."

"Mr. Jordan,
No. 166, Fleet-street."

"*London, June* 29, 1792.

"Sir; I have drawn on you two drafts for one hundred and fifty pounds each, one at seven days sight, the other at fourteen, payable to Mr. Johnson, or order, for monies which he has advanced on my account, and bills which are due, which drafts please to pay, and place the same to my account.

"Yours, &c. THOMAS PAINE."

"Mr. Jordan,
No. 166, Fleet-street."

"*Paris, 11th of November, 1st 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 Rights of Man. Had not my duty in consequence of my being elected a member

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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 have defended 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 yourself, 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 prosecution against me as you would have done against one of your own people who had absented himself because he was prosecuted: what passed at Dover proves that my departure from England was no secret.

"My necessary absence from your country now, in consequence of my duty here, affords the opportunity of knowing whether the prosecution was intended against Thomas Paine, or against the rights of the people of England to investigate 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.

"But I have other reasons than those I have mentioned for writing you this letter: and, however you may choose to interpret them, they proceed from a good heart. The time, Sir, is becoming too serious to play with court prosecutions, 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 attorney-general, can now do in England, ought to have some weight with men in your situation. 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 senses; 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. Is it possible that you, or I can 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. I speak to you as one man ought to speak to another: and I know also, that I speak what other people are beginning to think.

"That you cannot obtain a verdict, (and if you do it will signify nothing) without packing a jury, and we both know that such tricks are practised is what I have very good reason to believe. I have gone into coffee-houses, and places where I was unknown, on purpose to learn the currency of opinion, 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. I do not speak this from policy, but from benevolence; but if you choose to go on with the process, I make it my request to you that you will 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 alone that I shall do it.

"THOMAS PAINE."

"To Arch. Macdonald,
Attorney-general."

"As I have not time to copy letters, you will excuse the corrections.

"P. S. I intended, had I staid in England, to have published the information, with my remarks upon it, 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.

"T. P."

Andrew Milne sworn.

Examined by Mr. *Bearcroft*.

I believe you lived with Mr. Jordan?—Yes.

When?—About this time twelvemonth.

Did you at any time see Mr. Paine at Mr. Jordan's?—Yes.

What was the business he came upon?—It was respecting money principally.

Did you ever go to the printers of that book while it was in hand?—The Second Part I did.

Did you go by the directions of any-body, and by whose directions?—By Mr. Paine's directions.

Had you occasion to see him more than once?—Yes.

Did you at any time get an order from him

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to Mr. Crowder, the printer?—Yes, once in particular.

Was that before or after it was gone out of the hands of Chapman?—After.

Did you ever see him at Jordan's shop, after it had been published, more than once?—Yes.

Tell us the circumstances.—Respecting that note, in which he mentions Mr. Horne Tooke; I was in the shop at the time Mr. Paine came with Mr. Horne Tooke to Mr. Jordan's, in the evening; the conversation was in the parlour; I did not hear the conversation, but I knew of it afterwards.

I don't ask you what you learned from any body else; did you learn it from Paine?—No.

Did you see any money paid by Jordan to Mr. Paine on account of this book?—Yes.

John Purdue sworn.—Examined by Mr. *Wood*.

Are you acquainted with Mr. Paine?—I was formerly.

How long ago?—I have not seen him since he went to America.

He was in the Excise?—He was in the Excise.

Are you acquainted with his hand-writing?—Formerly I was.

Look at these letters, and say, whether you believe them to be his hand-writing?—I believe they all are.

The extracts from the libel read, as follows:

Page 21.

"All hereditary government is in its nature tyranny. An heritable crown, or an heritable throne, or by what other fanciful name such things may be called, have no other significant explanation than that mankind are heritable property. To inherit a government, is to inherit the people, as if they were flocks and herds!"

Page 47.

"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."

Page 52.

"The history of the Edwards and 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 those instances we see nothing of a constitution, but only of restrictions on assumed power.

"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; since, from circumstances, it must take one. The act, called the Bill of Rights, comes here into view. What is it but a bargain, which the parts of the government made with each other to divide powers, profits, and privileges? You shall have so much, and I will have the rest; and with respect to the nation, it said, for your share, *you* shall have the right of petitioning. This being the case, the Bill of Rights is more properly a bill of wrongs, and of insult. As to what is called the Convention Parliament, it was a thing that made itself, and then made the authority by which it acted. A few persons got together, and called themselves by that name. Several of them had never been elected, and none of them for the purpose.

"From the time of William, a species of government arose, issuing out of this coalition Bill of Rights; and more so, since the corruption introduced at the Hanover succession, by the agency of Walpole; that can be described by no other name than a despotic legislation. 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 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."

Page 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 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."

Page 63. *Note.*

"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

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be, touches it as with an opium wand, and it sleeps obedience.

"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 appears also to be most under influence, and the furthest removed from the general interest of the nation."

Pages 107-108.

"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 sterling 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 ministry acts upon the same idea that Mr. Burke writes, namely, that the people must be hoodwinked, and held in superstitious ignorance by some bugbear or other; and what is called the crown answers this purpose, and therefore it answers all the 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, is not from any thing that can happen to the man, but from what may happen to the nation—the danger arises coming to its senses."

Page 116. *Note.*

"I happened to be in England at the celebration of the centenary 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 600,000*l.* for the expense of the little fleet that brought him from Holland. George the First acted the same close-fisted part as William had done, and bought the duchy of Bremen with the money he got from England, 250,000*l.* 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."

Page 161.

"The fraud, hypocrisy, and imposition of governments, are now beginning to be too well understood to promise them any long career. The farce of monarchy and aristocracy, in all countries, is following that of chivalry, and Mr. Burke is dressing for the funeral. Let it then pass quietly to the tomb of all other follies, and the mourners be comforted.

"The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick for men, at the expense of a million a year, who understood neither her laws, her language, nor here interest, and whose capacities would scarcely have fitted them for the office of parish constable. If government could be trusted to such hands, it must be some easy and simple thing indeed, and materials fit for all the purposes may be found in every town and village in England."

DEFENCE.

The hon. *Thomas Erskine*:

Gentlemen of the jury; The attorney-general, in that part of his address which referred to a letter, supposed to have been written to him from France, exhibited signs of strong sensibility and emotion.—I do not, I am sure, charge him with acting a part to seduce you; on the contrary, I am persuaded, from my own feelings, and from my acquaintance with my friend from our childhood upwards, that he expressed himself as he felt.—But, gentlemen, if HE felt those painful embarrassments, you may imagine what MINE must be:—HE can only feel for the august character whom he represents in this place, as a subject for his sovereign, too far removed by custom from the intercourses which generate affections, to produce any other sentiments than those that flow from a relation common to us all: but it will be remembered, that I stand in the same relation* towards another great person more deeply implicated by this supposed letter; who, not restrained from the cultivation of personal attachments by those qualifications which must always secure them, has exalted my duty to a prince, into a warm and honest affection between man and man.—Thus circumstanced, I certainly should have been glad to have had an earlier opportunity of knowing correctly the contents of this letter, and whether (which I positively deny) it proceeded from the defendant. Coming thus suddenly upon us, I see but too plainly the impression it has made upon *you* who are to try the cause, and I feel its weight upon *myself*, who am to conduct it; but this shall neither detach me from my duty, nor enervate me (if I can help it) in the discharge of it.

If the attorney-general be well founded in the commentaries he has made to you upon

* Mr. Erskine was then attorney-general to the prince of Wales.—*Editor of Erskine's Speeches.*

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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 collects 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 those 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

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of that unmixed representative constitution which this work recommends and inculcates, you could not, *on that account*, acquit the defendant. Nay, to speak out plainly, I freely admit that even if you were avowed enemies to monarchy, and devoted to republicanism, you would be nevertheless bound by your oaths, as a jury sworn to administer justice according to the English law, to convict the author of The Rights of Man, if it were brought home to your consciences, that he had exceeded those widely-extended bounds which the ancient wisdom and liberal policy of the English constitution have allotted to the range of a free press.—I freely concede this, because you have no jurisdiction to judge either the author or the work, by any rule but that of English law, which is the source of your authority.—But having made this large concession, it follows, by a consequence so inevitable as to be invulnerable to all argument or artifice, that if, on the other hand, you should be impressed (which I know you to be) not only with a dutiful regard, but with an enthusiasm, for the whole form and substance of your own government; and though you should think that this work, in its circulation amongst classes of men unequal to political researches, may tend to alienate opinion; still you cannot, *upon such grounds*, without a similar breach of duty, convict the defendant of a libel, unless he has clearly stepped beyond that extended range of communication which the same ancient wisdom and liberal policy of the British constitution has allotted for the liberty of the press.

Gentlemen, I admit, with the attorney-general, that in every case where a court has to estimate the quality of a writing, the *mind* and *intention* of the writer must be taken into the account;—the *bona*, or *mala fides*, as lawyers express it, must be examined: for a writing may undoubtedly proceed from a motive, and be directed to a purpose, not to be deciphered by the mere construction of the thing written.—But wherever a writing is arraigned as seditious or slanderous, not upon its ordinary construction in language, nor from the necessary consequences of its publication, under *any* circumstances and at *all* times, but that the criminality springs from some *extrinsic matter*, not visible upon the page itself, nor *universally operative*, but capable only of being connected with it by evidence, so as to demonstrate the *particular* 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 notorious waste paper and packthread; because the innuendo 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

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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 farther, or to look for any future amendment?

In this manner power has reasoned in every age:—government, in *its own estimation*, has been *at all times* a system of perfection; but a free press has examined and detected its errors, and the people have from time to time reformed them.—This freedom has alone made our government what it is; this free

* See the preceding Case.

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dom 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 burthens 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 illegally agitated upon any subject in judgment, the forum has either been changed, or the trial postponed.—The circulation of any paper that brings, or can be supposed to bring, prejudice, or even well-founded knowledge, within the reach of a British tribunal, *on the spur of an occasion*, is not only highly criminal, but defeats itself, by leading to put off the trial which its object was to pervert. On this principle, the noble and learned judge will permit me to remind him, that on the trial of the dean of St. Asaph for a libel, or rather when he was brought to trial, the circulation of books by a society favourable to his defence, was held by his lordship, as chief justice of Chester, to be a reason for not trying the cause;* although they contained no matter relative to the dean, nor to the object of his trial; being only extracts from ancient authors of high reputation, on the general rights of juries to consider the innocence as well as the guilt of the accused; yet still, as the recollection of these rights was pressed forward *with a view to affect the proceedings*, the proceedings were postponed.

Is the defendant then to be the only exception to these admirable provisions?—Is the English law to judge *him*, stript of the armour with which its universal justice encircles *all others*?—Shall we, in the very act of judging him for detracting from the English government, furnish him with ample matter for just reprobation, instead of detraction?—Has not his cause been prejudged through a thousand channels?—Has not the work before you been daily and publicly reviled, and his person held up to derision and reproach;—Has not the public mind been excited, by crying down the very phrase and idea of the Rights of Man? Nay, have not associations of gentlemen, I speak it with regret, because I am persuaded, from what I know of some of them, that they amongst them at least thought they were serving the public;—yet have they not, in utter contempt or 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 pre-judging 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,

* See Vol. XXI, p. 872.

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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 Britain; it 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 for 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

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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 what are called constitutions, and the parts of which they are composed.

"It is for the good of nations, and not for the emolument or aggrandizement of particular individuals, that government ought to be established, and that mankind are at the expense of supporting it. The defects of every government and constitution, 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 reformed the law in the other."

Gentlemen, you must undoubtedly wish to deal with every man who comes before you in judgment, as you would be dealt by; and surely you will not lay it down to-day as a law to be binding hereafter even upon yourselves, that if you should publish any opinion concerning existing abuses in your country's government, and point out to the whole public the means of amendment, you are to be acquitted or convicted as any twelve men may happen to agree with you in your *opinions*.—Yet this is precisely what you are asked to do to another:—it is precisely the case before you:—Mr. Paine expressly says, I obey a law until it is repealed;—obedience is not only my principle but my practice, since my disobedience of a law from thinking it *bad*, might apply to justify another man in the disobedience of a *good one;* and thus individuals would give the rule for themselves, and not society for all.—You will presently see that the same principle pervades the whole work; and I am the more anxious to call your attention to it, however repetition may tire you, because it unfolds the whole principle of my argument: for, if you find a sentence in the whole book that invests any individual, or any number of individuals, or any community short of the WHOLE NATION, with a power of changing any part of the law or constitution, I abandon the cause—YES, I freely abandon it, because I will not affront the majesty of a court of justice by maintaining propositions which, even upon the surface of them, are false. Mr. Paine, page 162, 168, goes on thus:

"When a NATION changes its opinion and habits of thinking, it is no longer to be governed as before; but it would not only be wrong, but bad policy, to attempt by force what ought to be accomplished by reason. Rebellion consists in forcibly opposing the general will of a nation, whether by a party or by a government. There ought, therefore, to be, in every nation, a method of occasionally ascertaining the state of public opinion with respect to government."

"There is, therefore, no power but the voluntary will of the people, that has a right to act in any matter respecting a general reform; and, by the same right that two persons can confer on such a subject, a thousand may. The object in all such preliminary proceedings is, to find out what the GENERAL SENSE OF A NATION is, and to be governed by it. If it prefer a bad or defective government to a reform, or choose to pay ten times more taxes than there is occasion for, it has a right so to do; and, so long as the majority do not impose conditions on the minority different to what they impose on themselves, though there may be much error, there is no injustice; neither will the error continue long. Reason and discussion will soon bring things right, however wrong they may begin. By such a process no tumult is to be apprehended. The poor in all countries, are naturally both peaceable and grateful in all reforms in which their interest and happiness are included. It is only by neglecting and rejecting them that they become tumultuous."

Gentlemen, these are the sentiments of the author of the Rights of Man; and, whatever *his* opinions may be of the defects in our government, it never can change ours concerning it, if our sentiments are just; and a writing can never be seditious in the sense of the English law, which states that the government leans on the UNIVERSAL WILL for its support.

This universal will is the best and securest title which his Majesty and his family have to the throne of these 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

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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 communities must be held together by an evident 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, was written *avowedly and upon the face of it*, 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 contains no attack upon the king's majesty, nor upon any other LIVING MAGISTRATE;—if it excites to no resistance to magistracy, but, on the contrary, if it even studiously inculcates obedience, then whatever may be its defects, the question continues as before, and ever must remain an unmixed question of the liberty of the press. I have therefore considered it as no breach of professional duty, nor injurious to the cause I am defending, to express my own admiration of the real principles of our constitution;—a constitution which I hope may never give way to any other—a constitution which has been productive of many benefits and which will produce many more hereafter, if we have wisdom enough to pluck up the weeds that grow in the richest soils and amongst the brightest flowers.—I agree with the merchants of London, in a late declaration, that the English government is equal to the reformation of its own abuses; and, as an inhabitant of the city, I would have signed it, if I had known, *of my own knowledge*, the facts recited in its preamble; but abuses the English constitution unquestionably has, which call loudly for reformation, the existence of which has been the theme of our greatest statesmen, which have too plainly formed the principles of the defendant, and may have led to the very conjuncture which produced his book.

Gentlemen, we all but too well remember

* Letter to Samuel Span, esq., Burke's Works, vol. 3, p. 212, ed. of 1801.

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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 words* 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 the senate 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 misspent; 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, compare, and judge for yourselves.

"But, under all these disheartening circumstances, I could yet entertain a cheerful hope, and undertake again the commission with alacrity, as well as zeal, if I could see any effectual steps taken to remove the original cause of the mischief—'Then would 'there be a hope.'

"But, till the purity of the constituent body, and thereby that of the representative, be restored, there is NONE.

"I gladly embrace this most public opportunity of delivering my sentiments, not only to all my constituents, but to those likewise not my constituents, whom yet, in the large sense, I represent, and am faithfully to serve.

"I look upon restoring election and representation in some degree (for I expect no miracles) to their original purity, to be that, without which all other efforts will be vain and ridiculous.

"If something be not done, you may, indeed, retain THE OUTWARD FORM of your constitution, but not the POWER thereof."

Such were the words of that great good man, lost with those of many others of his time, and his fame, as far as power could hurt it, put in the shade along with them.—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

* See in the New Parl. Hist. the Debate, December 15th, 1792, on Mr. Fox's motion for sending a minister to Paris, to treat with the Provisional Government of France.

† Speech at Bristol. Burke's Works, vol. 3, p. 392, 393, 8vo. 1808.

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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 in 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 abettors of independence had attempted in vain. When that disingenuous compilation, and strange medley of railing and flattery, was adduced as a proof of the united sentiments of the people of Great Britain, there was a great change throughout all America. The tide of popular affection, which had still set towards the parent country, began immediately to turn, and to flow with great rapidity 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 government so partial to authority, as not to allow, that the hostile mind of the rulers to their people, did fully justify a change of government; nor can any reason whatever be given, why one people should 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 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 most distinct 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 of which if dangerous to be discussed, HE should not have led to the discussion: for, surely, it is not to be endured

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

† Burke's Works, vol. 3, pp. 162, 163, 8vo. edition of 1803.

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that any private man shall publish a creed for a whole nation;—shall tell us that we are not to think for ourselves—shall impose his own fetters upon the human mind—shall dogmatize at discretion—and yet that no man shall sit down to answer him without being guilty of a libel. I assert, that if it be a libel to mistake our constitution—to attempt the support of it by means that tend to destroy it—and to choose the most dangerous season for doing so, Mr. Burke is that libeller; but not therefore the object of a criminal prosecution:—whilst I am defending the motives of one man, I have neither right nor disposition to criminate the motives of another.—All I contend for, is a fact that cannot be controverted, viz. that *this officious interference was the origin of Mr. Paine's book.* I put my cause upon its being the origin of it—the avowed origin—as will abundantly appear from the introduction and preface to both Parts, and from the whole body of the work; nay, from the very work of Mr. Burke himself, to which both of them are answers.

For the history of that celebrated work, I appeal to itself.

When the French revolution had arrived at some of its early stages, a few, and but a few, persons (not to be named when compared with the nation) took a visible interest in these mighty events;—an interest well worthy of Englishmen.—They saw a pernicious system of government which had led to desolating wars, and had been for ages the scourge of Great Britain, giving way to a system which seemed to promise harmony and peace amongst nations. They saw this with virtuous and peaceable satisfaction; and a reverend divine,* eminent for his eloquence, recollecting that the issues of life are in the hands of God, saw no profaneness in mixing the subject with public thanksgiving; by reminding the people of this country of their own glorious deliverance in former ages.—It happened, also, that a society of gentlemen, France being then *a neutral nation*, and her own monarch swearing almost daily upon her altars to maintain the new constitution, thought they infringed no law by sending a general congratulation.—Their numbers, indeed, were very inconsiderable; so much so, that Mr. Burke, with more truth than wisdom, begins his volume with a sarcasm upon their insignificance:

"Until very lately he had never heard of such a club. It certainly never occupied a moment of his thoughts; nor, he believed, those of any person out of their own set."†

Why then make their proceedings the subject of alarm throughout England?—There had been no prosecution against them, nor any charge founded even upon suspicion 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 nor 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

* Dr. Price.

† Reflections on the Revolution in France. Burke's Works, vol. 5. p. 32, 8vo edition, 1808.

* Appeal from the new to the old Whigs. Burke's Works, vol. 6. p. 201, 8vo edition, 1808.

† Ibid.

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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 burthen,—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, pages 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; that, with a malignant insanity we 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 (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, intituled, The Principles of Political and Moral Philosophy, in which he investigates the first principles of all governments—a discussion not thought dangerous *till lately*,—I hope we shall soon get rid of this ridiculous panic.

Mr. Paley professes to think of governments what the Christian religion was thought of by its first teachers:—'*If it be of God it will stand;*' and he puts the duties of obedience to them upon free will and moral duty.—After dissenting from Mr. Locke as to the origin of governments in compact, he says:

"Wherefore, rejecting the intervention of a compact as unfounded in its principle, and

* Burke's Works, vol. 2, p. 222, 8vo 1808.
† Lord Ellenborough, then Mr. Law.

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dangerous in the application, we assign for the only ground of the subject's 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 proposition. 'Civil societies cannot be upholden, unless, 'in each, the interest of the whole society be 'binding upon every part and member of it:' —this is the third step, and conducts us to the conclusion, namely,—'That, so long as 'the interest of the whole society requires it, 'that is, so long as the established govern-'ment cannot be resisted or changed without 'public inconveniency, it is the will of God '(which *will* universally determines our duty) 'that the established government be obeyed,' —*and no longer*.

"But who shall judge of this? We answer, '*Every man for himself*.' In contentions between the sovereign and the subject, the parties acknowledge no common arbitrator; and it would be absurd to refer the decision to *those* whose conduct has provoked the question, and whose own interest, authority, and fate, are immediately concerned in it. The danger of error and abuse is no objection to the rule of expediency, because every other rule is liable to the same or greater; and every rule that can be propounded upon the subject (like all rules, indeed, 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 own private judgment, whether he be determined by reasonings and conclusions of his own, or submit 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:—

"No usage, law, or authority whatever, is so binding, that it need or ought to be continued, when it may be changed with advantage to the community. The family of the prince, —the order of succession—the prerogative of the crown—the form and parts of the legislature—together with the respective powers, office, duration, and mutual dependency of the several parts, are all only so many laws, mutable like other laws, whenever expediency 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 affection, and the sense of advantage, are the best and the only supports of government. On the same principle he then goes on to say,—"These points are wont to be approached with a kind of awe; they are represented to the mind as principles of the constitution, settled by our ancestors; and, being settled, to be no more committed to innovation 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 to the other, that tied them, without their own consents, to a subjection to them and their heirs.†

* Principles of Moral and Political Philosophy, book 6, chap. 3; vol. 2, p. 138. edit. of 1810.

† Ibid. p. 142.

* Ibid. p. 143.

† Locke on Civil Government, ch. 8, § 114. Locke's Works, vol. 5, p. 406, 8vo. edit. of 1801.

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"It is true, that whatever engagement or promises any one has made for himself, he is under the obligation of them, but cannot, by any compact whatsoever, bind his children or posterity: for his son, when a man, being altogether as free as the father, any *act of the father can no more give away the liberty of the son*, than it can of any body else."*

So much for Mr. Locke's opinion of the rights of man.—Let us now examine his ideas of the supposed danger of trusting him with them.

"Perhaps it will be said, that the people being ignorant, and always discontented, to lay the foundation of 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 king, 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 priciples 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 government; 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 authority over them than is consistent with any correct 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 *boná fide* entertain them, much less when connected with the history of his life, which I therefore brought in review before you.—But still the great question remains unargued—Had he a right to promulgate these opinions? If he entertained them, I shall argue that he had—And although my arguments upon the liberty of the press, may not to day be honoured with your, or the Court's approbation, I shall retire not at all disheartened, consoling myself with the reflection, that a season may arrive for their reception.—The most essential liberties of mankind have been but slowly and gradually received, and so very late, indeed, do some of them come to maturity, that, notwithstanding the attorney-general tells you that the very question I am now agitating is most peculiarly for *your* consideration, AS A JURY, under our ANCIENT constitution, yet I must remind both YOU and HIM that your jurisdiction to consider and deal with it at all in judgment, is but A YEAR OLD.†—Before that late period, I ventured to maintain this very RIGHT OF A JURY over the question of libel under the same *ancient* constitution (I do not mean before the noble judge now present, for the matter was gone to rest in the courts, long before he came to sit where he does, but) before a noble and reverend magistrate of the most exalted un-

* Locke, *ut sup.* § 116, pp. 407, 408.

† Locke on Civil Government, ch. 19, s. 223. Works, vol. 5, p. 471.

* Letter to the Sheriffs of Bristol. Burke's Works, vol. 3, pp. 133, 8vo. 1808.

† See p. 292. 306, and the cases, &c. there cited.

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derstanding, and of the most uncorrupted integrity:* he treated me, not with contempt indeed, for of that his nature was incapable; but he put me aside with indulgence, as you do a child while it is lisping its prattle out of season; and if this cause had been tried *then*, instead of *now*, the defendant must have been instantly convicted on the proof of the publication, whatever *you* might have thought of his case.—*Yet, I have lived to see it resolved, by an almost unanimous vote of the whole Parliament of England, that I had all along been in the right.*—If this be not an awful lesson of caution concerning opinions, where are such lessons to be read?

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 2nd, the Star Chamber ordnance 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 persecutions:—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

* Earl of Mansfield.

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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 it oppresses the individual, endangers the state.

"We have them not," says Milton, "that can be heard of, from any ancient state, or polity, or church, nor by any statute left us by our ancestors, elder or later, nor from the modern custom of any reformed city, or church abroad: but from the most antichristian council, and the most 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 of 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 produce, than one of your own, now sitting in parliament, the chief of learned men reputed in this land, Mr. *Selden*, whose volume of natural and national laws, proves, not only by great authorities brought together, but by exquisite reasons and theorems almost mathematically demonstrative, that all opinions, YEA ERRORS, known, read, and collated, are of main service and assistance toward the speedy attainment of what is truest."*

"Truth 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 reproach; for if we be so jealous over them as that we dare not 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 pretend."†

"Those corruptions which it seeks to prevent, break in faster at other doors which cannot be shut."‡ To prevent men thinking and acting for themselves, by restraints on the press, "is like to the exploits of that gallant man, who thought to pound up the crows by shutting his park gate."§

"This obstructing violence meets for the most part with an event, utterly opposite to the end which it drives at: instead of suppressing sects and schisms, 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 faces 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 effect 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:

* See Milton's Prose Works by Birch, vol. 1, p. 154, 4to ed. of 1753.

* P. 155. † P. 162.
‡ P. 162. § P. 157 || P. 164.

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"Believe it, Lords and Commons, they who counsel ye to such a suppressing" [of books] "do as good as bid ye 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 cannot be assigned a truer than your own mild, and free, and humane government. It is the liberty, Lords and Commons, which your own valorous and happy counsels have purchased us; liberty, which is the nurse of all great wits: this is that which hath rarified and enlightened our spirits like the influence of Heaven; this is that which hath enfranchised, enlarged, and lifted up our apprehensions, degrees above themselves. Ye cannot make us now less capable, less knowing, less eagerly pursuing of 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 abstract speculation, but to keep the public on their guard against all the acts of their government.

After showing the advantages of a monarchy to public freedom, provided it is duly controlled and watched by the popular part of the constitution, he says, "These principles account for the great liberty of the press in these kingdoms, beyond what is indulged in any other government. It is apprehended, that arbitrary power would steal in upon us, were we not careful to prevent its progress, and were there not an easy method of conveying the alarm from one end of the kingdom to the other. *The spirit of the people must frequently be roused, in order to curb the ambition of the Court;* and the dread of 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 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——"

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 ingenuity and 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

* Pp. 168, 169.

* On the Liberty of the Press. Essays, vol. 1, p. 12, 8vo. 1809.

† This appears to have been an erroneous supposition; seeing that the speech cited by Mr. Erskine was delivered by lord Chesterfield in the beginning of June 1737; and the Debates compiled by Dr. Johnson commenced not until November 1740. See the Prefaces to the IXth, XIth, and XIIth Volumes of the New Parliamentary History; in which will be found much curious and valuable information, respecting the genuineness of those Debates in parliament, which have (as it should seem falsely) been attributed to the imagination of Johnson.

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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 person 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 Loughborough'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* governments. 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 government. 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 speculative works upon the constitution, whether *they contain praise or censure.*"—*Lord Stanhope's Defence 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 *whatever 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 government. If they be wise and enlightening, the world will gain by them: if they be weak and absurd, they will be laughed at and forgotten; and if they be *bonâ fide, they cannot be criminal, however* ERRONEOUS. On the other hand, the purpose and the direction may give a different turn to writings 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 construction of the writing, the averment should be, in the case as I have instanced, that certain persons were, as I have described, assembled; and that the publisher, intending to excite these persons so assembled, wrote *so and so.* Here the crime is complete, and consists in an *overt-act of wickedness evidenced by a writing.*"

In answer to all these authorities, the

* Lord Chesterfield's Speech on the Playhouse Bill. New Parl. Hist. Vol. X, pp. 330, 331.

† New Parl. Hist. Vol. X, p. 333.

‡ New Parl. Hist. Vol. X, p. 340.

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attorney-general may say, that, if Mr. Paine had written his observations with the views of those high persons and under other circumstances, he would be protected and acquitted:—to which I can only answer, that no facts or circumstances attending his work are either *charged or proved;*—that you have *no* jurisdiction whatever, but over the natural construction of the work before you,—and that I am therefore brought without a flaw to the support of the passages which are the particular subject of complaint.

Gentlemen, I am not unmindful how long I have already trespassed upon your patience; and, recollecting the nature of the human mind, and how much, for a thousand reasons, I have to struggle against at this moment, I shall not be disconcerted if any of you should appear anxious to retire from the pain of hearing me farther. It has been said, in the newspapers, that my vanity has forwarded my zeal in this cause;—but I might appeal even to the authors of those paragraphs, whether a situation ever existed which vanity would have been fonder to fly from—the task of speaking against every known prepossession; with every countenance, as it were, planted and lifted up against me.—But I stand at this bar to give to a criminal arraigned before it, the defence to which the law of the country entitles him. 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 overawing the House of Commons, or recommending the conflagration of this city: *I* am doing the same duty now, which *my Lord and I* then did in concert together; and, whatever may become of the cause, *I expect to be heard:* conscious that no just obloquy *can* be, or *will* in the end be cast upon me for having done my duty in the manner I have endeavoured to perform it.—SIR, I SHALL NAME YOU PRESENTLY.†

Gentlemen, I come now to observe on the passages selected by the information; and with regard to the first, I shall dispose of it in a moment.

"All *hereditary* government is in its nature tyranny. An hereditable crown, or an hereditable throne, or by what other fanciful name such things may be called, have no other significant explanation than that mankind are hereditable *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 argument, therefore, is this, and it retorts on his adversary: he says, such a king as *you*, Mr. Burke, represent the king of England to be, inheriting the people by virtue of conquest, or of some compact, which, having once existed, cannot be dissolved while the original terms of it are kept, *is an inheritance like flocks and herds*.—But I deny 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 subjects; and having, after a variety of debate and investigation, agreed among themselves upon the several parts of a federal con-

* See the Case, Vol. XXI. p. 485.

† This expression was provoked by the conduct of one of the jury; which this rebuke put an end to. *Orig. Ed.*

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stitution, 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."

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 8th was the author of it? or because lust and poverty, and not religion, were his motives? He had squandered the treasures of his father, and he preferred Anne Bullen to his queen: these were the causes which produced it.—What then?—Does that affect the purity of our reformed religion?—Does it undermine its establishment, or shake the king's title, to the exclusion of those who held by the religion it had abolished?—Will the attorney-general affirm, that I could be convicted of a libel for a whole volume of asperity against Henry the 8th, 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 Runnymead?—Was it not again re-enacted whilst menacing arms were in the hands of the people?—Were not its stipulations broken through, and two and forty times re-enacted by parliament, upon the firm demand of the people in the following reigns?—I protest it fills me with astonishment to hear these truths brought in question.

I was formerly called upon, under the discipline of a college, to maintain them, and was rewarded for being thought to have successfully maintained that our present constitution was by no means a remnant of Saxon liberty, nor any other institution of liberty, but the pure consequence of the oppression of the Norman tenures, which spreading the spirit of freedom from one end of the kingdom to another, enabled our brave fathers, inch by inch, not to reconquer, *but for the first time to obtain* those privileges which are the unalienable inheritance of all mankind.*

But why do we speak of the Edwards and Henries, when Hume himself expressly says, notwithstanding all we have heard to-day of the antiquity of our constitution, that our monarchy was nearly absolute till the middle of 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*,†

* Lord Erskine obtained the declamation prize at Trinity College, Cambridge, on the subject of the Origin of the British Constitution.—It is somewhere printed. *Editor of Erskine's Speeches.*

† The limits within which, during the early part of our history, the power of the crown was confined, have been recently investigated with much ability and acuteness by a learned and perspicuous writer on the Constitution of

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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 distinguish-

Parliament; from whose Essay I extract some observations respecting the nature of this same 'absolute government,' which is asserted to have prevailed in England until the middle of the seventeenth century:

"He" [Mr. Jopp], "has the discretion to keep clear of Saxon antiquities; but, confiding in the assistance of Hume, Carte, and Brady, he enters boldly on the Norman part of our story. William the Conqueror, according to him, was an absolute sovereign, who enacted laws, imposed taxes, and administered justice according to his own will and pleasure, with no greater restraint from legal institutions than the present king of Denmark, or autocrat of the Russias. The question seems never to have occurred to him, by what possible means could a duke of Normandy, with very limited authority in his own duchy, raised to the throne of England by the help of independent adventurers, feudal vassals like himself of the king of France, attracted to his standard by the promise of lands and honours, at once convert himself into a Turkish despot, supreme arbiter of the lives and fortunes, not only of the conquered, but of the conquerors? Mr. Jopp will probably tell us, it was the introduction of the feudal system that wrought this stupendous miracle. 'The conqueror,' he tells us, 'in enforcing 'universally the feudal institutions, shaped 'every thing for the support of his sovereign 'independent pre-eminence.' But, in the *first* place, William the Norman did not introduce the feudal system into England. He established, it is true, knight service in England; and introduced some feudal incidents unknown to the Saxons. But many parts of the feudal system existed before his arrival. Beneficiary possessions were familiar to the Saxons. Feudal homage is repeatedly mentioned in their chronicles and charters, and even the word *vassal* occurs in their history as early as the time of Alfred. Privileged jurisdictions are frequently alluded to in their laws. Fines for alienation and even escheats in certain cases, were not unknown to them. Reliefs are described at length in the laws of Canute, under the name of *heriots*. The feudal system was taking the same course in England before the Conquest, which it pursued among the other nations of Europe; and there seems little doubt, that though the Norman invasion had never happened, the same causes that diffused it over the continent, would have established it in nearly the same form throughout England. In the *second* place, if the feudal system, as Mr. Jopp imagines, had been a 'political arrangement, contrived for the support of paramount, arbitrary control in the 'crown,' how came it to be adopted by a body of high spirited warriors, proud of their independence, and impatient even of just restraint? Does the answer of earl Warenne to the commissioners of Edward 1st imply, that such notions were entertained of the conqueror in an age not far removed in time from his own? When that great baron was required to show his title to his estate (we quote from no author disinclined to prerogative), 'he drew his 'sword and produced *that* as his title; adding 'that William the bastard did not conquer 'the kingdom for himself alone; but that the 'barons, and his ancestor among the rest, 'were joint adventurers in the enterprise.' But in the *last* place, who ever heard of the feudal system being favourable to absolute monarchy? Were Hugh Capet, or Conrad the Salick, absolute sovereigns? Was it for the subversion of an institution propitious to royal authority, that Lewis the Gross, and other kings of France, gave charters of community to towns, in order to form a counterpoise to the exorbitant power of their barons? Was it not rather the downfall of the feudal system that first exalted the royal authority in Europe, and prepared the way for absolute monarchy among the nations of the continent?

"Mr. Jopp, however, is of a different opinion. He has little doubt, that, 'for many 'generations after the Conquest, there was 'no law of paramount effect to the will of the 'prince, when (as it often happened) he was 'disposed to pursue it.' He admits, that 'during the reign of William, the *commune* '*concilium* was held *ex more* at the fixed court 'festivals of Easter, Whitsuntide, and Christ-'mas;' and he adds, 'If any national con-'cern was *discussed* in that general assem-'bly, it was on these occasions. There is, 'however, hardly any account of the pro-'ceedings in them, unless sometimes on ec-'clesiastical affairs; and although all formal 'acts then promulgated were said to be by 'the advice or consent of the archbishops, 'bishops, &c. and barons, there is no instance 'of dissent, or even of debate, upon any mea-'sure intended by the king. Discussion 'might, indeed, be permitted on matters 'purely concerning the church, and in which 'the crown might be indifferent; but there is 'no reason to think that the will or desire of 'the king was ever counteracted.'

"That the debates of the *commune concilium* have been rarely transmitted to us, and that the journals of its proceedings no longer exist, cannot be denied. Most of our early records have perished, and many of the Rolls of Parliament, even so late as the reign of Edward 3rd, are lost. The monks, who were the usual chroniclers for ages after the Conquest, are very brief in their account of transactions not directly affecting themselves and

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ed Classic in the language?—All the verdicts in the world will not make such injustice palatable to an impartial public, or to posterity.

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their monasteries. When they inform us, that the *commune concilium* was held, they seldom add more than a short sentence, stating the business for which it met, and the result of its deliberations. But from this negative evidence, from the brevity of historians, and from the loss of records, it would be a strange conclusion, that no discussions took place in those assemblies, except on church affairs; and that in other matters, the will of the king was the supreme law, which no one ventured to oppose. If such was the real character of these councils, our ancient historians had a singular mode of describing them—'Prisci moris fuit,' says Florence of Worcester, 'ut magnates Angliæ ad natale 'Domini ad curiam regis convenirent, tum 'ad festivitatem celebrandam, tum ad obse-'quium regi præstandum, *et de negotiis regni* '*deliberandum*.' The course of business in one of these courts *de more* is thus described by Eadmer:—'Peractis festivioribus diebus, 'diversorum negotiorum causæ in medium 'duci ex more cœperunt.' We have an ancient account of proceedings of great moment in a council of William 1st, in which there was a difference of opinion between the king and the other members of the council; and where, after much discussion, he was graciously pleased to yield to the wishes of his people, and the prayers of his baronage. In the preamble to the laws ascribed to Edward the Confessor (which is at least as old as the time of Henry 2nd), we are told that the Conqueror, in the fourth year of his reign, by advice of his barons, appointed twelve noble, wise, and learned Englishmen, to be chosen by every county in England, and directed them to appear before himself and council, and there declare, on oath, what were the ancient laws and customs of their country; suppressing nothing, adding nothing, altering nothing. When those commissioners had made their report, the king was inclined to prefer the Danish law to the Saxon, because it was more analogous to the law of Normandy. The commissioners entreated they might preserve the laws of their forefathers, in which they had been educated. The king at first refused; but, after long discussion, 'consilio habito, *precatu baronum, tandem* 'acquievit.' Edinburgh Review, vol. 26, pp. 349—352.

After examining the Forest Laws, and considering how far they are indicative of an absolute government, the learned Reviewer proceeds thus: "The forest laws of the Conqueror and his successors, are therefore no exception to the general principle of our constitution, that the supreme legislative authority has been always vested in the king and in the great council or parliament conjointly,

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

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and not in the king alone. If he made laws and regulations for his forests, it was by sufferance of his great council that he enjoyed this power, and, like other parts of his administration, the use he made of it was subject to the control and revision of that assembly. His laws, when found oppressive, were altered and amended by its interference; and the subordinate power of legislation, in which he had been indulged, was at length taken entirely from him, when repeated experience had shown that it was impossible to guard it from abuse. It is curious to observe with what obstinacy and perseverance our kings contended for this arbitrary branch of their prerogative. The value they set upon it seems to have increased in proportion to the odium in which it was justly held by their subjects. But though they struggled hard to maintain this arbitrary authority, parliament was equally pertinacious, and forced them at length to abandon it." Ib. p. 357.

"But it was not in ecclesiastical affairs alone that the king consulted with his great council. In every part of his administration he had recourse to their advice and assistance. In the disposal of civil as well as ecclesiastical appointments, he applied to them for counsel [Chron. Saxon, A. D. 1107]. A fact incidentally mentioned in the Saxon Chronicle, shows what importance he annexed to the assemblies. When ready to cross the sea against his brother Robert, he [Henry 1st], put off his expedition till after Whitsuntide, because he was unwilling to hold a great council abroad, or to have it meet in England during his absence [Chron. Saxon, A. D. 1106]. We are told that he arrested Ralph, bishop of Durham, his brother's minister, and recalled Anselm by advice of his *Witan*. [Chron. Saxon, A. D. 1100]. Twice he concluded peace at their request; once with his brother Robert [Chron. Saxon, A. D. 1101], and afterwards with the king of France [Florent. Wig. p. 659]. Before his invasion of Normandy, he assembled a council in London, and, to secure their attachment to his person, promised to regulate his government by their advice [Mat. Paris. 1, p. 62]. That his conduct was invariably suited to his professions, it is not necessary for us to show. It is sufficient we have his admission, that it was his duty to consult with his council in the administration of his kingdom. For the question is, not whether our Norman kings were just and mild princes, guiltless of all arbitrary and oppressive acts, but whether there was not always a legal power in England, known and recognized in the constitution, which had a right to control them, and restrain their excesses. 'In populo regendo,' says Fleta, 'superiores habet [rex] ut legem, per quam

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its political connexion with Germany, to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purposes. Domestic concerns are neglected; and with respect to regular law, there is scarcely such a thing."

That the government of this country has,

'factus est rex, et curiam suam, videlicet 'comites et barones.'

"The succession to the crown was twice regulated by the great council in the reign of Henry. It was first settled on his son, and, after the untimely fate of that prince, on his daughter and her heirs [Eadmer, p. 117. Florent. Wig. 657, 662]. Twice he consulted the great council about his own marriage, [Eadmer, p. 56. 136. Florent. Wig. 659. Bromton, p. 997], and once about the marriage of his daughter [Chron. Saxon, A. D. 1109.—Cont. Ingulph. p. 128]; and because he concluded her second marriage without their consent, and contrary to their inclination, it was afterwards argued, that they were absolved from the homage and allegiance they had sworn to her [W. Malms. Hist. Nov. p. 99. Chron. Saxon, A. D. 1127]. When she had quarrelled with her second husband, and returned to her father, the king, who was passionately fond of her, consulted with his great council, whether he should send her back to her husband, who had reclaimed her [H. Hunt. p. 220]. Such was the anxiety of this prince, even in his most private and domestic concerns, to have the advice and approbation of his subjects.

"During the whole of this period of our history, the supreme legislative authority was vested in the great council, conjointly with the king. We do not mean to deny, that proclamations and orders, having the effect of laws, were occasionally issued by the king alone, with advice of his ordinary council. The practice of our government was at that time, and long afterwards, exceedingly irregular in all its parts. If the interference of authority was requisite for any just and necessary purpose, the mere irregularity of the source from which it proceeded excited little jealousy or regard. Men who had arms in their hands, and were conscious of their power, had no dread of precedents injurious to their rights. From this peculiarity in the situation of our ancestors, and from their indifference about forms, many encroachments were made by prerogative, which it was difficult afterwards to repress; and many pretensions advanced for the crown, which it has cost no small trouble since to refute. What we contend for is, that, according to our legal constitution, the supreme legislative authority in England, from the time of the conquest, has been always vested, not in the king alone, but in the king and great council conjointly. This, we apprehend, is satisfactorily proved, not only by innumerable passages of our ancient laws, and by the testimony of our ancient historians, but by the authority of the best and most accredited lawyers of those times. 'Legis habet vigorem,' says Bracton, 'quicquid de consilio et *consensu* magnatum, 'et republicæ communi sponsione, authoritate 'regis sive principis præcedente, justè fuerit 'definitum et approbatum;' and, speaking of the laws and customs of England, he observes, 'quæ quidem cum fuerint approbatæ '*consensu* utentium, et sacramento regum 'confirmatæ, mutari non poterunt nec destrui 'sine communi *consensu* et consilio eorum 'omnium quorum consilio et consensu fuerunt 'promulgatæ.' After such decisive and explicit authority from Bracton, our readers must excuse us from entering on the objections of Mr. Jopp. The charter of Henry 1st is in the form of a grant; but it is attested by bishops, earls, and barons, as well as by the king; and contains passages, which imply that the crown was elective, and expressly declare, that both he and his father exercised their legislative authority by advice of their baronage. The great charter is also in the form of a grant; though every one knows it was extorted by force from king John. 'Acts 'of parliament,' says sir Edward Coke, 'are 'many times in the form of charters or letters 'patent.' Ib. pp. 359—362.

"From this review of our history under the Norman kings, it appears that the great councils had nearly the same functions to perform, which belong to parliament at present. In conjunction with the king, they possessed the supreme legislative power; and even in matters of ecclesiastical discipline, their sanction was required to give operation and force to the canons of the clergy. In disputes between the civil and ecclesiastical authorities, they were appealed to by both parties as the supreme power of the state. While they maintained the rights of the church, and protected the interests of religion, they checked the usurpations of the Roman see, and were considered by the crown as the chief bulwark against that encroaching power. They were a court of appeal from inferior tribunals, and had, in certain cases, an original jurisdiction, both civil and criminal. Ministers of state, as in the case of the bishop of Durham, were amenable to their judgment; and military tenants of the crown, when accused of treason, or even of imperfect performance of their feudal services, were compelled to appear before them, and answer for their conduct. In questions of peace and war; in acts of grace as well as of justice; in appointing to vacant offices, civil and ecclesiastical, their opinion was asked, and their advice followed by the monarch. They were consulted by him in his most domestic concerns; in his own marriage and that of his children, and even in the adjustment of private differences among the members of his family. Their consent was necessary for the

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in consequence of its connexion with the continent, and the continental wars which it has occasioned, been continually loaded with grievous taxes, no man can dispute; and I appeal to your justice, whether this subject has not been, for years together, the constant topic of unreproved declamation and grumbling.

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settlement of the crown, the succession to which, in that age, was but imperfectly regulated by the principle of hereditary descent So early was it an established maxim of the English constitution, that the king must administer his government with the advice and consent of his kingdom.

"According to this view of our ancient constitution, the king and the great council stood in the same relation to each other, in which the king and the two houses of parliament, stand at present. But though the great council had the same constitutional rights with our present parliament, it had not the same means of enforcing them. The crown possessed an immense landed estate, from which it derived an independent revenue sufficient to defray the ordinary charges of the government. If the king disregarded the advice of his great council, there was no remedy to which its members could have recourse, except resistance. He was bound to consult with them in the administration of his government; but when he chose to act in opposition to their opinion, he found no obstacle to his will, unless his measures were such as to produce an armed combination against him. The distribution of justice throughout the kingdom was loose, irregular, and arbitrary. Causes were tried and decided in a hasty and a summary manner by the rude and illiterate suitors of the courts. Power was every where the substitute for right. Men of all ranks were in the daily habit of suffering or inflicting injustice in their intercourse with one another, and were therefore indifferent spectators of solitary acts of violence or oppression, when exercised by their sovereign. The king might often crush or ruin an individual baron, without incurring the indignation, or exciting the resistance of his other vassals. It was only by multiplied provocations that he would rouse a general or effective opposition to his authority. It is in this way we are to explain the many arbitrary acts of our Norman kings, which passed without punishment or animadversion, and which have since been used by prerogative writers as precedents and arguments for slavery. It was at intervals only that the great council exerted its power to check these tyrannical excesses of the king and his ministers." Ib. pp. 363, 364.

"But, notwithstanding the enactment of Magna Charta, and the growing poverty of the crown, through the heedless though fortunate dilapidation of its demesnes, the independent revenue of the king was still considerable; and it was only when reduced to difficulties, by his extravagance, or by the expense of his continental wars, that he was compelled to have recourse to his great council or parliament, as it now began to be called, for relief in his necessities; and it was on such occasions only, that these assemblies were able to exert with effect their constitutional rights, without appealing, like their ancestors, to the sword. Innumerable contrivances were devised by the crown to escape from this control; but, though the vigilance of parliament sometimes slumbered, its supreme authority was never questioned, till an unhappy race mounted the throne, whose vain pretensions led to that memorable civil war, which levelled the pride of prerogative before the majesty of the people.

"The reign of the Tudors is commonly and justly supposed to be the period when the power of the crown in England had attained its highest point of elevation. Let us hear what was said at the time, of parliament, by sir Thomas Smith, minister of state, and ambassador under Henry 8th, and his children. 'The most high and absolute power of the 'realme of Englande,' says he, 'consisteth in 'the parliament.—All that ever the people of 'Rome might do, either in *comitiis centuriatis* 'or *tributis*, the same may be done by the 'parliament of Englande, which representeth 'and hath the power of the whole realme, 'both the head and the bodie.'"—*Edin. Review*, vol. xxvi. pp. 366, 367.

"The whole of parliamentary business," says lord chancellor West, in his Enquiry into the origin and manner of creating peers, "may be reduced under the two general heads of *advice* and *consent*; so far as the consent of the *barons* was wanting to any proposition that might be made unto them, their presence in parliament, and signification of their assent, was absolutely necessary to enable the king to do some act which by law could not be done without their consent. And as to the matter of advice, their attendance is to be considered only as a feudal service, which by the tenure of their lands, and the oath of homage they had taken, they were obliged to pay unto the king as to the superior lord of their *fiefs*. For it was a notion common to all the *Gothic* nations, that their kings had no right to any duties or services whatsoever, but what were purely *feudal*. Nor did any man think himself obliged to the performance of any further service, than was annexed to the tenure of his lands. And therefore as to all other things that were *extra-feudal*, the particular consent of the parties, who were to perform them either in person or by their representatives was absolutely requisite. Now it is absurd to suppose that the conqueror's native *Normans*, and much more so that the foreigners, who were no inconsiderable part of his army, flushed with the merit of conquering a kingdom for their general, would suffer them-

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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 in court a sermon written

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selves to be worse used in *England*, than they had been in their own country. That prince therefore (who was not likely to abate any thing of his just prerogative), never pretended to any thing from his followers that was not founded upon the known principles of the feudal law, as appears by the laws which he enacted; 'Volumus etiam ac firmiter præci-'pimus, ut omnes liberi homines totius mon-'archiæ regni nostri prædicti habeant et 'teneant terras suas et possessiones suas benè 'et in pace liberè ab omni exactione injustâ 'et ab omni tallagio, ita quòd nihil ab eis 'exigatur vel capiatur nisi servitium suum 'liberum quod de jure nobis facere debent et 'facere tenentur, et prout statutum est eis et 'illis a nobis datum et concessum, jure here-'ditario in perpetuum per commune conci-'lium totius regni nostri.' *Enquiry, &c. p. 7, Edit. of* 178*l*.

"When no prince in Europe had as yet imagined that he had a right to rule in all things without a parliament or assembly of estates; provided the consent of the persons, who were either to pay or perform any thing *extra-feudal* was *bonâ fide* applied for and obtained, they were not over solicitous concerning the manner in which it was applied for and obtained. But as the people grew jealous of the crown's designing to impose contributions, &c. without their consent, these (otherwise) formalities were thought necessary to be regulated and fixed. For certainly such things have been formerly done by each House in parliament, and that without any complaint, which if they were now to happen, would be universally condemned as unparliamentary and illegal. Both Lords and Commons have separately and by themselves given aids and subsidies unto the crown; as for instance, in 18 Ed. 3, the Lords granted to the king the tythe of all the corn, &c. growing upon their demesnes; the Commons at the same time granting nothing, nor anywise concerning themselves, with what the Lords thought fit to grant out of their own estates. At other times the knights of shires separating themselves, as it were, from the rest of the Commons, and uniting themselves to the Lords, have granted a subsidy, and the representatives of cities and boroughs have likewise, separately by themselves, granted the subsidies to the crown, as appears by a writ for the collection of a subsidy in 24 Ed. 1, 'Rex. &c. Cum Comites, Barones, Milites, '&c. nobis, &c. fecerunt undecimam de om-'nibus bonis suis mobilibus. Et cives et 'Burgenses, &c. septimam de omnibus bonis 'suis mobilibus, &c. nobis curialiter conces-'serint, &c.'

"But further, when any affair happened which was not universal, but affected only particular persons, it was common for them only to be summoned. Hence is it, that we see among the rolls several writs to this purpose, as, e. g. *Summonitiones ad colloquium, de veniendo ad consilium, &c.* Which, though they have sometimes been mistaken for parliamentary writs, are yet nothing but summons of particular persons to consult, and to contribute towards the expense of an affair, in which they only (or at least chiefly) were concerned. As in 35 Ed. 3, there is a writ directed to Humphrey earl of Northampton (which Dugdale however has printed in his collection of writs of summons to parliament), wherein, after reciting the confusion the affairs of Ireland were in, and that he and several other English lords had large possessions in that kingdom, and were therefore more particularly obliged to the defence of it, it follows 'Volumus vobiscum et cum aliis de 'eodem regno (Angliæ scilicet) terras in dictâ 'terrâ habentibus colloqium habere et trac-'tatum vobis in fide et ligeanciâ, &c. Man-'damus, &c.' But that the reader may fully see, how strictly the principle of no persons being to be taxed without their own consent was observed, he must know, that upon the same occasion writs were likewise directed even to the ladies, who were proprietors of land in Ireland, commanding them to send their proper attorneys, to consult and consent to what should be judged necessary to be done, in relation to that affair, 'Rex, &c. 'Mariæ comitissæ Norfolc. salutem, &c. 'Vobis in fide et ligeanciâ, &c. mandamus 'quod—aliquem vel aliquos de quibus confida-'tis apud Westmon. mittatis—ad loquendum 'nobiscum—super dictis negotiis—et ad fa-'ciendum et consentiendum nomine vestro, 'super hoc quod ibidem contigerit ordinari.' If this equity was therefore observed with respect to particular persons, it is no wonder that it was always thought necessary, as well as reasonable, to consult the whole kingdom in parliament, upon all affairs and demands, which were extra-feudal, and of a general concern. And therefore that great king, Ed. 1st, was so sensible of the justice of this way of proceeding, that he inserted in his writs of summons to parliament, as a first principle of law, and as his reason for summoning parliaments, *That in every affair which related to the whole kingdom, the consent of the whole kingdom ought to be required.* The words are so noble, that I may be forgiven if I transcribe them. 'Rex, &c. Sicut lex justissima, pro-'vidâ circumspectione sacrorum principum 'stabilita, hortatur, ut quod omnes tangit ab 'omnibus approbetur, sic et innuit evidenter 'ut communibus periculis per remedia pro-

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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.

'visa communitèr obvietur." West's Enquiry, &c. pp. 8, et seq.: See also pp. 20 et seq. of the same treatise.

"Bracton and Fortescue, the two most learned, and almost the only *learned* of the ancient lawyers, are both express, not only to our free and limited government, but they deduce the original of civil power from the people." Doctor Warburton to Mr. Hurd, August 31st, 1755. Letters from a late eminent Prelate to one of his Friends, p. 193, 2nd edition.

"Hume has outdone himself in this new history, in showing his contempt of religion. This is one of those proof charges which Arbuthnot speaks of in his treatise of *politically-lying*, to try how much the public will bear. If his history be well received, I shall conclude that there is even an end of all pretence to religion. But I should think it will not: because I fancy the good reception of Robertson's proceeded from the *decency* of it.—Hume carries on his system here, to prove we had *no constitution* till the struggles with James and Charles procured us one. And he has contrived an effectual way to support his system, by beginning the History of England with Henry 7th, and *shutting out* all that preceded, by assuring his reader that the earlier history is worth no one's while to inquire after." Warburton to Hurd, Letter CXXVII, March 3d, 1759.

"They that found absolute monarchy upon the title of the sword, make their heroes, who are the founders of such monarchies, arrant drawcansirs, and forget they had any officers and soldiers that fought on their side in the battles they won, or assisted them in the subduing, or shared in possessing, the countries they mastered. We are told by some, that the English monarchy is founded in the Norman conquest, and that our princes have thereby a title to absolute dominion: which if it were true *(as by the history it appears otherwise)*, and that William had a right to make war on this island; yet his dominion by conquest could reach no farther than to the Saxons and Britons that were then inhabitants of this country. The Normans that came with him, and helped to conquer, and all descended from them, are freemen, and no subjects by conquest, let that give what dominion it will. And if I, or any body else, shall claim freedom, as derived from them, it will be very hard to prove the contrary: and it is plain, the law, that has made no distinction between the one and the other, intends not there should be any difference in their freedom or privileges." Locke on Civil Government, ch. 16, s. 177. Works, vol. 5, p. 445, 8vo. ed. of 1801.

"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 burthensome, more auspicious, stable, and incorruptible

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"The manner of obtaining these charters, [Magna Charta and the Charta de Foresta], and the right the people have to the liberties contained in them, have been the subject of much controversy between the favourers of arbitrary power and the assertors of freedom: the one contending that they were the fruits of rebellion, extorted by force and fraud, from a prince unable to resist, and therefore revocable by him or his successors; and the others, that they were the ancient privileges of the nation, which John had, contrary to his coronation oath, invaded, and which they therefore, had a right to reclaim by arms. That they were obtained by force is undoubted, and that John and many of his successors looked upon them, therefore, as of no validity, is as clear, even from the argument lord Coke brings for their great weight, their being confirmed above twenty times by act of parliament. To what purpose so many confirmations, if the kings had not thought them invalid, and had not, on occasions, broken through them? and were it as clear that they were not the ancient rights of the people, it must be owned they were extorted by rebellion. But that they were no other than confirmations, appears very plainly from the short detail I have heretofore given of the constitution and spirit of the monarchy of the Saxons and all other northern nations." Sullivan's Lectures, p. 340, 4to. 1776.

I do not find in the recent editions of Hume's Essays, the passage cited in the text by Mr. Erskine. In the Essay, however, called Politics a Science p. 29, 12mo edit. of 1741, will be found a sentence expressing the same sentiment in nearly the same words.

The opinions promulgated by Mr. Hume, in his History of England, respecting the nature of our constitution antecedent to the seventeenth century, have been examined and criticized with much learning, acuteness, and ability by professor Millar in the concluding chapter of his "Historical View of the English Government from the Settlement of the Saxons in Britain to the Accession of the House of Stewart."

To the authorities already cited, it may not be amiss to add the sentiments of Edmund Burke:

"Our oldest reformation," says he, "is that of Magna Charta. You will see that sir Edward Coke, that great oracle of our law, and indeed all the great men who follow him, to Blackstone [See Blackstone's Magna Charta, printed at Oxford 1759], are industrious to prove the pedigree of our liberties. They endeavour to prove, that the ancient charter—the Magna Charta of king John, was con-

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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 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 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 ommitted in the information, and in his speech; it is this: "In the debate on engaging in the Russian and Turkish war, the majority in the House of Peers in favour of it was upwards of ninety, when in the other House, which is more than double its numbers, the majority was sixty-three."

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 that body useless.—They have now voted themselves so, and the whole hope of reformation is cast upon us,"* *(speaking of the House of Commons).* This sentiment Mr. Burke not only expressed in his place in parliament, where no man can call him to an account; but it has been since repeatedly printed amongst his works.—Indeed his opinion of BOTH THE HOUSES OF PARLIAMENT, which I am about to read to you, was originally published as a separate pamphlet, and applied to the settled habitual abuses of these high assemblies. Remember, I do not use them as *argumenta ad hominem*, or *ad invidiam* against the author; for if I did, it could be no defence of Mr. Paine.—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

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nected with another positive charter from Henry 1st, and that both the one and the other were nothing more than a reaffirmance of the still more ancient standing law of the kingdom. In the matter of fact, for the greater part, these authors appear to be in the right; perhaps not always: but if the lawyers mistake in some particulars, it proves my position still the more strongly; because it demonstrates the powerful prepossession towards antiquity, with which the minds of all our lawyers and legislators, and of all the people whom they wish to influence, have been always filled; and the stationary policy of this kingdom in considering their most sacred rights and franchises as an *inheritance*." Reflections on the French Revolution.

* A late eminent and pious minister at York. *Erskine's Speeches.*

* See New Parl. Hist. Vol. XXI. p. 70.

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

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gentlemen of the House of Commons have an interest equally strong, in sustaining the part of that intermediate cause. However they may hire out the *usufruct* of their voices, they never will part with the *fee and inheritance.* Accordingly those who have been of the most known devotion to the will and pleasure of a court, have at the same time been most forward in asserting a high authority in the House of Commons. *When they knew who were to use that authority, and how it was to be employed, they thought it never could be carried too far.* It must be always the wish of an unconstitutional statesman, that a House of Commons, *who are entirely dependent upon him, should have every right of the people dependent upon their pleasure.* IT WAS SOON 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 operated without noise and without violence,—an influence which converted the very antagonist into the instrument of power,—which contained in itself a perpetual principle of growth and renovation; and which the distresses and the prosperity of the country equally tended to augment,—was an admirable substitute for a prerogative, that, being only the offspring of antiquated prejudices, had moulded into its original stamina irresistible principles of decay and dissolution. The ignorance of the people is a bottom but for a temporary system; 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 parliament itself. If they have any evil design to which there is no ordinary legal power commensurate, they bring it into parliament. *In parliament the whole is executed from the beginning to the end. In parliament the power of obtaining their object is absolute; and the safety in the proceeding perfect; no rules to confine, no after-reckonings to terrify.* Parliament cannot with any great propriety punish others for things in which they themselves have been ACCOMPLICES. Thus the control of parliament upon the executory power is lost; because parliament is made to partake in every considerable act of government. *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: 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. Frequent and correct lists of the voters in all important questions ought to be procured.

"By such means something may be done. By such means 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 were possible to read the whole of this most important volume—but the consequences of these truths contained in it were all eloquently summed up by the author in his speech upon the reform of the household.

"But what I confess was uppermost with me, what I bent the whole force of my mind to, was the reduction of that corrupt influence which is itself the perennial spring of all prodigality, and of all 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."§

* Burke's Works, vol. 2. p. 229, ed. of 1808.
† Ibid. p. 286.

* Burke's Works, vol. 2. p. 291, 8vo. 1808.
† Ibid. p. 296. ‡ Burke, *ut sup.* p. 325.
§ See New Parl. Hist. Vol. XXI. p. 2.

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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 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 represented 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 representatives; 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 representatives:

"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 pre-eminent 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

* Mr. Pitt.

† Mr. Erskine took up a book.

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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 soon," 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 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 Italian eunuch, a mountebank, a fiddler, a player, or any regular practitioner of that tribe.—The Roman emperors, almost from the beginning, threw themselves inro such hands; and the mischief increased every day, till the decline, and final ruin of the empire. 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 offices about his person, a great number of his first nobility; and it is rather an useful prejudice that gives them a pride in such a servitude. Though they are not much the better for a court, a court will be much the better for them.—I have, therefore, not attempted to reform any of the officers of honour about the king's person."*

What is all this but saying that a king is na animal so incurably addicted to low company, as generally to bring on by it the ruin of nations; but nevertheless, he is to be kept as a necessary evil, and his propensities bridled by surrounding him with a parcel of miscreants still worse if possible, but better than those he would choose for himself.—This, therefore, if taken by itself, would be a most abominable and libellous sarcasm on kings and nobility: but look at the whole speech, and you observe a great system of regulation; and no man, I believe, ever doubted Mr. Burke's attachment to monarchy. To judge, therefore, of any part of a writing, THE WHOLE MUST BE READ.

* See New Parl. Hist. Vol. XXI. pp. 53, 54.

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, and laid it down again without reading from it, saying something to the gentleman who sat near him, in a low voice, which the reporter did not hear.*]

Is this the way to support the English constitution?—Are these the means by which Englishmen are to be taught to cherish it?—I say, if the man upon trial were stained with blood instead of ink,—if he were covered over with crimes of which human nature would start at the naming, the means employed against him would not be the less disgraceful.

For this notable purpose then, Harrington, *not above a week ago*,* was handed out to us as a low, obscure wretch, involved in the murder of the monarch, and the destruction of the monarchy, and as addressing his despicable works at the shrine of an usurper.—Yet this very Harrington, this low blackguard, was descended (you may see his pedigree at the Herald's office for sixpence) from eight dukes, three marquisses, seventy earls, twenty-seven viscounts, and thirty-six barons, sixteen of whom were knights of the garter; a descent which I think would save a man from disgrace in any of the Circles of Germany.—But what was he besides?—A BLOOD-STAINED RUFFIAN? —O brutal ignorance of the history of the country! He was the most affectionate servant of Charles the 1st, 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 stayed with him while a prisoner in the Isle of Wight;—came up by stealth to follow the fortunes of his monarch and master;—even hid himself in the boot of the coach when he was conveyed to Windsor;—and ending as he began, fell into his arms and fainted on the scaffold.

* A pamphlet had been published just before, putting T. Paine and Harrington on the same footing—as obscure blackguards. *Editor of Erskine's Speeches.*

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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 plagiary from any thing human; he looked up for light and expression, as he himself wonderfully describes it, by devout prayer to that great Being, who is the source of all utterance and knowledge; and who sendeth out his seraphim with the hallowed fire of his altar to touch and purify the lips of whom he pleases.—"When the cheerfulness of the people," says this mighty poet, "is so sprightly up, as that it 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 corruption, 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 fountain itself of heavenly radiance; while the whole noise of timorous and flocking birds, with those also that love the twilight, flutter about, amazed at what she means, and in their envious gabble would 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: methinks I see this noble and puissant nation, not degenerated and drooping to a fatal decay, but casting off the wrinkled skin of corruption to put on again the vigor of her youth.—And it is, because others as well as myself see this, that we have all this uproar:—France and its constitution are the mere pretences.—It is, because Britons begin to recollect the inheritance of their own constitution, left them by their ancestors:—it is, because they are awakened to the corruptions which have fallen upon its most valuable parts, that forsooth the nation is in danger of being destroyed by a single pamphlet.—I have marked the course of this alarm: it began with the renovation of those exertions for the public, which the alarmists themselves had originated and deserted; and they became louder and louder when they saw them avowed and supported by my admirable friend Mr. Fox; the most eminently honest and enlightened statesman, that history brings us acquainted with: a man whom to name is to honour, but whom in attempting adequately to describe, I must fly to Mr. Burke, my constant refuge when eloquence is necessary:—a man who, to relieve the sufferings of the most distant nation, "put to 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

* Areopagitica. See Milton's Prose Works, by Birch, vol. 1, p. 168, 4to edit. of 1753.

† Speech on the motion for going into a committee on Mr. Fox's India Bill. New Parl. Hist. Vol. XXIII, p. 1384.

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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, as I have done today, maintain the dignity of my high profession, and perform as I understand them, all its important duties.

[Mr. Attorney-General rose 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].

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575. Proceedings against JOHN FROST for Seditious Words: 33 GEORGE III. A. D. 1793. [Taken in Short-hand by Ramsey.*]

INDICTMENT.

Of Hilary Term, in the 33d year of the reign of King George the Third.

Middlesex, to wit. BE it remembered, that on Tuesday next after the octave of the purification of the blessed Virgin Mary, in the 33d year of the reign of our sovereign lord George the third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. in the court of our said lord the king, before the king himself, at Westminster, in the county of Middlesex, upon the oath of twelve jurors, good and lawful men of the said county of Middlesex, now here sworn and charged to inquire for our said lord the king, and the body of the same county—It is presented as followeth, (that is to say) Middlesex (to wit.) The jurors for our lord the king, upon their oath, present that John Frost, late of Westminster, in the county of Middlesex, gentleman, being a person of a depraved, impious, and disquiet mind, and of a seditious disposition, and contriving, practising, and maliciously, turbulently, and seditiously intending the peace and common tranquillity of our lord the king, and of his kingdom, to disquiet, molest and disturb, and to bring our most serene sovereign lord George the third, now king of Great Britain, &c. into great hatred and contempt, with all his liege and faithful subjects of this realm, and to alienate and withdraw the affection, fidelity, and allegiance of his said majesty's subjects from his said majesty, and to excite and move his said majesty's subjects to hatred and dislike of the government and constitution, established within this realm, he, the said John Frost, his most wicked contrivances, practices, and intentions aforesaid, to compleat, perfect, and render effectual, on the 6th day of November, in the 33d year of the reign of our sovereign lord George the third, now king of Great Britain, &c. at the parish of St. Mary-le-bone, otherwise Marybone, in the county aforesaid, in a certain discourse, which the said John Frost, then and there had with divers subjects of our said lord the king, of and concerning our said lord the king, and the government and constitution established within this realm, in the presence and hearing of divers liege subjects of our said lord the king, then and there present, maliciously, unlawfully, wickedly,

* I have also availed myself of the report published in Erskine's Speeches by Ridgeway.

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and seditiously did say, assert, affirm, and pronounce, and with a loud voice did publish these malicious, seditious, and opprobrious English words following, (that is to say) I (meaning the said John Frost) am for equality; I (meaning the said John Frost) see no reason why any man should not be upon a footing with another, it is every man's birth right; and that the said John Frost being thereupon then and there asked by one of the persons then and there present, how he, the said John Frost, dared to hold such language in any public or private company, and what he meant by equality; he, the said John Frost, then and there wickedly, maliciously, and seditiously, in the presence and hearing of those subjects, replied in these words, (that is to say) why, no kings; and thereupon the said John Frost being further asked, if he meant no kings in this country, he, the said John Frost, wickedly, maliciously, and seditiously, in the presence and hearing of those subjects, answered in these words, (that is to say) "Yes, no king, the constitution of this country is a bad one," (meaning thereby, that he the said John Frost was for having no king in this realm, and that the constitution of this realm was a bad one in having a king,) to the great scandal and 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 jurors aforesaid, upon their oath aforesaid, do further present, that the said John Frost being such wicked and evil disposed person as aforesaid, and further contriving and intending, as aforesaid, afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in the county aforesaid, in another discourse, which the said John Frost then and there had with divers liege subjects of our said lord the king, of and concerning our said lord the king, and the government established within this realm, in the presence and hearing of divers other liege and faithful subjects of our said lord the king, then and there present, maliciously, seditiously, and wickedly did say, assert, affirm, and pronounce, and with a loud voice did declare and publish these other malicious and seditious English words following (that is to say), I (meaning the said John Frost) am for equality; and the said John Frost being thereupon, then and there asked by one of the persons then and there present, if he, the said John Frost meant thereby equality, and no king in this country; he, the said John Frost then and there, in the presence and hearing of those subjects, maliciously, and seditiously replied, and with a loud voice published these words following (that is to say), Yes, no king, and there ought to be no kings, (meaning thereby amongst others, that there ought to be no king in this realm) to the great scandal and 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 jurors aforesaid, upon their oath aforesaid, further present that the said John Frost, being such wicked and evil disposed person as aforesaid, and wickedly, and seditiously devising and intending as aforesaid, afterwards (to wit) on the same day and year last aforesaid, at the parish aforesaid, in the county aforesaid, in the presence and hearing of divers other liege and faithful subjects of our said lord the king, then and there present, maliciously, seditiously, and wickedly did utter, and with a loud voice pronounce, assert, and affirm, that there ought to be no king in this country, (meaning this kingdom) to the great scandal and contempt of our said lord the king and his laws, to the evil example of all others in the like cases offending, and against the peace of our said lord the king, his crown and dignity.

Witnesses,
JOHN TAITT, } Both sworn in Court.
PAUL SAVIGNAC, } True Bill.

To this indictment, the defendant on the 15th day of February, 1793, gave bail, and pleaded Not Guilty.

Monday, May 27th, 1793.

As soon as the court (which was a very crowded one) was opened, the Special Jury were called over; eleven only appearing, the attorney-general prayed a tales, and the name of William Powell being misnamed, the associate applied to Mr. Frost, to know if he had any objection to admit Mr. Powell to be sworn as one of the jury? Mr. Frost replied, Mr. Powell was unknown to him, and perfectly indifferent, and therefore he desired the court would determine it.

The following Special Jury were sworn,

Thomas Brookes, of Bedford-square, *Foreman.*
Joseph Ballard, of Bedford-row,
Edward Phillips, of Great James-street,
William Blasson, of Hatton-garden,
Thomas Langton, of the same,
Thomas Dea, of Percy-street,
Peter Dawson, of Goodge-street,
Thomas Oliver, of Devonshire-street,
Thomas Sandford, of Paradise-street,
Richard Carter, of Paddington-street,
Joseph Hobbs, of Margaret-street,—*Esquires.*
Michael Robson, *Talesman.*

The Indictment having been opened by Mr. *Wood*, the Attorney General, *Sir John Scott*, 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

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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 men 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 mention to you, that he is now to be tried upon the second indictment which a grand jury of this country has found. When the first indictment was carried before the grand jury, this defendant was abroad; a warrant was issued for his apprehension, and he returned to this country in the month of February last: he appeared to the indictment, and gave bail to it; by some accident he had been indicted by a name which does not belong to him, and pleaded the misnomer in abatement. Another indictment was carried before the second grand jury, who found that second indictment without any hesitation, and it is in consequence of that proceeding that he is called upon to day to deny the truth of the charges which this indictment 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 with which a number of respectable persons acted 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 con-

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tinue 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 intrusted 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 his 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

* "It" [High Treason] "is distinguishable from Sedition, which is now understood in a more general sense, and extends to other offences, not capital, of like tendency, but without any actual design against the king in contemplation; such as contempts of the king and his government, riotous assemblies for political purposes, and the like: and therefore a charge of exciting sedition or doing any thing seditiously, does not amount to a charge of high treason. But all such contempts, though not amounting to high treason, as not being connected with any actual design on foot against the safety of the king, are yet highly criminal, and punishable with fine, imprisonment, and sometimes with the pillory." "In general, it is sufficient to observe, that all contemptuous, indecent, or malicious observations upon his person or government, whether by writing or speaking, or by tokens calculated to lessen him in the esteem of his subjects, or weaken his government, or to raise jealousies of him amongst the people, will fall under the notion of seditious acts, as well as all direct or indirect acts or threats calculated to overawe his measures or disturb the course of his government, not amounting to overt acts of high treason, or otherwise punishable by particular statutes. A second offence of this sort was, by a late temporary act, 36 Geo. 3, c. 7, s. 2, made punishable with transportation: but that is now spent." East's Pleas of the Crown, c. 2, s. 1.

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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 Foster, as containing the principle upon which, though the law holds seditious expressions as an exceeding high misdemeanor, it has not thought proper to consider them as a crime of the magnitude of high treason. He says, "As to mere words, supposed to be treasonable, they differ widely from writings in point of real malignity and proper evidence. They are often the effect of mere heat of blood, which in some natures, otherwise well disposed, carrieth a man beyond the bounds of decency or prudence; they are always liable to great misconstruction from the ignorance and inattention of the hearers, and too often from a motive truly criminal." "*Loose words, therefore, not relative to any act or design*, are not overt acts of treason, but words of advice or persuasion, and all consultations for the traitorous purposes treated of in this chapter, are certainly so; they are uttered in contemplation of some traitorous purpose, actually on foot or intended, and in prosecution of it." *

Gentlemen of the jury, it is competent to Mr. Frost, and he will give me leave to say, I think it is incumbent upon him, having made use of words of this sort, to state to you, that in the sentiment which that language conveys, he does not express those sentiments by which his general conduct in life is regulated. For aught I know, he is otherwise well disposed; and I am sure, if evidence of that sort is given to you, you will feel the propriety of giving to it, not only a candid, but you have my leave to give it the very utmost consideration that can be possibly 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;

* See Foster's Crown Law, p. 200, 3rd edition, of 1792.

"Whatever doubts," says Mr East, "may have been formerly entertained, or however the law may have been stretched in arbitrary times to reach particular men, it is now settled that bare words not relative to any act or design, however wicked, indecent, or reprehensible they may be, are not in themselves overt acts of high treason, but only a misprision, punishable at common law by fine and imprisonment, or other corporal punishment. They are frequently spoken in heat without any intention to act accordingly; they are still more frequently mistaken or misremembered; and sometimes it is to be feared the sense of them knowingly perverted. It is one of the causes mentioned in the preamble of the statute 1 Mar. st. 1, c. 1, for repealing all intermediate treasons created since the stat. 25 Ed. 3, on account of the severity of those laws that made words only, without other fact or deed, to be high treason." Pleas of the Crown, c. 2, s. 55.

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God forbid the time should ever come, and I do not believe it ever can come, when the legislature, acting upon the same principle, shall be obliged to say, that if it is at this hour high treason for men deliberately to affirm that the king and parliament of this country cannot regulate the succession to the crown, it shall be innocent for men to say that the king and parliament of this country have no right to continue any government in this country. Why then, gentlemen, if this doctrine of Equality and No King has been attended with such consequences as it is notorious to all mankind it has been attended with, the notoriety of the fact renders it incumbent upon those, whose duty it is, to bring such defendants before a jury of their country, for that jury to say, as between the country and individuals, whether, under such circumstances as will be laid before you, he is to be publicly permitted to hold such doctrines as those which are stated, in a manner that seems to evince that they are not stated for any useful purpose; but that they are stated for the purpose of trying, whether there is any law in this country that will secure the government of the country from attacks, which mean nothing but to display the audacity with which men dare to attack that government. And if you shall be convinced, upon the whole of the evidence before you, that the case is such as I have stated it to be, this I am sure of, that you will duly weigh the consequences of the verdict, however you shall be disposed to give it, for the crown, or for the defendant; and I am sure, *the crown, upon the temperate consideration of what the jury does, will not be dissatisfied with that verdict*, let it be what it may. The constitution of this country, if it be excellent, if it has really handed down to us those great and invaluable blessings, which, I believe, ninety-nine persons out of a hundred are convinced it has, and if it be a matter of anxiety to transmit them to our posterity, you will remember that the stability of those blessings finally and ultimately depends upon the conduct of juries. It is with them, by their verdicts, to establish their fellow-subjects in the enjoyment of those rights; it is with them to say in what cases those rights have been invaded; and the same constitution that has left it to them to say in what cases those rights have been invaded, has also bound every honest man to say, that when they have given their decision upon it, they have acted properly between the country and the individual who is charged with the offence.

Gentlemen, under these circumstances, I shall proceed to lay the case before you, and I have only again to repeat, if you shall find, upon a due consideration of this case, that this is a 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, sworn.—Examined by Mr. *Solicitor General.*

Do you know Mr. John Frost?—I never saw him but that evening in my life.

What evening?—The 6th of November last.

Where were you that evening?—In the Percy coffee-house.

Who was with you?—Mr. Paul Savignac.

Were there any other persons in the coffee-house?—Yes, several gentlemen.

Can you name any?—Mr. Yatman was there; Mr. Bullock; there were not many that I knew.

Did you see Mr. Frost there?—Yes.

At what time?—About ten in the evening.

Where did Mr. Frost come from?—He came from a room above stairs with several gentlemen into the coffee-room.

What did you first perceive with respect to Mr. Frost?—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?—By Mr. Yatman or some of the other gentlemen; he said, he was very lately returned.

Mr. *Sol. Gen.* What did he say more?—He asked him what they were doing there, and he said, things were going on very well there, they were doing very well.

Did you hear him say any thing more?—That he should very shortly return there.

What more?—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?—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.

Did he say any thing more?—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,

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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.

How long did he continue there?—I suppose not above five minutes.

Cross-examined by Mr. *Erskine*.

You went, I suppose, to the coffee-house just in the ordinary course of your recreation, I take for granted?—It is a coffee-house I very seldom go to.

How came you there that night?—I went there to sup.

You have been there often?—Very often.

Then of course you went to have your supper and read the newspaper?—Exactly so.

I take it you remember all the conversation that passed between Mr. Savignac and you that night?—I believe Mr. Savignac wrote down to the same effect.

I dare say you wrote down this?—I wrote none down.

But do you recollect the conversation between Mr. Savignac and you?—No.

Mr. Frost had been above stairs?—Yes.

With whom he was dining you do not know?—No.

Can you get out of that room without going through the coffee-room?—I don't know.

Don't you know the contrary?—I do not.

You must have seen people coming from above stairs, having frequented that house?—Yes.

Then you know the way from up stairs is through the coffee-room?—Yes.

You say, you are not certain that Mr. Frost addressed himself first to Mr. Yatman?—No, I am not.

The first of the conversation, you will venture to swear to, was a question put by Yatman to him?—Yes.

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?—That I cannot say.

What time was it?—About ten in the evening, rather before than after.

Mr. Frost was perfectly sober I suppose?—I cannot say whether he was or not.

There was a good dinner, where a number of gentlemen had been present?—I cannot say.

You saw other gentlemen come down?—Yes.

Were they not all drunk?—They might be, I don't know.

He asked Mr. Frost how long he had been from France, and he told him he was lately returned; the conversation went about France?—Yes.

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?—I cannot say, I did not attend to it till he exalted his voice, and said, he was for equality.

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?—No.

Then you did not know whether the conversation respected France or England; but hearing the word Equality, you were all a-gog?—No, I was not all a-gog.

You were in another part of the coffee-house?—I was in the next box.

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?—Yes.

You said that in a tone of voice that showed you felt yourself insulted?—Yes.

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?—Yes, I believe they did.

At this time you make use of an expression,—it probably may be owing to my dulness,—but I cannot understand you; you said, he seemed to wish to retract, but still continued to say the same thing over again?—He did not say much.

You said, he ought to be put upon the fire, you know?—Yes.

Somebody talked of sending for a constable?—Yes; and he said, every man there was a constable.

Mr. *Sol. Gen.* Did Mr. Frost appear to be disabled by liquor?—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.

Did he repeat the words more than once?—I don't think he did.

You said, he wished to retract, but still continued, that he was for no king and equality?—He did not repeat that twice.

What did you mean by saying, he wished to retract?—I rather thought he was sorry for what he had said; that is what I mean by it.

Paul Savignac sworn.—Examined by Mr. *Bearcroft*.

Do you remember being at the Percy coffee-house with Mr. Taitt, upon the 6th of November last?—Yes.

Do you remember seeing Mr. Frost there?—I saw a person whom they called Mr. Frost, but I never saw him before nor since.

That gentleman who sits there?—(pointing to Mr. Frost).—I cannot say.

What time in the evening did you see him in the room?—Between nine and ten.

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Did you hear any particular expressions he made use of?—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?—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.

Did you see him when he first came down into the public coffee-room?—I don't know that I might. I saw him soon after I saw Mr. Yatman.

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?—Not ten minutes; not more I am sure.

I would ask you whether this conduct and these expressions of his produced any, and what kind of notice in the company?—That every gentleman there was under the same idea with me, that he ought to be kicked out of the coffee-room.

Cross-examined by Mr. Serj. *Runnington*.

You don't live in that neighbourhood, do you?—No, in Carshalton, in Surrey.

How long had you been in the coffee-room, before you saw Mr. Frost come in?—He was up stairs.

Was he obliged to come through the coffee-room from up stairs to go into the street?—I cannot say.

How far were you from Mr. Yatman?—They were walking up the coffee-room close to me.

Did any thing pass from Mr. Yatman to Mr. Frost?—Yes.

Before Mr. Frost spoke at all?—No.

Do you recollect Mr. Yatman saying, as he came down stairs, "Well, Mr. Equality, where are you going to?"—No, I do not.

Matthew Yatman sworn.—Examined by Mr. *Baldwin*.

Were you at the Percy coffee-house, on the 6th of November, in the evening?—I was.

Did you see Mr. Frost there?—I did.

You have long known Mr. Frost?—Mr. Frost was in the commission for watching and lighting the street in which I live, and I am one of the commissioners.

Tell us what passed between Mr. Frost and you at the Percy coffee-house?—He came from the room where he dined, and into the coffee room; he came up to where I was, and knowing he was lately come from France, I said, Well, how do they go on in France? He seemed to be stimulated at the question, and he extended his arm, and exalted his voice sufficiently to be heard up stairs, if the door had been opened, "I am for equality and no king."—"What!" says I, "no king in this country?"—"No king!" as loud as he could holla.

Did any thing more pass between you and your old friend?—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 were so enraged at him, I supposed they would have kicked him out off 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.

Did he say any thing more that you recollect?—No, it was all confusion after that.

And the manner of it was as you have described it?—Yes.

With vehemence?—Yes, he was very warm.

Cross-examined by Mr. *Erskine*.

It was all general confusion after Mr. Taitt had interfered?—Yes.

I believe Mr. Frost said this extremely loud, that he might have been heard up stairs?—I am just of that opinion.

And then it was that Mr. Taitt interfered?—Yes.

After that all was confusion?—Yes.

Mr. *Baldwin*. Though there was confusion afterwards, there was not when he spoke those words?—No.

Did he speak it coolly or otherwise, excepting the warmth of which you have spoken? How was he in his understanding?—He spoke it very distinctly, and wished to be heard by every body.

Was he sober or no?—Certainly he was not drunk.

Mr. *Erskine*. It was ten o'clock, was it not?—Between nine and ten. I don't know whether it was quite ten.

Do you mean to say he was just as sober as he might be at twelve o'clock in the day?—That he walked.

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?—I don't say he was sober.

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

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o'clock at day?—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.

Do you mean to say he spoke in the manner, and the pitch of voice like a sober man?—He was stimulated.

He extended his arm?—Yes.

You think that a mark of sobriety, do you?—I do not think it a mark of good sense.

——— *Bullock* sworn.—Examined by Mr. *Wood*.

Were you at the Percy coffee-house on the 6th of November last?—I was.

Did you see Mr. Frost there?—I did.

Be so good as tell us whether you heard him say any thing, and what it was?—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.

Be so good as to read them slowly.—*(Reads.)* Percy coffee-house, 6th of November 1792. We, the undermentioned, do hereby certify, that at about ten o'clock this evening, Mr. John Frost came into this coffee-room, and did then, and in our presence, openly declare, that he wished to see equality prevail in this country, and no king, in a loud and factious way; and upon being asked, whether he meant that there should be no king in this country; he answered, Yes.—That is all I recollect of seditious words.

Lord *Kenyon*. You put this down with a view that they might have been signed?—I did.

Mr. *Wood*. Was Mr. Frost drunk or sober at that time?—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.

Have you ever seen him at any other time?—I have frequently since.

Where may that be?—in Paris.

How soon after this was it?—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 is rendered 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.

Where have you seen him since?—At Calais the first time.

Lord *Keynon*. 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?

How many times might you see him, think you?—It is impossible to say; I have frequently seen him at a coffee-house.

Are you able to judge from that, whether he was sober or not when you saw him at Percy-street coffee-house?—He was what you may call a sober man.

Mr. *Erskine*. Was he like a man who had been drinking?—Drinking moderately.

Two bottles of port, what do you say to that?—I cannot say.

It is very difficult to judge by weights and scales?—I thought he was sober by his manner.

Hon. *Thomas 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

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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 tenor 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

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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), has hitherto averted, or can continue to avert the dangerous contagion, which misrule and anarchy are spreading over the world;—that bodies of Englishmen, forgetting their duty to their own country and its constitution, have congratulated the convention of France upon the formation of their monstrous government;—and that the conduct of the defendant must be considered as a part of a deep-laid system of disaffection, which threatened the establishments of this kingdom.

Gentlemen, this state of things having no support whatever from any evidence before you, and resting only upon *opinion;* I have an equal right to *mine;*—having the same means of observation with other people of what passes in the world; and as I have a very clear one upon this subject, I will give it you in a few words.

I am of opinion then, that there is not the smallest foundation for the alarm which has been so industriously propagated; in which I am so far from being singular, that I verily believe the authors of it are themselves *privately* of the same way of thinking;—but it was convenient for *certain persons,* who had changed their principles, to find some plausible pretext for changing them;—it was convenient for those, who when *out of* power had endeavoured to lead the public mind to the necessity of reforming the corruptions of our own government, to find *any* reasons for their continuance and confirmation, when they operated as engines to support themselves in the exercise of powers, which were only odious when in *other hands.* For this honourable purpose the sober, reflecting, and temperate character of the English nation, was to be represented as fermenting into sedition, and into an insane contempt for the revered institutions of their ancestors:—for this honourable purpose the wisest men,—the most eminent for virtue,—the most splendid in talents,—the most independent for rank and property in the country, were, for no other crime than their perseverance in those sentiments which *certain persons had originated and abandoned,* to be given up to the licentious pens and tongues of hired defamation,—to be stabbed in the dark by anonymous accusation, and to be held out to England and to the whole world, as 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

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

Thatched House Tavern, May 18, 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	Rev. Mr. Bromley
Lord Surry	Mr. B. Hollis
Lord Mahon	Mr. Disney Fitche
The Lord Mayor	Mr. Edmunds
Hon. Wm, Pitt	General Hale
Sir Watkin Lewes	Sir Cecil Wray
Rev. Mr. Wyvill	Mr. B. Hayes
Mr. Falconer	Sir J. Norcliffe
Mr. Redman	Dr. John Jebb
Mr. Withers	Major Cartwright
Mr. Bodely	Mr. Hill
Mr. Vardy	Mr. Baynes
Mr. Sheridan	Mr. Shove
Mr. Alderman Turner	Mr. Churchill
Mr. Trecothick	Mr. Tooke
Mr. Vincent	Mr. Horne
Sir C. Turner	Mr. Frost
Mr. Taylor	Mr. Trevanion
Mr. Amherst	Dr. Brocklesby

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the duke of Richmond, at the Thatched House tavern, in St. James's-street; that I find him also the correspondent of the former, and that I discover in their publications on the structure and conduct of the House of Commons, expressions, which, however merited, and in my opinion commendable, would now be considered not merely as intemperate and unguarded, but as highly criminal.*

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 re-

Mr. Duncombe	Rev. Dr. Rycroft
Mr. J. Martin	Colonel Byron
Mr. Ald. Townshend	Major Parry
Mr. Ald. Creichton	Mr. Green
Mr. Ald. Wilkes	&c. &c. &c.

Resolved unanimously,

That the motion of the honourable William Pitt on the 7th instant, for the appointment of a committee of the House of Commons, to inquire into the state of the representation of the people of Great Britain in parliament, and to report the same to the House, and also what steps it might be proper in their opinion to take thereupon, having been defeated by a motion made for the order of the day, it is become indispensably necessary that application should be made to parliament, by petitions from the collective body of the people in their respective districts, requesting a substantial reformation of the Commons House of parliament.

Resolved unanimously,

That this meeting, considering that a general application by the collective body 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.—*Orig. Ed.*

* (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* 12, 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. *Orig. Ed.*

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monstrance of all other reformers before or since, he fell, in the heat and levity 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 deploring them, but they may differ nevertheless in decyphering their causes;—men to the full as wise as those who pretend to be wiser than Providence, and stronger than the order of things, may perhaps reflect that a great fabric of unwarrantable power and corruption could not fall to the ground without a mighty convulsion,—that the agitation must ever be in proportion to the surface agitated,—that the passions and errors inseparable from humanity must heighten and swell the confusion, and that perhaps the crimes and ambition of other nations, under the mask of self-defence and humanity, may have contributed not a little to aggravate them,—may have tended to embitter the spirits and to multiply the evils which they condemn,—to increase the misrule and anarchy which they seek to disembroil, and in the end to endanger their own governments, which by carnage and bloodshed, instead of peace, improvement, and wise administration, they profess to protect from the contagion of revolution.

As to the part which bodies of men in England have taken, though it might in some instances be imprudent and irregular, yet I see nothing to condemn, or to support the declamation which we daily hear upon the subject. The congratulations of Englishmen were directed to the fall of corrupt and despotic power in France, and were animated by a wish of a milder and freer government,—happier for that country, and safer for this; they were besides addressed to France when she was at peace with England, and when no law was therefore broken by the expression of opinion or satisfaction. They were not congratulations on the murders which have since been committed, nor on the desolations which have since overspread so large a portion of the earth, neither were they traitorous to the government of this country. This we may safely take in trust, *since not one of them, even in the rage of prosecution, has been brought before a criminal court.* For myself, I never joined in any of these addresses, but what I have delivered concerning them is all I have been able to discover; and government itself, as far as evidence extends, has not been more successful. I would therefore recommend it to his majesty's servants, to attend to the reflections of an eloquent writer, at present high in their confidence and esteem, who has admirably exposed the danger and injustice of general accusations. "*This way of proscribing the 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 any of the 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, they would be discharged from the exercise of vigilance, providence, and fortitude; and therefore that they may sleep on their watch, they consent to take some one division of the society into partnership of the tyranny over the rest. But let government, in what 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 delinquency exists in the overt acts, and then it will be as safe as ever 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 this vice, in any constitution that entertains it, at one time or other will certainly bring on its ruin*."

Gentlemen, let us now address ourselves to the cause disembarrassed by foreign considerations;—let us examine what the charge upon the record is, and see how it is supported by the proofs;—for, unless the whole indictment, or some one count of it, be in

* See Burke's Speech at Bristol. Works, vol. 3, p. 418, edit. of 1808.

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form and substance supported by the evidence, the defendant must be acquitted, however in other respects you may be dissatisfied with his imprudence and indiscretion. The indictment charges, "*That the defendant being a person of an impious, depraved, seditious disposition, and maliciously intending to disturb the peace of the kingdom; to bring our most serene sovereign into hatred and contempt with all the subjects of the realm, and to excite them to discontent against the government;* HE THE SAID DEFENDANT, HIS AFORESAID WICKED CONTRIVANCES AND INTENTIONS TO COMPLETE, 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 principle of English criminal law. It does not merely charge the speaking of the words, leaving the wicked intention to be supplied and collected by necessary and unavoidable inference, because such inference may or may not follow from the words themselves, according to circumstances, which the evidence alone can disclose; it charges therefore the wicked intention *as a fact*, and as constituting the very essence of the crime, stating, as it must state, to apprize the defendant of the crime alleged against him, the overt act, by which such malicious purpose was displayed, and by which he sought to render it effectual. No man can be criminal without a criminal intention, *actus non facit reum nisi mens sit rea*. This sacred maxim stands at the top of the criminal page throughout all the volumes of our law, and from the highest to the lowest order of crimes it is still the *intention* which is arraigned and punished: God alone can look into the heart; and man, could he look into it, has no jurisdiction over it, until society is disturbed by its actions; but the criminal mind being the source of all criminality, the law seeks only to punish actions which it can trace to evil disposition:—it pities our errors and mistakes,—makes allowances for our passions, and scourges only our crimes.

Gentlemen, my learned friend the attorney-general, in the conclusion of his address to you, did more than ratify these propositions; for, with a liberality and candour very honourable to himself, and highly advantageous to the public which he represents, he said to you, that if the 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 Foster, 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, Foster 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." Foster 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 acquittal:—but Mr. Attorney General, still looking through the false medium of other men's prejudices, lays hold of the words, "*otherwise well-disposed,*" and engrafts upon them this most extraordinary requisition. Show me, he says, that Mr. Frost is *otherwise well-disposed.*—Let him bring himself within the meaning of Foster, 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 and 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.

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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 apears to have dined at the tavern over the Percy coffee-house,—not even with a company met upon any political occasion, good or evil, but as has been admitted in the opening, with a society for the *Encouragement of Agriculture*—consisting of most reputable and inoffensive persons, neither talking nor thinking about government, or its concerns:—so much for the preface to this dangerous conspiracy. The company did not retire till the bottle had made many merry circles; and it appears upon the evidence for the crown, that Mr. Frost, *to say the least*, had drunk very freely: but was it then, that, with the evil intention imputed to him, he went into this coffee-house to circulate his opinions, and to give effect to designs he had premeditated?—*He could not possibly go home without passing through it*; for it is proved that there was no other passage into the street from the room where he had dined: but having got there by accident, did he even then stop by design and collect an audience to scatter sedition?—So far from it, that Mr. Yatman, the very witness against him, admits, that he interrupted him as he passed in silence towards the street, and fastened the subject of France upon *him*; and every word which passed *(for the whole is charged upon the very record as a dialogue with this witness)*, in answer to his *entrapping questions*, introduced with the familiarity of a very old acquaintance, and in a sort of banter too, that 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 constitutes its

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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 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;—criminal intention, but not indecent levities,—not even grave opinions unconnected with conduct, are to be exposed to the magistrate; and when men, which happens but seldom, without the honour or the sense to make the due distinctions, force complaints upon governments, which they can neither approve of nor refuse to act upon, it becomes the office of juries,—as it is yours to-day,—to draw the true line in their judgments, measuring men's conduct by the safe standards of human life and experience.

Gentlemen, the misery and disgrace of society, under the lash of informers, running before the law, and hunting men through the privacies of domestic life, is described by a celebrated speaker* with such force and beauty of eloquence, that I will close my observations on this part of the subject, by repeating what cannot, I am persuaded, be uttered amongst Englishmen without sinking deep into their hearts: "A mercenary informer knows no distinction. Under such a system, the obnoxious people are slaves, not only to the government, but they live at the mercy of every individual; they are at once the slaves of the whole community and of every part of it; and the worst and most unmerciful men are those on whose goodness they most depend.

"In this situation men not only shrink from the frowns of a stern magistrate, but are obliged to fly from their very species. The seeds of destruction are sown in civil intercourse, and in social habitudes. The blood of wholesome kindred is infected. Their tables and beds are surrounded with snares. All the means given by Providence to make life safe and comfortable are perverted into instruments of terror and torment. This species of universal subserviency, that makes the very servant who waits behind your chair, the arbiter of your life and fortune, has such a tendency to degrade and

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

* Edmund Burke. See also in this Collection Mr. Curran's eloquent defence of Finnerty, A. D. 1797.

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abase mankind, and to deprive them of that assured and liberal state of mind which alone can make us what we ought to be, that I vow to God, I would sooner bring myself to put a man 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 gaol distemper of a contagious servitude, to keep him above ground, an animated mass of putrefaction, corrupted himself, 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 publickly professed, and though followed up by corresponding conduct;—how irresistibly do they devote to contempt and execration all evesdropping attacks upon loose conversations, casual or convivial, more especially when proceeding from persons conforming to all the religious and civil institutions of the state, unsupported by general and avowed profession, and not merely unconnected with conduct, but scarcely attended with recollection or consciousness! Such a vexatious system of inquisition, the disturber of household peace, began and ended with the Star-chamber;—the venerable law of England never knew it;—her noble, dignified, and humane policy soars above the little irregularities of our lives, and disdains to enter our closets without a warrant founded upon complaint. Constructed by man to regulate human infirmities, and not by God to guard the purity of angels, it leaves to us our thoughts, our opinions, and our conversations, and punishes only overt acts of contempt and disobedience to her authority.

Gentlemen, this is not the specious phrase of an advocate for his client;—it is not even my exposition of the spirit of our constitution;—but it is the phrase and letter of the law itself. In the most critical conjunctures of our history, when government was legislating for its own existence and continuance, it never overstepped this wise moderation.—To give stability to establishments, it occasionally bridled opinions concerning them, but its punishments, though sanguinary, *laid no snares for thoughtless life*, and took no man by surprise.

Of this the act of Queen Anne, which made it high treason to deny the right of parliament to alter the succession, is a striking example. The hereditary descent of the crown had been recently broken at the revolution by a minority of the nation, with the aid of a foreign force, and a new inheritance had been created by the authority of the new establishment, which had but just established itself. Queen Anne's title and the peaceable settlement of the kingdom under it, depended wholly upon the constitutional power of parliament to make this change;—the superstitions of the world, and reverence for antiquity, which deserves a better name, were against this power and the use which had been made of it;—the dethroned king of England was living in hostile state at our very doors, supported by a powerful monarch at the head of a rival nation,—and our own kingdom itself full of factious plots and conspiracies, which soon after showed themselves in open rebellion.

If ever, therefore, there was a season when a narrow jealousy could have been excusable in a government:—if ever there was a time when the sacrifice of some private liberty to common security would have been prudent in a people, it was at such a conjuncture; yet mark the reserve of the crown and the prudence of our ancestors in the wording of the statute. Although the denial of the right of parliament to alter the succession was tantamount to the denial of all legitimate authority in the kingdom, and might be considered as a sort of abjuration of 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 dodge 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 Foster, "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 cause 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.

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"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 Foster, 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 Foster.

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, "O 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

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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 those 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 obvious 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 thought-

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less passages of his life, are fit for the inspection of God and man, he will be the fittest person to take the lead in a judgment of guilty, and the properest foreman to deliver it with good faith and firmness to the Court.

I know the privilege that belongs to the attorney-general to reply to all that has been said; but perhaps, as I have called no witnesses, he may think it a privilege to be waived.* It is, however, pleasant to recollect, that if it should be exercised, even with his superior talents, his honour and candour will guard it from abuse.

REPLY.

Mr. *Attorney General.* Gentlemen of the Jury; The experience of some years has taught me, that in the useful administration of justice, as it is administered by the juries in this country, little more is necessary than to lay before them correctly the facts upon which they are to form their judgment, with such observations as naturally arise out of those facts.

Gentlemen, feeling that very strongly at present, I am certainly bound in some measure to account to you, why I feel it my duty in this stage of this proceeding to avail myself of that liberty which my learned friend has stated to belong to me in addressing you again.

Gentlemen, my learned friend has thought proper to state this prosecution as the prosecution of informers,—of men whom he cannot call mercenary informers, but certainly whom he has been anxious to represent as officious informers, as a prosecution which it was my duty, independently of any considerations that I might feel myself upon the subject, to bring before you,—that it was what I could not approve of, but what I was bound to persevere in till I received your verdict.

Gentlemen, with respect to bringing the cause before the Court, my learned friend has not confined his observations to that point. He has stated also,—and every thing that falls from him, and more especially in a case that concerns the crown and an individual, deserves and must have an answer from me,—he has given you a comment upon words, upon which I likewise offered you some humble observations;—I mean the words, "otherwise well-disposed." I remarked, that where words in their natural meaning did import a seditious mind, it would be competent to a defendant to show upon a general principle, that, whatever might be the words uttered, the circumstances attending the expression of them might be stated to the jury, in order to give a different sense to them from their primary import.

Gentlemen, I hold it to be my duty, standing here responsible to the public for the acts that I do—deeply impressed with a consciousness that I am so responsible, to state to you, that I must be extremely guilty of a breach of my duty, if I should now call upon you for a verdict, or if I should now take your opinion; because there is not a single tittle of evidence before you which was not before me when the indictment was laid. I protest against that doctrine, that the attorney-general of England is bound to prosecute because some other set of men choose to recommend it to him to prosecute, he disapproving of that prosecution. I know he has it in his power to choose whether he will or not, and he will act according to his sense of duty. Do not understand me to be using a language so impertinent, as to say, that the opinions of sober-minded persons in any station in life, as to the necessity that calls for a prosecution, ought not deeply to affect his judgment. But I say, it is his duty to regulate his judgment by a conscientious pursuance of that which is recommended to him to do. And if any thing is recommended to him, which is thought by other persons to be for the good of the country, but which he thinks is not for the good of the country, no man ought to be in the office who would hesitate to say, My conscience must direct me, your judgment shall not direct me. And I know I can do this—I can retire into a situation in which I shall enjoy, what, under the blessings of that constitution thus reviled, is perhaps the best proof of its being a valuable constitution,—I mean the fair fruits of a 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

* With respect to the right of Reply in cases where no evidence has been produced in defence, see lord Mansfield's summing up in the case of Horne, Vol. XX, p. 763, and notes, the cases there cited; and the case of John Miller for a libel, Vol. XX, p. 888.

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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 to punish him?

Gentlemen, I call upon you seriously to consider the case, to act with candour, to act with indulgence to him, if you please, but at the same time to act with firmness as between him and the country. My learned friend has tried me in some measure to-day; now I avow it again—when *respectable persons* will state to me that such circumstances did pass, I will not take upon myself to say, that it is consistent with my duty to the king, or that it is consistent with my duty to the country, for whose benefit it is that he is king, that I should hear that such things have passed unnoticed. And when it is stated by such men as these are.—unimpeached,—feeling something, though their political theories are not the same as those of this defendant, surely they may be allowed to feel and to express at least with zeal their indignation, if not to assert with industry their right to what they enjoyed through the blessing of Providence, and the constitution under which they lived. It was a case which excited the honest zeal and the fair and reasonable indignation of a great number of gentlemen;—all respectable men, and competent to sit in that jury-box, as between this or any other individual and the justice of the country. But, gentlemen, according to my learned friend, I was to do one of these things: I was to say to Mr. Frost, which I certainly should have been glad to have said to him, or any man who stands in the situation of a defendant, if I could do it with propriety, What is this story, Mr. Frost? Can I ask a defendant, whom I am to prosecute upon the *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 attention as far as my lord may think your attention ought to be called to it, to what I take to be a clear distinction in the law of England. Gentlemen, if words of their own efficacy and import manifest a seditious intention, the uttering those words is a misdemeanor. I do not desire you to try this question in that manner, because I again repeat what I said towards the conclusion of what I before addressed to you, that if you should be of opinion, that Mr. Frost did not utter the words advisedly and knowingly, and with an intention to work the mischief this record imputes to him, I do not desire this 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

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read to you by Mr. Erskine, from Mr. Justice Foster'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 Foster, 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 *primâ facie* sense of the words: if that principle be just, I say that Mr. Frost has not found in the company below stairs, nor has he found upon the face of the earth, a single person to state to you, that from his general demeanour, when he uttered these words, he must not have had the fair use of that judgment and disposition, which conducts him through general life; I say no more about it; I am sure it would have been competent to him to have produced such witnesses. Gentlemen, it would not only have been competent to him, but from the turn the cause has taken, it was made almost necessary. If Mr. Frost was drunk, as my learned friend wishes you to believe, from what Mr. Taitt said, though I think his evidence will bear no such sense;—was there no man up stairs who could have stated it? Was there no man who saw Mr. Frost in the course of that evening that could have stated it? Then what is it that Mr. Taitt says upon the subject? He does not mean to say, that he had not drunk; he says he might be in liquor, and he did say, he did not doubt but he was in liquor, but he had not seen him before. The question is, whether, when he made use of those expressions, he made use of them as expressing his judgment upon the subject, and with the intent that this record ascribes to him, or whether he was so far bereaved of his judgment by ebriety as to stand before you, entitling himself to the benefit of this excuse, that he ought not to be answerable for the consequences of these acts upon that ground? and it would be extremely strange if a jury upon this ground could acquit Mr. Frost. Here are these gentlemen respectable in their situation, and what have they done? According to 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 this is not all; for that which is no act of deliberation is followed up by another question: "Why surely you cannot mean that

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there is to be no king in this country?" Says, Mr. Frost, "Yes, no king in any country." Why, gentlemen, the single question is, Is it the law of England that these words can be spoken under such circumstances with impunity? I am free to say, that upon the best information I can give myself upon the subject, I cannot feel a doubt that the law of England does not permit it. I say it is the law of England, that where men will hold language of this sort, they shall be deemed guilty of an offence against the law of England. Why then, what am I to do, if I, standing in this situation, am to govern myself by the wisdom of the law? I say it is my duty to submit to your decision the fact upon the law as it stands; if my learned friend is satisfied that the law is not so, he has one course before him, or if he thinks that the law ought not to be so, he has another before him. But is the attorney-general of this country to say, I will, in the regulation of my official conduct, take upon me to say, that I am wiser than the legislature of this country; I will enforce what I please, let the exigency of the country be what it may?

Gentlemen, in the first place it is to be observed, that the language of that act of parliament is exceedingly strong with respect to malicious and advised speaking, and it points out to a jury, that they are to have distinct evidence of the intention. This species of the intention may fall under a different consideration; but I do not wish to examine it upon a different consideration; because if in this case the words import the intent that the record attributes to them, you have that case in point of law, that justifies you in finding the defendant guilty.

Gentlemen, having stated thus much, rather with a view of explaining my conduct to you, than for the purpose of troubling you with particular observations upon the evidence, I will leave the case here. I think, upon the best consideration that I can give the case, that the late attorney-general did right to bring it before the public. I should not have appeared here to-day, if I had not thought it right so far as to bring it before the public; and the reason I do it is, that when a considerable number of his majesty's subjects in a *respectable situation* feel—my learned friend says, your verdict is to secure us from being in a situation like France—but when they feel that these words were uttered in a manner that has led them to think, that some of the most valuable blessings they enjoy under the constitution of this country, wedded to it as they are, 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 spoken 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*. Gentlemen of the Jury;—I shall not add much to the trouble which you have already and necessarily had upon the present occasion. You are selected in some measure by the parties themselves, to judge between the parties, and you come here, as all men must come, with the infirmities of human nature about you, and I will say in consequence of some sentences which fell from the learned gentleman of counsel for the defendant, towards the close of his speech, that if no jury can conscientiously find a man guilty, who don't first find that their own nature is impeccable, it is in vain to attempt hereafter to put in force the criminal law of the country; neither juries nor judges are divested of the follies, the infirmities or the weakness of the nature to which they belong; their own knowledge of their own weakness and infirmities will always urge them to look up with a favourable eye at the imperfections of others in doubtful cases; but still, being in the arduous situation of administering justice, they will look at the case with their best understanding, and decide as their best judgment shall direct them to decide. The situation of advocates and judges differs, perhaps, pretty widely. The advocate urges every topic, sometimes those which may inform, sometimes those which may confound, sometimes those which may amuse the jury, and sometimes those which may amuse a crowded audience.

How far the armies that entered the kingdom of France did right; how far a number of gentlemen at the Thatched-house tavern did right; whether what they did was the result of wisdom, or the result of faction and folly, it is not for us to decide. We are not here to enter into the merits of any particular class of great men in the country, nor am I prepared, because my duty does not call upon me, and if it did, I am afraid my abilities would fail, to read you a lecture upon government; it is enough in this country that we enjoy those blessings which the government of the country gives us; whether they are the best or not the best, every man will judge for himself. Those who find that their liberty and their property, and every thing dear to them, are defended by the even hand of impartial law, will congratulate themselves that they live in that country; and if they find that neither the history of former times, nor the present eventful times, produce any greater blessings than their own, they would feel it with gratitude under the providence of God, and endeavour to enjoy it with thankfulness.

Gentlemen, the offence of which the prisoner is accused, is, that he has with a seditious intention uttered the words that have been rehearsed to you so often, 'Equality *here*; I see no reason why any man should not be put upon a footing with another; it is every man's birth-right;' and being asked how he dared to hold such language in any public or

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private company, and what he meant by Equality, he said, 'why no king:' and being asked whether he meant to apply that observation to this country, he said 'Yes, *Equality here;* no king, the constitution of this country is a bad one.' These, Gentlemen, are the words which the present defendant is called upon by this prosecution to answer for the uttering of. Gentlemen, each of the learned counsel, in their turn, have appealed to certain passages from the works of a most learned and excellent judge, I mean the late sir Michael Foster. It is enough for me to say, that no passage that has been selected from that book, applies directly to the question before us; but the question there was, whether words could be high-treason, or whether they could constitute an offence under an act of parliament, made in the reign of queen Anne, which subjected the party to the penalties of præmunire, which are grievous indeed,—I think the loss of all his property and imprisonment; but it never can be said in any system of laws, which mean to prevent mischief, that factious and seditious words tending to subvert the government, are not the subject matter of inquiry in a criminal court of justice; it never has been said, I believe it never will. The only question that has been made, is, how far they can constitute the crime of high treason, or how far they can subject the parties to the penalties of that statute. If these words were spoken, if they were spoken in a connexion which tends to explain them, and to do away the *primâ facie*, obvious intention of them,—I say, if they were spoken in a context which tends to explain them, and show they were inoffensive words,—let the context be received, let the favourable construction be put upon them; but if in your opinion there is no context to explain them, it is your duty undoubtedly, by weighing and deliberating upon the question, to decide as your judgment shall lead you.

Now the first question is how far the words have been spoken, and in order to prove that they have been spoken, four witnesses have been called.

The first was Mr. Taitt, who gives an account of his being at the Percy coffee-house, and Mr. Frost coming down there, and in the coffee-house being asked by Mr. Yatman, what news from France, and answering all was going on well there, he then said, I am for Equality; this he repeated in a very loud tone of voice; he got off his seat and asked him who he was; Mr. Yatman said, this is Mr. Frost; upon which Mr. Taitt says, he asked him how he dared utter those words? he still continued I am for equality and no king; Yatman asked him if he meant no king in this country? he said Yes, no kings, the constitution of this country is a very bad one. He was asked upon the cross-examination, whether the man appeared to him to be sober or in liquor? he says he did not know him before, he did not know his manners, but from the words he used, he should rather suppose he was in liquor, but I do believe he perfectly understood what he said.

The next witness was Paul Savignac, who gives you the same account of the introduction of Mr. Frost into the coffee-house, and repeats to you in pretty much, if not exactly the same terms, the words that were used, I am for equality and no king. Mr. Savignac then says, he was asked if he meant equality, and no king in this country, and he says, Yes, there ought to be no king.

The next witness who was called, Mr. Yatman, I think, repeats in pretty much the same manner. And then Mr. Bullock comes, who put down the words as they occurred to him soon after, which he wished to be signed by the persons in the room, but it was not signed.

Gentlemen, This is the evidence on the part of the prosecution. It has been observed to you that these words were uttered at a critical time in the country, and Gentlemen, I have the highest authority, I think, when I appeal to the works of Mr. Justice Foster, though upon this occasion, I have not looked into them, not knowing what the words were, nor what the nature of the prosecution was. But I think he states that words might bear different meanings, according to the season in which they were spoken, and that those words were deemed high treason in the time of king Charles, when the mob were round the house of the archbishop of York, which might not have been so applied if they had been spoken in other times.

Gentlemen, What the times were, every individual in the country, who is capable of thinking, has formed his judgment upon; that there was a vast number of the mass of those people who had nothing to do with ministry, and who knew nothing of ministry, and who cared nothing about ministry; that though the times were perilous, that great dismay had scattered itself all over the country, one has learned from the resolutions, and from every individual one has conversed with, there are those who thought otherwise, and there might be some perhaps who might rejoice in the confusion of the country, some people perhaps might. It is not necessary for me to express my opinion upon the occasion, but undoubtedly, if you think those words were spoken in seasons, when seditious words might be the fore-runners of seditious acts, and that men's spirits were inflamed, and might from small beginnings take fire, and might be brought into action, it adds most immensely to the criminal construction you ought to put upon the words: but, gentlemen, it is not for us to penetrate with absolute certainty into the hearts of men, that is the business of the great Disposer of all things, and the judge of men; but we have an opportunity of judging from overt acts, whether guilt belongs to them or not. If any reason can be assigned why those words were

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used, let the reason be assigned, and let a favourable construction be put upon what is assigned as the reason; but without any clue to lead us, without any thing but the words expressed in the terms which I have stated to you, we must from those premises draw our conclusion. I am sorry for the individual who is subject to criminal law, for no man rejoices in the punishment of another; but punishment is inflicted as an example to the sons of men, that they may err in that course to which they see conviction and punishment annexed.

Gentlemen, it is for you in this case to do justice between the public, carrying on the prosecution by the attorney-general, and the individual. If the question hangs in even scales, inclination must be on the side of mercy; but if you find the whole evidence, and the great gist of the argument in favour of the prosecution, you are bound to discharge your duty to God and your country, and pronounce him guilty of the offence. It is with you to consider.

The Jury, not being agreed, retired from the court about twelve o'clock, to consider of their verdict, and returned into court about half past one o'clock, and delivered in their verdict to the court, that the defendant was guilty.

On Wednesday morning, June 19, 1793, Mr. Frost attended to receive the judgment of the Court. Mr. Erskine addressed the Court shortly in mitigation of the punishment. Mr. Attorney-general prayed the sentence of the Court, with great mildness and candour, submitting the whole matter to the judgment of the Court, without praying any specific punishment.

Mr. Justice Ashhurst then pronounced the judgment of the Court as follows:

John Frost, you have been convicted upon an indictment preferred against you, for publicly speaking several scandalous and seditious words, tending to lessen in men's minds, that love and veneration which every honest and good man ought to entertain for our wise and happy constitution, and likewise to withdraw the affections of his majesty's subjects from his majesty's royal person and government, and to stir up their minds against all kingly power.

The words that are laid in the indictment, as spoken by you, are these, "I am for equality; I see no reason why any man should not be upon a footing with another, it is every man's birth-right." And the indictment further states, that being asked by some of the persons then present, how you dared to hold such sentiments in any public or private company, and what you meant by equality? you replied, "Why, no kings;" and being further asked, if you meant no king in this country? you said, "Yes, no king; the constitution of this country is a bad one," meaning thereby that the constitution of this realm was bad.

These are the words, that are alleged to have been spoken by you. That constitution which you have thus attempted to traduce and vilify, was planned by wiser heads and better hearts than your's; it has stood the test of ages, and I trust, it is out of the reach of your malice, or of any man of such description as yourself; but though that be the case, it does not from thence follow, that you are to be suffered to vent your malice against it, however impotent, with impunity. The words which you have uttered, argue a malignity of heart, and it stands in need of correction, and shows, that if you had the power, your inclination is ripe for any mischief against your king, your country, and the constitution. One might have expected, that being so lately returned from France, it must decidedly have convinced you of the superior advantages to be derived from a free constitution, and of that safety and protection which all his majesty's subjects experience under its happy influence, when compared with that universal anarchy and confusion with which that unfortunate country is overrun; but there may, perhaps, be too much reason to suspect, that you did not go into that country with any view of bringing back any good and wholesome lesson to your countrymen. It has been said in excuse for you, that you were in liquor at the time you uttered these words, that excuse was not proved; the words are laid to be advisedly and seditiously spoken, and the jury have found them to be so. At best it is a bad excuse, that one crime should be alleged as an excuse for another.*

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* With respect to the plea of drunkenness as a palliation of the offence, see in this Collection the case of lord Cornwallis, Vol. VII. p. 150; Dammaree's Case, Vol. XV. p. 604; Purchase's Case, Vol. XV. p. 690. Alexander Stewart's Case, Vol. XVII. pp. 795, et seq.: the Case of Maclauchlan, p. 1002, and of Goodere and others, p. 1003 of the same volume. N. B. In the Recorder's speech to the prisoners [Goodere and others] on passing sentence upon them, there is a gross misprint: 'If drunkenness could be admitted as 'an excuse for crimes of this nature, this 'would be no world *then* of virtue and 'sobriety.' [Vol. XVII. p. 1094.] For *then* read *for men*. The recorder [Mr. Justice Foster] hath made this correction in the printed copy which belonged to him. Vide Dodson's Life of Foster, p. 12, edit. of 1811, *note*. See also, in addition to the authors already referred to in the above-mentioned cases, Hale's P. C. 32. Eden's Principles of Penal Law, c. 18. s. 6, and the authorities collected in Plowd. 19, cit. 4 Bl. Comm. 25.

"Is not a man drunk and sober the same person, why else is he punished for the fact he commits when drunk, though he be never afterwards conscious of it? Just as much the same person, as a man that walks, and does

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There is another circumstance, which is an aggravation of your crime, which is from the situation of life in which you are as an attorney you must have taken the oaths of allegiance to the king; these words that you have uttered, show, in your conduct and your carriage, how very little regard you have paid to the oaths you have taken; that therefore is a high aggravation of your offence.

The Court have taken all these circumstances into their consideration, and upon mature deliberation, the sentence of the Court is—That you be imprisoned in his majesty's gaol of Newgate for six calender months,* and that during that time you do stand in and upon the pillory at Charing-cross for the space of one hour, between the hours of twelve and two; and that after the expiration of your imprisonment, you do find sureties for your good behaviour for the space of five years, yourself in 500*l.* and your two sureties in 100*l.* each; and that you be further imprisoned until such sureties be found.

Lord Kenyon.—And also struck off the roll of attornies of this Court.

In a periodical publication for the month of June, 1793, I find the following passage:

"It is somewhat remarkable that as one of the witnesses against Mr. Frost was waiting to hear sentence passed, he was seized with an apoplectic fit. By order of lord Kenyon he was carried into the Court of Requests for the benefit of the air; he remained there some time in violent convulsions: amongst the persons who collected about him was Mr. Frost, who disregarding the agony he was in, upbraided him, and declared, that divine vengeance was hurled on his guilty head."

It appears that in December, 1813, Mr. Frost received from his royal highness the Prince Regent, acting in the name and on the behalf of the King, a free pardon, in consequence of which, on February 8, 1815, the court of King's-bench was moved, that his name should be replaced on the Roll: but, by the Court: Though the pardon releases him from all the effects of the sentence upon him, it does not necessarily follow that he must be replaced on the roll of attornies; more particularly as want of practice and experience in the profession for one or two and twenty years must have induced a degree of unfitness for the employment, which could not be supposed to attach to an attorney on his first application to be placed on the rolls. Motion refused.

[I have accidentally omitted in pp. 502, 503, to subjoin to the extract from Burke, a reference to his Works; the passage will be found in his Speech at Bristol, previous to the Election, 1780.—Works, vol. 3, pp. 390, 391.]

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other things in his sleep, is the same person, and is answerable for any mischief he shall do in it. Human laws punish both, with a justice suitable to their way of knowledge; because in these cases they cannot distinguish certainly what is real, what counterfeit: and so the ignorance in drunkenness or sleep, is not admitted as a plea. For though punishment be annexed to personality, and personality to consciousness, and the drunkard perhaps be not conscious of what he did; yet human judicatures justly punish him, because the fact is proved against him, but want of consciousness cannot be proved for him. But in the great day, wherein the secrets of all hearts shall be laid open, it may be reasonable to think, no one shall be made to answer for what he knows nothing of; but shall receive his doom, his conscience accusing or excusing him." Locke's Essay concerning Human Understanding, book 2, ch. 27, s. 22. See also on this subject the letters from Molyneux to Locke, December 23, 1693; Locke to Molyneux, January 19, 1694, Molyneux to Locke, February 17, 1694; Locke to Molyneux, May 26, 1694.

* December 19, 1793. Between eleven and twelve, Mr. John Frost was brought out of Newgate, and placed in a coach, apparently very feeble, and rolled in blankets. Mr. Kirby, the keeper, accompanied him to the house of Mr. Justice Grose, in Bloomsbury-square, where he, with two sureties, entered into the recognizance required by his judgment for his keeping the peace. He was then discharged out of custody. As soon as he was at liberty, the multitude took the horses out of the carriage, and drew him along the streets, stopping at every marked place, particularly St. James's palace, Carleton House, Charing-cross, &c. to shout and express their joy; and in this state they conducted him to his own house in Spring-gardens, where Mr. Thelwall made a speech, and intreated them to separate peaceably, which they accordingly did. *Ann. Reg. Chron.*

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576. Proceedings in the Court of the Vice Chancellor, and in the Court of Delegates, in the University of Cambridge, and in the Court of King's Bench, Westminster, in the Case of WILLIAM FREND, Clerk, M. A. for writing and publishing a scandalous Book or Pamphlet intituled, "Peace and Union recommended to the Associated Bodies of Republicans and Anti-Republicans." 33 & 34 GEORGE III. A. D. 1793, 1794.*

ON Saturday the ninth of February, 1793, the following Advertisement appeared in the Cambridge Chronicle.

"In the press, and in the course of next week will be published, Peace and Union recommended to the Associated Bodies of Republicans and Anti-Republicans, by William Frend, M. A. Fellow of Jesus College."

On the next Saturday, a second Advertisement appeared, stating, that the Pamphlet was published.

Soon after the publication, the following members of the Senate waited upon the vice-chancellor at different times, to express their disapprobation of the Pamphlet, and their wish, that such notice should be taken of the author's offence, as might best declare the censure of the University:—

W. Wade, B. D. Fellow of St. John's
Geo. Whitmore, B. D. Tutor of St. John's
T. Kipling,* D. D. Dep. Regius Prof. of Divinity
J. Jowett, LL. D. Tutor of Trin. Hall, and Regius Professor of Civil Law
W. Mathew, LL. B. President of Jesus
J. Plampin, M. A. Tutor of Jesus
J. Costobadie, M. A.
T. Bayley, M. A. } Fellows of Jesus
T. Castley, M. A.
J. Mainwaring, B. D. Margaret Prof. of Divinity
P. Douglas, B. D. Tutor of Bene't.
T. Lloyd, M. A. Tutor of King's
E. Kilvington, M. A. Fellow of Sidney
E. Outram, M. A. Lecturer of St. John's
W. Walker. M. A. Fellow of St. John's
A. Frampton, M. A. Lecturer of St. John's
R. Belward, M. A. } Tutors of Caius
W. Walford, M. A.
E. Bradford, B. D. Tutor of Bene't
H. Jowett, M. A. Tutor of Magdalen
R. Glynn, M. D. Fellow of King's
Jas. Wood, B. D. Tutor of St. John's
G. Gordon, B. D. Precentor of Exeter
J. Smith, B. D. Tutor of St John's
J. Oldershaw, B. D. Tutor of Emmanuel
W. L. Mansel, M. A. Public Orator†
T. Salmon, B. D. Fellow of St. John's
J. Fawcett, B. D. Fellow of St. John's
H. Greene, M. A. Fellow of Peterhouse
G. King, M. A.
W. Pugh, M. A. } Fellows of Trin. Coll.
R. Ramsden, M. A.
R. Tillard, M. A. Fellow of St. John's
F. J. H. Wollaston, M. A. Tutor of Trinity Hall, and Jacksonian Professor

In consequence of these applications, the vice-chancellor on the fourth of March, desired all the above gentlemen to attend him at his lodge, where he informed them, that, being called upon by so many respectable persons, he should now think it his duty to proceed against the author of the Pamphlet, in such manner as might be thought advisable. Being asked, "whether he meant in such manner, as might appear advisable to that meeting;" he answered, "No; but in such manner as should be advisable on the whole"—but added, "that he was very ready

* Of the proceedings in the vice-chancellor's court, I have met with two reports, one by John Beverley, M. A. and Proctor of the vice-chancellor's court, and the other by Mr. Frend, the defendant. It should be observed that Mr. Beverley's report was formed from notes taken at the time by the late Dr. Jowett. The sources from which Mr. Frend composed his publication are thus described by him.

"The proceedings of the two courts are given from official papers received from the registrary and bedell, and notes taken down by Mr. Lambert. Mr. Frend's speech was written down by himself a few days after the delivery of it, and though his memory is not very tenacious, he has been enabled by the notes of Mr. Lambert to give not only the order and leading ideas, but in general the very expressions used. The reader will naturally make allowances for a composition confined to the rules of speaking, not of writing, two very different things, and recollect that the latter is to the former what an engraving is to a picture."

These two reports do not differ materially;—however the account now presented to the public of this most curious and interesting case is compiled from both, after a careful and minute examination of their respective contents. Mr. Frend's speech is given *verbatim* from his own report of it.

* Now [1816] Dean of Peterborough.
† Now lord Bishop of Bristol.

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to hear, what they might think proper to be done;" and left them in the room to consult together. The following resolution was then unanimously agreed to, and deposited with the vice-chancellor.

Cambridge, Queen's College, March 4th, 1793.

Resolved by the underwritten persons, members of the University of Cambridge, that William Frend, Master of Arts, and Fellow of Jesus College, be prosecuted in the vice-chancellor's court, for having publicly and notoriously offended against a grace passed by the senate of this University in the year 1603: and that the following gentlemen be a committee to manage the said prosecution, viz. Dr. Kipling, Dr. Jowett, the Margaret Professor of Divinity, the Public Orator, and the reverend Mr. Belward, Fellow of Caius College.

T. Kipling
J. Jowett
J. Mainwaring
W. L. Mansel
R. Belward

Geo. Whitmore	G. King
W. Mathew	T. Lloyd
E. Bradford	R. Ramsden
J. Oldershaw	A. Frampton
W. Walford	E. Kilvington
W. Wade	E. Outram
J. Plampin	R. Tillard
H. Jowett	W. Pugh
J. Smith	W. Walker
J. Costobadie	F. J. H. Wollaston
J. Wood	W. Easton
Thos. Salmon	W. Wilson
H. Greene	

On the Friday following, the five gentlemen, who had been desired to undertake the management of the prosecution, met to draw up an accusation against Mr. Frend, to be lodged with the vice-chancellor. But, on considering the forms and precedents of the vice-chancellor's court, they found, that it had not been usual for the accuser to dictate to the Court, under what *particular* statute the offender should be punished. It was therefore thought necessary, that they should call a second general meeting; which was accordingly done: and on the 11th of March, the following resolution passed unanimously:

Cambridge, 11th March, 1793.

"Agreed, that the following words in the resolution made last Monday, viz. "against a *Grace* passed by the senate of this university, in the year 1603" be rescinded, and that in lieu of them be substituted these words, viz. "against the *laws* of the university."

T. Kipling
J. Jowett
J. Mainwaring
W. L. Mansel
R. Belward

G. Whitmore	F. J. H. Wollaston
Wm. Easton	G. King
Henry Jowett	G. Gordon
W. Mathew	W. Wilson
W. Walford	H. Greene
E. Bradford	T. Lloyd
J. Oldershaw	R. Ramsden
W. Wade	A. Frampton
J. Costobadie	E. Kilvington
J. Smith	W. Walker
P. Douglas	W. Pugh
J. Wood	E. Outram
T. Salmon	

On a subsequent day the managers of the prosecution drew up an accusation against Mr. Frend; which was delivered to the vice-chancellor; Dr. Kipling requested at the same time, that Mr. Frend might be summoned into the vice-chancellor's court, to answer to the charge.

Mr. Frend was accordingly summoned to appear in the vice-chancellor's court, to be held in the law-schools, on Friday the 3rd of May, at ten o'clock in the forenoon.

CITATION.

To John Beverley, William Mathew, and Henry Gunning, esquire bedels of the university of Cambridge, or their lawful deputy or deputies.

Summon William Frend, master of arts, and fellow of Jesus college in the university of Cambridge, to appear before me, or my lawful deputy, and my assessors, at my next court, to be held in the law-schools in Cambridge, on Friday the 3rd day of May next, between the hours of ten and eleven in the forenoon of the same day, in a certain cause of office promoted by the reverend Thomas Kipling, doctor in divinity, and member of the said university, the said cause of office or matter of complaint arising within the jurisdiction of the said university; then and there to answer to an accusation laid before me, in which the said William Frend is charged with having violated the laws and statutes of this university (particularly the statute de Concionibus) by publishing and causing to be dispersed, within the said university, a certain pamphlet, intituled "Peace and Union recommended to the Associated Bodies of Republicans and Anti-Republicans," of which doctor Kipling, the above-mentioned promoter of this cause, affirms him to be the author, and in which, according to the accusation of the said doctor Kipling, religion, as established by public authority within this realm, and also all ecclesiastical ranks and dignities are impugned; and so from court day to court day until the said cause be ended, and further to do and receive as to law and justice shall appertain. Hereof fail not at your peril. Given under my hand and seal, at Queen's college, Cambridge, this 23rd day of April, in the year of our Lord 1793.

(Signed) I. MILNER, (L. S.)
John Beverley. Vice-Chanc.
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PROCEEDINGS IN THE VICE-CHANCELLOR'S COURT.

FIRST COURT DAY.

At a court holden before the right worshipful Isaac Milner, D. D. vice-chancellor of the university of Cambridge, and John Smith, Richard Farmer, William Colman, Lowther Yates, John Barker, Joseph Turner, Francis Barnes, William Craven, and Thomas Postlethwaite, doctors in divinity, and John Fisher, LL.D. his assessors, between the hours of ten and one, on Friday the 3rd day of May, 1793, in the law-schools of the said university. Me present.

GEO. BORLASE,
Not. Publ. and Registr.

The office of the judge promoted by Thos. Kipling, D. D. *against* William Frend, M. A. and fellow of Jesus college.

On which day a summons, heretofore issued against William Frend, M. A. and fellow of Jesus college, was returned by John Beverley, esquire bedel, who made oath, that the same had been personally served on the said William Frend.

Mr. Frend appeared, and the Court was adjourned to the Senate-house.* Dr. Colman appeared at the adjourned court. When and where, Mr. Frend excepted to the court, as in the following paper, purporting to be a renunciation of the jurisdiction of the said court; which paper he read and signed in the presence of the registrary, who attested the same, and delivered it to the vice-chancellor.

"Mr. Vice-Chancellor;

"I desire leave, before my accuser enters on his office, to offer a few things, in the way of objection to the mode of trial, adopted by him, and authorized by you. They will, I hope, be found not unworthy of your attention.

"I acknowledge the receipt of a citation from you, to attend in this place at this hour, and my presence here is intirely owing to that circumstance: but I wish it to be considered, as proceeding more from civility and respect, than duty or obligation. The reason of which distinction will be obvious from what I am going to allege.

"My accuser charges me with the publication of a pamphlet, intituled "Peace and Union recommended to the associated Bodies of Republicans and Anti-Republicans," and by such publication, with impugning religion, as established by public authority within this realm, and also all ecclesiastical ranks and dignities; and by such impugning, with having violated the laws and statutes of this university, particularly the statute "De Concionibus."

"Now the violation of the statute "De Concionibus" being made the principal charge against me, I apprehend, that I ought not to have been cited to appear in the vice-chancellor's court, but before the vice-chancellor, and a majority of the heads of colleges, all offences against that statute being made cognizable by him and them jointly; and that there is no instance of any person being cited to appear here for such an offence. The difference between the vice-chancellor's court, and a meeting of the vice-chancellor and a majority of the heads of houses, I suppose to consist in the following particulars:

"1. The vice-chancellor's court subsists by ancient custom, and charters confirmed by an act of parliament, and ought to be held at stated times, for the purpose of receiving complaints, and hearing and determining causes. Whereas the other meeting derives its existence and authority wholly from queen Elizabeth's statutes, and from the nature of it, can only be occasionally assembled, in the same manner, that the same or other persons meet occasionally in the senate or other place, for the execution of other parts of the same statutes.

"2. The vice-chancellor's court is a court of record, from which no appeal can go to any of the courts in Westminster-hall, but only to the senate of the university.—Whereas, I apprehend, that no appeal can go to the senate from a determination of the vice-chancellor and heads, acting under the statute "De Concionibus," though such determination, like that of a mayor and aldermen in any civil corporation, may be liable to a review in the court of King's-bench.

"3. The vice-chancellor sitting in his court, possesses the power of punishing all offences, cognizable in it, without the concurrence of a majority of the heads of houses, such concurrence being in no case necessary to punish, but only to punish in a particular manner.—Whereas in the exercise of the power given in the statute "De Concionibus," such concurrence is in every step made absolutely necessary.

"4. The immediate object of a citation into this court is punishment; whereas the immediate object of a citation, before the vice-chancellor and a majority of the heads under the statute "De Concionibus," is not punishment, but the revocation of error.

"5. There is no pretence from the statute, nor from any practice under it, for the appointment or allowance of a promoter, such office being peculiar to ecclesiastical courts.

"5. The vice-chancellor has undoubtedly in his court the power of compelling evidence, and that upon oath, neither of which can, I suppose, be done by him and a majority of the heads, assembled for the purpose of enforcing the statute "De Concionibus."

"For these reasons, at least till stronger

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* This adjournment was made, as the Law-schools were too small to contain the audience.

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ones to the contrary shall be alleged, I think myself obliged to renounce the jurisdiction of this court, and do hereby renounce such jurisdiction, so long as the violation of the statute "De Concionibus" is made the principal or any part of the charge against me. And, though I should in the first instance have willingly submitted to answer for any supposed breach of that statute, before the vice-chancellor and a majority of the heads of houses, or before the vice-chancellor in this court for the breach of any other law of the university properly cognizable in it, I now desire time to be advised, whether having been wrongfully cited to appear in this court, on a supposed offence against that statute, with the acquiescence at least, if not the approbation of the heads of colleges, I am any longer liable to a trial for the same offence, either before the vice-chancellor and heads under the statute so often mentioned, or to the vice-chancellor alone, under any other law and statute of the university.

"W. FREND."

Signed by W. Frend, in the presence of me,
GEO. BORLASE,
Not. Publ. and Registrary.

The vice-chancellor, after deliberating with the assessors, pronounced for the jurisdiction of the court: and ordered Dr. Kipling to bring forward his charge. Mr. Frend desired, that the renunciation might be entered on the records of the court, and that the Grace "Cum Statutis Academiæ," Oct. 24, 1609, might be read, part of which was read by Mr. Frend—the vice-chancellor objecting to the reading the whole at that time, and saying it might be read in the course of his defence.

Dr. Kipling desired that the charges might be exhibited in writing; which was allowed: and the said charges or articles were read; and a copy of the same was ordered by the vice-chancellor to be delivered to Mr. Frend, and was so delivered.

Then the promoter rose, and Mr. Frend, rising at the same time, addressed the vice-chancellor, and desired that the accuser might not be permitted to speak till he had put on his proper academical habit. At this a violent burst of laughter and clapping from the audience ensued. The vice-chancellor seemed vehemently moved, and looked up to the gallery, as if going to reprimand the young men; but the burst was over, and the noise had ceased before the vice-chancellor could speak to order.

The promoter said, that the vice-chancellor, he supposed, would be required next to put on his robes too. The vice-chancellor treated Mr. Frend's requisition as frivolous; and Dr. Kipling began by praying, that the charges might be accepted in writing, and a copy of them, with a copy of the pamphlet annexed, given to the defendant. This was allowed, and the charges were read by the promoter.

ARTICLES.

University of Cambridge, May 3, 1793.

In the name of God, Amen. We Isaac Milner, doctor in divinity, vice-chancellor of the university of Cambridge, and judge of the court of the chancellor, masters and scholars, of the said university, lawfully constituted and appointed; to you William Frend, master of arts, and one of the fellows of Jesus college, in this university, do give and minister all and singular the articles, heads, or interrogatories under-written, for certain crimes and offences, said by you to have been committed; but more especially for having written, published, and caused to have been dispersed, within the said university, a book or pamphlet, intituled "Peace and Union recommended to the associated Bodies of Republicans and Anti-Republicans; by William Frend, M. A. Fellow of Jesus College, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793, (price one shilling)." In which said book or pamphlet, religion, as established by public authority within this realm, and also all ecclesiastical ranks and dignities, are impugned. At the promotion of the Rev. Thomas Kipling, doctor in divinity, and a member of this university. And we do object and article as follows: (that is to say)

In the first place, we article and object to you, the aforesaid William Frend, that the university of Cambridge was founded and endowed, and by an act of parliament, made in the thirteenth year of the reign of queen Elizabeth, was incorporated by the name of the chancellor, masters, and scholars of the university of Cambridge, for the maintenance of good and Godly literature, and the virtuous education of youth, within the said university: and moreover, that the letters patents granted to the chancellor, masters, and scholars of the university of Cambridge, in the third year of the reign of our then sovereign lady, queen Elizabeth, and all other letters patents granted to the said university, by any of the progenitors or predecessors of our said queen, were, by the said act of parliament, declared to be thenceforth good, effectual, and available in law, to all constructions and purposes; and we object and article the premises jointly and severally, and every part thereof.

2. Also, we article and object to you, the aforesaid William Frend, that in this present year of our Lord, one thousand seven hundred and ninety-three, you did publish, and cause to be dispersed, within this university, a scandalous book or pamphlet, of which you are the author, intituled "Peace and Union recommended to the associated bodies of Republicans and Anti-Republicans; by William Frend, M. A. Fellow of Jesus college, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793;" which said book or pamphlet is annexed to these presents, and

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prayed to be admitted as if inserted herein; and we article and object as above.

3. Also, we article and object to you the aforesaid William Frend, that in the twenty-ninth page of the aforesaid book or pamphlet, you have defamed the public liturgy of the established church, by affirming that "it is very far from that standard of purity in doctrine, which is required in such compositions;" and we article and object as above.

4. Also, we article and object to you the aforesaid William Frend, that in a paragraph contained in pages 36, 37, 38, of the aforesaid book or pamphlet, beginning at the words "The same passions," and ending with the words "Episcopal convocations," you affirm, that the public worship of the great body of Christians is idolatrous; including in this charge the members of the church of England, as evidently appears from the context; and we article and object as above.

5. Also, we article and object to you the aforesaid William Frend, that in the thirty-ninth page of the aforesaid book or pamphlet, you have asserted, that "ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of Christianity;" and we article and object as above.

6. Also, we article and object to you the aforesaid William Frend, that you have profanely reviled and ridiculed the most sacred offices of religion, as enjoined by the church of England, and performed by its ministers, in the following passage, contained in the thirty-ninth and fortieth pages of the aforesaid book or pamphlet (that is to say), "The laity, like brute beasts, sit tamely under this usurpation: a man, if a priest or minister enters, is not a master of his own house, he must not thank God for the blessings of Providence at his own table, he cannot pledge his faith to a lovely woman without the interference of the priest, his offspring must be sprinkled by sacred hands, and at death he is not committed to his long home, without another spiritual incantation.

"These superstitious prejudices are, without doubt, highly beneficial to the interest of the clerical community, but the morals of neither party are consulted. The laity are apt to imagine, that there are some practices, in which they may be indulged without any imputation on their Christian character; and the gentleman in black is supposed to put on a particular set of features and behaviour with his clothes;" and we article and object as above.

7. Also, we article and object to you the aforesaid William Frend, that at the time of publishing the aforesaid book or pamphlet, you were a master of arts, and member of this university; and that you now are a master of arts and a fellow of Jesus college, in this university, and therefore notoriously subject to the jurisdiction of this Court; and we article and object as above.

8. Also, we article and object to you the aforesaid William Frend, that by the laws and statutes of this university, particularly by the forty-fifth statute, intituled "De Concionibus;" and by a decree passed in the senate of this university, on the ninth day of June, one thousand six hundred and three, it is ordained and provided, that all and every person or persons, impugning religion, as by law established within this realm, or impugning ecclesiastical ranks and dignities, may, and ought to be proceeded against and punished, by suspension from academical degrees, by expulsion, or by banishment; and we article and object as above.

9. Also, we article and object to you the said William Frend, that of and concerning the premises, complaint hath been, and is rightly and duly made, by this party promovent, to this Court and the judge thereof.

Wherefore the party promovent in this cause, prayeth right and justice to be done, and administered to him effectually; and that the said William Frend, in regard to his great rashness and presumption in the premises, may be duly corrected and punished as the law requires.

The articles having been read, Mr. Frend objected to article 1st, as far as it concerned the cause in question. The vice-chancellor declared that objection already over-ruled by the Court.

Mr. *Frend*. By your own authority, or conjointly with the heads?

Mr. *Vice-Chancellor*. By my own, and the heads as my advisers.

Did they concur with you?—They did.

Do they now?

The vice-chancellor turned to the bench, and now asking the heads, declared, They concurred before, and do now.

The second article was then read, and Dr. Kipling proposed to call witnesses. Mr. Frend objected to the calling any witnesses, until the *secundus dies juridicus*, and read part of the grace "*Cum Statutis*," &c. beginning at the words, "*Secundo die juridico*," to the words "*per reum datis*," and required time to answer according to the statutes.

The vice-chancellor said, it was not necessary to comply literally with that grace. Being asked by Mr. Frend, on what account; the vice-chancellor said, That the difficulty of observing it would be very great; that it never had been accurately observed; that it would clash with some of the statutes, and particularly it would limit the power of summary proceedings. Mr. Frend still urging the propriety of its being strictly attended to, was asked by the vice-chancellor, Do you then insist on the promoter's witnesses not being called till the second day?

Frend. I do.

Mr. *Vice-Chancellor*. Do you wish for time to prepare your defence?—I wish for all the time allowed me by the statute. The commissary then interposed, and said, These wit-

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nesses might be admitted now by the first part of the statute. On being asked by Mr. Frend, What part? he said, That this delay was dispensed with, if the cause was *levior et ordinaria*. Mr. Frend asked, Can that cause be called one of the *leviores*, which may drive the accused from the university, and deprive him of his degrees? The commissary answered, That the distinction between *leviores* and *graviores causas* did not arise from the magnitude of the consequences, but from the ease or difficulty of proof.

Frend. If you allow it to be a *causa levior*, your proceedings, to be sure, may be summary.

The promoter observed, the appointment of a second day seemed intended as an indulgence to the actor, to prepare, &c. but this indulgence he did not desire, and was ready to proceed now.

Mr. *Frend* replied: I do not know that the actor is meant to be particularly indulged in this grace. I conceive it to be for the benefit of all parties: and as such I do desire that the time may be allowed, and that the actor may be required to proceed according to law.

Mr. *Vice-Chancellor*. You desire time, then, for your defence?—*Frend*. I desire the time allowed by law.

The vice-chancellor then retired with the commissary and heads, to the lobby, returned, and desired the registrary to read his notes, which were then altered, in various instances, by the commissary. A long conversation now took place between the vice-chancellor and commissary; after which the vice-chancellor, addressing Mr. Frend, said, that though he did not think his demand for time, as founded on the statute, good; yet, as he judged it reasonable to give him time to make his answer, it was allowed: and the Court adjourned till Friday, May 10th, ten in the morning, in the same place.

Mr. Frend desired the Court would understand, that he did not, in this demand, mean to make his defence that day: it was appropriated to the examination of the promoter's witnesses, and to that business only he should expect the Court to attend.

SECOND COURT DAY.

At a court holden before the right worshipful Isaac Milner, D.D. vice-chancellor of the university of Cambridge, and John Smith, Richard Farmer, William Colman, Lowther Yates, John Barker, Joseph Turner, Francis Barnes, William Craven, and Thomas Postlethwaite, doctors in divinity, and John Fisher, LL.D., his assessors, between the hours of ten and one, on Friday the tenth day of May, 1793, in the senate house of the said university.

Me present.
GEO. BORLASE,
Not. Publ. and Registr.

The office of the judge promoted by Thos. Kipling, D. D.
against
William Frend, M. A. and fellow of Jesus college.

On the opening of the Court, the judge asked Mr. Frend, if he was now ready to answer the charges laid against him. Mr. Frend declared, that he did not come with the idea of answering to the charges this day; but that he was ready to act according to the laws of the university, and referred again to the grace, passed Oct. 24, 1609. On which the vice-chancellor said, that as Mr. Frend on the last court day urged the necessity of adhering strictly to the grace of Oct. 24, 1609, and according to his own explanation of what is there stated; he thought it expedient now to explain his ideas concerning the meaning and authority of it.

The Vice-Chancellor then gave his reasons at large, in support of the present proceedings, and explained, according to the best of his judgment, in what sense this grace is to be considered as obligatory, and in what sense its authority could not be admitted.—He said, this court had unquestionably authority to proceed more or less summarily; and in the present instance, he did not yet perceive the shadow of a reason for departing from the usual practice. He added, that he was ready to listen with the utmost attention and patience, as long as any thing could be advanced on either side. His object was to do substantial justice, and he exhorted both the accuser and the accused, to use no unnecessary delay.

Question from Mr. *Frend*. Whether the judge meant to proceed according to the statute "De Concionibus" simply, or whether that statute made a part of the law, under which the judge was now proceeding?—I certainly consider myself as not acting under that statute separately, but as a part of the law on which I mean to proceed.

Whether the judge said this from his own authority, or with the assent and consent of the heads?—I do not think it necessary to answer that question repeatedly.

Mr. Frend protested against the Court now proceeding; as he said, there was not now present with the vice-chancellor, a majority of the heads, and therefore, he could not proceed to take the examination of witnesses, on oath, as long as the statute "De Concionibus" is made a part of the statutes on which the accusation is founded.*

Dr. Kipling then read the second article, and the vice-chancellor asked Mr. Frend whether he admitted or denied the same?—That he had before generally denied them all, asserting them to be false, wicked, and malicious.

Witnesses were then called on the part of the promoter.

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* Dr. Postlethwaite, Master of Trinity College, was absent on this day.—*Frend.*

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Harvey Alger sworn, and (a pamphlet being put into his hand by Dr. Kipling) deposed as follows:

Dr. Kipling. Did you ever see that book before?—*Witness.* Yes.

Did you purchase it of any one?—Yes.

Of whom?—Of Mr. Lunn the bookseller.

[The commissary asked, Is that the book that was delivered to Alger?—Yes.

Has it been in his possession?

Mr. Frend observed, that it ought never to have been out of court, and conceives that the commissary must join with him. Nothing was said in reply.]

About what time?—On Friday the 19th of April, 1793.

Who delivered that book into your hands?—Mr. Lunn's journeyman.

How do you know that to be the very book you received from Mr. Lunn's journeyman?—By having marked it on the cover, and by an L. for Lunn.

Did you make these marks before you delivered the book out of your hands?—Yes.

Can you say, on your oath, that it is the very pamphlet you delivered into my hands the last court-day?—Yes.

How do you know it to be very same?—By the letter L. which I know to be my hand-writing, and there are other marks.

Did you look at the letter L. particularly, when you delivered the book into my hands, on the last court-day?—I did.

Did you look at it again particularly, when I returned it to you?—I did.

Had it been in possession of any person besides yourself, since the last court day?—No.

Question by the *Commissary.* At what time was it delivered to you?—At the close of the business in court.

Question from the *Court.* Where does Mr. Lunn live?—In Trumpington-street.

Question to Dr. Kipling. Have you any more questions to ask?—Not any very material or necessary now.

Question to *Witness.* Can you read?—Yes.

Witness was ordered to read the title of the said pamphlet, and read as follows: "Peace and Union recommended to the associated bodies of Republicans and Anti-Republicans: by William Frend, M. A. and fellow of Jesus college, Cambridge. Printed for the author, by P. C. Croft, St. Ives, 1793. Price one shilling."

Dr. *K.* Did you deliver the same book into my hands this morning, when I came into court?—Yes.

Mr. *Frend* cross-examined the said Witness.

Are you not Dr. Kipling's servant?—I am.

For whom did you purchase this book?—For Dr. Kipling.

With what intention?—By Dr. Kipling's desire. When Dr. Kipling ordered me to buy it, he did not say what was his intention.

When did you make the two marks?—I made them in the kitchen before I took the book to Dr. Kipling.

Why were you induced to make those marks and letter, before you gave the book to Dr. Kipling?—By Dr. Kipling's order.

How long did it remain in Dr. Kipling's possession after the first delivery?—About two days.

Who delivered it into your possession at the end of the two days?—Dr. Kipling.

For what purpose did Dr. Kipling deliver it to you?—He desired me to lock it up.

Did Dr. Kipling assign any reason for its being locked up?—No.

Did you keep it locked up?—I did.

With what intention did you keep it locked up?—With no other intention than by Dr. Kipling's order.

By whose order did you take the book from the place where it was locked up?—By Dr. Kipling's order.

Did you bring the book to court the last court-day by Dr. Kipling's order?—Yes.

Was this book produced in court?—I gave it to Dr. Kipling in the Senate-house-yard, before I came into court; but cannot say what became of it after.

Why could not this book be out of your possession between the last court-day and this?—Because I locked it up as soon as I went home, and have had the key in my possession ever since.

Philip Life sworn.

Dr. *Kipling.* Do you know the last witness, my servant?—I know him by sight.

Do you recollect ever delivering to that servant a pamphlet, intitled "Peace and Union, &c. by William Frend, M. A."?—I do.

Do you recollect about what time you delivered it to him?—I do not.

Can you say from whence that pamphlet came, which you delivered to my servant?—I cannot.

Had Mr. Lunn any of those pamphlets in his shop on the 19th of April last, except the twenty copies which the witness himself had received from Mr. Frend?

[This question was over-ruled by the Vice-Chancellor as putting words into the mouth of the witness. Mr. Frend said, he prompted the last witness, and is now prompting this.]

Did you ever receive any copies of the pamphlet, intituled "Peace and Union, &c." from Mr. Frend himself?—I did.

How many copies?—Twenty copies?

On what day?—On the 3d of April last.

Had Mr. Lunn any copies of this book at that time unsold:—Not that I know of.

Did Mr. Lunn, to your knowledge, procure any copies of this pamphlet, from any other quarter, between the 3d and 19th of April last?—Not that I know of; at least I did not go for any.

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At what place did you receive those twenty copies of the pamphlet from Mr. Frend?—At Mr. Frend's room in Jesus College.

Why did you go thither for any copies of the pamphlet?—I applied to Mr. Bowtell for some copies, but he had none. Mr. Bowteli told me that Mr. Frend had them all.

Were you directed by Mr. Lunn to go to Mr. Bowtell for some copies?—I was.

What did you say to Mr. Frend, when you first went to Mr. Frend's chambers?

[Mr. Frend asked the Court whether such questions were proper? Dr. Kipling insisted on the question being asked; and it was therefore asked.]—I cannot exactly say what the words were; the purport of them was, that Mr. Lunn presented his compliments to Mr. Frend, and having sold all the copies of his pamphlet which he had, would thank him for 50 copies more.

Do you recollect, whether you asked Mr. Frend for copies of his pamphlet?—I do.

Did Mr. Frend make any answer to you on the occasion, and what?—As near as I can recollect, Mr. Frend said, that he did not think he had fifty copies; but that Mr. Lunn should have all he had.

Did Mr. Frend, immediately after this, deliver you any copies?——The commissary thought this a leading question; and therefore the promoter asked,

What did Mr. Frend do immediately after this?—When I went to Mr. Frend's rooms, he was not in them. Some little time afterwards, I saw him standing in the court; when I went to him, and delivered the message I have repeated: I then went with Mr. Frend to his rooms, when he delivered to me 20 copies of the pamphlet, intituled "Peace and Union."

What did you do with these 20 copies?—I brought them home to Mr. Lunn's shop.

You mentioned to Mr. Frend, that Mr. Lunn had sent you for more copies of the pamphlet, because Mr. Lunn then had none remaining unsold in his shop: Was this a part of Mr. Lunn's message or not?—As near as I can recollect, it was.

Promoter. I will explain the purport of my question in a few moments. I wish to know whether Mr. Lunn had any unsold on April the 3d. When first asked the question, he seemed uncertain; he now speaks positively that he had not.

Mr. *Frend* asked, Why he remembered the day when he came to his rooms?—Because I gave Mr. Frend credit in Mr. Lunn's ledger on that day.

By whose instructions did you take the memorandums now in your hand?—"They are only dates. Mr. Lunn thought it proper for me to take them down.

The Rev. *Thos. Lloyd*, M. A. was then called. Mr. Frend objected to his evidence, and desired that his objection might be recorded by the registrary.

Mr. *Frend.* I ask the Court whether a person concerned in the prosecution, may be a witness in the cause? Because Mr. Lloyd, now standing in this court, was one of the twenty-seven, or of the number which assembled at the vice-chancellor's lodge, and there entered into certain resolutions respecting this cause; by which resolutions Dr. Kipling, Dr. Jowett, Mr. Mansel, Mr. Belward and Mr. Mainwaring, were appointed managers, (as I understand) to carry on in their names, this prosecution. A copy of which resolutions, I requested Dr. Kipling to send me. But he (Dr. Kipling) returned word in his first answer, in writing, that he had them not. I sent a second note to Dr. Kipling, to desire to know by what means I might procure a copy of these resolutions. He returned me for answer in writing, that they were in the possession of the vice-chancellor. I wrote between the hours of twelve and one of that day, to the vice-chancellor, and receiving no answer from him, I wrote again between the hours of five and six, requesting that as my interests were much involved in those resolutions, I might be favoured with a copy of them. Between the hours of seven and eight, the vice-chancellor sent me word in writing, that he did not think himself authorized to comply with my request. I now again make that request, considering the production of that paper as necessary to the conducting my defence in the prosecution of this cause, and being fully convinced (whether those resolutions are to any purpose or not in themselves) that a very bad use has been made of them by the twenty-seven, to prejudice me in the eyes of the public, and of the university.

The *Vice-Chancellor* turned to the commissary, and after some little conversation, addressed Dr. Kipling:

Dr. Kipling, Mr. Frend desires to see the resolutions: have you any objection to the production of them?—I leave it to the discretion of the Court.

Court replied. The Court cannot direct the conduct of any of the parties.

Dr. *Kipling*, (after a little pause) Am I to give a decisive answer? I see no reason why he should not: I am willing that he should.

Vice-Chancellor. I see none. I believe I sent next day to Mr. Frend, that as soon as a regular accusation was formed, I would send them. I called a meeting of the heads, and it was their opinion that I should not.

Commissary. I will take Mr. Frend's objection fully. Mr. Lloyd is no accuser before the Court, and therefore a competent witness.

Mr. *Frend* asked: Mr. Vice Chancellor, is this with the concurrence of the heads?—They do not object. *

* In Mr. Beverley's Report of this case it is stated that, in answer to Mr. Frend's objection to Mr. Lloyd's evidence (on account of his being one of the number, which had

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Mr. *Lloyd* was then sworn, and deposed as follows:

Dr. *Kipling*. What pamphlet is that you hold in your hand? [Mr. Frend observed, that this looked like connivance. It seemed as if the promoter had directed the witness to bring the book, that the promoter might ask him what it was: and objected to the question, but the Court admitted it.]—A pamphlet, intituled "Peace and Union, by Wm. Frend, fellow of Jesus College."

Did you purchase it, or was it given to you?—I purchased it.

Of whom?—Of Mr. Lunn the bookseller.

Did you purchase it before the 3d of April or after?—After that date.

How long after that date?—On Thursday the 18th of April.

Can you say upon your oath, that it is the very pamphlet you bought in Mr. Lunn's shop?—I can.

Did you receive it from Mr. Lunn himself, or his foreman?—From his foreman.

The Witness cross-examined by Mr. *Frend*.

Was there any agreement between you and the promoter, to appear here with a pamphlet?—I was asked by Dr. Kipling, if I had any objection to appear, and had none.—It was a voluntary act.—The same principle that led me to petition for a prosecution, led me also to take the part I now do, in it.

(The question being repeated by Mr. *Frend*.)—I had no objection to purchase a pamphlet for the express purpose of appearing here against Mr. Frend, and to bring home the charge against him, and convict him of publishing.

Was there any agreement between you and Dr. Kipling concerning purchasing, keeping, and exhibiting the pamphlet before this Court?—Dr. Kipling suggested to me, to take every proper method for identifying the pamphlet, and qualifying myself as a witness on this occasion.

Were you one of the twenty-seven, or a greater or less number, who had met at the vice-chancellor's and entered into certain resolutions respecting this cause?—I have the honour to be of that number, and I thank Mr. Frend for making it known.

Did you vote for Dr. Kipling being chairman, in that meeting?—I did.

Did you debate on the mode of prosecution?—The plan was not finally settled on that occasion, there certainly was a debate.

By whose direction did you go to the vice-chancellor's lodge on that day?—I think it was in consequence of a message from Mr. Vice-Chancellor, I am not very positive, but believe it was.

Did you vote for the five managers?—I do not think it came to a regular voting.

Were they nominated?—Their names were mentioned.

Was there any question of depriving Mr. Frend of his property at that meeting?—I rather think it was hinted by some person present, that a prosecution might go to that, but that it was not a necessary consequence. The question was, whether the college might not, on account of the university prosecuting, proceed to exclude him from his fellowship; but I do not pretend to be accurate. I cannot answer for my memory, as I did not come to answer this.

Mr. *Frend*. Certainly: I suppose you came for a very different purpose. Was it not said, that to deprive Mr. Frend of his property was a matter of comparatively small moment?—I do not recollect that remark.

Mr. Lloyd gave in his copy, and the promoter desired that it might be identified to be a duplicate of that already in court.

Philip Life called again.

Dr. *Kipling*. Do you recollect a pamphlet being sold to Mr. Lloyd, intituled, "Peace and Union?"—I do.

Do you recollect whether it was sold after the 3rd of April or before?—I think after.

Question from the *Court*. How come you to recollect selling that pamphlet to Mr. Lloyd?—By Mr. Lloyd writing his name on it.

(Being shown a pamphlet). Is this the same?—It is like it, but I am not sure it is the same; I have no circumstance fixed in my memory, which will enable me to say with certainty, that the pamphlet was really sold to Mr. Lloyd after the 3rd of April; and do not remember that it was dated; the pamphlet being dated is the sole circumstance which leads me to suppose it was sold then.

The same witness cross-examined by Mr. *Frend*.

Why do you remember the day, on which you have said you came to my room?—Because I gave Mr. Frend credit for 20 copies, in Mr. Lunn's ledger.

By whose instructions did you take the memorandums in your hand?—By Mr. Lunn's.

Harvey Alger called again and examined by Dr. *Kipling*.

Are you in possession of a copy of the pamphlet, intituled "Peace and Union," by Mr. Frend?—I am.

Where did you purchase it?—Of Mr. Bowtell.

About what time?—On Friday the 19th of April last.

Question from Mr. *Frend*. Did you buy this second copy by direction of Dr. Kipling?—I bought both books by the direction of Dr. Kipling.

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signed the resolutions) the Court thought the evidence to be competent; but determined that as he was one of that number, they thought it their duty to receive his testimony with caution.

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John Boxtell, senr. called and sworn.

Dr. *Kipling*. Do you recollect selling a copy of a pamphlet, intituled, "Peace and Union," by Mr. Frend, to my servant?—I do.

From whom had you that pamphlet?—From Mr. Frend.

Did you go to Mr. Frend's chambers for it?—No.

Where then did Mr. Frend deliver it to you?—I received it from Mr. Frend, in my own house.

Did Mr. Frend bring it himself to your house?—No.

Who then brought it to your house?—It came to my house in a parcel directed to Mr. Frend.

Do you know from whence that parcel came?—I do not.

What did that parcel contain, besides that one copy sold to my servant?—It contained that pamphlet, and several other duplicates.

How do you know that it contained several other duplicates of that pamphlet?—I saw them when the parcel was opened.

Who opened that parcel?—Mr. Frend himself.

How long had the parcel been in your house before Mr. Frend came to open it?—I do not now recollect, whether Mr. Frend came the same day on which it arrived or not, but it was on the same, or the following day.

Did Mr. Frend, deliver that said copy, and several others, to be sold for him?—He did.

Did he give you any commission about the remaining copies?—I do not recollect that he did.

Did he give no directions to send any copies to Mr. Merrill or Mr. Lunn?—I do not recollect that he did.

Did you hear Mr. Frend give any such directions to your servant?—He did.

Inform the Court what those directions were.—Mr. Frend directed my servant to take one of the inclosed parcels to Mr. Merrill, another inclosed parcel was directed to be taken to Mr. Lunn.

Question from the *Court*. Were any of the parcels under cover?—They were tied up with the titles; so that no print was seen. The ends of the pamphlet were blank.

How did you know that these pamphlets were copies of "Peace and Union?"—I do not know that they were copies of "Peace and Union."

Do you know that the pamphlet now produced by Dr. Kipling's servant, was the pamphlet sold by you?—I do not know that it was.

Mr. *Frend* cross-examined the witness.

Have you not sold for me, a variety of books of different authors, addressed both to yourself and Mr. Frend, in parcels from London?—I have.

Charles Dickens, LL. D., called by the Promoter, and sworn.

Dr. *Kipling*. Have you in your possession at present, that pamphlet, intituled, "Peace and Union, &c." by William Frend, that was shown to me by a friend of yours and mine, about a week ago; containing an appendix, in two parts?—I have.

Produce it to the Court. (Produced.) Of whom had you that pamphlet?—Of my friend, Mr. Frend. I went to the printing office at St. Ives, where Mr. Frend was packing up many others. I took up one of the pamphlets, and asked him whether I might take one. Mr. Frend consented to my taking one (which I have now in my hand), but said, that he designed to have sent me one.

How do you know, that it is the same pamphlet you took up at that time?—Hisce oculis video.' I know it by my own handwriting on it.

Being asked what he had written, he read,

"Sunt bona, sunt quædam mediocria, sunt mala plura."

Dr. Dickens was desired by Mr. Frend to read what he had written at the end of the book.

He read,

Siste per fidem, at the bottom of the stairs
Nolo per Jovem, saith good Mr. Eyres
Nil dictum quod non dictum sit prius.

The Court was then adjourned to the next day at twelve o'clock.

THIRD COURT DAY.

At a court holden before the right worshipful Isaac Milner, D. D., vice-chancellor of the university of Cambridge, and John Smith, Richard Farmer, William Colman, Lowther Yates, John Barker, Joseph Turner, Francis Barnes, and William Craven, Doctors in Divinity, and John Fisher, LL. D., his assessors, between the hours of twelve and six, on Saturday the eleventh of May, 1793, in the Senate-house of the said university.

Me present.
GEO. BORLASE,
Not. Publ. and Registr.

The office of the judge promoted by Thos. Kipling, D. D. *against* William Frend, M. A. and fellow of Jesus College. } Certain Resolutions respecting this cause, by which Dr. Kipling, Dr. Jowett, Mr. Mansel, Mr. Mainwaring, and Mr. Belward, were appointed managers to carry on this prosecution, were read.

Dr. Kipling desired that the two pamphlets produced yesterday in court, the one by Harvey Alger, the other by Dr. Dickens, might be examined by the Court, that the Court might be satisfied that they were duplicates of the pamphlet "Peace and Union" in all respects, excepting an appendix annexed to the latter.

Mr. *Frend* observed; it would save trouble if the promoter would say for what end Dr. Dickens was produced at all.

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Dr. *Kipling* replied; it will save no trouble, therefore I shall go on in my own way.

Mr. *Frend*. Dr. Dickens only spoke to a fact in Huntingdonshire, with which this Court has no concern.

The *Vice-Chancellor* holding a paper in his hand, addressed Dr. Kipling; You consented that a copy of these resolutions should be given to Mr. Frend?

Dr. *Kipling* answered. I did consent that Mr. Frend might have a sight of them.

The papers were then delivered to Dr. Kipling, who after looking at them and a short consultation with the other four managers, said, they contain nothing we are ashamed of; yet I am unwilling to gratify an impertinent curiosity.

The papers were then delivered into court, and publicly read. [See them, ante, p. 525.]

Mr. Frend requested that they might be left with him during the sitting of the Court, which Dr. Kipling objected to.

John Bowtell, junr. called and sworn.

Dr. *Kipling*. Do you recollect seeing Mr. Frend a few weeks ago open a parcel in Mr. Bowtell's house containing some pamphlets?—I do.

Did Mr. Frend deliver any of those pamphlets to you?—He left some there for me to take out.

Did he himself give you directions about them?—Yes.

What were those directions?—To take one parcel to Mr. Merrill's and one to Mr. Lunn's.

Did you see the title page of any one of those pamphlets?—Of some that laid loose.

What was the title page as nearly as you can recollect?—Peace and Union.

Do you recollect any person's name on the title-page?—Mr. Frend's.

Were you directed to carry out any of those pamphlets that laid loose?—Yes.

Who gave you those directions?—Mr. Frend.

To what gentlemen did he direct you to carry them?—To Dr. Edwards.

To any other persons?—To Mr. Lambert, and to Mr. Marsh:

Were you to deliver any message with the pamphlets?—I do not remember that I was.

To whom did you deliver that parcel which Mr. Frend ordered you to carry to Mr. Lunn's?—To Mr. Life.

Who is Mr. Life?—Mr. Lunn's journeyman.

Can you say how many pamphlets were in that parcel?—They were tied up in fifties, and I took one parcel.

To whom did you deliver that parcel which Mr. Frend directed you to carry to Mr. Merrill?—To Mr. Merrill's maid servant.

Do you know her name?—No.

Can you recollect her person, when you see her again?—No.

Mr. *Vice-Chancellor*. Should you know her?—No.

Question from the *Court*. Do you know what those pamphlets were, which you delivered to Mr. Merrill's maid servant?—No.

Philip Life again called and examined by Dr. *Kipling*.

Do you recollect ever receiving from John Bowtell, junr. a parcel, containing 50 pamphlets or thereabouts?—I do.

Did you open that parcel yourself?—I cannot charge my memory, whether Mr. Lunn or I opened it.

Did you see the parcel opened?—I saw it when it was open.

What were the contents of it?—It contained 50 copies of a pamphlet, intituled, "Peace and Union recommended to the Associated Bodies of Republicans and Anti-Republicans."

Was there any person's name upon the title page?—Yes, Mr. Frend's.

What might be the interval of time, or nearly so, between your receiving the parcel, and seeing it open?—I saw it open the same evening it was brought.

Are you sure that the parcel of pamphlets that you saw open, was the very parcel that you received from John Bowtell, jun.?—I am sure.

Did John Bowtell, jun. deliver any message to you, with that parcel?—He said it came from Mr. Frend.

Did he say for what purpose?—I do not recollect that he did.

Have any of those pamphlets been sold in Mr. Lunn's shop?—Yes.

How many?—The whole fifty.

On what authority did you undertake to sell them?—I cannot say.—It was Mr. Lunn's order they should be put in the shop for sale.

Have any more copies of the same pamphlet been sold in Mr. Lunn's shop?—Yes.

How many more?—About seventy.

Do you know where those seventy copies came from?—I went for fifty of them to Mr. Bowtell's house, and for the other twenty, to Mr. Frend's rooms.

Did you receive the fifty copies yourself from Mr. Bowtell?—I did.

What did you do with them?—I brought them home to Mr. Lunn's shop.

Are all those 50 copies sold?—They are.

Were they all sold, before you went to Mr. Frend's chambers for more copies of the same pamphlet?—I believe they were, but cannot speak with any certainty.

[Dr. Kipling observed to the Court, the other twenty, you will remember, were proved to have been brought from Mr. Frend's rooms.]

Do you know, whether any more copies of the same pamphlet, were brought into Mr. Lunn's shop for sale?—I never saw any, after the twenty copies I received from Mr. Frend.

Do you believe, that no more than those 120 copies, which have been just now mentioned, were exposed to sale in Mr. Lunn's shop?—I do.

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Mr. *Frend.* At what time did the sale of these pamphlets begin at Mr. Lunn's?—Sometime about February the 13th last.

John Bowtell, sen. called and examined again by the Promoter.

Dr. *Kipling.* Did you ever deliver 50 copies of the pamphlet, intituled "Peace and Union, &c." to Philip Life, Mr. Lunn's journeyman?—I do not recollect that I did.

Do you recollect whether Philip Life ever came and asked you for some copies of that work?—No; I do not remember that.

Do you recollect ever giving any parcel of books to Philip Life?—I have no recollection of it.

Did not Mr. Frend leave several copies of the pamphlet, intituled "Peace and Union," in your house to be distributed to others, who might ask for the work?—He did.

Did you make an entry in your account books, of the number of copies which he left you for that purpose?—I believe I did.

Have you kept an account in the same books of the persons names to whom you have delivered copies of that work, and of the number of copies you have delivered to each person?—I have no account of any person to whom I have sold them.

You told the Court, yesterday, that you saw Mr. Frend open a parcel, which contained many pamphlets; you have also told the Court, that several of those pamphlets were left in your own possession—Have you kept any account of those pamphlets?—No; I have not.

Are they all still in your own possession?—None of them.

Tell the Court to what persons you recollect having delivered some of them.—I think I recollect sending 50 copies to Mr. Frend unsold.

Tell the Court the names of all the persons to whom you have sent parcels of those pamphlets.—I sent none; I saw them go; Mr. Frend sent them.

How many copies did you send to Mr. Lunn?—I sent none.

Do you mean to deny that Philip Life ever had 50 copies from you, of the pamphlet, intituled "Peace and Union, &c. by Mr. Frend?"—No.

Do you think that he never had that number of copies so intituled, from your house?—I might deliver them, but I do not recollect it.

You have said that you never sent any of those pamphlets yourself to Mr. Lunn's, but that you saw 50 of them go.—By whom were they carried to Mr. Lunn's?—By my servant, John Bowtell, jun.

Who directed him to carry them thither?—Mr. Frend.

What message did Mr. Frend send with them?—I do not recollect any particular message.

Did he send no message?—He said, take them to Mr. Merrill and Mr. Lunn; this is all I recollect.

William Henry Lunn sworn.

Dr. *Kipling.* Your foreman has told the Court, that he received a parcel containing 50 pamphlets from John Bowtell jun., that he does not recollect, whether he or yourself opened that parcel; do you recollect by whom it was opened?—[Mr. Frend, asked the Court, whether such prolegomena were allowable in questioning a witness? The commissary disapproved of them.]—I have no recollection of that circumstance at all.

Do you recollect that a parcel containing 50 pamphlets, intituled "Peace and Union, &c. by William Frend," was left in the month of February, at your house?—I have a perfect recollection of their being left, but cannot speak to the time; but my ledger will prove it.

Did you deliver them to your foreman for sale in the shop, or give him any directions for that purpose?—I do not recollect.

By what authority then do you suppose, they were sold in your shop?—As coming from Mr. Bowtell, by Mr. Frend's order.

Had you any more copies of the same pamphlet, From Mr. Bowtell?—I sent for more, when the first were sold.

How many were brought?—Fifty.

Had you sold the whole 100 copies, which you say you received from Mr. Bowtell, before the third of April?—I cannot say.

Had you sold all of them, when you sent for some more copies from Mr. Frend?—I think they were all sold, I will not say positively.

What other copies of the same work, have you ever received for sale?—Twenty copies.

From whom did you receive those twenty copies?—I received them by my agent, in consequence of a message I sent to Mr. Frend.

Had you ever any copies of the same pamphlet for sale, in your shop, besides the hundred copies you had from Mr. Bowtell, and the twenty copies you had by your journeyman "from Mr. Frend's chambers?"—[These latter words were withdrawn by direction of the commissary.]—No.

Do you believe that those 120 copies are the only ones ever brought into your shop for sale, and that you have sold no others?—I do.

Elisabeth Eversden called and sworn.

Dr. *Kipling.* Do you remember seeing that boy?—[Pointing to Bowtell jun.]—I do not.

Do you recollect receiving a parcel of pamphlets from a person of about that size?—Yes.

To whom did you deliver that parcel?—To my master, Mr. Merrill.

Did you see that parcel opened?—No.

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Did the person, of whom you received that parcel, deliver any message with it?—He told me they were pamphlets, to be sold for Mr. Frend.

Did he tell you from whence they came?—No.

Do you recollect about what time you received that parcel?—No.

Can you tell how long ago?—I cannot say.

John Bowtell, jun. called again.

Dr. *Kipling.* Do you recollect delivering a parcel of pamphlets, which you received from Mr. Frend, to Elizabeth Eversden, Mr. Merrill's servant?—I recollect delivering a parcel to Mr. Merrill's maid.

Do you recollect her person?—I cannot tell.

Mr. *Frend.* If Dr. Kipling has any question in future to determine personal identity, I must desire that he be not permitted to point out the person to the witnesses, but that they be left to discover it; as I believe is usual in all other courts.

John Merrill sworn.

Dr. *Kipling.* Do you remember receiving from your maid servant a parcel containing 60 pamphlets, intituled "Peace and Union, &c. by William Frend," with a message, purporting that they were to be sold for Mr. Frend?—Yes.

Were those pamphlets when you received them, put up so that the title pages could not be seen?—To this question, Mr. Frend made objections, which the commissary allowed.

How were those pamphlets put up?—I cannot recollect, that they were put up in any particular order.

Were the title pages visible?—I do not remember they were visible; they had titles.

Did you open the parcel yourself?—I did.

What were the titles of those pamphlets?—"Peace and Union, &c. by William Frend."

Have you sold any of those pamphlets?—I have.

Do you recollect, whether at the time you received them, each pamphlet had an Appendix to it?—They had.

Did you sell any copies with the Appendix to it?—Yes.

Have you since that, sold any without the Appendix?—I have.

By whose authority was the Appendix cancelled?—[Objected to by Mr. Frend, but ordered, as asked for no purpose but to prove the pamphlets with the Appendix written by Mr. Frend.]—By Mr. Frend's.

Did Mr. Frend in person, authorize you to cancel the Appendix?—Yes.

Did he in person, direct you to sell the pamphlet, without the Appendix?—I do not recollect that he did.

Did he give you no directions whatever in person, about the sale of those pamphlets?—I do not remember that he did.

To whom do you intend to pay the money you have received, or may receive, for the sale of this book?—[Mr. Frend objected to this question; the commissary thought it not improper; however it was changed.]

To whom have you given credit, in your books, for the money you have received, for the copies of the pamphlets that are sold?—To Mr. Frend.

Did you send a copy of the said pamphlet to the Master of Arts Coffee-house?—I did.

Do you recollect by whom you sent it?—I do not.

Court. At what time did you receive the parcel from your servant?—On February the 13th last, as appears by entry in my book.

Do you remember numbering that book? [Showing him a copy of "Peace and Union," from the Master of Arts Coffee-house.]—No; but I believe it to be numbered by my young man.

Thomas Wagstaff sworn.

[A book was given him by Dr. Kipling.]

Dr. *Kipling.* What is the title of that book?—"Peace and Union, &c."

Did you ever see that book before?—Yes.

Where did you see it?—In the Master of Arts Coffee-room.

Who keeps that coffee-room?—I do.

From whence did that book come?—From Mr. Merrill's.

Look at the second leaf—Whose handwriting is that?—It is mine.

What is written on the leaf?—Master of Arts Coffee-room.

Mr. *Frend.* Who has a right to take books out of the Master of Arts Coffee-room?—Any member belonging to the society.

Is Dr. Kipling a member of that society?—No.

Do you know then how that book came into Dr. Kipling's possession?—No.

Do you know who took it out of the coffee-room?—Mr. Frampton of St. John's.

How long has it been out of the coffee-room?—On the 6th of May.

Are there any limitations respecting the time of taking books out of the coffee-room?—Seven days.

How long is a book to be in the coffee-room, before it may be taken out?—Two months.

When did you receive this book?—On the 15th of February.

Dr. *Kipling,* to the Court—This book you observe has an Appendix.

Court. How do you know that the book came from Mr. Merrill?—Because it was numbered when it came in, which is the common case with books that come from Mr. Merrill.

Mr. *Frend.* Do you not receive into the coffee-room some as presents?—I do.

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This evidence occasioned some delay, and Mr. Merrill was called again.

Court to Mr. *Merrill.*

Do you remember how that number came on the pamphlet?—I believe it is my young man's writing.

Rev. *Josh. Watson*, M. A. sworn.

Dr. *Kipling.* Were you not curate of Fenstanton in February or March last?—I was.

Did you not in that interval make some inquiries respecting the price of spinning wool?

Mr. *Vice-chancellor.* What! what! spinning wool! what has that to do with this business. [Dr. Kipling went up to the vice-chancellor and said something in a low voice to him: who said, ay, ay, go on.]—*Witness.* I did.

What led you to that inquiry?—The perusal of part of a book which I had read at the Master of Arts Coffee-house.

What was the title of that book?—I do not recollect the precise title, but I have reason to believe, that the beginning of the title was "Peace and Union."

Is any person's name mentioned in the title page?—I believe, William Frend, M. A. fellow of Jesus College.

Did you find what is stated in that book, respecting the price of spinning, to be agreeable to the information you received from the inhabitants of Fenstanton?—I had reason to believe that the information I received at Fenstanton, on that subject, was different from the information, I received from that book, on that subject.

Did you mention that seeming misrepresentation to any one of your acquaintances at that time?—I did, whenever inquiry was made of me, on the subject.

Mr. *Vice-chancellor.* What is all this to prove?

Dr. *Kipling.* That Mr. Frend is the author.

Have you reason to think that Mr. Frend ever heard, that you thought, what is said in the before-mentioned pamphlet, about spinning, is not true?—I have reason to conceive so.

Mention that reason to the Court?—I did receive notes or letters, as I presumed coming from Mr. Frend; in one of which I was desired, not to assert in future, that the subject on which I had been questioned in various companies, was a misrepresentation.

Is that note in your possession?—It is.

Have you it in Court?—I have.

Please to produce it.—[Mr. Watson produced the note.]

I desire that the first note may be read.

Mr. *Watson.* I cannot swear that the note was written by Mr. Frend.

Rev. *Edward Kilvington*, A. M. sworn.

Mr. *Frend* objected to the oath being given to Mr. Kilvington, as one of the twenty-seven.

Court. This objection was over-ruled yesterday in Mr. Lloyd's case.

Dr. *Kipling.* Whose hand writing is that? [Shewing witness the note.]—Mr. Frend's.

Have you frequently seen him write?—Yes, frequently.

Mr. *Frend* cross-examined the witness.

Do you know it to be Mr. Frend's hand-writing?—I do.

How came you to know it to be Mr. Frend's hand-writing?—By having very frequently seen him write, and from having letters of his now in my own possession.

Did you ever write letters to Mr. Frend?—I believe I have.

Where did you see Mr. Frend write?—In his room when giving lectures, for three years, or thereabouts.

How long is it since you saw Mr. Frend write?—About six or seven years since I saw him write, certainly not more.

How then can you say, that this is Mr. Frend's hand-writing, that bears so late a date?—I have reasons, but on Mr. Frend's account, I am unwilling to give them.

Mr. *Frend.* I beg the witness may be desired to give them.

[Here the Court consulted, and ordered Mr. Kilvington to give his reasons:]

Mr. Frend's studied attentions shown to me, as I believe they were shown to all those whom he was desirous of proselyting to his own opinions, were such, as to have impressed very deeply on my mind, the recollection, not only of his hand-writing, but a thousand other circumstances, much more minute.—Added to this, I have occasionally seen his hand-writing since the time I formerly alluded to.

How long since?—Very lately.

How far back?—Within a month.

On what occasion?—In the Order Book at the Master of Arts coffee-house. [The vice-chancellor and commissary here observed, that this added no new strength.] I was unwilling to speak more strongly. And I further believe that I have seen Mr. Frend write within these two or three years, in his own room.

Did you read the writing which you saw Mr. Frend write within these two or three years?—I have read the directions of letters which I have seen Mr. Frend write.

I desire to know the precise time.—I cannot say, but I believe, within three years.

Is it within two years?—I believe not.

He seems to say that he is well acquainted with hand-writing, I wish he may be asked whether he knows this hand-writing? [Throwing down some papers.]—The vice-chancellor thought they might be read—the commissary thought not.

Rev. *John Plampin*, M. A. sworn.

Mr. *Frend* objecting to Mr. Plampin's evidence, said, he is one of the twenty-seven,

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and also one of those who have already sat in judgment on this matter in my own college, and condemned me on this very question without hearing any thing in my defence.

The Court observed, the objection had been overruled.

Mr. *Frend* said, here is additional ground.

[A note was given to him by Dr. *Kipling*.]

Whose hand-writing do you believe that to be?—I believe it to be Mr. Frend's.

Court. Have you seen Mr. Frend write frequently and lately?—I have, within six weeks.

Cross-examined by Mr. *Frend*.

Have any of your pupils an opportunity of knowing your hand-writing at lectures?—Certainly not, because it is not my duty to write in their presence.

Does Mr. Plampin give any lectures in college?—[Overruled.]

Dr. Kipling desired that a copy of the note might be given to him and the managers, which was agreed to, and Mr. Frend now desired that a copy of their resolutions might be delivered to him in exchange. This also was allowed.

Rev. *Thos. Newton*, M. A. sworn.

[A note was given to him by Dr. *Kipling*].

Whose hand-writing do you think that to be?—I believe it is Mr. Frend's, but I cannot say positively.

Court. Have you seen Mr. Frend write frequently, and how lately?—I have seen him write within a year or two, but not frequently.

(A) The Note was read:

To the Rev. Mr. Watson, Fellow of Sydney College.

Mr. Frend having been informed, that Mr. Watson has studiously endeavoured, in various companies, to make it appear that his account of the fall in the price of spinning is a misrepresentation; takes this opportunity of acquainting him, that Mr. Frend gained his knowledge of this circumstance from these sources; from the poor employed in spinning, from the persons employed by the wool-dealers to deliver out wool to the poor, and from the printed paper sent round by the wool-dealers. He asserts it as a fact, from these informations, that the poor person, who earned a shilling the week before the printed paper Mr. Frend alludes to was sent round, did the week after gain for the same quantity of work, only nine-pence. Mr. Audley, a wood-dealer in this town, is willing to corroborate this account, and will, Mr. Frend doubts not, give Mr. Watson any further information on this subject, which may not only tend to make Mr. Watson's ideas clearer, but prevent him from mis-stating in future, a matter of fact.

Jesus College, March 13, 1793.

Dr. *Kipling*. Has that note ever been out of your possession?—It has.

How do you know that the very same note you lent, was returned to you?—By my own hand-writing, which is on one side of it.

When was that written?—Before it went out of my possession.

Did you return any answer to that note?—I did.

Be pleased to produce that answer to the Court.

The witness delivered in the answer, which he could not swear was a literal, or a verbatim copy, of the answer he sent to Mr. Frend, but that it contained the meaning and substance; and was written on the same day he received the note.

This Answer was then read, and delivered to the Registrary:

To Mr. Frend, Jes. Coll.

Mr. Watson has received a note from Mr. Frend, in answer to which he declares, that whenever the subject of conversation in his presence was the oppression of the poor of Fenstanton, as represented in Mr. Frend's Appendix, he has asserted that he wished to believe that Mr. Frend, through ignorance, had misrepresented the fact; the foundation of this assertion, was information which Mr. Watson received at Fenstanton; Mr. Watson is still of the same opinion; as to his being studiously earnest either in approving or contradicting Mr. Frend's publication, he denies the fact.

Drum, March 14.

Dr. *K*. Did you ever receive any answer to note you have now read?—I did.

Produce that answer.

[Produced and read:]

(B.) *Rev. Mr. Watson, Fellow of Sydney College.*

Mr. Frend requests the favour of Mr. Watson to omit, in future, his remark on Mr. Frend's account of the fall in spinning, namely, that he wished to believe that Mr. Frend, through ignorance, "had misrepresented the fact," as Mr. Frend takes upon himself to assure Mr. Watson, that the fact is not at all misrepresented. Mr. Frend has informed Mr. Watson from what sources he derived his information, and takes the liberty of observing, that Mr. Watson is not probably aware that the printed bills alluded to are formed at meetings for a large district, and that those which Mr. Frend saw, did not relate only to the spinners of Stanton, but extended over Huntingdonshire, and parts of Northamptonshire and Bedfordshire.

In consequence of Mr. Watson's note, Mr. Frend called this evening on Mr. Audley, who has given him a printed paper just made for Cambridgeshire, and parts of Hertfordshire, Bedfordshire, and Huntingdonshire, and shown him letters from Yorkshire and other

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parts, informing him of the progress in the lowering of the value of spinning. At a meeting, this week, in Suffolk, spinning was lowered again 2*d.* per pound, from 9*d.* to 7*d.*

Now if in contradiction to Mr. Audley, and a variety of dealers whom Mr. Audley is willing to name to Mr. Watson, besides giving him every other information on this subject, Mr. Watson still persists in declaring that the price of spinning, which was one week at a shilling, and reduced, according to Mr. Frend's account, over a large district, to 9*d.* the week after, was not in this manner reduced; Mr. Frend can only request that he would point out to him, from what source he has derived an information which the principal dealer in wool of this place declares not to be true, which Mr. Frend knows also not to be true from the actual inspection of the printed papers which regulate these proceedings.

Mr. Frend did not in his former note refer to his publication at large, but simply to the fact of the fall of the value of spinning; he did not say that Mr. Watson was studiously earnest in contradicting or supporting Mr. F's publication, but solely that he has studiously endeavoured in various companies, to make the account of the fall in spinning, appear a misrepresentation.

Jesus Coll. Thursday Evening, March 14.

Mr. Kilvington, Mr. Plampin and Mr. Newton, were then asked by Dr. Kipling whether they believed this note to be the hand-writing of Mr. Frend; to which they respectively answered, that they believed it to be his hand-writing.

Dr. *K.* to Mr. *Watson.* Did you answer this note?—I did.

[The Answer produced and read:]

To Mr. Frend, Jes. Coll.

Sir; I was sensible from the inquiry that I made that the price of spinning was at the time mentioned in your pamphlet lower than the common current price, and that the value of a shilling's worth of labour was only paid by 9*d.*

You may probably be better skilled in the mysteries of woollen manufactories than I can pretend to be; my trifling knowledge of this trade does not attempt to account for the reason of paying what is called a shilling's worth of labour with 9*d.* or 10*d.*; but I believe it to be a notorious fact, that in proportion to the fluctuating value of the manufactured commodity, the price of spinning a certain quantity of wool, has varied in different degrees downwards from one shilling, which may be considered as the maximum; and that this did not commence at the period you mention, for previous to that, the price of woollen goods had not been at the highest, and therefore a full shilling was not paid for the labour of spinning that certain quantity. This information I received from some of the most respectable inhabitants of each of my parishes and to the best of my recollection it is the substance of what I have said, when I have conceived your assertion (however well meant) hastily adopted, that before the commencement of the present war, one shilling was the current price, and that it immediately fell 3*d.* I again repeat that I did not think myself interested about any part of your pamphlet as to be studiously earnest in having it discussed in various companies.

I am, Sir, your humble servant,

Sid. Mar. 15, 1793. Jos. Watson.

Dr. *K.* Did you receive an answer to this note?—I did.

[The Answer produced and read:]

(C). *Mr. Watson, Fellow of Sydney College.*

Mr. Frend did not write to Mr. Watson to enter into any controversy on the mysteries of woollen manufactories, which, like the pretended mysteries of religion, are only such to those, who do not give themselves the trouble of gaining knowledge from the proper sources. It is of the misrepresentation of a matter of fact, to the injury of Mr. Frend's character, that he complains; and however light the subject may appear in Mr. Watson's eyes, as long as truth is violated, it becomes Mr. Watson to acquire just information, and having done that, to convict Mr. Frend of a falsehood, or to retract his former assertion. Mr. Frend declares, that at the time mentioned in the Appendix to his pamphlet, spinning was at 9*d.*, the week before it was at par or a shilling. Mr. Watson denies this, and is referred by Mr. Frend to Mr. Audley, the principal wool-dealer in this place, or to any wool-dealer in Huntingdonshire. It appears strange, that Mr. Watson should delay to call on Mr. Audley, from whom he will gain more information on this subject, than from the most respectable inhabitants of his parish, not immediately concerned in letting out spinning to the poor.

Jesus College, March 15, 1793.

Mr. Plampin, Mr. Kilvington, and Mr. Newton, were called by the promoter to prove the hand-writing of the above note, and deposed as before.

Dr. *Kipling* to Mr. *Watson.* Were the two last notes you produced marked with the marks B. and C. by you, before you parted with them?—They were.

Did you answer the third note marked C?—I did.

[Mr. Watson's Answer read:]

Sir; You assert that I deny what you positively affirm—I do not.—The information which I received from my parishioners, about the fall of the price of spinning, seemed inconsistent with the contents of your publication. I repeat to you that I am not skilled in the knowledge of the practices observed in

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woollen manufactories.—I cannot, from my own knowledge, presume to contradict what you, from your professed extensive investigation of the subject, positively assert to be matter of fact—I will endeavour to recollect, if it can be deemed worthy of recollection, that you have unequivocally contradicted the idea which I had conceived, from the information of my parishioners.

I have before said, that I wished to believe, that thro' ignorance you had misrepresented a matter of fact—you cannot think that I have injured your character, by supposing you liable to error.

But I affirm, that it will be a violation of truth, if you maintain that I have, in various companies, studiously endeavoured to accuse you of wilful misrepresentation—I beg leave to decline any future correspondence with you upon the subject of the "fall in spinning" at Fenstanton—I would wish to profess the apparent sentiments of that person, or those persons, who humanely and studiously endeavoured to deliver your pamphlet from the incumbrance of its appendices, by tearing them from the copies that were sent to the different booksellers. I would be far from desiring, that by any exertion of mine, the remembrance even of these lucubrations, should be attached to the main body of your publication. The intention of their separation from it, doubtless was, that they might be consigned to oblivion—that peaceful asylum where enthusiastic rhapsodies and chimerical theories, having lost their novel excentricity, repose undisturbed from persecution, being secured by their own intrinsic insignificancy. I am, Sir, your humble servant, J. Watson.

Sydney Coll. March 17.

Dr. *K.* By whom did you send that answer to Mr. Frend?—By my bed-maker, John Smith.

Did your bed-maker bring you any answer?—He did.

[The Court ordered that John Smith be cited to appear on the next court-day.]

Have you any particular reason to think that the notes marked A. B. C. came from Mr. Frend of Jesus College?—I have.

Please to give that reason to the Court.—The first time I met Mr. Frend in public, after the receipt of the third note, he used to me the words, "Our correspondence has ceased."

Had you any other correspondence with Mr. Frend in writing, since Christmas?—Not to the best of my recollection.

Is there any other reason you would produce to the Court?—No.

Cross-examined by Mr. *Frend.*

Have you not reason to believe, that the information you received from Fenstanton, was not true?—At the time I received the information, I thought it true; since that time I have not searched into it, being satisfied with what Mr. Frend had shown me.

What did Mr. Frend show you?—Several papers since our correspondence.

What did these papers relate to?—I do not exactly know.

Were they certificates?—I believe one might have the form of a certificate.

Were they all written papers?—I believe not.

Have you any recollection of what the printed papers referred to?—I remember seeing one printed paper particularly.

I beg you to relate what the printed paper contained.—I believe it contained a scale of the prices of wool-spinning, but I cannot swear that it did.

The Court was then adjourned to Monday next, at ten o'clock in the forenoon.

Fourth Court Day.

At a Court holden before the right worshipful Isaac Milner, D. D. Vice-Chancellor of the University of Cambridge, and John Smith, Richard Farmer, William Colman, Lowther Yates, John Barker, Joseph Turner, Francis Barnes, and William Craven, Doctors in Divinity, and John Fisher, LL.D. his assessors, between the hours of ten and two on Monday the thirteenth of May, 1793, in the Senate-house of the said University.

Me present,
G. Borlase,
Not. Publ. and Regist.

The office of the judge promoted by T. Kipling, D. D. *against* William Frend, M. A. and Fellow of Jesus College.	Francis Hodson sworn and examined, also E. Kilvington, J. Plampin, T. Newton, J. Merrill, J. Bowtell sen., J. Bowtell jun., H. Alger, examined, and J. Smith, and W. Mathew, LL.B. sworn and examined.

Francis Hodson called by Dr. Kipling and sworn.

[The Cambridge Chronicle and Journal was given to him, dated February 9th, 1793.]

Are you the printer of that news-paper?—Yes.

Read that advertisement.—In the press, and, &c.

By what authority did you insert that advertisement?—A gentleman of the University brought it to me on February the 6th, and desired me to insert it, and paid me for inserting it.

Was it Mr. Frend himself?—No.

Do you know who the gentleman was?—It was the rev. Herbert Marsh,* fellow of St. John's College.

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* In 1816 Lord Bishop of Landaff.

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[Dr. Kipling observed to the Court; Mr. Marsh is so much indisposed, as not to be able to attend till sent for into court.]

Have you the writing which Mr. Marsh left with you?—I have.

Produce it to the Court.

[Produced and read.]

'In the press, and in the course of next 'week will be published, PEACE AND UNION, 'recommended to the associated bodies of 'Republicans and Anti-Republicans; by Wil-'liam Frend, M. A. and Fellow of Jesus 'College.'

Dr. *Kipling.* I shall not prove the hand-writing of this note, till another note is produced.

The note was directed to the rev. Herbert Marsh.

Mr. Hodson observed, the direction had nothing to do with the advertisement.

The advertisement having been read,

Mr. Hodson observed, that it was preserved as his authority for inserting it.

Mr. Marsh, who had been sent for, now appeared, and addressed the Court in these words: "Mr. Vice-chancellor; Is it absolutely necessary that my evidence should be taken? You'll consider, Sir, that Mr. Frend is a near relation—a man with whom I have been educated from my childhood, and, of course, a confidential friend. I think it hard—you yourself, Sir, with every assessor on the bench, would think it hard—nay even the prosecutors themselves, if it was their own case, would think it hard, extremely hard, to be dragged forward in this public manner, to act against a man with whom they were connected by the bonds of friendship, and united by the ties of blood. I request, Sir, the opinion of the Court."

The vice-chancellor, with the commissary and heads, then retired, and in about a minute the vice-chancellor returned, and made the following answer:—'Mr. Marsh, the 'Court has taken your case into consideration, 'and is of opinion, that you ought not to be 'examined, unless Dr. Kipling particularly 'insists upon it.' To which Dr. Kipling replied, that he only wished to ask Mr. Marsh a few questions, for form's sake, relative to the letter. The commissary then addressed Dr Kipling to the following purport:—'Dr. 'Kipling, you have heard Mr. Marsh's rea-'sons: the Court is satisfied with them; and, 'I think, therefore, you will not insist on his 'being examined.' Dr. Kipling, with some reluctance, then gave up the point: and Mr. Marsh retired.

Dr. *Kipling.* Are you the printer of that news-paper?—Yes.

Read that advertisement.—'This day is published,' &c.

By whose order did you insert that advertisement?—By Mr. Frend's own order personally.

Mention to the Court what passed between you and Mr. Frend, relative to that order.—I cannot recollect the exact words, but Mr. Frend desired me to repeat his advertisement in the next paper, and to say, "This day is published."

Did he not make use of these words, 'my pamphlet?'—[This question was disallowed by the Court as unfair.]

Did he make use of any other words?—Not to my recollection.

Did you receive a note from Mr. Frend soon after that conversation?—I received a note in the name of Mr. Frend, saying that he had omitted to desire me to add "the Price of one shilling."

Produce that note to the Court.

[Produced and read].

Have you ever seen Mr. Frend write?—Yes, often; but not this note, without that I cannot swear to this.

Do you think those notes were written by Mr. Frend?—I am of opinion they were, but I would not be considered to speak positively.

The Court desired him to give his reasons for thinking them the hand-writing of Mr. Frend.—The reasons are, that the respect I have for Mr. Frend, as a gentleman of literature, and a member of this University, would not have permitted me to insert an advertisement, to which his name was annexed, unless I supposed I had his own authority for doing it.

Rev. *E. Kilvington,* M. A. called.

Dr. *Kipling.* I refer to the former testimony given by Mr. Kilvington, and shall not put the previous question again, whether he has seen Mr. Frend write.

[Notes marked A. and B. were put into his hand.] Whose hand-writing do you believe that to be in the note marked A.?—Mr. Frend's.

And in the note marked B.?—Mr. Frend's also. Mr. Frend seemed to object to my former evidence, and asked, whether I had seen his writing within two years? I was then unprepared.

By Mr. *Frend.* Does Mr. Kilvington recollect that he has seen Mr. Frend write within these two years?—I am now, upon recollection, prepared to say that I have.

Dr. *Kipling.* Have you read any of Mr. Frend's hand-writing, which you have seen him write within these two years?—I have.

Rev. *John Plampin,* M. A. called.

Dr. *Kipling.* Look on those two notes; whose hand-writing do you believe it to be?—I believe it to be Mr. Frend's, but am not so certain of it as I was of the others.

Rev. *Thomas Newton,* M. A. called.

Dr. *Kipling.* Look at those two notes; whose hand-writing is it?—I cannot speak positively, but I believe it to be Mr. Frend's.

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John Merrill called again.

Dr. *Kipling.* Have you [or any one for you, objected to by the Court] ever received into your house any one copy of "Peace and Union, &c." by William Frend, besides those 50 copies which you mentioned in your former evidence to have been brought to your house from Mr. Bowtell's, on or about the 15th of last February?—[Mr. Frend interposed, and begged that Dr. Kipling might be confined to simple questions, without any prolegomena, till he acquires the talent of writing prolegomena better.]—I never received any more than that parcel on the 13th of Feb. last.

Did you ever sell a book, called a second address to the inhabitants of Cambridge, published 1789. [Dr. Kipling produced a book.]

Court. Do you think it material to prove the publication of Peace and Union?—Dr. *Kipling.*—No; I want to explain some passages in the present publication by it.

Mr. *Frend* rose and asked: Are my supposed opinions in 1793, to be explained by a book, supposed also to have been written by me in 1789?

The Court rejected the book as inadmissible in evidence.

John Bowtell, sen. called again.

Dr. *Kipling.* Have you ever had in your house, either as presents, or for sale, any copies of the pamphlet, intituled "Peace and Union," that were not contained in the parcel, which you have told the Court, was opened by Mr. Frend at your house, and in your presence?—None that I have seen.

Do you not think you would have seen them, had there been such?—Yes, I think I should, had I been in the way.

Did you ever hear of any such coming into your house, that were not contained in that parcel?—I have.

Do you know from whence they came?—No.

Do you know who brought them into your house?—No.

Who told you about them?—My nephew, John Bowtell.

Have you sold any of those copies?—No.

Are they still in your possession?—No.

To whom have you delivered them, or caused them to be delivered?—I have neither delivered them to any body, nor caused them to be delivered.

John Bowtell, jun. called.

Dr. *Kipling.* Have any copies of the pamphlet intituled "Peace and Union, &c." been brought into your master's house, besides all those copies of that pamphlet, which were taken out of a parcel opened there by Mr. Frend?—I brought some in myself.

Do you recollect how many you brought in?—No.

From whom did you receive those copies?—I fetched them from the inn where the carrier sets up at.

What carrier?—The St. Ives.

To whom were they directed?—They were directed to our house, I think for Mr. Frend.

Who ordered you to go to the carrier's for them?—Mr. Frend.

What did you do with those copies?—Mr. Frend desired me to unpack them.

Where were you when he desired you to unpack them?—In our own house.

Do you know what became of them afterwards?—They were sent to London.

Did you take them to the London carrier yourself?—Yes.

How do you know they were copies of the pamphlet, "Peace and Union, &c."?—I saw some of them untied, and saw the title-pages.

When?—About the 16th or 17th of February, on a Thursday night, and they were sent to London the same night.

Mr. *Frend* cross-examined the witness.

Do you remember seeing Mr. Frend before at your house, packing up, or unpacking parcels?—I have seen Mr. Frend one or two days before in our house unpacking a parcel.

But within these three or four years last, have you seen him frequently unpacking parcels, or causing them to be packed?—I do not remember that I have.

John Bowtell, sen. called again.

Dr. *Kipling.* Have any copies of the pamphlet, intituled, "Peace and Union, &c. by Willian Frend," been sold in your house, which were not taken out of the parcel which you saw Mr. Frend open, to your knowledge?—No others have been sold but what came out of that first parcel that I know of.

Have any copies of said pamphlet been sent from your house to Mr. Merrill's or Mr. Lunn's for sale, which were not taken out of the same parcel?—That I cannot tell, I do not know of any.

[Mr. Frend here asked, Whether it was usual and regular to call and recall evidence in this manner?

The commissary said he wished that it could be avoided.]

Have you ever sold any copies of said pamphlet, with the appendix annexed?—[Mr. Frend objected to this question, but the objection was over-ruled.]—I do not recollect that I have sold one with the appendix annexed.

Was the appendix torn from any copies of the pamphlet at your house?—Yes, it was cancelled.

Who cancelled it?—I did.

By whose order?—By Mr. Frend's.

To whom have you given credit in your books, for the money you have received, for the pamphlets sold by you?—To Mr. Frend.

Mr. *Frend.* Do you recollect several parcels of books of various authors, in the

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course of four or five years, packed or unpacked by me or my order at your house? —I do.

Harvey Alger called again.

Dr. *Kipling*. Did you deliver both the copies of the pamphlet, which you purchased by my order, at Mr. Lunn's or Mr. Bowtell's, into my hands, on the first court-day, or one only?—Only one.

Which of them was it?—That which I purchased at Mr. Lunn's.

How do you know it was that pamphlet in particular?—I marked it with an L.

Did you see me take the very same pamphlet from the table in the court, on that day?—I did.

How do you know it to be the same?—By the marks which were on it.

At what time did I take it from the table?—At the time the Court broke up.

To whom did I deliver it?—To me.

When and where?—At the table, at the time the Court broke up.

Dr. Kipling now observed, that the evidence having been given in Court at different times, and in a detached way, he must beg for time to collect the substance, and to arrange his observations upon it: but recollecting that John Smith had not been examined, he was called in and sworn.

John Smith sworn.

Do you know Mr. Frend of Jesus college by sight?—Yes.

Do you recollect carrying a note to him from Mr. Watson of Sidney, within these two or three months?—Yes.

Did you deliver it into Mr. Frend's own hand?—Yes.

What did Mr. Frend say to you on that occasion?—It required no answer.

Is this the only note you ever took from Mr. Watson to Mr. Frend?—Yes.

Dr. *Kipling*. I am now ready to proceed on article the third, and will repeat the passage.

Here Dr. Kipling read. Mr. Frend objected that the passages as quoted by Dr. Kipling, were not in the book. Dr. Kipling said; to be sure it mentioned purity of arrangement, but he left that out because he did not understand what it meant. We accuse him of defaming the liturgy. In proof of this assertion the promoter was going to read a passage out of the pamphlet published by Mr. Frend in 1789, but the defendant objected to this, and the vice-chancellor, after a considerable demur with the heads, said, we think that unless Mr. Frend allows that to be his book, and that he is of the same opinion now which he was then, it cannot be read.

Dr. *Kipling*. I will then leave that article to the judgment of the Court.

Dr. Kipling proceeded to the 4th article, and read p. 36, 37, 38, observing that the church of England must be included, as appears evidently from the context. For in page 36, the author distinguishes the whole body of christians into the members of the church of England, the dissenters, then the few dispersed over England, called, unitarians. Page 37, he speaks of the great body as deviating from the worship of the one God. By this, therefore, he must mean the church of England and dissenters together. Certainly, therefore, the church of England is included. This great body he asserts to have associated the worship of created beings, p. 37. with that of the God and father of Jesus Christ. He charges us, therefore, directly with idolatry. He cannot be speaking of the church of Rome, for he says, p. 38, "Let churchmen and dissenters examine how far they have deviated, &c."

Mr. *Vice-chancellor*. I should be glad, Dr. Kipling, to hear how you make out that in the great body of christians the church of England is included.

Dr. *Kipling*. I could have produced better evidence if I had been allowed.

The 5th Article being read, and passages quoted from p. 39, Mr. Frend looked up and down the page, but declared he could not find it.

Dr. *Kipling*. It is there.

Mr. *Frend*. I cannot find it.

Dr. *Kipling*. Mr. Vice-chancellor, it is exactly the same, 'tis all there except an omission. [Here a loud laugh on all sides.]

Dr. Kipling, after reading the 5th Article, said, I believe, Mr. Vice-chancellor, it is not unusual for the prosecutor to point out precedents for the direction of the Court. I will produce one. In the year 1590, Mr. Charke was charged with asserting in a *concio ad clerum*, first that all bishops, archbishops, and the pope, were introduced by Satan, into the church. 2dly, with affirming, that there ought to be no ranks of superiority in the church whatever. He was brought before the vice-chancellor, and confessed the charge. He was called upon to recant; he refused, and was excluded from his college, and banished the university.

Mr. *Frend*. Was this done by the vice-chancellor and the heads, or in the vice-chancellor's court?

Dr. *Kipling*. It was done somewhere, I don't know where.

Dr. Kipling read the 6th Article, and said he had nothing to add to that article; he should leave it all to the Court.

The seventh Article having been read,

William Mathew, LL. B. Fellow of Jesus college, sworn.

Was Mr. Frend a fellow of Jesus college in the month of February last, and does he continue to be a fellow of the same at this time?—He was fellow in the month of February last, and is fellow at this time.

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On what ground do you affirm that?—On two grounds: first, because the admission to the fellowship in Jesus college appears upon the register of the college, and because I pay to him such money as is due to him as fellow.

Rev. *John Plampin*, M. A. called in again.

Do you know that Mr. Frend was fellow of Jesus college during the whole month of February last, and that he continues still to be fellow?—Yes, I do.

Commissary. It appears that a Mr. Frend was fellow of Jesus, but not that the defendant is that Mr. Frend.

Dr. *Kipling.* I believe it is the practice of the Court to put the defendant to admit or deny it.

Court. You are to prove he is a master of arts.

Dr. *Kipling.* The register books prove that, but they are not here. But here is a young man who was examined for his bachelor's degree by Mr. Frend, and as none but masters can examine for that degree, it follows that Mr. Frend was a master of arts.

Mr. *Vice-chancellor.* That is no proof. People may take liberties which they have no authority for.

The vice chancellor directed the registrary to produce the book of degrees, and the Supplicat for the admission of Mr. Frend to the degree of M. A., at the next court.

8th Article. The decree of 1603 was read, then the law De Concionibus from the word 'Prohibemus,' by the bedell.

Mr. *Frend* desired that the bedell might read any other laws, if any more were to be made use of.

Dr. *Kipling.* I do affirm that he has offended these.

Mr. *Frend.* Does the promoter mean to refer to any other?

Mr. *Vice-chancellor.* If he does, he must produce them in time for you to consider them.

Dr. *Kipling.* I shall mention no more.

Mr. *Frend.* Does he refer to any more? if he does, let him declare them like an honest man.

Mr. *Vice-chancellor.* Do you (to the promoter) mean to mention any more?

Dr. *Kipling.* At present I have no intention.

Mr. *Frend.* Will he be allowed, after this, to mention any more?

Mr. *Vice-chancellor.* If he does, time shall be given to Mr. Frend.

The 9th Article was then read, praying that right and justice be done.

Here the evidence was closed, excepting only the proof of Mr. Frend being a master of arts which was postponed to the next court-day.

The vice-chancellor then asked, at what time Mr. Frend would be ready, and in what manner he meant to conduct his defence.

Mr. Frend said, that he intended to divide his defence into three parts, which might take up about two hours each; that he would comprise it in less if possible; that his health might not enable him to go through more than one part in a day, but he trusted that, if necessary, such indulgence would be allowed to him; he engaged it should not exceed that time.

Dr. Kipling then begged, that he might be allowed a little time to collect, arrange, and digest the evidence on the publication which had necessarily been so disjointed; and to add some observations upon it.

This was granted, and the Court adjourned to Friday the 17th, 10 o'clock in the morning.

FIFTH COURT DAY.

At a Court holden before the right worshipful Isaac Milner, D.D. Vice-Chancellor of the University of Cambridge, and John Smith, Richard Farmer, William Colman, Lowther Yates, John Barker, Joseph Turner, Francis Barnes, and William Craven, Doctors in Divinity, and John Fisher, LL.D. his Assessors, between the hours of ten and twelve of Friday the seventeenth of May, 1793, in the Senate-house of the said University.

Me present.
G. BORLASE,
Not. Publ. and Registr.

The office of the judge promoted by Thos. Kipling, D.D.
against
William Frend, M.A. and fellow of Jesus college.

} The Book of Degrees, and the Supplicat for the admission of William Frend, to the degree of Master of Arts, was produced by the Registrary, and Dr. Kipling was heard upon the evidence heretofore produced in this cause to the Court.

He began with expressing his acknowledgments to the Court for their patient attention during the trial, and for their present indulgence. His aim now was to collect and combine the scattered parts of the evidence.—Arrangement would communicate energy; a perspicuous connected detail would aid the decisions of justice, remove the hesitation which might have arisen from suspense, and impress a deeper conviction, where its force had been weakened by the interruptions and tedium of the trial. In my remarks however, he said, I shall be as concise as possible, and shall carefully avoid every thing impertinent and personal.—And, if any thing of this nature should fall from the defendant, he left it to the authority of the Court to repress it. Whilst at the same time it would be a consolation to him, that the accuser had not, in that respect, been the aggressor; that invective was deprived of the plea of retaliation.

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After this introduction, Dr. Kipling repeated the charge which had been brought against Mr. Frend, and explained the principal step which he had taken, previous to the trial, in order to establish its truth. Not aware of any objection to the testimony of a domestic to a plain matter of fact, he had directed his servant, Harvey Alger, to purchase two copies of the pamphlet, intitled "Peace and Union," at different booksellers. And the Court had now heard his deposition, that in compliance with his master's orders, he did on the 19th of last April, buy two copies, one at Mr. Bowtell's and the other at Mr. Lunn's; that, before he delivered them to his master, or any other person, he put such marks upon them, as might enable him to swear to their indentity, and in particular, upon the copy bought at Mr. Lunn's, the letter L.

Dr. Kipling then addressed the vice-chancellor, with observing, that the first result of his examination of witnesses was this, that the pamphlet marked L. and now in the possession of the Court, was one of twenty copies, which Philip Life, Mr. Lunn's foreman, brought from Mr. Frend, at his chambers in Jesus College, on the 3rd of April.

The testimony upon which he built this conclusion, was arranged, as follows:

Mr. Lunn had deposed, that he received by his agent, in consequence of a message sent to Mr. Frend, 20 copies of the pamphlet, intituled "Peace and Union."

Philip Life, his foreman, had deposed, that he went to Mr. Frend on the 3d of April, with this message from his master, "Mr. Lunn's compliments, and having sold all the copies of his pamphlet, which he had from Mr. Bowtell's, desires to have 50 more;" that Mr. Frend gave him 20, and that he brought these to his master's shop for sale.

Being asked, whether Mr. Lunn had any copies of the pamphlet unsold at the time of his going with the above message, he answered, "not that I know of;" and being again interrogated, whether Mr. Lunn had procured any other copies of the pamphlet for sale from any other quarter, between the 3rd and 19th of April, he replied, "not to my knowledge."

Another deposition of his master was, that the only copies he ever had for sale, were 100, which he received from Bowtell's, and 20, which he afterwards received from Mr. Frend by his journeyman; and that he thought he had not one copy remaining in his house, when he sent him to Mr. Frend on the 3rd of April for some more.

From these premises then, Dr. Kipling remarked, the conclusion is clear and decisive.

Dr. Kipling here added, that what was true of the copy marked L. was also true of that which another witness had delivered to the Court on the second court-day.—Mr. Lloyd had deposed, that he bought his copy at Mr. Lunn's shop on the 18th of April.

And, as if solicitous to engage the attention of the Court in a peculiar manner, to the point and the proof before them, he called their recollection to other parts of the evidence. According to the testimony of Bowtell sen. Mr. Frend had come to his house on or about the 13th of last February, had opened a parcel which was directed for himself at Bowtell's, and which contained several pamphlets, and had ordered his nephew (Bowtell, jun.) to take 50 of them to Mr. Lunn's. From Bowtell jun. they had learned, that these 50 copies were delivered by him to Philip Life, and from the latter, that he had received them into his master's shop, and that, when they were all sold, had fetched 50 more from Bowtell's house, who himself gave them into his hands.

After this proof, Dr. Kipling proceeded to show, that even admitting it was not conclusive, there remained another, which could not be disputed.—Supposing Mr. Lloyd's copy, and that marked L. were not of the twenty which were brought from Mr. Frend's chambers, they still must have come from Bowtell's house, and consequently from the defendant.

His argument was comprised in the following interrogatories and answers:

Philip Life was asked, "Do you believe, that no more than the 50 copies, delivered to you by Bowtell, jun. as coming from Mr. Frend; the 50 you yourself afterwards received from Bowtell the elder, and the 20 you brought from Mr. Frend's chambers, were ever exposed to sale in Mr. Lunn's shop?" And the witness replied in the affirmative.

To the question, "Had you ever for sale in your shop any copies of the pamphlet, intituled, "Peace and Union," besides the 100 you received from Mr. Bowtell, and the 20 which your foreman brought from Mr. Frend?" Mr. Lunn replied in the negative.

The elder Bowtell was then asked, whether any copies of the pamphlet in question, had been sent to Mr. Lunn's for sale from his house, which had not been taken out of the parcel opened by Mr. Frend in his house, and in his presence—And his answer was, "I do not know of any."

Who then, observed the promoter, as he recapitulated this united testimony, can controvert the plain inference, that if the copies before-mentioned, which were both purchased at Mr. Lunn's, did not come from Mr. Frend's chambers on the 3d of April, they were still a part of the parcel opened by Mr. Frend in Bowtell's house, and revert to him as their publisher and owner?

From this accurate representation, from this two-fold proof of the same point, Dr. Kipling passed to a third particular of no less moment. He appeared to wish to spare no investigation, nor could he be conscious of having done so. He seemed not to expect conviction from declamation or artifice, but to address the judge

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in his true capacity, as the severe and steady patron of truth in her plainest dress.

He now proposed to show, that the defendant had issued the copy, which his servant had bought at Bowtell's, and the copy which belonged to the Master of Arts Coffee-house, and was distinguished from the other only by an Appendix.

For the first, the single testimony of Bowtell was adverted to. He had said, that he never saw in his house, either as presents, or for sale, any copies of the pamphlet, except such as had been taken out of the parcel opened by Mr. Frend in his house, and in his presence: and that he thought, he must certainly have seen them, if there had been any others.

With respect to the copy belonging to the Master of Arts Coffee-house, Dr. Kipling appealed to the depositions of four witnesses.

Mr. Merrill had told the Court, that on the 13th of February, his maid-servant delivered to him a bundle, containing 50 copies, which were all he had ever received into his house; and that he sent the copy before them to the Masters of Arts Coffee-house.

Elizabeth Eversden, the maid-servant, had added to her master's testimony, that she received from a young person, about the size of Bowtell, jun. a bundle of pamphlets, and was told by him, that they were to be sold for Mr. Frend.

Of the two Bowtells, the younger says, that, in obedience to orders given by Mr. Frend in person, he took a bundle of 50 pamphlets to Mr. Merrill's shop, and delivered it to his maid-servant; the elder deposes, that Mr. Frend in his presence, ordered his nephew (Bowtell, jun.) to carry a bundle of pamphlets, which came out of the parcel opened by Mr. Frend, to Mr. Merrill's house, and that he knows not of any one copy being sent from his house to Mr. Merrill's, excepting the contents of that bundle.

The Court then, remarked the promoter, cannot but anticipate the observation, which closes this statement.—Mr. Merrill having no copy for sale, but what had come from Bowtell's house, out of the parcel opened by Mr. Frend, they will immediately decide the claim of the defendant to that which was sent to the Master of Arts Coffee-house.

At this point of the summary, Dr. Kipling, anxious to carry along with his own convictions, those of his hearers, recalled to their memories the amount of the whole preceding proofs. Out of five copies in the possession of the Court, four have come from the defendant, either when he was at Mr. Bowtell's, or at his own chambers: viz. Mr. Lloyd's, the Masters of Arts, and the two purchased by his servant.

He intended hereafter to show, that the fifth had the same source.—But he was now proceeding to the fourth result of the evidence. And he had, he said, in his hand a string of depositions, whose proof could not be resisted, that the sale and dispersion of every copy within the precincts of this University, originated with the defendant.—He was indeed aware of the objection, which might be here made, to the repetition of testimony, but requested, that the nature of his situation, as promoter, and the solicitude he felt, to discharge his obligations, and to impress the minds of his honourable auditory, might be admitted as his excuse and apology.

Dr. Kipling then entered upon a narrative to this effect:—A parcel directed for Mr. Frend was brought to the house of Bowtell, sen., in the month of February. On the day it arrived, or certainly on the following day, Mr. Frend came and opened it in his presence. —It contained a number of pamphlets, some of which Mr. Frend put into his hands. Of these, and of others, which he saw scattered about, the titles were "Peace and Union, &c." From this circumstance he concluded, that the titles of the rest of the parcel were the same. —No others, but what came out of this parcel, has he ever seen in his house; and when he sold any, he considered himself as accountable to Mr. Frend for the money.

Bowtell heard Mr. Frend order his nephew to carry two bundles of pamphlets, which were a part of the parcel, one to Mr. Merrill's, and another to Mr. Lunn's. — And the nephew, in compliance with that order, took the two bundles, each containing 50 pamphlets, and going to the booksellers, delivered one to Mr. Merrill's maid-servant, and the other to Mr. Lunn's foreman.

The maid-servant, according to her account, received a bundle for her master from a boy, about his size, and was told, "that it contained some pamphlets to be sold for Mr. Frend;" and she delivered the bundle to her master with the message.

Mr. Merrill, on opening it, found it to contain 50 pamphlets with the title "Peace and Union, &c." sold several of them, though none but what were a part of that bundle, and gave Mr. Frend credit for the money in his account book.

Mr. Lunn's foreman received the other bundle of pamphlets from Bowtell, jun., and when it was opened, either by himself, or Mr. Lunn, observed, that it also contained 50 of the aforesaid pamphlets.

Mr. Lunn took notice of the number of the pamphlets, and also of their titles, as well as his foreman. Mr. Lunn indeed received from Bowtell's 100 copies in the whole, (which all came out of the parcel opened by Mr. Frend), and he had had 20 from Mr. Frend's chambers—But besides these, he never had for sale any others. The 100 have been sold by him, and though he had not Mr. Frend's express direction to sell them, yet he exposed them to sale, upon the presumption, that they could not be sent to a bookseller for any other purpose.

From this relation drawn from the evidence, Dr. Kipling concluded, that not one single copy of the pamphlet under consideration had

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been sold in this place, but what came from the defendant: that he was the publisher of it, and had caused it to be dispersed within the precincts of this University.

He could, he said, insist upon other points, as that Mr. Lunn's foreman had received 20 pamphlets out of Mr. Frend's own hands, at his chambers in Jesus College, to be sold at his master's shop:—but he hastened from an uninteresting, though important detail, to prove, that Mr. Frend is the Author, as well as the Publisher of the Pamphlet.

Dr. Kipling requested, that the Court would connect the preceding testimony with the language, in which the pamphlet is addressed to the public. An anonymous author had not obtruded himself on their notice. The title page greets them in the name of W. Frend, and informs them, that the book is published for him, the Author.

There is, he continued, in the minutes of the Court more than one confession on the part of Mr. Frend of the truth of what the title page asserts. The pamphlet had scarce appeared to the world for three days, when the defendant called on Mr. Merrill, and ordered him to cancel the Appendix. Now, had Mr. Frend's name been put into the title without his knowledge, and without his consent, would he have ordered the last leaf to be torn off? Would he not rather have directed the bookseller to cancel the first leaf? He certainly admitted in this act, that the remainder claimed, and was not unworthy of his signature.

What else is it, Dr. Kipling said, but a confession of authorship, that upon being asked by a bookseller's servant for more copies of his pamphlet, the defendant should immediately, with his own hands, give him those, which were in his possession?

Dr. Kipling next produced and read the advertisement, which had been sent to Mr. Hodson, to be inserted in the Cambridge Chronicle of the 9th of February.—It told the same tale to the world with the title page. And the note, in which it had been sent, had been proved by four witnesses to be Mr. Frend's hand-writing. Nor was this all.—In the following week Mr. Frend had himself called on the printer, and directed him to repeat his Advertisement.

Dr. Kipling after this, reminded the Court, that they were in possession of a fifth copy of the pamphlet, which he had not yet assigned to its owner. It was that which Dr. Dickens had produced. He repeated Dr. Dickens's testimony, and observed, that he had now fulfilled the promise he before made, of showing that this, as well as the others, came from the defendant; and he would now prove him to be its author, and by consequence, the author of the rest, which bore it company. They differed in nothing, which at all affected the merits of the cause—There were two with an Appendix, and three without.

Mr. Watson, he said, had been engaged with Mr. Frend in an epistolary controversy on an assertion contained in the Appendix—Three notes written by Mr. Frend had been produced by Mr. Watson. The hand-writing of each had been established; and in the third, Mr. Frend expressly acknowledges the pamphlet, to which this Appendix belongs to be his—a direct confession from Mr. Frend himself, that he is the author.

Here the promoter, by a brief recapitulation of these last proofs, closed his review of the evidence, and expressed his firm conviction, that the most scrupulous must admit the truth of the second article of accusation. Indeed, for his own part, he said, he had no doubt of the truth of every charge. They had all been read to the Court, and spake a plain intelligible language. He held it to be unnecessary for him to point out the pernicious tendency of the passages quoted. The ordinary feelings of men would be insulted by such an attempt—Neither could he be called on to unfold a criminal intent, where there was no hidden meaning.—He left to sophistry its own devices.

Neither did he consider it, he added, as necessary for him to touch on that part of his accusation, which had respect to the laws and statutes violated.—No objection had as yet been made to that charge—and he stood before a Court, which needed no counsel from him,—before the governors of the University,—a judge and his assessors, who are the established lawful interpreters of all its ordinances.

Dr. Kipling then finished his accurate and able statement by saying, that, as he could not foresee what his adversary might allege in his defence, he still reserved to himself the privilege of reply.

The *Vice-chancellor* then observing, that Dr. Kipling spoke from notes, said:—Do you put the Court in possession of those notes?

Dr. *Kipling*. I should have no objection: but they cannot be of any use: they are merely to assist my recollection: you could not read them.

Mr. *Vice-chancellor* to Mr. *Frend*. Are you ready to enter now upon your defence?

Mr. *Frend*. It must be clear that I cannot, as I have not yet seen the evidence that was taken down in the court, and I wish to know in whose hands it has been?

Commissary. It is no part of the *acta curiæ*; it is only for private assistance of the vice-chancellor and his assessors; it is no record.

Mr. *Frend*. Has any body had it?

Registrary. Dr. Kipling.

Mr. *Frend*. By whose authority? I concluded he must have had some such assistance, from the singular fluency and accuracy with which he summed up the evidence which has been given. Who knows what liberties may have been taken with it? I shall certainly expect the same indulgence.

Mr. *Vice-chancellor*. There was no reason why Dr. Kipling should not see it, nor can there be any why Mr. Frend should not.

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The vice-chancellor then proposed Monday or Tuesday for Mr. Frend to enter on his defence, but it being observed, by two heads of colleges, that those days were sermon days, and Dr. Fisher being obliged to be in London on the Wednesday, Friday was proposed and accepted. The vice-chancellor observed, that it was the wish of the Court, that Mr. Frend might be able to finish all in one day. Mr. Frend replied:—If it were possible he certainly would; but if he found it impossible, he trusted that he should meet with the same indulgence which had been granted to Dr. Kipling.

The Court was adjourned to Friday next, the 24th inst. at ten in the forenoon, when Mr. Frend was appointed to enter on his defence.

SIXTH COURT DAY.

At a court holden before the right worshipful Isaac Milner, D.D. Vice-chancellor of the University of Cambridge, J. Smith, R. Farmer, W. Colman, L. Yates, J. Barker, Jos. Turner, F. R. Barnes, W. Craven, and J. Postlethwaite. Doctors in Divinity, and John Fisher, LL.D. his assessors, on Friday the 24th of May, 1793, between the hours of ten and three, in the senate-house of the said University.

Me present,
G. BORLASE,
Not. Publ. and Registr.

The office of the judge promoted by T. Kipling, D.D. *against* William Frend, M. A. and Fellow of Jesus College. } Mr. Frend was heard in his defence, having first reserved to himself the power of objecting hereafter to any part of the evidence or of the proceedings heretofore produced, and had before the Court in this cause.

Mr. *Frend.* I hope the Court will not take advantage, if I should in the course of my defence, inadvertently call the pamphlet mine, as I am obliged to defend it.

Mr. *Vice-chancellor.* Certainly not.

MR. FREND'S SPEECH IN DEFENCE.*

Mr. Vice-chancellor; I think myself happy in having arrived at last to that period, in which it is permitted to me to speak in my own defence, and to refute those calumnies, under which, for so considerable a time, I have laboured. The patient attention, which you have bestowed on this cause during the fatigue of so many days, encourages me to hope, that you will listen to me with equal candour, and that I shall find no difficulty in proving to your satisfaction as well as that of the whole Court, that the charges brought against me are, as I asserted on a former day, false, wicked, and malicious.

It is indeed a very extraordinary cause which now awaits your decision; a cause not to be paralleled in the annals of this university or even of the kingdom at large. For in what preceding period is it recorded, that a number of masters of arts and doctors combined together to attack the rights of a member of the senate? When was it thought necessary, that in defiance of the just power of the heads of this place, a cabal should erect itself into an inquisitorial office, and take under its cognizance the writings or speeches of an academic? When did the publication of a pamphlet give rise to a persecution like this, which, though in its consequences it is not so much to be dreaded as those of former ages, from the malignity and base arts of the conductors, and the total violation of law and justice with which it has been carried on, exceeds certainly every thing that has been recorded on the page of history.

About the middle of February was published a pamphlet, intituled "Peace and Union." It came forth at a time when the public mind was filled with the strongest apprehensions of dangerous plots against the peace of this kingdom, and insurrections were supposed ready to break out in every quarter. As the highest authority had given the alarm, each man was in fear for his own safety, but no one could possibly announce from whence the attack should begin. Troops were dispersed incognito over the country, and a look or a jest was sufficient to rank the friends of mirth and good humour among the enemies of government. The university was not free from the contagion of the times, and there were among us men well known for their intriguing disposition, who endeavoured by every art in their power to countenance a deception, which ought not to have gained ground but amongst the lowest of the people.

On the first appearance of the pamphlet in question, it was held forth as a most dangerous attack on every thing sacred to Englishmen, both in their religion and politics. The flame ran from one to the other, and long before the contents could be digested, it was declared absolutely necessary for the safety of the university and of the state itself, that the author should be punished in the most exemplary manner. Individuals first complained to the vice-chancellor, then parties of two, three, or more at a time, and at last a meeting was called of the disaffected, who, now well known by the name of the twenty-seven, entered into resolutions, appointing managers for the prosecution, and directing that proper steps might be taken to deprive the author of his degrees, and to banish him from the university.

This important business could not however be completed with the rapidity with which it was planned. The promoter found that several previous steps were necessary, and above three months elapsed before he was prepared to display his eloquence in open

* From the Report published by Mr. Frend himself.

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court. In this time every assistance was given to him which the ablest barristers in town could afford; the public orator imparted to him his eloquence; from the Lady Margaret's professor he was supplied with elegance of diction; and the professor of civil law by communicating to bim the whole of his knowledge in that profession, felt himself enervated at his usual lectures. But all this assistance would have been in vain if other means had not been employed: while the committee was compiling and arranging within, the familiars were engaged without doors, in searching out for information, in learning where the supposed author spent his time, what was his conversation, what letters he had received, and to whom he had written. It was enough, that a familiar heard a person say, that he heard another person say, that Mr. Frend had been talking to another person about his book. In an instant the promoter flew to the rooms of the last-mentioned person, sifted out the conversation, and adapted it to his purpose. One gentleman* was summoned to appear in this place, and was actually under the necessity of leaving a canvas in London, merely because it was his misfortune to have been chatting over a tea-table with some ladies, when Mr. Frend came in and joined the conversation. No stone was left unturned: booksellers, booksellers' boys, printers, friends, relations, and enemies, all were set to work to bring so great a criminal to justice.

Against these mighty efforts what had I to oppose? Nothing, Sir, but silence and my own innocence: trusting in the mean while to the natural effect of time and the good sense of the university, not doubting that, when the cause was heard, the folly and malignity of the conductors would appear in the most striking colours. Not that I would have it supposed, that I came here without assistance. The university has seen me accompanied by three of its members, who would do honour to any cause. They are men of tried learning, abilities, and integrity. Men who ran to me in the hour of distress, and on whose kindness and support I shall to the last moment of my life, reflect with gratitude. Such men the university knows to be my friends.

. . . . . quales neque candidiores
Terra tulit, nec queis me sit devinctior alter.

Without the assistance of these friends I must have sunk under the weight of prejudice with which the twenty-seven endeavoured to bear me down. Sir, I was pointed at as unfit to breathe this air; my religious and political principles were totally misrepresented; and such were the insidious arts used, that nothing but this public appearance could ever have given me an opportunity of vindicating my conduct and character.

Sir, I have been represented as an heretic, deist, infidel, atheist. Shall that man be called an atheist, who firmly believes in the existence of one God, the parent, the protector, and governor of the universe? Shall he be deemed an atheist, who declares, and has always declared his conviction of the being of the First Cause in the words of the church of England: 'there is but one living and true God, everlasting, without body, parts, or passions, of infinite power, wisdom and goodness, the maker and preserver of all things visible and invisible?' Is this the language of an atheist? Is a person, Sir, to be reprobated who maintains these sentiments?

But, Sir, I may be considered if not an atheist, yet as an infidel. Shall he, Sir, be esteemed an infidel, who, for the second article of his creed, grounds his hope of salvation solely on Jesus Christ? Who looks upon his Saviour as a person* sent from Heaven to be the means of the greatest happiness to mankind? Is he an infidel who declares his Saviour to be the great mediator between God and man, that his saviour gave himself up as a ransom for all, and through whom alone is eternal life, the free gift of God, bestowed upon a sinful world. However we may differ on other parts of our Saviour's character, we certainly unite in these principles, which are the essential points of a Christian's faith.

In the third article of my belief, this whole audience, if we except the twenty-seven, unite with me. The belief of the two former articles, unless sanctioned by a firm conviction of the latter point, and the necessity of acting under that conviction, appear to me of little consequence. We may boast of our knowledge of and acquaintance with God, we may confound every gainsayer on the terms of our salvation, yet, if we neglect the principle of universal benevolence, our faith is vain, our religion is an empty parade of useless and insignificant sounds. That every Christian is bound to entertain sentiments of universal benevolence, to love his fellow creatures of every sect, colour, or description, is the third grand point of my faith. If any one, Sir, should ask me, to what sect I belong? my answer is, my sect is not confined to age,

* The Rev. Mr. Davis, jun. fellow of Trinity College, was summoned in this manner, and, to his very great inconvenience, was present on the first day in the senate-house. The promoter, baffled in his schemes on that day, and universally reprobated for his conduct in this instance, was obliged to give up his intentions of bringing Mr. Davis down from town a second time.—*Frend.*

* I am not sure that I made use of the words "sent from Heaven, or coming down from Heaven," but in either case they are to be considered as scriptural expressions, and consistent with my opinion, that Christ was not in existence eighteen hundred years ago. *Frend.*

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colour, or country. I am a firm believer in the truths revealed by God, but I usurp no authority over another man's conscience. Our Lord and Saviour Jesus Christ is the head of my sect, he has laid down the rules of its faith and discipline. No one can encroach on his authority. His disciples are to be found in all nations and countries, of every age, language and colour. They may meet in places appropriated for public worship, or they present themselves in private only before their God and father, the God and father of their Saviour: but, wherever they are, they cannot persecute for opinion, they cannot treat their neighbour injuriously for any religious persuasion, they are connected together solely by the ties of universal love.

Since my religious opinions have been so much misrepresented, it is not surprising that equal attempts have been made to hold me up, on account of my political principles, as an enemy to my country. Sir, I have been ranked among that visionary herd to which it has lately been the custom to affix the name of republicans and levellers. Is it possible, Sir, to conceive, that a person educated as I have been, should entertain levelling principles? Is it likely that one who is accustomed to spend his life in study, and who, if such principles prevailed, would have no possible means of obtaining a subsistence, is it likely, Sir, that he should rank himself among levellers? The supposition is absurd and ridiculous. There is not, I am convinced, one man in this assembly, nay, I will go still farther, I do not believe that there is one man in this island, who ever dreamed of such a principle. My opinion on this subject is the same with that of the bishop of Llandaff, the principal of the man who stands forward here as promoter in this nefarious cause. The bishop has explained what some men call the levelling principle, or the principle of equality, to be that which every Englishman takes a pride in maintaining—an equality of rights. That the rich shall not oppress the poor, nor the poor riotously attack the rich, that they shall be all equal in our courts of judicature, these are the true principles of equality. Or, I may explain myself still farther by what takes place among ourselves. We all come from our respective schools with different qualifications indeed, but in the eyes of the university we are considered as equals. We are employed in various exercises, we have opportunities equally given to us all of distinguishing ourselves, and when the inequality takes place, it is, or ought to be, from merit alone, the reward of the industrious use of our talents and our time.

Sir, the idea of an Englishman entertaining the levelling principle, is absurd, and is countenanced only by those associations, which endeavour to set us at variance with each other: and the term republican is employed for the same odious purpose. I have read much, Sir, on the subject of government, and by spending the greater part of three years in different tours on the continent, have had frequent opportunities of comparing with our own the various forms which prevail abroad, and I maintain that, excepting the small democratical cantons of Switzerland, we have the greatest claim to the title of republicans of any nation in Europe. If to be an advocate for the just rights of the people, if to conceive that liberty depends on the people declaring their sentiments by representatives in parliament, if to contend strenuously for the independence of the House of Commons on every person except the people, if to wish for a better representation of the people, if these, Sir, are the sentiments which will entitle men exclusively to the name of republicans, I acknowledge, that I am a republican. I exult in the privilege of my birth-right, and being an Englishman, I rejoice that I also am a republican. And is there, Sir, a man in this assembly, is there an Englishman, who does not maintain the same sentiments? By asserting our privileges, which set us far beyond the other nations, it does not follow by any means, that we would usurp the prerogatives of the first magistrate, or encroach on the rights of the lords of parliament.

But, Sir, I am accused of a still greater crime, I rejoiced at the success of the French revolution. Yes, Sir, I did rejoice at the success of the French revolution, and is there an Englishman, who did not exult on this occasion? At what period did I rejoice? was it not at the time when every good man rejoiced with me, when tyranny received a fatal blow, when despotism was overthrown by the united efforts of all orders of men in an extensive empire? Was it not, Sir, at the time when that horrid dungeon was destroyed, in which had baen tormented so many wretched victims of caprice and effeminate cruelty? Was it a crime, Sir, to rejoice, when the whole nation was of one mind, and this university thought it a duty to impress the sentiment on our young men, by giving them as a proper subject for their talents, the taking of the Bastile? It was glorious in the university to unite with the general voice, and in the most public manner to express its indignation at tyrants and tyranny. I did, Sir, rejoice at the success of the French revolution: but does it follow, that I was pleased with the scenes which succeeded, that I now look with joy and not with horror on the dreadful outrages to which that country has been exposed? The massacres and bloodshed, disgracing so noble a cause, have pained every lover of freedom; and, viewing the conflicts of the most horrid passions of the human mind, we have been left in a wretched state of suspense, and not having sufficient grounds for uniting fully in our wishes for the success of any party, we have conceived, that silence on French affairs, is most advisable.

If to exult at the approach of freedom to a great and powerful nation was a crime, with

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what eagerness was the news circulated, that to make up the measure of my iniquities, I corresponded with the national convention! In laying this to my charge, they did me the honour of uniting me with four gentlemen of the most respectable character in this university, and as I am convinced that they would do nothing unworthy of the character of Englishmen and academics, the accusation, though intended to bring on me as much public obloquy as possible, was rendered of less effect. As to myself, Sir, I here declare that neither directly nor indirectly did I ever correspond with the national convention, and I make no scruple of saying, that with respect to the gentlemen, with whom I was supposed to be associated in this transaction, I do not believe that any one of them was ever engaged in such a correspondence. Not, Sir, that I think there was any disgrace in corresponding with the national convention, but so obscure an individual as myself could lay no claim to the notice of that assembly. If I could have suggested any thing to promote the welfare of that assembly and the nation which it represented, I should certainly have taken pleasure in doing it. They were our friends, there was no war declared between the two nations, they deserved our friendship, for they had broken the bands of slavery, and aspired to the honours of freedom.

Having thus endeavoured, by an explicit declaration of my sentiments, to remove the calumnies which have been so industriously circulated respecting my religious and political principles, I come now to the more immediate object of my defence. I am accused of publishing a certain book, and, by that publication, of impugning religion as established by public authority, and by such impugning, of violating the laws and statutes of the university. My discourse is naturally divided into three heads. The second is branched out into four articles. In one, I am charged with defaming the Liturgy; in the second with calling the worship of the Church of England idolatrous; in the third, with asserting that all ecclesiastical courts, ranks, and titles, are repugnant to the spirit of Christianity; and in the fourth, with profaning and reviling the most sacred offices of the church. Under the third head are mentioned two laws which I am supposed to have violated, the one a statute De Concionibus, the other a Grace passed in the year 1603. Of all these I shall treat in their order, and for that purpose I request that the second article in the charges delivered to me may now be read by the officer of the court.

[Here the second article was read.

2nd. Also, We article and object to you the aforesaid William Frend, That in the present year of our Lord 1793, you did publish, and cause to be dispersed within this university, a scandalous book or pamphlet, of which you are the author, intituled, "Peace and Union recommended to the associated Bodies of Republicans and Anti-Republicans: by William Frend, M. A. fellow of Jesus College, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793;" which said book or pamphlet is annexed to these presents, and prayed to be admitted as if inserted herein: and we article and object as above.]

Sir, I am accused in this article not only of publishing a book, but of publishing a scandalous book: and here I cannot help admiring with what modesty and address the promoter in summing up the evidence against me requested that, as on his part all personalities should be avoided, the same might be required on the part of the defendant. Well might he be anxious to preclude me from all personalities in my reply. Satisfied with the abuse which he and his adherents had before so liberally bestowed, he might well be content to refrain from further personality, provided I might be withheld from expressing my just sensibility and resentment. Doubtless he had a right to make this request, as there is no personality in declaring a member of the senate the author of a scandalous book! It is not at all personal to assert that Mr. Frend is unfit to breathe the air of this place! It is by no means personal to endeavour to deprive him of his degrees, and to expel him from the university! Had I indeed, Sir, taken notice of a late publication of the learned promoter, had I asserted that the work, which he has given to the public under the sanction of the university, is a disgrace to a man of letters, that after all the labour bestowed on it it abounded with so many and such gross blunders, as instead of a *fac simile* it was more properly speaking a *fac contrarium*, that his prolegomena were filled with quaint allusions and inaccuracies of expression, at which a boy in the lowest forms would blush; had I asserted such things of the learned doctor, I should have been called a dealer in personalities; but, when he accuses me of writing a scandalous book, then, Sir, it ceases to be personality!

Let him not then esteem me personal. I will not charge him with reading scandalous books, I will not accuse him of vitiating his taste by the perusal of those vile and profane authors of antiquity, which to our shame many of us still keep in our studies. This would be scandalous indeed. The learned doctor is better engaged than in commenting on a Cicero or a Demosthenes: with these profane authors he has long ceased to have any communication: his style is formed on much better models, and we cannot but admire the streams of eloquence which he has derived from the enchanting remains of a Sanctus Pachomius, Theodorus Beza, and Sanctus Bernardinus.

Though, Sir, I disdain, every species of personality against this promoter, I must be allowed to say that his charge is false. The

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book intituled, "Peace and Union," is not a scandalous book; it is not deemed a scandalous book by some of the most respectable members of the Houses of Lords and Commons; it is not esteemed a scandalous book by several very distinguished characters in the literary world; and in the judgment of many persons among us eminent for their learning and abilities, this work so far from being deemed scandalous, is thought to contain a variety of topics of the utmost importance to the state, and deserving the attention of every lover of his country. With all these I most cordially unite in wishing, that instead of blackening and defaming the character of the writer, the promoter and his twenty-seven had the candour and ability to answer the publication.

But whether the work is scandalous or not, let us consider, what proofs are brought by the promoter that I am the author of it. After so many days employed by him in endeavouring to prove this point, it would be a very bad compliment to pass over without some notice, the labour in which he has so strenuously exerted himself. On this account it will be necessary to make some previous remarks on the proofs of authorship in general, from which we shall easily perceive with what shallow proofs the inquisitorial spirit is contented, when the ruin of an individual is the only point to which its zeal and malice are directed.

There are two ways of discovering the author of any work, which may be called the external and internal marks of authorship. The external depend on two things, either on the author himself, or persons, who have had the means of being acquainted with the author's proceedings. Should a person declare himself to be the author of a given work, though this is not in itself an absolute proof, it is sufficient to subject him to the praise or censure which would have been bestowed on the author. If the author does not choose to avow himself, before those, who might be supposed entitled to question him on the subject, and it is asserted that he has elsewhere made this discovery, we must be particularly careful what credit we give to the testimony of the witnesses, who come forward on such an occasion. We must examine their characters, whether they are friends or enemies, whether they are likely to speak the truth fairly and openly, or whether the zeal of religion might not induce them to hazard a pious fraud by way of getting rid of a dangerous opponent to their fantastic theories. Besides, we must consider, whether they are competent to give a legitimate proof: if they can neither write nor read, it will avail but little, that they heard a person call himself the writer of a given work, as the work before the court may be of a different nature and tendency from that, whose title only was mentioned in their hearing.

The internal marks of authorship are various. It is unnecessary before this learned audience to investigate the methods, by which many of us, from having perused the writings, or heard the discourses of any one, can pronounce with ease, whether a work in question belongs to him or not. They can point out the beauties or the deficiencies of his style, his plan, his language. They can say at once, such a sentence was certainly the effusion of this writer's zeal, or, again, none but that doctor could have possibly indited this paragraph. For instance, who, that has read the prefaces of the learned promoter, or has heard his distinguished eloquence in the divinity schools, can doubt that he is the author of the late prolegomena? Could Cicero or Livy have written in such a manner, could they have ventured on such flights of fancy, could they have raised themselves to surprise the mind with such beautiful changes of cases and those noble deviations in the moods of verbs? Are not their metaphors feeble when compared with those used by our sub-professor? Where shall we find such latinity, where shall we meet with such beautiful specimens of quotation?*

No one, who has the least pretensions to critical acumen, would, on balancing all these circumstances, doubt that Dr. Kipling, as his signature declares, is and could alone be the author of his prolegomena. The work itself also carries internal marks of the editor. The perfect resemblance it bears to the original, having no other difference than that in several places the type is turned topsy turvy, convinces us that no one but the promoter has any claim to the merit of having corrected the press.

But, Sir, strong as these internal marks are, and stronger perhaps cannot be brought, I must contend that they can be of no weight in a court of justice. It will not suffice to say, the style is the same, the language is the same, the errors are exactly such as might be expected from this author; still no upright judge would be contented. The style and language may be imitated; there have been frauds even in the literary world, and nothing but external proof can make an author amenable to a court of justice for any publication. Hence in the present case, when the promoter wanted to prove the pamphlet intituled, "Peace and Union," to be mine, from a fancied resemblance between certain passages in it, and others in a pamphlet written four years ago, the court very properly rejected the attempt.

Many external marks are not available. Neither the title-page, nor public estimation, nor writing, nor the delivery of books are, separately or in conjunction, sufficient proofs of authorship.

First, with respect to title pages, I shall, Sir, bring two proofs, which I have no doubt will convince every unprejudiced mind, that

* See the learned promoter's preface to what he calls a *fac simile* of the Codex Theodori Bezæ Cantabrigiensis.—*Frend.*

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my opinion is well founded. The one shall be taken from the university of Oxford, the other from our own. We have all of us heard the fame of a celebrated professor of oriental literature in the university of Oxford. Some time ago he published under his own name a volume of sermons, which he had also preached in the university church. They were admired by every body, were held up as models of composition, as a complete victory over the heretics, particularly those, who go by the name of Socinians. Nothing could be urged against them, they were unanswerable, so great a champion as the oriental professor was invincible. So much and so universally were they esteemed, that a late lord-chancellor, well known for his love of pure religion and his regard for the interests of the church, felt himself called upon to reward such singular merit, and actually bestowed on the person whose name they bore a handsome piece of preferment. Who could then, Sir, entertain the least doubt of ascribing infinite merit to this learned writer? Who at first supposed that this great man could get up and preach before the university sermons not his own? The supposition would have been treated with contempt, if a concurrence of circumstances had not justified it, and the world is now in possession of the proof, that these noted sermons owe their celebrity to the united efforts of a once eminent dissenting minister and a doctor of distinguished merit of our own university.*

A book lately appeared among us under the title of Codex Theodori Bezæ Cantabrigiensis Now, Sir, not venturing to trust to my own interpretation of these words, I consulted a learned friend, who declared it could mean only the codex of Theodore Beza, a Cambridge man. Was Beza then the author of this work, or was he not? Did he write it? Did he compose it? Did he publish it? No such thing. He wished, that it might not be published. So far from his writing or composing of it, it appears to be a transcript of the four gospels and the acts of the apostles, which he purloined from a monastery in the course of the civil wars of France, and either not liking the various readings contained in it, or fearing that it might be claimed by its proper owners, he made a present of it to the university, to be edited in a future age by some promoter, though not so learned, yet as bigotted and bloody-minded as himself, who should make the great discovery, that Beza was a Cambridge man.

Thus, if title pages are to be taken as proofs of authorship, we may attribute to the oriental professor of Oxford a variety of errors, which arose solely from his friends being unacquainted with the writings of Mohammed and his best commentators, or celebrate him for the splendour of a diction which is not to be expected from one of his indefatigable industry, in discovering the roots of words and exploring the sources of Egyptian literature. The latinity also of the learned promoter might not only tend to persuade us, that Beza is a Cambridge man, but fix on him the stain of various heretical opinions, to which his Codex is supposed to give a sanction, and make him liable to a summons into the vice-chancellor's court.

Public estimation is also no proof of authorship. We have all of us either seen or heard a variety of epigrams, circulated not many years ago, full of reflections and scurrilous remarks on the heads of colleges, and men high in rank and office among us. For some time it was the fashion to ascribe them to one of our most celebrated mathematicians. They went under his name. Every one pronounced them in common conversation to be his, and if he had not expressly contradicted the report by openly disclaiming them, his fame might have gone down to the latest posterity rather as a satirist than a mathematician. Thus would our first character for eloquence have been deprived of an honour which is due to him alone, and which it is to be hoped, he will enjoy henceforward unrivalled and without dispute.

The hand-writing of a person is still less a proof of authorship, as we all know how easily it may be forged, and a person must have attained either great sagacity in the art of distinguishing hands, or great powers of swearing, before he can ascribe a writing to any individual. Besides, should the writing be proved to be that of any person, it does not follow that he is the author of the composition, he may have been only a copyist.

I need not dwell a moment on the absurdity of supposing, that the delivery of books can prove authorship, as in that case we shall convert all our booksellers into authors, or at least make the deliverers of any work into the seller's hands members of the literary republic.

Having thus, Sir, considered the general proofs of authorship, let us now examine those which the promoter has brought in favour of his assertion These are of two sorts either by evidence, or by writing. By the evidence of booksellers and their servants, a printer of a public paper, and certain gentlemen of the university. On the evidence given by the tradesmen and their servants I have not a single reflection to make. Having no sinister views, nor any other object than a plain statement of facts, they told what they knew with a plainness and integrity which must do them credit in the opinion of all who heard them. But to what did all their evidence amount? The booksellers and their servants relate that they received the pamphlet intituled, Peace and

* Mr. Badcock and Dr. Parr.—See White's sermons for the Bampton lecture, and the controversy on them, in pamphlets by Dr. Gabriel, Dr. Parr, and Dr. White.—*Frend.*

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Union, either from Bowtell's boy or from his house, except that one declares that he received twenty copies from myself at my own room. The copies at Bowtell's appear to have been brought by the St. Ives carrier, and Mr. Frend is said to have ordered certain packets to be sent to the booksellers and to his friends in the university. The printer declares, that he received the copy of an advertisement from Mr. Marsh, to be inserted in his paper, as also an order from Mr. Frend in person to repeat the advertisement, and afterwards a note from him stating the price of the pamphlet. Being asked whether he could swear to my hand-writing, he said all that an honest man could on such an occasion. He was too well acquainted with the nature of an oath, and the mistakes which a man even in his profession might make, to swear positively to the hand-writing of any person. Yet, Sir, I may venture to say that he has seen me write oftener and seen more of my hand-writing than any person in this audience, but he would give his conjectures only, and could not be brought by any means to make those round assertions, which we heard with astonishment from a quarter, whence they were least to be expected.*

Mr. Lloyd's evidence, Sir, is too curious to be passed over in silence. He appeared in court, as it should seem, in a mode prescribed by the promoter with a book in his hand. Enter Mr. Lloyd. Pray what have you in your hand, says the promoter? A book. What book is it? Peace and Union. Where did you get that book? At Mr. Lunn's shop. What did you get it for? To bring the charge home, and to convict Mr. Frend, replies this unbiassed witness, who being questioned concerning some transactions at the vice-chancellor's lodge, declared that he did not come prepared to answer such questions.

The evidence from writing is chiefly confined to certain letters said to have passed between Mr. Watson and myself. The letters are produced in court, and to prove them mine, step forward Mr. Kilvington and Mr. Plampin,

> ——————Arcades ambo
> Et jurare pares, et respondere parati.

They look on the notes, they are asked whose hand-writing it is. For the first note, Mr. Frend is the reply: for the second and third Mr. Plampin is not quite so positive. To this proof, that I wrote the notes, is added presumptive evidence from a conversation, which I had with Mr. Watson on the subject of the price of spinning wool, which happened then to engage the attention of the university; and as I carried with me sufficient proofs that Mr. Watson's statement was wrong, I must necessarily have been the writer of the notes. There is, however, a better proof remaining. Mr. Watson sent a servant once with a note to me, on the receipt of which, I said, it required no answer.

In this account of the evidence, I have been in danger, I perceive, of omitting a very important one, though for what purpose he was brought here, neither the Court nor myself can possibly devise. Dr. Dickens is a clergyman well known in Huntingdonshire, and, with the singularity and vivacity of his conversation, many gentlemen in this university have been frequently entertained: he writes sermons, which nobody reads, and generally sends me, and many others of his acquaintance, a copy of his publications. Considering him as a harmless old man, who had not forgotten the few scraps of Latin which he learned at school, I have sometimes visited him, when in his neighbourhood, and he occasionally indulges me with a sight of his sermons in manuscript. In return, he might be thought to have a claim on me for a copy of my publications; but he is brought here to relate a circumstance, which taking place in Huntingdonshire, cannot be made an object of inquiry in this court. The fact is simply this: he met me one day in the house of a stationer at St. Ives, where I frequently, as is usual to persons in the neighbourhood of a market town, go to execute any little commission, to read my letters, or the paper, or, if occasion requires, to write letters. Dr. Dickens found me writing some letters, and near me were some pamphlets, one of which I told him I was going to send to an old friend of his. He took up a pamphlet, and said, he must take it with him, and in the free and easy way for which this facetious divine is noted, he bore it off, not only without, but actually against my consent; and this book, thus taken, is it seems, brought here to prove that it is a production of my own pen.

Such is the evidence which the promoter has collected from all quarters, sparing neither age nor sex, and on which he means to rest his position, that I am not only the publisher, but also the author, of the book in question.

Unfortunately, however, Sir, for the promoter, his proofs are inconclusive. For first, with respect to his witnesses—Several of them are of the twenty-seven, that is, of the original body of accusers, and one, the most material, is his own servant. Besides the general objection to the twenty-seven, there is one of a distinct and separate kind, which I feel myself with infinite concern compelled to produce. It is so materially interesting both to the witness's reputation, and my own, that I did not choose to trust the explanation of my sentiments on this head to the casual observation of the present moment, but put it down in writing, and shall make no apology for reading it from this paper.

* See Mr. Kilvington's evidence.—*Frend.*

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Here Mr. Frend read the following paper:

Mr. Kilvington declared, that "my studied attentions, shown to him, as they were, he believes, to all those whom I was desirous of proselyting to my own opinions, were such as to have impressed, very deeply on his mind, the recollection of my hand-writing."

The world will be at a loss to guess how far any attention to a person can convey a knowledge of hand-writing, unless those attentions had been signified by an intercourse of letters: but they will be at no loss to discover, that the proof of my hand-writing was the least part of Mr. Kilvington's design. It was to gratify his own malignity, that he seized the opportunity of asserting a falsehood, which he had forgot how easily I could repel. Had I been permitted to try his skill in the interpretation of hand-writing, he would have been abashed to see, under his own hand, an acknowledgment which totally did away the slander of such an imputation. But I was told, that to urge the reading of his letters then, would weaken my defence. How, Sir, am I to defend myself now? Will this remonstrance be entered on the records? Will these letters be inserted in the Acta Curiæ? No, Sir, there will still remain an accusation without an answer—an accusation compared with which, the present charge is absolutely nothing. Sir, how slightly soever others may esteem—how slovenly soever others may discharge the duty of a tutor in giving lectures, in my idea, it was one of the most sacred deposits which could be confided in the hands of man. To betray this trust by prejudicing young minds, in those points where they ought to be left to the fair result of their own inquiries, would be base and treacherous: yet this is the treachery with which I am charged. My name is to go down to posterity, loaded with the infamy of practices I abhor; and from the imputation of which you were in vain solicited to protect it.

I do not mean, in vindicating my own conduct, to retort the accusation upon another; but I mean to disclaim, in the strongest and the most public manner, in the face of this court, and of God, a practice which I abhor.*

Mr. Kilvington cannot, I suspect, have duly considered the extent and import of the word to proselyte. The zeal of proselyting is of a peculiar nature, appropriated in scripture to a particular body of men. Ye, says our Saviour, compass sea and land to make one proselyte. To whom does he say this?—To whom but the scribes and pharisees? And who were they? Take a few traits of their character, as it stands afterwards marked in the language of our Saviour himself. All their works they do to be seen of men: for a pretence they make long prayers: they outwardly appear righteous and unto men, but within are full of hypocrisy and iniquity.

I am well aware how apt we are to apply ancient descriptions to present manners; and I should not wonder if the world were ready to discover in this place a set of men, to whom the pharisaical character applies at least as strongly as to me: but let me caution them against rash judgment; the Margaret professor has amply vindicated the character of those people from such an imputation. Bigots, and zealots, says he, are wonderfully ex-

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* The letters thrown down, were two received by me in the year 1788, the one dated July 19th, the other July 24th, which I accidentally found about a month after the first meeting of the twenty-seven at the vice-chancellor's lodge. On finding that Mr. Kilvington had taken so active a part in the prosecution, I showed them to some of my friends, as instances of the gratitude of the saints. The greater part of them is taken up with the business of college testimonials, and at the conclusion of the first Mr. Kilvington's words are:

"I shall make no further apology for the trouble I am now giving you; but must say, that it will give me the greatest pleasure to render you any services in my power, either in this, or any other part of the world which I may chance to be fixed in.—I am, with great respect, dear Sir, your very faithful and affectionate servant,

"Edward Kilvington, Jun."

In the second letter, he tells me, after some further business on the testimonials:

"The cure, which I have engaged to accept, consists of two parishes, Knockholt and Downe, in the county of Kent. They are situated in a most delightful part of the country, between Bromley and Sevenoaks. The present incumbent is the minister of our parish church; and, as he will be desirous of residing occasionally for a week or two, I have engaged on those occasions to officiate for him in London. The allowance is to be fifty pounds a year, together with the use of the parsonage furnished and provided with attendance. I am persuaded you will be happy to hear of my success, and I have therefore given you so circumstantial an account.

"I must again apologize for the trouble which I am presuming to give you, especially as I can never hope for an opportunity of discharging the obligations which I already labour under.—I am, with great esteem, dear Sir, yours, most affectionately,

"Edw. Kilvington."

Now is it probable, that, if I had endeavoured, with studied attentions, to draw off Mr. Kilvington from the church, he would have given me so circumstantial an account of his entrance into the office of minister in that church? Would he have been persuaded, that I should be happy to hear of his success in it?—*Frend.*

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pert in making infidels; they never, I believe, convert any.*

Mr. Frend ceased reading, and continued his discourse.

I have said that many of the witnesses were of the twenty-seven, and one is the promoter's own servant. Now, as the determinations of the Court must be made *secundum jus civile*, it is evident that these witnesses are inadmissible. These are the maxims of the civil law:

If the witness has any interest in the fact concerning which he is desired to give evidence, he will be rejected. For one cannot be sure that he will make a declaration contrary to his own interest.

Nullus idoneus testis in re suâ intelligitur. l. 10 de testib.

The persons who have a dependance on the party, who would make use of their testimony, such as menial servants, being suspected to favour the interest of their master, and to declare only what he desires, their evidence ought to be rejected.

Idonei non videntur esse testes, quibus imperari potest, ut testes fiant. l. 6. de testib.

Testes eos quos accusator de domo produxerit, interrogari non placuit. l. 24.

With these maxims of the civil law, the opinion and the practice of our courts of common law agree. Courts of justice, says lord Mansfield, do not sit to weigh what degree of temptation the minds of men are capable of resisting, but to take care, that they shall not be exposed to any temptations whatsoever. But even, if such evidence as that of the twenty-seven, and the servant of a prosecutor, were admissible in vulgar courts, in this, from the rules of the civil law, it must necessarily be rejected.

The similarity of hand writing, is a species of evidence which, in a cause of this nature, is equally inadmissible. The memorable and excellent Algernon Sidney was convicted by a Jefferies, on a comparison of hands, yet, to the honour of our legislature, his attainder was reversed; and it is declared in the act of parliament passed for the reversal,* that comparison of hands is no evidence of a man's hand-writing in criminal cases, and the same doctrine is acknowledged and laid down in the State Trials, and Hawkins's Pleas of the crown.†

The whole that has been brought forward on the distribution of books, falls to the ground, from the single evidence of Mr. Bowtell, who is my agent for the distribution of books, and has informed you, that he has frequently received from London, and other places, parcels of books of various authors, to be sold or dispersed by him on my account. It is also in the recollection of a considerable part of this audience, that I have frequently distributed myself books in the university. During the agitation of the questions on the slave trade, and the repeal of the test act, I distributed a vast number of books in this place, and carried, in person, to every head of a house, a valuable work of bishop Hoadley on the liberty of conscience. Indeed I speak, I think, within compass, when I say, that ten thousand books of various sizes, written by various authors, have been dispersed from this place, either by myself, or by Bowtell, under my direction. The distribution of these books, therefore, is no proof of my being the author of this work; for, if such a proof is allowed, on the same principles I may be called to an account for many sentiments totally opposite to my own, advanced by a variety of writers

It would take up too much time to examine seriously the evidence given by Mr. Watson, and a long and irrelevant correspondence about the price of spinning wool. Well indeed, Sir, might you express your curiosity to know how this business could possibly affect the question before the Court, or what strange resemblance the promoter had found out between wool-spinning and writing a book! There is not a word about wool-spinning in the pamphlet in question. Mr. Watson indeed says in one of his letters, that he did not refer to Mr. Frend's publication, and Mr. Frend replies that he did not refer to his publication, but solely to an assertion of Mr. Watson respecting wool-spinning But this was quite enough, the secret was now out, Mr. Frend had said his publication, and the familiars, who were upon the watch for every incident, seized this fatal note with eagerness and bore it off in triumph. It was read at the master of arts coffee-house, then at St. John's, from thence it travelled to Caius to the sub-promoter Mr Belward,* thence to the promoter; all read, all rejoiced, and all with the same sagacity concluded, that Mr. Frend must certainly be the author of Peace and Union, because he did not, he expressly said, refer to his publication. Thus the promoter boldly told the Court, that the pamphlet intituled Peace and Union must be Mr. Frend's,

* See Mainwaring's dissertation before his sermons —*Frend.*

* William and Mary, c. 7. of the private acts.

† Hawkins, 431.

* Mr. Belward got up some time after, and with some warmth declared, that the notes were never brought to him. How this great sub-promoter came to be overlooked has given rise to various suspicions Mr. Frend begged his pardon, for giving too hasty credit to the history in this respect, and should be very glad to absolve Mr. Belward from any other absurdity in the management of this cause, for which, as a sub-promoter, till he vindicates himself before the public, he stands accountable.—*Frend.*

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because he supposes that Mr. Watson and Mr. Frend could not be talking of any other publication; whereas it is well known, that Mr. Frend has written several books, and during the course of the winter he has certainly been engaged and is now engaged both in writing and publishing. On the whole the remark of the two countrymen seems to me the best that can be made on this woolspinning business. Seeing Mr. Watson standing so considerable a time in a very forlorn situation, examined by the promoter, confronted with other witnesses, questioned by the bench, again examined, again confronted, reading letters about wool, and answering interrogatories on the same subject, alas! poor gentleman! says one to the other, he is guilty, he certainly stole the wool.

Thus, Sir, I have examined this voluminous body of evidence, which the promoter has taken such pains in compiling and arranging, and with which he has fatigued us for so many days. Its little worth is apparent from the remarks already made on it, and the promoter seems to have been conscious of the weakness of his cause, and desirous that it might fall to the ground, as he has taken a step which renders the whole of his proceedings null and void. Sir, I contend that the taking of the evidence out of court, the giving of it to the person who is most materially concerned in converting it to his own purpose, renders it both on the principles of the civil law and the law of England incapable of being used by the judges of this Court: it has lost its authenticity, it cannot be considered as the same evidence, it cannot be made in this or any future court of review the foundation of a judicial decision.

The civil law says: it is not enough to give the declaration of a witness the effect, which it ought to have in justice, that the witness himself writes or causes another to write his evidence, and that he gives it or sends it to the judge, but it is necessary, that he appear before the judge, and that the judge himself interrogate him, and put down his declaration in writing.

The declarations, Sir, as well as the interrogatories were put down in writing by the registrary, and they have since been out of Court for some days in the possession of the promoter. That they are vitiated by such a step is evident: for, how can the judge now know that the interrogatories and the answers, by which he is to determine the cause, are the same that were committed to writing in his presence? The common law of England is equally tender with respect to evidence, and does not permit a cause to be decided by a jury by any other evidence than that which was produced before the Court, and if there is the appearance only of any other evidence being laid before the jury, the cause falls *ipso facto* to the ground. This appears clearly to be the law of England from the case of Metcalfe and Dean (Croke's Reports, folio 189) in which a jury withdrew out of Court, and, after having called a witness to repeat the evidence delivered in open court, returned and gave their verdict for the defendant. This was represented to the judge, and the jury in vindication of themselves said, that the evidence given to them privately was the same in effect as that given in open court, *et non alia nec diversa*. The judge however considered this private examination by the jury as illegal, and set aside the verdict.

If then the mere repetition of a *vivâ voce* evidence in presence of a whole jury, who could not be supposed at all interested in the decision, was sufficient to set aside their verdict, how much more strongly must the rule obtain in a case, where the questions and answers are distinctly repeated and put down in writing, and the prosecutor has been permitted to keep the writing in his own possession, and to garble it as may best suit his own corrupt purposes.

[Here the Commissary interposed and desired Mr. Frend to understand, that these minutes were no record, they made no part of the *acta curiæ*. Mr. Frend replied that in his idea this made no difference in the case, they certainly constituted the body of evidence by which the Court was to decide. Then addressing the judge he continued.]

On these grounds, Sir, I contend, that there is now no evidence before the Court, and the judge, who is bound by our statutes to determine *secundum jus civile*, has nothing before him, on which to ground a judicial decision: therefore, after having read my objections to several witnesses, I shall beg leave to protest against this particular informality, and the use of the supposed evidence, returned by the promoter to the registrary, either in this or any other court of justice.

Here Mr. Frend read the following papers:

I.

I object to the promoter's mode of producing evidence as unprecedented and unwarrantable in any court of justice.

1. As the witnesses were not only examined in the presence and the hearing of each other; but as the witnesses were repeatedly reminded not only of what they had said before, but also of what the preceding witnesses had testified.

2. As it was apparent, in many instances, and expressly avowed, by several of the witnesses, that the promoter had himself directed the evidence which they were cited to give, and prepared with materials for his purpose.

3. As the witnesses were not allowed to go through their respective evidences at once, but were called and re-called frequently, in a manner totally contrary to the practice of all other courts.

4. As the interrogatories were very frequently insidious and leading questions.

5. As witnesses were personally confronted, in order to prove identity, and not left, as they

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usually are, to the casual discovery of the person.

II.

1. I object in particular to the evidence of Harvey Alger as inadmissible, he being the menial servant of the promoter of the cause.

2. I object to the evidence of the Rev. Mr. Lloyd, he being one of my original accusers and directers of the prosecution, and having expressly avowed in Court a disposition totally irreconcileable with the purpose of candid testimony.

3. I object to the evidence of the Rev. Mr. Kilvington, he being also an original accuser and director, and having besides uttered, in the course of his evidence, an irrelevant and deliberate falsehood, which ought to invalidate every other part of his testimony.

4. I object to the evidence of the Rev. John Plampin, and of Mr. Matthew, they having also been original accusers and directors, and having besides already prejudged the cause in my own college, and condemned me without giving me an opportunity of making my defence.

III.

I object to the validity of the minutes of evidence in the state in which they now appear since they have been taken out of Court and put into the promoter's hands; and I must beg leave to enter my protest against this informality, which is utterly repugnant to the established forms of law. W. Frend.

Protest of the Undersigned against the validity of the evidence in this cause.

The witnesses cited by the promoter of this cause having been examined in the Court upon interrogatories proposed by the said promoter, and taken down in writing by the registrary of the Court before they were put to the witnesses, and the answers of such witnesses having been also taken down by the registrary, the evidence of the several witnesses so recorded by the registrary, ought to have been kept in Court as an official minute of such evidence; but the original minutes of the evidence, as taken in Court, having been delivered out of the hands of the proper officer, and put into the custody of the promoter, I do protest against such evidence, and do declare that it has lost its authenticity, and cannot be considered as the same evidence, or ever be made, either in this Court, or any future court of review, the foundation of a judicial decision.* W. Frend.

The vice-chancellor now asked the registrary whether the minutes appeared in any part to have been at all altered? The registrary answered, No. The jury, Sir, said Mr. Frend, in Metcalfe's case, declared the same: the witness had not varied a tittle: the evidence was *nec alia nec diversa*. You know, Sir, addressing himself to the commissary, you know the civil law better than I do. I submit the case to your consideration.

Mr. Frend then desired the third article in the charge to be read.

[The article was read.

3rd. Also, We article and object to you the aforesaid William Frend, That in the twenty-ninth page of the aforesaid book or pamphlet you have defamed the public liturgy of the established church, by affirming that "it is very far from the standard of purity in doctrine, which is required in such compositions:" and we article and object as above.]

Sir, I am charged in this article with defaming the public liturgy of the established church, Defaming the liturgy!—defaming, Sir, is a harsh word—a very harsh word, and ought to have been well considered before it had been applied to any observation, which the author of Peace and Union makes upon the liturgy. I will beg leave to read the passage as it stands in the original, not in the garbled and mutilated condition in which the promoter has thought fit to produce it. "The liturgy of the church of England is a composition derived from the mass-book of Rome, over which, if it has in some respects a manifest superiority, it is very far from that standard of purity in its arrangement, language, or doctrine, which is required from such compositions." Is then the liturgy a divine or a human composition? If it is a divine composition, to assert that it is the least removed from the standard of purity, would be certainly defamation; but if we allow it to be human, it certainly cannot be defamation to affirm, that it may, nay, Sir, that it must be imperfect. Is the author of Peace and Union then the only person who esteems it imperfect? Is it not acknowledged to be imperfect by the wisest and brightest luminaries of the church? I appeal to archbishop Sancroft, who, on account of some imperfections in the burial service, declared, that he could not take upon himself the cure of souls.—I appeal to archbishop Tillotson, who wished the church well rid of the Athanasian creed.—I might appeal to the present bishops of London and Ely, who, with several of their brethren, the most respectable of the clergy, had their meetings, to obtain some relief in the present mode of subscribing to the articles and the book of common prayer. Nay, that it is not defamation to suppose the liturgy imperfect, I appeal to one of the sub-promoters, to Mr. Mainwaring, Margaret professor of divinity, who, not many years ago, reprimanded Dr. Pearce, then fellow of St. John's college, for reading the Athanasian creed in the chapel, on one of the appointed days.*

* These papers were afterwards delivered into the vice-chancellor's hands.—*Frend.*

* Here Mr. Mainwaring got up in a great

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Thus supported, Sir, I should be warranted in saying, that the author has advanced nothing in the passage quoted but what is strictly true. Let any one examine the book for himself, and he will find the best and finest part of the whole service not free from that imperfection, to which all human works are subject. The psalms, as read in the churches, are miserably defective,—they are worse; they contain sentiments totally repugnant to that charitable and humane spirit, which breathes in every page of the gospel, and is required of every follower of Christ. With what horror must a serious christian revolt from those dreadful execrations, which whole congregations unite in uttering with their mouths, while the sentiment, it is to be hoped, is far from their hearts. Let his wife be a widow, say they, and his children fatherless: let the extortioner consume all that he has: and in the same manner they go on with imprecations, which, if they are pardonable in others, are certainly unbecoming in the devotion of christians. The learned may satisfy themselves that there is an error in the translation: I know it, Sir, the original conveys no such meaning. A jewish congregation would not think itself authorized thus to devote the most depraved of their species to the extreme of human wretchedness

Instances of imperfection might easily be enumerated, arising from various causes. Some are owing to the language being antiquated. Who would say now, prevent us, O lord, in all our doings, when he meant to pray for succour or assistance? Why must the people in their addresses to God, be confined to a language, which, in all other cases, would express a sense totally different from their real meaning? It is to the use and the capacities of common congregations, that the common prayer should be adapted. Is it right that the people in their devotions should be left to the alternative of praying for they know not what, or of finding out their own meaning by canons of criticism, or ancient glossaries?

To many similar defects in language, we may add others, from the nature of the arrangement, owing to the liturgy having been taken from the mass-book of Rome, over which indeed the author of Peace and Union asserts, that it has a manifest superiority. Had he not, however, made such a declaration—had he said, that it was only as good as the mass-book, he would have had royal authority for such an assertion; and he could not have been accused of defamation without impugning the sagacity of one of our wisest monarchs. In the general assembly at Edinburgh, in 1590, king James, afterwards the first of that name in England, gave this as his opinion of our liturgy; "As for our neighbour kirk of England, their service is an evil-said mass in English; they want nothing of the mass but the liftings."

But, Sir, whatever may be the opinion of crowned heads on this liturgy, I make no scruple of declaring in public, what I have repeatedly asserted in private, that the liturgy of England is superior to the liturgies established by public authority any where in Europe. I have read over many Latin, Greek, and Hebrew liturgies: with them I have compared ours, and it has always been to the advantage of the latter. Not that it should be understood, that every part in the English liturgy is superior to every part in those already mentioned. It would be absurd to suppose, that the psalms, in English frequently mis-translated, are superior to the originals in the Hebrew language, or that those parts of our service, which are translated from the Greek, are better than the same parts in the Greek liturgies; but, on taking the several liturgies together, and considering their various excellencies and defects, the English seems to have an evident superiority.

That it was not the author's intention to defame the liturgy, is clear, from his own words in the same page. Does he not point out a mode of improving it, by advising that commissioners of the English church should revise the book of prayers, and propose a form better suited to the present times. Would he have said, better suited to the present times, if he meant to defame? Would he not have said that it was not fit to be used in any times? Again, he says that the new liturgy should not supersede the one in present use; that no one should be forced to adopt it, but that it should be left to the option of each congregation to use the old or the new liturgy. Is this, Sir, the language of defamation? In recommending improvements to be made in human compositions, there can be no defamation, and this circumstance alone would be sufficient to prove the wickedness and the malice of the promoter, if they were not both apparent in his mode of quoting this obnoxious passage.

Sir, when the promoter read over this article, I naturally turned to the page quoted and requested him to point out the passage

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passion, and declared that it was an absolute falsehood; that he did no such thing. Mr. Frend turned to the vice-chancellor, and offered to prove it, but was desired to go on. Mr. Frend has been since informed, that he called Dr. Pearce, master, instead of fellow, and it is supposed, the sub-promoter took advantage of this mistake. But be this as it may, Mr. Frend can produce one of the most respectable members of the university, to attest, that Dr. Pearce related this history to him. Whether Dr. Pearce the master of Jesus college, has belied the lady Margaret's professor, or the lady Margaret's professor has forgotten the heterodoxy of former days, I leave to these two reverend divines to settle in any way they please. *Frend.*

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which I in vain attempted to discover. He was content with saying, that it might be found there; he had left out only a few things from his own inability to understand what they meant. He did not comprehend purity of arrangement. Be it so: Is the promoter's comprehension then to be the criterion of scandal and defamation? What writer can be safe if subject to the limitations of his taste or intellect? He has long ago forgotten those writings which are intended to refine our taste at school and in this place, or a passage from a profane writer of antiquity might have informed him, that

——————— Cui lecta potenter erit res
Nec facundia deseret hunc nec lucidus ordo.

Rejecting, however, as he does, every thing that savours of heathen lore, he might still have availed himself of the assistance, which would readily have been given him by a writer well known for the elegance of his dissertations. That *elegans formarum spectator*, who sits by him as sub-promoter in this business, would have furnished him with an explanation of the passage, and taught him that purity of arrangement is only another expression for *lucidus ordo*.*

But the promoter is not only ignorant of the nature of arrangement; he considers purity of language also as an inexplicable idea. From the late specimens, with which he has favoured the world, we are certainly justifiable in allowing this point to him in its full extent. Who that has read his late prolegomena, will impute to him the least acquaintance with purity of language? If he himself was alone concerned, he would have a right, without doubt, to reject, from every pamphlet, the parts which seem to him unintelligible; but, Sir, when he brings forward an accusation, the case is materially altered. Am I to be charged with a crime from his want of comprehension? Will it be allowed in any court of justice to bring forward a passage, garbled in a manner to suit the prosecutor's designs, without any regard to the author's meaning?

Sir, I contend that the promoter, by bringing forward a passage in this manner, has rendered his charge futile and ridiculous; it could not be urged in any court of justice; and his attempt to prove me guilty of defamation, falls necessarily to the ground. I request that the fourth article may be read.

[Here the fourth article was read.

4th. Also, we article and object to you the aforesaid William Frend, That in a paragraph, contained in pages 36, 37, and 38, of the aforesaid book or pamphlet, beginning at the words, "The same passions," and ending with the words, "episcopal convocations," you affirm that the public worship of the great body of christians is idolatrous; including in this charge the members of the church of England, as evidently appears from the context: and we article and object as above.]

In the former article, Sir, I was accused of defamation: a more heinous offence is now alleged against me; that of calling the worship of the church of England idolatrous. On reading over this charge, I referred to the part of the book on which it is grounded, but after a very exact scrutiny, could not find, to my surprise, the term idolatrous mentioned. Recollecting, however, the character of the promoter, and considering the nature of the books with which he refreshes himself after his severer studies, I discovered at last what had led him to insert this among his other articles. The promoter, Sir, can now and then in private relax his features, and he is particularly delighted with a celebrated work, with which we are well acquainted—the Memoirs of Gil Blas de Santillane. Meditating one day on this prosecution, he was resolved to imitate the facetious hero of these memoirs, and to try whether he could not play as good a trick on an unfortunate academic, as the merry Spaniard had done on a wealthy tradesman. Gil Blas, with his companions, dressed themselves up exactly like the promoter and the managers, and one of them, acting the part of the promoter, preceded the rest, and knocked at a tradesman's door—it was opened by a boy, who, petrified at the sight of the holy inquisitors, in a trembling voice answered the promoter's questions. Does your master love children? Oh! yes, says the boy, yes, my master is very fond of children indeed. Write down that this man seduces children for a sacrifice at the paschal supper. Do you ever eat pork? No, says the boy, I cannot say that we have pork often at our house. Write down that they never eat pork, that he is a jew convict. Pray does your master walk very slowly on Saturdays? Yes, says the boy, my master always walks very slowly indeed. Write down that he sabbatizes, that he never goes beyond a sabbath day's journey on a Saturday.

Pleased with this story, our promoter called together his brother managers, put the book into their hands, and desired them to read the passage quoted in the article. Do you see any thing in this passage? say she, to a gentleman, celebrated for his eloquence:* No; I cannot say that I see any thing, except something about the orgies of Bacchus. Orgies of Bacchus! blasphemous wretch! write down idolatrous. Is there any thing else? Yes, says a noted civilian,† here are the rites of the eucharist. Write down immediately, he derides the eucharist. What else is there? The great body of christians, replies a third.‡ Great body of christians! that is the church of England: write down, the

* See Mr. Mainwaring's Dissertation prefixed to his sermons. *Frend.*

* Mr. Mansell. † Dr. Jowett.
‡ Mr. Belward.

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church of England is idolatrous. Home went the managers, in amazement at the sagacity of their learned promoter, and as well pleased at this discovery as the Spaniards were with the tradesman's ducatoons.

Sir, the charge of the promoter deserves to be treated in this ludicrous manner, and I should be content with exposing him thus to your derision, if, by an artifice of his, he did not rather merit your contempt than your ridicule. He has quoted the last sentence of a paragraph, and endeavoured to fix on me the charge of comparing together the orgies of Bacchus with the rites of the eucharist. I deny the charge. No such comparison is drawn, nor could it possibly be drawn. I disdain the imputation of having at any time reviled, either by word or deed, any act or institution of my Saviour. The orgies of Bacchus were contemptible heathen rites, degrading to human nature: the eucharist had the sanction of our Saviour's authority, and was calculated to keep in the minds of the early christians the greatest event that had ever taken place in the history of mankind. I despise the one, and I revere the authority of him who instituted the other. Let the promoter continue his daily sacrifices to Bacchus, but let him not impute to me any approbation of them, much less suspect me of making a comparison which I detest and abhor.

Sir, the passage contains no comparison: it affirms a truth, a well known truth, authenticated by the history of all ages. The author, alluding to the effect of prejudice in a late event * disgraceful to this country, properly remarks, that the same passions produce on certain minds the same effects. It matters not, whether priests affect to be the disciples of a master, who taught nothing but love and benevolence, or are the votaries of a religion replete with impurity, if their minds are the same, and similar occasions offer, the effects produced will be exactly the same. This truth need not be insisted on here; it is exemplified in the whole conduct of the twenty-seven: but, ready as they are to oppose every truth by which their sacerdotal authority is endangered, let them not suppose that this is the case with every priest. There are very many respectable clergymen who feel no such alarms, and could never be prevailed on to unite with the twenty-seven. Why should I point out to the promoter the man whose chair he at present occupies, the bishop of Landaff, who by his conduct and writings, proves evidently, that he is not among the class of priests alluded to? He would not sacrifice his religion, or oppose the progress of truth, for any base views whatsoever; and I could, if necessary, enumerate many others of the same sentiments, who by their learning and abilities do credit to this University.

But, Sir, to leave this point, which has nothing to do with the charge of calling the church of England idolatrous, let us consider the promoter's division of christians, on which he grounds his opinion that the church of England must be meant by the author of Peace and Union. Christians, says he, are evidently divided by the author into three classes, the church of England, the dissenters from it, and a certain body of men called unitarians. How contemptibly ridiculous and absurd this division is, must appear evident to any one who gives himself the trouble of reading the paragraph in question. Besides, what must we think of a professor of divinity, who makes a division, by which he excludes the church of England from being a unitarian church? Is the church of England then not a unitarian church? Does he conceive that his church worships a plurality of gods? For my own part among the various sects of christians with which I have been conversant, I know but of one person, who has expressly denied himself to be a unitarian.

Sir, the church of England will give its sanction to no such sentiment. She will claim her right, in spite of the promoter, to the title of unitarian; and whatever may be the sentiments of different sects on the subject of the divine unity, they will find it difficult to maintain that she is not a unitarian church. Does not her first article expressly assert the unity of the godhead? and if there is any credit to be given to language, we must on her own claims call her a unitarian church. As a member of that church, you Sir, are a unitarian: all who hear me are unitarians, if they agree with the church in asserting the unity of the godhead.

But what is the number of the unitarians whether of the church of England, or of the body to which the promoter has appropriated this title? Add to them all the dissenters, and what proportion do they bear to the christians in Europe? The author of Peace and Union, talking of the great body of christians, speaks of a body of men, which has for fourteen hundred years maintained opinions nearly subversive of true christianity. Can this be said of the church of England which has not been three centuries in existence? The supposition is absurd, and the division of christians, which the promoter would introduce, proves only his total ignorance of church history.

Supposing that the church of England was involved in this remark, and was intended by the term, "the great body of christians," how is it charged with idolatry? Sir, you will be astonished, all who hear me will be astonished, when they are told that there is not in the whole pamphlet a single passage, in which the terms idolatry or idolatrous occur. How then can the writer honestly be charged with fixing such an epithet on any sect of christians?

But, Sir, whether, by the great body of christians in the passage alluded to, we are to

* The riots at Birmingham.

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understand the church of England or not, this I will undertake to assert for myself, and to attest in the most public manner, that the church of England is not idolatrous. I have never called it idolatrous, nor supposed it to be idolatrous. I totally disavow the charge, and in denying it do repeat, of this charge in particular, that it is false, wicked and malicious.* I request that the fifth article may be read.

[Here the fifth article was read.

5th article. We article also and object to you the aforesaid William Frend, That in the thirty-ninth page of the aforesaid book or pamphlet, you have asserted, that "ecclesiastical courts, ecclesiastical ranks and titles are all repugnant to the spirit of christianity:" and we article and object as above.]

In this article I am charged with saying that ecclesiastical courts, ecclesiastical ranks and titles are all repugnant to the spirit of christianity. On perusing this article and comparing it with the original, the first thing which struck me was the omission of a certain particular, for which I could not at first account: ecclesiastical dress is as much objected to in the pamphlet as ecclesiastical courts and titles. There must be something, I said within myself, extraordinary in this; the promoter has certainly his fears that all is not right about his dress, and that any remarks on this subject must be injurious to his cause. At last I resolved to consult the canons which he has sworn to obey, and I shall now read to you the seventy-fourth, in which decency of apparel is enjoined to ministers.

"The true, ancient and flourishing churches of Christ being ever desirous that their prelacie and clergie might be had as well in outward reverence as otherwise regarded for the worthinesse of their ministrie, did thinke it fit by a prescript forme of decent and comely apparell to have them knowen to the people, and thereby to receive the honour and estimation due to the especiale messengers and ministers of Almighty God. Wee therefore following their grave judgment, and the ancient custome of the church of England, and hoping that in time new fanglenesse of apparel in some factious persons will die of itselfe, doe constitute and appoint, that the archbishop and bishops shall not intermit to use the accustomed apparell of their degrees. Likewise all deanes, masters of colledges, archdeacons and prebendaries in cathedrall and collegiate churches (being priests or deacons) doctors in divinitie, law and physick, bachelors in divinitie, masters of arts, and bachelors of law, having any ecclesiastical living, shall usually weare gownes with standing collars and sleeves streight at the hands, or wide sleeves, as is used in the universities, with hoods or tippets of silk or sarcenet and square caps."

[Here Mr. Frend was interrupted by the vice-chancellor, who said, surely, Mr. Frend, you do not think that this will be of use to you in your defence. Certainly not, replied Mr. Frend, and went on reading.]

"And that all other ministers admitted or to be admitted into that function, shall also usually weare the like apparell as is aforesaid, except tippets only. Wee doe further in like manner ordaine, that all the said ecclesiasticall persons above-mentioned shall usually weare in their journies, cloakes with sleeves, commonly called priests cloakes, without gards, welts, long buttons or cuts. And no ecclesiasticall person shall weare any coife or wrought night-cap, but only plain night-caps of blacke silke, satten or velvet."

[Here the vice-chancellor interrupted Mr. Frend again. What is all this to the purpose? it cannot do you any good. Certainly not, certainly not, Mr. Vice-chancellor, replied Mr. Frend, and continued reading.]

"In all which particulars concerning the apparel here prescribed, our meaning is not to attribute any holiness or special worthiness to the said garments, but for decency, gravitie, and order, as is before specified. In private houses and in their studies the sayd persons ecclesiasticall may use any comely and schollarlike apparell. Provided that it bee not cut or pricked, and that in public they go not in their doublet and hose without coats or cassocks, and also that they wear not any light coloured stockings. Likewise poor beneficed men and curates (not being able to provide themselves long gownes) may goe in short gownes of the fashion aforesayd."

Such, Sir, is the law of the church with respect to dress, how well it is observed by the promoter is too apparent. So far from obeying it, is he not frequently on horseback in contempt of all ecclesiastical discipline, without the priests cloak to cover his nakedness? nay, have we not seen him here exposing himself in defiance of all decency, in his doublet and hose? Are the sub-promoters more attentive to their priestly apparel? At this very moment I discover among them the indecorous phænomenon of white stockings!* If, Sir, the promoter can thus despise the laws of the church, it is no wonder that he should be fearful of any mention of ecclesiastical dress: but his conduct deserves the severest reprehension, and he, who could undertake such a cause, must be held up as a fit object for derision and ridicule.

I do maintain, Sir, that the charge of the

* The papists worship several created beings, the socinians and the church of England worship only one created being. Mr. Frend disapproves of the worship of these three parties, and worships only the god and father of Jesus Christ. *Frend.*

* Mr. Mansell, the new disciplinarian, was as usual in light-coloured fustians and white stockings. *Frend.*

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promoter is false. I have never asserted, nor did it ever enter into my mind to assert, that ecclesiastical courts and ecclesiastical ranks and titles are all repugnant to the spirit of christianity. There are some ranks, titles, and courts repugnant, and others not repugnant to the spirit of christianity. The court of inquisition, for instance, is in my opinion of the former sort, wicked and detestable, and all ecclesiastical courts formed on the same principles, deserve the same epithets:—Courts, where the judge is determined to condemn, where he does not sit to investigate, but to harass the accused by every means he can possibly devise. Again there are ranks and titles repugnant to the spirit of christianity: that of pope is of this nature, and every title or rank derived from him, by which he or his adherents claim a power over the people not authorized by the laws of the country, or the precepts of the Christian religion.

On the other hand there are ranks, titles, and courts, by no means repugnant to the spirit of christianity. Such for example, were the titles of *episcopoi, presbuteroi, diaconoi*, of the early christians; such their courts for the correction of morals, and the infliction, if necessary, of the punishment of excommunication.

But, Sir, the author of Peace and Union no where makes the general proposition laid down by the promoter, who has taken an unwarrantable liberty in misquoting and misrepresenting a passage. It is in the recollection of the Court, that, when this article was read, the promoter asserted, that the words quoted by him were exactly the same as a sentence in the book, excepting only an omission and an insertion. To be sure it is perfectly justifiable to omit and insert at pleasure, but such liberties, though they may suit the promoter's purposes, totally destroy the meaning of a writer. Sir, by the same mode of garbling and mutilating sentences, the sacred scriptures might be quoted as containing the most horrid blasphemies, and it would be easy to convict the bible of atheism. In one part we read this general proposition, there is no God: it is positively affirmed that there is no God, but shall we rest our faith upon this article? Shall we, like the promoter, indulge in omissions and forget a very material part of the verse; it is the fool who uses this language: the fool hath said in his heart, there is no God?

Again we read in another part of our Bible, that an eminent leader of a faction, having been over-ruled in the cabinet of a rebellious son, went home and hanged himself: and in another place it is said, go thou and do likewise? Will the promoter be satisfied with scriptural authority? Shall I be authorized in giving him this advice: Achitophel went home and hanged himself: go thou and do likewise! The promoter will omit, insert, derange, confound, to injure another man; but, when his own principles are brought home to himself, and supported too with scriptural authority, he keeps his place with the utmost tranquillity.

Here the vice-chancellor interposed. I do not see how this applies to your case.

It applies, Sir, thus; it proves that the danger and injustice of quoting authorities imperfectly and detaching passages from the context of any writing is such, that by these means any author may be represented as asserting things totally different from and absolutely contrary to his express and plain meaning. In the instance now before you, the promoter, by leaving out the word, ' hence' and inserting the word ' are,' has converted into a general and absolute assertion, what is only true when restrained to the conditions of the preceding paragraph. Hence, says the author, hence, namely as it is said in the preceding paragraph, from the people being prevented from interfering in ecclesiastical concerns, are derived those courts, ranks, and titles, which are all repugnant to the spirit of christianity. And when did this first take place? when the love of pre-eminence began to bear sway over the minds of the clergy, that is, as it is said in page 36, fourteen hundred years ago. From that time, from the council of Nice, the great body of christians has been under this delusion; the clergy in the greater part of the world think themselves superior to the people, arrogate to themselves unbounded power, separate themselves from the laity, and bind themselves by vows to obey a foreign prelate. This is universally true of the catholic world, but it is certainly not true in the whole or in part in all protestant countries. I must therefore conclude this article by observing, that the promoter, in his usual way, has misquoted the author of Peace and Union, and laid to my charge the maintaining of a general proposition concerning courts, ranks, and titles, which I utterly disavow: and by acting in this manner he has given me another opportunity of showing, that his charges against me are false, wicked, and malicious. I beg that the sixth article may be read.

[Here the sixth article was read.

6th Article. We article and object to you the aforesaid William Frend, that you have profanely reviled and ridiculed the most sacred offices of religion, as enjoined by the church of England, and performed by its ministers, in the following passage contained in the thirty-ninth and fortieth pages of the aforesaid book or pamphlet (that is to say), "The laity, like brute beasts, sit tamely under this usurpation: a man, if a priest or minister enters, is not master of his own house; he must not thank God for the blessings of providence at his own table; he cannot pledge his faith to a lovely woman without the interference of the priest; his offspring must be sprinkled by sacred hands, and at death he is not committed to his long home without another incantation.

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"These superstitious prejudices are, without doubt, highly beneficial to the interest of the clerical community; but the morals of neither party are consulted. The laity are apt to imagine that there are some practices in which they may be indulged without any imputation on their christian character; and the gentleman in black is supposed to put on a particular set of features and behaviour with his clothes:" and we article as above.]

In this article I am accused of having profanely reviled and ridiculed the most sacred offices of the church, and from the peculiar emphasis with which the promoter repeated from the pamphlet the passage on which this charge was founded, it was easy to see that here lay the chief strength of the accusation; and it was naturally to be expected that he should support this assertion with a clearness and force of argument proportioned to the stress which he laid upon it. But, behold, instead of proving or attempting to prove a single syllable in the article, he fairly deserted the point, and left to the Court to make out what he felt it impossible to prove. Thus were my judges converted into accusers, and I was left without knowing in what manner or to what I should reply.

I might indeed imitate his silence from the full persuasion, that a reader of the book would find it difficult to discover, on what principle the promoter has grounded his assertion. Surely it became him to show, what were those offices of the church which he called not barely sacred, but most sacred, and which I am represented as having profanely reviled and ridiculed. For my own part, I never heard that there was an office prescribing the mode of thanking God for the blessings of providence at table; and I never read one in the common book of prayer for sprinkling a man's offspring by sacred hands: and, as the promoter has not chosen to specify any office, we may safely conclude that he labours under some error, and that he has dreamed of an attack on offices which exist only in his own imagination.

But as he has chosen to accuse me of reviling sacred offices, it is incumbent on me to consider two things, the rites themselves, and the persons by whom the rites are performed.

With respect to the rites of the church of England, I feel no difficulty in delivering my sentiments upon them, from which it will evidently appear that I could not wish to revile them. They seem to me in general very decent and solemn, fit to excite among the members of the church devotional sentiments. The services are drawn up in a strain of piety, which would do credit to any church, and however exceptionable some offices may appear to the most eminent among the dignified clergy, they do not deserve to be reviled or to be treated with ridicule.

In considering the pre-eminence assumed by priests as a body above the laity, the author of Peace and Union has properly called it an usurpation: but do the ministers of the English church usurp an authority over the laity? They perform offices as ministers of the state, as servants to the country. They are appointed to their posts like other civil officers, acknowledge themselves obedient in all things to the first magistrate, are not a separate order from the people, but perform services only as they are enacted by parliament. Is not this, Sir, the language of the pamphlet? and is it not extraordinary that a writer should be charged with imputing that to the church of England, which he had expressly denied to belong to it?

The contrary of all this is true in the church of Rome, whose rites seem more like heathenish incantations than the decent services of a christian community. Let any one compare together the ceremonies used in the Romish church at a marriage or a burial with the corresponding ones in the church of England, and he will not hesitate to use the language of the author of Peace and Union with respect to the former, which he would think totally inapplicable to the latter. But the promoter is unfortunately unacquainted with the rites of any church except his own; and, as he saw an allusion was made in the English language to matrimony and burial, he concluded that the writer must necessarily allude to the ceremonies of his own church; not considering that other countries use certain ceremonies on those occasions, and that the description of them, if applied to his own church, would appear very erroneous, if not ridiculous.

Again, the persons who perform these offices in the Romish church do usurp an authority over the people, and the laity, like brute beasts, do sit tamely under this usurpation. They keep themselves apart from the people, and countenance a variety of prejudices by way of increasing their spiritual domination.

These superstitious prejudices, the writer of 'Peace and Union' says, very properly, are beneficial to the interests of the clerical community, and it is right to observe that, though all prejudice is hurtful, some are more so than others, and deserve particularly to be called superstitious. The prejudice for example in favour of a clergy is superstitious, if founded on some mistaken notions of a separate order being spoken of in the new testament as more sacred than the rest: if the priests are conceived to approach nearer to the divinity, to have a peculiar character of sanctity, and to be entitled to a particular kind of reverence, not owing to merit or ability, but to some gifts bestowed on them on their entrance into the order. The respect paid to ministers in a Protestant community ought to be of a different nature. In England they are considered as employed in certain duties by the state, and according to their behaviour in the performance of those duties, they will be respected or neglected.

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There are no rites, Sir, of the church of England reviled in this passage, nor does the writer seem to have any objection to the performance of them by its ministers. The same line must be drawn in this as in the last article: the whole evidently belongs to the great body of Christians which has for fourteen hundred years swerved very widely from the truth of christianity.

That the author could not mean to involve in one common censure the ministers of Protestant churches appears from his words in pages twenty-eight and forty-one. In the former he recommends a provision to be made for the clergy, and that the profession should possess such emoluments, as may render it a proper pursuit for men of liberal education. In the latter he declares, that, from the profession of a teacher of christianity, respect ought not to be withheld. This, Sir, would not be said by one who wished to revile the rites or the members of any church, and the misapprehension of the learned promoter arose solely from his unwearied employment in other pursuits, and his total ignorance of every thing relating to theology and church history.

Having thus, Sir, made some general remarks on the four articles in which I am accused of impugning religion as established by public authority, I shall now read to you my answer to each charge in particular, as it is drawn up for the future inspection of the Court.

Here Mr. Frend read the following paper:

ANSWER TO ARTICLE THE THIRD.

The liturgy of the church of England, being confessedly an uninspired composition, it will appear to many not scandalous, to say that it must be imperfect; 'nor is it a crime in any one to point out its blemishes in order to its amendment.' Having been at first distributed into distinct and separate services, it will appear to many no disparagement to say, that it must have suffered considerably with respect to its original arrangement, by the combination of these several services into one. Having moreover been set forth at a time, when the English language was comparatively rude, it will appear to many no profanation to suppose, that both in meaning, and style, it may correspond but little with our conceptions; that in fact instances do occur, in which words are used in a sense very different from the popular meaning annexed to them, and that in some prayers, as Mr. Archdeacon Paley expresses himself, 'the style is ill according with that annihilation of human greatness, of which every act that carries the mind to God presents the idea. Having, lastly, been composed by persons, whose religious opinions upon some important articles, especially those of the quinquarticular controversy, were not exactly the same with those maintained by the body of the English clergy, for above the century last past, many may think it no defamation to say, that in respect to doctrine, it is very far from that standard of purity, which is required in such compositions.

Such persons would justify themselves by the authority of the brightest luminaries of the English church: by that of archbishop Tillotson, who wished the church fairly rid of the Athanasian creed; by that of archbishop Sancroft, who declared that he was so little satisfied with the burial office, that, for that very reason, he had never taken a cure of souls; by the authority of doctors Bennet and Stebbing, whose opinions on the burials of the dead, and the visitation of the sick, are well known; by the authority, lastly, of Dr. Porteous, the present bishop of London, Dr. Yorke, the present bishop of Ely, archdeacon Paley, and a numerous body of respectable clergyman, who, either by their publications, or their signatures, have declared, that the liturgy is susceptible, and stands in need of improvement.

But the charge objected to me is that of defaming the public liturgy of the established church. I ask the promoter how? the answer I receive from him is, by affirming, that it is very far from the standard of purity in doctrine, which is required in such compositions. But, has the author any where asserted this, or this only? Is it not said in the pamphlet, that the liturgy of the church of England is very far from that standard of purity in its arrangement, language, or doctrine, and not in its doctrines only? Is it the same thing to assert, that a liturgy, or any other composition considered in three respects, is far from the standard of purity, as to say, that it is very far from that standard in one only; that can only be true, on the supposition, that a fault in either of the other respects is impossible.

To prove the contrary, the promoter must argue in the following manner: the liturgy of the church of England you affirm to be very far from the standard of purity in arrangement, language, or doctrine, which is required in such composition. But, with respect to its arrangement and language, there is no deviation from that standard; therefore, you are rightly charged, with affirming that it is very far from that standard in point of doctrine. But, without having recourse to particular instances, can the promoter support the minor proposition, without denying the liturgy to be of human original? Having indulged himself with a fling at his orthodox brethren, by treating in his late prolegomena their opinion of the inspiration of the evangelists, as a vulgar error, does he mean to atone for it, by maintaining the inspiration of the compilers of the liturgy? But further to establish the truth of the distinction, on the ground of which I build my defence, I beg leave to illustrate it by two suppositions.

Suppose first, that a person speaking of the

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vice-chancellor, or any other public magistrate, should say, that his conduct had been very faulty, in taking notice of some offences, too little or too much of others, could be charged with saying, that the vice-chancellor had been very faulty, in taking too much notice of some offences, till it had been proved, that he had been no ways faulty, in taking no notice, or too little, of others. The promoter has lately published, under the patronage of the university, a transcript of the manuscript copy of the four gospels, and acts of the apostles, with a preface, contrary to the advice of a learned member of this university. Now, should I affirm of this preface, that it is very faulty with respect to the words employed, the sense in which they are used, or their arrangement, could I be charged with affirming, that it was very faulty in the latter instance, unless no faults could be, or had been produced in the two former? It is as unnecessary for me to produce any such instances, as it was to produce any in the former case, in which the vice-chancellor had taken no notice, or too little, of any offences; but, if I could bring myself to cite and examine words and phrases, with as little delicacy, as the promoter has cited and examined witnesses, I should not despair of equal success.

I have thus shown, to the full satisfaction of every one here present, that this charge against me is founded on a direct falsehood, and that it derives its whole appearance of truth from an artifice, that would disgrace an accuser in the most ordinary courts of justice. What effect it ought to have upon the character of a doctor in divinity, accusing before the university, I leave to the determination of the Court.

Answer to Article the Fourth.

The fourth charge, exhibited against me, is that of calling the worship of the church of England idolatrous: but this can only be added for the sake of multiplying articles, and of introducing an odious term. For, if the promoter could have proved me guilty of calling the liturgy idolatrous, would he have thought it worth his while, to accuse me of saying, and that too by a plain perversion of my meaning, that it was very far from the standard of purity in doctrine? No! no more than any other promoter, ecclesiastical or civil, would aim at proving one guilty of some small offence, whom he was sure of convicting of the greatest. The proof of this charge is, that the church of England is included, in what is said of the great body of christians in the Romish church, as appears by the context, to the promoter at least, who wishes to be thought very quick-sighted in the discovery of heresy and heretics. Be it so; and is the worship of those churches called idolatrous? No! not expressly; how then can that of the church of England be so called, even though it were included in the same language?

But the promoter, by a very unaccountable misapprehension, unless it may be imputed to a desire of finding fault, supposes me not to speak of four different parties of christians, namely, unitarian believers, dissenters from the established church, and the members of the churches of England and Rome; but of the three former only, and by the great body of christians, are meant the members of the church of England and English dissenters. But who, that is acquainted with the present state of christianity, could think of calling those two parties, the great body of christians; or, on that supposition, what can be meant by the reference to the church of Rome in the same page; or to the admonition given to churchmen and dissenters, at the conclusion of the paragraph quoted in the charge? 'Let churchmen and dissenters examine seriously, how far they have deviated from the true faith, and as they reject many points, established by the councils of the Romish church, let them expunge every thing, which, savouring of its leaven, is to be found in presbyterian synods, or episcopal convocations.'

To speak the truth, the charge of idolatry has been too frequently brought by one body of christians against another; all protestants have united in charging the church of Rome with it; and some dissenters have brought the same charge against the church of England. For my own part, though what has been said is sufficient to refute the charge, I must here declare, that I have frequently expressed, and do now express a disapprobation of this language, used towards the church of England. I speak this with greater confidence, as, on a conference, in which my opinion was asked with respect to the use of this term, as applied to the church of England, I expressed, as I do now, my entire disapprobation of it, and declared my name must be withdrawn from the society, of which I was then a member, if that term were permitted to remain in the declaration of the sentiments of the society.

The promoter, therefore, is guilty of a falsehood, in asserting, that the church of England is called idolatrous in the pamphlet in question: and of a wicked calumny, in objecting to me an opinion, which I utterly disavow.

His assertion, that by the great body of christians were meant the members of the church of England and the dissenters, is another proof of his inability to understand a plain sentence in the English language. By the great body of christians, is evidently meant that body of men, which, for the last fourteen hundred years, has maintained, as is asserted in page thirty-six, opinions nearly subversive of all true religion.

Answer to Article the Fifth.

To assert that ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of christianity, is both absurd, and

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contrary to several passages and expressions in the bible. The words επισκοπος, πρεσβυτερος, διακονος, commonly translated bishops, priests, and deacons, are expressive of ranks and titles in apostolical churches; and St. Paul himself not only authorizes, but advises the sentence of excommunication to be passed upon a delinquent in the church of Corinth. Therefore, since my accuser declares me to have asserted, that ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of christianity, he declares me to have asserted a thing contrary to that scripture, which I have always professed, and do profess, to make the ground of my belief and conduct; and this his declaration, unless substantiated by irrefragable arguments, can be considered only as a vile and malevolent calumny. Now so far from asserting, that ecclesiastical courts, ecclesiastical ranks and titles, are all repugnant to the spirit of christianity, I do here profess and declare, that they are both consonant with the spirit of christianity, and were, and may still be highly useful institutions.

Does the author of the pamphlet say, that these courts, ranks and titles, are all repugnant to the spirit of christianity? my accuser has, in quoting this passage, taken more than one liberty, that is unjustifiable. In the first place, the word 'are' is put in by himself. The passage, as quoted by him without thisword, is, 'ecclesiastical courts, ecclesiastical ranks and titles, all repugnant to the spirit of christianity.' The accuser justly considering within himself, that such a passage would not suit his purpose, put in the word 'are;' and a change is made, which cannot escape the notice of an unprejudiced observer. The insertion of a word is not the only crime, of which this learned doctor is guilty. In the second place, perceiving that the sentence must, from the context, appear absurd, unless the word 'hence' were removed he, by boldly striking it out, destroyed the whole meaning of the passage. Thus, by these two changes, I am supposed to assert a thing totally contrary to my own principles.

The fact is, that by taking the passage as it is in the original, the sense is plain, obvious, and corresponding with the passages preceding and succeeding. The clergy, *i. e* of the great body of christians above mentioned are said to affect a superiority, and to prevent the interference of the people in ecclesiastical concerns. Hence, says the author, hence, namely, from this affectation of superiority, and from the destruction of the just rights of the people, have proceeded, at different times, and in different countries, courts like those of the Spanish inquisition, and ranks and titles under the bishop of Rome, all repugnant to the spirit of christianity. The passage, as connected with the context, contains a plain and well-known truth; but my accuser has made it contain an absolute falsehood, by the omission of one word, and the insertion of another.

I do still farther declare and avow it as my deliberate opinion, that every church in this and all other countries is justified in instituting any court, rank, or title, which it thinks expedient for the better regulation of its religious concerns; provided that it does not interfere with the rights of christians, and acts according to the rule of the apostle, —Let all things be done decently and in order.

I have thus far given myself the trouble of confuting the promoter's charge; but it was unnecessary for me to do so, since the garbled manner in which the passage is produced, both from omission and insertion, have made void the whole of that article, and rendered it incapable of being submitted to any judge either in law or equity.

Answer to Article the Sixth.

In this article, I am charged with profaning and ridiculing the most sacred offices of religion, as enjoined by the church of England, and performed by its ministers; and it is left to me to find out, what sacred offices of the church of England are meant, and why they are called most sacred. In the first sentence of the passage quoted, it is said, that the laity, like brute beasts, sit tamely under this usurpation. Surely, to a man not blinded with prejudice and passion, this sentence must have been a clue to what follows. Are the laity of England like brute beasts? Do they sit tamely under clerical usurpation? The author of Peace and Union has expressly asserted the contrary in page twenty-five; and Englishmen have certainly got rid of the folly which prevailed in this country three hundred years ago, and will not sit tamely under the vile dominion of any priest.

But it may be said, that, in the next passages, the most sacred offices of the church of England are meant. Let any one read over the liturgy attentively, and point out one office there, relating, either to the thanking of God for the blessings of providence at table, or the sprinkling of persons by sacred hands, and I will answer to the charge. There are two offices in it called matrimony and the burial of the dead, but these surely cannot be called the most sacred offices; to which there may seem a reference in the words, 'he cannot pledge his faith to a lovely woman without the interference of a priest, and at death he is not committed to his long home without another spiritual incantation.'

On reading over the passage above-mentioned, I should conclude at once, that the author was well acquainted with the ceremonies of the Romish church. He mentions the term sprinkling with sacred hands, and the burial of a person with another spiritual incantation. By using the word 'another,' it is evident, that the author had in his view an incantation, applicable to some one of the other ceremonies mentioned, and, before he is charged with an improper sense in the use

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of that term, it is incumbent on the accuser to make himself well acquainted with the meaning of words, and to beware of appropriating a sense to them which they evidently will not bear.

By incantation is necessarily meant some charm uttered by singing or chanting, which was supposed to have influence over the devil or other evil spirits, or to use the words of lord chief justice Coke (3 inst. p. 44.) as quoted by the lady Margaret's professor, an inchanter or incantator is he or she, "qui carminibus aut cantilenis dæmonem adjurat;" and from reading the liturgies of the church of Rome, and from observing many of its services, I think myself justified in saying, that the word incantation is strictly applicable to the church of Rome, and totally inapplicable to the church of England.

Incantation is applicable to the form of words, accompanying the sprinkling used in catholic countries, and this ceremony is performed in the following manner:—The priest breathes over the water, and says first, "Exsufflo te, immundissime spiritus, in nomine domini nostri Jesu Christi." He then uses this exorcism: "Exorcizo te, creatura aquæ, in nomine Dei patris omnipotentis, et in nomine Jesu Christi, filii ejus, et spiritus sancti, si quod phantasma, si qua virtus inimici, si qua incursio diaboli, eradicare et effugare ab hâc creaturâ aquæ, ut fiat fons aquæ salientis in vitam eternam." It will not be necessary to read the whole office, nor to describe the various incantations used in the consecration of holy water. Incantation is also applicable to the burial of the dead in those countries, for with this inchanted water the dead body is repeatedly sprinkled, as is evident from these words, taken from a catholic liturgy, in which every thing wears the aspect of magic and necromancy, to use the language of Dr. Bentley, rather than of a christian rite. "Collocabunt corpus sic indutum, vel super mensam aliquam, vel in terrâ, loco decenti, super aliquod stragulum aut tapete, et ad pedes caputve semper candelam accensam habebunt: parva item aliqua crux super pectus et inter manus defuncti ponatur, aut, ubi crux desit, manus in modum crucis componantur. Sæpe etiam aspergatur corpus aquâ benedictâ." In describing the procession to the house of the deceased, it is ordered to be made "prælatâ cruce, et aspersorio, cum aquâ benedictâ in vasculo." The body of the deceased and bedchamber are to be sprinkled. In the church, "sacerdos accipit aspersorium de manu ministri, et aspergit corpus defuncti, diacono post eum incensante." The sprinklings, genuflexions, signings with a cross, incense burnings, and various other ceremonies, accompanied the whole time with a particular kind of chant, are well known to any person, who has travelled, or made any inquiries into the religious rites of popish countries. The sprinkling of the offspring, and the sprinkling of the dead body is performed by a particular instrument, with which when in catholic countries, I have been repeatedly sprinkled myself: it is called *aspersorium et aspergillum*.

In the passage quoted, there is neither profanation nor ridicule: facts are plainly and clearly stated, which take place in by far the greater part of the Christian world. The laity in most places sit tamely under the abominable and disgraceful usurpation of the vilest men under the denomination of priests. Let the promoter travel through the greater part of Europe, all Asia, and Africa, where there are Christians, and the greater part of America, and he may be a witness to every practice, mentioned in this obnoxious passage; but surely, it is unbecoming his character, unbecoming the office he bears among us, to show such a total ignorance of the state of christianity in the world, as to suppose, that those superstitious practices, which are known to belong to others, can be imputed to his own church, and which not only his own church expressly reprobates, but with which the accused person cannot be proved to have ever charged it.

These superstitious prejudices, it is said, are without doubt highly beneficial to the interests of the clerical community. If this were the case in England, the promoter could easily find out the benefit derived, or supposed to be derived by the clergy, from these practices; but as he cannot do this, and on the other hand, the benefits derived from them by the Popish clergy, are innumerable, he is convicted again, of giving a meaning to a passage, which it does not bear upon a fair construction.

The morals of neither party, it is said, are consulted; certainly they are not in the greater part of the Christian world: for, where the priests have the superiority, lust, ambition, passion, inordinate desire, and every other vice, necessarily consequent to the vows they have taken, and under which they are supposed to live, reign uncontrolled, and the people of both sexes, by being kept in ignorance, and made subservient to the views of the priests, grow callous to the impressions of virtue, and are notorious for a degradation of character.

The people, it is said, think themselves permitted to indulge in these vices. To prove this, it is necessary only to make inquiries from any persons, who have travelled, and they will give sufficient proofs, that the people do think themselves authorized to live in the commission of many vices, or at least, from the facility of absolution, make no scruple of living in the habitual indulgence of them. This is no new complaint: Wickliffe used to say above 400 years ago that he was not fond of applying the words, church and churchmen, merely to the clergy. As these often were men of bad lives, he thought such an application, a vile prostitution of those

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sacred names. Besides, it had a bad influence, he thought, upon the laity: seeming to exclude them from Christ's church, and to give them a dispensation for licentious practices. If they were not of Christ's church, they were not under Christ's laws. He therefore would never have any idea fixed to the word "church" but that of the whole body of christians.

The gentleman in black is supposed to put on a particular set of features with his clothes. It would be endless to quote passages from ancient or modern authors, which describe the state of the clergy abroad: the vows, which they are under, necessarily place them in a different situation from other men, and from these vows, they are expected by the people, who know not the nature of our frame, to be so. I have read much on, and been eye witness to their conduct; but he must be lost to all sense of shame, who either compares, or declares, that I have compared the clergy of England, with those on the continent, with a view of attributing to the former the vices and behaviour which belong to the latter. In England they are citizens, on the contrary abroad they are not so; and it is properly observed in page 43, of the pamphlet in question, that, could the clergy of France have submitted to become citizens, they might still have been in possession of wealth and influence. For my own part I consider, and am authorized by the canons of the church and by acts of parliament, in considering the clergy, like the army and navy, as a political body of men, of servants to the state, whose head is the same as the head of the army and navy, the sovereign of these realms. As their conduct with respect to the instruction of the people, and the conducting of the public worship is regulated by the civil power, the body is political, not spiritual. And, if any one says here, that the clergy are not in this predicament, which is a very different one from that of the Romish clergy, and should act upon this opinion, by withdrawing them from the allegiance due to the king, and impressing them with notions that they are a body of men independant of the state, I do not scruple to say, that he betrays his ignorance of our laws, and is an enemy to his country.

On the whole then, it does not appear, that any sacred office, much less the most sacred offices of the church of England, are profanely reviled, or ridiculed, or even alluded to. The promoter was not aware, that the passage in question, as I have before hinted, is connected with what goes before in page 36. 'For these last fourteen hundred years, the world has been under the influence of two opinions, nearly subversive of all true religion.' Under the second opinion, namely, the love of pre-eminence, come the observations, that the promoter has made a part of his charge, forgetting, that the church of England is not 300 years old, that at the reformation the pre-eminence of the ecclesiastical state was abolished, that the church of England derives its existence and authority from an act of parliament, and that its existence and authority may in a moment be as easily taken away, as it was given, by an act of parliament.

Though this explanation is sufficient to refute the absurdity of the charge made against me, I think it necessary to give my own opinion of the sacred or most sacred offices of the church of England, as performed by its ministers. They appear to me in general to be drawn up with a true devotional spirit, proper to impress the minds of the members of that church, with sentiments of religion and piety.*

W. Frend.

Mr. Frend having finished this summary, desired that the eighth article might be read.

[8th Article. We article and object to you the aforesaid William Frend, That by the laws and statutes of this university, particularly by the forty-fifth statute, intituled, 'De Concionibus:' and by a decree passed in the senate of this university, on the ninth day of June, one thousand six hundred and three, it is ordained and provided, That all and every person or persons impugning religion, as by law established within this realm, or impugning ecclesiastical ranks and dignities, may and ought to be proceeded against, and punished by suspension from academical degrees, by expulsion or by banishment: and we article and object as above.]

This article having been read, Mr. Frend requested that the grace of 1603 might be read, and on the printed statute book being produced, Mr. Frend objected, and desired that it might be read from the original grace book. The registrary replied that it was not in Court; it was in his office. Mr. Frend persisted in desiring it to be produced. The vice-chancellor on this, said: I suppose, Mr. Frend, it is not very material, you do not wish to give the registrary the trouble of going out of Court for it. Mr. Frend replied: Sir, I must. I have reasons why I conceive the production of the original very material. The office is not far off, and as I feel myself rather fatigued, this little delay will be some relief to me.

Upon this the registrary went out of Court, and returned in about ten minutes with the original grace-book. Mr. Frend then desired that the grace of 1603 might be read, and after some pause the vice-chancellor replied that it was not to be found. Mr. Frend rose and spoke with some degree of warmth.

No, Sir, it is not to be found. The grace of 1603 is not in those books. It is not in the place which could alone give it a statutable existence. This grace, on which so much

* This paper was afterwards delivered into the vice-chancellor's hands. *Frend.*

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has been said, which is to be held out in terrorem to academics, appears to be a non-entity, a phantom. When brought to the test it vanishes into air.

Surely, Sir, the promoter must be lost to all sense of decency, who could thus trifle with the Court, and charge a man with a variety of crimes against a grace, which as a law existed only in his own imagination. Is not this an instance of the most scandalous effrontery? Not content with the statute De Concionibus, which cannot be brought forward in this Court, he was resolved to show his skill and his malignity still farther, by endeavouring to condemn me on a suppositious law. Is it not, Sir, unaccountable, that at the end of the eighteenth century a member of this university, a doctor in divinity, could thus stand forward as a promoter in so nefarious a cause? It is now a hundred and ninety years since the grace is supposed to have passed, and within that length of time not a single person is to be found on record charged with a breach of it. Am I to be the first person to feel the effects of a grace, which, if it had ever passed, must be well known to have been the produce of troublesome times full of bigotry, and religious infatuation? But it is needless to argue longer on this subject: the grace is not to be found, it has no legal existence, it is not in the records of the university, no proof can be brought of any one suffering under its penalties, it is———(here the vice-chancellor interrupted Mr. Frend by observing that, though it was not in the grace-book, it was in the vice chancellor's book: on which Mr. Frend changed his discourse, and addressed him thus:)

I thank you, Mr. Vice-chancellor, for reminding me of a circumstance which I might otherwise have forgotten. The grace is certainly in the vice-chancellor's book, and from thence it was copied into the book of statutes. But, Sir, from its being in the vice-chancellor's book it does not follow that it is a grace of the university. On the contrary, there is full and sufficient proof, that, at the time when this book was written, there was no proof of the legal existence of the grace.

Sir, it is usual to attest that a copy of a grace agrees with the original. Of this you will find in the vice-chancellor's book frequent instances, and the registrary of those times naturally made use of the common formula. Under the grace you will find this attestation, concluding with the words, *Ita testor*. The registrary had been copying the grace, it might be from some printed book, and not having any doubts of its authenticity wrote down the usual words, *Ita testor*. Thus it remains, *Ita testor*. *Ita testor!* who testifies? The registrary was too honest a man to put his name down without an actual inspection of the original: he searched for this original, and not finding it, left the grace in the vice-chancellor's book in the present imperfect condition. There is indeed *Ita testor*, but no name or signature follows. As the grace could not be found in those days—as it is not to be found at present—as there is no record whatever of any trial under it—as it is now a hundred and ninety years since it was passed—I am released entirely from the necessity of giving it any farther consideration. I cannot examine whether the supposed crimes of which I am accused, come under this supposed grace or not; but I must leave the court under this conviction, that no man but the present promoter could have so degraded himself in the eyes of the university, and of all honest men, as to appear thus in a public court, to enforce what at best would have been considered only as an obsolete statute, and is now proved to be of no validity.

Having thus, Sir, freed myself entirely from one part of this article, I may be expected to examine what can be urged against me under the statute De Concionibus; but I have already made my objections to the application of this statute in the present court. I have protested against it as totally contrary to the forms of our law, and the privileges of the university. The promoter, fearful that his tricks should be found out, resolved to secure me by a statute, which differs materially from the grace: but I stand here, Sir, to be tried by the laws of the university. I am not only to defend myself, but the rights of every member of the senate. I stand here to vindicate the authority of the heads of colleges, which this promoter is endeavouring to undermine. Yes, gentlemen, I will vindicate your authority. I contend, that no man can be tried in this court under the statute De Concionibus. It would be an insult to you, to answer any charge here on this statute. You, gentlemen, conjointly with the vice-chancellor, are in the proper place the judges of every offence committed against it. I shall always stand up for your legal authority, and will support it, whilst this promoter, lost to all sense of duty, and decorum, insults every one of you. He insults every head of a house by this contemptuous mode of proceeding. Not content with treating the university with the utmost contempt, he aims a blow at the power of its heads. By presuming to interfere with the execution of this statute, he reproaches you with neglect in matters, which are trusted solely to your vigilance: and, in pursuing his own ridiculous purpose, he has no regard for the existence of laws, nor for the characters of those persons, in whom, by our statutes, the execution of them is vested. Gentlemen, if I am ever accused before you on matters, of which you have the statutable cognisance, I know how to submit; but I am an Englishman as well as a master of arts of this university, and I do maintain, that every right of Englishmen and academics has been violated in this trial.

It is needless, Mr. Vice-chancellor, to pro-

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secute this subject farther. I shall, in few words, read my answer to this article, to be hereafter submitted to your perusal.

Here Mr. Frend read the following paper:

I now flatter myself with having effectually demonstrated, that the several charges brought against me, whether I am the author of the pamphlet or not, are entirely without foundations; that I have not impugned religion as established in this kingdom, nor all ecclesiastical ranks and dignities; have not defamed the liturgy, styled the public worship idolatrous, nor profanely derided the most sacred services of the church. And here I might stop, as having no concern in what is farther objected to me by the promoter, in the eighth article, in which he says, that by the laws and statutes of this University, particularly by the forty-fifth statute, intituled, De Concionibus; and by a decree passed in the senate of this university on the ninth day of June, one thousand six hundred and three, it is ordained and provided, that all and every person or persons impugning religion, as by law established within this realm, or impugning ecclesiastical ranks and dignities, may and ought to be proceeded against, and punished by suspension from academical degrees, by expulsion, or by banishment.

But, for the sake of showing, that, though any or all of these charges should be thought to remain in full force against me, I have not thereby incurred any penalty, the infliction of which is intrusted to this Court, I shall offer some things on one of the laws specified therein, namely, the decree passed in the senate of the university, in the year 1603, reserving what I have to say on the statute De Concionibus, till I am called by the vice-chancellor, and the greater part of the heads of colleges, *errorem et temeritatem meam revocare, et publicè confiteri;* and dismissing all other laws and statutes, not particularly pointed out, with this general observation, *de non apparentibus et non existentibus eadem est ratio.* The supposed decree of 1603, which is printed from a copy of the statutes, formerly kept by the vice-chancellor, is not extant in the only authentic repository of law, the register of the university. Nor is this to be imputed to neglect or accident; the reason of its not being found there, must be obvious to any intelligent person. It was never ordered to be inserted there, as was and is usual in the case of standing laws; the customary clause in those cases, *ut hoc decretum vestrum, vel hæc concessio vestra pro statuto habeatur, et in libris procuratorum inscribatur,* makes no part of it: from whence the inference is obvious, that the decree, objected by the promoter, was merely a temporary resolution, suited to the present emergency, and not intended to operate as a law in future. The same inference may be deduced from the omission of the words, *deinceps,* or, *in posterum:* it is said, *si quis oppugnaverit,* not *si quis oppugnaverit in posterum;* so that, supposing the form itself ever to have passed the senate, it was certainly never intended, *ut pro statuto in perpetuum habeatur;* and, it is, I believe as certain, that it has never since derived an authority from any public act of the university. An attempt, therefore, to execute it at this time, must be as unreasonable and unjust, as it would be thought an hundred and fifty years hence, to enforce, what is called the alien bill, or that concerning traiterous correspondence, when the occasion of passing those laws was become mere matter of history, and the relative situation of England and France entirely changed.

I am warranted in saying this, supposing the decree ever to have had an existence, of which, I believe, the promoter has no farther evidence than that of a private author half a century after the date of it. But would such evidence be allowed in Westminster-hall, in favour of any law, which was not to be found in the rolls of parliament, and of which there were no traces in the decisions of the courts of law? I allege yet farther, that if the decree were found in the proper place, and containing all the expressions necessary to show, that, in the intention of those who passed it, it was designed to operate as a law, *perpetuis futuris temporibus,* it must be considered as null and void, for want of power to execute such intention. The subject matter of it does not come within the limit prescribed in that clause of Queen Elizabeth's statutes, under which alone, since these statutes were given, the power of making additional laws is vested in the senate. For, what connexion is there between a decree *de oppugnatoribus ecclesiæ anglicanæ,* and a power of making statutes *ad eruditionis amplificationem, et decori atque honesti conservationem?* But this is not all; it also *istis statutis detrahit aut officit,* as it gives to the vice-chancellor alone, a power of punishing those offences, the punishment of which is, by the statute, given to him and a majority of the heads jointly; and as it takes from every member of the university, the privilege of retracting or revoking his errors, by subjecting him *ipso facto,* to a suspension of his degrees.

In this part of my argument, I have the authority of the vice-chancellor himself, who, on a former day, asserted, that no grace or decree of the university ought to be allowed in this Court, which was inconsistent with a public statute; I take the liberty of adding, whether it makes for or against the power of the vice-chancellor, that of the other heads of houses, or the privilege of a private individual.* W. Frend.

Mr. Frend, having read this paper, addressed the Court.

Thus, Sir, I have endeavoured to refute the

* This paper was afterwards delivered into the hands of the vice-chancellor. *Frend.*

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charges brought against me; but before I deliver the papers into your hands and submit them to a candid investigation, give me leave to address myself to the promoter. Though I have not taken any notice of the statute De Concionibus, as he has mentioned the case of Mr. Clarke, fellow of Peter-house, who in the year 1572 was under that statute deprived of his fellowship, and banished from the university, and it has been urged as a precedent for inflicting the same punishment upon me, I will take occasion from hence to ask the promoter, before we part, a few questions.

Was Mr. Clarke cited into the vice-chancellor's court to answer for his conduct?

Who was the promoter of those days?

Was any near relation or intimate friend cited to appear against him?

Were any private letters or conversation betrayed for that purpose?

Was any attempt made to establish the charges by having recourse to distant publications?

Were the minutes of the evidence taken for the information of the judges put into the hands of the promoter, before they passed into the hands of the judges?

In a word, had the university the mortification of seeing a principal member, in the character of promoter, sacrifice every virtuous feeling to bigotry or resentment, to the hope of preferment or the love of persecution?

While the promoter is ruminating on these questions, I will, Sir, detain the Court only a few moments, in considering the nature of these prosecutions. I have been accused of impugning religion by asserting certain propositions, but, throughout the whole course of the proceedings, the promoter has never given himself the trouble to inquire a moment into their truth or falsehood. This he considered as of little importance. It was sufficient for him and the twenty-seven, that an opinion was supposed to be advanced, which, whether true or false, contradicted a notion maintained two hundred years ago, and was therefore a proper object for academical animadversion.

How disgraceful, Sir, is such a conduct! These men misconceive entirely the nature and character of this university. We propose by our studies to investigate truth, it is our ambition to lay it open to the world; and should any one of us in the course of his reading see reason to alter his former opinions, or should he explore any latent truth, we will not on that account hold him up to public censure. We applaud his researches, we approve of his zeal, we rectify our own notions by his discoveries, or if he errs his error teaches us to guard against some fallacy, and paves the way for future inquiries. Had the university been always of the same mind with the twenty-seven, in vain would a Locke have cultivated the powers of his mind: in vain would Newton have set aside the theories of the ancient philosophy. We must have been doomed to one beaten round of dry metaphysics, we must have plodded in the same dull course, and no one would have dared to follow the bent of his genius, lest the discovery of truth should banish him from the seats of literature

No, Sir, let it not be supposed in the world that our character is degenerated, and that we are of such base and servile minds, as to entertain a wish for the suppression of liberal inquiry. We will continue to exhort each other to cultivate every noble science: some may choose to explore with Newton the path into new worlds, others are investigating the causes which retained the human mind so long in the mazes of heathen mythology, others, by comparing the systems of the ancients with the discoveries of the moderns, may steer between the principles of Leibnitz and our immortal philosopher, and build a theory, which erroneous as it may seem, does not want for advocates among the most intelligent mathematicians. * Why should we stop these men in their career, and if they should carry their attention to sacred subjects or the art of government, are their endeavours to be derided or impeded? Are religion and politics the only things so well understood, that no addition or improvement can be made to them?

I have been long, Sir, of opinion, that truth cannot suffer by the fullest discussion, and that every restraint on the liberty of the press, where no damage can be proved to have been done to an individual, is contrary to the interest of society. Truth is on the side either of the majority of a nation, or the minority. If with the former there is nothing to be apprehended from the power of the opponents. In vain will they attack it. The cause of error, weak in itself, will be rendered more feeble by every endeavour to raise its head, and it will be overcome, not by the strength of party, but by the force of argument.

If the truth rests with the minority, it is evidently for the interest of the other side, that every argument should be brought forward. That majority must be corrupt and base which requires the suppression of truth, when it ought, on the contrary, to hold forth every encouragement to free inquiry, by which it must be a gainer; for a tenacious adherence to its own erroneous opinions, in spite of reason or argument, must, by a continual and progressive state of degradation, render it unfit for the most laudable pursuits, and sink it at last in the depths of ignorance and vice.

In a well constituted government, no danger can possibly ensue from the publication of any sentiments religious or political; and that state of religion and government must be bad indeed, which can be overset by a shilling pamphlet. As to trials of this sort, I look on them as public benefits; they may be com-

* See the works of Boscovich. *Frend.*

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pared to experiments in natural philosophy, and serve to show what progress the public mind has made in the investigation, and how far it is prepared for the reception, of truth. In future times, it will be thought an extraordinary phænomenon, that in the eighteenth century, in a place dedicated to the pursuit of literature, a man should have been thus summoned, thus tried, and thus persecuted for the publication of opinions, which no one of his accusers attempted to refute.

To sum up the whole, Sir, in few words; free inquiry cannot be injurious, except to wicked and depraved minds. Society may be meliorated, but can never suffer by it: and if it should be objected, that thus a door will be opened to the propagation of erroneous principles, let us still recollect, that the errors of genius are momentary and pardonable; but how shall we hereafter dispel that horrid gloom of intellectual darkness, which the promoter and his cabal are endeavouring to spread over this university!

REPLY.

Dr. *Kipling* now rose and observed, that when he considered the number of hours which had already been wasted on this trial, the precarious state of the vice-chancellor's health, and the various duties annexed to his office, he felt the necessity of confining himself, in his reply, entirely to the merits of the cause. He insisted that, notwithstanding every thing which Mr. Frend had said, to repel the charge of defaming the ministers and officers of the church of England, it must be obvious to every one, that the church of England must be the chief object of his attack. For to whom was the pamphlet addressed, but to the associated bodies of republicans and anti-republicans in England, and where must those abuses exist which they are called upon to remedy? certainly not in the church of Rome, to which their exertions could not extend, but in the church of England, where only they could be supposed to have any effect. The rest of Mr. Frend's defence was reducible, he said, to the following points:

The charge of malice imputed to him and the other prosecutors.

The impropriety of enforcing an obsolete statute.

The credibility of witnesses who had been produced in court.

As to the malicious and persecuting spirit with which he had been charged, Mr. Frend could not have forgotten the opportunity which had been given him of making concessions, and averting the prosecution, if he had thought proper. Of this the promoter said he was ready to give an account, if called upon. Mr. Frend here desired him to do it. Dr. Kipling proceeded, and said, that not many days after the 4th of March, when the first resolutions relating to the prosecution had been agreed on at the vice-chancellor's, Mr. Marsh called upon him, and after expressing his concern for Mr. Frend, as a relation and friend, wished to know if there was no way by which the prosecutors might be satisfied, without bringing matters to such extremities as seemed to threaten him. He told Mr. Marsh, that in his private opinion, if Mr. Frend should recant, and make a proper concession, he would not be brought before the vice-chancellor For his part, he assured Mr. Marsh, that he would then take no share in the prosecution, and he believed no other person would. Mr. Marsh went, by his consent, to Mr. Frend, who asked him, if he was authorized to make any proposals? and on his answering in the negative, Mr. Frend said, as you are not authorized, I can say nothing.

The promoter then went to the next point, and observed, that even admitting the statutes, mentioned in the eighth article, to be *obsolete*, it would by no means follow, that they ought *never* to be enforced. The enforcing of a law depends upon circumstances, —on some occasions it may be more prudent to connive at an offence, than to bring the offender to justice. But there are times, when such connivance would be criminal, as pregnant with the worst of consequences.—What was the state of this country when the pamphlet was written? What was then the situation of our established government?—Not only of our political, but of our ecclesiastical government? Was it ever known, since the beginning of this century, to be in greater danger? Was not the chief cause of this danger the circulation of seditious and treasonable pamphlets? Was not this danger increased to that alarming magnitude, by the unremitted industry of certain writers, to infuse the spirit of disaffection into the public mind? And has not *this* pamphlet the same evil tendency?

Dr. Kipling then proceeded in assuring his audience, that he would not have called on this Court to enforce either the 45th statute, or the grace of 1603, on a common occasion; but that the times had of late been extraordinary, and demanded extraordinary exertions.

As to what Mr. Frend had objected to the depositions of Mr. Plampin, Mr. Kilvington, and Mr. Lloyd, it was not to be supposed, for a moment, that three persons of liberal education, would knowingly perjure themselves in that or any other court. Their junction with others in the prosecution did not give them such an interest in the cause as to make them inadmissible. Every member of society is in some degree interested in the prosecution of a public offence: crimes of the most enormous nature might go unpunished, if all persons interested were precluded from giving evidence; and in cases of murder, no witness

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at all could be admitted, all being concerned, and parties in bringing the guilt to light.*

The present prosecution was of a public nature; the defendant was not cited for any personal offence to him or any other of the prosecutors. He had offended the public at large by his indecent reflections on the public institutions, he had called the solemnity of interment a spiritual incantation, he had charged the worship of the church with idolatry, and coupled the holy communion with a bacchanalian revel. The public therefore was injured and insulted, every man was interested in punishing the crime; and the three gentlemen who had borne testimony in the cause, ought no more to be rejected on account of partiality, than any other evidence who felt it a duty to stand forth and endeavour, as much as in him lay, to repress an evil of such a dangerous nature. Under this impression, the promoter said, that he had acted to the best of his abilities, and concluded with a compliment to the vice-chancellor and the heads, for their patient attention during the whole of this long trial.

Mr. *Frend* rose and observed, that as the promoter had been permitted to digress from the proper business of his reply to the relation of a fact which had not been before the Court, he hoped that he might be allowed to make an observation also on the same subject. The vice-chancellor answered: To be sure. Had I known what Dr. Kipling had been going to say, I should have stopped him.

Mr. Frend then related the whole of the transaction with Mr. Marsh, appealing to a letter which Dr. Kipling had received from Mr. Marsh, and which he declared should soon be in possession of the public; concluding the whole of this point with observing, that it was evident nothing conciliatory was ever intended; for if it had been, when they found it rejected by Mr. Frend merely as it should seem for want of authority in the proposer, this authority would have been given to Mr. Marsh, and the negociation would have been resumed. But no such thing was done.†

As to the promoter's maintaining that the ecclesiastical abuses complained of in the pamphlet, must be supposed to belong to the church of England, because the pamphlet is addressed to the associated bodies in this kingdom, he will please to remember, that all the paragraph from which he quoted, is expressly said, in the bottom of page 41, to be a digression with which the parties addressed have nothing to do. The words are: "The contending parties, whom we are addressing, will, however, consider this as a digression, and leave to others the care of directing the spiritual concerns and meliorating the religious opinions of mankind."

With respect to the witnesses, it was unnecessary to add any thing to what had been stated in his objections to them, the grounds of which had not been removed by the promoter, as their inadmissibility depended on very different circumstances—on laws with which it was evident he had not given himself the trouble to make himself acquainted.

Mr. Frend then gave into the hands of the vice-chancellor the papers, containing his answer to several charges which he had read in the course of his defence, with the request that they might not be permitted to pass into the hands of the promoter, or any other persons, except the heads of colleges. The protest against the validity of the minutes of the evidence he then signed and delivered to the registrary.

The Court was then adjourned to Tuesday next, the 28th inst. at 11 o'clock in the forenoon.

SEVENTH COURT DAY.

At a Court holden before the right worshipful Isaac Milner, D. D. Vice-chancellor of the University of Cambridge, J. Smith, R. Farmer, W. Colman, L. Yates J. Barker, Peter Peckard. Jos. Turner, Fr. Barnes, W. Craven, and T. Postlethwaite, Doctors in Divinity, and John Fisher, LL. D. his assessors, on Tuesday the 28th of May, 1793, between the

* It appears from the protest, that Mr. Kilvington's evidence only was objected to on account of veracity; that of the other two, on different accounts: and the reader will keep in mind, that the objections are founded on the civil law, the law of the court, to which the promoter, and his partner the vice-chancellor, seemed to have paid no attention. *Frend.*

† The copy of the letter which Mr. Marsh wrote to Dr. Kipling, on Monday the 6th of May, is in Mr. Frend's possession, but as it is of considerable length, a part of it only, containing those circumstances, is here inserted, which relate to the point in question:

"I perfectly well remembered that I had called upon you about two months before, to inquire if no method could be devised of averting the evil which threatened Mr. Frend; that a conversation took place, the result of which was, that I should go to Mr. Frend, and propose to him to make a concession, in the hope of having the prosecution dropped; that my instructions were, to say, I had reason to believe that a concession would produce the desired effect, but that I was not authorized to affirm it; that I went in consequence to Mr. Frend; that I made the proposal agreeably to my instructions; that he refused to return an answer, on the ground of my not being authorized to make the proposal, and that I again called at your house, to report what I had done.

"In answer to my request that I might not be called into court, you said, if it was not necessary, you should not do it; but if Mr. Frend refused to acknowledge himself the

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hours of eleven and one, in the Senate-house of the said university.

Me present,
GEO. BORLASE.
Not. Publ. and Registr.

The office of the judge promoted by Thos. Kipling, D. D. *against* William Frend, M. A. and fellow of Jesus college.

The vice-chancellor informed Mr. William Frend, that having fully and maturely weighed and considered the charges brought against him by Dr. Kipling, the evidence, and his defence, he was of opinion, that he the said William Frend was proved to be the author and publisher of a pamphlet, intituled "Peace and Union, recommended to the associated bodies of Republicans and Anti-republicans;" and that by writing the aforesaid pamphlet, and publishing it within the university of Cambridge, he the said William Frend, had offended against the latter part of the statute De Concionibus, beginning with the words, "Prohibemus ne quisquam," &c. &c.

Then the vice-chancellor, with the assent of the major part of the heads of colleges, as is required by the statute, directed Mr. Frend to retract, and publicly confess his error and temerity in the following manner.

"I William Frend, master of arts, and fellow of Jesus college, in the university of Cambridge, do acknowledge that, by writing a pamphlet, intituled, "Peace and Union, recommended to the associated bodies of Republicans and Anti-republicans," and by publishing the same within the university of Cambridge, I have offended against the latter part of the statute, "De Concionibus," as expressed in the following words:—

"Prohibemus ne quisquam in concione aliquâ, in loco communi, tractando, in lectionibus publicis, seu aliter publicè infrà universitatem nostram quicquam doceat, tractet, vel defendat contrà religionem seu ejusdem aliquam partem in regno nostro publicâ authoritate receptam et stabilitam; aut contrà aliquem statum, auctoritatem, dignitatem seu gradum vel ecclesiasticum vel civilem hujus nostri regni, vel Angliæ vel Hiberniæ.

"I do therefore, by the direction of the vice-chancellor, with the assent of the major part of the heads of colleges, retract, and publicly confess my error and temerity, as the said statute requires."

The commissary began the business of this day by reading a part of the written defence which Mr. Frend had delivered to the vice-chancellor on the preceding court day, and addressing himself to Mr. Frend, asked him, whether he wished to be heard upon the statute, "De Concionibus?" Mr. Frend replied: certainly not. Upon this, the vice-chancellor declared Mr. Frend guilty of a breach of the statute, "De Concionibus," as is stated in the Acta Curiæ, prefacing his order to recant with the following resolutions, which he read from a written paper.

Cambridge, Queen's-college, May 27, 1793.

At a meeting of the vice-chancellor, and the under-written heads of colleges: it was

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author, and proofs of the authorship were wanting, you should then be under a necessity of calling me. I replied, that as far as I understood the conversation which had passed in the evening of my citation, the design of my evidence was merely to show that a reconciliation had been proposed, and that I knew of nothing in that transaction, which would prove Mr. Frend to be the author of the work which was published in his name. You then gave me to understand, that in procuring my evidence, you had very different views from what I had imagined, as appeared from your making the following answer: Don't you recollect, that, when you made the report to me of the conversation, which had taken place between yourself and Mr. Frend, you said, among other things, that Mr. Frend used the following words: The members of the church of England have less reason to be offended than the dissenters, because, in the parallel which I have drawn between them, the advantage is much in favour of the latter?

"To my reply that I did not recollect having reported from Mr. Frend, the words which you repeated, you discovered, Sir, very visible marks, not only of disappointment but of anger, and in a very haughty and imperious tone, a tone which our respective situations, I think, will not justify, you threatened me with all the danger of prevarication; you told me that I should lose my character, if I pretended to conceal what I knew to be fact; that I was not the only witness who had been tampered with, in order to conceal evidence which should be brought to light, and then lifting up your arm with a menace, which (excuse me, Sir, the expression) at present appears to me ridiculous, you solemnly and violently declared, that you would not suffer such proceedings."

Mr. Marsh, on the subject of tampering, remarks with proper warmth: "I assure you, Sir, that unless the name of tampering be applied to the attempt, which you yourself have made to recall to my mind expressions, of which I have not the smallest recollection, as used in the manner which you declare, I know of no attempt, either direct or indirect, to which the term can be applied. With the charge that other witnesses have been tampered with, I have no immediate concern: I can only say, that I know of nothing of the kind, and that I believe Mr. Frend is a man of too much honour, and too much courage, to stoop to such a baseness." *Frend.*

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unanimously agreed, that William Frend, master of arts, and fellow of Jesus college, is proved to be the author and publisher of the pamphlet, intituled "Peace and Union, recommended to the associated bodies of Republicans and Anti-republicans."

It was also unanimously agreed by the said vice-chancellor and heads of colleges, that by writing the aforesaid pamphlet, and publishing it within the university of Cambridge, the said William Frend has offended against the latter part of the statute De Concionibus, beginning with the words, *prohibemus ne quisquam, etc.*

It is also unanimously agreed by the said vice-chancellor and heads of colleges, that the said William Frend be directed by the vice-chancellor to retract, and publicly confess his error and temerity in the following manner.*

Here follows the recantation as above, and then the signatures.

Issac Milner, V. C.	J. Barker,
John Smith,	J. Turner,
R. Farmer,	Francis Barnes,
W. Colman,	W. Craven,
L. Yates,	T. Postlethwaite.

A copy of the recantation, without any signatures, or resolutions, was delivered to Mr. Frend, who insisted on seeing the paper signed by the heads, which was delivered to him. He then began to read and observe upon it——the second article of the charge has never been proved against me——by writing, I have offended against the statute De Concionibus——am required to retract my error and temerity——What does that mean? The vice-chancellor interrupted Mr. Frend, who said, I am reading only that I may understand it; and then proceeded in his remarks. The statute requires me to retract my error—that error must be first pointed out. The vice-chancellor here again interrupted; and Mr. Frend was again proceeding in his remarks, when the vice-chancellor called out with much vehemence—order! order! the Court must not be trifled with any longer!

Mr. *Frend.* Sir, I must consider whether I can subscribe this or not.

Mr. *Vice-chancellor.* Mr. Frend, I will answer at once all you are going to say. If you wish for time to consider it, I will adjourn the Court: and I do accordingly adjourn this Court till nine o'clock on Thursday morning: and I warn you to appear, and to retract in the manner in which you have been directed. If you neglect to appear, or refuse to retract, you must take the consequences.

* Why were not these resolutions inserted with the recantation in the *acta curiæ*? Was the vice-chancellor conscious that these resolutions could only be made in a private meeting, and that the making of them would prove that he was acting in two different courts? *Frend.*

And the court was accordingly adjourned to Thursday next, the 30th instant, at nine o'clock.

EIGHTH COURT DAY.

At a court holden before the right worshipful Isaac Milner, D. D. vice-chancellor of the university of Cambridge, John Smith, Richard Farmer, William Colman, Lowther Yates, John Barker, Joseph Turner, Francis Barnes, William Craven, and Thomas Postlethwaite, doctors in divinity, and John Fisher, LL.D., his assessors, on Thursday the 30th of May, 1793, between the hours of nine and eleven o'clock, in the Senate-house of the said university.

Me present.
GEO. BORLASE,
Not. Publ. and Registr.

The office of the judge promoted by Thos. Kipling, D. D. *against* William Frend, M. A. and fellow of Jesus College.

Mr. Frend appeared, and the Minutes of the last Court were read.

The Vice-chancellor addressed Mr. Frend, and said, that he hoped he had considered the form of recantation, which had been given him on the last Court-day, and that he was now ready to read it.

Mr. Frend then arose, and began to read a different paper, when the vice-chancellor called him to order.

Mr. Frend said, this paper relates to the explanation of some things which I do not understand. The vice-chancellor refused to hear him read it, but received the paper, and the heads consulted on it.

The vice-chancellor informed Mr. Frend, that they adhered to their former opinion; that they had examined the paper, which did not contain any thing that could induce them to change that opinion.—Mr. Frend said, that he did not understand what his error was; and still persisted in maintaining, that it did not appear how he had offended against the statute De Concionibus.

The *Vice-chancellor* then said, Mr. Frend, you were heard in your defence for five hours, without the least interruption; and I would have listened to you with the greatest patience and attention for five hours more, if you had chosen to have pleaded upon the statute De Concionibus.—You refused to do so at that time—and now that you are convicted of having offended against the statute, you cannot be heard any longer. By the statute it is left to the Court to prescribe the manner of recantation, and you must now answer simply, whether you will read the form prescribed to you or not.

Mr. *Frend.* Sir, it is not upon the statute De Concionibus, that I am going to speak now, but——

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Mr. *Vice-chancellor.* You must not read or speak any thing now, but say, whether you will or will not sign that recantation.

Mr. *Frend* attempting again to read from the paper, the vice-chancellor again called out with vehemence—Order! Sir, order! order!

Mr. *Frend.* Aye, order! Mr. Vice-chancellor. I am for order: if you are a court of inquisitors, you may silence me; but here I must be heard.

Mr. *Vice-chancellor.* You cannot; it is too late. If you do not read this form, we shall consider it as a refusal to retract, and proceed accordingly.

Mr. *Frend.* This paper contains important matter. I ask the opinion of the Court upon it. If you will not allow me to read it, will you take it, Sir, and consider it yourself?

Mr. *Vice-chancellor.* I will.

Mr. Frend then delivered the following paper to the vice-chancellor:

Mr. Vice-chancellor;—The form directed to be subscribed by me, consists of two parts —of an acknowledgment that I have offended against the statute De Concionibus, and of a retraction, or public confession of my error and temerity. The former appears to me unreasonable, the latter is unintelligible. I choose to begin with the latter:—to retract, or publicly confess error or temerity, must mean, to retract or publicly confess some erroneous and rash position, or assertion, that has been advanced. But, where no position or assertion is stated to have been advanced, as in the present case, it can have no meaning at all. It is to retract, or publicly confess nothing, or to make no retraction or confession.

The unreasonableness of requiring me to acknowledge, that I have offended against the statute De Concionibus, consists in this, that no charge whatever, of having offended against the statute, has been brought during the whole course of the trial. I have indeed been charged with impugning religion, as by law established, and with impugning all ecclesiastical ranks and dignities. The language of these charges is plainly borrowed from the decree, supposed to have been passed in the year 1603: *si quis oppugnaverit doctrinam vel disciplinam ecclesiæ Anglicanæ*, are the words of that decree. The language of the statute, which must be deemed essential to any charge designed to be built upon it, is very different; it says, *Prohibemus ne quisquam publicè infrà universitatem nostram quidquam doceat tractet vel defendat contrà religionem in regno nostro receptam et stabilitam, aut contrà aliquem statum, auctoritatem, dignitatem, vel gradum vel ecclesiasticum vel civilem.* Now, with which of these acts have I been charged? and they are the only ones which the statute makes criminal.

In an act of parliament passed soon after the revolution, it is enacted, that if any person, having been educated in, or at any time having made public profession of the christian religion, within this realm, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons in the holy trinity to be God, he shall incur certain penalties. But, would a charge of having impugned the doctrine of the trinity, though perhaps an offence against some other law, be deemed an offence against that particular statute, if unaccompanied with any charge of having, either by writing, printing, teaching, or advised speaking, denied that doctrine? If not, then, for the same reason, any charge brought against me of having offended against some other supposed law, cannot be considered as a charge of having offended against the particular statute De Concionibus.

Mr. *Vice-chancellor* having received the paper, and consulted some time with the commissary and the heads, came forward and said, We all adhere to the form prescribed, and think that there is nothing contained in the objection. You have been convicted of offending against the statute: the statute has left to the Court to direct the form of recantation; this we have given you; and you must now only answer, whether you will or will not submit.

Mr. *Frend.* I expected that the errors which I am to recant would be pointed out.

Mr. *Vice-chancellor.* The error is, that you have offended the statute.

Mr. *Frend.* I declare, upon the honour of a gentleman and the credit of a scholar, that neither my friends nor I can understand the form.

Mr. *Vice-chancellor.* I will hear no more.

Mr. *Frend.* Am I then to subscribe this as my recantation?

Mr. *Vice-chancellor.* You are.

Mr. *Frend.* Then I would sooner cut off this hand than sign the paper.

Upon this the vice-chancellor and the heads employed themselves in signing the sentence, which had been prepared and brought into court; and Mr. Frend, after a minute's pause, addressed the vice-chancellor:

May I deliver this paper into the Court, in bar of sentence?

Mr. *Vice-chancellor.* You cannot.

Mr. *Frend.* Sir, I appeal to the commissary, whether in any court of justice a plea may not be offered in bar of sentence?

Commissary. Sentence is not yet pronounced.

Mr. *Frend.* It is to prevent sentence that I offer this plea.

Having said this, Mr. Frend laid his plea on the registrary's table.

"Whereas I, William Frend, am accused of having offended against a statute of the university, by publishing a pamphlet, intituled, "Peace and Union," &c. and at the close the last term, the following form of general

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absolution was pronounced by the vice-chancellor's deputy in a public congregation: I do hereby plead that absolution in bar of any further proceedings against me on account of the said publication.

"Absolutio in fine termini.

"Auctoritate nobis commissâ, nos absolvimus vos ab omni levi negligentiâ, forisfactione, seu transgressione statutorum privilegiorum et consuetudinum, et Deo et sacramentis ecclesiæ vos restituimus in nomine Dei Patris et Filii et Spiritus Sancti." Amen.

"W. FREND."

Exhibited in court 30th May, 1793.
Geo Borlase, Not. Pub. and Registrar.

The heads having now resumed their seats, Mr. Frend repeated the request that his plea might be read.

Mr. *Vice-chancellor*. It cannot.

Mr. *Frend*. It must.

Commissary. No paper has been yet received into the Court.

Mr. *Frend*. My request is, that it may be received.

Mr. *Vice-chancellor*. If you had any right, I would receive it.

Mr. *Frend*. I have a right, and, as a member of this university, I insist upon it. I do demand that it may be received and read.

Upon this the vice-chancellor took the paper, and having slightly perused it, with the heads, threw it back again upon the table, and delivered an address to the audience, the substance of which is as follows:

THE VICE-CHANCELLOR'S SPEECH.

When the university elected me vice-chancellor, in the month of November last, I acquiesced in their determination with much diffidence and anxiety. The discharge of the ordinary duties of this important office, seemed incompatible with my indifferent state of health; and, if any unforeseen trouble or difficulty should arise in the course of the year, I considered myself as utterly unfit for the management and direction of it. I foresaw that, while the remains of my health might probably be wasted in a diligent and conscientious attempt to do the best in my power, my mind would also be agitated with this painful reflection, "the dignity of the office of vice-chancellor suffers, and the discipline and general interests of the university are essentially injured, through my incapacity."

But, though apprehensions of this sort were naturally suggested by the circumstances, I still cherished a secret hope, that our academical pursuits of learning and science might, for the present year, go on smoothly and without interruption, and our tranquillity be disturbed by no odious or troublesome investigation of the causes of irregularity or riot.

Little did I then imagine that, in the very short space of four months, so refreshing a hope was entirely to vanish, and that I should be loudly called upon publicly to animadvert, not upon the rash and intemperate sallies of an inexperienced youth, but upon the premeditated and offensive conduct of a gentleman with whom I had myself long been acquainted, whose standing in the university was very considerable, and for whose talents and attainments I entertain the most sincere respect.

Improbable, however, as such an event might be, it actually took place, and nothing remained for the vice-chancellor but the painful task of investigating the nature of the offence committed, and the punishment assigned by the laws of the university, and of publicly explaining both, in the most open and perspicuous manner he was able.

On such an occasion, the situation of the judge of this court is not to be envied. Our times, whatever be the offence, are singularly unfavourable to the enforcement of rigid discipline; and, in regard to the degrading and vilifying of establishments either of church or state, by many it is scarcely supposed possible that an offence can be committed. Produce existing laws against such practices, and you are told that such laws ought never to have been made: that they are a disgrace to the country, that they are obsolete, and, perhaps, that you dare not enforce them. Others, with more temper and plausibility, admit that offences like the present are highly blamable in themselves, and that, if you could confine your punishments to such gross and indecent examples, there would be no room for complaint; but, say they, when you have once begun to inflict penalties for the propagation of opinions, there will be no bounds to the operation of such laws: unfair advantages will be taken by men of captious and arbitrary principles: the most inoffensive and laudable endeavours after improvement will be stifled: not a syllable must be uttered against what has once been established: the slightest objections and hints at amendment, either of our religious or political establishments, will be construed into a conspiracy against government:—there is an end of the exercise of our faculties in the dispassionate inquiry and investigation of truth. Then the parties cry out, Persecution! Tyranny over the conscience! No freedom of discussion! And thus, under the fair disguise of moderation and liberality of sentiment, the clamours of the ignorant or the disaffected are to be an answer to every sober argument that can be advanced in favour of the most sacred and venerable institutions that are to be found in the history of mankind.

It is true, indeed, that such popular and delusive topics can produce no conviction on the judgment of thinking persons; but it is no less true that too frequently they influence our practice. The soundest mental constitution is never wholly secure against the con-

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tagion of opinion, and therefore the safest rule, in all these difficult cases, is to turn a deaf ear to every argument or suggestion that has a tendency to draw the mind from the direct contemplation of the point in question, and to pay not the least regard either to those who cry out, Tyranny and Persecution, or to those who cry out, Sedition and Heresy.

With such views and impressions I entered on the investigation of this unpleasant business.

It is a cause of the greatest importance. A bold and indecent attack has been made upon the religious institutions of the country; the statutes of the university have been openly violated; and, if an offence of this magnitude be suffered to pass unnoticed, I think the very existence of the university may be soon endangered.

I do not deny that cases of libellous publications frequently occur, where it is much better to treat an impudent offender with neglect and contempt, than to gratify the obscure and deluded author by bringing him forth into public notice, and inflicting that precise sort of martyrdom which he has justly deserved, and is absurdly anxious to suffer. But I maintain, on the present occasion, that the case of Mr Frend is separated and distinguished, by peculiar circumstances, from that class of offences, which from motives of discretion it might be proper to pass over in silence and contempt.

The author of this pamphlet is a person of considerable standing in the university, and we are all of us ready to bear testimony to his talents and attainments: He has been in the important situation of a public tutor of a college: He resides a good deal among us, and by his zeal and his perseverance is well qualified to make impressions on the unsuspecting minds of youth: He is known to have objections to the established doctrines of the church of England, and if he be permitted thus to defame with impunity the solemn institutions of our religion, and the public functions of the clergy, I am sure that great use will be made of such forbearance and lenity: our under-graduates will soon be taught to insult the doctrines and ceremonies of the church to which they belong; they will believe them to be mere political contrivances; and they will conclude, that as we ourselves dare not support them, even when we have the law on our side, we also, as well as others, are convinced, that they are indefensible by reason, and are only induced to adhere to them from pusillanimity or self-interest.

Such I think is the natural inference which a sensible young man would draw from the silence and indifference of the governing part of the university, upon the appearance of such a pamphlet as this.

I may perhaps be told, that these are mere speculations of my own fancy—I instantly repel the insinuation by affirming a well-known fact, that a numerous and respectable body of this university, appear to have been influenced in a great measure by sentiments of the same sort. I or while I myself was hesitating, whether, as vice-chancellor, I was not called upon *ex officio*, by a flagrant breach of public decorum, to animadvert, in a summary way, upon the author of this pamphlet, I was released from much doubt on this head by the application of thirty-four members of the senate, and most of them of distinguished reputation, who requested the vice-chancellor to take cognizance of an offence which appeared to them dangerous in its tendency, and degrading to the clergy of the establishment. And here I must say, in justice to the laudable and zealous efforts of the respectable characters who stood forth on this occasion, that I think it impossible to conceive a business of this sort to have been conducted with less appearance of private animosity or resentment; and I feel myself bound to declare, that in the application of no one of those gentlemen could I discover the slightest trace of a wish to injure or distress Mr. Frend. On the contrary, every one explained the grounds of his application in the most distinct and guarded manner, professing himself to be solely influenced by a desire of maintaining the honour and credit of the university.

After having advanced so much respecting my own views and the motives of others, I suppose the minds of several who hear me may be disposed to object the inaptitude and irrelevancy of these reflections, and to suggest the propriety of proceeding directly to the consideration of the evidence, and to the administration of the justice of the case.

I openly and freely acknowledge the force of this objection, and if I have introduced reflections which seem in a degree foreign to the subject, it is only because great stress is frequently laid upon such topics, and particularly by persons who affect more than ordinary candour and liberality of sentiment. In order that arguments derived from such sources may have no more than their just weight and influence, I have been tempted to oppose this sort of reasoning by arguments of a similar nature.

Having freely acknowledged so much, let us now seriously and solemnly approach the cause itself.—Let us hear no more of Tyranny and Persecution on the one hand, nor of Heresy and Sedition on the other.

A grievous charge is brought against Mr. Frend; and, as judge of this court, I find myself bound by the most solemn obligations to enforce the statutes of the university. I do not mean to insinuate in the slightest degree, that the 45th statute is an unwholesome or impolitic law, but this I say, that in my present situation I have nothing to do with explaining or justifying the policy of that law; I find it in existence, and I am bound to execute it. Dr. Kipling, the promoter of this cause, has not alleged that the offence comes

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under any general sweeping clauses of the statutes, such as that it is *contra bonos mores, modestiam,* or the like, on which account I feel myself relieved from that embarrassment which naturally attends a conscientious discharge of duty, in a case where much is left to the feeling and to the discretion of the judge; but he has pointed out certain and particular statutes which he affirms to have been violated, and therefore, in case of conviction, the Court has no option.

Now the conviction or acquittal of Mr. Frend depends entirely on the solution of two questions. 1st. Is Mr. Frend the author and publisher of the pamphlet, intituled Peace and Union? On this head we have not the slightest embarrassment. We think that Dr. Kipling has produced a great deal of superfluous evidence. The second question is, does the pamphlet contain matter by which the 45th statute is violated? We are all satisfied that it does; nor has the eloquence of Mr. Frend convinced us that the most offensive passages in the pamphlet do not apply, and were not intended to apply, to the church of England, as well as to the church of Rome. Then, I say, the Court has no option.

Yet I am willing to pause for a moment, and to consider what might be the consequences of a supposed discretionary power in this court.

Enumerate, then, the circumstances which should induce the vice-chancellor and his assessors to mitigate the penalties of this statute. Did the pamphlet make its appearance at a time when every well-wisher for his country entertained the most serious apprehensions for its safety and tranquillity? Does the oldest of us ever remember so general, and I had almost said universal, a concurrence and union of sentiment in the best characters of all parties uniting to oppose the influence of seditious meetings and seditious publications? At such a critical time as this, did the author of this pamphlet inculcate the necessity of peace and good order? Or did he exhort the lower ranks of people to be patient and submissive in bearing the additional burthens which might be necessary to repel by force, the unjust attacks of an outrageous and insolent enemy? Or, again, when the national convention of France had filled up the measure of their crimes, by murdering their king and destroying all lawful government, when their deliberations breathed nothing but atheism and anarchy, and when they were threatening every country in Europe with the introduction of similar principles, did the author of this pamphlet sincerely inculcate a respect for the king and parliament of this country, and for the reformed religion and the functions of the clergy as established by law?

I ask not whether he entered into any nice disquisitions concerning improvements, or reformation in smaller matters; but I ask, in one word, whether the plain object of the author, at least in some parts of the pamphlet, was not to teach the degraded laity, as he calls them, that "like brute beasts they were sitting tamely under an usurped authority"?

Is there any satisfactory answer to be given to these questions? In the title page, it is true, there stand in great letters PEACE AND UNION.

Is it satisfactory to be told, that all the offensive passages apply to the members of the church of Rome, and not to the church of England? I answer as I have often heard my lord Mansfield instruct a jury—"Take the writing and read it as any plain man would do, and tell us the obvious meaning of the passages." Upon this principle, I firmly believe, my assessors, the heads of colleges, who have unanimously concurred with me in opinion, have most conscientiously acted.

But perhaps the author is sorry for his offence. This would plead strongly in mitigation of censure, and I wish I could have perceived, in the whole conduct of this business, the slightest vestige of contrition.

Mr. Frend had certainly an undoubted right to use his own judgment in conducting his defence, yet still I cannot but think he has mistaken the proper mode, in several ways.

1st. He has not treated the cause with a sufficient degree of seriousness.

Did he expect to make an impression on the minds of the judge and his assessors by legal quibbles, by strokes of wit, by allusions to novels, or by endeavours to excite smiles in the galleries?

2dly. He might have avowed the authorship, and if conscious of having gone too far in the propagation of principles, he might ingenuously have said—*This* I maintain to be true, *that* may possibly be defended, but *here* I wish I had stopped.

3dly. If not conscious of having gone too far, he might have boldly confessed and defended his principles, and in a manly way, have submitted to the infliction of penalties, which, according to his judgment, were arbitrary and unreasonable.

Whichsoever of these modes of defence he had chosen to pursue, I do not perceive that he would have endangered his reputation as a man of honour and veracity.

It was certainly laudable in Mr. Frend to use every fair and honest exertion of his talents to exculpate himself from the charges. But the Court has been at a loss to comprehend in what way the continued application of satirical remark and virulent invective on the character of Dr. Kipling, and on the rest of the gentlemen who disapproved of this publication, could be considered as useful to this purpose. Can he now say as the great Roman did of old, "*Si nullâ aliâ in re, modestiâ certè et temperando linguæ, adolescens senem vicero*"?

Such satire and invective might indeed have

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a tendency to debauch the sentiments of the galleries, but could not well be supposed to make any impression upon the minds of the vice-chancellor or his assessors, or of any gentleman who had carefully read and considered the pamphlet.

In the course of this defence it was more than insinuated, that the promoter of this cause could neither write nor speak a sentence of pure Latin. Suppose, for a moment, that the bishop of Llandaff, whose authority was so confidently appealed to on Friday last, could permit the most important professorship in this university to be so scandalously degraded and neglected, as this imputation on Dr. Kipling implies—how would all this exculpate Mr. Frend from the charges that have been brought against him? Again, suppose for a moment, that calumny could, by possibility, fix itself on the respectable characters of Dr. Glynn and Professor Mainwaring, of twelve tutors and lecturers of this university, of thirty-four members of the senate, who all applied to the vice-chancellor to take cognizance of this offence; I still ask, how would all this exculpate Mr. Frend from the charges that have been brought against him?

But Mr. Frend has not contented himself with applying the most disrespectful appellations to this considerable body of academical gentlemen. He has in effect maintained, that their evidence on oath ought to be rejected in this cause.

To this part of his argument, I confess, I listened with the utmost astonishment.

Let us try the truth of this assertion by a very possible supposition.—Suppose an offence to have been of so gross a nature, that not only 34 but twice that number,—suppose even the particular friends and intimates of the offender himself should have joined the *cabal*, as it has been termed—suppose the whole university, in a body, or by delegates, had applied to the vice-chancellor, "Sir, you *must* take cognizance of this offence: our character and credit in the world demand it;" will any man say that the evidence of all these gentlemen, speaking on oath, not to the intrinsic merits of the pamphlet, but to a plain fact, as the buying of a book, or the handwriting of a person, is to be rejected in such a cause? This would indeed be an alarming proposition, and enough to startle any considerate person. It amounts to no less an absurdity than this, that the very greatness of a crime might properly become its shelter and defence.

Before I put an end to this unpleasant business, by finally dissolving the Court, I feel myself called upon, by the extraordinary circumstances of this cause, to say a few words to the junior part of this university.

You have shown yourselves to be much interested in the investigation, and in the event of this trial, and now that it is brought to a conclusion, I wish to engage your most serious attention for a few moments, while I propose the following advice to your serious consideration:

I have no intention to animadvert upon the noisy and tumultuous irregularities of conduct by which our proceedings, on some of the former court-days, have been interrupted. Let these be consigned to oblivion; but let the principles from which these irregularities arose, be well considered, and let me seriously exhort you to be upon your guard in future against the consequences of their dangerous and delusive operation. I cannot suppose that you have even heard distinctly, much less that you can have digested every thing that has been advanced in the course of this trial. Your passions and affections therefore, in this case, are not founded on a knowledge and understanding of the subject. Examine yourselves, you will perceive that they are founded upon certain vague ideas, that the accused person has been persecuted.

Such an unreasonable persuasion, if not effectually opposed by sober argument and reflection, will soon produce the most destructive consequences on your practice. And I think it the more necessary at this time to advertise you of your danger, when this country has just escaped and survived a most alarming crisis, and when several turbulent and democratic spirits still endeavour to persuade the public, that every attempt to punish libellous attacks upon the constitution and government of the kingdom, by enforcing wholesome and established laws, is a species of persecution, and contrary to the *imprescriptible Rights of Man*.

Now I affirm, that in this country, wherever there is *fair* ground for an accusation, and where the accused person has had a *fair* hearing, there can be no such thing as persecution. On these two essential points I rest the merits of the question. When, therefore, I look on the junior part of this university, and foresee in them the future supports and ornaments both of the civil and ecclesiastical establishment of England, and when I consider that they have been entrusted to our care and nurture by relations and connexions who venerate these establishments, I feel myself authorized to interrogate you closely, and to demand, whether being educated from earliest infancy, in the practice of frequenting the church, and reverencing her institutions, you are now prepared to say, on reading this pamphlet, that the accusation of having impugned the established church was either frivolous or oppressive?

I know very well how you must answer this question, and am persuaded that the ingenuous dispositions of youth only needed this matter to be clearly stated to them.

In regard to the second question, whether the accused person has had a *fair* hearing, I have no anxiety. Whatever notions you may have inconsiderately entertained before the trial, I have no doubt but that now, after the

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trial, you will tell your fathers, your guardians, and your friends, that you never heard or read of a trial where the accused person had a more full, deliberate, and impartial hearing.

You will tell them also, that the only doubt you could entertain of the propriety of the proceedings might be, whether the judge of this court, through an extreme unwillingness to interrupt the accused person in his defence, did not carry his patience and forbearance to an almost unwarrantable length, while he permitted the defendant to proceed in an unbounded strain of virulent and irrelevant invective. Then you will add, and I trust, with some effect, that the university of Cambridge will not suffer the sacred and venerable institutions of the established church to be derided and insulted; and that at a time when a profane and licentious spirit of infidelity and irreligion makes rapid advances and threatens the destruction of our ecclesiastical fabric, there were to be found in these seminaries, respectable characters who could accuse with liberality and decorum, and judges who could condemn with firmness and moderation.

The remaining part of my advice to you will not fatigue your memories. It is brief; but it is important; and it is well worth your most serious consideration. Beware of entering into religious controversies at this period of your lives. Whatever may be the profession you are intended for, improve your understandings by the diligent pursuit of academical studies: obey your tutors: frequent the service of God according to the established forms, both in your private colleges, and in the university church. At present, take it for granted, that our forefathers had some good reason for steadily adhering to, and supporting these venerable institutions. I repeat it, at present take it for granted, and those whom I perceive to be objecting to these words, will themselves tell you, that it has not been my way to take things for granted. All I contend for is, that this is not your time for becoming parties in controversial matters of religion. It is your business to cultivate your understandings, and to be careful, that the good seed sown in these retirements may take root downwards, and bear fruit upwards, and increase to a mighty harvest in your lives and practice.

Against those who would openly attack the religious principles in which you have been educated, it is easy to guard. I have more apprehensions from those who are perpetually talking of candor, of liberality, of thinking for themselves, of examining things to the bottom, of the newly discovered modes of interpreting scripture, and of the opinions of fallible men. These, and such like topics are excessively captivating to the unsuspecting minds of youth. Impressions of the most durable nature, are made in a few conversations, and, in this way, I have more than once seen the finest talents and most amiable dispositions soon perverted or rendered useless, which, doubtless, in happier circumstances and with a better cultivation, might have been eminently serviceable to their country, either in church or state.

Remember then the earnest and zealous advice of a person, who thus addresses you from the purest motives of good-will, and the warmest wishes for your best interests; of a person whose imagination and temper have never been heated with religious dispute, whose pride and ambition have ever been to obtain, in the various branches of useful science, solid information for himself, and to communicate it to others, and whose health has been almost exhausted with academical labours.—Remember then, I say, the advice of a person who at this moment addresses you, not with the authority of a vice-chancellor, but with the friendship and affection of an experienced academic, of a person who has never been suspected of being fond of possessing offices or dignities, who has lamented bitterly that the necessity of this enquiry should have taken place in the present year; but who, when the inquiry was once instituted, thought it his duty to go through it with all the energy he was capable of, and who found it impossible to acquit Mr. Frend of having offended against the statute, without sacrificing every principle of truth, of justice, and of honour.

The Vice-chancellor, with the assent of the major part of the Heads of Colleges, then decreed sentence of BANISHMENT against Mr. Frend in the following form:

"I, Isaac Milner, D.D. and Vice-chancellor of the university of Cambridge, do decree, declare, and pronounce that Wm. Frend, M.A. and Fellow of Jesus College, having offended against the statute, "De Concionibus," by writing a pamphlet, intituled "Peace and Union, recommended to the associated Bodies of Republicans and Anti-Republicans," and by publishing the same within the university of Cambridge, and having refused to retract his error and temerity in the manner prescribed to him by me, the Vice-chancellor, with the assent of the major part of the Heads of Colleges, has incurred the penalty of the statute, and that he is therefore banished from this university.

(Signed) I. MILNER, Vice-chancellor.
J. SMITH,
R. FARMER,
W. COLMAN,
L. YATES,
J. BARKER,
J. TURNER,
FRA. BARNES,
W. CRAVEN,
T. POSTLETHWAITE."

The Court was then dissolved.

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Thus ended the proceedings in the vice-chancellor's court.* The day after, Mr. Frend waited on the vice-chancellor, to declare his intention of appealing to the senate against the sentence of the court; and on the following day, the proctor inhibited the vice-chancellor, in the usual form, from putting his sentence into execution. The mode of appeal and inhibition is stated by the registrary in the following words:

Queen's College, June 1, 1793.

Business of Appeal between William Frend, M. A. and Thos. Kipling, D. D. } Before the right worshipful Isaac Milner, D. D. vice-chancellor of the university of Cambridge.

On which day, at the hour of eleven in the forenoon, the said William Frend appeared, and having, in the afternoon of yesterday, declared to the vice-chancellor his intention of appealing from a certain definitive sentence pronounced upon him by the said Isaac Milner on the 30th of May last, did then and there take the oaths "de gravamine" and "de non solicitando delegatos."

At the same place, day, and hour, George Hunter, M. A. junior proctor of the university appeared, and inhibited Isaac Milner, D. D. vice-chancellor of the university, during the appeal between William Frend, party appellant, and Thomas Kipling, party appellate, in the following words: "Ego Georgius Hunter, procurator alter, nomine academiæ te Isaacum Milner, procancellarium, judicem a quo, inhibeo, ne quid, pendente appellatione inter Gulielmum Frend, et Thomam Kipling attentare vel innovare præsumas."

Me present,
Geo. Borlase,
Not. Publ. and Registr.

Business of Appeal between William Frend, M. A. and Thos. Kipling, D. D. } Before the right worshipful Isaac Milner, D. D. vice-chancellor of the university of Cambridge.

On which day, at the hour of twelve, Thos. Kipling, D. D. and John Beverley, M. A. his proctor, did appear, and did then and there respectively take the oath "de non solicitando delegatos," in a certain cause of appeal between William Frend, party appellant, and him the said Thomas Kipling, party appellate.

In the presence of me,
Geo. Borlase,
Not. Publ. and Registr.

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* Mr. Beverley inserts the following Papers, at the request of Mr. Kilvington; and he considers them as no unsuitable addition to his account of Mr. Frend's trial:

(Copy)

Cambridge, June 1, 1793.

We, the underwritten, express our detestation of the scandalous and unfounded imputations, which were attempted to be thrown upon the characters of Mr. Lloyd, and Mr. Kilvington, at the late trial of Mr. Frend.

T. Kipling	R. Boon
J. Jowett	J. Dudley
R. Glynn C.	W. Pugh
W. L. Mansel	C. Simeon
J. Mainwaring	Antho. Mainwaring
R. T. Belward	Edw. Wigley
Geo. Whitmore	W. Millers
W. Walford	Jos. Watson
J. Oldershaw	Tho. Castley
W. Wade	John King
W. Mathew	Philip Douglas
J. Smith	E. Edwards
J. Wood	J. Bradshaw
W. Wilson	W. Walker
H. Greene	J. Fawcett
R. Ramsden	R. Tillard
A. Frampton	W. Easton
E. Outram	Henry Jowett

(Copy)

The testimony given by Mr. Kilvington, during the trial of Mr. Frend, having been openly contradicted by the latter, and an idea having prevailed that certain letters written by Mr. Kilvington to Mr. Frend, contained a proof that the testimony was untrue: I think myself called upon to declare publicly, in vindication of Mr. Kilvington's character, that since the trial in the vice-chancellor's court, Mr. Frend, on application made to him by Mr. Kilvington's desire, showed me those letters, and that there was nothing in them which appeared to me in the smallest degree to invalidate that testimony. The substance of the letters was an application for college testimonials, and they contained general expressions of gratitude to Mr. Frend for favours received, which, according to Mr. Frend's explanation, consisted in attentions shown to Mr. Kilvington, when at Jesus college, and the supplying him occasionally with books from the library.

W. Parish,
Senior Proctor of the University.

Magd. Coll. July 1, 1793. *Orig. Ed.*

PROCEEDINGS
IN THE
COURT OF DELEGATES.*

First Court.

University of Cambridge to wit. } Before the right honourable and right worshipful William Wynne, knight, doctor of law, the worshipful John Hey and John Barlow Seale, respectively doctors in divinity, and the worshipful John Lane and Edward Christian, respectively masters of arts, judges dele-

* Compiled from the respective publications of Mr. Beverley and Mr. Frend.

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gates, in a certain cause of appeal, or complaint, between William Frend, M. A. and fellow of Jesus college, party appellant, and Thomas Kipling, D. D. party appellate, in the law schools of the said university, on Friday the 28th day of June, 1793, at nine o'clock in the morning.

Me present,
GEO. BORLASE.
Not. Publ. and Registr.

Business of Appeal between William Frend, M. A. and Thos. Kipling, D. D.

The Grace of the senate, 14th June, 1793, appointing delegates in this cause, was read. Also a citation of William Frend, party appellant, and a citation of Thomas Kipling, party appellate. And John Beverley, esquire bedel, was sworn, who deposed, that he had respectively served the said citations on Mr. Frend and Dr. Kipling, who both appeared.

Also was read a paper signed Robert Tyrwhitt, purporting to be a protest against the legality of the aforesaid grace. Mr. Tyrwhitt was heard in support of the protest; and the judges delegates, after deliberating on the same, declared, that they were unanimously of opinion, that nothing contained in the protest ought to prevent their sitting to hear this cause; and that they were ready to do so.

The registrary being sworn, deposed, that he had looked over the minutes, since they were returned by the promoter of this cause, in the court below, and that they had not undergone any alteration while in the promoter's hands.

And the proceedings and evidence had and taken in the court below were read as far as to the act of court 13th of May inclusively.

And the delegates adjourned the court to a quarter past four o'clock in the afternoon of this day.

Grace for the Appointment of Delegates.

Judices delegati in causâ appellationis inter Gulielmum Frend, A. M. et Thomam Kipling, S. T. P. electi et dati sunt.

GULIELMUS WYNNE, Eques.
DR. J. HEY, Sidn. coll.
DR. SEALE, Xti.
MR. E. CHRISTIAN, Div. Johannis.
MR. LANE, Coll. Regin.

Placeat vobis ut prædicti viri sint judices delegati in prædictâ appellationis causâ.*

Summons from the Delegates.

William Wynne, knight, doctor of law, John Hey, doctor in divinity, John Barlow Seale, doctor in divinity, Edward Christian, master of arts, and John Lane, master of arts, judges delegates rightly and lawfully constituted, in the under-written cause, and between the under-mentioned parties, To our beloved in Christ, John Beverley, William Matthew, and Henry Gunning, esquire bedels of the university of Cambridge, greeting: Whereas in a certain cause of appeal and complaint which before us in judgment is now moved and depending between William Frend, master of arts, the party appealing or complaining on the one part, and Thomas Kipling, doctor in divinity, the party appellate or complained of on the other part, rightly and duly proceeding therein, We have decreed the aforesaid William Frend, the party appealing and complaining, to be cited and admonished to attend on the day time, and at the place and to the effect and purpose underwritten, (justice so requiring.) We do therefore strictly enjoin and command you jointly and severally, That one of you esquire bedels of the said university do peremptorily cite, or cause to be cited the aforesaid William Frend, the party appellant and complaining in the said cause, to appear before us in the law schools of the said university, on Friday the twenty-eighth day of this instant June, between the hours of nine and twelve in the forenoon, then and there to prosecute his said appeal, and to abide in judgment until the final determination thereof, and further to do and receive as unto law and justice shall appertain, under pain of the law, and contempt thereof; and ye shall moreover intimate, or cause it to be intimated to the said William Frend (to whom also we do so intimate by these presents), That we do intend to proceed, and will then and there proceed to hear and finally determine the said cause of appeal according to law. And that you or either of you shall duly certify to us, what you shall do in the premises, together with these presents. Given under our hands and seals, this twenty-first day of June, in the year of our Lord one thousand seven hundred and ninety three. [Here follow the signatures.]

After the summons had been read, the following conversation took place.

Sir *W. Wynne.* Are the parties here?

Mr. *Frend.* I am the appellant in this cause.

Sir *W. Wynne.* The delegates are ready to proceed. What is that paper? (to the registrary).

Registrary. It is a paper which I received from Mr. Tyrwhitt.

Sir *W. Wynne.* Read it.

The registrary then read as follows:

Jesus College, 20th June, 1793.

Whereas a grace proposing five delegates was read a second time in the non-regent house, on Friday last, and was then suffered to be taken away by the officiating bedel, without a scrutiny; which grace was afterwards approved by a majority of votes in the other house:

* The delegates are nominated by the two proctors, and the members of the caput, except the vice-chancellor. The grace is then read in the houses like other graces. In this case, the master of St. John's brought with him a written list, to which the others, except two, acceded. *Frend.*

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I Robert Tyrwhitt, a non-regent master of arts, do, within ten days, make this open and legal protestation against the said grace.

1. In the first place, because I had not a statutable opportunity of expressing my disapprobation of it, either in whole or in part, though I was present in the house at the time it was read.

2. In the second place, because both the persons who acted as scrutators, were deputies, and neither of them sworn agreeably to the law of the university.

ROBERT TYRWHITT.

1. Stat. Vet. 161. De modo et formâ petendi gratias.

Stat. Vet. 80. Quomodo scrutatores tenentur petere gratias.

Stat. Vet. 63. De gratiis petendis.

2. Stat. sive gratia, de procuratoribus et scrutatoribus deputatis.

This writing I received of Mr. Robert Tyrwhitt, on the twentieth day of June, 1793. Mr. Tyrwhitt, at the same time, expressed a desire that the same might be recorded.

GEORGE BORLASE, registr.

Sir *W. Wynne.* Has Mr. Tyrwhitt any thing to say upon this?

Mr. *Tyrwhitt.* A great deal on all the statutes which relate to the duty of scrutators and moderators on passing graces: but I did not think that I should be called upon here. I thought another place more proper for this discussion, and accordingly proposed my objections in the senate.

Sir *W. Wynne.* Do you wish to have the statutes referred to read in the court?

Mr. *Tyrwhitt.* If you think it necessary, I do: but I desire it may be understood, that it was not on account of this particular case that I objected: I should have done it on any other matter of more than ordinary concern.

Sir *W. Wynne.* It must be at your request, if they are read.

Mr. *Tyrwhitt.* Then I make it my request, that they may be read. My objections were opposed in the senate house by some persons there, with a degree of petulance and violence, extremely unworthy of any member of the university.

The statute was then read.

161. De modo et formâ petendi gratias.

Item, statuimus, quod procuratores vel eorum alter cum occupante vices alterius, seu procuratorum vices occupantes, quamlibet gratiam petendam privatim scrutari teneantur, et quilibet regens alteri eorum votum exprimens secretè respondere præmonitus per alterum procuratorum privatim respondere teneatur, et pro secreto habere teneantur tam scrutator quam scrutatus: et qui contra hoc statutum venerit pœnam de secreta revelantibus incurrat. Nulla etiam gratia conditionetur sed purè concedatur vel negetur nec etiam aliqua gratia cum aliâ concurrat.

Mr. *Tyrwhitt.* It appears from this statute, that on all occasions the scrutiny should be secret. The putting in of a *non placet* at reading actually subjects a person to a penalty. It is wrong that the omission of putting in a *non placet* at the reading of a grace should be made a pretence for depriving any member of his privilege of voting. No person is authorized even to tell in what manner he voted.

Mr. *Lane.* What do you mean by pretence and omission?

Mr. *Tyrwhitt.* I mean only to represent the fact. The present practice of taking three steps in the house is a remnant of the original mode, prescribed by the statute, of walking round and asking the votes separately and privately, and supposes that a scrutiny has been actually taken. On common occasions, this may be sufficient: but, on such an occasion as this, it is an abuse of what even in ordinary cases is only an indulgence.

The statute 80. Quomodo scrutatores tenentur petere gratias, was then read.

Item, duodecimo die mensis Octobris, anno millesimo CCCC° LXVII°, in plenâ congregatione regentium et non-regentium, statutum est atque ordinatum; quod scrutatores electi arctentur ad petendum gratias et alia negotia universitatis exequenda secundùm formam statuti quo arctantur procuratores, eâdemque pœnâ puniendi sunt, si secundùm formam prædicti statuti requisiti id facere recusent.

Mr. *Tyrwhitt.* This shows that scrutators and proctors are in this respect bound by the same laws.

The two other statutes referred to by Mr. Tyrwhitt in his protest were then read.

63. De gratiis petendis.

Statuimus et ordinamus, quòd de cætero nulla gratia tempus aut formam concernens petatur, nisi in præsentiâ cancellarii vice-cancellarii vel præsidentis, et hoc in novâ capellâ et non alibi concedatur; exclusâ parvâ capellâ eidem annexâ, salvis tamen gratiis quæ in antiquis statutis solùm regentibus reservantur concedendis. Et si aliqua gratia vel gratiæ concedantur, quòd alter procuratorum vel alterius eorum vices occupans, altâ voce dicat in medio capellæ, ista gratia vel istæ gratiæ habentur in istâ congregatione. Et si aliqua gratia contrâ prædictam formam concedatur, impetrans officio suo sit ipso facto privatus, et utens scientèr eâdem gratiâ excommunicationis sententiæ sit ipso facto subjectus, à quâ nisi in plenâ congregatione per cancellarium vel ejus locum tenentem non valeat absolvi. Et ad hujus statuti continuam observantiam volumus singulos procuratores ac scrutatores futuros antequam admittantur ad eorum officia esse personalitèr juratos.

Gratia 1575. Quod jurejurando astringantur procuratores et scrutatores deputati.

Conceditur 6 Maii, cùm procuratores et

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scrutatores sæpè propter negotia sua privata abesse contingat à congregationibus et aliis publicis muniis academiæ, ut eorum substituti et vicarii jurejurando astringantur ad benè et fideliter peragendum eorum officium, antequam aliquid in præmissis pertractent.

Mr. *Tyrwhitt*. This provides that substitutes should be sworn before they act; which was not done. Mr. Collier was not sworn before he read the grace. This is the history of the matter It is the duty of the scrutators and proctors. after reading any grace in either of the houses, to go and ask every member of that house his vote personally. This appears from the bedel's books. from printed books, and every other authority by which the practice of the university is directed. When I was scrutator, I took the votes, though no *non placet* had been put in.

Court. Is it the usual practice now?

Mr. *Tyrwhitt*. No: not in ordinary cases: it is connived at. But in extraordinary cases, where any opposition is expected, it ought to be observed. In this case it was known that above twenty persons came into the university, in expectation that it would be opposed.

Court. Did you take the votes personally in all cases when you were scrutator?

Mr. *Tyrwhitt*. No: not in all.

Dr. *Hey*. In what cases did you?

Mr. *Tyrwhitt*. On one grace in particular, which, had I been only a private member, I certainly should have opposed, but as an officer, I could not.

Dr. *Hey*. Perhaps the purport of that grace was not very material.

Mr. *Tyrwhitt* Yes; it was, in my opinion, very material; it was a matter which I had long and uniformly endeavoured to correct: it was a mandate decree for the master of St. John's college. But I repeat, I did not expect to be called upon here to explain the grounds of the protest: it must therefore be considered as a very short and imperfect account of the business.

Sir *W. Wynne*. We shall not retire to take it into consideration, till you have said all that you choose.

Mr. *Tyrwhitt*. I will tell you then another instance, in which it was done. When the present vice-chancellor was a regent master of arts, a grace had been read in the non-regent house, and passed without a *non placet* having been put in. The present vice-chancellor, and the present bishop of Lincoln were adverse to it, and wished it to be read again, and put to the vote. They came very improperly into the non-regent house, and declared, with much violence, that there were persons in the house, who wished to oppose it. I remonstrated upon the indecency of their coming as regents into the non-regent house to make their objections. However, I stated it to the house, and in consequence of my representation, the votes were taken.

The Court then retired for about five minutes: and on its return, sir W. Wynne said: The delegates have deliberated, and unanimously determine, that nothing contained in Mr. Tyrwhitt's protest, or urged by him in its support, ought to hinder them from proceeding in this cause; and they are accordingly ready to proceed. We are ready to hear the appellant.

Mr. *Frend* rose, and after remarking on the unusual step of being cited by them, read the proper mode of proceeding, as described in the bedel's book.

"The delegates, which, by the statute, are ordered to be at least three in number, and at the most five, *pro qualitate causæ*, being chosen the party goes to each of them, desiring them to meet in the consistory, or some other fit place; and when they are met together, he presents the grace unto them as it passed in the senate; and when they have read it, they acknowledge *acceptare in se onus commissionis*, and declare themselves ready and willing to perform the office of judges in that cause, *juxta tenorem delegationis*. After acceptation made, the party appellant, or his proctor, doth desire the judges delegate to decree "partem appellatam arrestandam fore citra diem eorum arbitrio assignandam," to answer unto such things as the party appellant shall object against him. If the party appellate will then appear, the cause is declared on both sides, and the party appellant hath assigned him *ad proponendum in formâ* on the next court day, wherein such *gravamina* for the which he doth appeal, must be specified. The proceedings afterwards are ordinary, such as are in cases of the first instance."

He concluded with saying: I beg leave to know, whether this is the mode which is to be followed now.

Sir *W. Wynne*. We think that the whole proceedings in the vice-chancellor's courts should be first read.

Mr. *Frend*. Shall I make any remarks on them, as they go on?

Sir *W. Wynne*. As you please. But we think it better for the whole to be read first, and then for you to take up your exceptions: unless there is any part which you wish not to be read.

[The registrary then began to read the proceedings in the vice-chancellor's court; and when he came to the articles of accusation, sir William Wynne directed the quotations by which the respective charges were supported, to be read from the pamphlet itself.]

Mr. *Frend*. They were not read in this place on the trial.

Sir *W. Wynne*. They ought to have been.

Mr. *Frend*. With submission, Sir, to you, I should think it would be better to read them from the pamphlet in the course in which they were produced on the trial.

Sir *W. Wynne* I have no objections. I am willing that they should.

[Registrary reads to the words, "false, wicked, and malicious," page 534.]

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Mr. *Frend*. In my defence, I observed to the court, that in denying the whole, I did not mean to deny every particular. I did not deny that I was a master of arts: I did not say that I was not the author or publisher: but I gave (what I believe is usual in such cases) a general answer.

When the registrary began to read the depositions of the witnesses, Mr. Frend addressed the Court: You will take notice, gentlemen, that I gave into court, and do here repeat my protest against the validity of the evidence, the whole having been vitiated by the promoter's taking it out of court; and also for particular reasons against particular persons.

Sir *W. Wynne*. It will be impossible for us to judge, without hearing it all.

Mr. *Frend*. I only meant to save trouble: if it is of no use, it is only a waste of time to hear it.

Dr. *Hey*. May it not be as well to consider the protest now?

Sir *W. Wynne*. Perhaps it may be better. Will the registrary say, that the papers, which Dr. Kipling took out of the court, were returned to him exactly the same?

Bedell. Is the registrary to be sworn?

Sir *W. Wynne*. I have no objection to his being sworn.

Mr. *Frend*. I would spare the registrary the oath, as I conceive it impossible for any person to take it; it is impossible to prove, or to be certain that the papers have not been altered. Except in the divinity schools, I never heard of a proof being called for of such a negative proposition.

Sir *W. Wynne*. This is a court of justice, and we think it highly proper: they ought to be proved to be the same.

Mr. *Frend* then repeated the protest and the case of the jury, page 591, as a case in point. This was denied by Mr. Lane; and a short conversation followed, in which Mr. Frend maintained, that if not strictly in point, it yet concluded *a fortiori* in favour of his protest. For if the bare examination of a single witness out of court, by a set of uninterested and unprejudiced men, merely that he might repeat what he had said before in court, was yet sufficient to set aside their verdict: how much more must the removal of the whole evidence affect its validity, when taken out of court by the promoter himself, and with the express purpose of directing it in the most forcible manner to the conviction of the offender?

The *Registrary* repeated the declaration he had made in the vice-chancellor's court, that the papers had undergone no alteration, and that he was ready to swear to this. He was accordingly sworn.

Sir *W. Wynne*. Are the papers which Dr. Kipling returned to you, the same which you gave to him?

Mr. *Frend*. Can you say that there are no marks, no erasures, no obliterations, no alterations whatsoever, made by the promoter? Did you look all the papers over?

Registrary. I did look them over, and they have not undergone any alterations while in the promoter's hands.

Mr. *Frend* now observed, that having no expectation, that the proceedings of the vice-chancellor's court would be thus taken up, he had not brought with him the copy of the evidence delivered to him by the registrary: he desired, therefore, permission of the court to go to his rooms for them. This being granted, Mr. Frend went out, and Mr. Lambert took the opportunity of going out for the notes which he had taken during the whole of the trial. On their return, the reading was resumed, and very little progress was made before Mr. Frend observed the omission of a word in his copy.

Registrary. Your copy is not attested by me.

Mr. *Frend*. It has not your name to it, but it is on a proper stamp; it is marked as having been examined; it ought therefore to be literally exact. If it is not exact, for what purpose was it given to me?

The *Registrary* went on reading; and Mr. Frend, after remarking repeated variations, observed, that if mistakes of this kind are so easily made in copies taken and examined as accurate, it must be extremely difficult to swear to the indentity of writings.

When the registrary read the resolutions and signatures, p. 525, 526, Mr. Frend asked him, whether they were given to the promoter?

Registrary. Yes; I presume they went with the other papers; I cannot be certain. But if they did, they returned as they went.

On Mr. Lunn's evidence, Mr. Frend observed, that no notice was taken of the objection and answer of the commissary, p. 546, but that the gentleman who assisted him in taking the notes of the trial, is ready to swear that he did object. He observed, at another time, that the depositions of each witness had been transcribed all together, without any distinction of the different times in which he had been called up; and that the registrary was now reading them in such a manner, that the delegates might conclude it was all one continued deposition. He begged leave to recommend the same order in reading the depositions, as had been followed in the proceedings at the trial.

Registrary. I cannot speak to the order.

Mr. *Frend*. This is another instance of the irregularities of this business.

On Mr. Plampin's evidence, p. 549, Mr. Frend observed: Here is another omission of important matter. No notice is taken of my objection to this man's evidence I excepted to him on two grounds. Mr. Lambert is ready to attest it. Mr. Lambert here rose, and offered to make oath of the above, but the court rejected his offer; sir William Wynne declaring, that they could not attend to any thing not in the registrary's minutes.

On Mr. Hodson's evidence, Mr. Frend ob-

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served, that Mr. Marsh was called in, but the registrary had taken no notice of that circumstance. This ought to be attended to, as it proved the ground of a serious complaint from Mr. Marsh, of the treachery which had been practised against him. He had been promised, that, if he were called upon to give evidence, it would not be with any view of proving the publication: whereas, on the trial it appeared, that he was called upon for that very purpose. Mr. Frend then desired that he might read what Mr. Marsh had said in court, as it would establish his charge of malice in the prosecutors.

The court said, that as this did not appear on the minutes, it could not come before them.

On Mr. Alger's evidence, Mr. Frend observed: The court does not perhaps see the tendency of these questions and answers. That copy of the pamphlet had been taken out of court, and the commissary himself had expressed his surprise at it. Several other remarks were made by Mr. Frend on various parts of the depositions, proving their inaccuracy: and at the close of them he observed, that the whole of the evidence was too inconclusive for the judges to have formed any opinion upon it; that the proceedings of the court had been very irregularly recorded; that all that had passed ought to have been registered; for, as the vice-chancellor took upon himself to make the heads concur with him under a law, which required the consent of the majority, and the master of Trinity, without whom that majority could not have been formed, was absent several days, the proceedings should have been taken down with accuracy; otherwise the master of Trinity had no opportunity of forming a judgment. Indeed he must have been totally unacquainted with the nature of many objections suggested by Mr. Frend; and yet, without his concurrence, no recantation could have been proposed. This was a grievance exceeded only by that which could not have escaped the observation of the delegates, since it was manifest to every person, that from the beginning to the end of the business, the prosecutors and the judges were one and the same party.

The third article having been read, p. 561, Mr. Frend addressed the Court: When this charge was read by the promoter, I objected then, and I must repeat it now, that no such passage was to be found in the book, as that which the promoter articled against me. But there is no entry of this objection in the *acta curiæ*: which proves that the master of Trinity could not be a competent judge in the case. He heard none of my objections to the mode of quoting mutilated passages, nor of my proofs of the necessity of producing the words themselves.

On article the fifth being read according to *acta curiæ*, page 562, Mr. Frend observed, that here again the master of Trinity could be no judge, not having heard either his, or the promoter's remarks. The promoter, by way of directing the proceedings of the court, produced the case of Charke; but being questioned, whether Charke had been summoned to appear in the vice-chancellor's court, and on several other points necessary to establish his case as a precedent, could say nothing, though the master of Trinity, from what appears in the *acta curiæ*, must naturally suppose that it was admitted as a case in point.

Dr. *Seale.* Did not the judge suffer every thing to be stated, which you expressed a desire to have inserted?

Mr. *Frend.* No: he ordered the registrary to mind what he said, not what I said.

When the registrary had finished the *acta curiæ* for the thirteenth of May, p. 64, the Court was adjourned to a quarter past four in the afternoon.

SECOND COURT.

University of Cambridge to wit. } Before the right honourable and right worshipful William Wynne, knight, LL.D. the worshipful John Hey, and John Barlow Seale, respectively doctors in divinity, and the worshipful John Lane, and Edward Christian, respectively masters of arts, judges delegates, lawfully constituted, in a certain cause of appeal or complaint between William Frend, M. A. and fellow of Jesus college, party appellant, and Thomas Kipling, D. D. party appellate, in the law schools of the said university, on Friday the 28th day of June, 1793, at a quarter past four o'clock in the afternoon of the same day.

Me present,
GEO. BORLASE.
Not. Publ. and Registr.

Business of Appeal between William Frend, M. A. and Thos. Kipling, D. D. } The rest of the proceedings and evidence in this cause were read.

And the judges then declared, that the proceedings with the evidence had and taken in the court below, having been read and gone through in this court, they (the judges) now called on him (Mr. Frend) to proceed in his appeal.

Mr. Frend objected, that a certain paper relative to the sentence in the court below, and signed by the heads of colleges, had not been read. The judges inquired of the registrary for that paper, who declared that it was not committed to his custody. Mr. Frend then declared, that he conceived he was not, by the statutes, or practice and usage of the university held to proceed in his appeal till the next court day, particularly by the 48th statute, and an interpretation of the same, dated Oct. 6, 1596.

The judges having considered the said statute, and the interpretation, were of opinion, that the interpretation had no reference to causes of appeal; and again called on Mr.

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Frend to proceed on his appeal. Mr. Frend declared, that he was not yet fully prepared. The judges deliberated; and declared they would hear Mr. Frend to-morrow, immediately after the morning congregation. Mr. Frend objected, that to-morrow being a holyday, was not a *dies juridicus*; but the judges over-ruled this objection.

When, in reading the proceedings and evidence, the registrary came to the vice-chancellor's declaration in the *acta curiæ* of the 28th of May, p. 625, that he was satisfied that Mr. Frend was proved to be the author and publisher of the pamphlet, Mr. Frend observed that this was very improper: it ought to have been, we the vice-chancellor and heads of colleges are satisfied. How else does it appear, that they were convinced? and unless they were convinced, how could they sign the subsequent resolutions and sentence? The proceedings of this day are very imperfectly recorded. I should have spoken then on the form of the recantation proposed to be signed, but was prevented very abruptly by the vice-chancellor, who adjourned the Court very improperly, without giving me an opportunity of being heard.

On the *acta curiæ* of the 30th of May, p. 628, Mr. Frend observed, that he brought a paper, which was not allowed to be entered on the proceedings of the Court.

Sir *W. Wynne.* Nothing of this appears on the record.

Mr. *Frend.* No, Sir, because it was not allowed.

As soon as the registrary had closed the reading of the papers, sir W. Wynne asked for the resolutions at Queen's-college, and then addressed Mr. Frend: we have heard now all that has passed hitherto, and are ready to hear what you have to say.

Mr. *Frend.* I observe, Sir, that you have not yet heard all; there were certain resolutions entered into at the vice-chancellor's lodge, which you just now seemed to inquire after, but which I did not know that you were aware of.

Sir *W. Wynne.* They are not here: we know nothing of them.

Mr. *Frend.* I beg that the delegates may know that such resolutions were passed at Queen's-college.

Registrary. There is no copy of them in court.

Mr. *Frend.* There was a copy sent to me. The sentence has been read: the resolutions were brought into the vice-chancellor's court, and should have been read as part of the *acta curiæ.*

Sir *W. Wynne.* They are no part of the proceedings submitted to us.

Mr. *Frend.* Then I shall be ready to produce my *gravamina* on the next court day.

Sir *W. Wynne.* We are ready to hear them now.

Mr. *Frend.* It cannot be, I apprehend, on this day.

Sir *W. Wynne.* Why not?

Mr. *Frend.* Because it appears from the books by which the practice on these occasions is regulated, that the grievances are not to be produced till the next court day, I shall read an extract from the bedell's book, in proof of my assertion. Having stated that a day is to be appointed for the appearance of the party appellate it goes on, "If the party appellate will then appear, the cause is declared on both sides, and the party appellant hath assigned him *ad proponendum in formâ* on the next court day, wherein such *gravamina*, for the which he doth appeal, must be specified. The proceedings afterwards are ordinary, such as are in causes of the first instance."

The only question now is, when the second court day is to be: and this is explained by an interpretation of the heads, Oct. 6, 1596, which direct that the second court day can only be some court day in the following week. The interpretation runs in these words: "Whereas it is carefully by statute provided, that all causes and controversies hereafter commenced or coming before Mr. Vice-chancellor, should, with great expedition, be adjudged and determined: yet notwithstanding it is of late years come to pass, that causes are often a very long time delayed and protracted, not only to the great trouble of the magistrate * * * * of suitors, and their extreme charge and hinderance, but even to the discredit of the court and university.

"For remedy whereof Mr. Roger Goade, doctor in divinity, vice-chancellor of the university, and the heads of colleges, whose names are underwritten, have and do interpret and explain a doubt rising of a branch of the former part of the 48th chapter of the statute intituled, *De causis Forensibus* and beginning thus: Omnes causæ et lites quæ ad universitatis notionem pertinent, &c. finem autem accipiant infra triduum si fieri potest omni juris solennitate semota, viz. in these words: infra triduum si fieri potest, that all causes and controversies whatsoever wherein the vice-chancellor is competent judge, shall be by him, or his deputy, adjudged, determined, and ended, within three several ordinary court days, and those within three weeks next immediately following, (saving and excepting such weeks and court days as by law are to be excepted, as *dies non juridici*), the first day of the three to be the first court day next after the day upon which the party defendant shall or ought to make his personal appearance, and the other two, the two ordinary court days in the two several weeks next following, without any fraud or further delay."

Sir *W. Wynne.* The interpretation does not appear to refer to the causes of appeal, but only to proceedings in the vice-chancellor's court; and therefore you should be ready now.

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Mr. *Frend*. I came here with the best information I could procure from the statutes and the books of practice, relative to the course which I was to follow in these proceedings.

Dr. *Hey*. Are the books called the bedell's books, Bucks' books, or what authority have they?

Mr. *Frend*. All proceedings in causes of appeal to delegates, must be conducted in the same manner as *causæ forenses*, except in the preparatory part, which is regulated by these books.

Sir *W. Wynne*. I cannot tell what authority is ascribed to these books. They can have none, but as it is confirmed by the practice of the university.

Mr. *Frend*. I can only revert to them as the best directions I could procure.

Sir *W. Wynne*. Why cannot you enter on your *gravamina* now?

Mr. *Frend*. Because I am not prepared. I came here this day with the expectation of hearing that the cause would be proposed, and that then you would appoint some court day in the next week for me to produce my grievances.

The delegates now retired for nearly half an hour; and on their return into court, a little before six, sir William Wynne addressed himself to the appellant: Mr. Frend, the delegates are willing to allow you all possible indulgence, and therefore will allow you till to-morrow morning, after the congregation, to enter on your defence.

Mr. *Frend*. Gentlemen, to-morrow is not a *dies juridicus*; it is a saint's day; there is a sermon in the university church. The proceedings in this very cause in the vice-chancellor's court were put off two days on the same account. I believe that the master of Catherine-hall suggested the propriety of it, and the Court acquiesced in it.

Sir *W. Wynne*, (to the master of Catharine-hall, Dr Yates.) Was your objection founded on the reasons urged by Mr. Frend?

Dr. *Yates*. Not at all. I only did it as inconvenient on account of the sermons.

Mr. *Frend*. I must still maintain my objection to the appointment of to-morrow for hearing my *gravamina* as informal and irregular.

Sir *W. Wynne*. We take that irregularity upon ourselves, and will allow you no further delay than till after the congregation to-morrow morning: the sitting to be resumed after the congregation in the afternoon.

Accordingly, the Court was adjourned.

THIRD COURT.

Before the right honourable and right worshipful William Wynne, knight, doctor of law, the worshipful John Hey and John Barlow Seale, respectively doctors in divinity, and the worshipful John Lane and Edward Christian, respectively masters of arts, judges delegates, lawfully constituted, in a certain cause of appeal, or complaint, between William Frend, M. A. and fellow of Jesus college, party appellant, and Thomas Kipling, D. D. party appellate, in the law schools of the said university, on Saturday the 29th day of June, between the hours of twelve and three, in the afternoon.

Me present,
GEO. BORLASE.
Not. Publ. and Registr.

Business of Appeal between William Frend, M.A. and Thos. Kipling, D. D.

The minutes of the two courts of yesterday were read: and in the latter, after the words "he was not, by the statute," were inserted (by Mr. Frend's desire) the words "or practice and usage of the university."

After the registrary had read his papers, Mr. Frend rose, and desired leave to observe, that he had not objected to the production of his *gravamina* on this day, merely on account of the interpretation of the statute applying particularly to cases of appeal: the application of that interpretation was universal, and related only to the explanation of time meant to be allowed in all cases by the word *triduum*. My objection, continued Mr. Frend, was on the ground of practice, collected from the instructions handed down as authority for the public officers of the university.

Sir *W. Wynne*. There can be no objection to any plea from customary usage and common practice: this day was certainly objected to by Mr. Frend, but the objection was not admitted to have any weight.

Dr. *Hey*. I would not be understood to have acknowledged the authority of the bedell's books; I asked if they were Bucks' books, but received no answer.

Bedell. Bucks' books are here in Court, and may be consulted, if you wish it.

Dr. *Hey*. Not at all.

Mr. Frend then addressed the Court:

Gentlemen,

In the situation in which I stand, it cannot be supposed that I wish to offend any of the delegates; and in the step which I am about to take, I request you to consider me as acting upon motives which affect every member of the senate, and as being here not only to complain of private grievances to myself, but to withstand every proceeding which may hereafter be brought as a precedent to the injury of the members of the university. With this view I entered my appeal from the sentence of the vice-chancellor and the heads; and to support this appeal, I have endeavoured to gain all possible information on the proper mode of carrying it on. I stated yesterday what I gathered from the bedell's books as the most authentic guides which I could follow. This I considered, and still consider as the proper rule of this Court; and without presuming to call in question your honour and integrity, I must

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protest against what appears to me an unjustifiable precipitation in this business. In the most respectful manner therefore, I do desire that my protest may be taken into your serious consideration, not on my own account merely, but that I may not by any conduct of mine lay the foundation for a precedent, by which others may hereafter be essentially injured.

PROTEST.

I William Frend, M. A. and fellow of Jesus college, in the university of Cambridge, do hereby protest against my being called upon to produce on this day my *gravamina* in a certain cause of appeal now pending before Sir William Wynne, LL.D. John Hey, D.D. John Barlow Seale, D.D. John Lane, M.A. and Edward Christian, M.A.

For the following reasons:

1. Because the proceedings in all causes of appeal must be directed either by the statutes and interpretations, or the ancient and constant practice of the university: but the statutes and interpretations are all silent as to the proceedings in causes of appeal, therefore there remains only ancient and constant practice by which they can be directed.

2. Because in certain books called the bedell's books, the authority of which in matters of practice is always admitted, express directions are given for the party appellant to specify his *gravamina* on the next court day after that on which the cause has been declared.

3. Because by the interpretation given by the heads, October 6, 1596, of the word *triduum*, it appears that the next court day can only be understood of the next court day in the ensuing week.

W. FREND.

Having read this protest, Mr. Frend signed it, and having delivered it into Court said: If, after the protest, you think me obliged to proceed, I am ready.

Sir *W. Wynne*. We are unanimous in saying, that you ought to proceed now.

Mr. *Frend* then addressed the Court, in substance as follows:

Reserving to myself, gentlemen, the right of making, if necessary, my exceptions to this mode of proceeding, I shall, without farther delay, state the grievances under which I have laboured. I have called, and do call the prosecution malicious. A proof of malice, and that the prosecution never originated in a pure love of justice, or a simple regard to propriety, is, that a knowledge of the means of punishment appears always to have fallen far short of the desire to inflict it. When the former has been nearly extinguished, the latter has blazed with unabated flame. At the first meeting of my prosecutors, it was determined, after some debate, that I should be prosecuted in the vice-chancellor's court, for having publicly and notoriously offended against a grace passed by the senate of this university, in the year 1603, in preference to a prosecution for having violated the statute De Concionibus, and without any mention of other laws: but at a subsequent meeting it was agreed, that I should be prosecuted for having publicly and notoriously offended against the laws of the university, without specifying any in particular. Now, amidst this uncertainty and fluctuation of council, if my prosecutors had been actuated only by a regard for justice, or, indeed, if they had not been entire strangers to that virtue, would not some one of them have said; If there is so much difficulty in finding out any law against which Mr. Frend has offended, how can he be said to have violated any publicly and notoriously? Or how can we plead a sense of duty or conscience in endeavouring to bring him to punishment?

Another proof of malice is, that many of the charges brought against me have been founded, not on any undoubted passages in the book, but have been supported by passages misquoted, and mutilated, not only by the insertion or omission of particular words, but by leaving out whole propositions.

I am said to have defamed the liturgy, by asserting that it is far from the standard of purity in doctrine only; but in the original it is said, in its arrangement, language, or doctrine. If the promoter and the cabal had not been actuated by the fiend of malice, they could not have suppressed the other particulars, nor have represented me as charging that imperfection upon a single point, which they must know the author had expressly charged upon the accumulated defects of all the three. As well might I be said to defame the most beautiful woman in England, by a comparison of her beauty with the Venus de Medicis:—Suppose me to have said that, considering attitude, figure, and grace, she was inferior to this celebrated statue; is that saying, in figure only she was so much inferior as to have no pretensions to beauty? These are two out of an infinite variety of circumstances on which I ground my charge of malice in the prosecutors. I wish the promoter may be asked if he has any thing to reply which can repel this accusation.

Sir *W. Wynne*. You are to go on in producing all which you have to allege.

Mr. *Frend*. Is the promoter to answer at any other time?

Sir *W. Wynne*. He is to do as he thinks fit as to his answer.

I come then to the second grievance:

II. I was cited to appear on the statute De Concionibus, in the vice-chancellor's court. It was because I was then, and I am still, firmly persuaded that the vice chancellor's court had no business whatsoever with any of the offences described in that statute, that I entered my protest, which is now in possession of the court. It is not necessary to

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repeat it here, as it has already been read. This, gentlemen, I feel to be a very particular and extraordinary grievance, that I was cited to answer for the violation of a law, which was not cognizable in the court before which I was summoned to appear.

III. I have charged the promoter and the cabal with malice; I have now to impute to the vice-chancellor himself a bad design, in endeavouring to effect my punishment by two different and distinct laws. He could not be ignorant, that no person had ever been punished in the vice-chancellor's court on the statute De Concionibus; so that, had not I been aware of the non-existence of the grace of 1603, he might, and doubtless meant to have proceeded to punish me upon it. There was another artifice in the vice-chancellor, which cannot be imputed to any but a base design: This consists in availing himself of the authority of a vice-chancellor's court, to compel evidence upon oath: which could not be done by the vice-chancellor and heads of colleges assembled under the authority of the statute De Concionibus. All evidence there, he well knew, must be voluntary. The impropriety and injustice of having been subjected to appear for the same offence on two distinct laws, cognizable before two separate jurisdictions, must be obvious to you, and to every person in the least acquainted with the laws of this land. Suppose, for instance, a justice of the peace, after hearing evidence at the quarter sessions, should, upon the strength of that evidence, take upon himself to punish, when he got home, the accused person by his own authority, would such a proceeding be esteemed legal? Could a punishment be inflicted by a single magistrate, which required the concurrence of the bench, or *vice versâ*? Must not an accused person be tried in the proper court, and be convicted according to evidence in that, not according to any thing which may have been produced in another court? I will be bold to say, that no Englishman, no academic, can submit to such an unexampled abuse of every mode of trial. To the complaints, therefore, of malice in the prosecutors, I must add a bad design in the judge himself.

IV. But supposing that as an academic, I had offended against the statute De Concionibus, my offence was cognizable only before the proper judges appointed in that statute, the vice-chancellor and heads of colleges. It was unjust, it was indecent, for a number of masters of arts to form a cabal against a member of their own body. Such combinations are every where highly improper, but here they cannot be too severely reprobated. What then shall be said, when this cabal has the audacity to concert its plots, and to form its resolutions at the vice-chancellor's lodge? Yes, gentlemen, incredible as it may seem, my prosecutors were suffered, nay, encouraged, to meet in the house of the judge himself! There the first resolutions were agreed upon—there the committee was appointed—there the chairman chosen—and, in short, there was every measure taken, and every trap laid, by which an obnoxious member was to be persecuted and ensnared. What Englishman would submit patiently to insult and oppression like this: or what judge would suffer his roof to be polluted by such arts as these? Would you, Sir, [to Sir W. Wynne] in the court in which you preside, permit the prosecutors, in any cause, to assemble in your house, and there concert the means and measures of the trial? No, Sir, you would not; nor any judge in England; nor any man even here, except such a man as actually suffered it. This, gentlemen, I do then complain of as a most serious grievance, of a singular and alarming nature, that the prosecutors and the judge, in my case, made one and the same party.

V. Perhaps after the recital of such grievances, it may be thought superfluous in me to produce more: but as was the commencement of this business, so was its progress, and such was its end: it was begotten in malice, fostered in treachery, and accomplished in oppression. Gentlemen, you have heard read, what are called the proceedings of the Court, upon my trial: they are not the proceedings of the Court, but a very different thing: indeed, so totally different, that unless my friend Mr. Lambert and myself had assisted in supplying deficiences, in rectifying the order, and disentangling this chaos, it would have been impossible for you to have proceeded. Had they been put into your hands in such a state, without comment or observation from us, I defy any man to have understood the purport of them, or to have formed a just judgment upon the issue. It is with truth I assure you, that with all the assistance of notes, taken during the whole of the trial, and every advantage of personal recollection, Mr. Lambert and myself were more than six hours laboriously employed in arranging and reducing them to an intelligible order.

This defective and disorderly statement of matters, which are supposed to have been exactly recorded, and the omission of a number of particulars, which I conceive to be essential to my vindication, I must consider as another grievance. I am precluded from all remedy here, unless I were allowed to call witnesses, to attest every omission which I have remarked: but the calling of evidence now would be of no avail; since your decision is to be guided only by papers before the Court. Yet these papers contain no account of my protest against the admissibility of certain witnesses; none of my observations on the irregularity in the proceedings; on the impropriety of examining witnesses in presence of each other,—of reminding them not only of what each had previously deposed himself, but what others had sworn before,—of dictating to the witnesses the an-

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swer they were expected to give, and of admitting the evidence of persons interested in the prosecution,—nay, of persons who were themselves principals in the prosecution.

VI. The sixth grievance is of such a nature as requires barely to be mentioned in a court of justice. After I had appeared to the citation for four days together, and the examination of evidence was all finished, and taken down in writing by the registrary, this very writing was taken out of court, and put into the hands of the promoter, the prosecutor, the very man from whose wicked and malicious designs I had most to fear, and for the very purpose of carrying those designs most effectually into execution. This I have maintained, and I do still maintain to be an act which in any court of justice ought to invalidate the whole; and that, in fact, from the moment when the registrary's minutes went into the possession of Dr. Kipling my judges had no grounds whatever to decide upon.

VII. The vice-chancellor having been defeated in his design of enforcing the execution of the pretended law of 1608, and not being able to proceed on the statute De Concionibus, without the concurrence of nine heads, it was necessary that the master of Trinity should complete the number: but the master of Trinity, though present in court the first day, had been absent on all the examination of evidence, nor did he return into the university till after the proceedings of the Court had been in the hands of the promoter: he could therefore have nothing on which to ground his opinion, or by which he could justify his concurrence in the sentence.—

Here the master of Trinity got up, and asked if he might speak a few words; but Dr. Wynne observing, that it was not necessary, Mr. Frend went on:—I do conceive this to be very just cause of complaint, that without any authentic evidence at all, or on such a miserable representation of it, the master of Trinity should bring himself to join in a sentence, which, without his concurrence, could not have been passed.

VIII. But supposing the master of Trinity to have been present all the trial, and the vice-chancellor to have acted with the due concurrence of the statutable number of assessors, the first thing which the statute orders to be done is, that the offender should be required to recant. This, gentlemen, was never done; no recantation was ever proposed to me: a paper indeed was put into my hands, which the vice-chancellor thought proper to call a recantation, but which, on perusal, I found to be absolutely unintelligible on the one part, and unreasonable on the other. I would have expostulated upon this at the time when it was first given me, but was silenced by the violent noise of, order! order! from the vice-chancellor, and the Court was abruptly and indecently adjourned. I brought, the next court day, a paper containing my objections into the court, but was prevented from reading it, by the menacing language of the vice-chancellor; and with much difficulty I prevailed upon him to take it, and look at it himself: he returned it to me, and would not permit it to remain in court. I will now read it, and put it into your hands for your consideration.

Sir *W. Wynne.* You may read it as part of your speech.

[Here Mr. Frend read the paper.]

This paper I attempted in vain to read in the vice-chancellor's court. I will now sign it, and deliver it into this court.

Sir *W. Wynne.* I do not know whether it is any part of the process.

Mr. *Frend.* I must submit to you, whether you will receive any paper at all from me.

Sir *W. Wynne.* Certainly not.

IX. Then my grievances are far greater than I had ever imagined: for if the vice chancellor's reception of any paper, which I offered to him, is a reason against its being admitted here, by acting as he did, he added to the injustice of his conduct, and aggravated the injury, by precluding me from the possibility of redress.

X. My next appeal is to the absolution which I produced in bar of sentence, and by which I had been regularly acquitted by the vice-chancellor at the end of the term, of all statutable offences previously committed by me, and had been formally restored to God and the holy sacraments.* These, gentlemen, are solemn words: and if the vice-chancellor thought proper to treat it with contempt, I still maintain, that either I stood absolved by it from any charge which had been brought against me for violation of the statutes, or the university is three times in a year guilty of the most flagrant impiety in the sight of God and man.

Whatever degree of superstition may be charged upon our ancestors, there was wisdom in such a provision as this; they did right to discourage and to check all those iniquitous cabals, by which studious men might be molested, and the progress of literature and science be suspended by the interruption of suits and litigations. It is very natural that this observation should be treated with ridicule by the promoter, the sub-promoters, and the familiars: but let them remember that they derive their ranks, their degrees, and their offices in this place, from the very same authority to which I now appeal; and let not them deride a salutary law, though it may have originated in the impure sources of ignorance and superstition. How much soever we may now despise the pretended power of any person to absolve, it is ordered expressly by the statutes that the vice-chancellor should pronounce absolution at the end of every

* See page 631.

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term; and whatever exceptions may in these times be taken as to the form, whatever have been the notions on which it was founded, the regulation, I repeat it, was wisely calculated for this place. Should any literary man subject himself here to prosecution, the established authority says, let him be fairly tried, let him not be kept in suspense to the detriment of his own pursuits, and the injury of literary inquiry. It was foreseen that a number of ignorant or malicious men, people of no occupation and of no principle, might cabal together against an individual, whose activity and industry might render him obnoxious to them. The university says, we will countenance no such proceedings: we will put a stop to litigation and suspense: no man shall be harassed by tedious prosecutions: no man shall be interrupted in his studies for more than one term: at the end of every term the vice-chancellor shall absolve. It was on these considerations that I felt myself entitled to the protection which the university intended to hold out to men of letters and application; when I found myself, after a number of fruitless remonstrances, compelled to resort to it, it was under the full persuasion that I was vindicating the honour of our institutions; and, when I saw my appeal treated with contempt and ridicule, I felt that, in my person, were insulted the rights and privileges of the senate.

XI. Another grievance is, that the sentence does not relate to any offence positively prohibited in the law under which I am tried; for the statute De Concionibus says nothing about either printing or publishing a book. It describes only sermons, common places, theses, and such other public discussions, as fall of course under the immediate cognizance and observation of the vice-chancellor and heads, who are supposed to attend upon them.

I have indeed heard it said, that the words "*aliter publice*" imply all modes of making public whatsoever, and that the publication of books must be included in it. But no person at all acquainted with the interpretation of penal laws can maintain such a position: a general clause annexed to a particular enumeration of offences cannot, by any legal or fair construction, relate to any other kind of offence than such as had been before specified. Now the very title of this statute De Concionibus marks out at once the nature of the offences to which it was meant to apply, and the public manner of conducting the several exercises enumerated in it (which are all supposed to be performed in the presence of the vice-chancellor and heads of houses), plainly shows, that "*aliter publice*" must mean only some other such kind of publication as had been before recited.

In what I have advanced on the construction of a penal law, I am justified by the express authority of a person very learned and most respectable in the civil law. [Here Mr Frend quoted the opinion of Dr. Harris, upon the statutes of Jesus college, and applied the opinion which he gave on that case to the proceedings of the university.]

I am ready to acknowledge, that had I maintained any offensive doctrines in a sermon, common place, or thesis, or in any other such public manner, whether in speaking publicly in the schools, in the senate, or in any other place, and on any other occasion where the duty of the vice-chancellor and heads requires them to be present I should indeed have been liable to their censure under this statute. So far from this, I am punished by the vice-chancellor under this statute for my temerity in writing a book: but be the contents of that book what they may, the author is not liable to be punished for them under that statute: he may print a book in London—he may do it privately—however he does it, he does not necessarily for that fact come under the cognizance of the constituted authority. It exceeds the authority of the vice-chancellor and heads, to punish any man for his temerity in writing a book.

XII. But the publishing of a book makes only part of the offence. The promoter indeed did employ much time and great labour in attempting the proof of this; he should have recollected, that the proof of any criminal assertion in that book was equally necessary to establish the offence, as the proof of the publication itself: but this was never done. Supposing me the author, there is no proof whatever that I said any thing in that book which subjected me to punishment. The promoter endeavoured, by garbling sentences, and mutilating passages, to make up a kind of charge against me; but it was requisite that particular passages should have been faithfully and literally quoted, and particular errors demonstrated to have been fairly deduced from them. I shall read you part of the opinion of the same learned civilian I have already quoted. [Passage read from Dr Harris's opinion, which see, *post*.] This is the declared opinion of a person of great authority in the civil law, whose opinion is frequently taken by men of this university: and I do declare, that it has no where been proved that I have maintained any position contrary to the doctrine or the discipline of the church of England, as by law established. The promoter could not support the charge, and the criminality of the pamphlet still remains unproved.

XIII. But, after all, supposing that the crime had been fairly proved upon me, and that the vice-chancellor was legally empowered to proceed upon the statute De Concionibus, still no sentence could be pronounced, no punishment inflicted till the guilty person had been required to recant. Recantation implies error, and this error must be specified before it can be acknowledged, or given up. No such thing has taken place in the course of these proceedings. I was required to retract from the error and temerity of publish-

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ing a book: Gentlemen, it was insolence in the extreme to put such a paper into my hands, as what they called a recantation. I am very sensible that I am speaking now to gentlemen as well as delegates, and I will not scruple to say that no man of letters could consistently put such a paper into my hands; much less could I be so base a scoundrel as to sign it. The paper specified no errors; nor did my judges in fact desire it. If they had, they should have come forward fairly and said, You have maintained such and such opinions, which we judge criminal, and we therefore require you to retract from them. But this neither the promoter, nor my judges did; and why not? The reason is obvious: because their purpose was not to reform, but to punish; not to reclaim, but to get rid of me. The promoter and his cabal had agreed, that punishment should be inflicted without my being offered the opportunity of retracting.

Let me see, then, what are the errors which they pretended to article against me; and what ought to have been the recantation proposed by my judges:

1. I am first accused of having defamed the liturgy of the church of England: It is almost sufficient to reply, that this has nothing to do with the statute De Concionibus; yet, suppose it had, what ought to have been the language of the court?—You have defamed the liturgy; you have maintained it to be inferior to other rituals; and we require you, in express words, to acknowledge your fault, and to retract from such positions. Why, gentlemen, was this not done? because I had plainly said in my defence, that I had read many liturgies, and scrupled not to declare, that, taking it altogether, the liturgy of the church of England was the best established liturgy I had ever seen. They well knew that such a recantation I might have signed at once, without the smallest scruple: it was my real opinion, formed, not, as my accusers take up their notions, without reason or examination, but upon much reading, and serious inquiry.

2. I am next charged with having called the church of England idolatrous; if there was any meaning in the article, what ought to have been the form of recantation? simply this: You have asserted that the church of England is idolatrous, we require you to disclaim that assertion, and to acknowledge that it is not. Gentlemen, my accusers could not seriously make such a proposal to me; because they must know, that through the whole of the work the assertion had never been made. I declared in my defence, and I repeat it now, that I never called it idolatrous. The charge is a lie. They were afraid to put my vindication on that ground. The question is not now, whether I am, or am not the author of the pamphlet: but whether in any part of the pamphlet the church of England is said to be idolatrous: if it were, I again insist that I ought to have been required to retract from the assertion, and warned of the statutable punishment, if I would not. Gentlemen, the whole of this accusation arose from the ignorance of these wretched men; unable to compare the different forms of worship which prevail in different churches in Christendom, they imagined that, what was strictly true of the greater part of them, must be meant of all. Does then the church of England associate with the worship of the supreme God, the worship of created beings? Who ever said, or supposed this? I never did. Had the writer of "Peace and Union," or any other person said so, that is nothing in this case; I do not think it, and indeed it was never advanced by me. Is it not then very extraordinary, that of two errors imputed to me, I do not in fact maintain either?

3. The third error articled against me is, that all ecclesiastical courts, ranks, and titles, are repugnant to the spirit of christianity: this also is an infamous lie: I never said this, nor ever thought it. I leave the cabal, and the judges, to reflect that I pronounce the imputation to be an infamous falsehood: there is no such sentence in the pamphlet from which they pretend to have extracted it. The word 'are' is put in, and the word 'hence' left out; and such insertions and omissions of words, such perversions and distortions of meaning, arise from the most abominable wickedness: it is infamous treachery. Gentlemen, you must pardon me, if I am warm upon this occasion; it is not myself, but the university and its members that I am protecting against the intrigues of judges, managers, and caballers. I said plainly in my reply to this charge, that ecclesiastical courts, ranks, and titles, are not all repugnant to the spirit of christianity. I produced from scripture express examples; whose authority I willingly acknowledged, and whose expedience I readily saw. But suppose that I had said all which I have been misrepresented as saying, here again the mode of proceeding, such as the statute required was plain and obvious. The vice-chancellor should have said; You have maintained all ecclesiastical courts, ranks, and titles, to be unchristian: it is an error—will you retract from it? if not, you must be banished. Why was this not put to me? I answer, because my enemies knew that I should at once have answered, such an assertion is indeed an error: it cannot be maintained: I do most willingly disclaim it.

Can any thing more be wanting to strengthen the proofs of their malice? Is this just judgment? Is this the conduct of an equitable and upright judge? No, Sir, it is wickedness—wickedness of no common kind, nor such as ordinary men are subject to: it is not ignorance, but passion—deliberate, abominable passion—the result of malice and hatred, the project of vicious minds, warped by the desire of gaining infamous preferment. Who can hear of such proceedings, without

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pronouncing them abominable, shameful, scandalous!

I have been punished for a breach of statute of which I am not guilty: if I had been guilty, and had not retracted, then indeed in the proper place I might have been subjected to the sentence decreed.

4. The last error charged against me is, that I have profaned the most holy offices of the church. But here again the law on which I was tried is totally silent: the statute De Concionibus, says not a syllable on this head. If therefore I had been guilty of either profaning or ridiculing the offices of the church, it must be upon some other law that I ought to have been tried, and to some other punishment that I ought to have been subjected. But the fact is, I denied the whole. The offices of the church of England are no where reviled in the pamphlet called "Peace and Union;" nor did the promoter, when challenged by me to support his accusation, produce a single instance in which I had offended But suppose that I had been proved guilty of this article; what ought to have been the conduct of wise judges, and benevolent men? Had they been actuated by the love of justice, they would have produced a form of recantation in this particular, and I must either have subscribed to it, or submitted to the consequence. In short, the recantation proposed to me, ought, in common equity, and plain sense, to have been founded on the several particulars articled and proved against me. But the judge and the cabal had formed a very different project: without any regard either to the forms or the essence of justice, their sole view was to punish. This was the ground of their first resolution; not a voice at the meeting was found dissenting, though I could at this moment produce evidence, that one at least of the original twenty-seven had never seen, and I have reason to believe, that numbers of the rest had never read thebook.

These are a few of the *gravamina* under which I have struggled, against an iniquitous and malicious prosecution. The last alone is sufficient to set aside the sentence: it comes home to the point, that my judges in fact never proposed the alternative which the statute requires, and without which no sentence could be enforced.

The vice-chancellor is mistaken in supposing me obstinately attached to my opinions since I shall never refuse to retract any error of which I am fairly convicted. But the reasons must be given by my opposers: I must be induced by argument, not by compulsion: and I again affirm, that no opinion of mine has been attempted to be refuted, nor any position stated which I had an opportunity of retracting.

XIV. As the publishing or writing a book does not come amongst the offences specified in the statute De Concionibus, so no instances have ever occurred of any person being punished under that law, for writing a book, but only for maintaining *viva voce*, in a public university-exercise some point or doctrine specifically reprobated in the statute. But had not the silence of the law been sufficient, the practice of the university is decisive against my being brought to answer for any thing advanced in a printed book. Is not this then a singular and most oppressive grievance, that I should be the only person selected out by malice and ignorance to become the victim of intrigue, and to suffer by an obsolete law on which no person before had been ever prosecuted, and all this too in an age which has been called by some persons an enlightened age? This however is an error with which I cannot be charged. I have not called it an enlightened age, nor shall I easily be induced to call it so, while such a cabal and such judges can be found to exist in it;—men, who could put into my hands such an infamous and pitiful paper as no person of letters could write, nor any man of common honesty subscribe. Yet these persons are the guardians and instructors of our youth, and expected to support by their examples, the interests of literature, and the dignity of religion. Thanks to God! We have had so few as the twenty-seven capable of such conduct. The university has not lost its character for liberality and learning. I have received marks of friendship innumerable from men of the most distinguished character amongst us, such as are sufficient to redeem us in the opinion of the public. In behalf of men like these I have always vindicated the masters of arts: they are not all favourers of these wicked and abominable proceedings, they are not all involved in the charge, they are not all bigots, persecutors, and inquisitors. There are numbers of men amongst us very different from the promoter and his cabal. I am proud to acknowledge the particular countenance, which has been shown me by clergymen of the church of England, and by gentlemen highly respected in the law, who have expressly and repeatedly declared their abhorrence of these practices: they all consider it as a great grievance to me to be the only person ever brought to answer for an action which neither the law forbids, nor has the court authority to punish. Upon the whole, what I have hitherto said relating to the fact, may be reduced to one very short statement; there was no evidence before the court on which my judges could pronounce me guilty of even publishing the book; there was no proof of any thing criminal contained in it; nor, if there were, was that crime cognizable in the court which tried it.

XV. After six long days however, the vice-chancellor undertakes to declare that he is satisfied of my guilt, and that the heads concur in the sentence; but there is a very material defect in form. It does not appear from this, that the heads were all satisfied of my guilt: they concurred indeed in my sentence; but it does not follow, that they

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thought I deserved it. In both points their concurrence ought to have been declared; and the want of this declaration affects the whole.

But supposing the form to have been good, let it be considered only for a moment, how extremely disgraceful this mode of checking the freedom of investigation must be, in a place devoted to the purposes of literary improvement, how utterly inconsistent with the very end and design of our institution. If false or dangerous opinions may be any where produced, where can they be uttered with so little effect as in the midst of persons, qualified at once by ability and zeal, by reason and argument, to expose their fallacy, and to repel their danger? Such, Sir, are the modes naturally to be expected from literary men; and such ought to have been the mode adopted by the men who caballed against me. Let the promoter, Sir, or any of his party, write a book, containing sentiments which I feel myself interested to oppose: I here engage, that I will not make a party in the university to rouse the indignation of the vice-chancellor and the heads against him; I will answer it by argument and reason; and if my objections are replied to, will vindicate their strength, or acknowledge my mistake.

Having stated these grievances to you, gentlemen, I request that you would take them into your serious consideration, and on account of each separately and all conjointly, I desire that the sentence of the vice-chancellor may be reversed, as totally unfounded in law. As a master of arts of this university, I can only be punished by the statutes of the university: as an Englishman, I am subject to no punishment but by the direction of the laws of the land.

Amenable as I know myself to be to these laws, and submissive as I should have been to legal jurisdiction, legally exercised, I never will submit to any punishment in this country, not authorized either by the statutes under which I am tried, or by the laws of the land. It is on this ground that the liberty of Englishmen stands, that the proceedings against a man accused must be open, and that his trial must be by law. Even in those cases, where juries are not admitted, still he must be tried by law; and there is not a maxim in life which I would more particularly enforce than this; that law, law must be the ground and guide of all our civil conduct. And here I cannot forbear congratulating that part of my audience, who, by their situations, are exempted from any responsibility to jurisdictions like that under which I have been tried. Let them think themselves happy that they can be tried only by the known laws of their country, by courts legally established, and the verdict of a jury. Yes; I do declare, that for any offence, of whatever kind, I would rather submit my cause to any jury of twelve men, in whatever manner, or from whatever ranks impannelled, than to a set of judges, however qualified by learning or abilities, who can yet think themselves at liberty to act in the unprecedented and unwarrantable manner of the vice-chancellor's court. Much as I value the distinction of a master of arts of this university, I feel myself infinitely more happy as an Englishman, that I cannot be punished but by law. I cannot be imprisoned: I cannot be banished from my native country, but by a jury: and if I am to be punished after a verdict found by a jury, still that sentence must be according to law. In my case, the sentence was not according to law; for no recantation was proposed from the pretended charges, because they knew that I might have signed it without the least hesitation.

I cannot conclude, without again declaring that in these proceedings I have all along considered myself as acting, not merely on my own account, but in behalf of every member of the university: that we may none of us hereafter be exposed to the inconvenience and obloquy, that I have laboured under for many months; be withdrawn from our studies to answer the cavils of malice and impertinence; or be in danger of ruin from a factious cabal, composed, for the greater part, of men intriguing for preferment, or led away by bigotry and fanaticism.

[Here Mr. Frend ended: and Sir W. Wynne asked Dr. Kipling, if he had any thing to offer in reply to Mr. Frend.]

Dr. *Kipling*. I have heard nothing that requires any reply. I leave it all to the Court.

Mr. *Frend* desired that Dr. Kipling would repeat what he had said, as he had heard him very imperfectly.

Dr. *Seale* to Dr. *Kipling*. I beg you will repeat what you said just now.

Dr. *Kipling*. I am willing to submit the whole to the Court.

Mr. *Frend*. The promoter, then, has nothing to observe on any of the charges?

Dr. *Kipling*. No, not any thing; I have nothing to say.

Mr. *Frend*. I believe so.

The Court was then adjourned till after the congregation in the afternoon.

Fourth Court.

Before the right honourable and right worshipful William Wynne, &c. between the hours of six and eight in the afternoon of the 29th day of June, &c.

Sir *William Wynne* addressed the Court as follows:

We have conferred together since the morning, and the gentlemen with whom I have the honour to be connected, have unanimously commissioned me to give the sentence I am about to pronounce. The cause was originally instituted in the vice-chancellor's court, in which Mr. Frend was summoned

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by citation to appear before the vice-chancellor and assessors, for violating the laws of the university, particularly the statute De Concionibus. [Here the words of the citation were quoted.]

To this citation Mr. Frend appeared on the 3d of May, before the vice-chancellor, and eight heads of colleges and the commissary as his assessors. Mr. Frend excepted to their jurisdiction as a court, and delivered in a protest. [Here the words of the protest were recited.]

This protest was taken into consideration by the vice-chancellor and his assessors; and the vice-chancellor pronounced for the jurisdiction of the Court: and we are of opinion that the vice-chancellor was right. The protest goes upon the assumption, that the two courts are distinct jurisdictions: for which we find no authority either in the statutes, or the practice of the university. For the new regulations by queen Elizabeth, require no new court: the statute which directs that the vice-chancellor should not proceed in certain cases without the concurrence of the heads, is only a regulation of the Court; it makes no alteration in the Court itself. The addition of a certain number of persons authorized to sit with the vice chancellor in certain cases, is no alteration of the Court, except only in that particular expressly mentioned by the law. Something similar to this may be observed of other courts of law established in this country. The court of King's-bench has varied at times the number of its judges; but no alteration took place, either in the court itself, or the mode of its proceedings. The court of chancery, if necessary, calls in others as assessors: yet no alteration is thus made either in this court or its proceedings. In the court of admiralty, in cases of damages, assessors are called in, and pilots of the Trinity House sit with judges and delegates. These, however, make no alteration in the nature of the court, but are added merely as advisers. So in the present case, although the heads joined with the vice-chancellor in giving sentence, they make no part of the Court; nor do we see any ground for the distinction pretended between the authority of the vice-chancellor's court, and that of the vice chancellor and heads of colleges. Mr. Frend has objected that the concurrence of the heads was necessary in the whole of the proceedings as well as in giving sentence. The statute De Concionibus requires no such thing: the words of the statute are not "cancellarii et præfectorum jussu," but "cancellarii jussu cum assensu majoris partis præfectorum:" these words are materially different, and the vice-chancellor has clearly by this statute a right to proceed without the concurrence or assent of the other heads till he comes to the sentence itself. To this indeed their assent is required: but to nothing more. In whatever manner, or however they may be qualified, they are authorized to give it, whether the evidence was delivered in their presence, or they were informed by the vice-chancellor, no one can dispute the sentence. This being the case, I conceive that no objection can lie against the master of Trinity's absence on some days of the trial. So long as he assented to the sentence, it was not necessary for him to be present at the whole of the proceedings: however desirous he might be to get the best information, it was not essential to the giving his assent that he should have personally attended at the trial. Mr. Frend observed further, that the jurisdiction of the vice-chancellor's court and that of the vice-chancellor and heads must necessarily be different, as there can be no appeal from the vice-chancellor and heads to the senate: now this is odd, as he has himself appealed from them as vice-chancellor and heads, to the senate, and we sit here in consequence of that very appeal. On these grounds his renunciation of their authority was over-ruled by the vice-chancellor: and the delegates think that he acted rightly.

The charges were then read, particular passages recited from the pamphlet, and the Grace of 1603, and the Statute De Concionibus referred to. Dr. Kipling then called witnesses, which was objected to by Mr. Frend till the *secundus dies juridicus*, and he grounded his objection on a part of a Grace passed in 1609. But in another part of the very same grace the judge is expressly allowed a more summary mode of proceeding.—[Here sir W. Wynne quoted the words "nisi causæ sint leviores et ordinariæ in quibus potest judex statim," &c.]. But whether the cause be *levior* or *longior* seems left entirely to the direction of the judge, and by virtue of that direction, the vice-chancellors have in all cases of late summarily proceeded: and that the party accused might, however, have no just cause of complaint for want of time, a sufficient interval was allowed. By the Grace, indeed, it appears, that in deciding what are to be considered as *leviores causæ*, the judge may use a discretionary power, and may proceed summarily upon them: this has been confirmed by long practice; and it does not appear that the proceedings in the vice-chancellor's court have been carried on by examination of witnesses upon allegations, and interrogatories, and subsequent publication. Witnesses were in consequence examined. Mr. Frend objected to the evidence of Mr. Kilvington and Mr. Lloyd, on the ground of their being accusers, and concerned in the prosecution. And had it appeared that these gentlemen had any interest in the cause, especially in the costs of suit, or any previous dispute or quarrel with the party, or any malice against him, these are circumstances, which, though they would not have rendered them incompetent as witnesses, yet would have made against the credit to be given them. But there appears no reason for suggesting any thing of this kind against them. Their public resentment of the pam-

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phlet affords no ground for objection; their indignation appears to have been, not against the person, but his publication: they were therefore strictly allowable as witnesses; and the evidence they gave seems impartial and clear. The same objections were suggested to have been made against other witnesses, but these not appearing on the minutes of the Court, I call them barely suggested, no evidence appeared of their having been made, and therefore no weight was allowed them.

Mr. Frend's next objection was, that the original Minutes of the Evidence taken down by the registrary, ought to have been kept in the court, but that they were taken out of court, and put into the possession of the promoter, and therefore, have lost their authenticity. As the fact has not been controverted, we must consider it as admitted. At some period, the proceedings must go into the hands of all the parties: Mr. Frend must have had copies given to him, at what time I do not know. But the objection is taken up on that radical maxim, that no evidence shall be communicated before publication. If this had been a close examination, then indeed it would have been a fatal proceeding. But this was an examination in open Court, taken down in the most deliberate manner, by the proper officer, and might also have been taken down by the promoter, or any of his friends. It was therefore indifferent in what manner the promoter came by it; whether the originals came into his hands if those originals underwent no alteration there, and that they did not, has been sworn by the registrary. But Mr. Frend objected also to the mode of taking the depositions at various times. It would, to be sure, have been more regular, if the deposition of each witness had been taken all at once: but it is no unusual thing in courts of law, by leave of the Court, to have up evidence at different times. I remember one instance, in a particular trial, where a witness having said what he had not meant, the cause was rescinded, to take the deposition of that witness again. Mr. Frend objected next, that several leading questions had been asked, but the instances did not appear to us to be of such a nature as to justify the complaint. One witness was called and reminded what he had said before. [Here Bowtell senior's evidence was referred to "You told the Court, &c."] I do not apprehend that to be a leading question. An examination conducted in a court familiarized to legal processes, might perhaps have been carried on in rather a more proper manner in point of regularity; but to this I make one general reply: the inexperience of the parties who conducted the proceedings, and of the Court in which they were carried on. It would be a very unhappy thing, if the members of this university were conversant in matters of this nature: they are much more usefully employed. If it appears that in this case they have conducted themselves with caution, with a strict regard to truth and the substantial ends of justice, little regard ought to be had to objections of informality and inexperience; and, I must say, I never saw depositions taken with greater impartiality, or witnesses appear with less forwardness to favour the party by whom they were called. But there is yet one objection, the vice-chancellor's rejection of an appeal to absolution in bar of sentence. I think it very evident, that the occasion and the offence considered, the vice-chancellor could do no otherwise than reject such an appeal. There are many of the old statutes, by which excommunication was usually inflicted on many offences not now thought deserving so severe a censure. To avoid hurting tender consciences in those days, absolution was pronounced at the end of every term: but that this provision should be construed to extend to offences stated to be contrary to the statutes, can never be allowed: the protest, therefore, was very properly dismissed, and the vice-chancellor acted perfectly right.

Mr. Frend has this day urged as a matter of the greatest consequence, that the prosecution was malicious; and he spoke of the promoter, and of many other persons of the highest rank and the most respectable character in this place, in terms which nothing but his present unfortunate situation and the heat and agitation of his mind could excuse: in charity to him, I hope that on reflection he will be sincerely sorry for the expressions he has made use of. It is sufficient for us to say the charge is not relevant at all; courts do not inquire into the motives of a prosecution: it is impossible for them to be ascertained; and if it could be done, it could not weigh in determining the guilt, or the innocence of the party accused; these must depend on the real merits of the cause, and the facts actually proved in evidence.

In the first place, then, it appears, from the name of Mr. Frend in the title page, that he was the author of the pamphlet: this indeed goes but a little way; and though the presumption, which it affords, remains till it be removed, yet, for legal proof, it must be allowed that great confirmation is wanted. In the evidence of Hodson, such circumstances occur as leave little room to doubt; yet even this evidence is slight, compared with what appeared on subsequent inquiry; the evidence of Bowtell, and the correspondence with Mr. Watson. In these notes, Mr. Frend does over and over again speak of this pamphlet, and the appendix as his: indeed he seems to have exerted more activity than is usual in a common publication. The only question now remaining is whether there be any thing in the pamphlet which comes under the statute De Concionibus. The modes of uttering expressly prohibited in this statute are, preaching, common-placing, and public lectures; but these are not all: the statute evidently goes farther, and includes much more in the expression, *aut aliter publicè*. The

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only question is, whether printing and publishing a pamphlet comes within this clause? Mr. Frend contended, that *aliter publicè* must refer only to some mode of publication, of the same kind with those before particularly described, and cannot apply to any doctrine, or position, not maintained and supported *vivâ voce*. But I do not apprehend that this could be allowed, in the strictest way of interpretation, even of the statutes of the realm, much less of the statutes of the university which admit of a more liberal interpretation. We are here to consider the spirit of the statute, the intention of the founder, and the extent of the mischief which it was intended to prevent. It is certain, that publishing by printing is more general, and in all respects more pernicious, than by any *vivâ voce* declaration; Therefore if Mr. Frend's pamphlet contains any matter prohibited in the statute, it is comprehended within the expression "*seu aliter publicè*." Of the particular parts and passages in this pamphlet, I shall take notice of only three.

1. In page thirty-nine alone, there is language sufficient to justify the sentence we are about to give. "Hence ecclesiastical courts, ecclesiastical ranks and titles, ecclesiastical dress, all repugnant to the spirit of christianity." It has been stated by Mr. Frend, that this passage was not fairly quoted; and he denies that any such meaning, as the promoter has given to it, can be inferred from the original; but we think the meaning is clearly determined from the context; "The christian world," &c. in the same page, to "concerns. *Hence*," &c.—Now, in all plain construction, the sense put upon these words by the promoter is the true meaning of them; and if so, how it can be said that they are not against *aliquem statum et gradum*, I do not know: at the close of the passage they are all pronounced "repugnant to the spirit of christianity;" and, the writer of such a passage must be admitted to be guilty of the charge.

2. Again "The laity like brute beasts sit tamely under this usurpation, A man, if a priest or minister enters, is not master of his own house; he must not thank God for the blessings of providence at his own table; he cannot pledge his faith to a lovely woman without the interference of the priest; this offspring must be sprinkled by sacred hands; and at death he is not committed to his long home without another spiritual incantation." How words could be pronounced more injurious to the clergy of this kingdom than representing them as tyrants and usurpers, I cannot see. The person who uttered them must be considered as teaching the laity, that they *are* brute beasts if they submit to this usurpation; and therefore I cannot but think that the writer must mean to oppose the degrees and ranks established by the church of England.

3. The latter part of the sentence speaks of three of the most sacred offices of our church in a contumelious and irreverent manner—baptism, marriage, and burial; we are therefore clearly of opinion, that the vice-chancellor was well founded in determining that Mr. Frend had offended against the 45th statute. It has been alleged by Mr. Frend, that he was not called upon to retract, in virtue of there being no particular errors or passages specified in the form prescribed; but in fact he was called upon to retract—the form is before the Court.

[Here the form of recantation was read.]

Mr. Frend's assertion rests on this, that the recantation proposed, did not contain any particular specification; but we are of opinion, that, if any passages whatever are to be found in the pamphlet, which go against the statute, the requiring of him to retract from the book which contains such passages, is strictly proper. Now, I have pointed out three passages, in which the pamphlet does expressly controvert the provisions in the statute. The form, therefore, was proper; besides, by that statute, the party is obliged to conform in whatever manner the vice-chancellor shall direct "*eo modo quo illi prescribitur*:" The party had no pretence to dictate the manner in which he was to make his recantation. We are therefore unanimously of opinion, that in this, and in every part of the proceedings, the vice-chancellor did right, and we affirm his sentence.

Accordingly the sentence of the Court below was affirmed as follows: Whereas by by Grace of the university dated 14th June 1793, William Wynne, knight, Dr. John Hey, Dr. Seale, Edward Christian, master of arts, and John Lane, master of arts, were appointed judges delegates in a certain cause of appeal or complaint between William Frend, master of arts, and fellow of Jesus college, in this university, party appellant, or complaining, on the one part, and Thomas Kipling, doctor in divinity, party appellate and complained of, on the other part, We the said William Wynne, John Hey, John Barlow Seale, Edward Christian, and John Lane, having taken the said cause into our serious consideration, after having examined the several proceedings had therein before the right worshipful Isaac Milner, doctor of divinity, vice-chancellor of this university, which have been transmitted to us; and having heard the arguments urged by the appellant in support of his appeal, Do by this our definitive sentence pronounce against the said appeal made and interposed in this behalf; and that the judge from whom the said cause is appealed, hath acted rightly, justly, and lawfully. And we do hereby affirm the sentence pronounced by him in the said cause.

(Signed) WILLIAM WYNNE.
JOHN HEY.
JOHN BARLOW SEALE.
JOHN LANE.
EDWARD CHRISTIAN.

Mr. Frend now demanded a copy of the sentence; and the Court was dissolved: but before the delegates left the schools, he rose, and said: I desire it may be understood, that

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my present intention is, to appeal from this unjust sentence, to the court of King's-bench where I hope every Englishman will meet with justice.

PROCEEDINGS
IN THE
COURT OF KING'S BENCH.

Wednesday, Nov. 26, 1794.

These proceedings are thus reported by Messrs. Durnford and East, 6 T. R. 89—115.

The King *against* the Chancellor, &c. of the University of Cambridge.

Upon an application for a *mandamus* to the vice-chancellor, &c. of the university of Cambridge, commanding them to restore William Frend to the franchises of a resident master of arts of the said university, it appeared from Mr. Frend's affidavit, that he was a master of arts and fellow of Jesus College in Cambridge, and as such entitled to a vote in certain elections of officers, &c. and may be elected himself to certain offices of annual profit, and entitled to the use of the books in the public library, and to commons, and other advantages, while resident in the university, for which he cannot enjoy or receive any compensation if prevented residing therein. That on the 24th of April, 1793, he received a citation from the vice-chancellor and his assessors to appear at his then next court to be held at the law schools on the 3d of May following to answer an accusation laid before the vice-chancellor by Dr. Kipling, deputy regius professor of divinity, for having violated the laws and statutes of the university, particularly the statute De Concionibus, by publishing and dispersing within the university a certain pamphlet, intituled, &c.: that the deponent appeared on the 3rd of May at the court of the vice-chancellor, and excepted against the jurisdiction of the same over the said cause, on the ground that offences against the statute De Concionibus were not cognizable in the vice-chancellor's court, which is a court of record, and competent to compel the attendance of witnesses; but that such offences are by the statute made cognizable by the chancellor and the major part of the heads of colleges within the university; which the deponent conceived to be a distinct jurisdiction from the vice-chancellor's court, and not invested with similar powers, being neither a court of record, nor competent to compel the attendance of witnesses. That the vice-chancellor, however, over-ruled the exception, and accepted the charges in writing against the deponent, which were then and there read by Dr. Kipling the promoter; that the Court adjourned from time to time, and the examination of witnesses was taken in support of the charges. That at an adjourned court on the 28th of May, 1793, the vice-chancellor informed the deponent that he was of opinion that the deponent was proved to be the author and publisher of the pamphlet in question, and that by writing and publishing it within the university he had offended against the latter part of the statute De Concionibus; and the vice-chancellor then read certain resolutions to that effect, made by himself and other heads of colleges, which concluded by requiring the deponent to retract and publicly confess his error and temerity in the following manner; "I William Frend, M. A. &c. do acknowledge that by writing a pamphlet intituled, &c. and by publishing the same within the university of Cambridge, I have offended against the latter part of the statute De Concionibus, as expressed in the following words; *Prohibemus ne quisquam*, &c. I do therefore by the direction of the vice-chancellor, with the assent of the major part of the heads of colleges, retract and publicly confess my error and temerity, as the said statute requires." That the deponent objected to the generality of the recantation, no specific error being therein pointed out, nor it being shown in what manner he had violated the statute De Concionibus; and therefore he refused to retract in the form proposed; whereupon the vice-chancellor, with the assent of the major part of the heads of colleges, decreed sentence of banishment from the university against the deponent, and refused to receive a plea of absolution which was tendered by the deponent in bar of the sentence; the vice-chancellor or his deputy having in the Cambridge term preceding the passing of sentence pronounced the following absolution in public congregation; Auctoritate nobis commissâ nos absolvimus vos ab omni levi negligentiâ, forisfactione, seu transgressione statutorum, privilegiorum, et consuetudinum, et Deo et sacramentis ecclesiæ vos restituimus in nomine Dei, &c. That the deponent afterwards appealed from the said sentence, which appeal was heard before certain delegates, who affirmed the sentence. That on the 14th November, 1793, the deponent tendered his vote upon the election of the vice-chancellor, which was rejected on account of the said sentence of banishment against him, on which account also he had been refused the use of the books of the university library. He further stated that by the constitution of the vice-chancellor's court it is not necessary that any of the heads of colleges should be present therein, and that those who do attend it are merely assessors of the vice-chancellor, and do not join in any sentence pronounced by him; that it has been usual to hold such court in the law schools or some other public place in the university, and that it is an open court. He also stated his information and belief that there is no instance of any prosecution for an offence against the statute De Concionibus in the vice-chancellor's court; but on the contrary, many instances of proceeding thereon before the vice-chancellor and the heads of colleges privately assembled for that purpose.

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Other affidavits made in support of the rule set forth the whole proceedings in the vice-chancellor's court, &c.; by which it appeared that in the articles exhibited against Mr. Frend all the objectionable parts of his pamphlet were set forth. The affidavits further stated certain objections to the mode of appointing the delegates constituting the court of appeal, by which the sentence of the vice-chancellor's court had been affirmed, and which were now insisted upon.

In answer to these affidavits, others were filed by the vice-chancellor, and several other respectable members of the university, some of whom had resided there for forty years; stating that there had been immemorially within the university of Cambridge a court called the vice-chancellor's court, which had been held, as well in the lodge or chamber of the vice-chancellor, as in the consistory or law schools, or other public room within the university, at the discretion of the vice-chancellor for the time being; and which court had taken cognizance of offences against the statutes of the university as well as of other offences. That it is made necessary by the statutes, as well as by the usage of the Court, for a majority of the heads of colleges to assent to the vice-chancellor's sentence of expulsion or permanent banishment. That they knew not of any court of the vice-chancellor and heads of colleges distinct from the vice-chancellor's court, or of any jurisdiction which the vice-chancellor and heads of colleges possessed or exercised distinct from that which the vice-chancellor possessed and exercised in his said court. Other parts of their affidavits were in answer to the supposed irregularity in the appointment of delegates in the court of appeal. It also appeared that Mr. Frend had been since banished from Jesus College, of which he was a member.

The following statutes of the university were referred to in the course of the argument, and appeared in the affidavits on both sides.

Stat. 1 Eliz. De cancellarii officio.—Cancellarius potestatem habebit ad omnes omnium scholasticorum, atque etiam eorum qui scholasticorum famuli sunt, controversias, summariè et sine ullâ juris solemnitate præter illam quam nos prescribemus, secundum jus civile, et eorum privilegia et consuetudines, tum audiendas tum dirimendas, ad congregationes graduatorum et scholasticorum convocandas, ad homines dignos gradibus scholasticis ornandos, qui omnia munia scholastica his contenta statutis expleverint, et ad indignos rejiciendos ab iisdem et repellendos, ad omnes eorum violatores puniendos; ad providendum præterea ut singuli academiæ ministri in suo officio se contineant, ignavos grassatores, rei suæ dissipatores, contumaces, nec obedientes, suspensione graduum, carcere, exilio, aut alio leviori supplicio judicio suo et assensu præfectorum ædium, castigandos.

Stat. 12 cap. 42. De cancellarii officio. This statute was in terms the same as the former, as far as related to the persons who were the subjects of punishment, ending with the words "*nec obedientes;*" after which it proceeded, suspensione graduum, carcere, aut alio leviori supplicio, judicio suo castigandos; non licebit tamen cancellario aliquem scholarem exilio multare, aut aliquem pileatorum aut præfectorum collegiorum incarcerare, absque consensu majoris partis præfectorum collegiorum.

Stat. 12 Eliz. cap. 45. De Concionibus.—Prohibemus ne quisquam in concione aliquâ, in loco communi tractando, in lectionibus publicis, seu aliter publicè infra universitatem nostram, quicquam doceat, tractet, vel defendat, contra religionem, seu ejusdem aliquam partem in regno nostro publicâ auctoritate receptam et stabilitam, aut contrà aliquem statum, auctoritatem, dignitatem, seu gradum vel ecclesiasticum vel civilem, hujus nostri regni Angliæ vel Hiberniæ. Qui contrà fecerit, errorem et temeritatem suam cancellarii jussu cum assensu majoris partis præfectorum collegiorum revocabit et publicè confitebitur; quod si recusaverit, aut non humilitèr eo modo quo illi præscribitur perfecerit, eàdem auctoritate à collegio suo perpetuo excludatur, et universitate exulabit.

There were also certain ancient statutes set out, which related to the question concerning the regularity in the mode of appointing the delegates.

The affidavits against the rule also set forth certain cases and judgments before the vice-chancellor upon the statute De Concionibus; which were in the possession of the registrar of the university. Rush's case 1609: the title of this began "*officium domini,*" which was stated to be the style of the vice-chancellor's court. The proceeding appears to have commenced by the vice-chancellor interrogating Rush as to a sermon which the latter had written and preached, and which he was required to produce; on his evading the request tunc dominus ex consensu assistentium &c. monuit Rush sub pœnâ juris to bring it to him, and verify it upon his oath to be the same, upon the second Friday in the term in the consistory. Afterwards on 17th October 1609 *in camerâ* of the vice-chancellor, and before him and certain doctors. Rush was accused of uttering libellous matter in his sermon against Dr. Barwell deceased, and he was required to deliver it in writing, which he said he could not do; whereupon the vice-chancellor admonished him a first, second, and third time; but he still refusing the vice-chancellor accused him of contumacy, and committed him to safe custody till he should produce it. Afterwards in the consistory, before the vice-chancellor and five doctors by name, Rush being brought up in the custody of one of the beadles, and after other proceedings, being again remanded, he produced his sermon and swore to the identity of it; whereupon he was liberated from custody: but because it appeared to the vice-chancellor and his assistants that he might again offend in the same manner, he was

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suspended from his degree, and silence imposed upon him until further decree and licence by the vice-chancellor and his assistants; et dominus continuavit hanc causam in statu quo, &c. There were other proceedings against him afterwards: in the course of which a recognizance for his appearance was taken from him and two others, and a recantation was proposed to him, in which, amongst some general admissions, were stated specific objectionable parts of his discourse; and he refusing to read this recantation, sentence was passed on him by the vice-chancellor's deputy "by virtue of the statute intituled De Concionibus, by the consent of the greater part of the heads of colleges, that N. Rush had fallen under the penalty of the beforementioned statute; and he declared him to be utterly precluded and shut out of the said university and his said college, according to the contents and effect of the said statute; and he did accordingly exclude and banish him by his final sentence or decree, &c."

Addams's case 1637; at the consistory, &c. present, &c. it was decreed that Mr. Addams should be warned to appear that day month and bring in his sermon. This summons appeared to have been by letter; and it was not till after several meetings of the vice-chancellor and heads that Addams appeared and excused his absence, because he had never had any monition or warning from authority till lately. He was then admonished to bring in his sermon. Several proceedings were had, the style of all which was entered "*officium domini*, &c." and most of them were expressly stated to be *in consistorio*. He produced his sermon, and the vice-chancellor objected to particular passages; a recantation was proposed, and the form of it debated amongst the vice-chancellor and heads; and there being some difference of opinion, the vice-chancellor admonished Mr. Addams not to depart from the town without his leave. The form of recantation was afterwards set out, specifying the particular errors alleged; and the vice-chancellor decreed that if Addams refused to make it, he should undergo the punishment pointed out by the statute De Concionibus; and he enjoined the registrar to make an act, as well of the sentence, as of the recantation, that it might appear he had done his part to assert the doctrine of the church. Some of the heads assented, and others dissented, to the recantation proposed. Finally the sentence took place, and was subscribed by the vice-chancellor and heads "which done, Mr. Vice-chancellor did dismiss the meeting, but not the cause."

Whiston's case in 1710 was before the vice-chancellor and heads; witnesses were sworn, as appeared by the entries; and sentence was passed by the vice-chancellor, the heads assisting and consenting; by which it was decreed that Mr. Whiston, mathematic professor, &c. having asserted and spread abroad divers tenets contrary to religion, &c. "had incurred the penalty of the statute, and that he should be banished from the university."

Waller's case 1752: he was cited by the vice-chancellor "to appear before him and his assessors at his next court to be held in consistory, the usual place of judicature in the university, on, &c. to answer in a certain cause of office, promoted by K. B., as the author of a profane and blasphemous libel, intituled, &c." This was contained in a book called Acts of Court. At subsequent courts he was charged with being the author of the book, which he confessed, and that he had delivered it to be printed and published, and was sorry for it. The judge adjourned the Court, and afterwards the vice-chancellor with the assent of the assessors declared Waller to be expelled the university.

Various other cases were brought forwards, some of which were in the consistory, and other public schools. One of the courts, in Ducket's case, was held by adjournment in Trinity college lodge, the residence of the vice-chancellor, and sentence of expulsion from the university pronounced there.

Out of the same book, intituled Acts of Court, were also produced various instances, where the vice-chancellor alone in his court inflicted punishments short of expulsion for offences against the statutes.

In Easter term last Gibbs obtained the rule, calling on the defendants to show cause why a *mandamus* should not issue, &c. as above; and five objections were made on the part of Mr. Frend to the proceedings against him in the university. 1st. That the cause was not tried before a proper jurisdiction. 2dly. That the plea of absolution put in by Mr. Frend ought to have been received. 3dly. That the form of recantation proposed to him was improper. 4thly. That the sentence was illegal in the form of it. 5thly. That the delegates upon the appeal had been improperly appointed. But upon showing cause the second was abandoned, as being a matter of appeal to the ordinary jurisdiction; as was also the last, because supposing the fact to be made out, the application should have been for a *mandamus*, in another shape, to compel a proper appointment of delegates.

The rule came on to be argued several times; in the course of which cause was shown by

The Attorney-General, Erskine, Law, Graham, and Le Blanc serjeant, on behalf of the university upon the three remaining points. First, as to the cause not having been tried before a proper jurisdiction; the proposition contended for by the university is this, that in all cases of judicial cognizance before the vice-chancellor, whether sitting alone, or with the heads of houses, the proceeding is in the vice-chancellor's court, where he is the sole judge, although he is restricted from pronouncing certain judgments without the assent of a majority of the heads of colleges; and that whether the proceeding

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be held before the vice-chancellor *in camerâ*, or in the consistory, or law schools, the place of holding the Court being altogether in his option, it is still the vice-chancellor's court. The proposition on the other side is this, that in all cases when the assent of the heads of houses is required to inflict a punishment in a matter of discipline, they act as co-judices with the vice-chancellor, and form a private tribunal different from the public tribunal of the vice-chancellor's court, governed by different rules, and not having the same process. Now it will appear plainly from the history of the university, from reference to the statutes of the same, and to the known usage there existing at this day, that the proceedings of the university in this case conformable to the proposition insisted upon by the university were perfectly regular. It is well known that both the universities, as ecclesiastical bodies, had *ab incipio* ecclesiastical jurisdiction, as appears in Dr. Bentley's case; [Vide 1 Burn's Ecc. Law, 413.] they had also the same officers as ecclesiastical courts, the chancellor presiding; and hence arose the appellant court of delegates. It appears too, that the vice-chancellor's court has existed immemorially, and taken cognizance of all offences against discipline as well as of other matters; and there is no trace of any other court of the kind in the university. The proceedings in this court are regulated principally by the civil law; the officers and process are the same; and it has the power of administering oaths and compelling the appearance of witnesses. The Court is held in the vice-chancellor's name; it is called his court; by him the process is issued; by him the court is convened, adjourned, and dismissed; and the sentence is given by him, and in his own name and authority. There being then such a known and immemorially existing court in the university, where all offences against the discipline and good government of the university by any of the members can be punished, it follows of course that if a subsequent statute create any new offence generally, without any particular reference in the statutes in express terms, it must be referred to the jurisdiction of this court. It cannot be presumed, that the cognizance of this offence was intended to be conferred on the vice-chancellor in his private capacity, when all other matters of discipline were cognizable by him in his judicial capacity in his own court, where it is exercised openly, and by known rules and principles, and where he has the means of enforcing the attendance of witnesses, and of executing his sentence when pronounced. This appears more decisively by referring to the statutes De Cancellarii Officio; by the first of which, stat. 1 Elizabeth, a general jurisdiction is conferred upon that officer to enforce discipline and morals in the university, without any particular reference to the vice-chancellor's court; and yet that jurisdiction has always been there exercised: the punishments are there extended to imprisonment of certain members, and to exile, but though they are to be inflicted *judicio suo*, yet they must be *cum assensu præfectorum cœtium*. The subsequent statute of the 12 Eliz. cap. 42.; which follows the other in terms as to the description of the offences, varies as to the mode of passing the sentence. By that all punishments short of imprisonment in some cases and exile in all may be inflicted by the discretion of the vice-chancellor alone; but he cannot inflict those two Absque consensu majoris partis præfectorum collegiorum. But though it is necessary for the vice-chancellor, before he can proceed to the extremity of such imprisoning or exiling of a member, to have the assent of the majority of the heads of houses, yet that does not alter the nature of the court in which the proceeding is held; it is still the vice-chancellor's court, he alone is the judge; he regulates all the proceedings; the sentence is his, and the heads merely act as assessors to him. If the vice-chancellor therefore upon examination of the charge thought it sufficient to inflict the *leviora supplicia*, it was not necessary for him to consult the heads of houses; but if he considered banishment to be necessary, then he was required to obtain the consent of a majority of them. Now if the construction contended for by Mr. Frend be the true one upon the statute De Concionibus, the same argument would have equally applied in all cases under the statute 1 Eliz., and in all those where exile or imprisonment was inflicted under the 12 Eliz. cap. 42 But there is no trace, in the records of the university, of proceedings under these statutes in any other than the vice-chancellor's court; nor is it pretended that the necessity of the vice-chancellor's calling in the assistance of the heads of the houses to enable him to pass sentence of imprisonment or exile, in any of these cases under the 12 Eliz. cap. 42., constituted a new court different from the Court out of which the process first issued, and wherein the depositions were taken. Then how is the case varied by the statute De Concionibus? It creates an offence, the punishment for which, if the party do not recant, is banishment. But banishment was a punishment which the vice-chancellor could in no case inflict on his own judgment by the 12 Eliz. cap. 42., without the assent of a majority of the heads; to be consistent therefore it was necessary to require the same assistance under the statute De Concionibus. But there is no greater reason why this should be construed to raise a new jurisdiction than the former statute. And as the consequence of refusing to recant was so penal, the statute following its own principle required the assent of the heads to the form of the recantation: but still this is to be done *jussu cancellarii*, as under the statute De Cancellarii Officio; and the sentence of banishment is to be inflicted *eâdem auctoritate*; but even this cannot be done, if the party will recant his error. They

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then referred to the cases which were mentioned in the affidavits, some of which they contended were clearly in the vice-chancellor's court, and others were prosecutions for offences under the statute De Concionibus; and they showed by comparing them together that the latter must also have been determined in the vice-chancellor's court, from the similarity in the style of the Court, in the original process, in the subsequent proceedings, in the officers, in the places where it was held, which were either *in camerâ* or *in consistorio*, at the discretion of the vice-chancellor, and lastly from the form of the sentence. That in some of the cases under the statute De Concionibus, when banishment was ultimately inflicted, some stages of the proceedings were before the vice-chancellor alone, others where less than a majority of heads, viz. only five, attended; but when sentence was to be given, a majority of heads always appeared to be present. Lastly, as to the first point they relied on the affidavits made by persons of long standing and great experience in the university, who had never heard of any other than the vice-chancellor's court in the university. 2dly, As to the form of the recantation not being sufficiently explicit; no particular form is pointed out by the statute creating the offence. And the fact being found to be true of Mr. Frend's having offended against the statute, no form of recantation more lenient than this could be proposed. However it does appear by the record of the university proceedings what the particular objections were, to which the judgment and recantation must be taken to refer. But at any rate this was a ground for appeal, and cannot be taken advantage of, however erroneous, upon an application to this court. 3dly, The last objection is, that the sentence of banishment is illegal, because not conformable to the statute De Concionibus, inasmuch as it only banishes him from the university, without also expelling him his college. First, it is to be remembered that it does not operate merely as an ouster of privilege, but as an actual exclusion of the person from the limits of the university, within which the college is locally situated; and therefore *ex necessitate* it must operate as a banishment from both. Then it does effect what the statute in substance requires, though it does not follow the form of words in it, which is not required. And the complainant's own affidavit shows that such is its operation; for one ground of complaint is that by means of this sentence he cannot enjoy his commons, which as a resident member he would be entitled to have. Next, the words of the statute are, "a collegio suo perpetuò excludatur et universitate exulabit;" upon the legal construction of which either sentence of banishment from the university does *ex vi termini* exclude him from his college, or the effect of it is to be compulsory on the college to follow up the sentence by an order of exclusion from the college; "Let him be excluded from the college." But each body can only give that sentence which is referable to the powers and usages of each. Therefore the university are required to banish him from the university, and the college from their own body; for some of the privileges of the college may be enjoyed by its members without being actually present; and of these he can only be deprived by a judgment of the college. But even if this were otherwise, upon what pretence can Mr. Frend apply to be restored to the university, from which he admits the sentence to have banished him, because he has not also been banished from his college? If there were an error in the form of the sentence, the court of appeal had cognizance of it, and might have corrected it, or given the appellant relief. But if upon the whole it appears to this court that he has been properly amoved from the university, they will not issue a *mandamus* to restore him because of an error in the sentence, which was in his favour. In the case of the King *v.* the Mayor, &c. of London, [2 T. R. 177.] the Court refused a *mandamus* to restore to the office of clerk of the bridge house estates, though the party was irregularly suspended, it appearing on his own showing that there was good ground for the suspension, if the proceedings had been regular; and other cases are there cited to the same effect.

Having answered the points, on which the sentence of the university was objected to, a new ground of objection was taken to the *mandamus* itself; that it appeared from Mr. Frend's own showing that his franchise of a master of arts still remained to him; and that in fact the sole foundation of his complaint was not that he was deprived of any known franchise, but that by the sentence of a competent court of criminal jurisdiction he had been put out of a condition to avail himself of some of the advantages of his franchise; but that no *mandamus* lay in such a case, except where the corporate franchise itself was either taken away or suspended. He is still a master of arts, which is the only corporate franchise he held before. Supposing he had been imprisoned or transported by the sentence of any other criminal court, he could not have tried the legality of such sentence upon an application for a *mandamus*, and yet he would have been deprived of the very same advantages which he has now lost.

GIBBS and RAINE, in support of the rule for the *mandamus*, to the last objection, which was entirely new, observed that a *mandamus* was a remedial writ in cases where the subject had no other specific mode of redress. The sentence of the vice-chancellor operated in effect as a disfranchisement of Mr. Frend, by depriving him of the means of exercising his franchise beneficially; and he had no other way of getting rid of that sentence but

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by the present application to the Court, who exercised a controlling power over all inferior jurisdictions, to confine them within their proper limits, and prevent injustice to the subject. In an application for a *mandamus* to restore, it is not necessary that it should clearly appear that injustice has been done; it is sufficient to raise a reasonable doubt in the Court whether it has or not; especially when it is considered that if the *mandamus* be refused, the party has no remedy: whereas if granted, it is not conclusive on the persons to whom it is directed; but they may dispute the question on a return to the writ. Cowp. 378. In the case cited of the King *v.* the Mayor &c. of London, [2 T. R. 177.] one of the reasons assigned for refusing the application was, that the party had another remedy.

As to the 1st objection, to the jurisdiction; all offences created by the statute De Concionibus are cognizable only by a peculiar jurisdiction, consisting of the vice-chancellor and heads of houses *in camerâ*, and not by the vice-chancellor in his court. The constitution of the vice-chancellor's court does not necessarily draw to it the cognizance of an offence of this nature, which is partly political, partly religious. The origin of this court is involved in great obscurity; it may have been, as is asserted, of an ecclesiastical nature in its inception. In Dr. Ewen's case, [E. 19. G. 3.] lord Mansfield said it is a court of law, instituted in order to take cognizance of common law offences, or such as would have been cognizable in other courts foreign to the university; that it was for the convenience of the members of the university to enable them to have justice administered within their own limits. It appears however to be a court of record, issuing process, having proper officers, and capable of compelling the attendance of witnesses, and administering oaths. These are powers which can only be possessed by immemorial usage or act of parliament, which consequently could not be exercised by the vice-chancellor and heads of houses in their inquisitorial capacity instituted by the statute De Concionibus; and therefore it is a matter anxiously to be desired by them to draw the cognizance of this offence to the vice-chancellor's court, which is armed with all these powers. But this cannot be done without an adequate authority. Now the statute itself, creating the offence, contains no reference whatever to the vice-chancellor's court; on the contrary it refers the cognizance of it to a tribunal differently constituted. The vice-chancellor alone is the judge in his own court; no other judges can sit there; and it does not follow, because the vice-chancellor is appointed to be one of many other judges under the statute De Concionibus, that the jurisdiction is given to his court: Neither does it follow, because there exists such a court in the university, on which the greatest stress has been laid, that every offence which is newly created must be referred to that court. But such an inference is more especially rebutted, when the cognizance of such offence is referred to different judges from the one who presides in the vice-chancellor's court; for the conferring of the power of hearing and determining these offences includes in it also the power of holding a court for the special purposes pointed out by the statute of Eliz. The heads of houses are not mentioned in any academical book, as parts of the vice-chancellor's court; whereas for the trial of offences for which certain punishments are to be inflicted under the statute of Eliz. they are necessary parts of the tribunal authorized to inflict such punishments. Suppose it had been prohibited by charter to the city of London, to any member of the corporation to publish any thing of this sort; and it had been directed that if any member were guilty of such an offence he should be summoned before the mayor and aldermen, to be dealt with by them accordingly; they might have exercised their power in their corporate capacity without having recourse to any court. But supposing further, that there existed then in the city of London a mayor's court, having cognizance of offences, held by the mayor, and at which some of the aldermen sat as assessors on particular occasions, it could not be supposed that such a charter, which took no notice of the mayor's court, but which said that the jurisdiction should be exercised, not by the mayor alone, but by the mayor and aldermen, must necessarily be taken to refer the cognizance of the offence to the old jurisdiction, the mayor's court. In aid of the construction contended for by the university several cases have been brought forward upon the statute De Concionibus, determined (as it is alleged) in the vice-chancellor's court. But this is an assumption not warranted by the cases themselves, upon reference to which many differences will be observed. [Here many observations were made upon those cases, upon the style and manner of proceeding therein, from whence the counsel inferred that those cases must have been determined *in camerâ* before the persons specially authorized by the statute De Concionibus, and not in the vice-chancellor's court.] In a doubtful case the best way to discover whether those causes were determined by the same jurisdiction by which sentence has been given against Mr. Frend is to compare those proceedings with the present; and in so doing the greatest dissimilarity will be found. Here was a regular charge, exhibited by the proper officer; Mr. Frend was regularly summoned before him; he was called upon for his defence, and there was every other mark of a regular court: the contrary of all which is to be found in those cases; and no two of them being alike in the form of proceedings, but appearing to have been conducted in the most desultory manner, as might be supposed to take place in every such examination out of a regular

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court of justice. Then it was urged, that the same objection might have been made to all those cases, which were clearly determined in the vice-chancellor's court, upon offences described by the 1st Stat. of Eliz. De Cancellarii Officio, where the assent of the heads of houses was equally required. But all those cases must have been determined under the second stat. De Cancellarii Officio, 12 Eliz. c. 42. which must necessarily have repealed the former, being as to the description of the offences an exact transcript, though referring the cognizance of them to different persons. 2dly, The publication of a book is not an offence within the statute De Concionibus, which was merely levelled against those who offended in this manner in public lectures, sermons, or the like. The statute meant to prevent those places and institutions, which were set apart and intended for the advancement of religion and learning, being made the vehicles of those libels against which the statute is directed. The words "*seu aliter publicè*" must be taken with reference to what accompanies them; and taking the whole context together, it will be found that the framers of the statute only intended to prohibit the publication of improper subjects in preaching, in public lectures, disputations in the schools, (the *locus communis* in this statute meaning a common exercise, and not the place where the exercise is gone through) and the like, which were written or delivered in some public character; but it does not apply to publications by individuals in their private capacity. 3dly, As to the recantation; although the form of it may rest in some degree in the discretion of the vice-chancellor, &c.; and although the impropriety of it may be a matter of appeal to the delegates, yet if it appear to this court not to be a recantation in the form and substance of it, this court will interfere, because the court below has exceeded its jurisdiction by passing sentence, without having proposed to the defendant to recant his error. Now this is no recantation at all, because it specifies no error which the party was called upon to recant. It is nothing more than a demand of him to confess that he had been guilty of some offence, but of what does not appear; therefore it is in itself a mere nullity. The statute had two objects in view, the correction of error, and the convincing of the party that he had erred; or secondly the punishment for the offence: but before punishment inflicted, the party is to have an opportunity of retracting that which is supposed to be exceptionable. The vice-chancellor and heads of houses have therefore exceeded their jurisdiction; for the statute only authorizes them to call on the party to confess such errors as shall have been previously pointed out to him, in order that by a recantation of such opinions, proved to have been erroneous, he may avoid punishment: whereas Mr. Frend is left unacquainted with the errors imputed to him, and therefore he is precluded from restoring himself to what he has lost, by a confession of them. In all the cases cited of proceedings under this statute, the recantation proposed contained the specific errors alleged against the party. But in this instance the spirit of the statute has been lost by an adherence to the words of it. 4th, In the next objection, where the words were most important, namely in the frame of the sentence, they have been unnoticed, and the supposed substance of them adopted in their place. It is a clear rule that where a statute imposes a particular punishment for an offence, the sentence must adhere strictly to the form prescribed by the statute. If the punishment consist of two parts, the judge cannot pronounce the one without the other. If a statute inflict a certain penalty, judgment for a less penalty is erroneous; and it is no answer in either case to allege that the punishment was milder than it need have been. Here the statute requires the offender to be banished from his college, and from the university; and the latter only of these has been pronounced against him. It has been said in answer that one includes the other; if so, the statute would not have required both. Besides, no court is at liberty to depart from a positive injunction, however unnecessary, for the ends of justice. The fine in manslaughter, which is most commonly nominal, must yet be imposed. These are matters *positivi juris*, and are not to be reasoned away. Upon the whole, if a doubt only can be raised in the minds of the Court upon any of the points submitted to them, it is a sufficient foundation for the *mandamus*, on the return to which the university may have an opportunity of disputing the subject in a more solemn manner.

Lord *Kenyon*, Ch. J. After the very elaborate and ingenious arguments that we have already heard in this case, we cannot expect to receive any further information upon the subject; and as we entertain no doubts about the case, I think it is our duty to declare our opinions now, and not to suffer this learned body to remain one hour longer in suspense. It has been contended—and I will not dispute the point, because I assent to it to a certain degree,—that it is the duty of this Court to correct the errors of inferior jurisdictions, and to grant a *mandamus* where we suspect on strong grounds that injustice has been done below in cases where a *mandamus* lies: it was so held in Dr. Bentley's case, where the Court said it was essential to the good administration of justice that a party should not be bound by one decision, but that there should be an appellant jurisdiction, which might reform the errors in the judgment of the first Court giving the sentence. But this general rule must be taken *cum grano salis*; and it was intimated in that case, that if the bishop of Ely had acted as general visitor, this Court would not have entered into a discussion of

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the case below. But in this case, the party applying for the *mandamus* seems to have admitted the jurisdiction of the first court; for he himself appealed against the decision of it; it was at his instance that the delegates were appointed to take into their consideration the former decision. It is indeed now hinted that there was something informal in the appointment of those delegates: but if that were so, the party is mistaken in the form of his application to this Court; in that case he should have moved for a *mandamus* to rectify the appointment of the delegates to constitute that court which he himself chose for the decision of this controversy, and not for a *mandamus* to restore him.

But to come to the great questions that have been discussed at the bar; the first of which is, whether the vice-chancellor's court, constituted as it was, consisting of the vice-chancellor assisted by the heads of houses, had or had not jurisdiction to hear and determine the offence of which Mr. Frend was accused; and that depends upon the statutes of Elizabeth which have been so often referred to. It was admitted in the argument, that the constitution of this court remains in great obscurity: and we are desired by the person making this application to cancel at once every precedent which can be found in the university books for near two centuries past, and to say that all those proceedings are erroneous, and we are required to find out by our construction of the statutes what the united wisdom of this university has not yet been able to discover. All the cases that have been alluded to are, in my opinion, precedents in support of the jurisdiction of that court, by which the sentence was pronounced in this case; for as to the differences which have been pointed out between those cases and the present, they all go beside the jurisdiction of the Court. It has been observed that Rush was called upon to produce his objectionable sermon, and to convict himself by his own evidence; if he had been properly advised, he would not have complied with that request: but it does not follow from that circumstance that the court by which he was sentenced was different from the present Court; it does not affect the jurisdiction of the Court, it only shows the fallibility of those who administer justice in courts of judicature. Without going through the other cases, I think that in all of them the Court was constituted as the present Court was; and no one has suggested what other known court should be substituted in the room of it. It was said indeed that the Court having cognizance of this offence should be composed of the vice-chancellor and the heads of houses; now those very persons sat in the Court in question, and from that Court the party himself appealed to the court of delegates. It seems to me that offences against the statutes alluded to were intended to be cognizable in the vice-chancellor's court; and if there be any errors in the proceedings of that court, they should be rectified in the court of appeal in the university. If I could raise any doubt in my own mind respecting the jurisdiction of this court, and could discover that the statutes in question had intended to create any other for inquiring into offences of this nature, I should have been disposed to grant a *mandamus*: but after all the industry I have employed upon the occasion, I do not entertain the least doubt upon the subject.

The next question, in point of order, is that respecting the offence. It is not very probable that so great a body as the university could have existed so long, without having some power within itself of controlling and checking those evils which, without correction, would be subversive of all discipline in the university. Discipline is the soul of such a body; and if persons egregiously offended against that order and discipline so necessary to be preserved in the university, the latter must have had a power to correct such offences previous to the statute of Elizabeth. However I do not rely on that, but I rely on the words of the statute of 12 Elizabeth, as deciding this objection. The pamphlet in question was published in the university, and as appears by the proceedings by a member of the university; and it certainly contains matter highly offensive to those who think that the religious establishment of the country is of consequence enough to be preserved. It appears too that this gentleman was the fellow of a college, and a master of arts: but I hope (for his own sake) that he is not in holy orders; because I do not see how any person, who had before in the most solemn manner expressed his assent to every thing contained in the liturgy, could have ventured to write the pamphlet in question; it would have been for him to reconcile it to his own moral and religious character. Therefore I wish to take it for granted that he is not in orders; and indeed he styles himself gentleman only in his affidavit. But I have no doubt but that this is an offence within the statute of Elizabeth. If a person in the very bosom of the university promulgate dangerous doctrines in the manner most likely to do mischief, namely, by publication, he is at least as criminal within the meaning of this statute as another who verbally declares such doctrines; for that which is uttered by the mouth may be soon forgotten, but *literæ scripta manet*. When publications like the present are circulated in the university, they call for the attention of those to whom the moral and religious education of the youth there is committed. And I think that those who instituted this prosecution below would have forgotten the duty they owe to the public, if they had suffered the publication in question to pass *sub silentio*, without bringing it before that jurisdiction which is competent to reform or to punish the author of it.

With regard to the question concerning the

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form of the recantation, I do not think we have any thing to do with it. It was for the courts of the university, acting on the principles of the civil law, to determine on the form of the recantation. If however we had been required to assist the vice-chancellor's court, I do not know how we could have framed any thing more lenient than the recantation proposed.

The only remaining objection is that which respects the sentence; and that is that the sentence is not so severe as it should have been, for that only one of two things which the statute requires has been done, and that the rest of the sentence directed by the statute has not been inflicted. It is said that the language of these statutes is borrowed from the civil law; it was in the first instance in the hands of ecclesiastics, and always in those of persons conversant with the rules of the civil law; and they are more properly qualified than we are to put a construction upon it. The court in the university having jurisdiction over the subject, and proceeding on the principles of the civil law, have put their construction upon it; and I am of opinion that we have no authority to revise the judgment given.

In Dr. Bentley's case this court interfered, because the principles of all law had been violated; he had been condemned without being heard; and the whole was an improper mode of proceeding: but that cannot be said to be the case here. I am therefore clearly of opinion that there is neither precedent nor principle to warrant us in granting this *mandamus*. If it had been a difficult or a doubtful question, I should have been inclined to grant the rule, in order that the question might be controverted in a more solemn manner, on the return to the writ: but as I cannot find any fair ground to dispute the jurisdiction of the Court below, I think it is our duty to refuse this application, and to close that question, which, for the sake of the public and of the university, ought to be at rest.

Ashhurst J. This case has been divided by the counsel in support of the rule into four questions; 1st. Whether the matter has been tried before a proper tribunal? 2nd. Whether it is an offence against the statute De Concionibus? 3rd. Whether the recantation proposed was a proper one? and 4th. Whether the sentence is agreeable to the statute? As to the first point, it is contended that it was heard in the vice-chancellor's court, whereas it should have been heard before the vice-chancellor and heads of houses. It seems agreed by the counsel on both sides that the origin of the vice-chancellor's court rests in great obscurity; and there is reason to suppose that it existed prior to any of the statutes that we have been furnished with. The statute of the 1st Elizabeth and also that of the 12th Elizabeth, De Cancellarii Officio, speak of the chancellor's proceedings secundum jus civile, et eorum privilegia, et consuetudines; which seems to show that the Court must be then existing, otherwise there could be no such thing as any customary regulations annexed to it. There is no pretence to say that either of those statutes gave the Court its existence; therefore it must have existed before that time; and if it did, the remote distance of that period is sufficient to found a presumption that it is immemorial, unless the other side can prove the commencement. As to the court of the vice-chancellor and heads of houses, there does not seem to be any such distinct from that of the vice-chancellor. The statute of 12th Eliz. gives the chancellor the sole criminal jurisdiction in regard to such offences as are punishable by suspension from degree, imprisonment, or other lighter punishment. But where the offence is of a more serious kind, such as the present, there the statute De Concionibus has thought fit to require a greater degree of solemnity; and therefore it ordains that if any person in any public lecture, or otherwise, publicly within the university, teach or defend any thing against religion or any part of it, publicly received within this kingdom, &c. then such person "errorem et temeritatem suam cancellarii jussu, cum assensu majoris partis præfectorum collegiorum, revocabit et publicè confitebitur; quod si recusaverit, eâdem auctoritate e collegio suo perpetuò excludatur, et universitate exulabit."—From the penning and obvious construction of the above statute one may plainly infer that the chancellor is meant to be the judge, and that the proceeding is meant to be in his court; for every act is to be done *jussu cancellarii*, but *cum assensu majoris partis præfectorum*; he therefore by plain construction must be taken to be the judge, and they his assessors: the statute only imposes a check upon the chancellor in such cases, but does not create or establish a new court. And that such is the construction appears from all the cases and precedents that have been cited; and there is not a single one against it. But, at all events, in the present case the proceeding has been before the persons required to have the cognizance of such offences; and wherever they sit, it will not invalidate the proceedings. The second question made is, whether this is an offence within the statute De Concionibus? And it is said that the statute only relates to what is uttered in public lectures, not to private publications. But the bare reading of the statute suffices to answer this objection; for the statute says "in lectionibus publicis, seu aliter infra universitatem," &c.; therefore the words of the statute are large enough to include this case, and there cannot be a doubt but that it meant to do so; for the publishing such a tract is within the mischief meant to be guarded against, and indeed it seems the most mischievous way of propagating and giving a currency to such doctrines; and we should do very ill, were we, against the words,

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to narrow the construction of the statute. The third question is, whether the recantation proposed was a proper one? It is said to be ambiguous and unintelligible; but there does not appear to me to be the smallest obscurity or ambiguity in it. The articles and recantation must be taken together; the articles state the offence charged to consist in publishing and causing to be dispersed within the university a scandalous book or pamphlet, describing it, and praying that it may be taken as if annexed; and then the articles proceed to point out the most exceptionable parts. The recantation required is, that he acknowledges that by writing a pamphlet, intituled, &c. and publishing the same within the university of Cambridge, he has offended against the latter part of the statute De Concionibus as expressed in the following words [reciting them]; "I do therefore by the direction of the vice-chancellor, &c. retract and publicly confess my error and temerity as the said statute requires." Can it then be doubted what error he is to confess in publishing? It can mean nothing but such passages as are objected to and pointed out as exceptionable. The fourth and last question is, whether the punishment is conformable to the statute? And as to this I am of opinion, that if the punishment in its effect answer all the end and intention of the statute, it is sufficient: and that seems to be the case here; for if Mr. Frend be expelled from the university, he of course can never take up his residence in the university in a collegiate way; therefore it is a virtual exclusion from his college. And it seems to me of all others the most fit way; for I do not know that the university ever assumes the jurisdiction of expelling a member from a particular college. A court of this kind is not tied down by the strict and technical formalities which obtain in courts of law; and it suffices if such court as we are at present speaking of is substantially right in its proceedings. But even if an expulsion from the university did not operate as an expulsion from the college, it would be but an ungraceful objection for Mr. Frend to make, that he is not punished as much as he ought to be; and there are cases to be met with, in which it is held that a man shall not assign that for error which is for his advantage: it is so laid down in 5 Rep. 39. 2 Saund. 46. 2 Sid. 94. And this reasoning would equally apply to the present case, for a *mandamus* to restore must virtually annul the sentence as erroneous. But there is no occasion to enlarge upon this topic, as I think the sentence is substantially good, as fully answering every end, and as attended with every effect, which the statute meant to enfore. Therefore, on the whole, I think that the rule for the *mandamus* ought to be discharged.

Grose J. Before I enter into a discussion of the great questions in this case, I will say a few words on what has been advanced at the bar respecting this application, which is for a *mandamus* to revise the sentence of another court. I conceive that the granting of such a *mandamus* is not of course; nor is it of course to grant it in a doubtful case, where the Court below assuming it to be a court of competent jurisdiction has exercised that jurisdiction and proceeded to sentence, and where the party has appealed against that sentence, and it has been affirmed on such appeal. The principal ground for granting a *mandamus*, so frequently mentioned by lord Mansfield, is, where it is to prevent a failure of justice, and where there is no other specific remedy; that chiefly applies to cases where there is no jurisdiction to appeal to, or where the judgment pronounced is clearly an excess of the jurisdiction of the Court below. And that brings me to the great questions in this case, which are, first, whether the vice-chancellor in doing what he did in this court (and which I call the vice-chancellor's court) acted within his jurisdiction; and secondly, whether the judgment pronounced in that Court were correct and sufficient.

With regard to the first, Mr. Frend was charged with a violation of the statute De Concionibus; proceedings were instituted against him in the vice-chancellor's court, where the cause was heard; that court thought that the offence was sufficiently proved against him, for that he was the author of the pamphlet imputed to him, and that the publishing of it within the university was an offence against this statute; on which the vice-chancellor, with the assent of the major part of the heads of houses, directed him to recant his errors; this being refused, the vice-chancellor with the like assent banished him from the university. Now that some jurisdiction is given to the vice-chancellor by the statute in question, and that that jurisdiction is to be exercised within the university, is clear, and was indeed admitted in the argument. The university insist that that jurisdiction was to be exercised in the vice-chancellor's court in the manner in which the vice-chancellor was accustomed to exercise his jurisdiction under the stat. 1 and 12 of Elizabeth; which is, that in the case of heinous offences he should pronounce the judgment with the consent of the major part of the heads of houses, even though the punishment extend to banishment: but it is contended on the other side that no proceedings under the statute De Concionibus can be instituted in the vice-chancellor's court, in cases where banishment is part of the sentence, but that they must be *in cameră* before the vice-chancellor and the heads of houses. In the consideration of this question it is material to observe that there is admitted to exist a vice-chancellor's court, from whose decisions there is an appeal, (which fact I wish to keep in view throughout the whole of this business) in which oaths are administered, and that from the sentence of this court Mr. Frend has himself actually appealed in this case.

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It is no less material to remember that, according to the defendant's own account, no appeal lies from the Court which he wishes to substitute in lieu of the vice-chancellor's court. I consider the statutes 1 Eliz. 12 Eliz. c. 42, and 12 Eliz. c. 45, which were given to promote the discipline of the university, as being made *in pari materiâ;* and consequently they throw light on each other. By the 1st of Elizabeth the vice-chancellor has power over all the members of the university, and to punish them even with banishment by his sentence, with the assent of the heads of houses. By the 12 Eliz. c. 42, he may punish all the violators of the law by his own sentence alone; he may suspend from degrees, imprison scholars, or inflict any less punishment *judicio suo;* but he cannot imprison any of the heads, nor banish any of the members of the university, without the consent of the major part of the heads of houses. It appears by the affidavits made against this application by persons conversant in the modes of proceeding in the university, that the proceedings in this instance were conformable to the precedents from all antiquity in the vice-chancellor's court. When the statute De Concionibus was passed, I take it for granted that some improper publications had been made; that act therefore directs that the party offending should be directed jussu cancellarii cum assensu majoris partis præfectorum collegiorum to retract and to confess his error, and that if the party refused he should be banished from the university *eâdem auctoritate.* This statute, like the former ones, was made for better enforcing the discipline of the university. And as under the former statutes the vice-chancellor was in some instances to act as the sole judge, and in others where banishment was to be inflicted was to act with the heads of houses, so under this statute De Concionibus where banishment was to be the punishment he was to act with the assent of the major part of the heads of houses. It is observable that no particular forum or court, where proceedings under the statute De Concionibus were to be instituted, is pointed out by the statute; and the same thing is also to be observed of the stat. 12 Eliz. c. 42. And it has been admitted that there existed in the university a court called the vice-chancellor's court, in which proceedings under the stat. 1 Eliz. and 12 Eliz. c. 42, have always been had, and from which there is an appeal. Then came the stat. 12 Eliz. c. 45, which described a particular offence, and ordained a particular punishment for the commission of that offence. Then in what court was that jurisdiction to be exercised? The answer is obvious, in that court where offenders against the statutes of the university were by the laws and constitution of the university before punished; in that court, which was before appropriated to the vice-chancellor, and where he presides. A former statute said, that there was a court competent to punish all the violators of the statutes, "*ad omnes eorum violatores puniendos*:" then came a subsequent statute, which created another offence, and annexed to it a particular punishment to be inflicted by the same persons as were mentioned in the former one; then where is the offence created by the latter statute to be inquired into? In the same court in which offences against the university were before heard. It seems to me that all these statutes, when they authorize the vice-chancellor to act *judicio suo,* consider him as sitting in some known and established court of justice; but it is objected that the statute De Concionibus erected a jurisdiction consisting of the vice-chancellor and the heads of houses, where there is no process to compel the attendance of any persons, where no witness is to be heard on oath, and from which there is no appeal. It occurred to me that if the vice-chancellor had proceeded in this court, where Mr. Frend now insists the proceedings should have been, Mr. Frend would have complained, and said, "There is a court of competent jurisdiction, where the vice-chancellor examines on oath into offences against the university, where proceedings on similar accusations have been constantly instituted, and from whose decisions there is an appeal; I have been accused of an offence against a statute of the university which does not in terms direct that the complaint shall be heard in any other than the vice-chancellor's court; you have denied me the privilege of being heard in that court, and in a case too in which by the sentence of another court I am to be banished from the university, and deprived not only of all the temporal advantages annexed to that situation, but also of the good opinion of all moral and religious men." He would have had to complain that the jurisdiction, by which he had been banished from the university, was new, unheard of, and self-created, in which witnesses had given evidence against him without oath, and from whose decisions no appeal lies; and all this while there are extant on the records of the vice-chancellor's court proceedings on this very statute. This would have been a substantial ground of complaint; and in my opinion, it would have been no answer to it to have alleged that which has now been stated on the behalf of Mr. Frend. I am therefore clearly of opinion that the jurisdiction to be exercised under the statute De Concionibus was intended to be exercised in a known and established court in the university, in the same court in which offences against the statutes 1 and 12 Eliz. c. 42, are heard, and in which, according to all the precedents, offenders against the statute in question have been corrected or punished. Against these precedents produced by the university, not a single one has been cited in opposition. Then it would be dangerous in the extreme for this Court to attempt to put a new con-

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struction on this statute, and to point out a different mode of administering justice on laws, which are familiar to the university, but new to us.

Then it was objected that this was not an offence within the statute; and Mr. Frend has attempted to confine the construction of the statute to speeches or writings delivered or published on public occasions in the university, as lectures, sermons, &c.: but whatever may be the meaning of the former words of the statute, the words "seu aliter publicè infra universitatem nostram" evidently extend the meaning beyond such a construction. It must be remembered too that that statute was made for the preservation of good discipline in the university, and for the maintenance of religion; and the object would be entirely defeated if any of the members were permitted to publish blasphemous or any other objectionable doctrines in the university, though they were not published in the course of any of the public exercises there.

As to the objection to the form of the recantation proposed; the answer given to it by my brother Ashhurst is very satisfactory in my mind, and I can add nothing more than my assent to it.

The remaining objection is that the judgment is not sufficient, for that under the statute the vice-chancellor's court should also have adjudged him to be excluded from his college. I confess I cannot accede to what my brother Ashhurst has said upon this subject; for if a statute create an offence and ordain a particular punishment, the judgment must follow that which is prescribed by the statute; and if I had thought it necessary, I think I could have referred to authorities to show that a judgment given under a statute prescribing a particular punishment is erroneous if it do not pursue the statute, even though the judgment be not so severe as the statute directs. But, in this case, I think that the exclusion from the college is included in the sentence of banishment; and I observe that the precedents are like the present case. But I think it is perfectly immaterial whether the one does or does not include the other, because this is a ground of appeal only, and fit for the discussion of the court of delegates. I have entered thus fully into the subject, because in a case like this it is of importance to the discipline and good government of the university that the grounds upon which we proceed should be distinctly known.

Lawrence J So much has been already advanced upon every part of this case that I can add but little to it. Almost every ground, upon which any argument can be founded to show that the proceedings below have been regular, has been already taken: but in a case of this importance, I will say a few words. The great question is, whether the vice chancellor, assisted by the heads of houses, had or had not any jurisdiction in the vice-chancellor's court over offences under the statute De Concionibus. It has been contended by Mr. Frend that he had not: but if not, all the instances that have occurred from Rush's case down to the present time are erroneous; for it appears from all of them that all offences in any of the members of the university have been tried and determined in that court. The question therefore will depend on the usage and construction of the statute De Concionibus, whether it was meant to create a new and particular jurisdiction for this particular offence, or whether it was intended to refer the cognizance of offences against it to the old jurisdiction under the other statutes. On this point the whole evidence is uniform. Mr. Frend's counsel felt the weight of this, and endeavoured to show that the proceeding in Rush's case was *in camerâ*, and not in the vice-chancellor's court: but I think it was in a court; for it begins with the style of a court "*officium domini*," which is the title of the proceeding in courts governed by the civil law. Besides, it appears that he was guilty of a contempt, for which he was committed to custody, which shows that the proceedings could not have been *in camerâ*. Next it was observed that the proceedings in that case did not appear to have been at the promotion of any person: perhaps the minutes of that case are not sufficient to show that; but in the subsequent cases of Waller and Duck, that circumstance does appear. If then this court had jurisdiction in this case, the next question is whether this person was guilty of any offence against the statute De Concionibus; upon that I cannot entertain a doubt. It would be a very weak statute indeed, if, when its object was, to prevent the circulation of improper doctrines in the university, it only prohibited the public preaching, or public delivery, of those doctrines on some particular occasion, and permitted the members to print books containing such doctrines, and to disperse them all over the university With regard to the form of the recantation, I see no difficulty in Mr. Frend's making it, since it must have applied to those things with which he was charged, and not to those with which he was not charged. The last question, respecting the sentence, is equally clear. No particular form is prescribed; and it is stated that the sentence pronounced (as understood by Mr. Frend himself) has all the effect which he says the statute ought to have.

Rule discharged.

An account of these proceedings in the Court of King's-bench was published by Mr. Frend, under the title of

"A SEQUEL to the Account of the Proceedings in the University of Cambridge, against the Author of a Pamphlet intituled PEACE and UNION; containing the Application to the Court of King's-bench, a

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Review of similar Cases in the University, and Reflections on the Impolicy of Religious Persecution, and the Importance of Free Enquiry."

In this pamphlet, Mr. Frend thus exhibits the grounds on which his application to the court of King's-bench was founded:

The delegates, by confirming the sentence of the vice-chancellor, paved the way for an application to the court of King's-bench, which was made chiefly upon the following grounds: That the pretended offence was not cognisable by the statute under which it was tried; that an offence against that statute was not cognisable in the vice-chancellor's court; that the recantation proposed did not specify any errors, by which the statute was violated; and that the sentence pronounced was not itself agreeable to the statute. The two former points were affirmed to be evident from the words of the statute, the nature of the vice-chancellor's court, and universal practice; for not an instance can be produced of a person being punished, under the above-mentioned statute, for refusing to retract any opinion published only in writings, nor an instance of any person being punished under this statute in the vice-chancellor's court, though there are several instances of persons being convened before the vice-chancellor and heads for a violation of this statute, and treated in a very different manner from that which a court of law requires.

In support of these opinions references were made to the cases of Charke, Brown, Browning, Milayne, Chadwick, Johnson, Bambridge, Baret, Baro, Whiston, Duckett, and Waller, which, it was supposed, would have thrown considerable light upon the question; and, as they contain much curious information on the progress of religious toleration and instruction, merit the attention of every impartial reader.

Charke's Case.*

The first instance upon record is that of William Charke, fellow of Peterhouse, who, in a Latin sermon [Concio ad clerum], on Dec. 3, 1572, asserted, that the states of bishops, archbishops, metropolitans, patriarchs, popes, were introduced into the church by Satan; and that among the ministers of the church no one ought to be superior to another. For these opinions he was convened before the vice-chancellor and heads, required to make a public recantation, and, on his refusal, was banished from the university. From this sentence he appealed, but the vice-chancellor refused, and, it seems, with great propriety, to admit the appeal; for he judged, that no appeal could in reality be made, when sentence followed one, that had confessed what was charged upon him; and that there could be no appeal, when the sentence is given by the "vice-chancellor, with the assent of his fellow judges, the major part of the heads of colleges." The mode of conduct pursued in this case is best seen by the letter, written to the chancellor of the university, by the vice-chancellor and heads of colleges, in vindication of themselves, against Charke's censures. [Strype's Life of Whitgift, p. 43].

"Our duties in most humble maner to your honour remembered. Your lordship's letters, written in behalf of Mr. Charke, have made us al not a little perplexed; partly for the boldness of him, who, for so notorious a fault, and manifest breach of statute, would attempt to procure your lordship's favour; but, most of al, for that we are hereby brought in some doubt of your lordship's good liking of our proceedings in that case; whereof, to render a just account, and that your lordship may thereby the better judge what lenity hath been used on our parts towards the said Charke, contrary to his report (as it seemeth), may it please your lordship to be advertised of the whole matter from the beginning.

"First, omitting the great expectation of many, long before his sermon, raised (as may probably be thought) by some speech given out by him concerning those things, whereof he would entreat; leaving also his singular confidence, used in the whole action and utterance of his sermon; even at that time, when he was called before us, besides the

* Style of proceedings taken from a book in possession of the registrary, called Ecclesiastical Causes and Censures.

The following is all that relates to Charke's case:

Coram domino doctore Bing, procanc. 5 die Feb. 1572, assidentibus doctoribus Pern, Hawford, Kelk, Mey, Chaderton, Harvey, Ithel, Whitgift, Shepherd, Goad, and Aldardge.

Quibus, &c. comparuit Wm. Charke et interrogat. dno. procancellario de duabus illis propositionibus prius illi objectis et in concione sua habitis, viz. (stating the two propositions) unde dominus cum assensu prefectorum collegiorum prefat pronunciavit D. Wm. Charke incidisse in pœna statuti in ea parte facti ideo excludend. a collegio suo de qua sententiâ D. Charke appellavit cui appellacio non deferend.

In Brown's Case.

Coram domino doctore Whitgift procan. 24th Nov. 1573.

Quibus, etc. comparuit, Ds Brown; and it goes on in nearly the same as in Charke's case.

In Milayne's Case.

Coram Dno. Doctore Bing procancellario, assistentibus doctoribus Pern, Hawford, Whitgift, Harvey, Majus, Shepherd, Legg.

Mr. Millen in artibus Mr. Socius Collegii venit coram dno. procancellario et assistentibus supernominatis qui interrogatus de qui-

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obstinate defending of his errors, he spared not in presence to overthwart divers of the heads, in very unseemly maner, and with taunting words; nevertheless bearing with his want of discretion beyond his deserts, and seeking to allure him by gentle persuasions, we thought good he should severally be communed with by three or four of our company. After which conference, though they had little prevailed with him, yet that he should not think himself too straitly dealt with, we graunted him more than seven weeks space, to consider thorowly of his grounds, and after good advisement to yield his answer upon the same, giving him further to understand how we could do none otherwise than the statute required, if he should persist in his conceived opinions.

"At the time appointed we found him nothing altered: howbeit, stil wishing his good conformity, and meaning rather to reduce him charitably, than suddenly to cut him off, we offered, that if he would but only promise, upon better deliberation, to revoke his assertions, he should be respected for the performance therof til after Easter; which for that before us al, he utterly refused to do —it was concluded with one consent, that he should incurr the paine of the statute, that is, to lose both his college, and also the university.

"Now, if this punishment had been enjoyned him only by our arbitrement, and not by statute, yet his demerits being such as we have declared, and he cannot deny, he could not justly have complained of over much severity. But seeing we have done nothing of any private consideration in this case, but our sentence hath been wholly directed by her majesty's statutes, delivered unto us, as a rule to guide us, and wherewith to dispense is utterly forbidden us, we much muse what colour of defence he can seem to pretend. And, surely, how necessary it is that we have such statutes, and namely that one concerning preachers (which statute was sent enclosed), the malice of these times doth easily show; for, since Charke hath broached these untimely contentions, others have ventured to continue the same: wherby the minds of some are so incensed, that in many colleges they study and devise only how to molest and disquiet their governours; their drift, as it is wel known, being nothing else but to procure to themselves a licentious liberty, wherein, if they may find favour through their importune suits, our state is most miserable of all others. What poison lieth hid in popularity cannot be unknown to your singular wisdom: our labours and travails, in suppressing the same, must needs be joyned with occasion of great envy, which we shal never be able to resist, unless we be supported by your lordship's authority, and others that are placed in the chiefest rooms, especially when the difference consisteth in this; whether we shall be borne with for executing our laws, or others, by indulgency, encouraged to break the same.

And yet for Charke we have further to report, that after the delivery of your lordship's letters, being again demanded, whether he would yet promise to retract his former doctrines, he would in no wise yield therunto, but made the like refusal as before, adding, that he thought your lordship's meaning was not to have him recant; wherin, as your lordship may wel perceive his great presumption, so did he nothing deceive the expectation of some of us, who have noted him in the like haughty stomac, ever sithence we first knew him.

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busdam assertionibus a se prælatis in concione sua infra ecclesiam stæ Mariæ quarto die Oct. affirmavit se easdem protulisse deinde dominus procancellarius et assist. monuerunt ei ut retractaret easdem sed Millen recusavit unde Dnus. procancellarius de consensu præpositorum tunc pronunciavit D. Millen incidisse in pœna statuti academiæ et ab academia expellendum decrevit.

In Barret's Case.

Coram venerabili viro Dn. Doctore S— deputato Doct. Duport, procancel. Cant. Doctoribus Goad, Tindal, Whitaker, Berral, Jegon, Preston, M. Chaderton et Clayton, præfectis collegiorum, 5 Jun. in præsentia me T. Smith.

The entry then states the offence of preaching against the reformers, and the requisition to recant. There are no marks of originality, it being roughly copied, and fastened together bookways with the other papers.

In the Cases of Johnson and Bambridge.

23d Jan. 1588, Coram eodem Dno. procancell. assistentibus D. D. Pern, Tindal, Copcott, Legg et Bett, et in consistorio hora octava universitatis in præsentia Thomæ Brooke, Not. Pub.

Acta facta et gesta coram venerabili viro dno. Thoma Neville, S. T. P. atque universitatis Cant. procan. assistentibus tunc et ibidem nobilibus viris dnis. doctoribus Hill, Tindall, Copcott, Bing, Legg et Mrs. Andrew et Preston, 9 die mensis Septemb. 1589, in præsentia Thomæ Smith, N. P. in consistorio universitatis.

The entries in this and Johnson's case consist of protests, explanations, canon law opinions, and as in Strype's annals.

On these imperfect entries indeed much cannot be grounded; but the history of the cases throws a light upon them; and as in the two full cases under the statute De Concionibus produced by the promoter, there is an evident difference in the style and whole proceedings, from the cases also produced by him, and clearly proved to belong to the vice-chancellor's court, the reader, it is presumed, has had every thing laid before him which can enable him to form a proper estimate of the question.—*Frend.*

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"Thus having dissembled nothing, but plainly laid forth the cause, as it is, we are most humbly to crave your lordship's favourable assistance for the repressing of this, and the like enormities, wherwith we are so greatly incumbred at this present, that of force we should faint, were we not sustained with the only hope of your lordship his good acceptation and countenance of our dutiful travailes in that behalf. Even so praying the Almighty long to preserve your honour, to our great comfort, and the wealth of this state, we humbly take our leaves.

"From Cambridge, the 2d day of March, 1572.

"Your lordship's ever most humble at commandment." [App. to Whitgift's Life, p. 14.]

Subscribed by the vice-chancellor and ten heads.

Browning's Case.

Browning was convened before the vice-chancellor and heads about the same time, for uttering in St. Mary's, certain doctrines, tending to the heresy of Novatus, and prohibited from preaching again, till the question had been thoroughly investigated. In spite however of this admonition, he did preach again, and for his contempt of authority, totally independent of the new statute of Elizabeth, was committed to prison. As besides the heretical opinions advanced, he had touched upon matters of state, the question was thought of higher consequence, than to be settled in the committee, and in February he was bound in a recognizance of two hundred marks to answer for the same, when called upon; and Booth and Shedley, two fellows of the same college, were bound in forty pounds a piece for his appearance. Thus released from the committee he was turned over to the chancellor, to answer for these dangerous words, by whom he was treated with great mildness: and it does not appear, that his ecclesiastical doctrines were afterwards examined by the committee. His conduct however gave great offence, and some years after he was, on the pretext of having disobeyed a college statute, deprived of his fellowship. [Register of the commitment, anno 1572. Jan. 27. Johannes Browning, M. A. et socius collegii S. Trinitatis per D. vicecancellarium de assensu præpositorum, scil. D. D. Pearne, Hawford, Kelke, Mey, Whitgyfte, Chaderton, Harvey, Shepherd, Goad, Aldriche, committitur carceri le Talbothe. Eo quod prohibitus per doctorem Whitgift, deputatum D. vicecancellarii, ne concionaretur, quia accusabatur de suspicione corruptæ doctrinæ per ipsum prolatæ, ea tamen prohibitione non obstante concionatus est. Registr. Academ. Strype's Life of Whitgift, b. i. c. 8.]

Brown's Case.

In the same year 1572, Brown was convened before the vice-chancellor and heads for two sermons, the one delivered on the Sunday before Christmas, the other on the 25th of January following, on which it was objected to him: 1st, That in both the said sermons he uttered doctrine and reasons tending to the infringing of the order and manner of creating or electing ministers, or the regiment now used in the church of England, or tending to the corrupting of Musculus's reasons, whereby the said Musculus would establish the said order or regiment now used. 2d, That he said no priests, made in the Popish time, ought to have any function in the church of England, except they were called again, or words tending to that end.

Upon these articles he was frequently called before the committee, examined by it, treated sometimes with harshness, so far as to be confined to his rooms, but, according to the vice-chancellor's account in his letter to the chancellor, every delay was used, upon the hopes of farther conformation, and that by reasonable means he would be ruled. Brown wrote also in July 1573 to the chancellor, and gave the following account in Latin of his treatment. "Five months ago," says he, "I preached before the university, and, in the opinion of those who felt themselves hurt by my censures, inveighed against certain vices with too great asperity. In consequence I was convened before your vice-chancellor and the heads. Certain articles were objected to me, but there was not an accuser; and, when I persisted in it, that such things never came into my mind, much less that I had proposed them to the people, some men in the university were sent for, who being supposed to have been present at my sermons, were compelled to relate upon oath what they had heard me speak, and to leave their declaration in writing signed with their own hands. By these very declarations, if the heads had acted according to law, I must have been acquitted: for some of these hearers freed me from every suspicion, others heard nothing at all, others hesitated much in giving any opinion. It was however determined, by what mode of argument the heads only know, that I should retract propositions, which I really never taught, though some persons with bad ears dreamed that I had taught them; and this condition was added, that, if I refused, I should not only be expelled my college but banished from the university." After some observations on the recantation and the difficulty of pleasing men, who would prescribe the voice and gesture with which it should be performed, he continues: "Let it suffice that an innocent man has been called very often before the heads, has been examined, has been confined to his rooms. Permit them not to cut me off in the career of my studies, to deprive me of my livelihood, to take away my character, to drive me into banishment, especially since I confine myself within the royal laws, which I have subscribed before the vice-chancellor." [Ap. to Strype's Life of Parker, lxxx.] This application, however

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did not meet with success: he complied with the terms of the meeting, and in the November following made his recantation. [Ibid. iv. 18.]

Brown's Recantation.

Whereas I, preaching in this place the Sunday before Christmas, and also the twenty-fifth of January last past, was noted to have preached offensively, speaking as well against the manner and form of making and ordering of ministers and deacons in the church of England now established and allowed, as also against such priests as were made in king Henry's and queen Mary's time, saying, that they were not to be admitted into the ministry without a new calling, I let you all to understand, that I never meant so. For I do here acknowledge, and openly protest, that the manner and form of ordering of ministers and deacons in the church of England now established is lawful and to be allowed. Item, that the priests made in king Henry's and queen Mary's time, now allowed and having or exercising any function in the church, are lawful ministers of the word and sacraments, without any new ordering otherwise than is prescribed by the laws of this realm."

Milayne's Case.

The troubles to which every man, who dissented in those days from the ruling powers, was exposed, did not deter Milayne, a fellow of Christ-college, from declaring his religious opinions. In October, 1573, he publicly preached at St. Mary's doctrine stigmatised as erroneous, was convened for it before the vice-chancellor and heads, acknowledged the preaching of such doctrine, was often required to confess his errors, but on refusing to comply with the exhortations of the meeting, and calling, on the contrary, upon it to receive his doctrine, was banished from the university. This is the account given by the vice-chancellor by letter, as was usual in those days, to the chancellor; in which he states, "that among other things Milayne entered a discourse of the ordering and making of ministers, of fasting, of saints eves, of keeping their days festival, avouching these conclusions: 1. That the ordering and making of ministers, now used in the church of England, is an horrible confusion, and contrary to the word of God. 2. That ignorant ministers were no ministers. 3. That to command saints eves, as of the apostles, the virgin Mary, &c. to be fasted, is abhominable idolatry. 4. That to command the same saints days to be kept and observed as holy days, is abhominable idolatry." [Strype's Life of Whitgift, i. 8.]

The vice-chancellor besides enclosed a brief extract of Milayne's sermons, and committed a large report to Mr. Howland, the bearer of the letter, and who had also himself endeavoured to refute, in the same pulpit, the grievous errors above mentioned. As it is curious to see on what points the heads were so much offended, and what were the subjects of dispute in those days of pretended reformation, the report is here subjoined.

"The Contents of a Sermon, preached at St. Maries in Cambridge, by one Millayn, Fellow of Christ's-college: against the ministrie of the Church of England.

"First, That ignorant ministers were no ministers, because they were not chosen by God. For they which were chosen by God, them God had always endued with understanding sufficient. But in those were found no such sufficiency. Therefore they were no ministers.

"Secondly, That other ministers, which were both sufficient to answer their charge, and also ready and willing to take upon them the charge of the ministry, were partly rejected from their function by the clergy; partly not called therunto. It is not lawful to admit him to the ministry that cannot preach. And therefore there is invented a new ministry, namely, a reading ministry.

"Thirdly, That the clergy of England do not only not advance and set forward the edifying of the church; but as much as lyeth in them (and this point he did exaggerate mervaillously) they do deface, hinder, and pul down the same, in maintaining both advoultrye and idolatry. First, advoultrye was divers ways boulstred, contrary to God's word, by the pope's law, called the canon law. Considering, that by the canon law, if a man or woman be never so much suspected of advoultry, if the party bring forth twelve to swear, that they think he hath not committed that crime, he is by and by cleared; wherby many advoultries are boulstred.

"A minister, not being rightly called by the congregation, is no minister.

"He that is negligent, and maintaineth officials, is no minister: and so ought of the people to be accounted.

"Again, They maintain idolatry in allowing and defending holydays of saints, and fasting on the evens.

"Fourthly, That the common sort of the clergy, which, although they had learning, were either negligent in teaching, or preaching, or dissolute in their lives, were no preachers, nor ministers before God. And so he persuaded the people to take them; urging also an earnest and effectual reason therefore, viz. That they could show no proof of their preaching: chalenging any of them out, to show what one soul they had won by their preaching; affirming, that twelve diligent men would do more good, in al England, than al the preachers that now be.

"Fifthly, That our calling of the ministers was not lawful, because they were not called to any ordinary function, nor to any certain place of the ministry; but were made (as he said some of them made this excuse) pastors of England, not of any private or certain place: which, he said, was clean prepostrously

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don: and that rather a pastor of England might make a bishop of Lincoln, than the bishop of Lincoln might make a minister of England.

"The prince admitting a bishop, called him to an ordinary function. What, said I, to a function? He stood very much upon that point, to persuade the people, that there was no minister now; and that they ought to look to the matter, it being so weighty, and their souls lying upon it." [Ap. to Whitgift's Life page 16.]

Smith's Case.

When no one is permitted to discuss an important subject, the peace of the university is said to be well preserved; and this kind of peace seems to have been maintained till the year 1585, when the act of parliament for the better observance of the Lord's day occasioned some disputes on the nature of the sabbath, and the propriety of keeping sunday, from evening to evening, according to the law established for the Jewish sabbath by Moses. For certain opinions maintained in a latin sermon on this subject on Ash-wednesday, John Smith a master of arts was convened before the committee; and in its presence on February 21 subscribed a confession, that he had declared among other things in his sermon, "That the plays at Saturday and Sunday at night were breaches of the Christian sabbath. On Sunday, for that they were at it before the sun was set: on Saturday, for disabling their bodies for the sabbath duties."

On the 26th he appeared again before the committee assembled in the great chamber* of the vice-chancellor in Queen's-college, when certain questions arising from his sermon were proposed; in some of which Smith agreed with, in others differed from, the committee. The questions proposed were:

1. "Whether the Christian sabbath is to be kept *jure divino* from even to even? Smith and the rest answered negatively.

2. "Whether the time of the Lord's day is to be continued *jure divino* by the space of twenty-four hours?" Smith answered in the affirmative; all the rest negatively.

3. "Whether the Christian sabbath is broken, when some thing is done, which is not necessary or religious?" Smith answered affirmatively; so that 'necessary,' be not too strictly taken. All the rest negatively; so that those actions do not hinder religion or are not an offence to the brethren.

4. "Whether Christians are bound so strictly to the observation of the Lord's day in respect of works, as the Jews to the observation of the sabbath?" Smith and the rest answered negatively.

Upon the whole, Smith promised to explain his opinions more fully in another latin sermon, to be first shown to and approved of by the vice-chancellor; and as no farther notice is taken of him, it is to be presumed, that his discourse gave general satisfaction. The mode of conduct pursued in this case evidently proves, that, so far from not specifying errors, the great business of the committee was to find out the errors, to point them out to an ignorant or tenacious preacher, and to be satisfied with the easiest and least ignominious mode of recantation. [Strype's Annals, iii. vol. 1. b. c. 27. A. 1585.]

Chadwick's Case.

About two years after, offence seems to have been justly taken at a sermon preached at St. Mary's, by Charles Chadwick, M. A. Fellow of Emanuel college, in which much abusive language was used on occasion of the non-residence of some members of the university, particularly the governors of colleges, whom the preacher called murderers of many thousands. For this sermon he appeared on November 2, 1587, before the vice-chancellor and five doctors, who are styled *justiciarii dominæ reginæ*, and entered into a recognizance of fifty pounds to appear in person or by his attorney, before the vice-chancellor, whensoever legally summoned, to answer for it, and to any other persons, who were injured by and intended to prosecute for words then and there uttered. In this case there were prosecutors: and the cause was of a different nature from those* that were brought by the statute, under the inspection of the committee and treated therefore differently: it was a cause of libel and criminal accusation, and a recantation would not have satisfied the persons injured; but, from an imperfection in the register, the punishment assigned for this offence cannot be ascertained. [Strype's Annals, iii. vol. 2, b, c. 13. A. 1587.]

Bambridge and Johnson,

In the next year the university was in considerable degree of ferment, occasioned by the sermons of Cuthbert Bambridge, and Francis Johnson, fellows of Christ college, against the episcopal government of the church of England. For these sermons they appeared before the vice-chancellor and heads on January 23, 1588, and being required to answer upon oath the questions proposed to them, and refusing to comply with this requi-

* The words of the registry, are in Magnâ Camerâ; and there is not the least appearance of a court of law in the transaction. The whole was clearly done, as in all other cases of this sort, by conference.—*Frend.*

* The doctors before whom he appeared are *justiciarii dominæ reginæ*.—There were prosecutors. He was bound in recognizance to appear before the vice-chancellor—he was liable to prosecution in the court from a variety of persons—he might appear by himself or attorney, as in a criminal case, which could not be done where opinions only were to be discussed, and a recantation to be proposed.—*Frend.*

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sition, were committed into safe custody. Against this conduct they protested, declaring at the same time their readiness to appear before the chancellor, to clear themselves of any crimes laid to their charge, or to receive any punishment which he should assign. Both parties wrote to the chancellor upon this occasion, who, in reply to the letter of the heads, intimated, that there had been too great severity in their proceedings; and recommended, that the two delinquents "should not be dealt rigorously withal." The heads answered, "that they dealt with them in civil and courteous wise, with offer of conference, as of intent to persuade, and not to force them;" but the preachers, taking advantage of the chancellor's expressions, insisted upon it, that, as there was no mention of answering upon oath, he was clearly of their opinion. This occasioned another letter from the heads, to learn the chancellor's mind concerning the oath; and he, in return, told them plainly, that they had taken a very hard course indeed with the preachers by detaining them so long in prison. In their next letter, the vice-chancellor and heads endeavoured to vindicate themselves, acknowledging "it so to have been, if they had not first essayed by all good and gentle means to prevail with them (the preachers);" but as the law allowed it, and "it was to be justified by the word of God, they thought they were bound, as in convenience and equity so in discretion and duty, thus to proceed." Some reflections were thrown out against the disciplinarian party; and they urged, that "they found by experience of this one dealing, that the same had done no little good in the university; for that since that time, some stirring tongues had been very quiet, who before spared neither state nor persons of the greatest honour and merit, living nor dead." This letter was subscribed by the vice-chancellor and four heads; but two protested openly, and one privately, against their proceedings.

The cause being now before the chancellor, the opinion of the civilians was taken, for his information, who determined, that "the parties here were bound by law to answer upon their oath;" and it appears that the preachers did in consequence give an account of their sermons upon oath, and answers to the passages declared exceptionable in them. It would be tedious to transcribe the whole of this controversy, as happily in the present days it is considered of little importance: but the fifth article against Bambridge, which probably gave the greatest offence to his judges, deserves, for the sake of showing the spirit of the times, to be here inserted. It runs thus: 5. "If you mind indeed to awake.—As though he had irreverently reflected upon the sleepiness of the doctors at sermons." In reply to which he says, "To the fifth I answer I said thus, directing my speech to the doctors: If you desire indeed, I speak it with reverence, that they should awake from their sleep, meaning the townsmen, if you would have them forsake the works of darkness, and that Christ Jesus may be heard, provide that Christ Jesus may speak more often unto them." Whether the answers were satisfactory or not, from the distance of time it is not easy to determine: there is no account of any recantation being proposed or refused.

Bambridge was fellow of the college in 1590; but Johnson, who seems to have been more violent, and who held archbishops and bishops to be anti-christian, was in 1593 a prisoner in the Clink. [Strype's Annals, an. 1588, iii, b. 2, c. xx, and Ap. lxx, lxxi.]

Baret's Case.

The proceedings of this petty inquisition seem to have put a stop for some years to theological controversy in Cambridge; but in the year 1595 a dispute arose, which occasioned no small degree of animosity between the heads and the archbishop, the very man who had been the chief instrument in procuring them the means of tyrannising so much in matters of religion. William Baret, fellow of Caius college, in the term after Easter, vented in a Latin sermon at St. Mary's several anti-calvinistical doctrines, and treated Calvin and the other heads of the pretended reform much in the same manner as they in general treated their adversaries. It would be to little purpose to enter into the merits of this question at a time, when, after many changes of opinion on the meaning of the articles of the church of England, it seems to be doubted, whether they were intended to have any meaning at all. [See Paley's account of subscription to the Articles, in his Moral Philosophy.] The nature of the proceedings of the vice-chancellor and heads acting under a particular statute is the chief point under consideration, and much light is thrown upon the subject by their conduct in this transaction. [Strype's Life of Whitgift, iv. 14.]

The vice-chancellor first conferred with the offending preacher, to bring him to see his errors. Not being convinced by the arguments of the vice chancellor, he was called before a meeting of the heads in the consistory, in which were present, at three several long meetings, the vice-chancellor's deputy, and eight of the heads. At these conferences, as they are termed, "he was laboured with to be won from his errors, and to make a quiet end by voluntary public satisfaction." He persisted however in maintaining his opinions, and was consequently ordered to revoke his errors, in the manner prescribed to him by the vice-chancellor and the major part of the heads. To this there was some demur from the preacher, who requested, that his recantation might be made in the regent house, and not at St. Mary's. This request was not granted, and he read at St. Mary's the recantation delivered to him in writing by the vice-chancellor; but in such a

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manner as to give great offence, and to provoke many members of the university to testify in writing their indignation at his conduct.

The form of recantation delivered to him proves, that though there was little liberty of conscience in the reign of Elizabeth, yet no one could be called upon, even in those intolerant days, to recant, without the specification of a single error. The recantation was drawn up in Latin, to the following effect:

"In a sermon delivered by me not long ago, most accomplished men, in the church of the university, many things fell from me both falsely and rashly asserted, by which I understand that the minds of many persons have been exasperated. For the satisfaction therefore of the university and of truth, which I have publicly injured, by this public confession I review and revoke my errors.

"1st. I said, that no one in this weak world was endued with so much confidence or certainty of faith, unless, as I afterwards explained myself, by revelation, that he could be sure of his own safety. Now however I profess before God, and acknowledge conscientiously, that the justified by faith have peace towards God, that is, reconciliation with God, and by faith stand with grace in him. They ought therefore to be sure of and secure in their safety with the certainty of faith itself.

"2dly. I asserted, that the faith of Peter could not, but the faith of others might fail; because, as I then said, the Lord did not pray for the faith of every one. Now, however, being taught by a better mind and sounder judgment, by the words of Christ himself, John xvii, 20. I do not pray only for these, that is, the apostles; but for those who, by their preaching, shall believe on me; I acknowledge, that Christ prayed for the faith of every one; and that, by the efficacy of this prayer of Christ, each true believer is so supported, that his faith can never fail.

"3rdly. In that I said, that final perseverance was a proud security concerning a future event, a thing in its nature contingent, of which kind is the perseverance of every man, yet I did not call it only proud, but most impious: I now ingenuously confess, that the true and justifying faith, by which the faithful are most closely united with Christ, is so fixed and so secure from futurity, that it can never be rooted out of the minds of the faithful by any temptations of the flesh, the world, or the devil himself. So that he, who has it once, will always have it; for by the benefit of this justifying faith Christ dwells in us, and we in Christ. Therefore it cannot do otherwise than increase, since Christ increases daily in us; and it must persevere to the end, since God bestows constancy.

"4thly. I affirmed, that in faith there was no distinction except in believers. In this I confess my error; for I freely acknowledge, that temporary faith, which by the testimony of Bernard is feigned, because it is temporary, is distinguished, not by measure and degrees, but by the thing itself, and differs from that saving faith by which sinners laying hold of Christ are justified before God to all eternity. Besides, I add, that James makes mention of dead faith; and Paul speaks of the love of him who worketh.

"5thly. I subjoined, that the forgiveness of sins is an article of faith, but not special, not of this man or that man; that is, as I explained, that a truly faithful man neither can nor ought to believe that his own sins are forgiven. But now I think otherwise, and ingenuously confess, that every truly faithful person by this article of faith, *I believe in the forgiveness of sins*, is bound to believe certainly, that his own sins are graciously forgiven. Yet it does not follow from hence, that this petition in the Lord's prayer, *Forgive us our sins*, is superfluous; for in that petition we pray both for the gift and the increase of faith.

"6thly. These words fell from me in my sermon: As to those who are not saved, I most firmly believe, and in contradiction to Calvin, Peter Martyr, and others, ingenuously profess, that I do thus believe, that sin is the true, proper, and primary cause of reprobation. But now being better taught I say, that the reprobation of the impious is from eternity, and that the opinion of Austin is the true one, namely, If sin were the cause of reprobation, then no one would be chosen, since God foreknows that all are contaminated: and, to speak ingenuously, I do not think and believe otherwise of the doctrine of election and reprobation, than the English church believes, and teaches in its articles of faith, in the article of predestination to this purpose, "Predestination to life is that eternal purpose of God, by which, before the foundations of the world were laid, he decreed assuredly in his own counsel, hidden indeed to us, to free from sin and perdition those whom he chose in Christ out of the human race, and to bring them as vessels made for honour through Christ to eternal safety. Whence they who are endowed with so excellent a gift of God, by his spirit working in due time, are called according to his purpose, obey the call through grace, are justified, are graciously adopted as sons of God, are formed into the image of his only begotten Jesus Christ; being conformable in good works, walk holily; and, lastly, by the mercy of God, attain to eternal safety, &c."

"Lastly. Against John Calvin, a man of the greatest merit in the church of Christ, I rashly uttered these words: That he dared to exalt himself above the truly highest and Almighty Son of the Highest and Almighty God. By which words I confess that I have greatly injured this very learned and truly pious man; and I beseech you, in the most humble manner, to forgive so rash an expression.—Besides, I inveighed very bitterly in

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some things against Peter Martyr, Theodore Beza, Jeremy Zanchy, Francis Junius, and others of the same religion, luminaries and ornaments of our church, calling them by the odious name of Calvinists, and blackening their characters with other ignominious words. Now, as our church deservedly holds these men in reverence, it was not right in me to hurt their fame, lessen in any manner their reputation, or to discourage our own people from reading their very learned compositions.

"I repent therefore and am sorry for the very heinous offence which I have publicly given to this most celebrated university, the temple of true religion, the tabernacle of piety; and I promise, that by the assistance of God I will never offend in like manner for the future. I most earnestly beseech you also, most accomplished men, and all others whom by the preceding articles, or by any other part of my sermon, I have offended, that this proof of repentance ye will kindly forgive me." [Strype's Life of Whitgift, App. p. 185.]

So strong a dose was not relished by the penitent; and as there were many things in it, either capable of dispute, or clearly not within the letter and meaning of the statute, he had good grounds for complaining to the archbishop on the conduct of the heads and some members of St. John's college, who at that time had been extremely active in circulating a libellous account of his sermon. This libel he sent to the archbishop, with his own remarks on each article: it ran in the following words:

A Copy of Mr. Barret's Propositions, which he held at S. Maries in Cambridge. As given out and dispersed by some of S. John's College.

I. A man may fal out of the favour of God, and in again; yea, quite out of the state of grace, being in.

I have not once named 'justifying faith' in al my sermon.

II. A man may utterly and finally lose justifying faith.

I spake of the ordinary certainty, whereby a man ought not to be secure; and of none other, as it appears in my sermon.

III. A man cannot be sure of his salvation in this world; yea, it is high presumption to think he may be.

IV. Remission of sin in the creed is general, not particular.

I said not so; but only, that S. Paul had a revelation.

V. If S. Paul was sure of his salvation, it was by revelation.

I did not say it was the 'highest,' but only the first moving cause.

VI. Sin was the true, proper, and highest cause of reprobation.

I said not so, but that it was 'inconsiderate dictum.'

VII. Beza blasphemed, who said, 'Donum fidei a dono perseverantiæ separari non potest.'

I said he blasphemed in saying, Our Saviour almost despaired; and yet we ought not once to fear.

VIII. Calvin blasphemed most horribly, who said, Christ in his agony almost despaired of his salvation; and yet a man should not.

If I said any such thing, I submit myself willingly to any punishment that your grace shal think meet to inflict upon me; but, in truth, I said not one word to that purpose.

IX. Calvin, Beza, Luther, P. Martyr, and Junius, were false guides; and he mervailed that we taught not so, and bewailed the iniquity of our time, that we should be so misled by such young teachers.*

The archbishop now took up the cause, and, expressing his anger at the precipitate conduct of the heads, put a stop for a time to farther proceedings; for it was their intention, that the delinquent should make another recantation, and perform it in a more decent and humble manner. The archbishop tells them in his letter, that his reasons for disliking their manner of proceeding against Baret were these:

1. "The hasty and rash proceeding against him; not giving unto him liberty to confer with others, nor time to consider of those points wherewith he was charged; a peremptoriness not used by the Papists, nor in any well-governed church of Protestants; and, indeed, a rash and untolerable consistorian-like kind of proceeding.

2. "In that they knowing his care to have these new occasions of contention appeased, and to that end writing his advice therein to the vice-chancellor, to be imparted to the rest of the heads; knowing also, or at least ought to know, that, in matters of religion, it had pleased her majesty to commit the special care to him (that university also being within his peculiar charge, in respect to the vacancy of the bishopric of Ely); yet they would not vouchsafe to make him acquainted therewith, as in duty they ought to have don; which, therefore, the archbishop added, he could not take in good part, neither yet suffer.

3. "For that they had proceeded in matters wherin they had no authority; no, not by the statute by them alleged; these points being not within the letter or meaning thereof, although they had suffered, and daily did suffer, both in their colleges, and in other places in town, men to offend against the very letter of that statute, without reproof.

4. "For that, in some points of his retractation, they had made him to affirm that which was contrary to the doctrin holden and expressed by many sound and learned divines in the church of England, and in other churches likewise, men of best account, and that which, for his own part, he thought to be false, and contrary to the scriptures; for the scriptures were plain, that God, by his absolute will, did not hate and reject any man, without an eye to his sin. There might be impiety in believing the one, there could be none in believing the other; neither was it contrary to any article of religion established by authority in this church of England, but rather agreeable thereunto.

"Likewise to affirm, *neminem debere esse securum de salute*, to what article of religion established in this church it was contrary, he

* Appendix to Strype's Life of Whitgift, p. 188.

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saw not, seeing security was never taken in good part; neither did the scripture so use it: and what impiety was it to affirm, that a man ought be *certus de salute*, but not *securus*?

"To say also, that *credentium fides*, or *electorum fides, potest deficere totaliter sed non finaliter* he asked again, against what article of religion established in this church was it? That it was a matter disputable, and wherein learned men did, and might dissent, without impiety.

"*In fide nullam esse distinctionem, sed in credentibus*, he took to be an error; but yet without the compass of their authority, having no article directly against it; and an error of that nature, that might be solved by distinction, worthy of reprehension, not of recantation, for any thing he [the archbishop] could yet understand.

"*Remissionem peccatorum esse articulum fidei, sed non specialem, nec hujus, nec ullius,*" was likewise untrue; and that if he had in that maner and sort affirmed it, he showed therein his ignorance; wherein he should have been better instructed, and in more christian maner.

"To traduce Calvin, and other learned men, in pulpits, he could by no means like: neither did he allow the same towards Augustin, Jerome, and other learned fathers, which nevertheless, had often and many times been abused in the university without controwle; and yet if a man would have an occasion to controwle Calvin for his bad and unchristian censure of K. Henry 8th or him and others, in that peremptory and false reproof of this church of England, in divers points, and likewise in some other singularities, he knew no article of religion against it; much less did he know any cause why men should be so violently dealt withal for it, or termed ungodly, popish, impudent; for the doctrin of the church of England did in no respect depend upon them.

"The premisses considered, he thought they had dealt in matters not pertaining to that jurisdiction; and, if it remained doubtful which of these points were contrary to the doctrin professed in the church of England, and which not, he hoped they would not take upon them to determine thereof."

In the end, thus the archbishop concluded: "That if they meant not to use him in these cases as a friend, he must use them according to his place, and acording to the authority which God and her majesty had committed unto him; and that if they had used these matters according to his directions, and as in good discretion they ought to have done, Cambridge had been as free from these controversies as other places were; whereas now they were offensive to their friends, and a rejoicing both to the common enemy, the papists, and to their private ill-willers."*

The heads, however, having onee committed themselves, found it no easy matter to draw back; and letters and messages passed and repassed between these theologues and their chief. By way of screening themselves from the power of Lambeth, they apply to their chancellor, lord Burleigh, and pretend that they had done nothing which their statutes did not allow. Upon this point the archbishop observes in one of his letters, "that for his part he never thought to infringe any privilege of the university, but had studied more in defence thereof than any there remaining; that the statute, which they then alleged, had been procured by his means to his lordship, and therefore he had good cause to know the meaning thereof: that in this cause he had only dealt with them by persuasion and advice, in respect of the peace of the church, and for the avoiding of new controversies, but that they had not regarded him therein."

This language brought the heads to some humility; and, in compliance with their chancellor's order, they submissively petitioned the archbishop, that some mode might be devised to prevent such men as Baret from spreading their dreadful errors. Thus the cause fell into the archbishop's hands: Baret was twice examined by him; the sentiments of the most learned men of the times were taken, another recantation was drawn, to which, with some difficulty, his assent was obtained, and this mighty dispute was hushed up in as easy a manner as was consistent with the dignity of the contending parties. The new recantation was in latin, and to the following effect:

"Reverend fathers, and dear brethren, in my sermon *ad Clerum*, preached some time since before you, I asserted some things, which gave much offence to the ears and minds of many, and that deservedly; for I said confidently, and stifly maintained, First, That a temporary and unfruitful faith is al one with a true and saving faith; and that there is no difference or distinction in faith. Secondly, That it is given to none certainly to know by a certainty of faith that he is elected. Thirdly, That none can in this frail world be certain of his salvation by a certainty of faith. Fourthly, That remission of sins is an article of faith, but not special of this or that person. Fifthly, That Peter's faith onely could not fail. Sixthly, That Christ prayed for Peter's faith onely, that it should not fail. Seventhly, That David knew not that he could not fal away. Eighthly, That the gift of perseverance is a future contingent. Being now overcome by truth, and, according to the appointment and command of my superiors, I do freely, openly, and ingenuously, and from my heart, revoke, condemn, and detest these assertions, as being contrary to the sacred scriptures, and the orthodox faith, lawfully approved in the church of England. And I do solemnly promise, that hereafter I will never profess them, or de-

* Strype's Life of Whitgift, p. 440.

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fend them, nor think otherwise of religion than now the church of England thinketh, which I do believe to be the true church of Christ; and I am sory I spake so reproachfully of those chief men Martyr, Calvin, Beza, Zanchy, whom, I confess, have deserved excellently wel of the church of Christ."*

This business seems to have been brought to an end, after much conference and persuasion with Baret, according to the wishes of the archbishop, about the middle of January; and a recapitulation of the whole was drawn up by the prelate, in these words:

I. "Baret preached a sermon at Cambridge *ad clerum;* wherein divers unsound points of divinity were uttered, to the offence of many.

II. "Baret therefore was convented before the vice chancellor and heads, and enjoyned to recant.

III. "Baret did read a recantation prescribed unto him, but not in such a sort as satisfied most of the hearers.

IV. "Baret thereupon was convented again, and threatned to be expelled the university.

V. "Baret hereupon complaineth to me; and I writ down to the vice-chancellor, &c. to desire them to stay further proceedings against him, until such time as I might understand the causes of their proceeding, being matters of divinity: and the rather, because I found some errors in that recantation, which they had caused him to pronounce; which errors also were afterward confessed by some of them, and were manifest.

VI. "Hereupon they writ to my lord treasurer, their chancellor, and complained grievously of Baret; and desired, that, by his authority, they might procede to the punishing of him.

VII. "My lord answered, that he would confer with me, and refer the matter to my hearing.

VIII. "But that being misliked by the party that was sent about the business, as being supposed to be repugnant to their privileges, it pleased his lordship to write his letter to the vice-chancellor and others, to procede against Baret.

IX. "Which when I understood, I writ to his lordship, and desired him to cause stay to be made from further proceding in this cause, until better consideration were had thereof; some of the things called in question being deep points of divinity, and wherein great learned men did vary in opinion.

X. "His lordship accordingly did cause stay to be made.

XI. "Then I desired of the vice-chancellor, that some might be sent unto me, instructed in these causes; and that Baret might come up likewise; to the end I might the better end the controversies. Al which was performed.

XII. "The dean of Ely, and Mr. Dr. Whitaker came unto me, and so did Baret. I found that Baret had erred in divers points. I delivered mine opinion of the propositions brought unto me by Dr. Whitaker; wherein some few being added, I agreed fully with them, and they with me

"And I know them to be sound doctrines, and uniformely professed in this church of England, and agreeable to the articles of religion established by authority. And therefore I thought it meet that Baret should in more humble sort confess his ignorance and error: —and that none should be suffered to teach any contrary doctrin to the foresaid propositions agreed upon.

"And this is the sum of al this action. And if this agreement be not maintained, further contentions will grow, to the animating the common adversaries, the *papists:* by whose practice Baret and others are set on; some of his opinions being indeed popish."

Baro's Case.

The points which Baret had discussed in his sermon, are of too intricate a nature to be easily settled, even by laborious students; and the archbishop, aware, perhaps, of the difficulties attending the controversy, and willing to retain his own authority, and preserve what is called the peace of the church, drew up nine articles, which, being sanctioned farther by the authority of the archbishop of York, on the 20th of November, 1595, were sent to the heads, with strict injunctions, that for the sake of peace and quietness, no scholar should depart from them in his public exercises. With whatever good intentions these articles were framed, a considerable body in the university was displeased with them, as was the queen herself, with the exercise of an act of power, infringing upon the rights of the head of the church. In despite of these injunctions, Baro, the Margaret professor, preached on the 12th of January following, on the disputed topics, and, in consequence of the opinions maintained in his sermon, was, on the 17th of the same month, convened before the vice-chancellor and heads. At this meeting the vice-chancellor declared, that several bachelors in divinity had complained of the sermon, and of the preacher's disobedience to the mandate lately sent round to every college, to put a stop to farther disputation. A long conversation then took place between the professor and the heads, on the subject of the complaint; and, in the conclusion, the vice-chancellor tells him: "It is true, I perceive, that, in your sermon, you abstained very cautiously from the words and phrases expressed in the articles; but whether you delivered any doctrine contrary to these articles, must be a matter of farther discussion. And so the meeting broke up."

There were two other meetings on this sub-

* Life of Whitgift, p. 458.

* Life of Whitgift, 458.

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ject, on the 21st and 29th. On the latter day, the preacher, who had been advised by his lawyers not to give up a copy of his sermon, was peremptorily ordered to do it. With this order he complied on the next day, when the vice-chancellor, by virtue of his authority, ordered him to "abstain from these controversies, propositions, and articles, as well in his lectures, sermons, and determinations, as in his disputations, and other his exercises." The heads now found it difficult how to proceed; they might commit themselves again, as they had done in Baret's case; and they were unwilling to go to extremities, until they had heard the opinion of the higher powers. In the mean time Baro was not idle, but wrote to the archbishop and the chancellor; and the latter, in very strong language, expressed his disapprobation of the proceedings of the committee. Such a check had its natural effect with the heads: they went on no farther with the professor in the common way, but by throwing out insinuations against him, that he was a foreigner, and busy in other persons' matters, they contrived to make the place so disagreeable to him, that in the next year he resigned his professorship, and, by retiring to London, got rid of the childish attacks of the heads of colleges.*

Covel's Case.

The instance of one Covel might have been brought in here, not so much to prove the exact mode adopted in cases of this sort (for the matter seems to have been hushed up) as to show, that they had no idea, in those days, of calling a man under the statute on sermons, into the vice-chancellor's court. The vice-chancellor informs the chancellor, that this Covel, fellow of Christ college, had inveighed, in a sermon, preached some time in December 1595, against the nobility, and in some sort also the bishops; that he sent for him to answer to these points, and that he now wrote to his lordship both for want of sufficient assistance of heads of colleges, and because "he could not as yet, by way of counsel and persuasion, induce the said party to make voluntary, convenient, and public satisfaction." He gave the same information also to the archbishop, who would have sent for Covel to Lambeth: but the vice-chancellor dissuaded him from this point, by suggesting that so severe a measure might occasion discontent, as being a breach of the university privileges; and that he would rather try, by himself, and the heads in the place, to bring the offendant to a voluntary satisfaction.†

From the above related cases, it was presumed, that the proper mode of acting under a very plain statute could not be doubted. They followed within a few years after the granting of the statute, and there appears in them nothing like the process of a vice-chancellor's court. There is not an accuser, nor an open examination of witnesses: they want the formality of accusation, defence, proctors, public summing up, and sentence of the judge. No appeal was thought of, except in the first case, and then properly denied, because there is no authority in the statutes for an appeal from a meeting of vice-chancellor and heads to the senate of the university. If there had, indeed, been any ground for this appeal, must it not, in those times of ferment, when the senate was little inclined to assent to the authority of the heads, have been frequently claimed? but the persons likely to fall under the penalty of the statute, considered themselves as in a situation to gain relief from their chancellor or the archbishop. The forms of recantation also express specific opinions, and these opinions were all advanced in sermons. But to make the matter still clearer, a more recent case was brought forward; and, as in this century the same mode of proceeding was adopted as prevailed in the reign of Elizabeth, there is every reason to believe, both from the words of the statute, and the authority of precedents, on which modern lawyers dwell so much, even when they contradict the law, that a supposed offence against the statute on sermons was never, till the late instance, thought to be cognizable in a vice-chancellor's court.

Whiston's Case.

[This Case will be found in the XVth Volume of this Collection, p. 703. Mr. Frend's account of the case is inserted in p. 707 of that Volume.]

Ducket's Case.

Ducket's case was brought forward, to show the difference of proceeding in general cases against religion, and the particular one under the statute so often mentioned. Ducket had declared himself an atheist. For this crime he was summoned on the 17th Feb. 1788, to appear in the vice-chancellor's court, and on his appearance on the next court day, on the 23rd of March, with the accuser, or, as he is called, the promoter, Mr. Eglington, the Court adjourned, on account of Bentley's indisposition, from the Consistory to Trinity college.—There the accusation was formally laid; evidence was brought; and the vice-chancellor, on summing up the whole, declared Ducket guilty, convicted of the crime of atheism, and, with the consent of the heads, expelled him the university. Here every thing was transacted in legal form; no recantation was proposed or thought of.

For a prophane and blasphemous libel, intituled, "David's Prophecy," Waller, bachelor of arts of Trinity college, was summoned to appear in the vice-chancellor's court on the 25th of June 1752, on the accusation of Zachary Brooke, a fellow

* Life of Whitgift, iv. 17, 18.
† Life of Whitgift, p. 481.

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of St. John's college, and treated in the same manner.*

After noticing the affidavits on the part of the university, Mr. Frend proceeds to state and observe upon the cases produced in opposition to him. The following is his account of them:

The promoter made affidavit, that he had examined the statutes and other papers of the university, from which he had extracted the statutes granted in the first and twelfth years of Elizabeth on the office of vice-chancellor;

* Acts of Courts, 1752.

At a Court holden in the Consistory of the University of Cambridge, between the hours of ten and eleven on the 25th day of June 1752, before the right worshipful John Wilcox, D. D. Vice-chancellor, the right reverend Edmund Lord Bishop of Chester, the worshipful John Newcome, Roger Long, Wm. Richardson, Robert Smith, Fra. Sawyer Parris, John Green, Kenrick Prescot, and Philip Yonge, respectively, D. D. being his Assessors.

Me present. T. Bennett, Notary Publick.

The office of the Judge promoted by Zachary Brooke, B. D. against William Waller, B. A.

Summons went forth, which being returned, and proclamation made, said Waller appeared, and was charged by Mr. Brooke with being the author of a prophane blasphemous libel, intituled, "David's Prophecy," &c. which libel was then delivered into court. Said Waller confessed that he was the author of the said book which was then shown to him, and that he delivered it to be printed and published; that he was sorry for it, and declared that he was not now in the same sentiments as when he wrote it.

The judge deliberated, and adjourned the Court to four o'clock in the afternoon in the Consistory, when and where said Waller was admonished to attend.

At a Court holden between the hours of four and five in the afternoon, on the 25th day of June 1752, in the Consistory of the University of Cambridge, before the right worshipful John Wilcox, D. D. Vice-chancellor, the right reverend Edmund Lord Bishop of Chester, the worshipful John Newcombe, Roger Long, William Richardson, Robert Smith, Fra. Sawyer Parris, John Green, Kenrick Prescot, and Philip Yonge, respectively, D. D. being his Assessors.

Me present. T. Bennett, Notary Publick.

Proclamation being made, Mr. Brooke and S. Waller both appeared. The vice-chancellor having deliberated with the said nine assessors, did by and with the assent, and consent of them all, pronounce and declare the said William Waller expelled this university.

Adjourned to Wednesday, 1st of July next, at three o'clock in the afternoon. *Frend.*

also the statute De Concionibus, and the cases of Rush, Adams, Whiston, Waller, Ducket, Latham, and two other scholars.

Rush's Case.

Some time in September 1609, probably the 10th,* Rush offended by a sermon preached at St. Mary's, and after a summons he appeared on the 15th of the same instant, before a meeting of the vice-chancellor and heads, in the chamber of Dr. Jegon the vice-chancellor. In this case there was no accuser: the vice-chancellor asked Rush, whether he had his late sermon written or not, and on answering that he had it not, and afterwards confessing that he had the most part of it, and in a jesting manner saying, that he wished it were worth their worships' sight, he was admonished by the vice-chancellor to bring "his last sermon preached in St. Marie's, penned so near as possible he could in the very words he Mr. Rush then and there uttered it, and so as he may take his corporal oath, that it is the same he then preached, soe neare as he shall know or believe, upon the second Friday in the term in the consistory," there to expect the further progress of this enquiry. On the 17th he appeared again in the same lodge, and was "charged by Mr. Vice-chancellor and his assistants with many uncharitable speeches, uttered in his funeral oration in Christ's colledge, tending to the disgrace and discredit of Mr. Dr. Barwell deceased, and also with other matters then by him uttered." To this Rush said, "That he did believe, if any conscionable man had heard him, he would thinke the better of him for it, and not the worse." The vice-chancellor then admonished him three times to deliver up the sermon in writing, which he expressly refused to do, and for contumacy was ordered into confinement till he should produce his sermon.† On the Friday above-mentioned, he appeared in the custody of one of the esquire bedels, and then delivered a paper, which he declared upon his oath to be "the trewe copie of his oracion uttered at Mr. Doctor Barwell his funerall, so farr as he doth know or believe;" and being now asked for his sermon preached at St. Mary's, he delivered a book, of which, be-

* It is said the 10th, as the MS. is not very clear in this place. This and the following cases are taken from the copies of Kipling's affidavit delivered by the university attorney, to the attorney on the other side.—*Frend.*

† In the margin of the paper sworn to by Kipling, it is observed, that on the 14th Rush had been admonished in the vice-chancellor's chamber, to deliver a copy of his sermon; and from the confused manner in which the whole case is related, it is evident that the business could not have been transacted in a court of law, where there would have been a regular accusation, and each day's process would have been defined.—*Frend.*

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cause he said "that Mr. Vice-chancellor and his assistants could not well read it without directions, and for that himselfe made some doubt, that it was not there written in all points as he uttered it in St. Marie's," he was treated as contumacious, admonished to bring this sermon ready written on Monday next, and in the mean time remanded into custody. On that day he appeared in the consistory, gave his consent to the time, place and judges, and renounced all advantage to be derived from the want of a sufficient number of heads, and having delivered a faithful copy of his sermon was discharged out of custody; but, as it appeared to the meeting, "that he had wronged manye by his sermon preached, and by his oracion uttered at the sayd funerall, and for that it was to be feared, now he had his libertye, he would or might again offend by publickly preaching, or in open assembly," and for other causes, he was suspended by the vice-chancellor in the name of the Father, etc. from all his degrees, and prohibited from praying or preaching within the university, till the suspension was taken off, and the farther consideration of the sermon was defer'd to the 27th of October. On that day the heads met again, and Rush was interrogated on various points in his sermon, and after much conversation he promised to stand by their decree; "so they urged him not against his conscience, to saye blacke was whyte or whyte blacke:" upon which he was admonished to bring on the next day in writing a speech to be publicly delivered by him in satisfaction of the several points with which he had been charged. In the morning he appeared before the meeting, but did not satisfy it, and on his appearance in the afternoon it was decreed, on a similar submission as he had made before, "that he should on the morrowe immediately after the afternoon sermon, in St. Mary's church, in the minister's pew or seat, there publiquely and openly reade with an audible and loude voice, the whole contents, which shall be the schedule" delivered to him by the vice-chancellor before eight in the morning.

At eight o'clock on the next morning the paper drawn up by the meeting was delivered by the vice-chancellor into Rush's hands, in the presence of the notary public, which Rush refused to read, "saying, he had Mr. Perkins and Franciscus Junius of his side, and therefore he would never ly against his owne conscience."

In consequence of this refusal he was bound with his sureties, John Atkinson and Thomas Perkins, in a recognisance to appear within four days after a summons left for him at his college; and on the third of January following, he appeared again at a meeting of the heads, when he was admonished thrice by the vice-chancellor to read the contents of a paper, then put into his hands, in the forenoon of the next Sunday, "if there was no sermon in the afternoon; or if there was a sermon in the afternoon, on the Sunday following, immediately after the sermon, before the psalme be songe, in the minister's pewe, in the bodye of the church of great St. Marie's." This recantation, drawn up in the following words, he refused to perform.

"Whereas many christian auditors, wyse, godly, and religious, have beine offended with many things which I have not longe since uttered in a sermon in this place, justley reprehending not only my greate indiscreation, presumption, uncharitablenesse, rash and boulde censuring, but also some strange and erroneous opinions I then was taken to deliver: I am now come in the same publique place (after sundrey conferences had with divers grave and learned divines of this universitye) to acknowledge my fault and to make satisfaction.

"And first, where in my prayer I used every unreverent and reproachfull speech agaynst the cleargy or some of them, terminge them the 'gorbellyed clergye,' and also some offensive speeches which might be taken to touch authoritye or some attendinge in court, callinge them 'develish parasyts' in flatteringe and attributynge over much to some in higher place: upon better advisement, I now acknowledge my presumpteous bouldnesse therein.

"Further, in that I did then deliver these opinions in this manner and words, viz. That St. Paule and Moyses did fault and err in their desires, it cominge from the surge and source of a passion too earnest and hott, and not sufficiently bounded with the trew limits of pure charity, and also even our saviour Christ's prayer (Father, if thou wilt this cup passe from me, but not my will but thy will be done) came from nature, and without reason attendinge his understandinge all the whyle otherwise buysied, and his resonable deliberacion not concurrynge therewith (for it is not necessarye that the resonable mynde should concurre with the tonge always, men speaking some tymes in their sleepe, and parats also learninge that facultye), and that his mouth with all the instruments of speech were wryed as it werre, and wrested to utter the summe and substance of his naturall instinct and inclynacion: and further, that our saviour Christ's prayer, though it were uttered by a person resonable, yet it was nothing in substance but nature's desyre and prayer, it directly and originally being the proper cause of it: and further, that the words of Christ were as the words of a man in sleepe; and yet further, whereas in my confutation of Mr. Beza's judgment (being that the prayer of our saviour Christ came from a reasonable will), I uttered these words in aunswer: as I take it, it cannot stande; for how could he without tediouse and untimelye troublinge and obtundinge his father's earr (as I may soe speake) pray that the cupp should pass from him? I now, upon better deliberacion, doe with griefe and sorrow harte confess before God and his

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angells and his whole assembly, that I have greatly erred in my sayd opinions publiquely delivered, and specially touching the poynts about the most holy, earnest, meritorious, and heavenly prayer of our saviour, in that his bitter agony suffered for our sinns, wherein my said speeches were not only erroneous, rash, and presumptuous, but also such as might be taken to be dishonourable to our saviour, impious and profane, givinge just scandalle both to such as then heard me, and also further to whome the fame and report thereof hath come.

"Wherefore I humbly beseech, first, Almighty God, and next, you all (whome I have offended), to forgive me, (promisinge by God's grace to be more vigilant and circumspect hereafter) in that I shall publicly utter either in this or any other place.

"Which that I may the better performe, I humbly desyre you to pray for me, and now to joyne with me in that most absolute forme of prayer which our saviour Christ himself hath taught us."

The final meeting was now held, and, on the 8th of January 1609, the vice-chancellor, in the presence of eight heads, passed sentence upon him for his refusal, in the following words:

"Whereas you Nicholas Rush, late master of arts and fellowe of Christ's colledge in this universitye of Cambridge, have preached and delivered in St. Marye's church in Cambridge aforesayd, the 10th of September last past, a certayne doctrine judged by me deputye vice-chancellor and the greater parte of the heads of colledges of the said universitye contra religionem seu ejusdem aliquam partem in regno Angliæ publicâ authoritate receptam et stabilitam; and being thereuppon covented before me John Duport doctor of divinitye, and deputye, and the heads, and also vice-chancellor of this universitye of Cambridge by me, with the consent of the greatest parte of the heads of colledges, strictly charged, injoyned *sub pena juris* at a certayne daye, tyme and playce, to revoke and recant the sayd false and erroneous doctryne according to a prescript for me, and manner of words heretofore judicially to yourselfe exhibited; and because you the sayd Nicholas Rush have perempterely refused so to doe in manner and form so to you prescribed, I therefore the sayd vice-chancellor's deputy doe by that authoritye is to me comitted, and by vertue of the statute in that behalfe provided, viz. Libro statutorum academiæ, cap. 45°, titulo De Concionibus, by the consent of the greater parte of the heads of colledges afforesayd, doe pronounce and declare you the sayd Nicholas Rush incidisse in penam in statuto præ mentionatam, and to be utterly precluded and shut out of the sayd universitye and Christ's colledge, according to the contents and effect of the sayd statute, and doe soe accordingly exclude and banishe you by mye finall sentence or decree, which I give and publishe in this wrytynge.

Lecta & lata 8° die mensis Januarij 1609,

Per me Jo. Duport deputat. vican.

Ita testor Ja. Tabor. registrar.

In present. mei Johnis Wiseman, bedelli, testis rogati."

How this precedent can justify the proceedings against William Frend, it is difficult to perceive; for, 1st. It relates to a sermon preached at St. Mary's. 2nd. There was not a promoter. 3rd. Rush was ordered to recant according to a particular form, which he refused to do, and yet sentence did not follow, as it must have done in a court of justice. 4th. The recantation finally proposed to him, specified his errors. 5th. The sentence was evidently pronounced in a private meeting, for not only the registrary signs it, but a bedell is besides requested to be a witness to it.—6th. The exclusion from college is mentioned in the sentence, as well as banishment from the university.

Adams's Case.

In the case above related, the promoter has brought an instance of a person, on refusal to recant, banished from the university. The next produced by him is more full in some parts, though the supposed offender was not punished. On the 17th of July, 1637, a meeting of the heads was held in the consistory, in which it was decreed, that Sylvester Adams, M. A. of Peterhouse, should be warned to appear on that day month, and bring with him the sermon he had preached at St. Mary's on the 25th of June. In consequence a summons was left at his college, but he did not appear at the next or subsequent meeting, to which the business was deferred; and it was then farther put off to the 9th of October, when he appeared, and excused his absence, on the ground that he had not received any warning from authority saying at the same time, that his sermon was either in Sussex or lost. Upon which he was admonished to bring a true copy of it, such that he could swear to, on that day month.

On the 6th of November he brought his sermon to the meeting, and took his oath, that the contents were so far as he knew the whole of what he had delivered at St. Mary's. On the 4th of December was another meeting, in which he was admonished to deliver up a copy of his sermon without quotations; and was asked first, Whether he held that "the confession of all knowne sins unto a priest is the only ordinary revealed meanes for salvacion?" To which he replied, that he did not hold it. A second question was then proposed to him, Whether he held "that God doth not ordinarily pardon such knowne sins before mentioned, without such confession as is before mentioned?" To this question no answer appears.

At the next meeting on the 11th of December, he delivered another copy of his sermon, and was admonished to appear again

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on the Saturday following. On his next appearance, the "vice-chancellor was intreated to conceave a forme of acknowledgement which should be propounded to Mr. Adams, to see if he would voluntarily undertake it." At the next meeting, on the 18th, the vice-chancellor objected to Mr. Adams certain opinions, maintained in his sermon, upon confession to a priest. Adams replied, that he had said nothing in his sermon, which he believed to be contrary to the doctrine of the church of England. A recantation was then read; and the question was put, "Whether the recantation read be a fit recantation, to be made by Mr. Adams in regard of the matters delivered in his sermon, whereof a copy is delivered?" Upon this question the votes were very much divided; four of the heads only voting in the affirmative, four positively rejecting the recantation, four voting for longer time to be given to Adams, and one declaring that as yet he saw no reason at all for recantation. Upon this difference of opinion, Adams was admonished by the vice-chancellor not to quit the town without his leave.

A long interval now ensued, in which most probably many attempts were made in private to bring the heads to some better agreement: and on the 2nd of March another meeting was held, in which Adams appeared, and the vice-chancellor, having read a form of recantation, asked him first, Whether he would voluntarily submit to the said recantation? but he expressly refused to subscribe it. He was then asked again, Whether he would acknowledge the said recantation? but he persisted in his refusal. The vice-chancellor then delivered his opinion and sentence, in writing, subscribing it with his own hands, in which he was followed by six of the heads; and five of the heads subscribed their names too, but in the negative. The paper was drawn up in the following words:

"At the consistory Martij 2°, 1637, presentibus. Doctor Brownrigg, procan. Doctor Ward, Doctor Collins, Doctor Bambrigge, Doctor Paske, Doctor Bachcroft, Doctor Beale, Doctor Cosen, Doctor Laney, Doctor Love, Doctor Sterne, Doctor Holdsworth.

"I having diligently perused the sermon of Mr. Adams, fellow of Peterhouse in this university, concerning the necessity of confessing of our sins to a priest; and having sundry times convented him thereupon, and finding him still obstinate in his false doctrine, I doe sentence him so far forth as is in me to recall his error, and give satisfaction to the church, by the publique and audible pronouncing of this forme here underwritten:

"Whereas upon Sunday the 25th of June last, in my publique sermon upon these words, St. John, xx. 23. *Whose sinnes ye remitt they are remitted, and whose sinnes ye retain they are retained*, I delivered this doctrine, That a speciall confession unto a priest (actually where time or opportunity presents itselfe, or otherwise in explicit intention and resolution) of all our sinnes committed after baptisme so farre forth as we doe remember is necessary unto salvation, not only *necessitate*, butt also *necessitate medij*, so that according to the ordinary or revealed means appointed by Christ there can be no salvation without the aforesaid confession: upon more mature thoughts and better information, I doe finde that this doctrine then delivered was both erroneous and dangerous, having no warrant from the word of God, and crossing the doctrine of our church, as may appeare by her liturgie in the second exhortation at the communion, and in the visitation of the sick, and in the second part of the homilie of repentance. As therefore in general I doe acknowledge in the words of the aforesaid homilie, that it is most evident and plaine that this auricular confession hath not his warrant of God's word, and that therefore, being not ledde with the conscience thereof, if we with fear and trembling, and with a true contrite heart use that kind of confession which God doth command in his word, namely, an unfeigned confession unto almighty God himselfe, then doubtless (as he is faithful and true) he will forgive us our sinnes, and make us cleane from all our wickedness; so in the case of a troubled or doubtfull conscience, I doe conforme my opinion unto the direction of mother church, which, in her liturgie, doth exhort and require those whose consciences are troubled with any weighty matter, to a special confession, so that they who canot quiet their owne consciences are to repaire to their owne or some other discreet and learned minister of God's word, to open to him their griefe, that so they may receive such ghostly counsell advise and comfort, as their conscience may be relieved, and by the minestry of God's word they may receive comfort, and the benefitt of absolution, to the quieting of their consciences, and the avoiding of all scruple and doubtfulness. Butt it is against true christian liberty, that any man should be bound to the numbering of his sinnes, as it hath been used heretofore in the times of ignorance and blindness. This I doe acknowledge to be the doctrine of the church of England concerning confession; and to it I doe examine, subscribe, and am heartily sorry for whatt ever I have delivered to the contrary."

"And if Mr. Adams refuses to make this publique acknowledgement of his error, then my sentence is, that he shall undergoe the punishment which the university statutes, cap. 45 De Concionibus, doe appoint to be inflicted; and I require the registror to make an act as well of this my sentence as of the forme of recantation injoyned by me, wherein he is charged with no other but his own words in his sermon, and appointed to recall his false doctrine in no other butt the words of the liturgie and homilie of mother church. This I require to be registered, that so it may

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appear that I have done my part to assert and maintaine the doctrine of our church."

Of the heads who determined in the negative, four gave as a reason, that particular confession is not contrary to the doctrine of the church of England, and one required the qualifying of some particular expressions. Thus a recantation could not be proposed to Adams, and "Mr. Vice-chancellor did dismisse the meetings, but not the cause;" but it does not appear that the cause was ever resumed, or that Adams was farther disturbed about his opinions.

From this case may be clearly collected, among other things, that the form of recantation was considered as a material part of the business, and that an order to recant, without specifying the particular errours in a sermon, would have been considered as an absurdity. The next case referred to by the promoter is that of Whiston, taken from a loose paper found in the registrary's office, from which nothing can be collected, which does not confirm the account given in the preceding pages.*

Waller and Duckett.

The above are the only precedents brought forward for the court of king's bench by the promoter, which relate to the statute De Concionibus: the others were all either mere matters of discipline, or confessedly tried in the vice-chancellor's court, and the manner of proceeding was totally different. Copies are given of the summons to Waller, and proceedings of the court, by which he was banished for publishing a blasphemous libel, intituled David's Prophecy; and from these papers it appears, that one Brooke stood forward as an accuser, that Waller confessed the crime, and without the proposal of recantation was sentenced to be banished. The papers of Duckett's case are also copied, which prove that he was accused of atheism in the vice-chancellor's court, found guilty of the crime, and sentenced to be expelled the university.

Of what authority the contents of the papers thus sworn to by the promoter are, he leaves to conjecture; for he says only, that they are taken from books, papers, and records in the possession of the registrary of the university: the following cases he makes oath are taken from two books, the one lettered on the back, Act. Cur. 1690. 1709, the other intituled in the first page Acts of Court, 1752. The first case is that of John Latham, who confessed, that he had been in a house of ill fame, for which he was suspended from all his degrees: the second that of Rutter and Osbourn, who on confessing the charge that they were out of college at unseasonable hours in the night, and quarelling in the streets, were also suspended from their degrees. From the extracts it appears, that these cases were determined by the vice-chancellor on the 18th of March, but the date of the year is not put down; that they were mere cases of office, ordinary discipline, or criminal jurisdiction before the vice-chancellor, and that none of the heads were present. The next and final case is that of an undergraduate and a bachelor of arts, prosecuted by an inhabitant of the town for a riot on the night of the 28th of June and morning of the 29th, 1780, and indecent behaviour towards his daughters. For a variety of offences proved on the young men, by several persons examined in court upon oath, the vice-chancellor on the third day of hearing inflicted the following punishments: 1st, That they should be fined 6*s.* 8*d.* each for being out of college at unseasonable hours: 2nd, That one should be confined a fortnight, the other a week, to his college: 3d, That they should ask pardon of the promoter for the disturbance at his door, and of two of his daughters for some indecent language reflecting on them as unchaste women.

How these cases can serve the promoter Kipling, it is difficult to conceive. On the first day, in the last case, there was not a head in court besides the vice-chancellor; on the second, he was joined by five heads; on the third, two only were present with him; and if none had been present, the cause would have gone on as well. Nothing is proved, except that the same course was taken by the promoter and his cabal against the author of a pamphlet, as against some young men for a

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* Copy of the paper relating to Whiston in Dr. Kipling's affidavit.

Octr. 20mo, 1710.—Coram Dno. procanco. assident. &c. comparuit Mr. Flackham, Townsend, &c. et jurat. deposuerunt.

23.—Decret. Mrm. Whiston monendum fore ad comparend.

23.—Put in scriptis.

25.—Put in scriptis.

30.—Put in scriptis.

Dr. Roderick.	Balderston.
Sir J. Ellys.	Quadring.
Dr. Gower.	Richardson.
James.	Ashton.
Blithe.	Fisher.
Covel.	Lany.

20° *Octobr.* 1710.

Unde Dns. procancellarius, assidentibus et consentientibus.

Colliorum præfectis, sententiam ferendo decrevit, declaravit et pronciavit, prout sequitur:

In the name of God, Amen. I, Charles Roderick, vice-chancellor of this university, do decree, declare, and pronounce, that Mr. William Whiston, mathematic professor of this university, having asserted and spread abroad divers tenets contrary to religion received and established by public authority in this realm, hath incurred the penalty of the statute; and that he is banished from this university.

Lata fuit humoi. sentia. per dnum. procanc. præsente me Robto. Grove, not. pub. et almæ universt. præd. regro. *Frend.*

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riot. But what has all this to do with the present question? when it is not denied, that the author of Peace and Union was tried in a vice-chancellor's court. But it is affirmed, that he ought not to have been tried in such a court, and that no precedent can be alleged in favour of a trial in that court, under a statute, which implies a mode of proceeding absolutely incompatible with the laws of a criminal court.

To the preceding remarks, Mr. Frend subjoins the arguments of counsel and judgment of the Court; of which, as the reader has already been furnished with the very ample report by Messrs. Durnford and East, I forbear to insert Mr. Frend's account.

Other proceedings were instituted against Mr. Frend, in respect of his being a Member of Jesus College, Cambridge: of these proceedings, Mr. Frend published an account, from which the following is extracted:*

At Jesus college there was a meeting of some of the fellows, who drew up the following paper:

February 22, 1793.

At a Meeting of the President and major part of the resident Fellows;

Resolved,

That a pamphlet, intituled "Peace and Union," lately published by W. Frend. M. A. fellow of this college, appears to us to have been written with the evil intent of prejudicing the clergy in the eyes of the laity, of degrading in the public esteem the doctrines and rites of the established church, and of disturbing the harmony of society. And that as we feel it to be our particular duty to disavow principles calculated to mislead the minds of young men entrusted to our care, a copy of the said pamphlet be sent both to the vice-chancellor of the university, and to the visitor of the college, inclosed in a letter to each, expressing our disapprobation of the opinions therein delivered, and humbly requesting them to take such measures as in their judgment may appear most proper for the effectual suppression of their dangerous tendency.

W. Mathew, Thos. Bayley,
J. Plampin, T. Castley.
J. Costobadie,

The master, after two days deliberation with several of the fellows, and an intermediate journey to London, to take the opinion of a civilian, appointed a meeting of the college, which he required the author, by the following note, to attend:

The master of Jesus college informs Mr. Frend that he appoints Wednesday, April 3, at eleven o'clock in the morning, for a meeting of the master and fellows, to take into consideration a pamphlet, intituled "Peace and Union, recommended, &c., by W. Frend, &c." which meeting the master requires Mr. Frend, if called upon, to attend.

W. Pearce.

Jesus Coll. Camb. Mar. 27, 1793.
To Mr. Frend.

The attention of the university was now turned to this meeting, and the opinion, which the master had brought down with him from town, was thought by the faction a sufficient ground for expulsion from college. This the master would not permit the author to have a sight of, though it was shown by him to his friends out of college, who lost no time in circulating the report through the university, that every thing succeeded to their wishes, and that there could be no doubt of the college co-operating with the twenty-seven in the execution of their designs. The friends of the author were alarmed; with the energy of that zeal, which throughout the whole of these proceedings have uniformly marked their kindness towards him, they came round him, and entreated him to be no longer passive. They requested him to send the case to a civilian: he considered it as superfluous, conceiving that it required none of the acuteness of a lawyer to understand a plain college statute; but being unwilling to oppose the better judgment of persons, for whom he has the greatest regard, he sent his case to town to be laid before a civilian, and received the following opinion from Dr. Harris:

Case.

The following is a Copy of one of the Statutes of Jesus College, Cambridge:

De pœna enormiter delinquentium.

Item statuimus ordinamus et volumus quod si quis sociorum aut commensalium sive studentium dicti nostri collegii incorrigibilis existat vel de perjurio (quod absit) aut sacrilegio furto rapina vel homicidio adulterio vel incestu aut alio lapsu carnis enormi aut iniqua violenta et atroci percussione studentis socii vel quod deterius est magistri vel in alio quocunque crimine de majoribus et gravioribus quæ infamiam irrogant reus inventus fuerit per magistrum vel præsidentem et majorem partem sociorum ab ipso collegio nostro removeatur et penitus expellatur.

Mr. Frend, one of the fellows of Jesus college, being the supposed author of a tract, intituled "Peace and Union," &c. a copy of which is left herewith for your perusal, and the college intending to take it into consideration, how far they shall be justified in

* In the original publication, Mr. Frend takes occasion to comment with much invective, on the characters and motives of those gentlemen who were opposed to him:—such comments I have omitted.

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proceeding against him on the above recited statute, on Wednesday next, your answer is requested, without loss of time, to the following question:

"Is the author of the book, intituled, "Peace and Union," &c. liable, on account of any thing written in that book, to the penalty contained in the above statute, and under what part of the statute can the author be proceeded against?"

The ANSWER of Dr. HARRIS.

The college statute is penal in its nature, and ought not to be construed more extensively by the members of a society, than it would by an established court of public justice; and penal statutes are always construed strictly in public courts.

The recited statute enables the master or president and the majority of the fellows, which I apprehend to be a majority of the whole number, and understand to be 16, to punish any member of the college, even by expulsion, who is found guilty of perjury, sacrilege, rapine, theft, homicide, adultery, incest, or of any gross misbehaviour or violence toward the master or any of the fellows, and also of any other crimes, which may stamp infamy on the offender.

It is, I presume, clear, that the writer of the pamphlet cannot be accused of the commission of any of the crimes, which are expressly specified in the statute; it can therefore only be asked, whether Mr. Frend, admitting himself to be the author of the pamphlet, can, as such, be said, in consequence of any passage or passages contained in it, to have maintained, adopted, or favoured any doctrine or opinion, which can be justly deemed to be of such nature as to brand him with infamy, on supposition that this statute is not limited to overt acts, and can be extended to tenets.

To this I answer,

That, as the crimes expressly mentioned in the statute, are all crimes of commission, it is to be inferred that the crimes, which are intended to be included under the words, *quocunque alio crimine*, are crimes of commission also, and of the same nature with those which are expressed, and imply not the crimes of entertaining and propagating opinions, be they what they may: I have, however, no difficulty in further saying, that on a very attentive perusal of the pamphlet, I have not been able to find any doctrine or opinion proposed, maintained or favoured in it, which in my apprehension can, in the judgment of any loyal, moral and christian man, be said to fix a stain on the maintainer of such doctrine or opinion, and much less such a stain as could render him infamous in any legal sense, or in the judgment "*boni et æqui viri.*"

After what I have written, it may not be absolutely necessary for me to add more, but it may yet be in point of form expedient for me to say, though it may savour of repetition, that on the fullest consideration of the case, according to the information before me derived from the college statute and the pamphlet, I am strongly led to think, that Mr. Frend can have no reason to be apprehensive of any sort of censure from a majority of a number of literary, well-informed, and candid men, such as his college is reputed to be composed of, if they confine themselves in the present instance to the powers given them by the college statute, and to the contents and the general tenor of the pamphlet.

GEORGE HARRIS.

Doctors Commons, 31st March, 1793.

The case and answer the author put into the hands of the master the day before the meeting, and desired him to lay them before the fellows. This was done in the evening, and on the next day the author wrote down every thing that passed in the meeting, as far as he was personally concerned, in the following words:

A little before twelve o'clock on April 3, 1793, I was called into the parlour by the porter; and the master, in the presence of ten fellows, showing me a pamphlet, asked me, whether I avowed myself the author of it. I told him that, by advice of a civilian, I requested the accusation, if I was accused of any thing, in writing. He told me, that there was no accusation, and should only ask me this question. I replied, that by advice of a civilian I must beg leave to wave any answer to this question. Do you disavow it, said the master. I replied; On the same principle I wave any answer to this question. I was then desired to withdraw.

Between seven and eight in the evening the master again sent for me, and told me in the presence of the fellows, that they had inquired into the proofs of my being the publisher of the pamphlet, and that they were thought satisfactory.

He also read to me the following Resolutions:

1st. That several passages in the said pamphlet have a tendency to prejudice the clergy in the eyes of the laity.

2dly. That several passages in the said pamphlet have a tendency to degrade, in the public esteem, the doctrines and rites of the church of England.

3dly. That there is a tendency in the said pamphlet to disturb the harmony of society.

4thly. That the said pamphlet tends more particularly to hurt the credit and interests of this college.

5thly. That in publishing the said pamphlet, Mr. Frend is guilty of an offence contrary to the laws of the college.

These resolutions were made, the master

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said, by the master and the major part of the fellows.

On being asked what I had to say in my defence, I requested that a written copy of the accusation might be given to me. Upon which the master desired me to withdraw, that the matter might be put to the vote.

About half an hour after, I was called in again, when the master read to me the following words:

The question being put, whether Mr. Frend should have any charge delivered to him in writing, and it being urged, that Mr. Frend had seven days notice by a summons from the master, of a meeting, for the consideration of his pamphlet, and that the charge was sufficiently implied in the resolutions, that had been read to him, it was carried in the negative.

Being asked then, what I had to say in my defence, I replied that, without an accusation, it was impossible for me to defend myself, but that I should be exceedingly sorry, to have been guilty either intentionally or unintentionally of several things, contained in their resolutions. I then retired.

About a quarter past nine I was called in again, when the master read to me the following words:

The question being asked, whether Mr. Frend should be again called in, and informed, that the meeting still persist in not delivering a written charge, and that if he will not proceed on his defence, the meeting will proceed without it.

Agreed to.

I then said, that I presumed I must consider the resolutions as an accusation, and therefore requested that the passages in the pamphlet might be referred to, with the statutes which I had offended against, and that I would then proceed on my defence. I then retired, and heard nothing more from the meeting, which broke up about eleven, till the next morning, when I was summoned into the parlour between nine and ten.

The master was going to read something to me, but I requested to see first the proceedings of yesterday I then retired, and on my return the master informed me, that my request was not granted I urged, that I had a material objection to propose, but the master refused to hear any thing, saying, that if I had any thing to say in my defence, I ought to have said it yesterday. I replied, that I was ready to proceed in my defence yesterday, but was desired to retire, when I had requested that the passages of the pamphlet might be referred to, with the statutes which I had offended against, but was never called in to make my defence. He silenced me, and read the following words from a written paper in his hands:

Is it the opinion of this meeting, that Mr. Frend be removed from the college, that is from the precincts of the college, and from residence in it, till he shall produce such proofs of good behaviour, as shall be satisfactory to the master and major part of the fellows?

In the affirmative,

The Master.	Mr. Bayley.
Mr. Mathew.	Mr. Castley.
Mr. Plampin.	Mr. Stockdale.
Mr. Costobadie.	

In the negative,

Mr. Newton.	Mr. Whitehead.
Mr. Warren.	Mr. Otter.

And agreed by those, who answered in the affirmative, that he may be allowed a month from this time, to settle his affairs in college, the other four not dissenting.

I then withdrew.

It was not likely such arbitrary measures should be complied with, and though the bishop of Ely is visitor of the college, it was thought necessary to comply with the common forms on such occasions, and to appeal to him from the injustice of the master and the six fellows. The appeal was accompanied with the following letter.

My Lord;

The unstatutable proceedings of the master and certain fellows of the college, have put me under the necessity of troubling your lordship with the appeal which accompanies this letter; and I flatter myself that your lordship will see the propriety of my request, that your lordship would suspend the execution of the sentence, against which I appeal, until the matter, now at issue, has received your lordship's determination.

I remain, with great respect, my lord,
your lordship's very obedient
and humble servant,
W. Frend.

Jes. Coll. Camb. April 17, 1793.

The Appeal.

To the honourable and right reverend James, lord bishop of Ely, visitor of Jesus college; the humble appeal of William Frend, M.A. and fellow of the said college,

Sheweth,

That at a meeting of the master and ten fellows of the said college, held on the third of April, the master and a majority of the said fellows supposing the appellant to be the publisher of a pamphlet, intituled "Peace and Union," concurred in the following Resolutions:

1. That several passages in the said pamphlet have a tendency to prejudice the clergy in the eyes of the laity.

2. That several passages in the said pamphlet have a tendency to degrade, in the public esteem, the doctrines and rites of the church of England.

3. That there is a tendency in the said pamphlet to disturb the harmony of society.

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4. That the said pamphlet tends more particularly to hurt the credit and interests of this college.

5. That in publishing the said pamphlet, Mr. Frend is guilty of an offence contrary to the laws of the college.

And in consequence of these resolutions, without having pointed out the exceptionable passages in the said pamphlet, or the statutes against which the appellant is supposed to have offended, or having even permitted him to speak in his defence, the master and six of the fellows agreed, on the subsequent day, to remove the appellant from residence in the college, as appears from the following words, which the master read to the appellant in the meeting:

Is it the opinion of this meeting, that Mr. Frend be removed from the college, that is from the precincts of the college, and from residence in it, till he shall produce such proofs of good behaviour as shall be satisfactory to the master and major part of the fellows?

In the affirmative,

The Master.	Mr. Bayley.
Mr. Mathew.	Mr. Castley.
Mr. Plampin.	Mr. Stockdale.
Mr. Costobadie.	

In the negative,

Mr. Newton.	Mr. Whitehead.
Mr. Warren.	Mr. Otter.

And agreed by those who answered in the affirmative, that he may be allowed a month, from this time, to settle his affairs in college, the other four not dissenting.

To prevent the execution of this sentence, passed in so irregular and unstatutable a manner, the appellant humbly requests the interposition of the visitor on the following grounds:

1. Because no exceptionable passages in the said pamphlet were produced.

2. Because no laws of the college, against which the appellant has offended, were pointed out.

3. Because the appellant had no opportunity of vindicating himself from the supposed charges.

4. Because it does not appear from the statutes of the college, that the master and six of the fellows, or any other number less than the majority of all the fellows, are competent to inflict any punishment on a fellow, much less one not expressly warranted by the statutes.

5. Because the sentence of removal from the college is not only not warranted by the statutes, but is clearly inconsistent with that which requires the constant residence of the master and fellows.

W. FREND.

The master and five fellows answered the above appeal, and delivered a copy of it to Mr. Frend.

To the honourable and right reverend JAMES, lord bishop of Ely, visitor of Jesus college, Cambridge.

My lord,

We have received from Mr. Frend a copy of an appeal, which he has made to your lordship, from a sentence of amotion pronounced against him by the master and major part of the fellows, for publishing a pamphlet intituled "Peace and Union, &c." The spirit and contents of the pamphlet considered, we had reason to think that in the sentence pronounced, the lenity of the college was as conspicuous as its justice. But since Mr. Frend has not thought proper to acquiesce in it, we beg leave, in few words, to vindicate our proceedings from the objections which he has made to them.

As Mr. Frend, in the introductory part of his appeal, represents the master and fellows, as only supposing him to be the publisher of the pamphlet in question, we shall lay before your lordship, in the first place, the evidence which was adduced to us in proof of that fact.

Mr. Bowtell, the bookbinder, and his boy, were the first called in. The boy said, that a parcel of books came to Mr. Bowtell by the St. Ive's carrier, that Mr. Frend came and unbound the parcel, dividing it into two bundles, which, by Mr. Frend's orders, he carried to the two booksellers, Merrill and Lunn, for sale. Mr. Bowtell confirmed that Mr. Frend was at his house on this business, and that it was on the 12th or 13th of February. The boy added, that he did not carry any books to Merrill's or Lunn's for a considerable time before or after. Lunn's servant was then called in, he confirmed the bringing of the bundle by Bowtell's boy to Lunn's shop, and said that it consisted of Mr. Frend's book called "Peace and Union, &c." He farther said, that that morning, April 3d, he brought twenty copies of this pamphlet from Mr. Frend's rooms, at Mr. Frend's request, for sale, one of which pamphlets he produced.

This is a detail of the evidence given to us in support of the fact of publication, by which we were fully satisfied that Mr. Frend was to be considered as the publisher of the pamphlet. The fact of publication being thus established, the first ground of objection taken to the validity of our proceeding thereon is, that no exceptionable passages of the pamphlet were produced.

It is true, my lord, that we declined pointing out particular passages, because our disapprobation was founded not merely on detached passages, many of which are, in our apprehension, of a tendency highly criminal and dangerous, but also on the general tenour and tendency of the whole composition. If your lordship should deem it necessary, that passages should be distinctly pointed out, we shall have neither difficulty nor repugnance in obeying any order which your lordship may be pleased to make upon us to that effect. But we humbly conceive that the whole

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pamphlet (to which we refer, and which we have annexed to this answer) being submitted to your lordship's view, will remove the necessity of any such selection at present, and fully justify the propriety of having declined to make any such selection at the time of the inquiry.

The next ground is, that no laws of the college against which Mr. Frend had offended, were pointed out.

In cases of discipline, we apprehend that it is not necessary to point out particular statutes; because if the matter is referred to the visitor, the college avails itself not of one, but of the whole body of the statutes, and also of the general design and intention with which societies of that kind are instituted. The college, we submit, hath, *quatenus* a college, an inherent right, independently of any express or particular statute, to take cognizance of and punish offences, *contra bonos mores*, committed by its members; and among those offences we believe no person will have any difficulty in ranking the publication of this pamphlet.

The 3d ground is, that Mr. Frend had no opportunity of vindicating himself from the supposed charges.

It will appear to your lordship from the course of the proceedings, that three distinct opportunities of defence were given to Mr. Frend, which he declined to accept, but upon conditions demanded by himself, to which the college acceded, so far as they conceived those conditions to be founded in justice. The first time that he was called in, instead of entering upon his defence, he demanded a written charge. The second time that he was called in, he would not enter upon his defence, but insisted upon his former demand, though he was told that the charge, which he demanded, was contained in the resolutions which had been read to him, of which he had taken a copy. It was then resolved, that if he would not enter upon his defence without some other charge than that contained in the resolutions, the meeting would proceed without his defence. On being called in a third time, this was declared to him: but instead of attending to it, he made other new demands, which were, that as by the resolutions read to him, he was accused of certain offences, the passages of the book, in which he had offended, and the statutes against which he had offended, might be pointed out to him; which were refused on the grounds above stated to your lordship in our answer to the first and second articles of objection.

As to the 4th objection, that it doth not appear from the statutes of the college, that the master and six of the fellows, or any other number less than the majority of all the fellows, are competent to inflict any punishment on a fellow, much less one not expressly warranted by the statutes: We answer, that the present sentence was virtually passed by a majority of the fellows; for a majority of the fellows being present at the meeting, and the major part of that meeting having concurred in the sentence, such sentence is valid, and to be considered as passed by the whole meeting, tho' some of the members present should have refused their assent to it, and even expressed their dissent from it. If there should be any doubt of this, upon the face of the statutes, we beg leave to refer your lordship to bishop White's interpretation of them, which is of equal validity.*

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* Bishop White's Interpretation of the words *De majore parte Sociorum*, in the Statutes of Jesus College.

De majore parte sociorum quomodo accipienda sit, tam in dicto statuto de electione officiariorum, cap. 12, quam etiam in statuto de electione sociorum et forma ejusdem cap. 5 et denique in statuto de scholaribus in collegio exhibendis cap. 9, de quibus omnibus idem dubium movetur, ita judicamus. Nimirum cum in statutis vestris observemus requiri alias universaliter majorem partem omnium sociorum, ut in quibusdam rebus et negotiis arduis, cap. 3. 25, 26, 27, 28, memoratis, alias simpliciter et indefinite majorem partem sociorum, non adjecta voce omnium, ut in electionibus sociorum, scholarium, et officiariorum dictis capitibus 5. 9. et 12. cumque præterea unicuique dictarum electionum suus certus terminus ultra quem differri non debeat in iisdem statutis limitetur, cum denique in dicto statuto, de electione sociorum, expresse et signanter dicatur, magister convocabit omnes socios ejusdem collegii tum in academia præsentes, absentium nulla habita ratione aut mentione facta, eademque esse videatur reliquorum duorum statutorum ratio: his igitur omnibus diligenter collatis et perpensis, tam verba illa dicti capitis quinti, de electione sociorum et forma ejusdem, illi electi censeantur et pro electis reputentur, in quos magister et in ejus absentia præsidens sive locum tenens et major pars sociorum consenserint, quam illa capitis noni, dictos vero scholares per magistrum et majorem partem sociorum toties eligi et admitti volumus, et denique illa capitis duodecimi, illi pro electis officiariis habeantur in quos magister vel in ejus absentia præsidens et major pars sociorum expresse consenserint, ita interpretamur, ut intelligantur, et intelligi debeant, non de majore parte numeri sociorum pro tempore existentium, sed tantum de majore parte sociorum tum in academia præsentium quando electionem fieri debere contigerit.

Proviso semper, quod in omnibus dictis electionibus requiratur præsentia majoris partis totius numeri sociorum pro tempore existentium. Proviso tamen insuper quod si quis sociorum legitime monitus sive vocatus ad capitulum venire noluerit, aut neglexerit, vel cum semel præsens fuerit in capitulo sine venia discesserit, habeatur pro illa vice et

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The last ground of objection is, that the sentence of removal from the college is not only not warranted by the statutes, but is clearly inconsistent with that statute, which requires constant residence of the master and fellows.

In answer to this we must observe, that the statutes confer a power of total expulsion itself, for such acts of misconduct, as are more particularly criminal and offensive. But altho' it were true, that the sentence was not expressly marked out by the statutes, yet we contend, that it was perfectly competent to the college to pronounce it under that general and necessary authority which it possesses in all cases of discipline, whether specifically described in the statutes or not. Temporary amotion is a punishment well known, and is frequent in the practices of all colleges for offences either moral or academical. It is analogous to the canonical punishment of suspension *ab officio*, which is chargeable with inducing the same inconsistency as is complained of in the present case, since the minister is thereby restrained from discharging those duties which he has solemnly bound himself to perform. It is analogous to most punishments in civil society, which induce, for the time they last, a disability of doing several acts which the guilty person would otherwise be under an obligation of performing. A similar inconsistency to that which is now complained of, occurs between two of our own statutes: the statute De Refectionibus, cap. 19, says that the fellows shall not be absent from dinner or supper in the hall, nisi ex causâ rationabili, per magistrum et seneschallum approbandâ. And yet the statute De Malis Moribus, &c. cap. 8, requires that a fellow, for certain offences shall be put out of commons. This objection we cannot help observing is somewhat extraordinary, coming from a man in Mr. Frend's situation, since it goes to the lenity of the sentence; for the statutes would have warranted the college in punishing him, by total expulsion, for an offence of such magnitude as that of which he has been guilty. We have the honour to be, my lord, your lordship's most dutiful and most obedient servants,

W. Pearce,
W. Mathew,
J. Plampin,
J. Costobadie,
Tho. Bayley,
Thomas Castley.

The prosecution in the university now took up the attention of the appellant, so that having only cursorily looked over the answer, he wrote to the bishop to excuse himself from replying to it immediately.

My lord; Mr. Mathew put into my hand yesterday, by your lordship's order, the answer of the master and certain fellows of the college to my appeal. The same motives which led them to condemn me, unheard, in this college, instigated them to make part of a cabal to prosecute me in the vice-chancellor's court, and I have been under the necessity of appearing in that court four days; where, after a strict examination of fifteen hours, the facts have not been proved which they have misrepresented in their answer, and on which, after a few minutes conversation, they took on themselves to pass a sentence wholly irrelevant and unjustifiable in law and equity.

My accusers are expected to finish their charges on Friday next, and I shall be called upon for my defence in the course of next week. Your lordship is sensible that a person who has for the last three months laboured under the pressure of every thing which malice and calumny can suggest, and whose attention has been wearied by the fatigue of observing the wretched tricks which my accusers have used in attacking me, is incapable of sitting down immediately to reply to the master's answer, in a manner worthy of your lordship's notice, and I shall therefore presume so far on your lordship's patience, as to delay the reply till I have completed my defence before the university. As the annals of the university do not present an instance of a persecution attended with so many circumstances of malice and ingratitude, and so contrary not only to the principles of the Christian religion, but to every maxim of law and justice, I trust that your lordship will, with your usual kindness, accede to the request of a much injured man, and one, who is with great respect, my lord, your lordship's very obedient and humble servant W. Frend.

Jes. Coll. Camb. May, 15, 1793.

The bishop did not condescend to answer this letter, but by his secretary, allowed three weeks, to commence on May 22nd, for the drawing up of the reply. Before the expiration of that term another request was made in the following letter:

My lord; I am sorry to be under the necessity of making another application to your lordship, to request farther indulgence with respect to the time of making my reply to the paper delivered to me by Mr. Mathew. A plain statement of facts will, I flatter myself, convince your lordship that my request is not unreasonable.

The vice-chancellor's court was broken up last Thursday, after having sat eight days, during which, my attention was necessarily taken up with the proceedings; and the fatigue I underwent might have borne down men of much stronger constitutions. On Friday I appealed to the university, and on Saturday the proctor, in the name of the university, inhibited the vice-chancellor from

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quoad res explicandas in illo capitulo tanquam nullus de numero existentium.

The above is the interpretation referred to. —*Frend.*

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putting his sentence, which is founded neither in law nor evidence, into execution. I must now prepare myself to appear before the delegates, and not being by any means recovered from the fatigue of the last business, your lordship will, I hope, have the goodness to allow me a longer time to prepare the reply to be laid before your lordship.

It is an unusual thing that an Englishman should be thus employed in two different courts, on the same subject, and I was once in hopes that my persecutors would have permitted a decision to take place in one court before they proceeded to attack me in another. But as they were resolved to harass me to the utmost of their power, I have only to commit myself to your lordship's protection, and to request that, as to this moment I have not been free from vexation, and am now scarce able to take pen in hand, I may be indulged with longer time, or, if it should be agreeable to your lordship, I could wish to be permitted to delay my reply till the merits of the cause, now pending in the university, have been fully and finally discussed by its delegates. I have the honour to be, with great respect, my lord, your lordship's very obedient and humble servant,

W. Frend.

Jesus College, Camb. June 3, 1793.

The bishop, in return, answered by his secretary, that he did not think it consistent with a proper attention to the college, and the nature of the business referred to him, to comply with the request. His lordship was, therefore, put to the trouble of receiving another letter.

My lord; As the circumstances already mentioned to your lordship have prevented me from giving more than a cursory glance at the answer to my appeal, I am by no means certain what time or trouble will be requisite for the reply. But if I am not in the mean while called upon by the university, I shall do my utmost endeavours that it may be with your lordship by the end of next week. I have the honour to be, with great respect, my lord, your lordship's very obedient humble servant, W. Frend.

June 5th, 1793.

After this the appellant went into the country for a few days, and on his return to college drew up, in a couple of days, his reply, which he sent, accompanied with the following letter, to the bishop:

My lord; Inclosed is my reply to the answer of the master and five fellows of this college. Had I, on the receipt of it, read it twice over, your lordship would not have been troubled with any requests from me for time to consider it. I remain with great respect, my lord, your lordship's very obedient humble servant, W. Frend.

June 14, 1793.

The absence, it is presumed, of his secretary, put his lordship to the trouble of writing an answer to the above in the following words:

The bishop of Ely received, by yesterday's post, Mr. Frend's reply to the answer of the master and fellows of his college to his appeal against their sentence. His lordship desires Mr. Frend will deliver a copy of the reply to the master and fellows for their consideration.

June 20th, 1793.

In obedience to this order, as the master was absent, a copy of the reply was given to the president of the college.

Reply.

My lord; The answer to my appeal is signed, I perceive, by the master and five only of the fellows, who agreed to remove me from the college: from whence I conclude that the sixth fellow being fully sensible of his error, in acting in so unwarrantable a manner against one of his society, refused to be any farther connected with those by whom he had been misled. I am not surprised that the five fellows should praise themselves for their lenity; since they had sent to your lordship an accusation very different from the resolutions entered into at the meeting of the 3rd of April, and had besides been most of them part of a cabal, to deprive me of my degrees, and to banish me from the university. It is no wonder that they should talk of lenity, who regard as of little moment the inconvenience which a man of letters must feel, by being deprived of the calm repose requisite for study, and of access to the rich repositories of learning in this place: but their language in my opinion is insolence in the extreme, and adds insult to injustice.

I have said that the master and fellows supposed me to be the publisher of a certain pamphlet, and they have now laid before your lordship the evidence by which they were guided. It is the boast of Englishmen, that the accused person should be confronted with the witnesses, but, as in this instance a different conduct was pursued, it is no wonder that the pretended judges should not only fall into error, but should present with the utmost confidence such error to your lordship.

I do declare, and am ready to attest upon oath, that in the evidence laid before your lordship, there is an absolute falsehood.

The master and the five fellows confess, that no exceptionable passages were pointed out, and, in excuse, refer to the general tenor and tendency of the whole composition. What may be their ideas of the tendency of any work, it is not necessary for me to inquire. I do not conceive them to be competent judges of my writings, nor ever intend to govern myself by their notions of composition. In the most wretched inquisition that the world has ever seen, such a pretext for punishing a

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man has never been held forth. Some specific charges have been brought against the accused person, and whether the crimes were real or fictitious, the disciples of St. Dominick carried on the appearance of justice. Even the persecutors of Galileo did not think the tendency of his philosophy a sufficient cause for confining him in prison. They brought forward the charges on which he was condemned, namely, for contradicting the scriptures and violating the laws of the holy see. To remove a man from college on the supposed evil tendency of his publications, is to open a door for the worst of persecutions. The first printed Bibles in England were burnt, because of their supposed dangerous tendency, and if this pretext were allowed, students must hereafter shut up their books, lest, if by a regular attention to college duties, they should offend some of the body who might be notorious for a disregard of all order and decorum, the publishing of a book should render them obnoxious to every species of vindictive malice and resentment.

Under this head, I beg leave to offer to your lordship's consideration the following historical fact, which shows, in the strongest manner, the sense of the whole bench of bishops, on a similar occasion. In 1701, the lower house of convocation took into consideration bishop Burnet's Exposition of the thirty-nine articles of the church of England; and coming to several resolutions upon it, laid them before the upper house, which proceeded, among others, to the following conclusion: "That the lower house of convocation's censuring the book of the bishop of Sarum, in general terms, without mentioning the particular passages on which the censure is grounded, is defamatory and scandalous."*

The reason for not pointing out the particular statutes against which I am supposed to have offended, is ridiculous and puerile in the extreme. The statutes are given us as a rule of conduct, and to prevent arbitrary proceedings: I have sworn to obey these statutes, and to submit to a punishment according to the statutes, but not to any other. The college has certainly a right to punish a member for an offence *contra bonos mores*, but the offence is punishable only according to the statutes. Any punishment, not authorized by the statutes, a fellow of this college is not bound to submit to; and if the master should pretend to enforce it, he does it under the peril of perjury: for he has taken an oath to govern according to the statutes. This subject has been well stated in the protest laid before your lordship by three of the fellows present at the meeting on the third of April. "We conceive, that the master and fellows have not a power of punishing any fellow of the college, till it is clearly proved that he has offended against some one of the college statutes; and that then they are empowered to inflict only such punishment as the statute requires."

I have said, that I had no opportunity of vindicating myself from the supposed charges; and the master and the five fellows refer your lordship to some course of proceedings, which not having seen I might invalidate, by repeating only my former assertion. But it is very extraordinary that the master and the five fellows should pretend to say, that I had three opportunities offered of making my defence, when three of the other fellows, who were present with them during the whole of the time, declare, as one reason for dissenting from the resolution of removing me from the college, that I had no opportunity given of vindicating myself. Their words are, "It appears to us to be repugnant to the principles of justice, and contrary to the rules observed in every court, to pass sentence on any person before he has had an opportunity of answering to the particular charges brought against him, which, in the present instance, was not allowed to Mr. Frend." In addition to this evidence, given by three very respectable members of our college, one of whom is a tutor, and exemplary in the discharge of every part of that office, I do declare, and am willing to attest upon oath, that the account delivered to your lordship is founded on a gross misrepresentation.

The master and the five fellows assert, that their sentence, for such they call their resolution, was virtually passed, by a majority of the fellows; and, as a proof, allege, that a majority of the fellows being present at the meeting, and the major part of that meeting having concurred in the sentence, such sentence is valid, and to be considered as passed by the whole meeting, though some of the fellows expressed their dissent to it. The consequence of this reasoning is, That if a master of the college, regardless of his duty and his oath, should make a party amongst the fellows to injure another, should closet five of the fellows, and, by promises, solicitations, or threats, bring them over to his purpose, he may drive any person from the college, of whom, through prejudice, he has conceived a bad opinion, or from whose fall he expects to derive an advantage. But the author of the statutes was not so inattentive to the liberty and independence of the fellows; he was aware of the abuses which in general prevail in bodies of this sort, and would not permit a person to be exposed to the continual injuries which he might receive from the intrigues of a master and five fellows. The smaller crimes have punishments assigned to them, to be inflicted by the master or president, and dean: the greater crimes, by the master, and majority of the fellows. Bishop White's interpretation can-

* See Historical Essay upon the Government of the Church of England, by George Reynolds, LL. D. archdeacon of Lincoln, p. 194. *Frend.*

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not apply to this case; for it was made for the relief of the fellows in certain cases, in which, from the inconvenience or impossibility of assembling all the fellows, the college might be liable to sustain some detriment; but in his interpretation there is no reference to any statute on punishment, and it is confined solely to three statutes which limit certain elections with respect to time. In the present instance, there can be no reason for not expecting the concurrence of a majority of the fellows, if the sentence were justifiable; since the meeting was not confined to any particular time, and the master was vested with sufficient authority to bring all the fellows together. As there was more than a majority of the fellows present, and only six concurred in the resolution of removal, the proper mode of arguing is, that not only those four who dissented from the resolution, but all the rest who did not appear disapproved entirely of the master's conduct, in pretending to call the fellows together on a subject, in which it is evident they thought themselves not at all concerned. For I cannot allow the master and fellows of this college any right to decide on the merits of a work written by one of their body. The statutes give them no such power, and if a fellow of the college should, by printing or publishing, act contrary to the laws of the realm, he is in common with other Englishmen, liable to be brought before the tribunal of justice.

Instead of answering my last objection, and pointing out the statute which warrants their resolution of removal, the master and five fellows are content with saying, that the college could pass such a sentence under that general and necessary authority which it possesses in all cases of discipline, whether specifically described in the statutes or not. But, unfortunately for them, I have taken an oath to obey, and will obey only in those cases prescribed by the statutes, and the same oath which obliges me to obey only in certain cases, is a sufficient proof that the college can demand obedience only in those cases.

The punishment of a fellow, by a temporary removal from his college, is not known in the university, except in those colleges, in which it is enjoined by their statutes, and I have good reason for saying, that the assertion of the master and five fellows, concerning the frequent practice of such amotion in the university at large is without foundation. But were this true in other colleges, we are to be governed by our own laws, not by the laws or practice of any other community. Where the punishment of removal is statutable, the inflicting of it supersedes the duties required by the other statutes. On this principle the suspension of a clergyman *ab officio*, is perfectly consistent with his general obligation to discharge the duties of his office: such obligation being only conditional, and dependant on his own conduct, and the judgment of his superior. But would your lordship think yourself justifiable in assuming a discretionary power of banishing a clergyman from his living, who, by his oath, is obliged to residence, such punishment not being enjoined by any law of the church? There is no inconsistency between the two statutes pointed out by the master, and the five fellows. To make such inconsistency, they must suppose, that the fellow, who, in virtue of the latter, shall be put out of Commons, is not obliged by the former to dine in the hall at his own expense; or if any such inconsistency should be allowed, it is certainly not a similar one, as it arises from an express injunction of the law-maker. And, if the founder of the college had thought fit, among other punishments, to appoint that of temporary removal, and to add, that it might be inflicted by the master, and six of the fellows, there would be no doubt of the obligation on every fellow to comply with it; but as the master, and the five fellows, have not brought the least shadow of a proof that this is the case, my objection remains in full force.

On the whole, I cannot help observing to your lordship, that the master, and the five fellows, have failed in their answer to every one of my objections. Being sensible of the weakness of their cause, and the badness of their arguments, they pretend to talk of the lenity of their sentence, and of the situation in which they suppose me to be placed. The offence, of which they conceive me to be guilty, is an ideal one; the statutes would not have warranted them in punishing me by total expulsion; and if they had, the exchange of expulsion for a temporary removal, must, on my part, have been optional. So far from giving the master and five fellows, any credit for their lenity, I conceive them to have done the utmost in their power, for which they imagined that they had the least semblance of a pretext, and the injustice of their conduct is apparent in the total irrelevancy of their sentence. For, what has the publishing of a book, containing speculative opinions, to do with the behaviour of an individual? What misbehaviour could they ever charge me with? What certificate of good behaviour do they require? What proofs will satisfy Mr. Plampin, who is a tutor in the college, and notorious for neglect in the most material part of his office, that of giving lectures? If proofs were requisite, I could bring them signed by the most respectable members of this university, and the first literary characters in the kingdom; and I should have the utmost contempt for myself, if my character could be in the least hurt by any imputation which the master, and the five fellows, have endeavoured to fix upon it. Instead, therefore, of requiring a certificate of my good behaviour elsewhere, let them first produce some proofs of my misbehaviour during my residence among them; and if they could do that in a satisfactory manner to your lordship, the con-

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sequences are well known. As to this worse than inquisitorial manner of proceeding, by examining witnesses without confronting them with the accused, by refusing to hear a man in his own defence, by condemning him without pointing out the statute against which he has offended, by passing a sentence which is totally illegal, and has no connexion with the supposed crimes, I am persuaded it must be as disgusting to your lordship, and every other liberal mind, as it is to, my lord, your lordship's very obedient servant,

W. FREND.

On the 16th of July, the master of the college called a meeting of the fellows, and in it read to us a paper which he professed to have received from the bishop of Ely, and on the twenty-sixth of July, it was copied into the order-book of the college, as appears from the following extract:

July 26, 1793.

At a meeting of the master and all the fellows resident in college, Mr. Frend having appealed to the visitor against the sentence contained in the foregoing page, and the visitor having dismissed the appeal, and affirmed the sentence in the following words:

To the reverend the master and fellows of St. Rhadegunde, or Jesus College, in the university of Cambridge.

Gentlemen; I have carefully perused the appeal of the reverend William Frend, of your college, against the proceedings had and sentence passed upon him, as publisher of a pamphlet, intituled Peace and Union recommended to the associated bodies of republicans and anti-republicans; by the master and major part of the fellows of your society, together with the answer of the said society, and the reply of the appellant, and the several documents therein referred to, and having duly deliberated thereupon, I dismiss the said appeal, and affirm the sentence of amotion.—I am, Gentlemen, your constant well-wisher,

JAMES ELY, visitor.

July 18, 1793.

Agreed, that if Mr. Frend does not quit the college according to the sentence, that no time should be lost in enforcing the sentence in the manner pointed out by sir William Scott, in an opinion given by him on this occasion.

W. PEARCE, master.
W. MATHEW.
THOS. BAYLEY.

Mr. Frend was not at that time in college, but the master informed him by letter, that on the second of August, admission into the college would be denied to him. On that day Mr. Frend returned to college, and about twelve o'clock received an intimation in writing from the master, that the college servants were prohibited from supplying him in future with any necessaries.

This case was afterwards, by Mr. Frend, brought before the court of King's-bench. It is thus reported 5 Term Rep. 475.

Thursday, Jan. 23d, 1794.

The King *against* the Bishop of Ely.

RAINE moved, and was supported by GIBBS, for a rule calling on the bishop of Ely to show cause why a mandamus should not issue, directed to him, commanding him as visitor of Jesus College, Cambridge, to hear and determine an appeal of the reverend W. Frend, late a fellow of that college, against a sentence of amotion.

It appeared from the affidavit of Mr. Frend that in April last he was "removed from his college" by a sentence of the master and fellows, on a charge of having written a seditious pamphlet: that the defendant appealed against this sentence to the bishop of Ely, as visitor, on the grounds that no exceptionable passages in the pamphlet had been produced; that no laws of the college, against which the appellant had offended, were pointed out; that the appellant had no opportunity of vindicating himself; that there was not a majority of all the fellows of the college concurring in the sentence, as the statutes required; and that the punishment was not statutable: that in answer to this appeal the master and five of the fellows asserted to the visitor that they had examined evidence relating to the publishing of the pamphlet, by which they were convinced that Mr. Frend was the publisher; that the appellant had three distinct opportunities given to him to defend himself; and that the sentence which they had taken upon themselves to inflict, was virtually passed by a majority of the fellows: that to this answer the defendant replied that the evidence was false; that, with respect to the opportunities offered to him of making a defence, the master and five fellows had misrepresented the case to the visitor, and that three other fellows had protested against the sentence on this ground that Mr. Frend had not had an opportunity of answering the charge. "That upon the appeal thus made to the visitor, the answer of the master and the five fellows, and the reply of the appellant, the visitor, without reference to any of the statutes of the college, without noticing the allegations of the appellant, or the want of proof on the part of the master and five fellows, without specifying any reasons (agreeably to the constant practice of former visitors) for his concurrence with the sentence of the masters and fellows, in short with a simple declaration that he had duly deliberated upon these things, determined in these words, "I dismiss the said appeal, and affirm the sentence of amotion."

The counsel for the rule admitted that this court had no authority to compel the bishop to exercise his visitatorial power in any particular mode, or to correct his sentence, how-

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ever erroneous, if that sentence were pronounced after hearing the merits of the case on appeal; Philips v. Bury, 1 Ld. Raym. 5, 2 T. R. 346; but contended that in this case the bishop had not heard the appeal of Mr. Frend at all; for that though he received the appeal, he dismissed it without hearing any of the parties. They also mentioned R. v. the bishop of Lincoln Tr. 25 Geo. 3. B. R. [2 T. R. 338.]; where the court said they had a right to compel a visitor by mandamus to hear an appeal, in order that he might form his judgment on the merits of it.

Lord *Kenyon, C. J.* If there were the most remote probability of raising a question in this case, we ought to grant a rule to show cause, in order that the question might be further investigated. But as there is no probability of throwing fresh light on this case, and as according to the circumstances now disclosed the rule which applies to cases of this description has been so clearly settled for near a century (since the case of Philips v. Bury) that it ought not now to be brought in question again, I think it would be unjustifiable to put the bishop to the expense of showing cause against a rule, which is destitute of every foundation on which it can rest. It was settled in Philips v. Bury, in which determination the profession has ever since acquiesced, that this court has no other power than that of putting the visitatorial power in motion (if I may use the expression), but that if the judgment of the visitor be ever so erroneous, we cannot interfere in order to correct it. Now here the visitor received the appeal; each party disclosed his case to him; the whole merits of the case were before him; and he has exercised his judgment upon the whole. If therefore we were to interfere, it would be for the purpose of controlling his judgment. But any interference by us to control the judgment of the visitor would be attended with the most mischievous consequences, since we must then decide on the statutes of the college, of which we are ignorant, and the construction of which has been confided to another forum.

Ashhurst J. When a visitor refuses to receive and hear an appeal, this court will compel him to exercise his visitatorial power: but we have no authority to compel him to form a particular judgment on the merits. Here the bishop has heard and decided; and I think that the appellant does not state the ground of his application correctly, when he says that the bishop has not heard the appeal.

Buller J. The whole turns on the equivocal use of the word, "heard." The appellant thought he had a right to be heard personally before the visitor, and that the bishop ought not to have decided without hearing parol evidence. But that is not the course of proceeding on these appeals. Here the appellant states that he did appeal; that the college sent their answer to the bishop; and that he (the appellant) replied to it; then the bishop did hear the appeal in the way in which such appeals are usually heard.

Grose J. If the bishop had not exercised his judgment at all, we would have compelled him: but it is objected that he has not exercised it rightly; to this I answer that we have no authority to say how he should have decided.

Rule refused.

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577. Proceedings in the Case of Daniel Isaac Eaton,* upon an Indictment for publishing a Libel, intituled, "The Second Part of the Rights of Man, combining principle and practice." By Thomas Paine. Tried at Justice Hall, in the Old Bailey, before Sir John William Rose, Serjeant at Law, Recorder of the City of London, on Monday, the 3rd Day of June: 33 George III. A. D. 1793.

Indictment.

At the general session of Oyer and Terminer, of our Lord the King, holden for the city of London, at Justice-hall, in the Old Bailey, within the parish of St. Sepulchre, in the Ward of Farringdon without, in London aforesaid, on Wednesday, the twetieth day of February, in the thirty-third year of the reign of our sovereign lord, George the Third, king of Great Britain, &c.

London, to wit. THE jurors for our lord, the king, upon their oath present, That Daniel Isaac Eaton, late of the parish of St. Botolph, without Bishopsgate, in the ward of Bishopsgate, in the city of London, aforesaid, bookseller; being a wicked, malicious, seditious and ill-disposed person, and being greatly disaffected to our said sovereign lord the now king, and to the constitution and go-

* See the next case; and in this Collection, the trials of this same Daniel Isaac Eaton, in 1794, and 1812 *post.*

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vernment of this kingdom, and most unlawfully, wickedly, seditiously and maliciously, devising, contriving, and intending, to scandalize, traduce, and vilify our said lord the now king, and the hereditary succession to the crown and regal government of this kingdom, as by law established, and to alienate and withdraw from our said present sovereign lord the now king, the true and due obedience, fidelity and allegiance, of his subjects, and wickedly and seditiously to disturb the peace and tranquillity of this kingdom: on the seventeenth day of January, in the thirty-third year of the reign of our said present sovereign lord the king, with force and arms at the parish aforesaid, in the ward aforesaid, in London aforesaid; he the said Daniel Isaac Eaton, unlawfully, wickedly, maliciously and seditiously did publish and cause to be published, a certain scandalous malicious and seditious libel, intituled, "Rights of Man, Part Second, combining Principle and Practice, by Thomas Paine, Secretary for Foreign Affairs to Congress, in the American War, and Author of the Works intituled Common Sense, and the First Part of the Rights of Man. London, printed for H. D. Symonds, Paternoster-row, 1792." In which said libel are contained (amongst other things) divers scandalous, malicious, and seditious matters, of and concerning the hereditary succession to the crown and regal government of this kingdom, as by law established, that is to say, in one part thereof according to the tenor and effect following, that is to say, "It cannot be proved by what right hereditary government" (meaning amongst other things the said hereditary government of this kingdom), "could begin, neither does there exist within the compass of mortal power a right to establish it" (meaning such hereditary government). "Man has no authority over posterity in matters of personal right, and therefore, no man or body of men, had, or can have a right to set up hereditary government," (meaning amongst other things, the hereditary government of this kingdom.) And in another part thereof, according to the tenor and effect following, "Hereditary succession" (meaning amongst other things the said hereditary succession to the government of this kingdom) "is a burlesque upon monarchy, it puts it in the most ridiculous light, by presenting it as an office, which any child or ideot may fill. It requires some talents to be a common mechanic, but to be a king requires only the animal figure of man, a sort of breathing automaton, this sort of superstition may last a few years more, but it cannot long resist the awakened reason and interest of man." And in another part thereof according to the tenor and effect following, that is to say, "A government calling itself free, with an hereditary office" (meaning amongst other things, the government of this kingdom, with an hereditary office of king thereof) "is like a thorn in the flesh, that produces a fermentation which endeavours to discharge it." And in another part thereof, according to the tenor and effect following, that is to say, "Hereditary system" (meaning amongst other things the hereditary system of succession to the crown of this kingdom) "therefore, is as repugnant to human wisdom, as to human rights, and is as absurd, as it is unjust."

And in another part thereof, according to the tenor and effect following, that is to say, "Whether I have too little sense to see, or too much to be imposed upon, whether I have too much or too little pride or of any thing else, I leave out of the question, but certain it is, that what is called monarchy" (meaning amongst other things the monarchy of this kingdom) "always appears to me a silly contemptible thing, I compare it to something kept behind a curtain, about which there is a great deal of bustle and fuss, and a wonderful air of seeming solemnity, but when by any accident the curtain happens to be open, and the company see what it is, they burst into laughter." And in another part thereof according to the tenor and effect following, that is to say, "That monarchy" (meaning amongst other things the monarchy of this kingdom) "is all a bubble, a mere court artifice to procure money, is evident (at least to me) in every character in which it can be viewed." And in another part thereof according to the tenor and effect following, that is to say, "It can only be by blinding the understanding of man, and making him believe that government is some wonderful, mysterious thing, that excessive revenues are obtained. Monarchy" (meaning amongst other things the monarchy of this kingdom) "is well calculated to ensure this end. It is the popery of government, a thing kept up to amuse the ignorant, and quiet them into taxes," in contempt of our said lord the now king, in open violation of the laws of this kingdom, and to the great danger of our happy constitution, to the evil example of all others in the like offending, and against the peace of our said lord the king, his crown and dignity.

Witness,

CHARLES HUMPHRIES.

JURY.

Mr. Thomas Preston,	Miles's-lane Cannon-street.
Edward Howell,	Ditto.
Joseph Cecil,	Ditto.
Jos. Greening,	Crooked-lane.
Thomas Bond,	Ditto.
Thomas Swaine,	Lilipot-lane.
Joshua Windsor,	St. Martin's-le-grand.
David Bligh,	Ditto.
Jonathan Cope,	Ditto.
John Morgan,	St. Ann's-lane, Aldersgate-street.
Jos. Scammel,	Noble-street.
Samuel Glover,	Aldersgate-street.

Counsel for the Prosecution.—Mr. Garrow,

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[in 1812 Solicitor; in 1813, Attorney General;] Mr. Fielding.

Attornies. — Messrs. Chamberlayne and White, Solicitors to the Treasury.

Counsel for the Defendant. — Mr. Felix Vaughan, Mr. John Gurney.

Attorney.—Mr. I. A. Bonney, No. 4, Percy-street, Rathbone-place.

[Mr. *Fielding* opened the Indictment.]

Mr. *Garrow.* Gentlemen of the jury;—I have also the honour of attending you upon this occasion, charged with the duty of stating to you, on the part of the crown, the circumstances which belong to this case, imputing to the defendant the guilt of being the publisher of a seditious libel.

As this is an appeal between the defendant and the public, calling upon you, under the most solemn of all sanctions, to decide; I should, after what has passed upon the subject of this publication in other places, have contented myself, with very shortly desiring that the passages should be read to you, that the fact of publication should be proved, and should then have asked for your verdict. The reason I take another course is this, it has happened somehow or another, that persons standing in the situation of the defendant, have had the good fortune, in every place in which they have been prosecuted, to be defended by very considerable talents and abilities, from the exercise of which it is to be expected (as experience has shown us it has been practised), that all that the ingenuity and learning of the profession can bring in aid of such defendants, will be exerted for the purpose of standing as a shield between them and the verdicts of juries, in order to protect them from conviction.

Upon the present occasion, the defendant has the advantage of the attendance of a learned friend of mine, if he will permit me to call him so, for whose abilities I have very great respect, and therefore it will be my duty (as in all probability this will be the only stage of the cause, in which I shall have an opportunity of addressing you) to anticipate the modes of defence which my friend's ingenuity will find out, and appeal from that ingenuity to your plain sober common sense and discretion, to decide between my friend and me, upon the propriety of the defendant's conduct.

In the outset of the cause, I say this, representing the public, if you have any serious, sober, rational, doubts of the guilt of the defendant, upon any of the fair topics, that may be adduced before you, in God's name pronounce him Not Guilty. If on the other hand, when the evidence shall be laid before you, when you shall have attended to this publication, as men of sober reasoning must attend to it, you shall find it impossible to pronounce him not guilty without a breach of your oaths, or a dereliction of your duty, sure I am, you will not incur the imputation of having sacrificed the one or infringed the other, upon any topics of compassion, humanity, or any other that ingenuity may furnish.

It may occur to some persons who have but superficially attended to this subject, that these prosecutions have been multiplied too much. Judge of that, when it is stated to you, that after this publication, which I suppose you have collected to be the Second Part of the "Rights of Man," written by that gentleman who states himself to be "Secretary for foreign affairs to Congress in the American War, and Author of Common Sense;"—that when that had run through several rapid editions, at a high price, it was found that, in order to accommodate it to readers of all classes and descriptions, to find its way into the most humble habitation of the most peaceful subject of this country, to make the poison spread and to gratify every palate, the press teemed with new editions at a cheap and easy rate; and notwithstanding all the admonitions of the prosecutions that were commenced, all the admonitions of the verdicts of juries, and all the judgments of necessary severity; this defendant continued still in this metropolis, in the heart of those convictions, and those judgments, with all of them staring him in the face, still to sell and to distribute this publication, until the notoriety of his conduct was such, that they, whose duty it is to watch over the public tranquillity, thought themselves in duty bound to institute this prosecution.

Upon the libel itself it will not be necessary to adduce many arguments, for you to pronounce that it is what it is described to be, a most malignant, seditious, inflammatory, and mischievous libel. I admit to my learned friend, that if taking this book, and reading the passages with its context and with its various parts, you should be of opinion, that upon the whole it is an innocent, fair discussion of a political subject, it will be your duty to acquit the defendant.—If indeed that argument could be offered to men of common sense, without an outrage upon reason, the author, instead of being as he is, suffering the judgment of the law, an exile, I hope an eternal exile, from this happy country, ought to have been a man acquitted, not condemned.*

Let it not be said that the press is endangered by this prosecution,—that the freedom of the press is in danger, because libels, flagitious and seditious as this is, find their way into courts of justice. I state therefore, that if you should be of opinion that this book was written in the fair spirit of true political inquiry, I do not desire you (because those I represent have not desired any body else) to find the defendant guilty.

Gentlemen, I proceed to state some of these

* See the trial of Thomas Paine, *ante*, p. 357.

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passages, and then you shall, if you please, as you go along, judge for yourselves in what spirit they were published in this country. You will look, for certainly you are permitted to do so, at the relative situation of other countries, at the time of the publication; that will assist you in discovering with what views, and with what spirit, this author wrote.

He begins by talking of the constitution of the country, in that important part, the executive part of the government, the kingly office, and hereditary succession.—Observe how he speaks upon that subject.—I will give you his own words.

He says, "It cannot be proved by what right hereditary government could begin, neither does there exist, within the compass of mortal power, a right to establish it."

Observe the reasoning, and see if his reasoning be founded to what it extends. "Man has no authority over posterity in matters of personal right, and therefore, no man, or body of men, had, or can have, a right to set up hereditary government."

In plain English and common sense, what does this mean? You Englishmen, at least to carry it no farther back than a century, have been submitting to the folly, to the absurdity, to the tyranny, and to the despotism of a form of government, which has for its foundation and corner stone, hereditary succession. You have been slaves therefore all that period, because, inasmuch as you have not given any consent to this form of government, inasmuch as you have not been called upon to give your approbation or disapprobation, and, as no mortal power could establish it, as man has no right over posterity, and, as no man or set of men have a right to dictate to you, what government you shall have, —What is the argument? that you have been living the slaves of despotism, the shackles of which were forged for you by your ancestors. That it is, which this man, vain and absurd reasoner as he is, tells you; he tells you all your rights, all your interests, all your chances of happiness, all that is dear and estimable in society, have been trampled upon, because those who according to him, had no right to say how you should be governed, have said, you shall have an hereditary succession.

Does the argument end here? If no man, or set of men, have any right to enter into stipulations for posterity, how is it that we have any representatives in parliament? How is it that any part of the constitution stands? How is it that we have received from our ancestors those three branches, the King, the Lords, and the Commons, of which our admirable constitution is composed? They have handed them down to us; but in the language of this author, they had no right to do so, for no man or set of men have a right to stipulate for posterity. It is folly, impudence and usurpation; that is the argument of this gentleman.—But perhaps this will be said to be all fair reasoning, and political discussion, and only the writing of a man, who thinks the constitution can be a little mended.

He goes on to say, "Hereditary succession is a burlesque upon monarchy, it puts it in the most ridiculous light:"—Is this fair, dispassionate reasoning? Is this the man who comes here as secretary for foreign affairs to America? Is this gentleman in the spirit of reforming our foolish opinions?—"By presenting it as an office which any child or ideot may fill." Is it so? Why, if it were, I admit, that it is fair and fit for any man, to sit down in his closet, and state that, by way of argument.—But is that true, or is it not an impudent assertion, within the knowledge of the author false, made in order to impose upon weak minds? Is the executive government of this country, passing in the illustrious house in which it is to pass in succession I hope till the end of time, to be treated in this manner? Is he not telling you, that you are submitting to be governed in an office, which you look to as essential to the constitution you admire, but which is, according to him, like a child's rattle, or the idle nonsense of an ideot? Is it not a malicious and seditious intent, to rouse up the discontents of the country;—To alarm the people for every thing that is dear and valuable;—to make them disgusted with the king and kingly office,—and to recommend it to them to get rid of it as soon as they can?

Then he goes on, "It requires some talents to be a common mechanic;"—still addressing himself with a meanness, of which I protest one is ashamed, to any vulgar mind, under whose notice this book may come;—"But to be a king, requires only the animal figure of man—a sort of breathing automaton." Is this the language of fair political discussion? Is this the reasoning of a man, who thinks things may be mended by political discussion? or is it not the language of a man, sneering at all that is dear and valuable to this country?

He says, "This sort,"—and if you wanted a commentary upon the rest of the text, this would furnish it,—"This sort of superstition;" —What superstition? the superstition in which we have been educated, as something we were to look up to as a blessing; and which our maturer judgments have taught us to admire and adore;—attachment to royalty, the corner stone of this country.—

"This sort of superstition may last a few years more, but it cannot long resist the awakened reason and interest of man." What is to become of it? Why get rid of it, in consequence of this writing of mine, in consequence of my attempts, and those of others who are engaged in this pious labour, to illuminate mankind, to awaken their reason, and put them in the right track of inquiry and of action too, for I defy any man alive to say, that that is not the meaning of the author of this book!

Is this, I ask again, calm, deliberate discussion? Is this what a man writes, desiring

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it to go forth into the world, saying thus, if my reasoning is good, adopt it; if it is futile reject; if it is absurd, laugh at it? No, it is an endeavour to undermine every thing that is estimable and useful, and to do it in a way that too often succeeds, for when you find you cannot attack a man to advantage by argument, you may do something by a sneer.

"A government calling itself free, with an hereditary office, is like a thorn in the flesh, that produces a fermentation which endeavours to discharge it."

"A government calling itself free."—Let us see what that means in plain English; for I invite my learned friend to this mode of reasoning upon the book, and let him convince you if he can, that this is plain sober reasoning, not calculated to do mischief. "A government calling itself free!" You Englishmen call yourselves free. You say you live under a free government. You say that in this country every man's liberty is protected, his property secure, that he can go about his business with safety, that there is equal law for the poor and for the rich, in one word that you have adopted the cant of your ancestors, and call yourselves a free people.

But in this freedom you have hereditary government, which is so utterly inconsistent with freedom, that "it is like a thorn in the flesh, which produces a fermentation, which endeavours to discharge it." What does this mean, but that the hereditary office of the king of this country, is to be got rid of by a fermentation? What is the argument? You who boast that you are free, and wish to be free, and have set the world a madding after your freedom, if you would restore yourselves to that envied character, or assert it if you never had it before, get rid of your hereditary succession, it is a thorn that is stuck into your flesh; set about the fermentation,—"fermentation," was not an accidental word; let this book engender the fermentation, and then you may throw out this thorn.

Gentlemen, is this the art of an advocate? Is it not the plain common sense of this passage? I protest I never have tried what the sense of this book was in the way I do now, and I chose to trust to the impression which it would make upon my mind upon this occasion.

Then he goes on, "The hereditary system therefore, is as repugnant to human wisdom as it is to human rights." What, is it repugnant to human wisdom? What is that but telling us that we are the most egregious fools that ever lived; that with all the lights that reason holds forth to us, and the instruction these gentlemen are so good as to give us, we still go on preferring folly to wisdom, slavery to freedom? You goon adopting an hereditary system, which is as repugnant to human wisdom, as to something else I am coming to. But as if this were not enough, as because men if they are fools, will be likely to continue so, our author is to address us upon another point, and influence us by other considerations.—It is repugnant too to human rights. What is this argument again? Your rights, as long as you have had this hereditary succession, have been invaded, because hereditary succession is repugnant to human rights. You foolish Englishmen have believed you were happy and free, but I tell you, you are neither happy nor free, you are not acting consistently either with wisdom or with rights, because you are fools enough to submit to hereditary succession. How are you to mend that? get rid of it; become wise, become free, become valuable, but you can only do this by getting rid of it.

He proceeds, "And is as absurd as it is unjust." Is this the language of a politician in his closet, writing in the spirit of a Locke or a Sidney for future days? Why, it is telling you that it is not only absurd, and therefore to be got rid of, but it is unjust. What is the plain English of that? why, that the king who sits upon the throne is an usurper.

Then he says, still, I think, in language which may teach you the spirit in which the author wrote; "Whether I have too little sense to see, or too much to be imposed upon; whether I have too much or too little pride, or of any thing else, I leave out of the question; but certain it is, that what is called monarchy, always appears to me a silly contemptible thing."

Does it so indeed? That thing which you have fancied, the moment it was destroyed, destroyed the constitution under which you live.—That thing which having lost by usurpation during a small period of the history of your country, you were eager to have restored to you, feeling that you could not do without it.—That thing always appeared to this author to be a silly, contemptible thing. Is this a cool, calm, political writer? No, such a person would have spoken in this manner,—"If you examine what monarchy has been in any ages of the world, you will find perhaps that considered by itself it has its objections, but, with a little attention employed to meliorate the state of the parliamentary representation in this country, perhaps, such a thing might be spared." And then might have proceeded with a fair candid course of reasoning.—But he goes on to say, what sort of contemptible thing it is, and he tells you what he compares it to.

"I compare it to something kept behind a curtain, about which there is a great deal of bustle and fuss, and a wonderful air of seeming solemnity;"—

The author has travelled into a very unfortunate country to make this observation. It is the amiable characteristic of the monarchy of England, that it is the reverse of that character, "but when by any accident the curtain happens to be open, and the company see what it is, they burst into laughter."

What is this then, from which, accident is

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to remove the curtain, to expose to the view of the people of this country and excite their laughter? It is nothing less than the monarchy of England, from which this man invites you by accident,—I believe he would have liked it much better to have been done without accident,—to draw the curtain that you might treat it as the pitiful, contemptible thing he always thought it.

This man does not leave a great deal for counsel to do, to explain his text; he takes the bull by the horns, he goes on, "That monarchy is all a bubble, a mere court artifice," —setting up monarchy as something, which, according to this man, might be indicted, under the statute, for false pretences,—"a mere court artifice to procure money, is evident (at least to me) in every character in which it can be viewed."

Wherever I look at monarchy, whether I look at it as something grounded in the wisdom—no he would say the folly of our ancestors,—for preventing the numerous inconceivable, and devastating consequences of elective monarchy;—whether I look at it as something that is to attach to it the respect of surrounding nations;—in whatever character I view it, it looks like a trick to get money out of the pockets of the people. Are the people of this country disposed to go along with the author in this observation?—No; it is upon much better and nobler principles we contribute to the necessities of the state. It is because we know we cannot be safe nor free but at the expense which must necessarily attend all government, in all countries.

He says, "It can only be by blinding the understanding of man, and making him believe that government is some wonderful mysterious thing, that excessive revenues are obtained. Monarchy is well calculated to insure this end."—What end? picking the pockets of the people by blinding their understanding. "It is the popery of government." Now mark the art of this; would any man, sitting down in a spirit of fair dispassionate inquiry about government, attack the mind of an Englishman, by likening his hereditary succession to popery, which he knows he detests. "A thing kept up to amuse the ignorant, and quiet them into taxes." If it be so, undoubtedly it is high time there were an end of it. If any man could persuade us, that that limited, well-balanced monarchy, under which we have had the pleasure to live, merited this description, we should be traitors to ourselves and all posterity, if we did not immediately set about getting rid of it.

My friend shall have my free consent to read the whole of the book and you may judge by the context.

But I ought perhaps to apologise for having taken up so much time upon such a subject, because I have not only the opinion of learned lawyers what this is; but I have what, speaking without intending any offence to the learned judge who presides upon the present occasion;—I have what is of infinitely greater importance than the opinions of learned lawyers;—I have the concurring sentiment (I believe I may venture to say) of every honest man in his majesty's dominions, upon the question you have to decide; I have the opinion of various juries, concurring without any man's having for a single moment entertained a doubt that the spirit of the author of this book was indeed to unite practice with principle, to unite a dangerous, a destructive, a king-killing practice, with the pernicious principles of his book.

Shall I believe that you will disgrace yourselves and the place in which you are, by differing from all men of common sense and understanding upon this book? Shall I believe, any thing can for a moment divert honest and sensible men, like you, from that course which it is your duty to take?

The present defendant having the examples of these convictions, staring him in the face, and knowing that the guilty author of this book was liable to punishment upon his conviction, has taken the risk upon himself; he has chosen to make it the subject of merchandise, and sold it publicly in his shop. Shall we have any arguments addressed to you, to mark a distinction between the author and the seller of the book? I can only suppose we may, because I protest it seems to me to be extremely difficult to defend the defendant; and therefore, I am to expect that all that ingenuity can suggest, will be suggested; when a case will not afford good arguments, he must put up with indifferent ones, and when they are but scarce, he must sometimes have recourse to bad. So that upon this occasion, you possibly may have all three, good, bad, and indifferent. In the class of bad, I think stands the argument I am about to state to you;—all this may be true, as applicable to the author, the book itself may be flagitious in the extreme, the greatest talents that ever stood up to address a jury, have laboured in vain upon this,* but it will be better to say at once, traitor Paine is, he will not trouble us any more, and therefore turn your backs upon him, and consider the case of the poor defendant, who is only a poor bookseller, a man who sells this for his bread.

Will that be said? I will tell you what I should be disposed to say in answer to it, if I were a jury-man, Why Mr. Bookseller, you deal in a very dangerous commodity, if you will make a merchandise of poison to poison the dearest interests of the public, you must answer for it. I will take the liberty of saying more. It happened to somebody to write, not as Mr. Paine has done in the aggregate against every thing that is dear and valuable, but only to attack the sacred religion of the country; but he had not quite brought him-

* See the eloquent defence of Paine by lord Erskine, *ante*, p. 410.

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self up to the publishing, so he left it to his executor with a legacy to publish it after his death.—It was said upon that occasion, that one scoundrel had charged a musket to its muzzle against the interests of society, but he was too great a coward to pull the trigger, and he left another scoundrel half-a-crown to do it for him.* It seems to me that the condition of a bookseller in this case is something like that of the executor.

Mr. Paine shall have my consent to sit down and write till his eyes drop out and his heart aches, provided he cannot find any body to publish it; but it is by means of persons like the defendant, giving vent to publications like the present, that injury has been done to society.

Gentlemen, I shall prove that this pamphlet was sold at his shop, for a price, no matter by whom. I know that if ever there is an argument that is likely to succeed, if ever there is a topic that is likely to be addressed to gentlemen in your situation, it is that which is to find its way to the heart and to the compassionate feelings of those to whom it is to be addressed; and therefore, I take it for granted, my learned friend will tell you, it would be hard to convict the defendant, since this book was sold not by him, but by his wife. I should be the last person who would be supposed to visit upon the fair sex any of their offences: but, to speak gravely, does that furnish any argument at all? I admit now, and I give my friend the opportunity if he will show that the wife of the defendant, against remonstrances on his part, without his knowledge, or against his consent, procured and vended them, I shall risk none of the displeasure of any of those who are employed in guarding the interests of the public, by saying I would abandon the prosecution.

But if, on the other hand, a man is to be permitted to load his musket to the muzzle, against the interests of society, and to go from home to leave a timid woman to pull the trigger, he must pay for the mischief he does to society.

You are now in a newly ascertained situation to persons of your description, charged to inquire not only upon the fact of the publication, but upon the criminal intent with which it was published.*

I could say, I never read Mr. Paine's two books through: would it be said as an excuse for me, if I had sent these by thousands in a package into all the market towns in this kingdom,—I never read the book, but I sent them down, and they fell into the hands of a great many people who having less to do, I dare say, did read them? Still less would it be an excuse for me, if with all the warnings I have mentioned, staring me in the face, I had done this act.

I am obliged to my friend Mr. Fielding, for suggesting to me an observation. It may happen now and then, that a man does not know what has been passing in courts of justice, but the author of this, when he had the goodness to furnish the world with a cheap edition, had the goodness to tell all his publishers that he was under prosecution, but then in an appendix he ridicules the absurdity of prosecutions like this.

EVIDENCE FOR THE CROWN.

Charles Humphries, sworn.—Examined by Mr. *Fielding*.

Do you know the defendant, Daniel Isaac Eaton?—I saw him at his house in Bishopsgate-street.

When was it?—I think it was the latter end of January, or the beginning of February.—I bought some books at that time.

Did you buy the book in question?—I did not buy this.

Mr. *Gurney*. Do not let us hear any thing respecting other books.

Humphries. I bought this book there before that.

Mr. *Fielding*. What is it?—It is the Rights of Man, Part the Second.

Had you ever seen him in the shop, before you bought it?—I had—The day I went into the shop when he was there, I asked him for some of Mr. Paine's publications; he hesitated at selling it, but after some conversation, he sold me them.

Mr. *Gurney*. Confine yourself to the Rights of Man.

Humphries. I told him I had bought the Rights of Man before; and his wife I believe, a woman I conceived to be his wife, said she had sold the gentleman the Rights of Man, with some other of Mr. Paine's works a little while ago.—I think he said, "Did she?" and after that he let me have the other books.

Mr. *Gurney*. On what day did you purchase the Rights of Man?—The 17th of January.

* The following I apprehend to be the anecdote alluded to by the learned counsel: "On the 6th of March came out lord Bolingbroke's Works, published by Mr. David Mallet. The wild and pernicious ravings, under the name of "Philosophy," which were thus ushered into the world, gave great offence to all well-principled men. Johnson, hearing of their tendency, which nobody disputed, was roused with a just indignation, and pronounced this memorable sentence upon the noble author and his editor. Sir, he was a scoundrel, and a coward: a soundrel, for charging a blunderbuss against religion and morality; a coward, because he had not resolution to fire it off himself, but left half-a-crown to a beggarly Scotchman, to draw the trigger after his death!" Boswell's Life of Johnson, vol. 1, p. 240, 8vo. 1793.

* See stat. 32 G. 3, c. 60. then lately passed. See also pp. 292, 294, of this Volume.

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FOR THE DEFENDANT.

Mr. *Felix Vaughan.*—Gentlemen of the Jury;—I am of counsel for Mr. Eaton, the defendant to this indictment; and after the long, and skilful, and eloquent address, which has been made to you on the part of the prosecution, I own, that it is not without great embarrassment that I rise in discharge of that duty. For it has pleased Mr. Eaton to commit the conduct of his defence to a person so different from that which has been represented to you, that I declare, without any affectation of modesty, you will hear nothing to day on behalf of this defendant, but what has suggested itself to a man of very inconsiderable talents, and of absolutely no experience.

Gentlemen, It has been said, that you are to be spoken to by me, with eloquence, and ingenuity, and all possible contrivance; where Mr. Garrow, or any man could have collected this, I am at a loss to discover; and for this plain reason, that the present is the first occasion I ever had, of defending any man by addressing a jury, in this, or any court whatever. How then it should happen, that even in the outset of his speech, the learned gentleman should load his adversary with such encomiums, I should be at a loss to find out, did I not know he must be aware of the defence we have to lay before you; and which, all his ingenuity, all his rhetoric, and all his experience should not so far cry down this day, but that I shall find in you, a jury such as he has described, viz. a jury of honesty and independence, who are therefore prepared to give an independent verdict.

Gentlemen, I trust that such a verdict will be, because, I hope to prove that it ought to be, a verdict of acquittal. I am persuaded that such a verdict only can be just in the circumstances of this case; and, that when given, it will be universally approved by every man of common sense, and generally applauded by the people of England.

Such are my hopes, and perhaps they are the sanguine hopes of inexperience, or inability. But if the merits of the respective advocates are to be the direction of your judgment to day, what hope am I to entertain? For what am I to look? What is to become of us? What is to become of our lives, of our liberties, and our possessions, should the understandings of jurymen be carried away and overwhelmed by the torrents of rhetoric, brought down upon them, in every state prosecution?

Gentlemen, I have too great a regard for that constitution, which has been so much the subject of the learned counsel's panegyric, to believe that the greatest and most important of its establishments, is become so defective.

Mr. Garrow has discovered a great deal of ingenuity, in anticipating the modes of defence, which he imagined I might set up, on this occasion; and if we were driven so hard, it is possible you might hear from me much unnecessary declamation respecting the manner in which this pamphlet was sold, and its having been purchased of the defendant's wife, who was by this means obtaining a livelihood for herself, her husband, and her family; but Gentlemen, we are not driven to any such expedients, we know that these are no justifications. By the English law every man is accountable for the conduct of his family, and others who shall be employed by him in way of trade. Such a defence would be no sooner made, than refuted. Why then should we have recourse to it. when we have a legal and substantial justification? When I can build my house upon a rock, I will not consent to lay its foundation in the sand.

Nor Gentlemen, will you hear much from me in the way the learned counsel has supposed, on a subject most important, I admit, in itself, and in its effects, I mean the liberty of the press. You will not suspect me of contending for that licence of the press, which is neither more nor less than an abuse of this liberty. But I do not forget that I am standing before twelve of my country-men, who cannot be ignorant of the most valuable privilege of a free people. I should think it an insult to your understandings, were I to insist on the excellence of that, which has created and preserved to us the advantages we still enjoy, and, which I trust will be our protection against all who shall invade them. The liberty of the press is that, without which, there is an end to our political existence. It is like the air that we breathe, if we have it not we die.

Certain however it is, that the liberty of printing has, in this country, suffered no small opposition, and that, in quarters from whence it might least have been expected. It is not yet two years, since jurymen were gravely told, in our courts of justice, that although they were, by their verdict, to find persons accused of libel, either Guilty, or Not Guilty; still to inquire into the guilt of the publication itself, or into the intention of the publisher, was no part of their business. So that all the jury had to do, was to find the innuendos and the fact of publishing, which, if found, brought with it a verdict of Guilty, any thing farther being out of their jurisdiction.

But, gentlemen, give me leave to draw your attention to that jurisdiction which you are now acknowledged to possess in prosecutions for libel. Fortunately, for this defendant, and for us all, you are at this day no longer in the absurd and contradictory situation, in which you might have stood, according to the doctrines of two years ago. You are now to judge of the whole guilt or innocence in the publication, and of those connected with it; and for the jurisdiction thus assured to you, we are indebted to one of the most able, the most eloquent, and as this cir-

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cumstance has proved, one of the most honest advocates, that ever distinguished themselves in this country:—We are indebted to the honourable Mr. Erskine (and I do not use the epithet in its aristocratic sense), for the act of parliament, which says, that doubts having arisen as to the powers of juries, in matters of libel, it is enacted, "That on every such trial, the jury sworn to try the issue, may give a general verdict of Guilty, or Not Guilty upon the whole matter put in issue," &c.*

Now, gentlemen, what is the matter put in issue? Why it is that the defendant is the publisher of this book, that the book contains "scandalous, seditious, and malicious matters, of and concerning the hereditary succession to the crown and regal government of this kingdom," and that all this was done by the defendant, "unlawfully, wickedly, maliciously, and seditiously."

The witness has proved the defendant's wife selling it to him on the seventeenth of January last, so that the questions remaining for you to try, are

First, Whether the passages selected contain in them matter illegal, scandalous, and so forth.

Second, Whether the defendant published them with a malicious intention, in order to produce an evil effect upon the country.

And third, Whether they bear the innuendos or meanings affixed to them by this indictment.

Gentlemen, There is not one of these points which I shall not dispute to day. I shall contend that not one of these passages, nor any part of the chapter from which they are taken, is either scandalous or illegal. And I will say, that the whole of it is such as may be published, without any breach of the law, without any malicious intention, or evil effect upon the public mind.

I shall contend, that none of the passages of the chapter, from whence they are taken, are illegal; nor is the chapter itself any thing of the kind. If the passages were calculated to introduce anarchy, if that were to be collected from them, undoubtedly it would not be for me to contend upon them alone, that the defendant was innocent. But I assert, that there is not one which may not be defended; for I deny, that any one of them applies to the king, the government, or the constitution of this country. Examine them by the only test by which you ought to judge, viz. by the context of the whole, comparing other parts of the chapter with those complained of, and I am persuaded, that it is impossible that this indictment should stand as a criminal charge after such examination.

I contend, moreover, upon the law, as laid down by the late earl of Mansfield, that supposing the passages were in themselves of this criminal character, so that no man could doubt of the design of the author, inasmuch as they contained in themselves an overt act of sedition, &c. still in this case, there is sufficient evidence to resist that conclusion, by proving that the defendant thought there was nothing illegal, nothing improper, nothing but what was innocent in this publication.

So that I shall defend this cause upon three grounds; First, upon the universally admitted right of general discussion, which would be invaded if this prosecution were followed up by a conviction.

Secondly, Upon the ground of the intention with which the defendant published.

And lastly, That not one of these passages applies to the English government or constitution, according to the innuendos of the indictment.

Now Gentlemen, consider the structure and context of this book, consider also, that there are certain prejudices which have been most artfully and some most criminally raised against it, and against all ranks and descriptions of men who should dare to think, speak, or write upon the liberties of their country, and the common interests of their species. Remember by what means they have been extended through every town in England by those associations, or rather inquisitions, which persons interested in the support of public abuses have thought it good to establish. What has been the consequence of this? why that numbers of unhappy individuals have suffered the most injurious prosecutions, that many have been ruined in their private property, that others have suffered the severity of public punishment, from their fears of provoking it by a defence of themselves before a jury of their country. And thus it is, that two unhappy printers have pleaded Guilty to the same indictment with the present, and are now groaning in the dungeon before you, in consequence of that submission.

And yet it has been said, that the defendant Eaton, published this book in the face of prosecutions and convictions on account of it. Gentlemen, as an advocate, I am entitled to deny, and you as jurymen are bound to disbelieve that there were any such convictions. Are they in evidence before you? If there were—Do you know that the passages then in question were the same as those now in question? And supposing there had been such convictions, have there been no acquittals upon the book? For instance, was there no acquittal at Warwick or elsewhere throughout the kingdom? But taking all this as stated by the learned gentleman, what does it prove more than this, that there are now so many miserable men in his majesty's prisons, whose families are deprived of their support, while themselves are consigned to wretchedness and ruin?

But, Gentlemen, I beg your pardon. It is

* See the case of Stockdale, *ante* p. 292, and the cases there cited.

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not my intention to trouble you with declamation, and therefore I restrain myself on this topic. I am not desirous of provoking your feelings of humanity, when I have arguments of justice to lay before you.

Let us now particularly examine the principles of the book, and the passages selected from it by the indictment; what is its professed object as expressed in the title? it is a pretty general one, "Rights of Man, combining Principle with Practice." The rights of man indeed, we have been told by a certain apostate patriot,* are very contemptible things. Philosophy, light, and the rights of man are all in his estimation, of the same value, that is, are all of them fit objects of our contempt; but you and I who have something to lose when those rights are taken from us, will be apt to look at them more seriously.

But it is said the principles laid down in this book, tend to dissolve all order in society, to destroy just obedience to the laws, and that this was the design of the author. Has the event been so? what riots, what confusion has taken place since it was published? There have indeed been riots † at two places, viz. at Birmingham and at Manchester; but were they conducted on any principles like the Rights of Man, or upon any other than those of bigotry and persecution? Look to the preface and let that speak for him. I will not read the passage; but it is in substance, "that however it might be good to detect the errors of a bad law, and to expose its defects, still that it is proper and expedient to obey it, while it exists, for fear that resistance should weaken the force of good ones." Will it from this be contended, that Mr. Paine meant resistance and rebellion to law and good government? The whole scope of his book, is to give opinions, is speculation which may, or may not be adopted in practice, as shall be thought just and proper. Is there any title to any chapter in Mr. Locke's Essay, or in any other book on government, more abstract, more speculative than those of all these chapters of this book on the rights of man? Look to them. What are they?

First, Of society and civilization.

Second, Of the origin of the present old governments.

Third, Of the new and old systems of governments.

Fourth, Of constitutions.

And Fifth, Ways and means of reforming the political condition of Europe.

Out of these the indictment has taken certain extracts from chapter the third, which is a general discussion on the comparative advantages of hereditary and representative government. When it is said, that the whole of this chapter consists of instigation to anarchy and confusion, it is but fair to state all such passages as are relevant to the subject in question, and not singly those of the indictment. As to the latter, I admit, that they contain satyric and invective, I care not what, on a certain form of government, which this man had in his head, and which he conceived to be mischievous,—I mean absolute monarchy, and indefeasible hereditary succession.

But, Gentlemen, Mr. Garrow has conceived, and taken it for granted in all his observations, that the author meant the English government, and that alone, which is begging the whole question in issue. Now the fair way to judge of a writer's meaning, is, by comparing the whole context, and seeing how the one part of his book conforms to the rest of it. If so, what is the definition given by Mr. Paine himself, both of a republic, and of a monarchy in this very chapter? It is as follows:—

"What is called a Republic is not any particular form of government. It is wholly characteristical of the purport, matter, or object for which government ought to be instituted, and on which it ought to be employed, *res publica*, the public affairs, or the public good, or literally translated, the public thing."

Undoubtedly this man had not a learned

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* Perhaps alluding to Edmund Burke.

† Of these riots, which, and the proceedings consequent upon them, long engaged the general attention of the country, ample details were published at the time of their occurrence. The reader is referred more particularly to the undermentioned pamphlets:

"An authentic Account of the Riots in Birmingham on the 14th, 15th, 16th, and 17th days of July 1791; also the judge's charge, the pleadings of the counsel, and the substance of the evidence given on the trials of the rioters; and an impartial collection of letters, &c. written by the supporters of the establishment and the dissenters, in consequence of the tumults. The whole compiled in order to preserve to posterity the genuine particulars and connexions of an event which attracted the attention of Europe."

"An Appendix to the "Account, &c." containing interesting papers omitted in that work, or since published. With the damages claimed by, and allowed to the sufferers."

"The Report of the Trials of the Rioters at the Assizes held at Warwick, August 20, 1791, before the right hon. Mr. Baron Perryn, taken in short hand by Marsom and Ramsey, by order of the committee of protestant dissenters in Birmingham."

The disturbances at Birmingham produced also a long literary contest which was carried on with considerable asperity, between the partizans of Dr. Priestley and their antagonists. Numerous tracts issued from the press during the controversy, but as they have no longer that interest which they possessed at the time of their appearance, and will not be found to afford much either of instruction or amusement, I will not trouble the reader with a recital of them.

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education, but he always contrives to know the meaning of the terms he uses, being well aware that the ideas depend materially on the language in which they are conveyed. But what is his definition of monarchy? "It is," says he, "a word of base original signification. It means an arbitrary power in the hands of an individual person, in the exercise of which himself, and not the *res publica* is the object." Let me ask you, let me ask any man, whether this is, or not, the nature of the English constitution; surely no! the government of this country is, I trust, of a very opposite description. It is a government of liberty, a government of beneficence, very different, I hope, from that abominable system here represented.

In the consideration of this chapter, I am not at all afraid of that "thorny" passage, about which we have heard to day, and thorny I am persuaded they will find it, when they attempt to turn it against the present defendant.

But says Mr. Garrow, in great triumph, this is said of a government calling itself free, and therefore, the hereditary office in such a government, must mean England, and our government; in common fairness, read the sentence preceding this, and you will find that it applies entirely to the stadtholdership of Holland, an hereditary office, which as we all know caused so many disturbances in that republic As to us the subjects of England, it is above a century since the thorn has been extracted from the frame of our constitution. Previous to the revolution, we lived under the pain and inflammation which it occasioned; thank Heaven and the courage of our ancestors, the fermentation which it produced has left us with provisions to prevent a recurrence of the same evils, or the same remedies.

It is true, indeed, that since that time, two attacks have been made on the settlement of executive government, as by law established. In 1715 and 1745,* the Pretender, aided by a foreign power, invaded this country, with this same chapter of hereditary succession in his hand, which is almost word for word, like the innuendos of this indictment. They were in both instances, repulsed and driven out with shame and contempt for their portions. Yet after this defeat, what was the conduct of the people of England? The chiefs alone of that rebellion were punished. They made an example of the rats, who would have undermined the house, and they left the mice to go where they would. There were not, I believe, such numerous, nor vexatious persecutions as have taken place about this little book, called the Rights of Man. The mildness and generosity of that day suffered but few sacrifices at the altar of vindictive justice: And yet it should seem, that those who invaded the promulgated will of a free people and the rights of man, as established in England, did deserve, for the benefit of the nation and posterity, very signal punishments indeed.

Gentlemen, if these considerations are not, together with those contained in the rest of the indictment, of the most speculative kind, I should be glad to know whether Mr. Locke's Essay is to have that or what other character. In fact, this whole chapter is professedly written, as you may observe in the beginning of it, in reply to the abbé Sieyes, a French author, with whom Mr. Paine had a literary contest on these subjects. I shall therefore trouble you with no farther commentary on this head, but request your attention to the authority I have already alluded to.

Gentlemen, in sir James Burrow's Reports, in the case of the King *v.* Woodfall, for printing the celebrated Letter of Junius, lord Mansfield lays down this doctrine, which I will give you in his own words: "There may be cases, where the fact proved as a publication may be justified or excused, as lawful or innocent. For, no fact which is not criminal, in case the paper be a libel, can amount to a publication of which a defendant ought to be found guilty."*

In pursuance of this opinion, it is clear, that if the printers and publishers of this book have done any act which may prove satisfactorily to you, the innocence of their intentions, then you are bound to consider this charge as groundless, for there can exist no crime in our law, where there is no criminality of intention.

You will observe, gentlemen, that the book in evidence purports to be a second edition of the work intituled "Rights of Man." At the time of its being published, Mr. Paine was under prosecution, but for what? for any thing contained in the book before you? not at all. The booksellers contracting with him for the reprinting his work, knowing it was prosecuted by the attorney-general, refused to print it, unless the passages contained in Mr. Attorney's information, were struck out from the book. They reasoned thus; this is a matter of great public expectation; the attorney-general has undoubtedly inserted in his charge, all that is criminal, for in such circumstances, nothing surely would be omitted. We will bow to so high an authority, we will print nothing but what is innocent, which we conceive the remainder of this book to be. Examine this book, gentlemen, and you will find that there is no reflection on the House of Orange, or the House of Hanover, or the Revolution, for which Mr. Paine was prosecuted. On the contrary, you will perceive in the notes of it, where these paragraphs are omitted: why then, I put it fairly to you, do you in your consciences believe, that these

* See the proceedings respecting the Rebels of 1715 and 1745, in Vols. XV. and XVII. of this Collection.

* See *antè*, Vol. XX, pp. 917, 918.

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men, or any of them, could do this unlawfully, seditiously, and so forth, in the manner as charged by the indictment, and as you are bound to find by your verdict? if not, I contend, that you are bound to find the defendant not guilty.

One word more, gentlemen, and I have done. The innuendos of this indictment allege, that these passages are "of and concerning the monarchy of this kingdom." Gentlemen, exclusive of the definition of this term, as given by the author, I insist that it has no legal application in this case. However, it must be owned, that there are prejudices in men's minds which favour an opinion, that monarchy is an essential part of the English constitution. These arise from the reading of certain popular treatises, which are very pretty, and very amusing, but which contain in them very incorrect and ill-digested notions. It is not in the essays of foreigners, nor in the light easy lectures read before the students of our universities, that we are to look for the constitution of the country, but in the laws and in the history of the country.

But, gentlemen, people have thought proper, for the sake of writing books, to sit down to the study of the constitution. Finding it composed, as it undoubtedly is, of King, Lords, and Commons, they being men of learning, and intimately acquainted with the Greek language, have concluded that this is a mixture of monarchy, aristocracy, and democracy, according to the Greek accounts of those governments: with these materials they begin to compose an English constitution, much in the same way as a good English house-wife would compose a good English pudding—but these writers are not to be the rulers of our judgments. The indictment states, that these observations are written and published seditiously and unlawfully. Now I ask in what law it is, whether in the common law or the statute law that you find the term monarchy? Where do you find, in substance, any thing like the monarchy described in this book, which is the true and literal signification of the word?

Gentlemen, there is, in the English law, no such thing. The English constitution knows no such thing as an arbitrary power in the hands of any one individual, as distinguished from the interest of the community.

Gentlemen, let us not confound the title of a sovereign, governing by the free consent of a free people, with that of a mere monarchy. The one is the noblest title our gracious sovereign can wear; the other is directly the reverse. There is but one thing in which arbitrary power is observable, and that is in the law. The law is the only monarch of this country. And I have the highest authority, that of its great oracle and luminary, lord Coke, for saying, that the king is the subject of that law, while he is the first and principal magistrate of the nation.

Is this a title gained by fraud, or by force, or by intrigue, or by conquest, like that of almost all the monarchies in Europe?—Neither. It is the result of an act of parliament, under which, about a century since, this nation did elect a king, and said this, with respect to the future succession:—First, it shall be limited to king William and her gracious majesty queen Mary, and their issue; then to the lady Anne (afterwards queen Anne) and her issue; and there was a further provision, that in case queen Anne should die before king William, without issue, then, that the heirs of king William, by any other woman whom he might marry, should become the lawful successors. But it did not end here. In 1700, the duke of Gloucester, son to queen Anne, died; upon which the then parliament provided further for the exclusion of the House of Stuart, and introduced the succession of the family of Hanover; the whole being conditional, any person whatsoever, being a papist, or marrying a papist, being himself and his heirs for ever excluded.

But again, this latter act determines, that should any man call in question the power, which the parliament has, to alter the succession, he shall be guilty of high treason, if that opinion is in writing; and shall incur the penalties of a præmunire, if by advised speaking.

Now I ask, in what part of all this do you find absolute monarchy or absolute hereditary succession, according to the innuendos of this indictment, for the constitution and government of England? Do we not see directly the contrary? Did not the parliament say, "We will not be governed by the House of Stuart; we will drive them out, and choose a new race in their stead, by whom we will be governed, but to whom we will give certain conditions and limitations for the rule of their conduct. And should any one come and dispute our authority to alter the succession, and to make it conditional, let him stand by the consequences. He shall incur the penalties we have provided?"

Put all these circumstances together, and let them tell us how these innuendos make out the monarchy and hereditary succession to the crown of these kingdoms (when they put those words absolutely and alone, without qualification or condition), as being things so sacred. I say, that neither the author's definition, nor the law of England, warrants their being so used and referred to the English constitution; which I say any writer is protecting, when he shall philipicize or satyrize this species of hereditary right and of hereditary monarchy. He is, in effect, making a defence of its principles, by destroying those of an opposite kind, and conferring the greatest benefit on his country.

Gentlemen, I have now concluded my argument on this case. Let me intreat you to make some little allowance for the length of it, on account of the fate which may attend this defendant, and the thousands of people,

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who may be subject to the same charge with that now brought against him, for the publication of the Rights of Man. Let me intreat of you to dismiss from your minds any prejudices you may have imbibed against its author, of whom I am led to acquaint you with an anecdote, disproving much that has been said against him; for I am credibly informed, that it is now several years that he has maintained an old and decrepid relation, at Thetford, the place of his birth. This relation, hearing the severe things reported against him, said, he was the best man in the world, and would have been thought so universally, if he had never been able to write. And it may in the same manner be said of many persons, that it would have been well if they had been unable to read, as they may afterwards be prosecuted for lending, or otherwise publishing, this book; for I know of no benefit of clergy extending to them in cases of libel.

The present cause is to bring with it very serious consequences.—Consider how many thousand copies of this book have been in circulation; consider how slight a proof is requisite to convict a man of being a publisher; for the law differs, as to evidence in libel, from that of other subjects, being entirely the offspring of that monster the Star-Chamber. Every man, who lends, or carries, or leaves a book upon his table, so as another may read it, is, by able prosecutors, made out to be a publisher. I do not know whether you have read the Rights of Man, or have it in your possession; but are you sure you never lent a political pamphlet that might subject you to a prosecution? I know at least of one person in this court who cannot so say; but I know my neighbour much too well to mention his name. And I should think it somewhat hard, for a man to suffer a heavy fine and two years imprisonment for having left this book upon his table.

Gentlemen, it is for you, by your verdict, to lay this question at rest; for otherwise, when, and where, and with whom, is this storm of informations and indictments to cease? Is it to finish with Mr. Eaton, the present defendant? I wish it were; and although I have not an intimate acquaintance with him, I do believe he has spirit enough to wish so likewise, provided he were sure of saving the numberless victims who are intended to follow him; who are to be taken from their homes and occupations; who are to be torn from the bosoms of their wives and families, dependant upon them and their labour for support; and to meet the severity of fine and imprisonment:—And all this for what? For having published a book which they believed to be innocent, and which they might fairly think beneficial to the public interest.

Gentlemen, let me ask of you to consider whether this foreign, this ancient language of monarchy,—whether this Tory language, of absolute hereditary succession,—is such as being reviled in any book, should bring down upon its authors and publishers shame, disgrace, misery, and ruin? That is to be the fate of this man and his family, should you err in the verdict you have to give. I trust that will not be the case. I am persuaded, that you will give to this important cause every attention and every additional argument that may occur to you, and which may probably have escaped me; but, above all, that you will not fail to remember the circumstance of intention, tending so greatly to favour that acquittal, which I here solemnly claim from you on behalf of this defendant, because I solemnly believe him entitled to it upon this indictment.

Permit me, lastly, again to beg you will seriously reflect upon the consequences of your verdict; should it be a verdict of that harshness and vindictive character called for so loudly by the prosecutors, it will be an apple of discord that you shall have thrown amongst us, the seeds of which, spreading far and wide across the land, shall cover it with sorrow, wretchedness, and despair.

There may be parts of this book which are criminal, but I contend they are not the parts appearing on this indictment. Besides it is not quite so well that any persons, who have published, and, like Mr. Eaton has done it innocently, should never lay down to rest without thorns upon their pillows.

Should you bring in a verdict of acquittal how different will it be! You will, by that means, put an end to all these speculative disputes and rancorous prosecutions. You will be laying the foundation and corner stone to a temple of peace and concord, wherein we shall be protected, not only from the storms of anarchy and confusion, attributed to the author, admirers, and publishers of this book, but also from the invasions of those petty subalterns of arbitrary power, who are ever fawning upon their superiors, by persecuting men better than themselves.

The *Recorder* summed up the evidence, and then proceeded as follows:

Before I come to the question of publication, there are some previous other questions to be decided.

The question of libel.—The sense of the libel is always stated in the indictment, by way of innuendo; and before the late act of parliament took place, it was always clear and settled law, that it was matter of fact for the jury to decide, whether that sense was to be applied to the language of the libel.

You have heard an able address to you on the part of the defendant; you will have to consider whether the author never meant, and had no intention to apply himself to the government of this country, in the language which he used; and at the same time, that the readers of this book, whoever they were, not merely philosophers and men of great information and learning, but the generality

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of mankind—whether the generality of mankind, reading this book, would apply this book, in the language in which it is written, to the king of this country, and the hereditary succession and government of this country; because it has been contended, that the sense applied by the indictment is not the good sense.

The counsel, in taking that line of argument, has told you, that the force of this libel is taken away, by stating to you, and therefore I must take it the fact is so, that there was a book published on the same subject, which book has been considered as a libel; and his client, in order to avoid the mischief of that publication, has published this in the way it stands; and that, by that means, not only the sense is materially altered, but all the mischiefs done by the former book are clearly done away, because no mention is made of the house of Hanover or the government of this country.

You will be to consider upon this part of the case, whether the persons, who in general read this book, in the common sense they use the word "monarchy," the word "absolute" not being put one way, or "limited" the other, would not apply it to the government of this country.

If upon reading the whole of this, you are satisfied that the person who wrote it, did not write it with an intention to weaken the hands of government, to set every thing afloat, to put every thing into confusion, but with a good, honest, philosophical, turn of mind, for the benefit and real advantage of mankind—if you are satisfied, that Paine published this book in this country, as a philosophical man, coolly applying to the sound discretion of those who were competent to judge upon the subject, to men of learning, to philosophers, who could understand the terms in which he wrote, and that he meant to do no mischief, it is what all authors in this country have a power to do; for the distinction between the freedom of the press and the abuse of it is precisely this—that every thing may be done by the press which is done for the honour, advantage, and benefit of mankind; but nothing can be done by the freedom of the press that tends positively and decidedly to the injury of mankind; and, therefore, I should hope you would throw out of your decision that sort of captivating argument the learned gentleman addressed to you upon the freedom of the press, because I think it is out of the question; for if it is a criminal work, the freedom of the press will be protected by your verdict against it; if it is an innocent one, it will be protected by your acquittal.

I shall leave it to you, whether this book is the work of a philosopher, meant to instruct mankind, and written in such language as is calculated for persons of that description; or whether it is adapted to the lowest orders of the people—people who either cannot, from their education or situation in life, be supposed to understand the subject on which he writes; and whether from those passages, which are selected here, and others, you will not find it rather adapted to the passions, than the good sense of mankind, to induce them to be dissatisfied with the government under which they live, and look for something more satisfactory than they find.

I cannot help observing, that this, if a criminal attack, has certainly a degree of aggravation in it, because it is an attack upon a government the most free that is now existing, a government that seems to be established for the benefit of all persons concerned. The crown is part of that government, and is at the head of it. As a chief magistrate must preside over it, there then becomes another question—Whether that shall be hereditary, or whether it shall be elective? Now, the best and most discreet writers on that subject have found the most horrid inconveniences to arise from the repeated elections of sovereigns; and I believe have, in general, agreed that hereditary succession is most for the comfort and benefit of mankind. It is upon that principle our constitution is formed, and I hope will continue.

You will judge of the points I have thought it my duty to state. If the book was published, as the work of a philosopher, for the benefit of mankind, then this man will not have to answer for the publication. If published with a malicious view, then he will have to answer for it, if you are convinced of the fact of publication.

After the Jury had been out of Court, upwards of two hours, they returned.

Foreman of the Jury. We find the defendant Guilty of publishing, but not with a criminal intention.

Mr. *Gurney.* That is, Not Guilty.

Mr. *Vaughan.* My Lord, the verdict must be entered,—Not Guilty.

Mr. *Recorder.* No; the verdict must be entered as the jury have given it: but I shall tell the jury what verdict they have a right to find, in order that they may re-consider it, if they think proper.

Mr. *Vaughan.* My Lord, I submit that the verdict of the jury is given, and that the Court is bound to receive it; though in effect it is a verdict of acquittal, it is in form a special verdict—a special verdict is a solemn and a serious thing; it bears the mark of deliberation. In this case the jury have deliberated maturely, and have found a verdict, which I submit cannot be altered.

Mr. *Recorder.* I shall inform the jury of the powers vested in them by the libel bill, that they may not be taken by surprise.

Mr. *Vaughan.* I am very far from wishing the jury to be taken by surprise, or to be precipitate. I am sure it is for the advantage of my client that they should not be.

Mr. *Recorder.* I do not think myself at

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liberty now to give the jury my opinion upon whether this is, or not, in point of law a libel.

Mr. *White.* Your lordship will pardon my speaking; but my counsel are not here. I submit, your lordship is at liberty, and that you are called upon to do it.

Mr. *Vaughan.* Certainly not, Mr. White that time is past. His lordship might have done it, in summing up, but his summing up is closed, and it is not competent to him to do it now.

Mr. *Gurney.* I submit, if your lordship should inform the jury of the powers vested in them by the libel bill—which bill directs, that they may give a verdict upon the whole matter put in issue before them—that you will tell them this, that, in order to find the defendant guilty, they must affirm every allegation in the indictment to be true; and that if they disbelieve and 'negative any one allegation, they are bound to find the defendant, Not Guilty.

I submit, that the intention of the party is the gift and essence of the crime; and that, without a criminal intention, no crime can be committed; consequently, the jury negativing the criminal intention of the defendant, must acquit him of this indictment.

Mr. *Recorder.* I think I ought to tell the jury, that, by the libel bill, they are entitled to give a verdict upon the whole matter in issue before them.

Mr. *Gurney.* If the jury should go out to reconsider their verdict, I beg they may take out with them a copy of the indictment; because I am sure it is impossible for any man to read the indictment without seeing, that, if the jury negative the criminality of the intention of the defendant, they must necessarily find him, Not Guilty.

Mr. *Vaughan.* I contend, that the verdict of the jury is given, and that it is complete and irrevocable.

Jury. We have given our verdict; and we persist in it.

Mr. *Vaughan.* The jury persist in their verdict: I apprehend it is your lordship's pleasure that the verdict should be recorded.

Mr. *Recorder.* Certainly.

Mr. *Gurney.* The verdict must be recorded—however unwillingly.

The deputy clerk of the arraigns recorded the verdict, and read it to the jury.

Mr. *Gurney.* Now I submit to your lordship, that the defendant must be immediately discharged.

Mr. *Recorder.* I certainly shall not discharge him.

Mr. *Gurney.* Is this man to be kept in custody, now he is acquitted?

Mr. *Recorder.* I suppose the prosecutors do not mean to admit that he is acquitted.

Mr. *White.* No.

Mr. *Gurney.* But after a jury of his country have solemnly acquitted him of all criminality of intention, it would be an unheard-of cruelty to inflict a punishment upon him. If he is to be committed to prison, the jury might as well have found him guilty.

Mr. *Vaughan.* This man stands in a most singular situation; he stands, *convicted of innocence.* I conceive he is entitled to his discharge.

Mr. *Recorder.* The point of law cannot be argued till next sessions—He must be committed till then.

Mr. *Gurney.* This man has hitherto been at large upon bail—he has shown no wish to withdraw himself from the justice of his country; and can it be imagined that, after having surrendered, taken his trial, and obtained a verdict acquitting him of all criminality of intention, he will now fly? It would be flying from deliverance.

Mr. *Bonney* proposed defendant's being admitted to bail.

Mr. *White.* Without consulting those with whom I have the honour to act, I will consent to let him be at large upon the same bail as before.

Mr. *Gurney.* Are they here?

Mr. *Eaton.* They were just now; but they are gone.

Mr. *Recorder.* Then he must be committed to-night, and brought up to-morrow morning, to be bailed.

Mr. *Vaughan.* This is extremely cruel, that this man is to be committed to prison at all.

Mr. *White.* I thought, without any authority for doing it, I had gone a great way, in consenting to what I did.

Mr. *Gurney.* We are perfectly sensible of your politeness, Mr. White; but we cannot help feeling the hardship of our client's situation.

Mr. *Vaughan.* We will find bail in a minute. One of the bail is returned; and here is another gentleman who offers himself.

Mr. *White.* I will not take any bail, but the persons who were bail before. For this reason, I have made inquiry, and am satisfied with them.

Mr. White then left the Court; directly after which the defendant was committed to Newgate, to be brought up next morning, in order to be admitted to bail; which he accordingly was.

To the original publication of this case, the defendant subjoined the following remarks:

The following sessions commencing, and neither my attorney nor counsel having received any notice respecting the business, on Wednesday, the 26th of June, my attorney gave notice to the attorney-general of moving the Court to discharge my recognizances on the Friday following; to evade which motion, Mr. Attorney General came on the Thursday, the day before, well knowing my counsel were not in Court, and moved, that the case might be left to the determination of the twelve Judges, till the next term, as ap-

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pears by the following account, extracted from the Morning Chronicle.

June 28. "Yesterday the attorney-general informed the Court, that he attended, in consequence of the extraordinary verdict found by the jury, upon the trial of Mr. Eaton, who was indicted last sessions, for publishing the Second Part of Paine's Rights of Man; when the jury found the defendant guilty of publishing, but without any criminal intention.

"Notice had been given him, that upon the foundation of this verdict, the bail of Mr. Eaton intended to make an application to be discharged from their recognizances. The attorney-general said, it was a case of considerable importance, and he was ready to argue it, or receive such direction from the judges as they might think fit to give. It would be a question for the judges to decide, what the legal import of the verdict was; the case was distinguished by its novelty, and it was of great concern to the jurisprudence of the country, that the law should be settled upon this point.

"The judges, Buller and Wilson, were of opinion, that the verdict called for the most serious deliberation—there was some difficulty in ascertaining what the intention of the jury was, when they pronounced the verdict. It would be necessary to consider whether it amounted to any verdict at all; and if it did, whether it was an acquittal in part, or as to the whole of the charge upon the record.

"Mr. Justice Wilson said, the jury possibly might mean, that the sentiments contained in Paine's pamphlet were not criminal. After some conversation between judge Buller, Wilson, and the Recorder, it was agreed, that the case should be laid before the judges, in order that they might enter the proper verdict, and settle the law upon this point."

The next day, being Friday, we had given notice for moving the Court. I attended with my bail; when I was, for the first time, informed, "that the verdict was to be decided by the judges next term."—I then addressed the Court; but was desired to wait the Recorder's return, who had left the Court; which I accordingly did. And on his return began to read an address, which I had drawn up just before going into Court, lest I might have expressed myself, without intending it, in offensive terms. But the Recorder prevented my reading the whole; and, with much reluctance, I submitted, telling the Recorder, however, and the Court, That, as an Englishman, I claimed the right and protection of the laws; that I conceived the verdict was a verdict of acquittal; and the more so, as I had heard one of the jury say at the time, it was intended as an acquittal. I therefore insisted upon having justice, and demanded my discharge. To which the Recorder answered, "Mr. Eaton, you may depend on having strict justice; but it is now left to the decision of the twelve judges."

Thus foiled by the ingenious management of the attorney-general, and thus prevented from making a regular application to the Court, by the irresistible interference of the Recorder, I thought it incumbent on me to inform the public of the nature of the proceedings; which I did, in the Morning Chronicle of the next day as follows:

To the Editor of the Morning Chronicle.

Sir;—I think it my duty to state to the public, that being yesterday brought up to the sessions of the Old Bailey, it was my intention to address the Court in the words subjoined; being however prevented, I will beg of you to insert them, in order that my fellow-citizens may not suppose that I omitted claiming my acquittal under the verdict after mentioned. I was indeed stopped by the Court, by reason that the attorney-general had yesterday come down and moved that the verdict should be referred to the twelve judges. But as this proceeding was without any notice to me, or my attorney or counsel; and notwithstanding I had given notice that the Court would be moved on this day, to discharge my recognizance; I did think it proper to object to their proceeding, in which I am sure no one can fairly think me to blame.

"My lord;—If your lordship will have the goodness to hear me for one word. My counsel are not here, and therefore your lordship will excuse my speaking for myself.

"My lord, I am come here in discharge of my recognizances, by which I was bound over to receive the judgment of this Court, upon a verdict found the last sessions, on an indictment for libel.

"My lord, that verdict was, that I was guilty of publishing, but without any criminal intent——I am told by my counsel, and I believe it is an almost universal opinion, that this is a verdict of acquittal, because the law of England knows no guilt in any action, where there is no criminal intent.

"Now, my lord, I demand my discharge of the Court, because no man can be imprisoned; unless by the judgment of his equals, or by the law of the land. A jury of my equals have found me without any criminal intentions, the law acquits me of all crime, and admits of no imprisonment.

"My lord, I am a poor but an honest man; I can bear punishment, when I know it is good for the public example. But, I should think myself guilty of an heinous crime indeed, were I to neglect putting in my claim to my right under this verdict. And so my lord I throw myself on the justice of the Court; whether being acquitted by a jury of my fellow subjects, I am not entitled by the law, to my liberty as an Englishman."

DANIEL ISAAC EATON.

No. 81, Bishopsgate-street.

For the result of the verdict given by the Jury on this occasion, see the following Case.

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578. Proceedings on the Trial of an Information, exhibited Ex Officio, by his Majesty's Attorney General, against DANIEL ISAAC EATON, for publishing a Seditious Libel, entitled, "A LETTER addressed to the ADDRESSERS on the late PROCLAMATION: By Thomas Paine." Tried in the Court of King's Bench, Guildhall, before the Right Hon. Lloyd Lord Kenyon and a Special Jury, July the 10th: 33 GEORGE III. A. D. 1793.

INFORMATION.

Hilary Term, 1793.

The KING *v.* DANIEL ISAAC EATON.

London, } BE it remembered, that sir
to wit } Archibald Macdonald, knt. attorney-general of our sovereign lord the now king, who for our said lord the king, prosecutes in this behalf, in his proper person comes into the court of our said lord the king, before the king himself, at Westminster, in the county of Middlesex, on Tuesday next after the morrow of the Purification of the Blessed Virgin Mary, in this same term, and for our said lord the king, gives the Court here to understand, and be informed that before the publishing of the wicked, malicious, scandalous, and seditious libel herein-after mentioned, to wit, on the 21st day of May, in the year of our Lord 1792, our said lord the king, by the advice of his privy council, had issued a proclamation, whereby after reciting that divers wicked, and seditious writings had been printed, published, and industriously dispersed, tending to excite tumult and disorder by endeavouring to raise groundless jealousies and discontents, in the minds of his faithful and loving subjects, respecting the laws, and happy constitution of government, civil and religious, established in this kingdom, and endeavouring to vilify and bring into contempt the wise and wholesome provisions, made at the time of the glorious Revolution, and since strengthened and confirmed by subsequent laws, for the preservation and security of the rights and liberties of his faithful and loving subjects; and that divers writings had also been printed, published, and industriously dispersed, recommending the said wicked and seditious publications to the attention of all his faithful and loving subjects, and that he had also reason to believe that correspondences had been entered into with sundry persons in foreign parts with a view to forward the criminal and wicked purposes above-mentioned, and that the wealth, happiness, and prosperity of this kingdom, did (under divine Providence) chiefly depend upon a due submission to the laws, a just confidence in the integrity and wisdom of parliament, and the continuance of that zealous attachment to the government and constitution of the kingdom, which had ever prevailed in the minds of the people thereof, and that there was nothing which he so earnestly desired as to secure the public peace and prosperity, and to preserve to all his loving subjects the full enjoyment of their rights and liberties, both religious and civil—He therefore being resolved, as far as in him lay, to repress the wicked and seditious practices aforesaid, and to deter all persons from following so pernicious an example—Solemnly warned all his loving subjects, as they tender their own happiness and that of their posterity to guard against all such attempts which aimed at the subversion of all regular government within this kingdom, and which were inconsistent with the peace and order of society, and earnestly exhorted them at all times and to the utmost of their power to avoid and discourage all proceedings tending to produce riots and tumults, and he did strictly charge and command all his magistrates in and throughout his kingdom of Great Britain that they should make diligent inquiry, in order to discover the authors and printers of such wicked, seditious writings as aforesaid, and all others who should disperse the same, and he did further charge and command all his sheriffs, justices of the peace, chief magistrates in his cities, boroughs, and corporations, and all others his officers and magistrates throughout his kingdom of Great Britain, that they should in their several and respective stations take the more immediate and effectual care to suppress and prevent all riots, tumults, and other disorders which might be attempted to be raised or made by any person or persons, which on whatever pretext they might be grounded, were not only contrary to law, but dangerous to the most important interests of this kingdom, and he did further require, and command all and every his magistrates aforesaid, that they should, from time to time, transmit to one of his majesty's principal secretaries of state due and full information of such persons, as should be found offending as aforesaid, or in any degree aiding or abetting therein, it

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being his determination for the preservation of the peace and happiness of his faithful and loving subjects, to carry the laws vigorously into execution against such offenders as aforesaid, to wit, at London, in the parish of Saint Mary le-Bow, in the ward of Cheap. And the said attorney-general who prosecutes as aforesaid, further gives the Court here to understand, and be informed, that after the said proclamation had been issued, and before the publishing of the wicked, malicious, scandalous, and seditious libel, herein-after next mentioned, divers addresses on occasion of such proclamation has been announced, in the London Gazette, as having been made to his said majesty, and the government and constitution of this kingdom, to wit, at London aforesaid, in the parish and ward aforesaid. And the said attorney-general, who prosecutes as aforesaid, gives the Court to understand and be informed, that Daniel Isaac Eaton, late of London, bookseller, well knowing the premises, but being a wicked, malicious, seditious, and evil 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 contriving, devising, and intending to stir up and excite discontents and seditions among the subjects of our lord the king, and to bring the said proclamation into disregard and contempt amongst his [subjects, and to alienate and withdraw the affection, fidelity, and allegiance of his said majesty's subjects, from his said majesty's person and government, and wickedly, maliciously, and seditiously to insinuate and cause it to be believed by all the liege subjects of our said lord the king, that the constitution and government of this kingdom as by law established, is a system of tyranny, injustice, and oppression, and destructive of the liberties and happiness of his said majesty's subjects, and thereby to stir up and excite his said majesty's subjects to seditious meetings and conventions, and wickedly and seditiously to disturb and destroy the peace, good order, and tranquillity of this kingdom, on the 1st day of February, in the 33rd year of the reign of our lord, the now king, with force and arms at the parish aforesaid, in the ward aforesaid, in London aforesaid, unlawfully, wickedly, maliciously, and seditiously did publish, and cause and procure to be published, a certain wicked, malicious, scandalous and seditious libel, intituled "A Letter addressed to the Addressers on the late Proclamation" (meaning his said majesty's proclamation) in which said libel are contained, amongst other things, divers malicious, scandalous, and seditious matters, of and concerning the constitution of this kingdom, according to the tenor following, that is to say,

"It is a good constitution" (meaning the constitution of this kingdom), "for courtiers, placemen, pensioners, borough-holders, and the leaders of parties, and these are the men that have been the active leaders of addresses" (meaning such addresses as aforesaid), "but it" (meaning the constitution of this kingdom), "is a bad constitution for at least ninety-nine parts of the nation" (meaning this kingdom) "out of an hundred, and this truth is every day making its way. It is bad, First, because it entails upon the nation the unnecessary expense of supporting three forms and systems of government at once, namely, the monarchical, the aristocratical, and the democratical. Secondly, because it is impossible to unite such a discordant composition by any other means than perpetual corruption, and therefore the corruption so loudly and so universally complained of, is no other than the natural consequence of such an unnatural compound of governments, and in this consists that excellence which the numerous herd of placemen and pensioners so loudly extol, and which at the same time occasions that enormous load of taxes, under which the rest of the nation groans. Among the mass of national delusion, calculated to amuse and impose upon the multitude, the standing one has been that of flattering them into taxes, by calling the government (or as they please to express it, the English constitution), the envy and the admiration of the world; scarcely an address has been voted, in which some of the speakers have not uttered this hackneyed nonsensical falsehood. Two revolutions have taken place, those of America and France, and both of them have rejected the unnatural compounded system of the English government. America has declared against all hereditary government, and established the representative system of government only—France has entirely rejected the aristocratical part, and is now discovering the absurdity of the monarchical, and is approaching fast to the representative system. On what ground then do those men continue a declaration respecting what they call the envy and admiration of other nations, which the voluntary practice of such nations as have had the opportunity of establishing government, contradicts and falsifies? Will such men never confine themselves to truth? Will they be for ever the deceivers of the people?" And in which said libel are contained (among other things) divers other malicious, scandalous and seditious matters of and concerning the constitution of this kingdom, according to the tenor following, that is to say,

"I have asserted and have shown both in the First and Second Parts of the Rights of Man, that there is not such a thing as an English constitution, and that the people" (meaning the people of England) "have yet a constitution to form." And in which said libel (amongst other things) are contained divers other malicious, scandalous, and seditious matters, of and concerning the constitution of this kingdom, according to the tenor following, that is to say,

"It has ever been the craft of courtiers, for

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the purpose of keeping up an expensive and enormous civil list, and a mummery of useless and antiquated places and offices at the public expense, to be continually hanging England upon some individual or other, called king, though the man might not have capacity to be a parish constable; the folly and absurdity of this is appearing more and more every day, and still those men continue to act as if no alteration in the public opinion has taken place. They hear each other's nonsense, and suppose the whole nation talks the same gibberish; let such men cry up the House of Orange, or the House of Brunswick, if they please; they would cry up any other house if it suited their purpose, and give as good reasons for it. But what is this house, or that house, or any other house to a nation? For a nation to be free, it is sufficient that she wills it. Her freedom depends wholly upon herself and not on any house, nor on any individual. I ask not in what light this cargo of foreign houses appears to others, but I will say in what light it appears to me. It was like the trees of the forest, saying unto the bramble, "come thou and reign over us." And in which said libel (amongst other things) are contained divers other malicious, scandalous, and seditious matters, of and concerning the constitution and government of this kingdom, and the power and authority of the parliament thereof, according to the tenor following, that is to say,

"I consider there form of parliament," (meaning the parliament of this kingdom) "by an application to parliament" (meaning the parliament of this kingdom) "as proposed by this society to be a worn-out hackneyed subject, about which the nation is tired, and the parties are deceiving each other. It is not a subject that is cognizable before parliament" (meaning the parliament of this kingdom,) "because no government has a right to alter itself either in whole or in part. The right and the exercise of that right appertains to the nation only. And the proper means is by a national convention elected for the purpose by all the people. By this the will of the nation whether to reform, or not, or what the reform shall be, or how far it shall extend will be known, and it cannot be known by any other means. Partial addresses, or separate associations are not testimonies of the general will. It is, however, certain, that the opinions of men with respect to systems and principles of government are changing fast in all countries, the alteration in England within the space of little more than a year, is far greater than could then have been believed, and it is daily and hourly increasing. It moves along the country with the silence of thought. The enormous expense of government" (meaning the government of this kingdom) "has provoked men to think, by making them feel, and the proclamation" (meaning his majesty's said proclamation) "has served to increase jealousy and disgust. To prevent therefore those commotions which too often and too suddenly arise from suffocated discontents, it is best that the general will should have the full and free opportunity of being publicly ascertained and known." And in which libel are contained (amongst other things) divers other malicious, scandalous and seditious matters of and concerning the representation by the Commons of Great Britain in parliament assembled, and of and concerning the power and authority of the parliament of this kingdom according to the tenor following, that is to say,

"I wish that Mr. Grey since he has embarked in the business would take the whole of it into consideration, he will then see that the right of reforming the state of the representation" (meaning representation by the Commons of Great Britain in parliament assembled) "does not reside in parliament" meaning the parliament of Great Britain) "and the only motion he could consistently make, would be that parliament" (meaning the parliament of Great Britain) "should recommend the election of a convention by all the people, because all pay taxes; but whether parliament" (meaning the parliament of Great Britain) "recommended it or not, the right of the nation would neither be lessened nor increased thereby." And in which said libel (amongst other things) are contained divers other malicious, scandalous, and seditious matters according to the tenor following, that is to say,

"Instead then of referring to rotten boroughs, and absurd corporations" (meaning boroughs and corporations of this kingdom) "for addresses, or hawking them about the country to be signed by a few dependant tenants, the real and effectual mode would be to come at the point at once, and to ascertain the sense of the nation" (meaning this kingdom), "by electing a national convention," (meaning a convention of the people of this kingdom, otherwise than in parliament assembled).

To the great danger of our happy constitution and government, 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, : Whereupon, the said attorney-general of our said lord the king, who for our said lord the king, in this behalf, prosecuteth prayeth the consideration of the Court here in the premises, and that due process of law may be awarded against him the said Daniel Isaac Eaton, in this behalf, to make him answer to our said lord the king, touching and concerning the premises aforesaid.

THE SPECIAL JURY.

Mr. Robert Alburn,	Princes street.
Mr. Samuel Horne,	Size-lane.
Mr. William Prescott,	Bow-church-yard.
Mr. Thomas Lewis,	Freeman's-court.
Mr. John Nixon,	Cateaton-street.

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Mr. Isaac Osborne,	Lawrence Poultney-hill.
Mr. Richard Wood,	King-street.
Mr. Daniel Lambert,	St. Martin's-lane.
Mr. James Arthur,	Copthall-court.
Mr. Boyce Coombe,	Austin friars.
Mr. John James,	Watling-street.
Mr. Edward Smith,	Gracechurch-street.

Merchants.

Counsel for the Prosecution.—Mr. Attorney General [Sir John Scott, afterwards lord Eldon, and successively lord chief justice of the Common Pleas and lord chancellor]; Mr. Solicitor General [Sir John Mitford, afterwards lord Redesdale, and lord chancellor of Ireland]; Mr. Bearcroft, Mr Baldwin, Mr Wood [afterwards a baron of the Exchequer].

Attornies — Messrs. Chamberlayne and White, Solicitors to the Treasury.

Counsel for the Defendant. — Mr. Felix Vaughan, Mr. John Gurney.

Attorney.—Mr. I. A. Bonney, No. 4, Percy-street, Rathbone-place.

The Information having been opened by Mr. Wood, the Attorney General stated the case as follows:

May it please your lordship, and gentlemen of the Jury;—I have the honour to attend you in the discharge of my official duty, for the purpose of laying before you the grounds on which this information is instituted, and the evidence by which it is supported. The late attorney-general,* in the discharge of his duty, thought it incumbent upon him, from the peculiar circumstances with which it is accompanied, to submit this case to the decision of an English jury. Gentlemen, the defendant in this case is not the author of this work, but he is, as I shall be able to prove to you, most indisputably the publisher of the work in question; and the circumstances to which it will be necessary your attention should be directed, are the fact of the publication, and the nature of the work which is published.

I shall not on this occasion, enter into any discussion as to what may be the particular circumstances under which it may be proper either to prosecute or to forbear the prosecution of the publisher; I mean not to enter into the consideration of the propriety of prosecuting the author, or of prosecuting the publisher; but I state it to you, under the correction of my lord, as a rule of law, indisputably clear, that a man who holds out to the public, a publication of the description which I impute to this work, is guilty of the offence imputed to him in the indictment: and that man cannot state himself to be not guilty of offence, since a publication of this kind is calculated to overturn the most invaluable rights of individuals; it can hardly then be contended, that the publisher can be guiltless, nor can he justify his conduct. In this cause I know not what can be said for the publisher, who in this particular case is brought before you. I am speaking in the presence of those who I think will agree, that what I state is incapable of contradiction; that audience in whose presence I am speaking, know the governing principles of this country constitute all that happiness, and all that glory which belong to Englishmen, happy are they if they have but the good sense to retain a fondness for those privileges which secure to them their civil, moral, and political liberty, and those felicities, which, under the protection of Providence, were never given in so ample a manner to any other country under the canopy of heaven, —to any nation on the face of the earth; and I must confess, I think this assertion is incapable of contradiction.

Some time since we had the good sense to understand and know our superior privileges: it was not then thought, as this author has flippantly asserted, "That it was a good constitution for courtiers, placemen, pensioners, borough-holders, and the leaders of parties, and these are the men that have been the active leaders of addresses, but it is a bad constitution for at least ninety-nine parts out of an hundred, and this truth is every day making its way." But men of all descriptions, upon reasoning in their closets, looking at the history and experience of mankind, are thoroughly convinced, that, in point of fact, this constitution did best secure, and does secure the great end of political government, personal liberty, personal security, and the security of property: it was not as this author has pleased to state it; but men in every country, speculating on the nature of government in every country, looked to Great Britain, as the most favoured spot under the canopy of heaven.

There was a country in Europe, which in point of fact, enjoyed the most mild and benignant government in Europe (I mean France), but, at the same time, the principles upon which it was enjoyed, were not such as to secure that enjoyment, with that security of permanency that rational men have a right to look to: whether it was thought necessary for the introduction here of the same effects which have been produced in that country, that this government should be reviled or not, I know not; but as you have been told by the proclamation, which is part of the record, in point of fact, there were, in this country, seditious writings of all sorts, and of such a nature as upon the authority of this author I assert, never made their appearance in this country before.

The Second Part of the Rights of Man informs us, that the author felt no difficulty to state, that during the late war he formed a

* Sir Archibald Macdonald.

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design, and he communicated it to general Greene, at Philadelphia,—he was impressed with the idea that if he could get over to England without being known, and only remain in safety till he could get a publication out, he would open the eyes of the country, as to the madness and stupidity of its government. He authorizes me to say what I have stated, when he expresses a wish to know the manner in which a work different from what had been customary to be seen in England would be received, before he proceeded farther.

Gentlemen of the jury, this proof of the systematically mischievous intentions of this author, is confirmed by the diligence with which productions of such a nature have been dispersed through this country. The chief magistrate of this country (who is never once represented, in this publication, as the chief magistrate entrusted with the powers the constitution has given him *for the benefit of the country;* and in the exercise of which he is restrained by the law; his duty prescribed by law; and his conduct regulated by legal principles) thought it his duty to state that there was a law in England, that might be applied to those who dared thus to interrupt the happiness of the country; to warn his subjects, not as this author has represented it, against a temperate and free discussion of the principles of the constitution of this country; but against seditious writings tending to mislead the public—writings published by those who knew the nature of the constitution of which they were treating not to be such as they represented it to be. Gentlemen, the Second Part of the Rights of Man became, after this, the subject of a prosecution in this country, the result of the trial of Mr. Paine was*, (for after all, the constitution of this country rests on the protection which a jury will give it) the result of that trial was, that the jury in this place were of opinion that it was an infamous and scandalous libel; the author of the work was, as he stated he meant to be, out of the kingdom; he came here in 1790, and published such a writing as he confesses never before appeared in this country; he remained till he could get his publication out, and then he was gone; this was on the 18th December, 1792; his majesty's proclamation stated in this record, had been issued in May, 1792.

The author of the work as if his business was to revile all the authority in the country, did not wait for the decision of the jury, but employed his time in printing this book, which is now, gentlemen, brought before you; and I take the liberty to state it in your presence, and in the presence of the country at large, that without exception, it is the most absurd and daring libel that ever was published. I am not afraid to say that it requires the exertion of great talents, to state the distinction, if there be one, according to the laws of England, between this sort of writing and such as amounts to high treason: gentlemen, I will say too there is a case that may happen, that a publisher, in the ordinary course of his trade, may give a book to a customer; that he may give it with no motives more nor less, than belong to an honest tradesman, he may yet in so doing expose himself, if the work be dangerous, to the penalties of the law.

It is extremely clear, that in point of publication, the conduct of the party may be very different as to criminality; for if the work upon the face of it, purports to be a work reflecting on the actual government of the country, in any particular instance in which it is thought proper to exercise the powers of government; if it reflects on all the constituted powers of the country, and upon those who exercise those authorities, I beg leave to say if a publisher can suppose from the circumstances of the case, that he does publish it at a risk, and is yet resolved to publish it, and does publish it, and continues to publish it at the same risk, if so, at his risk be it. I say when this author had been convicted upon a verdict of the jury of the country, which had been found against him in December, 1792, it was becoming those who were vending the First and Second Part of the Rights of Man, to take care that they did not publish the third work of this author, if it contained matter more offensive to law than either the First or Second Parts.

The publication in question was sold by the defendant so late as the month of February last; now gentlemen, under these circumstances, I think I might submit to any man in Court, with respect to the expediency of this prosecution; but entering my solemn protest against the necessity of giving that evidence, I am prepared to prove to you that the chief magistrate of this city, in obedience to the law, and in the laudable exercise of his duty as such, took the trouble to inform this man, and advise him that he was doing that which he ought not to do, for that the law, as he was advised, would not permit it; telling him if he chose to act on any other advice he must answer for it, he found himself bound to watch his conduct, and if he chose to act as a good subject ought to do, he might protect himself. Gentlemen, notwithstanding that the defendant still persisted in giving this publication to the world; and under such circumstances, if the publication be as it is stated, he has no reason to complain if the law is applied to his individual case. Now gentlemen, with respect to the paper itself, I am very far from saying, that any intimation of this sort, was an intimation, which any subject was bound to obey.

Gentlemen, it is fully consistent with my duty, to remark to you the wisdom of the law of the country: and the impropriety of departing from it, on speculations, which will

* See the trial, p. 357 of this volume.

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be found to have produced more misery to the public, within the last three years than perhaps ever existed before. I say the reflection which that remark raises in my mind, is to render it extremely doubtful whether in my situation, I should not better do my duty to the public, by following the rule of law, as I find it to be handed down to me, and, as I find it to have been received by those who have administered it in past ages, than in stating to you any suspicions of my own, with respect to what it is, or ought to be. I say distinctly, this defendant had a right, subject to this qualification, to publish this book, for I find the law to be such, that if the liberty of the press is not infringed, or violated, it is essential to a free state.—Gentlemen, you will give me leave to observe, that in all states which have not been founded on principles of liberty, in them the liberty of the press does not exist; this liberty consists in laying no restraints on publications; every freeman has an undoubted right to lay what sentiments he pleases before the public, but if he publishes what is improper, he must take the consequence of his temerity.

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 medicines, and to this he adds, it is necessary to prevent improper conduct, and that to censure the licence is not to attack the liberty of the press.

Gentlemen, I say the defendant had a right to publish this book if he chose, leaving it to you to say whether he had done right in publishing it,—without attending to his duty as a publisher,—whether you find yourselves bound to censure him or not with respect to the publication of it. Gentlemen, I am one of those who admit that a case has never occurred, in which it was less necessary to dispose of a dry question of law, whether a man might or not freely and rationally discourse in public, or otherwise, on the principles of any government under heaven, and I do not believe the case ever will occur; or that a jury need to be asked that question: but I have no objection to say, that if you can take up this book, and can lay your hands upon your hearts, and can say that the author, with the knowledge he necessarily must have of the nature of the constitution of this country, meant fairly to represent the constitution of this country, and to reason upon it, and that he meant to state the principles on which the constitution of other countries were formed, and the effect of those principles, as he knew them, at the time this work was published, and then by fair reasoning without a seditious intention, that he meant to draw a just comparison, and that he did not publish this work purposely to argue down the system of law and the constitution of this country, I do not ask you for your verdict.

Gentlemen, what I impute to this work, is this, the author misrepresents the constitution as it stands; he does not state the effect of those laws as he knew them; it was not his intention to draw a true representation of the constitution of this country, but he sat down with a design to misrepresent it, and that he has sacrificed in every page of his book, the real truth to a fondness for the principles of his system, and to forward which he had declared, was the intention with which he came into this country.

Look at the book where he speaks of the chief magistrate, and considers him as a king and as a man, and give me leave to say, that the wisdom of the law of our ancestors, the wisdom of the law of England taught them to look at man as he is, they did not think with this self-sufficient author, that man was all perfection, but that we were beings such as God had formed us, and that our infirmities were to be corrected by the system of laws which were formed on deep reflection and on deep experience. Take and read this book through, and after you have so done, is there any of you, who can suppose that the king of this country has any power of being hurtful to this country? Considering the weakness of infancy, the dotage of old age, and the imbecility of human life in general, why did not this gentleman state that the crown of this country was a trust for this country, that the weaknesses of infancy, the infirmity of old age, are all rectified by the infinite variety of checks, with which the law has guarded the execution of the chief magistracy in this country? Take it another way; observe, this gentleman does not state to his readers the constitution as it is; he has not the integrity to tell them that the constitution of this country was acknowledged to be a constitution securing all the blessings of civil liberty, not only by the subjects of this country, but by those of other nations, who were looking at it as the best constitution that could be framed, a constitution which is at once the envy and admiration of the world.

When this gentleman was describing the nature of our constitution, why not state the whole truth? he should not have vilified it beyond fair reasoning and sober argument. Why not put it to the people of England as he ought to have done; and have said, when I published my former works I thought so and so, and, in support of those opinions, you will find I have published this work of which I can fairly say, you will find in this book sober reasoning and fair discussion? I hope the law of England, never will prevent fair discussions, nor would this man have been an object of prosecution, if the work had contained fair discussion only, and not scandalous and malicious abuse: but that not being the case, by persisting in this publication, he enters into a conflict with the law.

I say, the fair account of the sense of the passages which will be read to you, is no

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more nor less than this, making the constituted authorities of this country inadequate to the end. Gentlemen, I appeal to your own attention and observation, it would very ill become me to make any other appeal. The late attorney-general thought it necessary to follow up this prosecution, my reverence for the verdict of a jury of England, and my regard for our excellent constitution, as it is established, has induced me to ask for your determination.

EVIDENCE FOR THE CROWN.

[The printed proclamation produced.]

Mr. *Vaughan.* I submit to your lordship, that the printed proclamation unsupported by any evidence whatever, cannot be received.

Mr. *Attorney General.* Mr. Justice Buller has received it.

Mr. *Gurney.* At least the king's printer should be called to authenticate it.

Mr. *Attorney General.* That is not necessary to authenticate an act of parliament.

Mr. *Gurney.* That is a very different thing.

Lord *Kenyon.* I think I ought to receive it, I will, if you wish it, save the point for you.

Mr. *Vaughan.* I should be obliged to your lordship, certainly.

[The printed proclamation read.]

Charles Humphreys sworn.—Examined by Mr. *Solicitor General.*

Look at that book [showing him a copy of the letter to the addressers]; did you purchase it?—Yes.

Where?—No. 81 Bishopsgate-street.

Of whom?—Of the defendant.

When?—On the 1st of February.

You did it at the request of the lord mayor?—Yes.

[The title of the pamphlet read.]

Mr. *Vaughan.* With submission to your lordship, I object, that the title of the pamphlet is not fully and sufficiently described in the information, the information states only "Letter addressed to the Addressers on the late Proclamation," whereas the title continues, "By Thomas Paine, Secretary for Foreign Affairs to Congress, &c." and the names of the publishers.

Lord *Kenyon.* I must acknowledge that in my opinion, it is abundantly and fully described.

Mr. *Attorney General.* The rest seems to be rather the title of the author than of the book.

[The paragraphs read which were inserted in the information.]

Mr. *Gurney.* My lord, from the office copy of the record we were led to expect that we should find two variances in this information: which, however it might possibly be contended that they did not very materially alter the sense, we should have submitted must be fatal, but these two variances have been attempted to be concealed by erasures.

Lord *Kenyon.* I have nothing to do with the record, but as it stands at present; happy indeed is the clerk who never made a mistake in transcribing.

Mr. *Gurney.* My lord, I should submit that the existence of the variances in the copy of the record delivered to us, raises such a presumption as calls upon the attorney-general to show that the variances were cured before the issue was joined.

George Storey sworn.—Examined by Mr. *Baldwin.*

I believe you are secretary to the lord mayor?—Yes.

Do you remember the defendant being brought before my lord mayor?—I do; it was customary when his lordship received information, anonymous or otherwise, to send for the person complained of, and in consequence of some information which he received, he sent for the defendant.

What passed on that occasion?—My lord mayor asked him whether the information was true, and that he had sold the publications mentioned.

Mr. *Gurney.* My lord, I submit this examination is irregular, unless Mr. Baldwin lays a ground for it, by asking in the outset whether any thing passed in this conversation relative to the pamphlet in question.

Lord *Kenyon.* You may ask that question if you please.

Mr. *Gurney.* In the conversation you are relating, did any thing pass relative to the "Letter to the Addressers?"

Mr. *Attorney General.* That will be a question in cross-examination.

Mr. *Gurney.* The present examination is only calculated to raise a prejudice, by facts which are not relative to the cause.

Lord *Kenyon.* Does this go to the fact of the publication?

Storey. He replied it was true that he had sold these publications.

Mr. *Baldwin.* Were there any publications mentioned?—I believe the Rights of Man; he said the deputy of the ward had been to him, complaining of his selling those books, but that his behaviour was such, he being drunk at the time, that he had not paid that attention to him, that he otherwise should have done.—He reasoned with him very particularly on the impropriety of so doing; at first it seemed to give him very little concern, but he went away promising to desist from selling them in future.

George Storey, cross-examined by Mr. *Gurney.*

How long was this conversation?—I think about ten minutes or a quarter of an hour.

Are you sure it was not much longer than a quarter of an hour?—I can't say.

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I believe you produced a letter?—I do not recollect a letter.

Have you no recollection of a letter being read, which the lord mayor had received from Mr. Reeves at the Crown and Anchor, respecting Mr. Eaton?—I cannot say.

Will you venture to say upon your oath, that the lord mayor did not read to Mr. Eaton, a long letter from Mr. Reeves?—I cannot recollect.

Will you say upon your oath, that such a letter was not read?—No, certainly I will not. The only information I believe was written, in a disguised hand upon the back of a card of Mr. Eaton's; to the best of my knowledge and remembrance, this is the minute I made at the time, "Isaac Eaton, about selling seditious libels, who promised to discontinue it."

I will refresh your memory respecting this letter; do not you recollect that Mr. Reeves complained of Mr. Eaton selling several seditious pamphlets besides the Rights of Man, and among them the duke of Richmond's letter to colonel Sharman?—I do not recollect it.

Will you venture to swear, that no conversation passed between Mr. Eaton and the lord mayor, about the contents of that letter?—I can't say.

Do not you recollect, Mr. Eaton putting this question to the lord mayor, "how it could possibly be criminal, to publish a pamphlet before it had been declared to be a libel by the verdict of a jury?"—I cannot attempt to enter minutely into what passed; I cannot attempt to swear to any particulars.

Will you swear that that did not pass?—No, I will not.

But you do recollect Eaton's telling the lord mayor of this drunken deputy who went to reprove him for a breach of the law?—Yes.

Mr. *Baldwin*. After this conversation, did the lord mayor say any thing to him?—Only wished him a good morning, and I believe he told him the penalties he would be subject to.

Charles Humphries again.

Mr. *Gurney*. Mr. Eaton did not sell you this pamphlet very willingly?—He did not.

I believe you were under the necessity of employing some art, to induce him to sell it?—I was, I was directed so to do.

Mr. *Attorney General*. What do you mean by art, tell us what you did?—He asked me for what purpose I wanted it; as I had purchased some of Mr. Paine's works on the 17th of January, he asked me whether I would purchase the rest, as there were more coming out; he asked me if I wanted to bind them up together, I told him I probably should; he asked me when I would call again, I told him in the course of a week or a fortnight.

Mr. *Gurney*. It was on the 17th of January that you purchased the "Rights of Man;" for selling which, Mr. Eaton was tried at the Old Bailey?—Yes.

In your evidence upon that occasion, you stated that Mr. Eaton hesitated at selling you the "Letter to the Addressers," but that he did it in consequence of his wife telling him she knew you, and had sold you some of Mr. Paine's works before?—I did.

Upon that trial the jury found Mr. Eaton "guilty of publishing, but without a criminal intent?"—They did.

Mr. *Attorney General*. I don't care a farthing about it, but I must object this; it has nothing to do with this cause.

DEFENCE.

Mr. *Felix Vaughan*:

Gentlemen of the Jury; You have now heard from Mr. Attorney-General his opening, together with the whole of the evidence produced in support of this information: and it has become my duty, as counsel for Mr. Eaton, to lay before you such plain and simple observations as have occurred to a very plain and simple understanding; but which, I trust, will operate in your minds a conclusion directly opposite to that desired on the part of the prosecutors, against this unhappy, or rather this unlucky, defendant.

But, gentlemen, when I am told, and from so great an authority, that in this cause are required such uncommon talents, to distinguish the pamphlet in question from the crime of treason; and when I reflect on the miseries which must ensue to this man and his family, in case he were convicted, my heart sinks within me, to consider the importance of having undertaken his defence. At the same time I am comforted, because I know I shall be supported by the learned judge who sits on the bench; and if it should, from any circumstance, happen that I were unable to go through with this defence, you, gentlemen, in discharge of your oaths, are bound to supply the deficiency. So that the defendant has also to rely on the judgments of twelve of his fellow citizens; and therefore it is, that I hope and look for a verdict in his favour.

Such however is the situation in which we are placed, when prosecuted by his majesty's attorney-general, that the chances are almost two to one against any defendant under such a prosecution; for the attorney-general claims a right to reply to all that may be answered to his charge. Consider this infinite disadvantage to the defendant, viz. that the prosecutor has two addresses to the jury, and therefore reserves all the strength of his argument till the time comes when he is to reply; and thus will it happen to-day. All that you have hitherto heard is but a sort of proem for what we are to hear: it is the protatic part of the drama, very necessary and well calculated for the catastrophe intended to be produced. We have been told indeed a great deal about this writing, its author, and its publisher; but hardly a passage of it has been quoted. All has been matter of general reflexion; n

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principles have been laid down by which you might determine the question before you, or by which we might have conducted this defence. We are to lay the grounds of the whole cause, and to build up a fortress of protection for this unfortunate man, whose thoughts were as far from those imputed to him by this charge, as the poles of the earth are from each other.

Gentlemen, it seems to have been expected, that you would hear from us a deal of outrageous declamation upon subjects of public liberty. If a man will speak on subjects of that description, it is impossible to be other than declamatory, because, in general, they consist of axioms, whose truth stares you in the face; and all that such a man can say, is, "How excellent are these things! how indispensible to our happiness! How criminal must those be, who attempt to deprive us of them!" But, gentlemen, I am persuaded that fairness and candour are the best weapons we can use in behalf of the defendant. I will therefore freely make to you my profession of faith, on the principles by which I conceive we should all of us be guided in this question; I am very far from maintaining extravagant doctrines, or approving every thing I have heard respecting them.

Among the numerous proceedings observable in our jurisprudence, there is no proceeding which contains so much obscurity, ambiguity, and confusion, as this charge of sedition, malice, and so on, by libel. I do not say the charge of libel, for that term contains nothing imputed to the defendant by this information. Nothing can fix that upon him, but the adjectives implying the qualities to be found in this libel or book (for I use the term in its innocent sense); and these qualities arise out of the intention he had in publishing this book. It is certain, that this ambiguity and confusion have created in the minds of a great number of well meaning men extreme dissatisfaction and discontent. Of this discontent, a great deal is well founded; but it must be owned, that a great deal is likewise unfounded. But while, on the one hand, it is contended that no mere opinions delivered, but that actions only, are fit objects of public punishment—it has, on the other, with equal, if not greater vehemence, been maintained, that every thing, true or false, rational or otherwise, if it happen to be offensive to particular descriptions of society, is to be repressed with the utmost rigor which the law can inflict. Each of these opinions I hold to be extremely, though not equally dangerous, and nothing shall at any time influence me to defend either the one, or the other, in the present cause, or upon any future occasion; yet, gentlemen, it is with no small sorrow, that I have observed the latter of them reduced to practice in a way sufficient to alarm us for the very foundations of liberty and personal security. We have seen a system of things unknown before to the people of England; we have seen persons getting themselves together in holes and corners, and erecting themselves into an *Imperium in imperio*, under pretence of defending the English constitution. These associators, for so they style themselves, are so many mere inquisitors, who have spread themselves and their sectaries through every part of the country, from the Channel to the Tweed, and from thence northwards; but the chief tribunal, and the grand inquisitors of all, hold their office at the Crown and Anchor tavern, in London. It is not immediately in evidence, but in my own mind I have not the smallest doubt that it is to them we are indebted for the prosecution of to-day. It is from them that advice against this unfortunate defendant was communicated to the lord mayor; who thereupon employed his spies, his emissaries, or informers, or whatever else you please to call them, for the purpose of obtaining a conviction, which, if obtained, must bring Mr. Eaton and his family to inevitable ruin.

Gentlemen, when you consider that I am counsel for a man in these circumstances, you will, I am sure, favour the little which may be offered to you on his behalf, with a patient attention. And you will look into all that has been or may be advanced against him, either in this information or out of it, with an eye of jealousy and mistrust, which is never unbecoming an English jury.

Gentlemen, I trust that Mr. Attorney-General will not be dissatisfied with the principles I have hitherto contended for. I declare in the outset, that all malicious and intentional mischief, is at all times and equally punishable, by whatever means it may be effected; and that it is the same, in point of criminality, whether such intention be completed by the tongue or by the hand, by the pen or by the poignard. If, therefore, this has been proved on the defendant; and that in the publication of this book, his designs were wicked, seditious, and malicious, as in the charge before you, he could have no claim whatever to an acquittal. As it is, I must intreat you will examine attentively the different parts of the information, having previously considered the act of parliament known by the name of the Libel Bill, upon the benefits of which I shall not enlarge (the author and first mover of the question being now present in court) however gratifying it might have been to my own feelings.

Gentlemen, by that bill,* it is said, that the jury sworn for the trial of the issue before them, in matter of libel, are to judge of the whole matter put in issue. If you have been frequently in this place, you must know that an issue on any trial, is nothing more than an affirmation of the charge on one side, and a denial of it on the other, which the jury are to decide upon by the evidence produced to them. Now, gentlemen, all that is in evi-

* See p. 306 of this Volume.

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dence amounts to no more than this, that the defendant published a sixpenny pamphlet, and that the lord mayor sent to him, desiring him not to publish another book called "The Rights of Man."

Gentlemen, I do not understand that the lord mayor is a lawyer: where has he learnt his law? I suppose from the Crown and Anchor tavern;—his law, if he has any, must come from the other side of Temple-bar, perhaps from the association we have spoken of, for I never heard of its being extracted from coffee or sugar, or any other article of commerce in this city. I know he is a municipal, but I never heard of his being a judicial officer; although he seems in this instance to have supposed he had an authority of the latter kind, and is of opinion, that by warning a man against any act, he has the power to prevent his doing it. But, gentlemen, I submit to you, that the whole of this history about the lord mayor is totally out of the question, and that you ought so to consider it; for the beauty of the whole is, that the witness has said nothing about this pamphlet—he has told us, that the lord mayor never had any conversation with the defendant, but concerning the book called "The Rights of Man," and of seditious publications in general. Does the lord mayor's opinion make them so? Most assuredly not. They are to be construed and decided upon by your opinions, by a jury of the country, who are certainly, as Mr. Attorney General has said, the great support of the constitution,—and I fear its greatest, if not its only support. And as that is now become your duty, let me again and again intreat you, that should you have belonged to any of these associations, you will cast from your minds every prejudice they may have created, so that it may no longer bias or contaminate your verdict.

The defendant, not being much in favour, and having perhaps some private enemies among those associators, nor with the drunken deputy that you have heard of, is brought forwards by a public prosecution, and is charged by the information as follows: "That the said Daniel Isaac Eaton, being a wicked, malicious, seditious, and evil disposed person, and greatly disaffected to our said lord the king, intending to stir up and excite discontents and seditions among the subjects of our said lord the king, and to bring the said proclamation into disregard and contempt among his subjects, and to alienate and withdraw the affection, fidelity, and allegiance of his said majesty's subjects, from his said majesty's person and government, and wickedly, and maliciously, and seditiously, to insinuate, and cause to be believed, by all the liege subjects," &c. &c.

What! Gentlemen, is all this contained in the single fact that is in evidence, viz. the sale of a sixpenny pamphlet? Were a man conscious of all this, would he risk the consequence to gain by it a penny or two-pence? Would any of you risk the punishment of such an offence, if you knew it to be so, even were you reduced to the lowest condition of life? Why, the multitude of evil designs here imputed to this act, is something like lord Burleigh's shake of the head; which, being explained, meant a long series of reflections on the consequences of the Spanish armada. The charge is indeed of no common sort, and we are told by Mr. Attorney General, that it is little less than treason, at least a cousin German, or some near relation to it. But if so, why is the defendant brought here for a misdemeanor? Why is he not prosecuted for the crime of which he is guilty, so that a due proportion may be observed between his crime and his punishment? You, gentlemen, will remember, that you are not brought here to judge of any charge like that of treason; but of that which stands upon this record, imputing to the defendant objects and motives, which, to criminate him, must be made out to your certainty and satisfaction.

But gentlemen, be pleased to attend to the passage I have just read from the information, and observe how the motives and the objects imputed to the defendant, and the means he is said to have used for the attaining them are huddled together, without distinction, and as it were with a purposed obscurity and confusion. I will endeavour to divide and analyze it, so that it may be reduced to common sense. And first it appears by it, that his motives were malice and sedition: secondly, that his objects were to bring his majesty's person into hatred and contempt, and to excite seditious meetings and conventions among his majesty's subjects; all which were to be effected by the means of bringing his majesty's proclamation into disregard, and by representing the constitution and government, as a system of tyranny, injustice, and oppression. Whether the defendant has had such motives and objects you can only judge by the evidence of the means he is said to have used, viz. the mere act of selling this book to the worthy informer, who is the witness in this cause.

Gentlemen, Mr. Attorney General, reserving himself, no doubt, for his reply, has taken but little or very slight notice of the pamphlet before you; but when the time comes, you will hear the whole artillery of his eloquence discharged upon it. Hitherto, we have heard a great deal about the "Rights of Man," and the circumstances of its publication, and about the intentions of its author; but I ask, what have either of them to do with the question you have to try? Is any part of that book upon the record, or before the Court? Certainly not. And yet they are all mixed up together, so as to produce a conclusion in your minds fatal to the defendant, who is by this means to be convicted of designs fatal to the English constitution, "the envy and admiration of the world." As to this latter expression, it is indeed in the pamphlet; but will

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the learned gentleman contend, or can you be persuaded, that every man and every book, telling you, that the constitution of England is not the envy and admiration of the world, must therefore be criminal?

Gentlemen; I believe, nay, I know I could read you many books, in which it is said, that the English constitution is neither the perfection of human wisdom nor of human happiness. Observe, gentlemen, that I do not partake of such sentiments, for I hold the constitution of England in that state of purity wherein I know it has existed, and in which I hope, before I die, to see it exist, in as much veneration as any person. I am persuaded, I shall not be misunderstood in any observations respecting it; but its original and pure condition is well worth looking after, when we are told by a very elegant writer, that the English constitution had, for a long time, been advancing, with rapid strides, towards a popular government; but that, now having attained its summit in that way, it is taking a contrary course, and is now declining, by gentle degrees, towards a perfect and absolute monarchy. He contends also, that it is much better so to continue, than trying to relieve ourselves from such a change of our condition; because it is much quieter to go on as we are; and that all this will happen by slow and imperceptible gradations. This, says Mr. Hume, is the natural death, or (to use the delicate expression he has borrowed from an ancient language) the Euthanasia of the English constitution.* Gentlemen, there is no doubt, but that death is a state of profound quiet; but I hope, that whenever our country shall arrive at such a dissolution of its principles, this author's description will be something more than metaphorical. I hope, that the natural and political existence of every Englishman will then be lost together. Of this I am sure, that when the latter is gone, the former is not worth having.

Let us look a little farther into the structure of this information, and I think we shall be led to no small discoveries as to the object intended by it. There are, in all, six passages extracted from the book, and charged as criminal upon the publisher, Mr. Eaton. These passages are some of them said, to be of and concerning the constitution and government; others of and concerning the representation, power, and authority of parliament; but the sixth and last is not stated to be of and concerning any thing. However, gentlemen, as it is said of a good epigram, that its sting is ever to be found in its tail; so, as I take it, it is with this information, the whole scope and design of which may be found in the last passage, extracted from the pamphlet. Mr. Paine says, "that instead of resorting to rotten boroughs and absurd corporations, for addresses, or hawking them about the country, to be signed by a few dependant tenants, the best way would be to come to the point at once, and to ascertain the sense of the nation, by electing a national convention." Why, gentlemen, if this is of and concerning any one, it must be of and concerning the rotten boroughs, the absurd corporations, and the dependant tenants: and is it so wicked, seditious and malicious, to treat with disrespect such great and distinguished persons, as the voters in rotten boroughs, or the dependants who sign addresses?

Now, gentlemen, as the extremes of things are said often to meet, let us bring the end of this information to the beginning, and observe how exactly they fit one another. At the outset we are told of evil designs against the constitution, and at last of sedition against borough-mongers and rotten corporations. Why, gentlemen, if such rotten corporations exist (which you understand as well as I do), and if they are to be upheld as the legitimate constitution of this country, can there be a doubt of the cause of this prosecution? Why does not every one see that it is to protect borough-mongers, and their property, that this information has been filed? If I were possessed of, or connected with this species of property (for so it is called), and were I base enough to wish its continuance for my own profit and advantage, what would be my conduct? Why I should cast within my own mind, whether it would not be proper to suppress all publications on the subject of boroughs. If I were determined to support that interest, *per fas et nefas*, I should never think it safe till I could prevail in having a prosecution. I should never rest until I had thrown the broad shield of this information between myself and the public. But the attorney-general is a man of honour and a gentleman, so that without telling the plain naked truth, I would say; "Sir, here are base and virulent libels abroad; they swarm, they fly in covies over the nation; and they contain strong insinuations that the government is not so pure as it ought to be. They tell us, the government is expensive—wicked creatures to say it is expensive!—and that this expense goes to courtiers also. Now, Sir, we are the persons to whom this government is beneficial, and what is to become of it when we are no more? Prosecute in time, or where is this to end: for what is the English government but a majority of the boroughs in parliament?"

And yet, in this point of view, it may be doubted, whether prosecutions of this kind are very prudential, or a political measure. For first, they raise into light all that might be kept secret; and revive in our memories what otherwise might have been forgotten: How long it is since any of us have seen "The Rights of Man," or any other of Mr. Paine's writings? As objects of sale, they

* See Hume's Essay, Whether the British government inclines more to absolute monarchy, or to a republic. Essays, vol. 1, p. 53, 8vo 1809.

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have long disappeared from before the public eye; and this defendant would not have been brought here to day on that account, had it not been for the spies of the lord mayor, who have entrapped him into his present unfortunate situation.

For good and sufficient reasons, no doubt, "The Rights of Man" have been introduced into the cause, which, give me leave to say, must want a deal of bolstering, if what is not in question, must be brought forward in its support. Permit me also to say a word or two on that pamphlet. On account of certain passages reflecting on the revolution and the House of Hanover, the author was convicted by a special jury in this court. But what use has there not been made of his name, in every town and village throughout the kingdom? nay, what use was there not made of it before his trial, and before his conviction? Let me call to your memories, whether going into any place of public resort, you did not find all the journals of the day stuck as full as they could hold, with paragraphs, as malicious and as scandalous as ever were vented on the head of man; and this before his conviction, when he stood under the protection of the law, and I will add under that of Mr. Attorney-General's information. For, by the same laws, under which he was prosecuted, ought he to have been protected; and it would greatly have added to the dignity of the character of that officer, had he caused the same proceedings to have been filed against the calumniators of Mr. Paine, as had been exhibited against the writings of Mr. Paine. It would have been an act worthy of the *censor morum* in a great and a generous nation. Political enmities would have ceased, and nothing but a sense of justice would have reigned among the people. Instead of that, what have we seen? One part of our fellow subjects have been associated against the other. An *imperium in imperio* has been raised amongst us, as if the laws of the country were insufficient for public purposes.—This author, or rather his name, has become a means of oppression, raised up by these judicial dæmons against the poor inhabitants of this country, who have happened unfortunately to imbibe, with their mother's milk, a strong attachment to liberty. After all, is this book answered?—By whom is it answered?—By no one whom any of us remember. I am persuaded that there must exist, in the hearts of many people, a lurking affection for this man, arising from the re-action of the prosecution, which his name has undergone. Is it then wise to be eternally prosecuting his book, and every one who happens, in an unguarded moment, to sell it for the small advantage that may accrue from that sale?

The passages to which the exceptions were made, were omitted by the printers in their second edition of "The Rights of Man." The printers of that edition were prosecuted; —they pleaded guilty, and were convicted. Surely, here was example sufficient, if that alone was the object.—Why extend it, beyond the printers, to the numberless publishers, who perceiving in it many maxims, not only innocent, but laudable, published till such time as the second edition was condemned by the courts of law. From that time they stopped their sale: yet, after all this, it is judged necessary to bring Mr. Eaton before a jury for this Letter to the Addressers, in order that he may increase the number of persons now under fine and imprisonment! Good God! Is every thing with the name of Thomas Paine to be libellous and criminal? When he tells you that our country should be the world, and our religion to do good, I should be glad to know whether that and other opinions of the same kind are criminal. Gentlemen, all this persecuting practice reminds us of Cadmus and the serpent. These writings resemble the virulent teeth of that serpent, which he would not leave above ground, but planted them beneath it, until they rose in such a crop, as no honest or well meaning man can ever wish to return in this enlightened nation.

But let us look into other passages of the Letter to the Addressers, contained in the information, and respecting the constitution. It is charged and held out to be a great crime, that Mr. Paine has said, "that it is a good constitution for courtiers, borough-holders, and pensioners."—Why, if there are such persons, and they are "the active leaders of addresses," who doubts but that it is good for them; their actions prove that they think it so. From borough-holders (if any such people exist) may they not become courtiers? And from courtiers, may they not become pensioners? And if so, what is the state of the English constitution? Is it conformable to the spirit of the constitution, that the representation of the country should have become the property of a few individuals? Of what nature is property? It is the rightful possession of what I have acquired by my industry, or what is confirmed to me by the laws of the land. But where is the law, either common or statute, or is it among any of the systems of law, which though permitted amongst us, seem as it were to cross our original jurisprudence, that we find a toleration for this diabolical species of pretended property? Why, suppose a place without either house or tree, should send as many members to parliament as the county of Middlesex, is this to be called a property? If you, an English jury, can look on such property with any thing but abhorrence; if you can consider it as a legal part of the English constitution, your hearts do not beat within your bosoms after the manner of your fathers, who did so much for its establishment on principles of wisdom and independence.

Mr. Paine goes on to say, rather strongly, "that it is a bad constitution for ninety-nine

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parts of the nation out of one hundred." This is said, in reference to the persons, who, as he says, find their advantage under it. But why may we not speak of it as we think of it? why not speak as freely of the body politic, as of the body natural? It is my misfortune, to have a very unhealthy constitution; and when I meet with a man of the same appearance with myself, I suppose he has a very bad constitution likewise. In the same manner, when I find that in all the constitutions of Europe there was once that third estate, which is said to be the splendour of our legal government; and when I find that it is now lost in them all by means of fraud and corruption, I cannot help looking with anxiety to our present representation. We are told, it is the envy and admiration of the world; yet, in point of fact that is not true, as we know from two recent examples.

But, says Mr. Attorney General, till within these three years the kingdom of France had a mild and benignant government. Gentlemen, I do not know whether the learned gentleman has ever travelled in that country; but of this I am sure, that if so, he is the first traveller who ever returned with such an account. Are not our books filled with relations of bastiles and of cruel imprisonments? If ever you resided in the capital of this benignant government, what did you find but a motley appearance of filth and finery? and in the provinces what did you observe but luxury and grandeur in the midst of disease and poverty? The griping hand of corrupt courtiers had fastened upon every thing profitable or valuable, while the cottage of the peasant remained unthatched, his children ill-clothed and worse educated, to support the folly and license of the metropolis. Is it to be wondered, if being so treated, the people should now break forth in violence and cruelty? But give me leave to speak from my own experience as to the mercantile and middle ranks of life in France, among which I have known men of as much virtue, and of as pure principles, whether moral or political, as ever existed in this country or any other.

I ask Mr. Attorney General, and I hope for an answer to this question, Has this observation on the English representation never been made before? I assert that it has, and in much stronger language, and I hold the proof in my hand, viz. the petition presented to the House of Commons, accepted by the House of Commons, and entered on the Journals of the House of Commons. It is a petition received at a time when others were rejected on the subject of a reform in our parliamentary representation. Permit me to read you two extracts; and first it is stated, "that the petitioners complain of a grievance, detrimental to their interests, and contrary to the spirit of the constitution."

A grievance, if I understand the term right, is something bad, if not uncommonly bad; and what is the grievance? Why, "that the elective franchise is so partially and unequally distributed; and in so many instances committed to bodies of men of such very limited numbers, that the majority of your honourable House is elected by less than fifteen thousand electors; which, even if the male adults in the kingdom be estimated at so low a number as three millions, is not more than the two hundredth part of the people to be represented."

The proportion of the nation represented is but the two hundredth part of the whole! and this is a grievance, entered as such on the Journals, and with the consent of the House of Commons. Why, then, one hundred and ninety-nine out of two hundred are unrepresented, which is a grievance in the constitution. Will it be said that this is not the same language with that of Mr. Paine? Is it not a grievance? Is it not bad for one hundred and ninety-nine out of two hundred? All the difference consists in the larger measure of badness complained of by the petitioners; since Mr. Paine says, the constitution is bad for only ninety-nine out of one hundred. If so, is it criminal to have written in this pamphlet, what is at least not discountenanced on the Journals of the legislature itself?

Think not gentlemen, that I mean to speak with slight or disrespect of that petition, or of the gentlemen who signed it. In my mind it does them immortal honour; and pursuing that line of conduct, as I doubt not they will, it will render their names dear to our latest posterity.

Thus far, I hope that the defendant is rescued from some of the charges in this information. In one of the passages to which I have alluded, it is said, that the constitution consisting of three separate systems, is expensive. What then! May I not say so without any breach of the truth? We are a great and commercial people, with great establishments, colonies, and foreign possessions. It may be good to have there an extensive military force, with an expense adequate to those purposes, upon the supposition that it is faithfully applied. But it is said by Mr. Paine, and here seems to be the great crime of all, "that we have yet a constitution to form; and that the means should be by a convention." All this we are told, is highly culpable, if not treasonable.

Gentlemen, it is not fair to prosecute any man for words of a doubtful meaning, and nothing contributes more to injustice than a misrepresentation of an author's language.—Convention was not always an odious term amongst Englishmen; and, standing as it does in this book, how do you know but the author might mean exactly such a convention as that of 1688?

Had the information stated this fairly, it would have placed together upon the record, all that was advanced by the book on the subject; we should then have found that the

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writer, so far from wishing disorder and confusion, has stated the manner as well as the reasons for carrying it into execution. "I wish," says the author, "that Mr. Grey, since he has embarked in the business, would take the whole of it into consideration. He would see that the only motion he could consistently make, would be, that parliament should recommend a convention." What is this, but providing the most peaceable mode for such a measure? Let it originate with parliament; it is possible they may be willing to abdicate such part of their power, which may be good for the people to possess; they may think it fitting to cut away the different corruptions which the hand of time has introduced. If you could bring the wishes of the people to one point, they would know their own political interest too well to do themselves a mischief, and you would know whether they meant to have any, and what reform. The convention of France, of whose acts we have been told so often, is no where mentioned in the course of the book; which, indeed, was published before any of us heard there was such a thing in contemplation. It is easy to paint the massacres which have taken place in that country; and you will hear of them more than once, in the course of Mr. Attorney General's reply; but after all, they are subjects of sorrow, and not of exultation; for though the people of that country are now our enemies, they are still our fellow creatures. If we are to reason from the example of conventions, cast your eyes on the other side of the Atlantic; compare the effects among those who resemble us in laws, in manner, in language, in religion. Behold the laws administered at a small expense; the commerce and population of the American continent increasing, and extending beyond what could have been foreseen or believed; and then determine whether the argument is for or against conventions in matters of reform. As to what is said of our having no constitution, take the word constitution in the sense here defined, and that completely justifies it. Every writer is to be understood according to his own definitions; and the only answer I shall give, is the passage of page 17. "A constitution is a thing antecedent to government; it is the act of the people, creating a government, and giving it powers, and defining the limits and exercise of the powers so given."

I have but two remarks to add;—the first of this instrument, and this charge called an information. In form, it has an omission, which is somewhat new—I believe, intirely. There is omitted one of the principle qualities of the charge of libel, I mean the word "false." Consider what a difference that must make in the extent of any charge. For will it be said, that there is no difference between a direct political truth, and a direct political falsehood? I have not made this an objection in point of law to the court, because it may be so argued in a future stage of this proceeding, if necessary. But it is a question for you considering the whole matter put in issue, whether that word "false" ought or ought not to have been left out. Is it true, that these addresses come only from rotten boroughs, and absurd corporations? Is the rest of the matter of this book *true*? It must be either true or false; and it is not charged to be *false*. Why then, I ask, is it fitting, upon such a charge, that Mr. Eaton shall be brought here, and attacked by this formidable phalanx, by such a regiment of advocates as we do not often see, the defendant having but two inexperienced men to oppose the most veteran and devoted troops in his majesty's service.

It remains for me only to observe, as to the intention of the publisher, which, if innocent, I care not what you think of the pamphlet. Upon this ground I set my foot. The conversations held at the lord mayor's, and the publication by the defendant, were both prior to any conviction of this book. The prosecutors have attempted to prove the intention; but I say, they have failed in this part of their case. I shall leave the whole upon this one question: DO YOU OR NOT BELIEVE, THAT WHEN THE DEFENDANT TOOK THIS BOOK FROM HIS SHELF WITH THE ONE HAND, AND RECEIVED SIXPENCE FOR IT WITH THE OTHER, THAT HE MALICIOUSLY AND MISCHIEVOUSLY ENTERTAINED IN HIS MIND THOSE CRIMINAL MOTIVES, THOSE CRIMINAL OBJECTS, AND THOSE CRIMINAL MEANS ALLEGED AGAINST HIM, AND ALL OF WHICH YOU ARE BOUND TO FIND BY YOUR VERDICT?

Gentlemen of the jury, I have now to surrender the defendant into your hands. Take him; do what you please with him; but recollect, that the situation he stands in to-day may become that of yourselves to-morrow. For you also may be accused, and be as little guilty of the charge as Mr. Eaton, while the only difference between you, may be that of your several properties; for he, unhappily, is not worth fifty pounds in all the world. Nay, were it in private, I should not fear to ask you, whether by reading aloud, or by lending, or in some other way, exposing this book you have not made yourselves liable to prosecution. All this might happen to you without any seditious or malicious motives. And can you lay your hands upon your hearts, and say, that the defendant published with those motives? Look well to the charge, and see whether it is proved to your satisfaction, by the evidence produced, or by that of common sense.—Suffer no vile prepossessions to bias you, nor let any eloquent parts of the reply distract your judgments. Remember that you are to sacrifice no victims to clamour, or to vulgar reputation: but that the eyes of your country are upon you in the verdict you are presently to deliver. Reflect upon it calmly, consider it coolly, as a duty that you owe to yourselves and to your posterity, to your consciences and to your God.

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And if a prejudice should have been instilled into you, that whenever liberty is mentioned property is in danger, do not be carried away by it, but see whether property does not increase in the same proportion with liberty. Look around, and see whether there ever was a great and commercial country where there was nothing but slavery; the grass grows in the streets of Antwerp, which was once the common mart for all the nations in Europe: but from the moment that liberty was crushed in that city, commerce took her flight, and its mercantile prosperity was no more. To insure the principles of public liberty, is to insure the existence of property in this country. You will therefore coolly, but solemnly, consider on your verdict as you value its consequences to yourselves and to the public; as you are true and honest men; as you are freemen and merchants of the city of London, specially chosen, and sworn for that duty.

But, gentlemen, I beg pardon for taking up so much of your time. You are now going to hear, from one of the first men in the country, all that his duty requires him to urge in reply. You will observe it accurately: and as far as it affects the defendant, as to his acquittal, or his conviction, I sit down, in the fullest persuasion, that your verdict will terminate in the former; and that you will send him home with a joyful heart to comfort his family.

REPLY.

Mr. *Attorney General.* Gentlemen of the Jury;—If I did not think the present case of the greatest importance, I would not trouble you even with these few words in answer to a speech which you have heard delivered with unquestionable abilities and talents, but where much has been said entirely foreign to the question before you, if those few words did not appear to me to be exceedingly material.

Gentlemen, whether it has arisen from custom, or from what cause it may have arisen, I cannot say, but it has so happened that every question of this kind is generally made rather the trial of the officers of the crown, instead of the defendant, by the imputation of unworthy motives to that officer of the crown in instituting this species of trial.

Gentlemen, my learned friend has done me the honour to suppose that I have done that for which no man in England entertains a more sovereign contempt than myself, which is, the making an eloquent speech on an occasion like the present, since it has always appeared to me that the duty of a counsel for the prosecution consists in stating facts fairly to the jury, and reasoning with candour on those facts. I should betray that important and sacred trust which has been reposed in me, and should no longer desire to be continued in the discharge of the duties of

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that situation which I unworthily fill, if I departed from those sacred principles which actuate my conduct in this place, as the servant of the crown, prosecuting a subject of the crown, well knowing that I am bound by the duty of my office to do justice to that subject equally as much as to the crown itself. Gentlemen, if I betray my duty to that subject, I betray my duty to the crown. It is the duty of all to acquiesce in your verdict; and God forbid that I should, standing here in the exercise of my duty, betray any wishes for any other verdict than that which will be dictated by the strictest justice.

Gentlemen, I am bound to do more than this; to assure you, and through you to assure the public, that I did not bring this charge before the public till I had duly considered it, and the consequences: I must say it, not in vanity, but in gratitude, and as a duty owing to the individual himself, whom I here represent, that no way can so certainly insure his approbation as the fair and just exercise of my best talents.

Gentlemen, I wish you carefully to consider the case as proved to you, and to determine, without prejudice. Far be it from me to urge you to deliver a verdict against the defendant, if the case is not proved to you; if the case be not a case of guilt, I doubt not but he will meet with an acquittal; if it be a case of guilt, it is my duty to ask a jury of the country for their verdict. When this gentleman, sitting by me, informs you, that by your verdict the defendant may be subjected to fine and to imprisonment; and that he has a wife and several children dependant on his labours; God forbid that I should have a temper so discordant with the lenity of those laws under which I live, but to wish that you, acting under that consideration, will yourselves be satisfied as to your verdict, as humane men, and as conscientious men, but above all, as jury men, under the oath you have taken. No man more warmly wishes than I do that you should consider the consequences of your verdict carefully and deliberately, and form your decision with impartiality.

Gentlemen, I will now only trouble you with a single word with respect to those associations in the country, to which my learned friend alluded. Gentlemen, I do not stand here to-day, to discuss before you, whether they were right, or whether those are in the right who have chosen to call them an *imperium in imperio.* My learned friend has said that, in which I perfectly agree with him, which is, that this business was commenced by the late attorney-general,—a gentleman, who, in the discreet discharge of his duty, never can be exceeded by any successor.

Of that gentleman I will say, that had he been called upon to protect Mr. Paine, if Mr. Paine could have satisfied him that it was a case which admitted of a defence, no man living would have given him a more willing ear: gentlemen, you all know that the

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persons conducting these prosecutions are bound to carry them on in discharge of the duties of their office, and that for the public good; and men are placed in these situations with a view to make themselves useful to the country. But you have had in proof that, which I believe when it once comes to be fully considered, will not allow of any extenuation; for what did Mr. Paine do? He came into this country, for the express purpose of publishing such a work as never was published here before. A jury was asked, whether that book was a fair, reasonable, honest discussion, stating the facts as they are, and reasoning upon it honestly. This jury gave their determination in this place, that that publication was a libel; he directly goes and publishes this book, which is now before you, and in it he libels the attorney-general, and disclaims all reference to a jury. Is the defendant then, who publishes such a book, and under such circumstances, a person, who can have any very great claims to indulgence?

Gentlemen, this is not all; for my learned friend introduces to me a principle, which I confess, as far as relates to my observation, is perfectly new; he states it thus, that a book is not to be considered as libellous, when it comes out of the hands of the publisher, until it has been proved so by a jury. Here is such a receipt for disobedience to the law of the land, that for my own part, I do not, on this principle, see what could operate to the conviction of the author or publisher of any publication whatsoever. Much has been said about the petition of the society of the Friends of the People, in the endeavour to palliate the expressions employed in this pamphlet. But, gentlemen, having the honour to be a member of the House of Commons, I will mention to you the difference between that petition presented to that House, and this publication. In that petition, certain grievances were stated indeed, but that in the most respectful manner. I pray God, that there never may come a time when the subjects of this country may not state to the legislature of the country what they conceive to be grievances, whether they really are grievances or not; but this is a publication that does not state them in a respectful manner, but is a direct attack on the magistracy and legislature of the country; and really this book was such, that my learned friend was put to a stretch on the occasion: he was obliged to have recourse to the convention of 1688, to excuse the proposal of a convention made by this author; but where is the similarity? I confess I can discover none. This author, in fact, states that if the people possess not those things, they are not to look to the legislature for the remedy. And now I am to repeat what my learned friend said; and he is counsel for the publisher of a book which vilifies the whole of the revolution; I tell you, that every one has a right to personal liberty and personal security; and that every one has a right to that property, which labour and industry have procured him. We can here enjoy, and leave to our children that property, which, under the blessing of Providence, we have been able to obtain. That has been declared, over and over again, to be the indisputable and indubitable right of the subjects of this country.

My learned friend speaks of the oppressions of the old government of France. I say, that compared with the present existing government of France (if it may be called a government) it was mild; but when you talk of bastiles, will my learned friend count with me bastile for bastile; if he will, he will soon be counted out of court. Gentlemen, no man can dispute it, that more of real liberty, and of solid public happiness, has in fact been enjoyed, for a longer period of time, in this than in any other country under heaven.—Now, if you look back to the fifteenth page of this book, you will perceive that this author has wickedly and blasphemously employed, from the Holy Scriptures, that passage which contains, I believe, the expostulation of the Almighty with the Jews, when they wanted a king. I believe, with this author, that if a thing is good, it will not suffer by investigation and discussion; stating it properly, meaning to do all the mischief which the work is calculated to do; but my learned friend says, that an act is never criminal till it is proved so. Therefore the question before you is, is the work criminal? Is this publication criminal or not?

Gentlemen, I am not ashamed to state, in the face of this court, and in the face of the country at large, that there is not a question relating to the boroughs of this country, that can come with propriety into the question which now waits your determination. And as to those, who talk of restoring to the constitution that purity which never existed, it should be considered, that this is a subject upon which a man may reason speciously; but upon which he may speculate rather inaccurately. When that petition was presented to the House of Commons, the positions it contained deserved a great deal of attention; and I hope they received that attention from me, and that I acted conscientiously in the discharge of my duty.

Gentlemen, I said that this publication is not treason, but it certainly approaches as near to treason as could be, although I believe the author thought that it was treason. I am asked, why the defendant is not indicted for treason. I answer, for this plain reason, his offence does not quite amount to treason.

Gentlemen, I have a right to assert, that the first men in the country, as well as well-informed foreigners, have all looked to the government of this country as the best constitution that ever was established. Why, gentlemen, look to the passage which has been read to you: "It is a good constitution for courtiers, placemen, pensioners, borough-

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holders, and the leaders of parties; and these are the men that have been the active leaders of addresses. But it is a bad constitution for at least ninety-nine parts of the nation out of one hundred; and this truth is every day making its way." Now, in thus addressing those who are not capable of comparing government with government, and forming a proper judgment, consider the pernicious consequences that may arise. When the affairs of a neighbouring nation were referred to, it would have been fair to have observed, that this author has not told his readers of the advantages which had accrued to this country ever since the establishment of monarchy in its true principles, at the time of the Revolution; stating the subject rationally, discretely, and deliberately.

Gentlemen, my learned friend talks a great deal about America; and here I must observe, Mr. Paine, a subject of America, chose to prefer the government of that country; if he chose to prefer it to that of Great Britain, on account of the greater expense of that of Great Britain, which in truth had paid for the government of America, would it not have been fair to have stated that fairly? It is one thing to establish principles, by which the government of a country may be accelerated; and another thing to excite uneasiness in a country, by the means of saying what he knows not to be true. Should he not have told his readers, that in a country, like America, where both the country and population differ from that of this country, it is impossible to say that the same system should hold good, with respect to the government of the two countries.

Gentlemen, the next passage in the book is, "it has ever been the craft of courtiers, for the purpose of keeping up an expensive and enormous civil list, and a number of antiquated places and offices, at the public expense, to be continually hanging England upon some individual or other, called a king, though the man might not have capacity enough for a parish constable." Gentlemen, a man who wishes for hereditary succession, ought not so to express himself. Gentlemen, what does he say? he says,—"an individual, called a king, though the man might not have capacity to be a parish constable." Gentlemen, am I talking to Englishmen or am I not? If there is a parish constable here, I may tell him his duty is to protect the liberty of the subject; and while he does so, he will have the protection of the great magistrate, whose representative in some respect he is. If I had treated the constable in this way, I should have derogated from that manly and proper conduct which is due to every public officer in every public capacity.

Gentlemen, he next says, "the folly of these men, and the absurdity is appearing more and more every day; and still those men continue to act, as if no alteration in the public opinion had taken place; they hear each other's nonsense, and suppose the whole nation talks the same gibberish; let such men cry up the House of Orange or the House of Brunswick, if they please." Now, would it not have been decent in this author to have stated to you what the pretensions of these Houses were?

Gentlemen of the Jury, look at that part of the pamphlet which recommends the convention. "I wish," says the author, "that Mr. Grey, since he has embarked in the business, would take the whole of it into consideration. He would see that the only motion he could consistently make, would be, that parliament should recommend a convention." I know I live in a country, that asserts, by an act of parliament, that the King, Lords, and Commons, constitute the government of the country. Why, gentlemen, will it not require a great deal of discussion to determine, whether, in the way that gentleman states it, it is not high treason?

Gentlemen, I am not stating this, to press against this defendant. God forbid! but I mean to justify, at least, the propriety of opposing those who adopt this species of conduct. It rests with you, gentlemen, to determine, whether you will allow works of this kind to be circulated. Observe how artfully he requests a very respectable gentleman, a member of the House of Commons, I mean Mr. Grey; and he puts his name in *italics* too. I state it before you, and the public, that this is a high crime in this country: the work is now before you, in which the constitution of the country is calumniated; and not only the offices, but all the magistrates of the country.

Now, gentlemen, with respect to the propriety of the prosecution, as against the present defendant, I have said elsewhere, that in my opinion, it may be more proper that the publisher of the work should be prosecuted than the author; on this plain principle, that the man who mixes the poison, and does not distribute it, is less guilty than he who lends his hand to the distribution of it. Gentlemen, the licentiousness of the press needs to be restrained; for when the author of the Second Part of the Rights of Man was prosecuted, the booksellers thought it proper and safe to re-publish it; and that it was sufficient to leave out some offensive parts, marked in the information, and substitute others, equally offensive in the room of them; and to say, that let the nature of the work be what it will, the smallness of the gain is to be an excuse for its publication, because, if a man, knowing the actual mischief resulting from the publication of these books, chooses, for two-pence, to run the risk of publishing a work, the purport of which is to make wives and children detested of husbands and fathers, —and is he not to be brought to justice, because he happens to have a wife and children? I know what you would have said to the officer of the crown, if he had negligently permitted

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the continuance of such publications: I know you would have said, that if a guillotine was to be found in this country, his head ought to be the first that should be severed. Gentlemen, the defendant published this book, which, by its title, imported either a decent or indecent account of the conduct of the first magistrate of the country; the title of the very same book staring him in the face, and telling him it was written by Mr. Paine, who was at the same time under a prosecution for a libel on the government of this kingdom.

Gentlemen, you must perceive that if this can be the course, the thing is easily done; and though a magistrate of this city,—who I am sure would say I acted very basely by him, if I ventured to flatter him,—he being to execute his duty as a magistrate, what does he do? He is informed, that the defendant vended these seditious publications: this information came by an anonymous hand, I grant; and what does he do? Why, he sent for the defendant, and told him, he must not publish the work in question; but he, the defendant, neglecting this admonition, about a fortnight afterwards this person, the witness in the cause, purchased the book; for you never can have a conviction without buying a book. He used some art;—why, certainly, some art is generally employed in these cases. Gentlemen, have you a doubt that this defendant had been persuaded, by somebody or other, to dispose of his stock after this admonition of the lord mayor?

Gentlemen of the Jury, God Almighty forbid, that I should press this matter against the defendant farther than sound justice and equity should require; I know the constitution of this country, and all that is dear to all of us depends on the firmness, integrity, and honesty, with which juries will decide on the nature of the conduct of persons charged with offences.

Gentlemen, with regard to myself, I have only to say, that I know I want pardon for my own errors and inaccuracies, as well in this as in all my public transactions: and if, when you consider the benign principle of the laws of England, which have been so vilified in this publication; if you feel it is your duty to acquit the defendant, you will discharge that duty; on the other hand, you will recollect that these principles tend to the deprivation to yourselves and your families, of both liberty and property.

SUMMING UP.

Lord *Kenyon*.—Gentlemen of the jury; this cause has consumed a considerable portion of your time, and I shall keep my word with you when I tell you I will not add many minutes to that time. I have several weighty reasons for so doing. In the first place, this is not the only business of this day, it is the last day in which justice can be administered by me in this place, and those civil causes of your fellow citizens that are not heard to day, must stand over to a future period.

There is another weightier reason than this, that this prosecution, which depends upon a few short facts, does not appear to me to want a great deal of detail of argument or a great deal of artificial reasoning either to substantiate the guilt or to substantiate the innocence of the party before you. The cause is either plain to be decided upon very short topics, or I confess I know nothing of the cause.

If I were master of eloquence I would not make the decision of this cause a stage upon which I would display that eloquence. Those things which are very proper for advocates to do, become very improper for the judge, who has nothing to do, but to state to the jury the short grounds upon which the cause ought to proceed.

I shall not travel into the affairs of France and America, or any of the various topics that have, at considerable length, undoubtedly not improperly, been talked about this day; but I shall make one or two observations not exactly to the point of this cause.

I dare say it was not intended, but it did rather appear that the chief magistrate of this city was a little sneered at for what he has done. He was called to the office by the unanimous voices of the citizens, the situation he holds is the first officer of the first city in the world in point of commerce and riches and every thing that can constitute the magnificence of a city. He is not a judicial officer it is said. He is a judicial officer, and a municipal officer too, and from these combined characters there are duties incumbent upon him, which by all the ties that can bind a man to the discharge of duty, he is bound to discharge. It stands at the head of his duties, next after protecting the religion which binds us to God, to govern that civil policy which binds government together, and prevents us from being in a state of anarchy and confusion. What could he do other than he has done? He would have retired from his station, if, intelligence being given him, he had not used all due diligence to see whether crimes had been committed, and to be accessary as far as he could to the support of government, and the detection of those crimes, and putting them in the way of prosecution, and of being brought finally where this person is brought,—before a jury.

Therefore, I would state that; making no farther remarks upon it, because every man living who has adverted to his situation, has long ago not only acquitted him, but approved of his conduct.

Something too has been said respecting the nature of this prosecution, that it ought not to have been commenced, because this man had been guilty of the offence in common with thousands of his fellow countrymen.—Are all the thousand to be prosecuted, or is iniquity to go unpunished?

I have heard that it was the perfection of the administration of criminal justice to take

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care that the punishment should come to few and the example to many; and surely there is no blame to be imputed to the executive government, when the offence was so disseminated, that a few, or that one only, for we treat of only one to day,—that the punishment being inflicted upon one person, the example might come to many.

Gentlemen, the book is before you; if you think it necessary to look through the whole before you give your verdict, that you will certainly do, because upon the whole contents of the book your judgment upon criminality or innocence is to be formed. If the parts which have been extracted from it have been unfairly garbled, and taking the whole context together, that does not belong to them which the information states, take the context, and if the context compels you to acquit the defendant, you must acquit him.

That it was purchased from the person who is now the defendant in this cause has been proved and is not controverted. But you are asked, and very properly asked, not to convict him unless he had an intention to offend. —To enter into the hearts of men belongs to him who can explore the human heart, it belongs to human judicatures to judge of the intention by the overt act of the person; and therefore if in all cases positive proof must be brought of evil intention, it would be proclaiming impunity for all offences where the intention goes to constitute the offence, which is almost all criminal cases whatever. It may occur to a man that death is a consummation devoutly to be wished for, and he may think it a laudable act to put an end to the lives of as many people as he can, because it is that consummation; and if a man indicted for murder were to tell you by his advocate, that this act was done from the purest intentions in the world to take the object out of the miseries of this world, and you were called upon not to convict unless you had positive evidence of the badness of the intention, I know not how crimes are to be punished.

In this case and in all others, we must refer to the act the party has done and ascribe that to the intention of doing good, of doing evil, or of doing neither good nor evil, to which of those motives it ought to be ascribed. You will, under the solemn obligation you have been so often reminded of, answer that question and want no advice from me.

The cause is all in your power, and in a power which does not take its rise from the act of parliament, but which arose from principles interwoven with our constitution, which juries before have exercised beyond all doubt.

If you think the defendant is guilty of publishing that which trenches upon the government of the country, he will then be liable to punishment: on the other hand, if the man is innocent, he has a right to be acquitted by your verdict.

The *Jury* withdrew two hours and twenty minutes, and returned a verdict, GUILTY OF PUBLISHING.

Lord *Kenyon*. The verdict should be GUILTY, OR NOT GUILTY.

Juryman. We have considered the case, my lord, maturely, and this is the only verdict we can give.

Lord *Kenyon*. I have no right to ask what are your doubts, gentlemen. If you have no doubts to state to me, I can have nothing to say to you voluntarily.

Juryman. We have canvassed the point as well as we could: we can find no other verdict.

Lord *Kenyon*. I do not know the meaning of the words "Guilty of Publishing."—I don't know in what that guilt consists. You are bound to try the issue; you are sworn to try it. —The country will expect a verdict from you.

The *Jury* withdrew again, and in about forty minutes returned with a verdict of GUILTY OF PUBLISHING THAT BOOK.

Lord *Kenyon*. Gentlemen, you should give some verdict—but if you persist, I must record it as it is.

Juryman. We have very maturely considered the case, my lord, since we went out of court; we cannot give any other verdict.

The verdict was then recorded, GUILTY OF PUBLISHING THE PAMPHLET IN QUESTION.

Of the proceedings which took place in consequence of the verdicts given in this and the preceding case, I have not discovered any printed account.—For the communication of the following particulars, I am indebted to that distinguished member of the profession, Mr. Gurney, who was, on both occasions, of counsel for the defendant.

In the beginning of Michaelmas Term, 1793, the attorney-general (now lord chancellor Eldon) moved the court of King's-bench for a rule to show cause why the verdict in this case should not be entered up according to its legal import*: a rule to show cause was granted, and the counsel for the defendant were instructed to show cause; but the argument did not take place, nor was the case publicly mentioned. The reason assigned for its not being brought on was the pendency of the case which had been reserved at the Old Bailey for the opinion of the twelve judges, and it was thought fit, that that should be argued first. As the defendant was out on bail, in that case, he never applied to have it argued; the crown did not apply, and it was not argued or decided. The case in the King's-bench has never been mentioned since.

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* The same motion that was made in the case of Woodfall: *ante*, vol. xx. p. 903.

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579. Proceedings on the Trial of an Indictment against WILLIAM WINTERBOTHAM,* for Seditious Words uttered in a Sermon, preached on November 5th, 1792; tried at Exeter, before the Hon. Sir Richard Perryn, one of the Barons of his Majesty's Court of Exchequer, and a Special Jury, on July 25th: 33 GEORGE III. A. D. 1793.†

Counsel for the Crown—Mr. Serjeant Rooke, in 1793, one of the Justices C. B.; Mr. Serjeant Lawrence, afterwards successively one of the Justices C. B., B. R., and C. B.; Mr. Morris, Mr. Fanshawe, Mr. Clapp.

Solicitors—Messrs. Elford and Foot, of Plymouth Dock.

Counsel for the Defendant—Mr. Gibbs, in 1813, Lord Chief Baron of the Exchequer, in 1814, Ch. Just. C. B.; Mr. East; Mr. Dampier, afterwards one of the Justices B. R.

Solicitor—Mr. John Saunders, of Plymouth.

JURY.

William Tucker, of Kilmington, Devon, *F.*
Richard Kingdon, of Holsworthy, ditto.
Richard Hawkins, of Dodbrook, ditto.
Charles Hayne, of Blackawton, ditto.
Samuel Walkey, of East Budleigh, ditto.
Thos. Cummings, of Bishops Teignton, do.
Charles Row, of Silferton, ditto.
J. Ing. Fortescue, of Buckland Filleigh, do.
Walker Palk, of Rattery, ditto.
Wm. Ponsford, of Drews-Teignton, do. esqrs.

TALESMEN,

Wm. Hallet, clothier, of Thorncombe, ditto.
Richard Ware, of Northawton, ditto.

Mr. *Clapp*. THIS is a prosecution against the defendant Wm. Winterbotham, for that he maliciously and seditiously intending to disquiet, molest and disturb the peace and common tranquillity of our lord the king, and of this kingdom, and to traduce and vilify the happy constitution and government of this kingdom, and to bring the king and his government into hatred and contempt, and to excite the subjects of the king to sedition against his government, on the 5th day of November last, did preach, speak, and publish the following words, to wit:

In the first Count—of and concerning the revolution in the government of this kingdom, in the year of our Lord 1688, and the laws of this kingdom then made, these seditious words following:—

"The laws" (meaning the laws of this kingdom) "made at that time" (meaning the time of the Revolution) "have been since abused and brought into disuse; and it particularly behoves me to speak of the present times,"—(meaning thereby that the said laws were in the present times abused and brought into disuse by his said majesty's government).

In the second Count—of and concerning a supposed revolution in the government of France, whereby the ancient monarchical government of the country was supposed to be subverted, and a republican government established in its place: and of and concerning the government of this kingdom; these seditious words following:—

"I" (meaning the said Wm. Winterbotham) "highly approve of the revolution in France" (meaning the said revolution in the government of France), "and I" (meaning the said Wm. Winterbotham) "do not doubt but that it has opened the eyes of the people of England," (meaning that the people of England saw there was a necessity for a similar revolution in the government of this kingdom).

In the third Count—of and concerning the laws and government of this kingdom, these seditious words following:—

"Why are your streets and poor houses" (meaning the streets and poor houses of this kingdom) "crouded with poor" (meaning the poor of this kingdom), "and your gaols with thieves" (meaning crowded with thieves) "but because of the oppressive laws and taxes?" (meaning that the laws and statutes of this realm, and the taxes imposed on the subjects of this realm, thereby were oppressive). "I" (meaning the said Wm. Winterbotham) "am astonished that you" (meaning the subjects of this kingdom) "are quiet and contented under these grievances, and do not stand forth in defence of your rights."

The fourth Count—similar to the third.

In the fifth Count—of and concerning the laws and government of this kingdom, these seditious words following:—

"You fancy you live under a mild government" (meaning the government of this kingdom) "and good laws," (meaning the laws of this kingdom), "but it is no such thing," (meaning the government of this kingdom was not mild, and the laws of this realm were not good).

In the sixth Count—of and concerning the national debt of this kingdom, and certain

* Published by the defendant.
† See the next Case.

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monies lately paid and applied in reduction thereof by authority of parliament, these seditious words following:—

"I" (meaning the said William Winterbotham) "speak boldly"—"I" (meaning the said William Winterbotham) "deny it" (meaning that any money had been applied in reduction of the national debt); "for it is no other than a person taking money out of one pocket, and putting it in the other" (meaning the other pocket).

In the seventh Count—of and concerning the granting by the Commons of Great Britain in parliament assembled of supplies to his majesty for the public services of this nation, and the application of such supplies when granted, these seditious words following:—

"When there is a demand made to the House of Commons," (meaning the Commons of Great Britain in parliament assembled), "for a supply," (meaning a supply to our said lord the king, for the public service of this nation, "they" (meaning the Commons of Great Britain in parliament assembled) "deny it" (meaning deny granting the said supply) "at first" (meaning on the first demand of the said supply), "and on a second demand" (meaning a second demand of the said supply) "there are two thirds or three fourths" (meaning two thirds or three fourths of the said Commons of Great Britain in parliament assembled) "will grant it" (meaning the said supply); "and then they" (meaning the said two thirds or three fourths of the said Commons of Great Britain in parliament assembled), "will share it" (meaning the said supply), "among them."

In the ninth Count—of and concerning the said late supposed revolution in the government of France, and of and concerning the subjects of this kingdom, these seditious words following—

"We" (meaning the subjects of this kingdom), "have as much right to stand up as they did in France for our liberty" (meaning and intending it to be believed that the subjects of this kingdom ought to stand up to effect a revolution in the government of this kingdom similar to the late revolution in the government of France).

The tenth Count—similar to the third and fourth.

In the eleventh Count—of and concerning our said lord the king, these seditious words following:—

"His majesty," (meaning our sovereign lord the now king) "was placed upon the throne" (meaning the throne of this kingdom) "upon condition of keeping certain laws and rules; and if he" (meaning our said lord the king) "does not observe them" (meaning the said laws and rules), "he" (meaning our said lord the king), "has no more right to the throne" (meaning the throne of this kingdom), "than the Stuarts had" (meaning the family of the Stuarts heretofore kings of England).

The twelfth Count—similar to the second.

The thirteenth Count—similar to the third, fourth, fifth, and tenth.

In the fourteenth Count—of and concerning the taxes imposed by the laws and statutes of this realm upon the subjects thereof, these seditious words following—

"Under these grievances" (meaning the said taxes) "'tis time for you" (meaning the subjects of this kingdom) "to stand forth in defence of your rights."

Mr. Serjeant *Rooke*. I stand forth authorized by government to prosecute the defendant William Winterbotham, a dissenting preacher, for having preached a seditious sermon.—Before such a jury as I am now addressing, it will scarcely be necessary for me to go into the subject of government, and I believe there will be little difference between me and the gentlemen concerned on the other side, upon that subject.—Without subordination, there can be no government; and without government society cannot exist; and those who would produce anarchy, would wish to put us in a worse condition than we should be in under the government of Turkey.—It has been laid down by divine authority, that there is no power but what is derived from the Supreme Being—therefore to cry out against the government where there is no occasion, is a crime. And for a man living under mild and equal laws, to preach sedition and discontent, is blasphemy against the majesty of Heaven.—Till of late, there has been no attempt to deny these principles; but in a neighbouring country, never remarkable for religion, there has been a new light sprung up. But if we look to that country we shall find nothing there to lead us to imitate them; we shall there see a desire of overturning all the old establishments under which we have lived so happily for a great number of years, and which till very lately were never thought about as subjects of investigation.

The success of the French had induced their friends in England to stand forth and avow their principles; and one gave encouragement to the other, till at last it spoke out little short of treason.—In all parts of the country. persons were trumpeting forth sedition, till government found it necessary to interfere.

The defendant Mr. Winterbotham, a dissenting teacher at Plymouth, thought proper on the 5th of November last to preach a sermon of the most inflammatory nature.—You have heard the particular passages of what the witnesses which I shall call can remember of the sermon.—It is not to be expected that a person could carry off in his memory the whole sermon—it is most likely he would take notice of what was particularly grateful or particularly obnoxious;—and it is next to impossible if he paid attention, that a hearer should not collect the general tenor of the sermon.—With respect to the tendency of the words as laid in the indictment, if the wit-

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nesses I shall call should prove those words, or any thing like them, it is impossible for you to have a doubt whether they are seditious, or whether the defendant intended to excite sedition by them.

[The serjeant here enumerated the words laid in the several counts of the indictment.]

I would ask whether these words tend to conciliate the people to the government?—How it is possible to explain these words away, or persuade the jury that they had not the tendency of exciting the people to sedition I know not.—If ever the trumpet of sedition was sounded in the pulpit, it was done in this instance.

The defendant said, "You fancy you live under a mild government and good laws, but it is no such thing."—What could these words mean, but that they did not live under a mild government and good laws?—Whether the assertion relative to the House of Commons granting supplies, was founded in ignorance or not, the defendant certainly intended to make the people dissatisfied with the House of Commons.—The words laid in the several other counts are of the same nature. And a minister of the gospel, who uttered such a discourse from the pulpit, betrayed his duty with respect to that gospel which he pretended to preach, the doctrines of which breathe nothing but peace; and in opposition to that peace for which he pretended to pray, thereby endeavoured to stir up the minds of his audience to mutiny and rage, and to put them into such a state of rebellion as we have seen in a neighbouring country.—If ever a country had warning of the pernicious effects of sedition and tumult, it is this country; we have had warning by what passed in king Charles's time—we have had warning by what passed in the year 1780, when we knew what it was to have popular disturbances—and we have had warning by what has lately passed on the other side of the water.—Our constitution has made us happier than any other nation upon earth, and if we are not content, we must deservedly fall;—but if we are thankful for its blessings, as we ought to be, we should repress those people who endeavour to instil a contrary doctrine into the minds of the public.—When offenders of this sort are brought before us, we should without remorse find them guilty.—If the jury should think the defendant guilty of the offence laid to his charge, they will say so without regret.

I shall now call the witnesses for the crown, and prove that the defendant spoke these words; and I have no doubt but you, gentlemen of the jury, will find your verdict accordingly.

EVIDENCE FOR THE CROWN.

William Paddon sworn.—Examined by Mr. *Morris*.

On the 5th of November last, were you at How's-lane chapel?—Yes,

Do you know the defendant?—Yes.

Who preached at the chapel on that day?—Mr. Winterbotham.

What time was it when you went?—About seven o'clock.

Had Mr. Winterbotham begun his discourse?—Yes.

Do you know where his text was?—No.

What was he preaching about?—He was then speaking of the riots in Birmingham, where he said there had been a lawless mob;—that the dissenters there were much oppressed, and that they above all others were much oppressed.

Well, what else did he say?—Did he say any thing about the revolution?—[To this mode of examination an exception was taken by the defendant's counsel, but over-ruled by the judge.]—Yes.

What did he say about the revolution?—Said the Revolution of 1688 he very much approved of,—he called it a glorious Revolution;—he said he was very sorry to see the laws so abused, and brought into disuse.

What, did he say the laws were abused?—He said they were not now as they were at the Revolution, and when first instituted.

Well, and what else did he say?—He then spoke of the present times—said he approved of the revolution in France very much—and he endeavoured to expose the old despotic government of France;—said he did not doubt but it had opened the eyes of Britons.—He then spoke of the method of tax-gathering in England, and said a tax-gatherer will come into your house, and demand your property out of your pocket, without satisfying you to what purpose the money is to be applied:—he said that was not liberty for a Briton—every man had a right in a land of liberty, to know how his money was to be applied.—He then spoke of the expenses of the late armaments—said he disapproved of three of them,—and said they were manœuvres for ministers to make up their accounts;—said then, how are your streets crowded with poor, your poor houses with vagrants, and your gaols with thieves—it is all owing to your oppressive taxes.—He then said he had often heard people talk what a happy land they lived in, and what a mild government they laboured under; but that it was no such thing;—he was much astonished at their quietness; and added, it is high time you should stand forward to defend your rights.—He then said he was sorry to see justice so abused—said no magistrate or justice had any right to hold his office, unless he obeyed his trust, not even his majesty, if he did not see the laws duly observed, he had no more right to the throne than a Stuart; and he concluded by saying, he hoped we should soon see better times.

Cross-examined by Mr. *Gibbs*.

Mr. Winterbotham, I believe, is a baptist?—I believe he is.

Are you of that persuasion?—No.

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Pray as you are not of that persuasion, what led you to go on that evening to this place of worship?—I was informed that Mr. Winterbotham was going to preach a political sermon, and for that reason went.

That was your reason for going?—Yes.

Then you did not go for your instruction?—No; I did not know what he was going to say.

Pray what are you?—A member of the church of England, and a brush-maker.

Were you ever at this meeting before?—Yes, several times.

You don't know the text?—No.

Pray did you never hear what the text was?—I heard some words spread about Plymouth as the text, but did not believe them.

Did you never tell any one what the text was?—No; the words spread about the text were something about binding kings in chains and nobles in fetters of iron.

Why did you not believe that to be the text?—I had a better opinion of Mr. Winterbotham, and thought he knew better than to preach from such a text.

Did you make any minutes of what you heard?—Not before I gave information before the mayor.

You have done it then since?—Yes, about a month after.

How long was it after the sermon was preached, before you went to the mayor in order to give an account of what you heard preached?—It was soon after—I went and gave a verbal account.

And is the account you have given now, the same with that you gave before the mayor of Plymouth?—As well as I can recollect, I related to the mayor of Plymouth all the circumstances I have given in evidence.

The first part of Mr. Winterbotham's sermon which you heard was about the riots at Birmingham—did you look on that as seditious?—Mr. Winterbotham introduced his sermon with an account of the riots:—when he said the dissenters were oppressed, I did not in particular object to that, but thought it an improper observation.

And then he spoke of the revolution. In what manner, pray, did he speak of it?—He spoke of the Revolution in an honourable view, call'd it a glorious Revolution—but said it was deviated from since that time.

He said it had been deviated from. Did he say in what instance it had been deviated from?—I understood that he said the laws were abused and brought into disuse.

You understood so; are you positive he said so?—Yes, I can swear positively to that.

You heard the introduction to the discourse, but you don't know where the text was; did you never inquire of any of the congregation? or did you never hear any person say where the text was?—I never heard what the text was, but I heard people say that the text was not consistent with the sermon.

How many persons do you think were present when this sermon was preached?—The congregation consisted of about two hundred.

And though there were two hundred persons present, you never could find any one that could tell you where the text was?—No; though I inquired of many. I inquired of Mr. Channens, and he told me part of the text was, "I will teach them to thy children in time to come."

Did you think that text improper?—No.

Did you think it consistent with the sermon?—Yes: I thought that text consistent with what he preached.

Do you recollect Mr. Winterbotham's saying any thing about the gunpowder plot in his sermon, or our deliverance from popery?—I don't recollect he said any thing about the gunpowder plot; but he spoke of the Revolution as a crisis when we were delivered from papal power; and he spoke of the principles on which the Revolution was founded, and said something about king William, but I cannot remember what it was.

You don't recollect that any thing was said about the gunpowder plot, nor what was said about king William; but you recollect very particularly those things you have taken upon you to give in evidence?—I made minutes of what I heard, and which were the same as I have now delivered.

Were there no innocent parts in the sermon which you recollect?—There were very little innocent parts in the sermon.

Pray how long was Mr. Winterbotham in preaching this sermon? About three quarters of an hour.

And during all this time, you don't recollect any part of the sermon that was innocent?—During the whole time, all he preached from beginning to end was very seditious.

How far do you think Mr. Winterbotham had proceeded in his sermon when you first went in?—I cannot tell.

Was the sermon divided into parts?—Yes, I remember it was divided; but I don't remember any of the divisions, only the last, when he said he should treat of the present times: this was all I collected.

Then you do not recollect any passage in the sermon that was innocent?—There might have been such, but I cannot recollect them.

There has, I believe, been a considerable deal of conversation about this sermon; did you never hear any persons speak of it in a very different light?—have you not heard it spoken of as a discourse very well adapted to the occasion for which the day is set apart, and as being very innocent?—Yes; I have often heard persons say so.

In giving your evidence, have you given Mr. Winterbotham's own words?—Yes; as nearly as I could.

You have told us Mr. Winterbotham said, his majesty, if he did not see the laws duly observed, had no more right to the throne than a Stuart; what did you understand by a Stuart?—I understood he meant by a Stewart, some officer under the crown;—I considered it in the light of a gentleman's steward.

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You thought Mr. Winterbotham meant some officer under the crown like a gentleman's steward?—Yes; I took very little notice of it, and did not think much about it.

You took but little notice, and paid but little attention then to what was meant?—No; I paid very little attention to what his meaning was about the Stewards.

John King sworn.—Examined by Mr. Serjeant *Lawrence.*

Did you go to the meeting in How's-lane, on the 5th of November last?—Yes.

Did you see the defendant there?—Yes.

Had he begun his sermon?—Yes.

What was he preaching about?—He was speaking of the Revolution in 1688, which he spoke highly of, and called it a glorious Revolution: he next spoke of the revolution of France; spoke highly in favour of it; said he did not doubt but it had opened the eyes of Britons. He then spoke concerning the corruption in electing members of parliament, and the interested views they voted with.—Concerning taxes, he said every man in a land of liberty, ought to know how his money was applied; and said, why are your streets crowded with vagrants, your poor houses with poor, and your gaols with thieves?—it is owing to the heavy taxes.

What else did he say?—He spoke concerning the late armaments; part, he said, he disapproved of; and added, it is high time to come forward in defence of your rights.

Did he say any thing else?—This is all I recollect.

Did you make any minutes of what you heard?—No; I took no minutes at the time, but thought the passages improper.

Cross-examined by Mr. *East.*

What are you?—A shoemaker.

Are you a frequenter of the meeting?—No

Were you ever there before?—Yes.

How came you to go there on that evening?—Paddon (the first witness) told me there was to be a constitutional sermon preached at the Baptist meeting, and we agreed to go there.

What time was it?—We were going out to supper; it was before supper time, about seven o'clock.

Did you hear the text?—No, I did not hear the text; I was not there at the beginning of the sermon.

When did you first speak of the sermon as seditious?—I spoke of it to Paddon after we went from meeting, at the house where we supped, and very much disapproved of it, and thought it dangerous.

How long was it before you went to the mayor about it?—It was about a month after when we went to the mayor.

Could you at a month's distance take upon you to speak with accuracy as to particular words?—Yes, I remembered the particular words.

Have you ever taken minutes of them since?—No, I have never put any thing into writing.

Is the evidence you have given now the same as that you gave before the mayor?—Yes, exactly the same.

What were the particular words or sentences in the sermon which you thought improper?—Mr. Winterbotham called the Revolution of this country a glorious Revolution.

And was that one of the parts you thought dangerous and improper?—Yes; I thought his speaking of the Revolution in such terms, mischievous, as it introduced the other parts of the subject, and therefore very dangerous and improper.

Well, and what other parts did you object to?—The defendant spoke highly favourable of the revolution in France; and laid a very great stress on its having relieved a number of people from despotic power and the papal yoke; and made this the ground of his rejoicing: this I thought dangerous and improper.

Were there any other parts you objected to?—Speaking of the election of members of parliament he spoke of the corruption.

Do you remember any particulars of what was said respecting the election of members of parliament?—No, I don't recollect any particulars; but I thought his speaking of bribery and corruption very dangerous and improper.

Was there any thing else in the sermon you thought dangerous?—The general tenor of the discourse appeared to be so: speaking concerning the taxes, he said every man in a land of liberty, had a right to know how his money was to be applied: this I thought highly dangerous and improper.

Was there any other part you thought improper?—He said, "Why are your streets crowded with vagrants? your poor houses with poor, and your gaols with thieves? owing to the heavy taxes:" these I am positive was the identical words; I could not be mistaken.

Did Mr. Winterbotham speak this as a circumstance he lamented, or in what manner did he speak of it?—He lamented those circumstances in his sermon, and thought it a kind of oppression to the inhabitants.

And you thought that it was very improper and dangerous for Mr. Winterbotham to lament these distressing circumstances did you?—Yes, I did.

Was there any other part you disapproved of and thought dangerous and improper?—He spoke of the late armaments: and said a part he disapproved, and made use of the words, it is time to come forward in defence of your rights.

Did Mr. Winterbotham use the latter expressions with reference to the armaments, or to any other part of his sermon?—I cannot say to what part the words referred, whether to the armament or any other.

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Mr. Baron *Perrin*. Did you understand the words to be applicable to any particular part, or to the whole of the discourse?—It was at the conclusion of the whole discourse, and I thought them applicable to the whole discourse.

Mr. *East*. Were there any other parts of the sermon you objected to?—I and Paddon disapproved of the whole sum and substance of the sermon.

You cannot take upon you to say what those words "It is time to come forward in defence of your rights," followed, or in what part of the sermon they were spoken?—I cannot tell what they followed, but to the best of my recollection, they were in the latter part of the sermon.

What construction did you at that time put on those words?—I do not ask you what constructions you put upon them now;—What rights did you understand they were to come forward in defence of?—I understood it was to come forward in defence of those rights they were in want of.

Did not the words appear to you to apply to something particular?—They appeared to apply to the whole sermon; but I do not know what preceded.

Mrs. *Pridham* sworn.—Examined by Mr. *Fanshawe*.

Were you at the meeting in How's-lane on the 5th of November last?—Yes, I was.

Did you hear the defendant preach at that time?—I did.

What did you hear him say?—He said he approved of the French revolution, and made no doubt but the eyes of the people were opened.

What people were they whose eyes he said were opened?—I understood he meant the people of England.

What else did he say?—He then said, why are your streets (or poor houses) crouded with poor, and your gaols with thieves, but because of the oppressive taxes. He was rather surprised people were happy and contented under their grievances, and did not stand forth for their rights. He likewise said, we thought we lived under a mild government and good laws, but it was no such thing. He mentioned the number of millions of the national debt, and what was said to be paid off: he said he spoke boldly, he denied it: he said we call ourselves Englishmen, an Englishman has a right to speak his own words, but I deny it. He thought we had as much right to stand up for our liberties as the people in France. He reprobated taxes and tax-gatherers, saying they come into your house to demand money out of your pockets. He thought we had a right to know which way the money was applied.

Cross-examined by Mr. *Dampier*.

Were you present at the beginning of the sermon?—I was.

Do you recollect the text?—No, I do not.

Was the sermon divided? I believe it was.

Have you given us your evidence in the defendant's own words?—Yes, as near as I can recollect.

You are not quite certain they are all his own words?—I am certain all I said were his own words; but I do not recollect all the particulars of the sermon.

You say you believe the sermon was divided: do you recollect the division?—No, I do not recollect the division or the subject.

Miss *Margaret Jago* sworn.—Examined by Mr. *Clapp*.

Pray Miss Jago where do you live?—At Cawsand.

Do you know the defendant?—Yes.

Do you remember his preaching this sermon on the 5th of November last?—Yes, I was at the meeting.

Were you there before the beginning of the sermon?—Yes, I was there before Mr. Winterbotham came in.

Will you tell us what you recollect of the sermon?—Mr. Winterbotham said our streets and poor houses are filled with poor, and our gaols with thieves, on account of oppressive laws and taxes. He spoke of the national debt, of the number of millions, he specified what had been said to be paid, and said I deny it; it is no other than taking money out of one pocket and putting it into the other: he said, he disapproved of the corrupt mode of choosing members of parliament, but I do not recollect the particular words he used.

Cross-examined by Mr. *Gibbs*.

I believe, Miss Jago, you said you were present at the beginning of this dicourse?—Yes, I was there from beginning to end.

Are you a usual attendant on the meeting?—No, but I have been there before.

Did you pay particular attention to this sermon?—Yes, from the beginning to the end.

Do you recollect the text?—No, I do not, it was so long ago.

Do you recollect the division of the sermon, or whether it was divided?—I believe it was divided, but cannot recollect the particular heads.

Do you recollect the particular subject on which Mr. Winterbotham treated?—It was a sermon preached in commemoration of the Revolution, and the deliverance of this kingdom from papal power.

Did Mr. Winterbotham treat these subjects largely?—Yes, he went much at large into these subjects.

He went largely into the subjects of the Revolution in this kingdom, and its deliverance from papal power: pray did he go at large likewise into the deliverance of any other countries?—I do not recollect any thing that he said about the deliverance of other countries.

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If Mr. Winterbotham did say any thing about the deliverance of other countries, it could not be a great deal or very striking, otherwise I suppose you would have remembered something of it?—I think I should.

Pray how long was Mr. Winterbotham preaching this sermon?—About three quarters of an hour.

Do you recollect Mr. Winterbotham saying in his sermon that the laws made at the time of the Revolution have been since abused and brought into disuse?*—No, I do not recollect he said any thing about the laws being abused or brought into disuse.

Do you think there was any thing of the kind said?—I believe not; I did not hear it.

Do you recollect Mr. Winterbotham's saying he highly approved of the French revolution?—He said something about it, but I cannot remember the particulars.

Do you remember any thing that Mr. Winterbotham said would be the probable consequences of the revolution in France; as that it would be the means of delivering it from papal power?—No, I do not recollect it.

Did he say it had opened the eyes of the people of England?—I do not recollect any thing of the kind; I heard nothing about opening the eyes.†

Did Mr. Winterbotham make use of the words oppressive laws and taxes, as a reason for the streets being filled with poor, &c.?‡—I am almost sure that he did say oppressive taxes.

Did you never say the word oppressive was not used?—I may have said that I did not recollect the word being used, but it appears now to me so clear, I can swear to it.

Pray what money did you understand the defendant to mean when he spoke of taking it out of one pocket and putting it into the other?—I understood him to mean the national money.

Do you recollect Mr. Winterbotham's saying in his sermon, that when there is a demand made in the House of Commons for a supply, they deny it at first, and on a second demand, there are two thirds, or three fourths, will grant it, and then they will share it among them?§—I do not recollect any such thing.

Do you think you should have remembered it if it had been said?—If it had been said, I think I must have remembered it.

Do you recollect Mr. Winterbotham's saying his majesty was placed upon the throne upon condition of keeping certain laws and rules, &c.?*—No, he said nothing about his majesty, throughout the sermon.

Did Mr. Winterbotham say we had as much right to stand up as they did in France for our liberties?†—I do not recollect he said any thing like it.

Do you think Mr. Winterbotham's sermon was calculated to excite sedition?—I cannot say it appeared so to me; I thought it improper to be preached at that time, as ignorant persons might misconstrue it.

William Little sworn.—Examined by Mr. Serjeant *Rooke*.

Were you at the meeting in How's-lane on the 5th of November last?—Yes.

Did you hear Mr. Winterbotham's discourse?—Yes; but I recollect but little about it, as I have a bad memory, and was never called upon before.

What do you recollect?—Mr. Winterbotham spoke concerning the Revolution of 1688, and in my opinion, very much to the purpose: he mentioned something about the Birmingham riots, but what I do not recollect. He told about the perversion of laws, and the different situation of the nation at the time of the Revolution and this: I heard some things that did not please me, but cannot recollect the particular passages. He mentioned the streets being crowded with poor, and said something about heavy taxes, but said nothing about oppressive laws or taxes.

Cross-examined by Mr. *Gibbs*.

Do you remember what the difference was which Mr. Winterbotham pointed out between the situation of this country now and at the Revolution?—He pointed out a material distinction. He said that then there was no national debt, and that now there was a very large one.

You are sure when Mr. Winterbotham was speaking of taxes, he did not use the word oppressive?—He said the taxes were heavy; but I do not remember that he said oppressive.

Mary Channens sworn.—Examined by Mr. *Morris*.

Were you at the meeting in How's-lane on the 5th of November last?—Yes, I was.

Did you hear the defendant preach?—Yes, I did.

Do you recollect the text?—No, I don't.

Were you there all the time the defendant was preaching?—Yes, I was.

What did he preach about?—He began with the revolution in France; he approved of it, and said he wished it to be the same here as it was there; he said it was high time for us to stand forth for our rights. He talked

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* The words laid in the first Count of the indictment. *Orig. Edit.*

† This, and the two preceding questions, include the words laid in the 2nd and 12th Counts. *Orig. Edit.*

‡ The words charged in the 3rd, 4th, 10th, and 13th Counts. *Orig. Edit.*

§ The words laid in the 7th Count. *Orig. Edit.*

* The words laid in the 11th Count. *Orig. Edit.*

† The words laid in the 9th Count. *Orig. Edit.*

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about our streets filled with vagrants, our poor houses with poor, and our gaols with thieves, owing to the heavy taxes. He said he hoped it would open our eyes, and that it was high time for us to come forth for our rights. He said that at the Revolution in 1688, the nation was not a shilling in debt, and now our debt was many millions. He added, they say there is some of it paid off; but I deny it, I speak boldly.

John Channens sworn.—Examined by Mr. Serjeant *Lawrence*.

Were you at the meeting in How's-lane, on the 5th of November last?—Yes.

Were you there at the beginning?—Yes, I was there first before the defendant came in.

Do you remember where the text was?—I cannot be certain as to the text, but to the best of my recollection it was "thou shalt teach them to thy children in time to come."

And what did the defendant say in his sermon?—The first thing I remarked, was concerning the Revolution at the time of king William, when the defendant said the nation was not a shilling in debt, but now it was so many millions; and then stated the interest of the millions, but I don't remember the amount; said the minister had said so much of the national debt had been paid off, but I speak boldly, I deny it.

What else did he say?—He also said we had very good laws, which was the House of Commons; that his majesty had not arbitrary power to demand any thing of himself, but when they first applied to the House of Commons, they denied it, and upon the second demand, two thirds or three fourths would grant it; and when it was granted, they would take and divide it among them.

Did he say any thing else?—He said the tax-gatherers come into our houses and demand the money out of our pockets; but in a land of liberty, every man had a right to know what was done with his money. He also said, why are your streets crowded with vagrants, your poor houses with poor, and your gaols with thieves, but by means of your oppressive taxes. He then said we call ourselves Englishmen, an Englishman has a right to speak his own words, but I deny it; we have as much right to stand up for our rights as they have in France. He said his majesty was set upon the throne for maintaining certain laws and rules, whereof if he did not, he had no more right to the throne than the Stuarts had. In regard to electing members of parliament, he said at Plymouth we had very good members, but they were chosen by a set of idle and debauched people. —From the beginning to the end of his discourse, he endeavoured to stir up the people against government; and St. Paul when he went to Damascus to persecute the people of God, had not greater envy against the people than Mr. Winterbotham had against the king and government.

On Cross-examination,

This witness said he never heard of any political sermon to be preached; that he did not attend for instruction, that he is a superannuated carpenter in his majesty's yard at Plymouth, but is not seditious.

DEFENCE.

Mr. *Gibbs*. The applause which has been bestowed on the opening of the learned gentlemen, on the part of the prosecution, would on this occasion render me extremely doubtful of the event of the cause, if Mr. Winterbotham were to be tried by the audience, and not by the jury; for I think it has sufficiently appeared that there is such a considerable spirit of prejudice excited against Mr. Winterbotham, as would leave him, in such a case, little reason to expect a fair trial. But you, gentlemen of the jury, are come here to try the cause according to the evidence adduced before you; and when you sit as judges in the cause, you will discard from your minds every injurious imputation which may have arisen to the prejudice of Mr. Winterbotham.

I had heard such misrepresentations of the sermon preached by Mr. Winterbotham on the 5th of November, and likewise of the text, that I had the greatest difficulty to bring myself to undertake Mr. Winterbotham's defence. However, it is for you, gentlemen of the jury, to compare the evidence of the witnesses on the part of the prosecution, and of the witnesses which I shall produce, with the indictment, and then judge whether Mr. Winterbotham made use of those expressions; and whether they were used with the intention stated in the indictment.—The defendant, Mr. Winterbotham, is of the sect of dissenters called Baptists, and that sect approaches nearer to the church of England than any other sect of dissenters whatever; for they agree with it in almost all points, only differing with respect to infant baptism; I do not mean to insinuate that, because Mr. Winterbotham is a dissenter, it will dispose the jury to convict him; but I only observe this, that as some sects of dissenters are supposed to entertain particular opinions of government more obnoxious than others, to explain what Mr. Winterbotham is, and thus to set him strait before you.

Mr. Winterbotham was originally brought up in a different line from that in which he is at present, and did not in the early part of his life, receive such an education as persons destined for the ministry among the dissenters, generally do; and this perhaps might plead some alleviation for the use of expressions not strictly weighed with grammatical accuracy; but I do not mean to urge that Mr. Winterbotham is intitled to any peculiar indulgence on this account.—I disclaim, and Mr. Winterbotham, through me, disclaims all such defence. I admit and contend that Mr.

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Winterbotham is a man of considerable talents, and of a very good understanding; and who by an unwearied though late attention to his studies, has attained to a very high degree of knowledge, not only in those pursuits pertaining to his profession, but in the laws of his country, and its civil and political rights; and is a man of as well informed and enlightened a mind as most of those of his age, who have enjoyed much greater advantages.

I do not hold it my duty to defend sedition,—the defence which I have to offer on the part of Mr. Winterbotham is of a very different complexion: and if I can succeed in carrying the attention of the jury to the different articles of the charge, I do not doubt but I shall make it clearly appear, that the far greater part of the words were not spoken by Mr. Winterbotham; and that where the witnesses for the prosecution have laid hold of some of the words which he did use, by the omission of some words, and the transposing of others, they have been taken in a very different sense from that in which Mr. Winterbotham used them; and this I undertake to lay before the jury, not in my speech, but in evidence. The nature of my defence is that in many instances the words were not spoken at all: in others, where they were spoken, or something like them, they have been very much perverted, and will bear a quite different construction.

The jury will recollect that this sermon was preached on the 5th of November, on a day set apart by the legislature to commemorate our deliverance from papal power, and the establishment of our liberties by the Revolution in 1688, which has been termed by Mr. Winterbotham, a glorious Revolution. I find no difficulty in admitting that political sermons are in general improper; but not on a day set apart for the commemoration of that great national event, of which it is the duty of the minister to point out the principles, and to show in what those principles have been departed from;—was the doing this faulty in Mr. Winterbotham? if it was a fault in him, what will you say to the many sermons preached on that day from the pulpits of the established Church?—where all the preachers went into the principles of the Revolution, and no one condemned them for it?—will you condemn Mr. Winterbotham for doing that which has been done without censure in so many of the established churches? The same breath that condemns Mr. Winterbotham, condemns not only this sermon, but those which were preached on the same day before the great national assemblies of this land. If a man keeps within the line of the law, to point out in what respect the principles of the revolution have been abode by, and in what respect they have been departed from—is no crime. Or do we live under a government which allows us to say what we can in favour of the principles of the Revolution, but will not suffer us to point out what are the defects of our constitution, or in what respect its principles have been departed from? If such is the opinion of you, gentlemen of the jury, I deliver Mr. Winterbotham into your hands—I have no defence for him. If you mean to act on the principle that it is lawful to say what you will in commendation of those who have now or who have had the administration of the public affairs in their hands, but not to say in what they have departed from the principles of the constitution, then I admit that Mr. Winterbotham has no defence.

On this occasion, the jury will not understand me to say that I agree with Mr. Winterbotham in all his political opinions, or to declare that they are mine. I have no such intention. But this is the law, which I submit to you under correction from the learned judge, if I am wrong; that, if a man, either by speaking or writing, publishes what he thinks is defective in the constitution, and what is in his opinion, capable of remedy and reform, if he has no seditious intention, he has a right so to do;—and I contend, that what Mr. Winterbotham did on the 5th of November last, was in the fair spirit of discussion; and if I do not prove it, then I admit Mr. Winterbotham stands undefended. The questions then for the consideration of you, gentlemen of the jury, are whether Mr. Winterbotham did preach those words in his sermon, which are stated in the indictment; and whether it was with the seditious intention laid in the indictment? or whether it was a fair, liberal discussion of the propositions laid before his audience?

Several of the words, the jury will be of opinion with me, were never uttered, if they consider the witnesses on the part of the prosecution, and their manner of giving their evidence. They had heard of this sermon, and went to the meeting with an intention of finding something to criminate Mr. Winterbotham; for in the whole course of the sermon, they cannot, or will not, recollect a single passage that was not seditious. When they were asked about the innocent parts of the sermon, they said they paid no attention to such passages: and when witnesses say they can give an account only on one side, surely the jury will not believe them. It is necessary that those passages which had a contrary tendency should be brought forward, but not one of the witnesses for the prosecution has mentioned a single circumstance to which they did not impute guilt. Another very extraordinary circumstance is, that none of them can recollect the text, which is generally the first object of every man's attention. The text is the first point which parents direct their children to attend to; they lead them to the church door, and they charge them to mind the text; and a man that cannot repeat the text, can seldom give any accurate account of the sermon. A great num-

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ber of words are laid which one or other of the witnesses for the crown say they attended to, but which being mentioned to another of them he does not recollect. Mrs. Channens does not recollect the text, but says the defendant began about the French revolution; and all the other witnesses for the prosecution, say that the revolution in France was not spoken of till near the end of the sermon. What can the jury think of witnesses who differ so materially respecting the discussion of the most material charge in the indictment? and which according to some of the evidences, took up a considerable portion of the time in which the defendant spoke, though that appears totally incredible with the testimony of others of them.

I do not mean to say that these witnesses are perjured; they may think what they have said is true, but surely the jury will not give much credit to their recollection.—I believe something like some of the words, was uttered by Mr. Winterbotham, but not in the sense which they have mentioned, or in which they are laid in the indictment.

Paddon, one of the witnesses for the prosecution, was so perfectly unacquainted with the event of which Mr. Winterbotham was preaching, that though you, gentlemen of the jury, know very well what Mr. Winterbotham meant by the Stuarts, he thought he meant an officer under the government, and conceived him to allude to a gentleman's steward; and so willing were some of the witnesses for the crown to criminate Mr. Winterbotham, that they attributed every word uttered by him to a disapprobation of the present government.

Those witnesses who did not pretend to remember accurately the particular words, but who perfectly understood the whole drift and scope of the sermon, are certainly better entitled to credit, than those who only remembered the words, but did not understand the meaning of them, though they pretend to have made memorandums two months after the sermon was preached. Mr. Little said very properly that at this distance of time he could not recollect the particular words, but that Mr. Winterbotham compared the present times with the time of the revolution, saying then there was no national debt, but now there was a very large one—but is there any thing seditious in that? he compared it in a view in which it bore the comparison. This witness went to the meeting for the purpose of receiving information and instruction, and seems to have attended particularly to the sermon.—Speaking of the taxes, he gave a very material evidence—he said heavy taxes—Is that seditious? To say taxes are oppressive, may be seditious, but to say they are heavy, I contend is not seditious.—Though Mr. Winterbotham is stated by one of the witnesses to have said that our laws are bad, yet by another he is stated to have said that our laws are good. Then can you, gentlemen of the jury, believe witnesses who thus contradict themselves?

I shall now proceed to state the different counts in the indictment, and the different way in which I shall meet them by evidence; but first I shall contend that it is necessary for the gentlemen concerned in the prosecution to prove the precise words laid in the indictment, for no other words, however seditious they may be (unless they are contained in the indictment) will be sufficient to justify you in finding Mr. Winterbotham guilty.

In the first count, Mr. Winterbotham is charged with saying, "The laws made at that time (meaning the time of the revolution) have been since abused and brought into disuse; and it particularly behoves me to speak of the present times." Not one of the witnesses for the crown has proved this charge—for though Paddon has said something of that nature, yet his evidence does not go to proof of the count, but only that Mr. Winterbotham said the laws in being at the time of the revolution, have been since disused; and it is certainly more than probable that Mr. Winterbotham at that time, speaking of the revolution, meant to refer to the laws which were then in existence, and not to the laws which were made at the revolution; for the laws made at the revolution were the laws that altered the government at that time, and which constituted what Mr. Winterbotham called a glorious revolution, and there is not a word in evidence on this sermon about the laws made at that time being disused. You cannot therefore find Mr. Winterbotham guilty of speaking of the abuse or disuse of the laws made at the time of the revolution, on proof that he spoke of the disuse of other laws which were then in being.

The charge in the second count is, "I highly approve of the revolution in France, and I do not doubt but it has opened the eyes of the people of England."—Has any one proved that Mr. Winterbotham spoke these words connectedly together? The jury will recollect that what I complain of, is the garbling of this sermon. Paddon and King have stated that Mr. Winterbotham endeavoured to expose the old despotic government of France: but I appeal to the jury, whether it is seditious to rejoice in the revolution in France, so far as it is a deliverance from despotism and papal power?—was that power so very desirable? God forbid that I should attempt a defence or palliation of the anarchy and murder which has attended that event: Mr. Winterbotham himself in this very sermon, expressly stated his abhorrence of it; and so far from saying he did not doubt but it had opened the eyes of the people of England to see the necessity of a similar revolution in this land, he said in so many express words that we had no occasion for a revolution, that he deprecated such an event, and said that the parliament alone was to be ap-

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plied to for the redress of grievances—this I undertake to prove by evidence, and have therefore no doubt but you will acquit Mr. Winterbotham of this charge.

In the third count, Mr. Winterbotham is stated to have said, "Why are your streets and poor houses crowded with poor, and your gaols with thieves, but because of the oppressive laws and taxes?—I am astonished that you are quiet and contented under these grievances and do not stand forth in defence of your rights." Not one of the witnesses for the crown, with all their disposition to select offensive passages could prove that Mr. Winterbotham uttered these words in one distinct connected sentence. But in the fourth, tenth, thirteenth, and fourteenth counts, they are separated—It is said that he imputed the streets being filled with beggars, the poor-houses with poor, and the gaols with thieves, to oppressive laws and taxes; but if the jury will attend to what the witnesses for the prosecution have said, they will find that not many of them have used the word oppressive; and I desire the jury to poll them on that head.—Paddon said oppressive—King said he was confident the word was heavy—Pridham said oppressive—Jago said she was almost sure Mr. Winterbotham said oppressive—Little said the words were heavy taxes, and in express terms declares Mr. Winterbotham said nothing about oppressive laws or taxes—Mary Channens said it was owing to heavy taxes: the learned serjeant asked her again, and she said, heavy; and she was repeatedly asked, and as repeatedly made the same reply—John Channens said the defendant used the word oppressive; but he said his wife had an excellent memory, and she said heavy; and the jury have the greatest reason to believe from the prosecutors own witnesses that the word was heavy. However I shall call several witnesses who will prove that the defendant never used the word oppressive; and that the words in the latter part of the count were never uttered by him throughout the whole of this sermon: and I am certain that the jury will not have a doubt in saying that the defendant is not guilty on this charge.

In the fifth count, the defendant is charged with saying "You fancy you live under a mild government and good laws, but it is no such thing." One of their own witnesses has proved that Mr. Winterbotham stated in express terms that our laws were good, and Mr. Winterbotham is not such a fool as to contradict himself in the same sermon. This I do not state as an answer to the charge, but only as a preparatory introduction to the evidence which I shall adduce. I shall prove by several persons who are in the habit of attending on Mr. Winterbotham's ministry, that he did not use these words, nor any like them. But if I only prove that it is not only improbable, but next it impossible that he should have done so, the jury will not be led by a presumption only, to think him guilty. And even supposing the evidence should be exactly equal, I am sure I need not remind you, that you ought to lean on the side of innocence, and acquit Mr. Winterbotham; and you will consider that all the witnesses I shall produce will positively prove a negative, at least as far as a negative can be proved.

On the next charge, viz. that in the sixth count, I have a different topic to address the jury upon: with reference to the reduction of the national debt, Mr. Winterbotham is stated to have said, "I speak boldly, I deny it; for it is no other than a person's taking money out of one pocket and putting it into the other." It certainly has been a disputed point whether the national debt is reduced or not, and the subject is as perfectly unintelligible,—This I take upon me to state on my own experience: I once considered the subject as accurately as I could, but not being able to satisfy myself, I determined to inquire of others, and the first person I inquired of told me it was very clear to him that the national debt was reduced; and the next person told me it was as clear the other way, and I remember that he used the very same expression which is charged in this count against Mr. Winterbotham, that it was no other than a person taking money out of one pocket and putting it into the other.—If it were sedition for one party to differ from another on a political subject, every one around this table, would be liable to be indicted; and if you gentlemen, of the jury, are prepared to say that this is sedition, and were to go through the country, you might convict half the inhabitants of sedition, for few persons would be able to avoid the charge—public opinion being so fluctuating as generally to go with the last speaker.

Although I acknowledge that I differ from Mr. Winterbotham in his political sentiments—yet I cannot desire to send fire and faggot to every one who differs from me,—if you gentlemen of the jury can, much good may it do you.

On the next count, the seventh, I cannot speak seriously; it is so extremely improbable that a man of Mr. Winterbotham's understanding should have used these words—"When there is a demand made to the House of Commons for a supply, they deny it at first, and on a second demand there are two thirds or three fourths will grant it, and then they will share it among them." Could any man possessed of the understanding of a postilion, or even of the horse the postilion rides on, have spoken such nonsense? Channens is the only witness who spoke to this count, and he said Mr. Winterbotham said so: that certainly was his evidence, but then the jury will recollect there were called before him Paddon, who made memorandums at the end of two months, and five others who heard nothing like it; and one of them

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(Miss Jago) on being asked, says she thinks it impossible these words should have escaped her if they had been spoken. Is it possible the words should not strike the ears of all those six other witnesses, who were certainly not unwilling to remember any thing against Mr. Winterbotham? But I shall call a great many witnesses who will prove that no such words were uttered. So many witnesses for the prosecution not recollecting them, a half crazy man at last only speaking to them, can the jury have a doubt remaining on their minds, after hearing the defendant's witnesses and reflecting on the absurdity of the words, that they were never uttered by him? It is impossible that they can.

The next count is only a variation of the last.

In the ninth count, Mr. Winterbotham is charged with saying, "We have as much right to stand up as they did in France for our liberties."

The construction put upon these words in the innuendos affixed to them is forced and unnatural, for the maintaining the possession of a right does not necessarily imply the enforcing the exertion of that right;—and I believe I may take upon me to say that neither of the two witnesses (for there are only two who have declared that Mr. Winterbotham did utter these words in his sermon) have attempted to put such a meaning upon them as "that the subjects of this kingdom ought to stand up to effect a revolution in the government of this kingdom similar to the late Revolution in the government of France." But in the evidence I shall bring forward on Mr. Winterbotham's behalf, I shall not only prove to you that he did not utter these words, but that no such meaning as is here affixed to these words could be fixed on any part of his sermon—I shall prove to you that Mr. Winterbotham so far from saying any thing that had a tendency to encourage a revolution in this kingdom, said quite the contrary—that he deprecated the idea of it—said we wanted no revolution, and that we should prove superior to throwing ourselves into a state of anarchy and confusion—and if I do this by a number of respectable witnesses, the jury will not hesitate to pronounce Mr. Winterbotham innocent with respect to this charge.

The tenth count I have observed upon before.

Then comes the eleventh count—Mr. Winterbotham is stated in the indictment to have said, "His majesty was placed upon the throne on condition of keeping certain rules and laws, and if he does not observe them he has no more right to the throne than the Stuarts had." I shall be content for you, gentlemen, to convict Mr. Winterbotham on this count, and to find the innuendos as laid; but I shall not be content for you to find the words are seditious, because they were spoken.—No man has a greater respect for his majesty than I have, or is more convinced of the benefits derived from his majesty's government—but I contend that these words are true. Does any man pretend to say that his majesty sits on the throne by *divine right*?—no one will dare to do this—no one can do it without making himself an offender against the constitution of the country.—If the prosecutors had proved that Mr. Winterbotham had asserted in his sermon that his majesty did not keep those laws and rules by which, as the first magistrate of this kingdom, he is bound, this would have been highly seditious—but this none of the witnesses for the prosecution have dared to insinuate.—If then he uttered the words laid in this count, and with the meaning affixed to them, he only did that which he was authorized to do by the laws of this country.—For, what was the right of the Stuarts? Why were they driven from the throne of this kingdom? Why was it a glorious revolution, but because an arbitrary monarch having broken the laws which his engagement bound him to support, he was hurled from the throne; and the people of England on that occasion did themselves justice. If the contrary is law, then there is an end of the revolution and all its glory; then those who succeeded the Stuarts were usurpers and the glorious revolution of 1688, was downright and stark rebellion!—There is no person in these realms above the laws—no person so great but the laws of the constitution reach him: those laws his majesty does observe—those laws Mr. Winterbotham said he did observe: therefore those words are perfectly innocent; and not only innocent but laudable and praise-worthy; therefore I care not a farthing if the jury find that Mr. Winterbotham did speak them, for he did not insist that his majesty had broken the laws.

In the twelfth count which imputes to Mr. Winterbotham those words, "I highly approve of the late revolution in France, and I do not doubt but it has opened the eyes of Britons:"—I do not recollect that those words are proved to have been spoken in one connected sentence, by any of the witnesses.—As to Mr. Winterbotham's approbation of the revolution in France, I have stated upon what grounds he approved of it—and this statement has been supported by the witnesses for the prosecution. He had before spoken of our deliverance from papal power, and he then rejoiced in the revolution of France, as likely to be productive of the same benefits; in that sense only he approved of the French revolution, and in this he was supported by all who wished for the happiness of mankind.—But God forbid that any man should rejoice in the means by which that benefit was obtained! this Mr. Winterbotham had never done.

With respect to the latter part of the charge,—the application of it to the people of England,—there will certainly be a contradiction in evidence; for I shall call many witnesses, who with all the attention in their

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power (the only evidence which can possibly be brought on such a charge) will all say that no such words were uttered by Mr. Winterbotham in the course of his sermon.

The thirteenth count is only a repetition of the words in the former one.

The words charged in the fourteenth count are, "Under these grievances, it is time for you to stand forth in defence of your rights." On the part of Mr. Winterbotham I have certainly to complain, and he through me has to complain that his sermon has been garbled, and a few detached sentences, stripped of their connexion, have been put together in one count, and separated in others, with a studied design to criminate him; but I doubt not but I shall be able to prove that Mr. Winterbotham did not say, throughout the whole of his sermon, "It is time for you to stand forth in defence of your rights:" but the words "under these grievances," have never been proved to have been uttered by Mr. Winterbotham. One of the witnesses certainly did prove the latter part of this count, and it was in answer to a question which his lordship put, and which I should have objected to had it been put by any other party, but as his lordship put it I could not.

The other words "under these grievances"—are stated to have been used by Mr. Winterbotham, but they have not been proved.—One of the witnesses indeed said he supposed him to mean so,—but to convict Mr. Winterbotham, you must have proof that he used the words; and I am justified in saying that those words are not found in any part of the evidence for the prosecution, and therefore the jury cannot find him guilty of uttering them.

I have now animadverted particularly on all the charges contained in the indictment, and on the evidence brought forward to support them:—And when the jury shall have heard the evidence I have to adduce, I think there are none of them on which they will find Mr. Winterbotham guilty.—You may probably hear some doctrines were contained in the sermon, which you and I do not approve, but it is the birth-right of an Englishman to speak and write freely upon government, provided he does it fairly and candidly; and whether it was in the spirit of fair discussion that the defendant spoke some of the words charged, is for the jury to decide on. Mr. Winterbotham certainly did enter into the subject of a reform in parliament; with respect to my own opinion on this subject, though there may be some grievances existing, though we may have departed from the principles of the revolution in some instances,—which certainly is the case,—yet I have no difficulty in saying that it would be attended with danger to make any alterations at present: but surely, considering the men who have entertained contrary opinions, and that he who is now the idol of this country and at the head of his majesty's councils, and who has attained a degree of popularity before unknown;—when such a man as Mr. Pitt has held similar opinions of the state of our representation, the jury will not say it is sedition in Mr. Winterbotham to hold the same

With respect to what Mr. Winterbotham did say on the subject of reform, no offence could be taken by a temperate and considerate man; he did speak,—and perhaps it were better not to speak on such subjects,—he did speak of the corruption attending the election of members of parliament; but the jury, who have Cornwall before, and Somerset behind them, perhaps may have heard of such a thing from others besides Mr Winterbotham.—But if it was an error of judgment to speak of it, the jury will not convict Mr. Winterbotham for saying what the walls themselves cry out, "Dum tacent clamant." Whether it would not be better to trust to the voice of God, which speaks in the experience of ages, than to urge an immediate reform, is quite another question.—The jury know that contrary opinions are held, not by a majority certainly; but there are none of you but have friends who hold such opinions, and yet you do not drive them from your tables. It is not consistent with the spirit of christianity, or the spirit of an Englishman, to convict a man for differing in opinion from you on a political subject. And though Mr. Winterbotham may have uttered doctrines that may be improper, and that may be imprudent (and I will on this occasion admit that they were so); surely the jury will not find him guilty, unless it is proved he had a seditious intention.—I desire only your patience, candour, and impartiality, and after you have heard the evidence which I have to adduce on the part of Mr. Winterbotham, I have no doubt but you will find him not guilty.

I might state to the jury, that Mr. Winterbotham is a man whom your verdict may utterly ruin, that he never before has been accused of sedition, and that a verdict of guilty, may consign him to destruction; but I disdain to take that ground;—I am instructed by Mr. Winterbotham himself to disclaim such a defence; what he demands from your justice, he disdains to ask from your favour; and if he has that which I in his behalf would wish to obtain, your candid and impartial attention to the evidence that shall be brought forward in his defence—I am well assured that you will find him not guilty of the offence laid to his charge.

Mr. *Benjamin Shepheard*, sworn.—Examined by Mr. *East*.

Were you at the meeting-house in How's-lane on the fifth of November last?—Yes.

Are you one of Mr. Winterbotham's congregation?—No—but go there at times—sometimes once in a month or two—I went there that evening, it being customary to have a sermon preached there on that day: it is likewise customary at all the other dissenting places of worship.

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Were you there before the sermon began?—Yes—and was particularly attentive to what was said—and was in a very good situation to hear.

Do you remember Mr. Winterbotham's text?—Yes—it was in Exodus the 13th chapter and 8th verse, "Thou shalt show thy son in that day saying, this is done because of that which the Lord did unto me."

As you say you were particularly attentive, I ask you whether the defendant made use of the words charged in the first count of the indictment?*—As far as it is possible for a man to be certain on such an occasion, I declare he did not say those words, nor any words to the same effect;—the defendant said that at the time of the Revolution it was laid down as a principle that frequent parliaments should be held, but that they were now extended to seven years.

Did the defendant use the words laid in the second count?—I heard nothing about opening the eyes, from one end of the sermon to the other;—the defendant approved of the French revolution, as it had freed twenty-five millions of people from the yoke of despotism they lived under—as it had opened a prospect of an amicable intercourse between France and this country—and as it had opened a door for the spread of the gospel;—but he in no respect proposed the example of France to be imitated here—but on the contrary, said that in this country we wanted no revolution—and he deprecated the idea of a revolution, because it would produce anarchy and bloodshed. He said a reformation was necessary, and pointed out how it should be obtained, namely, by petitioning the parliament; he said our principal grievance was the long duration of parliaments, and the inadequate representation of the people. He observed this was our principal evil, and if this were removed, every lesser evil would be remedied of course. He farther said it was the undoubted right of the people of England to petition parliament for the redress of grievances, for which he quoted the declaration of rights, and particularly referred to where the Convention Parliament claimed this privilege as the undoubted right of the people.

Did you hear the defendant utter the words laid in the third count?—The defendant did not state it in any such way, nor with any such sense to it. He was representing the situation of the present times, and said it was a lamentable fact, that while the nation was in a state of peace and great commercial prosperity, our streets were never more full of vagrants and poor, or our gaols with felons and debtors. I am positive the defendant did not use the latter words of the count, viz. "I am astonished that you are quiet, and contented under these grievances, and do not stand forth in defence of your rights;" for if he had, I would have taken up my hat and walked out.

Did the defendant say, that oppressive laws and taxes were the occasion of the streets and poor-houses being filled with poor, and the gaols with thieves?—He admitted that heavy taxes in part occasioned it, but he did not use the words oppressive laws and taxes, either separately or connected with other words; had he used the word oppressive, I must have recollected it.

Why do you think if the word oppressive had been made use of you should have recollected it?—It would have forcibly struck me, as I do not think it was a proper place to talk about oppression.

Did the defendant utter the words laid in the fifth count?—Mr. Winterbotham did not use these words, but said the spirit of our constitution was excellent. He did not attempt to impress his hearers with the idea that they did not live under a mild government or good laws; but he observed that our law books were incumbered with obsolete and contradictory statutes, and he thought it would be better if there were stated times for their revisal, and it was for want of those stated times, that our law books were so incumbered.

Did the defendant utter the words charged in the sixth count?—Mr. Winterbotham said it was a mistake, and referred to the debates and estimates in the House of Commons, in proof of his assertion, saying the national debt was no more reduced than a person would reduce his substance, by taking his money out of one pocket and putting it into the other.

Did Mr. Winterbotham use the words as an assertion of his own, or did he speak of it as the opinion of others?—He spoke of it as a matter of opinion, and referred to the debates and estimates in the House of Commons. He said some thousands a year had been taken off the taxes.

Did Mr. Winterbotham use the words charged in the seventh count?—I should have thought him mad if he had. He said nothing like it; if he had, I should have thought him fit for a strait jacket; I paid particular attention to the sermon, and must have heard it if it had been said.

Did the defendant use the words laid in the ninth count?—No, the defendant used no such words: the only words like them were, that we had a right to petition parliament for a redress of grievances. He pointed out our situation as very different from that of the people of France; the charge is therefore a falsehood or perversion; and this is my opinion of the greater part of the indictment; and this has ever been my opinion. I called on Mr. Eales (the deputy clerk of the peace for Devon), in January last, for copies of Mr.

* To prevent the trial from extending unnecessarily in bulk, the repetition of the words of the several counts is avoided—and the reader is referred to the opening of the case by Mr. Clapp. *Orig. Edit.*

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Winterbotham's indictments; and on this indictment told him at that time, that of the fourteen counts, twelve of them were lies or gross misrepresentations: and that the other two were true only in part, and they were those which refer to the national debt.

What is your opinion of the general tenour of Mr. Winterbotham's sermon?--I heard the whole of the sermon, and think it was calculated to enlighten the head and mend the heart, at least it had that effect on me, and on my conscience I do not think it was calculated to excite sedition. The defendant prayed for the king very affectionately, and for all in authority under him; and it is his general custom so to do at those times I hear him.

How many persons might there be present, when this sermon was preached?—Two or three hundred; they were chiefly of the middling and lower class of people; the congregation is in general a very respectable one; there were two other places of worship open at the same time, which might be the reason why the congregation was not at that time larger.

Cross-examined by Mr. Serjeant *Rooke*.

You said Mr. Winterbotham's sermon had a tendency to enlighten the head and mend the heart, tell us wherein?—Mr. Winterbotham in the introduction of his sermon, said his text referred to the deliverance of the people of Israel from Egyptian tyranny; that their deliverance was commanded by God to be annually commemorated; in consequence of which a like practice had been adopted in most countries, and by few more so than England: then said the events usually commemorated on that day were the frustration of the designs of the papists to blow up the parliament; and the revolution effected by William the Third, when James attempted to subvert the constitution of this country. He called the revolution a glorious one, and showed wherein; said it was a principle laid down then that parliaments were to be frequently holden, and gave us the particulars of the bill of rights; and this enlightened my head.

Then you had never heard of the bill of rights before?—Yes, but had never read it, and therefore was very glad to hear that we had such rights.

Now tell us wherein it mended your heart?—Mr. Winterbotham showed the disposition of mind with which we ought to commemorate such events, viz. with general charity. He said we ought not to commemorate these events with the narrow spirit of a sectary; that we ought to lay aside the distinction of churchman and dissenter, and join together as Britons and christians; and this I hope mended my heart.

And what else did he say?—He spoke highly of king William, and those who effected the revolution; and said we ought to revere their characters, and imitate their conduct in like circumstances. He said, that William was indebted for the crown to the people's gratitude; that the parliament acted as trustees for the nation, in conferring the crown on William—that they had since conferred it on another family, which they would have a right to do again in case of a vacancy of the throne.

Had you ever any conversation with the defendant about the sermon?—Yes, the sermon was a subject of general conversation, and I have several times told him what I had heard about it.

Is Mr. Winterbotham connected with you in any business?--Yes, in the hemp and flax manufactory, is a partner. *

Did you ever see a copy of the sermon?—Yes, about four or five months after it was preached.

Did you make any minutes of the sermon?—Not till about the beginning of December, when Mr. Foot, the solicitor for the prosecution, called upon me to give evidence, when I refused unless compelled; when expecting to be called to give evidence before the mayor, I then made some memorandums.

Were you summoned to give evidence before the mayor?—No.

Did you keep out of the way that you might not?—No, but on the contrary staid at home on the day I expected to be called.

How is it that at this distance of time you can speak with so much certainty of the sermon?—The general conversation about it, and the misrepresentations of it have been such as to oblige me often to enter into a defence of the sermon, by which means my recollection has been supported.

You said you made application to Mr. Eales for a copy of the indictment; pray how came you to make that application?—Being at Exeter on a journey, I was desired so to do by the defendants attorney, and if ready, to bring it home with me.

You say the sermon was not calculated to stir up sedition?—The general tenor of the defendant's sermon was, to reconcile people to the constitution as first established; and he pointed out a mode to rectify our grievances by an application to parliament for redress.

Then you really think the whole tenor of the sermon was, to reconcile people to the government?—I do, for he enforced submission to the laws, though he did not to the long duration of parliament, or to the present state of representation, which he wished to see reformed.

* This business, begun by eight individual dissenters, merely for the purpose of affording employment for the poor, and providing for the education and clothing of a number of indigent children, the defendant has been obliged to relinquish through the power and influence of popular prejudice.—*Orig. Edit.*

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Are you a preacher?—No, I do not conceive myself qualified to preach.

What are you?—A mercer—and the acting partner in an hemp and flax manufactory.

Mrs. *Jane Pearce* sworn.—Examined by Mr. *Dampier.*

Were you at the meeting in How's lane, on the fifth of November last?—I was.

Did you hear the defendant preach?—I did.

Do you remember the text?—Yes, I do; it was in the 13th chap. Exod. and 8th verse.

Did the defendant utter the words charged in the first count?—No, he did not—he said the principles of the revolution were good, and ought to be well understoood and cherished; but he said they were so buried in a voluminous pile of law books, that the greater part of the people had neither leisure nor ability to understand them. If he had spoken the words charged in the count, I must have heard them.

Did Mr. Winterbotham utter the words charged in the second count?—No, he did not. When he spoke of the revolution in France, he said nothing about opening the eyes of the people of England; nor did he say in express words, that he approved of it; though it seemed to me that he did approve of the first revolution in France, as giving civil and religious liberty to more than twenty millions of persons.

Did the defendant use the words laid in the third count?—He did not. He lamented that the streets were filled with beggars, the workhouses with poor, and the gaols with felons and debtors; and this in a time of peace, and while we had a flourishing trade: but he did not charge it to oppressive laws and taxes—he said nothing about oppressive taxes; nor did he use any such words as, "he was astonished they were quiet and contented under these grievances, and did not stand forth in defence of their rights;"—but on the contrary, said we ought not to throw ourselves into anarchy and confusion: that we wanted neither revolution nor bloodshed: that a reform in the representation was by most people judged necessary; and it was our duty to use every legal endeavour to obtain it:—that no body of men, however dissatisfied they might be, would be justified in attempting to obtain by force, a redress of grievances; for the people had delegated their right in national concerns, to the parliament; to whom they ought to make their complaints known.

Did the defendant utter the words laid in the fifth count?—No, nor any thing like them.

Did the defendant make use of the words charged in the sixth count?—He did not say, "I speak boldly;" nor did he deny any of the national debt to be paid off:—he said it might be asked whether the minister had not been reducing the national debt—and said by a reference to the debates in the last session of parliament, it appeared to be like taking money out of one pocket and putting it into the other.

Did he say any thing like the words charged in the seventh count?—No; the words are so strikingly absurd, I must have observed them if they had been spoken.

Did the defendant utter the words laid in the ninth count?—No; if he had it would have been contradictory to all the rest of his discourse.

Then the defendant did not say any thing that you think could have a tendency to stir up the minds of the people to a revolution in this kingdom?—No, he did not.

Cross-examined by Mr. *Morris.*

Have you ever seen the sermon?—Yes.

How long ago?—It might be a month or a little more, after it was preached: but I speak from my own recollection, and not from seeing the sermon.

Pray how can you be so particular in your recollection?—The sermon has been so much talked of in the town—I heard of it in every company I went into: and many falsehoods being propagated about it has induced me at different times to explain it, and to be particular in remembering it.

Did you ever make any memorandums of what you recollected?—Yes, and carried them about me till I wore them out in my pocket.

Pray is Mr. Winterbotham any relation of yours?—No; he is an acquaintance—the minister whose preaching I attend; and he lives in our house.

I think you said Mr. Winterbotham did not say positively that he approved of the French revolution?—He seemed to approve of the first revolution in France, because by that means a blow was given to popery—as it would be a means of spreading the gospel, and prevent wars and an increase of taxes.

He did say something then about taxes?—Pray did he not say the taxes were oppressive?—He lamented the necessity of the taxes, but did not say they were oppressive.

Did he not say they were heavy?—I do not recollect whether he said they were heavy or not.

Miss *Mary Brend* sworn.—Examined by Mr. *Gibbs.*

Were you at the meeting in How's-lane on the fifth of November last?—Yes.

Were you there the whole time of the service?—I was.

Do you remember the text?—Yes, it was in Exodus 13th chapter and 8th verse.

Did you particularly attend to the sermon?—I did, to the whole of it.

Did Mr. Winterbotham utter the words charged in the first count?—He did not: I am sure if he had, they would have attracted my attention.

Did Mr. Winterbotham utter the words charged in the second count?—The words in

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the latter part of the count about opening the eyes of the people of England, were not spoken —Mr. Winterbotham approved of the revolution which took place in France in the first instance, as a Briton; as it gave liberty to millions, and delivered the people from tyranny and oppression. He also approved of it as a christian; as thereby a mortal blow was given to popery, and an opening made for the spread of the gospel. He also said we ought to esteem the French as brethren, because there was a probability of their enjoying like privileges with ourselves: which I understood in a civil and religious sense. He also approved of it on account of its preventing future wars; but I am confident he did not say it had opened the eyes of the people of England: nor did he hold out the French revolution as an example to the people of England, but quite the contrary. He indeed showed the necessity of a reform, and how he thought it ought to be accomplished, viz. by petitioning of parliament; who, he said, were the only persons capable of effecting it: and this was to be done without bloodshed, violence, banditti, or mob.

Then Mr. Winterbotham did not say any thing which you think could be construed to stirring up the people of this country to a revolution?—No: the general drift of the sermon was quite opposite to persuading the people to a revolution.

Did Mr. Winterbotham utter the words charged in the third count?—No; he did not say the laws and taxes were oppressive; on the contrary, he said the laws were very good: and he took it up as a lamentation that our nation being in a flourishing state, yet the streets were filled with beggars, our workhouses with poor, and our gaols with felons and debtors: but he never imputed it to oppressive laws and taxes.

Then Mr. Winterbotham did not use the word oppressive?—No, I am confident he did not.

Did Mr. Winterbotham make use of the expressions in the latter part of this count—"I am astonished" &c.?—No, he never advised the people to stand forth in defence of their rights: the tendency of his discourse was quite the contrary.

Did he use any expressions like to them?—No, he never used any words, to which such a sense could be given.

Did Mr. Winterbotham use the words charged in the fifth count?—No, if he had they would have struck me forcibly.

Was there nothing said that might be so construed?—No words were used to which such a sense could possibly be affixed; no part of the sermon was consistent but quite inconsistent with such doctrine.

Did Mr. Winterbotham use the words charged in the sixth count?—He said no such thing as "I speak boldly, I deny it"—but he spoke concerning taking money out of one pocket and putting it into the other, with reference to the debates in the House of Commons, and not as a fact of his own knowledge.

Did Mr. Winterbotham utter the words laid in the seventh count?—I am confident no such words were used.

Did Mr. Winterbotham use the words charged in the ninth count?—No comparison of the kind was made, because he did not look upon us to be in the same state as France was: there was no such passage in the sermon, or any thing like it.

How is it you take upon you to speak with such certainty on the sermon?—I have had frequent occasions to relate what I remembered of it.

Do you recollect any particular time or circumstance when you related the sermon?—Yes, the same evening that it was preached, to my father, who was not at the meeting, but who inquired of me about the sermon on my return: the sermon being a subject of public conversation, I have very frequently contradicted the false reports which were propagated concerning it; to one person in particular, who said he was ready to swear the text was about binding kings in chains, and nobles in fetters of iron.

Did you ever see a copy of the sermon?—No, I speak entirely from my recollection.

Did you ever make any minutes of it?—Yes, I made minutes of what I recollected soon after the sermon was preached.

Cross-examined by Mr. Serjeant *Lawrence*.

Pray how long was Mr. Winterbotham preaching this sermon?—Near an hour.

How long was it before you made your minutes of it?—It might be three weeks or a month: a prosecution was talked of, and then I reduced what I recollected into writing.

And you could recollect very particularly what was said at that distance of time?—I had then had frequent conversations about the sermon because it was misrepresented.

You had frequent conversations with some of Mr. Winterbotham's friends, I suppose?—No; I had never at that time talked with any of Mr. Winterbotham's particular friends on the subject.

You have taken upon you to deny the words charged in the indictment, pray how is it you can speak so positively at this time? might not these words have been spoken and you not have heard them?—The expressions charged in the indictment are so particular, that they must have struck me had they been used.

Pray what are the words that you think so particular?—The words charged about the revolution in France would have impressed me that Mr. Winterbotham thought a revolution necessary here, as would the word oppressive.

You say that Mr. Winterbotham did not use the word "oppressive," pray what reason did he assign for the streets and poor houses

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being filled with poor?—I don't know that he assigned any reason.

Did he not attribute it to the heavy taxes, if he did not say oppressive?—I do not recollect that he said the taxes were heavy; but if he had said they were oppressive, I am sure that would have struck me.

You don't recollect your having any conversation with any of Mr. Winterbotham's friends about this sermon?—The only person of this description I have ever said any thing to is Mrs. Holland, with whom I have frequently conversed since we were subpœnaed to give evidence.

Are you a frequent attendant on Mr. Winterbotham's ministry?—Yes; and have always considered him as a very respectable character.

Have you never seen the sermon nor a copy of it?—No; I speak entirely from my own recollection, unassisted by any other person or thing.

Is not Mr. Winterbotham very intimate in your family?—He is no particular acquaintance with my father or his family; as a minister he occasionally visits.

Mrs. *Sarah Holland*, sworn.—Examined by Mr. *East*.

Are you a usual frequenter of the meeting where Mr. Winterbotham preaches?—Yes.

Were you there on the evening of the 5th of November last?—Yes, I was.

Were you there the whole time of the service?—I was.

Did you pay particular attention to the defendant's sermon that evening?—Yes I did; it is my general practice so to do.

Did Mr. Winterbotham make use of the words charged in the first count?—No, nor any thing like them; he said the laws made at the time of the revolution were very good; that ours was a glorious revolution.

He did not say then that the laws had been abused and brought into disuse?—He said that since that time the laws respecting representation had been misused.

He did not say the laws were abused in any other sense, but as it respected the representation in parliament?—No, in no other.

Did you hear the defendant utter the words laid in the second count?—No, he did not use the words; he rejoiced at the revolution in France, as the people had been long deprived of civil and religious liberty, and he hoped they would now enjoy both; and that we being influenced by the spirit of the gospel, should now be united as brethren, and the wars and discord which had so long prevailed between the two nations be prevented; he never said it would open the eyes of the people of England—the sermon was of a contrary tendency; and he never represented the people of England as being in the same state as the French were.

You are sure he never used those words?—I am; for had he used words so striking I must have recollected them.

Did the defendant use the words charged in the third count?—No, he said it was to be lamented that in a time of peace and prosperity, our streets and poor houses were crowded with poor, and our gaols with thieves and debtors.

Did Mr. Winterbotham use the words in the latter part of this count?—No, he did not express his astonishment at the quietness of the people; he enforced the necessity of a reform in parliament, which he recommended to be applied for without riot or tumult—in a legal manner, by petitioning the House of Commons.

Did Mr. Winterbotham say that oppressive laws and taxes were the causes of the streets being filled with poor?—He might think the weight of taxes was the cause of it, but he did not mention the word "oppressive" in all his discourse.

Are you sure Mr. Winterbotham did not use the word "oppressive?"—If the word "oppressive" had been used, it would have made an impression on my mind, and I must have recollected it.

Did the defendant utter the words laid in the fifth count?—He said no such thing, nor any thing like it.

You are sure he did not?—If he had it would have been a contradiction to what he before said; I supposed from what he said that he thought the laws good.

Did the defendant use the words laid in the sixth count?—He did not deny that money had been paid off the national debt; but that other things had happened which made it necessary to lay on other taxes, which was the same as taking money out of one pocket and putting it into the other: and what he said was in reference to the debates in the House of Commons.

Did Mr. Winterbotham utter the words laid in the seventh count?—No; he used no such words, nor any like them.

Did he use the words laid in the ninth count?—No, nothing of the kind; no part of the sermon could be construed as if he thought we were deprived of our liberties; he never held up the revolution in France, to be imitated in this country; he said he thought a reform in the parliament necessary, but said there was no need of a revolution—and he particularly made use of those words "we have no occasion for a revolution."

You have I think before given an answer to a similar charge; but I would again ask you did the defendant utter these words in the fourteenth count, "Under these grievances, it is time," &c.?—I never heard any thing of the kind; the general tendency of the sermon was not like it.

Do you think if the words had been used you should have recollected them?—Yes, as I should have thought he spoke them to stir up a tumult.

In what you have said of the sermon do you speak from your own recollection?—Yes.

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Did you ever see the sermon?—No, but I heard Mr. Winterbotham read it once some months ago—after the indictments were preferred; I had frequently conversed about it before.

Cross-examined by Mr. *Fanshawe.*

Pray do you live at Plymouth?—Yes.

How far from the defendant?—A little distance.

The defendant I believe is a very particular acquaintance of yours?—I attend his preaching regularly, but have no other particular acquaintance with him.

Pray how long was the defendant preaching this sermon?—About three quarters of an hour.

Are his sermons generally of that length?—Yes.

This sermon was preached I believe on a Monday, were you at this meeting the day before?—Yes, and every Sunday before for five or six weeks.

Can you recollect any particular sermon the defendant preached for a week or month before?—No.

Can you recollect the text of any?—No.

You say you heard the sermon read, where was it read?—At a Mrs. Gibbs's.

Pray who was there when the sermon was read?—Mrs. Gibbs, Mr. Bowering, and myself.

Pray what are you, are you in any business?—No, I am a widow, and live with my father.

Mr. Winterbotham visits you, I believe sometimes?—He sometimes calls, and may stay and drink a dish of tea.

Do you ever visit him?—No.

How came you to be at Mrs. Gibbs's when the sermon was read—did you go there on purpose?—No, Mrs. Gibbs is an acquaintance—I called by chance—I often do so without any particular invitation.

You did not know the defendant was going to read the sermon?—I did not.

Did you ever make any minutes of the sermon?—Yes.

Did any person desire you so to do?—No; but as I heard a prosecution was likely to take place, I did it—no one knew I had done it.

How long was it after the sermon was preached?—Some time.

How can you then speak so positive?—It was impossible for me to avoid recollecting it—there was so much conversation about it.

But you don't recollect any thing of any other sermon?—If there had been a like complaint against any other sermon, I should have endeavoured to have recollected that also.

What led you to make minutes of this sermon in particular—did you ever do it of any other?—I heard a prosecution was threatened, and did it in case I should be called on as an evidence.

You did not desire Mr. Winterbotham to read the sermon to you?—No, I did not know of his intention to do it, I went to Mrs. Gibbs by chance.

Mr. *William Pearce* sworn.—Examined by Mr. *Dampier.*

Were you at the meeting in How's-lane, on the fifth of November last?—I was.

Did you pay attention to the sermon?—I did, from the beginning to end.

Did you hear the defendant utter the words charged in the first count?—No, nor any words similar to them.

He did not utter any thing like this count?—Nothing that could bear any analogy to it—He called the Revolution of 1688, a glorious one.

Did the defendant utter the words laid in the second count?—He did not use any such words—He approved of the revolution in France, but made no application of it to the people of England.

In what sense did Mr. Winterbotham approve of the revolution in France?—He approved of it so far as it would prevent future wars with this country; and as it would make way for the spread of the gospel—as it would unite in the bonds of friendship with us, those who had long been our enemies, and thus be a considerable saving to this nation.

Did the defendant utter the words charged in the third count?—He lamented that while our commerce was extended to such a degree, there were such a number of poor in the streets and workhouses, and of prisoners in the gaols: but he said not one word about oppressive taxes.

He did not say any thing of oppressive taxes?—No, nor do I suppose he would have dared to do it in the pulpit:—had he done it, I should have for ever deserted his ministry.

Did the defendant utter the words laid in the fifth count?—He did not say any such thing; if he had, it would have been quite inconsistent with the whole tenor of his sermon.

Did the defendant utter the words charged in the sixth count?—He did not say, "I speak boldly, I deny it:"—he is not given to egotism in the pulpit. And what he said about paying off the national debt, he did not state as a sentiment of his own, but referred for proof of what he said to the debates in the House of Commons.

Did you hear the defendant utter the words charged in the seventh count?—I heard nothing like them.

Do you think you should have heard them if they had been uttered?—I must have heard them if they had been used.

You really think you must have heard them?—It is impossible they could have escaped me if they had been spoken.

Did the defendant utter the words charged in the ninth count?—No, he said nothing like them, nothing tending to such an idea; it

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would have been altogether inconsistent with the tenor of his discourse—He recommended them to come forward in a legal way—by a legal application to parliament in defence of their rights.

Then what Mr. Winterbotham proposed for the defence of their rights was an application to parliament?—Yes, he recommended it to be done in a constitutional way, and mentioned an application to the House of Commons.

He did not say we were to stand up as they did in France?—No, he said there was no necessity for anarchy, confusion, or blood.

Cross-examined by Mr. *Clapp.*

Did you ever see the sermon?—Yes, he showed it to me at my request, about four months ago.

Then it is from what you read that you speak?—No—the reading only confirmed my recollection—I did not recollect every passage I read—and I only speak of what I recollected to have been preached.

But the reading of it did refresh your memory?—Not much.

Pray have you ever conversed with the defendant about this sermon?—Yes, but not so much as I have with other people.

You say the reading of the sermon did not refresh your memory much—how is it then that you recollect so perfectly what was said?—The 5th of November was a remarkable day—and when I considered my friend was about to be indicted for seditious expressions, which he did not utter, I endeavoured to recollect all that I could of the sermon.

You say the 5th of November was a remarkable day—are there any other particular days in which you go to meeting, that would lead you to remember the sermon—such as the day of king Charles's martyrdom?—I do not go to meeting on that day—but if I thought I should be called on about any other sermon, I should endeavour to recollect it.

As I believe Mr. Winterbotham lives in your house, I would ask you if it is customary for him to write his sermons before he preaches them?—On any particular occasion, he writes his sermon at length; at other times, only the outlines of them.

What did you mean, when you said the defendant was not given to egotism?—That it is not his usual way of delivering his sentiments, to use the words I say, I speak, &c.

How does he then speak?—He instead of using the I, will probably and generally say we.

When Mr. Winterbotham was speaking of the Revolution in 1688, don't you think in that instance he might say I?—Yes, I believe he did there.

When he was speaking of the French revolution don't you think it is possible he might say I?—He might do it.

Mr. *Caleb Bowering* sworn.—Examined by Mr. *Gibbs.*

Were you present when Mr. Winterbotham preached this sermon on the 5th of November?—Yes, I was there at the beginning—the text was in Exodus, 13th Chap. 8th verse, "Thou shalt show thy son," &c.

Did Mr. Winterbotham utter the words laid in the first count?—The words were not spoken by Mr. Winterbotham—nor any thing that bore the least resemblance to them—on the contrary, he said our constitution was a good one.

Did Mr. Winterbotham utter the words laid in the second count?—The latter words charged in the count, "I make no doubt but it has opened the eyes of the people of England," were not spoken:—Mr. Winterbotham rejoiced at the revolution in France, as it would open an intercourse between the two nations—as it was a blow to popery and was a likely means for the spread of the gospel in those parts.

Did Mr. Winterbotham use the words charged in the third count?—He lamented that while our commerce flourished, our streets were filled with poor, and our gaols with felons and debtors—but he did not attribute it to oppressive laws and taxes.

You are sure he did not attribute it to oppressive laws and taxes?—He did not say the laws or taxes were oppressive, but on the contrary spoke of the laws as very good.

Did Mr. Winterbotham use the words in the latter part of this count, "I am astonished," &c.?—He did not, nor any words like them; he said it was necessary to stand forward to obtain a reformaion in the representation of the people, and instanced the Russian armament, in which he said the voice of the people and that of the parliament were at variance—that a reform in parliament was wanted to remove those evils under which we laboured.

Did Mr. Winterbotham say how this reform was to be obtained?—Yes, it was to be applied for by petition to the House of Commons.

Did Mr. Winterbotham utter the words laid in the fifth count?—He did not.

Did he use the words charged in the sixth count?—He used no such words as "I speak boldly, I deny it." At the end of a sentence, he said it appeared to be as much reduced as a man reduces his fortune by taking money out of one pocket and putting it into the other; but he did not utter this as an opinion of his own—it appeared to me that he spoke of it on some other authority.

Did Mr. Winterbotham utter the words charged in the seventh count?—He said nothing that could bear the least resemblance to them.

Are you confident he did not?—If he had it must have attracted my notice.

Did Mr. Winterbotham utter the words charged in the ninth count?—No such words

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were used: his sermon recommended his hearers to peace; to avoid disorder, and to give up party disputes. He never held up the example of France, nor ever once expressed a wish for any revolution in this country, but only for a reform of the abuses in parliament.

Did Mr. Winterbotham utter the words in the fourteenth count?—He did not say the taxes were a grievance, or that it was time for us to stand forth in defence of our rights.

Cross-examined by Mr. Serjeant *Rooke*.

Did you ever see this sermon, or hear it read at any time?—I heard the sermon read, but cannot say how long ago. I had made minutes of it before I heard it read.

What are you?—A servant to Mrs. Gibbs.*

Where did you hear the sermon read?—In Mrs. Gibbs's parlour.

How came you to be there? were you called in on purpose?—I constantly sit there.

Who was in the parlour besides you, when it was read?—Mrs. Holland and Mrs. Gibbs.

Do you think there was nothing in all the sermon to make the people of this country discontented, and to stir them up to sedition against the government?—Mr. Winterbotham, in his sermon, advised the people, if they were discontented with the present appearance of things, to apply legally to parliament for redress.

You say he advised them to apply to parliament for redress; pray did he not find much fault with the parliament?—He observed we had not a true representation.

Did he not find fault with the taxes, and say they were oppressive?—He admitted the necessity of taxes, but did not say they were oppressive.

You are sure he did not say they were oppressive?—I never heard him use the words.

John Wooton sworn.—Examined by Mr. *East*.

Were you at the meeting in How's lane on the 5th of November?—I was.

Did you hear the sermon?—Yes, I did.

Were you there the whole time of service?—Yes, from beginning to end.

Did you hear the defendant utter the words laid in the first count?—The defendant never said so during the whole time he was in the pulpit, nor any thing that bore any analogy or similitude to it.

Did the defendant utter the words laid in the second count?—The defendant approved of the revolution in France; but did not say any thing about opening the eyes of the people of England.

Can you tell us why the defendant approved of the revolution in France?—He said the revolution of France had rescued millions from tyranny and oppression, it had opened a door for the spread of the gospel, and he hoped that now the sword of war would be sheathed, and every man would worship God in his own way, under his own vine and his own fig-tree.

Were these the reasons for which he rejoiced in it?—Yes, and no other.

Did the defendant utter the words charged in the third count?—No, he did not. If he had said any thing about standing forth, I should have called on him to have known what he meant. He spoke of the streets being filled with poor, and the gaols with felons; but said nothing about the laws: and he did not apply the word "oppressive" to the taxes.

You are sure he did not say, "he was astonished they did not stand forth in defence of their rights"?—He did not exhort the people to any such thing.

Did the defendant utter the words charged in the fifth count?—He did not use any such words.

Did the defendant use the words laid in the sixth count?—He did not say, "I speak boldly, I deny it." He said it was intimated that the national debt had been reduced: but that by a reference to the debates and estimates in the House of Commons, it appeared the same as a man's taking money out of one pocket and putting it into the other.

Did the defendant utter the words laid in the seventh count?—He did not, but he said the representatives of the people were invested with a power to grant or refuse supplies.

Did the defendant use the words laid in the ninth count?—No, he did not use them; if he had, I must have taken notice of them, as they appear to me to be opposite to the views of his sermon, as he recommended to lay aside all party spirit; and said he hoped a door was opened for the French to hear the gospel, and enjoy the same blessings, civil and religious, as we did.

Did the defendant utter the words laid in the fourteenth count?—He did not use those words: the defendant seemed to intimate that we were enjoying rights beyond others; and said we ought to act with becoming dignity, and not throw ourselves into a state of anarchy and confusion, for we wanted neither revolution nor bloodshed.

Have you ever seen the sermon?—No, I have never seen a particle of it.

Did you ever hear it read?—No, I never did.

Did any one ever offer to show you the sermon?—No; if any one had, I should have looked upon it as tampering with me.

Cross-examined by Mr. Serjeant *Lawrence*.

What are you?—A biscuit-baker in the victualling office at Plymouth. I served my time there.

* In order to prevent wrong ideas of this word, the reader is informed that Mr. Bowering is a person of very respectable connexions; and at the time of this trial, conducted an extensive business in the linen drapery for Mrs. Gibbs, then a widow.—*Orig. Edit.*

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Do you mean to take upon you to say, that what you have given in evidence were the identical words spoken by the defendant?—I could not mention the identical words spoken by the defendant, but I have endeavoured to convey his ideas, and as near as possible in his own words.

Then you cannot say you have given us the express words the defendant used?—I cannot say every word I have mentioned was used by him.

But as you do not take upon you to recollect the whole of the sermon, how can you take upon you to swear, that the words charged in the indictment were not spoken?—I conceive the words charged as spoken by the defendant, to be diametrically opposite to the tenor of his sermon, and therefore am certain he did not use them.

How can you be certain he did not use them?—Why, for instance, we might pass by a current of water a hundred times without noticing it while it runs in its proper channel, but should it instantaneously start from its course, and take an opposite direction, it must very forcibly strike our notice; so while Mr. Winterbotham continued to preach that evening invariably suitable to the occasion of his subject—I cannot take upon me to repeat every word of the discourse—but if Mr. Winterbotham, after exhorting us to act with becoming dignity, and assuring us we wanted no revolution, had invited us to stand forward in fence of our rights, and endeavoured to inflame the minds of his hearers, it would have been impossible for such language to have escaped my notice.

Are you positive they were not used?—I am as positive as a man can be; if they had been used they would have struck me as a goad in a sore place.

What do you mean by a goad in a sore place?—It is scripture language, and perhaps you do not understand it.

You say the words charged are opposite to the tenor of the defendant's discourse. What do you conceive to have been the tenor of the sermon?—I do not think it was calculated to stir up sedition, or to inflame the minds of the people; the defendant wished indeed for a reform in parliament, but if he had uttered the words laid in the indictment, I would have voluntarily come forward in behalf of the prosecution.

Rev. Mr. *Gibbs*, sworn.—Examined by Mr. *Gibbs*.

Mr. Gibbs, what are you?—I am a dissenting minister at Plymouth, and have been so for more than forty years.

What is Mr. Winterbotham?—He is my assistant

Were you present at the preaching of this sermon?—I was; the text was Exodus, 13th chap. and 8th verse. I paid particular attention to the sermon from beginning to end. Mr. Winterbotham's design was, to let his hearers know that a national festival was introduced by divine appointment among the Jews, on a very extraordinary occasion—to commemorate their deliverance from Egyptian bondage; he observed that it had been usual for most nations to commemorate grand national events which had occurred; and that on that day they were called upon by the legislature to celebrate two grand national events, as Britons and Christians.

Did you hear Mr. Winterbotham utter the words laid in the first count?—No, he did not use those words: on the contrary, he said he thought the laws made at the Revolution very excellent, as they had established our future rights. I am sure if the words had been used they would have struck me.

Did you hear Mr. Winterbotham use the words laid in the second count?—He did speak some part of them, but not the whole; he approved of the revolution of France, and assigned his reasons for so doing: but he said nothing about the opening the eyes of the people of England. He said the French revolution would be the happy means of delivering millions from despotism and tyranny, and preventing wars; that it would unite us together with them, and save much blood and treasure to this country—that it would be the means of spreading civil and religious liberty, and the knowledge of the gospel through those parts which had long been in darkness. He said that we wanted no revolution here; but said the French had been copying our example.

Then Mr. Winterbotham did not say, "I do not doubt but it has opened the eyes of the people of England?"—No, nor did I discover any thing in the sermon alluding to the people of England seeing a necessity for a revolution; if the defendant had used those words, they would have struck me so forcibly that I should have despised the man.

Did Mr. Winterbotham use the words charged in the third count?—The words were not used. He lamented that in a time of peace and national prosperity, when our trade was extended to every quarter of the globe, that our streets were filled with poor, and our gaols with thieves; but he did not charge it to oppressive laws and taxes, but to the luxury of the age, and the exorbitant price of every necessary of life: He wished parliament, in their wisdom, would consider the necessities of the poor. With respect to the other part of the charge, "I am astonished that you are quiet and contented under these grievances, and do not stand forth in defence of your rights," I never heard any such words used.

You are certain these last words, "I am astonished," &c. were not used by Mr. Winterbotham?—I am astonished that they should be brought forward, for if he had used them, they would have made a deep impression on my mind, and I should highly have disapproved of them; I have always been a peaceable man myself, and if Mr. Winter-

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botham had uttered these words, he should not have preached a single sermon more as my assistant.

Did Mr. Winterbotham utter the words laid in the fifth count?—I heard no such sentence delivered, I should have abhorred the man if he had.

You do not then think the words were spoken?—I am confident they were not.

Did Mr. Winterbotham utter the words charged in the sixth count?—He used a part of them, but not as an assertion of his own, but as an opinion that had been formed on the debates of the House of Commons, and the estimates laid before them: he did not deny that any of the national debt had been paid off, nor did he say that those who inspected the accounts laid before the House of Commons said so; but that on a review of the whole, it appeared like taking money out of one pocket, and putting it into the other.

Did Mr. Winterbotham use the words laid in the seventh count?—No, I absolutely deny that he used them.

You are certain they were not uttered?—I am persuaded there were no such expreseions in the sermon.

Did Mr. Winterbotham utter the words laid in the ninth count?—He said nothing like that count; but on the contrary, said we needed no revolution, we had already had one, and a glorious one.

Did Mr. Winterbotham utter the words laid in the fourteenth count?—I am confident he did not, nor any like them.

What would have been your conduct towards Mr. Winterbotham, if he had uttered the words laid in the indictment?—If Mr. Winterbotham had used any of the words as laid in the indictment, I should have despised him, and should have deemed him an enemy of his king and country, both of which I respect, and I would not have suffered him to continue with me as a minister.

Did Mr. Winterbotham in his sermon point out any particular grievances under which the people of this country laboured?—He said he thought it would be extremely happy for this country, were the duration of parliaments shortened, and a reform to take place in the representative system.

Did Mr. Winterbotham speak of any means for the accomplishment of this?—Yes; he said the proper mode of redress was an application to the parliament itself, and that it should be done peaceably.

Then the mode Mr. Winterbotham proposed, was a peaceable application to parliament?—Yes; he said that he abhorred tumult—that the laws were not to be in the hands of a mob, and deprecated every other means but an application to parliament.

He did not exhort to any other means of redress, than what you have now stated, viz. an application to parliament?—No; he said that no men or body of men, however respectable, had a right to attempt it, except by the legal mode of addressing the parliament.

Did Mr. Winterbotham speak of any other grievance, besides that respecting the representation?—I do not recollect that he did, but that he stated to be one.

Was there in your opinion any thing in Mr. Winterbotham's sermon which had any tendency to excite people to sedition?—No, if there had I should utterly have resented it.

If it had had such tendency you think you should have noticed it? If it had, it could not have escaped me.

What then is your opinion of the general tenor of Mr. Winterbotham's discourse?—It appeared to me to be a fair, candid discussion of the points of which he treated.

Did Mr. Winterbotham show you the sermon before he preached it?—He showed me the outlines of it.*

Was the sermon Mr. Winterbotham preached, consistent with the outlines he showed you?—Yes.

Did you ever see the sermon after it was preached?—Yes, but it was at least four months after.

Do you speak from recollection of what you heard, or from what you read of the sermon?—From my recollection of what was preached; the perpetual questions asked me about the sermon have made me particular in remembering it. One circumstance in particular made a great impression on my mind; it was said Mr. Winterbotham preached from the text, "Bind their kings in chains, and nobles in fetters of iron," and I was obliged, in a large circle of friends, often to repeat the text he preached from, and the tendency of his discourse, so that I could not possibly forget it.

Cross-examined by Mr. Serjeant *Rooke*.

Were you ever in business?—Yes, as a linen draper, but did not personally attend to it.

How long is it since you quitted it?—About seven years.

And you really think that there was no passage in this sermon which had a seditious tendency?—No passage in it, unless misapprehended, could have any such tendency.

Why, what is your opinion of the words laid in the several counts of the indictment?—The greater part of them were never uttered.

But if they had been uttered, what then?—If the defendant should preach so as to make the people discontented, or to stir up the people to sedition—the people who attend on his ministry would desert him.

But what is your opinion of the words in the indictment, would they have made the

* Privileged with a connexion with an aged and experienced divine, the defendant is happy in saying his pleasure and profit were equally blended in doing this, as opportunity offered, with all the sermons he preached.—*Orig. Edit.*

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people discontented?—Undoubtedly they would, if they had been used by the defendant.

You say the defendant did approve of the revolution in France?—Yes.

Then he approved of the revolution in France on the fifth of November last, when the king was in chains?—He did not approve of kings in chains, or nobles in fetters of iron; nor did I say he approved of the revolution at that time.

Did you approve of the revolution in France at that time?—I approved of it when the king of France approved of it and accepted the constitution, and of no other revolution.

Did Mr. Winterbotham approve of the French revolution on the fifth of November? or, if he did not, what revolution did he approve of?—He approved of the French revolution—but which revolution, I do not know; for I do not know what was the state of France on the fifth of November last: the revolution Mr. Winterbotham mentioned was the revolution celebrated at Birmingham—this revolution he approved of on the grounds he stated, and which have been stated in this court—but he never expressed any approbation of the cruelties in France, or of their keeping their king in confinement.

REPLY.

Mr. Serjeant *Rooke*. After the great length of time this cause has already taken, I am very sorry to be obliged to trouble the jury. I have explained my own sentiments at the outset, and I do not find that the learned gentlemen concerned for the defendant differ very materially from me. The learned counsel for the defendant, has contended for the lawfulness of admitting political discussions from the pulpit, especially on the fifth of November; and said he thought it the duty of clergymen to point out where the principles of the Revolution of 1688 have been departed from—If it were discussed in a fair, liberal, candid manner, I dare not say it is illegal:—but I will say that the pulpit is a most improper place for discussing the subject of government; and that the clergy are of all people, the most incapable of the discussion, because their studies have a very different direction; and of all places, this was the most improper, in an assembly of between two and three hundred of low, ignorant people.—There could not have been a more ill-advised step taken than for Mr. Winterbotham, the defendant, in such a place, and before such a congregation, to have gone into the discussion that he has done. I have observed in the course of this trial, that the defendant and some of his witnesses, have been wandering to the principles of the Revolution, and to the terms on which his majesty holds his crown—a subject that least of all becomes them, or persons in their situation to inquire into.—The terms on which his majesty holds his crown ought not to be the subject of investigation; for when once people come to make this a subject of discussion (even among the ablest men), and to reason and speculate on the great principles of government, they endanger the constitution under which they have so long been happy, and which has been the envy of every surrounding nation. If this be the case when the ablest and best of men engage in the discussion, and I contend it is—what must be the consequence when the ignorant (of all people the most improper) begin to speculate on the high affairs of his majesty? The words the defendant's counsel has stood forth in defence of, are, in my opinion, extremely improper; "that his majesty has no right to the throne unless he keeps certain terms and conditions." What does this go to, but that whenever they catch or think they have caught their chief magistrate doing any thing which they think inconsistent, and which does not concur with their opinions of his duty, that he has no right to the throne any longer, and that they are absolved from their obedience? I shall always think it my duty to stand forward, and deny the principle: and the language my friend has used on this occasion, had better not have been used. We have been told of pulling majesty from the throne. The words we have heard to day are "that the people of England did themselves justice, and hurled the Stuarts from the throne"—but this is not the way we should be taught to look up to the throne; on the contrary, we should look up to it with reverence and veneration:—at the time of the Revolution, our ancestors were more cautious of its dignity; for the term they used was the term abdicated.

It is happy for us that they called in the present family, but the less we examine into the principles on which they called it the better—we should confine ourselves to the constitution as it is at present, and give our governors credit for doing their duty.

Having thus settled the principles between my friend and myself, I will call your attention to what has been brought forward in defence of this indictment.—It appears that this sermon was replete with those complaints which have been so much in vogue since the celebrated sermon of Dr. Price, which Mr. Burke so ably commented upon. The increase of taxes, and the high price of provisions, has been much insisted on; and the remedy proposed, is an application to the parliament; but I believe it will be admitted to be impossible for the parliament to take off the taxes, at least at present, or to lessen the price of provisions.

When a man thinks proper to tell the people from the pulpit such things as Mr. Winterbotham has told them, he is not a preacher of the doctrine of peace, but makes use of the pulpit for his own seditious purposes; and I appeal to the jury whether these are proper topics for such a place—"Our streets and poor-houses are crowded with poor, and our gaols with thieves, because of our oppressive or heavy taxes.—It is time for you to stand

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forward in defence of your rights." As to the payment of the national debt—"I speak boldly, I deny it: it is like taking money out of one pocket and putting it into the other."

This I think has been proved even by the defendant's own witnesses; for though one set of his witnesses said that he gave no reason, another said that there were reasons, and that the reasons were taxes. Shepheard said he gave a reason, and said heavy taxes, in part, were the cause of this: but he did not recollect the word oppressive. Holland said, "I will not say but he thought the weight of taxes might be the cause."—Another witness doubted whether any reasons were given—but all agreed that the word oppressive was not used.

It was a sermon which has excited general attention, it was a sermon shown to the rev. Mr. Gibbs before it was preached, and which many people came to hear because it was said there would be a political sermon.

It is very extraordinary that every one of the witnesses for the defendant should take upon them to say, that the word oppressive was not used, and yet the sermon was not shown to them till four months afterwards.—The defendant did not show it to the mayor; which he would have done had there been nothing improper in it, and would have said, here is my sermon, read it, and convince yourselves there is no sedition in it: but instead of this, at the end of four months he produces a garbled sermon, which he reads to those poor deluded wretches instead of the real one; and the jury have seen from the manner of giving their evidence how they look up to their pastor. They told the jury that their recollection was founded upon what they heard at the time, and yet they did not at that time know the defendant was to be indicted. Ready recollection is the consequence of particular attention, and what could make those witnesses so positive? What could induce them to say that the word oppressive was not in the sermon?

I consider these poor men and women in a state of delusion, and cannot think they could say so, except with such consciences as their pastor has fitted them up with. When told our laws are buried in obscurity—has that a tendency towards conciliating people to their government? When the minister, speaking of the national debt, says, that part of it had been paid off, but tells them that it is taking money out of one pocket and putting it into the other—can there be a doubt whether these words have a tendency to peace or sedition? The defendant says that we are unequally represented—that we ought to have frequent parliaments; and at the same time he tells them from the pulpit, to go peaceably and petition parliament: this reminds me of a pleasant story about Garrick, who at one time had offended the audience, and they were endeavouring to demolish the scenes:—Garrick had a favorite harpsichord, which would have escaped unmolested, had it not been for an arch fellow, who told the people that it was Garrick's harpsichord, but begged them not to touch it, as Garrick set great store by it, and they immediately tore it to pieces. So when a man tells people from the pulpit that the taxes are oppressive—that they are not adequately and equally represented, that the voice of the House of Commons is not the voice of the people,—and in the same breath tells them they ought to go quietly and petition parliament—I ask whether he does not do it on the same principle as the man desired the people not to touch Garrick's harpsichord? The witnesses for the defendant tell us that some of the armaments he disapproved of, and said they were voted contrary to the voice of the people, and that he advised them to go to the very parliament who voted them to seek redress, but there was to be no anarchy or confusion. Is that preaching the gospel of peace, or is it an insidious mode of setting the people against government?—There are men whose hearts are open, who wear their hearts upon their sleeves: if such a man comes forth and says openly, I don't like your constitution; I don't like your government;—I could rather shake hands with that man than I could with the insidious character who equivocates, and dares not avow those principles which are lurking in his heart.—I desire the jury to consider these men, and defy them to have a doubt as to the principles of those heads of the conventicle. One of Mr. Winterbotham's witnesses said that in the latter part of the sermon, the defendant said we should stand forth in defence of our rights: this he said in answer to a question on the fourteenth count, but he said it was to be in a constitutional and legal way that they were to come forward in defence of their rights. But what are those rights? I desire to digress a little on the subject of the rights of man, which the philosophers of the age, to the curse of the times, have so much spoken of; and I will venture to say that man has no rights whatever in opposition to the supreme being; and that man blasphemes and talks of having absolute rights independant of the deity, who talks of rights in any other way than in subordination to the society in which he lives; and yet these atheistical philosophers talk of the rights of man! There are no absolute rights of man—and if we talk of civil rights of man; while in a state of civil society, man has no rights but what that society which he lives in allows him.—When these gentlemen therefore talk of standing forth in defence of their rights, they talk blasphemy to their Creator, and treason to the constitution. Man has no natural rights but what is consistent with the duties he owes his Creator, and as to civil rights he has only what he is allowed by the society in which he lives.—What do they mean by rights? One of the witnesses for the defendant said, the rights which we are in want of,—they have no such rights.

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It stands thus on the testimony of the defendant's own witnesses. I put it to the reverend head of the flock, what was his opinion of these expressions? and the reverend gentleman at last answered me, that though he did not think they were used, yet he thought they had a seditious tendency.

Notwithstanding their wishing and praying for peace, they either deceive themselves, or they attempt to deceive others.—If they are the objects of delusion I pity, but should choose to have but little communication with them.—As the defendant's own witnesses, notwithstanding their being aided and assisted by the sermon, cannot be positive as to the identical expressions, the witnesses for the crown cannot; but, under his lordship's direction, I contend that it is not necessary to prove the exact words. It was yesterday ruled in the other court, and acquiesced in by the counsel for the defendant, that if you lay two sentences in the count and prove one of them, if that is of a seditious tendency it is sufficient. The first object therefore of the jury, must be the tendency of the words. The reverend doctor (Mr. Gibbs) has no doubt about their tendency; but if the witnesses for the prosecution are to be believed, they proved much stronger words; and if the jury do not join in opinion with the reverend gentleman, that they were not uttered, they can have no doubt as to their tendency, or the motives with which they were spoken.—Can the jury believe all the witnesses on the part of the prosecution to be perjured? The witnesses have proved that the defendant spoke of the method of tax-gathering in England, and said this is not liberty for a Briton—and then of the late armaments—three of them he disapproved of, and said they were voted by the House of Commons contrary to the opinion of the people—not a word of this is contradicted by their own witnesses.

They have proved a direct avowal that they ought to disturb the government until they got what the witnesses called their rights. The witnesses for the prosecution went on to prove several of the counts, and if they were not spoken, or words of a similar tendency, they must be perjured. As to the profession of the defendant's witnesses who said they would have left him had he uttered those seditious expressions, that depended upon the humour of the hearer—one set of men thought the words seditious which another did not.—The defendant's witnesses have said they should have fired at expressions like those mentioned in the indictment, and yet they could hear of the taxes and laws being oppressive, and of armaments voted contrary to the sense of the people, of inadequate representation and the like, without thinking these words any way seditious.—But are those words which would have occasioned such abhorrence, worse words than the defendant's own witnesses have proved? The words "it is time to stand forward in defence of your rights," are proved by Pearce, to have been spoken yet they made so little impression on the other witnesses for the defendant that they all deny that they were spoken.—The negative which such people put on what the witnesses for the crown have proved, is vague, idle and illusory, for they spoke to their recollection—their recollection has been refreshed by a garbled sermon, read to them at the distance of four months. If the witnesses for the prosecution are positive, and those for the defendant are doubtful, the jury will certainly believe those for the crown rather than the defendant.

I will not weary the jury—some of the words are certainly proved; all the witnesses for the crown have proved that the defendant said, about paying off the national debt.—"I speak boldly, I deny it."—One of the defendant's witnesses said the defendant was no egotist, for that he did not use the word I; but being asked what he said with respect to the Revolution of 1688, he said I believe he did say I, there,—and about the French Revolution—he might say I there.—This shows there is a shuffle, and the best way to extirpate it, is to get rid of it first of all from the hearts of their pastors, for till then the individuals of the flock will be deceitful.

Whether the words, "I speak boldly, I deny it," are true or not, the count is proved. It is one among the many passages of this sermon, which I contend is seditious.—Though the witnesses may differ in opinion—it is for the jury to decide whether Mr. Winterbotham meant to stir up his hearers to mutiny and rage, or to keep the people in that state of peace for which their pastors pray. The jury will recollect the assembly was composed of between two and three hundred of the lowest of the people—and that the witnesses for the crown have as fair a claim to their belief as the witnesses for the defendant; and if that is your opinion, you will have no doubt in finding the defendant guilty.—Much indeed has been said of his being a man of an enlightened mind, is he so?—Then he will endeavour to spread that light among all those audiences he may hereafter address. He feels that conviction will be his ruin, but disdains to take the advantage of such a defence. If conviction should ensue, he will meet it boldly: he disdains to apply to the mercy of the jury—he does well, because mercy has nothing to do there.—In this court, the jury have nothing to think but what is the truth of the case: and without giving way to indignation on the one hand, or compassion on the other, all I have to do on the part of the crown, is to intreat the jury to decide on the evidence:—If the defendant said the words in the way of fair, liberal, candid discussion, without any seditious intention—far be it from me to wish you to convict him. It is from this tribunal we derive our happiness; on a jury we depend for our property and our lives; therefore I do not ask you to convict a

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man if you think him innocent; on the contrary, I intreat you to acquit him.

But if you believe the witnesses on the part of the crown have really spoken the truth (and I see no reason to doubt it), then on the other hand I demand his condemnation.

The crown has the same right to justice as an individual, and the meanest individual has the same right as the crown: and I am well assured that the jury will decide agreeably to the evidence; and with your decision, I and all those with whom I am concerned, shall rest perfectly satisfied.

SUMMING UP.

Mr. Baron *Perryn*, after stating the words charged in the different counts of the indictment, and the innuendos there laid, proceeded to state the evidence given by the witnesses on the part of the prosecution; and then said that on the part of the defendant a great number of witnesses had been called, who had given a very contrary evidence to those on the part of the prosecution.—He said that with regard to those witnesses, they denied that the defendant used words any thing like the greater part of the words charged in the indictment;—the clergyman, Mr. Gibbs, did the same, but admitted that some parts of them were spoken, but in a different sense from that laid in the indictment; and said that if they had been spoken as laid in the indictment, he would have discharged Mr. Winterbotham from being his assistant, and despised him.

The learned judge then impartially stated the evidence of the witnesses on behalf of the defendant, and said that if he had omitted any thing, he had no doubt but it would occur to the jury from their own notes.—He said that the jury were to judge from the whole evidence;—First, whether the words laid in the indictment were spoken by the defendant; and secondly, whether he spoke them with an intention of exciting sedition, and with the sense laid in the indictment: and if they were of opinion that they were spoken, and with the intent laid in the indictment, they would consequently find the defendant guilty; but on the other hand, if they thought the words were not spoken, or that they were spoken in a different sense from that laid in the indictment, they would then find him not guilty. The learned judge said that it appeared to him that this sermon might have been preached without any intention of exciting sedition; but it was certainly a discussion which was improper, as it was delivered to some of the lowest class of the people; and that it was also ill-timed, for his majesty had lately issued a proclamation which ought to have cautioned the defendant, and he should have waved any such discussion at that period. The judge said, the most material part for the consideration of the jury was whether the words were spoken in the sense laid in the indictment; and the jury should consider that if the defendant was found guilty by them, his punishment would be his utter ruin, and therefore they would put the best construction they could upon the matter, and show the utmost lenity in favour of the defendant.

The *Jury* desired to withdraw, and after being locked up about two hours and a half, they brought in a verdict of Guilty.

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580. Proceedings on the Trial of an Indictment against WILLIAM WINTERBOTHAM, for Seditious Words uttered in a Sermon, preached on the 18th of November, 1792; tried at Exeter, before the Hon. Sir Richard Perryn, one of the Barons of his Majesty's Court of Exchequer, and a Special Jury, on the 26th of July: 33 GEORGE III. A. D. 1793.

The counsel were the same as on the preceding trial.

JURY.

Richard Hawkins, of Dodbrook, Devon, *F.*
Thomas Heathfield, of Woodbury, ditto.
William Leigh, of Salcombe Regis, ditto.
Thomas Gregg, of Sidbury, ditto.
Samuel Walkey, of East Budleigh, ditto.
Thomas Huckle Lee, of Lympston, ditto.
William Land, of Silferton, ditto.—esqrs.

TALESMEN.

Joseph Ewen, of Littleham, Devon.
William Merson, of Northmoulton, ditto.
James Tapp, of ditto, ditto.
William Lake, of Witherage, ditto.
James Hodge, of Luppit, ditto.

MR. *CLAPP* opened this cause, by observing that this was a prosecution against the defendant, William Winterbotham, for that he maliciously and seditiously intending to de-

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quiet, molest and disturb the peace and common tranquillity of our lord the king, and of this kingdom, and to traduce and vilify our present happy constitution, and to bring our said lord the king and his government of this kingdom into hatred and contempt with all the subjects of this realm, and to asperse and scandalize our said lord the king and his government of this kingdom, and to excite the subjects of our said lord the king to sedition against his government,—on the 18th day of November last, did preach, speak—and publish the following words, to wit:

In the first count of and concerning the government and magistracy of this kingdom and the subjects thereof, these seditious words following:

"Darkness has long cast her veil over the land;" (meaning amongst others this kingdom) "persecution and tyranny have carried universal sway;" (meaning amongst others in this kingdom) "magisterial powers" (meaning amongst others magisterial powers in this kingdom) "have long been a scourge to the liberties and rights of the people" (meaning amongst others the people of this kingdom). "It does not matter by what name these usurped powers are known, whether by king, senate, potentate, or stadtholder, they are in either sense usurped."

In the second count, these seditious words following: "The yoke of bondage among our neighbours," (meaning the French) "seems now to be pretty well broken, and it is expected the same blessing is awaiting us," (meaning the subjects of this kingdom) "when persecution and tyranny shall be no more; when enjoying" (meaning when the subjects of this kingdom enjoying) "the liberties of a free people, we" (meaning the subjects of this kingdom) "shall boast of having introduced among us" (meaning the subjects of this kingdom) "that equality our neighbours" (meaning the French) "have acquired."

The third count, similar to the first.

The fourth count, similar to the second.

The fifth count, similar to the first.

The sixth count, similar to the second.

Mr. Serjeant *Rooke* said he was again called upon to prosecute Mr. Winterbotham for sedition;—he had yesterday substantiated the charges in one indictment, and he had no doubt but he should be able to do the same by this. The words laid in the indictment, and which he should prove to have been uttered by Mr. Winterbotham, he stated to be of the most inflammatory nature; and said they went so far as to aim at the total destruction and subversion of all the governments of Europe: for Mr. Winterbotham had not contented himself with objecting to this or the other form of government, but he had asserted that they were all usurped. Of the design and tendency of this sermon, the serjeant said, there could be no doubt, if the manner in which Mr. Winterbotham introduced it, and the time of the delivery were considered. He told his audience his text applied to the present times, and that it became him to treat it politically—which he did particularly with respect to France and this country; the serjeant stated, that the audience Mr. Winterbotham addressed was not an audience calculated to fathom the depth of political subjects, and was therefore more easily deceived by specious pretences: and he thought no motive could be adduced that could have influenced Mr. Winterbotham at that time to have gone into a political discussion, but that of exciting rebellion and discontent. The serjeant said, this sermon was not delivered on a day that called for a discussion of such a nature, it was on the 18th of November, 1792, when the situation of France was not very eligible; the government was overturned, Paris was a scene of misery, one massacre had followed another, the palace itself was violated—the guards murdered—the king and queen thrown into a dungeon, and the goverment seized by a mob. He said, it was at this time that Mr. Winterbotham thought proper to tell his auditory, that all the powers of magistracy were usurped, and to utter the words they had heard read. The serjeant said, there were persons who thought all government an usurpation, and he supposed Mr. Winterbotham to be one of those, or he would never have considered the then situation of France to be a blessing, or have said that he expected the same blessing was awaiting us, and that we should soon have to boast of having introduced among us, that equality our neighbours the French had acquired. The serjeant, after some other general comments on the text and on the absurdity and wickedness of those who wished to throw us into a state of anarchy and rebellion by preaching up equality, concluded by observing he should call his witnesses to prove the words laid in the indictment, and he had no doubt but the jury would find the defendant guilty.

Edward Lyne examined by Mr. Serjeant *Lawrence*.

Were you at the meeting in How's lane on the evening of the 18th of November last?—Yes; I went there with Mr. Darby, in consequence of a report that Mr. Winterbotham had preached a seditious sermon on the 5th of November.

Were you there before the defendant began his sermon?—Yes, we were; we heard him begin.

Do you recollect the text he preached from?—Yes, it was Rom. 13th ch. 12 ver. "The night is far spent, the day is at hand, let us therefore cast off the works of darkness, and let us put on the armour of light."

How did he treat this text?—After the preamble to his sermon, he said, he felt himself bound by the present juncture of affairs, to apply the text politically;—we were then

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in the aisle, but on Mr. Winterbotham's proposing his intention to treat his subject politically, we went into a pew and sat down;—He then repeated the words of his text, and said, "Darkness has long cast her veil over the land, persecution and tyranny have carried universal sway." He then expatiated on that head, and proceeded, "Magisterial powers have long been a scourge to the liberties and rights of the people; it does not matter by what names these usurped powers were known, whether by king, senate, potentate, or stadtholder, they are in either sense usurped." This he endeavoured to prove by the following part of his discourse, which I do not recollect. He then adverted to the affairs of France, and said, "The yoke of bondage amongst our neighbours, seems now to be pretty well broken, and it is expected the same blessing is awaiting us; when persecution and tyranny shall be no more, when enjoying the liberties of a free people we shall boast of having introduced amongst us that equality our neighbours have acquired." He then immediately or soon afterwards rejoined, "To possess such an acquisition, we were to cast off the works of darkness and put on the armour of light."

Do you recollect any thing more of the sermon?—There is no other particular passage that I can recollect the words of.

Did you ever take minutes of what you heard?—Immediately on leaving the meeting, with those observations strongly impressed on my mind, I went home to my lodgings, and there made minutes; and I am sure these are the very expressions the defendant used.

Cross-examined by Mr. *Gibbs*.

Pray, Mr. Lyne, how came you to go to the meeting, on the evening on which this sermon was preached?—I went with Mr. Darby, in consequence of the rumours which were circulated respecting the former sermon.

You say you went in consequence of certain rumours which had been circulated respecting the former sermon; I would ask you if you believed those rumours?—No; I disbelieved the report.

I believe you are not one of Mr. Winterbotham's congregation?—No, I am not.

Then as you are not in the habits of attending Mr. Winterbotham, and as you disbelieved the reports in circulation respecting the former sermon, I would ask you what were the motives with which you went on that evening?—I went as the friend of Mr. Winterbotham, to take his part, that I might have an opportunity to defend him against the accusations circulating concerning him.

You say you went as the friend of Mr. Winterbotham, that you might have an opportunity to take his part; that was your motive for going?—Yes; and if I had thought he would have been prosecuted I would not have gone.

Then it was your general christian philanthropy that led you to the meeting as the friend of Mr. Winterbotham?—Yes it was my general christian philanthropy that led me to go there.

As the friend of Mr. Winterbotham, I would ask you, what is your opinion of the whole of the sermon?—I considered the whole of the sermon as totally seditious.

Was there no part of it but what was seditious?—There were many moral and religious sentiments, but the whole, in a chain, was seditious.

Pray how long do you think Mr. Winterbotham was in preaching this sermon?—About three quarters of an hour.

And though you went to the meeting as the friend of Mr. Winterbotham, and though Mr. Winterbotham was three quarters of an hour in preaching, you do not recollect any passage in the discourse but what was seditious?—At that time I did not wish to recollect any that were not seditious.

Though you were the friend of Mr. Winterbotham, you had no wish to retain any passage in your memory but those you thought seditious?—I endeavoured to retain in my mind those which were so strong.

But you don't recollect any other sentence in the whole sermon, but those you have given in evidence?—I can't repeat any other sentence.

In what part of the meeting were you, during the time Mr. Winterbotham was preaching?—I remained in the aisle till he talked upon politics, and then I sat down in a pew.

I think you said, if you had thought Mr. Winterbotham would have been prosecuted you should not have attended; pray how came you then to be an evidence?—When he said he should treat his subject politically, I then determined to attend to what he said, intending to take part against him if called upon.

Pray in what manner did Mr. Winterbotham begin his sermon?—He gave a moral exposition of the text at first; but I don't remember what he said, neither the words nor the tenor of them.

Then there was nothing seditious in the first part of the sermon?—I really think the first exposition of the text was such as any clergyman might have used in any place of devotion.

But you don't remember any thing of this part of the subject which you think was unexceptionable?—I cannot repeat any sentence; I did not endeavour to store in my mind any part of it.

Though you went to the meeting as the friend of Mr. Winterbotham, and for the express purpose of vindicating him from what you conceived to be false accusations, yet you did not endeavour to store in your mind any sentence of that part of the sermon which you conceived to be unexceptionable?—No, I did not.

As you say you cannot repeat any sentence

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that Mr. Winterbotham uttered besides those you have given in evidence, I'll endeavour to call a few passages to your mind. I believe Mr. Winterbotham made several quotations from the preceding verse in the chapter from which he took his text?—There were many quotations from the Sacred History, he made the chapter the thesis of his discourse.

Mr. Winterbotham, in commenting on the preceding parts of the chapter, I believe, speaking of the origin of magisterial power, said the powers that be are ordained of God; did he not?—I think he did mention the origin of all power.

You recollect he did say something of the origin of power; well, do you recollect what he said was the origin?—He did mention that the powers that be are of God, and quoted that verse, "Let every soul be subject to the higher powers, for there is no power but of God, the powers that be are ordained of God:" but I considered many of his observations as interspersed for the purpose of insinuating what was flagitious and wrong.

Then you think what Mr. Winterbotham said on the verses preceding his text, was only to introduce those parts which you think seditious?—I think what went before was consistent, in order to carry his point.

I believe Mr. Winterbotham, speaking of the powers of magistrates, not only spoke of their origin, but also that they were the ministers of God for good, that they ought to be obeyed and supported; I think he said something of this kind?—I won't contend that he did not quote the rest of the chapter, speaking of the powers of government, and containing the doctrine of Christian obedience; but if he did, any comment he made on it entirely escaped my notice.

Pray was this sermon divided into distinct heads?—By one person the sermon might be supposed to be divided into several heads, by another not.

I believe Mr. Winterbotham, in his sermon, likewise said something about different orders in society; I believe he contended for the necessity of them; and reprobated the idea of equality. You certainly recollect that something of this kind was said?—I do not recollect any thing in the sermon that tended to show the necessity of different orders.

You don't recollect any thing of the kind;—do you recollect Mr. Winterbotham's saying, the man who could entertain an idea of equality, either in character or property, was a fool or a madman, and ought to be dealt with as such?—If such arguments had been used, they would appear quite inconsistent; they would appear quite contrary to the drift of the sermon.

Might it not have escaped your notice?—I do not know whether it could or not.

I think Mr. Winterbotham in his sermon insisted on some motives, which ought to induce persons to obey the powers ordained?—I do not know whether he did or not.

You are sure you don't recollect any thing of the kind; pray did Mr. Winterbotham mention the arguments made use of by the apostle for that purpose?—I listened more to the defendant's own opinions, than what he stated the apostle to think; I considered the whole discourse as calculated to create discontent, though there were many specious arguments used to reconcile the people.

Pray did not Mr. Winterbotham say something in his sermon about the Africans, about their deliverance from slavery?—I have some faint idea that there was something said about the Africans, but I cannot tell what; I do not recollect any thing of the sermon but what I have already proved.

You say you don't recollect any thing of the sermon, but what you have already proved; I'll endeavour to refresh your memory: I think Mr. Winterbotham, in his sermon, stated the absolute necessity of a chief magistrate, whether dignified with the title of emperor, king, stadtholder, doge, president, or any other?—I do not recollect.*

I'll endeavour to call up your recollection to another part of Mr. Winterbotham's sermon. In speaking of the first part of his text, "The night is far spent, the day is at hand;" I believe he applied these words to several times and circumstances;—you certainly recollect this?—Those words were only applied to the present times.

You did not hear Mr. Winterbotham apply these words to any thing than the present times;—pray were you there the whole of the time in which he was preaching?—Yes; Mr. Darby was not, he left the meeting before the sermon was ended, but I tarried.

Did you see Mr. Darby at any time afterwards that evening?—Yes, Mr. Darby came to me the same night.

And then I suppose you made minutes?—Mr. Darby did not then see the minutes I had made.

Has he ever seen them since?—Yes, perhaps in the space of ten days after, or it might be a shorter space.

Then you had no communication with Mr. Darby that night about the sermon? you did not say any thing to him that you had made minutes of it?—I had no communication about the minutes; I only expressed my resentment to Mr. Darby.

Pray what are you?—I am clerk to the collector of excise at Plymouth.

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* On the 15th of Dec. 1792, the defendant rode from Ashburton to Plymouth, in company with this witness, and Mr. Tyrell, collector of the excise; when some conversation taking place respecting this sermon, the defendant stated this clause, and made his appeal to the witness, whose answer was, he believed them to be the identical words delivered from the pulpit. *Orig. Ed.*

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John Darby, sworn.—Examined by Mr. *Fanshawe*.

Were you at the meeting in How's-lane, on the 18th of November?—Yes; I went there with Mr. Lyne.

Do you remember who preached?—Yes, Mr. Winterbotham preached; the text was 13th Rom. 8th verse.

And what did he say about the text?—He made some observations which I did not attend to, and then said, at this juncture it was necessary to apply it politically; I then paid attention, and Mr Lyne went into a pew, and sat down, but I remained in the aisle; Mr. Winterbotham then proceeded: "Darkness has long cast her veil over the land; persecution and tyranny have carried universal sway." He then expatiated upon that head, and proceeded: "Magisterial powers have long been a scourge to the liberties and rights of the people; it does not matter by what means these usurped powers are known, whether by king, senate, potentate, or stadtholder, they are in either sense usurped." He then introduced the former part of his text—the night is far spent, the day is at hand, and followed it up with this observation: "The yoke of bondage amongst our neighbours, seems now to be pretty well broken, and it is expected the same blessing is awaiting us, when persecution and tyranny shall be no more; when enjoying the liberties of a free people, we shall boast of having introduced amongst us that equality our neighbours have acquired." I then had occasion to leave the meeting: I afterwards returned, and found the service done, and Mr. Lyne gone.

Are you certain that what you have given in evidence are the defendant's exact words:—I am certain it was the sense, if not the exact words.

Cross-examined by Mr. *East*.

Did you make any minutes of what you heard?—I made no minutes at that time, but have done it since.

Pray was what you have given in evidence connected together in one connected sentence?—These expressions which I have stated did not follow each other immediately.

How long was it before you took minutes?—The day after I heard the sermon.

When did you see Mr. Lyne's notes?—The next day.

Then the minutes you made were copied from Mr. Lyne's?—Mr. Lyne's minutes recalled the words to my recollection,

How came you by Mr. Lyne's minutes?—I asked him for them; that which I recollected I copied merely for my own satisfaction.

You had no idea then that you should be called on as an evidence?—At that time I had no idea of a prosecution.

Mr. *Gibbs*. As you only copied from Mr. Lyne's minutes what you recollected to have been spoken, those words must at the time of their delivery, have made a very deep impression on your mind?—I never heard a sermon that struck me so forcibly.

What were the parts that made such an impression?—I do not recollect the particular parts.

I believe there were no particular parts but what you found in Mr. Lyne's minutes?—There was a part of Mr. Lyne's minutes I did not copy, what passed after I left the meeting.

You copied all that was in Mr. Lyne's minutes that was said before you left the meeting?—I did copy all that part.

How long were you at the meeting?—About twenty minutes.

And you take upon you to swear that what you have given in evidence were Mr. Winterbotham's identical words?—I do not say the defendant used the identical words, but only words to that tendency.

As you were not in a pew, how far were you from the door while Mr Winterbotham was preaching?—I was not very far inside the door.

How many persons were there present, do you think, at the time this sermon was preached?—One hunded, a hundred and fifty, or two hundred, the meeting house was not crowded

What are you?—A midshipman in the navy, and my reason for going to the meeting was, I had heard of the sermon on the fifth of November.

DEFENCE.

Mr. *Gibbs*. A miracle was once stated to have happened relative to the translation of the septuagint. Seventy old men were put into different cells to translate the testament, and they all translated it in the same words. It is necessary for the jury to believe that the same kind of miracle has again happened, if they think that the two witnesses for the crown, one of them a clerk to the collector of excise—the other a midshipman in the navy, could both go to a meeting—hear a sermon preached which lasted three quarters of an hour—come out again, collect a great number of sentences in the sermon—retain them in their memory—and come here nine months afterwards, and repeat them precisely in the same words. This I have not stomach to digest. One of the witnesses took notes of the particular passages, which the other saw and copied; yet he said he did not speak from them, but from his own recollection of what passed at the time. If that witness spoke from what he copied from the notes of the other, all his evidence is to be left out of the case; and the jury are either to believe the miracle of the septuagint to be again realised—they are to believe that those two witnesses recollected exactly the same words—and no other; or they must lay out of the case the evidence of the last witness,

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I request the jury to recollect for a moment, that the name of the defendant is Winterbotham—that he is brought here to be tried for having preached a seditious sermon on the 18th of November. It has been stated that he had preached a sermon on the 5th of November, which had in many points been greatly misrepesented, and about which he must have expected a prosecution: and yet these witnesses pretend that he went into the same pulpit and preached another sermon, on the 18th, which would bring him again within the reach of the law;—it is certainly improbable

The witnesses for the prosecution are both young men, the latter at least, not very likely to carry off in his memory such a string of sentences as those he repeated. On the credit of those witnesses, I shall not much trouble the jury; and yet Mr. Lyne (the first witness) gave such an account that I think he could not well be believed. He said "that not being of the sect to which Mr. Winterbotham belongs, but a clerk in the excise, and having before heard that Mr. Winterbotham had preached a seditious sermon on the fifth of November, that he, who wished well to Mr. Winterbotham, went to this meeting, hoping and not doubting, but that he should find an opportunity to contradict the injurious reports which had been circulated relative to the sermon, which Mr. Winterbotham had before preached." He told the jury that it was his "general christian philanthropy" (those were his words) that brought him there, thinking Mr. Winterbotham would not again preach a seditious sermon; and that by the defendant's not preaching a political sermon, then he should be able to convince the people he had not before preached seditiously. Is this evidence credible or consistent? Can the jury believe that this man attended there for the purpose of finding an exculpation of Mr. Winterbotham? that he, who had such general christian philanthropy, that he believed every man innocent who was accused, should go there for the purpose of finding Mr. Winterbotham innocent; and yet he should not recollect a single passage in the whole sermon, but what had a contrary tendency? He went there not with a view to accuse but to defend: his attention then must have been to those points of the sermon which would rather exculpate than accuse Mr. Winterbotham. We generally attend to what we wish, and yet the witness could remember no one passage in the course of the defendant's sermon, but those which he had given in evidence to criminate him, and which Mr. Darby had echoed back to Mr. Lyne again.

This witness has said he did not recollect a single sentence of all those passages in the sermon which I asked him about; but I shall prove that those passages which I questioned the witness to the truth of, were uttered by Mr. Winterbotham, and are to be found in Mr. Winterbotham's sermon.

The line of defence which I shall adopt is, that the words used by Mr. Winterbotham are explained by other sentences in the sermon, and that they bear quite a different sense from that stated by the witnesses for the crown, which is inconsistent with the context. If I prove this, the jury will conclude, that they were not applied in the sense stated by the witnesses, and surely in candour and moderation, exercising justice with mercy, and even without mercy, they will not then find Mr. Winterbotham guilty.—I do not mean to say those two witnesses are perjured; but I will say, that it is not true that the words were used in their acceptation of them. Those witnesses, not being competent judges of the subject, have brought the words to the jury; but they will not bear the construction they have put upon them, and were used in a very different sense.

It is true that Mr. Winterbotham chose the text which they have mentioned, but he did not confine his discourse to that verse; he went through the whole of the chapter, and the sermon was a running commentary upon it; he explained the former part of the chapter, which breathed nothing but loyalty, and a proper subordination to government, and he particularly stated "that every soul was to be subject to the higher powers—that the powers that be are ordained of God:" yet of this the witness does not remember a single passage.

If the former part of the chapter was introduced, he did not remember it; it was immaterial. It was certainly immaterial to his purpose, but it is very material for those who defend Mr. Winterbotham.

He said he could recollect nothing in the sermon that recommended obedience to the civil magistrates, nothing of subordination, when every passage of the chapter was explained, and yet he went as the friend of Mr. Winterbotham! He could not recollect that the defendant said, the magistrate was the minister of God for good; that the good was mentioned, or that he mentioned any motives for obeying the magistrate! He had no recollection that the former words of the text were commented upon, or that any darkness was mentioned. The general scheme of this sermon, I contend was, that we were to obey the rulers that were set over us for good; and that this was the duty of christians: and Mr. Winterbotham contended, that this chapter of St. Paul contained the directions and motives, which ought to influence christians in the duty of obedience to the magisterial power. I shall also prove, that those words following were used, which the witness for the crown almost denied:—"That the powers which be are ordained of God, that the economy of nature proclaimed it, that man was formed a social and dependent being, that the poor could not do without the rich, nor the rich without the poor, that every thing around us proclaimed the necessity of degrees and

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subordination in society; yea, if we turned our eyes to heaven itself, as far as we had any thing certainly revealed of that state, there were archangels, angels, principalities, powers and virtues; so that the man who could entertain an idea of equality in character or property, was a fool or a madman, and ought to be dealt by as such" The jury have had it from the witnesses own mouths, that if such words had passed, they were diametrically opposite to those words they said they remembered. I do not mean to impute perjury to them, but must say that they have frail memories.

Mr. Winterbotham, in his sermon, said likewise, "Under whatever form government is administered, there must be a chief magistrate;" and this agreed with the general tenor of his discourse. He stated, that the power of government could only be exercised by a chief magistrate, whether emperor, king, stadtholder, doge, president, or any other; and those are the words which the witnesses for the crown have so misunderstood, and who supposed the following were the words: "Magisterial powers have long been a scourge to the liberties and rights of the people; it does not matter by what names these usurped powers are known, whether by king, senate, potentate or stadtholder, they are in either sense usurped."

I shall prove that the words were uttered by Mr. Winterbotham which I have stated, and here I am proving an affirmative; and I hope on my proving an affirmative of this nature, unless the jury find a conviction of perjury against my witnesses, or unless they think that no part of the congregation of a dissenting minister are to be believed upon their oaths, that they will acquit Mr. Winterbotham from the charge of sedition; and upon considering how much the witnesses I shall call are used to attend to the sermons of Mr. Winterbotham, I doubt not but their testimony will gain credit with candid, disinterested, and impartial men. With great deference to the better lights which the jury possess than I do, it appears to me impossible that they should not upon such testimony, find that Mr. Winterbotham did not utter the words in the sense they were understood by the witnesses for the prosecution.

Mr. Winterbotham proceeded in his sermon to state, that the magistrate was the minister of God for good; and observing in what he was the minister of God, for good, divided it into four heads:—"Natural good, as exercising his power for the protection of persons and property, which would otherwise be endangered by evil men:—Moral good, as caring and providing for the instruction of the ignorant, the punishment of vice, and the reward of virtue:—Civil good, as extending (as far as the welfare of the community will admit) the blessings of liberty, and affording protection in the enjoyment of it:—Spiritual good, as labouring to promote and uphold those means which are for its advantage:"—this he said was the apostle's description of magisterial power: and he farther added, "they are God's ministers attending continually on these things." Mr. Winterbotham then proceeded, and laid down in his sermon the duties which christians owed to magistrates; these he said were, "1st. Subjection: let every soul be subject to the higher powers. 2ndly. Support: render therefore to all their dues—tribute to whom tribute is due—custom to whom custom, &c. Again, for this cause pay you tribute." He then added, "these are the undoubted duties of every member of a civil community, much more of christians, who of all men are bound to keep and support order in society: and while the powers are for good to them, they are inexcusable if they do not: yea, they are undeserving of the character of christians, as in such case they break a positive command of God."

Each of these he thus explained methodically, one by one, in a regular connexion; yet this the witness, though he went as the friend of Mr. Winterbotham, did not recollect. He did not remember, that he noticed the duties enjoined on christians with respect to magisterial power—subjection to government, or the support of government; and yet these things Mr. Winterbotham did say, as I shall prove by a number of witnesses.—And here I would ask, whether the jury can believe it possible that a man, in the same sermon, could use such contradictory expressions? Those stated by the witnesses for the prosecution, are wholly inconsistent with the context in the sermon; but I do not rely on this: the witnesses for the defendant will prove that they verily believe and are certain no such words were uttered by Mr. Winterbotham, as are charged in the indictment to have been spoken by him.

Mr. Winterbotham having stated the origin and nature of magisterial power, and the duties which christians owed to this power, then proceeded to explain the motives which ought to influence christians to a performance of these duties: these he stated to be a consideration of the powers wherewith magistrates were invested; he said, "they were a terror to evil doers—the ministers of God—messengers to execute wrath on him that doeth evil."——But Mr. Winterbotham never said, that magistrates were messengers of wrath, or a terror to the good; but on the contrary said, "they were the ministers of God to them for good:" he said christians were bound by conscience sake, as it was the command of God—and added, "Christians do obey from the noblest of motives; not from fear, but from a conscientious regard to God's injunctions." This I likewise take upon me to prove was Mr. Winterbotham's identical language. Mr. Winterbotham having stated that it was their duty to obey the powers that be, in their temporal concerns, can the jury believe that the same man in the same ser-

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mon, in one single unconnected sentence, should urge his hearers to a conduct directly contrary to what he had in the former part of the sermon laid down as their du y founded on the word of God?

Mr. Winterbotham now proceeded to the text:—"The night is far spent, the day is at hand; let us therefore cast off the works of darkness, and put on the armour of light." Here the witnesses for the crown said they began their account, for that the words which offended them arose from the commentary on the text: and here it will be most manifest they were mistaken. Mr. Winterbotham did not say a word about his text in the former part of his sermon, nor did he utter one syllable about magistrates after he had mentioned it.

The learned serjeant has stated, that the doctrine charged in the indictment could only come out of the mouth of a man who wanted to drive us to that state of anarchy and confusion which prevailed in France. Has it been proved that Mr. Winterbotham has on any occasion, held language of that sort? Has it been proved that he held that the ties of society were to be dissolved, and that we should be driven back to a state of nature? If these were Mr. Winterbotham's sentiments, then Mr. Winterbotham went out of his way, to state in the former parts of his sermon, the necessity of subordination to government; and that we owed obedience to the powers that be: and if I prove that Mr. Winterbotham did this, and this I engage to prove, it will be a full proof that he did not use such expressions as those charged in the indictment, and which the witnesses for the prosecution have attributed to him.

On the 5th of November, there were not wanting a number of witnesses who took offence at the sermon then preached by Mr. Winterbotham, but has any one been found now? Or have the solicitors for the prosecution neglected their duty, that out of a congregation of more than five hundred persons, not one could be found to prove Mr. Winterbotham's speaking the words, but these two witnesses? I could have wished some other person had been found who would have given us an account of the other parts of the sermon: for the minutes made by Mr. Lyne, shown to the other witness, and copied by him in the same terms, contained all that was given in evidence either by Mr. Lyne or Mr. Darby.

In that part of Mr. Winterbotham's discourse which treated of the text, the Jury will recollect the witnesses said that the words "The night is far spent," were applied only to the present times, but I shall prove by incontestible evidence the contrary. Mr. Winterbotham considered the words of his text as containing, 1st. A positive assertion.—2d. Certain exhortations.—1st. The assertion "that the night was far spent and the day was at hand," he considered with reference to several times and circumstances. He said, "That the night might respect the situation in which the Gentile world lay prior to the light of the gospel breaking in upon them." On this state of the Gentile world Mr. Winterbotham largely descanted, and observed "when the apostle wrote this epistle this night was far spent and the day was at hand; so that the Gentile world was addressed in the language of the prophet, Arise and shine, thy light is come, and the glory of the lord is risen on thee." Christianity was then gaining its way through the world, before which time darkness was extended over every nation—this application of the word was therefore natural and judicious.

Is it possible that a man coming here to prove particular words, can be believed when he says, he paid due attention to every part of the sermon, and yet does not recollect so striking a passage as this, which was the chief of Mr. Winterbotham's observations on this part of the subject? he said "That this night which preceded the introduction of the Christian religion, was a night season indeed—darkness extended over the face of the earth," and the witnesses having misconstrued his meaning, have stated his words to be "darkness has long cast her veil over this land."

Mr. Winterbotham then said, "this assertion might be applied to another night which had since prevailed."—Here he spoke of the Mahomedan and Papal darkness which had succeeded those pure rays of Gospel light, "that shone resplendent in the primitive age of the church." This night he said, "had been long, and its darkness great, while its consequences had been fatal, not only to religion but to the peace, happiness and prosperity of nations and individuals—but still its darkness and misery was not like that which was experienced before the light of the gospel first shone forth; for in the midst of its most gloomy periods, some rays of light and truth had made their appearance, and prevented a total relapse into heathenism and idolatry—these rays had waxed stronger and stronger, and at this time proclaimed the night to be far spent." Mr. Winterbotham also considered the assertion of the text, with respect to a season of persecution, and said "that the church of Christ had experienced a night of persecution under Pagan powers, and then under Mahomedan and Papal powers." The persecution Mr. Winterbotham treated of, had no reference to present times, nor to this country, he stated it to have been a persecution for ceremonies and creeds, and therefore impossible to be any way applicable to a nation where all ceremonies and creeds are tolerated: his words were—"2dly, under Mahomedan and Papal powers—how dreadful has been the intolerant spirit that has gone forth! especially under the latter? What torture has the imagination been able to invent, but

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what has been exercised! What punishment but has been inflicted? If contention for dominion, thirst for revenge, or ambitious schemes of conquest have sent millions of the human race to the grave—how many more have been consigned to an eternal state, by contentions for ceremonies and creeds; which had they been universally received and believed, could have added nothing to the morality and happiness of mankind, or to the glory of God." Yet the witness for the crown could not recollect that he said any thing that did not relate to the present times.

I shall prove that all those passages occurred in Mr. Winterbotham's sermon; and I hope that the jury inclining rather to find a man innocent than guilty, will think that the witnesses for the crown, with their minds biassed one way, have applied to the present times what was applied by Mr. Winterbotham to the times of Mahometanism and Popery.

But I admit that Mr Winterbotham did also apply the assertion to the present times, and spoke of civil liberty and considered the assertion in the text with reference to the African slave trade; and although the witnesses for the prosecution cannot recollect that one syllable fell from Mr. Winterbotham about it—yet I shall prove that it was one particular head of his sermon, and that he expressed his strongest wishes, that the Africans might be delivered from slavery, and that they might be put into a state of civil liberty. Mr. Winterbotham's words were "Permit me to indulge another thought agreeable with the assertion in the text, viz. that the night of slavery and bondage is far spent, and the day of universal liberty is at hand, a day in which men will no longer destroy the happiness and liberty of their fellow creatures, but labour to promote their felicity and interests. The noble attempts which have been made on the behalf of our African brethren, teach us that men begin to understand each other's rights, and lead us to hope, that the efforts of a few interested individuals (whose hearts are grown callous to the tender ties of nature) will not be sufficient to withstand the generous exertions of the friends of mankind.—But as Britons rejoicing in liberty, let me remind you that though much has been done in behalf of the poor untaught Africans, yet still more remains to be done; let me then urge you to forget not their cause, nor to cease your attention to their interests, till they have obtained that liberty which the voice of reason and religion proclaims their right, and are properly instructed for the enjoyment of it." Will the jury convict Mr. Winterbotham of sedition for speaking of the African trade? I think not; for it has been spoken of in the same manner by reverend bishops, and others of the established clergy from their pulpits; and what has been done with impunity by the members of the established church, they will certainly not convict Mr. Winterbotham for doing.

Mr. Winterbotham next considered the words with reference to the approaching dissolution of man, and applied them spiritually to his auditory. Mr. Winterbotham then came to the second part of his text, "Let us cast off the works of darkness, and let us put on the armour of light." Here I expected that Mr. Winterbotham would have been accused of endeavouring to excite rebellion, and that from his having used the words "armour of light," it would have been pretended that he endeavoured to excite his audience to violence, and to put on the armour of sedition; but (perhaps to avoid misconstruction) Mr. Winterbotham stated what the apostle meant by the armour of light: "by this armour of light," he said, "might be intended the gospel, and its glorious doctrines, by which the christian defended himself from delusion and error," but did that excite men to sedition?—had it any tendency to excite sedition, to exhort men to obey the doctrines of the gospel? The next thing which he thought might be intended by the armour of light was, the Lord Jesus Christ, whom the apostle had exhorted them to put on. Was that minister of peace held up by Mr. Winterbotham as the armour of light, and yet did Mr. Winterbotham in the same sermon, excite his hearers to put on the armour of sedition and rebellion? When he said the armour of light was the Lord Jesus Christ, the author of that religion which exhorts us to peace with all men (and whose apostle, in the same chapter whence Mr. Winterbotham took his text, exhorts us to subordination and obedience to the powers that be), could it be believed that Mr. Winterbotham wished to excite discontent and violence? Another thing Mr. Winterbotham considered as intended by the armour of light was, an upright evangelical obedience, which he said "was of the utmost importance to a christian;—1st, As adorning the soul, and rendering the man amiable under every circumstance of life, prosperous or adverse, while it affords him a solid peace under every change.—2dly, As shielding and defending the man and his principles from the calumnies of ungodly men:—these are always ready to charge on the christian that which for the most part he is a stranger to, but which if he is guilty of, is not owing in the least to his principles, but to the common infirmities of nature. This," he said, "ought to make persons as christians, more particularly careful to put on the armour of christian obedience, that whereas they speak of you as evil doers, they may be ashamed that falsely accuse your good conversation in Christ; for it is better if the will of God so be, that ye suffer for well doing than for evil doing." Is this the language of a man preaching sedition and rebellion? or is it the language of a man preaching patience and sufferance? In the conclusion of his discourse, Mr. Winterbotham addressed himself to his auditory, and said, "Let this text alarm you, the night of

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life is indeed far spent; some of you are grown grey in sin—but is there not a more awful night approaching—a night of eternal darkness, from which, if once entered on, there is no return or deliverance:—'the 'wicked shall be cast into outer darkness, 'where there shall be weeping, wailing, and 'gnashing of teeth.' An awful night this indeed, the very thought is sufficient to appal a thinking mind, and raise an inquiry in the hitherto careless soul of, What shall I do to be saved?"—Had he pointed out that the only way to be saved was to obey the doctrines of the gospel, and yet did he, in the same sermon, incite his hearers to blow the trumpet of sedition? How did he exhort them to obey the doctrines he pointed out? It was in all things to be obedient to their superiors, to the magistrates, to those whom the hand of God had set over them.

No man loves more than I do to see a spirit of loyalty—no man more approves of the principles of our constitution; but I would not have the altar of public opinion profaned and polluted by a spirit of loyalty probably improperly exercised. If Mr. Winterbotham did preach rebellion and sedition, I desire the jury to convict him, and he will then be a victim deservedly falling under your just verdict; but if he did not (and I contend he did not), then he ought not to be sacrificed to public opinion. I exhort the jury to attend particularly to the observations I have made, not for the sake of Mr. Winterbotham, but for the sake of public justice that it may not be said her altars are stained with human victims, for the sake of that religious establishment we live under, and that constitution which we revere.—Remember the day may come, the day will come (though God forbid that you or I should be the witnesses of it) when the tide of popular favour may run in a different channel, when the verdict given yesterday against Mr. Winterbotham will be remembered; and if upon a fair impartial consideration of the evidence, the weight of it is not found in the scale of guilt, it will neither save the cause of religion, the cause of loyalty, or obedience to the law.

Could I succeed in calling your attention to the evidence I shall produce on behalf of Mr. Winterbotham, I have no doubt of your acquitting him.

The verdict of yesterday has nothing to do with the verdict of to-day:—if upon a due consideration of the evidence, you think that Mr. Winterbotham preached this sermon with a view of exciting sedition—you are to pronounce the verdict, and you must then find him guilty; but if those words did never pass Mr. Winterbotham's lips, you are then bound by your consciences and bound by your oaths, to find Mr. Winterbotham not-guilty.

Miss *Mary Brend* sworn.—Examined by Mr. *East*.

Were you at the meeting in How's-lane on the 18th of November?—I was.

Did Mr. Winterbotham preach that evening?—Yes.

Were you there the whole time?—I was, and paid particular attention to the sermon.

As you paid particular attention, I would ask you if Mr. Winterbotham used the words laid in the first count?—He mentioned nothing about darkness which had overspread this land—after repeating his text, which was Romans 13th chap. 12th verse, he spoke of the night of darkness being far spent in various senses———

[Here Miss Brend fainted, and was obliged to be carried out of court,] * when

Mrs. *Jane Pearce* was sworn.—Examined by Mr. *East*.

Were you at the meeting in How's lane on the 18th of November last?—Yes, I was.

Were you there when Mr. Winterbotham preached this sermon?—I was.

Were you there the whole time?—Yes; and paid attention to the sermon.

I would ask you then—did Mr. Winterbotham utter the words laid in the first count?—No, he did not; nor any thing like them: he said nothing about darkness having cast her veil over the land, or that magisterial powers were usurped.—He began with paraphrasing on the former part of the chapter from which he took his text—beginning—"Let every soul be subject to the higher powers, for the powers that be are ordained of God." He said "the magistrate was the minister of God for good to us, as he protected our persons and property, which would otherwise be endangered by evil men—and that it was the duty of every one in a civil community to obey them and render them support; and that they would break a positive command if they did not."

Then Mr. Winterbotham did not say magisterial powers had long been a scourge to the liberties and rights of the people?—No, he said "they were a terror to evil doers," but not to others; he on the contrary said they were the ministers of God for good.

Do you recollect Mr. Winterbotham's saying any thing about the titles and dignities by which magistrates are known or distinguished?—He said there must be a chief magistrate whether dignified with the title of emperor, king, stadtholder, doge, president, or any other.

He said there must be a chief magistrate, did he?—He did, under whatever form government was administered.

Then he did not say that magisterial powers were usurped?—If he had said they

* Miss Brend had been so exceedingly indisposed throughout the preceding night, as to induce the defendant to forego the advantage of having her as an evidence on this trial; and she was only brought forward at the pressing solicitation of the defendant's counsel. *Orig. Ed.*

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were usurped, it would have made nonsense of what he said before—on the contrary, he said they were God's ministers.

You say Mr. Winterbotham did not say darkness had long cast her veil over the land—pray how did Mr. Winterbotham apply the first part of his text—the night is far spent?—He aplied it to Pagan, Mahometan, and Papal darkness, which he said "had long covered great part of the earth, but now seemed far spent."—Speaking of the Papal see, he said, "from the defection of one of its principal supporters, it appeared that the night of Popery was nigh spent, and the day at hand when the pure rays of the gospel would cover the land, as the waters cover the great deep."

Did he apply this part of his text to any other persons or circumstances?—Yes, he then spoke of the "unhappy Africans, and said we might hope from the exertions which had been made in their favour, that the night of their bondage and slavery was far spent, and the day was at hand when they would not only enjoy liberty, but be taught and instructed so as rightly to enjoy it."

Did he apply the words in any other sense?—The farther application of the words was spiritual, and speaking of spiritual darkness, he quoted the words of the prophet Isaiah, "Darkness covered the earth, and gross darkness the people"—but said that the light of the gospel had now shone on a great part of the earth—speaking of the application of these words to sinners he said, "they were led captive by the devil at his will, till they were brought into the glorious light of the gospel;" and when closing his discourse, he spoke of an awful night of eternal darkness, from which there would be no return of day.

Was there any other view in which Mr. Winterbotham considered that part of his text?—No, there was not.

You are certain that Mr. Winterbotham did not apply it to the land, or to the present times?—I am confident he did not.

I would now ask you whether Mr. Winterbotham uttered the words charged in the second count?—No, he did not; he said nothing about a yoke of bondage among our neighbours being broken—nor of the same blessings awaiting us—nor of having introduced any equality amongst us—there was nothing of the kind in the sermon.

Pray did Mr. Winterbotham make any allusion to the affairs of France in this sermon?—No, he did not.

He did not say it is expected the same blessing is awaiting us?—I am confident nothing of the kind was said.

You are confident nothing of the kind was said?—I am—Mr. Winterbotham's sermon did not allude to the government of any particular country, but to magistracy in general, which he said "was ordained of God."

Did Mr. Winterbotham speak of a yoke of bondage in any sense?—He spoke as I have before said of the bondage of the Africans, and of the spiritual bondage of sinners led captive by the devil at his will.

He did not speak of it in any other sense, did he?—No, he did not.

Do you remember whether Mr. Winterbotham said any thing about persecution and tyranny?—He spoke of a night of persecution which the church had experienced under Pagan and Papal powers.

Do you recollect any thing particular he said in this part of his discourse?—He said the night had been long, and the darkness great, that it had destroyed the happiness of nations and individuals—that every species of cruelty had been exercised on those who had differed from those powers in their religious creeds—but he said the night now was far spent, and men seemed ashamed to persecute for religious opinions.

Then the persecution of which Mr. Winterbotham spoke, was the persecution of the church by Pagans and Papists?—Yes, it was the persecution of the church by Pagans, Papists and Mahomedans.

There was nothing said of magistrates or persecutors in the present times, was there?—Nothing of the kind.

Did you hear any thing said in the sermon about introducing that equality our neighbours (the French) have acquired?—There was no such thing said—nothing like it: if there had it would have contradicted the whole tenor of his discourse.

Did Mr. Winterbotham say any thing about equality?—He did; he said the man who could entertain an idea of equality, with respect to character or property was little less than a fool or a madman.

Then so far from Mr. Winterbotham's speaking in praise of equality, he reprobated the idea of it?—He did; and said, "the economy of nature proclaimed the necessity of degrees and orders in society:—Man was formed a social and dependent being; the poor could not do without the rich, nor the rich without the poor:"—He said, "if we looked to heaven, as far as we had any thing certainly revealed, it did the same—there were arch-angels, angels, principalities, and powers:"—he ridiculed and reprobated the idea of equality either in character or property.

Do you think there was any thing in this sermon, that had a tendency to bring the powers of magistracy into contempt, or to stir up the people to disobedience?—Nothing that could have any tendency to it.

Pray how many persons do you think were present?—About five hundred.

Pray of what size is your place of worship?—It is large; it was not full.

Were there many persons there who were not in the habit of attending?—I remarked a great many respectable strangers there.

Cross-examined by Mr. Serjeant *Rooke*.

Pray how comes this sermon to be so very

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fresh in your memory?—Because the very next day after it was preached, I heard persons had said it was seditious.

Did you ever see the sermon?—Yes, three or four days after it was preached.

Who showed it to you?—It was lying in the parlour, and I perused it.

Mr. *William Pearce*, sworn.—Examined by Mr. *Dampier*.

Were you at the meeting in How's lane on the evening of the 18th of November last?—I was.

Did Mr. Winterbotham preach that evening?—He did.

Did you hear the whole of the sermon?—I did, and heard distinctly.

Did Mr. Winterbotham utter the words laid in the first count?—No, he did not.

Did the defendant say any thing about magisterial power?—There was some part of his sermon about magisterial powers;—he said they were of God, and to be obeyed.

Then Mr. Winterbotham did not say they were a scourge to the liberties and rights of the people—did he?—No, he did not; he said, "magisterial powers were a terror to evil doers, and a protection to the good."

Did the defendant enforce obedience to magistrates?—He said all persons were bound to yield obedience to magistrates, and particularly Christians.

Did the defendant say any thing about darkness having long covered the land?—He spoke of papal, pagan, and mahometan darkness, and said it was far spent.

Did the defendant mention any thing about the different orders of magistrates?—He said that there must be a chief magistrate, by whatever names they were dignified, whether emperor, king, &c.

Did the defendant utter the words in the second count?—No, he said nothing similar or tending that way. I attended the mayor of Plymouth a few days after the sermon was preached, and was astonished at the time to hear of such a charge against him.

Did the defendant say any thing in his sermon about equality?—Yes, he reprobated the idea of it, and said that those must be no less than fools or madmen, who could suppose equality of character and property.

Did the defendant in his sermon say any thing about politics?—He spoke of Christian politics, and also observed something respecting the Africans;—that he hoped the day of African liberty was approaching, when they would be delivered from their bondage.

Had the sermon any seditious tendency?—The whole sermon was as contrary to sedition as light differs from darkness.

Was there a large congregation present?—I believe the congregation were about five or six hundred persons: and among them there were a number of respectable strangers, whom I had never seen there before.

Cross-examined by Mr. Serjeant *Lawrence*.

Pray Mr. Pearce, how can you be so particular in remembering this discourse: you gave us for answer on the sermon of yesterday that you well remembered that, because it was a particular day—but I believe this was not preached on a particular day?—I heard of Mr. Lyne's intention to prosecute, and therefore called up my recollection, and made minutes of it.

You are sure there was nothing seditious in this sermon, are you?—Nothing could have escaped me if it had been seditious, as it is perfectly inimical to my principles.

Did you ever see the sermon?—Yes, three or four days after it was preached—I can't be particular—it was before I went to the mayor, and I had talked it over with Mr. Winterbotham.

This sermon was not preached upon any particular occasion, was it?—No, it was not.

Miss *Mary Brend* being recovered, was again called.—Examined by Mr. *Gibbs*.

Did Mr. Winterbotham utter the words as laid in the first count?—No, he did not; he paraphrased all the former parts of the chapter, and then went on with speaking of the necessity there was for subordination.

Did Mr. Winterbotham say any thing about magisterial powers?—He plainly showed, in a civil and religious view, the necessity of magisterial powers.

Did Mr. Winterbotham enforce obedience to them?—Yes, he recommended obedience to the higher powers, under whatever names—whether king, potentate, or any other.

Then Mr. Winterbotham showed the necessity of magistrates, did he?—Yes; he said, "that without magisterial powers, neither our persons nor our property would be safe."

Did Mr. Winterbotham say any thing in favour of equality?—No, he recommended quite the contrary to equality, and said that a person who could entertain an idea of it, either as to character or property, must be either a fool or madman.

You are certain Mr. Winterbotham did not recommend equality, as in France, to be introduced amongst us?—He did not mention the equality among the French to be introduced here—it would have been a contradiction to what he was saying, and as such must have struck me:—he endeavoured in a forcible manner to impress on his audience, their obligation to obey magistrates, and in a particular manner on those who were Christians, as being appointed of God.

Do you recollect any other parts of Mr. Winterbotham's sermon?—Yes, he explained what night was far spent.

How did he apply the word night, did he consider it with reference to this country?—No, he did not apply it as a night that had spread darkness over this country: he referred it in a general sense to popery and perse-

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cution, by popery or papal powers: he referred to the persecution of the people of God by popery, with respect to which he observed, it might be said the night was far spent, as we did not suffer it now.

Did Mr. Winterbotham use the words laid in the second count?—No, he did not; he spoke of the Africans, and of the endeavours that had been used in parliament to free them from bondage.

Did the defendant apply the words to the French nation?—No, it was the Africans he spoke of.

Do you recollect any other parts of the sermon?—Yes, he spoke of casting off the works of darkness, and putting on the armour of light, in a spiritual sense: the works of darkness he considered to be sin, and the armour of light he treated as the gospel; and therefore it became us as the children of God, not to live after the course of this world, but to the honour and glory of him who had redeemed us.

Pray did Mr. Winterbotham in his sermon enforce obedience to magisterial powers?—I never heard any thing more forcibly urged than he did through the whole of his sermon, to induce his audience to obey the existing powers; and he exemplified it from the necessity there was of a head to a private family.

Cross-examined by Mr. Serjeant *Rooke*, (through Mr. *Gibbs*).

Do you think when Mr. Winterbotham urged the necessity of obedience to magistrates, he spoke from his heart, or that he said one thing and meant another?—It did not in the least appear as a latent doctrine of disobedience; I understood it as the language of his heart, because he is not used to dissemble.

Then you really think that what Mr. Winterbotham said in this respect, he spoke from his heart?—I had no reason to think from the other parts of his sermon, that they were not the genuine dictates of his heart.

Have you seen the sermon?—No, the sermon has never been shewn to me. I speak from my recollection, and the minutes I made myself.

When did you make minutes of the sermon?—It might be about two or three weeks after the sermon was preached; they were what I then recollected.

Did you copy any part of it from the minutes of any other person?—No, I never copied the minutes of any other person.

How came you to be so particular in the recollection of this sermon?—I heard people very frequently misrepresent it, which occasioned me to remember it.

Mrs. *Holland*, sworn.—Examined by Mr. *East*.

Were you at the meeting in How's-lane on the 18th of November last?—I was.

Did the defendant preach that evening?—Yes.

Were you there all the time the defendant was preaching his sermon?—I was.

Did the defendant utter the words laid in the first count?—No, he never said any thing about darkness, he spoke of a night.

Did he speak of it as applicable to this country?—No, he did not apply the words to this country.

Did the defendant say that magisterial powers had been a scourge to the rights and liberties of the people?—No, he recommended magisterial powers very highly.

Then the defendant did not say they were usurped, did he?—No, he did not call them usurped, but quite the reverse; he said there was an absolute necessity for magisterial powers, and that all were bound to obey them, particularly christians, had he used such words, they would have been quite inconsistent with the rest of his sermon.

Did the defendant utter the words as charged in the second count?—No, he spoke of the Africans as being in a state of bondage, but did not apply the words to the people of this country.

Did he say any thing in his sermon in praise of equality?—No, he said that any body that could entertain an idea of equality in character or property, must be little less than a fool or madman.

Then you are certain he did not in any part of his sermon recommend equality to be introduced in this country?—Yes, I am confident he did not; it would have been a contradiction to other parts of his sermon.

Do you think the defendant's sermon had any seditious tendency?—No, the sermon was not in the least seditious, and the latter part of it was quite of a religious nature.

Did you ever see the sermon?—No, I never saw it.

Cross-examined by Mr. *Faushawe*.

Did you make any minutes of this sermon?—Yes, I put my ideas to paper.

How came you to make minutes of it?—I heard of the prosecution by Mr. Lyne and then made minutes of what I recollected.

Rev. *Philip Gibbs*, sworn.—Examined by Mr. *Gibbs*.

Were you at the meeting in How's-lane on the evening of the 18th of November last?—Yes, I was.

Did Mr. Winterbotham preach that evening?—He did.

Were you there during the whole of the time the defendant was preaching this sermon?—I was.

Did Mr. Winterbotham make use of the words as charged in the first count?—No, he did not: he paraphrased on the former part of the chapter as was his custom, but he gave from the pulpit a particular reason for so doing at that time, he said he had been misre-

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presented before, and that he was determined his audience should understand his meaning; he particularly observed the necessity of subordination to chief magistrates, and that we must support them in their government; he read the chapter and paraphrased verse by verse.

Did Mr. Winterbotham in his sermon enforce obedience to magisterial powers?—He did; he pressed obedience to magistrates as a christian duty, and said that we were to obey not from fear, but for conscience sake.

Did the defendant say any thing in his sermon respecting the different orders of magistracy?—He said, as there was a necessity for magistrates, it signified not under whatever names, whether emperor, king, stadtholder, president or any other.

Did Mr. Winterbotham in his sermon say any thing about darkness?—He spoke of night and day, and that in a figurative sense.

Did he apply those words to this land?—He referred to the popish and mahometan darkness, and he also spoke of the Africans.

Did Mr. Winterbotham say any thing about persecution in his sermon?—He spoke of the persecution under the ten pagan emperors, and of various persecutions under papal powers.

Did Mr. Winterbotham apply the word persecution to this country?—He did not apply it in any sense to this kingdom.

Did Mr. Winterbotham in his sermon encourage the spirit of equality as in France?—No, he did not; he said whoever spoke of equality in character or property, was little better than a fool or madman.

Do you think Mr. Winterbotham's sermon had any seditious tendency?—No, the drift of his discourse was obedience to the magistrate, and the necessary duties of religion; and he observed to his audience that if they paid regard to the voice of an inspired apostle, they would attend to his injunctions.

Have you seen the sermon?—Yes, I have seen the sermon; I have a large circle of acquaintance who were frequently making inquiry relative to what Mr. Winterbotham said on the occasion, the sermon having been greatly misrepresented, I therefore desired that I might have it, to see whether it corresponded with what I recollected of it, and to show it to my particular acquaintances, that I might thereby have a double testimony to confute the reports in circulation, my own recollection and the sermon itself.

Cross-examined by Mr. Serjeant *Rooke*.

Pray what are you, Mr. Gibbs?—I am the pastor of that church, and Mr. Winterbotham is my assistant.

Are you ordained, Sir?—I have been ordained forty-five years.

Are you not engaged in trade?—I married a wife who was engaged in trade, and she conducted the trade till within these seven years.

Where did Mr. Winterbotham come from?—Mr. Winterbotham was a native of London.

Did not Mr. Winterbotham serve an apprenticeship in Birmingham?—I have reason to believe he served an apprenticeship in London, and has never been in Birmingham.

Tell me Sir, Did not Mr. Winterbotham, in his sermon, say something about the French?—I am not sure he did not mention the French.

Mr. *John Wooton*, sworn.—Examined by Mr. *East*.

Were you at the meeting in How's-lane, on the evening of the 18th of November last?—I was.

Did Mr. Winterbotham preach that evening?—He did.

Were you there the whole time of the service?—Yes, I was.

Did the defendant utter the words charged in the first count?—No, he did not.

Did the defendant say any thing in his sermon about magisterial powers?—Yes.

What did he say?—The defendant insisted that it was the indispensable duty of every subject to render himself subject to, and support the government under which he dwelt; and particularly of Christians, as the person who acted otherwise, broke a positive scripture command which says, "Let every soul be subject to the higher powers—render to all their dues, tribute to whom tribute," &c. The defendant adverted in a very cogent manner, on the use that magistrates were of to the subject; that they were a terror to evil doers, and a praise to them that do well; that they were the ministers of God for putting in force the civil law which protected our persons and property from the hands of wicked designing men; and the defendant likewise observed, that they were of further use in protecting us in the use of spiritual means, that we might worship God according to the dictates of our own conscience, none daring to make us afraid.

Did the defendant say any thing about equality?—The defendant observed it would be madness for any one to suppose that mankind could subsist without proper ranks, for the interest of all were mutually blended—the poor could not do without the rich, nor the rich without the poor: and that it was obvious from divine revelation that there were different degrees among the glorified spirits in heaven, such as angels, archangels, principalities, &c.

Did the defendant say any thing of politics, or of the French?—No; the defendant did not enter into a discussion on politics, nor did he draw any political inferences from his text—he said that a night of pagan and papal darkness had long covered the land, but was about to give way to the glorious gospel of Jesus Christ, the knowledge of which he hoped would reach all the habitable parts of the globe. The defendant said he could not

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pass unnoticed the fate of our African brethren, for whom he said much had been done by the friends of humanity, yet there still remained much to do; but he hoped the period would soon arrive when they would enjoy equal privileges with others now in a different situation.—The defendant spoke of the night mentioned in his text in a spiritual view, and observed to his hearers that a night of darkness had covered their minds, and that Satan had tyrannized over them, and kept them in bondage until the knowledge of Jesus Christ had set them free.

Cross examined by Mr. Serjeant *Lawrence*.

Do you always attend the meeting to hear the defendant preach?—I frequently attend when opportunity serves, but not particularly to hear him.

Pray did not the defendant treat of politics in his sermon?—He did not, except in the case of the natives of Africa.

Did not the defendant use the word politics?—Yes; he made use of the word.

How did he apply it?—He said, in the chapter preceding that from which the text was taken the apostle had given us a complete system of Christian ethics, but in the chapter of which the text was a part, he had given us a system of Christian politics.

Pray tell us Mr. Wooton, did not the defendant speak of France, or of the affairs concerning the French nation?—He did not, directly or indirectly.

As the defendant pities the Africans, might he not speak by way of commiserating the distress that prevailed in a neighbouring kingdom—France?—He might have spoken in that manner, but as I am on oath I do not recollect he gave any person the minutest reason to suspect that he adverted or alluded to the French in any manner whatever.

I believe Mr. Wooton, you have a retentive memory, have you not?—It has been admitted so on other occasions.

Did you ever make any minutes of this sermon?—I did

When did you make those minutes?—Immediately on my return to Plymouth after attending the sessions.

How came you then to make minutes, having made none before?—To answer this, I beg leave to intrude on your patience while I relate a circumstance that took place prior to it. Soon after the preaching of this sermon, I had occasion to call at the shop of a Mr. Pearce of Plymouth; he then asked me if I could recollect any part of this sermon. I told him the sermon had made a peculiar impression on my mind, as I thought it so well calculated to settle the minds of the people at such a time; and on my relating some part of the sermon, Mr. Pearce, to my surprise, told me that he believed there would be a necessity to call on me to give evidence, as two young men had given information against the sermon: I desired Mr. Pearce to take no notice to any one of what I had said, as I did not wish to have any thing to do in the affair. We then parted, and fearing I should be called on, I judged it prudent to bear in my mind as much as possible; and seldom a day passed but I pondered in my mind what at first made the most striking impressions, until my return from Exeter; and then, to relieve my mind, I committed the substance of what I recollected to writing.

Did you ever read this sermon?—Not a syllable of it in my life.

You are sure that what you have given in evidence is the truth?—I am no way interested in speaking for the defendant; it is much against my inclination that I am here, but I came with a determination to speak the truth, and nothing but what my conscience coincided with.

Mr. *Thomas Coxworthy*—Examined by Mr. *Dampier*.

Were you at the meeting in How's-lane, on the 18th of November last?—I was.

Did Mr. Winterbotham preach?—He did.

Did you hear the whole of the sermon?—I did.

Did Mr. Winterbotham utter the words laid in the first count?—Some of the words were made use of by him; the others are entirely perverted: but I deny, *in toto*, that Mr. Winterbotham said any thing in his sermon, in the sense charged in the indictment.

Did Mr. Winterbotham say that magisterial powers had been a scourge to the rights and liberties of the people?—No, he did not, nor any thing like it.

Did he say that those powers were usurped?—No, he did not; he inculcated obedience to the magisterial powers.

Did Mr. Winterbotham utter these words, "darkness has long cast her veil over the land?"—No, he spoke of a night, and that in a religious sense; he said that night had overspread the world before the light of the gospel.

Did he apply the idea of night in a political sense?—No, he did not use it in a political sense.

Did Mr. Winterbotham make use of the words charged in the second count?—I deny that altogether.

Did Mr. Winterbotham say any thing in his sermon in favour of equality?—No; on the contrary, he said that man must be a madman or fool, who had any such conceptions either as to property or character.

Did the defendant say any thing in his sermon about the affairs of France?—I never heard him mention any thing about France; the only part of his sermon which related to politics, was in his paraphrasing on the eleven preceding verses to the text, which he said contained christian politics.

Cross-examined by Mr. *Clapp*.

Do you constantly attend Mr. Winter-

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botham's preaching? — sometimes I attend Mr. Winterbotham, sometimes others, as I live at Dock.

What led you to attend this meeting on the 18th of November? — Nothing particular drew me thither.

Did you make any minutes of the sermon? —Yes, I did make minutes of what I recollected.

When did you make minutes; how long was it after the sermon was preached?—I believe about a month afterwards.

What induced you then to make minutes of it?—It was in consequence of the various opinions about it

Pray did you ever see the defendant's sermon.—I never saw or read the sermon.

How came you to be so particular in your recollection of this sermon?—I took particular notice of it, because of the aspersions thrown on it a few days after it was preached.

Mr. Serjeant Rooke having replied on the part of the prosecution,

Mr. Baron *Perryn* proceeded to sum up the evidence: he stated the words laid in the indictment, and observed, that two witnesses had been called forward in support of them, both young men: the testimony of one of these, witnesses (Mr. Darby), the learned judge said, they must put out of the question; for though, he observed, Mr. Lyne, the other witness, had said, that he did not communicate his notes to him for several days, yet Mr. Darby acknowledged that he copied his minutes from Mr. Lyne's on the next day after the sermon was preached; and this is farther corroborated, by his having given his evidence in Mr. Lyne's words; he said, the jury must therefore entirely lay aside his testimony; and the support of the charges would then rest on the testimony of one youth. The learned judge then observed, that on the part of the defendant many respectable adult persons had been examined, persons who, he observed, were in the constant habit of attending on the defendant's ministry, and therefore might be supposed to be better qualified to judge of the doctrines he advanced; these, he said, had unanimously denied the words laid in the indictment, and had likewise given a positive evidence of a very contrary nature: they stated the defendant's sermon to breathe nothing but loyalty, peace, order, and obedience to the law; this evidence, he observed, would be duly weighed and considered by the jury. The learned judge farther observed, that it had been admitted on both sides, that the defendant was a sensible man; and it was extremely improbable that a sensible man, with a prosecution hanging over his head for a sermon preached on the 5th of November, should again preach another sermon on the 18th of the same month, which he must know would again bring him within the reach of the law, and which, if the testimony of the witness for the crown was to be relied on, contained expressions worse than the former. The learned judge observed, that it was for the jury to determine, what degree of credit was to be given to this evidence, against the unanimous testimony of so many other persons. Under the circumstances, he said, he could not think the defendant guilty; but the jury were to determine for themselves — only they should remember that after the verdict of yesterday, if the defendant was again found guilty, it would be his utter ruin.

The jury desired to withdraw, and after being locked up for five hours and a half, returned a verdict of Guilty.

COURT OF KING'S-BENCH.

Thursday, Nov. 21st, 1793.

The counsel for the defendant spoke in mitigation of punishment as to the first trial. But with deference to the character of the learned judge, who presided at the trial, begged leave to express their astonishment, that he had omitted in his report much of the evidence adduced on the part of the defendant, in the second. That five or seven witnesses had expressly sworn there was no evil tendency whatever in this sermon:—On the contrary, that the general tenor of it was to inculcate dutiful submission to the laws, &c.—and that one of the witnesses for the prosecution repeated the charge in the indictment, at the trial, almost word for word, saying, he heard that from the defendant's mouth, although he admitted he neither recollected the words, nor understood another sentence in the whole sermon. Upon these and other grounds the learned gentlemen contended, that had the learned judge before whom the cause was tried, reported these facts as they appeared in evidence, the Court would have felt themselves bound by uniform practice to grant the defendant a new trial as to the second indictment, even without a word being said by his counsel. But whatever evidence might have been given at the trial, and although the learned judge himself strongly inclined to advise the jury to acquit the defendant, yet they could not travel out of the report in this stage of the proceeding.

The *Attorney General*, and other learned gentlemen on behalf of the prosecution, contended that both the convictions were just; and that the defendant's case was such as called for exemplary punishment.

Lord *Kenyon*. He must be committed now to Newgate, and brought up the last day but one of the term.

The *Defendant* was accordingly committed to Newgate.

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Wednesday, November 27.

The *Attorney General* prayed the judgment of the Court on the defendant *William Winterbotham*, for preaching two seditious sermons in the month of November last at Plymouth.

The sentence of the Court was, "That for the first offence, he should pay to the king a fine of 100*l.*, and be imprisoned in the New Prison, Clerkenwell, for two years; and for the second offence, that he should pay a fine to the king of 100*l.*, and be imprisoned in the New Prison, Clerkenwell, for two years, to commence at the expiration of the former period; to find surety for his good behaviour for five years, himself in 500*l.* and two sureties in 200*l.* each.

The *Defendant* then observed, that he hoped he should have had an opportunity of addressing their lordships on this case when he was before them on a former day, but he was prevented then from saying any thing; he thought that he might without acting unconstitutionally, or in a manner inconsistent with the character of a good subject, who had sworn to, and was bound to yield obedience to the law, address the Court.—His want of information——

Lord *Kenyon*. What is the tendency of this address? It was the duty of the Court to hear every thing, either what you had to say for yourself, or your counsel for you, before sentence was pronounced. It is too late now. You know you might have applied to the Court before judgment: the Court was fully inclined to hear every thing that was necessary.

Defendant. When the prosecution was closed, you immediately ordered me out of court, my lord.

Lord *Kenyon*. The Court, by my organ, ordered you out when the business was over.

Defendant. I am conscious, my lord, that if I had had the privilege of addressing the Court, you would not have passed the sentence.

Lord *Kenyon*. If there is any thing more to be said upon the case, it must be applied to the fountain of mercy: whatever is to be urged must be urged to his majesty; and if mercy be fit to be shown, no abuse of situation will prevent it from being exercised.—We cannot hear any more: the business of the Court must be done.

The *Defendant* was then conducted to prison.

I have been favoured by the Rev. Mr. Winterbotham with a communication relating to these proceedings against him; from which I extract the following passage, stating the manner in which a change of the place of his imprisonment was obtained, and bearing honourable testimony of his gratitude to the eminently learned and upright person by whose kind co-operation that change was effected.

"In consequence of an application made to Mr. Justice Grose, at chambers, by Mr. Dampier, one of my counsel, with the consent and approbation of the present lord Eldon, then attorney-general—whose polite and humane attention on that occasion will never be erased from my mind,—between the period of the sentence, and the following Hilary term an alteration of the sentence, so far as to the place of confinement, was obtained; and his majesty's gaol of Newgate, at my own request, substituted. This request was made on the ground of the disposition and conduct of the gaoler, and the inconveniences of the prison, which did not admit of my separation from felons without submitting to his extortion."

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581. Proceedings on the Trial of an Indictment against Thomas Briellat for Seditious Words. Tried at the Sessions House, Clerkenwell Green, December 6: 34 Geo. III. A. D. 1793.*

The Indictment found in October Session last, stated—*Count 1st.*

THAT Thomas Briellat, of the parish of St. Leonard, Shoreditch, in the county of Middlesex, pump-maker, being a malicious, seditious, and ill-disposed person, and wickedly and seditiously devising and intending to move and incite the liege subjects of our said lord the king to hatred and dislike of the constitution of the government of this realm, and to cause the said subjects to wish for, and to endeavour to procure a subversion of the said constitution, on the 17th day of October, in the thirty-third year of the reign of our said lord the king, at the parish aforesaid, in the county of Middlesex, aforesaid, in a certain conversation which he the said Thomas Briellat, then and there had and held, of and concerning the constitution of the government of this realm, in the presence and hearing of divers liege subjects, of our said lord the king, unlawfully and seditiously did utter, publish, and declare with a loud voice, the malicious, seditious, and inflammatory words following, that is to say, a reformation (meaning a reformation in the government of this realm) cannot be effected without a revolution (meaning a subversion of the constitution of the government of this realm) 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.

Count 2nd.

That the aforesaid Thomas Briellat being such person as aforesaid, and wickedly and seditiously devising and intending to move and incite the liege subjects of our said lord the king, to hatred and dislike of our said lord the king, and of the regal power and office established by law within this realm, and to cause the said subjects to wish for, and to endeavour to procure the abolition of the said power and office, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, in a certain conversation, which he the said Thomas Briellat, then and there, had and held, of and concerning the people of this realm, and the constitution of the government thereof, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully and seditiously did utter, publish, and declare with a loud voice, the malicious, seditious, and inflammatory words following, that is to say, we (meaning the people of this realm) have no occasion for kings (meaning any kings of this realm). In contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Count 3rd.

That the said Thomas Briellat, so being such person as aforesaid, and so devising and intending as last aforesaid, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, in a certain conversation, which he the said Thomas Briellat, then and there had and held, of and concerning the power and office of a king of this realm, among others in the presence and hearing of divers liege subjects of our said lord the king, unlawfully did utter, publish, and declare with a loud voice, the malicious, seditious, and inflammatory words following, that is to say, there never will be any good times until all kings (meaning among others the king of this realm) are abolished from the face of the earth. In contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Count 4th.

That the said Thomas Briellat, so being such person aforesaid, and so devising and intending as last aforesaid, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, in a certain conversation which he the said Thomas Briellat, then and there, had and held, of and concerning the office and power of a king of this realm among other things, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully and seditiously did utter, publish, and declare with a loud voice, that there never would be any peace until all the kings (meaning among others the king of this realm) were abolished, in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Count 5th.

That the said Thomas Briellat, so being such person as aforesaid, and so devising and intending as last aforesaid, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully and seditiously did utter, publish, and declare with a loud voice, the malicious and seditious words following, that is to say, there never will be any peace

* Taken in short-hand by Ramsey.

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or good times until all kings (meaning among others the king of this realm) are abolished from the face of the earth. In contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Count 6th.

That the said Thomas Briellat so being such person as aforesaid, and so devising and intending as last aforesaid, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully and seditiously in the presence and hearing of divers liege subjects of our said lord the king, did utter, publish, and declare with a loud voice, that there never would be any peace until all kings (meaning among others the king of this realm) were abolished. In contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Count 7th.

That the said Thomas Briellat, so being such person as aforesaid, and so devising and intending as last aforesaid, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, in a certain conversation, which he the said Thomas Briellat, then and there, had and held, of and concerning the power and office of a king of this realm among others, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully and seditiously, did utter, publish, and declare with a loud voice, the malicious, seditious, and inflammatory words following, that is to say, it is my (meaning his own the said Thomas Briellat) wish that there were no kings at all (meaning thereby, and being understood to mean, that he the said Thomas Briellat, wished that there was no king of this realm among others). In contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Count 8th.

That the said Thomas Briellat, so being such person aforesaid, and so devising and intending as last aforesaid, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, in a certain conversation, which he the said Thomas Briellat, then and there, had and held, of and concerning the power and office of a king of this realm, among others, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully and seditiously did utter, publish, and declare with a loud voice, that it was the wish of him the said Thomas Briellat, that there were no kings at all (meaning thereby and being understood to mean no king of this realm among others). In contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Count 9th.

That on the same day and year aforesaid, an open and public war was prosecuted and carried on between our said lord the king, and the persons exercising the powers of government of France; that is to say, at the parish aforesaid, in the county aforesaid, and that the aforesaid Thomas Briellat so being such person aforesaid, and being greatly disaffected to our said lord the king and his administration of the government of this realm, and wickedly and maliciously devising and intending to move and incite the liege subjects of our said lord the king to hatred and dislike of our said lord the king and of his administration of the government of this realm on the same day and year aforesaid, and during the existence of the said war, at the parish aforesaid, in the county aforesaid, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully and seditiously did utter, publish, and declare with a loud voice, the malicious, seditious and inflammatory words following, that is to say, I (meaning himself the said Thomas Briellat) wish the French would land one hundred thousand men in England to fight against the government party. In contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Count 10th.

That the aforesaid Thomas Briellat, so being such person as aforesaid, and devising and intending as last aforesaid, on the same day and year aforesaid, and during the existence of the said war, at Hackney aforesaid, in the county aforesaid, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully and seditiously did utter, publish, and declare with a loud voice, that he the said Thomas Briellat, wished the French would land in England, to fight against the government party. In contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

Count 11th.

That the aforesaid Thomas Briellat, so being such person as aforesaid, and devising and intending as last aforesaid, on the same day and year aforesaid, and during the existence of the said war, at the parish aforesaid, in the county aforesaid, in the presence and hearing of divers liege subjects of our said lord the king, unlawfully and seditiously did utter, publish, and declare with a loud voice, that he the said Thomas Briellat, wished that the French would land one hundred thousand men in England. In contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. Plea, NOT GUILTY.

Counsel for the Crown—Mr. Silvester [Common Serjeant of the City of London]; Mr. Baldwin.

Solicitors —— Messrs. Chamberlayne and White, Lincoln's-inn.

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Counsel for the Defendant——Mr. Felix Vaughan, Mr. Gurney.

Solicitor—Mr. Martin, Richmond-buildings, Soho.

JURY.

Thomas Lingham	Stephen Skelton
Francis Sellars	William Cornelius
William Collins	Jarvis Buck
Thomas Alexander	George Sanderson
James Dukes	John Langfield
Golden Cock	William Dennis.

Mr. *Silvester*. Mr. Chairman;* May it please you, Sir, and you gentlemen of the jury. This is an indictment against the defendant at the bar for speaking many seditious and inflammatory words. You have heard them particularly read to the prisoner, and a more inflammatory set of words could not be got together by the wickedest subject of this kingdom. It first of all states, that he said, there could be no reformation without a revolution; that is to say, whatever grievances there might be of ever so small a nature, in the government of this country, it was necessary to overturn that government, and destroy the power which exists now, under which we so happily live, and enjoy the protection of our property, and every thing that is dear to us.

Gentlemen, the next set of words are, that, he wishes there were no kings in this country. Why, gentlemen, the wishing to annihilate any one part of our happy constitution would, in effect, destroy the whole.

Gentlemen, the next set of words is, that he wished that ten thousand men of our bitterest enemies would land in this country. Can there be a worse subject existing than the man who could harbour these ideas in his breast for a single moment? Would not government, or those persons employed under the government to protect our lives and liberties, have neglected their duty if they had not brought such a man forwards, for your decision to determine the question, whether he did or did not speak these words?

Gentlemen, that is the only question you have to try,—whether that man at the bar spoke any of the words alleged in this indictment; and what will you say gentlemen, when I tell you that that man is a man of property, is a man in a situation of life to have influence in his neighbourhood. The defendant is a man following the trade of a pump-maker, possessed of land and houses, which he enjoys under the protection of the law. Gentlemen the words spoken were mentioned at a time when there was much fear in this great city, that those persons who wished to overturn the government were ripe for an insurrection. You all know the arts which were made use of by wicked and designing men publishing abominable books, handing about hand-bills on purpose to excite sedition every where, that the good citizens were obliged to meet for the purpose of associating themselves together, to resist all levellers, and all persons who would wish to overturn the government. At that time he went to the house of a Mr. Goodman, and there he made use of the expressions stated in this indictment; the publican was exceedingly offended at it, but he did not at that moment stand forward to give evidence to the magistrate, because he thought, perhaps, that upon mature reflection, Mr. Briellat would not offend against the laws of his country, he wished that the public should not know that in a neighbourhood near Spitalfields, where there are so many manufacturers, many of them at this time out of bread, ripe for any thing, and who might get something by confusion, when they could not get bread by their honest labour; he did not mention it till the 24th of last month, when by the artifice of Mr. Briellat and others, it was publicly spread abroad, that a meeting was to be held in his premises and field in the Hackney-road, where they boasted that they would have thousands of persons to come, whose sense they were to take upon the propriety of a reform and upon the idea of a reformation. The moment Mr. Goodman heard this, his fears were alarmed; he recollected as every one of us must recollect, that in the year 1780 a number of men —religious men,—associated together called the Protestant association, with good inclinations and good intent; that a mob was got together, and when that hydra-headed monster was assembled, it was impossible to stop its ravages. Your town was laid waste and your property destroyed: it therefore became the duty of Mr. Goodman to give notice, that it was reported in Spitalfields where there are thousands of inhabitants, who are of the lower class and of the poorer sort of the people, that they were to meet in the field belonging to the defendant. Alarmed at this, he went to the magistrates and gave information; the magistrates, active to do their duty and to protect their fellow subjects, went there with a number of constables; when they came there they found pretty nearly a thousand people, assembled in Mr. Briellat's field, with himself there; and by their exertions, their manly exertions, they dispersed the meeting, and no harm was done. The public are obliged to those magistrates, a fire might have been kindled in that quarter of the town which might spread to us all: God knows what might have been the consequence; it is easy in this country to collect a mob, but it is impossible to guide it.

One would have thought that the present situation of a neighbouring kingdom, where a black catalogue of vices has been committed, where there is not an offence that one can name almost but they have committed: rapine, sacrilege, perjury, murder, in short every offence that in the catalogue of vices you can

* William Mainwaring, esq.

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possibly enumerate or suggest to your mind, has been committed by those persons. What would have been the consequence, God only knows, had not our fellow citizens assembled in this town, animated and spirited up by men who had some property at stake to preserve that property.

Gentlemen, my case is a very short one, and a very plain one; it requires neither art nor ingenuity.

Gentlemen, it does not depend, I say, upon much argument or ingenuity, it depends upon whether those words were spoken? you will have them proved to you, not by one, but by several witnesses; you will have it proved, in the first place, that he said a reformation could not be effected without a revolution. You will have it proved, in the next place, that he said that kings were not necessary. And you will have proved, that aggravated part of the charge in the indictment, that there is a man existing in this country, wishing that all the male part of the royal family were destroyed, and that the female part were confined. Can you conceive for a moment, so horrid a wish as that of having any set of men to be destroyed by the hand of the executioner? An Englishman shudders at the idea of destroying any body. It will be proved to you that those words were spoken; that he wished that the bitterest of our enemies, who have given an example to the world that there is no cruelty but they are capable of, that they would land in this country ten thousand men.

Gentlemen, is it possible there can be any Englishman existing who could wish that his fellow-subjects might fall by the hand of the assassin, because whatever the event might have been, many of our fellow-subjects, many of our relations might have lost their lives. Therefore, I say, if these words are proved, you will think, not only that the defendant deserves punishment, but that he deserves exemplary punishment indeed. He has pleaded not guilty, it is therefore necessary on my part to prove the words: when I have done that, what kind of defence can be set up for him, or for any other man under the like circumstances I cannot conceive, going as far as ingenuity can go; for he has the assistance of a very ingenious gentleman. But you are plain men like myself, you are to attend to the evidence, and if the facts are proved, it is not all the ingenuity that man is capable of, that can divert your minds from doing that which is right: you will judge upon the evidence, and upon that, pronounce your verdict. The only possible defence that can suggest itself to my mind is, that he did not speak the words. I vow to God I should be happy if he could prove it. I should be happy if he could go away from this bar, having proved that that man does not exist in this country, or any other, who could wish to see his fellow-subjects destroyed, the government overturned, and anarchy and confusion reign through the land; if he does exist, he is the subject of punishment; and if he does not, I am sure you will be happy as well as myself in acquitting that man, and in going forth into the world rejoicing that such a character does not exist.

Mr. *Vaughan*. Mr. Chairman; I submit an objection to part of this indictment, which I conceive will not be opposed by the gentlemen on the other side; it is a clerical error; but I feel that I am bound to take all those fair advantages on behalf of my client, that present themselves upon the face of the indictment, and I now take that advantage. It is to the two last counts. I submit the words ought to be laid with certainty: they are laid in this manner: That the said Thomas Briellat, at Hackney, at the parish aforesaid, in the county aforesaid, did so and so. Now, Sir, the place where the rest of the indictment is laid, is in the parish of St. Leonard, Shoreditch; and therefore I conceive it will not be opposed by the gentlemen on the other side.

Mr. *Silvester*. It is not usual, in this stage of the cause, to make such an objection; but the gentleman very well knows, in the first place, that if any one of the counts is good, it will be sufficient; and, in the second place, it does appear to be in the county of Middlesex.

Mr. *Vaughan*. The only answer that appears to me necessary to give to the reply of Mr. Common Serjeant is, that in Cro. Car. 465, which is likewise mentioned in Hawkins, there is this observation: "It seems agreed by all the books, that the place where the offence was committed must be alleged in such a manner as is perfectly free from all repuguance and inconsistency; for, if one and the same offence be laid at two different places, or at the town of B. aforesaid, where no such town was mentioned before," (not where no such county was mentioned before, but where no such town was mentioned before), "the indictment is void." That is the passage in Hawkins.—Now I will read you the words in Croke, from which it was taken. "It was held by the judges, upon a motion in the King's-bench, that because it was laid to be done in Shoreditch, and Shoreditch not being in the record, that judgment was tainted."

Mr. *Silvester*. You must move in arrest of judgment, and at no other time.

Mr. *Vaughan*. I beg leave to say that any time is a time for the objection.

Mr. *Gurney*. It is perfectly indifferent to us whether the objection is taken now, or in arrest of judgment.

Mr. *Vaughan*. We do not care about it; but for the sake of precedent, I think it is necessary the Court should determine it.

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EVIDENCE FOR THE CROWN.

William Goodman sworn.—Examined by Mr. *Silvester*.

You are, I believe, a victualler?—Yes.

Do you know Briellat?—Yes.

What is he?—A pump-maker.

Where does he live?—His house is in Holywell-street, and he has a house in Hackney-road. A short time previous to the meeting of the parish of St. Leonard, Shoreditch, against the republicans and levellers, Mr. Briellat came to my house at seven o'clock in the evening, or between seven and eight. After the usual compliments to the company he said, that he had been robbed of the tree of liberty, which he would not have lost for two guineas; there was no more to be got, and that it was a valuable piece, and ought to be stuck up in all Christian families. The conversation then turned upon how they were to dispose of the king, our king.

Whom was Briellat talking to?—I believe Mr. Davis was there, and six or seven other persons.

Was any thing said before that?—Not that I know of; there was some gentleman said the king had lived a lazy life a long time; that he thought he ought to work for his living: another person said he had not been brought up to work, consequently he could not work for his living: Briellat, less merciful than any of them, said, I would have all the male branches put to death.

Of whom?—The royal family. The females should have a small allowance, and be confined so that they should do no mischief; the company present, part of them, however, expressed a great deal of indignation at what Briellat had said, and that is all that I recollect passed at that time. I recollect one more circumstance, that he said to a Mr. Tate of the Borough. that we were fools; he said what we were about to do was for the good of posterity.

Mr. *Chairman*. That who were fools?—Meaning the people that opposed him at the time, that he being an old man might not reap any benefit from it, but his children would if he had any.

What was it that they were to reap benefit from?—From an alteration, a revolution.

Do you recollect the very words?—I don't recollect.

Try and recollect?—From a reduction of taxes.

Mr. *Vaughan*. When was this?—A short time previous to the 12th of December, 1792.

On the 12th you saw him again?—Yes, he came into my house I believe about nine o'clock at night, in company with a Mr. Benson a tobacconist; he then said that a reformation could not be effected without a revolution.

Jury. What time was that?—On the 12th of December, 1792; I told him that if he repeated those words, I would take him into custody; he said that it must be so, and it could not be done without it, and that he was a republican, and gloried in being so.

Mr. *Chairman*. What did he say when you told him that if he repeated those words you would take him into custody?—He did not repeat the words, but said, it must be so, it could not be otherwise, it could not be done without.

Mr. *Chairman*. And that he was a republican?—Yes, and gloried in being so; I told him he was a very bad man, and desired he would never enter my room again.

You told him you did not desire to see him in your house again?—Yes, he told me he should come whenever he pleased.

Has he ever been in the house since?—No.

You did not take him up then?—No.

When was it that you gave the information of this, and upon what account?—In consequence of the information I had received on the 22d of October last; I believe two days previous to the meeting in Hackney-road, which was I believe on Thursday.

What meeting do you mean?—A meeting of persons to get at the minds of the people, and to reduce the taxes.

Was there a meeting there?—Yes, in Hackney-road, in the house of Briellat, and in his field likewise.

That was on the 24th, was it?—Yes, on Thursday the 24th.

What number of persons were assembled?—There were, to the best of my knowledge, two or three hundred persons, as far as I could judge.

Among them did you see Briellat?—Yes, I saw him two different times, once in the one pair of stairs room, and I saw him in the yard, standing upon a table I believe, however, exalted upon something.

What was he doing?—Attempting to speak, I believe, but I did not hear what he said, I saw his mouth move.

You were informed on Tuesday, that the meeting was to be on Thursday?—Yes.

In consequence of that information what did you do?—On the information of Mr. Wells, he expressed a great deal of uneasiness for his country, and was alarmed, thinking he would be the first person singled out for destruction. I told him I would go to inform the magistrates; I went that instant and gave information at Worship-street: they desired me to bring the persons who informed me next morning.

You informed them on the 22nd?—Yes.

The magistrates were active, I believe, with their constables in dispersing them?—Yes, I believe four or five magistrates attended and dispersed them.

You were alarmed as well as the rest of your neighbours?—Yes, Mr. Wells was particularly alarmed.

You know Mr. Alport the seedsman?—Yes.

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Was he present?—He was present when Briellat said a reformation could not be effected without a revolution.

He was a respectable man in that neighbourhood?—No man more so.

William Goodman cross-examined by Mr. *Vaughan*.

This conversation that you have been relating to us was so long ago as in January last?—In December last.

And from that time to this, till the time you gave the information at least, you never thought it necessary to say any thing to any person in authority?—No.

Never at all. You are a very loyal man, and yet you kept that a secret all this time?—Yes.

What employment have you besides that of a publican and victualler?—That is the only thing I get my bread by.

Are you not a police officer?—Yes.

You did not think it necessary at all to give information to any magistrate, though you were a peace officer?—I did think it necessary, but I thought the exertions of government might be sufficient to convince Mr. Briellat of his errors.

And you who were an officer of government did not?—No.

You keep a public-house, and saw Briellat there upon the 12th of December last?—Yes.

What time of the day did he come on the 12th of December?—It was, I believe, a little after nine.

Morning or evening?—Evening.

You are a publican, and endeavour to be very entertaining, I doubt not to your customers; you drink with them, don't you?—No. I do not drink in the parlour once in a month.

Did not you exceed a little that day in drink?—No.

You were not at all in liquor any part of the time Briellat was in your company?—Perfectly sober as I am now.

How were you dressed at the time this conversation passed?—I cannot tell what coloured coat I had on.

Had you any coat on at all during the time he staid there?—Yes,

Had you your shirt on?—Yes.

During the whole time that he was there; now tell us what time he came there?—About nine or a little after, and I believe did not go away till after twelve.

From nine to twelve Briellat was present; during that time this conversation passed that you tell us of?—Yes.

What part of the conversation do you particularly recollect to have passed; was it this first part?—No, that was previous to this day.

On the same day?—No.

This conversation about the royal family, was that on the 12th of December?—No.

Sometime before perhaps?—I believe it was some days previous.

Then all that passed at this meeting was that a reformation could not be effected without a revolution?—He said that it must be, when I told him I would take him into custody, it must be so, and it could not be done without, and that he was a republican, and gloried in being so.

I see you are now willing to tell us all that passed though you were not so willing some time ago. Who was present besides Mr. Alport?—Mr. Eden.

Any body else?—Yes, but I do not immediately recollect.

Do you recollect Mr. Pointer?—Yes.

Mr. Benson?—Yes.

And they of course heard all that you heard?—I suppose so.

What part of the room were you in?—Sometimes in one part and sometimes in the other.

And yet this conversation was very short?—This was very late in the evening, and I was not much in the room.

This was cold weather, you were about the fire I suppose?—No.

Then the conversation was not near the fire?—The table was near the fire.

Consequently these persons were collected round?—Yes.

And you amongst the rest?—No.

Then how did you hear it?—I was present in another part of the room.

At a distance from the company to wait upon them, were they eating or drinking?—Drinking.

And you take upon yourself upon your oath, to swear, that from nine to twelve you were by no means affected by liquor?—At no time at all.

You have told us a great deal about this meeting at Hackney, and have been so good as to tell us that it was to work upon the minds of the people, now I ask you upon your oath, what reason you have to say that it was to work upon the minds of the people?—From the information of Mr. Wills and Mr. Benson.

But you assert as fact that it was so; did you see any writing of Mr. Briellat's, that said it was to be so, did you see any thing signed with Briellat's name or any body else that told you it was to work upon the minds of the people?—I had it from Mr. Wills.

Did you see any writing of that kind?—I did not.

Signed by Mr. Briellat? or did you hear any words of that kind spoken by Mr. Briellat?—No, I never had any conversation with him upon this subject.

Nor heard him say that was the purpose of the meeting?—No.

Upon your oath don't you know the purpose of the meeting was to petition for a reform in parliament, or take some measure for that purpose?—No, that report was given there, but not by Briellat.

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You know such a report was given?—Not to me.

You never heard that from any body I suppose?—No.

Who told you it was for the reduction of taxes? (I don't know that there was any crime in that) who told you that?—From information of Mr. Wills.

Who is he?—A hair-dresser.

And so this loyal hair-dresser was very much affected by this?—Yes, and very justly.

And Wills gave you all these notions about this being to work upon the minds of the people?—Yes.

Wills was an alarmist, and very much frightened for his family?—Yes.

You say several magistrates were present at this meeting?—Yes.

Don't you know that notice was given to such magistrates, and that their attendance was particularly desired by the people who ordered the meeting?—No.

You have heard all on one side I see.

Mr. *Silvester*. This is near Spitalfields, is it not?—No, in Hackney road.

Very near Spitalfields, is it not?—Yes.

There are 10,000 manufacturers there I suppose?—Yes, and 5 or 6,000 out of employ.

Were you a regular officer of the police?—Only an extra police-officer, being an housekeeper.

Don't you live by the office?—No, we used to go out once a week, and frequent the different public-houses, and for no other purpose.

Mr. *Alport* sworn, and examined by Mr. *Silvester*.

You are a nursery-man I believe at Hackney?—Yes, in the Hackney-road.

A gardener, nursery-man and seedsman?—Yes.

Do you know Briellat?—Yes.

He is a pump-maker?—Yes.

Were you present on the 12th of December at Goodman's-house?—Yes.

What passed, what did you hear Briellat say?—Briellat came in with a Mr. Benson about nine o'clock in the evening, a conversation soon after took place respecting the meeting at Merchant-Taylor's-hall.

A meeting of the merchants that was held there?—Yes, at Merchant-Taylor's-hall; also about a meeting at the church, when they came to a resolution to support the constitution of this country; a little altercation took place between Briellat, Benson, and myself; they contended that those persons who signed their names at Merchant-Taylor's-hall, had not a right to sign their names at the church, and the discourse ran a little high, some speaking against the administration of this country, and I and some others contending for it.

Mr. *Gurney*. Repeat the last words.—They were rather warm, Briellat was contending that the administration was not as it ought to be. I never expected to be called upon till yesterday, and therefore I can only speak to what I can recollect, and I shall say no more than I can recollect clearly: what was the most pointed at in Briellat's conversation, and what I took most notice of was, that he said he was a republican, and he owned he was a republican, and that there could be no reformation in this country without a revolution, and that is the substance of what I recollect.

Did he say any thing about kings?—I don't recollect any thing particularly about the king; he was speaking in general terms that the king and royal family were a great expense to the country, and mentioned the general drift of the discourse.

You saw this meeting in October last?—Yes, I walked up the road out of curiosity; there were a vast number of people assembled.

In what field?—In a little field or piece of ground behind Briellat's house, more like a large yard than any thing else.

Did you see Briellat there?—Yes.

Did you see him upon the table?—I don't immediately recollect seeing him upon the table; but I think towards the latter end of the business he was, but I will not speak positively to that; I saw him upon the steps of the back-door, and at different parts of the premises.

Cross-examined by Mr. *Gurney*.

Tell us what persons were present at this conversation in December last?—I will as near as I can recollect, myself, Briellat, Benson, Adams, and Goodman.

Was a Mr. Pointer there?—Mr. Pointer, junior, was there.

What time might you stay together?—About three hours.

You stated before, that Briellat came about nine or a little after nine?—Yes.

Was Goodman in the room all the time?—No, he came occasionally backwards and forwards.

Was he perfectly sober all the time?—Yes, I believe he was.

No sort of high words arose between him and Briellat?—Yes; upon Briellat's making use of the words I have related, that he was a republican, and he owned it, and was certain there could be no reformation without a revolution, Goodman resented it, and said, he did not want him to come to his house; that he would not draw him any liquor, and there was a great deal of altercation took place.

Did he not strip himself to fight?—I believe he did pull off his coat.

Did he go any further than pulling his coat off, did he not pull off his shirt?—I do not recollect that.

You saw this meeting at Briellat's in Hackney-road?—Yes.

You say Briellat was towards the close of the meeting upon the table?—I cannot speak positively.

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Did you hear what he said, when he stood upon the table?—No, I did not.

Mr. *Silvester.* Goodman did this at the time?—Yes.

And said, though he was a customer, he should not come to his house again, and should have no more liquor?—Yes.

Joseph Adams sworn.—Examined by Mr. *Silvester.*

You are a baker?—Yes.

A master baker, and live in Holywell-street?—Yes.

Was you at Goodman's on the 12th of December last?—I cannot say as to the date.

Was it at the time when Alport was there?—Yes.

About the time of the meeting at the church?—I do not know any thing of that meeting.

Goodman is a publican?—Yes.

Were you there with Goodman and Hindle, and several other people?—I was.

Tell those gentlemen what Briellat said?—Briellat said that there could be no reform in this country till there was a revolution.

Cross-examined by Mr. *Vaughan.*

During this conversation, there was a great deal of violence, I suppose, of language at least between different people who were disputing according to their different sentiments? There was afterwards.

A good deal of violence and dispute?—There might be a great deal of heat.

And violence of argument?—Yes.

Do you remember any talking about fighting at this meeting?—Yes, there might be, but there were no blows.

Do you recollect either of them taking off his coat, or stripping for this purpose at all?—I cannot say.

Was there any liquor drank during the time you were there?—Yes.

A good deal?—I don't know but there was.

That increased the violence of the argument I suppose?—Yes.

A good deal of hard loud arguments, one crying up the administration, and the other crying it down?—No, Sir, Lord no.

What day of the week was this?—It was of a Saturday.

John Hindle sworn.—Examined by Mr. *Silvester.*

What are you?—An auctioneer.

Where do you live?—In Shoreditch.

Were you present at Goodman's?—Yes, Briellat was there and Benson, and I was in the room before they came.

What did you hear Briellat say?—They were disputing respecting the signature that had been at Hicks's-hall, and at our church, and that brought on some disagreeable conversation.

Where?—At Merchant-Taylor's-hall, and at our church, and Briellat's sentiment was, that he thought there never would be a reform.

Mr. *Chairman.* Tell us what he said, not what his sentiments are?—He said, he thought there never could be any good done in this country, till a revolution had taken place. I was displeased with the conversation, and I went away an hour and a half before they went away.

What time did you go away?—I went at eleven o'clock, and they stayed till after twelve.

Goodman was not drunk, was he?—I cannot say.

You are sure these words passed at that time?—Yes.

Cross-examined by Mr. *Gurney.*

Favour us with the words exactly that Mr. Briellat used, as well as you can recollect them at this distance of time:—That there would be no good done in this country till a revolution had taken place; that he was a republican, and gloried in the name.

Are you positive that he made use of those words that no good would be done in this country till a revolution had taken place, and that he was a republican and gloried in the name?—Nearly so, it is a long while ago.

Were they not that a reformation could not take place without a revolution?—That there never would be any good done without a reformation, and that could not be got without a revolution.

Edward Woodbridge sworn.—Examined by Mr. *Fielding.*

In what condition of life are you?—Apprentice to Mr. Brown, in Shoreditch.

What trade is he?—A butcher.

Do you know the defendant at the bar, Briellat?—Yes.

Have you known him any time?—I have known him several years past, while I have been apprentice to Mr. Brown.

And he was no stranger to you at the time you saw him at Mr. Davis's?—No.

Davis is a cheesemonger?—Yes.

Where does Davis live?—The corner of Webb's-square.

When was it you saw the defendant at his house?—On the 17th of October.

That was on a Thursday?—Yes, in the evening.

How many people were in the house of Davis?—There was one besides Mr. Davis when I went in.

Did you go into his shop?—I went to speak to a man that was in the shop.

What was his name?—Mr. Horam.

Was Mr. Briellat in the house at that time?—No, he came in afterwards.

What time was it?—About six in the evening; soon after that came in another man, whose name I did not know.

Have you learned since?—I believe his name to be Fortescue, a wheelwright.

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Was Davis in the house?—Yes, Fortescue came in before Briellat; there were four of us when he came in.

Upon his coming in or at any time afterwards what passed?—Briellat came in after these men; he came to the door and said, I hope I see you all brother citizens; then Horam said, yes, Mr. Briellat, you make four now you are come, but here is one here I cannot answer for, meaning me. Davis then asked Briellat what he had heard; then he said he had heard that the duke of York had nearly been taken by the French; Davis replied, so had he, but it was God's mercy he was not, and turned it off rather with a sneer; then Briellat said, yes, it was God's mercy, but a thousand pities, for he wished that they had him then in France; after that he sat down in the shop; he then pulled a book out of his pocket, that he said was wrote by an anonymous writer some years ago: then he read a passage from it concerning the revelations of the first and second woe, wherein he expressed there never would be no good times till all kings were abolished from the face of the earth, and it was his sincere wish that there were no kings at all.

Did he read it so or say so himself?—He read it so from the book; and then he said it was his sincere wish there was no king at all; then he wished that the French would land an hundred thousand men in England, and fight against all the government party; and then there was one came in, that I believe to be a journeyman dyer.

First of all, let me ask, what he did with the book out of which he read that passage?—I believe he put it in his pocket.

For mere curiosity sake, I ask what sort of a book it appeared to be?—Not a very large one, a bit of a pamphlet.

It was not a bound book?—No.

Then there came in a journeyman dyer, as you believe?—Yes, the dyer spoke to Horam, and said he was going down Bishopsgate-street, to sign his name at Eaton's (what that was for I don't know) and he asked him to go with him, and Briellat said he would go too, and that is all that I heard.

Jury. Did you hear him say what was the title page of the book, or who was the author of it?—No, I did not hear no farther than he said it was wrote by an anonymous writer some years ago, but who it was dedicated by he did not mention.

Had you an opportunity to see whether it appeared to be a printed book, or a manuscript writing?—I was about as far as I am from you, and I thought it to be a printed book; I did not go to look at it.

After this journeyman dyer had put his question to Horam and Briellat, they went out together?—Yes, and said they would go with him with all their hearts.

Did you hear any thing of Briellat afterwards?—No.

Cross-examined by Mr. *Vaughan.*

You live with Mr. Brown, the butcher?—Yes.

How long have you lived with him?—I have almost served six years to him.

Has Mr. Brown any partner?—No.

Has he a son-in-law?—Yes.

Who is that son-in-law?—One Thomas Bartlet.

Is he an acquaintance of Briellat's?—Not that I know of.

Is he any friend?—Not that I know of.

Nor an enemy?—Not that I know of.

Had they not a battle together?—I have heard of it.

Was he not beat in that battle?—No.

You never heard Bartlet say any thing about this when you went to give information to the magistrates?—No.

Who went with you?—Mr. Goodman; he was at our house, and said he was going there, and I went with him.

Going to whom?—To the justices in Worship-street.

And you said you would go with him?—Yes.

For what?—To relate what I had heard him say.

Did you tell Goodman before you went?—No, I said nothing to him.

Not a word you told to the officer, all the way you went with him?—I spoke to him, but not concerning that.

Did you think him an improper person to mention it to?—Not at all, because I know him to be of the contrary party.

Were you afraid of his telling the republicans of it?—No, I was not, because he is against the republican party.

What was it you told the justice?—First of all I told the justice what I have related here concerning Briellat, afterwards what I heard the dyer say at the house of Davis the cheesemonger in his shop; I said to this dyer, what you are for no king? and he said he was for no king at all.

You told the justice what passed, and what you heard Briellat say; now tell us the precise words that you repeated to the magistrate, as having been spoken and uttered by Briellat?—I told the magistrate I was in Davis's shop, the cheesemonger's, on the 17th of October last, on Thursday evening; and as I mentioned them before, I need not repeat them again. Fortescue came to the shop; Briellat came to the door and said, I hope I see you all brother citizens; then Horam said, yes, Mr. Briellat, you make four now you are come, but here is one here I cannot answer for, meaning me. He then entered into discourse that he heard the French had been beat by the Spaniards, and he seemed sorry for that; afterwards he said he heard the duke of York had nearly been taken by the French, and Davis said, so had he, but it was God's mercy that he was not; Briellat then

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said so it was, but it was a thousand pities, for he wished that they had him then in France. Then he took out the book out of his pocket that he said was wrote by an anonymous writer, some years ago; then he read a passage from it concerning the revelations of the first and the second woe, wherein he expressed there would never be no good times till all kings were abolished from the face of the earth; moreover, that it was his sincere wish that there were no kings at all; then he wished that the French would land an hundred thousand men in England, and fight against all the government party.

Those were the words, that it was his wish that the French would land one hundred thousand men to fight against all the government party, and then he read out of the book respecting the revelations and the abolition of kings?—Yes.

Mr. *Vaughan*. I submit that whatever shall be read at any time, in any place, when it shall afterwards be brought forward as matter of crime against any individual, it ought not to be brought forward in any way but as a libel, because the better evidence would be the book itself, and that book ought to be produced.

Mr. *Fielding*. We have passed over the book as a most harmless thing; what the man said afterwards we rely upon, and therefore it is merely an introduction to this, and which I give you the benefit of, if you can derive any benefit from it, but it does not form a part of the charge.

Mr. *Vaughan*. It stands upon the indictment as a criminal part of the charge.

Mr. *Silvester*. No such thing.

Mr. *Chairman*. I don't understand that any of the words laid down in the indictment, are the words that the witness said he read out of that book; but he read certain other words, and then he makes his own observations.

Mr. *Gurney*. Give me leave to read the words. In the third count it is laid, there never will be any peace or good times till all kings shall be abolished from the face of the earth.

Mr. *Vaughan*. I submit that this should be presented as a charge of libel, and not a charge of words; it is the publication of a libel.

Mr. *Fielding*. Here again, to be sure, my friend's observation, which is ingenious, meets with a most immediate answer; if we had chosen to have charged him with the publication of this book, we might, but if he utters any such words of himself, he is chargeable with the uttering, without any reference to the book.

Mr. *Gurney*. I understand that it is now a little altered. I understood Mr. Fielding that, that part which Mr. Briellat read was used as introduction to evidence, because it was said that those words were not in the indictment; now it is found that these were the words in some counts in the indictment; then it is a little changed and said, no we do not make that an introductory part of the evidence to that which relates to the indictment, but we charge him with having adopted the sentiments of that writer, and therefore uttered seditious expressions.

Mr. *Fielding*. My learned friend says, that whatever objection he has stated, I have given answers to, that is all he says. I confess, as to that which he read from the book, as I do not think it would be a matter of aggravating the charge extremely, I rather apply to the evidence, which is given of his own observation after reading that passage.

Mr. *Vaughan*. If you give it up as a part of the charge, the gentlemen of the jury will recollect——

Mr. *Fielding*. It cannot be given up as a part of the charge.

Mr. *Chairman*. What has been read out of the book, which is a charge in the indictment, is nothing; it finishes, that there never would be any good times till all kings were abolished from the face of the earth; and then he comes with his own observations upon it: then he said, for I particularly asked the question, whether he went on reading, but no, he leaves the book there, and says it was his sincere wish, that there were no kings at all; and then afterwards went on and said, that he wished the French would land an hundred thousand men in England, and fight against the government party; this is his own observation after having read from the book, and is not in the book at all.

Mr. *Gurney*. Your notes, Sir, are perfectly correct, and all we state is, that there would be no good times till all kings were abolished from the face of the earth, cannot be evidence against him, because it was read from a book, we object to that being charged in any other way than that of a libel. In the fourth and fifth counts are these words;—there will never be peace, nor any good times, till all kings are abolished from the face of the earth. If I utter any thing seditious, it is no matter whether I say it independent of the book; if I utter them as my own principles, I am liable.

Mr. *Vaughan*. If I read out of a book, the best evidence must be brought which the nature of the case admits, which is the book itself.

Mr. *Fielding*. The book is alone in the possession of the aggressor, and therefore we must produce other evidence.

Mr. *Vaughan*. Tell us at what time Briellat came in.—*Woodbridge*. About half after six.

What time did you go away?—About half an hour afterwards.

How long might it take the reading of this book?—He was not long reading that book.

How long?—I suppose he might be five minutes reading those words, and then he left off.

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Did you go out then?—No, he left off when he had read those words, and said it was his sincere wish that there were no kings at all; that was not read in the book.

Who was present in the shop besides?—Mr. Horam, the dyer, Mr. Davis, and this other man.

Then there were yourself present, Mr. Horam, the dyer, Mr. Briellat, Mr. Davis, and another man?—The dyer came in afterwards.

But when you went away who were present?—The dyer, Mr. Horam, Mr. Davis, Mr. Briellat, and the other man, five in all.

Do you know his name?—No, I heard say it was Fortescue. I did not know it then.

Do you know the employment of the other men?—One was a drover, Horam; another was a dyer, I don't know his name; the other is a wheelwright, I believe Fortescue.

Mr. *Fielding*. I will not trouble you with another question, but I want you to repeat your idea, you say you went to the justices, because you thought it your duty so to do?—I did, I thought from those words that worse might come of it, and thought it my duty to go.

Mr *Fielding*. You regarded your duty to your God, your king, and your country, when you did it; you are a very good lad, and I tell you that for your satisfaction.

DEFENCE.

Mr. *Vaughan*. Gentlemen of the jury; It falls to my lot this day to have the honour of addressing you on behalf of the unfortunate, and in my imagination of the very injured man, who now stands at your bar. And when I say so, I consider it in part a subject of satisfaction, in part a subject of extreme sorrow. It is to my mind a subject of extreme sorrow, that questions of this kind should be brought forward, when no necessity upon earth can call for them from any persons whatever. I conceive so for this reason:

Either these charges are true, or they are false. If they are true, what do they produce to the public eye but this; that there are among our fellow-subjects in this country, men discontented with the constitution of its government, who therefore in moments of irritation, of liquor, or of displeasure, when they are put off their guard, express this disposition, and that they are then extremely sincere? If they are sincere, what follows from that? Why that so many persons do not reason like ourselves upon this constitution, and that finding in it defects, they wish to have them rectified. It is to be lamented that we should not all of us be unanimous in the applause of that system which very many of us are desirous of defending with all our might, and with all our strength. But I say it is a subject of extreme sorrow, when such dispositions are not confined to the persons who declare them; when discontent sexpressed in such circumstances are brought forward in an audience like this, in a public court of justice, and so made a matter of public notoriety; and particularly, if afterwards they are reported as they mostly are, and as they always ought to be; because making known the proceedings of courts of justice is one of the most essential supports of our liberties, of our properties, of our lives. It will happen that this discontent and the reasons of it are spread abroad among the people. It is true, they may take no effect. Some may fall out by the way side, but some will fall upon the fertile soil. Many of them will undoubtedly imprint themselves upon the minds of the inhabitants of this country.

So much for these accusations, if they are true. But if they are false, what is the consequence then? though they are false, if they are sworn to, the person brought here for trial must in consequence of that be punished, and punished, as all of you know, very severely indeed. The reason of it I do not inquire, the reason of it I am sure I do not understand; but certain it is, that within the present century at least, and down from that glorious era, which all of us look back to with joy and gratitude, from the time of the glorious Revolution, words—words as such, libels—libels as such, never were punished with such extreme severity as they are at this day. If then it be possible that such a charge should be false (and that it may be false it is not very presumptuous to suppose) what reflections must arise in your minds, what in the mind of every well-meaning man, when he considers, that the result of your verdict must be an imprisonment of the Lord knows what length, a fine to the Lord knows what amount, and distress to a man and his family such as none of you are able to calculate or conceive. It is for you to look after the evidence, and into the nature of the charge, so as to observe how far the one squares and applies to the other.

Gentlemen, you will pardon me for saying so much in this respect; but we live in times which are somewhat strange. We live in times, when word-catching and libel-catching seem to be the fashion of the day; when men seem to think they recommend themselves, and to suppose it the genteelest thing in life to call down others for their unguarded expressions, and to dignify the character of an Englishman with that of a spy and an informer. I hope that none of you partake of that character; I believe you do not, and I judge so from your appearance; not that I mean to flatter you; I thank heaven I have not been practised in this profession a sufficient time (although I have been accused of ingenuity, which I have not) to acquire that manner, which puts a force upon our nature, so as in addressing a jury to convert their passions and prejudices to the purposes of injustice. That will make no part of my conduct: I give nothing but a plain story to-day.

Gentlemen, it is most true, that Mr. Briellat does think, and give me leave to think so

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too, that a reform is necessary in some part of the constitution of this country. God forbid I should likewise think that that reform cannot be effected without a revolution! but that I have a right to say so, and that I have a right to tell all mankind so, is what I am assured of from every observation which I have been able to make;—from conversations, and particularly the conversations of those who are the most active in opposing this reform, and in bringing forward this disgrace to our country, this gang of spies and informers, and to place their fellow-citizens in imprisonment and ruin them by fines.

It is to prevent reform and not sedition that these men rise up with so much force and tell us, whenever we speak of reform, (for this is the language they hold,) "There can be no reform without a revolution." Whenever you give them reasons why the county of Middlesex, which contains so vast a number of inhabitants, should send more members to parliament than Old Sarum, which has not two houses in it, they always say, but how will you help it? here are gentlemen in considerable power; here are persons of considerable fortune and authority, who have tenants and servants, and tradespeople whom they employ; all of them perhaps dependent upon these gentlemen for support; what then will you do? Why, if you want to obtain a reform, if you want to procure that the borough of Old Sarum shall not have as many members as the county of Middlesex, or if you want to procure that the county of Cornwall shall not have within two as many representatives as the whole kingdom of Scotland, which contains 4,000,000 of people, how will you effect it? why it must be by force, and no otherwise, because this power will be maintained by force: force must be opposed to force, and therefore a reformation cannot be effected without a revolution. This is the language I have heard from what we used to call in former times Tories, but now, in the cant language of the day, Aristocrats; this is the language I have heard them hold. Gentlemen, had I brought such an one to this bar, and said, "Sir, on such a day you told me so and so," (and I could have brought many) what sort of an opinion would you have had of me? what sort of an opinion would my friends have had of me? what sort of an opinion would my country have entertained? Gentlemen, I think you would have treated me with scorn, I mean if I had been the individual who had brought forward that prosecution, I don't mean as the counsel, because we are all to do our duty when we are retained; but had I been the individual who had brought forward the prosecution, would you not have said, you deserve to be kicked out of every company? and certainly I should: for I should have been breaking every tie between man and man; I should have been betraying the dearest rights, the honest confidence which I hope all Englishmen feel one to another, and I should have been cutting the cords of human society.

Now, suppose a man is of opinion (as I have my particular private opinion) that a reform of various abuses is necessary, abuses will creep in without any man being in fault; the rust of time will introduce abuses in moral and political things as well as in natural. If this be so, where is the harm of complaining of them? Where is the harm of representing them by writing or conversation? Where is the mischief done to the country, when I point them out as matter to be remedied, and when I take peaceable means as a mode of remedy? None; none that will warrant the innuendos in this piece of parchment: this piece of parchment tells us that revolution means a subversion of the government. Gentlemen, I deny it flatly; it is no such thing; for we have had a revolution, and a very glorious revolution it was, although it cost a great deal of blood and a great deal of treasure—a great deal, because any is always too much. But in comparison with the other revolutions we had but little. What was that revolution?—Was it a revolution that subverted the constitution of the country, or was it a revolution against those who wished to subvert it?—Was it a revolution in favour of our liberty and property? or a revolution hostile to both?—Why then to say that when a man uses the term revolution he must necessarily mean a subversion of the government, it is a subversion of language and of justice; it is a stab and injury to his peace.

Having admitted that this man thought then (and I am sure he has more reason to think so now) and said, as a means and not as the end, that a reformation cannot be effected without a revolution, which he perhaps had heard from some of these tories of the day, he is brought forward to answer for it as a criminal charge, and you will be required to find these facts (for which he is to go to prison the Lord knows how long, and pay a fine of the Lord knows how much) if you find him guilty. It is what shall appear upon this parchment, and no more, that is what you will be called upon to state, so that this man shall be punished. But if you find him guilty, you find that revolution means a subversion of the government, you must find him guilty of meaning that, because the gentlemen drawing the indictment are pleased to put that construction upon the word revolution by their innuendo. Gentlemen, the word revolution means no such thing, it means the revolving of things and returning to the point from which they first set out. That was done at the revolution. James wanted to ruin the constitution; when James abdicated the throne and William had delivered this country from slavery, then took place the revolution; then was the glorious revolving of things; then it returned to its original state, and then it was that our benefits were complete.

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Now this part of the charge I admit with all my soul. If you can take upon yourselves to say, that that observation is criminal, which I am sure you have all heard before, viz. that force can only be repelled by force, or that reform without revolution cannot be effected, nay, if you have not heard that from people of all sides, it will seem very strange to me. But if revolution must mean a subversion of the government of the country, and making that observation is criminal in the sense of this indictment, why then you determine this, that no man shall dare to say what he thinks upon any political subject. You will have said that every man ought to look around him when he speaks, and to see if there is not a spy, or an informer, or a butcher's boy within hearing. You will have said there shall be an end to all that honest communication which Englishmen in the frankness of their hearts hold one with another. But this it is impossible to prevent at any time, and therefore it would be wiser to sew up men's mouths and shut their ears, and in short destroy all their senses; for these prosecutions never did at any time put an end to the fair declaration of public opinions. I am sure in this country they never did; for, take history where you please, I am sure you will always find that men spoke their opinions, and sometimes more than their opinions; and why? because the addition of prosecution was in theirs addition of grievances. They thought it ought to be prevented and withstood, and therefore it was that these prosecutions had not their effect.

In what manner did this conversation arise? there was a set of men at this public-house, some abusing the administration, and some praising it, some thinking that taxes were good, and that a number of employments were good, because they were employed in them, others thinking that the reduction of taxes would be good, for so the witness understood it. Whether the reduction of taxes be possible or no, is not now the subject of inquiry; but it is a very common and natural subject of conversation, for we all know that we are taxed from the hat upon our heads to the shoe upon our feet. If every thing we put on reminds us of taxation, it is very natural that we should talk of it; it is very natural that we should look to see from what sort of a source this fountain flows; and then it is very natural that we should talk of the minister who imprints his taxes upon our hats and our gloves, and our medicines; in short, upon every thing, for we can neither be born, nor married, nor buried, without a tax. In the name of God, is it possible not to think a little about the actors in such a scene? when we see stamps in every corner of the street; in every perfumer's shop—in every stationer's shop—in every hatter's shop, and in every glover's shop, when each of them is sticking a piece of paper into your gloves, your hosiery and perfumery, in order that you may not go and inform against him. If this is to go on so, what is the consequence? that men will complain, that they will talk of reformation, and if they talk of reformation they do right, and they do laudably. We have a right to complain of taxes, when we think them excessive, and we have a right to complain of persons laying on those taxes, if they act improperly; for they accept their places, aye, and enjoy the profits too, upon that condition. I dare say, neither Mr. Pitt, nor any other persons about him, care for themselves two-pence about these prosecutions, because they do not not gain any thing by them; but there are others that do; for instance, this extra police officer, employed by some of the virtuous associations that we have seen for carrying on prosecutions: what was the witness Goodman's employment at that time? he was an extra police officer; and what is an extra police officer? Why a gentleman that expects to become a police officer, with a little of the sweets of the profit beforehand—a police officer in reversion, he was not apprentice to the trade—he was only upon liking. He thought he had made a complete quibble by his answer, and I defy any man to say, he ever saw an evidence given with zealous malignity as his evidence was given; for the rule of evidence is this, that a witness is to testify to a matter of fact, and not to reason; but he goes farther and argues the case; for this extra police officer that was, I suppose the real police officer that is,—he tells you, that Mr. Briellat was going to a meeting. It was held in a field of his at Hackney. It was to work upon the minds of the people. Where did you hear that? Why, from Mr. Wills, the hair-dresser! who was frightened for his family, and thought all the democrats were coming to eat him up alive.

You see, gentlemen, how zealously he goes out of the question: but I beg you, for your own sakes, to consider very seriously, that if you suffer your minds to go for one moment out of this charge upon this indictment, if you find the defendant guilty of words which were spoken, but not presented on this parchment, pardon me if I say, you are foreswern men; for certainly this only is the charge that you are to try—this only is the charge that you are to find proved or not. Why, then, how do the prosecutors find themselves? Why, they say, here is a man who tells us, that a reformation cannot be effected without a revolution. They know, however, there is not much in that, and particularly because it passed a long while ago, and juries do not like stale prosecutions any more than they like stale goods. Then to bolster this up, they take you to the Hackney meeting, and tell you a long story, there being a number of people collected, so that then the learned counsel will have an opportunity of mentioning the protestant associations in the year 1780, and the conflagrations then produced. Those riots no man remembers

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with greater horror than I do; but what did that proceed from? Did it proceed from sentiments of liberty? Certainly not; for it was for the suppression of religious liberty; the Roman Catholics were under parchment chains, which, it must be confessed, bound them very tight. When they were dangerous to this country, at the era of the revolution, acts of parliament were made to restrain them, so as that it should not be in their power, upon resorting to arms and violence, to overturn that constitution, a great part of which consisted in the protection of our liberty. Time passed on, and the Roman Catholics dwindled in number, till they were reduced to a very small and not a dangerous body. They became attached to that constitution from which they derived advantages, and therefore the generosity and the justice of the country said, let them be relieved. But what said those protestant associations? they said, this is inimical to our religious liberty, because our religious liberty is the protestant religion. Now this is exactly what the Roman Catholics said a hundred years before, and exactly that for which the protestants were burnt in Smithfield. Then, I say, those protestant associations were not for liberty but for fanaticism and despotism. They were mischievous things, and I wish their examples had not been lately followed. But so far was this meeting at Hackney from bearing any such character, that it was constructed upon a different, and I will tell you what model, not of tyranny—not of fanaticism—not of fire and sword, but to restore those benefits which, I say, we have lost since the revolution. If every such attempt is to be prevented, if we are to go on and have this glorious fabric frittered away, we shall at last become as despicable a nation as any now in Europe.

Gentlemen, for this purpose a number of men did undoubtedly think it necessary for them to do in their own defence what many others have been ready to think it necessary for them to do in the same situation. They thought it necessary to associate, and they associated, upon what model? why exactly upon the model of the right honourable William Pitt, that immaculate prime minister who now loads us with taxes, the present prime minister, but not the minister of that day. These were the virtues of him who was not minister, but of the extra officer, who was upon liking. Says he, we must associate and have a reform in parliament; for if there is not one, how are ministers to be honest? He comes into the House of Commons, and he finds there men, very honest men, and those men associate with him in the same cause. Says he, restore the constitution of the country, or you will never have a virtuous executive government; restore your constitution, or you will never be a virtuous legislative government; but how restore it? against power, against property, against placemen of all descriptions, from the auditor of the exchequer down to the lowest officer of excise. Do not these people spread themselves over the island? Are not the ramifications of their influence perceived in every town and village? They have the strength—the weapons—the arms—the force. How will you meet them but in this way? union is a strong thing—let us make a bond of union among ourselves for the liberty of the subject, as they have for themselves in their places and pensions, and let us endeavour by that means to obtain a redress of our grievances. That was exactly the model of the association which took place some time in 1782 or 1783, immediately after the example of those fires which have been alluded to, and it was carried on with the present prime minister at its head. Then is it so criminal a thing to associate? Is it so criminal to look after a reformation which could, they thought, be effected without a revolution, but which has not yet been effected any way. Upon this model others thought they might associate, and as no skirmish or bloodshed, or no violence had ensued from this former association, so they thought they also might find some men honest enough in the House of Commons or elsewhere who would represent their grievances to the legislature, to the sovereign, and to the aristocracy; so that we should have the benefit of that reform. That is what these persons thought—that is what Mr. Briellat thought. I will tell you what was his conduct, how Mr. Briellat came to be mixed with it at all; for this meeting having been introduced here in order to bolster up the other parts of the charge, I am forced to explain why these persons met. Gentlemen, there are, as we all know, a monstrous number of committees of those bodies who call themselves associations against republicans and levellers, but they would give themselves a far better name by calling themselves associations for receiving informations, anonymous letters, and carrying on prosecutions. These gentlemen have 150 committees in different parts of this capital. I don't say, that no honest man joined them; one honest man did join them and soon left them, for very good reasons, and he has published those reasons to the world, which are well worth any man's reading.

Gentlemen, there is not a word spoken by any of you in a butcher's shop, or any other, but it may be carried to the office of these gentlemen, exactly as at Venice, where you may throw a piece of paper into the mouth of a lion (and by-the-by the comparison is not a bad one) when immediately prosecutions are awarded. I know these gentlemen take great merit to themselves for their conduct in these instances. Many of these associations have not misconducted themselves at all. I know individuals belonging to them who are honest men, and I wish all honest men had gone among them, to have prevented the mischief they have caused. But gentlemen,

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what is the consequence? that any malicious enemy I may have may take advantage of any loose word I may speak in a moment of pain—in a moment of joy—in a moment of sadness, and that he may carry his information to the lion's mouth at the committee of his parish, it shall go to the central committee, and from thence to the solicitor to the treasury, or the attorney-general. Whereabouts are we when thus we are put into the hands of any man in this way, into the hands of the lowest class of the people, of butcher's boys, and police officers,—to accuse us on any day and at any distance of time that they please. Is this right? is this good? are we safe? I don't know whether we are or not. I don't determine these questions. But it is a good reason for us to examine into such prosecutions and to scout them as they deserve, if they are instituted from private motives. I will tell you the whole as it passed. Mr. Briellat found these persons, associated for liberty, were desirous of forming some kind of system by which their cries might be heard, as well as those who were afraid of republicans and levellers, so that they might not hear any more of St. Ives, St. Mawe's, or Old Sarum, or any such rubbish Gentlemen, this reforming of boroughs is not the business of yesterday. All of us have thought it, most of us, I hope, have said it was necessary: Every one of us has a right to associate for the enforcement of it. However, there is a great reason to suppose that the object of these prosecutions go more to this than to that moonshine charge of sedition, which, employed as it now is, no man understands, for sedition is in every man's mouth, but in no man's book. Every man interprets it according to his own sense, according to his own passions, and his own interest: the people wishing a reform, knew so well that this was the fact with a great many of their acquaintance; they knew so well the prejudices that had gone out, that they went to two magistrates and said, we mean to have such a meeting; there are some hundreds of us, we can find no room to meet in; let us, for God's sake, have the pleasure of your company, to see that we do nothing and wish nothing contrary to the established government. Two magistrates accordingly, as I am informed, attended, and the meeting broke up with perfect quiet and decency. Why then we are told that this was Mr. Briellat's field? he let the justices come into the field: and why did he let them come into the field? he had as good a right to shut them out as any body else, unless they came in a certain form; however, they came, and the meeting broke up in peace. They accomplished their object. What their object was I don't know precisely; but it was an object favourable to reform. Mr. Briellat then got upon the table, and said something which the witness could not hear; there are persons here, I dare say, who were present and heard what he said. It was this; says he, "Gentlemen, we are reproached with being men enemies to peace, let us show our adversaries they alone are of that description; we seek liberty, but liberty is a peaceful thing and not a destructive one. Then don't let your passions break out, do not applaud, nor be clamorous, express neither approbation or disapprobation, but let every thing be quiet, and when we have done depart to your own homes peaceably." To get upon the table, is that a wicked thing! or was it a wicked thing to tell people, as there were a great many of them, not to make a noise? I am informed, it is incredible the peace, the silence, and the quiet with which this meeting was carried on. Well, Mr. Briellat was the cause of this; he did not give them a quantity of beer, rich man as he is. When they had done their business, they all depart to their homes and so does he; but what happens?—Mr. Briellat, at the moment that he showed this desire of a reform in parliament and of effecting it, this peaceable mode of obtaining a remedy (not by fire and sword, as he has been represented), is seized by a warrant, on returning from this meeting. They thought they had caught him on the hip, for they had found Mr. Goodman, the extra police officer, who in January last had heard these words, had bottled them up to this time, and now brought them out as brisk as any champagne for the occasion. But, gentlemen, is this the manner in which the prosecutions of a great and magnanimous nation are to be conducted? Surely, surely, we are come to a sad pass, cast low indeed, when we are brought to this situation. And low indeed must that administration be brought, which resorts to such expedients; for this I will say, that all the experience of this, and all the countries that I have ever seen or heard of, will prove that the administration which cannot subsist without prosecution is in a gallopping consumption. I am sure, it is a sort of thing which every honest mind must be disposed to resist.

Gentlemen, you see that this man was committed upon the evidence given to the magistrate by Goodman, and upon the evidence of this butcher's boy. I tell you that no part of the first charge is upon this indictment, but that reformation could not be effected without a revolution. Now, if you go out of the charge, and venture to condemn, upon any other words these persons can swear to than such as are upon this parchment (this only being what you are to determine the guilt upon), if you go out of it, you are doing contrary to your duty. I say then, all that has been proved, with respect to this first charge is, that the defendant said, a reformation could not be effected without a revolution, excepting the mixture that has been made of what passed in the field.

Mr. *Chairman*. It does not appear to me that any evidence has been given as to what passed in the field.

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Mr. *Vaughan*. Certainly not, Sir. Gentlemen, having done then with this part of the indictment, I proceed to the remaining part. And there I own I see that which would give me infinite pain if I did not know that I had evidence to resist it of infinitely greater credit than what is produced; for how many persons were present at this time?—Five persons. How many are brought in support of the charge?—Only one. Woodbridge, a butcher's boy, and that is all. He heard something which was read out of a book which he goes and reports at home, from whence he accompanies Goodman; but he does not say a word to him about it till he gets to the magistrates. Gentlemen, I have not the evidence to prove it, or I could show you that it was founded in mere malice. But I have negative evidence. I have this kind of reproach to make to the prosecutors; why did you not call the other persons that were present? there were other persons present; but you don't bring forward any one of them. All that you bring forward is the butcher's boy, although five persons were present. When was this? Last October—they were not dead—they had not buried their information from December to the present time. Gentlemen, were I not to call them, which I will do, it is enough for you to conclude, that their evidence is kept back, because this charge could not be otherwise supported.

Gentlemen, you have before you a junior counsel, when opposed to gentlemen who have had the experience of twenty years, who know how to coax a jury, and who know how to keep down an evidence, and no man feels so distressed as I do when I have persons of that description to cope with. But, gentlemen, I will set my foot upon a rock—the authorities of the law. For this purpose I have brought a book which all of you have heard of, and many of you have read, and I selected it for that reason. It is said by Mr. Justice Blackstone, upon the subject of evidence, as follows: "The one general rule that runs through all the doctrine of trials is this, that the best evidence which the nature of the case will admit of, shall always be required, if possible to be had." Was it not possible to be had? It was—these people live in Shoreditch—they are tradespeople in Shoreditch. Woodbridge tells you, he knew their places of residence, why not inquire of him?—why, because the others say the butcher's boy does not speak truth; they say, he has been guilty of an infamous falsehood. Then, I say, they have not brought forward the best evidence, because the better evidence was many persons, and not one single person: if there is any better evidence that might have been produced, the very not producing it is a presumption that it would detect some falsehood which is concealed. Now then, gentlemen, though five persons were present, they came down here with only one witness to justify the last part of the charge, which I deny; I admit the former; I say, the former is not criminal. There are cases where the evidence of one witness ought to be valid in the minds of a jury; in the case of murder, for instance, where only one person is present, certainly the evidence of that person must be received; for such a crime as that must be punished, and the only way to punish it is by bringing evidence, and the only evidence is one, and therefore that only evidence is good, credible evidence; but if there are several persons present, that is not the case. You have not my word only, who have not been twenty months at the bar, when my learned friend has been above twenty years, but you have the words of Mr. Justice Blackstone; he says, "One witness (if credible) is sufficient evidence to a jury of any single fact, though certainly the concurrence of two or more corroborates the proof." Then, why not bring more? because they knew they could not succeed upon it if they did. "Yet, our law considers that there are many transactions to which only one person is privy."—There are many cases to which only one person can be privy, and therefore you must be satisfied with that one. "And the law does not always" (*always* in italics) "demand the testimony of two, as the civil law universally requires." This is Mr. Justice Blackstone's account of the nature of evidence. He will not be suspected of sedition; for he was not an ardent friend to liberty. He was only a partial friend to liberty. It is for you to consider whether there is not the strongest presumption against this witness; I will bring to you persons, not butcher's boys, not police officers, or any persons wishing to recommend themselves to favour, but two respectable persons, men who value their reputation as much as any of you—men in the same situation of life with the defendant—men in the same situation of life with yourselves. Now, if we produce such men to the latter part of the charge, we shall put an end to the whole of it; for, will you take upon yourselves, upon your oaths, to say this man is guilty, for saying, that reformation could not be effected without a revolution? I trust you will receive directions from the bench desiring you not so to do. Will you say, that the same idea has not entered into your own thoughts?—if so, will you consider it as criminal? Gentlemen, I think you will not so say, I think you will not be directed so from the Court. You will listen to what the Court shall observe with all respect; but I will remind you of the saying of one of the sincerest friends to the constitution, as then established, whether in its regal part or in its popular one. He says, "That Decantatum, in our books, ad questionem facti non respondent judices, ad questionem legis non respondent juratores, literally taken is true."* Gentlemen, you are

* See Bushell's Case in this Collection, Vol. VI. p. 1013.

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all tradesmen, but I am sure most tradesmen know something of Latin.

Foreman of the Jury. We shall thank you to English it for us, if you please.

Mr *Vaughan.* I was just going to translate it to you. "That Decantatum, that is the maxim, in our books, to the question of fact the judges don't answer, to the question of law that jurymen do not answer, literally taken is true;" that is the translation; "for, if it be demanded what is the fact, the judge cannot answer it; if it be asked, what is the law of the case, the jury cannot answer it." This is the opinion of Mr. Justice Vaughan, in the famous case of Bushell. Then he goes on to say, "a man cannot see by another's eye, nor hear by another's ear, no more can a man conclude or infer the thing to be resolved by another's understanding or reasoning, and though the verdict"——[Here is the material part, the distinction between the judge and the jury, a distinction that juries ought never to forget at any rate]—"and though the verdict be right that they give, yet they being not assured it is so from their own understanding, are forsworn, at least in *foro conscientiæ*," * in the tribunal of conscience. This being the case, I trust you will do your duty, which is a much more interesting duty than mine. Most of you seem to be men of responsible characters in life; you will attend to the observations of the learned judges on the bench, who will make many excellent observations to you no doubt; but you will remember they are not to be the rules of your verdict; that in matters of law they are decisive, but you are the only persons to consider and to determine matters of fact. If you are prepared to determine that every man who says a reformation cannot be effected without a revolution must go to prison, after the manner of imprisonments of this day, you are not the men that I believe you to be. If you can take upon yourselves to say, that all the matters in this record (and you must not travel out of it) were ever spoken by the defendant, if you can say so likewise, you are not the men I take you to be. On the other hand, if you think the honest character of an Englishman is still to be preserved; if you think that a freedom of speech and a freedom of communication is still to go forward between Englishmen, remember that words, if even sworn to, are a sort of things very indeterminate, easily misconceived, and misrepresented, for words are no more than wind: the recollections of men frequently vary it, and the imaginations of men vary it likewise. If this is your opinion, you will find the defendant not guilty. But if those prejudices which have been endeavoured to be instilled into your minds by a knot of men terrible to this country and to its justice, are to give way (which I cannot believe you will suffer them to do) to that which is the main object of your oaths, you have made trial by jury a very bad thing indeed, and the jurors of the country are become (as St. Matthew said of another description of men) "like unto whited sepulchres, which indeed appear beautiful outward, but are within full of dead men's bones."

* See in this Collection, Vol. VI. p. 1012.

EVIDENCE FOR THE DEFENDANT.

Benjamin Davis sworn.—Examined by Mr. *Gurney.*

You are a cheesemonger in Shoreditch?—Yes.

Do you recollect Mr. Briellat coming to your house on the evening of the 17th of October last?—Very well.

At what time did he come?—I believe it was between seven and eight in the evening.

What evening in the week was it?—Thursday evening.

Who was in your shop when Mr. Briellat came in?—Mr. Fortescue, a wheelright, and two other men.

Do you recollect their names?—Yes, one was Horam, and I do not recollect the name of the other.

Those were the persons present, besides the witness Woodbridge?—Yes.

When Mr. Briellat came in, we have heard you had some little conversation about the news, did you see Mr. Briellat produce any book?—He did.

What did he read?—I think it was a prophecy, taken out of the 11th chapter of Revelations, and the 13th and 14th verses, concerning the second woe.

Can you recollect what were the words that he read?—The words, I think, were about the earth quaking, and a tenth part of the city falling.

Was there any thing in that book respecting kings?—Not that I recollect.

Did you attend to what Mr. Briellat read?—Yes; I was close to him.

Did you hear every thing he said?—I did.

Now, to the best of your recollection, did he say any thing whatever, in the reading of that book, respecting the abolition of kings from the face of the earth?—No such thing.

That you positively swear?—Yes.

Did he say any such words, not reading them in the book?—No, he did not.

Did any conversation pass after Mr. Briellat had concluded the reading out of that book?—None at all, not a word.

Then I need scarcely ask you, if there was any conversation, after that, respecting kings?—No.

Nor a wish that there were no kings at all?—No.

If he had uttered such words must you not have heard them?—Yes.

Or any words respecting the landing of the French?—Not a word.

Or, did he express a wish that 100,000 French would land to fight against the government party?—No.

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Can you take upon yourself to swear that no such words were uttered by Mr. Briellat upon that occasion?—No such thing.

Which went out of the shop first, Mr. Briellat or the boy?—The boy, one of his fellow-servants called him.

At what period of the conversation, or of the reading, did he go out?—While he was reading the book one of his fellow-servants came and told him the supper was ready, or something of that sort, and he went away; Mr. Briellat went away with Mr. Fortescue.

Cross-examined by Mr. *Silvester*.

The boy, Woodbridge, was there?—Yes.

And there was no conversation of any sort?—Yes.

What was it about?—He had a little book that he said he was going to read, and he seldom begins a book without reading it through.

Briellat read about the earthquake, and then not a word more was said, but Fortescue and he walked out?—I suppose he read on for a quarter of an hour or twenty minutes.

Did he put the book in his pocket?—I don't know.

He did not say a word about the duke of York?—No.

There was no conversation at all but merely talking about this book and reading this book, and that was all that passed?—No, when Briellat first came in, before he began reading, there were some words passed; he came in and said, how do you do, gentlemen all? I believe that was the words, as nigh as I can recollect.

You won't be positive?—No; I said, how do you do, Mr. Briellat? I hope you are very well. He said, he had been towards the city; and I asked him, what news? and he said, nothing particular; but I am almost tired. O yes, there is news too, says he, they say the queen of France has been tried and cast, and they had sent to the emperor of Germany concerning it, that if he would draw his troops from the frontiers, they would save the queen, and would give him fourteen days to consider of it; and he said, that the French army and the Spanish army had had a battle, and the French had got the better; and, says he, I have got a book that was lent me, concerning the times now in France, a prophecy, I believe he called it, and then he read it.

He did not say any thing about the duke of York's army being taken?—No.

Recollect yourself?—Oh! I recollect perfectly.

Nothing about the duke of York having like to have been taken?—No.

It was a book written by an anonymous writer?—I do not know.

Did he not say so?—No.

Nor any thing about the French attempting to land here?—No.

But all at once he pulled out the book?—No; I said let us have the news first, and the book afterwards.

And, after he had read the book, it was put in his pocket without a single observation?—No.

Not a single observation was made by any body?—No, not a word: away he went and said no more about it.

James Fortescue sworn.—Examined by Mr. *Vaughan*.

What business are you?—A coach and cart wheelwright.

Where do you live?—In the Curtain-road, Shoreditch.

Do you know Mr. Briellat, the defendant?—Yes

Did you see him any time in October last in the shop of Mr Davis, in Shoreditch?—Yes.

Were you present when he came in?—I was, in about five or perhaps ten minutes before he came in.

Will you relate, as well as you can recollect, what passed during the time that you were there with him?—Yes; I was in Davis's shop when Briellat came up to the door, with some irons upon his shoulder, and some fish in his hand; he came in at the door and says, gentlemen, how do you all do? we made answer, we were very well. What news have you, says Briellat? We said, we have no news at all, you are likeliest to know as you have been in the city; says he, I know of none in particular. We said, why, is there none at all? Why, says he, there are two or three things flying; but I don't know what it is particularly, for I have almost forgot, says he, I must recollect; he recollected a bit: why, says he, I will tell you, the first paragraph is, that they have tried the queen of France, and it is reported that she is cast for death, and, says he, they say that they have sent a proposition or something of the kind to the emperor of Germany, if so be as he would wish to save her; the proposition was sent, and they demanded an answer at such a time, about fourteen days, from them; that if so be he would draw his forces from the frontiers, that they would save she and make a good provision for her and her family; that was all very good we thought Why, says he, the French and Spaniards have had an engagement, and the Spaniards are drove from the frontiers, I understand. That is all that I know about that

That was the end of the news?—It was the end of the news; he said, he had got an old prophecy, or something of that kind, in a pamphlet which he had seen somewhere and borrowed, that related to the present state of affairs in France; when the news was over he pulled it out of his pocket and opened it, and began about the middle of it; the beginning of it was in 1717; I took particular notice of the year, because it was the year I was born in.

Do you mean to say, that was the beginning of the pamphlet?—No; the beginning

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where Mr. Briellat began reading, there was a date of 1747, and this history or this prophecy was taken out of the Revelations, John the divine's prophecy, and it went on concerning the revolution in France, as it signified this prophecy prophesied much like the troubles in France at this present time, and it was supposed by the prophecy that this French nation was the place where these troubles should begin.

What part of the Revelations was it that the prophecy supposed to have that meaning?—The 11th chapter, I think; there was to be a very great woe and a very great earthquake, and the tenth part of the city was to fall.

Was this explained to relate entirely to the affairs of France?—Yes; it was supposed that the nation of France was the place fixed for these troubles in that prophecy at this present troublesome time.

How long did the reading of this prophecy last?—He read about twenty minutes or better, near half an hour.

Did you see the butcher's boy, Woodbridge, there at that time?—I cannot say I did see him; there were some butcher's lads at the door, but they were there a very little time.

After the reading, what passed?—Nothing was said, but he shut up his book, took his fish in his hand and went away; I went with him part of the way; I staid till Mr. Briellat went away; he wished the people a good night, and I walked with him to the turning which goes to his house, and I went up Holywell-lane.

Did you hear any conversation about the abolition of kings from the face of the earth on the part of Briellat?—No.

You were there before he came in, and went away with him?—Yes.

During that time did you hear any thing about the French landing 100,000 men, or about the duke of York?—Nothing at all.

Can you positively recollect so as to be able to swear that?—I stand here before God and man, and I would not tell a lie.

James Fortescue cross examined by Mr. *Silvester.*

You live in Holywell-street?—No, in the Curtain-road.

How long have you lived there?—Near twenty years.

In the year 1778 you lived there?—Yes.

You have been a witness here before?—No never upon any thing of any kind.

In no court whatever?—No, no more than a trifling thing before a justice.

Do you mean the jury should understand that you were never examined as a witness in a court of justice?—No.

Never at the Old Bailey?—No, never. I never was there in my life.

Do you remember a man of the name of Edward Sellons?—Yes.

He was an acquaintance of your's, was he not?—Yes.

He lived by Kingsland?—He lived in Kingsland-road.

You have been acquainted with him some time, have not you?—No; but I have some reason to know him.

Upon your oath, were you not a witness in his behalf at the Old Bailey?—No.

I mean a man who was tried and convicted of a highway robbery at the Old Bailey, when you appeared in his behalf?—No.

You remember his being tried?—No; I remember hearing talking of his robbing the mail.

Do you remember his being hanged in the year 1778?—Sellons was not hanged.

Which of them was then?—I don't know, I suppose it was his accomplice.

Then you have heard of it?—I heard he had turned evidence.

And you mean to say, you never were a witness for that man at the Old Bailey?—No, nor any where else.

You never were examined upon that trial?—No; I speak the truth.

You had no concern at all in that trial?—No.

Did you know any thing of this meeting at Hackney?—No, I know nothing of it.

Now, as to this book that was read, there was nothing in it about kings?—No.

Nor kingly government?—No.

Nor a word about monarchy?—No.

What was it that was to be overturned, for I happen to know what book you are alluding to?—I don't know.

Do you mean to say, there was nothing in it about overturning monarchy?—Not a word.

And this book was read and put in his pocket, without a single observation from him or any body else?—Yes.

And as to the butcher's boy, whether he was there or not, you will not be positive?—No; as to Sellons, I was obliged to summon him at Whitechapel-court.

Do you mean to deny that Sellons was either a principal or accomplice in the robbery of the mail in 1778?—I know nothing about it any farther than people say.

REPLY.

Mr. *Silvester.* Gentlemen of the jury, it now becomes my turn to make a few observations upon the defence set up for this man at your bar. You have had a long declamation, of no less than an hour and a half, in which all ranks of men, from the highest to the lowest, have been libelled; there is not a man, there is not a court but what has been attacked, in my opinion, in a very improper manner. In the first place, we are told (and the gentleman avows it himself, that his principles are, that a reform is necessary, and that the constitution can be altered and ameliorated by a set of banditti assembling in fields round this metropolis.

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Mr. *Vaughan*. I said no such thing—that is your interpretation.

Mr. *Silvester*. It is my interpretation. Gentlemen, he justifies at this moment the meeting at Briellat's and says he had a right to call any number of people he pleased together, for the purpose of amending the constitution. He says, the first charge is not proved, because, though it states that this man has said, that "a reformation could not be effected without a revolution," he says, the meaning of the word revolution is, to go back to a former state Where are we to draw the line? Are we to go back to the late revolution in this country, to the state of the savages of America, or to the present state of the people in France, who are without either law or religion; but we thank God we have both laws and religion.

Gentlemen, it has been told you, that the courts of justice have in these times inflicted more severe punishments than have ever been done since the revolution. It does not become us practisers at the bar to find fault with those judgments, which have been given by men of the first character, by men who consider well and judge right what punishments men deserve, nor is this or any other court to be intimidated, and told that these punishments are too severe; it is with the court to punish the offender according to the crime, and to hold him up as an example to deter others from committing the like offences.

Gentlemen, it is told you, and made a kind of triumph, that formerly the system of reform was supported by our virtuous and immaculate prime minister, as if to be immaculate and virtuous were in these times a subject of reproach. But, gentlemen, we are now trying a plain fact, which, I think, is brought home to your satisfaction. My learned friend called upon you to consider your wives and children. I, in my turn, also claim your protection for your wives and children; the only way to protect them is by supporting the constitution and the government under which we all live; for when this is overturned there is an end of all our property, and every thing becomes anarchy and confusion.

Gentlemen, it has been told you, that I personally, having practised a long time at the bar, am possessed of some art, some contrivance. I don't know that any man need to be ashamed of conducting this or any cause to the best of his ability. I don't know that it is a reproach to that gentleman for exerting his abilities in a bad cause, which his certainly is, neither is it a reproach to me that I have had the honour of practising in this court, and before a man who understands law as well as any of the judges. It is the pride of my heart to attend before such a bench, from whence you will hear the law laid down as it ought to be laid down.

The learned gentleman has quoted Blackstone to you, who says, that juries are judges of the law as well as judges of the fact. So they are, and you are the persons to determine the fact, having received your information from the court of what the law of the case is.

Gentlemen, it is told you, that the best evidence that the nature of the case will admit of ought always to be produced and an author is quoted for it. But, gentlemen, it is likewise, by the same author, said, that one witness, if believed, is fully sufficient. So it is; we all know, that in many transactions that pass one good credible witness is sufficient. But it is said, that it is necessary, that every witness should be called. Why so? if the gentleman thought it was law that he was stating to the jury, and did not mean to mislead them, why did he not call all the persons who were present? But as the gentleman perfectly well knows that some persons might hear the whole and others not the whole of it, you are to impute perjury to that boy, who can have no interest, who tells you a plain fact, whose character they have not touched, because they knew they could not affect it; he tells you a plain natural story, that they were conversing about the news, about the duke of York being taken and the army; and then he states, that there was a book, which Briellat had in his custody, and which he read, wishing that all kings should be abolished from the face of the earth. Gentlemen, I don't know whether it has hapdened to you, but it strikes me, that it is a book purporting to be a discourse upon the Revelations, in which the fall of monarchy is predicted to happen in the year 1792, and as people have supposed is applicable to France. Gentlemen, it is said, that we ought to produce this book. Is it so? Who has the book? Briellat himself, for he put it in his pocket; he might therefore have produced it, but he has not produced it.

Gentlemen, two witnesses are called to contradict this boy, and upon whose testimony you are to impute perjury to him. One of them tells you, he does not recollect whether the boy was there, therefore his testimony is not material. The first witness tells you, that Briellat seldom read a book but what he finished, and when he had finished reading, without saying a single word, he put it in his pocket and went away. Is that probable? Is it likely? He takes out a book and reads about the tenth part of a city falling by an earthquake, and not a single observation follows it, not even that it was wonderful that in the year 1747 this should have been predicted, but not a single observation was made. Gentlemen, it is possible that the witnesses may be speaking of different times; for the last witness does not recollect whether the boy was there or not, and yet we are to be told that we are a nation of informers, and that we shall all become informers, which is a disgrace to us.

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Gentlemen, the boy, in my mind, acted wisely, he acted prudently in not talking of this to any body, but going with an officer to a magistrate and telling the story. Some of my witnesses have been asked about being alarmed. Why, gentlemen, one is to be alarmed when seditious men are planting themselves from east to west in various parts of the town. I say, gentlemen, when one sees that, it is high time for every honest man to join to put a stop to it, when persons are collected together thus in every part of the town. When you hear one man speaking seditious words in one part of the town, and another in another, you have reason for fear and for alarm; and a great deal of praise is due to those who stand forward as your defenders. Then the only attack is upon this boy, whose testimony, in my mind, remains unshaken; but what do they say to the evidence of all the other witnesses? Here is Goodman, who tells you that he is a publican, that he heard a conversation, in which this man stated that there should be a revolution, and that nothing would do good but a revolution. His fears are not alarmed till a meeting is to be held at this man's house, at which all the persons in that neighbourhood are called together. Is this a legal meeting? Have we no other mode, or could they apply to none of their law friends to know how they were to be assembled? Have we no sheriffs whose business it is to call a meeting? Have we not two worthy representatives who might have assembled them? But Mr. Briellat is to assemble, in the neighbourhood of Spitalfields, all the men who were out of work, and harangue them upon a table. I don't impute what he said upon the table but to show the disposition of that man's mind.

Gentlemen, it has been stated to you that application was made to two magistrates. Have we any evidence of that? None at all; the fact is not true, and it is not their interruption now that will prove it. They knew the fact would not bear them out, and they, as lawyers, ought to know that that is not the way to call a meeting of the county, the only legal meeting of the county is called by the sheriff.

Gentlemen, have they attempted to show any animosity in this man, Goodman, or is it any imputation upon him that he is a constable? many of you, I dare say, have served the office of constable with credit to yourselves; and whether a man is appointed by the court leet or by the magistrates, does it follow that he is to be a subject of reproach, that he has forgotten every thing that is just and honourable, and that he is for a paltry expectancy to perjure himself? But does it stand upon his evidence alone? No, a very respectable tradesman, Mr. Alport, confirms his testimony in every respect, and then Mr. Adams does the same; he fixes it in the very words of the indictment, he tells you that he said, no good would be done in this country till a reformation took place, and that could not be done without a revolution.

Now, gentlemen, really I ought to make an apology to you for taking up so much of your time upon so plain a question, after the long speech you have heard; in which you have had ministers attacked, the bar attacked, the whole nation attacked, in short every body, that could be lugged in, has been attacked in this business. The gentleman has told you that if you give a verdict improperly you are forsworn; Gentlemen, he does not know you, if he supposes you could give a verdict improperly; he does not know me, if he thinks I could ask you so to do. I wish nothing but a verdict consistent with your oaths, consistent with your consciences. I know you well, you are respectable men in your situation, and you will give a just verdict; whatever that verdict is, I, for one, shall be satisfied. The law has made you the guardians of our liberty, our property and our lives from the highest to the lowest;—the highest cannot do injustice, nor the lowest be oppressed with impunity, and therefore you are to disregard every thing of that kind, on the one side as well as on the other; it is not because Briellat, as has been stated to you, is a man of property, not because he is a man of fortune, or has had the honour to sit in that box, that shall screen him to day—I only wish that persons in higher situations, who are guilty of like offences, were also brought to this bar. Here you have not a low man, it is acknowledged that he is a man of property, that he is in a good situation in life, that he is your equal, and therefore becomes the more an object of danger. It is said this is an improper prosecution. I should be glad to know if you were in the situation of the attorney-general, and a person were to come to you, and lay information that a man had been speaking seditious words, for the purpose of exciting a disturbance in this country; and that afterwards he was about to hold a meeting at his house and in his field, whether you would not think it your duty to bring forward such a man? He hears what the witnesses have to say, and he says it ought to be inquired into; then let a jury of the country inquire whether these facts are true, if true he incurs the punishment due to them; if they are not true the magistrate has been imposed upon, but that is no disgrace to him; for it is the duty of every man concerned in the administration of justice to lay facts of a heinous nature before a court and jury for them to determine whether they are or are not true, and that is the simple question for you to try. I shall not go through the whole of the case about a reform in parliament, for it has nothing to do with it, it is only made use of as an argument on the part of the counsel for the defendant to captivate your understanding, and if possible to prejudice your minds; you are to suppose that all these notable reformers are persons who are your friends, and who will ease you of taxes. It

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may be so in France, which is now the most unfortunate country in the world, without laws, religion or government, and yet you are told that taxation is a burthen which you ought not to bear. I can only say you bear it in common with the rest of your fellow-citizens; here the taxes are proportioned to your property, it does not fall upon the person, but upon the property; it was not so in France, and yet that is made use of as an argument to throw a prejudice upon a prosecution of this kind. And then you are told that there are some rotten boroughs which ought not to be represented in parliament; but whether they ought or ought not is not for us to discuss in a court of justice, nor is it for Briellat to discuss at the head of his weavers near Spitalfields. I say, gentlemen, I ought to make an apology for detaining you so long.—All you have heard has been a declamation and an attack upon the government, and upon those who are administrators of the government of this country, without giving an answer to a single observation; the only point of evidence has been to discredit that witness, and instead of discrediting him, I am of opinion he is confirmed,

Gentlemen, having said so much, I shall sit down perfectly satisfied on which side your verdict will be, because I know you are men of sense, I know you are men of integrity.

SUMMING UP.

Mr. *Mainwaring*. Gentlemen of the Jury; This is an indictment against the defendant, Thomas Briellat, charging him with certain misdemeanors, in unlawfully and seditiously uttering, publishing and declaring in a certain conversation which he then and there held concerning the constitution, the words following, that is to say, a reformation cannot be effected without a revolution; and then there is another count follows in this indictment, charging him with the same, that we, meaning the people of this realm, have no occasion for any kings; and then there is a third charge in the indictment, stating him to have said, that there will never be any peace or good times until all kings are abolished from the face of the earth. Then there are other counts mentioning these words, and then comes a seventh count, which charges the defendant to have said, it is my wish that there were no kings at all; and the ninth count, charges the defendant to have said, I wish the French would land 100,000 men in England to fight against all the government party.

Gentlemen, these are the charges laid against the defendant as words spoken by him with a seditious and a malicious design.

Gentlemen, it appears to me that upon this occasion your duty and your province lie in a very narrow compass indeed, that you have no occasion to be perplexed or entangled with history or politics; if you will only impress upon your minds one or two short principles, in my opinion, it will carry you through this business as fair, honest, upright men, discharging that duty which you owe your country. Certainly we cannot but admit that no man is punishable for the discontent and dissatisfaction of his own mind; men have a right to their own opinions, and I should be sorry to see a man stand at this or any other bar in any criminal court of judicature, because he had in an unguarded manner delivered sentiments not strictly legal, or which, if construed too strictly, might be considered as seditious; but, gentlemen, no man in a discontented state of mind is to infuse that discontent into the minds of others, by which he disturbs the public tranquillity, and becomes a very capital offender against the laws of his country; because, whatever disturbs the tranquillity of the kingdom is a general detriment to us all: therefore it appears to me that the question here for your consideration is, whether this man comes within that latter description; if he does not, I think you ought to acquit him; but if, upon the whole of this business, you think he is of that disposition, why then certainly you can have no doubt in your minds, and you will find him guilty.

Gentlemen, in this case I would have you go rather farther than what you usually take upon you, to be judges of the fact; but I would have you in some degree be judges of the law also: you will take into your consideration, not merely whether he said the words, but you will consider also the intent with which he uttered them.

Gentlemen, it has been said by the learned counsel for the defendant, that a reform is necessary, and that he thinks so; he has a right so to think; but the question is, what method is to be taken to obtain it: a man wishing to bring about a reform has no right to enforce it by violence, by force of arms,—that is no less an offence than high treason.

Gentlemen, in observing upon one of the counts in this indictment, where it is stated, that the defendant said a reformation cannot be effected without a revolution, it is asked, what is a revolution?—a revolution does not mean a subversion of government, it means a revolving of things. It may have that meaning in some cases; but you must take the subject matter; if it is applied to the government of this country, it is a subversion, a total change in the government of the country; there cannot be two opinions about it.

Gentlemen, I need not trouble you with any farther observations before I state the evidence that has been given to you upon this occasion, and you will be to consider how far the defendant is guilty or not, according to the circumstances which I shall shortly lay before you.

[Here Mr. Mainwaring summed up the evidence on both sides to the jury, and then proceeded as follows.]

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Now, gentlemen, the evidence on the part of the defendant contradicts that on the part of the prosecution, and it is for you to determine which speaks the truth; and of course you will not judge from the number of witnesses, but from the whole circumstances of the case; you will consider it; I believe you are thoroughly possessed of the sense of the obligation you are under to do justly.

Gentlemen, I should have told you, that there is no evidence at all of any criminal act done at Hackney, and therefore you must acquit him upon the two last counts. There is no evidence to prove that any such thing was said at Hackney, and therefore you will find him not guilty of those counts.

The Jury retired, and in about three hours returned a verdict, finding the defendant GUILTY.

Mr. *Mainwaring*. Do you mean to find him guilty of all the counts in the indictment?

Foreman. Yes, except the two last counts. At the same time it is the desire of the gentlemen of the jury that I recommend him to mercy.

The Court sentenced Mr. Briellat to twelve months imprisonment, 100*l*. fine, and security for his good behaviour for three years, himself in 500*l*., and two sureties for 250*l*. each.

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582. Proceedings on the Trial of an Information, filed Ex-Officio by his Majesty's Attorney General, against JOHN LAMBERT, JAMES PERRY,* and JAMES GRAY, for a Seditious Libel. Tried by a Special Jury in the Court of King's Bench, before the Right Hon. Lloyd Lord Kenyon, on Monday the 9th of December: 34 GEORGE III. A. D. 1793.

TO the original report of this trial, published by Debrett, Mr. Perry, one of the defendants, prefixed the following

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.

On Tuesday, the 25th of December, 1792, the following paper appeared as an advertisement in the Morning Chronicle:

At a meeting of the society for political information, held at the Talbot-inn, in Derby, July 16, 1792, the following address, declaratory of their principles, &c. was unanimously agreed to, and ordered to be printed:

"To the Friends of Free Inquiry and the General Good.

"Fellow citizens;—Claiming it as our inde-

* See in this collection the cases of Messrs. Lambert and Perry, on a commitment by the House of Lords for a breach of privilege, A. D. 1798; and in the court of King's-bench for a libel on the King, A. D. 1810.

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feasible right to associate together, in a peaceable and friendly manner, for the communication of thoughts, the formation of opinions, and to promote the general happiness, we think it unnecessary to offer any apology for inviting you to join in this manly and benevolent pursuit: the necessity of the inhabitants of every community endeavouring to procure a true knowledge of their rights, their duties, and their interests, will not be denied, except by those who are the slaves of prejudice, or the interested in the continuation of abuses. As men who wish to aspire to the title of freemen, we totally deny the wisdom and the humanity of the advice to approach the defects of government with 'pious awe 'and trembling solicitude.' What better doctrine could the pope, or the tyrants of Europe desire? We think, therefore, that the cause of truth and justice can never be hurt by temperate and honest discussions; and that cause which will not bear such a scrutiny, must be systematically or practically bad. We are sensible that those who are not friends to the general good, have attempted to inflame the public mind with the cry of 'danger,' whenever men have associated for discussing the principles of government; and we have little doubt but such conduct will be pursued in this place; we would, therefore, caution every honest man, who has really the welfare of the nation at heart, to avoid being led away by the prostituted clamours of those who live on the sources of corruption. We pity the fears of the timorous, and we are totally unconcerned respecting the false alarms of the venal. We are in the pursuit of truth, in a peaceable, calm, and unbiassed manner; and wherever we recognize her features, we will embrace her as the companion of happiness, of wisdom, and of peace. This is the mode of our conduct; the reasons for it will be found in the following declaration of our opinions, to the whole of which each member gives his hearty assent.

DECLARATION.

1. "That all true government is instituted for the general good, is legalized by the general will, and all its actions are, or ought to be, directed for the general happiness and prosperity of all honest citizens.

2. "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.

3. "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, expences of collection, &c. by seven millions of people; we think that these expences may be reduced, without lessening the true dignity of the nation or the government: and therefore wish for satisfaction in this important matter.

4. "We view with concern the frequency of wars. We are persuaded that the interests of the poor can never be promoted by accession of territory, when bought at the expense of their labour and blood, and we must say, in the language of a celebrated author, 'We, 'who are only the people but who pay for wars 'with our substance and our blood, will not cease 'to tell kings,' or governments, 'that to them 'alone wars are profitable: that the true and 'just conquests are those which each makes 'at home, by comforting the peasantry, by 'promoting agriculture and manufactories; 'by multiplying men, and the other productions of nature; that then it is that kings 'may call themselves the image of God, whose 'will is perpetually directed to the creation of 'new beings. If they continue to make us 'fight and kill one another in uniform, we will 'continue to write and speak, until nations 'shall be cured of this folly.' We are certain our present heavy burthens 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 protest against them.

5. "The present state of the representation of the people 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 corruptions of which we are inclined to attribute unnecessary wars, &c. &c. We think it a deplorable case when the poor must support a corruption which is calculated to oppress them; when the labourer must give his money to afford the means of preventing him having a voice in its disposal; when the lower classes may say, 'We give you our money, for which we 'have toiled and sweat, and which would save 'our families from cold and hunger; but we 'think it more hard that there is nobody whom 'we have delegated, to see that it is not improperly spent; we have none to watch over 'our interests; the rich only are represented.' 'The form of government since the revolution, is in some respects changed for the 'worse: by the triennial and septennial acts 'we lost annual parliaments: besides which, 'the wholesome provisions for obliging privy 'counsellors to subscribe their advice with their 'names, and against placemen and pensioners 'sitting in parliament have been repealed.' It is said, that the voice of the people is the constitutional control of parliament; but what is this but saying, that the representatives are naturally inclined to support wrong measures, and that the people must be constantly assembling to oblige them to do their duty? 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 pro-

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cure this reform, which appears to us of the utmost importance.

6. "In short, we see with the most lively concern an army of placemen, pensioners, &c. fighting in the cause of corruption and prejudice, and spreading the contagion far and wide; a large and highly expensive military establishment, though we have a well regulated militia; the increase of all kinds of robberies, riots, executions, &c. though the nation pays taxes equal to the whole land rental of the kingdom, in order to have his property protected and secured; and is also obliged to enter into separate associations against felonious depredations. A criminal code of laws, sanguine and inefficacious; a civil code so voluminous and mysterious as to puzzle the best understandings; by which means, justice is denied to the poor on account of the expense attending the obtaining it; corporations, under ministerial or party influence, swallowing up the importance, and acting under the voice of the people; 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 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 (tending to cramp the liberty of the press, and discredit the true friends of the people) receiving the support of numbers of our countrymen; we see the continuation of oppressive game laws and destructive monopolies; we see the education and comfort of the poor neglected, notwithstanding the enormous weight of the poor-rates; we see burthens multiplied, the lower classes sinking into poverty, disgrace, and excesses, and the means of these shocking abuses increased for the purposes of revenue; for the same end, excise laws, 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, without having had time to grow rich, under a government by which justice is duly administered, the poor taught and comforted, property protected, taxes few and easy, and that at an expense as small as 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 'backwards? Are our burthens to be as heavy 'as the most enslaved people? Is the condi-'tion of the poor never to be improved?' Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry against reforms and improvements is inhuman and criminal. But we hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present association; a union founded on principles of benevolence and humanity; disclaiming all connection with riots and disorder, but firm in our purpose, and warm in our affections for liberty.

7. "Lastly, we invite the friends of freedom throughout Great Britain to form similar societies, and to act with unanimity and firmness, till the people 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."

In Hilary term 1793, the following information *ex officio* was filed in the court of King's-bench, by sir Archibald Macdonald then attorney-general, afterwards lord chief baron of the Exchequer.

Middlesex, to wit. BE it remembered, that sir Archibald Macdonald, knight, attorney-general of our present sovereign lord the king, who for our said lord the king in this behalf prosecutes, in his proper person comes into the court of our said lord the king, before the king himself at Westminster, on Wednesday next after the octave of St. Hilary, in this same term, and for our said lord the king gives the court here to understand and be informed, that our sovereign lord the king, before the printing and publishing of the false, wicked, scandalous, and seditious libel hereinafter next mentioned, to wit, on the twenty-first day of May, in the thirty-second year of his reign, to wit, at Westminster, in the county of Middlesex aforesaid, had, by the advice of his privy council, issued and caused to be published his royal proclamation, whereby, after reciting that divers wicked and seditious writings had been printed, published, and industriously dispersed, tending to excite tumult and disorder, by endeavouring to raise jealousies and discontents in the minds of his faithful and loving subjects, respecting the laws and happy constitution of government, civil and religious, established in this kingdom, and endeavouring to vilify and bring into contempt the wise and wholesome provisions made at the time of the glorious revolution, and since strengthened and confirmed by subsequent laws for the preservation and security of the rights and liberties of his faithful and loving subjects; and that divers writings had also been printed, published, and industriously dispersed, recommending the said wicked and seditious publications to the attention of all our said lord the king's faithful and loving subjects; and that

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his said majesty had also reason to believe that correspondences had been entered into with sundry persons in foreign parts, with a view to forward the criminal and wicked purposes above mentioned, and that the wealth, happiness and prosperity of this kingdom did, under divine providence, chiefly depend upon a due submission to the laws, a just confidence in the integrity and wisdom of parliament, and a continuance of that zealous attachment to the government and constitution of the kingdom which had ever prevailed in the minds of the people thereof, and that there was nothing which our said lord the king so earnestly desired as to secure the public peace and prosperity, and to preserve to all his loving subjects the full enjoyment of their rights and liberties, both religious and civil; our said lord the king therefore being resolved, as far as in him lay, to repress the wicked and seditious practices aforesaid, and to deter all persons from following so pernicious an example, by his royal proclamation so issued, solemnly warned all his loving subjects, as they tendered their own happiness and that of their posterity, to guard against all such attempts, which aimed at the subversion of all regular government within this kingdom; and which were inconsistent with the peace and order of society, and earnestly exhorted his said subjects, at all times and to the utmost of their power, to avoid and discourage all proceedings tending to produce riots and tumults; and our said lord the king did thereby strictly charge and command all his magistrates in and throughout his kingdom of Great Britain, that they should make diligent inquiry in order to discover the authors and printers of such wicked and seditious writings as aforesaid, and all others who should disperse the same; and our said lord the king did further charge and command all his sheriffs, justices of the peace, chief magistrates in his cities, boroughs, and corporations, and all other his officers and magistrates throughout his kingdom of Great Britain, that they should, in their several and respective stations, take the most immediate and effectual care to suppress and prevent all riots, tumults, and other disorders, which might be attempted to be raised or made by any person or persons which, on whatever pretext they might be grounded, were not only contrary to the law, but dangerous to the most important interests of this kingdom; and our said lord the king did thereby further require and command all and every his magistrates aforesaid, that they should from time to time transmit to one of his said majesty's principal secretaries of state, due and full information of such persons as should be found offending as aforesaid, or in any degree aiding or abetting therein, it being our said lord the king's determination, for the preservation of the peace and happiness of his faithful and loving subjects, to carry the laws vigorously into execution against such offenders as aforesaid: nevertheless one John Lambert, late of the parish of Saint Clement Danes, in the county of Middlesex, printer; James Perry, late of the liberty of the Rolls in the said county of Middlesex, gentleman; and James Gray, late of the liberty of the Rolls aforesaid, gentleman, being wicked, malicious, seditious and ill-disposed persons, and being greatly disaffected to our said lord the king, and to the constitution and government of this kingdom, and wickedly, maliciously, and seditiously designing, contriving, and intending to disturb the peace and tranquillity of our lord the king and of this kingdom, and to scandalize, defame, and vilify the constitution, laws and government of this kingdom, and to bring the same into hatred and contempt with his said majesty's subjects, and to infuse and instil into the minds of his said majesty's subjects, a belief that they were oppressed by his said majesty's government and abuses therein, and by means of cruel, impolitic wars, and unnecessary wars, entered into by his said majesty against foreign powers, and to excite and stir up disloyalty, discontents, and seditions amongst his said majesty's subjects, and to seduce, instigate, and encourage his said majesty's subjects to resist and oppose his said majesty in the administration of his government, and in the exercise of the lawful powers and authorities vested in him by the constitution of this kingdom, on the twenty-fifth day of December, in the thirty-third year of the reign of our said lord the now king, at the parish of St. Mary-le-Strand, in the county of Middlesex aforesaid, to complete, perfect, and bring to effect their said wicked and seditious contrivances and intentions, wickedly, maliciously and seditiously did print and publish, and cause to be printed and published, in a certain newspaper called the Morning Chronicle, a certain false, wicked, scandalous and seditious libel, in the form of an address of a society for political information, held at the Talbot Inn, in Derby, July 16, 1792, declaratory of their principles, &c. and directed to the Friends of Free Inquiry and the General Good, in which said libel are contained (amongst other things) divers false, wicked, scandalous, malicious and seditious matters of and concerning our said lord the king's government of this kingdom, and of and concerning the constitution of this kingdom, according to the tenor and effect following, that is to say, "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.—3. 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

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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. 4. We view with concern the frequency of wars," (meaning amongst others the wars of his said majesty and his subjects with foreign powers) " we are persuaded that the interests of the poor can never be promoted by accession of territory, when bought at the expense of their labour and blood; and we must say, in the language of a celebrated author, we who are only the people, but who pay for wars with our substance and our blood, will not cease to tell kings or governments, that to them alone wars are profitable; that the true and just conquests are those which each makes at home by comforting the peasantry, by promoting agriculture and manufactories, by multiplying men and the other productions of nature; that then it is that kings may call themselves the image of God, whose will is perpetually directed to the creation of new beings; if they continue to make us fight and kill one another in uniform, we will continue to write and speak until nations shall be cured of this folly. We are certain our present heavy burthens" (meaning burthens of the subjects of this kingdom) " are owing in a great measure, to cruel and impolitic wars" (meaning cruel and impolitic wars entered into by his said majesty against foreign powers), " and therefore we will do all on our part, as peaceable citizens, who have the good of the community at heart, to enlighten each other, and protest against them. 5. 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 corruptions of which we are inclined to attribute unnecessary wars, &c. &c. We think it a deplorable case when the poor" (meaning the poor of this kingdom) " must support a corruption" (meaning corruption of the representation of the people of this kingdom in the parliament thereof) " which is calculated to oppress them" (meaning the poor of this kingdom), " when the labourer must give his money to afford the means of preventing him having a voice in its disposal, when the lower classes may say We give you our money for which we have toiled and sweat, and which would save our families from cold and hunger, but we think it more hard that there is nobody whom we have delegated to see that it is not improperly and wickedly spent; we have none to watch over our interests, the rich only are represented: the form of government" (meaning the government of this kingdom), " since the Revolution, is in 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 provisions for obligsno" (meaning obliging) " privy counsellors to subscribe thair" (meaning their) " advice with their names, and against placemen and pensioners sitting in parliament" (meaning the parliament of this kingdom), " have been repealed. It is said that the voice of the people is the constitutional control of parliament" (meaning the parliament of this kingdom); " but what is this but saying that the representatives" (meaning the representatives of the people in the parliament of this kingdom) " are naturally inclined to support wrong measures, and that the people most" (meaning must) " be constantly assembling to oblige them to do their duty. An equal and uncorrupt representation" (meaning representation in the parliament 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. 6. In short, we see with the most lively concern an army of placemen, pensioners" (meaning persons holding places and pensions under the government of this kingdom), " &c. fighting in the cause of corruption and prejudice, and spreading the contagion far and wide; a large and highly expensive military establishment" (meaning the military establishment of this kingdom), " though we have a well-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 separate associations against felonious depredations— a criminal code of laws" (meaning a criminal code of laws of this kingdom) " sanguine and inefficacious—a civil code" (meaning a civil code of laws of this kingdom) " so voluminous and mysterious 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 expense 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); " penalties" (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

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have their true interest at heart—we see with equal sensibility the present outcry against reforms, and a proclamation" (meaning his said majesty's royal proclamation) "tending to cramp the liberty of the press, and discredit the true friends of the people, receiving the support of numbers of our countrymen—we see the continuation of oppressive game laws" (meaning the game laws of this kingdom) "and destructive monopolies; we see the education and comfort of the poor" (meaning the poor of this kingdom) "neglected, notwithstanding the enormous weight of the poor-rates; we see burthens 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 excise laws" (meaning the excise laws of this kingdom,) "those badges and sources of oppression, kept up and multiplied; and when we cast our eyes on a people just formed in a free community, without having had time to grow rich under a government by which justice is duly administered, the poor taught and comforted, property protected, taxes few and easy; and at an expense as small as that of our pension list--we ask ourselves are we in England? Have our forefathers fought, and bled, and conquered, for liberty? And did they not think that the fruits of their patriotism would be more abundant in peace, plenty, and happiness? Are we always to stand still, or go backward? Are our burthens" (meaning the burthens of the subjects of this kingdom) "to be as heavy as the most enslaved people? Is the condition of the poor" (meaning the poor of this kingdom) "never to be improved? Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry against reforms and improvements is inhuman and criminal; but we hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present association, an" (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.—7. 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 contempt of our said lord the king, in open violation of 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 John Lambert, James Perry, and James Gray, being wicked, malicious, seditious, and ill-disposed persons, and wickedly and seditiously contriving and intending to disturb the peace and tranquillity of our said lord the king, and of this kingdom, and to excite and stir up the subjects of our said lord the king to hatred and contempt of our said lord the king, and of the constitution, laws, and government of this kingdom, on the said twenty-fifth day of December, in the thirty-third year of the reign of our said lord the now king, at the parish of Saint Mary-le-Strand aforesaid, in the county of Middlesex aforesaid, to complete, perfect, and bring to effect, their said last-mentioned wicked and seditious contrivances and intentions, wickedly, maliciously, and seditiously, did print and publish, and cause to be printed and published, in a certain newspaper, called the Morning Chronicle, a certain other false, wicked, scandalous, and seditious libel, of and concerning our said lord the king, and of and concerning the constitution, laws and government of this kingdom, according to the tenor and effect following: "In short, we see, with the most lively concern, an army of placemen, pensioners" (meaning persons holding places and pensions under the government of this kingdom,) "&c. fighting in the cause of corruption and prejudice, and spreading the contagion far and wide; a large and highly expensive military establishment," (meaning the military establishment of this kingdom) "though we have a well-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 separate associations against felonious depredations; a criminal code of laws," (meaning a criminal code of laws of this kingdom) "sanguine and inefficacious; a civil code," (meaning a civil code of laws of this kingdom) "so voluminous and mysterious, 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 expense 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) "penalties" (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

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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 the said proclamation so issued by his said majesty on the said twenty-first day of May as aforesaid) "tending to cramp the liberty of the press, and discredit the true friends of the people, receiving the support of numbers of our countrymen; we see the continuation of oppressive game laws" (meaning the game laws of this kingdom) "and destructive monopolies; we see the education and comfort of the poor," (meaning the poor of this kingdom) "neglected, notwithstanding the enormous weight of the poor-rates; we see burthens multiplied, the lower classes" (meaning the lower classes of the people in 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 excise laws," (meaning the excise laws of this kingdom) "those badges and sources of oppression, kept up and multiplied." In contempt of our said lord the king, in open violation of 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. 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 them the said John Lambert, James Perry, and James Gray, in this behalf, to make them answer to our said lord the king touching and concerning the premises aforesaid.

In Trinity Term a rule was made in the usual way, on the motion of the prosecutor, for a special jury. Forty-eight jurors were struck; and in Easter Term they were reduced by the parties to twenty-four. In the sittings after Easter, the cause came on, and seven of the special jurors came into the box. Sir John Scott, the then Attorney General, did not pray a *tales*, and the trial went off as a *remanet pro defectu juratorum*.

In Michaelmas Term the prosecutor, on a motion of course, took out a rule for a new special jury. This the defendants thought irregular.

On Friday, the 15th day of November, the honourable *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 objections to the jurors, nor any motion in court to discharge the original rule under which the jury was impannelled: but assuming it to be the law that the rule was spent and expired, by the trial going over, for defect of jurors, they have, as a motion of course (drawn up, upon the signature of counsel out of court), obtained a second rule for striking a jury, as if no former rule had ever existed, and as if no jury had been struck under it.

I confess I was not a little surprised at this attempt to impannel a jury, without the consent of the defendants, between whom and the crown the former had been reduced and ascertained under the first rule.—On their part, I therefore now object to the proceeding, as totally illegal and hostile to the freedom of trial; and I humbly move that this new rule may be discharged.

I do not know that I am able to state, at this moment, any direct precedent for my motion, nor is it necessary that I should, because I found my application upon the whole statute law of the kingdom respecting the trial by jury, which is positive and unequivocal on the subject, which no practice can shake, and which no decisions of the Court, if there were any, could repeal or over-rule.

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,

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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 3, chap. 11, expressly gives this reason. After stating that divers of the people had been disherited 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 1. chap. 30,† had expressly directed, that, upon the default of jurors, the justices should put in the inquest no other than those first summoned; and this regulation was so much the settled law, that the act of William, for the ease of jurors, and the regulation of trial, recites, that, as the law then stood, it often happened that upon causes going off at the assizes, for defect of jurors, the same jurors were obliged to attend again and again at the trial of one and the same cause, to their great expense and trouble; and after this preamble, a new *venire facias*, for the first time in the history of the law, was given to the parties, to bring in a new jury, upon the default of those impannelled under the first writ. It is therefore only by the effect of this statute, that a jury, once summoned, is discharged before trial; and the statute not extending, nor indeed relating at all to special juries, they remain upon the old footing. Special juries do not exist, as many people seem to suppose, by the authority of a modern 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 2, 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 2, 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

* The following are the words of the statute:

"Item, Forasmuch as divers mischiefs have happened, because that the panels of inquests which have been taken before justices by writ at *scire facias*, and other writs, have not been returned before the sessions of the justices at the Nisi Prius, and otherwise, so that the parties could not have knowledge of the names of the persons which should pass in the inquest, whereby divers of the people have been disherited and oppressed: it is ordained, That no inquest, but assises and deliverances of gaols, be taken by writ of Nisi Prius, nor in other manner, at the suit of any, great or small, before that the names of all of them that shall pass in the inquests be returned in the Court: and that the sheriffs array the panels in assises four days at the least before the sessions of the justices, upon pain of twenty pound, so that the parties may have the view of the panels, if they the same demand. And as to the return or answer of the bailiffs of franchises, they shall make their answer to the sheriff six days before their session upon the same pain. And in all manner of panels arrayed by the sheriffs, or bailiffs within franchise, shall be put the most substantial people, and worthy of credit, and not suspect, which have best knowledge of the truth, and be nearest." See Statutes of the Realm, Vol. 1, p. 389, 390.

† The words are "And from henceforth the justices shall not put in assises or juries any other than those that were summoned to the same at the first." See Statutes of the Realm, vol. 1. p. 86.

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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, Cowp. 412, and the King *v.* Joliffe, 4 T. R. 285; 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 2, 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 Jolliffe, 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 Jolliffe. 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 arguments are thus reported in 5 T. R. 453.

* With respect to this, see the case of the dean of St. Asaph, *antè* Vol. XXI. pp. 848, et seq.

The KING against PERRY, and two others.

In Hilary term last an information was filed by the attorney-general against the defendants for a libel, to which they pleaded not guilty in Trinity term. In the same term a special jury was struck, but for the default of jurors at the sittings after Trinity term, the information was not tried. A rule having been since obtained for striking a new special jury;

Mr. *Erskine*, on a former day, moved to discharge it, on the ground that after a special jury had been once struck, that jury alone, or as many of them as appeared when the cause came on to be tried, with the addition of talesmen, only could try the cause. That the stat. 3. Geo. 2, c 25, sect. 15, enacted, that "the jury so struck, &c should be the jury returned for the trial of the said issue." That in R. *v.* Jolliffe, [4 T. R. 285] where the trial had been put off on the day first appointed, the prosecutor applied to lord Kenyon, at his chambers, for a new jury, which was refused, and the jury first struck tried the defendant.—He also produced an affidavit, in which it was stated that the *venire* and *distringas* of the former jury in this case were returned; and that the twenty-four persons named in those writs were alive and resident in the county. And he observed that, though a distinction formerly prevailed in cases where there had been a change of sheriff after the time of striking the first jury, in which cases a new special jury was struck, that distinction had been exploded in R. *v.* Hart [Cowp. 412.]

Mr. *Bearcroft* now showed cause against this rule, and insisted that what had been done in this case was warranted by practice and authority, and supported by principle. That it was of great importance to the administration of justice that there should not be a standing jury, and that the parties might

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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.

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have no opportunity of tampering with the jury. That in point of practice it had been usual to strike a new special jury, whenever the cause went off for a default of jurors at the time first appointed. That, in a very late case, R. *v.* Lord Charles Fitzroy, which was an information in nature of a *quo warranto*, a new special jury had been struck, as a matter of course, under such circumstances. That in R. *v.* Jolliffe, after the trial had been put off at the spring assizes on account of some hand bills which the defendant had distributed with a view of influencing the jury, a new special jury was struck in the Easter term following as a matter of course, and not on the ground of the defendant's having attempted to influence the former jury; and that the application for another special jury (alluded to by the defendant's counsel in making this motion) was afterwards in Trinity term; but that in fact the jury first appointed did not try the defendant, but a second special jury struck in the Easter term after the assizes when the trial was first fixed. That in R. *v.* Hart, the twenty-four had not been struck, and that the only question there was whether the master should reduce the forty-eight to twenty-four. And that this very question had been determined in R. *v.* Waring. [The following note of R. *v.* Waring was read from the manuscripts of the late Mr. Masterman:—R. *v.* Waring. Indictment against the defendant for perjury, in East. 12 Geo 2. The defendant pleaded not guilty in Trinity term following; when Mr. Wirley, on behalf of the prosecutor, moved for a special jury. The record went down for trial at the ensuing assizes, and the special jury were returned for the trial; but the cause was not entered with the marshal, the prosecutor's witnesses not being able to attend. In the Michaelmas term following the Court gave costs to the defendant against the prosecutor for not having proceeded to trial. In Hilary* term following a motion was made for a special jury by Mr. Burrell, which was opposed by Mr. Taylor, the defendant's counsel, who said he did not see any reason why the same jury should not be summoned to attend at the next assizes. *Sed per curiam* (Probyn J. and Chapple J. abs.) "If the party desire a new special jury, we cannot refuse him one." And Page J. "seemed to think that the former could not be summoned." *Per Curiam*, let there be a new special jury.]

Mr. Justice *Buller* having asked the prosecutor's counsel whether he had seen a contrary determination in R. *v.* Franklin, and received an answer in the negative, read those parts of the following note, which are applicable to this point. "The King against Franklin [Vide 2 Sess. case, page 333, S. C.] Hil. 5 G. 2, B. R. 1731. Franklin was convicted upon an information for publishing a libel against the government; and now Mr. Bootle moved that the prosecutor should bring in the *postea*, and that the jury process, &c. might be filed; and said such a motion was granted in the case of the King *v.* Ward, and also in the case of the King *v.* Wright. It was objected by the Court (upon the information of Mr. Masterman) that it was contrary to the practice of the Court in these cases to hasten and oblige the Crown to bring in the *postea* upon motion; and that the defendant could not move in arrest of judgment till the prosecutor had brought in the *postea*, and given a rule, &c. to the defendant. Mr. *Bootle;* there seems to be no reason for such practice. In all cases relating to the revenue, &c. where the Crown is prosecutor, the defendant upon motion hath a rule of course to bring in the *postea;* the same reason holds in this case, and stronger; for should the prosecutor refuse to bring in the *postea* at all, the verdict will not only hang over his head in the interim; but suppose the defendant be in custody and cannot find bail, he must remain there till the Crown thinks proper to bring in the *postea*, which, perhaps, may never be brought in at all, and so the party be without remedy. Rule *per curiam nisi.*

"At another day, Mr. *Attorney-General* came and showed cause, and alleged that this motion was contrary to practice. That there was no one instance that the *postea* was ever filed in these cases, but that it always remained in the hands of the clerk in court; and that when it is brought into Court, the *distringas* is always annexed to it, and brought in along with it. The defendant, if he please, may move to have the *postea* brought in, which is the common motion in these cases, in order to move in arrest of judgment. It is impossible that the *distringas* should be filed, there being no file for that purpose in the crown-office: it is always annexed to the *postea*, and cannot be separated from it upon any motion. As to the *venire* (he said) that was filed before this motion was made, and if the defendant had any objection to that, it was open to his inspection.

"Mr. *Bootle* and Mr. *Fazakerly contrà.* If the *postea* and *distringas* are brought into Court it will answer our purpose. Although the *distringas* is annexed to the *postea* upon the return, and is brought into court along with it, yet it is always sent back again to the

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* N. B. No rule for such jury appears to have been drawn up either in Hilary or Easter term, but in Trinity term following there was a rule for a special jury at the instance of the defendant.

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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,

filed, for it is no part of the record, nor is it entered up upon the plea.

"*Per curiam*; the *distringas* cannot be filed; there is no file in the office for that purpose. The defendant after conviction may come at any time within the four first days of the term, and upon motion oblige the clerk in court to attend and bring in the *postea*: he is entitled to it *de jure*, and this is the constant practice in these cases.—And so they made a rule that the *postea* and *distringas* should be brought into court, and the *venire* filed.——

"Mr. Franklin being convicted upon an information for publishing a libel, his counsel moved to set aside the verdict, the trial being by a jury who had no authority; and objected that a rule being made in B. R. for a special jury for the trial at the sittings after Trinity term expressly, and he not being then tried, could not afterwards be tried by the same jury at the sittings after Michaelmas term, but that a new rule should have been made by the Court; and they compared it to the case of Lear; where upon motion to the Court to appoint a day for execution, a rule was obtained accordingly, but at the day execution was suspended by his majesty. In the subsequent term a new application was made to the Court, and a second day appointed, but his majesty was then pleased to grant a further reprieve, which occasioned a fresh application, &c. The same reason holds for a new trial in this case; for the old rule being special, and restrained to a particular time by express words, viz. at the sittings after Trinity term, the rule must expire with the time, and therefore it was necessary to have a fresh rule. It was farther argued that this was the constant practice in C. B.; and that new rules are always granted in cases of this nature: but what was chiefly relied upon was the stat. of 3 G 2. c. 25. for regulation of juries, which now enforced the practice, and made it absolutely necessary to have a fresh rule.

"To these objections the king's counsel made three answers; 1st, That the objection was made out of time; 2dly, Before the late act of parliament there would have been no weight in the objection; and 3dly, The late act of parliament did not extend to the crown, and so the crown was not bound or precluded by it. As to the first, it was insisted that the defendant was now too late to make any challenge to the array; for after a challenge of the poll, the party is precluded of his challenge to the array; and so it is held in 1 Inst. and laid down there as a maxim, that after challenge to the poll, there can be no challenge to the array. There is no precedent to impeach this maxim. The defendant in this case falls within this rule: he made his challenge to the poll, and capt. Wringfield was struck off the pannel, and a tales sworn in his place; and so the defendant is now too late to make any objection to the array. Suppose a rule is made for a special jury, and the parties proceed to trial before a common jury, the verdict shall not afterwards be impeached, for the defendant must either make challenge to the array, or let judgment go by default: but if he appear, and a defence be made, he is by that precluded to make any objection to the jury afterwards; and so it was adjudged 13 W. 3, in an anonymous case, in an action for words. 2dly, It was said that before the late act of parliament this objection could be of no weight; for before that act the authority of special juries did not arise from the rule of court, for the purport of the rule is only to have a fair jury, and after that is once struck, the rule hath had its effect, and then the authority of the jury arises from the king's writ; for a jury cannot be returned upon the rule of court, but upon the *distringas et venire* issuing to the sheriff for that purpose: that part therefore of the rule which limits the trial to a particular time can be of no force, for after the parties have been before the master, and a fair and impartial jury is struck, that jury is then under the same circumstances, and their authority of the same nature, with all common juries. Suppose the rule had been limited to the first sittings in term, if the cause had not then been brought to trial, would there have been occasion for a new rule to try it at the second sittings? It would be absurd to imagine it. The same reason where the rule is for trial after term. In these cases a new jury is never struck, nor does a new *venire* issue for that purpose; an *alias distringas* issues out, and the continuance is entered upon that; so the trial is upon the old *venire*, and by the old jury: *pari ratione*, where a rule is made for a special jury, and a jury is struck accordingly; though the trial be not precisely at the time limited by the rule, yet the authority of the jury is continued upon the *alias distringas*; and yet there is the same reason for a new jury as for a new rule. It is impossible to have a *venire de novo* in this case; for the stat. 7 and 8 W. 3, which gives the new *venire*, does not extend to the crown; and it is adjudged in 2 Ventr. 173, that a new *venire* is error: *à fortiori* if there cannot be a *venire de novo* there cannot be a rule *de novo*; for the Court cannot make a rule to have that particular jury returned; for that would be in effect for the Court to strike the jury. And though it is said to be the practice of the Court of C. B., yet the practice of one court is not the practice of another: but admitting this to be the practice of C. B. yet the king is not included

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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 3rd of George 2, to prevent juries from becoming permanent, or from being so long known be-

within that practice; for it extends only to civil cases; and where the general words of an act of parliament do not extend to the crown, the general practice of a court shall not. There are no negative words in this rule; and though the time is specially limited to the sittings after Trinity term, yet it cannot negatively be inferred from thence, that a trial subsequent to that time will be erroneous; and where no inconvenience can arise to the parties by extending the old rule to a further day, there can be no necessity for any fresh application to the Court for a new one. In all cases of trials at bar, where a time certain is limited for the trial, if at the day there is a *defectus juratorum* on which the trial is adjourned, yet no application is ever made to the Court for a new trial at bar *de novo;* but a *decem tales* is awarded, and the trial is had upon the old rule; and yet in that case the jury is struck in the same manner as it is here, and so falls within the same reason. As to Lear's case, where rules *de novo* were granted for execution, that case makes nothing for the defendant; for there the sheriff's authority altogether arises from the rule, and consequently expires with it: but in this case the authority of the jury takes its foundation from the king's writ, and so long as the writ continues in force, so long the authority of the jury remains. There would therefore have been no weight in this objection before the 3 G. 2, c. 25; and what alteration that will make in the present case is proper for the consideration which falls under the 3d answer; viz. that that act of parliament does not extend to the crown, and so the crown is not bound or precluded by it. All acts of parliament, that are made for the ease of jurors, and that prescribe particular forms for the method of proceedings to be observed between plaintiff and defendant, do not extend to the crown unless there are particular words for that purpose; which is the reason why 7 and 8 W. 3, which gives a new *venire*, does not extend to prosecutions where the crown is concerned: and yet it is expressly enacted by that statute, that if any plaintiff or demandant in any cause depending in any of the courts at Westminster, which shall be at issue, shall bring or sue forth any *venire facias*, &c. in order to the trial of such issue at the assizes, and shall not then proceed to trial, the plaintiff or demandant, whenever he shall think fit to try the said issue, shall sue forth a *venire de novo*. There the words are express, viz. "any plaintiff or demandant;" and yet because there are no particular words to extend it to the crown, no *venire de novo* does ever issue at the suit of the crown. By 29 Car. 2, c. 3, writs of executions shall not bind the property of the goods but from the time the writ is delivered to the sheriff; but in executions at the suit of the crown, the property is always bound from the *teste* of the writ. In the stat. of Jeofails, revenue causes are expressly mentioned; otherwise the crown had not been included within those acts. The stat. 35 H. 8, c. 6, which gives *a tales de circumstantibus*, does not extend to juries impannelled to try causes between the king and party; and therefore by the 4 and 5 Ph. and M. c. 7, the crown is expressly mentioned. In the case of the king and Meredith, Tr. 13 W. 3, upon an information for perjury, a *venire facias* was issued forth, returnable in three weeks of Trinity; the then attorney-general died, and sir E. Northey succeeded him: the cause did not come on to trial, but continuances were entered upon the *distringas* for a year. After verdict it was objected that no continuances were entered upon the *venire*, and yet the court adjudged that jury to be a sufficient jury. In the exchequer chamber there never issues a new *venire*, and the reason of this practice is obvious; for the 7 and 8 W. 3, which gives the new *venire*, does not extend to the crown. The act of 3 G. 2, is within the same reason as these cases: there are no particular words to extend it to the crown; and it is impossible, from the necessity of the thing, that the crown should be included by it; for unless the crown could have a new *venire* as hath been observed, they cannot have a new rule, and the crown cannot have a new *venire*, because the statute which gives the new *venire*, does not extend to the crown; *ergo*, &c. But admitting the crown to be within the late act, if it can have any effect in the present case it will be in favour of the crown; for by the express words of the act when a special jury is once struck and returned, the cause must be tried by that jury. The words are, "which said jury so struck as aforesaid shall be the jury returned for the trial of the said issue." Admitting therefore this act to have any weight in the present question, as there could not have been a new *venire*, the cause must have been tried by the same jury which was first struck and returned upon the old rule.

"To these answers the defendant's counsel replied, that it was not too late to make the objection. In Gardner's case, 5 Rep. 37, and in Cro. Car. 278, a defence was made, and yet objections were taken to the verdict; the one in arrest of judgment, and the other in error; and the objections in both the cases were to the panels of the jurors. In Gardner's case 23 jurors were only returned, of whom twelve appeared and gave a verdict; and though it was adjudged that this was remedied by the 18th Eliz. c. 14, yet if it had not been for that statute, judgment would

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rehand, as to be subject to influence. That regard to the prayer for a tales, though ıdoubtedly the defendant must have the ave been arrested. In the other case of ines and Norton in Cro. Car. 278, 23 jurors ıly were returned upon the *venire*, and ı the *habeas corpora* there were 24; the last whom (that is to say) W. L. was not re-ırned upon the *venire*. the whole 24 being ;turned by *distringas*, 12 of them were worn, whereof the said W. L. was one; and fter verdict this was held to be a manifest rror. The objection in the present case is) the panel of the jurors: there ought to ave been 48 returned, whereas 24 have only een returned, which is as manifest an error ı special juries as where 23 only were re-urned upon common juries. So if a bad re-urn be made to the *venire*, a writ of error rill lie after verdict, 1 Roll. Ab. 800. It rould be putting a difficulty upon the defen-lant to oblige him to make his objection *in-tanter*: where a doubt arises he ought to ıave time to consider of it, to enable him to ay it properly before the Court. This objec-ion arises properly upon the rule of court, which is the best judge of its own proceed-ngs. It is not so much a challenge to the ury as to the proceedings of the sheriff upon hat rule; and whether he acted according to he directions of the Court, is proper for the consideration of the Court. The anonymous ase cited by the other side was upon a good ury. There is no distinction between a good ury and a common jury. Suppose no defence ıad been made in that case, could the defen-lant have objected that the jury was not a good jury? The sheriff is a proper judge what s a good jury: and when he hath returned a air jury, be there a defence or no defence, it s the same thing; a verdict was never set ıside because the jury was not a good jury. If the plaintiff should move for a special jury, ıe may wave his motion to try his cause by ı common jury: had the verdict in this case been by common jury, viz. by jury chosen by balloting according to the late act, the con-viction had been good: but in this case the uthority of the jury depends upon the rule of court; and although the authority of juries n general depends upon the king's writ, yet he particular manner of returning 24 de-ends upon the rule of court; and when the ule falls, the authority of the jury is deter-ained. The act of parliament expressly pre-cribes that 48 shall be returned, but special uries struck by rule of court are excepted ut of the act; so that these juries have their xistence from the rule of court. But it is aisted on, that if the act extends to the rown, it is in this case to be taken in favour f the crown; for it is said the jury must be ruck and returned to try the same cause. he act in this case hath been complied with ogether; a jury hath been struck, and the ame jury returned; so the intention of the

warrant of the attorney-general to enable him to pray a tales, yet the attorney-general never denied such a warrant. Another act is fulfilled in this particular. And there is no provision made in the act, that if the trial should go off, the same jury shall subsist: the intention of the act is otherwise, and made to prevent mischiefs arising from the continuation of juries But should the doctrine of the other side prevail, the whole force and energy of the act will be overturned. The act recites several abuses in the impannelling and returning of juries (vid. 3 G. 2), and in prevention of such abuses directs and prescribes the method of ballotting, to prevent mischiefs arising from the picking up of talesmen. There are likewise words that import there must be fresh juries. The act likewise enforces an attendance by giving power to the Judges, &c. to fine. It likewise provides that juries shall have certificates of their discharge from serving for two years. But if this construction prevail, the act will have no effect as to these particulars. Will not juries continue as they did before the act? Will they not be as liable to be tampered with and solicited, supposing a design to have a packed jury? The method will be this; the plaintiff will get a rule for a special jury, will have a jury struck, will have 24 returned, and those he will continue upon the *distringas* till he hath time and opportunity to mould them to his purpose. But admitting the jury cannot be corrupted, the plaintiff may continue them till one dies; and by this mean talesmen will be added as before. By the same reasons that this construction prevails in criminal cases, it will prevail in civil cases; and so the essential end of the act will be entirely overturned. It is further insisted upon, that there could be no new rule in this case from the necessity of the thing, because the crown cannot sue out a new *venire*, &c.: wherever a new law is introduced, the practice of the Court must conform to the intention of that law, and not the intention of that law to the forms of Court. Where a rule cannot subsist by reason of a new law, but it is necessary *ut res valeat* to have a new rule, in that case a *venire* must issue of course. Bro. title "*venire facias*," *pl.* 30. And though the matter does not appear upon record to entitle them to a new *venire*, yet it may be suggested upon record; for if the party can have liberty for the sake of making continuances to suggest what is contrary to matter of fact, *à fortiori* where it is in support of an act of parliament which cannot subsist without such suggestion. Supposing a *venire* issue upon the ballotting clause, will that preclude the party from applying to the Court for a special jury? This would be carrying the act apparently further than was intended; for trials by special juries are in this respect excepted out of the act. The statute for this reason gives a

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gument 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

general direction, and takes no notice whether a *venire* issued before or no; for the issue is the thing the act hath in view, and takes no notice of the process. Supposing before the act a new *venire* was taken out, must proceedings be upon that *venire*? Certainly no. Therefore a new *venire* may issue out by virtue of this act, and though the words of the act are general, yet such construction must be made as is consistent with the meaning of the act. In some cases continuances may be entered upon the *venire*, as where the array is quashed, nothing more certain than that a new *venire* issues out of course, Bro. "*venire facias*," 22 Staun. P. C. 155, 6, Bend. 56, b. 5, Rep. 41, Rowland's case. A *venire* may be quashed at the suit of the party. In the case of Wright and Pindar, Al. 18, an *alias venire* was awarded: in this case had there been a new *venire*, the intention of the act would have been answered. The *venire* ought to have been returned and filed, to convince the Court the crown could not have another *venire* by a continuance upon the *venire* of *vicecomes non misit breve*. The crown may have as many *venires* as it pleases. Suppose there had been no *venire* at all, would a defence have aided that error? In the case of Young and Watson there was no return to the *venire*, and yet that was held error after verdict. The Court might have granted a new rule after the old one was expired, and a *venire de novo* would have issued in that case, 2 Roll. Ab. 720, p. 2. If at the return of the inquest upon a *venire* a writ come from the king not to proceed *Rege inconsulto*, and afterwards a *procedendo* is granted, a new *venire* issues, and not a *habeas corpora*; and so is 2 Roll. Ab. In the case of Wilby and Quinsey, Hob. 130, the *habeas corpus* was returned *album breve*, and thereupon a new *venire* was awarded. In the case of Green and Cole 2 Saund. 257, 258, error was assigned upon a mis-return of the *venire*; and it was objected that defendant might have challenged the array at the time of the trial, but having made no objection to it at that time, he could not now assign it for error; to which it was answered that there was no fault in the officer for which he might have challenged the array; but that it was the erroneous act of the Court to mis-award the *venire*. As to trials at bar, where the cause does not come on to trial at the day appointed, it is put off by adjournment; and when the trial comes on, the entry upon record is made upon that day which was first appointed: and in all these cases the adjournment is to a day within the same term. There is no instance of trials being adjourned to a subsequent term without a fresh application to the Court to obtain a new rule. In trials at bar, if at the day appointed there is

defectus juratorum, a *decem tales* or an *octo tales* issues, which is a continuation of the same process; and so a great difference between trials at bar by adjournment and trials by special juries.

"Chief Justice *Raymond* delivered the opinion of the Court; that there did not appear any irregularity upon the record to set aside the verdict. He said the act of parliament was a very beneficial act, and ought to be supported. He then mentioned the mischiefs which occasioned the making of the act, and the several remedies that are applied in the redress of them. (Vid. 3, G. 2, an act intituled for the better regulation of juries.) The act particularly provides that no jurors shall be returned which have served within such a time. It further provides that no less than 48 shall be returned upon the *venire*, unless in particular cases, where upon application to the Court a rule is granted for a special jury; so that by the express words of the statute special juries are excepted. The method therefore of proceeding by special juries is in no respect altered, but must be in the same form and in the same manner as before the act. The statute indeed goes farther, and says, after a special jury is struck, that the jury so struck shall be the persons returned for the trial: but there are no additional words to make it necessary for the same jury to serve; for if these words had been inserted they would have excluded talesmen, which would have been inconvenient in these cases. The case in question is not included within the words of the act, and the Court cannot extend the words of the act to it: neither will the intention or force of the act be any ways impeached or offended by this construction. It is insisted upon by the defendant, that the rule was specially confined to a time, viz. to the sittings after Trinity term; and that in these cases it is the rule of court which gives authority to the jury: the Court is of another opinion; that in all cases the authority of juries arises from the king's writ: the import of the rule is to have a fair jury struck before the master; and after that is done, the return must be made by the sheriff as in other cases, who returns the *venire*, upon which the power of the jury depends. And though the rule is to have the trial at a time limited, yet it is not restrictive. The rule is *pro triatione* in general; and the time limited shows only the intention of the Court to have it tried at that time, but it is not to be taken negatively "at that time and no other." In this case the crown could not have a *venire de novo*, and therefore from the necessity of the thing the trial must be upon the old rule. Before 7 and 8 W. 3, a new *venire* could issue in some cases, as upon a challenge of the array: so where the verdict

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hem might attend, and still be subject to be alled again: there was no end of this, and ie owned he did not know how they could all upon them again, for he did not know an nstance of an *alias distringas* to bring up pecial jurors.

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vas imperfect, where there had been a mis-eturn of the jurors, &c,; in these cases and he like a *venire de novo* would issue. In Aleyn 18, it is said an *alias venire* should be awarded, and not a *venire de novo;* but he hought that an odd case; and said that he never before heard of an *alias venire.* In Styles 34, it is held a *venire de novo* could go; but even in that case there is a contrariety of opinions: and though it was adjudged that a *venire de novo* should be awarded, yet it was held that the same jurors should be returned. This case hath a great resemblance to the case in Styles; the same jury is returned in this case; only the continuances are kept on upon the *distringas,* and an *alias distringas* is awarded. In all the cases cited by the defendant, there hath been some mistake either in the impannelling of the jury or returning the writ; but where there appears no defect upon record, a new *venire* never goes. The stat 7 and 8 W. 3, does not extend to criminal causes; so that cases of that nature remain as they were before the act. Before this act *venires de novo* were granted, but never without the consent of parties. It is said that in C. B. in cases of special juries new rules are always granted. Admitting it to be so, it avails nothing here; for different courts have different forms, and their practice varies in many circumstances. Where an irregularity is complained of, the party complaining must show the irregularity, and not put it upon the other party to vindicate his proceedings, and show that he is regular. There does not appear to be any irregularity in the present case: but the Court is unanimous that the verdict shall stand. Whether the defendant was too late to make this objection, (he said) the Court would not determine that point, the objection being overruled upon the merits of it: but without doubt in cases of irregularity, advantage must be taken of it in its proper season, otherwise no advantage can be taken of it afterwards.

"It was afterwards moved in arrest of judgment, that the rule which was granted by the Court to have a special jury returned, and a special jury having been returned by virtue of that rule, the rule itself should have been suggested upon the record. But this objection was after argument unanimously overruled, and sentence was passed upon the defendant."]

After this note had been read,

The Court said, that considering the eminence of the counsel who had argued, and of the judges who had decided, that case, it was impossible to get over such an authority and therefore they made the

Rule absolute.

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.* Francklin, 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 2d, 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. Francklin was convicted of printing and publishing a libel in the Craftsman.† The case was only so far different from the present, that the defendant there moved the Court to reverse the judgment, because the cause, after being put off from one term to another, had not been tried by a new jury. Here the defendants moved to continue the same jury.

The doctrine was the same in both cases, only that in this case, it is upon the application of the attorney-general that the new jury is required; in that case the attorney-general or the crown contended that the old jury should continue. Chief-justice Lee pronounced the opinion of the Court, which Mr. Justice Buller read. The opinion of the Court was, that the words of the statute were express, and could not be departed from, unless cause could be shown that there had been some irregularity in the striking of the jury. or in the reducing, or in some part of the proceeding, or in the writ of Venire, or otherwise. The words of the statute were, "that the jury so struck and so reduced, shall be the jury to try the issue joined in such cause." The jury were not dissolved until the cause was determined, and an *alias distringas* might issue. The opinion was at great length, and detailed the practice of striking juries by the ancient statutes downwards, and showed, that by the act then recently passed, the 11th of George 2d, 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

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* The same judges who are supposed to have decided the case of the King against Waring.—*Orig. Edit.*

† See Francklin's case in Vol. XVII p. 625 of this collection.

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juries, it was thought hard and severe to compel their attendance from time to time; but the special jury was left by that act precisely as it stood before.—This opinion, Mr. Justice Buller said, delivered so soon after the act had passed so solemnly and argumentatively, in a question 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 Ashhurst were of the same opinion.

The case of the King *v.* Francklin,* therefore, decided this question; and the court determined, that the rule for another special 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 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.* Burridge, for a misdemeanor, which came before the court of King's-bench, in Trinity term, 10 Geo. 1st, a very short time before the passing of the act respecting special juries.

That case is reported in lord Strange's Reports, vol. 1, p. 593; in lord Raymond, 1364; in Andrews's Reports, 52; in Eighth 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. 2d, 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

* In consequence of that case, viz. the King *v.* Francklin, 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.* Francklin.

Special juries existed long before the statute of the 3d of Geo. 2nd, 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.

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jury, obtained upon the motion of the crown lawyers, must be discharged.

COURT OF KING'S BENCH.

Monday, December 9th, 1793.

Before the Right Hon. Lord Kenyon.

Eight only of the special jury, originally struck between the parties, and continued by rule of Court from the sittings after last Trinity term to the present time, attended.

The *Officer of the Court* asked, if *Tales* were prayed?

Mr. *Attorney General.* My lord, as I cannot, on a second trial, have a special jury in this case, I will pray a *tales.*

The following were the names of the jury:

SPECIAL JURORS.

Matthew Knight, of Gun-dock,
William Farrington, of Virginia-street,
Nathaniel Collier, of Lisle-street,
William Martin, of Leicester-square,
Edward Bowman, of Soho-square,
Thomas Hankin, of Leicester-square,
Ralph Clarke, of Robert-street, Adelphi,
Richard Dekin,* of Long-acre,—Esqrs.

TALESMEN:

Henry Hubert, of Abingdon-street, coalmerchant
Thomas Boys, of Great Saint Anne's-lane, wireworker
William Adeney, of Charles-street, taylor
John Barret, of the Broadway, coalmerchant.

Counsel for the Crown.—The Attorney General [Sir John Scott], Mr. Bearcroft, Mr. Wood.

Solicitors. Messrs. Chamberlayne, and White.

Counsel for the Defendant.—The Hon. Thomas Erskine, Mr. Adam.

Solicitor. Mr. Lowten.

The information having been opened by Mr. Wood, Mr. *Attorney General* stated 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

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meaning of these words. The only other consideration in this case is, what change the statute made in the rights of the parties, if it made none from the words of the rule; and it is evident, that it did no more than convert into a statutory obligation, carried into execution by a rule of court, what had been a matter of compact, executed by a rule of Court; but that in all other respects, except that the one party was, after the statute, bound to agree to a special jury, if the other proposed it, the consequences were the same.

The disobedience to the rule remained a contempt, and the rule remained valid, unless the court, for particular cause of corruption, or undue interference, properly verified, should see ground to have another jury; but that otherwise, the jury of compact or statute must continue.

This was the more material, because of the attorney general's power to refuse the defendant a warrant to have a tales, to make up the special jury, if deficient, and of the common jury; which was so far from being an idle right, as mentioned by Mr. Bearcroft, that there was a case in which it was solemnly agitated, and which formed a ground of decision that the attorney could and ought, in certain cases, to exercise the right. The King *v.* Jacob Banks, Sixth Modern Reports p. 246, as follows:

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.—*Orig. Edit.*

* On calling the name of Charles Barber esq. of Rupert-street, in the parish of St. James's, Mr. George Barber of Newport-street, in the parish of St. Anne, answered, and said he had received a summons by the officer of the Court, as a special juror in the cause, but which had been altered from Charles to George, and from Rupert-street, to Newport-street. Lord Kenyon did not see any objection to his serving, if the parties were agreed. The attorney-general acquiesced; and Mr. George Barber went into the jury box; but Mr. Erskine, for the defendants, contended,—not from any personal objection to Mr. Barber, whom they did not know, but merely for the regularity of the proceeding,—that as they had received a list of names for the purpose of making inquiry concerning them, and could find no such person as Mr. Charles Barber, of Rupert-street, they held it to be irregular to admit a person of another name, in another street, of another parish to be of the jury. The objection was held to be valid, and Mr. Barber left the box. *Orig. Ed.*

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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 or violated. The liberty of the press is indeed essential to the nature of a free state, but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter, when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus the will of individuals is still left free; the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry; liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments destructive of the ends of society, is the crime which society corrects. A man (says a fine writer on this subject) may be allowed to keep 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 incurring 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 incontrovertible. The law allowed defendants in this, as in every other case, a fair impartial trial, upon the result of which they were to be adjudged guilty or acquitted of the charge exhibited against them; and this principle has been explained by the last act of parliament, for removing doubts of the functions of juries in cases of libel; the meaning of which act I take to be, that the jury shall try these charges of libels precisely as they try any other charge of a criminal nature;—that they shall hear the case with attention, and hear it impartially;—that they shall hear the advice of the Bench in point of law, and then apply the law, as they understand it, to the facts that appear in evidence, and then they shall acquit or find guilty, as to them shall appear right. The question in this case is, "Whether, upon the facts, as they shall appear in evidence, under the law, as you shall understand it, after the advice of the learned judge, the defendants be guilty, as the information charges them to be." With respect to the fact, the paper stated in

* Blackstone's Commentaries, Vol. iv. p. 151—153.

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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 criminality, might then, perhaps, properly be urged as circumstances of extenuation. Though this paper, therefore, appeared in the Morning Chronicle, not as the projected act of the defendants, or of either of them, but as an advertisement signed by a Mr. Eyre, still it was a publication for which the defendants, in their capacity, as connected with this paper, were clearly answerable. Another circumstance which deserves your attention, is the time at which this advertisement was brought forward; you will find in the same paper in which it appeared, a vast number of advertisements from various associations in different parts of the kingdom, stating that there had lately been many seditious writings circulated with the greatest industry, and from the worst intentions, which had already done much mischief, and expressing a determination to take every method in future to discountenance and suppress such publications. You are then to consider how far these advertisements might operate as an antidote to the statement contained in this publication, you are to take into review the whole of the paper and advertisements, that you may be able to judge fairly of the tendency of the contents, and the intention of the writers; you will then decide whether this paper was published with a peaceable temper, and from upright intentions. I have nothing to say, in order to exaggerate the case, or influence your decision; I have never had occasion to do so in any instance; it is neither my duty nor my wish in the present, and I trust that no man in my situation will ever do so upon any future occasion. All cases of which the law takes cognizance, and which are to be determined by ascertaining facts, and applying the law to them, are, thank God, safe in the hands of a jury, the best guardians of our rights. Every thing in this country that deserves to be called a blessing, is indisputably deposited in their hands, as well as the power to apply a remedy, wherever their interference is called for to check the progress of an evil. It is from our blessings being vested in their hands, that we derive 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

* See the case of Almon, *ante*, vol. xx, p. 803; the case of Cuthell, A. D. 1799, and the case of White, A. D. 1811.

* After citing this passage and 4 Bl. Comm.

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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 can answer the purposes of candid and useful discussion. The contrary conduct adopted in this paper can only have a tendency to unsettle men's minds, and stir up sedition and anarchy in the kingdom. I never will dispute the right of any man, fully to discuss topics respecting government, and honestly to point out what he may consider as a proper remedy of grievances; every man has a right so to do, if the discussion be fairly and temperately conducted; I never will stand against such a person, even though I should differ with him in my opinion of the grievance, or disapprove of the proposed means of remedy. But when men publish on these points, they must not, as in the present instance, do it unfairly and partially; they must not paint the evil in the most glowing colours, while they draw a veil over the good. The writers of this paper, in describing the government of this country as productive only of one scene of misery, must have acted contrary to their own knowledge of its blessings, and in opposition to the sense which they could not but perceive was entertained by the people at large of the happiness of their condition. To what motives, I will ask, can such a representation be ascribed, or what are the effects to which it is naturally calculated to lead? Are the motives such only as can be set down to fair and honest intention, and the effects only such as can terminate in a legal and peaceable line of conduct? We are to consider too, that this mode of representation is adopted with respect to a constitution which has been the admiration of the wisest and best men in all ages, who have thought it barely possible that a constitution

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151, referred to by the attorney-general p. 987, Mr. Starkie observes, "When measures are fairly canvassed, and their defects, real or imaginary, pointed out with coolness and temper, it does not seem to have been contended, in modern times, that the line of duty has been transgressed, though the discussion may tend to prove the authors of those measures to be ill qualified for their situations. Party heat and zeal will overleap those bounds, or any, indeed, which decency might prescribe; and the thirst after honours and wealth, and, frequently, motives still more reprehensible, produce personal attacks upon character,—misrepresentation or exaggerated statements of matters of fact,—or downright lies fabricated to answer particular ends, and illustrated with inflammatory comments.

"To prevent all excesses of this nature, without destroying at the same time the liberty of the press, would be as impracticable as to root out from human nature the passions which gave them birth; but though it may not be politic to interfere in every instance where the bounds of rational discussion may have been overstepped, it seems clear that any such excess is illegal.

"The test of intrinsic illegality must, in this as in other cases, be decided by the answer to the question, *Has the communication a plain tendency to produce public mischief, by perverting the mind of the subject, and creating a general dissatisfaction towards government?* This tendency must be ascertained by a number of circumstances capable of infinite variety; it is evidenced by the wilful misrepresentation or exaggerated account of facts which do exist, or the assertion of those which do not, mingled with inflammatory comments, addressed to the passions of men, and not to their reason, tending to seduce the minds of the multitude, to irritate and inflame them.

"It may be said, where is the line to be drawn? Discontent may be produced by a fair statement of facts, inasmuch as it is very possible for an imbecile or corrupt man to be employed in the administration of public affairs. To this it may be replied, that to render the author criminal, his publication must have proceeded from a *malicious* mind, bent not upon making a fair communication for the purpose of exposing bad measures, but *for the sake* of exciting tumult and disaffection. The judge who presides at the trial, is bound by the law of the land, to deliver his opinion to the jury upon the quality and tendency of the publication; and the defendant cannot be convicted, unless that jury be convinced of the unfairness, that is, of the malice of the representation." Starkie on the Law of Slander and Libel, p. 524, ed. of 1813.

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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 befel 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; disclaiming all connexion with riots and disorder, but firm in our purpose, and warm in our affections for liberty." It is with you to decide whether you think the general tenor of this paper consistent with the principles assumed at the beginning and asserted at the end. If you shall judge that it contains matter very inconsistent with these principles, you are then to consider whether, in a case like this, humble language ought to ransom strong faults. If you shall be clearly of opinion that the paper has a different tendency from that which is professed in the outset and 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

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present, or thought necessary to submit to you, except what may fall from my learned friend shall require me to add some farther observations in reply. You will hear from the evidence all the facts which the defendants have to urge in their own justification, and from his lordship all that shall appear to him to be the law on this subject. I now leave the matter to your decision. If you think the defendants ought to be acquitted, I shall retire from the Court with a full conviction, not inconsistent however with that respect which I owe to your decision, that, in bringing this matter before you, I have acted according to the best of my judgment.

Mr. *Wood*, the junior counsel on the part of the prosecution, was then proceeding to call witnesses, and Mr. Berry was called, when the counsel for the defendants said he was instructed to save the Court all this trouble, as the defendants were anxious to try the question on its own merits. As counsel for the defendants, he therefore admitted that John Lambert, charged in the information as printer of the Morning Chronicle, was in fact printer of that paper; that the paper was purchased at the printing-house; and that the defendants, James Perry and James Gray, charged in the information as 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 time 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

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abide in their decision by the law as explained by the judge; they are not at liberty follow their own opinions. For instance, I am deprived of any part of my property, he loss of my property lays a foundation for n action, and the fact being found, the jury re bound to find a verdict against the person who has occasioned my loss, whatever might e his intentions. Here the judge pronounces he law, the jury only find the fact. The law nd the fact are as distinct and separate, as ght from darkness; nor can any verdict of a ury pass for a farthing in opposition to the law, s laid down by the judge, since the courts ave a power to set such a verdict aside.—ut in criminal cases, the very reverse has een immemorially established, the law and he fact have been inseparably joined; the ntention of the party accused is the very gist f the case. We are CRIMINAL only in the yes of God and man, as far as the mind and ntention in committing any act has departed om the great principles of rectitude, by which e are bound as moral agents, and by the indispensable duties of civil society. It is not he act itself, but the motive from which it roceeds, that constitutes guilt, and the eneral plea therefore in all criminal cases is ot guilty. Such is the answer which the ustice and clemency of our laws have put into he mouth of the accused; leaving him the ight of acquittal, if the circumstances of the ransaction shall be found to exculpate his notives.

The criminality of a person under the libel ct, is not to be taken as an inference of law rom the fact, as Mr. Attorney-general has tated it; but (if, as one of the authors of that ill, I may be allowed to interpret its meaning) connects and involves the law and the fact ogether, and obliges the jury to find in this rime, as in all others, by extrinsic as well as ntrinsic means, the mind and intention with hich the fact was committed. Nothing can e more simple than the doctrine. It goes irectly to the reason of the thing. Two men, or instance, are in company, and one of them killed. It is not an inference in the law om the fact of the killing that the person as guilty of murder—it might be manaughter, justifiable homicide, chance-medley, r it might be murder:—the fact does not fer the crime: it is the intention with which he act was committed, and this the jury are ound to discover and decide upon from all he accompanying circumstances. If I had een wrong in holding this opinion, all my pposition to that great luminary of the law ow departed,* but who will always live in ublic memory, was wrong and false; I revered his venerable authority, I admired the plendor of his talents which illustrated the ge he lived in, and perhaps ages will pass ithout 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 his sacred function to deliver to you an 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 information, 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 at all 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,

* William, earl of Mansfield, who died March 20th, 1793.

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and republics rising upon their ruins; when we beheld despotic monarchy succeeded by the despotism of anarchy. In this state of alarm, confusion, and devastation in other countries, the defendants are accused by this information of wickedly, maliciously, and seditiously endeavouring to discharge his majesty from the hearts of his subjects, and to alienate the people of England from what their affections were rivetted on—a limited and well-regulated monarchy. The proclamation appeared professedly to check a spirit of innovation, which had already displayed itself by such alarming effects in a neighbouring country, and which it was feared, by its authors, might in its progress become fatal to all establishments. How, then, can this paper be deemed seditious, in the spirit of that proclamation? It was not surely against a reform in our own constitution, which this paper recommends, that the proclamation was pointed, but against those who, in imitation of that neighbouring country, wished to establish a republican anarchy. Can any man produce a single expression which, in the smallest degree, countenances such a system? —How then can this paper be urged to be published in defiance of his majesty's authority, or to have a tendency to alienate the minds of his subjects from his government? A proclamation is always considered as the act of ministers; it becomes the fair subject of discussion; nor do the contents of this paper at all breathe a spirit, either disrespectful to his majesty's person, or injurious to his government.

If you, gentlemen of the jury, can think that the defendants were actuated by the criminal motive, not of wishing to reform and restore the beautiful fabric of our constitution, somewhat impaired by time, but to destroy and subvert it, and to raise on its ruins a democracy or anarchy,—an idea at which the mind of every honest man must shudder,—you will find them guilty. Nay, if any 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 a desire 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 upon 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 this country, 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 the 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

* See it in this Vol. p. 237.

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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 burthens 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 particular grievance, he enters into a general panegyric on the constitution? Will Mr. Attorney General say to-day, that this is the law of libel?

This very point has been most admirably touched upon by a person who ranks in the highest class of genius, and whose splendid and powerful talents, once exerted in the cause of the people, may possibly bear away the palm in the minds of posterity from the most illustrious names of Greece and Rome.

Mr. Burke, in his reflections on the affairs of France, at the commencement of the revolution, most justly observes, that when a man has any particular thing in view, he loses sight for a time even of his own sentiments on former occasions: when that right hon. 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, be brought forward, he said, sentiments favourable to such rights.—But when monarchy was in danger, monarchy became the object of his protection; the rights of the people were nothing to him then; they did not form the subject of his book; his object was, to show where the danger lay; and the beautiful illustration from Homer, relative to the death of Hector, was most applicable: "When his body was placed before the aged king, his other sons 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 inanimate and useless corpse was dearer to the

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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 excellences, or venture to touch upon a topic of grievance without bringing forward a recital of blessings. A paragraph would be swelled to a pamphlet, and an essay expanded to a dissertation.

But it seems the circumstances of the times render any opinion in favour of a reform of parliament peculiarly improper, and even dangerous, and that the recommendation of it, as the only remedy for our grievances, must, therefore, in the present moment, be ascribed to mischievous intentions. Were I impressed with a sense of that corruption, which has, to a certain degree, impaired and defaced the fair fabric of our constitution, and which, if not stopped in its progress, may lead to its decay and ruin;—were I to address you, gentlemen of the jury, to petition for a reform of parliament, I would address you particularly NOW, as the season most fit for the purpose; I would address you NOW, because we have seen in other countries, the effect of suffering evils to prevail so long in a government, and to increase to such a pitch, that it became impossible to correct them, without bringing on greater evils than those, which it was the first object of the people to remove;—that it became impossible to remedy abuses without opening a door to revolution and anarchy. There are many diseases which might be removed by gentle medicines in their beginning, and even corrected by timely regimen, which, when neglected, are sure to bring their victims to the grave. A slight wound, which may be certainly cured by the simplest application seasonably administered, if left to itself will end in gangrene, mortification, and death. If experience can be of any service to warn men of their danger, and to instruct them how to avoid it, this is the season to teach men the best sort of wisdom,—that wisdom which comes *in time* to be useful. I have myself no hesitation in subscribing to all the great points in this declaration of the meeting at Derby. To the abuses of our representative system they ascribe our unnecessary war,—our heavy burthens,—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

* "As any one," says Burke, "of the great members of this constitution happens to be endangered, he that is a friend to all of them chooses and presses the topics necessary for the support of the part attacked, with all the strength, the earnestness, the vehemence, with all the power of stating, of argument, and of colouring, which he happens to possess, and which the case demands. He is not to embarrass the minds of his hearers, or to incumber, or overlay his speech, by bringing into view at once (as if he were reading an academic lecture) all that may and ought, when a just occasion presents itself, to be said in favour of the other members. At that time they are out of the court; there is no question concerning them. Whilst he opposes his defence on the part where the attack is made, he presumes, that for his regard to the just rights of all the rest, he has credit in every candid mind. He ought not to apprehend, that his raising fences about popular privileges this day, will infer that he ought on the next, to concur with those who would pull down the throne: because on the next he defends the throne, it ought not to be supposed that he has abandoned the rights of the people.

"A man who, among various objects of his equal regard, is secure of some, and full of anxiety for the fate of others, is apt to go to much greater lengths in his preference of the objects of his immediate solicitude than Mr. Burke has ever done. A man so circumstanced often seems to undervalue, to vilify, almost to reprobate and disown those that are out of danger. This is the voice of nature and truth, and not of inconsistency and false pretence. The danger of any thing very dear to us, removes for the moment every other affection from the mind. When Priam had his whole thoughts employed on the body of his Hector, he repels with indignation, and drives from him with a thousand reproaches, his surviving sons, who with an officious piety crowded about him to offer their assistance. A good critick (there is no better than Mr. Fox) would say, that this is a masterstroke and marks a deep understanding of nature in the father of poetry. He would despise a Zoilus, who would conclude from this passage that Homer meant this man of affliction as hating, or being indifferent and cold in his affections to the poor relics of his house, or that he preferred a dead carcass to his living children.

"Mr. Burke does not stand in need of an allowance of this kind, which, if he did, by candid criticks ought to be granted to him." *Appeal from the New to the Old Whigs*, Burke's Works, vol. 6. pp. 114, 115, 8vo. 1808.

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his constituents, on the same subject, a letter which is so much in point that I must beg leave to repeat it to you.

"I return to you baffled and dispirited, and I am sorry that truth obliges me to add, with hardly a ray of hope of seeing any change in the miserable course of public calamities.

"On this melancholy day of account, in rendering up to you my trust, I deliver to you your share of a country maimed and weakened; its treasure lavished and mis-spent; its honours faded; and its conduct the laughing-stock of Europe: our nation in a manner without allies or friends, except such as we have hired to destroy our 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, compare, and judge for yourselves.

"But, under all these disheartening circumstances, I could yet entertain a cheerful hope, and undertake again the commission with alacrity, as well as zeal, if I could see any effectual steps taken to remove the original cause of the mischief.—Then would there be a hope.

"But, till the purity of the constituent body, and thereby that of the representative, be restored, there is NONE.

"I gladly embrace this most public opportunity of delivering my sentiments, not only to all my constituents, but to those likewise not my constituents, whom yet, in the large sense, I represent, and am faithfully to serve.

"I look upon restoring election and representation in some degree (for I expect no miracles) to their original purity, to be that, without which all other efforts will be vain and ridiculous.

"If something be not done, you may, indeed, retain the outward form of your constitution, but not the power thereof."*

Such were the words of that great and good man, surely equally forcible with any of those employed in the declaration of the meeting at Derby, yet, who ever imputed to him mischievous intentions, or suspected him of sedition? His letter was published and circulated, not only among his constituents in the extensive county of York, but addressed to the nation at large, and recommended by him to their attention. Who does not recollect the conduct which had been adopted on the same subject by the very men now nearest his majesty, 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, 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 then 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 upon every suitable occasion I shall continue to maintain.

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

* This quotation was introduced by Mr. Erskine in his defence of Paine, *antè*. pp. 425, 426.

* See pp. 492, 493.

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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 authors 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 endured. 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 nation 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 very 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 that 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

* The paper in question was generally understood to have been composed by the late Dr. Erasmus Darwin, the celebrated author of the 'Botanic Garden' and 'Zoonomia.'

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e no objection to them in their character of ditors, that they have sought only for the ruth, and, wherever they have found facts, ave not hesitated to bring them before the ublic. They have thus enabled their readers o judge for themselves, and have furnished hem with the means to form a proper judgent. This is the true value of a free press. he more men are enlightened, the better ill they be qualified to be good subjects of good government; and the British constiution, as it has nothing to fear from compaison, so it can receive no support from those rts which disguise or suppress the truth reecting other nations. Wherever the deendants have delivered their sentiments upon ublic occurrences, they have equally avoided eing misled by the credulity of alarm, and he frenzy of innovation; and have reproated, with the same spirit and boldness, the buse of freedom and the perversion of power, -the outrages of a sanguinary mob, and the ppressions of an unprincipled despot. Whatver may have been their political partialities hey are such as cannot but do them the ighest honour, and their partialities have een the result of honest conviction.—Though niformly consistent in their friendships, they ave never been accused by those who know hem of being partisans for interest.—Their pinions have been honest, as well as steady; nd through life they have maintained and sserted the pure principles of rational freeom, and given the most strenuous support to he best interests of man. They have, in heir daily task, ever preserved reverence for rivate character, and in no instance violated he decorums of life, by low ribaldry or wanton efamation.—Though adverse in their sentiients to ministers and their measures, they ave confined themselves to manly discussion, nd fair argument; and never descended to ndecent attack, or scurrilous abuse.

My learned friend cannot produce a single nstance in the course of seventeen years (the rm of my acquaintance with them), in hich they have been charged in any court ith public libel, or with private defamation: nd I challenge the world to exhibit a single nstance in which they have made their ournals the vehicles of slander, or where om interest, or malice, or any other base notive, they have published a single pararaph to disturb the happiness of private life, o wound the sensibility of innocence, or to utrage the decencies of well-regulated soiety.—I defy the world to produce a single nstance.—Men who have so conducted themelves, are entitled to protection from any goernment, but certainly they are particularly ntitled to it, where a free press is part of the ystem. In the fair and liberal management f their paper, fifteen shillings out of every uinea which they receive flow directly into he public exchequer; and besides the incesant toil, and the unwearied watching, all the xpenses 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 would show even by internal evidence, that it was inserted at a very busy moment, without revision or correction, and about 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 following them with a fair statement of grievances? If it be 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 thes 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

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heart. You will rather desire that British justice should resemble that attribute of heaven which looks not to the outward act, but to the principle from which it proceeds—to the intention by which it is directed.

In summing up for the crown, I would never wish to carry the principles of liberty farther than Mr. Attorney-general has done, when he asserted the right of political discussion, and desired you only to look to the temper and spirit with which such discussion was made;—when he asserted, that it was right to expose abuses, to complain of grievances, provided always that it were done with an honest and fair intention. Upon this principle, I appeal to you, whether this advertisement might not be written with a *bonâ fide* intention, and inserted among a thousand others, without any seditious purpose, or desire to disturb the public peace.

Undoubtedly our first duty is the love of our country; but this love of our country does not consist in a servile attachment and blind adulation to authority.—It was not so that our ancestors loved their country; because they loved it, they sought to discover the defects of its government; because they loved it, they endeavoured to apply the remedy. They regarded the constitution not as slaves with a constrained and involuntary homage, but they loved it with the generous and enlightened ardour of 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.

REPLY.

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, of which my duty calls upon me to take notice. 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 people 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 intentions. 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

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intention, is amenable to the law, and that such and such acts are evidence of the criminal intention; and then the jury must decide upon that evidence, and upon that advice, whether the defendant was or was not guilty: so says Mr. Erskine, and so I say; for it is a matter of plain common sense, coming home to the understanding of every man. Mr. Erskine has contended, that the jury must not draw the inference of criminal intention from the mere fact of publishing a paper. Certainly not; but they may draw the inference of guilty intention, if they discover in the contents of the paper a wicked and malicious spirit, evidently pursuing a bad object by unwarrantable means. If I should put a paper into the hands of the Jury, desiring them to put my learned friend to death, would not that prove an evil 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 have not attempted to prove. Why, if they received it in July, they did not then insert it, they have not said. They have 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 any 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 defendants.

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 judg-

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ment 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 *bonâ fide*, and from no other motive, than the wish to procure a peaceable and legal redress of grievances? If you can admit this, you will of course find the defendants not guilty. But if it shall appear otherwise, let me remind you of that duty which you owe to the public, with whose safety and protection you are intrusted, and whose interests you are to consult in the verdict which you shall give. Let me remind you of the necessity of checking, in proper time, the spirit of sedition, and frustrating the designs of the factious, before it be too late. Let me conclude with observing, that I have brought forward this prosecution as a servant of the public, influenced by my own judgment, and acting from what I conceived to be my duty. I had no other view than the public advantage; and should you be of opinion that the defendants ought to be declared not guilty, I trust you will acquit me of any intention of acting either impertinently with respect to you, or oppressively to the defendants. I shall then retire, conscious of having done my duty in having stated my opinion, though inclined, in deference to your verdict, to suppose myself mistaken.

SUMMING UP.

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,

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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 news-paper, 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 that the defendants are the proprietors of the paper in which this address was published.

There is one topic more. It is said they were not the authors of the address, and that it got inadvertently into their paper. It never was doubted, and I suppose it never will be doubted, that the publishers of a newspaper are answerable for the contents of it. Those who think most favourably for the defendants will go no farther than to say, that the parties publishing ought to give an account how they published it, and if there is any thing baneful in the contents, to show how it came to them, and whether it was inserted inadvertently or otherwise. If any thing of that sort had been offered, I certainly should have received it as evidence. But nothing of the kind has been offered, and the defendants stand as the proprietors and publishers of the paper, without the slightest evidence in alleviation being offered in their favour.

It is not for human judgment to dive into the heart of man, to know whether his intentions are good or evil. We must draw our conclusions with regard to his intentions from overt acts; and if an evil tendency is apparent on the face of any particular paper, it can only be traced by human judgment *primâ facie* to a bad intention, unless evidence is brought to prove its innocence. This cause is destitute of any proof of that kind.

It is said that this paper contains other advertisements and paragraphs; and therefore from the moral good tendency of the whole, for aught I know to the contrary, you are to extract an opinion that the meaning was not bad. I cannot say that the travelling into advertisements, which have nothing to do with this business, is exactly the errand you are to go upon. From this paper itself, and all the contents of it, you will extract the meaning; and if upon the whole you should think the tendency of it is good, in my opinion, the parties ought to be acquitted. But it is not sufficient that there should be in this paper detached good morals in part of it, unless they gave an explanation of the rest. The charge will be done away, if those parts which the attorney-general has stated are so explained as to leave nothing excepted.

There may be morality and virtue in this paper: and yet, apparently, *latet anguis in herbâ.* There may be much that is good in it, and yet there may be much to censure. I have told you my opinion. Gentlemen, the constitution has intrusted it to you, and it is your duty to have only one point in view.— Without fear, favour, or affection, without regard either to the prosecutor or the defendants, look at the question before you, and on that decide on the guilt or innocence of the defendants.

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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.

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583. Proceedings on the Trial of an Indictment against WILLIAM HUDSON, for Seditious Words. Tried at Justice Hall in the Old Bailey, before Sir John William Rose, Serjeant at Law, Recorder of the City of London, on Monday Dec. the 9th: 34 GEO. III. A. D. 1793.

[OCTOBER the first, 1793. Yesterday Mr. Pigott and Dr. Hudson dined at the London coffee-house, Ludgate-hill. Shortly after their dinner they were giving toasts to each other in so loud a manner as to be taken notice of. Pigott gave aloud, "The French republic," which was immediately resented by a gentleman present, who gave "The king." Mr. Leech, the master of the coffee-house, had previously taken notice of their improper conduct, and soon after sent for a constable from the Poultry compter, who took them into custody. They were yesterday examined before Mr. Alderman Anderson, at Guild-hall, who remanded them, in order to be brought again before him. Mr. Leech, the master of the coffee-house, Mr. Newman, of Newgate-street, and a Mr. Vaughan, of Bristol, were examined; and it was proved in evidence, that they had spoken in a very disaffected manner, and had given the following toasts, —"The system of equality,"—"May the republic of France be triumphant over all Europe!" The lord mayor was talked of in most opprobrious terms for his public conduct. The king was spoken of in an improper and seditious manner; as was also the prince of Hesse-Cassel, whom they called a swine-dealer. The ministry were denominated robbers and highwaymen. The constable, who accompanied them in the coach to the Poultry compter, deposed, that on their way thither they called from the coach-windows to the people, "The French republic!" and "Liberty while you live!" This morning they were again brought before the same magistrate, when Dr. Hudson made an able speech in defence of himself and his fellow prisoner. After the whole of the evidence had been heard in support of the charge, the alderman felt it his duty to commit both the prisoners for trial. They were accordingly committed to the New compter, their bail not being ready; and it being necessary, in this case, to give notice to the solicitor of the treasury of the persons intended to be offered as bail.

5th. Mr. Pigott and Dr. Hudson were brought by a Habeas Corpus before the honourable Mr. Justice Gould and Mr. Baron Perryn, at Serjeant's-inn, at the request of Mr. Martin, their attorney. The warrant of commitment being deliberately read by Mr. Harrison, at the request of the judge, Mr. Pigott hoped that Mr. Martin might state to his lordship the grounds of their objection to the commitment. Mr. Martin was heard for the prisoners, in a speech which took up near half an hour. His principal aim was directed to the illegality of the commitment; and he trusted, that, as the precise words were not specified in the warrant, the gentlemen would be discharged. The solicitor-general made a short reply; when judge Gould stated at some length the act of parliament which guided him in this business. He did not see that there was any illegal step in the commitment, and quoted several authorities to confirm it. Baron Perryn stated, that he knew nothing of the circumstance till that moment, but entirely agreed in opinion with his brother Gould. Mr. Pigott and Dr. Hudson both addressed the judge, who gave them the greatest attention. Dr. Hudson also stated, that he had no reason to complain of alderman Anderson's conduct; on the contrary, he believed he had done no more than his duty. Mr. Martin, the attorney, begged to be heard again. He said he differed from his client in his sentiments with regard to the alderman's conduct; and was proceeding with some invective, when he was stopped by the judge. Mr. Pigott: "My lord, the Bill of Rights states, that excessive bail shall not be demanded." Judge Gould: "You are premature. You do not know what bail I may demand. I shall be satisfied with less. Where

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are your bail?" Mr. Martin: "My lord, from the objections I have made, I did not think of bringing any; my clients would much sooner suffer the greatest severity the law can inflict, than put in such heavy bail, so contrary to Magna Charta." Mr. White, of the treasury, said he should be contented with bail of 250*l.* for each of them. Judge Gould: "You must give twenty-four hours notice to the solicitor of the treasury, that he may inquire as to the respectability of the bail; but, as you have no bail to put in, I must do my duty, and remand you to prison." *Annual Register.*]

At the Old Bailey, on Nov. 2nd, 1793.

The bill of indictment preferred against Mr. Pigott for uttering seditious words in the London coffee-house, was rejected by the grand jury.

The bail offered by Dr. Hudson, also charged with uttering seditious words, in the London coffee-house, in company with Mr. Pigott, was rejected by the Court; and therefore Dr. Hudson was committed to Newgate, there to remain until he shall produce sufficient sureties.

Monday, December 9, 1793.

William Hudson was indicted for uttering seditious and inflammatory words:

Prisoner. The indictment has never been fully read to me, nor have I been indulged with a copy of it; I claim the indulgence of the Court to have it read.

[The Indictment read by the clerk of the Court.]

The indictment having been opened by Mr. *Raine*, the case was stated by Mr. *Fielding*.

[The witnesses examined apart.*]

John Buchanan, sworn.

I am a manufacturer at Glasgow in Scotland.

Were you in the London coffee-house on the evening of the 30th of September last?—Yes.

Did you see Mr. Hudson and Mr. Pigott there?—I did.

About what time did you first observe them in the coffee-house?—I suppose, about seven o'clock.

What was the first thing that attracted your thoughts respecting the prisoner?—When they came into the room Mr. Hudson called for a newspaper, and sat down in a box in the open coffee-room.

Were there many people in the coffee-room, or was it empty? or how?—There were a good many in then, but there were more came in afterwards; the coffee-room was not so full then as it was afterwards. Mr. Hudson began reading the defeat of the Dutch troops in the paper; the first thing that attracted my notice was, that he wished the duke of York and his army were either sent home, or sent to the devil, he did not care which; there were a good deal of things spoken respecting several characters afterwards. I believe this conversation was between the prisoner and Mr. Pigott.

How far off were you from the prisoner?—I was in the next box, sitting in a chair at the end of the next box.

In the course of this conversation was the king mentioned at all?—He was.

By whom?—By Mr. Hudson.

Be so good as to tell us what part of any thing was mentioned by Mr. Hudson?—He said, "The king, what was he?—George Guelph, a German hog-butcher, a dealer in human flesh by the carcass, and sold his Hanoverian subjects to his British subjects for thirty pounds a piece."

Will you utter the words just as he uttered them?—I think it was, "The king, what is he?—George Guelph, a German hog-butcher, a dealer in human flesh by the carcass, he sells his Hanoverian subjects to his British subjects for thirty pounds a piece, and that he was not satisfied with that, that he was partner with the prince of Hesse-Cassel."

Speak the words in the manner he related them?—"And not content with that, he goes partner with the prince of Hesse-Cassel, and has fifteen pounds a head for each of his carcasses."

In what tone of voice was this said?—It was in a sharp tone of voice, and rather felt noisy by the gentlemen who were sitting along with him; it was louder than the common conversation.

Do you know, in point of fact, whether it was heard by those persons in the neighbouring boxes?—It was heard very plain by the gentlemen who sat with him, and several others.

After he had made use of these expressions, what followed then?—There was some conversation took place between Mr. Pigott and him; Mr. Hudson took up the paper, and read of the king's going a hunting, and seemed to reflect much on his majesty's doing so, at the time that his country was in such a calamitous war.

Was there any toast given by any body?—In the time of conversation they had drank two glasses of punch each; they called for a threepenny glass, and hurried it.

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* With respect to the removing witnesses while others give their testimony, see the earl of Shaftesbury's case in this Collection, Vol. VIII, pp. 775, 778, 792; Harrison's case, Vol. XII, p. 871; Peter Cook's case, Vol. XIII, p. 348; Vaughan's case, Vol. XIII, p. 494; Matthews's case, Vol. XV, p. 1340; Reason and Tranter's case, Vol. XVI, p. 18; and Elizabeth Canning's case, Vol. XIX, pp. 323, 330.

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Were they tumblers or small glasses?—Large glasses, such as they charge sixpence a piece for: as soon as they had got them Mr. Hudson drank aloud, "The French republic! or constitution!" I cannot say which exactly, and Mr. Pigott said, "I will join you in that, with all my heart;" on the doing that, the gentlemen in the room got up on their feet, except those two men, he and Pigott, and "The king! The king!" was called from all quarters of the coffee-room, to my knowledge it was; when that was the case, Mr. Hudson got up his glass and in a very loud voice called out, "The French republic; and may it triumph over all the governments in Europe!"

In what tone of voice did he call out that?—In a very loud tone of voice, much sharper than he had said any thing before.

Prisoner. You said it was about seven o'clock in the evening when I came into the coffee-room?—I have said so.

How long do you think I was in the coffee-room from first to last?—I cannot say.

How long do you think?—He kept the room for, I suppose, half an hour after the business might have all been over.

That is not an answer.—How long do you think I was in the coffee-room?—I suppose you might be two hours; I took no particular notice of the clock.

Did I address myself to you in any part of that two hours or not?—As an individual you never addressed me.

Did I address myself to the company at large?—Yes.

You swear that positively?—I do.

Pray how was that manner of address made?—You said, when the gentleman got up and drank "the king," you got up and said,—"what are we all?"

How? did I address myself to the whole room?—You asked them, what were they all? That was immediately after you had drunk the toast.

How long do you think I might have been in the coffee-room before I addressed the company with that question?—I do not know, perhaps an hour, or an hour and a half.

Do you think it was an hour?—I do not think it was quite so much.

What had passed before I asked that question?—The drinking of the toast.

Pray in consequence of what was it that I made that address?—When they drank "the king!"

Pray, Mr. Buchanan, did you see any body attempt to interrupt me previous to this address? Mind, I ask you positively to speak to that question, because you must know.—Yes, I think Mr. Newman did.

Are you positive that Mr. Newman did?—I think so.

You seem to be extremely positive in some other things, why not in this? Did you or did you not see some person interrupt me?—Yes, they drank "the king!"

That did not interrupt me.—It was done to that effect.

Was nothing else done?—I saw Mr. Newman interrupt you.

Was this before or after I addressed the company?—It was before.

Now, Sir, pray what was the manner of that interruption?—He told you, you were a bad man, or you would not have been guilty of giving that toast. I do not know, whether he did not call you a rascal.

Pray, Sir, did you not hear him call me a rascal? If you can recollect one part of the conversation, so much against me, you surely can recollect the other, or else your's must be a very accommodating memory. Did not you hear him call me a rascal?—It was thereabouts.

Was it words to that effect?—I think it was.

Were they opprobrious terms?—There were words on both sides.

I ask you positively whether he did or did not call me a rascal?—He did to that purpose.

Would you have supposed that any other man was called a rascal?—I know the words he said to you was calling you a rascal.

Did he do any thing else?—When you called him a rascal he seemed to have an inclination of striking you on the head with his cane.

Did you hear Mr. Newman call me a rascal? What did he call me?—I told you he called you something to that purpose.

Did you see Mr. Newman do any thing to me than call me opprobrious names? To cut the matter short, did not you see him put his fist to my face?—He did put it very near to you.

If he had applied to you in that way would you have supposed that he meant to strike you?—I had not given him a provocation to do it.

Would not you have supposed he was going to strike you?—Mr. Newman and you, both, were in a passion, and you called out to the whole room that he was an aristocrat and a rascal

Did not you see him put his fist in my face before I addressed the company?—He seemed inclined to strike you over the head.

Was not all this previous to my having addressed myself to him or the company?—It was in consequence of getting up and drinking, "the French republic, and may it triumph over all the governments of Europe!"

You say, you heard me call the king, a German hog-butcher and other words; are you sure that these were all the words that I uttered? Are you sure that I never uttered any words by way of comparison, such as he was no better?—I have told every thing to the best of my recollection.

Do not you know what passed previous to my making use of these words?—I remember a great many scurrilous things said of diffe-

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rent characters; but they are put off here by the Court, and I am not to mention them.

Pray at what period of the evening was it that I gave a toast "to the French republic?"—At the time that Mr. Newman and you seemed to have a scuffle, when you got the third glass of punch, not before that as I can recollect; and you sat by me all the time; I was not far, I was a great deal too near you.

You were not, I think, before the alderman, when I was first taken up?—I never was before any body till I came here.

Were not you applied to, to come before the alderman?—No.

How came you to come here to-day?—Mr. White subpœnaed me here.

Was it not in consequence of a paragraph appearing in one of the papers, stating that this country had to pay for so many Hanoverians killed, at thirty pounds a head, that I made these remarks?—I did not hear you read that.

John Leech sworn.

I keep the New London coffee-house; this gentleman, Mr. Hudson, and Mr. Pigott, came into the London coffee-house between seven and eight o'clock, the 30th of September last; it was on a Monday evening, they had been in the house more than half an hour, and they had had three glasses of punch, and began to be noisy; they called for several papers, in fact I believe all the papers, and as they called them they read different paragraphs from them, and commented on the paragraphs as they went on; there was nothing which called my attention till they gave some toasts as were thought, by the company present, very improper ones, as "equality," "the French republic;" they both drunk it, I believe that gentleman gave it; he then drunk, "an overthrow to the present system of government throughout Europe!" I am not sure whether Mr. Pigott drank that, that gentleman gave it.

Do you recollect any other toasts that were given by the defendant?—There were several others, but I cannot take upon myself to recollect any others; these were both given by Mr. Hudson.

Had he a glass in his hand? Was he standing or sitting?—He was sitting at that time; he gave it in a friendly manner, but very loud; in short he called the attention of all in the room, and the gentlemen pressed me to turn him out; I told them I would thank them if they would make it a business of their own, as I did not wish to interfere in it; several gentlemen reproved me for it, and told me I ought not to suffer such behaviour in the coffee-room.

Was that heard by Mr. Hudson?—It was not, these toasts I have mentioned must be heard by the gentlemen; by this time Mr. Newman came in, he walked up the room and he heard the toasts, and he said, "Mr. Leech, why do you suffer such behaviour as this in your room?" By this time Mr. Hudson had spoken so very loud, as to cause Mr. Newman to call for a glass of punch, and give "the king!" and every body in the room got up on their feet, and gave "the king! the king!" ten times or more; this roused Mr. Hudson, he got up on his legs and gave "the French republic!" he had a glass in his hand; Mr. Newman then went rather closer to him, and seemed to show great indignation at the toast which he had given; Mr. Hudson persisted in it, and gave it again, and said he would drink it, and held up his stick in a posture to provoke Mr. Newman to strike him. Mr. Newman seemed very warm, but was persuaded by the gentlemen present not to strike him; I believe no blows passed on either side.

Do you remember whether he held up his stick in that menacing posture, before he was threatened by Mr. Newman?—I should rather think it was after Mr. Newman had reproved him for giving such a toast, but certainly before Mr. Newman offered to strike him.

What followed on that?—Several gentlemen called to me, and desired I would turn them out of the room; I told them I had observed their conduct for some time, and I did not think I was justified in turning them out of the room, but I certainly would deliver them into the hands of the police. I sent for an officer; there was twenty minutes elapsed or more before an officer came; during that time they behaved very riotously, particularly that gentleman offering his stick in the face of two or three gentlemen. Mr. Pigott made an attempt to go out, but I pulled him back again and had all the doors fastened, and when the officer came, I gave them into his custody.

Prisoner. Pray Mr. Leech what hour in the evening was it I entered your house?—I suppose it might be about seven o'clock.

How long might I remain in your house?—Till near nine.

You think it did not exceed nine before I went out?—I think it was about nine.

How came I to go out of your house?—I ordered you out; I gave you in charge of the officer.

What authority had you for that?—If you had not said any thing I should not have ordered you out by an officer.

What period might I have been in your house, when I drank "the French republic?"—It was near eight.

How many glasses of punch did I drink in your house?—Three.

Was it the first, second, or third?—The third.

Did I address myself ever to you?—Yes; you called me a fool.

Did any body attempt to interrupt me before I addressed myself to the company?—Yes; you were clearly interrupted before you addressed the company, because every body was so hurt.

Did you not hear Mr. Newman call me a rascal?—I did not.

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You swear positively that Mr. Newman did not call me a rascal?—You heard me, I answer no.

Did you not see Mr. Newman put his fist into my face?—Yes.

Was not that previous to my having addressed myself to the company?—No, it was afterwards

Now, Sir, what part of the room were you in, when you heard me drink these toasts?—Not a great way from you, a little farther from you than I am now.

Did I drink them as toasts to the company at large, or to my friend?—You drank them to your friend at first, but you drank them so loud that they could be heard all over the coffee-room.

Was it not after Mr. Newman called me a rascal, and put his fist in my face, that I gave the toast on my legs?—It was, I said so before.

Did I seem to have given Mr. Newman any provocation to induce him to put his fist in my face, and call me a rascal?—No doubt of it, he was the first man who came up to you, and then you held up your stick in a menacing posture.

Was he not approaching my box in a menacing posture?—No otherwise than showing indignation at your behaviour.

You did not hear me call the king a German hog-butcher?—Perhaps that question may as well not be asked me. Certainly I did hear you call the king a German hog-butcher, that he had sold his troops at thirty pounds a head; that is as near the words as I can recollect.

Court. What were the words?—That he had sold his subjects for thirty pounds a head.

Did he say what subjects?—I was not close enough to hear; he said the prince of Hesse-Cassel did the same.

Prisoner. Pray, Mr. Leech, were these all the words I uttered?—I cannot answer that question; I wonder you should put it.

You have seemed to select them very nicely however; was it not in consequence of some paragraphs in the newspapers that I made these observations?—That I cannot say; it did not appear to me that these were observations that could be made from any thing in a paper.

The jury want to hear nothing of you but evidence; did I not read the newspaper aloud, and were there not paragraphs tending to that effect, which induced me to make use of some of these expressions?—When you read the newspaper so very loud I was not in the room; you had read your paper aloud, and had two glasses of punch before I came into the room, and I begged to keep out till I was forced in.

And you came in very apropos when I was uttering these words. Did you hear the whole of that conversation concerning the king?—I did.

At what period did you come in?—I had been out of the room half an hour.

Was it after you came into the room some time, that I began to speak about the king?—I only heard by piece-meals, except when you exerted yourself.

There is nothing else you can swear to, only what you have mentioned?—No.

At what period do you think that I drank "The overthrow to the present systems of government throughout Europe"?—Towards the latter end, at the last glass of punch.

And are you sure these are the very words I uttered?—Yes.

White Newman sworn.

I live in Newgate-street with my father; I was in the London coffee-house on the 30th of September; I went in there between eight and nine; the prisoner at the bar and another gentleman were sitting in a box, opposite to where I sat down.

How many do you think there were in the coffee-room at that time?—I should suppose a dozen, not more; they were talking very loud, but I did not hear any of their conversation, till they gave "The French republic!" as a toast aloud,—I mean the prisoner gave it to the person who was with him; it was as loud as I speak now; I heard it distinctly, and I believe every gentleman in the coffee-room did; I got up, and went to Mr. Leech, the master of the coffee-house, who was at the upper end of the room; I asked him if he suffered that toast, "The French republic!" to be drank in his coffee-room? I do not know whether Mr. Hudson heard me or no; Mr. Leech said, it was too bad. I called for a glass of punch, and drank his majesty's health, and the royal family; which was repeated, I believe, by every gentleman in the room, and immediately "The King! The King! The King!" resounded from all parts of the room, except from the prisoner. Then a dispute arose between the prisoner and myself; he gave it repeatedly again, "The French Republic;" he was sitting when I went to him; I said he had no right to drink that toast in the public coffee room; he called me a rascal and scoundrel several times, and held his stick in my face, and I held mine, but we neither of us struck one another. When I said he had no right to drink that toast in a public coffee-room, he drank that toast again, and said that I was a rascal and scoundrel and had no business with him; he made use of very ill language to me, to wish me to strike him, but I laid my stick on the opposite box, and told him I was determined not to strike; there was a great dispute in the coffee-room; he said I was a rascal, he had Lavater, he could read it in my face; and an officer was sent for, and he was taken into custody.

Prisoner. You say, you came into the coffee-room between eight and nine o'clock; can you recollect what period between eight and nine?—I suppose it was as near the half hour as could be.

Did I address myself to you when you came into the room?—You did not.

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Did I appear to be addressing myself to the company?—You drank that toast aloud.

Did I desire the company to join with me?—You did not.

Did not you come up to me, and call me a rascal?—Not before I went to Mr. Leech.

You did not call me a rascal before I spoke to you?—By no means in the world.

I think you put your fist in my face?—I did not.

What induced you to come to my box at all?—Why, your giving "The French Republic."

You had no other provocation from me; how long do you think I gave this after you came into the coffee-room, before I was conveyed out of it?—I think it may be three quarters of an hour.

Then it must be past nine o'clock?—I think it was.

Did you hear me give any other toasts than those you have mentioned?—I did not; I heard riotous behaviour.

I think, when you were before the magistrate, you said you heard me call his majesty a German hog-butcher?—No, I did not; I came in afterwards.

What did you conceive that I was taken out of the coffee-room for?—For breeding a riot.

Did I strike any body?—I did not see you.

Did not I desire the constable to take a gentleman into custody, who, I swore positively, had struck me?—You did.

Was he taken into custody?—He was not.

You are sure, that I did not connect any other words with the toast that you have sworn to?—I did not hear any other.

Thomas Griffith Vaughan, sworn.

I live in Bristol; I am a merchant there: I was at the coffee-house this evening.

Will you be so good as to tell us whether you heard any toast given by the prisoner, and what it is?—I heard many toasts given, and drank; I heard two particularly given by the prisoner at the bar, "Equality!" "The Republic of France; may it triumph over Europe!" There were many toasts, and some repeatedly given; but these two I have a perfect recollection came from the prisoner, or words to a similar import.

Do you recollect any expressions relative to the king?—Yes.

Were any such expressions as these used by the prisoner at the bar,—that the king was a German hog-butcher, that he sold his subjects of Hanover to the government of this country, to be butchered at thirty-pounds a head; and that the prince of Hesse-Cassel did the same by his subjects; and that he had no doubt but the king of England was in partnership with him, and received fifteen pounds a head back again of it, from the prince of Hesse-Cassel?—He said these words.

Prisoner. What hour might it be when I came into the coffee-room?—A little after seven.

How long do you think I remained there?—For more than till half after eight.

Do you think I remained there till three quarters past eight?—I do not think you were taken away till nine.

Was I taken away before nine?—I do not know.

In what part of the coffee-room was it you sat?—In the next box to you, with my back against your's.

Was Mr. Newman sitting with me?—No.

Was Mr. Buchanan?—He was sitting at the end of that box.

Then perhaps Mr. Buchanan sat nearer to me than you did?—No, I do not think he did, because my back was close to you.

At what time did I drink "the French Republic"?—You drank several toasts of that nature.

How long do you think I had been there before I drank the toast you charge me with?—Perhaps an hour.

Do you recollect how many glasses of punch I had while I was there?—You drank three.

How many glasses of punch do you think I had drank before I had made use of these expressions?—You were drinking the second.

You are sure of that?—I have said it.

Have not you sworn that I drank "The French Republic"?—Yes.

And now cannot you fix on any period at all that I did drink it in?—Not within five minutes.

You recollect how many glasses of punch I drank; how many had I drank before I used these words?—I can charge you with drinking a great many toasts, some of them in the first glass, and some in the second.

Answer that question; at what glass of punch was it I drank the toast in question?—At the last glass.

Did you see any body attempt to interrupt me, in the course of my being in that coffee-room?—Not till you had drunk "The French Republic," in opposition to the toast given, and generally received,—"The King."

Did you see any body interrupt me then?—Yes, Mr. Newman.

Did I address myself, in any period of this discourse, to you?—No, not at all.

Did you see me address myself to any body else?—Yes, to Mr. Newman, and to several persons in the room after the toast was given.

Did I give the toast to Mr. Newman?—You gave it generally; you gave it very loud in opposition to the toast of "The King," which was the sentiment of the company

Did you see Mr. Newman put his fist in my face, or attempt to do it?—I did not; I saw him hold up his stick to you, and I came to him, and desired him to put down his stick.

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Was that Mr. Newman holding his stick up to me previous to, or after my addressing him?—After.

Did you hear Mr. Newman call me a rascal?—I did not; I heard you call him one.

But before I addressed myself to him, did not you hear him call me a rascal?—I did not.

And if he had done so, you must have heard him?—Probably I should.

Did you, in the conversation you have stated, hear me make use of any other words than these you have mentioned? Were these expressions not mixed with other words?—Yes, there were several general expressions afterwards; as that none but a German hog-butcher could be guilty of such practices.

I wish to ask you a serious question, whether I did not apply the words, none but a German hog-butcher could be guilty of such practices, instead of the king being a German hog-butcher?—Both, I believe; I charge you with the first positively, and I believe you spoke the last.

I suppose it is not possible you could be mistaken in these words?—I am pretty confident.

You receive no kind of emolument for appearing against me this day?—I expect to be paid my expences.

You have not applied for any part of the credit loan?—I have not.

I believe your circumstances are not in the best situation?—They are not.

I believe you are either in a bankrupt state, or making up your affairs?—No, I am not: I have no other end than a man of honour, and the common rights of mankind.

Are you positive that I drank an overthrow to the present systems of government throughout Europe?—I am positive you did, and you proposed it.

Did not you, in a former examination, say that I spoke in a language which you did not understand?—It was so in the beginning of your conversation; I much wondered that two men sitting so close together, should talk so extraordinarily loud, so I looked round to see what sort of people they were; in consequence of which, Mr. Pigott noticed me looking at you; then a sort of conversation in French, or some other language, passed between you; so you went on in another language for some time, and you entered into an argument in a language which I did not understand; I suppose you spoke in that language when you found it necessary to put an end to the argument that had attracted attention.

Did not the conversation at first originate from a paragraph which I was reading in the newspaper?—I believe you were reading that the king had been a fox-hunting, and Mr. Pigott expressed great surprise that the king should take diversions of that kind while his subjects were engaged in a war; then you began exclaiming that the king was a German hog-butcher.

You said, that I said, none but a German hog-butcher could be guilty of such practices?—That was by way of explanation; you generally summed up pretty fully. I believe you meant all that the words could convey, that I have given before.

What did you hear me say about the prince of Hesse-Cassel?—That you had no doubt but he was in partnership with the king of England, and that he received fifteen pounds a head, as half the consideration.

Will you swear that I used these words, in partnership with the king of England?—It was, or words to that full meaning.

Did you hear me make use of the term, king of England?—You said the king, meaning the king of England.

That is your meaning I suppose?—You had expressed the king of England before.

The *Prisoner* replied, for nearly two hours to the charge; and founded his defence, first, on the illegality of his first caption in the house of Mr. Leech, there being no law allowing Mr. Leech to order him into custody for mere words.

Secondly, that when he drank "The French Republic," and "an overthrow to all the present governments in Europe," by the French republic might be understood the good of the French people; and that as an Englishman, when he drank the overthrow of all the present systems of government throughout Europe, it might naturally be supposed he excepted his own country.

And thirdly, with regard to his saying the king was a German hog-butcher, it was a comparison he used, in which he saw no great harm; and with regard to the king's selling his Hanoverian subjects to the British government, and what he said about the prince of Hesse-Cassel, he was warranted, if he did say it, from existing treaties sanctioned by parliament.

The *Jury* returned a verdict of GUILTY.

Mr. Hudson was sentenced to be imprisoned two years in Newgate, to pay a fine of two hundred pounds, to be further imprisoned until such fine be paid, and to find security for his good behaviour for two years, himself in two hundred pounds, and two sureties in one hundred pounds each.

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584. Proceedings in the Case of Archibald Hamilton Rowan, Esq., on an Ex-Officio Information, filed against him by the Right Hon. Arthur Wolfe, his Majesty's Attorney-General for the Kingdom of Ireland, for publishing a Seditious Libel: 33 & 34 Geo. III. A. D. 1793-4.

Court of King's-bench Dublin.

The Information was as follows:

Of Trinity Term in the thirty-third year of the reign of our sovereign lord George the Third, now king of Great Britain, and so forth, and in the year of our Lord one thousand seven hundred and ninety-three.

County of the City of Dublin, to wit. } Be it remembered that the right honourable Arthur Wolfe, attorney-general of our present sovereign lord the king, who for our said lord the king prosecutes in this behalf, in his proper person comes into the court of our said lord the king, before the king himself, at the city of Dublin, in the county of the said city, on the eighth day of June in this same term, and for our said lord the king gives the Court here to understand and be informed, that Archibald Hamilton Rowan, of the city of Dublin, esquire, being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm of Ireland, discontents, jealousies, and suspicions of our said lord the king and his government, and disaffection and disloyalty to the person and government of our said lord the king, and to raise very dangerous seditions and tumults within this kingdom of Ireland, and to draw the government of this kingdom into great scandal, infamy, and disgrace, and to incite the subjects of our said lord the king to attempt, by force and violence, and with arms, to make alterations in the government, state, and constitution of this kingdom, and to incite his majesty's said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to overawe and intimidate the legislature of this kingdom, by an armed force, on the sixteenth day of December, in the thirty-third year of the reign of our said present sovereign lord George the third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, and so forth, with force and arms, at Dublin aforesaid, to wit, in the parish and ward of Saint Michael the archangel, and in the county of the said city, wickedly, maliciously, and seditiously, did publish, and cause and procure to be published, a certain false, wicked, malicious, scandalous, and seditious libel, of and concerning the government, state, and constitution of this kingdom, according to the tenor and effect following, that is to say,——'The Society of United Irishmen at Dub-'lin, to the volunteers of Ireland. William 'Drennan, chairman, Archibald Hamilton 'Rowan, secretary.—Citizen soldiers, you first 'took up arms to protect your country from 'foreign enemies, and from domestic dis-'turbance; for the same purposes it now be-'comes necessary that you should resume 'them; a proclamation has been issued in 'England for embodying the militia, and a 'proclamation has been issued by the lord 'lieutenant and council in Ireland,' (meaning a proclamation which issued under the great seal of the kingdom of Ireland, the eighth day of December, one thousand seven hundred and ninety-two), 'for repressing 'all seditious associations; in consequence 'of both these proclamations it is reasonable 'to apprehend danger from abroad and dan-'ger at home, for whence but from appre-'hended danger are these menacing prepara-'tions for war drawn through the streets of 'this capital?' (meaning the city of Dublin) 'or whence if not to create that 'internal commotion which was not found; 'to shake that credit which was not affected; 'to blast that volunteer honour which was 'hitherto inviolate, are those terrible sugges-'tions and rumours and whispers that meet 'us at every corner, and agitate at least our 'old men, our women, and our children? 'whatever be the motive, or from whatever 'quarter it arises, alarm has arisen; and you 'volunteers of Ireland, are therefore sum-'moned to arms at the instance of govern-'ment, as well as by the responsibility at-'tached to your character, and the perma-'nent obligations of your institution. We 'will not at this day condescend to quote au-'thorities for the right of having and of using 'arms, but we will cry aloud, even amidst 'the storm raised by the witchcraft of a pro-'clamation, that to your formation was owing 'the peace and protection of this island, to 'your relaxation has been owing its relapse 'into impotence and insignificance, to your 'renovation must be owing its future freedom 'and its present tranquillity; you are there-'fore summoned to arms, in order to preserve 'your country in that guarded quiet which 'may secure it from external hostility, and to 'maintain that internal regimen throughout

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'the land, which, superseding a notorious 'police or a suspected militia, may preserve 'the blessings of peace by a vigilant prepa- 'ration for war.—Citizen soldiers, to arms, 'take up the shield of freedom and the 'pledges of peace—peace, the motive and 'end of your virtuous institution—war, an 'occasional duty, ought never to be made an 'occupation; every man should become a 'soldier in the defence of his rights; no man 'ought to continue a soldier for offending the 'rights of others; the sacrifice of life in the 'service of our country is a duty much too 'honourable to be intrusted to mercenaries, 'and at this time, when your country has, by 'public authority, been declared in danger, 'we conjure you by your interest, your duty, 'and your glory, to stand to your arms, and 'in spite of a police, in spite of a fencible 'militia, in virtue of two proclamations, to 'maintain good order in your vicinage, and 'tranquillity in Ireland; it is only by the mi- 'litary array of men in whom they confide, 'whom they have been accustomed to revere 'as the guardians of domestic peace, the pro- 'tectors of their liberties and lives, that the 'present agitation of the people can be stilled, 'that tumult and licentiousness can be re- 'pressed, obedience secured to existing law, 'and a calm confidence diffused through the 'public mind in the speedy resurrection of a 'free constitution,' (meaning that the peo- ple of Ireland had not at the time of the publishing aforesaid a free constitution) 'of 'liberty and of equality, words which we use 'for an opportunity of repelling calumny, and 'of saying, that by liberty we never under- 'stood unlimited freedom, nor by equality 'the levelling of property or the destruction 'of subordination; this is a calumny invented 'by that faction, or that gang, which misre- 'presents the king to the people, and the 'people to the king, traduces one half of the 'nation to cajole the other, and by keeping 'up distrust and division wishes to continue 'the proud arbitrators of the fortune and fate 'of Ireland; liberty is the exercise of all our 'rights, natural and political, secured to us 'and our posterity by a real representation of 'the people; and equality is the extension of 'the constituent to the fullest dimensions of 'the constitution, of the elective franchise to 'the whole body of the people, to the end 'that government, which is collective power, 'may be guided by collective will, and that 'legislation may originate from public reason, 'keep pace with public improvement, and 'terminate in public happiness. If our con- 'stitution be imperfect, nothing but a reform 'in representation will rectify its abuses; if 'it be perfect, nothing but the same reform 'will perpetuate its blessings. We now ad- 'dress you as citizens, for to be citizens 'you became soldiers, nor can we help 'wishing that all soldiers, partaking the 'passions and interest of the people would 'remember, that they were once citizens, 'that seduction made them soldiers, but 'nature made them men. We address 'you without any authority save that of 'reason, and if we obtain the coincidence 'of public opinion, it is neither by force 'nor stratagem, for we have no power 'to terrify, no artifice to cajole, no fund 'to seduce; here we sit without mace or 'beadle, neither a mystery nor a craft, nor a 'corporation; in four words lies all our power '—universal emancipation and representa- 'tive legislature—yet we are confident that 'on the pivot of this principle, a convention, 'still less a society, still less a single man, 'will be able first to move, and then to raise 'the world: we therefore wish for Catholic 'emancipation without any modification, but 'still we consider this necessary enfranchise- 'ment as merely the portal to the temple of na- 'tional freedom; wide as this entrance is, wide 'enough to admit three millions, it is narrow 'when compared to the capacity and compre- 'hension of our beloved principle, which takes 'in every individual of the Irish nation, casts 'an equal eye over the whole island, embraces 'all that think, and feels for all that suffer; 'the Catholic cause is subordinate to our 'cause, and included in it; for, as United 'Irishmen, we adhere to no sect, but to 'society—to no cause, but Christianity—to 'no party but the whole people. In the sin- 'cerity of our souls do we desire Catholic 'emancipation: but were it obtained to-mor- 'row, to-morrow would we go on as we do 'to-day, in the pursuit of that reform, which 'would still be wanting to ratify their liberties 'as well as our own. For both these purposes 'it appears necessary that provincial conven- 'tions should assemble preparatory to the 'convention of the Protestant people; the de- 'legates of the Catholic body are not justified 'in communicating with individuals or even 'bodies of inferior authority, and therefore an 'assembly of a similar nature and organiza- 'tion is necessary to establish an intercourse 'of sentiments, an uniformity of conduct, an 'united cause and an united nation; if a 'convention on the one part does not soon 'follow, and is not soon connected with that 'on the other, the common cause will split 'into the partial interest, the people will 'relapse into inattention and inertness, the 'union of affection and exertion will dissolve, 'and too probably some local insurrections, 'instigated by the malignity of our common 'enemy, may commit the character and risk 'the tranquillity of the island, which can be 'obviated only by the influence of an assembly 'arising from, assimilated with the people, 'and whose spirit may be, as it were, knit 'with the soul of the nation, unless the sense 'of the Protestant people be on their part as 'fairly collected and as judiciously directed, 'unless individual exertion consolidates into 'collective strength, unless the particles unite 'into one mass, we may perhaps serve some 'person or some party for a little, but the

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public not at all; the nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by well-timed reform, and to save their country in mercy to themselves. The fifteenth of February approaches, a day ever memorable in the annals of this country as the birth-day of new Ireland; let parochial meetings be held as soon as possible, let each parish return delegates, let the sense of Ulster be again declared from Dungannon on a day auspicious to union, peace and freedom, and the spirit of the north will again become the spirit of the nation. The civil assembly ought to claim the attendance of the military associations, and we have addressed you, citizen soldiers, on this subject from the belief, that your body uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations and friends We offer only a general outline to the public, and meaning to address Ireland, presume not at present to fill up the plan or pre-occupy the mode of its execution, we have thought it our duty to speak.—Answer us by actions; you have taken time for consideration; fourteen long years are elapsed since the rise of your associations; and in 1782 did you imagine that in 1792 this nation would still remain unrepresented? How many nations in this interval have gotten the start of Ireland? How many of your countrymen have sunk into the grave?'—In contempt of our said lord the king, in open violation of the laws of this kingdom, 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.—Whereupon the said attorney-general of our said lord the king, who for our said lord the king in this behalf prosecutes, prays the consideration of the court here in the premisses, and that due process of law may be awarded against him the said Archibald Hamilton Rowan in this behalf, to make him answer to our said lord the king touching and concerning the premisses aforesaid. ARTHUR WOLFE.

Thomas Kemmis, Attorney.

Received the 8th of June 1793.—(Copy)

To this information Mr. Rowan appeared by Matthew Dowling, gent. his attorney, and pleaded the general issue—Not Guilty—and the Court having appointed Wednesday the 29th day of January, 1794, for the trial of the said issue, the undernamed persons were sworn upon the jury:

Sir F. Hutchinson, bart.	John Read,
Frederick Trench, esq.	Robert Lea,
William Duke Moore,	Richard Fox,
Humphry Minchin,	Chris. Harrison,
Richard Manders,	George Perrin,
George Palmer,	Thomas Sherrard.

Upon calling over the jury, John Read, was objected to, as holding a place under the crown,* but the attorney-general insisting

* "Where the king is partie, one shall not challenge the array for favour, &c. because in respect of allegeance he ought to favour the king more; but if the sheriffe be a vadelect of the crowne, or other meniall servant of the king, there the challenge is good. And likewise the king may challenge the array for favour." Co. Litt. 156, a.

To that part of the above passage which ends with the words—"he ought to favour the king more," Mr. Hargrave has annexed the following note:

"Acc. Keilw. 102. a. But lord Hale is of a different opinion; for he expressly allows challenges for *favour* to prisoners in treason and felony, and consequently so far against the king, 2 Hal. His. Pl. c. 271. Though, too, lord Coke's doctrine should be admitted, the reason he gives for it, which is almost in the words of the case of 22 E. 4, cited in the margin from Fitzherbert's Abridgement, seems rather unsatisfactory; but a better principle to found the rule upon was not unobvious, namely, that from the extensive variety of the king's connexions with his subjects, through tenures and offices, if *favour* to him was to prevail as an exception to a juror, it might lead to an infinitude of objections, and so operate as a serious obstruction to justice in suits in which he is a party."

And to the words "there the challenge is good," Mr. Hargrave has subjoined the following observations:

"Lord Coke having immediately before expressed that the array shall not be challenged for *favour* against the king, he must be here understood to consider *being a vadelect or other menial servant of the crown*, as a *principal* challenge to the array, for otherwise he would be inconsistent; unless indeed, he is supposed in the first instance to state a general rule, and in the second an exception to it, which, as his words are, would be a strained construction. It is also strong evidence of lord Coke's intending to give this challenge to the *array* as a principal one, that he elsewhere represents *being a servant of either party*, where the suit is between subjects, as a principal challenge, both to the array and to the polls. See *suprà* and also *post*. 157, b. However lord Hale will not allow this sort of exception to a juror to be more than a challenge to the *favour* in trials for treason or felony, citing for authority from Fitzherbert's Abridgement, a case in 3 H. 6. which is a decision in point by the whole court; to which may be added the *dictum* in the year book of 4 H. 7, 3. Also the practice since lord Hale's time, seems to have accorded with his doctrine, there being subsequent instances in print, in which such an exception when taken to the polls has been disallowed, but not one I believe of its being received. The instances of disallowing

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upon the illegality of the objection, and observing that it went against all that was honourable and respectable in the land, it was over-ruled by the court. Richard Fox, when called to the book, was interrogated whether he had ever given an opinion upon the subject then to be tried, to which he answered, that he did not know what the subject of the trial was. The same question was put to Thomas Sherrard, who returned a similar answer.

Joshua Dixon, who had been sworn upon the jury, without any objection, here stated, that he had given an opinion upon the subject, upon which Mr. Attorney-general consented that he should be withdrawn, but protested against the right of the defendant's counsel to examine the jurors as they had done. If they had any objection, they ought to make their challenge, and support it by evidence.

The counsel for the defendant answered, that they would not acquiesce in the consent of the attorney-general to withdraw the juror, if their examination was to be objected to; and intimated that the juror ought to be withdrawn upon the desire of the attorney-general, without any consent whatever being entered into.

Hereupon the attorney-general desired that the juror might be withdrawn.

Counsel for the Crown.—Mr. Attorney-general, [the right hon. Arthur Wolfe; afterwards lord chief justice of the court of King's-bench, and viscount Kilwarden]; Mr. Prime-serjeant, [James Fitzgerald]: Mr. Solicitor-general, [John Toler; in 1798, attorney-general; in 1800, lord chief justice of the Common Pleas, and lord Norbury]; Mr. Frankland; Mr. Ruxton.

Agent.—Mr. Kemmis.

Counsel for the Defendant.—Mr. Curran, [in 1806 master of the rolls]; Mr. Recorder; Mr. Fletcher [afterwards one of the justices of the court of Common Pleas.]*

Agent.—Mr. Dowling.

[Mr. *Ruston* opened the pleadings.]

Mr. *Attorney General.*—My Lord and Gentlemen of the Jury; In this case, between the King and Archibald Hamilton Rowan, Esq. it is my duty to prosecute on behalf of the crown. The traverser in this case, gentlemen, stands accused upon an information filed *ex officio*, by the king's attorney-general, for publishing a seditious libel. It is my duty to lay the facts of this case before you—it will be the duty of another of his majesty's servants to observe upon the evidence. I shall state the nature of the charge and the questions you are to try: I will then state such circumstances as are necessary to be taken into your consideration, for the purpose of understanding and expounding that paper which the information charges to be a malicious and seditious libel.

The information charges, that Archibald Hamilton Rowan, maliciously designing and intending to excite and diffuse amongst the subjects of this realm discontents, disaffection, and disloyalty to the king and government, and to raise very dangerous seditions and tumults, and to draw the government into scandal, infamy, and disgrace, and to incite the subjects to attempt, by force and with arms, to make alterations in the government, and to excite the subjects to anarchy, to overturn the constitution and overawe the legislature of the kingdom, did publish the libel set forth in the information. In this case, therefore, it will be for you, gentlemen, upon the evidence which shall be laid before you, to determine whether the traverser has been the publisher of that paper or not. I shall, in the course of what I am to offer to the court and to you, read the very libel itself, and make such observations as occur to me to be proper in the present state of the business. Previous, however, to my doing so, I will take the liberty, gentlemen, of stating to

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the exception as a principal challenge, to which I shall refer, are Mr. Hampden's trial in the King's-bench, Hill, 36, Cha. 2, for a misdemeanor, and sir William Parkyns's at the Old Bailey in 1695, for high treason. See State Trials by Howell, vol. IX. p. 1057; and vol. XIII. p. 75. In the former the point was sharply argued, on challenges by Mr. Hampden of two jurors for having offices in the king's forest; and as the counsel for Mr. Hampden relied on lord Coke, and on Rolle's Abridgement of the case of 22 E. 4, here cited by lord Coke in the margin, as the ground of his doctrine, so the court adjudged against the exception as a principal challenge, on the authority of the case of 3 H. 6, cited by lord Hale. In the latter, sir William Parkyns challenges two for being servants of the king; but was informed by lord Holt, that it was no cause of challenge. The first of these instances was a direct adjudication; but, however, it loses part of its weight, in consequence of having occurred in an ill time, whilst lord Jefferies presided in the King's-bench, and of being accompanied with ungracious and unbecoming language from him in respect to both Coke and Rolle. This second was rather an extra-judicial opinion, because the counsel for the crown consented to put by the jurors objected to, on the ground of being king's servants, unless there should be a defect of other jurors, which did not happen. But lord Holt declared against the challenge, in the most absolute and unreserved terms, as if it would not bear arguing."

On this subject see also, Hawk. P. C. ch. 43, sections 32 and 33, cited *ante*, Vol. IX. p. 1057.

* Mr. Emmet and some other gentlemen, who had been originally concerned in this cause, as counsel for the defendant, feeling a personal interest, declined any longer acting in that capacity. *Orig. Ed.*

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ou some facts and circumstances that appear o me deserving of attention in the investigaion of the matter before you; and in doing o, I shall carefully avoid mentioning many acts and circumstances which those disgraceful times have furnished, that might lead your erdict one way or the other. I shall not ttempt to excite your passions. I am happy t length that this case has come before an mpartial jury. It has long been the desire f every good man that this matter should ome to trial before that constitutional ribunal who stand arbiters in this case, to rotect the accused against the power of the rown: not resembling any of those prosecuions which the turbulence of former times ave excited, you are assembled, with that oolness which the solemnity of the occasion equires, to determine whether Mr. Rowan be guilty, criminally, of the offence charged gainst him. Take the libel into your onsider.tion, and determine, as the law ow allows you to do, whether it be a ibellous publication, tending to excite sedition, to overawe the government,—or tending to produce any of the effects imputed o it.

I shall now proceed to state a few facts which I said it was my duty to do. I shall all your attention to the history of the times bout which this libel was published:—No nan, let his situation be what it may, can be oo cautious in uttering what ought not to be aid, which might influence your judgment pon your oaths; and in that office which I old, which is the office of the people as well s of the crown, it is more than a common uty to take care not to step beyond that line which leads to common justice. I am warranted by the authority of a court of justice, —by the proceedings of the King's bench in England,—by the opinion of a judge of as nuch spirit and independence as any man,— allude to the case of the printer of the Morning Chronicle, in which lord Kenyon informs the jury,* that it is necessary in cases f this kind, to attend to the circumstances nd history of the times in which the libel was published. They tend to explain the notives which induced the publication, and he meaning of the libel itself. He says it is mpossible for the Court or a jury to shut their ars against the history of the times. Besides that common principle, I am the more ustifiable in what I shall state, because the ibel charged comes from that body of men who have constituted themselves by the name of "The Society of United Irishmen in Dublin." From the time of the restoration f our constitution—from the year 1784—to he year 1792, this country advanced in prosperity with a regular progress and gradation. The agriculture, commerce, and police improved;—the civilization of the country proceeded uniformly from year to year;—the commonalty began to enjoy blessings they had been strangers to—ships crowded in our harbours—commerce occupied our ports— —culture in our fields, and peace and happiness every where prevailed. The French revolution took place, when there were found many men, who from situation, from circumstances, from ambition, were desirous of commotion. Clubs were formed in the metropolis with the avowed intention of improving the constitution, for they must assume some pretext; but with a view, I fear, under colour of that, to overturn it They subsisted here in this town under different names, till at length in 1791, they formed themselves into a club, called "The Society of United Irishmen," consisting at first of a small number, composed of various classes of men, certainly some of them of the learned professions, some of the lowest members in the community. In 1791 they continued to pour upon the public daily publications, setting forth the distresses of the people, teaching them to be discontented with their situation and the government of the country. Things thus proceeded down to the latter end of the year 1792.

In the latter end of autumn, 1792, the allied armies retired from the kingdom of France: the convention of that kingdom began to hold a high language, and to talk of oversetting the government of kings. An attack was made upon regal authority, a spirit was stirred among those desirous of such schemes—it seemed to inspire them. There was a talk of overturning the government of king, lords, and commons—success at the same time seemed to crown the arms of the French; they advanced beyond their own territory, and menaced an attack upon the United States of Holland. In this situation of things, there did pervade a gloomy apprehension for the safety of the country. Emissaries from France were spread throughout Europe; a new array of a new corps was made in Dublin in the noon day, decorated with emblems of sedition; they were to parade in your streets, and to be marshalled in your squares. The volunteers of Ireland,—a name revered by this country and by every good man loving the constitution,—that sacred name was made a cloak for arming a banditti, which arraigned the constitution and degraded the name of volunteer; a national guard was formed upon the plan of those in Paris.

It is notorious to every man in Ireland, to every man in the British dominions, that such men assembled with clothing of a particular uniform, with emblems of harps divested of the royal crown;—every thing was undertaken to spread the spirit which animated themselves; and can any man forget the situation of Dublin in September, October, and November, 1792, which caused apprehensions in those who were well affected to the government and tranquillity of the country? Can

* See lord chief justice Kenyon's charge to the jury in the case of Lambert and others, *ante*, p. 1017.

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any man forget the state of the nation at this period? her credit was shaken, good people stood appalled; those loving peace stood astonished at the languidness of government. At length that government came forward which had never slept, but had been proceeding with mildness, determined not to go forth to action, nor have recourse to any severer remedies until every man in the state, who had a moment's reflection, must see the necessity of the exertion. The troops are summoned to meet, the guards are summoned to assemble, and the first battalion of national guards were to have paraded, clothed like Frenchmen. The night before, the lord lieutenant had summoned the council of the kingdom; upon that night, a proclamation issued, stating that there were intentions to assemble men in arms, with seditious signs; and apprehending danger from their so assembling, it prohibited their meeting. The proclamation issued on a Saturday night, and it produced that satisfaction which all good men desirous of order seek to enjoy; and they felt once more the pleasurable assurance that they had a government. Appalled by this proclamation, the corps did not meet on the 8th of December as it was intended, though some few were seen dressed in the national guard uniform, parading the streets with a mob crowding at their heels; but however nothing followed. They were seen, and, blessed be God! they were seen no more.

This proclamation, having for its object the preservation of the peace of this kingdom and the city in particular, mildly and coolly cautioning all men against those measures, held out the consequences that must necessarily follow, if they did not obey; —a proclamation which received the applause of the great and good, of the lovers of society, and of every man not lost to the sense of order and the constitution; but odious to every man who was attached to the Society of United Irishmen, and whose views corresponded with it. While I speak of that society let me not be understood as imputing to every man who is in it, those illegal motives which I impute to the society in general: there might have been in it, no doubt, many well meaning persons, for there were men picked up industriously to lend their names, in the streets, in the lanes, in the markets, in the highways, and in the fields, even the rich and industrious grazier was procured to lend his name. To the good, this proclamation gave pleasure and satisfaction, to the bad it became odious and detestable; and they accordingly formed the intention of bringing the government into disgrace for issuing that proclamation.

A few days after, I am not aware of the particular day, but a few days after the issuing the proclamation, the society assembled; the proclamation was upon the 7th, the address I speak of was published the 16th of December. The meeting therefore must have been between the 7th and the 16th of December. The society, I say, assembled, and they agreed upon a certain address to the volunteers of Ireland, and Dr. Drennan is there stated to have been in the chair, and the traverser secretary, at that meeting. At that meeting the address to the volunteers was agreed upon, which is the libel charged against Mr. Rowan as being guilty of publishing it. Under that address, this was to be done;—the volunteers of Dublin were to be called into action, and those papers were to be dispersed among them. For that purpose the several volunteer corps at that time existing in Dublin were summoned to assemble in a house in Cope-street, belonging to Pardon, a fencing-master, upon the 16th of December. Accordingly upon that day, the several corps of volunteers did go with side arms to this fencing-school in Cope-street. The traverser was, I believe, at the head of one of these corps; another very celebrated name was at the head of another of them, James Napper Tandy. Who was at the head of the others I am not able to inform you. But in the afternoon of the 16th of December, several volunteers with uniforms and side arms, assembled in the fencing-school. In this fencing-school, gentlemen, there was a gallery, and into that gallery there was such public access that what passed below may be said to have passed in the face of the world; to such excess had those persons carried their designs, as to expose them to open view; and if I state what is not true, there are one hundred persons in the volunteer corps of the city of Dublin, out of whom a multitude may be called to contradict me. The corps, I say, assembled in that room. There stood in the middle of the room a table, and there was a vast number of printed papers brought in and placed on the table. The different corps entered into several resolutions, having taken into their wise consideration the proclamation issued by the lord lieutenant and council; the necessity for issuing it is investigated, each of the corps took severally into their consideration the propriety of it, and next day published their different sentiments all expressive of strong disapprobation. So that it is manifest they were brought publicly together for a state purpose, and to debate a state matter.

While these resolutions were in discussion, Mr. Tandy and Mr. Rowan were seen to take from the table the printed papers that lay upon it, and disperse them among the several volunteers who stood around them, and to hand them from the lower room to persons in the gallery, and to persons not in their confidence; they were handed up promiscuously to any man there, and to many persons in the streets, that evening and the next day; they were flung out of the windows to the mob that stood round the room.

These, gentlemen, are the circumstances which preceded the publication of this paper by the traverser: it will be for you to consider with what view and purpose a paper

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ike this was composed and thus dispersed. f you believe it was a candid and fair discussion upon constitutional subjects, or upon rievances real or supposed, you will not conider it as a libel: but if from internal evilence in the paper itself, and from the circumstances attending it, you believe it was o such thing, but that it was published with view to raise discontents against the gevernment—to disturb the people—to overawe he parliament, or any branch of the state, hen you must find him guilty. You, gentlemen, will take the paper into your room with ou; consider it coolly, and discharged from ll you have heard abroad respecting it, and letermine in your own minds whether it be ossible to give it any other construction than hat which the information has ascribed to it. will submit to you, gentlemen—to you lone I desire to submit—the cool examinaion of that paper, upon the paper itself. It s impossible with all the ingenuity (and he who comes after me on the other side, has as much ingenuity as any man) to show that it was not written for the purpose of overawing he legislature, or to account for it in any other way.

This brings me now to the libel itself, and s it has not been read to you in this court, or in open court I wish it to be read, I will ead it, and make such observations as I hink necessary. " The Society of United rishmen, at Dublin, to the volunteers of reland. William Drennan, chairman, Archibald Hamilton Rowan, secretary. Citiens soldiers;"—a language, gentlemen, which excites ideas in one's mind that cannot be described. You will perceive in this publication he frippery of the French language as now sed; and those ideas will be excited, which nust fill the mind of every man who regards eligion, society, or peace, with terror and larm.——" Citizen soldiers; you first took p arms to protect your country from foreign nemies, and from domestic disturbance. or the same purposes it now becomes necesary that you should resume them."—The ociety of United Irishmen, who say they are o corporation, yet as if they were a corporaion, presume to tell the armed people of reland when it is they should assemble: is hat or is it not tending to sedition? Is it or s it not assuming a power to overawe the arliament and overturn the government tself?—" A proclamation has been issued in England for embodying the militia, and a proclamation has been issued by the lord ieutenant and council in Ireland, for repressng all seditious associations. In consequence f both these proclamations, it is reasonable o apprehend danger from abroad, and danger at home. For whence but from appreended danger, are those menacing preparaions for war drawn through the streets of his capital," (alluding to some cannon which were drawn through the streets a few days before to protect the inhabitants against the dangers apprehended,) " or whence, if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that volunteer honour which was hitherto inviolate,"—What! did the proclamation forbidding seditious associations and assemblies of men, with banners expressive of disloyalty, violate the honour of that glorious institution, which was raised to protect and support that constitution, which those seditious men, calling themselves volunteers were assembled to destroy, and this society of United Irishmen did wish to overturn? That is what is stated in this,—for so I will call it until you teach me another language,—this abominable, seditious libel.——" Are those terrible suggestions and rumours and whispers, that meet us at every corner, and agitate at least our old men, our women, and children? Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you, volunteers of Ireland, are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution."—First you will observe, gentlemen, they make the ancient volunteers those whose honour was wounded and blasted by the proclamation, and then they tell them that the proclamation has summoned them to assemble in arms—strange inconsistency of rhapsody!

With regard to such parts as are unintelligible, for there are many parts the most bombastical and absurd that ever appeared in any publication, I pass them over; it is not my wish to criticise upon them. " We will not at this day condescend to quote authorities for the right of having and of using arms." Who had called in question the right of the people to carry arms? Is it because the government said, that arms should not be used to the destruction or danger of the people, that therefore the legality of carrying them is questioned?—" But we will cry aloud, even amidst the storm raised by the witchcraft of a proclamation,"—is that a direct charge against government, that they laid a scheme to raise a storm?—" That to your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance, to your renovation must be owing its future freedom, and its present tranquillity. You are therefore summoned to arms, in order to preserve your country in that guarded quiet, which may secure it from external hostility, and to maintain that internal regimen throughout the land, which superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war." — Now, gentlemen, here you see a reflection cast: if they meant to state a grievance, or to reason upon a point of constitution, why not do it?—They had a right. But does that mark the meaning and intention of the publication? Why reflect

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upon legal establishments, and why endeavour to cry down a body of men, which it was well known to be in the contemplation of government to raise? They endeavoured to render odious the militia before it was created, because they foresaw it would protect the state against the schemes which they had formed.

They next inform these men, that they are not embodied, as before stated, for the protection of their country, but to resist a body of men about to be constituted by government for the protection and safety of the state, but whom they are pleased to deem suspicious. Is not this to raise disturbance? Is not this to excite tumult? "Citizen soldiers, to arms! Take up the shield of freedom and the pledges of peace,—peace the motive and end of your virtuous institution. War, an occasional duty, ought never to be made an occupation. Every man should become a soldier in the defence of his rights; no man ought to continue a soldier for offending the rights of others. The sacrifice of life in the service of our country is a duty much too honourable to be entrusted to mercenaries, and at this time, when your country has by public authority been declared in danger, we conjure you by your interest, your duty, and your glory, to stand to your arms, and in spite of a police, in spite of a fencible militia,"—the police established in the different counties are first represented in an odious light to the volunteers; a reflection is cast upon the militia, and now the mercenaries are stigmatized, and a distinction taken between them and the volunteers of Ireland, thus summoned by this corporation of United Irishmen.—"In virtue of two proclamations to maintain good order in your vicinage, and tranquillity in Ireland. It is only by the military array of men in whom they confide, whom they have been accustomed to revere as the guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence diffused through the public mind, in the speedy resurrection of a free constitution, of liberty and of equality."—Here, gentlemen, let me call your attention; what meaning can be given to these words by the plainest man in the hall of these courts? What! was our free constitution dead? Do the gentlemen intend by way of argument to excuse this as the consideration of a grievance? They tell the people they have no constitution, that they might look for another; is this a cool disquisition upon a matter that every man has a right to inquire into? is not this to excite tumult? "Liberty and equality!" Words, gentlemen, that it would be painful to me to observe upon to the extent to which they go, words that suggest but too much to every good and reasonable mind. There is no man in this kingdom who would not lay down his life to preserve true liberty and equality; but these are but conceptions to cajole the ignorant: the vulgar abuse of a constitution which we possess to the envy of the world.—"Liberty and equality, words which we use for an opportunity of repelling calumny and of saying, that by liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination. This is a calumny invented by that faction, or that gang, which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland." Is not this traducing the government? But attend, gentlemen, to their definition of liberty.—"Liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and equality is the extension of the constituent, to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by collective will, and that legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness." Certainly, gentlemen, the sentence is very sonorous, and agreeable enough to the ear; but to the mind it conveys nothing but this, that government is to be conducted by the will of every man, high and low, rich and poor, ignorant and learned; the people are to govern the people, and how they will do so, unhappily for mankind, has been learned from experience.

Mark this next passage, gentlemen, for I confess I do not understand it.—"If our constitution be imperfect, nothing but a reform in the representation will rectify its abuses; if it be perfect, nothing but the same reform will perpetuate its blessings."—This is something like *tobacco hic*.—If our constitution be imperfect, nothing but a reform will render it perfect;—if it be perfect, still the reform is necessary to keep it perfect.—In whatever light it is viewed, reform is necessary, and a good constitution requires amendment as much as a bad one. I do not feel it necessary to dwell upon this, because it is so unintelligible, that it cannot deserve notice. But see next, what endeavours have been used to render odious among the people, those forces upon whom our peace and tranquillity depend.—"We now address you as citizens, for to be citizens you became soldiers, nor can we help wishing that all soldiers, partaking the passions and interests of the people, would remember that they were once citizens, that seduction made them soldiers, but nature made them men."—How will my learned friend when he comes to speak of this part of the case satisfy you, that it was necessary in a publication of this sort, recommending a

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reform in parliament, and to be disseminated among thousands, to tell the soldiers, the forces of the state, that their profession was dishonourable, that they were imposed upon, that they should not be entrusted with the protection of the state? Gentlemen, I am unwilling to dwell upon these passages, it is but necessary to mention them to show their danger, if they deserve consideration you will give it to them, if not, you will not waste your attention upon them.—"That nature made them men."—It required no authority to satisfy them of that.—"We address you without any authority, save that of reason, and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce. Here we sit without mace or beadle."—What they allude to, I suppose you, gentlemen, apprehend, they seem to disdain any distinction in civil institutions.—"Neither a mystery, nor a craft, nor a corporation.—In four words lies all our power, UNIVERSAL EMANCIPATION, *and* REPRESENTATIVE LEGISLATURE." In these four words lies all the power of the United Irishmen, according to this publication, approved of by the traverser; he himself a member of that society, and secretary of the meeting which composed it

"Universal emancipation!" By that I presume is meant the giving a right of voting to every man in the community. "And representative legislature!" The meaning of these words is but too obvious. "The constitution" is often in the mouths of men, when the destruction of it is in their hearts. If the plan of these people were carried into effect, where would be the House of Peers?—for our legislature, gentlemen, consists of King, Lords, and Commons. When government is guided by the will of all the people and their force carried into action, where will be the House of Peers? Where will be our constitution?—buried in the anarchy of republican power, formed from the dregs of the people;—A government consisting of all the people, guided by the will of all the people. What sense but this can be put upon these words? If indeed the context of the paper shows you, gentlemen, that any thing else was meant, than as I interpret the words, you will take it altogether in that sense in which it appears to have been meant. God forbid, I should endeavour to wrest any thing to impute guilt to the gentleman who now stands at your bar, that the whole of the paper does not warrant! But if the words bear that meaning which I give them, who will say, that guilt shall not be imputed to him? You will form your opinion from reading the whole, and comparing the several parts with each other.

Here comes a sentence which will puzzle you a little, but which with some comment may be understood. "Yet we are confident that on the pivot of this principle, a convention—less still, a society—less, a single man—will be able first to move and then to raise the world." Here is an open declaration of their wish to raise the people, not only of this country but of the whole world; a proof of peaceable intent! "We therefore wish for Catholic emancipation without any modification, but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom: wide as this entrance is—wide enough to admit three millions—it is narrow when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer. The Catholic cause is subordinate to our cause, and included in it; for, as United Irishmen, we adhere to no sect but to society—to no creed but christianity—to no party but to the whole people. In the sincerity of our souls do we desire Catholic emancipation; but were it obtained to-morrow, to-morrow would we go on as we do to-day, in the pursuit of that reform, which would still be wanting to ratify their liberties as well as our own.

"For both these purposes it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore an assembly of a similar nature and organization," (French language still occurring with French ideas) "is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people relax into inattention and inertness; the union of affection and exertion will dissolve; and too probably some local insurrections, instigated by the malignity of our common enemy, may commit the character and risk the tranquillity of the island."

Gentlemen, the paper mentions here the common enemy, as to who is meant by the expression, you will judge; did they mean those who were about to defeat their machinations, and who would not commit the tranquillity of the island to the convention to be assembled? it says, "an assembly of a similar nature and organization is necessary." These are Gallic sentences and suited only to the soil of France. "And risk the tranquillity of the island. Which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation. Unless the sense of the Protestant people be, on their part, as fairly collected and as judiciously directed; unless individual exertion consolidates into collective strength; unless the particles unite into one mass, we may perhaps serve some person or

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some party for a little, but the public not at all. The nation is neither insolent, nor rebellious, nor seditious. While it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by a well-timed reform, and to save their country in mercy to themselves."—An address to the volunteers to obtain universal emancipation;—holding out, that this kind of remonstrance should be attended to, before the power of the nation should be exerted. What meaning does a common understanding annex to these words? —Was it not a threat? Was it not to spirit up the minds of the people against the members of parliament? Was it necessary for the purpose of cool investigation, or to obtain constitutional redress, that the people should exert their power? and to threaten parliament, by telling them there was a force to be raised against them? Unless a reasonable account is given why this language was inserted, and what the meaning of it was, I must presume, it was for the purpose I mention.

"The fifteenth of February approaches, a day ever memorable in the annals of this country as the birth-day of new Ireland; let parochial meetings be held as soon as possible,"—(Here you have an exact delineation of the French government)—"let each parish turn delegates, let the sense of Ulster be again declared from Dungannon on a day auspicious to union, peace, and freedom, and the spirit of the North will again become the spirit of the nation." Now gentlemen of the jury, you will mark this next sentence, and it will be a clue to the whole. "The civil assembly ought to claim the attendance of the military associations, and we have addressed you, citizen soldiers, on this subject, from the belief, that your body uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations and friends." The nation is in danger from foreign foes and from domestic enemies—so they state. The proclamation calls forth the forces of the state. The United Irishmen raise their audible voice, and call the people to arms;—For what? Is it to assist the government to repel the foreign enemy and seditious foe? But how?—A convention is to be assembled, and they are to call around them the national forces. The convention was to meet at Dungannon; there assembled, were these forces to repress foreign foes and domestic sedition? Gentlemen, it is but too obvious for what purpose this was intended; this sentence speaks the language of the whole of this paper—and if it had been drawn with more art than it is, here is the clue to the whole;—the force of the nation was to be assembled, under the control of the convention assembled under the great seal of the United Irishmen, who say they are not a corporation; but who have a corporation seal: —For what purpose? to obtain universal emancipation and representative legislature! They are held up as such a force and controlling power as must produce that effect upon the king, lords, and commons;—An effect which they profess to have designed for the good of their country—if they did, they should seek its accomplishment by reason and by argument. But to publish a call to arms to that power and authority which for years this country has respected; and from which, certainly, since 1784 every blessing in society has been derived (and every man who looks for those blessings of life otherwise than by a due regard to all ranks of men, blasphemes the God who made us all)—I say, to call upon the whole body of the people to rise in arms and be their own rulers, is a species of government, which, when it comes, will be an equal misfortune to the poor and the rich.—The rich would lose that which they enjoy, and more—the power of contributing to the necessities of the poor—Industry will no longer continue to have the motives to labour and those habits of economy which the protection of a mild constitution encourages, but the people will be turned out to a system of plunder, robbery and murder, such as we find prevailing in another country.

The paper goes on and recites, "We offer only a general outline to the public, and meaning to address Ireland, we presume not at present to fill up the plan or pre-occupy the mode of its execution; we have thought it our duty to speak.—Answer us by actions."—(An open invitation to force and violence)—"You have taken time for consideration. Fourteen long years are elapsed since the rise of your associations; and in 1782 did you imagine that in 1792 this nation would still remain unrepresented?" These volunteers of 1782 had not all these schemes in view—but this society here expressly tells the people, with arms in their hands, that they remain unrepresented: and adds, "How many nations, in this interval, have gotten the start of Ireland? How many of our countrymen have sunk into the grave?"—What is meant by nations having got the start of Ireland? is it the revolution in France? they indeed have gotten the start of Ireland in calamity and distress: long may they hold their distance; and long, long may be the period before we shall overtake them, is my most sincere and earnest wish.

Such is this paper—I have read it accurately. Gentlemen of the jury, it is for you to consider the whole of it, and determine whether it was published by Mr. Rowan, and whether it be a libel or not?—If you should be of opinion that Mr. Rowan is guilty of publishing this paper, then you are to consider whether it is a libel or not?—Gentlemen, it is the peculiar felicity of this country, the great blessing of our constitution, that we have a trial by jury; in France it is polluted; but it is the boast of our constitution that we have a trial by jury, and the great preserva-

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ve of that blessing and of the constitution self, is the liberty of the press; that is the reat bulwark of our free constitution, we ave a trial by jury, and of the freedom of ıe press you are the guardians. You, gentemen, are by the constitution appointed to ecide upon all these questions touching the eedom of the press. The freedom of the ress cannot be destroyed but in two ways, rst, by the overweening power of the crown, econdly, by its own licentiousnes corrupting ıe minds of the people; and when it is desoyed, then will our constitution be at an end. hile the press is left open to cool and fair iscussion upon legal and public topics of rievance and constitution, so long will the eedom of our constitution endure; and henever an attempt is made to control it, ou will step in and guard and protect it as ou would guard your property, your lives, nd your liberties; you will secure it from centiousness. Where its licentiousness is ot punished, through the weakness or timiity of a jury, its freedom can no longer exist.

What does the paper which is the subject f the present question purport to be? it ooks for a reform of parliament, it calls to rms the citizens under pretence of supportıg the government by resisting it, by speakıg of grievances which cannot be endured, it overawing the parliament. If such licenousness be tolerated, then the freedom of he press will be destroyed. You, gentlemen, ill consider whether this paper contains in self internal evidence to show that the moives of its publication were not for the purose of reasoning with the people, or for the ecessary correction of any evil in the conitution, but to excite sedition and tumult. f in that case you believe that Mr. Rowan ublished it, then you must find him guilty. f, on the other hand, you are of opinion, that his was a cool and dispassionate paper, reaoning with the people in a becoming manner, cknowledging the authority of the law, then ou will acquit him. Further, let the tenency of the paper be what it may, if you are f opinion, he did not publish it, then you ust acquit him. We will produce a witness o show he published an individual paper—we ill prove that he took several others and disersed them abroad—if you believe the evience, it will be impossible but that you must e satisfied he is guilty. Thus stands the vidence. I have stated that the traverser as secretary to the United Irishmen. It ill be proved thus:—he published that paper; f he did, he acknowledged the contents of it o be true; and the paper states him to be ecretary of the society.

Gentlemen, such is the case as it appears o me on the part of the crown. I will not retend to anticipate what may be offered by he gentlemen on the other side. Two topics, owever, have occurred as likely to be introuced:—one is, the case of the volunteers—he other, the functions of a jury under the late act of parliament. Upon the first, I have said abundance to satisfy you. I will suppose however, that this paper was addressed to the old volunteers: what then? The tendency of the paper was to excite those volunteers to commit actions that would tarnish the honour acquired by their previous conduct. Let them show that the proclamation (against which this was a counter-proclamation) went against the old volunteers—it meant no such thing—it describes them so and so.—But there were among the old volunteers men actuated by new principles and new motives, that it became the duty of government to suppress them. For your sake they did so;—no government should be influenced but by the prosperity of the whole state. But in what respect did these men resemble the old volunteers? not in a single feature: these men were assembled by the call of the United Irishmen in Back-lane; the ancient volunteers were assembled by the call of government and the lord lieutenant, who distributed arms among them from the arsenal, for the public defence; they added to these out of their own pockets whatever they thought necessary; they were collected to support that constitution which is now sought to be overturned. Were these new volunteers of that description? Were they so formed? How were they equipped? The green cockade was adopted in the place of the black. I have no necessity for this; but fearful that men will have recourse to such topics to cajole you, I think it necessary to take notice of them. Secondly, as to the act of parliament within this kingdom, I am not aware that it operates here; but even by it, as it now stands, and I told you so before, you have a right to enter into the guilt or innocence of intention upon this occasion, as you would upon the trial of any other offence. Gentlemen, to you, and most willingly, I commit this case; I desire no more than that you will by your verdict vindicate the freedom of the press and punish the licentiousness of it.

EVIDENCE FOR THE PROSECUTION.

John Lyster **sworn.—Examined by Mr.** *Prime Serjeant.*

Do you recollect the 16th of December, 1792?—I do.

Do you recollect having been at any place that day?—I do.

Where?—At one Pardon's house in Cope-street.

Were there many people assembled there?—There were to the amount of 150 or 200, with side-arms and uniforms, there was a table in the room.

Did any person, and who, sit at that table?—There was Mr. Hamilton Rowan and Mr. Napper Tandy at it, and a good many others.

Court. What do you mean by uniforms?—Regimental uniforms—scarlet with different facings.

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Mr. *Prime Serjeant*. Do you know the person of Mr. Rowan?—I do.

Court. Do you know him now?—He is just opposite to me.

Mr. *Prime Serjeant*. Was he sitting at the table?—At one time he was—at another time he was standing.

What brought you there?—Merely curiosity.

How was it excited?—I happened to pass through Cope-street, and saw a great crowd—I asked what it was—they said it was a meeting of the United Irishmen. My brother was with me, and we went into the room; we were in coloured clothes, and to the best of my recollection, Mr. Rowan said, no gentleman with coloured clothes could be there; but mentioned, that there was a gallery to which we might go.

Did you perceive any person perform any particular part in that assembly?—I perceived Mr. Rowan about the table very busy—he had papers in his hand, and there was pen and ink on the table; he walked about the room, with the papers in his hand.—Napper Tandy came up to him, read part of one of the papers—they were handed about—some were handed up to the gallery—I got one of them, and so did my brother, and several others in the gallery along with me.

Look at that paper—is that the one?—This is the paper I got there.

Was it one of the papers handed up to the gallery?—It was one of the papers handed by Mr. Rowan to some of the people about him, and by them handed up to the gallery.

Your brother also got one?—He did.

Was there a number distributed?—About thirty were thrown up to the gallery.

Have you any reason to ascertain that to be the particular paper?—I have, because it has my own hand-writing upon it.

You made that memorandum upon it?—I did.

Read it.—"I got this paper at a meeting of the United Irishmen in Cope-street the 16th of December—it came through the hands of Archibald Hamilton Rowan."

Court. You say one of these papers was read by Mr. Rowan; how do you know that?—Because I attended to the words he read, and they agreed with what are in this paper.

Can you swear that one of these very papers was read by him?—I can swear that part of the words were read, I cannot swear to the whole.

Cross-examined by Mr. *Recorder*.

At what hour was this?—To the best of my knowledge it was between one and two.

Was this upon the 16th of December?—It was upon the 16th of December, 1792.

It was upon a Sunday?—I believe it was.

How long did you remain there?—For about three quarters of an hour.

There were about one or two hundred volunteers below stairs?—There were.

Were they dressed in the uniforms which you had seen the old volunteers wear?—I cannot exactly say as to the facings of the uniforms—some of them were green.

Had not some of the old volunteers green uniforms?—They had, and there were some of the old volunteers in the room.

Were not the old volunteer uniforms scarlet faced with different colours?—They were.

Were all these men sitting down, or walking up and down?—They were walking;—there were very few forms or chairs in the room.

Were they conversing?—They were chatting and talking.

Did you see many of them go up to this table where the papers were?—I saw a good many of them go up to it in the course of their walking backward and forward.

Did you see many take papers off the table?—I did not see very many of them—I saw four or five or six of them.

They read them, and handed them about?—Yes, I saw them do so.

Did you not see them hand them about from one to another?—I did.

By virtue of your oath, did you ever see that paper in your hand, in the hands of Mr. Rowan?—I swear it was among the parcel upon the table, some of which were handed up to the gallery—I cannot say it was touched by his fingers.

Court. You say it was among the parcel handed to the gallery?—Yes.

By whom?—It was in the bundle handed by Mr. Rowan to several there, and by them handed up to the gallery.

Mr. *Recorder*. Did that bundle of papers pass through the hands of more volunteers than one before it came to the gallery?—I believe it did.

Did he hand several parcels?—I only saw him hand one to a volunteer who gave it to another.

Then it went through the hands of several before it got to the gallery?—It did, through four or five.

Can you tell the name of any man through whose hands it passed?—I cannot,—I was not so well acquainted with the gentlemen.

When this bundle of papers was handed up, do you know who in the gallery received it?—They were broken and separated, I held out my hand and got one of them—my brother another, and other people got some.

Were there many in the gallery?—There were a great many.

Did every man there get one?—I cannot say—every one that chose to take one might.

Did they hand them about in the gallery?—The next man saw what his neighbour got; they gave them about, but I never parted with mine till yesterday.

Did you know any other volunteers below stairs besides Mr. Rowan?—I did Mr. Tandy; and to the best of my recollection, there was a Mr. Kenny whom I knew before.

Did several of the volunteers below stairs

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hand up papers to the gallery or not?—I dare say several of them did.

Did not several men take papers from the table?—I suppose they did—I did not observe whether they did or not. Several, as they passed back and forward, went to the table and might take them off.

Do you not know that several did take papers off?—Several of them did.

You saw those papers passed through the hands of four or five volunteers before they came to the gallery?—A parcel of the papers, among which this was, came up.

How came you to pitch upon that paper so accurately?—I was the first who put out my hand.

Did you watch this particular paper?—Not that particular paper, but the bundle in which it was.

Will you swear there were no other papers handed up?—To the best of my knowledge there were not.

When did you put that memorandum upon it?—The very day I got it.

Where?—In my lodging.

Did any body advise you to make a memorandum?—No one did:—I generally, when I get an improper paper make such memorandum.

For what purpose?—Just a fancy of my own.

Did you make that memorandum in order to enable you to prove it upon a prosecution?—I did not.

To whom did you first communicate your having this paper and the memorandum?—I shall tell you. There was a brother of mine who did business for the late Mr. Adderley—there were different accounts between them—my brother went to the castle to Mr. Hobart* to show the accounts—Mr. now lord Hobart, desired my brother to call upon Mr. Pollock, the agent for young Mr. Adderley.—Mr. Pollock said he had heard that I and my brother were present at the meeting in Cope-street, and that he understood it was a very improper meeting.

How long was this after the meeting?—I cannot say.

Was it a week or a month?—I cannot recollect. Mr. Pollock said, "You have been there I understand." I said, we were, and that we saw such things going forward. I had one of the papers in my pocket and showed it to him. He said, Mr. Hobart heard I was there, and that I should give information of it as it was against the king and constitution. I said I would not encourage any thing against the king, but would do what was proper. Mr. Kemmis came to my lodging next day—the circumstances were talked over—we said we would make no delay in making any information concerning it, and it was in that manner they came to a knowledge of it.

Court. What Mr. Kemmis?—The crown solicitor.

Mr. *Recorder.* Were you of any profession at the time you attended this meeting?—I was not.

You are in the army now?—I have that honour.

What commission?—An ensign's commission.

How long since did you obtain it?—I have been gazetted since the 27th of June last.

In what regiment?—In the 40th.

You say you heard some of that paper read?—I do, Sir, the greater part of it.

Was this while all the volunteers were walking about?—Some were walking about, others gathered about the place while the paper was reading by Mr. Rowan.

Can you point out any part of the paper you heard read?—I can.

Show such part as you heard?—He began, "The Society of United Irishmen," and so on.

He did not read it all?—He read the greater part.

Can you say where he stopped?—I cannot.

Did you obtain your commission by purchase?—No, I did not:—I got it through the interest of a lady I have the honour of being related to—lady Hobart.

Pray, were you ever a witness to a bond or two bonds executed by your father to one of your brothers?—I was.

To your younger brother?—Yes.

Was there ever any suit or issue directed to try whether the bond was genuine or a forgery?—There was an issue to try whether it was my father's bond or not. I do not say it was to try whether it was a forgery.

Was it not alleged by your father and your elder brother that it was a forgery?—My elder brother thought to keep my younger brother out of the property, and I suppose he alleged it was a forgery. I am sorry to mention these matters here. My father filed a bill against us, alleging the bonds to be forgeries, and Mr. Simon Butler,* a very honourable gentleman, to whom I am under many obligations, undertook the business, and we recovered the money. I see the defendant has brought parchments into court this day. I saw Mr. Blake, who is to give evidence against me here. If I had been aware of these things being mentioned, I should have had the gentleman here who could prove them—I speak of the bonds for 500*l.*

Was there not an issue to try them?—

* Robert fourth earl of Buckinghamshire, then chief secretary to the lord lieutenant of Ireland.

* An intimate friend of Mr. Rowan. *Orig. Edit.* See the case of him and Oliver Bond before the house of peers of the kingdom of Ireland for a breach of privilege, A. D. 1795, inserted in a note to the trial of the latter for high treason, A. D. 1798 *post.*

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There was an order to have it tried in the country.

Were you not examined in the country upon that trial?—I believe I was.

Your are not sure?—I am sure.

Did you swear to the due execution of these bonds?—To the best of my knowledge I was examined;—I was witness to the bond.

Can you swear whether you were examined or not?—I cannot say positively whether I was or not—one of my brothers was examined—my elder brother, I believe, cried out to the jury, that he would leave it to a reference.

You cannot swear positively whether you were examined or not?—I cannot.

Do you not believe you were examined?—I cannot swear positively I was: I do believe to the best of my recollection I was—but I cannot swear positively.

How long is this ago?—It is a good while—I cannot exactly say.

Is it three years ago?—I believe it is.

Only three years ago and you cannot say positively whether you were examined or not?—I know I was to be examined, but I cannot say whether I was or not.

Were you not examined to the best of your belief?—To the best of my recollection I was: but I cannot swear positively.

Do you recollect the judge before whom that issue was tried?—I do.

Before whom was it?—Before one of their lordships on the bench (Mr. Justice Boyd).

Were there not more witnesses than one examined to show it was not your father's hand writing?—I do not know, I believe there were many examined, but they did not say positively it was not my father's hand-writing.

What verdict was there?—There was no verdict at all.

Was it not because the jury could not agree?—No, it was not.

Will you swear to that?—I will not; but I think my elder brother called out, perceiving himself wrong, and said, he would leave it to a reference.

Was it ever left to the reference?—It was.

What was done?—I cannot say, I was not there; but most people imagined the referees were wrong in doing as they did.

Did they give the amount of the bonds?—They did not.

What was the amount of the bonds?—One was 500*l.*, the other 300*l.*; it is not yet decided, my brother intends to bring it into the courts to set aside the award.

Court. Do you know what they allowed?—I know not.

Did you ever hear?—Some hundreds.

Mr. *Recorder.* Did you hear it was 200*l.*?—I did not.

Two hundred are some hundreds?—They are; but as I was not to get any of the money, I believe nothing about it.

Did not a gentleman of the name of Walter Lambert file a bill against you?—He did.

Was he executor of Peter Hamilton?—He was.

Why did he file a bill?—It is a very unjust one. Peter Hamilton had married my sister, he became insane, and I went to stay with him in a madhouse in England; I had no support from my father at that time, and I thought Mr. Hamilton's relations should pay my expenses and support me; a Mr. Nagle recommended me to bring Mr. Hamilton home; I did by force put him on board a ship, and brought him to Cork, and from thence home to Galway; he had intervals of reason, and he gave me a bond for 150*l.*, part of which was paid. I went to judge Kelly, a relation of his, to interfere; in some time I got a note for the money, and after his death the executor filed a bill against me.

Did he not charge the note not to be the hand-writing of Peter Hamilton?—No: the note was in my hand-writing, with Mr. Hamilton's name signed by himself.

Did you ever recover any part of it?—No, it is not yet determined.

Is there an injunction against you?—No: I believe not; I was nonsuited by the neglect of Mr. Morton, my attorney, who left the papers in town, when the trial came on in the country.

After you drew this note, Mr. Peter Hamilton put his name to it?—Yes.

And you sued for it and did not recover?—He was perfectly in his senses when he put his name to it as I am: he transacted his own business as if he had not been mad.

Did he not live many years after this?—No, he did not: he might have lived many years if he had not shot himself.

By a Juror, Mr. *Minchin.* Did you see many more of the papers handed up?—I did.

Were there any of another tendency?—There were not.

Mr. *William Morton* sworn.—Examined by Mr. *Solicitor-General.*

Do you remember being at Cope-street, Dublin, on the 16th of December, 1792?—I do.

Do you recollect to have seen any thing there, or to have got admission into any place there?—I do: I saw a number of men assembled there, for what purpose I cannot say: they were arrayed in military dress.

What were they doing?—They drew up a form of resolutions at a table.

Do you recollect to have seen any particular person there?—I recollect to have seen Mr. Hamilton Rowan and Mr. Napper Tandy.

Court. Do you know Mr. Rowan?—I do.

Did you know him before that day:—I have seen, but was not acquainted with him.

Do you know him now?—I do: he is there, (pointing to him).

Mr. *Sol. Gen.* Did or did not Mr. Rowan appear to take an active part in that meeting?—He did.

Do you recollect any thing about papers of

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any description?—I shall mention what I know: I gained admission into the gallery, there were a number of papers or advertisements brought in, as if wet from the press, and distributed about.

Were they in large or small parcels?—There was a large parcel in a man's arm, wet as from the press.

What became of them?—They were laid upon the table, and some were given to Mr. Napper Tandy.

Did you see any of them?—I did.

Had you an opportunity of reading them?—I had.

How came you to have that opportunity?—I saw some of them taken up by Mr. Rowan and delivered to some of the members, and by them handed up to the gallery. A gentleman near me received one of them; I immediately took it out of his hand: there were many thrown up; one was read by a gentleman, and I remember while he read it, a number were thrown out of the windows to the mob, who desired more of them, and accordingly they were sent to them.

Was the paper read in a loud manner; did every man know what was doing in the gallery?—Every man could hear it, I believe.

Did you keep one of these papers?—I did.

Where is it?—I gave it to a person, who, I understand, has since mislaid it.

Do you recollect any part of it?—The beginning of it: it was from the association of United Irishmen; it began—"To arms citizens, to arms!"

Did you hear it read?—I did.

When it was begun, did that passage make an impression upon you that you remember it?—It was a young gentleman in the gallery who read it through; the people there called out, read it for the benefit of us all.

Cross-examined by Mr. *Fletcher*.

Are you of any profession?—I am a goldbeater.

Do you you get your livelihood by that?—I am an apprentice, serving my time to that business.

Is your father living?—He is not.

How came you to be at this meeting?—It was on a Sunday, and I was unemployed. I met a young gentleman who asked me to go to Cope-street. I went from curiosity.

At what hour did you go there?—It was in the forenoon, from eleven to one, there were several gentlemen in uniform.

What was their uniform?—Scarlet faced with green; there were some light infantry in their jackets; there were different corps.

Upon your oath, were not all the uniforms you saw, the appropriated uniforms of the old volunteer corps?—I cannot say.

Do you not believe they were?—I suppose they were; but I had been absent, and had not seen them for some time.

You were in the gallery when you saw those bundles of papers?—I was.

Were there more than one?—Not that I remember; I saw but one.

Did not several persons go up to the table and get these papers?—I cannot say; I believe not. I was in the gallery: there was a beam in the middle of the room, and when they went to the upper end of the room, the beam prevented me from seeing them.

You said you saw Mr. Rowan take one of these papers and hand it to some other person?—I did not say one: I saw him take some papers and hand them about.

What papers were they?—I cannot say whether he took them off the table or not. He took part of those that came in: several of the members asked him for some: I suppose he gave them.

Supposition will not do; say upon your oath, what you saw take place with regard to Mr. Rowan and these papers?—When they came in Mr. Rowan and Mr. Tandy took some of them, they delivered them to the volunteers; one of the volunteers threw some up to the gallery, and I got one.

Did you not say there was but one bundle?—I did.

Did you say, that from your situation you could not see what passed at the table?—Part of the table I could see.

Were you in such a situation as to see every thing which passed at the table?—The volunteers were walking up and down, and sometimes I could not see every thing there.

Do you know the names of any of the persons from whom these papers came to the gallery?—No; I did not know any one in the room but Mr. Tandy and Mr. Rowan.

Can you say who the person was who read the paper in the gallery?—I cannot. I never saw hm before.

Did he read it more than once?—I cannot say.

Had you any of the papers in your hand when he read it?—I had.

You kept that paper which you received?—I did, for some time.

How long?—I do not recollect: I kept it a week or less.

Whom did you give it to?—An acquaintance of mine.

Has he no name?

[Here the witness hesitating in his answer, Mr. Sheriff Giffard called out, that he was the person to whom the witness delivered the paper, upon which the witness said it was to Mr. Giffard.]

Why did you resort to him?—I had no reason: I gave it by accident.

You had no reason?—None, but that he was the first person I met that I was acquainted with.

Did you not keep it a week?—No.

Did you keep it five days?—No, I believe not one; for I think I gave it to him the day after I got it.

When you said you gave it in a week, did you mean the day after?—It was less than a week.

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Did you mean to convey the idea that you had it but one day, when you said you had it less than a week?—I did.

Upon your oath that was the meaning you intended to convey?—It was.

Upon your oath you say so?—I do.

Do you generally speak in riddles of that kind?—No.

How long did you keep that paper?—Not one day: on the same day that I received it, I gave it to Mr Giffard.

This meeting was in the forenoon?—It was.

How long after the paper was distributed did you continue at this assembly?—I do not remember when it broke up.

Was it before or after dinner?—It was before dinner.

Court. Did you stay till the assembly broke up?—I did.

Mr. *Fletcher.* Can you say how long you remained in the place after getting that paper?—I cannot say.

What do you believe?—Half the time was not elapsed when the papers were distributed, but I do not recollect, there was a young man with me, and we were in conversation.

What became of you afterwards?—We separated: he went to dinner, I suppose.

Where did you go?—I went to Mr. Ryan.

You dined there?—No.

Who is Mr. Ryan?—He is a surgeon.

Did you show the paper to Mr. Ryan?—No; but I met Mr. Giffard there, and I gave it to him.

Did you expect to meet him there?—I did not.

Of what business is Mr. Ryan?—He is a surgeon.

Does he get money by any other business?—I do not know.

There is a paper printed in the house where he lives?—There is.

What paper?—The Dublin Journal.

Does not Mr. Ryan superintend the publication of that paper?—I believe he does not.

Who is the proprietor of that paper?—George Faulkner.

Do you believe he conducts that paper now?—I am not to know any thing about it.

But can you not form a belief?—I cannot form a belief. I do not know.

Did you never hear that Mr. Giffard had some interest in that paper?—I did hear it.

Do you believe it?—I do not. I know not.

What do you believe?—I believe he has not.

Did you ever hear it?—I did.

Why do you disbelieve it?—I heard it from several persons.

And you do not believe it?—I do not.

You do not believe that he has any connexion with that paper?—I do not believe it.

Have you heard it contradicted?—I have.

By whom?—I do not know.

What relation are you to Mr. Giffard?—His nephew by marriage.

And will you, his nephew, say he has not any interest in that paper?—I do.

Is not Mr. Ryan a relation of Mr. Giffard?—He is.

What relation?—I cannot say.

Who pays the rent of the house where Mr. Ryan lives?—I do not know.

This witness retired, and then the paper* produced by Mr. Lyster was read—upon which the case for the prosecution was rested.

The Earl of Clonmell, *Lord Chief Justice*, asked the counsel for the defendant whether they wished to have the information read, in order to compare it with the publication.

Mr. *Curran.* We have instructions not to take any captious objections, and therefore do not think it necessary to accept of the offer of the Court.

Mr. *Attorney-General.* A good reason why, Mr. Curran; there is no error in the record.

EVIDENCE FOR THE DEFENDANT.

Francis Blake, Esq. — Examined by Mr. *Curran.*

You live in Galway?—I live now in Dublin, but I did live in the county of Roscommon.

Do you know a gentleman who was examined here to-day, of the name of John Lyster?—I believe I do.

The son of Thomas Lyster of Grange?—I do know him.

Do you think that Mr. Lyster is a person who would deserve credit in what he should swear in a court of justice?—That is a very hard question to answer, for I never had any dealing with him, so as to say from my own knowledge whether he should be believed or not.

I only ask your opinion: is it your opinion that he deserves credit upon his oath? Do you believe it?—I cannot say he is: I might hesitate.

Can you form an opinion?—I have made all the answer I can—I cannot say that he does not deserve credit—at the same time I might have doubts.

Lord *Clonmell.* He only says he might hesitate—he has doubts.

Mr. *John Smith.*—Examined by Mr. *Recorder.*

Do you know John Lyster?—I have seen him, I have no acquaintance with him.

Have you ever seen him examined as a witness?—I have.

Where?—At Galway summer assizes, 1791.

Was he the son of Thomas Lyster of Grange?—I believe he was.

Did you see him on the table to-day?—I think, I did, while I was standing upon the steps of the exchequer.

Is it your opinion that he is a person to be believed upon his oath in a court of justice?

* See the paper at large in the information.

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—I cannot form a general opinion, with regard to the matter upon which he was examined to-day: from what I know of him I would give very little credit to him.

What is his general character?

Mr. *Attorney-General.* I object to that question.

Court. You are a man of business: upon your oath, do you know enough of this man to say whether you think he ought to be believed upon his oath?—I do not; for I know nothing of him, but what I saw at the trial in Galway.

Cross-examined by Mr. *Attorney-General.*

Are you a member of the United Irishmen?—I really am not.

Mrs. *Mary Hatchell.*—Examined by Mr. *Fletcher.*

Do you know Mr. John Lyster, son of Thomas Lyster of Grange?—I know Mr. John Lyster.

Is he in the army?—He is an ensign of the 40th.

Have you known him long?—I have known him well for better than a year; by sight I know him a long time.

From all that you know and have heard of this gentleman, can you form an opinion whether he is a person to be credited upon his oath?—From my opinion he is not.

Cross-examined by Mr. *Solicitor-general.*

Pray, madam, where do you live?—Upper Ormond-quay.

You know a brother of Mr. Lyster?—I do well: it calls painful remembrances to my mind by talking of him.

Was there any particular infidelity imputed to this gentleman or his brother?—George William Lyster was married to a daughter of ours (my husband is living).

Who is George William Lyster?—The younger brother of John Lyster.

Your first intercourse then originated from that connexion between George Lyster and your daughter?—Yes: George William Fitzgerald Lyster married my daughter.

It was not with your consent?—It was not.

You have not been induced to any painful necessity of breaking the marriage?—John Lyster has found means to take away his brother from his wife, insisting that he had another wife.

Jury. How do you know that John Lyster is the person who inveigled his brother from your daughter?—His elder brother told me so.

Court. Is that the reason you do not believe him?—It is one of the reasons.

What other reasons have you?—Conversations with his elder brother.

Here the evidence was closed for the defendant.

[A few moments before the defendant's counsel rose, a guard of soldiers was brought into the Court House, by the sheriff].

DEFENCE.

Mr. *Curran.* Gentlemen of the Jury. When I consider the period at which this prosecution is brought forward; when I behold the extraordinary safeguard of armed soldiers resorted to, no doubt for the preservation of peace and order; when I catch, as I cannot but do, the throb of public anxiety which beats from one end to the other of this hall; when I reflect on what may be the fate of a man of the most beloved personal character, of one of the most respected families of our country—himself the only individual of that family, I may almost say of that country, who can look to that possible fate with unconcern;—Feeling as I do all these impressions, it is in the honest simplicity of my heart I speak, when I say, that I never rose in a court of justice with so much embarrassment, as upon this occasion.

If, gentlemen, I could entertain a hope of finding refuge for the disconcertion of my mind in the perfect composure of yours; if I could suppose that those awful vicissitudes of human events, which have been stated or alluded to, could leave your judgment undisturbed and your hearts at ease, I know I should form a most erroneous opinion of your character: I entertain no such chimerical hope; I form no such unworthy opinion; I expect not that your hearts can be more at ease than my own; I have no right to expect it; but I have a right to call upon you, in the name of your country—in the name of the living God, of whose eternal justice you are now administering that portion, which dwells with us on this side of the grave—to discharge your breasts as far as you are able, of every bias of prejudice or passion; that if my client be guilty of the offence charged upon him, you may give tranquillity to the public by a firm verdict of conviction; or, if he be innocent, by as firm a verdict of acquittal; and that you will do this in defiance of the paltry artifices and senseless clamours that have been resorted to, in order to bring him to his trial with anticipated conviction. And, gentlemen, I feel an additional necessity of thus conjuring you to be upon your guard, from the able and imposing statement, which you have just heard on the part of the prosecution. I know well the virtues and talents of the excellent person who conducts that prosecution.* I know how much he would disdain to impose on you by the trappings of office; but I also know how easily we mistake the lodgment which character and eloquence can make upon our feelings, for those impressions that reason and fact and proof only ought to work upon our understandings.

Perhaps, gentlemen, I shall act not unwisely in waving any farther observation of

* The late lord Kilwarden, then attorney-general; who was murdered in the streets of Dublin, July 23d, 1803.

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this sort, and giving your minds an opportunity of growing cool and resuming themselves, by coming to a calm and uncoloured statement of mere facts, premising only to you, that I have it in strictest injunction from my client, to defend him upon facts and evidence only, and to avail myself of no technical artifice or subtlety that could withdraw his cause from the test of that inquiry which it is your province to exercise, and to which only he wishes to be indebted for an acquittal.

In the month of December, 1792, Mr. Rowan was arrested on an information, charging him with the offence for which he is now on his trial. He was taken before an hon. personage now on that bench, and admitted to bail.*

He remained a considerable time in this city soliciting the threatened prosecution, and offering himself to a fair trial by a jury of his country; but it was not then thought fit to yield to that solicitation; nor has it now been thought proper to prosecute him in the ordinary way, by sending up a bill of indictment to a grand jury.

I do not mean by this to say that Informations Ex-Officio are always oppressive or unjust; but I cannot but observe to you, that when a petty jury is called upon to try a charge not previously found by the grand inquest, and supported by the naked assertion only of the king's prosecutor, that the accusation labours under a weakness of probability which it is difficult to assist.† If the charge had no cause of dreading the light—if it was likely to find the sanction of a grand jury, it is not easy to account why it deserted the more usual, the more popular, and the more constitutional mode, and preferred to come forward in the ungracious form of an Ex-Officio Information.

If such a bill had been sent up and found, Mr. Rowan would have been tried at the next commission; but a speedy trial was not the wish of his prosecutors.‡ An information was filed, and when he expected to be tried upon it, an error, it seems, was discovered in the record. Mr. Rowan offered to wave it, or consent to any amendment desired. No—that proposal could not be accepted—a trial must have followed. That information, therefore, was withdrawn, and a new one filed: that is, in fact, a third prosecution was instituted upon the same charge. This last was filed on the 8th day of last July.

Gentlemen, these facts cannot fail of a due impression upon you. You will find a material part of your inquiry must be, whether Mr. Rowan is pursued as a criminal, or hunted down as a victim. It is not, therefore, by insinuation or circuity, but it is boldly and directly that I assert, that oppression has been intended and practised upon him, and by those facts which I have stated, I am warranted in the assertion.

His demand, his entreaty to be tried was refused—and why? A hue and cry was to be raised against him; the sword was to be suspended over his head; some time was necessary for the public mind to become heated by the circulation of artful clamours of anarchy and rebellion; these same clamours, which with more probability, but not more success, had been circulated before through England and Scotland. In this country the causes and the swiftness of their progress were as obvious, as their folly has since become, to every man of the smallest observation. I have been stopped myself, with, "Good God, sir, have you heard the news?" "No, sir, what?"—"Why one French emissary was seen travelling through Connaught in a post-chaise, and scattering from the windows as he passed little doses of political poison, made up in square bits of paper—another was actually surprised in the fact of seducing our good people from their allegiance, by discourses upon the indivisibility of French robbery and massacre, which he preached in the French language to a congregation of Irish peasants."

Such are the bugbears and spectres to be raised to warrant the sacrifice of whatever little public spirit may remain amongst us.—But time has also detected the imposture of these Cock-lane apparitions, and you cannot now, with your eyes open, give a verdict without asking your consciences this question; is this a fair and honest prosecution?—is it brought forward with the single view of vindicating public justice, and promoting public good? And here let me remind you, that you are not convened to try the guilt of a libel, affecting the personal character of any private man: I know no case in which a jury ought to be more severe, than where personal calumny is conveyed through a vehicle, which ought to be consecrated to public information; neither, on the other hand, can I conceive any case in which the firmness and the caution of a jury should be more exerted, than when a subject is prosecuted for a libel on the state. The peculiarity of the British

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* The hon. Mr. Justice Downes; who afterwards [on the death of lord Viscount Kilwarden], was appointed Lord Chief Justice of Ireland.

† As to the Information Ex-Officio, see the case of sir William Williams *ante* Vol. XIII, pp. 1369 *et seq.*: and the case of Horne, Vol. XX. pp. 677, *et seq.* 692.

‡ The advantages of proceeding by the information Ex-Officio against libels of a nature so dangerous to the safety of the realm as to require a more prompt visitation of justice than the forms in ordinary cases will permit, have been recently canvassed in an Essay in the Edinburgh Review, Vol. XXVII. pp. 137, *et seq.* See also the debate in the House of Commons on Mr. Brougham's bill for securing the Liberty of the Press, and preventing the Abuse thereof, XXXIV Hansard's Parl. Deb. pp. 377 *et seq.*

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constitution, (to which in its fullest extent we have an undoubted right, however distant we may be from the actual enjoyment) and in which it surpasses every known government in Europe, is this; that its only professed object is the general good, and its only foundation the general will; hence the people have a right acknowledged from time immemorial, fortified by a pile of statutes, and authenticated by a revolution that speaks louder than them all, to see whether abuses have been committed, and whether their properties and their liberties have been attended to as they ought to be.

This is a kind of subject which I feel myself overawed when I approach; there are certain fundamental principles which nothing but necessity should expose to public examination; they are pillars, the depth of whose foundation you cannot explore without endangering their strength; but let it be recollected that the discussion of such topics should not be condemned in me, nor visited upon my client: the blame, if any there be, should rest only with those who have forced them into discussion. I say, therefore, it is the right of the people to keep an eternal watch upon the conduct of their rulers; and in order to that, the freedom of the press has been cherished by the law of England. In private defamation let it never be tolerated; in wicked and wanton aspersion upon a good and honest administration let it never be supported. Not that a good government can be exposed to danger by groundless accusation, but because a bad government is sure to find in the detected falsehood of a licentious press a security and a credit, which it could never otherwise obtain.

I said a good government cannot be endangered; I say so again, for whether it be good or bad, it can never depend upon assertion: the question is decided by simple inspection: to try the tree look at its fruit; to judge of the government look at the people. What is the fruit of a good government? the virtue and happiness of the people. Do four millions of people in this country gather those fruits from that government, to whose injured purity, to whose spotless virtue and violated honour, this seditious and atrocious libeller is to be immolated upon the altar of the constitution? To you, gentlemen of the jury, who are bound by the most sacred obligation to your country and your God, to speak nothing but the truth, I put the question—Do the people of this country gather those fruits? Are they orderly, industrious, religious, and contented? Do you find them free from bigotry and ignorance, these inseparable concomitants of systematic oppression? Or, to try them by a test as unerring as any of the former, are they united? The period has now elapsed in which considerations of this extent would have been deemed improper to a jury; happily for these countries, the legislature of each has lately changed, or, perhaps to speak more properly, revived and restored the law respecting trials of this kind. For the space of thirty or forty years a usage had prevailed in Westminster-hall, by which the judges assumed to themselves the decision of the question, whether libel or not;* but the learned counsel for the prosecution are now obliged to admit that this is a question for the jury only to decide. You will naturally listen with respect to the opinion of the court, but you will receive it as a matter of advice, not as matter of law; and you will give it credit, not from any adventitious circumstances of authority, but merely so far as it meets the concurrence of your own understandings.

Give me leave now to state to you the charge, as it stands upon the record:—It is, "that Mr. Rowan, being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse among the subjects of this realm of Ireland, discontents, jealousies, and suspicions of our lord the king and his government, and disaffection and disloyalty to the person and government of our said lord the king, and to raise very dangerous seditions and tumults within this kingdom of Ireland, and to draw the government of this kingdom into great scandal, infamy, and disgrace, and to incite the subjects of our said lord the king to attempt, by force and violence, and with arms, to make alterations in the government, state, and constitution of this kingdom, and to incite his majesty's said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to overawe and intimidate the legislature of this kingdom by an armed force;" did "maliciously and seditiously" publish the paper in question.

Gentlemen, without any observation of mine, you must see that this information contains a direct charge upon Mr. Rowan; namely, that he did, with the intents set forth in the information, publish this paper; so that here you have in fact two or three questions for your decision: first, the matter of fact of the publication; namely, did Mr. Rowan publish that paper? If Mr. Rowan did not in fact publish that paper, you have no longer any question on which to employ your minds: if you think that he was in fact the publisher, then and not till then arises the great and important subject to which your judgments must be directed. And that comes shortly and simply to this: is the paper a libel? and did he publish it with the intent charged in the information? For whatever you may think of the abstract question, whether the paper be libellous or not, and of which paper it has not even been insinuated that he is the author, there can be no ground for a verdict against him, unless you also are persuaded that what he did was done with a criminal design.

* See p. 292 of this Volume.

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I wish, gentlemen, to simplify and not to perplex; I therefore say again, if these three circumstances conspire, that he published it —that it was a libel,—and that it was published with the purposes alleged in the information, you ought unquestionably to find him guilty: if on the other hand, you do not find that all these circumstances concurred;—if you cannot upon your oaths say that he published it;—if it be not in your opinion a libel; —and if he did not publish it with the intention alleged: I say, upon the failure of any one of these points, my client is entitled, in justice, and upon your oaths, to a verdict of acquittal.

Gentlemen, Mr. Attorney-general has thought proper to direct your attention to the state and circumstances of public affairs at the time of this transaction; let me also make a few retrospective observations on a period, at which he has but slightly glanced: I speak of the events which took place before the close of the American war.

You know, gentlemen, that France had espoused the cause of America, and we became thereby engaged in a war with that nation.

"Heu nescia mens hominum futuri!"

Little did that ill-fated monarch know that he was forming the first causes of those disastrous events, that were to end in the subversion of his throne, in the slaughter of his family, and the deluging of his country with the blood of his people. You cannot but remember that, at a time when we had scarcely a regular soldier for our defence; when the old and young were alarmed and terrified with apprehensions of descent upon our coasts; that providence seemed to have worked a sort of miracle in our favour. You saw a band of armed men come forth at the great call of nature, of honour, and their country. You saw men of the greatest wealth and rank; you saw every class of the community give up its members, and send them armed into the field, to protect the public and private tranquillity of Ireland. It is impossible for any man to turn back to that period, without reviving those sentiments of tenderness and gratitude which then beat in the public bosom;—to recollect amidst what applause, what tears, what prayers, what benedictions, they walked forth amongst spectators, agitated by the mingled sensations of terror and of reliance, of danger and of protection, imploring the blessings of heaven upon their heads, and its conquest upon their swords. That illustrious, and adored, and *abused* body of men stood forward and assumed the title, which, I trust, the ingratitude of their country will never blot from its history, "THE VOLUNTEERS OF IRELAND."

Give me leave now, with great respect, to put this question to you: do you think the assembling of that glorious band of patriots was an insurrection? do you think the invitation to that assembling would have been sedition? they came under no commission but the call of their country; unauthorized and unsanctioned, except by public emergency and public danger. I ask was that meeting insurrection or not? I put another question: if any man then had published a call on that body, and stated that war was declared against the state; that the regular troops were withdrawn; that our coasts were hovered round by the ships of the enemy; that the moment was approaching, when the unprotected feebleness of age and sex, when the sanctity of habitation would be disregarded and profaned by the brutal ferocity of a rude invader; if any man had then said to them, "Leave your industry for a while, that you may return to it again, and come forth in arms for the public defence." I put the question boldly to you—It is not the case of the volunteers of that day; it is the case of my client at this hour, which I put to you—Would that call have been then pronounced in a court of justice, or by a jury on their oaths, a criminal and seditious invitation to insurrection? If it would not have been so then, upon what principle can it be so now? What is the force and perfection of the law? It is the permanency of the law; it is, that whenever the fact is the same, the law is also the same; it is, that the law remains a written, monumented, and recorded letter, to pronounce the same decision, upon the same facts whenever they shall arise. I will not affect to conceal it: you know there has been artful, ungrateful, and blasphemous clamour raised against these illustrious characters, the saviours of the kingdom of Ireland. Having mentioned this, let me read a few words of the paper alleged to be criminal. "You first took up arms to protect your country from foreign enemies, and from domestic disturbance. For the same purposes it now becomes necessary that you should resume them."

I should be the last man in the world to impute any want of candour to the right honourable gentleman, who has stated the case on behalf of the prosecution: but he has certainly fallen into a mistake, which, if not explained, might be highly injurious to my client. He supposed that this publication was not addressed to those ancient volunteers, but to new combinations of them, formed upon new principles, and actuated by different motives. You have the words to which this construction is imputed upon the record; the meaning of his mind can be collected only from those words which he has made use of to convey it. The guilt imputable to him can only be inferred from the meaning ascribable to those words. Let his meaning then be fairly collected by resorting to them. Is there a foundation to suppose that this address was directed to any such body of men as has been called a banditti, (with what justice it is unnecessary to inquire), and not to the old volunteers?

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As to the sneer at the words "citizen soldiers," I should feel that I was treating a very respected friend with an insidious and unmerited unkindness, if I affected to expose it by any gravity of refutation. I may, however, be permitted to observe, that they who are supposed to have disgraced this expression by adopting it, have taken it from the idea of the British constitution, "that no man in becoming a soldier ceases to be a citizen." Would to God, all enemies as they are, that that unfortunate people had borrowed more from that sacred source of liberty and virtue; and would to God, for the sake of humanity, that they had preserved even the little they did borrow! If ever there could be an objection to that appellation, it must have been strongest when it was first assumed.* To that period the writer manifestly alludes; he addresses "those who first took up arms:" "You first took up arms to protect your country from foreign enemies and from domestic disturbance. For the same purposes it now becomes necessary that you should resume them." Is this applicable to those who had never taken up arms before? "A proclamation," says this paper, "has been issued in England for embodying the militia, and a proclamation has been issued by the lord lieutenant and council of Ireland, for repressing all seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home." God help us, from the situation of Europe at that time; we were threatened with too probable danger from abroad, and I am afraid it was not without foundation we were told of our having something to dread at home.

I find much abuse has been lavished on the disrespect with which the proclamation is treated, in that part of the paper alleged to be a libel. To that my answer for my client is short: I do conceive it competent to a British subject, if he thinks that a proclamation has issued for the purpose of raising false terrors,—I hold it to be not only the privilege, but the duty of a citizen, to set his countrymen right, with respect to such misrepresented danger; and until a proclamation in this country shall have the force of law, the reason and grounds of it are surely at least questionable by the people. Nay, I will go farther,—if an actual law had passed, receiving the sanction of the three estates, if it be exceptionable in any matter, it is warrantable to any man in the community to state, in a becoming manner, his ideas upon it. And I should be at a loss to know, if the positive laws of Great Britain are thus questionable, upon what grounds the proclamation of an Irish government should not be open to the animadversion of Irish subjects.

"Whatever be the motive, or from whatever quarter it arises," says this paper, "alarm has arisen." Gentlemen, do you not know that to be fact? It has been stated by the attorney-general, and most truly, that the most gloomy apprehensions were entertained by the whole country. "You volunteers of Ireland are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution." I am free to confess, if any man, assuming the liberty of a British subject to question public topics, should, under the mask of that privilege, publish a proclamation inviting the profligate and seditious, those in want, and those in despair, to rise up in arms to overawe the legislature, to rob us of whatever portion of the blessing of a free government we possess; I know of no offence involving greater enormity. But that, gentlemen, is the question you are to try. If my client acted with an honest mind and fair intention, and having, as he believed, the authority of government to support him in the idea that danger was to be apprehended, did apply to that body of so known and so revered a character, calling upon them by their former honour, the principles of their glorious institution, and the great stake they possessed in their country;—if he interposed, not upon a fictitious pretext, but a real belief of actual and imminent danger, and that their arming at that critical moment was necessary to the safety of their country; his intention was not only innocent, but highly meritorious. It is a question, gentlemen, upon which you only can decide; it is for you to say, whether it was criminal in the defendant to be misled, and whether he is to fall a sacrifice to the prosecution of that government by which he was so deceived. I say again, gentlemen, you can look only to his words as the interpreters of his meaning; and to the state and circumstances of his country, as he was made to believe them, as the clue to his intention. The case then, gentlemen, is shortly and simply this: a man of the first family, and fortune, and character, and property among you, reads a proclamation, stating the country to be in danger from abroad and at home; and thus alarmed—thus upon the authority of the prosecutor alarmed, applies to that august body, before whose awful presence sedition must vanish, and insurrection disappear. You must surrender,—I hesitate not to say it,—your oaths to unfounded assertion, if you can submit to say, that such an act, of such a man, so warranted, is a wicked and seditious libel. If he was a dupe, let me ask you, who was the impostor? I blush and shrink with shame and detestation from that meanness of dupery and servile complaisance, which could make that dupe a victim to the accusation of that impostor.

* In the resolutions and addresses of the old volunteers, at and prior to 1783, the terms "citizen soldiers," and "citizen soldiery," were no uncommon appellations. *Editor of Curran's speeches.*

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You perceive, gentlemen, that I am going into the merits of this publication, before I apply myself to the question which is first in order of time, namely, whether the publication in point of fact, is to be ascribed to Mr. Rowan or not. I have been unintentionally led into this violation of order. I should effect no purpose of either brevity or clearness, by returning to the more methodical course of observation. I have been naturally drawn from it by the superior importance of the topic I am upon, namely, the merit of the publication in question.

This publication, if ascribed at all to Mr. Rowan, contains four distinct subjects: the first, the invitation to the volunteers to arm; upon that I have already observed: but those that remain are surely of much importance, and no doubt are prosecuted as equally criminal. The paper next states the necessity of a reform in parliament: it states thirdly, the necessity of an emancipation of the catholic inhabitants of Ireland; and as necessary to the achievement of all these objects, does, fourthly, state the necessity of a general delegated convention of the people.

It has been alleged that Mr. Rowan intended by this publication to excite the subjects of this country to effect an alteration in the form of your constitution. And here, gentlemen, perhaps, you may not be unwilling to follow a little farther than Mr. Attorney-general has done the idea of a late prosecution in Great Britain upon the subject of a public libel. It is with peculiar fondness I look to that country for solid principles of constitutional liberty and judicial example. You have been pressed in no small degree with the manner in which this publication marks the different orders of our constitution, and comments upon them. Let me show you what boldness of animadversion on such topics is thought justifiable in the British nation, and by a British jury. I have in my hand the report of the trial of the printers of the Morning Chronicle, for a supposed libel against the state, and of their acquittal: let me read to you some passages from that publication, which a jury of Englishmen were in vain called upon to brand with the name of libel.

"Claiming it as our indefeasible right to associate together, in a peaceable and friendly manner, for the communication of thoughts, the formation of opinions, and to promote the general happiness, we think it unnecessary to offer any apology for inviting you to join us in this manly and benevolent pursuit; the necessity of the inhabitants of every community endeavouring to procure a true knowledge of their rights, their duties, and their interests, will not be denied, except by those who are the slaves of prejudice, or interested in the continuation of abuses. As men who wish to aspire to the title of freemen, we totally deny the wisdom and the humanity of the advice, to approach the defects of government with 'pious awe and trembling solici-'tude.' What better doctrine could the pope or the tyrants of Europe desire? We think, therefore, that the cause of truth and justice can never be hurt by temperate and honest discussions; and that cause which will not bear such a scrutiny, must be systematically or practically bad. We are sensible that those who are not friends to the general good have attempted to inflame the public mind with the cry of "danger," whenever men have associated for discussing the principles of government; and we have little doubt but such conduct will be pursued in this place; we would therefore caution every honest man, who has really the welfare of the nation at heart, to avoid being led away by the prostituted clamours of those who live on the sources of corruption. We pity the fears of the timorous, and we are totally unconcerned respecting the false alarms of the venal.——

——"We view with concern the frequency of wars.—We are persuaded that the interests of the poor can never be promoted by accession of territory, when bought at the expense of their labour and blood; and we must say, in the language of a celebrated author,—'We, 'who are only the people, but who pay for 'wars with our substance and our blood, will 'not cease to tell kings,' or governments, 'that to them alone wars are profitable; that 'the true and just conquests are those which 'each makes at home, by comforting the pea-'santry, by promoting agriculture and manu-'factories, by multiplying men and the other 'productions of nature; that then it is that 'kings may call themselves the image of God, 'whose will is perpetually directed to the cre-'ation of new beings. If they continue to 'make us fight and kill one another in uni-'form, we will continue to write and speak, 'until nations shall be cured of this folly.' —We are certain our present heavy burthens 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 protest against them.

"The present state of the representation of the people 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 corruptions of which we are inclined to attribute unnecessary wars, &c. &c. We think it a deplorable case when the poor must support a corruption which is calculated to oppress them: when the labourer must give his money to afford the means of preventing him having a voice in its disposal; when the lower classes may say,—We give you our money, for which we have toiled and sweat, and which would save our families from cold and hunger; but we think it more hard that there is nobody whom we have delegated, to see that it is not improperly and wickedly spent; we have none to watch over

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our interests; the rich only are represented."—

—"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.

"In short, we see, with the most lively concern, an army of placemen, pensioners, &c. fighting in the cause of corruption and prejudice, and spreading the contagion far and wide.—

—"We see with equal sensibility the present outcry against reforms, and a 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 burthens multiplied—the lower classes sinking into poverty, disgrace, and excesses, and the means of these shocking abuses increased for the purposes of revenue.—

—"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 happiness?—

—"Is the condition of the poor never to be improved? Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry against reforms and improvements is inhuman and criminal. But we hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present association: an union founded on principles of benevolence and humanity; disclaiming all connexion with riots and disorder, but firm in our purpose, and warm in our affections for liberty.

"Lastly—We invite the friends of freedom throughout Great Britain to form similar societies, and to act with unanimity and firmness, till the people 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."*

Such, gentlemen, is the languaue which a subject of Great Britain thinks himself warranted to hold, and upon such language has the corroborating sanction of a British jury been stamped by a verdict of acquittal. Such was the honest and manly freedom of publication, in a country too where the complaint of abuses has not half the foundation it has here. I said I loved to look to England for principles of judicial example; I cannot but say to you that it depends on your spirit, whether I shall look to it hereafter with sympathy or with shame. Be pleased, now, gentlemen, to consider whether the statement of the imperfection in your representation has been made with a desire of inflaming an attack upon the public tranquillity, or with an honest purpose of procuring a remedy for an actually existing grievance.

It is impossible not to revert to the situation of the times; and let me remind you, that whatever observations of this kind I am compelled thus to make in a court of justice, the uttering of them in this place is not imputable to my client, but to the necessity of defence imposed upon him by this extraordinary prosecution.

Gentlemen, the representation of our people is the vital principle of their political existence; without it they are dead, or they live only to servitude; without it there are two estates acting upon and against the third, instead of acting in co-operation with it; without it, if the people are oppressed by their judges, where is the tribunal to which their judges can be amenable? without it if they are trampled upon and plundered by a minister, where is the tribunal to which the offender shall be amenable? without it, where is the ear to hear, or the heart to feel, or the hand to redress their sufferings? Shall they be found, let me ask you, in the accursed bands of imps and minions that bask in their disgrace, and fatten upon their spoils, and flourish upon their ruin? But let me not put this to you as a merely speculative question. It is a plain question of fact: rely upon it, physical man is every where the same; it is only the various operation of moral causes that gives variety to the social or individual character and condition. How otherwise happens it, that modern slavery looks quietly at the despot, on the very spot where Leonidas expired? The answer is, Sparta has not changed her climate, but she has lost that government, which her liberty could not survive.

I call you, therefore, to the plain question of fact. This paper recommends a reform in parliament: I put that question to your consciences; do you think it needs that reform? I put it boldly and fairly to you, do you think the people of Ireland are represented as they ought to be? Do you hesitate for an answer? If you do, let me remind you, that until the last year three millions of your countrymen have by the express letter of the law been excluded from the reality of actual, and even from the phantom of virtual representation. Shall we then be told that this is only the affirmation of a wicked and seditious incendiary? If you do not feel the mockery of such a charge, look at your country—in what state do you find it? Is it in a state of tranquillity and general satisfaction? These are traces by which good are ever to be distinguished from bad governments, without any very minute inquiry or speculative refinement. —Do you feel that a veneration for the law,

* See the case of Lambert and others, *ante*. p. 954—958.

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a pious and humble attachment to the constitution, form the political morality of your people? Do you find that comfort and competency among your people, which are always to be found where a government is mild and moderate,—where taxes are imposed by a body who have an interest in treating the poorer orders with compassion, and preventing the weight of taxation from pressing sore upon them?

Gentlemen, I mean not to impeach the state of your representation, I am not saying that it is defective, or that it ought to be altered or amended: nor is this a place for me to say, whether I think that three millions of the inhabitants of a country, whose whole number is but four, ought to be admitted to any efficient situation in the state. It may be said, and truly, that these are not questions for either of us directly to decide; but you cannot refuse them some passing consideration at least, when you remember that on this subject the real question for your decision is, whether the allegation of a defect in your constitution is so utterly unfounded and false, that you can ascribe it only to the malice and perverseness of a wicked mind, and not to the innocent mistake of an ordinary understanding: whether it may not be mistake; whether it can be only sedition.

And here, gentlemen, I own I cannot but regret, that one of our countrymen should be criminally pursued for asserting the necessity of a reform, at the very moment, when that necessity seems admitted by the parliament itself; that this unhappy reform shall at the same moment be a subject of legislative discussion, and criminal prosecution. Far am I from imputing any sinister design to the virtue or wisdom of our government; but who can avoid feeling the deplorable impression that must be made on the public mind, when the demand for that reform is answered by a criminal information?

I am the more forcibly impressed by this consideration, when I consider, that when this information was first put on the file, the subject was transiently mentioned in the House of Commons. Some circumstances retarded the progress of the inquiry there, and the progress of the information was equally retarded here. On the first day of this session, you all know, that subject was again brought forward in the House of Commons; and, as if they had slept together, this prosecution was also revived in the court of King's-bench,—and that before a jury, taken from a pannel partly composed of those very members of parliament, who in the House of Commons, must debate upon this subject as a measure of public advantage, which they are here called upon to consider as a public crime.*

This paper, gentlemen, insists upon the necessity of emancipating the Catholics of Ireland, and that is charged as part of the libel. If they had waited another year, if they had kept this prosecution impending for another year, how much would remain for a jury to decide upon, I should be at a loss to discover. It seems as if the progress of public information was eating away the ground of the prosecution. Since the commencement of the prosecution, this part of the libel has unluckily received the sanction of the legislature. In that interval our Catholic brethren have obtained that admission, which it seems it was a libel to propose; in what way to account for this, I am really at a loss. Have any alarms been occasioned by the emancipation of our Catholic brethren? has the bigoted malignity of any individuals been crushed; or has the stability of the government, or that of the country been weakened; or is one million of subjects stronger than four millions? Do you think that the benefit they received should be poisoned by the sting of vengeance? If you think so, you must say to them, "you have demanded emancipation and you have got it; but we abhor your persons, we are outraged at your success and we will stigmatize by a criminal prosecution the adviser of that relief which you have obtained from the voice of your country." I ask you, do you think, as honest men, anxious for the public tranquillity, conscious that there are wounds not yet completely cicatrized, that you ought to speak this language at this time, to men who are too much disposed to think that in this very emancipation they have been saved from their own parliament by the humanity of their sovereign? Or do you wish to prepare them for the revocation of these improvident concessions? Do you think it wise or humane at this moment to insult them, by sticking up in a pillory the man who dared to stand forth as their advocate? I put it to your oaths,—do you think, that a blessing of that kind, that a victory obtained by justice over bigotry and oppression, should have a stigma cast upon it by an ignominious sentence upon men bold and honest enough to propose that measure?—to propose the redeeming of religion from the abuses of the church, the reclaiming of three millions of men from bondage, and giving liberty to all who had a right to demand it,—giving, I say, in the so much censured words of this paper, giving "UNIVERSAL EMANCIPATION!" I speak in the spirit of the British law, which makes liberty commensurate with and inseparable from British soil,—which proclaims even to the stranger and sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and con-

* Among the names on the pannel were right hon. J. Cuffe, M. P.—Right hon. D. Latouche, M. P.—Sir W. G. Newcomen, bart. M. P.—J. Maxwell, M. P.—C. H. Coote, M. P.—Henry Bruen, M. P.—H. V. Brooke, M. P.—J. Reilly, M. P.—J. Pomeroy, M. P. *Orig. Edit.*

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secrated by the genius of UNIVERSAL EMANCIPATION. No matter in what language his doom may have been pronounced;—no matter what complexion incompatible with freedom, an Indian or an African sun may have burnt upon him;—no matter in what disastrous battle his liberty may have been cloven down;—no matter with what solemnities he may have been devoted upon the altar of slavery; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust: his soul walks abroad in her own majesty; his body swells beyond the measure of his chains that burst from around him, and he stands redeemed, regenerated, and disenthralled, by the irresistible genius of UNIVERSAL EMANCIPATION.

[Here Mr. Curran was interrupted by a sudden burst of applause from the court and hall; silence however was restored after some minutes, by the interposition of lord Clonmell, who declared the great pleasure he felt himself, at the exertion of professional talents, but disapproved any intemperate expression of applause in a court of justice.]*

Gentlemen, I am not such a fool, as to ascribe any effusion of this sort to any merit of mine. It is the mighty theme, and not the inconsiderable advocate, that can excite interest in the hearer! What you hear is but the testimony which nature bears to her own character; it is the effusion of her gratitude to that power, which stampt that character upon her.

And, permit me to say, that if my client had occasion to defend his cause by any mad or drunken appeals to extravagance or licentiousness, I trust in God I stand in that situation, that humble as I am, he would not have resorted to me to be his advocate. I was not recommended to his choice by any connexion of principle or party, or even private friendship; and saying this I cannot but add, that I consider not to be acquainted with such a man as Mr. Rowan, a want of personal good fortune. But upon this great subject of reform and emancipation, there is a latitude and boldness of remark, justifiable in the people, and necessary to the defence of Mr. Rowan, for which the habits of professional studies, and technical adherence to established forms, have rendered me unfit. It is however my duty, standing here as his advocate, to make some few observations to you, which I conceive to be material.

Gentlemen, you are sitting in a country which has a right to the British constitution, and which is bound by an indissoluble union with the British nation. If you were now even at liberty to debate upon that subject,—if you even were not by the most solemn compacts, founded upon the authority of your ancestors and of yourselves, bound to that alliance, and had an election now to make,—in the present unhappy state of Europe, if you had been heretofore a stranger to Great Britain, you would now say, we will enter into society and union with you;

Una salus ambobus erit, commune periclum.

But to accomplish that union, let me tell you, you must learn to become like the English people. It is vain to say, you will protect their freedom, if you abandon your own The pillar whose base has no foundation, can give no support to the dome under which its head is placed; and if you profess to give England that assistance which you refuse to yourselves, she will laugh at your folly, and despise your meanness and insincerity. Let us follow this a little farther;—I know you will interpret what I say with the candour in which it is spoken. England is marked by a natural avarice of freedom, which she is studious to engross and accumulate, but most unwilling to impart; whether from any necessity of her policy, or from her weakness, or from her pride, I will not presume to say, but so is the fact; you need not look to the east, nor to the west, you need only look to yourselves.

In order to confirm this observation, I would appeal to what fell from the learned counsel for the crown, "that notwithstanding the alliance subsisting for two centuries past between the two countries, the date of liberty in one goes no farther back than the year 1784."

If it acquired additional confirmation, I should state the case of the invaded American, and the subjugated Indian, to prove that the policy of England has ever been to govern her connexions more as colonies than as allies; and it must be owing to the great spirit indeed of Ireland if she shall continue free. Rely upon it she will ever have to hold her course against an adverse current; rely upon it, if the popular spring does not continue strong and elastic, a short interval of debilitated nerve and broken force will send you down the stream again, and reconsign you to the condition of a province.

If such should become the fate of your constitution, ask yourselves what must be the motive of your government? It is easier to govern a province by a faction, than to govern a co-ordinate country by co-ordinate means. I do not say it is now, but it will always be thought easiest by the managers of the day, to govern the Irish nation by the agency of such a faction, as long as this country shall be found willing to let her connexion with Great Britain be preserved only by her own degradation. In such a precarious and wretched state of things, if it shall ever be found to exist, the true friend of Irish liberty, and British connexion, will see, that the only means of saving both must be, as lord Chatham expressed it, "the infusion of new health and blood into the constitution." He will see how deep a stake each country has in the

* See, in this collection, the cases of lord Shaftesbury, Vol. VIII. p. 821; of the seven bishops, Vol. XII, pp. 430, 431, and of William Stone, A. D. 1796.

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liberty of the other; he will see what a bulwark he adds to the common cause, by giving England a co-ordinate, and co-interested ally, instead of an oppressed, enfeebled and suspected dependant; he will see how grossly the credulity of Britain is abused by those, who make her believe that her interest is promoted by our depression; he will see the desperate precipice to which she approaches by such conduct, and with an animated and generous piety he will labour to avert her danger.

But, gentlemen of the jury, what is likely to be his fate? The interest of the sovereign must be for ever the interest of his people; because his interest lives beyond his life:—it must live in his fame, it must live in the tenderness of his solicitude for an unborn posterity;—it must live in that heart-attaching bond by which millions of men have united the destinies of themselves and their children with his, and call him by the endearing appellation of king and father of his people.

But what can be the interest of such a government as I have described?—Not the interest of the king, nor the interest of the people; but the sordid interest of the hour; the interest in deceiving the one, and in oppressing and defaming the other: the interest of unpunished rapine and unmerited favour: that odious and abject interest, which prompts them to extinguish public spirit in punishment or in bribe, and to pursue every man, even to death, who has sense to see, and integrity and firmness enough to abhor and to oppose them. What, therefore, I say, will be the fate of the man, who embarks in an enterprise of so much difficulty and danger? I will not answer it.—Upon that hazard has my client put every thing that can be dear to man,—his fame, his fortune, his person, his liberty, and his children; but with what event your verdict only can answer, and to that I refer your country.

There is a fourth point remaining—Says this paper, "For both these purposes, it appears necessary, that provincial conventions should assemble preparatory to the convention of the protestant people. The delegates of the catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore an assembly of a similar nature and organization is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause, and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people will relax into inattention and inertness, the union of affection and exertion will dissolve, and too probably some local insurrection, instigated by the malignity of our common enemy, may commit the character and risk the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with—the people, and whose spirit may be, as it were, knit with the soul of the nation: unless the sense of the protestant people be on their part as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the particles unite into one mass, we may perhaps serve some person or some party for a little, but the public not all: the nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by well-timed reform, and to save their country in mercy to themselves."

Gentlemen, it is with something more than common reverence, it is with a species of terror that I am obliged to tread this ground. —But what is the idea, put in the strongest point of view?—We are willing not to manifest our powers, but to supplicate administration, to anticipate revolution, that the legislature may save the country in merey to itself.

Let me suggest to you, gentlemen, that there are some circumstances, which have happened in the history of this country, that may better serve as a comment upon this part of the case than any I can make. I am not bound to defend Mr. Rowan as to the truth or wisdom of the opinions he may have formed. But if he did really conceive the situation of the country such, as that the not redressing her grievances might lead to a convulsion, and of such an opinion not even Mr. Rowan is answerable here for the wisdom, much less shall I insinuate any idea of my own upon so awful a subject; but if he did so conceive the fact to be, and acted from the fair and honest suggestion of a mind anxious for the public good, I must confess, gentlemen, I do not know in what part of the British constitution to find the principle of his criminality.

But, be pleased farther to consider, that he cannot be understood to put the fact on which he argues on the authority of his assertion. The condition of Ireland was as open to the observation of every other man, as to that of Mr. Rowan; what then does this part of the publication amount to? In my mind, simply to this, the nature of oppression in all countries is such, that, although it may be borne to a certain degree, it cannot be borne beyond that degree. You find that exemplified in Great Britain; you find the people of England patient to a certain point, but patient no longer. That infatuated monarch, James 2, experienced this. The time did come, when the measure of popular sufferings and popular patience was full; when a single drop was sufficient to make the waters of bitterness to overflow. I think this measure in Ireland is brimful at present; I think the state of the representation of the people in parliament is a grievance; I think the utter exclusion of three millions of people is a grievance of that kind that the people are not likely long to endure, and the continuation of which may

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plunge the country into that state of despair which wrongs exasperated by perseverance never fail to produce—But to whom is even this language addressed? Not to the body of the people on whose temper and moderation, if once excited, perhaps not much confidence could be placed; but to that authoritative body, whose influence and power would have restrained the excesses of the irritable and tumultuous; and for that purpose expressly does this publication address the volunteers.—We are told that we are in danger; I call upon you, the great constitutional saviours of Ireland, to defend the country to which you have given political existence, and to use whatever sanction your great name, your sacred character and the weight you have in the community must give you, to repress wicked designs, if any there are. We feel ourselves strong. The people are always strong; the public chains can only be rivetted by the public hands. Look to those devoted regions of southern despotism; behold the expiring victim on his knees, presenting the javelin reeking with his blood to the ferocious monster who returns it into his heart. Call not that monster the tyrant: he is no more than the executioner of that inhuman tyranny, which the people practice upon themselves, and of which he is only reserved to be a later victim than the wretch he has sent before. Look to a nearer country, where the sanguinary characters are more legible; whence you almost hear the groans of death and torture. Do you ascribe the rapine and murder in France to the few names that we are execrating here? or do you not see that it is the phrensy of an infuriated multitude, abusing its own strength, and practising those hideous abominations upon itself. Against the violence of this strength, let your virtue and influence be our safeguard.—

What criminality, gentlemen of the jury, can you find in this? what at any time? but I ask you, peculiarly at this momentous period, what guilt can you find in it? My client saw the scene of horror and blood which covers almost the face of Europe: he feared that causes, which he thought similar, might produce similar effects, and he seeks to avert those dangers by calling the united virtue and tried moderation of the country into a state of strength and vigilance Yet this is the conduct which the prosecution of this day seeks to punish and stigmatise; and this is the language for which this paper is reprobated today, as tending to turn the hearts of the people against their sovereign, and inviting them to overturn the constitution.

Let us now gentlemen, consider the concluding part of this publication. It recommends a meeting of the people to deliberate on constitutional methods of redressing grievances. Upon this subject I am inclined to suspect that I have in my youth taken up crude ideas, not founded, perhaps in law; but I did imagine, that when the bill of rights restored the right of petitioning for the redress of grievances, it was understood that the people might boldly state among themselves that grievances did exist, I did imagine it was understood that the people might lawfully assemble themselves in such manner as they might deem most orderly and decorous. I thought I had collected it from the greatest luminaries of the law. The power of petitioning seemed to me to imply the right of assembling for the purpose of deliberation. The law requiring a petition to be presented by a limited number, seemed to me to admit that the petition might be prepared by any number whatever, provided, in doing so, they did not commit any breach or violation of the public peace. I know that there has been a law passed in the Irish parliament of last year, which may bring my former opinion into a merited want of authority. The law declares that no body of men may delegate a power to any smaller number, to act, think, or petition for them. If that law had not passed I should have thought that the assembling by a delegate convention was recommended, in order to avoid the tumult and disorder of a promiscuous assembly of the whole mass of the people. I should have conceived before that act, that any law to abridge the orderly appointment of the few to consult for the interest of the many, and thus force the many to consult by themselves, or not at all, would in fact be a law not to restrain but to promote insurrection. But that law has spoken, and my error must stand corrected. Of this however, let me remind you, you are to try this part of the publication by what the law was then, not by what it is now. How was it understood until last session of parliament? You had both in England and Ireland, for the last ten years, these delegated meetings. The volunteers of Ireland, in 1782, met by delegation; they framed a plan of parliamentary reform; they presented it to the representative wisdom of the nation; it was not received; but no man ever dreamed that it was not the undoubted right of the subject to assemble in that manner. They assembled by delegation at Dungannon, and to show the idea then entertained of the legality of their public conduct, that same body of volunteers was thanked by both Houses of Parliament, and their delegates most graciously received at the throne. The other day, you had delegated representatives of the Catholics of Ireland, publicly elected by the members of that persuasion, and sitting in convention in the heart of your capital, carrying on an actual treaty with the existing government, and under the eye of your own parliament, which was then assembled; you have seen the delegates from that convention carry the complaints of their grievances to the foot of the throne; from whence they brought back to that convention the auspicious tidings of that redress which they had been refused at home.

Such, gentlemen, have been the means of

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popular communication and discussion, which until the last session have been deemed legal in this country; as happily for the sister kingdom, they are yet considered there.

I do not complain of this act as any infraction of popular liberty; I should not think it becoming in me to express any complaint against a law, when once become such. I observe only, that one mode of popular deliberation is thereby taken utterly away, and you are reduced to a situation in which you never stood before. You are living in a country, where the constitution is rightly stated to be only ten years old; where the people have not the ordinary rudiments of education. It is a melancholy story, that the lower orders of the people here have less means of being enlightened than the same class of people in any other country. If there be no means left by which public measures can be canvassed, what will be the consequence? Where the press is free, and discussion unrestrained, the mind, by the collision of intercourse, gets rid of its own asperities, a sort of insensible perspiration takes place in the body politic, by which those acrimonies, which would otherwise fester and inflame, are quietly dissolved and dissipated. But now, if any aggregate assembly shall meet, they are censured: if a printer publishes their resolutions, he is punished. Rightly to be sure in both cases, for it has been lately done. If the people say, let us not create tumult, but meet in delegation, they cannot do it? if they are anxious to promote parliamentary reform, in that way they cannot do it: the law of the last session has for the first time declared such meetings to be a crime. What then remains? The liberty of the press ONLY; that sacred palladium, which no influence, no power, no minister, no government, which nothing but the depravity, or folly, or corruption of a jury, can ever destroy.—And what calamities are the people saved from by having public communication left open to them? I will tell you, gentlemen, what they are saved from, and what the government is saved from; I will tell you also to what both are exposed by shutting up that communication. In one case sedition speaks aloud, and walks abroad; the demagogue goes forth; the public eye is upon him; he frets his busy hour upon the stage, but soon either weariness, or bribe or punishment, or disappointment, bears him down, or drives him off, and he appears no more. In the other case, how does the work of sedition go forward? Night after night the muffled rebel steals forth in the dark, and casts another and another brand upon the pile, to which, when the hour of fatal maturity shall arrive, he will apply the flame. If you doubt of the horrid consequences of suppressing the effusion even of individual discontent, look to those enslaved countries where the protection of despotism is supposed to be secured by such restraints. Even the person of the despot there is never in safety. Neither the fears of the despot, nor the machinations of the slave have any slumber, the one anticipating the moment of peril, the other watching the opportunity of aggression. The fatal crisis is equally a surprise upon both; the decisive instant is precipitated without warning, by folly on the one side, or by phrenzy on the other, and there is no notice of the treason till the traitor acts. In those unfortunate countries,—one cannot read it without horror,—there are officers, whose province it is, to have the water, which is to be drunk by their rulers, sealed up in bottles, lest some wretched miscreant should throw poision into the draught.

But, gentlemen, if you wish for a nearer and more interesting example, you have it in the history of your own revolution; you have it at that memorable period, when the monarch found a servile acquiescence in the ministers of his folly; when the liberty of the press was trodden under foot; when venal sheriffs returned packed juries to carry into effect those fatal conspiracies of the few against the many; when the devoted benches of public justice were filled by some of those foundlings of fortune, who, overwhelmed in the torrent of corruption at an early period, lay at the bottom like drowned bodies, while soundness or sanity remained in them; but at length, becoming buoyant by putrefaction, they rose as they rotted, and floated to the surface of the polluted stream, where they were drifted along, the objects of terror, and contagion, and abomination.

In that awful moment of a nation's travail, of the last gasp of tyranny, and the first breath of freedom, how pregnant is the example? The press extinguished, the people enslaved, and the prince undone. As the advocate of society, therefore, of peace, of domestic liberty, and the lasting union of the two countries, I conjure you to guard the liberty of the press, that great sentinel of the state, that grand detector of public imposture:—guard it, because, when it sinks, there sinks with it, in one common grave, the liberty of the subject, and the security of the crown.

Gentlemen, I am glad that this question has not been brought forward earlier; I rejoice for the sake of the court, of the jury, and of the public repose, that this question has not been brought forward till now. In Great Britain analogous circumstances have taken place. At the commencement of that unfortunate war which has deluged Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles; at that moment of general paroxysm, to accuse was to convict. The danger loomed larger to the public eye, from the misty region through which it was surveyed. We measure inaccessible heights by the shadows which they project, where the lowness and the distance of the light lends the length of the shade.

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There is a sort of aspiring and adventurous credulity, which disdains assenting to obvious truths, and delights in catching at the improbability of circumstances, as its best ground of faith. To what other cause, gentlemen, can you ascribe that in the wise, the reflecting, and the philosophic nation of Great Britain, a printer has been gravely found guilty of a libel, for publishing those resolutions to which the present minister of that kingdom had actually subscribed his name? To what other cause can you ascribe, what in my mind is still more astonishing, in such a country as Scotland—a nation cast in the happy medium between the spiritless acquiescence of submissive poverty, and the sturdy credulity of pampered wealth; cool and ardent; adventurous and persevering; winging her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires; crowned as she is with the spoils of every art, and decked with the wreath of every muse, from the deep and scrutinizing researches of her Hume, to the sweet and simple, but not less sublime and pathetic morality of her Burns—how, from the bosom of a country like that, genius, and character, and talents, should be banished to a distant barbarous soil;* condemned to pine under the horrid communion of vulgar vice and baseborn profligacy, for twice the period that ordinary calculation gives to the continuance of human life?

But I will not farther press any idea that is painful to me, and I am sure must be painful to you: I will only say, you have now an example, of which neither England nor Scotland had the advantage; you have the example of the panic, the infatuation, and the contrition of both. It is now for you to decide, whether you will profit by their experience of idle panic and idle regret, or whether you meanly prefer to palliate a servile imitation of their frailty, by a paltry affectation of their repentance. It is now for you to show, that you are not carried away by the same hectic delusions to acts, of which no tears can wash away the fatal consequences, or the indelible reproach.

Gentlemen, I have been warning you by instances of public intellect suspended or obscured; let me rather excite you by the example of that intellect recovered and restored. In that case which Mr. Attorney-general has cited himself, I mean that of the trial of Lambert in England, is there a topic of invective against constituted authorities; is there a topic of abuse against every department of British government, that you do not find in the most glowing and unqualified terms in that publication, for which the printer of it was prosecuted, and acquitted by an English jury? See too what a difference there is between the case of a man publishing his own opinion of facts, thinking that he is bound by duty to hazard the promulgation of them, and without the remotest hope of any personal advantage, and that of a man who makes publication his trade. And saying this, let me not be misunderstood. It is not my province to enter into any abstract defence of the opinions of any man upon public subjects. I do not affirmatively state to you that these grievances, which this paper supposes, do in fact exist: yet I cannot but say, that the movers of this prosecution have forced this question upon you. Their motives and their merits, like those of all accusers, are put in issue before you; and I need not tell you how strongly the motive and merits of any informer ought to influence the fate of his accusation.

I agree most implicitly with Mr. Attorney-general, that nothing can be more criminal than an attempt to work a change in the government by armed force; and I intreat that the court will not suffer any expression of mine to be considered as giving encouragement or defence to any design to excite disaffection, to overawe or to overturn the government. But I put my client's case upon another ground: if he was led into an opinion of grievances, where there were none; if he thought there ought to be a reform, where none was necessary, he is answerable only for his intention. He can be answerable to you in the same way only that he is answerable to that God, before whom the accuser, the accused, and the judge must appear together; that is, not for the clearness of his understanding, but for the purity of his heart.

Gentlemen, Mr. Attorney-general has said, that Mr. Rowan did by this publication (supposing it be his) recommend, under the name of equality, a general indiscriminate assumption of public rule by every the meanest person in the state. Low as we are in point of public information, there is not, I believe, any man, who thinks for a moment, that does not know, that all which the great body of the people of any country, can have from any government, is a fair encouragement to their industry, and protection for the fruits of their labour. And there is scarcely any man, I believe, who does not know, that if a people could become so silly as to abandon their stations in society, under pretence of governing themselves, they would become the dupes and the victims of their own folly. But does this publication recommend any such infatuated abandonment, or any such desperate assumption? I will read the words which relate to that subject: "By liberty we never understood unlimited freedom, nor by equality the levelling of property or the destruction of subordination." I ask you, with what justice, upon what principle of common sense, you can charge a man with the publication of sentiments, the very reverse of what his words

* Mr. Curran alludes to the sentence of transportation passed in Scotland upon Mr. Muir, &c. &c. *Editor of Curran's Speeches.* See the Scots trials in Vol. XXIII. of this collection.

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avow? and that, when there is no collateral evidence, where there is no foundation whatever, save those very words, by which his meaning can be ascertained? or if you do adopt an arbitrary principle of imputing to him your meaning instead of his own, what publication can be guiltless or safe? It is a sort of accusation that I am ashamed and sorry to see introduced in a court acting on the principles of the British constitution.

In the bitterness of reproach it was said, "Out of thine own mouth will I condemn thee;" from the severity of justice I demand no more. See if in the words that have been spoken, you can find matter to acquit or to condemn: "By liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination.—This is a calumny invented by that faction or that gang, which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and, by keeping up distrust and division, wishes to continue the proud arbitrator of the fortune and fate of Ireland." Here you find that meaning disclaimed as a calumny, which is artfully imputed as a crime.

I say therefore, gentlemen of the jury, as to the four parts into which the publication must be divided, I answer thus. It calls upon the volunteers. Consider the time, the danger, the authority of the prosecutors themselves for believing that danger to exist, the high character, the known moderation, the approved loyalty of that venerable institution, the similarity of the circumstances between the period at which they were summoned to take arms, and that in which they have been called upon to reassume them. Upon this simple ground, gentlemen, you will decide, whether this part of the publication was libellous and criminal, or not.

As to reform, I could wish to have said nothing upon it: I believe I have said enough: if Mr. Rowan in disclosing that opinion thought the state required it, he acted like an honest man. For the rectitude of the opinion he was not answerable; he discharged his duty in telling the country that he thought so.

As to the emancipation of the Catholics, I cannot but say that Mr. Attorney-general did very wisely in keeping clear of that subject. Yet, gentlemen, I need not tell you how im-

Of the concluding part of this publication, —the convention which it recommends, I have spoken already. I wish not to trouble portant a figure it was intended to make upon the scene; though, from unlucky accidents, it has become necessary to expunge it during the rehearsal. *

* Between the period of the publication and prosecution, the legislature had, by the recommendation of the crown, removed the principal grievances of the Catholic code. *Editor of Curran's Speeches.*

you with saying more upon it. I feel that I have already trespassed much upon your patience. In truth, upon a subject embracing such a variety of topics, a rigid observance either of conciseness or arrangement could perhaps scarcely be expected. It is however with pleasure I feel I am drawing to a close, and that only one question remains, to which I would beg your attention.

Whatever, gentlemen, may be your opinion of the meaning of this publication, there yet remains a great point for you to decide upon: namely, whether, in point of fact, this publication be imputable to Mr. Rowan or not? whether he did publish it or not? Two witnesses are called to that fact: one of the name of Lyster, and the other of the name of Morton. You must have observed that Morton gave no evidence upon which that paper could have even been read; he produced no paper, he identified no paper, he said that he got some paper, but that he had given it away. So that, in point of law, there was no evidence given by him, on which it could have gone to a jury; and therefore it turns entirely upon the evidence of the other witness. He has stated that he went to a public meeting, in a place where there was a gallery crowded with spectators; and that he there got a printed paper, the same which has been read to you. I know you are well acquainted with the fact, that the credit of every witness must be considered by, and rest with the jury. They are the sovereign judges of that; and I will not insult your feelings, by insisting on the caution with which you should watch the testimony of a witness that seeks to affect the liberty, or property, or character of your fellow-citizens, Under what circumstances does this evidence come before you? The witness says he has got a commission in the army by the interest of a lady from a person then high in administration. He told you that he made a memorandum upon the back of that paper, it being his general custom, when he got such papers, to make an indorsement upon them; that he did this from mere fancy; that he had no intention of giving any evidence on the subject; he "took it with no such view." There is something whimsical enough in this curious story. Put his credit upon the positive evidence adduced to his character. Who he is I know not; I know not the man, but his credit is impeached. Mr. Blake was called, he said he knew him. I asked him, "Do you think, sir, that Mr. Lyster is or is not a man deserving credit upon his oath?"—If you find a verdict of conviction, it can be only upon the credit of Mr. Lyster.—What said Mr. Blake? Did he tell you that he considered him a man to be believed upon his oath? He did not attempt to say that he did. The best he could say was, that he "would hesitate." Do you believe Blake? Have you the same opinion of Lyster's testimony that Mr. Blake has? Do you know Lyster? If you do know him, and know that he is re-

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dible, your knowledge should not be shaken by the doubts of any man. But if you do not know him, you must take his credit from an unimpeached witness, swearing that he would hesitate to believe him.

In my mind there is a circumstance of the strongest nature that came out from Lyster on the table. I am aware that a most respectable man, if impeached by surprise, may not be prepared to repel a wanton calumny by contrary testimony: but was Lyster unapprized of this attack upon him? What said he? "I knew that you had Blake to examine against me, you have brought him here for that purpose." He knew the very witness that was to be produced against him, he knew that his credit was impeached, and yet he produced no person to support that credit. What said Mr. Smith? "From my knowledge of him I would not believe him upon his oath."

Mr. *Attorney General*.—I beg pardon, but I must set Mr. Curran right. Mr. Lyster said he had heard Blake would be here, but not in time to prepare himself.

Mr. *Curran*.—But what said Mrs. Hatchell? Was the production of that witness a surprise upon Mr. Lyster? Her cross-examination shows the fact to be the contrary. The learned counsel, you see, was perfectly apprized of a chain of private circumstances to which he pointed his questions: this lady's daughter was married to the elder brother of the witness Lyster. Did he know these circumstances by inspiration? no; they could come only from Lyster himself. I insist, therefore, that the gentleman knew his character was to be impeached, his counsel knew it, and not a single witness has been produced to support it. Then consider, gentlemen, upon what ground you can find a verdict of conviction against my client, when the only witness produced to the fact of publication is impeached, without even an attempt to defend his character. Many hundreds, he said, were at that meeting. Why not produce one of them to swear to the fact of such a meeting? One he has ventured to name, but he was certainly very safe in naming a person who he has told you is not in the kingdom, and could not therefore be called to confront him.

Gentlemen, let me suggest another observation or two, if still you have any doubt as to the guilt or innocence of the defendant. Give me leave to suggest to you, what circumstances you ought to consider in order to found your verdict. You should consider the character of the person accused; and in this your task is easy. I will venture to say, there is not a man in this nation more known than the gentleman who is the subject of this prosecution, not only by the part he has taken in public concerns, and which he has taken in common with many; but still more so, by that extraordinary sympathy for human affliction, which, I am sorry to think, he shares with so small a number. There is not a day that you hear the cries of your starving manufacturers in your streets, that you do not also see the advocate of their sufferings—that you do not see his honest and manly figure, with uncovered head, soliciting for their relief; searching the frozen heart of charity for every string that can be touched by compassion, and urging the force of every argument and every motive, save that which his modesty suppresses—the authority of his own generous example. Or if you see him not there, you may trace his steps to the private abode of disease, and famine, and despair,—the messenger of heaven, bringing with him food, and medicine, and consolation. Are these the materials of which you suppose anarchy and public rapine to be formed? Is this the man, on whom to fasten the abominable charge of goading on a frantic populace to mutiny and bloodshed? Is this the man likely to apostatise from every principle that can bind him to the state,—his birth, his property, his education, his character, and his children? Let me tell you, gentlemen of the jury, if you agree with his prosecutors, in thinking that there ought to be a sacrifice of such a man, on such an occasion, and upon the credit of such evidence you are to convict him—never did you, never can you give a sentence, consigning any man to public punishment with less danger to his person or to his fame; for where could the hireling be found to fling contumely or ingratitude at his head, whose private distresses he had not endeavoured to alleviate, or whose public condition he had not laboured to improve?

I cannot, however, avoid adverting to a circumstance that distinguishes the case of Mr. Rowan from that of the late sacrifice in a neighbouring kingdom.*

The severer law of that country, it seems, and happy for them that it should, enables them to remove from their sight the victim of their infatuation. The more merciful spirit of our law deprives you of that consolation; his sufferings must remain for ever before your eyes, a continual call upon your shame and your remorse. But those sufferings will do more; they will not rest satisfied with your unavailing contrition, they will challenge the great and paramount inquest of society: the man will be weighed against the charge, the witness, and the sentence; and impartial justice will demand, why has an Irish jury done this deed? The moment he ceases to be regarded as a criminal, he becomes of necessity an accuser: and let me ask you, what can your most zealous defenders be prepared to answer to such a charge? When your sentence shall have sent him forth to that stage, which guilt alone can render infamous, let me

* Scotland, from whence Messrs. Muir, Palmer, and others, were transported for sedition. *Ed. of Curran's Speeches*.—See the Scots Trials in the next Volume.

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tell you, he will not be like a little statue upon a mighty pedestal, diminishing by elevation; but he will stand a striking and imposing object upon a monument, which, if it does not (and it cannot) record the atrocity of his crime, must record the atrocity of his conviction. Upon this subject, therefore, credit me when I say, that I am still more anxious for you, than I can possibly be for him. I cannot but feel the peculiarity of your situation. Not the jury of his own choice, which the law of England allows, but which ours refuses; collected in that box by a person, certainly no friend to Mr. Rowan, certainly not very deeply interested in giving him a very impartial jury. Feeling this, as I am persuaded you do, you cannot be surprised, however you may be distressed, at the mournful presage, with which an anxious public is led to fear the worst from your possible determination. But I will not for the justice and honour of our common country, suffer my mind to be borne away by such melancholy anticipation. I will not relinquish the confidence that this day will be the period of his sufferings; and, however mercilessly he has been hitherto pursued, that your verdict will send him home to the arms of his family, and the wishes of his country. But if,—which heaven forbid!—it hath still been unfortunately determined, that because he has not bent to power and authority, because he would not bow down before the golden calf and worship it, he is to be bound and cast into the furnace; I do trust in God, that there is a redeeming spirit in the constitution, which will be seen to walk with the sufferer through the flames, and to preserve him unhurt by the conflagration.

[After Mr. Curran had concluded, there was another universal burst of applause through the court and hall, for some minutes,* which was again silenced by the interference of lord Clonmell.]

Mr. *Attorney General.* My lords; It is Mr. Prime-Serjeant's duty to speak to the evidence, but as Mr. Curran has let fall some things to make an impression not barely upon those who surround us, I must be excused in stating some facts known to no human being but myself.

It has been stated that this was an oppressive prosecution, and that oppression has been intended by the delay. Now, I do aver that the instructions he has received are false; that I received no instructions of the sort from government, and no government could think of prevailing with me in such a measure. I feel within myself, that no man could ask me such a thing twice in the office I hold. Let the jury consider the fact as it is, let them consider the evidence, and God forbid they should be influenced by any thing but the evidence. Mr. Curran states that oppression is practised—I am responsible to the Court for my conduct here, and if I have carried on this prosecution with oppression, I am responsible to the country. Let this gentleman, if he thinks he has been oppressed, call me to punishment—let me be a disgrace in the eye of the country, and let me be driven from that profession in which I have so long been honoured.

The facts are these;—the accusation against Mr. Rowan was made in the month of December, 1792; he was arrested in January following, and brought before Mr. Justice Downes and discharged upon bail The information was filed in Hilary term; as soon as it was possible by the rules of the Court, Mr. Rowan pleaded, and the *venire* issued, I do protest with a *bonâ fide* intention to try Mr. Rowan: after that an error was found in the record, though it had been compared before; the error was this; in the record the words were, "We would do" so and so; in the publication it was "Would we do" so and so. As soon as that error was discovered, notice was given that the trial could not come forward, and the witnesses were dismissed.

In Trinity term, application was made to issue the *venire*, and it appeared from the Recorder, that he was aware of the defects; I am above concealing any thing, I admit he did offer to waive any objection to the error and go to trial directly. I asked Mr. Kemmis, "are the witnesses gone out of town?"—"They are gone to Galway." I was therefore obliged to refuse the offer, but entered a *nolle prosequi* and filed a new information. Mr. Rowan put his plea upon the file, and in Michaelmas term I applied for a trial. There were several trials at bar appointed, and the Court refused, in consequence of the business before them, to try it in that term, and appointed it for this term. These are the facts which I think it my duty to mention, and have no more to say upon the subject, but will leave the case entirely to the jury, whose verdict will not be influenced by such topics as have been thrown out.

Mr. *Curran.* Mr. Attorney, I could not know the circumstance you mention, of your witnesses being gone out of town.

Mr. *Attorney General.* It was impossible you should.*

* Upon leaving the Court, Mr. Curran was drawn home by the populace, who took the horses from his carriage. *Editor of Curran's Speeches.*

* In the latter end of December, 1792, Mr. Rowan was arrested by virtue of Mr. Justice Downes's warrant, on a charge of distributing a seditious paper. Mr. Justice Downes having assured Mr. Rowan, that the examinations, upon which the warrant was grounded, would be returned to the clerk of the crown, and that they would, he supposed, be in course by him laid before the next term grand jury; Mr. Rowan, instead of going to gaol, in pursuance of his own opinion, followed

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Mr. *Prime Serjeant.* Wearied and exhausted as you, my lords and gentlemen of the jury, must be at this late hour, I yet feel it my duty to trespass a short time upon you, in a prosecution which the attorney-general has been obliged to institute:—Gentlemen, I say obliged, because prosecution is painful to him, as well as to those who act with him. The infliction of punishment is disagreeable to the Court, but in our public duty these weaknesses must give way. There is justice due to the public; my learned friend is the

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the advice of his law friends, and gave bail for his appearance in the King's-bench, to answer such charges as should be there made against him. During the succeeding Hilary term, Mr. Rowan daily attended in the King's-bench, and on the last day of that term, finding that no examinations had been laid before the grand jury against him, he applied, by counsel, to the Court, that the examinations should be forthwith returned, particularly as Mr. Attorney-general had, in the course of of the term, filed two informations *ex officio* against him, the one for the same alleged offence of distributing a seditious paper, and the other for a seditious conspiracy; whereupon, Mr. Justice Downes, who was on the bench, having asserted that he had on the first day of the term, returned the examinations to the clerk of the crown, and the clerk of the crown having said that from the multiplicity of examinations returned to him on the first day of the term, in the course of the term, and even on that day, he had not had time to look them over, the Court refused to make any order. Mr. Rowan daily attended the King's-bench in the following Easter term, until the same was nearly spent, and finding that no bills were sent up to the grand jury against him, he moved the Court, by counsel, that the recognizance entered into by him and his bail, should be vacated, and publicly declared, that if this motion was not granted, he would surrender himself in discharge of his bail. The attorney-general consenting, the motion was granted, and the recognizance was vacated.

[It may not be improper here to state, that the above examinations having charged Mr. James Napper Tandy, with distributing a seditious paper equally with Mr. Rowan, he likewise gave bail; but not having appeared in Court pursuant to his recognizance, it was estreated, green wax process issued against the bail, and the amount of the recognizance levied from them, though no bill of indictment, grounded on these examinations, was ever preferred against him, and though his absence was notoriously on another account.]

In the above mentioned Easter term, a motion was made, on behalf of Mr. Rowan, to fix certain days for trial of the informations filed *ex officio* against him, and the attorney-general having agreed to the appointment of two days in the ensuing Trinity term, viz. the 3d and 7th days of May, those days were accordingly appointed for the purpose. However, in the Easter vacation, the attorney-general served a notice on Mr. Rowan, that he would not proceed to trial on those days, and would apply to the Court to appoint other days, grounded on an affidavit to be filed, of which notice would be given; nothing was done upon this notice, and no affidavit was filed, or motion made thereon, and the *venire*, the process necessary for impannelling juries on the days appointed, having been, after being issued, kept by Mr. Kemmis, the crown solicitor, instead of being delivered to the sheriff, a motion was made, on behalf of Mr. Rowan, in the last Trinity term, that the *venire* should be delivered to the proper officer, in order that the trials might be had on the days appointed, in case the Court should not grant any motion the attorney-general might make for postponing the trials. This motion was opposed by the attorney-general—he declared, that there was error in the information for distributing a seditious paper. Mr. Rowan offered to agree to an immediate amendment of the information, or that a fresh one should be filed and pleaded to *instanter*, or that he would release all errors;—all these offers were severally refused. The object of the attorney-general appeared to be to postpone the trials, and though only one of the informations was stated to be informal, yet the day appointed for the trial of the other, which was supposed to be formal, passed away without trial, equally with the day appointed for the trial of the one which was stated to be informal. The attorney-general afterwards withdrew the information stated to have been informal, and filed another in the stead thereof. Many of Mr. Rowan's friends suspected, that the motive for postponing the trials was the expectation of having, under the shrievalty of Mr. Giffard, juries more favourable to government prosecutions, than they could entertain any hopes of having during the shrievalty of Mr. Hutton. In Michaelmas term last, the attorney-general applied to the Court, that a day should be appointed for the trial of the information for distributing a seditious paper; the Court would not appoint a day in that term, but appointed a day for the trial of that information in Hilary term following, viz. the 29th January last. After Mr. Rowan had received his sentence, being desirous of having the information for a seditious conspiracy also tried and disposed of, he instructed his counsel to move for the appointment of a day for the purpose; and the counsel having mentioned to the attorney-general such his instruction, the attorney-general said, that it was not his intention to proceed upon that information, and that he had been prevented only by a press of business from withdrawing it, but would without further delay, and accordingly the attorney-general has since entered a *noli prosequi* as to that information. *Orig. Ed.*

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advocate of justice to the public, not of persecution against the defendant.

There is no man, who recollects the period at which this publication came out, too notorious and shameful to be forgotten, who must not have thought it highly proper to bring the publisher to a legal trial. To the exertions of government, at that time, it is to be attributed that the trial by jury still subsists among us, and that he has not been before now tried at another court; that the King's-bench has not been superseded by a Revolutionary Tribunal; and that my learned friend has not, ere now, made room for the public accuser. The defendant must think it fortunate that he is tried according to established law, and defended by counsel of his own election, and before a jury, bound by a solemn appeal to God, to find according to the evidence given to them, notwithstanding that disgraceful situation in which it has been stated they will be held, if they presume to find a verdict of conviction. I feel no danger that this jury can be intimidated by apprehensions, or influenced by prejudice. My learned friend and I have been represented as instruments of oppression against the gentleman at the bar. I consider it as the talk of the moment, because his learned counsel little knows us, if he thinks us capable of acting so abominable a part. He could not mean it in the extent to which it reaches the common ear; I can consider it only as the splendid effusion of his talents; he was anxious to lead you, gentlemen, from that which was the true object of consideration.

You have been told, the defendant was prosecuted because he published an invitation to the volunteers, entered into the discussion of a reform, and Catholic emancipation, and endeavoured to have a national convention assembled. I will tell the jury it is not a prosecution upon any one of these grounds; but a prosecution, because these subjects were thrown before the public in a paper crammed with libellous and seditious matter, calculated to inflame. These measures, which were sought after, should be procured by the power of reason and not by an intimidation of the legislature. Little does the defendant's counsel know me, if he thinks I could prosecute a man for calling upon the volunteers to suppress domestic tumult or resist a foreign foe; these are the subjects to which he calls your attention, totally evading the offensive matter in the publication.

Gentlemen, the questions which you are to try are these: Was this matter published? Is it a libel? And was the intention criminal?——Can he desire more? If it was not published, if it be not libellous, and the intention was not criminal, I agree that the defendant ought to be acquitted; and if the jury acquit him after a fair and candid discussion of the case, no man will be more satisfied than I shall. But if, without such a consideration, a jury, in times of distraction and disorder should, acquit the factious, I agree with the gentleman, that the world would bear hard upon a jury, who from fear or favour betrayed that situation in which the law and the constitution placed them.

Let me now, gentlemen, take that place which it is my duty to take, and which the gentleman on the other side, I suppose from address, so lightly touched upon. I shall reverse the order he adopted. The first question then is, "Whether the publication of this libel was by the defendant?" If there be a man, entertaining a doubt after the evidence stated, it is in vain for me to address him. In support of the fact of publication Mr. Lyster has been examined; he states that, upon the day of the publication of the paper, he was passing through Cope-street, in this city, and seeing a great crowd at the house of Mr. Pardon, he went there to know what the object of the meeting was; he says, that on going to the door he saw Mr. Rowan, who prevented him from going to that part where the assembly was, saying he could not be let in with coloured clothes; afterwards he went up to the gallery: a bundle of papers was brought, some were thrown upon the table, and some handed up to the gallery, and this particular paper which he produced was thrown from a parcel which Mr. Hamilton Rowan had in his hand. The witness got this paper, which was thus for the first time put into circulation: he gave an account of the manner in which this matter was communicated to the Crown solicitor.

The witness was questioned much as to family matters, with a view to impeach his character; but it has had a contrary effect: for the matter was submitted to reference, and the authenticity of the instrument under which his brother claimed, has been established, and some hundreds awarded, one shilling of which would not have been given if they believed the instrument to be forged. When he was interrogated as to these matters, he said he heard this day, that Mr. Blake was to be examined to impeach his character, "If I knew it before," said he "I could have had witnesses from the country to support me." But when Mr. Blake was called, did he in any respect whatever impeach the character of Mr. Lyster,? he would not say that Mr. Lyster was not to be believed. What then must you think, when resort has been had to distant counties to find witnesses to impeach the character of Mr. Lyster, and out of the 150 men assembled in Cope-street, no one has been brought forward to deny the fact which has been sworn to? Will the jury believe that if the fact could be controverted, men would not come forward with emulation to acquit Mr. Rowan? I there join with his counsel: he is far above bringing any man forward to swear that which is not the fact; he would not purchase an acquittal by such means, and therefore it is, gentlemen, that you have not witnesses to prove he was not

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there, or to prove he was inactive upon the occasion.

The next witness, gentlemen, was Mr. Morton; he goes in direct confirmation of every thing sworn to by Lyster, though he does not prove the same individual paper; but he remembered hearing the words of such another paper read, it began with the words, "Citizen soldiers to arms!" This evidence, though not decisive of itself as to the identity of the paper, is corroborative of the testimony of Lyster, and shows that Mr. Rowan was there.

Thus stands the evidence as to the publication. Can any man doubt that this paper was published by Mr. Rowan? It is not necessary for me to tell you what is a publication in point of law, as to writing or printing; but putting it into circulation is a publication in law and fact. I forgot to take notice of the other impotent attempts to impeach the credit of Mr. Lyster by the evidence of Smith, who could not prove any thing; and the evidence of an unfortunate woman, between whose daughter and Mr. Lyster's brother there had been some attachment. But that I leave as matter of law to your lordships to state to the jury. Thus stands the evidence; and with regard to the publication, if I were upon the jury, no earthly consideration could induce me not to give a verdict of conviction.

I shall now beg leave to call your attention to the publication itself. It is charged in the information that it was designed to overthrow the government, to overawe the legislature, to create tumult and disorder: there are paragraphs in the paper to warrant every charge contained in the information, which is, in point of law, sufficiently sustained. If there be a single paragraph of this paper to warrant the jury to draw this conclusion, that it was intended to throw the government into disgrace, to excite the subjects to make alterations in the government by force, to excite them to tumult, to overawe the legislature by an armed force; if, I say, there is a single paragraph in this paper, from which you can draw that inference, it sufficiently proves the subject matter of the information.

The gentleman concerned for the defendant read, from the account of a trial, what an English jury did in the case of the Morning Chronicle, as an example for an Irish jury, as if that were to bind you upon your oaths; and yet what was the case? The jury thought that a printer, endeavouring to get his bread was not as guilty as the person composing the libel, and that the former did not distribute it with any malicious view. But suppose 500 juries found such a verdict, are you to follow their example? I am wishing to take up the distinction made by the defendant's counsel and my learned friend in the prosecution. If this paper had rested with the invitation of the volunteers to arms, he never would have instituted this prosecution upon that account. As in the case in England, lord Kenyon said, "there may be much innocent matter in the publication, but *latet anguis in herbâ*, there may be much to censure."* But here is a publication teeming with faction, tumult, and sedition; it is impossible to suppose it was intended for the old volunteers, it comes from the society of United Irishmen.

The first words have been passed over by the defendant's counsel, but they show at once the wicked adoption of French principles and French language. Is there any man who does not know that at that period, the French revolutionists universally adopted the expression of "Citizens?" This paper begins "Citizen soldiers; you first took up arms to protect your country from foreign enemies and domestic disturbance; for the same purposes it now becomes necessary that you should resume them." It is not confined to summoning the volunteers to protect their country, it calls them to political discussion: was this a period for such proceedings? "A proclamation has been issued in England for embodying the militia, and a proclamation has been issued by the lord lieutenant and council in Ireland, for repressing all seditious associations; in consequence of both these proclamations it is reasonable to apprehend danger from abroad and danger at home. For whence but from apprehended danger are those menacing preparations for war drawn through the streets of this capital? or whence if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that volunteer honour which was hitherto inviolate,"—Gentlemen, was public credit affected or not? Was there a man at that time who could reckon upon the security of his house for a night?—"Are those terrible suggestions and rumours and whispers that meet us at every corner, and agitate at least our old men, our women, and our children? Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you volunteers of Ireland are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution." If this were a real invitation to the volunteers, it would endeavour to reconcile them to the government they were called upon to defend; to stand or fall with the constitution, which they had, so much to their honour, exerted themselves to establish. But here follows a direct insinuation calculated to excite jealousy between the government and them. "We will not at this day condescend to quote authorities for the right of having and of using arms, but we will cry aloud, even amidst the storm raised by the witchcraft of a proclamation,"—Is that a peaceable invitation to the volunteers?—"that to your formation was

* See p. 1018. of this volume.

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owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance"—here the country is represented to be in such a state, that every man is called upon to rescue it from insignificance;—" to your renovation must be owing its future freedom and its present tranquillity; you are therefore summoned to arms, in order to preserve your country in that guarded quiet which may secure it from external hostility, and to maintain that internal regimen throughout the land which, superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war."—This is a peaceable, quiet invitation to the volunteers, setting them against the legalized establishments of the country, and against that measure which was in agitation.

It is called a suspected militia. The establishment of a great constitutional force, a militia, will be soon experienced to be of advantage to the kingdom, and not an oppression; but too fatal have been the consequences of decrying it; opposition was given to the militia law, and numbers have fallen sacrifices to their error. It is nothing less than an order to the army to disband; that body of men to whom we owe the safety of the state, are told they are not to be entrusted. —" Citizen soldiers, to arms, take up the shield of freedom and the pledges of peace—peace, the motive and end of your virtuous institution—war, an occasional duty, ought never to be made an occupation; every man should become a soldier in the defence of his rights; no man ought to continue a soldier for offending the rights of others; the sacrifice of life in the service of our country is a duty much too honourable to be intrusted to mercenaries."

In another paragraph it says, " By liberty we never understood unlimited freedom, nor by equality the levelling of property or the destruction of subordination; this is a calumny invented by that faction, or that gang, which misrepresents the king to the people, and the people to the king." What is the meaning of this paragraph? it was unintelligible to me, until I heard the argument of the counsel: he did fairly avow it to be the government of this country, that a gang was formed to preserve themselves in power; otherwise indeed it is the most rank nonsense and ribaldry that ever fell from the pen of man; it seems to be a French idea, to excite tumult in the whole body of the people.

The publication goes on and says—" Here we sit without mace or headle, neither a mystery nor a craft, nor a corporation—in four words lies all our power, UNIVERSAL EMANCIPATION *and* REPRESENTATIVE LEGISLATURE; yet we are confident that on the pivot of this principle, a convention, still less a society, less still a single man, will be able first to move, and then to raise the world. We therefore wish for Catholic emancipation, without any modification, but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom: wide as this entrance is—wide enough to admit three millions—it is narrow when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Irish nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer. The Catholic cause is subordinate to our cause, and included in it; for, as United Irishmen, we adhere to no sect but to society—to no creed but christianity—to no party but the whole people. In the sincerity of our souls do we desire Catholic emancipation; but were it obtained to-morrow, to-morrow would we go on, as we do to-day, in the pursuit of that reform, which would still be wanting to ratify their liberties as well as our own." Here the libel recommends an emancipation to the Catholics, as a colourable pretence for accomplishing their other schemes. " For both these purposes," says it, " it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore an assembly of a similar nature and organization"—Here the very terms made use of by the French revolutionists are again adopted in this publication—he says, " organization is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause, and an united nation."

In the subsequent paragraph, the author enforces the necessity of the speedy meeting of conventions.—" If," says he, " a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people will relax into inattention and inertness; the union of affection and exertion will dissolve; and too probably some local insurrections, instigated by the malignity of our common enemy, may commit the character and risk the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation—unless the sense of the Protestant people be on their part, as fairly collected, and as judiciously directed; unless individual exertion consolidates into collective strength: unless the particles unite into mass, we may perhaps serve some person or some party for a little, but the public not at all." Does this mean to give the fullest dominion to the whole body of the people, to overawe the governing executive power? Gentlemen, the mass of the people is to be collected after the French manner, and bear down all before them. French doctrines were to be carried into execution. Are those the innocent ex-

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mination of claims and the discussion of great political subjects? To what part of the discussion was it necessary to tell the army, that "seduction made them soldiers?" Was it necessary for the deliberation of that great question, the emancipation of the Catholics of Ireland, to say to the army, "seduction made them soldiers, but nature made them men?" The words are, "We now address you as citizens, for to be citizens you became soldiers, nor can we help wishing that all soldiers partaking the passions and interest of the people would remember, that they were once citizens, that seduction made them soldiers, but 'Nature made them men'" I say, gentlemen, where was the necessity of telling the army, that seduction made them soldiers? Was it necessary to detach them from their duty, for the purposes which this publication intended to accomplish.

You are told that their whole creed, their whole system "lay in four words, UNIVERSAL EMANCIPATION, *and* REPRESENTATIVE LEGISLATURE." I say, without universal slavery there cannot be universal emancipation, and without the ruin of that constitution, (the panegyric upon which produced such a burst of applause in favour of the learned counsel,) there cannot be a representative legislature. The legislative authority consists of King, Lords, and Commons.—But they must have an elected king, and elected nobles to answer their ideas of representative legislature.

I am unwilling to state the seditiousness of this libel farther: but there is another paragraph which deserves to be considered, it says, "The nation is neither insolent, nor rebellious, nor seditious. While it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by a well-timed reform, and to save their country in mercy to themselves." Here the government of this country was called upon to yield to this reform, to anticipate revolution, and save this country in mercy to themselves. The peaceable language of discussion! Can you read this publication and say it was not the intention of the publisher to intimidate and overawe the government of this country? The people are invited to arms, to catch a revolution by force, and then the government is called upon to anticipate the revolution by a reform. Is this the peaceable discussion for which the counsel contend? Or is this the freedom of the press? for which I would go as far as any man.

Here the libel appoints a particular day for the convention to meet; it says "The 15th of February approaches, a day ever memorable in the annals of this country, as the birth-day of new Ireland; let parochial meetings be held as soon as possible; let each parish return delegates; let the sense of Ulster be again declared from Dungannon on a day suspicious to union, peace, and freedom, and the spirit of the North will again become the spirit of the nation. The civil assembly ought to claim the attendance of the military associations." Here the military associations were particularly called on to attend the civil assembly at Dungannon: was it for the purpose of giving weight to their resolutions? Was it for the purpose of sending their resolutions to parliament, backed by the people in arms? It was a national convention to be attended by a national guard. This was the object of this publication as it strikes me; the very able manner in which it was gone through by my learned friend, makes it unnecessary for me to dwell upon it, lest I should weaken the force of his remarks.

If you are satisfied of the fact that Mr. Rowan did publish the instrument in question, then you will consider, whether that publication was likely to produce the effects mentioned in the information? and you will decide whether the publication was an innocent or a criminal one? I will agree it is matter for your consideration what was the immediate effect of publishing this libel? Immediately after it was read, some copies of it were thrown out to the mob in the street, who called out for more of them, and more of them were thrown out. Here is a fact which, if you believe it, is of considerable weight.

Gentlemen, in this case there has been no justification, nothing has been said to palliate the publication. You will decide on the matter of this libel, and whether it was published with an innocent intention, or with that seditious view charged in the information.

Gentlemen of the jury, in any case where a man kills another, it is *primâ facie* evidence of malice, but it admits of proof to show the manner in which it was done, and whether the party accused killed the person with a felonious intent, or whether the killing was by accident, and not done with any intention of taking away the life of the party. The allusion comes home; here is a libel, and unless it is shown by excuse or justification, that it can be qualified, the law will say it is libellous.

In the present case, the learned counsel on the part of the defendant has endeavoured to set your hearts and passions against your consciences and judgments, by representing that the liberty of the press would be destroyed by a verdict against the defendant; but I appeal to the authority to which he appealed to show what the liberty of the press is, "It is employed as the centinel to alarm us; we should take care it is not abused and converted into a traitor; the instant it degenerates into licentiousness it must be punished." That is an opinion to which every man must subscribe, and which should be as lasting as the constitution itself.

Gentlemen, I have trespassed too long upon your patience; if you can reconcile it to your oaths, that Mr. Rowan did not publish this paper, or that it does not contain any matter libellous, no man will be better pleased at an acquittal than I shall. But on the other

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hand, I conjure you by your oaths, that uninfluenced by power or prejudice, favour or affection, you discharge your duty to God, your country, and yourselves.

SUMMING UP.

The Earl of *Clonmell*, lord chief-justice.—Gentlemen of the Jury; at this late hour, it is some relief to the bench and myself that the learned gentlemen of the bar, on both sides, have so ably spoken in this case, that it is not now necessary for me to be very prolix or voluminous in my observations. I shall therefore, for your convenience and that of the bench, contract my observations within as short a space as, in the discharge of my duty, I think I ought to do.

Before I go into the particulars, or give any opinion upon the publication, I think it my duty to state and fully apprize you of a statute which passed the last session of parliament in this kingdom,* by which it is declared and enacted, that upon all trials by indictment or information (which, if it wanted it, is an additional solemnization of this mode of trial) where issue is joined, as in the present case, for making or publishing any libel, the jury may give a verdict of guilty or not, upon the whole matter put in issue, and shall not be required or directed, by the court, to find guilty merely upon proof of publication, provided the court shall, according to their discretion, give their opinion upon the matter in issue, in like manner as in other criminal cases. I shall endeavour, as far as I can, to conform to the spirit and words of the law. You had the power to do so before, perhaps you had the right; this act of parliament is a legislative exposition of that right, and you will exercise it as becomes you.

Though the evidence is not long or complicated, yet the paper is both long and complicated, therefore I will adopt that order which has been made by the bar, and class my observations under four heads, being the leading objects complained of in this information:

1st. The making the government odious by endeavouring to disparage and degrade it.

2d. To render the people discontented, not only with the government, but the constitution.

3d. To solicit the people to take up arms, to intimidate the legislature.

4th. Endeavouring, by tumult and by force, to make alterations in the constitution and government, and overturn them both.

Gentlemen, every thing which I shall say to you, will fall under one of these heads. The information, of which I have an abstract in my hand, is that Archibald Hamilton Rowan, maliciously designing and intending to excite and diffuse among the subjects of this realm, discontents, jealousies, and suspicions of our lord the king and his government, and to raise dangerous seditions within this kingdom of Ireland, and to draw it into scandal and disgrace, and to incite the subjects of our said lord the king to attempt by force and violence to make alterations in the state and constitution, and to excite the subjects of our said lord the king to overturn the established constitution of this kingdom, and to intimidate the legislature of this kingdom by an armed force, on the 16th of December, in the 32d year of the king, in the county of the city of Dublin, wickedly, seditiously, and maliciously, did publish a libel of and concerning the government of this kingdom, according to the tenor and effect following:—"Society of United Irishmen to the volunteers of Ireland," &c. They state themselves to be a self-created body; they state it vauntingly, they say they have no authority save that of reason, they have no authority in the state. I will therefore consider the language of this paper as that of a body not known to the constitution, calling upon the *subjects* at large, though they scorn to call them so. Let me bring to your minds, that one gentleman thought the address was to a new created body of volunteers; another gentleman thought it was addressed to the original and respectable volunteers; take it either way, if addressed to the new created volunteers, it was for the purposes of sedition, and if to the old original volunteers, it would be still more dangerous if they were to succeed with them in altering the constitution by force. It is stated, "William Drennan, president. Archibald Hamilton Rowan, secretary." This is a strong presumption that Mr. Rowan was acquainted with every part of the paper; it professes upon the face of it that he was secretary of this society. I shall come, by and by, to the question of publication; if he published it, there does arise a presumption that he knew what he published: I go no farther with that observation.

He says, "Citizen soldiers; you first took up arms to protect your country from foreign enemies, and from domestic disturbances. For the same purposes it now becomes necessary that you should resume them." Citizen soldiers, you first took up arms, that is, in my judgment, you took them up originally for these two purposes, it now becomes necessary you should resume them for those purposes. "A proclamation has been issued in England for embodying the militia, and one in Ireland for repressing seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home." The printed paper has been proved and read: it says, "For whence but from apprehended

* The statute passed by the parliament of Ireland is stat. 33 G. 3, c. 43. It is entitled "An Act to remove Doubts respecting the Functions of Juries in cases of Libel," and is *verbatim* the same with the act passed by the parliament of Great Britain, which see *antè* p. 306.

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danger, are those menacing preparations for war drawn through the streets of this capital," (innuendo, meaning the city of Dublin) " or whence, if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that volunteer honour which was hitherto inviolate." In my opinion these words fall directly within one of those heads I have stated, as rendering odious to the king's subjects the proclamation as insincere and hypocritical, as creating internal commotions, which it intended to restrain, and that embarrassment, which was not found; that it went farther to the ruin of the country, shaking the credit which was not affected, and blasting the volunteer honour which was hitherto inviolate; as if it was said to be blasted by the executive government. This was, in my mind, a charge of having created disorder, not before existing, of shaking the credit of the country contrary to the duty of government; and blasting that volunteer honour, which until this instrument appeared never was violated. It is charging them, in my opinion, as insidiously as the meanest mind can conceive, in a most vital part, the peace and the credit of the country. Whether it was calculated to inflame the minds of the subjects, will be for your consideration, on your oaths.

It says, " There were rumours and suggestions which agitated our old men, our women, and children." What is that? Why, this is all an imposition of government, they wanted to frighten you by a bugbear. " Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you, volunteers of Ireland, are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution." Here was another imputation upon government; they have raised apprehensions and summoned these persons to take up arms. It goes on and says, " We will not at this day quote authorities for the right of using arms; but we will cry aloud even amidst the storm raised by the witchcraft of a proclamation."— " We will cry aloud in the storm."—Where or how was it raised? It says, " By the witchcraft of a proclamation." Here was an imputation charged upon the proclamations of government, as raising a storm in the country. It says, " To your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance;" that is, when you were in arms this island was protected and in peace, and appeared to be of consideration; to your relaxation has been owing its impotence and insignificance, therefore it can only be raised again into importance by your taking up arms. If that is the impression of this paragraph, you will consider whether this is a libel upon the government or not. It was a publication not only to the people of this kingdom, but to all the enemies of this nation, saying that this country was in a state of impotence and insignificance.

It goes on and says that " to your renovation must be owing its future freedom and its present tranquillity. You are therefore summoned to arms, in order to preserve your country in that guarded quiet, which may secure it from external hostility, and to maintain that internal regimen throughout the land, which superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war." It is impossible in a work of this kind, were it twice as libellous as it is, if it could be so, that it should not be mixed with some professions, some parts better than others; it must profess something, to be received. But it complains of a police and a militia that is suspected. It says, if you do not supersede a police and militia, you cannot preserve the blessings of peace. I say, therefore, in my opinion, no words can be more inflammatory than these are.

You are charging the police as an evil sort of an establishment; it is called a " notorious police," and the militia as consisting of persons proper to be suspected, not to be confided in. It says, " You must preserve the blessings of peace by a vigilant preparation for war. Citizen soldiers, to arms! take up the shield of freedom and the pledges of peace." What does that say? Your arms only are the shield of freedom and pledges of peace; therefore take up arms. " Peace the motive and end of your virtuous institution. War, an occasional duty, ought never to be made an occupation. Every man should become a soldier in defence of his rights." Was it necessary to call them together? if their rights were not attacked, why invite them to collect themselves to defend that right? It says, " No man ought to continue a soldier for offending the rights of others. The sacrifice of life in the service of our country is a duty much too honourable to be entrusted to mercenaries." They assume, or endeavour to assume, the power of the sword, and of degrading the king's forces from that power with which they are entrusted. It says, the duty we suggest is too honourable for mercenaries: is not this saying, do not trust to the military, and at that time when by public authority it was declared that the country was in danger? The volunteers, in that paper, were called upon to stand to their arms. Every expression of solicitation and stimulation is used. The volunteers were called upon to resume their arms; the nation was impotent and insignificant without it. Citizens, to arms! you are summoned to arms: take up arms in spite of a notorious police and a suspected militia, and in spite of two proclamations. You are to do your duty to preserve good order in your vicinage, in spite of a police and fencible militia, for they resist peace; and you are to do your duty in spite of those constituted authorities; and

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the phrase is varied, you are invited by the proclamation, that is, this proclamation has done as much mischief as those men they condemn. "It is only by the military array of men in whom they confide, whom they have been accustomed to revere as guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured to existing law, and a calm confidence diffused through the public mind, in the speedy resurrection of a free constitution, of liberty and of equality,—words which we use for an opportunity of repelling calumny." That is, it is only by a military array of men you can have a free constitution; that is as much as to say, the people of Ireland have not a free constitution. Whether that be the meaning of the paper, as charged in the information, will be for your consideration.

The words liberty and equality are introduced for an opportunity, say they, of repelling calumny. Where did it come from? Why did the society find it necessary to repel it? How did they repel it? By the words liberty and equality, which they think proper to explain in this way: "By liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination. This is a calumny invented by that faction, or that gang, which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland." Here he says a faction or gang misrepresents the king to the people. Is not this an aspersion, endeavouring to render the governing power odious? What is this gang which he says misrepresents the king to the people, I leave you to determine. Why is the misrepresentation? The paper insinuates, for the purposes of power which they abuse. —"Liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and equality is the extension of the constituent, to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by collective will." These are terms, gentlemen, which you may probably understand, though they are conveyed in an unascertained and declamatory style.

Gentlemen of the jury, at the time that the qualification of a voter to give his suffrage to a candidate for a seat in parliament was originally ascertained, forty shillings was equivalent then, as it is calculated, to forty pounds of our present currency; from the time of Henry 1 to queen Anne, the value of money had advanced in a ratio of one to twelve; from that time to this it has been as one to twenty; so that a man then having an estate of twenty shillings a year was equal to a man's having an estate of twenty pounds of our present money. The elective franchise never was in the whole body of the people in Great Britain or Ireland.* It says, "That legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness.—If our constitution be imperfect, nothing but a reform in representation will rectify its abuses." In figurative abstracted expressions it is not easy to ascertain the meaning; although you have an impression of the object. This may be a very innocent proposition; but to me it may be a very wicked one, when applied to be obtained in the manner here pointed out: it says, "Nothing but a reform will rectify its abuses—nothing but a reform will perpetuate its blessings;"—and then it goes on and says, "We now address you as citizens," &c.—Not a word of *subjects* from beginning to end—that is a word driven out of fashion, at least in this publication—"Seduction made them soldiers, but nature made them men." What had this charge to the soldiers to do with a parliamentary reform? I quarrel not with the composition, it is not my duty, but in my mind here is a direct charge upon the military, that they were imposed upon, that seduction had made them soldiers. The sword is put into the hands of the sovereign, he is vested with it by the constitution, and yet this paper says, it was made an instrument of seduction. "We address you without any authority, save that of reason, and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce—here we sit without mace or beadle, neither a mystery, nor a craft, nor a corporation."

Here they acknowledge they had no proper authority to call the people to arms, which they assume to do by that publication; they avow that this society did make no corporate body or legal authority. They add "In four words lies all our power, UNIVERSAL EMANCIPATION *and* REPRESENTATIVE LEGISLATURE. Yet we are confident that on the pivot of this principle, a convention, still less, a society, less still, a single man, will be able first to move and then to raise the world." I rest here a little to consider what idea this writer must have of the power of the paper, when a single man will be able first to move and then to raise the world; one of the charges is, that this paper intended to stir the people to arms, it is an admission here, a profession, a vaunt, that the society, nay less, a single man, may move and then raise the world; the expression is not one kingdom, but to raise the world. If any thing like it has happened, it is a miserable consideration. "We therefore wish for Catholic emancipation without any modification, but still we consider this neces-

* Vide Prynne Brev. Parl. red. p. 187, & 3 Whitelock, p. 90, *contra*. *Orig. Ed.*

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ary enfranchisement as merely the portal to he temple of national freedom: wide as this ntrance is—wide enough to admit three mil-ions—it is narrow when compared to the ca-acity and comprehension of our beloved prin-iple, which takes in every individual of the rish nation." It is but a portal to freedom: vhat, unqualified emancipation!—It is for ou to consider what the beloved principle is. Emancipating three millions is opening a ortal—what portal? one which takes in very individual of the Irish nation—where? nto power, into the elective franchise; "it mbraces all that think, and feels for all that uffer."

"The Catholic cause is subordinate to our ause, and included in it; for, as United Irish-nen, we adhere to no sect but to society, to io creed but christianity, to no party but he whole people. In the sincerity of our ouls do we desire Catholic emancipation; ut were it obtained to-morrow, to-morrow vould we go on as we do to-day, in the pur-uit of that reform, which would still be vanting to ratify their liberties as well as our wn." You, Roman Catholics, emancipated o-morrow, will not stop us, we will go on, nd unless you go on with us it will not e sufficient to establish your liberty. "For oth these purposes it appears necessary hat provincial conventions should assemble reparatory to the convention of the Pro-estant people. The delegates of the Ca-holic body are not justified in communicat-ng with individuals, or even bodies of infe-ior authority, and therefore an assembly of a imilar nature and organization, is necessary o establish an intercourse of sentiment, an niformity of conduct, an united cause and an nited nation. If a convention on the one art does not soon follow, and is not soon onnected with that on the other, the com-non cause will split into the partial interest; he people will relax into inattention and nertness; the union of affection and exertion vill dissolve; and too probably some local nsurrection, instigated by the malignity of ur common enemy, may commit the cha-acter and risk the tranquillity of the island, vhich can be obviated only by the influence f an assembly arising from, assimilated with he people, and whose spirit may be, as it vere, knit with the soul of the nation: nless the sense of the Protestant people be, n their part, as fairly collected and as judi-iously directed; unless individual exertion onsolidates into collective strength; unless he particles unite into mass, we may per-aps serve some person, or some party for little, but the public not at all: the nation s neither insolent, nor rebellious, nor sedi-ious; while it knows its rights it is unwilling o manifest its powers; it would rather sup-licate administration to anticipate revolution y a well-timed reform, and to save their ountry in mercy to themselves."

Gentlemen, this last paragraph is a menace: for if the proposal made is not accepted, a revolution is threatened. The paper in question proceeds in the following words: "The 15th of February approaches, a day ever memorable in the annals of this country as the birth-day of New Ireland; let parochial meetings be held as soon as possible; let each parish return delegates. Let the sense of Ulster be again declared from Dungannon, on a day auspicious to union, peace, and freedom, and the spirit of the north will again become the spirit of the nation. The civil assembly ought to claim the attention of the military associations." The civil assembly was to be attended by military forces; was not the intention to alter the constitution? "We have addressed you, citizen soldiers, on this subject, from a belief, that your body, uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations, and friends." Armed citizens was the favourite object that was to be gained; it says, "We presume not at present to fill up the plan or pre-occupy the mode of its execution, we have thought it our duty to speak.—Answer us by actions. You have taken time for consideration. Four-teen long years are elapsed since the rise of your associations."—This part is very material, it says to the people, "take up your arms," and it says "answer us by actions." What are the actions of men in arms? Armed asso-ciations will support the different meetings. We have spoken out to you; answer us with. your actions. "Fourteen long years are elapsed since the rise of your associations; and in 1782 did you imagine that in 1792 this nation would still remain unrepresented? How many nations, in this interval, have gotten the start of Ireland?" How far Ireland has been backward in the number of good subjects, have they asked? No. The question here is, how many nations have gotten the start of Ireland? What is meant by this start? What nations are there, that have in fourteen years advanced more than ourselves in happi-ness? None. What actions of other nations would that publication recommend to Ireland to follow? It concludes with this sentence; "How many of our countrymen have sunk into the grave?" Gentlemen, I have gone through the paper mentioned in the informa-tion, and made such observations as I thought necessary. I do, as it is my duty, tell you, that I think it deserves the appellations given to it by the information. I take it to be a scandalous and seditious libel; but that is my opinion only. Gentlemen of the jury, it is you who are to decide this question, whether you think it is a scandalous or seditious libel? the verdict will be yours, and not mine.

Gentlemen, in order to support this prose-cution, the first witness that was produced is John Lyster; he told you (here his lordship stated the testimony of Lyster, as given upon his direct examination). On his cross-exami-nation he gave an account of the manner in which he communicated this matter to Mr. Kemmis, the crown-solicitor; said he would

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communicate to him what he knew; produced the paper that was read in part by Mr. Rowan. Said he did not know where Mr. Rowan stopt reading. Says, he (the witness) did not purchase his commission as ensign in the army; got it through the interest of lady Hobart, his relation. The witness attested two bonds, there was an issue directed to try whether those bonds were genuine. Was asked whether he was examined as a witness at that trial; believes he was examined as a witness; the issue was tried before Mr. Justice Boyd; there was an award of 200*l.* out of 800*l.* Says Mr. Lambert filed a bill against him about a note for 147*l.* which Peter Hamilton passed to witness.

Attempts were made to impeach the credit of this witness upon three or four grounds: 1st. He was a witness to the bonds which were alleged to have been forged—an unfair transaction. 2d. That he got the note from a person alleged to have been insane. 3d. That he had got a commission. 4th. That it was not probable he made this memorandum. I can only say, he has given a rational account of this business; but it is your duty to judge of his credit; it is my duty to make observations, which it is your duty to reject if they are not well founded. He says he is an ensign in the 40th regiment. He got the commission through the interest of a relation; and it appears the arbitrators did give his brother since, part of the demand, by which, if it weighed a feather in the case, they thought the bond was not a forgery. Says it was usual to take memorandums on getting papers of this kind. Says there was about 150 or 200 volunteers in the room. Was Lyster's evidence not satisfactory to you, he was the only witness to this great part of the case. This observation has been made: "What! 150 persons present, and not one of them comes forward to attest the innocence of Mr. Rowan!" 150 *volunteers or United Irishmen, and not one comes forward,—many of them would have been proud to assist him; their silence speaks a thousand times more strongly than any cavilling upon this man's credit; the silence of such a number is a volume of evidence in support of the prosecution.**— But the next witness does, in my apprehension, as far as he goes, confirm every word said by Lyster. Morton says, he saw numbers of persons in the room doing some business at the table. Saw Mr. Tandy and Mr. Rowan in the room. The witness had seen them before that day. He identified Mr. Rowan in court. He appeared to take an active part in the business. Witness got admission into the gallery. He saw a bundle of papers on the table, several were distributed to the mob in the street, who called out for more. The witness got a paper which he gave to a person who said he had lost it. Witness said he heard part of a paper read, containing the words "citizen soldiers to arms." If it stood upon this man's evidence, here was not evidence of publication; and if it rested upon him alone, you should acquit the defendant; but as corroborating the testimony of Lyster, it is very material.

If the counsel for the defendant intended to discredit the witnesses for the prosecution, they have failed. A gentleman from Galway, a Mr. Blake, was produced, who says he now lives in Dublin, gave his evidence as to Lyster, which I shall come to by-and-by. Morton's credit was not questioned. Morton, on his cross-examination, said, he was an apprentice to a gold-beater—Believes the persons he saw at the room in Cope-street were in the uniform of the old volunteers—Is sure he saw Mr. Rowan there—Some of the persons wore scarlet with different coloured facings—witness said he could see from the gallery what was done at the table. He gave the paper, the day he received it, to a person in the house where the Dublin Journal is printed. The paper was then read which I have stated to you, and you have heard so much of. Here the prosecution was rested.

On the part of the defendant was produced Mr. Francis Blake, to show that John Lyster was a person not to be credited upon his oath. Mr. Blake was asked whether Lyster was a man to be believed upon his oath; he answered he could not say he is not to be believed upon his oath; but he would hesitate. The witness was produced to show that Lyster should not be believed upon his oath, but Blake said no such thing. In a question, whether the oath of one man ought to be received, where another man swears he ought not to be believed upon his oath, then you would have one man's oath against another. The credit of Lyster is not affected by what Mr. Smith, the second witness, has said. The third witness to this point was Mrs. Hatchell; she said she knew John Lyster; she was asked whether he was to be believed upon his oath? she said, according to her opinion he was not to be believed upon his oath—She said the witness, John, had prevailed on his brother to quit his wife, and said he was married to another woman, which was not truth—said she heard declarations from John's elder brother, and that was one of the reasons why she said the witness, John, ought not to be believed upon his oath. In the usual course of evidence no proof has been adduced to prove that the witness Lyster ought not to be believed upon his oath.

Gentlemen of the jury, I think this is the evidence on both sides, as correctly as I have been able to take it. As to the fact of publication, it is my duty to tell you, there is very strong evidence that Mr. Rowan did publish

* In the Dublin Edition of this trial the passage in italics is omitted; a note states that "the editor is here under a necessity of introducing an hiatus, the printer having refused to print this part according to the notes furnished to him by the editor." The passage was however afterwards printed in a London edition, from which I have transcribed it.

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hat paper, and did publish it knowing what e published, and as to the other matter, whether it is a libel, I have told you I thought he matter libellous—libellous in the extreme; now tell you that is my opinion. If you, pon the whole matter, believe, upon your aths, that Mr. Rowan published the paper nd with the criminal intention stated in the nformation, and for the purposes ascribed to im, you ought to find him guilty, for I think he paper entitled to, and deserves the appelation annexed to it—it is a seditious libel. f you believe he did not publish it; if you lisbelieve the evidences which have been uncontradicted; if you believe he published it y mistake or ignorance, not meaning to publish this paper, which might happen, but of which there is not a tittle of evidence in this ase, you will find him not guilty.

I will state this direction in other words; f you find him guilty, it must be, because you believe in your consciences he published it, nd that you believe the innuendos are true; meaning, as well as you understand this paper, eading it separately or collectively together, hat he published it with a criminal intention: hat is, adopting its sense and meaning. If ou acquit him, it must be, because you do ot believe he published it or that he did not nean to adopt its sense and meaning. I must ell you his thinking it not mischievous, is ot a reason why you should acquit him. His hinking he was doing right, if you believe the ntention of the paper was to raise forces to ntimidate the legislature, which is the great bject complained of, though he was thinking e was right to accomplish his object by every neans, will not be an excuse; that would ead to the acquittal of every felon upon earth. f a man was accused of a felony, and he hought he was doing a right thing to murder is neighbour, thinking he was doing a right hing would be no excuse to him. If the deendant's object was merely a reform in parliament, yet if he endeavoured by force, or by illegal means to obtain it, you ought to find im guilty. I have stated the facts, and nade such observations as occur to me to be ecessary—I have stated the point of crimiation, and I now leave to you to dispose of he question; and have not the least doubt ou will do as becomes you. If I have been efective, I shall be corrected by my brethren, hom you will hear with pleasure and infornation.

The honourable Mr. *Justice Boyd.*—Gentlemen of the jury; My lord Clonmell has so ully stated the information, it is not necesary for me to repeat it. With regard to his bservations, I adopt them every one in the ame degree of latitude in which he delivered hem: I think the paper deserves the appelation in the information: it is a false, scanalous, and malicious libel My lord Clonell mentioned an act of parliament which as made upon its being thought the judges ent too far in former cases, it gives you ower to decide on questions of this kind, whether libel or not; you are to give your opinion upon the whole of the matter, and therefore you are not bound to find according to our direction. My opinion concurs with lord Clonmell's, that the paper is a libel. If you, gentlemen of the jury, are of a different opinion, you are not bound to go by the opinion of the court, in point of law, in a case of libel.

You have heard the evidence, and the first question which arises is, whether there was any publication of this paper by Mr. Rowan? If you are of opinion, that Mr. Rowan did not publish the paper in question, you must acquit him. If you think it is not a libel, even though he did publish it, you ought to acquit him. If he published it by mistake or ignorantly, that is a ground for acquittal. But his own opinion of what he thought right, even in obtaining the emancipation of the Catholics, or a parliamentary reform by force of arms; however laudable he thought himself, the intention of the publication was a criminal one, and in that case you ought to find him guilty.

The honourable Mr. *Justice Downes.*—Gentlemen of the jury; The few words I shall trouble you with, will be in concurrence with what you have heard from the rest of the Court. The fact of publication depends upon the evidence you have heard, and the degree of credit you will give to the witness. I agree in the observations upon Lyster's testimony, no degree of difficulty occurs in contradicting him, if what he said was false. If you do believe that Lyster deserves credit, the publication of this paper is proved to have been made, industriously, by the defendant, knowing its contents; and under such circumstances as, I should not hesitate to say, adopted its contents. If you believe it was published under these circumstances which you have heard, it will be for your consideration to determine, whether it be a libel, and with what intent it was published? I concur in the observations upon its contents, and I am unable to read it without being of opinion that the tendency of this paper is to excite to arms the persons to whom it was addressed, and for the purpose of making alterations in the government of this kingdom, as charged in the introductory part of the information. If you believe the account of the mode of publication given by Lyster, and believe the defendant adopted this paper as his act, you are to look for the intent upon the paper itself, and on which you are to decide. If you believe that the general tendency of it was to excite tumult in the country, and to call to arms any description of men, no doubt can be entertained that it is libellous, and it must be imputed to the defendant, he having given no evidence of a contrary intention.

To attempt to effect by force any alteration in the constitution of the country, or to overawe the legislature by force—any such act of force would be high treason; and to publish a paper to excite people to do such an act,

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no man can doubt is a libel. If you do think such was the tendency of the paper in question, you cannot hesitate to find the defendant guilty. There was no evidence to show the tendency of the paper was of a contrary nature. The intentions of the publisher are deducible from the paper itself; if it was the purpose of the publisher of the paper to attain an alteration in the state by force, it was a criminal intention, however desirable the alteration might be supposed to be, or whether the object sought for was in itself right, or not.

I will not trouble you any farther. I have given the case the best consideration I am able. You will decide upon it according to your oaths, and I have no doubt the defendant will have every justice in your hands.

The jury withdrew, taking with them the printed paper which had been read in court, and in about ten minutes returned, and brought in their verdict,—We find Archibald Hamilton Rowan—Guilty *

Lord *Clonmell.*—Do the counsel for the defendant desire four days time to move in arrest of judgment?

Mr. *Curran.* The only instructions I have from my client are to disclaim any application of that kind: he does not wish to take advantage of errors in the record, if any there be, but is now ready to attend to receive what sentence the court may be pleased to pronounce.

Lord *Clonmell.*—(After conferring with the other judges) We will not pronounce judgment till four days.—Mr. Sheriff, take care of your prisoner.

The counsel for Mr. Rowan here objected, that he was not a prisoner—he had not been in custody—he had not given bail upon this information—he was bound in no recognizance—was served with no process—he had appeared to the information by attorney—he pleaded by attorney—the issue was tried after the manner of a civil action, a word merely of the record being read, and the defendant was not given in charge to the jury as the practice is, where he appears in custody. Mr. Rowan attended the trial, it is true, but the Court had no judicial cognizance of him; the information could have been tried in his absence—he attended as a common auditor, and the witness being called upon to point him out at the desire of the bench, might have been a satisfaction to them to see that the witnesses were speaking of the same person, but it was altogether unprecedented in such cases as the present. Mr. Rowan was ready for sentence—he claims no indulgence—does not insist upon the four-day rule: but if the Court, for their own accommodation, choose to defer the sentence for four days, they have no legal authority for sending Mr. Rowan to prison, until sentence pronounced, or the usual and accustomed process issued against him.

Lord *Clonmell.*—If the attorney-general consents, I have no objection.

The attorney-general had left court, and the solicitor for the crown remained silent.

Lord *Clonmell.*—The defendant is a convict, as such he is a prisoner—the law must have its course. Adjourn the Court.

Accordingly the Court was adjourned.

Mr. Rowan was conveyed to the New Prison, attended by both the sheriffs, and a formidable array of horse and foot guards.

Monday, February 3, 1794.

A Habeas Corpus, grounded on the affidavit of Mr. Matthew Dowling, Mr. Rowan's solicitor, was granted to bring up John Coultry, confined in Newgate for debt, to swear an affidavit; Mr. Rowan was also ordered up for the same purpose: when their affidavits, together with those of William Porter, John William Atkinson, and Francis Clarke, were sworn.

Mr. *Recorder* moved the Court to set aside the verdict obtained on Wednesday last, and grant a new trial in this cause, pursuant to a notice served on Mr. Attorney-general, and grounded on these affidavits, the contents of which he set forth.

Mr. *Attorney general*, having after some time come into court, moved the Court to appoint a day to have Mr. Rowan brought up for judgment.

Lord *Clonmell* appointed to-morrow, and at the same time acquainted the attorney general with the recorder's motion, and the nature of the affidavits,

The *Attorney-general* then desired to have them read; which they were, as follows:

The King, at the prosecution of the right honourable Arthur Wolfe, his majesty's attorney-general, *against* Archibald Hamilton Rowan.

William Porter of the city of Dublin, printer, maketh oath, that since the commencement of the prosecution in this cause, and previous to the trial had on Wednesday last, he this deponent had a conversation with George Perrin, of Castle-street, in the city of Dublin, bookseller, in the course of which the said George Perrin declared to this deponent, that this country and its trade never could flourish until Napper Tandy and Hamilton Rowan were transported or hanged, or words to that effect: and deponent was much astonished and concerned, recollecting the declaration made, when he discovered that

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* When this verdict was first brought in, there was a loud clap of approbation commenced in the outer hall, it is presumed from a misconception that the jury had acquitted the defendant; for when the verdict was repeated, and the word *guilty*, sufficiently stressed, the clap was changed into hootings and hissings, and groans, that lasted with very little remission, during the remainder of the sitting of the Court.—*Orig. Edit.*

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the said George Perrin had been one of the jury who tried the said defendant, and found him guilty of the misdemeanor in this cause.

WILLIAM PORTER.

Sworn in court this third day of February, 1794.

CARMICHAEL and BRADSHAW D. C. C.

The King, at the prosecution of the right honourable Arthur Wolfe, his majesty's attorney general, *against* Archibald Hamilton Rowan.

John William Atkinson, of Skinner-row, in the city of Dublin, watch-maker, maketh oath, that some time in the month of August last past, as deponent best recollects the time, on the morning after the night whereon some illuminations had been made upon the event of the capitulation of Valenciennes, this deponent had some conversation with George Perrin, of Castle-street, bookseller, respecting the volunteers of Ireland; in the course of which the name of Archibald Hamilton Rowan, the defendant, with several others, was frequently mentioned; and the said George Perrin did, upon that occasion, utter a good deal of acrimonious and disparaging language and observations against the body of volunteers in general, and against the said Archibald Hamilton Rowan in particular, with several others; and the said George Perrin did then, upon that occasion, also say that they (meaning as deponent well understood and is convinced) the said Archibald Hamilton Rowan, with several others, deserved and ought to be hanged. Deponent saith he is credibly informed, and verily believes, that the said George Perrin was one of the jury who on Wednesday night last found the said Archibald Hamilton Rowan guilty of the misdemeanor in this case.

JOHN WILLIAM ATKINSON.

Sworn in court the third day of February, 1794.

CARMICHAEL and BRADSHAW, D. C. C.

The King, at the prosecution of the right honourable Arthur Wolfe, his majesty's attorney-general, *against* Archibald Hamilton Rowan.

James Coultry, of the city of Dublin, gentleman, maketh oath, that he has known John Lyster, who appeared and gave evidence on the trial in this cause on Wednesday last, as deponent is credibly informed and believes, and saith, that from his own knowledge, the said John Lyster ought not to be credited upon his oath in a court of justice; in as much as this deponent saw the said John Lyster take a false oath upon the holy Evangelists, stating that a horse or mare his property, which was seized for debt, was the property of George William Lyster, and not the property of any other person whatsoever; and deponent saith that he the said John did personate his said brother George William Lyster, and impose himself on a magistrate of the city of Dublin in that name; and that under the character and in the name of the said George he the said John did take the said false oath, although the said George was then labouring under a wound, unable to leave his bed; which oath he took in a deliberate, cool manner, notwithstanding deponent had previously remonstrated in a particular manner upon the enormity and danger of his doing so; and deponent further saith, that shortly after the time said John Lyster took the said false oath as aforesaid, he received a letter from a man of reputation, resident in the neighbourhood of the country where said John Lyster and his two brothers Thomas and George Lyster had lived; by which letter deponent was informed, and which he verily believes to be true, the said Thomas Lyster had made an affidavit in the country, precisely contradicting, upon his oath, the fact sworn to by John in the name of George, as the said Thomas swore said horse was his particular property, sworn to as aforesaid, in Dublin, by the said John Lyster;—and which two affidavits deponent has frequently seen.

JAMES COULTRY.

Sworn in court the third day of February, 1794.

A. CARMICHAEL.

The King, at the prosecution of the right honourable Arthur Wolfe, his majesty's attorney-general, *against* Archibald Hamilton Rowan.

Francis Clarke, of Denmark-street, in the city of Dublin, peruke-maker, maketh oath, that he is well acquainted with John Lyster, the person who, as deponent is credibly informed and believes, appeared and gave evidence on Wednesday last, in this case on behalf of the prosecutor; and deponent saith that, from his own knowledge, the said John Lyster ought not to be credited on his oath, in a court of justice, as this deponent has known the said John Lyster to have perjured himself; for deponent saith that having been well acquainted with the said John Lyster for five or six years past, during which time the said John Lyster had been frequently in the house and shop of deponent, and during which time deponent had constantly dressed his hair: about three years ago or upwards, upon deponent having caused the said John Lyster to have been summoned to the court of conscience for a small sum of money due deponent by said Lyster, h the said Lyster attended in said court pursuant to said summons, and being sworn on the holy Evangelists by alderman Emerson, in presence of this deponent and several others, in a peremptory manner, said Lyster deposed that he never had known or seen deponent before, or been in deponent's house, and that he did not know deponent's name, notwithstanding deponent positively saith the said

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John Lyster had, for near three years previous to that time, frequently, from time to time, been in the house and shop of this deponent, in presence of many persons, and nevertheless deponent had two or three days previous to said Lyster's taking said oath, met said John Lyster passing over Essex-bridge, and there talked to him for some time; and deponent further saith, that in the course of three years last past, the said John Lyster, as deponent has good reason to be convinced, has been guilty of perjury in various other instances.

FRANCIS CLARKE,

Sworn in court the third day of February 1794.

CARMICHAEL and BRADSHAW, D. C. C.

The King, at the prosecution of the right honourable Arthur Wolfe, his majesty's attorney-general, *against* Archibald Hamilton Rowan.

The defendant, Archibald Hamiton Rowan, maketh oath that, since the trial had on Wednesday last, in this case, and after defendant had been pronounced guilty by the verdict of a jury impannelled and sworn on the said trial, deponent has received credible information, which he is convinced is true, that several persons, who had until after said trial and verdict been strangers and utterly unknown to deponent, would be material witnesses, on behalf of deponent, upon said trial; and that had the said witnesses been known and attended thereon, the testimony of John Lyster, who was the principal evidence on behalf of the prosecution, would have been fully discredited. Deponent further saith he has also, since said trial and verdict, been credibly informed, and verily believes some of the persons who were on said jury have, previous to said trial, made use of expressions tending to disapprove of deponent and his conduct, respecting the subject matter of this prosecution: and which induces deponent to believe they had, previous to said trial, been biassed against, and had formed impressions in their mind unfavourable to deponent. Deponent further saith, that from the daily information and accounts which deponent and his friends have received, and are receiving, of the life, conduct, and character of said John Lyster, he has no doubt of proving fully and satisfactorily, that the said John Lyster ought not to be believed on his oath.

ARCHIBALD HAMILTON ROWAN.

Sworn in court the third day of February, 1794

A. CARMICHAEL.

After Mr. Rowan's affidavit was read, it was deemed advisable by his counsel, that he should make a further one. The Court were accordingly pleased to wait until it was prepared and sworn. It was then read as follows:

The King, at the prosecution of the right honourable Arthur Wolfe, his majesty's attorney-general, *against* Archibald Hamilton Rowan.

The defendant, Archibald Hamilton Rowan, maketh oath, that he hath heard the several affidavits of Francis Clarke, James Coultry, William Porter, and John William Atkinson, this day made in this cause, read in open court, and saith that all and every the matters contained in said affidavits, and every of them, were utterly unknown to this deponent until after the trial and verdict in this cause; and that this deponent had no reason to believe, and never heard until after said trial, that said persons or any of them could have given evidence of the facts sworn to this day by them, or any of them, in their said affidavits mentioned; or any other material evidence upon the trial of the issue in this cause. This deponent further saith that he heard the evidence given by John Lyster and William Morton upon the said trial, charging deponent with having read, distributed, and published the paper in the information in this cause mentioned, at Cope-street, in Pardon's fencing-room; and this deponent positively swears that the said testimony was utterly false. Deponent further saith that he heard, and believes, John Giffard, one of the sheriffs, and by whom, or his under-sheriff, the pannel of the jury was arrayed to try this cause, is and has been for some years the conductor or proprietor of a news-paper generally considered a government paper; that the said Giffard has also some lucrative employment in the revenue, and a commission in the Dublin militia; and that he verily believes the said Giffard was and is strongly prejudiced against deponent; and that the said Giffard did labour to have a pannel of such persons arrayed, as he knew, or believed, to be unfairly prejudiced against this deponent.

ARCHIBALD HAMILTON ROWAN.

Sworn in court the third day of February, 1794.

G. JAMES.

After it was read the court asked the attorney-general, whether he wished for time to have these affidavits answered; to which he having replied in the negative, the Court ordered Mr. Rowan to be brought up to-morrow, and adjourned.

Tuesday, February 4, 1794.

Mr. *Recorder* said, he was instructed that there were four new affidavits, sworn to the same purpose as those read yesterday, to prove that others of the jurors had used expressions of enmity against Mr. Rowan before the trial, and prayed that they might be read.

Mr. *Attorney-General* objected, for that yesterday was the last day in which any affidavits could be made, and now it was ex-

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tempted to bring others without any notice; he was willing that this case should meet the fairest and fullest investigation, but would not consent that the rules of court should be departed from on this, more than on any other occasion.

Mr. *Recorder.* I am very sensible that in ordinary civil cases, where any motion is made to set aside a verdict, the party must apply within four days, and lay a sufficient ground for the motion; but even then the Court would sometimes indulge the party with another day, to lay before it new materials, in advancement of justice. The intention of the traverser, or his counsel, was not to do any thing by surprise, or to bring these affidavits hastily forward, to prevent the crown from answering them; we are willing to give any reasonable time for that purpose. But your lordships will consider the circumstances in which this traverser stands; that he is in confinement, and not at liberty to search for evidence, or the necessary materials for his defence; not standing in the situation of a defendant in any civil action, but in a situation which the law regards so far, as never to impute laches to any man whilst he is in prison. If it is necessary, I am instructed that affidavits can be made, that the matters, now brought forward, were only discovered since the rising of the Court yesterday, and there is scarce an hour that further evidence does not come forward, tending to shew the truth and reality of the present case. The information now offered to the Court has been so lately brought to light, that the agent has not had time to brief the affidavits; I have only been informed, on my way into court, of the purpose for which they are brought forward, and am still ignorant of their contents; and as the justice of the case may be advanced, and no inconvenience can result from it, I trust your lordships will allow these affidavits to be read, and the motion either to go forward now, or to wait till the counsel for the crown shall have an opportunity of answering them.

Mr. *Attorney-General.* The rank, character, or situation of any man standing in this court accused of a crime, I conceive to be a matter of perfect insignificance, when put in competition with the settled rules of distributive justice. There are a certain number of days given to move in arrest of judgment, or for a new trial; within which the party is to lay before the Court the ground upon which he means to move; all then that is insisted upon is, that this defendant should be bound by the same rule that binds every man in the like circumstances: for if a party should be at liberty from day to day to bring forward new affidavits, there never would be an end of any prosecution. Mr. Recorder's observation shows the good sense of this rule; he says new materials are pouring in every hour —I doubt it not; and that new affidavits may come in to-night; and the same arguments used to day will be used to-morrow.

Mr. *Curran.* There was no objection made yesterday to the reading of affidavits, which were made and sworn in the presence of the Court. Mr. Attorney-General has himself said that the defendant was at liberty yesterday; if so, he is equally within the rule to-day, for this is only a continuation of the same motion:—this is a question put, as it were, to the conscience of the Court, viz. do your lordships think that justice has been so done, that it ought not to be sent to a new inquiry; and shall any rule of practice be suffered to preclude the light, which should inform that conscience?—It would be absurd that no distinction should be made between ordinary and extraordinary cases; in small matters summary justice is enforced; but in such a case as this (he would speak as guardedly as possible) the Court will consider that punishment is not inflicted vindictively, but for example and prevention; and that nothing gives so much force to the preventive effect of sentences of courts of justice, as all the word being able to say, every fair inquiry has been made, and the sentence has passed in consequence of an impartial verdict. There is a way known to our law to set verdicts aside, where there has been any abuse of justice; any fault in the returning officer, the jury, or the witnesses; or any mistake in the Court:—all applications and information for this purpose have been received with indulgence; and upon the most cool inquiry it has been found that the verdict, upon which the sentence was had, must have satisfied the reasonable, fair, conscientious mind of any man;—this it is which gives to the sentence of the law that good and tranquillizing effect, for which alone it is intended.

We are now prepared to show that more of these jurors have made express declarations of malice, and shall it lie in the mouth of the prosecutor to say, there is a rule which operates like a trap upon the conscience of the court of Kings's-bench; that after a certain moment it becomes so helpless, that let what will arise, it can do justice no longer?

I say the rules are the instruments, not the tyrants of the court; as to the point of practice it is conceived that trials at bar are not within the four day rule; but I go upon a more solid ground, and appeal to this, that the Court has a right to receive information, at any time, in furtherance of justice; if it were necessary to cite cases, there has been a very late one in this court, where it has exercised the very same discretion.

After the verdict was brought in, not having the least idea that there was any fact existing which could impeach the verdict, the traverser's counsel stated, that if it was the pleasure of the Court. he should appear to receive sentence; and let me observe that he did not at that time conceive that he was in custody; he was not called on to appear; there was no order, and the only judicial knowledge the Court had of his being pre-

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sent, was that a witness turned to him, to identify him; if then, instead of being at large, as he ought to have been, he was put into prison, where he had not the same opportunity of procuring evidence, however universally it might exist, can there be a stronger circumstance to show that he is peculiarly entitled to the indulgence he seeks?

Mr. *Fletcher*, on the same side. When I see the temper of the audience which surrounds me, I shall avoid touching upon public topics with the same delicacy, which the gentleman who preceded me has done. If justice is the object of this prosecution, why stand upon such punctilious points of practice, and *inter apices juris*? In the case alluded to, it was insisted that the four day rule did apply to trials at bar, but the Court decided otherwise. and there is good reason for the distinction; in cases coming from the country this rule is necessary, to prevent the one party from keeping the *postea* in his pocket, until he could surprise the other at a time when he was not, perhaps, so well prepared to impeach the verdict; it is necessary, then, that there should be a fixed time that no advantage may be snatched; but there is no analogy to a case of this kind, which is entirely in the breast of the Court.

In the dean of St. Asaph's case,* a great prosecution instituted, like this, to answer the ends of public peace and public policy, the Court did exercise its wisdom upon the merits of the business before it; the rule was not adhered to, but the parties were let in after the four days had expired. As to the objection which has been thrown out, that if this matter is postponed we may come in to-morrow, and the next day, and so on; it is answered, that we will undertake, if it should lie over till to morrow, to rest satisfied, and seek for no more materials.

This is merely a point of practice, and it strikes my mind as folly to say, that so high a court as this has not its practice within its own power.

The Earl of *Clonmell*, lord chief justice. On the day that Mr Rowan was convicted, we were called upon for judgment; but we conceived. that even if it was not a matter of right upon adjudged cases, it was still proper, that the defendant should have four days to question the verdict, or move in arrest of judgment. Suppose, instead of that, we had then pronounced judgment, all argument would have been concluded, for it would have been absurd to say, that he should have been suffered, after that, to unravel the proceedings; then what has passed since? A motion has been made and entertained upon affidavits, stating facts, of which the party has had information since that day; I mention this to show, that there has been no precipitancy in the Court, nor possible hardship in what it has done. Yesterday Mr. Rowan made an affidavit, some others were also made; Mr. Rowan desired to make a further one, and the Court waited till a late hour, till it was composed and sworn; the attorney-general was then called upon, who declined to answer these affidavits; the Court then certainly concluded it was to hear no more of the collecting of materials for this motion, but that it should go on and be argued like every other of the same kind.

It is said the rule of court, with respect to moving for new trials, does not extend to cases tried at bar, in the city of Dublin; that does not apply to this case, for the reason before mentioned, that within four days judgment would be pronounced; so that from the nature of the thing, this motion must be made within four days.

See what consequences would follow, from the letting in affidavits pending a motion of this kind; there is not an argument to be used by counsel on either side, that would not lay the foundation for a new affidavit, so that a motion would never have an end.

We are all of opinion, that it would introduce confusion into the practice of the Court, and be a pernicious precedent, and that the affidavits cannot be read.

[Here there took place some altercation upon the question of practice, who should first go on; the traverser's counsel insisting, that the affidavits *primâ facie* entitled them to their motion, and that the usual practice of giving the last word to the crown did not extend to a motion of this kind; but the Court upon the authority of the King against Horne,* desired the defendant's counsel to proceed in support of the motion.]

Mr. *Fletcher*. This is a prosecution highly interesting, not only to that most respectable individual, who is the immediate object of it (for so I shall continue to call him notwithstanding the verdict), but also to the community at large; it is a great prosecution directed upon solemn and deliberate grounds, to attain the ends of public peace and public justice; the Court will scrutinize into a verdict that affixes the guilt of a high misdemeanor on a character so respectable; the only end of such prosecutions must be to deter others from the commission of similar crimes, and to satisfy the public mind, and to convince the world that guilty practices do not go unpunished; it therefore becomes necessary, that such a verdict should be free from the shadow of objection, otherwise so far from having the salutary effect proposed, it might have a very different one; men will scan the ground upon which such verdicts have been had; points of practice, and objections *inter apices juris*, amongst the quirks and pranks of the law will then vanish, and the public will stamp reprobation on a verdict obtained under circumstances of suspicion and unfairness.

* Vol. XXI. p. 847.

* See the case *antè* Vol. XX. p. 651.

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The affidavits, on which we ground our motion, are now to be taken as true as the gospel, the verity of them cannot be shaken; the gentlemen concerned for the prosecution have been called on to answer them, and have not done it; these affidavits, then, furnish three objections to the verdict.

1st. As to the person upon whose evidence alone (upon the face of your lordships notes) the verdict could be sustained, two or three affidavits go pointedly to show that he is utterly destitute of credit.

2dly. There is another class of affidavits impeaching one of the jurors for deep malignity conceived against my client.

3dly. There is that of the traverser himself, who swears that the testimony of the witnesses was false, and further that he has reason to believe that the person, who arrayed the pannel, did it through favour, and purposely chose men hostile to him and to his principles.

Now even if any one of these grounds taken separately, were not sufficient to shake the verdict, it becomes a matter of high concern to see whether the result of the whole does not, at the least, furnish a doubt that justice has not been done; if so, it brings it within the great principle upon which alone new trials should be granted. It cannot be expected that a case should be found, apposite in every minute particular; the present case has a good deal of novelty, and I cannot find any accurately agreeing with it; but you have the high authority of that luminary of the law, lord Mansfield, thus declaring himself in the case of Bright and Enyon, 1 Bur. "If we have reason to think that justice has not been done, we will send it to another examination." It is upon such broad principles that I go, and if that was the opinion of his lordship, in a civil action, between man and man, with how much greater reason should it be so in a trial between the sovereign of the land and so respectable a citizen, who is accused of violating the laws of that land, to which it was his duty to be amenable. Will any man in his right reason say, that the great, broad, liberal, principle should not be applied *à fortiori* to a case of this kind, where the liberty of the subject is at stake, with all that he holds dear;—where the public peace, and the opinion the world may entertain of public justice, are involved?

Taking it then for granted, that this principle applies at least as strongly to criminal cases, as to civil, there are abundance of authorities in the books- [Here Mr. Fletcher apologised for not being better prepared, having only got his brief on his way to court.]—In Bac. tit. New Trials, there is a case where new evidence was let in, and it is true that there are in the same page, cases where it was refused; what conclusion is to be drawn from this, but that every case of this nature stands upon its own peculiar foundation, and is not to be strictly governed by any decided case, because when it is not a question of abstract law, but a consideration emanating and flowing from a combination of circumstances, never the same in any two cases, it is of all questions that can come before a court of common law, that most peculiarly within its own sound judicial discretion, that can be gathered from reporters, differing in attention and ability, in some broad principles of general analogy: wherever there is any strong leading feature in the case, it must be judged of according to its own tendency and effect: it is apparently from the oscitancy of the reporters, from their being unacquainted with the facts, and for want of more correct and particular notes, that we find so much seeming contradiction, otherwise we should find the opinions of the judges nearly the same in all similar cases, but varying with the peculiar circumstances of each particular case; as in the present, the verdict certainly would not be set aside, unless it appeared that the new evidence came to the parties knowledge since the trial.

But there is a circumstance which, in my opinion, pointedly distinguishes this from all other cases, viz. that the new evidence is applicable to the credit of the principal witness, upon whose testimony the verdict must have been found, and not to any substantive matter, making a particular ingredient in the case Nor is it a new substantive defence. For the court has wisely said, we will not set aside verdicts on account of evidence, which might reasonably have come to the knowledge of the party before, for then whenever the point, upon which he rested, proved insufficient, he would next shift his ground, and try some new sort of defence.

Having often searched for cases of this kind, I can say, upon my recollection, that there is none like the present to be found; your lordships then have no guide but your own discretion, and your own notes to recur to, where you will see in what point of view this gentleman's evidence appeared.

At the trial, he admitted that two bonds had been set up by his younger brother against his elder, which he was called to prove, as a subscribing witness: he admitted, that the genuineness of these bonds had been the subject matter of suits in courts of justice; that both his father in his life-time, and since his death, his eldest brother had impeached the authenticity of these bonds, to which he had signed his name, as a witness: he admits an issue out of Chancery to try their authenticity: that they went down and were the subject matter of a trial; but that some compromise being mentioned, a juror was withdrawn and the matter submitted to referees, who gave only 200*l.* instead of 800*l.* which was the value of the bonds. He was asked whether he was examined at the trial, to prove the validity of these bonds; his answer was, I cannot charge my memory with these facts; a pretty extraordinary answer from one who,

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in other respects, has been so accurate. Since the commencement of this business, he has got a commission by the good offices of a lady, who was his relation; and before that, he had no business nor profession.

Thus did the testimony of this witness, who alone attempted to bring the publication home to the traverser, appear extremely suspicious, even upon his own examination. It will appear upon your lordships notes, that a gentleman from the same neighbourhood was afterwards asked, is such a person to be credited upon his oath? he answered, it was a very hard matter to say; but made use of the words, "I might hesitate." Another was examined; what did he say?—"It is a very hard question—I know but little more than what happened on the trial, where he was examined; I would for my own part give him very little credit." But being pressed again, he said he did not think himself warranted to say, he was not to be credited, from any particular knowledge of his own. A very respectable witness of the other sex was then called, who said she would not credit him upon his oath. She was cross-examined in a manner which plainly showed, that the conductors of the prosecution were aware that the character and credit of the witness was to be impeached, and by whom it was to be impeached, and yet have been able to bring forward nothing to support it. This lady was asked, if there was any particular infidelity which she had to complain of in the witness? she answered, that he had a brother who was married to her daughter, whom he had endeavoured to seduce from his wife. This however not proving sufficient at the trial to discredit the witness, I trust we shall now be allowed to bring forward the new matter, which has since come to our knowledge, in corroboration, explanation, and illustration of what passed there.

The hair-dresser charges the witness with direct perjury; he states that he knew him, and dressed his hair for a length of time, and sued him for the debt thereby incurred, in the court of conscience, where the other on his oath, denied that he had ever seen him, or that he ever knew his name, although the hair-dresser swears to a conversation that passed between them that day, upon Essex-bridge. There has been time to answer that affidavit, it remains however uncontradicted; therefore I am entitled to take it as true, and it ought to have as much weight as that of the most dignified person in the state. It is the same thing as if this wituess had been called upon the table, and gone done without cross-examination, and then where would have been the evidence to support the publication?

There is also another witness who tells a story about a horse cause, when Lyster made an affidavit, and therein perjured himself, by personating and swearing in the name of his brother.

It is true, at the trial, the jury would have been judges of the credit of the witnesses, but your lordships would not have passed over the testimony of these two men, and if you had then stated, that there was not a single witness but himself, to give any legal proof of publication, it is for your lordships to judge, whether the jury would have found the verdict they did; and it is enough for me, if I can even raise a doubt, to use lord Mansfield's words, in Bright *v.* Enyon—whether justice has been done.

But it does not stand upon the ground alone, of the impeachment of the witness, there are two other affidavits impeaching the conduct of one of the jurors. Perhaps it may be argued from public convenience, that when the party has not been fortunate enough to find evidence of this kind before the trial, upon which to challenge the array or the particular jurors, it is better that the individual should abide his misfortune, than that confusion and irregularity should be introduced into the jurisprudence of the country; but I trust your lordships will make that consideration bend to the greater question—has justice been done?

What is judicial discretion?* It is the sound application of judicial knowledge and good judgment to the peculiar circumstances of each individual case;—it is the investigation of every minute circumstance in a proceeding, to which sound sense and liberal understanding can be applied.

But you have also the affidavits of that respectable man, of whom the voice of the kingdom of Ireland will say, that he would not sully his unspotted honour by using any unworthy artifice for the purpose of evading any punishment however great.

This alone ought not to shake the verdict; but will any man attempt to say, that an affidavit of that kind, which has been admitted, and has been read, and must obtain the belief of every man in and out of court, will not have some weight to induce your lordships to suspect that justice has not been done.

Mr. *Fletcher* then recapitulated the four grounds of the motion.

1st. New evidence not discovered till after the trial.

2d. New evidence to impeach that witness without whom (had he been out of the way) there could have been no verdict of conviction.

3d. Evidence to impeach the jury.

4th. The evidence of the traverser as well to the witnesses as the sheriff.

And concluded, that it would be more becoming the officers of the crown to say—we will not have such a verdict as this to go abroad and be scrutinized in every country, where the English language is read. If we cannot have a conviction consistent with justice and with decency, we will have none.

* With respect to judicial discretion, see the note to the case of Richard Thompson *antè* Vol. VIII, pp. 56, 57.

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Mr. *Recorder*, on the same side, followed Mr. Fletcher, putting the same arguments in a striking and varied point of view;—he observed, that by setting aside this verdict and sending the cause back again to receive a solemn, serious, and deliberate investigation from a fair jury of the country, returned by a returning officer whom the traverser has no reason to distrust, there could not follow the smallest mischief; and then, if upon fair evidence laid before the court on one side and the other, he should happen to be convicted, that conviction would have the effect which was intended; but if this verdict were to stand after the evidence which had appeared upon the trial, and after the lights which had been thrown upon it since, there is not a person present in the court, and believing that testimony false, who would not feel sorrow, to see the judgment of a court of justice so founded.

If this gentleman had been indicted in the ordinary way, for a misdemeanor, he would have had an opportunity of knowing the party prosecuting, and the specific charge made against him. But when an information is filed *ex officio*, it is the practice of the officers of the crown to keep the information they receive in their pocket for their own justification, and the defendant is not authorized to call upon the crown for a copy of the examinations sworn.

The Earl of *Clonmell*, chief-justice—When this was mentioned before, it occurred to me that there had been an examination sworn before a magistrate, and he was not prevented from applying for it.

[Here Mr. *Rowan* appealed to Mr. Justice Downes, whether he had not, when before him, requested to know who the perjured villain was that could have sworn against him, and whether, for that purpose, he had not been inclined to refuse the offer of bail, choosing rather to go to prison, that he might know his accuser and prosecute him (for he had been refused a copy of the examinations), and said, that had he gone to gaol then, as he was inclined, he would have been, without doubt, acquitted, when the former sheriffs were in office, and when there was not the same selection of jurors.

Downes, Justice—Admitted that the defendant had stated nothing but what passed, and that he had got no information from him respecting the prosecutor.]

Mr. *Recorder*.—The person prosecuted *ex officio* knows nothing more than what appears upon the information filed, which gives him not the smallest intimation of the witness who is to prosecute him.

He then made some pointed observations upon the testimony of Lyster, who swore that there were one or two hundred people walking up and down, having no seats; and yet in the midst of so much confusion, he was able from a distant gallery, to distinguish that gentleman's voice, which did not appear very loud, nor very shrill, nor very remarkably articulate, in reading a paper which he presumes to swear was the very paper which is the subject of this prosecution; nor could he remember whether he had been examined some time within three years, upon so important a question as a forgery imputed by one of his brothers to another, and in which he was himself involved.

But even if he could be supposed an honest man, his testimony was bad, as, to say the best, his memory and apprehensions must have been very defective.

If those circumstances of discredit had not appeared upon the trial, it might have been improper to admit them now; but in the present situation of things, it would be a favour to the witness, if he thinks he has been slandered, to give him an opportunity of showing, upon a new trial, that he is not perjured: and as it was said to be an easy matter for the defendant to bring a third person out of this crowded and promiscuous assembly to contradict him, so it cannot be difficult for him to bring some individual out of a private gallery to support him.

The evidence of Morton was most palpably false, for he swore that his uncle Giffard, to his belief, had not any thing to say to the conduct of the Dublin Journal, nor could he say any thing of the relationship that subsisted between his cousin Ryan and the sheriff, who was their common uncle.

And he concluded by observing, respecting the traverser, that at all events it would not convict him in the opinion of unprejudiced and moderate men, to have gone farther in such circumstances than moderate men would go; that the traverser, whose affidavit scarcely any man in the community would doubt, had sworn that the evidence of Lyster was false, and that the jury were prejudiced, and returned by a person adverse and hostile to him; and that the public could not but feel horror at a sentence pronounced upon such a foundation.

He protested solemnly, that feeling for the dignity and character of the administration of justice in this country, he was more interested in the event of the present motion, than in that of any other in which he was ever concerned. The king had not in his dominions a subject more warmly attached to the constitution in church and state than he; but he was, at the same time, a friend to the civil and religious liberties of the people. The man who goes too far in doing what he thinks may tend to secure these, may be censured by moderate men, but he will not, therefore, cease to be esteemed by moderate men. Mr. Rowan may, perhaps in some instances, have gone too far on this subject; but his conduct has always been known to originate in the best and purest motives, and there was not in society a man more respected, nay, admired—than he.—It was, therefore, essential in the highest degree, that a verdict, by which

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such a man was subjected to public and exemplary punishment, should be above all exception.

Mr. *Curran*, on the same side. It was an early idea, that a verdict in a criminal case could not be set aside *inconsulto rege*, but the law had stood otherwise, without a doubt to impeach its principle, for the last two reigns

Common sense would say, that the discretion of the Court should go at least as far in criminal as in civil cases, and very often to go no farther would be to stop far short of what was right; as in those great questions where the prosecution may be considered either as an attempt to extinguish liberty, or as a necessary measure for the purpose of repressing the virulence of public licentiousness and dangerous faction; where there can be no alternative between guilt or martyrdom, where the party prosecuted must either be considered as a culprit sinking beneath the punishment of his own crimes, or a victim sacrificed to the vices of others. But when it clearly appears that the party has fallen a prey to persecuting combination, there remains but one melancholy question, how far did that combination reach?

There have been two cases lately decided in this very Court; the King and Pentland, where the motion was made and refused; and the King and Bowen, where it was granted; both of which show, that captious sophistry, and technical pedantry, had here, as well as in England, given way to liberal and rational inquiry; and that the Court would not now, in their discretion, refuse a motion of this kind, unless they could at the same time, lay their hands upon their hearts, and say, they believed in their consciences that justice had been done: such was the manly language of one of their lordships (Mr. Justice Downes); and such the opinion of the Court on a former occasion.

He then cited 7 Modern, 57,* as referred to in Bacon, tit. Trial, to show that where there was good ground of challenge to a juror, not known at the trial, it was sufficient cause for setting aside the verdict.

In England they have a particular act of parliament, entitling the party to strike a special jury to try the fact, and then he has time between the striking and the trial to question the propriety of that jury: here my client had no previous information, till the instant of trial, who his jurors were to be.

There are certain indulgences granted at times perhaps by the connivance of humanity, which men, who are not entitled to demand them in an open court, obtain nevertheless by sidelong means; and perhaps the little breach which affords that light to the mind of the man accused, is a circumstance concerning which the Court would feel pain, even if called upon, to say, that it should in all cases be prevented: but to overturn principles and authorities, for the purpose of oppressing the subject, is what this Court will never do.

The first of the affidavits I shall consider, is that of the traverser. I do not recollect whether it states the sheriff, in avowed terms, to be an emissary or an hireling agent of the Castle, therefore I do not state it from the affidavit; but he swears, that he does believe that he did labour to bring into the box a jury full of prejudices, and of the blackest impressions; instead of having as they ought, fair and impartial minds, and souls like white paper.

This sheriff now stands in court, he might have denied it if he would, he had an opportunity of answering it; but he has left it an undenied assertion he was not certainly obliged to answer it, for no man is bound to convict himself. But there is a part of that charge which amounts, at least, to this, "Your heart was poisoned against me, and you collected those to be my judges, who, if they could not be under the dominion of bad dispositions, might be at least the dupes of good." The most favourable thing that can be said is this, you sought to bring against me honest prejudices, but you brought against me wicked ones. The very general charge, that he sought for persons who he knew were most likely to bring prejudices with them into the jury box, is a part of the affidavit that it was incumbent on him to answer if he could.

I do not contend, that what is charged in the affidavit would have been a ground of principal challenge to the array; but I hold it to be the better opinion, that a challenge to the array for favour does well lie in the mouth of the defendant.

The ancient notion was, you shall not challenge the array for favour where the king is a party,* the king only can challenge for favour; for the principle was, that every man ought to be favourable to the crown; but, thank God, the advancement of legal knowledge, and the growing understanding of the

* This is cited erroneously. The words in Bacon are, "If there were good cause of challenge to one of the jurors, but this was not known, and consequently could not be taken advantage of at the trial, the Court will grant a new trial," and for this he cites 7 Mod. 54, Hyon *v.* Ballard: in that case, however, as reported in 7 Modern, nothing to the above purport will be found; but in the case of lady Herbert *v.* Shaw, 11 Mod. 119, the Court [Lord Holt, C. J. and Powell, Powys, and Gould, Justices] said "if a party have cause of challenge, and know of it time enough before the trial, if he do not challenge he shall not have a new trial; *contra*, if he has not timely notice of it." With respect to the authority cited in the text by Mr. Curran, see the observations of the earl of Clonmell, C. J. and of Mr. Justice Downes, *post*.

* See the note to p. 1038, of this Volume.

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age, have dissipated such illiberal and mischievous conceptions.

But I am putting too much stress upon such technical, discarded, and antiquated scruples. The true question has been already stated from the authority of Mr. Justice Downes, and that question is, Has justice been done?

It is a matter upon which scarce any understanding would condescend to hesitate, whether a man had been fairly tried, whose triors had been collected together by an avowed enemy, whose conduct had been such, as to leave no doubt that he had purposely brought prejudiced men into the box.

In every country where freedom obtains, there must subsist parties. In this country and Great Britain I trust there never will be a time when there shall not be found men zealous for the actual government of the day. So, on the other hand, I trust, there will never be a time, when there will not be found men zealous and enthusiastic in the cause of popular freedom and of the public rights. If, therefore, a person in public office suffers his own prejudices, however honestly anxious he may be for a prosecution carried on by those to whom he is attached, to influence him so far as to choose men, to his knowledge, devoted to the principles he espouses, it is an error which a high court of judicature, seeking to do right and justice, will not fail to correct.

A sheriff, in such a case, might not have perceived the partiality of his conduct, because he was surveying it through the medium of prejudice and habitual corruption: but it is impossible to think that this sheriff meant to be impartial, it is an interpretation more favourable than his conduct will allow of; if he deserved any credit at all, it is in not answering the charge made against him: at the same time, that, by not answering it, he has left unimpeached the credit of the charge itself.

[Here the sheriff tendered some form of an affidavit, which the Court refused to have sworn or read, for the same reason that those sworn, and tendered by the defendant's counsel, had been before refused. Mr. Curran, however, consented to its being sworn and read; but the attorney-general declined it, being unacquainted with the contents, and uninstructed as to its tendency; it therefore was not sworn.]

Mr. *Curran.* Is this, then, the way to meet a fair application to the Court, to see whether justice has been done between the subject and the crown? I offer it again; let the affidavit be read. And let me remind the Court, that the great reason for sending a cause back to a jury is, that new light must be shed upon it; and how must your lordships feel, when you see that indulgence granted to the conscience of the jury, denied to the Court?

Mr. *Attorney General.* I am concerned that any lawyer should make a proposition in the manner Mr. Curran has done; he proposes to have an affidavit read, provided we consent that others, which the Court have already refused, should be now read.* I did not hear it offered; but is it to be presumed I will consent to have an affidavit read, about which I know nothing? Yesterday, without any communication with a human being, I did say, that I conceived it unnecessary to answer any of the affidavits, thinking that they were not sufficient to ground the application made to the Court. And is it presumed I am so mad as to consent to the reading of affidavits which I have not seen?

[Here some altercation took place, and the Earl of *Clonmell*, chief justice, interposed, saying, that the counsel had certainly a right to argue it upon the ground, that the sheriff was biassed, and did return a jury prejudiced against the traverser.]

Mr. *Curran* was then proceeding to observe upon the expression of one of the jury, sworn to in another affidavit, "that there would be no safety in the country, until the defendant was either hanged or banished;" when it was asked by the Court, whether the time of its coming to the knowledge of the traverser, that the sheriff was biassed, was stated in his affidavit?

Mr. *Curran* answered, he was in prison, and could not have the attendance of those counsel, whose assistance he had in court; and besides, from the nature of the circumstances, it was impossible he could have been sufficiently apprized of its consequences; for he saw not that panel till the day of the trial, when he could not have had time to make any inquiry into the characters, dispositions, or connexions of the jury. Mr. Curran then reverted to his argument on the expression of the juror.

If triors had been appointed to determine the issue, favourable or not, what would have been their finding? Could they say upon their oaths, that he was not unfavourable to that party against whom he could make such a declaration?

Favour is not cause of principal challenge, which if put upon a pleading, would conclude the party. Favour is that which makes the man, in vulgar parlance, unfit to try the question. And as to the time these facts came to his knowledge, he has sworn that he was utterly ignorant of them at the time of his coming into court to take his trial.

I will not glance at the character of any absent noble person, high in office; but let it be remembered, that it is a government prosecution, and that the witness has, from a low and handicap situation, scraped himself into preferment perhaps, for I will put the best

* It may not be improper to observe that Mr. Attorney-General mistook Mr. Curran's proposal, which was an *unqualified* offer to have Mr. Giffard's affidavit read. *Orig. Ed.*

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construction upon it, by offering himself as a man honestly anxious for the welfare of his country; in short, it is too obvious to require any comment, what the nature of the whole transaction has been, that he had got his commission as a compensation, *pro labore impendendo*, and came afterwards into court to pay down the stipulated purchase.

Had this, then, been an unbiassed jury, was there not something in all these circumstances, that might have afforded more deliberation than that of one minute per man, for only so long was the jury out? and had this been a fair witness, would he have lain down under a charge, which if true, ought not only to damn this verdict, but his character for ever? What would a corps of brother officers think of a person charged, upon oath, with the commission of two wilful perjuries, and that charge remaining undenied? Here is an undenied charge in point of fact; and although I do not call upon the Court to say, that this is a guilty and abominable person, yet surely the suspicion is strongly so, and must be considered. This was at least a verdict, where the evidence went to the jury under slighter blemishes than it will if my client has the advantage of another trial, for then he will put out of the power of man to doubt that this witness has been perjured;—This witness, who has had notice, both here and at the trial, of the aspersions on his character, and yet has not called a human being to say that he entertained a contrary opinion of him.

Was he known any where? Did he crawl unobserved to the castle? Was it without the aid or knowledge of any body, that that gaudy plumage grew on him, in which he appeared in court? If he had been known for any thing else than what he is stated to be, it was, upon that day, almost a physical impossibility, in a court-house, which almost contained the country, not to have found some person, to give some sort of testimony respecting his general character. For though no man is bound to be ready at all times to answer particular charges, yet every man is supposed to come with his public attestation of common and general probity. But he has left that character, upon the merits of which my client is convicted, unsupported, even by his own poor corporal swearing. You are called upon then, to say, whether upon the evidence of a being of this kind, such a man as that is to be convicted, and sentenced to punishment, in a country where humanity is the leading feature even of the criminal law.

He then observed upon the second witness.—A man coming to support the credit of another collaterally, is himself particularly pledged; then what was his testimony! He did not know whether Mr. Giffard was concerned in the newspaper!!! And now, you have the silence of Giffard himself, in not answering Mr. Rowan's affidavit, to contradict that. And next, he did not know whether his own cousin-german was the relation of their common uncle!!! I call upon you, my lords, in the name of sacred justice, and your country, to declare whether the melancholy scenes and murderous plots of the meal-tub and the rye-house* are to be acted over again? And whether every Titus Oates that can be found is to be called into your courts as the common vouchee of base and perjured accusation?

He then proceeded to another ground, namely, that the direction of the court was not, as he conceived, agreeable to the law of Ireland. The defence of my client (he added) was rested upon this, that there was no evidence of the fact of publication; upon the incredibility of the fact, and the circumstances of discredit in the character of the witness: yet the Court made this observation: "Gentlemen, it scarcely lies in the mouth of Mr. Rowan to build a defence upon objections of this kind to the characters of witnesses, because the fact was public; there were many there; the room was crowded below; the gallery was crowded above; and the publicity of the fact enabled him to produce a number of witnesses to falsify the assertion of the prosecutor, if in fact it could be falsified!" Is that the principle of criminal law? Is it a part of the British law that the fate of the accused shall abide, not the positive establishment of guilt by the prosecutor, but the negative proof of innocence by himself? Why has it been said in foolish old books, that the law supposes the innocence of every man till the contrary is proved? How has it happened that that language has been admired for its humanity, and not laughed at for its absurdity, in which the prayers of the Court are addressed to Heaven for the safe deliverance of the man accused? How comes it that so much public time is wasted in going into evidence of guilt, if the bare accusation of a man did call upon him to go into evidence of his innocence? The force of the observation is this—Mr. Rowan impeaches the credit of a witness, who has sworn that he saw him present, and doing certain acts at a certain meeting; but it is asked, has he substantiated that discredit, by calling all the persons, who were present, to prove his absence from that meeting, which is only stated to have existed by a witness whom he alleges to have perjured himself? I call upon the example of judicial character; upon the faith of that high office which is never so dignified as when it sees its errors and corrects them, to say, that the Court was for a moment led away, so as to argue from the most seductive of all sophisms, that of the *petitio principii*.

See what meaning is to be gathered from such words: we say the whole that this man has sworn is a consummate lie; show it to be so, says the Court, by admitting a part of it to be true. It is a false swearing; it is a conspiracy of two witnesses against this defen-

* See Vol. IX, p. 357.

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dant; well then, it lies upon him to rebut their testimony, by proving a great deal of it to be true! Is conjecture then, in criminal cases, to stand in the place of truth and demonstration? Why were not some of those—(I will strip the case of the honour of names which I respect)—but why were not some of those, who knew that these two persons were to be brought forward, and that there were to be objections to their credit—if, as it is stated, it happened in the presence of a public crowd, rushing in from motives of curiosity, why were not numbers called on to establish that fact? On the contrary, the Court have said to this effect; Mr. Rowan, you say you were not there; produce any of those persons with whom you were there, to swear you were not there! You say it was a perjury; if so, produce the people that he has perjured himself in swearing to have been there! But as to your own being there, you can easily show the contrary of that, by producing some man that you saw there! You say you were not there? Yes. There were one hundred and fifty persons there: now produce any one of those to swear they saw you there!

It is impossible for the human mind to suppose a case, in which infatuation must have prevailed in a more progressive degree, than when a jury are thus, in fact, directed to receive no refutation nor proof of the perjury of the witness, but only of his truth. We will permit you to deny the charge by establishing the fact: we will permit you to prove that they swore falsely to your being there, by producing another witness to prove to a certainty that you were there.—[Interrupted by lord Clonmell.]

The Earl of *Clonmell*, chief justice.—The reasoning of the Court was strong upon that point: this is a transaction stated by the witness to have happened in open day, in a crowded assembly in the capital, amidst a number of persons dressed in the uniform of Hamilton Rowan. There has been nothing suddenly brought forward to surprise the traverser; yet what has he done? did he offer, as in the common course, to prove an *alibi*? It is stated to be at such a day; the witness swears at such an hour—the place is sworn to have been full of people, of Mr. Rowan's friends: but if there was even a partial assembly it would be easy still to produce some one of those persons who were present to say, that the fact did not happen which has been sworn to, or if you say Mr. Rowan was not there, it is easier still to prove it by showing where he was: as thus; I breakfasted with him, I dined with him, I supped with him, he was with me, he was not at Pardon's; disprove that assertion by proving an affirmation inconsistent with it.

Mr. *Curran*.—I beg leave to remind the Court of what fell from it. "He may call," said the Court, "any of those persons; he has not produced one of them;" upon this, I think, a most material point does hang. "He might have called them, for they were all of his own party."

The Earl of *Clonmell*.—That is, if there were such persons there, or if there was no meeting at all, he might have proved that.

Mr. *Curran*.—There was no such idea put to the jury, as whether there was a meeting or not: it was said they were all of his party, he might have produced them, and the non-production of them was a "volume of evidence" upon that point. No refinement can avoid this conclusion, that even as your lordship now states the charge, the fate of the man must depend upon proving the negative.

Until the credit of the witness was established he could not be called upon to bring any contrary evidence. What does the duty of every counsel dictate to him, if the case is not made out by his adversary or prosecutor? Let it rest; the Court is bound to tell the jury so, and the jury are bound to find him not-guilty. It is a most unshaken maxim, that *nemo tenetur prodere seipsum* And it would indeed be a very inquisitorial exercise of power, to call upon a man to run the risk of confirming the charge under the penalty of being convicted by *nil dicit*. Surely at the criminal side of this Court, as yet, there has been no such judgment pronounced. It is only when the party stands mute of malice, that such extremes can be resorted to. I never before heard an intimation from any judge to a jury, that bad evidence liable to any and every exception ought to receive a sanction from the silence of the party. The substance of the charge was neither more nor less than this: that the falsehood of the evidence shall receive support and credit from the silence of the man accused. With anxiety for the honour and religion of the law, I demand it of you, must not the jury have understood that this silence was evidence to go to them? Is the meaning contained in the expression "a volume of evidence" only insinuation? I do not know where any man could be safe; I do not know what any man could do to screen himself from prosecution; I know not how he could be sure, even when he was at his prayers before the throne of Heaven, that he was not passing that moment of his life, on which he was to be charged with the commission of some crime, to be expiated to society by the forfeiture of his liberty or of his life; I do not know what shall become of the subject, if a jury are to be told that the silence of the man charged is a "volume of evidence" that he is guilty of the crime: where is it written? I know there is a place where vulgar phrenzy cries out, that the public instrument must be drenched in blood;—Where defence is gagged, and the devoted wretch must perish. But even there the victim of such tyranny is not made to fill, by voluntary silence, the defects of his accusation, for his tongue is tied, and therefore no advantage is taken of him by construction; it cannot be

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there said that his not speaking is a volume of evidence to prove his guilt.

But to avoid all misunderstanding, see what is the force of my objection: is it that the charge of the Court cannot receive a practicable interpretation, that may not terrify men's minds with ideas such as I have presented? No—I am saying no such thing: I have lived too long, and observed too much not to know, that every word in a phrase is one of the feet upon which it runs, and how the shortening or lengthening of one of those feet will alter the progress or direction of its motion. I am not arguing that the charge of the Court cannot by any possibility be reconciled to the principles of law; I am agitating a bigger question; I am putting it to the conscience of the Court, whether a jury may not have probably collected the same meaning from it, which I have affixed to it, and whether there ought not to have been a volume of explanation, to do away the fatal consequences of such mistake.

On what sort of a case am I now speaking? on one of that kind, which it is known has been beating the public heart for many months: which from a single being in society has scarcely received a cool or tranquil examination. I am making that sort of application, which the expansion of liberal reason, and the decay of technical bigotry have made a favoured application.

In earlier times it might have been thought sacrilege to have meddled with a verdict once pronounced; since then, the true principles of justice have been better understood; so that now, the whole wisdom of the whole Court will have an opportunity of looking over that verdict, and setting right the mistake which has occasioned it.

Mr. Curran made other observations, either to corroborate his own, or to answer the opposite counsel; of which it is impossible to give an exact detail; and concluded: You are standing on the scanty isthmus that divides the great ocean of duration; on one side of the past, on the other of the future: a ground, that while you yet hear me, is washed from beneath our feet. Let me remind you, my lords, while your determination is yet in your power, *dum versatur adhuc intra penetralia Vestæ*, that on that ocean of future you must set your judgment afloat. And future ages will assume the same authority, which you have assumed; posterity feel the same emotions which you have felt, when your little hearts have beaten, and your infant eyes have overflowed, at reading the sad history of the sufferings of a Russel or a Sydney.

[The conclusion of Mr. Curran's speech was marked by another burst of applause, similar to those which accompanied his former exertions in this cause.]

Wednesday, February 5, 1794.

Mr. *Attorney-General*, for the Crown. My lords; it is my business to offer such arguments as occur to me, to resist what has been advanced in favour of Mr. Rowan, upon this motion to set aside the verdict and grant a new trial.

It is to me, my lords, a great happiness, that it has arrived at this stage, when the subject will be examined by the rules of legal reasoning, without an appeal to the passions of men, or any attempt to influence the argument by topics deduced from extrinsic matter. I should be sorry when I return to my own house, that passion should so far make me forget my reason. It is the duty of every man, whether prosecutor or advocate for the prosecuted, to promote the ends of justice, and obtain decisions upon argument, and argument alone. It is not the duty of counsel to determine the weight of argument: they are to offer the best arguments they can; when they pass that, they pass the bounds of duty.

This, my lords, is said to be a verdict against evidence, because the credit of the principal witness was such, as that he deserved no credit, and that now, if the verdict be set aside, new evidence will be offered, since come to the knowledge of the party, farther to show that the witness did not deserve credit. Another ground is this, that the sheriff, who returned the jury, had a prejudice against the accused, and laboured to procure a panel prejudicial against Mr. Rowan. Another ground is, that one of the jurors had expressed himself in a certain way, showing he had an ill opinion of Mr. Rowan upon some subject or other. Such, my lords, are the grounds specified in the notice. A farther objection was made from the bar, of which no notice was given, namely, that one of the judges had mis-directed the jury. If there be any weight in it, the party by strict form can derive no advantage from it—but I do not confine myself to form, it is my desire that this matter should be fairly inquired into according to the rules of law; therefore I will observe upon that, and make such answer to it as occurs to me, first calling upon your lordships and the gentlemen in this court, for beyond that I desire no attention, to give me an impartial hearing. I appeal to those only who have knowledge of law and the rules of cool reason; the rest is matter of indifference.

My lords, this information was filed a year since against Mr. Rowan; he was arrested upon a previous information which was returned to the crown-office in Hilary term, 1793; a *noli prosequi* was entered upon that, by reason of a mistake in copying one of the words, so that if brought to trial, he must have been acquitted without entering into the merits. Another information was filed; that was pleaded to, and immediately an application was made to have him tried in Michaelmas term. The Court conceived that, consistent with the discharge of general duty, it was impossible to have him tried

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then, and this term was appointed. The panel was returned to the office in the usual manner; I have a right to say so, because there is no suggestion to the contrary; and it was open to any man who pleased to look at it. On Wednesday se'nnight the record came to be tried. The jury were called at ten o'clock; they were called a second time, a third time, and a fourth time; and it was not till near twelve o'clock that the jury were sworn. All that time there was no challenge taken to the array. No application was previously made, no suggestion filed to have the *venire* directed to any other officer than the gentleman who returned the panel. But when the jurors were called to the book, several were challenged, and a pretty general question was put to several, I do not say to all of them, to declare whether they had delivered any opinion upon the case. To that question—I beg attention from every impartial man—they were permitted to give answers; though I rely upon it, that by law, in a criminal case, the party had no right to put such a question. So that after an hour and half's deliberation, the party knowing who were to be called, such as were thought proper to be questioned, were examined and permitted to answer.

But the fairness with which this prosecution was intended to be conducted is manifested by another circumstance. A juror of the name of Dickson was actually sworn, and afterwards he said he had given an opinion—it was desired that he might be discharged. I instantly gave my consent. Mr. Curran desired not my consent, but that I should move it myself; I did move it, because I thought it was right to have him discharged. The jury were then sworn, and the merits were gone into. Two witnesses were produced, one swearing to the actual fact of publishing the very paper in the record; another, who though he did not swear to the very paper, yet did give such evidence as, if he was worthy of credit, must give every reasonable man conviction, that it was the very same libel. Three witnesses were produced and examined to the credit of Lyster, the witness for the crown;—one did not say he was unworthy of credit, but that he would hesitate: another was not much inclined to give him belief; and it is insisted that such evidence was direct and positive to take away his credit, and therefore your lordships should set aside this verdict. The cross-examination by the counsel for Mr. Rowan throughout, directly and in terms, admitted that there was a meeting that day at Cope-street, that Mr. Rowan was there, and that the volunteers were there assembled; the whole cross-examination went to that fact; the dress and uniform of the Old Volunteers, every fact was insisted upon, and it was not until yesterday, in a kind of joke, that the contrary was insisted upon. Mr. Rowan's affidavit does not deny the meeting.—Away, therefore, with the childish observation, that a man could not be called from a meeting which did not appear to exist.

I will now come to the merits of the case upon the objections made. There was nothing omitted which could be said for Mr. Rowan: it is not fit for me to say that any thing was said which ought not to have been said. But, my lords, something was said with regard to the right of courts to set aside verdicts in criminal cases, not capital: no man disputed the right, or questioned it. Mr. Curran went into the history of that branch of the law and the doctrine of setting aside verdicts *rege inconsulto;* how it was with regard to ancient times, I am not satisfied; but sure I am, and so I hope it will remain, that this Court will have a right in favour of the defendant, and in his favour only, to set aside a verdict against him. But the exercise of that great power, touching the trial by jury, must be applied according to the known rules of law. Mr. Curran stated that an exact instance was not to be found in the books, and from the hurry, I suppose, in which he had considered the subject, he fell into the observation that the practice is of so modern a date that many precedents could not be found: he confined it to the two last reigns; but, my lords, the reports in William 3d's time are full of such applications; the practice prevailed in the reign of Car. 2nd,—how much earlier I cannot say—there are an infinity of cases upon the subject, and he was right when he said there was no such case as this; and before your lordships make a precedent of this, I am sure you will give it all the attention it deserves.

I repeat the observation, that the consequence of this determination to the public, and the administration of criminal justice, is of the last importance; and that, however right it is, that Mr. Rowan should seek redress by these means, and that every possible exertion should be made in favour of a man standing a culprit at your bar: yet, my lords, the consideration of that man, or any other, let him be who he may, dwindles to a thing of no value, when compared to the general justice of the country. There can be no distinction here: and here alone there is equality among subjects, between the highest man in the state, and the men who shout in the hall at the names of Titus Oates* and Algernon Sidney.†

The case, my lords, comes then to this, whether upon the affidavits which have been made you should set aside this verdict? They say these affidavits are to be taken as true—I say they are not: they were made and produced in court in my absence. I was called—I knew no more of

* See his trials in Vol. X., and the proceedings relative to the Popish Plot in Vols. VI. and VII. of this collection.

† See his case, Vol. IX. p. 817.

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them than the man in Westminster-hall. I heard them read, and it did strike me, that they were of such a nature, that I ought not to give an answer to them; I therefore did not consent to a rule unless cause, but was ready to meet the counsel at the moment. It is to be taken as true that such affidavits are made; that Mr. Rowan can find two witnesses swearing to those facts which have been mentioned; but it cannot be taken as true, that those alleged facts are true; it is not for your lordships to say they are true or false; nor if witnesses were found to say that what has been stated respecting Perrin was false, could you determine that; but whether you send it back to see whether a jury would give them credit or not, that is what you are to determine; you are to send it back to let in the same species of evidence which has been already adduced without success.

As to Mr. Rowan's affidavit, he swears to something he heard, and something he believes—that must be taken as true; that is, that he heard something, and that he believes it—if that were a ground for a new trial, verdict may be had after verdict. Something has been spread abroad, that your minds might be influenced by something without doors—a thing impossible. Let the cry be what it may by the seditious and the turbulent, the whole will be thought of rightly on a future day. What has been said cannot influence you, who will determine according to the rules of law. It is desired, that you will set aside this verdict, that evidence may be given to show Lyster is not worthy of credit.

Gentlemen have argued this case, certainly of the first talents and ingenuity, some of them have had as much experience in these matters as any gentleman who has the honour of wearing a bar gown; but I must say some little things fell from them, which were rather extraordinary; one gentleman said he had only got his brief the night before; another said he had got his on his way to court; but they knew the affidavits were to be made, they heard them read the day before; something was said of a case which had MS. opposite to it in the margin. I believe there are not many gentlemen who could recollect cases in the books cited as from manuscript cases, and quote them as such from memory. I have used great diligence upon the subject, and agree with Mr. Curran, there is not one to be found. You are desired to set aside the verdict, because the witness was not to be credited. Who made you judges of that? Are you the guardians of the lives, the liberties, and the properties of the people? Which of you determines the credit of the witnesses? I have sat at my lamp the most of the night, and have found nothing like this. But I will, for a moment, suppose what I do not admit, that it might be a ground for setting aside the verdict: bring it to the test of reason, bring it to the bar of sense where it should be tried. You are to set aside a verdict, to let in evidence to the credit of a witness; when his credit was impeached, witnesses were examined to his credit, and so strong say they was the evidence against him, that it ought to have destroyed his credit. The case was made, witnesses were examined, and the whole was left to the jury. For, my lords, it is a sad mistake which has been sent abroad, that because one witness says another is not to be believed, that therefore what the first says is true. Are the jury to give up all the circumstances—their own observation—to the opinion of another man perhaps as much prejudiced as any? But here the matter was examined; they were prepared with evidence to the history of this man's life, and after a verdict is had upon that, some men are picked up in the streets to give some evidence, that is, that they do not believe the witness, to eke out a ground for setting aside the verdict, in a case where the objection has been already made and already tried.

Here incidentally let me observe upon another part of the case. The verdict is against evidence, because the witnesses were not to be believed: there is no man so young at the bar as not to see the futility of such an argument: a man may have discredited himself upon various occasions, and yet may give such testimony accompanied with other circumstances, as shall entitle him to belief, though a thousand should oppose him.* "My good lord primate of Armagh, do you know Mr. Lyster?"—"I do, I have known him concerned in many transactions of a base nature, he is not to be believed." What! if that was sworn to by that saint upon earth, shall the positive swearing discredit the testimony though it be accompanied with circumstances which speak its truth? Can that be law? I hope not, for it is not reason. There are cases which say a verdict shall not be set aside, though an incompetent witness has been examined, who was not known to be incompetent at the time. That is a stronger case than the present, and applies to the ground of objection with respect to the jury. Turner *v.* Pearte, 1 Durnf. & East. 717.†—Wright *v.* Littler. 3 Bur. 1244.

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* As to what shall be deemed sufficient to derogate from the credit of a witness, see in this Collection the cases of Titus Oates, Vol. X, p. 1135; of Elizabeth Canning, Vol. XIX, pp. 454, 609; of Timothy Murphy, Vol. XIX, p. 719; and of Catharine Nairne and Patrick Ogilvie, Vol. XIX, p. 1268.

† In Turner *v.* Pearte, referred to by the learned counsel, Mr. Justice Buller said—"There has been no instance of this Court's granting a new trial on an allegation, that some of the witnesses examined were interested; and I should be very sorry to make the first precedent. Anciently no doubt the rule was, that if there were any objection to the competency of the witness, he should be

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Here I must trespass upon your lordships ime to take notice of another observation. t is insisted that you ought the rather to let im in, because this was an information filed *r officio* by the attorney-general, by which e was deprived of an opportunity of knowing he witness against him, and consequently hat though in ordinary cases a new trial ught not to be granted upon that ground, et here it ought. The gentleman who made his observation, was here again a little hur- ied, for if he had reflected one moment, he ould see that the cases are precisely the ame. The party in an indictment has no ight to see the examinations till trial, and ometimes not even then. In an information e has no right to see them. So that whe- her it be an information or an indictment, he s alike forbid to see the examination. If he e prosecuted by indictment, the examination will be returned to the crown-office. If by nformation, the examinations are put into he same crown office on the first day of the erm. It was said that in the case of an in- lictment, what was sworn could be known. All that could appear would be that some of the grand jury might forget their oaths and disclose the secrets of the prosecution, though they are specially sworn not to mention what appears upon the examinations.* This observation was made without thought, therefore, and could not have been made for any good purpose with respect to this motion; it was made for nothing but to impress the people with an idea that there has been severity or oppression in this case, not allowable, and that the subject has been put under difficulties, not occurring in the ordinary course of justice. But upon a cool inquiry it will be found that the manner of proceeding makes no difference in the case. If there be any way by which the informations in the crown-office can be got at (I hope there is not) he might have made use of that; but Mr. Rowan was apprized; he came here with witnesses to trace facts happening at various times; he put his defence on that. Mr. Lyster's name was inserted in the papers, and it was notorious for many months that he was the man. But I disclaim that, your lordships have no right to know it, but you know that Mr. Rowan came prepared with witnesses against him.

Another observation occurs. I will suppose,—what I never will admit till a solemn decision is had,—that the objection made on account of the want of credit would be a good ground for setting aside the verdict, even after that credit had been examined to, or provided no witness was found to come forward; yet you cannot entertain this motion, for the knowledge of the existence of the evidence since the trial is not sworn to. Mr. Rowan has made an affidavit that he did not know it; that affidavit is to be taken as true; —I believe he did not. But he appeared by attorney, he defended by attorney, and it is not sworn even to his belief, nor has his attorney sworn, nor is there a syllable to tell you that those concerned for him were not apprized of the fact. If these affidavits be admitted, there is nothing to be done but conceal every thing from the party, to keep back that which may eventually serve the motion for a new trial, in case of any thing against him. I feel that if this were an ordinary case, the bare statement of the fact would drive the motion out of court; the fact has been inquired into by the jury; notwithstanding what has been said of the witness, he may have told the truth, and it is impossible it should be otherwise.

The other objection is that one of the jurors did not stand indifferent,—a ground of challenge which was not taken, and not having

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examined on the *voir dire;* and it was too late after he was sworn in chief. In later times, that rule has been a little relaxed, but the reason of doing so must be remembered. It is not that the rule is done away, or that it lets in objections which would otherwise have been shut out. It has been done principally for the convenience of the Court, and it is for the furtherance of justice. The examination of a witness, to discover whether he is interested or not, is frequently to the same effect as his examination in chief: so that it saves time, and is more convenient, to let him be sworn in chief in the first instance; and in case it should turn out that he is interested, it is then time enough to take the objection. But there never yet has been a case in which the party has been permitted *after trial* to avail himself of any objection, which was not made at the time of the examination." "Where it appears that one or more material witnesses who were examined on a trial were interested, it may afterwards weigh with the Court as a circumstance for granting a new trial, provided the merits of the case are doubtful; but as a substantive objection, I am clearly of opinion that it ought not to be allowed." 1 T. R. 719, 720.

In Lister *v.* Mundell, 1 Bos. & Pul. 429. The Court [of C. B.] observed, that "though it was unusual to grant a new trial on evidence contradicting the testimony on which the verdict had proceeded, discovered subsequent to the trial, yet as the very facts on which these witnesses had founded themselves were falsified by the affidavits produced, they thought it afforded sufficient ground for a new trial."

* With respect to the oath of secrecy administered to the members of a grand jury, see in this Collection, the case of the Earl of Shaftesbury, Vol. VIII, p. 759, and the note to that case, p. 772., of the same Volume; See also the case of the Regicides, Vol. V, p. 972, as there referred to; the case of colonel Bayard, Vol. XIV, p. 477, and Mr. Barrington's Obs. on 18 Edw. 3rd, stat. 4,

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been taken, the verdict shall be set aside, and the party have a new trial. The statute law has directed that in treason the party shall have a copy of the panel a certain number of days; in no other case has the party such a right, he is to take his challenge as the party comes to the book; that is the law of the land, that has been the simple law under which our ancestors lived happy for ages, by which juries have been chosen and formed, who have for ages protected every thing dear to Britons and Irishmen; and now, for the first time, I will be bold to say, in any criminal or civil case, the verdict is to be set aside because there lay a challenge to a juror, not known to the party at the time of the verdict. I will suppose that there was a principal cause of challenge to this man; no instance of such a case can be produced where that was a ground for a new trial; there is no necessity to examine further into the circumstances; there is no cause of challenge now stated—What is it? There was an illumination in Dublin last August, when the juror and Atkinson fell into conversation of and concerning—What? the libel calling the citizens to arms? No such thing—But an illumination takes place for the capture of a town, they fall into a conversation about the volunteers in general, in which the juror said, the country could not prosper unless Hamilton Rowan and Napper Tandy were hanged or transported; not a syllable respecting the matter in hand—Not one word of this matter. Would that be a cause of challenge to a juror? Most undoubtedly not—and the man who used the expression, supposing he did use it, gave no cause of challenge, and now, though the eleven others agreed in that verdict, you are to send it back to a new trial—For what? to have two triors sworn to ascertain whether Mr. Perrin was a person to be challenged or not.

The juror gave an opinion of different men upon a political subject. What man is there who has not given an opinion upon such a subject? If there be, he is cold to the interests of his country. But does it apply, that the man using such expressions is not competent to meet a question of facts upon evidence before him, though the party may be concerned in a particular measure not agreeing with his opinion. I may think the conduct of a man dangerous; I may speak of the consequences of his conduct as I think. But does it follow that such a man passing a verdict upon his oath upon the examination of witnesses to a particular fact, is therefore to be unfavourable to the person of whom he had entertained the opinion? Was there a single allusion to the matter in question? It is not a cause of challenge to a man, that he has delivered an opinion upon the very subject he must have done it through malice and with an improper view; and the reason is, that an honest man may deliver an opinion upon what appears before him, concerning which, when examined, he may have a different opinion, even upon the subject itself; it must be clearly shown, that the opinion was unfair or malicious, 2 Salk. 589.* But see what is desired;—suppose it a cause of challenge, suppose it a principal cause of challenge, then, my lords, I submit, that the verdict should not be set aside; because, by law the challenge must be taken, if to the array before a juror is sworn; if to the polls, it must be as each man comes to the book.—So very strong is it, that after one juror is sworn, the law will not allow a challenge to the array; and yet where would be the difficulty? but such was the simplicity of our ancient law, that it would not allow it, Hob. 235. And now, my lords, after the party has taken allthe advantages which he could take, asking questions he had no right to ask, putting aside a juror actually sworn after having the advantage of every thing which he could desire; you, my lords, and the people, (for they are appealed to upon a judicial trial!) have been told, that this trial was carried on by cruel and unjust means, and you are desired to set aside this verdict, upon matters suggested in these affidavits, respecting a juror, which was no cause of challenge, upon a supposed conversation, as it seems to me, touching the volunteers, probably over a bowl of punch, and not about the subject of any trial.

I now come to the third objection, that the sheriff has been partial: Mr. Rowan swears, as to his belief, that the sheriff has an office under government—is a militia officer, and conductor of a paper, commonly called a government newspaper—that the sheriff is prejudiced against him—and that the panel was returned by Mr. Giffard, or his sub-sheriff, and that he laboured to return a panel which he either knew or believed to be prejudiced against Mr. Rowan. If the affidavit has any meaning, it means this, that there lay a challenge to the array, for that the sheriff was partial, and procured a jury for the purpose of convicting Mr. Rowan. He is not pleased to inform your lordships when he heard of these facts, or when he first formed his belief. This was not omitted from want of recollection in himself, or those who advised him; because, in his affidavit touching the evidence, he takes care to tell you, that he did not hear of it till after the trial; so that it does not appear that Mr. Rowan was not apprized of this when the jury came into the box—when the *venire* issued— when the trial at bar was moved for in Michaelmas term, or when he put in his plea:—look at the situation in which your lordships stand—look at what precedent you are called upon to make; you let the man take his trial, with an objection in his possession that may set aside all the proceedings, and he declines to make it,—the party is to be tried by a jury—be

* I do not find this in Salkeld; I presume 2nd. Hawkins, 589, was intended.

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ubmits to the jury (for he made no challenge), he is found guilty, and now he says, I ad a cause of challenge, I took my chance—end me to another trial that I may make it. My lords, I would almost ask, is this decent?—the law protects every man, gives him a ight to have a fair jury, the law points him ut the way, and he is not to overbound hose limits, to do that which has not been lone since the days of our Saxon ancestors. He knew these facts, that Giffard was sheriff, hat he was an officer in the militia, that he ad a place in the revenue—what had he to lo? Mr. Rowan had able counsel, men of he first talents and information—his remedy vas easy and without delay or expense—why ot come in here and suggest the facts? If he ad, the *venire* would have gone to the other heriff, and Giffard could not have meddled.

But mayhap the other sheriff is partial—uggest that then, and if the objection be well ounded, the *venire* will go to the coroner. f the objection would not be sufficient for hat purpose, it cannot be sufficient for this urpose. But it is said he was not aware of his suggestion; I will not impute it to the ounsel—Mr. Rowan must have been aware f it when they came into the box—why not hallenge the array? He forgot to do that, ill one of them was sworn; then why not hallenge for favour? Where are these men who have told him these stories? Why do hey not make affidavits? Why does he ake a chance for a verdict, knowing these acts? Having taken his chance, he now calls pon you to set aside the verdict upon that. —Make that example, my lords, and you verset the criminal law, that which is the guardian of our lives and properties, and you nake it depend upon the art, design, and knavish conduct of those concerned. The objection is founded upon the conduct of the heriff; that conduct was known previous to he trial, therefore I rely upon it, that this erdict ought not to be set aside; and if it be, t will be an example big with dangerous consequences.

It has been said, Mr. Giffard did not answer the affidavits, and therefore they must e taken as true—Mr. Rowan believes what e has sworn;—but are the facts true still? No. He might have produced persons to prove the facts—Giffard has not answered he affidavits, it was offered to let him answer; but you must put that out of the case; whether he be ready to answer them or not, I lo not know, and I do not care. I at once said o the gentlemen, I meet you on your own ground—Giffard could not make an affidavit n this case, he may make one extra-judicially f he pleases.

I come now to the other objection, which hey had no right to make—the misdirection f the judge: the eloquent gentleman applied t as pleasantly as any serious subject could e applied; the whole was sophistry or joke. —He imputed this to one of your lordships, that the jury were to find against Mr. Rowan, because he did not show that the facts did not happen, where so many persons were present. Your lordships best know what the observations you made were; the trial stood thus,—witnesses were examined for the prosecution—witnesses were examined to discredit these, which is always matter for the jury: there was clear evidence of the guilt of Mr. Rowan, if they believed the witnesses; but witnesses were produced to discredit the first. The jury were to consider how far the opinions of those persons were to have weight, and every circumstance was to be taken into consideration. It was taken as true, that there was a meeting, that Mr. Rowan was present at the meeting, and the question was, Whether he published such a paper there? If there was such a meeting, and he was there, it must occur to every person, that if he wanted to discredit the witnesses, it could be best done by showing that he did not publish the paper. It was a judicial inquiry into a question of fact, and it was a proper observation, suggesting itself to the mind of any honest judge, to say,—you are to consider, here there was a meeting; if you believe that there is not a witness produced from this number to contradict the evidence, it was a natural observation, but no direction was given to the jury; your lordships gave your opinion upon the libel,—whether right or wrong is not the inquiry: there are few reasonable men, who have read or shall hereafter read that paper, who will not feel that it was the most dangerous and seditious libel, published at the time it was, that ever came from the press.—But your lordships told the jury, that notwithstanding what you said, they were to form their own opinion: I do not rely upon the want of notice, but upon a full and fair discussion, let this case be decided as the law admits.

One topic more remains, my lords, I should never touch upon it, if so much had not been said about it, more than ever was known to pass from the lips of counsel—I speak of Mr. Rowan's own affidavit, and the credit to be given to it. I am not to speak of the credit given to any man, it is not my province: but it is the first time I ever heard, that a man swearing to his own innocence should affect the determination of a judge in a criminal case. A great press was made upon this:—we were told—I know not what—and what if I did know, I choose not to repeat—of the consequences that might attend a belief of this gentleman's affidavit: I am not apprehensive of any consequences from it: the public mind is tranquil upon subjects, and whatever tumult or noise is made by the little mob behind me, or any where else, for a few hours, or a few days, the learned and the good will see, that the case has been determined upon the known rules of law, and that justice has been administered to this gentleman, as to every other.

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But the fact is not as it has been insinuated; he has not sworn to his innocence; he has not sworn, that if the verdict be set aside, he has a good cause of defence. He swears generally, that the testimony of the witnesses is not true; not a syllable with regard to his innocence. I desire to infer nothing from this; but I desire that nothing may be inferred from what he has sworn, to what he has not sworn. It is said he is a gentleman of great worth, I know him not, I dare say he is; if he be, it may furnish some deduction, that there was something which he could not deny:—I desire not to press it farther; that affidavit can have no weight in the disposal of this case, and I feel sensible, that the time will come, when it can have no effect upon the people. But be their opinion what it may, be the consequence what it may—*Fiat justitia, ruat cælum.*

Mr. *Solicitor General*, on the same side. My lords, I was in hopes it would not be necessary for me to address you. This is the sixth day that this subject has taken up the time of the Court, it is impossible not to feel it as trespassing much upon your time. The subject has been magnified into consequence not necessarily belonging to it; you have heard this case with dignified patience and with dignified attention, with an exemplary degree of temper, not disturbed by the efforts of unbridled eloquence. It is impossible to escape your lordships wisdom, that by the late act of parliament there was a latitude given to the jury upon the subject of libels. The learned gentleman who laboured this argument, went into an investigation of the facts, very briefly. He, in an argument of three hours or more, a few days ago, scarcely took up ten minutes in the investigation of facts: he has fastened the fact of publication "round the neck of his client;" that publication was a calling to arms to introduce a reform in the representation of the people, and an emancipation of the Catholics. He said the present publication was the "honest effusion of a manly mind."—Instead of disclaiming the publication, the learned counsel has made "a wreath of it to decorate the brows of his client."

This motion is to set aside the verdict. In 3 Wils. 45, Swaine *v.* Hall, lord chief justice Wilmot said, In this case, there was a contrariety of evidence on both sides; and although I am still of opinion that the weight of evidence was with the plaintiff, yet I disclaim any power to control this verdict of the jury, who are the legal constitutional judges of the fact.

My lords, I forbear to follow the learned counsel for the defendant through the vast variety of matter which he has introduced upon the occasion of the trial, with a degree of boldness and freedom, that was very unusual to my ear, scarcely admissible in any assembly, the most popular known to the country. There was another circumstance, I beg to put to your lordships' mind; in the progress of the cross-examinations, it appeared, that at the meeting in Cope-street, there was a new species of men, under the cloak of old volunteers, with new devices and new badges of sedition, as a harp divested of the royal crown.* It was most industriously pointed out, that they were the old, ancient, volunteers. The witness said the men were dressed in scarlet turned up with blue, yellow, &c. Here was a declaration of the fact, that there was a meeting: give me leave to ask, was that fact capable of disproof, namely, was there a meeting of volunteers in Cope-street? —Did that fact rest on the testimony of an incredible witness?—The fact happened thirteen months ago; there was full opportunity to collect materials, to disprove what was sworn to, with regard to that meeting. Was it not competent to Mr. Rowan to discredit the man if his evidence was untrue, to prove there was not a meeting on the 16th of December, 1792, of volunteers at Pardon's?—That no man appeared there with side arms, or did wear those badges of sedition? was it capable of disproof?—Not one of the 150 persons have been brought to disprove the evidence of Lyster, that there was such a meeting. There is not an affidavit to prove the innocency of the party accused, that he did not publish the paper in question.

My lords, is this a case in which your lordships can say, you are dissatisfied with the verdict? Or that case in which the Court can say, that justice has not been done? It was said, that it will do no harm to send this case back to another investigation; but, my lords, can you send it back, without deciding upon the credit of witnesses, which it is the province of the jury to decide upon? Give me leave to observe, upon the concurring evidence of Morton; he does not go to the collateral part of the case, he goes to the very principal part, namely, the publication of the paper; he was able to repeat part of the paper (which he said was read) by memory, viz. "Citizen soldiers, to arms."

This verdict is sought to be set aside, in order to give the defendant an opportunity of being able to find more witnesses against the credit of Lyster, when he has already ransacked the province of Connaught for evidence.

If you do set aside the verdict, upon the ground of these affidavits, you do not give Lyster an opportunity of vindicating his character, which has been depreciated on the present occasion.

This verdict is sought to be set aside upon the ground of the challenge to the jury. I am bold to say, there is not a single authority in the law books to show where a verdict has been set aside for matter of challenge. If the juror was competent at the time, you will not

* No such fact appeared, or was asserted, on the direct or cross-examination of any of the witnesses. *Orig. Ed.*

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set the verdict aside for challenge to the jury. There are authorities which do say, that a challenge for competency is not a ground for granting a new trial. See the Compleat Juryman, 261. There the law with respect to challenges to jurors is fully laid down, and several cases referred to.

As to the objection, that the sheriff was partial; a sheriff is the returning officer intrusted by law; if Mr. Rowan had suggested the objection at the time, before any of the jurors was sworn, no doubt your lordships would have postponed the trial, or issued a *venire* to the coroner; on this ground therefore this motion cannot be supported.

This is the first time, in the history of criminal proceedings, where an eloquent character has with unbridled liberty said, that there were conspiracies formed against his client, who stood in the alternative between guilt and martyrdom;—if, said he, his client should be found guilty, he has been the victim of a persecuting combination; it was one question how far this combination was to reach. Give me leave to consider this eulogium to be of a dangerous and seditious tendency, against the jurisdiction of this country. The solemn and cool investigation of matters criminal, is not driven as yet to appeals to the people. Much has been said about the liberty of the press; the best mode to preserve the freedom of the press, is to curb its licentiousness. The most popular character that ever existed in England, lord Camden, on the decision of a case mentioned in the State Trials, gave his opinion on the dangerous consequences of libels; he said, that they excited discontent against the government, and tended to destroy the liberty of the press by its licentiousness, and said that the worst government was better than no government at all.*

It has been a fortunate event for this country, that this matter has been brought to trial; if, in consequence of the summons to arms by the publication of this paper, the people in arms had by force overawed the government; if the people in arms had proceeded to act, the gentleman who now stands at the bar for publishing a libel and charged to be a misdemeanor, would be accused of high treason against the state; if there had been one act of force committed, by the clamorous rabble, who shouted yesterday at your bar, in consequence of this summons to arms, it would fasten the crime of high treason upon this gentleman. It has been a most fortunate circumstance, that a proclamation did issue, it quelled this paper trumpet of sedition. The gentleman at the bar, in every other department of life, is an honourable, a good, and a virtuous citizen, the friend of his country; but he is a mistaken zealot in point of politics; a mad philanthropist.

The new scheme of searching for an Utopia, a nation perfect in every respect, has driven millions to their graves; is that the country which has, in the language of the paper in question, got the start of us?

I do rejoice that this trial was had, for it has saved that individual character, of whom most men speak good things, and I am one of those, who have the honour of knowing him; but to let him go on uncontrolled, might be dangerous to himself, he might pull down the building upon himself—he lives to look at the image of his king before him. He has had the most patient trial I ever knew in the annals of this country.

Mr. *Frankland*, on the same side.—Every observation, every case, and every principle of law, has been so very fully stated by Mr. Attorney-general, that I feel it necessary to compress what I have to say, into the narrowest compass; and after so much has been said by the learned gentleman who spoke last, I shall be very brief. The avowed personal regards for the gentleman at the bar, which the learned counsel have for him, have called forth the most splendid display of talents that has been known; but I consider this case merely as a case between the king and a common traverser; if this motive had not called forth the exertion of the eminent abilities of the learned counsel, this motion ought to have been decided in ten minutes.

Mr. Rowan now applies to the discretion of this Court upon many affidavits, in none of which he has stated one substantive case to make upon a new trial. He has made two affidavits himself, in neither of which he has stated, that he is not guilty of the crime charged. Upon these affidavits have you ground to say, first, that this verdict is contrary to justice? That the verdict was found upon false evidence not deserving any credit?

I will admit that there is an analogy in principle, between criminal and civil cases; but I will be bold to say, there is not a case in the books, considering the circumstances that arise in this case, where an application has been made for a new trial. There is no case where a new trial has been granted, merely because the witness produced had spoken falsely. However, supposing it was a ground for an application, then look to the circumstances attending this case. You cannot forget that the traverser and his counsel came prepared to impeach the character of Lyster. The jury, it must be presumed, has weighed the evidence; they found a verdict. Do you now send back this case to a new trial, because the person who has sworn that Mr. Rowan did publish the paper at such a meeting in Cope-street, has sworn false?

In cases of this kind, your lordships will look with eagles eyes. The Court will never set aside a verdict on the ground, that a witness produced has sworn false. This Lyster should be indicted for perjury, and then these two men may bring forward the circumstances; but it would be absurd to set aside

* See the Case of Seizure of papers, Entick *v.* Carrington, *antè* Vol. XIX. p. 1074.

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the verdict against Mr. Rowan upon the affidavits of those two persons, who have sworn that Lyster perjured himself on some other particular transactions. In every application for a new trial, upon the allegation that evidence has been discovered which was not known antecedent to the trial, an affidavit of not only the party himself, but also of his attorney is required. Now, give me leave to ask, why these grounds are stated upon this affidavit of Mr. Rowan himself, and not of Mr. Dowling, his attorney upon record? If you should grant a new trial, when this necessary ingredient, the affidavit of his attorney, has not been complied with, would not every attorney in the hall, the instant he was employed to defend a client charging him with a misdemeanor, say to him, do you listen to no one; do not inquire about your defence; I shall shut the mouth of every man to you upon the subject, and go to trial, and give yourself a chance of a verdict of acquittal; if you should happen to be acquitted, it is well; but if the verdict should be against you, then apply to the Court to set aside that verdict, upon the ground of facts which I now tell you of, and which you can swear has come to your knowledge since the trial. Let it not be understood that I mean to apply that there was such a scheme between the present parties. No; but I am adducing a case to the Court. I would not have it imagined that I impute any thing in the case I have supposed, to the present defendant; he is a man of honour; but courts will decide upon established general rules, applicable to the case of every man.

The notice in this case is very generally shaped: is he to be granted a new trial upon the ground stated by these affidavits? Nothing can be more clear than that the defendant had a knowledge that Lyster was to be produced against him. Lyster was examined, and witnesses were examined to discredit him. Will it be contended that there was not evidence for the jury to weigh and deliberate upon? The verdict of the jury shows they did decide on Lyster's evidence. To say therefore, that this is a verdict against evidence, is utterly untenable; it is not a verdict against evidence; it comes then to this, is it a verdict against the weight of evidence? Will your lordships establish such a rule as this? You never will interpose with the province of the jury: the Court will not say it was a verdict against the weight of evidence, the whole of the evidence did go to the jury, and upon that evidence the jury were competent to decide.

As to the second ground, that some of the jury were prejudiced against, and at enmity with the traverser.—Upon that ground I was told, that Mr. Curran laid down the position from a case in 5th Bacon which referred to 7th Modern, 57. where a challenge for favour is a good cause of setting aside a verdict. Supposing the case to be in point, yet in the present case the facts set forth in these affidavits would not constitute a good challenge to the poll, or to the array. This appears from the triors oath in Co. Lit. to determine whether you are bound to look to the words of this affidavit. Supposing, but not admitting, that the juryman did use the words mentioned six months before the trial, before he was sworn, it was not a good cause of challenge to the poll:—suppose that six months ago, the words used by a juryman were these, "Mr. Rowan has committed murder," when the juror came to be sworn on the trial four days ago, on a charge for a misdemeanor, the juror might say, my mind is now disabused, I was under an error when I did speak the words mentioned, but I never made any declarations upon the matter in issue. The trior's oath is, "to enquire whether the juror stands indifferent as to the matter in issue between the parties." Give me leave to say, that by the principles of law, the court will never send a cause back to be tried on account of the words spoken, as charged in this affidavit, unless the words spoken were such as in law would be a good legal challenge to favour.

The objection made to the sheriff, as returning officer, is for partiality. I was astonished when the traverser and the counsel came forward on a motion to set aside the verdict, because the defendant knew a fact, without stating when he came to the knowledge of that fact, which would be considered as a good legal challenge to the array. Is it because a man is proprietor of a newspaper, has a place in the revenue, and holds a commission in the militia, and he returns the jury—is that a good cause of challenge to the array? But, if it has any weight, when did Mr. Rowan come to the knowledge of those facts? Mr. Rowan could have made his objections before the trial; he had a knowledge of these facts, he knew that Mr. Giffard was proprietor of a newspaper called a government newspaper, had a place in the revenue, and held a commission in the militia. He could then, by an affidavit, have applied to the Court, stating that he could not have a fair trial. Your lordships would no doubt have postponed the trial.

I do not find in the notice, any mention made relative to any misdirection in the judge. The Court was unanimous, the whole matter was left to the jury, who were told that they were to judge of the credit they would give to the witnesses. Mr. Rowan's being at the meeting was a fact admitted; for on the cross-examination of Lyster it was pressed by the counsel, that the meeting consisted of the old volunteers, that their uniform was scarlet with different coloured facings. The fact of Mr. Rowan being at that meeting was proved by Morton, and he said he heard part of the paper read, as "Citizen soldiers, to arms!" There were near 200 persons at that meeting; that was the fact capable of disproof; if so, there has not been a single

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person produced to disprove it; that is as a volume of evidence of the truth.

I must say I rejoice at hearing this voluntary eulogium on his private character. That has nothing to do with applying to your discretion to set aside the verdict, which twelve men on their oaths have found. This motion ought not to have taken up ten minutes of your lordships' time. I think there is no ground to set aside the verdict.

Mr. *Prime Serjeant*, on the same side.—My lords, unless your lordships please, I have no desire to speak on this motion.

Court.—As you please;—use your own discretion.

Mr. *Prime Serjeant.*—My lords, I am counsel on the part of the Crown. This case is totally different from any case in the books. It is unnecessary to go into the detail of the evidence on which your lordships have, in fact, given your opinion. This is a motion made to set aside the verdict, where no evidence on the part of the defendant was adduced, but merely to discredit the witness produced on the part of the prosecution. They ask you to step out of your proper sphere, to judge of the credit of the witnesses, which is the province of the jury only to do. Where evidence has been adduced on both sides, the court may give their opinion to the jury, where the weight of evidence lies, but the jury are to determine as to the evidence and the credit they will give to it. I should apprehend there would be a clamour against the Court, if your lordships were to step off the bench into the jury box; because the Court has nothing to say to the credit of the witnesses. Were you to set aside this verdict, it would be taking away the opinion which twelve men on their oaths have formed, and which opinion the jury were bound by the law of the land to entertain. Therefore, on the ground of the verdict being contrary to evidence, or to the weight of evidence, in a case where there was no evidence on one side, there is not a man of common understanding that cannot say there is no ground for this motion.

It is said, that a juror was prejudiced against the traverser. If there was any contrariety of evidence, if there was any point on which that prejudice was to operate, if there was any scruple of evidence on one side, and prejudice was to give way to that scruple, there might be some weight in the objection, but here there was nothing to exercise his prejudice upon; there is therefore nothing in this objection as a ground to set the verdict aside. If five hundred witnesses had come forward to say, that Lyster is not to be believed upon his oath, it is not for the court to determine, but solely for the consideration of the jurors. The jury must determine whether Lyster was deserving of credit, or not; even if this objection had more weight than it has, the door is shut upon it, as against the traverser. The whole of the case went to the jury, and by their verdict it appears, that they did give credit to what was said by Lyster.—2 Atkins 319,* an issue was directed to try the validity of a deed, a witness swore to the execution of the bond at a certain time and place. Before the trial, the defendant in the action gave notice, he would impeach the credit of the witness, because he was abroad at the time of the alleged attestation to the deed. The case went to trial; there was a verdict on the evidence intended to be impeached. The party applied for a new trial, on affidavit, that the person was at a different place when the deed was alleged to have been executed. The Court† said they would not entertain the motion; he ought to have come prepared at the trial; we will not now give you an opportunity of bringing on your witnesses at a new trial.

With respect to the incredibility of Lyster, three witnesses were examined, and now your lordships are called upon to have an examination of Clarke, who appears to have been the hair-dresser of Lyster, and to let in the evidence of Mr. Coultry that Lyster does not deserve credit, after the examination of three witnesses to that point at the trial. Is the hesitation of Mr. Blake to impeach the character of Mr. Lyster? Or the positive assertion of any man? With respect to the public principles and character of witnesses, are they to be again inquired into, after they had gone through the fiery ordeal of a cross-examination? The Court would not permit it, after the witness had gone from the table. As to the general character of Lyster, it could not be gone into; evidence did not go to the point that he did deserve credit or not. An objection is made on account of the declaration of the juror; it was not a declaration of any opinion as to the matter in issue between the parties; such declarations therefore, could not be the ground of a challenge to the juror. 2 Hawkins 589.

If there be objections to a juror for partiality, it would be a ground of challenge, if accompanied with some particular instances of malice. The law makes ill will in a juror necessary to support the cause of challenge.

The charge against the sheriff is that he did impanel persons prejudiced, and at enmity against the defendant; but no particular prejudice is mentioned in the affidavit: Mr. Rowan does state he heard, and believes, that Mr. Giffard is conductor of a newspaper, called a government newspaper, &c. It is not said that Giffard's labours were successful, so as to have a single person on the jury who was unfairly prejudiced against defendant. Mr. Rowan has not sworn that the panel was absolutely composed of persons prejudiced against him, and such were chosen by the contrivance of Mr. Giffard: this was in the nature of a challenge to the array made par-

* Richards *v.* Symes.

† Lord Chancellor Hardwicke.

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tially, through the misconduct of the returning officer.

As to the incompetency, it is no ground to set aside the verdict; judge Grose says, "as to the question of competency of witnesses after trial, on a motion for a new trial, we are bound to reject such testimony now;" though a decision of competency peculiarly belongs to the Court,* 1 Durnford and East's Reports,

Locke says, that where a transaction is done in open day, where there is a possibility of contradicting it, not contradicting it is an admission of the fact. The observations mentioned will have a conclusive effect upon the mind of every man that hears me.

Adjourned to Friday, February the 7th, 1794.

Friday, February 7, 1794.

This day the Court proceeded to deliver their opinions *seriatim*.

The Earl of *Clonmell*, lord chief justice.—This is a motion made on behalf of the traverser, Archibald Hamilton Rowan, founded on a notice dated the third of February instant: and it is to set aside the verdict had against him in this cause; first, as being contrary to the justice of the case, as founded upon false evidence, and upon testimony not deserving of any credit. The second ground is, that some of the jury, who found the verdict, were prejudiced and at enmity with the traverser, and had declared that opinion before they were sworn upon the jury. The third ground is, because the sheriff who arrayed the panel was prejudiced against the defendant, and did array the panel so as to have him tried by an unfair jury.

The motion is stated to be founded upon six affidavits (of which I have copies, as have my brothers), stated to have been filed in this cause on the third of February, stating the nature of the case, and the reasons to be offered The motion was called on that day, and ordered to stand for the next day, when another ground of objection was made in the argument of the motion, or suggested by counsel, founded upon an observation stated from his memory, and unsupported by any oath; which he argued from, as if used by me in my charge to the jury; which I shall take notice of in its proper place. The affidavits to the first point in the notice, for I have endeavoured to class them so as to make them intelligible to every person; the affidavits, I say, to the credit of Lyster, are three:

1st. Clarke, the peruke-maker, who is of opinion that Lyster is not to be credited, as he believes, because in a suit in the court of conscience he, Lyster, perjured himself, by denying any acquaintance with him. The next is Coultry, a gentleman, who is of the same opinion, because, he says, Lyster perjured himself respecting a horse, and made a false affidavit in the name of his brother, whom he personated. Mr. Rowan, in one of his affidavits, for he has made two, also swears to the same points; that he believes, if these two persons had attended at the trial and been examined, this witness, Lyster, would have been totally discredited. That he swears is his belief, and I dare say, that impression is made upon his mind. And he adds farther, that from what he and his friends are daily hearing, he has no doubt of proving fully, that Lyster is deserving of no credit on his oath. These are to the first point.

Touching the second point in the notice, that is, the partiality or prejudice of the jury, or some of them, William Atkinson, a watchmaker, has made an affidavit, stating that in August last, on an occasion of some illumination, he had a conversation with Mr. Perrin, one of the jurors, respecting the volunteers; and that, with respect to the body in general, he spoke with acrimonious language; but particularly with respect to Hamilton Rowan; that he and Napper Tandy deserved to be hanged, or the country would never prosper, or to that effect; and Mr. Porter swears that, since the commencement of this prosecution, and before the trial, Mr. Perrin made use of some other expressions of the same sort; and Mr. Rowan swears, that he believes that some of the jurors did, previous to his trial, use expressions tending to asperse him, therefore they were heated against him, and had impressions in their minds unfavourable to him.

With respect to the third point in the notice, Mr. Rowan swears he heard and believes that sheriff Giffard, by whom, or by whose under-sheriff, the panel has been arrayed, is the conductor of a paper generally understood to be a government paper; that he has a lucrative office in the revenue, and is an officer in the Dublin militia; and that he is strongly prejudiced against him, and did labour to have such a panel arrayed, of such men as he knew were unfairly prejudiced against him.

These are the affidavits touching the three grounds stated in the traverser's notice. And as to the general merits, Mr. Rowan farther states, that he was present during the trial, and that he heard the evidence given by Lyster and Morton, charging him with having read, distributed, and published the paper in Pardon's school, and he swears that said testimony is utterly false. This he positively swears to; but he does not, however, deny any of the particular facts alleged in the information against him; as to that he is silent, and he undertakes to contradict no fact sworn in the evidence against him, but that which I have mentioned.

Thus stand the affidavits upon which this motion is grounded. It may not be amiss to

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* The words of Mr. Justice Grose are "As to the competency of the witnesses, it is not contended that in point of law we are bound to reject their testimony now," 1 T. R. 720, Turner *v.* Pearte.

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give a short history of this case, so far as we have judicial knowledge of it, in order to throw light upon the situation in which Mr. Rowan stood when his trial came on. He was arrested in consequence of the publication in question, above a year ago, and gave bail to that arrest, before Hilary 1793, viz. on the 20th of December, 1792 (I believe I am not mistaken but it is not very material), and the first information *ex officio*, for that is not the one on which he has been tried, was filed Hilary 1793; and now I speak of what passed in this court. On the sixth of May last, near nine months before his trial, in Easter term, which ended the thirteenth of May, Mr. Emmet moved to vacate his recognizance: Mr. Attorney General consented. Mr. Rowan and his bail appeared in court, and it was vacated, as he was ready to be tried upon that information: next was a motion on his behalf, by the recorder of the city of Dublin, to appoint a day for his trial in the term following; that motion was made in Trinity term, but the attorney-general applied to the Court, stating, that he had discovered an error in the information, and entered a *noli prosequi;* accordingly no trial was appointed. A new information was filed, and in Michaelmas term, several weeks after the city sheriffs were chosen, a trial at bar was moved for, and a day appointed in this present term (the twenty-ninth of January). On the eleventh of November last, the attorney-general moved to amend the information, by striking out one of the innuendos. The recorder appeared on behalf of Mr. Rowan, and said he was instructed not to oppose it. On the twenty-ninth of January the trial was called on, and no challenge having been taken either to the array or to the polls, either principal, or to the favour, the jury were sworn, and tried the cause. There were questions put to some of the jury touching their opinions, whether they had declared them or not, upon the matter in issue: one of them having said, after he was sworn, that he had given some opinion, he was withdrawn by consent: nor was it objected to by the crown lawyers; and these questions, which are said in the books to tend to reproach, were asked, and not objected to.

I must here invert the order of the points, to make it more clear, by following the order of time? the first objection then, is that stated by Mr. Rowan's affidavit to the sheriff's panel. He swears that Giffard, by whom, or by whose sub-sheriff, the panel was arrayed, is conductor of a newspaper, generally considered a government paper; that he has a lucrative office in the revenue, and is in the militia; and he believes he laboured to have such a panel arrayed, as were prejudiced against him. This I shall first consider in point of law and then of hardship, as addressed to the discretion of the Court: first then, would it have been a cause of challenge upon a demurrer? Clearly not; there is nothing certain nor ascertained in it; is it in law, a ground of challenge, that a man conducts, what is considered, a government newspaper? what is a government newspaper in legal estimation? A chimera of the brain. Is it meant to be insinuated that government, or the crown, to use a more proper expression, was at war with Mr. Rowan, or that any thing done on the part of government was to be injurious to him? I hope not; nor that any thing he did is to be injurious to government; I trust not. I put it the other way: suppose it had been objected, on the other side, that a juror had published a paper called Mr. Rowan's paper, or the Freeman's Journal, or any paper of that kind; would it be an objection that could have any weight? Undoubtedly not; no denomination of subjects, under that general name, can furnish an objection even to the prosecution.

Then again it is stated that he held an office under government, and was in the militia. If this were to be a disqualification, then mark the consequence: every sheriff in the thirty-two counties of Ireland at large, would be disqualified to return a panel; which amounts to this absurdity, that the very grant which qualifies, by law, every sheriff to make returns, does *ipso facto* disqualify him, because the office of sheriff is under the crown: and if holding an office under the crown disqualify a man, it involves this palpable absurdity, that the very grant, which makes him, disqualifies him from acting. But it is still weaker with respect to the sheriff of Dublin, for that sheriff is not appointed immediately by the crown, but by election; however I have exposed this objection upon the other ground I put it, that it would be absurd that the very office should be a direct disqualification from the fulfilling of the most important duty of it.

But then Mr. Rowan believes him to be prejudiced against him, and that he laboured to return a prejudiced panel. Would his belief be evidence of favour? Surely not; but the law, not grounded on weak suspicions, disregards such conjectures, and rejects the surmises of interested parties. Our law, also, appoints a proper time, when even legal objections can only be received. The time for challenging the array, is before any of the jury are sworn, and for challenging the polls, when they come to the book; but if the party accused takes his chance with the jury, he afterwards comes too late to object to them; so is the language of the law, and the manifest principle of justice. But to take it upon the point of hardship, which has been insisted upon, there appears to be none; he had three months notice, and near two terms had elapsed, during which time he never expressed any discontent against the sheriff, nor suggested to the Court, by affidavit or otherwise, that the sheriff was partial, or adverse to him. He and his attorney must both have known that this man was sheriff, and yet they never applied to have the trial postponed, or the pro-

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cess directed to any other officer; and even in his affidavit, made since the trial, which is unsupported by any other, he does not state that this cause of complaint came to his knowledge subsequent to the trial; indeed the reason of his belief speaks the contrary, namely, his being the conductor of, what is called, a government paper, an officer in the militia, and in the revenue; which facts, it is presumable, he could not have been a stranger to at the time of the trial.

Next comes that objection to the juror Perrin, in answer to which, what I have already said, respecting time, that the challenge should have been made before the juror was sworn, and if a challenge had been made, there is not enough in the affidavit, even supposing the facts true, to support it. It is not sworn that he made any declaration respecting the matter in issue, nor in malice, to the defendant. 2 Hawk. P. C. 589, chap. 43, sec. 28, cited by Mr. Prime Serjeant. The trior's oath illustrates and is applicable, it is to try, whether the jurors are indifferent upon the matter in issue. But I still resort to what I said before, the objection now comes too late.

A third objection goes to vitiate the verdict as unjust, founded upon false, on incredible testimony. This is a question of great extent, and of great consequence to the administration of criminal law: the object desired is, to be let in, it is said, to impeach farther by new witnesses, the credit of persons already attempted to be discredited on the trial. If that were yielded to, no verdicts for misdemeanors against the traverser could stand, as long as a man could be found to swear that the witness did not deserve credit. It would be a direct and general invitation to such perjury as could not be punished by an indictment, and would tend to withhold a part of that evidence by which the witness on the first trial might be impeached, and hold out an invitation to persons to offer themselves after the trial, to discredit the witnesses with safety, perhaps profit to themselves. It would wound the constitution deeply, by transferring the jurisdiction of the jury to the Court, and would totally overturn the trial by jury. It is admitted by the defendant's counsel, that no case has been found to authorize it, and the case cited 7 Mod. 57, has been searched for, and cannot be found.* I have found a case in p. 54, which, so far as it goes, is against him; it would be strange and unjust if it could; but there are other cases, which go much more strongly against him, where it has been attempted to set aside the verdict where the witness has been incompetent, of which the Court, and not the jury, are by law the judges. Hyon and Ballard cited 7 Mod. 54, referred to 5 Bacon, was the case of a nonsuit, and the Court refused to set it aside, although the deed, upon which the defendant relied, was sworn to be a forgery; and Turner and Pearte 1 Term Rep. 717 is much stronger than this, against what is applied for. An application was made for a new trial upon affidavit, that five of the witnesses produced by the party, who obtained a verdict, were incompetent, and ought not to be examined at all; there is an affidavit in answer, that the party who called these witnesses did not know that there was any objection to them. Ashhurst J. said they came too late after trial. Now there their evidence was to be considered as a nullity, that they never should have been examined at all; not what credit they deserved, whether more or less, which the jury are judges of, not the Court. And in that case, where the matter was of law within the power of the judges, whether competent or not, though it was sworn that five of them were interested, and incompetent of course, yet the Court would not hear the objection because it came too late; and Mr. Justice Buller, a very great lawyer, says "there has been no instance of this Court's granting a new trial, on an allegation, that some of the witnesses examined were interested, and I should be very sorry to make the first precedent." "There never yet has been a case in which the party has been permitted after trial to avail himself of any objection which was not made at the time of the examination."* Mr. Justice Grose, in the same case, says, "In the first place it does not clearly appear, that the plaintiffs did not know of the objection at the time of the trial. It is sworn very loosely; and if they knew of it, at that time, that would be a decisive reason for refusing to allow it now."† And now I shall apply this opinion, in this case, to the last objection made by counsel, as well as to what I have already said; but there it was said by Mr. Justice Grose, that the objection to the witness might be an ingredient if the party applying had merits. In 2 Term Rep. 113 in the case of Vernon and others, the assignees of Tyler v. Hankey, the Court would not grant a new trial, to let the party into a defence, of which he was apprized at the first trial.

I have cited these cases to show, that even

* See the note in p. 1135 of this Volume. But the reader on reference to Mr. Curran's argument, will observe that 7 Mod. 57, was cited by Mr. Curran to show that "where there was good ground of challenge to a juror not known at the trial, it was sufficient cause for setting aside the verdict," which does not seem to be the question here contemplated by the learned judge.

* See the note in p. 1148 of this case.

† "However," added Mr. Justice Grose, "although no new trial has ever been granted on such an objection, I do not know but that, if a proper affidavit were made, it might have some influence on my mind, where the party applying has merits; but here the weight of evidence is in favour of the verdict."

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in case of incompetency, where the witness ought not to be permitted to stand upon the table, or open his lips,—there after trial, the Court would not set aside a verdict upon that ground. But see what Mr. Rowan's affidavit is, even if it could be listened to as to his own innocence; he says, he heard the evidence of Lyster and Morton, charging him with having read, distributed, and published the paper in the information, in Cope-street, at Pardon's fencing school, and positively swears, that their testimony was utterly false. Now first I say, that no trial or verdict was ever set aside, in a case like this, upon such an affidavit. It is at best the oath of the party to his own innocence; but it is not so much; here he does not deny the facts, not one of them; and let me take the words "utterly false" in every sense they convey; if he means false in every thing, then he has surely made an affidavit stating that he has heard the evidence of Lyster and Morton, charging him with having read, distributed, and published the paper, that, he says, is utterly false. To use the expression of one of the judges in that case I cited, it is a great deal too loose; the party swearing for himself does not even contradict Lyster: he does not contradict any one of these facts specifically. I will ask, could he be found guilty of perjury, upon such loose swearing, supposing it to be false? I should think not But it is material to another part, that this is the only part of their testimony which he has contradicted, and he might, when he undertook to contradict any of the facts, have contradicted the whole, or any other part, as far as the truth would justify him, at least upon hearsay or belief; he has not done that.

But it is urged from the bar, upon a point not stated in the notice, but from the recollection of one of the counsel, unto which no affidavit refers, that I assumed to the jury the fact of a meeting, at Cope-street, of 150 men, at which Mr. Rowan was present, which he has not contradicted: upon that I have built a strong inference of guilt, upon the presumption arising from their silence. Here I will state, as accurately as I can, what I did say; what I did not say, which has been imputed to me; in which I have the concurrence of my brethren as to their recollection. I told the jury, and meant to have told them, as far as my recollection serves me, that the observation made by one of the prosecutors counsel, indeed by two of them, first Mr. Attorney-general, and afterwards Mr. Prime-serjeant, struck me as obvious and strong, viz. that the defendant did not contradict by a single witness, any one fact sworn to against him; I then stated some of the leading facts sworn to, those facts, as I thought, easiest to be contradicted, and those facts which brought with them, if they were true, the means of defence; for example, that there was a meeting in open day at a public fencing school, where from one to two hundred persons, many of them in volunteer uniforms, were sworn to have been present; this fact, I told them, was sworn to by two witnesses, and if the jury believed there was a meeting of the kind and number sworn to, it was to my mind, a volume of evidence; I say so still, that the defendant did not produce any of the persons to contradict any of these facts, or prove that he did not read, publish or disperse the libel in question.

He has now made an affidavit, and see the power of perverting fancy: Gentlemen argue for an hour upon affidavits, because the facts sworn to are not contradicted, and they insist upon these uncontradicted facts as truths; these six affidavits, say the counsel, are strong and uncontradicted, and therefore the facts in them must be assumed; but on the other hand Mr. Rowan has made an affidavit, and he has not to this hour, ventured to contradict all the facts proved against him on the trial; and shall we not be at liberty in our turn, to assume upon this motion that he cannot contradict them? He swears he heard the evidence: he has not ventured to contradict any of those facts; he has not sworn that there was not a meeting of so many persons, nor any thing of that nature.

Now I will state what the evidence was: Lyster swore, that on the 16th December, 1792, he was at Pardon's fencing school, in Cope-street, in the city of Dublin; that there was from one to two hundred persons present in scarlet uniforms; that Napper Tandy, Hamilton Rowan, and others, were sitting at a table; the witness went in from curiosity, and he was told by Mr. Rowan, to the best of his knowledge, that no man in coloured clothes could be admitted there. He does not contradict that conversation with this man—that there was a gallery, to which he might go, that is not contradicted;—that Hamilton Rowan was very busy, and walked about with papers in his hand; these facts, let it be remembered too, that he swore upon belief and vague recollection to the best of his knowledge. I told the jury this was not evidence, and should be rejected; but he does not now contradict any of those facts. Then he goes to the publication. So it was with respect to Morton, what did I tell the jury? after stating the act of parliament which declares, if not gives, a power to the jury, to find upon the whole matter, which I told them they had a right to do; that the credit of the witnesses was with them and not with me; that they were to find upon the whole matter in issue, and that they were the judges of the fact, and the intention. Did I assume any fact? No; that fact as well as every other, was to be determined upon belief or disbelief of the witnesses. Such may not have been my identical words, but such must have been my manifest meaning, and the Court approved of what I said. And I say now with certainty, I never said to the jury, that the defendant's silence upon those facts was to supply any

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defect in the prosecutor's evidence; I disclaim it. I did not assume the fact, nor did I mean or direct that the jury should take it for granted, that there was any meeting whatsoever.

These facts were sworn to, like the others, by two witnesses, except the fact of publication, which was the criminal fact, and which was sworn to by one witness only; and so I stated to the jury, that Lyster whose credit was attacked, if they did not believe, I told them, they ought to acquit. I then left the whole of the facts and credit of the witnesses and the intention of the paper (if they believed the defendant published it) to the jury, who were, I told them, to determine upon the whole matter.

But suppose the fact otherwise, and as favourable to the defendant as his counsel wished to have it taken, it cannot avail upon this motion either in law, or justice, or fact, or legal discretion First it makes no part of the notice: next it should have been objected to below: it was the duty of the gentleman who urged it now, and he was not remiss, to have taken notice of it at the time: thirdly, it falls under the general rule that any objection which could have been made below, and contradicted or refuted by evidence, cannot afterwards be taken advantage of. It might have been instantly answered, qualified, contradicted, or adhered to; but in truth, the general course of the defence rejected all idea of disproof; it was to justify that paper; and standing upon that ground, it scorned to deny the publication, I take for granted; for no attempt was made to contradict a single fact sworn to by one or other of those witnesses.

But, upon this motion, how is it to affect our discretion? Does it appear now that any of those facts are contradicted? What are we then to judge of? Is it that manifest injustice has been done, which is the principle that governs motions for new trials? Is there any thing like a new substantive defence set up, which has not been made before? Is it said by any of the persons who have made affidavits here, or by the traverser himself, that he can by witnesses contradict these facts? Not a word of any such thing; and if we are to draw the same inference from the silence of the affidavits, which was drawn from not answering them in the arguments of the case, see how it stands; what he has not contradicted he has admitted;—but I have no occasion for that

This motion is addressed to the discretion of the Court; that is to the Court bound by the curb of legal discretion, for we cannot indulge our feelings, be they what they may, and legal discretion is as well ascertained as any express point of law; adjudications are evidence—we are obliged to follow these, as evidence of what the law is. It is said there is an analogy respecting the granting of new trials, between cases of misdemeanors and civil cases; and yet, in order to determine this motion, as the defendant's counsel desire, we must abandon that very ground of analogy: the great principle is that, and that alone, which is recognised in Bright and Enyon, 1 Bur. 390, alluded to and adopted in many others, from the case in Styles to this hour—has substantial justice been done? Has the party who requires a new trial been manifestly injured? Upon what ground is it we are to presume an injury done to the traverser? He has had fourteen months to prepare himself. In trials for their lives, men have often not more than one, and very seldom more than six months; he had fourteen;—they, though confined and in prison, are supposed to have time to defend themselves in felonies of death—here the party at large, complains, invites, provokes the trial. Has he been surprised? Has he wanted the aid of counsel? Has he been unattended with friends and followers? Look at the history of the trial. What new defence has he alleged? Has he, even himself, contradicted the facts charged against him? No: from what then are we to infer, that injustice has been done to him? It was said that whether by right or by courtesy, by indulgence, or connivance, persons in his situation find a way to the matter charged against them. See how that stands: there may be very good and sufficient and proper reasons, not to disclose the name of the party swearing the information; to protect him from violence or corruption of the party sworn against. How is this case? The very thing, which most deserves to be concealed, was made known to him and his agent; for the person who is to swear against him, is disclosed to them, they trace him to the place of his birth, they inquire into his family and connexions, they follow him through his private bargains and engagements, they become acquainted with his indiscreet, and perhaps immoral conduct; shall we presume, that this man, whose name was then at the foot of the examination, was unknown to him? Where are we to look for that substantial justice, by which he can protect himself on another trial? I find it no where; I find it not in the principle of the criminal law; I find it not in adjudged cases; I find it not in the sound discretion of the Court. He has had every possible indulgence, he has had every latitude of defence by justification (at the least as far as it would go), by insinuation, by address,—I believe, and hope he has had; and I trust, in this free country, I am not mistaken when I suffer counsel to go as large, and take as wide a range as decent language will admit, to convey every sentiment which may assist his client: can we say the merits are not tried? Is it said the merits are in his favour? But see, as I said before, how perverting imagination can change the most common maxim: is it alleged that the juror, who is complained of, exerted himself to influence the others? That this was a case of a struggle

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amongst the jury? Oh no; but the case was so clear, that there was not a minute a man in the deliberation. Then where there is not a struggle, and it is not said that he did act partially, or work upon the other eleven, or that by his unjust means the verdict was obtained; yet we are desired to step out of our way—to go unconstitutionally into the jury box, and say that they should not have given credit to the witnesses, where the constitution gives them a power to decide. I am therefore clearly of opinion, that the verdict cannot, upon any principle of law or justice, be disturbed.

Mr. Justice *Boyd*. This is an application to set aside a verdict upon an information. My lord Clonmell has stated the affidavits so much at large, that it is not necessary for me to take up much time.

The counsel in the argument rested the case,

1st. Upon the declaration of a juror against Mr. Rowan.

2d. Upon the partiality of the sheriff.

3dly. The incredibility of Lyster the witness, and

Lastly. The misdirection of the Court.

As to the declaration of the juror, there are two affidavits which state it, but it was upon a common subject; it had no relation whatever to the matter in issue; it does not appear that this declaration was malicious, and the authority in Hawkins establishes that a declaration to prevent a man from being a juror, must be pertinent to the matter in issue, and malicious. The declaration of Perrin, in my opinion, if laid before the Court in proper time, was not a ground of challenge in point of law; and I must conclude it now comes too late; it was an objection merely to the favour; it is a matter *in pais*, to be determined by triors appointed; and here the Court are desired to assume the province of a jury, and try it here. But I think it now comes too late. In this case it does not appear, that justice has not been done, which is the true ground of setting aside verdicts. It is no where suggested, that the misconduct of this juror was the cause by which the verdict was obtained. The shortness of the time that the jury were withdrawn, is a strong ground to presume they were not persuaded by him.

2dly. As to the charge of partiality in the sheriff, Mr. Rowan in his affidavit speaks only as to belief; he does not charge it positively. The same observation I have already mentioned, goes to this point; there was not a challenge taken to the array, on the ground of partiality in the returning officer. This being an application to the discretion of the Court to set aside the verdict, the question is, has justice not been done? The charge is general upon belief; and yet the affidavit does not say, that the sheriff did procure a partial jury, or that he could procure it; and in this case, as in every other, the not making objections at the trial, is a strong ground to prevent the Court from interfering, especially, where the traverser, in no part of his affidavit, swears he is not guilty, or has a good cause of defence to make upon a new trial, which, in my opinion, are two material grounds in granting new trials.

As to the incredibility of Lyster's evidence, I must observe that evidence was offered at the trial, which shows to demonstration, that the defendant was prepared; he produced three witnesses against Lyster, for he did produce Blake, Smith, and Hatchell, their evidence and Lyster and Morton, all went up to the jury; the jury have found their verdict; and this application is made to the discretion of the Court, to set that verdict aside and to grant a new trial, to let in farther evidence in support of that which the jury did not credit, that is, of the witnesses who charge that Lyster ought not to be believed on his oath. There is no instance in the books to be met with to warrant such a proceeding.——There are instances, where a court has refused to set aside a verdict, on the ground of incompetency of the witnesses on the former trial, because the defendant had taken a chance of a verdict in his favour. Suppose a new trial granted, what would be the consequence? Lyster would be examined before another jury, with the suspicion of the court of King's-bench falling upon him, that he was an incredible witness.

As to the misdirection of the judge;—I attended to every word, as I always do, to what falls from his lordship; I recollect the substance of the charge, it had my entire approbation, it was, that the defendant did not contradict, by a single witness, any one fact charged against him. His lordship stated several of the facts, which he thought might be disproved, if not true; the meeting was at noon-day, in a public room, and 150 persons present, in uniform; the evidence of Lyster was confirmed by Morton, but Morton had not the paper, but heard the expression, "citizen soldiers, to arms." On the whole the evidence went to the jury, but there was only one witness to the fact of publication. If the jury believed there was any meeting of the kind and number that was so mentioned, the defendant did not produce a witness to contradict one of the facts so alleged. His lordship did not say, that the defendant's silence was to supply the defects in the prosecutor's evidence. All the facts were left to the jury by the Court, and each of us made such observations as occurred to him. By the verdict the jury, it appears, did give credit to the witnesses, and did believe there was a meeting. The description given of the meeting was, that there were 150 persons present. These were strong circumstances to go to the jury. If you believe there was a meeting, not one of those persons has been brought forward to contradict these assertions. I know of no judicial determination of any case

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similar to the present. In this case, the traverser does not swear he is not guilty. If this were a civil case, here is not good ground for a demurrer. On the whole, I concur with lord Clonmell, that this verdict ought not to be impeached

Mr. Justice *Downes*. This is an application to set aside a verdict of guilty in a criminal case, on several affidavits. I hope that it will be recollected, that the affidavits have been read without opposition from the counsel for the crown, and that the Court have not given any opinion whether after a verdict of guilty in a criminal case, the defendant has a right to have such affidavits read, as have been produced in this case; but as they have been read, I shall examine the grounds of the motion, which is founded on them.

1st. The verdict is sought to be set aside (according to the notice) on this ground, that it is contrary to justice, founded on false testimony not deserving any credit; those are the words of the notice.

This is a direct appeal from the jury to the Court, in a matter solely within the province of the jury; the Court cannot decide on the truth or falsehood of evidence, and yet we are desired to set aside this verdict on the ground that the evidence was false, and that the jury ought not to have believed the witnesses.

No fact sworn to by either of the witnesses for the crown, on the trial, was then contradicted by evidence, no new witness is discovered who can, in case of a new trial, contradict any fact sworn by either of those witnesses.

The truth of their testimony as given on the trial, is even now contradicted only by the affidavit of the defendant; the Court can make no distinction between defendants, and no instance is, or I believe can be shown, where the oath of a person found guilty, contradicting the witnesses examined against him on the trial, has been allowed to shake the verdict that convicted him: and if it should be suffered to do so, I believe few convictions would stand.

But it is said, that if the verdict should be set aside, new light will be let in upon the case by the evidence disclosed in these affidavits.

But what is the new light that is suggested? not upon the merits of the case; it is not alleged that any new ground of defence is discovered; no affidavit of any of the new witnesses says one word of the matter in issue in the cause, and the defendant himself does not in his affidavit state, that if this verdict shall be set aside, he can at a future trial produce any evidence, as to the fact with which he is charged.

But it is said, that new light can be thrown upon the defect of credit in Lyster, the principal witness for the crown.

Not by showing that any fact he swore was false, the best mode of discrediting a witness; it is not suggested that the defendant can produce any evidence to that effect. But two witnesses can be produced, who will swear, that they think he ought not to be believed; and to let in these opinions, we are desired to set aside the verdict; I say, to let in these opinions, for the particular facts of perjury, which they state, could not be suffered to be proved at that trial.

And I think it is at least doubtful, whether if they had appeared on the trial, which has been had, they could (from any thing appearing on their affidavits) have given any evidence at all; for neither of them speaks as to Lyster's general character; whether that be such as not to deserve credit in a court of justice, and it is with respect to his general character only, that a witness can be prepared to defend himself, and not against the opinion of an individual.

But if it were admitted, that a verdict might be set aside, where a party is surprised by the production of a suspicious witness, who he had no reason to suppose would be examined against him; yet this is not that case; here it is evident, that there was no such surprise; the defendant knew before trial that Lyster was his prosecutor, he was prepared at the trial to impeach his credit; he examined three witnesses for that purpose, the jury have weighed and decided upon that credit; and can we say, after the credit of this witness has been examined by the jury, that particular facts, sworn by him, in some of which he was corroborated by another witness, and contradicted by none, ought not to be believed, because persons come forward and state that they would not give him credit on his oath? It would in my apprehension be a most mischievous decision, if the Court were to do so. And I know not how any verdict could ever stand, if it were sufficient ground to set it aside, that new witnesses come and tell us, that the former witnesses ought not to be believed.

My lord has cited cases on this point, which I need not take up time in again going over.

As to the declaration sworn to have been made by a juror—

Mr. Curran cited a case, which cannot be found in the book referred to; but supposing it has been decided, that a cause of challenge not known at the trial, is sufficient to set aside a verdict, I cannot feel, that mere general declarations, though severe ones, relative to the defendant's political conduct, made long before the trial, upon a conversation, no way concerning the matter in issue, would have been sufficient cause for a challenge. I cannot think that such general declarations could form any ground of challenge, for if they would, suppose a rebellion in the country, no loyal subject could be a juror on the trial of any of the principal persons concerned in it.

As to the objection grounded on the conduct of the sheriff, it is enough to say, that no particular act of partiality is stated, and that

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his having endeavoured to procure a prejudiced jury is stated, only on belief;—no act of the sheriff is stated upon which that belief is founded; nor whether it was formed before the trial or not; and if the defendant had apprehended that the sheriff would misconduct himself, he ought to have taken the proper steps to have the jury process directed to another officer, which could easily have been done if sufficient grounds existed.

These objections—to the witnesses, the juror and the sheriff, are all the grounds upon which the verdict is impeached by the notice served on the part of the defendant; and, in my mind, it would be a severe and dangerous injury to the trial by jury, if we were to disturb this verdict on any or all of those grounds.

But an objection is taken to my lord's charge to the jury, and it is contended that there has been a misdirection; that an illegal charge has been given, and that, on that account, the verdict ought to be set aside.

When that charge was given to the jury, I thought it a clear, able, fair and legal charge. —I think so still.

I attended to it minutely; as it was my duty to do: if I had perceived any assumption of any fact, any observation in my opinion unwarranted by law, I should have pointed it out to his lordship on the spot;—and from the manner in which my humble assistance has been at all times received by him, I am confident that I should have had his thanks for so doing.

I saw no reason to object to any part of the charge when it was delivered, and I expressly concurred in it.

When, upon the recollection of counsel, without affidavit, of the words of the charge, my lord was stated to have used expressions to the jury, which conveyed to them—absolutely that there was a meeting of a great number of persons—I had no recollection of the fact of a meeting having been assumed in the charge.

And, when it was contended at the bar, that it was put to the jury in words amounting to this position or effect, that the silence of the defendant would establish a charge, or supply evidence not fully proving the case, I must say, that the impression made on my mind by the charge excited no such idea. I conceived the charge to have left the fact of the existence of a meeting, and the other facts of the case, fairly to the jury, upon the evidence given by the prosecutor's witnesses, without assuming the truth of any of those facts, but leaving the credit of the witnesses to the jury. I requested his lordship to give me, in writing, his charge, as to this part of the case, according to his recollection of it, and he gave it to me as stated by him to-day —and the substance and effect of it corresponded with my own recollection.

As to the observation objected to, that the silence of the defendant was strong evidence, which was the meaning conveyed by the words "a volume of evidence:" I think the observation justifiable, prefaced, as it is by my lord stated to have been, and from whose statement I must take it, in this manner—"if the jury should believe there was a meeting of the kind and number sworn to by the two witnesses, the not producing, any person who was at that meeting to contradict any of the particular facts sworn by them, or to prove that he did not publish the libel in the manner sworn." Is this a violation of the maxim that no man is bound to accuse himself? Does this amount to the position that the silence of the defendant will prove a charge? It will not; it would be monstrous if it were so held. If no charge is proved, he may be for ever silent; but where one witness has fully proved the fact of publication, if believed; where he stated that fact, attended with a number of circumstances, easy to be contradicted if false; where many of those circumstances are corroborated by the evidence of another witness, who swore he was at such a meeting as Lyster described;—Is it not a fair observation in a judge to say (where no manner of evidence to contradict any of those facts is given), that if the jury believe that there was such a meeting as sworn, the silence of the defendant is strong evidence—strong evidence—that the facts which are sworn to have passed at that meeting, and which might, if false, be readily contradicted—were truly sworn.

If no case is made out in evidence by the prosecutor, the defendant may be safely silent, and the jury ought to be told by the judge, that no case is proved: but if a case is sworn to, and fully by the prosecutor, if the defendant chooses to be silent as to the facts, and to rest on the discredit of the witnesses against him, he runs the risk of their being believed; and if the account they give is such, and circumstances sworn to by them strike the jury to be such, as that they might be easily answered and contradicted if false, then if no answer is given, the jury may be well warranted to believe them; and a charge of a judge, fully and strongly putting such case before the jury, and with such an observation, would not in my mind be reprehensible.

Suppose the only witness in a case of felony should be an approver, a witness whose credit is reduced to the lowest point of degradation; he may state such circumstances, as from the facility of contradicting them, may force credit from a jury; and would it be unjust or illegal for the Court to observe, that where the facts sworn to, were easy to be contradicted if false, it was a strong circumstance against the prisoner, that he had produced no evidence to contradict them; that such conduct furnished evidence to strengthen the credit of the witness?

This objection was made for the first time, when the motion came on to be argued; it is not stated in the notice, that there was any

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misdirection; from whence it might be conjectured, that it had not struck the counsel, then, that there was any ground in the charge on which the verdict could be attacked. Two very able counsel spoke to the motion for the defendant, without touching upon any objection to the charge. And the learned gentleman, who took the objection, had immediately after the verdict came in, informed the Court that his client would (if the Court thought fit) then receive the sentence of the Court. It is hard to imagine, that if that counsel, the only one who attacked the charge, then thought that there was a misdirection in the Court, which would have entitled his client to set aside the verdict,—it is hard, I say, to imagine that he would have informed the Court, that his client was willing to appear, and receive judgment, which if the Court had then pronounced, he must know, would have shut his mouth for ever from taking any advantage of any misdirection of the Court, if any had existed.

I think there has been no misdirection, and therefore, and because I think the other grounds stated are insufficient to set aside the verdict, I think the motion must be refused.

Mr. *Attorney General.*—My lords, it is my duty to apply to the Court to pronounce sentence upon the traverser.

Mr. Justice *Boyd.*—Archibald Hamilton Rowan; you have been found guilty by a jury of your country, of publishing a false, wicked, and seditious libel, of and concerning the government and constitution of this kingdom, with an intent to excite and diffuse among the subjects, discontents, jealousies, and suspicions of the king and his government; to raise dangerous seditions and tumults; to throw the government of this country into scandal and disgrace; to excite the people to make alterations in the government, and to overawe and to intimidate the legislature by an armed force.

This charge was exhibited in an information filed against you by his majesty's attorney-general, and the whole matter was, as it ought to be, left to the jury, who have found, first, that the instrument set forth is a libel; —secondly, that you did publish it;—thirdly, that you published it with the intentions stated in the information.

The libel is contained in a printed paper, intituled, "An Address from the Society of United Irishmen at Dublin, to the Volunteers of Ireland." This publication followed and animadverted upon a proclamation published by order of the lord lieutenant and council, to which you have attributed an intention to create internal commotion, to shake the public credit, and to blast the volunteer honour. This proclamation has had the sanction of both houses of parliament. At this period, and it is upon the records of parliament, the great body of the Roman Catholics were seeking relief; they presented dutiful addresses, stating they were anxious to be liberated from restraints they laboured under; —but you addressed them to take up arms, and by force to obtain their measures; they were palpably to be made a dupe to your designs, because you say you will proceed to the accomplishment of your beloved principles—UNIVERSAL EMANCIPATION and REPRESENTATIVE LEGISLATURE.—Seduction, calumny, and terror are the means by which you intend to effect them. The volunteers are to become instruments in your hands, and despairing to seduce the army, you calumniate them with the opprobious epithet of mercenaries. You say seduction made them soldiers, but nature made them men. You stigmatize the legal establishments for the preservation of order, as a notorious police, and the militia, the pride and the strength of the kingdom, are to be looked upon as suspicious. You called upon the people to arm—all are summoned to arms to introduce a wild system of anarchy, such as now involves France in the horrors of civil war, and deluges the country with blood.

It is happy for you, and those who were to have been your instruments, that they did not obey you. It is happy for you that this insidious summons to arms was not observed, if it had been and the people with force of arms had attempted to make alterations in the constitution of this country, every man concerned would have been guilty of high treason.

The sentence of the Court is—

Mr. *Hamilton Rowan.*—My lords, I am perfectly sensible of the forbearance of the Court in this trial, and particularly during the arrangement of a long affidavit; I hope therefore that I shall be allowed a few words, either in mitigation, or in whatever other character I may have a right to address the court, before they pronounce their sentence. (Mr. Justice Boyd desired Mr. Hamilton Rowan to proceed.) I need not apologise, my lords, for any little errors I may fall into, for I am known to be a man unlearned in the forms of these courts, but I shall as plainly, and as shortly as I can, state every thing as it struck my ear and understanding.

My lord, if I understood rightly, the three heads under which this matter has been argued are, the evidence, the jury, and the sheriff; I did hope that the objections taken to these by my counsel would have set aside the verdict.

There are some parts concerning the evidence, in which the Court, as well as the prosecutor, seem to have been mistaken. They have taken it for granted, that I knew the person who was to be brought to give evidence against me; and it was asserted by the bench, that I had ransacked Connaught for evidence against the character of Lyster. I do not know what impression this might have made upon some of the jury; it was indeed corrected at the time, but it was not sufficiently done away; it is plain it was not for Mr. Solicitor General, who was present the whole time,

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hose duty it is, and whose inclination he eclared it to be, to listen with attention and eference to every thing which fell from the ench, has since repeated the same assertion.

certainly did suspect, that the person who as now been brought forward, was the man ho had lodged the informations against me; ut I hoped that my trial had been postponed y the prosecutor, from a knowledge of his haracter, and a wish to procure more credible estimony, as to the fact of the distribution.

had certainly every reason to suppose this ad been the case, as I knew that several of ny friends, men who belong to the old volunteer corps, and who probably were at that neeting, if there were any such assembly, ad been summoned on this trial by the prosecutor. They attended in the Court, but vere never called upon; perhaps I am wrong o mention this, but had they been called pon, I know the charge exhibited against me y Mr Lyster would have fallen to the ground, I had been certain of an acquittal.

As to the jury, my lord, I can conceive some f them to have been very honourable men, nd yet prejudiced, much prejudiced; I did ot conceive however, that any man would ave gone into that box, taking an oath to try ne impartially, yet having publicly declared n enmity against me. It was certainly very ngenious in one of the crown lawyers to suppose, that the jurors who used those expresions, might have thought at that time, that I ad been guilty of murder, or some heinous rime, and had been disabused before the trial ame on, but, without recurring to my general haracter, that suggestion, in my opinion, alls to the ground, for the conversation was n the subject of the volunteers; and it is for n address to the volunteers that I am now rosecuted; I certainly did wish for a revival f the volunteers, and I did attempt it: I hought they had already done honour to the ation, that they had been acknowledged onourable by the legislature; this I did ttempt, if this be a crime. It has been said y one of my prosecutors, that it was not with he jurors, but with their verdict that I was iscontented; I ask, what was my conduct hen the verdict was delivered in? Did that rove a mere discontent against the verdict? o. I thought it a severe one, unfounded in vidence, but I called for the sentence of the ourt; I was ready to abide by that sentence; nd it was not until my return to Newgate, hen I found my prison doors crowded with tter strangers to me, each recapitulating intances of declared partiality in the jurors, nd further acts of infamy in the evidence, hat I had thoughts of setting aside their erdict.

As to the sheriff, and the circumstance of ny not having made some application to the ourt prior to my affidavit of the day before esterday, and the question of when I beame acquainted with his partiality, the fact s, that it was with the utmost reluctance I now stood forward, to accuse a man of what must, in my opinion, render him infamous. I well knew that in every public act of my life since I came to this country, trifling as they were, I had been calumniated by him; but that was in his province of editor; he is now become the representative of the executive power—is he not?—I thought the station he now holds, would give him some pride, instil some spark of honour into him, and that relinquishing that conduct and those proceedings which were calculated to procure a sale for his journal, in some corners of the city, he would consider himself bound to return a jury which should be unsuspected.

Was it likely that he did not know of these declarations of the jurors? It is not probable. Before the recognizances were given up, while I was out on bail, the death of a near relation obliged me to go to England, where my attendance was necessary for the arrangement of my private affairs; I returned however at great inconvenience, and some pecuniary loss, to attend this Court; yet, during my absence, I was branded by this man as a fugitive; and here permit me to observe, that your lordship in your recapitulation of the events of this trial, omitted to mention the motion made for me by my friend, Mr. Blennerhasset, that the examinations against me should be forthwith returned; day after day I had attended the Court; the little inquiry I could make informed me that no such examination had gone up to the grand jury, I believe it was on the last day of the term, or it was not motion day, or something of that kind, and there was no order of the Court made.

It had been suggested to me by some of my friends, when notice for this trial was served upon me, that I ought to attempt to put it off; but what would have been the consequence? Your lordship has said that I had called for, that I had provoked this trial, that I had complained it was not brought forward; it is true I did call for, I did provoke this trial; I have complained that it was not brought forward. I wished to be brought to trial, but I did wish also to be tried by an impartial jury, summoned by an impartial man; such I thought the sheriff of that time* to be, although I was not one of his acquaintance. The very words your lordship used, show why I did not put off my trial. What would then have been said by that journal, which is perpetually stigmatizing my conduct, and villifying my private character? It would have repeated, what was said in another country, that I was "an infamous wretch, who had fled from the punishment that awaited me."† But still those friends urged me to put off this

* Henry Hutton, esq.

† Vide the lord advocate's speech on Mr. Muir's trial, printed by Robertson, Edinburgh. *Orig. Ed.* See Muir's Case in Vol. XXIII of this Collection.

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trial: the sheriff is your enemy—No—I have called for trial, I will trust to his oath of office: though, as editor of a newspaper, he has acted thus, yet when bound by oath "to return panels of persons able and sufficient, and not suspected or procured, and to do justice impartially" (these are merely the words of the oath of a county sheriff), I hoped he would rise superior to his editorial capacity, and act with justice. Nay even in my first affidavit, I did not throw out this imputation.

As to the sub sheriff, I know him not, but I am informed that the sheriff himself returned the whole panel upon this occasion; contrary to the usual custom, as I am informed: why this was so, I know not; I cannot dive into the breast of any man; God forbid I should be capable of diving into his.—My lord, perhaps what I am going to observe may be improper, but I once thought that intention constituted guilt. I thought I heard from the bench, that my intention did not signify.

Lord *Clonmell.*—You have said nothing improper yet, Sir: go on, you do not seem to recollect the idea perfectly

Mr. *Hamilton Rowan.*—It was not from your lordship.

Mr. Justice *Downes.*—Certainly it is an opinion no judge could hold

Mr. *Hamilton Rowan.*—I have been mistaken then; it was something like it, it struck me so.

As to the paper, it has been said to come from a Society of United Irishmen. One of my witnesses was asked was he an United Irishman I have heard much of United Irishmen, much calumny here and elsewhere; I avow myself to be one, my name has appeared to several of their publications, I glory in the name On entering that Society I took a test, by which I am bound to seek for the emancipation of every class of my fellow-citizens, and to procure (by spreading information, for that is the only mode a few men assembled in Back-lane can adopt) a reform in the representation of the people:* a reform, the necessity of which has been allowed even in parliament. These are our objects, objects which I am bound to pursue to their completion.

As to the paper, I honour the head that conceived it, and I love the hand that penned it. Much stress has been laid upon the words Universal Emancipation and Representative Legislature, it may be owing to a want of logical precision in me, but I do not consider these words as carrying the meaning which has been imputed to them. I did imagine that the British constitution was a representative legislature, that the people were represented by the House of Commons; that the Lords represented the territory, the property; and that the King represented the power of the state, the united force, the power of the whole, placed in his hands for the benefit of the whole. As a person, as a man, I know nothing of the king; I can know nothing of him, except as wielding the force of the nation, to be exercised for the benefit of the nation;* and if ever that force should be misapplied, or abused, it then remains for the people to decide in what hands it ought to be placed.†

I really feel myself in an awkward situation, thus declaring my sentiments, seeing intentions different from those both of the author and myself are fixed upon that paper, for the distribution of which I am persecuted. From my situation however, having an independent fortune, easy in my circumstances, and with a large family, insurrection of any sort would surely be the last thing I could wish for; I ask no favour, but I submit myself to the clemency and the justice of the Court, and I trust that whatever may be their sentence, I shall bear it with becoming fortitude.

Lord *Clonmell.*—I have conferred with my

* It being the interest as well as the intention of the people to have a fair and equal representation, whoever brings it nearest to that, is an undoubted friend to and establisher of the government, and cannot miss the consent and approbation of the community.—Locke on Government, sect. 158. *Orig. Ed.*

* But yet it is to be observed, that although oaths of allegiance and fealty are taken to him (the king), it is not to him, as supreme legislator, but as supreme executor of the law, made by a joint power of him with others; allegiance being nothing but an obedience according to law, which when he violates, he has no right to obedience, nor can claim it otherwise than as the public person vested with the power of the law, and so is to be considered as the image, phantom, or representative of the commonwealth, acted by the will of society, declared in its laws; and then he has no will, no power but that of the law. But when he quits this representation, this public will, and acts by his own private will, he degrades himself, and is but a single private person, without power, and without will, that has any right to obedience; the members owing no obedience but to the public will of the society.—Locke on Government, sect. 151. *Orig. Edit.*

† This doctrine of a power in the people of providing for their safety anew, by a new legislative, when their legislators have acted contrary to their trust by invading their property, is the best fence against rebellion, and the probablest means to hinder it.—Locke, sect. 226.——When king Charles's deluded brother attempted to enslave the nation, he found it was beyond his power. The people both could and did resist him; and in consequence of such resistance, obliged him to quit his enterprise and his throne together.—Blackstone, public wrongs, B. 4. c. 33. s. 5. *Orig. Edit.*

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rethren upon what has fallen from you, conessedly in mitigation and with that view here are two facts which you seem to nsist upon as new. If it made for you, that Ir. Blennerhasset made the motion you state willingly adopt it. If I had known it in iving the history of this case, I should not ave omitted that or any thing else done in his Court. You mentioned that the informations should have been returned, they were eturned into the crown-office.

Mr. *Rowan*.—My Lord, I meant they were ot returned to the grand jury.

Lord *Clonmell*.—The proceeding was not by ray of bill of indictment, therefore what you esire could not have been adopted. The roceedings here were by information Ex-Officio, and when the informations were lodged n the crown office, which I am instructed to ay, was the first day of Hilary Term, 1793, he first day the Court sat afterwards the information was filed and the other proceedings ad. There is nothing else that has not been ouched upon. As to the meaning of the libel, owe justice to every man, and here and every here I have said that no inference can be rawn from any construction in your favour hat was omitted. I think I shall be justified n saying that you were well and ably defendd by your counsel. Nothing has fallen from ou that affected the minds of the Court in nitigation, to change the judgment which we ave thought proper should be pronounced pon you. I shall not adopt any idea, or uffer any idea to arise in my mind, from hat you last let fall from you, to increase hat punishment.* The judgment of this Court will therefore be pronounced as is the practice in Westminster-hall, by the second judge of the Court. It shall be pronounced by my brother Boyd.

Mr. Justice *Boyd*.—The sentence of the Court is—That you, Archibald Hamilton Rowan, do pay to his majesty a fine of five hundred pounds, and be imprisoned for two years, to be computed from the 20th of January, 1794, and until that fine be paid; and to find security for your good behaviour for seven years, yourself in the sum of two thousand pounds, and two sureties in one thousand pounds each.

Of Mr. Hamilton Rowan's escape from prison, and of the proceedings connected therewith, which terminated in his receiving from his majesty a free pardon, the following particulars have been obligingly communicated to the Editor of this Work by Mr. Rowan himself, and are now first published.

Dublin, December, 1816.

When I had been in Newgate about four months, in consequence of my sentence, the reverend Mr. Jackson, an Englishman and an emissary from France, came to this country. He was accompanied by another person, to whom he had communicated the object of his mission, and who pretended to assist his views, but had in fact betrayed him to the minister, and accompanied him to Ireland as a spy. They were introduced to me in the gaol. We had several conferences; and at last a statement of the situation of this country was agreed upon and given to Jackson, in my hand-writing. Mr. Jackson's friend was employed by him to put this into the post-office, directed to Hamburgh. He was seized in the act, and taken before the privy-council. Mr. Jackson was committed to prison. In the evening Mr. Jackson's friend came to my room, and requested I would procure him admission to Jackson; which I did, for at this time there was no suspicion of the friend nor of my being implicated with Jackson. In this interview he said, that in his examination he had acknowledged the letter to have been given to him by Jackson; said the privy council seemed to be much exasperated

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* In the case of The King *against* Withers (3 T. R. 428) lord Kenyon ch. just. said "It is well settled that the conduct of a defendant subsequent to the time when he is found guilty, may be taken into consideration, either by way of aggravating or mitigating the punishment."

Undoubtedly it is the settled practice, upon convictions for misdemeanors, to receive affidavits in mitigation and aggravation; and in such affidavits it is permitted to relate facts respecting the general character and conduct of the convict. See Starkie on the law of slander and libel ch. 41. Holt on the law of libel, b. 3. ch. 6, and Mr. Christian's note to 4 Bl. Comm. 151. Yet it may seem that there is some objection to the admission of affidavits, which disclose other facts than those by which may be ascertained or explained the degree of the guilt of the particular offence before the Court (and qu. if this disclosure might not preferably be made, when it is practicable, by witnesses subject to cross-examintion upon the trial); for if the disclosure of facts unconnected with that particular offence induce the Court to mitigate the punishment which, without such disclosure, they could have adjudged to be merited by the offence; then it may seem to induce them to interfere with the royal prerogative of mercy: if it induce them to aggravate the punishment which they would otherwise have inflicted, then it may seem to induce them, under the appearance of punishing the convict for the offence of which he has been convicted, in fact to punish him for matter of which he has not been convicted, and for which he has not been tried.

* See in this collection, *post*, his case for high treason, A. D. 1794, 1795.

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against me, and had asked him whether the statement was not in my hand-writing? which he had answered by saying he had never seen me write; that his examination was not legal evidence, as he had refused to sign it; and that he was determined to return immediately to England; but that at any rate it was necessary to have two witnesses to convict of high treason; and if we adhered to one another we should be safe. I asked him whether Jackson's situation would be rendered worse, in case I could make my escape. He said No; but he feared the thing would be impossible. I left him with his friend, and never have seen him since.

The next morning I set about my scheme, and got it accomplished at twelve that night. It would be a waste of paper and your time here to recount the various deceptions practised on the under gaoler, which induced him to accompany me to my own house, where a rope being slung ready out of a two pair of stairs window, enabled me to descend into the garden, and to take a horse out of the stable, and meet a friend who should conduct me to a place of refuge.

When the gaoler became impatient and forced into my wife's room, she made him every offer if he would conceal himself and go to America, not raising a pursuit, but permitting it to be supposed that he had accompanied me in my flight, which he absolutely refused, swearing he would soon see me hanged. I was taken to the house of a gentleman named Sweetman, since dead. It was soon found that the most probable means of escaping from this country would be by a small pleasure boat of Mr. Sweetman's; but she was neither sea-worthy, nor equipped for a channel cruize; and a farther question was, who would risk themselves with me, who were not in the same danger? Mr. Sweetman however did not despair, and was successful. He procured three sailors of the vicinity of Buldoyle, where his house was, about four miles from Dublin, to whom he promised they should be well paid, if they would take a gentleman to France in his boat; and they consented. Two of them, the most trusty, had been in the smuggling trade, and knew the coasts of both countries.

The next day was occupied in procuring provisions, charts, &c. &c. In the evening when Mr. Sweetman returned, the three men came to him and showed him proclamations, which had been distributed during his absence, and which offered in different sums from the government, the city, and the gaoler, nearly 2,000*l.* for my apprehension. They said, "It is Mr. Hamilton Rowan we are to take to France;" without hesitation he answered it was; they as instantly replied, "Never mind it. By Jesus we will land him safe!"

We sailed with a fair wind, which however in the night got a head, and blew hard. As we could not keep the sea, we returned to our old moorings under Howth. The next day the wind was again fair, and, after some other occurrences, on the third day I landed at Roscoff, on the coast of Bretagne, under the fortified town of St. Paul de Leon.

I remained an eventful year in France, and sailed from Havre, passing as an American, to Philadelphia. My departure from France being known, the earl of Clare gave Mrs. H. R. an assurance, that although the prosecution against me must proceed with the utmost rigour, yet he would use his influence to procure a restoration of the estates to the family, —eight children, and herself. All the forms of law were gone through, except the appointment of an agent for the crown. This consoling information was renewed by lord Clare in 1799, with a passport from the British government, for me to meet my family in Denmark, and a farther promise of procuring me a pardon when there should be a peace with France.

Lord Clare died between the time of the signature of the preliminaries, and that of the definitive peace of 1803, and I was left without a patron. Mr. Thomas Steele, whose schoolfellow and fellow-collegian I had been, having heard these declarations, was induced by a mutual friend to adopt my cause, and he followed it up with a zeal I can never forget. When the French armies were approaching Hamburgh, where I then resided with my family, he procured for me a promise of a pardon, if I would accept of it on the condition of never setting my foot in Ireland without the permission of the Irish government, which was to be expressed in the body of the pardon, under a large penalty. I accepted of the terms with thankfulness, and embarked for England. Mr. Steele procured the instrument to be immediately drawn up and laid before the chancellor, to receive the great seal. The chancellor refused to put the seal to such an instrument; and it was above a year after,—during which time it was found that the pardon must be under the great seal of Ireland, where the treason was committed, —that he gave as a reason for his refusal, that it would have put it in my power, on the payment of the penal sum, to have gone to Ireland whenever I pleased.

I then petitioned the Irish government, stating the circumstances of the case, and I received an unconditional pardon. But the same condition of not residing or going to Ireland, without the permission of the Irish government, was implied. In the summer 1805, I appeared in the court of King's-bench here, and pleaded my pardon.—I returned immediately after to England, according to promise. Shortly after, my father died; and I applied to lord Castlereagh to procure me permission to pass a few months on my family estate, to regulate my affairs. He was so good as to make the application, but before lord Hardwicke's answer arrived, a change of ministry took place; and I then

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applied for a permission to reside in Ireland, which was granted; and I have lived here ever since, most sincerely anxious to promote peace, harmony, and submission to the laws and constitution of Britain.

The Proceedings which took place in the Court of King's-bench Dublin, on Mr. Rowan's pleading his Majesty's pardon, are thus related in the Annual Register.

July 1st, 1805.

In the court of King's-bench, Dublin, Mr. Hamilton Rowan was brought up by writ of Habeas Corpus; and the record of his outlawry being read, the clerk of the crown, as is usual in such cases, asked the prisoner what he had to say, why judgment of death and execution should not be awarded against him?—Mr. Rowan said, that he was instructed by his counsel to say, that the outlawry contained errors in fact. The attorney-general confessed errors in the outlawry, which was reversed. Being put to plead to the indictment, Mr. Rowan pleaded his majesty's most gracious pardon. Having then obtained liberty to speak, Mr. Rowan addressed the Court nearly in these words:

When last I had the honour of appearing before this tribunal, I told your lordships, I knew his majesty only by his wielding the force of the country; since that period, during my legal incapacity and absence beyond seas, my wife and children have not only been unmolested, but protected; and, in addition to those favours, I am now indebted to the royal mercy for my life. I will neither, my lords, insist upon the rectitude of my intentions, nor the extent of my gratitude, lest my conduct should be attributed to base and unworthy motives; but I hope my future life will evince the sincerity of those feelings with which I am impressed, by such unmerited proofs of his majesty's beneficence.

To which address the Chief Justice [Downes] replied:

Mr. Rowan; From the sentiments you have expressed, I have not a doubt but you will prove, by your future conduct, that his majesty's pardon has not been bestowed on an unworthy object.

Mr. Rowan then bowed to the Court and withdrew. XLVII. *Ann. Reg.* 402.

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585. Proceedings against Daniel Holt, for publishing a Seditious Libel, intituled, "An Address to the Addressers," and for publishing another Seditious Libel, intituled, "An Address to the Tradesmen, Mechanics, Labourers, and other Inhabitants of the Town of Newark, on a Parliamentary Reform:" 33 & 34 George III. A. D. 1793.

[The following account of this case is extracted from a pamphlet published in the year 1794 by the defendant under the title of "A Vindication of the conduct and principles of the Printer of the Newark Herald: an Appeal to the justice of the people of England, on the result of the two recent and extraordinary prosecutions for libels. With an Appendix. By Daniel Holt, printer of the Newark Herald."]

In the month of July last [1793] the assizes were held at Nottingham, where, as a matter of course, my two prosecutions came on for trial, and, as another matter of course too, before a special jury. The information for selling the "Address to the Addressers," was first tried. In the course of this trial, it incontestibly appeared, that this pamphlet was published by me long before it was proved to be a libel in any court of judicature, and sold merely in the regular routine of my business; no proof being brought of my intention to circulate it in particular, more than other new publications of any description whatever. One of the witnesses (Mr. S. Hunter) produced on the part of the prosecution, proved, that in a conversation* he had with me on the

* This conversation is thus represented by Mr. Holt in another part of his pamphlet:

Soon after the institution of the "Newark Association, for the support of the constitution," a member of the committee called on me as a friend, and acquainted me, that the association had it in contemplation to inform against all those who published writings of a seditious tendency; and requested me to take out of my shop window, several publications which he apprehended they in their wisdom might deem either seditious or improper. Knowing that I had no publications exposed for sale, that were then pronounced either libellous or seditious, by the laws of my country; and warmed at the bare supposition that I should be thought capable of sel-

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subject of libellous publications, previous to the sale of the pamphlet in question, I informed him that I had taken out of my shop all such of Paine's works as had then been declared libels, and that I intended not to vend any more of them; nor would I, on any account, sell a libel, knowing it to be one.—After a trial of five hours, in which my counsel, Messrs. Dayrell and Clarke, did all that great abilities like theirs could do in such a situation, the special jury withdrew, taking the pamphlet with them, and returned in about half an hour with a verdict of—GUILTY!

The trial for reprinting and publishing the following* "Address" next came on, before another special jury.

"Address to the Inhabitants of Leeds, Sheffield, Birmingham, Manchester, and other Unrepresented Towns, on a Parliamentary Reform.

"Friends and Countrymen;

"Permit me, with the affection that every man ought to bear towards his fellow citizens, and with the anxiety that every citizen ought to feel for his country, to submit to your consideration the following reasons why, in my humble opinion, the reform of parliament, now in agitation, ought not to be regarded by you with indifference:

"1. Being subject to the legislation of persons whom other men have placed over you, it is evident that you are denied that which is the birthright of every Englishman, and without which he is not a free man, viz. a share in the making of those laws which have power over your properties, your families, your lives, and liberties.

"2. Being very deeply interested in trade, not only at home, but in all parts of the world, you ought to have in parliament deputies well informed on the subject of commerce in all its branches, but more particularly acquainted with that which you in an

* The only alteration in this paper from the original copy, was merely the title; that for which I was prosecuted being addressed to the inhabitants, &c. of "Newark." *Orig. Ed.*

ling any book of that description, knowing it to be so, I answered him, I believe, nearly in the following words: "That I was highly sensible of this mark of his friendship, and conceived myself much obliged to him for taking the trouble to inform me of the intention of the association, previous to their putting it into execution; but, at the same time, I begged leave to say, that as the publications to which he alluded had not yet been legally pronounced libels by a jury of my fellow-citizens, or even noticed as such by the Attorney-general in London, where they were originally and avowedly published, I could not, nor would not, consent to take them out of the window, or prevent their being publicly sold in my shop, to gratify the tyrannic wishes of a set of men who certainly had no legal authority to interfere in the business. To comply with the requisitions of the association in this, or in any other instance, where the obnoxious writings were not specifically mentioned would be to strike at the very root of my business; for how was I to ascertain what were, and what were not libels, previous to their being so found by the verdict of a jury? What was I to sell, or what was I to refuse selling? Where was I to draw the line? I observed, that far from being the wilful seditious, disaffected person the association wished to have the public believe, and which they affected to believe themselves; I refused to sell both parts of Mr. Paine's Rights of Man, though the verdict then only applied to the second, as soon as I knew it to be adjudged a libel. Did this conduct wear the appearance of disaffection? With respect to the unwarrantable suspicions of my principles and views, implied in this intended interference of the association, they merited no other refutation, than indignant contempt.—After some observations on the prejudicial and despotic tendency of the interference of the association in the sale of political pamphlets, and in the internal regulation of my business; I concluded by declaring, that from several private circumstances, I was well convinced it was not a love of public justice that actuated the association in their proceedings against me, but a diabolical spirit of party revenge, and a desire to wound through me the local liberty of the press, that induced them to take the present steps; but I assured him in the accomplishment of these objects they would eventually find themselves mistaken and disappointed, as I was determined not to swerve from my duty as a man and a printer, through the apprehension of any personal danger nor was I to be intimidated by the pitiful threats of associated placemen and pensioners.—The freedom of the press was attacked, and I felt it my duty as well as my inclination, as a printer, to defend and support it, as far as my individual exertions could extend. In those times of false alarm, and pretended danger, it became every true friend to his country to be at his post. This I conceived to be mine, and here they would ever find me."—Here this gentleman left me, but not without first acquiescing in the propriety of my remarks, and expressing his approbation of my conduct.—I have been thus particular in relating the circumstances of this interview, as the subsequent proceedings of the association were manifestly regulated by it.

From the moment this gentleman left me, I foresaw what would happen; and expected, as a matter of course, an application from the association to the attorney-general, to file an information against me, for my outrageous and seditious conduct. *Vindication, &c. pp. 3—6.*

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especial manner commit to their guardianship, as your immediate representatives. It is not otherwise possible that your interests should be properly attended to

"3. Should you not join the public spirited towns and counties who may petition for a reform in the national representation, there is reason to apprehend that it will be but very imperfectly amended. And if the amendment fall any thing short of making parliament independent of the crown, perhaps the only difference we may find, may be, that it may henceforth cost the nation more to purchase majorities for the minister, than it has hitherto done; for if corruption, instead of being made impossible, be only rendered somewhat more troublesome, the additional trouble as well as the additional value of votes, must be paid for.

"4. It is a truth known to you all, that a country which once loses its liberty, must shortly lose its trade also. Thus, on commercial principles themselves, you are bound to contribute your share towards the reform in parliament, although it should be attended with some cost and labour. The fruits of your industry will prove to your children but a poor inheritance, if not accompanied with freedom.

"5. So long as a majority of the House of Commons shall continue to be appointed by a number of borough electors, not exceeding seven thousand as now is the case; so long will bribery govern borough elections, corruption be the characteristic of parliament, and an oppressive taxation be the lot of the people.

"6. If the present inequality of representation and length of parliaments be the cause of parliamentary corruption, as they undoubtedly are, we must remove the causes before the effect will cease

"7. By a corrupt parliament is meant, that which, instead of being a shield against unnecessary taxation, is the hired instrument whereby the nation is pillaged; — that which, instead of proving a check upon the crown, when disposed to engage in unnecessary and ruinous wars, is the bribed tool by which the nation was first gulled into an approbation of war, and afterwards drained of its blood and treasures to carry it on: — and again, uniform experience teaches us, that whenever parliaments are under an undue influence from the crown, they are ever ready to betray the most sacred rights of the people. Suffice it at present to recall to your recollection a few instances only. In the reign of Henry 8, parliament enacted, that the king's proclamation should have the force of law; in the reign of William 3, they made a precedent for suspending by statute the benefits of the habeas corpus; and it has since been several times practised: in the reign of George 1. by means of the statute vulgarly called the riot act, all the constitutional means of giving support to the civil magistrate were supplanted in favour of the practice of calling out the standing army That government which cannot preserve its authority without such an instrument, deserves not the name of government; and that country, in which it is an ordinary practice to support the execution of its laws by a standing army, is not a free country. But the deadliest wounds that freedom ever received from parliament, were those which have been given it by the disfranchising statute of Henry 6, the triennial act of William 3, and the septennial act of George 1, for by the joint operation of those three statutes, the very foundations of the constitution are removed. Those statutes not only defraud the nation of six parts in seven, both of its election and its representation, but they have effectually vitiated the remaining seventh.

"8. Parliaments chosen as they now are, and continuing for seven years as they now do will ever be composed, for the most part, of a few factions, under the guidance of particular noblemen, perpetually contending for the power and emoluments of office. The common-soldiery of these several factions, like that of all other standing armies, is made up of mercenaries from the most idle and profligate orders of the community. Who so idle, as men of pleasure, and the vicious part of our nobility and gentry? Who so profligate, as murdering nabobs, prostitute lawyers, and unprincipled adventurers, who through the iniquity of corrupt elections, make their way into parliament, and there let out their tongues and their votes for hire?

"9. Parliaments chosen as they ought to be, that is by the whole nation in just proportion, and continuing as they ought to do, for one session only, must of course (as corruption without doors would then be impossible) consist of men most eminent for virtue and wisdom from every part of the kingdom. Every district and every town (freed from an undue influence by the multitude of its electors) would undoubtedly appoint for its parliamentary representative, or attorney, the person best acquainted with its interests, and best qualified to promote them. These representatives, feeling that dependance on their employers which an annual election would ensure, and carrying with them into parliament characters of value, would be doubly guarded against falling into temptation; besides their virtue would be farther secured from this important consideration, that, as no minister in his senses would esteem it practicable to bribe a majority of such a parliament, it follows, that bribing individuals could be of no use to him.

"10. But such a parliament cannot be had unless we will revert to the first principles of our constitution, which we have so shamefully abandoned. Since electing a parliament is our only security against an arbitrary power in the crown, election itself must be not only the common right, but the common duty of all the people.

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"11. The only plausible objection which is held forth, in order to discourage the manufacturing towns from demanding representation, namely, the loss of time amongst the workmen that would be occasioned by elections, is an idle bugbear.

"12. All the idleness and vice of modern elections in this country are the consequences of that very inequality of representation, and that long duration of parliament of which we complain. While all but the villeins of former times, that is, while all free subjects had their votes, and parliaments were chosen sometimes twice, and sometimes thrice in a year, tumult and debauchery at elections were unknown; and there were not above two or three cases of false returns or disputed elections in the course of two hundred and seventeen years, as stands proved by authentic records in the tower. In a single parliament of the present reign, the trials upon contested elections fill five large volumes; and the profligacy so frequently attending the choice of members is a reproach to our age and nation. —Is it not time then to restore a representation of all, and parliaments of a single session; since they alone can ensure us peaceable and virtuous elections?

"13. Prevent the temptation to the evil you dread, and the evil itself will be prevented: this is a law of nature. If parish officers, if common-council-men of London, and mayors of corporations, if committees for all sorts of business, if, in short, deputies of any other description, can be annually or more frequently elected, without any evil consequences, is it not an insult to common sense to tell us, that deputies for transacting our parliamentary business may not be elected also?—Prevent, I say, the temptation to the evil you dread, and the evil itself will be prevented. The temptation to the candidate—is the hopes of a place, a title, or what else he can get from the minister; the temptation to the borough elector—is the candidate's treat and bribe.—As elections of all, and sessional parliaments, would cut up by the roots this commerce of corruption, so they would ensure you elections as peaceable and orderly, as your weekly meetings at divine service, or in your markets. Thus that glorious word, election, which is not to be found in the dictionary of any enslaved nation, would be restored amongst us to its plain and honest signification: carrying with it no other idea, than that of a free choice of freemen, for their own benefit and happiness.

"14. But if we cannot believe history, nor place confidence in records themselves, let us, at least, trust our own senses, and observe what is the conduct of our sober and sagacious brethren of America. If representation be of no use to a trading people, and if elections are nuisances, why have the citizens of Philadelphia, Boston, and all America, secured to themselves, by their new constitution, an equal representation and annual elections, as the very essence of that constitution which they inherit in common with ourselves, and as that without which they knew they should not be a free people?

"15. If you think to enjoy the benefits of representation through persons chosen by other men, and over whose dismission you have no power, you much deceive yourselves. Supposing a merchant had not the choice of his own clerks, nor workmen, nor household servants, but they were to be appointed for him by the exciseman, or by some neighbouring lord, who had an interest in so doing; and if, when so appointed, he could not get rid of them in less than seven years, let their idleness, extravagance, and dishonesty be ever so glaring, and their insolence ever so insufferable, does it need the spirit of prophecy to foretel, that his name would soon be in the gazette, proclaiming him a ruined and miserable man? And is not that great merchant, the nation, brought to the verge of bankruptcy by these very means?—A nation happy above others in the fertility of its soil, and the industry of its inhabitants; a nation which now possesses a district of India, equal to the whole kingdom of France, and until the other day possessed also a continent in America, is nevertheless, I say, and by the means I have pointed out, nearly reduced to the condition of a bankrupt. In consequence of losing through supineness, the appointment of its own clerks, workmen and servants, or in other words, its own parliament, it is now indebted two hundred and seventy millions of money, and not only its lands, but future industry, is deeply mortgaged for the payment of the interest; whereas, had it constantly asserted its rights, it needed not at this day to have owed a shilling.

"16. As the interest upon these two hundred and seventy millions is just so much to be deducted from the national industry, and as nations less taxed may consequently undersell us at foreign markets, the manufacturing towns of this kingdom are peculiarly and eminently interested in restoring purity to parliaments. They ought also to recollect, that if it be neglected, an increase of debt, and consequently an increase of taxes, must follow; for so long as the cause of extravagance remains, the effect will not cease.

"17. Although it is granted, that if petty beroughs and septennial parliaments were still to remain *in statu quo*, and the only alteration to be obtained, were a mere election of two members for each manufacturing town, the general advantage therefrom would be trifling, and the new elections might perhaps be inconvenient: yet, that is not what is proposed; nor would be the consequence, if those towns containing an immense proportion, of the whole nation, would properly exert themselves. In conjunction with Surrey, Middlesex, and the Metropolis, united in quintuple alliance, and the many other generous towns and counties

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which may petition, the vast weight of the manufacturing towns would no longer suffer our hopes and fears, our recovery or our total ruin, to hang in doubtful balance; but the sterling gold of reformation would preponderate, and treachery and oppression kick the beam.

"18. Take a sketch of such elections as are proposed. It being found that the proportion of English electors to every representative, according to the present number in the House of Commons, is about three thousand, it follows, that each town ought to be divided into districts of election, containing each about that number of male inhabitants, of twenty-one years of age. By the militia lists alone this might be easily done. In towns where the whole number of electors for each district might inhabit one parish, there ought to be ten or twelve subdivisions of them, so that not more than three hundred at most elect in one place. This would not only preserve the peace, but ensure the completion of the election in one forenoon; it would also so facilitate the attendance, that no manufacturer or mechanic need lose an hour's labour.

"19. A moment's reflection will convince any candid man, that in such elections annually repeated there could be no such thing as bribery; and if a ballot were added, all undue influence of wealth or authority would be guarded against. Bribery and threats out of the question, who could have an interest or temptation to promote any licentiousness? It has already been shown also that in parliaments so elected, and so dependant on the esteem and confidence, and power of the people, it would be as impossible for a minister to obtain support by corruption, as now it is impossible to find support without corruption.

"20. But a minister, it is said, cannot carry on the business of the nation without a majority. This is held to be an axiom in politics. And so it is. No maxim is more true. But it is equally true, that, in parliaments chosen as ours now are, that majority must be had by means of faction and bribery; in a reformed parliament, it must be gained by rectitude of measures alone.

"21. A reformation of parliament would produce a total revolution in the condition of the minister. Instead of continuing to be an haughty lord and master of the nation, he would instantly become its servant, as the word minister imports;—instead of having through a corrupt majority the purse of the whole nation at his mercy, he would find that it should not yield him an extravagant or an unnecessary shilling. Instead of creating jobs, offices, and contracts, and squandering millions of the public treasure to gratify himself, his connexions, his creatures and dependants, besides the enormous bribery within the walls of parliament, he must correct every wasteful expenditure, and transfuse a spirit of economy through every department of the state.—Instead of being in a condition to make inroads on the liberties of the people, or to make any thing law, by which he could ingratiate himself with royalty, or strengthen his own hands against every opposition to his will, he must be content to act within his own sphere, which is to execute the laws made by the concentrated wisdom of the nation in parliament assembled.

"22. In such a parliament as must be the consequence of asserting our right to an equal representation and annual elections, it would be as impracticable for any faction to displace an able and virtuous minister, as for a cabal of grooms and chambermaids, in a private family, to displace the steward, whose reputation had been established for talents and integrity, and who acquitted himself to the satisfaction of his master. So long as the minister did the business of the nation to its satisfaction, the representatives of that nation, having no temptation to do otherwise, but an evident interest in supporting him, would support him accordingly. Nevertheless, the House of Commons would still be the political theatre for ambitious spirits to act their parts in; and it ought to be so. It is the proper school of politics; and whenever a great genius for government should arise, and could satisfy parliament as to any considerable incapacity in the minister, and of his own superior talents, it would be the duty of parliament to see the nation was served by the fittest person in the kingdom; and a change would take place as naturally, and as peaceably, as when a gentleman parts with one servant and takes another. Thus so far from annual elections preventing amongst foreign courts a confidence in our government, as some maintain, they would raise its reputation for wisdom, vigour, and permanency throughout the world: and by preserving a perpetual harmony between the crown and the people, and keeping always at the helm the person best able to guide it, the king of England would once more become the most powerful and glorious monarch on earth.

"23. Petition then, with one voice, my friends and countrymen, for that share in making your own laws to which, by the constitution and the laws of nature, you are entitled. Pursue the only course which can ever effect any considerable reduction of debts and of taxes, materially advance the interests of manufactures and commerce!—In short be Englishmen! be free, prosperous, and happy! And give your posterity, the same cause to revere your memories, as you have to bless those progenitors who left you an inheritance in a free constitution!"*

* In the Monthly Magazine, vol. xix. p. 34, is inserted a letter signed John Cartwright, respecting this address. The writer of that letter noticing the Memoirs of the Life of Gilbert Wakefield, remarks that "In

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THE KING *against* DANIEL HOLT.

INFORMATION.

Nottinghamshire, to wit. } BE it remembered that sir Archibald Macdonald, knt. attorney-general of our present sovereign lord the king, who for our said lord the king in this behalf prosecutes in his own proper person comes here into the Court of our said lord the king, before the king himself, at Westminster, on Wednesday next after the octave of Saint Hilary, in this same term, and for our said lord the king, giveth the Court here to understand and be informed, that Daniel Holt, late of Newark-upon-Trent, in the county of Nottingham, printer, being a wicked, malicious, seditious, and ill-disposed person, and being greatly disaffected to our said lord the king, and to the constitution and government of this kingdom, and wickedly, maliciously, and seditiously, designing, contriving, and intending to disturb the peace and tranquillity of our said lord the king, and of this kingdom, and to scandalize, defame, and vilify his said majesty's government and the parliament and statutes of this kingdom, and the representatives of the people of this kingdom in the parliament thereof, and to bring them respectively into hatred and contempt with his majesty's subjects, and to represent and cause it to be believed by his said majesty's subjects that their said representatives in parliament were corrupt and profligate, and betrayed their rights and interests, and to excite and stir up discontent, and sedition amongst his said majesty's subjects, on the first day of January, in the thirty-third year of the reign of our said lord the now king, at Newark-upon-Trent, in the said county of Nottingham, to complete, perfect, and bring to effect his said wicked contrivances and intentions, wickedly, maliciously, and seditiously did print and publish and caused to be printed and published in the the form of an address to the tradesmen, mechanics, labourers and other inhabitants of the town of Newark aforesaid on a parliamentary reform, a certain wicked, scandalous, and seditious libel (amongst other things) of and concerning his said majesty's government and the administration thereof, and of and concerning the parliament and statutes of this kingdom, and of and concerning the representatives of the people of this kingdom in the parliament thereof, in one part of the said libel according to the tenor and effect following: That is to say,

"6. If the present inequality of representation" (meaning representation in the parliament of this kingdom) "and length of parliaments" (meaning the parliaments of this kingdom) "be the causes of parliamentary corruption, as they undoubtedly are," (meaning that the present parliament of this kingdom as to the representatives of the people in the parliament, was undoubtedly corrupt) "we must remove the causes before the effect will cease.

"7. By a corrupt parliament is meant that, which instead of being a shield against unnecessary taxation, is the hired instrument whereby the nation" (meaning this kingdom) "is pillaged, that which instead of proving a check upon the crown" (meaning the crown of this kingdom) "when disposed to engage in unnecessary and ruinous wars, is the bribed

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the note vol. ii. p. 433, it is said, that 'Holt, 'the publisher of the Newark Journal, was 'imprisoned in Newgate, for reprinting, without alteration, a pamphlet by major Cartwright; to which the minister, (Mr. Pitt) as 'a member of a political society, had given 'countenance and circulation. The consequence to this young man was, the ruin of 'his affairs, and death in a short time after'

"True, indeed, it is, that the paper (for it was a single sheet) had been written by me, and at my request published in a Leeds newspaper in 1783; true it is, that the prosecution proved the ruin of Holt's affairs; and no less true I hold it to be, that his imprisonment was the cause of his premature death: but, ill as I have learned from experience, to think of the minister that has been mentioned, as I wish not to see added to the heavy accusations against him, a grain of untruth, it is proper I should correct that part of the statement which speaks of my paper having had his 'countenance and circulation.' Of its original appearance he certainly had no knowledge; and, for cogent reasons, I am convinced he never could have promoted, in any way, its publication.

"The paper, Sir, was an exhortation in favour of parliamentary reformation; and contained not a sentiment in which, so long as I hold the use of reason, I shall not glory. In the year in which it was written, 'a political society' did indeed give 'it countenance 'and circulation' to a wide extent. I speak of the Society for Constitutional Information; but Mr. Pitt never was a member of that society, nor, as I imagine, of any other, having similar objects.

"Mr. Wakefield, in common with the public in general, had, as I conceive, been led into the error I have noticed by a speech made by one of the counsel of Mr. Holt. Where that error really originated I know not; but as often as it has been mentioned in my hearing, it has been contradicted; a circumstance which, had it been known to the sincere votary of truth, whose loss we deplore, would assuredly have prevented his adoption of the report.

"Holt had republished the paper in question without my knowledge; nor was I apprized of it until applied to on his behalf, to prove that he was not the author. With that intent I appeared at his trial, but my intended evidence was rejected, as inadmissible; on the ground that such evidence would not disprove the act of publication."

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ool by which the nation" (meaning this kingdom) "was first gulled into an approbation of war, and afterwards drained of its blood and treasures to carry it on:—And again, uniform experience teaches us that whenever parliaments" (meaning the parliament of this kingdom) "are under an undue influence from the crown," (meaning the crown of this kingdom) "they are ever ready to betray the most sacred rights of the people." (meaning the subjects of this kingdom.) "Suffice it at present to recall to your recollection a few instances only. In the reign of Henry 8," meaning Henry 8, heretofore king of England) "parliament" (meaning the then parliament of this kingdom) "enacted that the king's proclamation should have the force of law: in the reign of William 3." (meaning William 3, heretofore king of England) "they made a precedent for suspending by statute the benefit of the Habeas Corpus; and it has since been several times practised: in the reign of George 1," (meaning George 1, heretofore king of Great Britain) "by means of the statute vulgarly called the Riot Act, all the constitutional means of giving support to the civil magistrate were supplanted in favour of the practice of calling out the standing army. That government" (meaning the government of this kingdom) "which cannot preserve its authority without such an instrument, deserves not the name of government; and that country," (meaning this kingdom) "in which it is an ordinary practice to support the execution of its laws by a standing army, is not a free country. But the deadliest wounds that freedom ever received from parliament," (meaning the parliament of this kingdom) "were those which have been given it by the disfranchising statute of Henry ," (meaning Henry 6, heretofore king of England) "the triennial act of William 3," meaning William 3, heretofore king of England) "and the septennial act of George 1," meaning George 1, heretofore king of Great Britain) "for by the joint operation of those three statutes the very foundation of the constitution" (meaning the constitution of this kingdom) "are removed. Those statutes not only defraud the nation" (meaning this kingdom) "of six parts in seven both of its election and its representation, but they have effectually vitiated the remaining seventh.

"8. Parliaments chosen as they now are, and continuing for seven years as they now do, will ever be composed, for the most part, of a few factions, under the guidance of particular noblemen, perpetually contending for the power and emoluments of office. The common soldiery of these several factions, like that of all other standing armies, is made up of mercenaries from the most idle and profligate orders of the community. Who so idle as men of pleasure, and the vicious part of our nobility and gentry? Who so profligate as murdering nabobs, prostitute lawyers, and unprincipled adventurers, who through the iniquity of corrupt elections, make their way into parliament" (meaning the parliament of this kingdom,) "and there let out their tongues and their votes for hire?" And in another part thereof according to the tenor and effect following: (to wit.)

"19. A moment's reflection will convince any candid man, that in such elections" (meaning the elections of representatives to serve in the parliament of this kingdom) "annually repeated there could be no such thing as bribery; and if a ballot were added, all undue influence of wealth or authority, would be guarded against. Bribery and threats out of the question, who could have an interest or temptation to promote any licentiousness? It has already been shown also that in parliaments" (meaning the parliaments of this kingdom) "so elected and so dependent on the esteem and confidence, and power of the people" (meaning the subjects of this kingdom), "it would be as impossible for a minister" (meaning the minister of our said lord the king employed in the administration of his government) "to obtain support by corruption as now it is impossible to find support" (meaning support from the parliament of this kingdom) "without corruption."

"20. But a minister" (meaning such minister as aforesaid), "it is said cannot carry on the business of the nation" (meaning this kingdom) "without a majority. This is held to be an axiom in politics, and so it is. No maxim is more true. But it is equally true that in parliaments chosen as ours" (meaning the parliament of this kingdom) "now are, that majority must be had by means of faction and bribery; in a reformed parliament it must be gained by rectitude of measures alone;" In contempt of our said lord the king, in open violation of his law, 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. Whereupon the said attorney-general of our said lord the king, who for our said lord the king in this behalf prosecutes 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 Daniel Holt in this behalf to make him answer to our said lord the king touching and concerning the premises aforesaid.

Several witnesses were called by the counsel for the crown who proved the mere fact of publication.

After the evidence was closed, my leading counsel, Mr. Dayrell, then addressed the jury in a very able, pointed, and energetic speech, of considerable length; in which he exposed with singular felicity, the various abuses that had crept into the government; and very successfully, and with great ability insisted on the right of every citizen to deliver his opinions on the form of government under which he lives, and dwelt with peculiar force and energy

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on the singular cruelty of prosecuting a man for re-printing, in the way of his business, a paper, sanctioned by the first characters of the age, and subscribed by the two first men in the present administration, viz. Mr. Pitt and the duke of Richmond. He stated, that the paper in question, had been printed in all the newspapers of the year 1782, and notoriously circulated throughout the kingdom for the space of ten years; and that he then held in his hand the original copy from which the present paper was printed, and that he should call evidence to prove that it had been so printed, circulated, &c. &c. &c.

He then proceeded to call major Cartwright, who was one of the committee at the Thatched House tavern, in the year 1782, by whom this paper was first given to the public, but the counsel for the crown objected to the major's being called. Mr. Dayrell strenuously contended that he had a right to produce any evidence that would at all serve the cause of his client. To this it was answered, that if the judge committed a mistake in receiving the evidence, it could never be rectified or redressed; but if he did not receive the evidence, and it was afterwards discovered that he was wrong in so doing, a motion might be made for a new trial. The counsel for the crown farther observed, that it did not in the least signify if the paper in question had been first printed in the year 1746 instead of 1782, and had never before been noticed by government; yet, if it was re-printed so many years after, and the innuendos would then apply to those times, they certainly had a right to prosecute whenever and whomsoever they pleased. — These objections on the part of the crown were admitted, and of course no evidence in my favour was examined.

After the summing up by the judge, the jury withdrew, taking the paper with them and returned in three quarters of an hour with a verdict of—GUILTY.*

In the court of King's-bench, on Thursday, November the 21st† the following proceedings took place.

After the attorney-general [sir John Scott] had moved for judgment in the usual form,

Mr. Justice *Grose* read over the report of the learned judge on the trial of the first information.

The hon. *Thomas Erskine*. My lords, I am of counsel for this defendant, who has been found guilty on two informations, and is now in Court ready to receive your lordships judgment.—But I do not know that it may not be better to hear the learned judge's report on the second information, that I may take them both together.

Mr. *Attorney General*. It is indifferent to me whether the informations are taken together or not; but I hope your lordships will pass a separate judgment on each information.

Lord *Kenyon*. That is matter of course. We must pronounce distinct judgments on each offence. Separate punishments certainly.

Mr. *Erskine*. I know that; but, my lords, I conceive that it is competent to me to suggest such reasons as occur to show that my client has been illegally convicted, and that if your lordships should be of that opinion, he ought to have a new trial.

Mr. *Attorney General*. My lords, this is the first moment that I have heard it was the intention of my learned friend to move for a new trial. At the same time I would not wish to be understood that I meant to blame him, or to say that he has no right to it.—I confess I do not know, and I do not pretend to know, so much of the practice of this Court as to say, whether or not an application for a new trial is now in time or not. Although I appear on behalf of the crown, I do not wish to deprive a defendant of any of his rights. I do not wish by any means to shut out his application.

Lord *Kenyon*. Mr. Erskine; can you produce any precedent where a new trial was granted after the first four days of the term after trial, except in a few excepted cases, where the Court itself interfered. I remember perfectly the case of the king and Gough is of that nature; as also the case of the king and Morris. And there is one instance or two more of the same kind, that may be mentioned. In the first of these cases a question arose, "Whether the town-hall of Gloucester was within the county of the city, or within the county at large?" and the Court itself, on hearing the report of the learned judge read, were of opinion that it ought to go to a new trial; but that was the act of the Court itself, without any application from the bar.

Mr. Justice *Ashhurst*. I have always understood the rule of this Court to be, that a defendant may move in arrest of judgment at any time before judgment is pronounced; but that a motion for a new trial must be made within the first four days of the term after the defendant is found guilty.

Mr. *Erskine*. In the case of the king and Aylett, and in another case, to my certain knowledge, new trials were granted long after the four days in the subsequent term had expired. A new trial was granted when the defendants were in the Court ready to receive its judgment:—Nay, my lords, I appeal to the whole bar, "whether it is not their general opinion that a new trial may be granted

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* I lament that I was disappointed of the assistance of a short-hand writer at these trials: but as the two cases were afterwards so ably and copiously re-argued in the court of King's-bench, the omission is not so very material, as the reader will find those proceedings reported at full length, when he comes to that part of the pamphlet. *Orig. Edit.*

† In the original it is erroneously called the 20th.

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at any time before the judgment of the Court is pronounced?"

Lord *Kenyon*. I very much doubt whether that is the general opinion of the bar. I am informed by one of the officers of the Court, that in the case of the king and Aylett, the Court had expressly given leave to move for a new trial, on a future day. I have no wish upon the subject either one way or the other. I wish only to go according to the practice of the Court.

Mr. *Erskine*. My lords, as on the one hand I do not wish to deceive the Court, so on the other I should be extremely unwilling to give up any advantage or privilege which belongs to any man who puts his trust in me.

Lord *Kenyon*. Let this motion be postponed to the second day of the next term.

Mr. *Erskine*. If it could be done without any inconvenience, I should be glad that this case was settled at an earlier period.

Lord *Kenyon*. We are now got to that period of the term, when I do not know how we can do it at an earlier period, consistently with the other business that should be done. Why did not the defendant move for a new trial within the first four days of the term?

Mr. *Erskine*. My lord, I was only applied to yesterday, and in the judgment of the gentlemen who are concerned with me, as well as in mine, we ought to take the previous opinion of the Court, "whether this gentleman has been legally convicted?"

Lord *Kenyon*. Is the motion for a new trial meant to be made on what is disclosed in the report of the learned judge, or on affidavits?

Mr. *Erskine*. My lord, it is meant to be moved on both.

Lord *Kenyon*. Let it stand over until Saturday, when we may hear that multitude of cases.

Mr. *Attorney General*. My lords, if the defendant thinks that any serious mischief will result to him from the verdicts that have been given under the idea that he had been illegally convicted; I do not wish that the Court should be troubled with hearing this argument; but shall think it a substantial ground for saying, that I conceive it to be my duty to permit the defendant to bring it again before the Court.

Lord *Kenyon*. We, the Court, are bound *ex debito justitiæ*, to hear this application to the Court, in as much as the practice of this Court is part of the law of the land.

Mr. *Bearcroft*. The practice of this Court, as I understand it, is this: If the party moves for a new trial, he must move within the first four days of the next term: but if what passed at the trial comes before the Court in any course, and the Court sees the verdict is not right, the Court shall see that justice take place.

Mr. Justice *Buller*. In the case of the king and Gough, on reading the judge's report, the Court was of opinion that the defendant ought not to have been convicted.

Lord *Kenyon*. I would not have a cloud hang over it, and therefore let it stand over to Saturday, to see what can be said upon it.

Mr. *Erskine*. In point of reason, my lords, and of common sense, there is no difference, whether the defendant himself, or his counsel for him, point out an error to the eye of the Court, or whether the Court is led to discover it by any other means.

Lord *Kenyon*. Well.—Let the defendant be remanded.

The defendant was then accordingly remanded to the King's-bench prison.

On the following Saturday morning (Nov. 23rd.) he again appeared in Court, when as before, the attorney-general moved for the judgment of the court.*

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* The arguments on this occasion are thus reported, 5 T. R. 436.

Saturday, Nov. 23, 1793.

The KING *against* DANIEL HOLT.

The defendant was brought up on Thursday last, the 21st of November, to receive judgment upon two informations for libels, which had been exhibited against him by the Attorney-general, and of which he had been convicted at the last Newark assizes before Judge Wilson. The first of these was an information for a libel intituled, "A Letter addressed to the Addressers on the late Proclamation;" the second for a libel intituled, "An Address to the Tradesmen, Mechanics, Labourers, and other Inhabitants of the town of Newark, on a Parliamentary Reform." The first information stated that, before the publishing of the libel thereinafter mentioned, to wit, &c. "our lord the king, by the advice of his privy council, had issued his royal proclamation whereby, &c. [reciting the proclamation]; that, after the said proclamation had been issued, and before the publishing of the seditious libel therein-after-mentioned, divers addresses had on occasion of such proclamation been presented to his said majesty by divers of his loving subjects, expressing their loyalty and attachment to his said majesty, and the government and constitution of this kingdom, &c." It then proceeded to state that the defendant, well knowing the premises, &c., but maliciously and seditiously intending to bring the said proclamation into contempt, &c., and to stir up sedition, &c., published the libel in question intituled, "A Letter addressed to the Addressers on the late Proclamation," which was averred to mean his said majesty's proclamation: after which followed the libel itself. The judge's report upon this information stated that the proclamation was read, after an objection made to its admissibility had been overruled; and then stated the evidence of the fact of publication. The report upon the second information merely stated the fact of publication, and the circumstances attending it.

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Lord *Kenyon*. Mr. Erskine; this is the stage of this business when it is proper for you to show that it is allowable according to the practice of the Court, for a defendant, after four days have elapsed in the term, to move for a new trial.

The *Attorney General* having prayed the judgment of the Court upon the defendant,

Mr. *Erskine* desired first to be heard on behalf of the defendant, upon a motion which he intended to submit to the Court for a new trial in both cases: and, upon a suggestion by the Court that he was out of time for such a motion, the four first days of the term having elapsed, he stated that the rule concerning the moving for new trials within the four first days of the term applied only to civil, and not to criminal cases; that there were instances in which the Court had awarded new trials in the latter subsequent to the four first days, although no motion had been made to that effect before. And he mentioned several cases in which he conceived this distinction had been adopted or recognized. Rex. *v* Gough, T. 21 G. 3. Dougl. 791. R. *v*. Atkinson, M. 24 G. 3. & M. 25 G. 3.*

R. *v*. Aylett. T. 25 G. 3.* and R. *v*. Spottes-woode, H. 28 G. 3.† In addition to which, Birt *v*. Barlow, Dougl. 170, was afterwards adverted to.

The Court however considered the practice to be otherwise; but desired the matter to stand over till this day, in order that the question might be more fully considered by the defendant's counsel, and an opportunity afforded to search the precedents.

The motion was now again resumed, when Mr. *Erskine* stated that, having more maturely considered the cases which he had before mentioned, he was convinced that the party complaining of a verdict either in criminal or civil cases could not claim of right to be heard upon a motion for a new trial after the four first days of the term: but that it was also certain that, under particular circumstances, the Court had indulged defendants in criminal cases with stating their objections to the verdict after that time; and had even awarded new trials, without any motion for that purpose at the bar, in cases where there seemed to them to be grounds for doubting whether substantial justice had been done. And that being the case, he saw no impropriety in the counsel for a party under those circumstances suggesting arguments to the Court for a similar purpose; for

* In R. *v*. Atkinson, the defendant was convicted of perjury at the sittings after Trin. term, 1783. In the Michaelmas term following, on the 8th of November, lord Mansfield observed to the bar, that an intimation had been given that a motion was intended to be made for a new trial in this case, and also in that of R. *v*. Bembridge,† (who had been convicted of a misdemeanor at the same sittings), that "this was the third day of the term, and no motion had yet been made; and that no such motion could be made unless the defendant were present in court. On the 26th of June, 1784, the defendant, Atkinson, appeared in court, when Bearcroft, on his behalf, desired that the consideration of this business might be postponed until the Monday following, adding, that he thought that it would appear on reading the report, that there was ground for a new trial. The attorney-general objected (for the sake of precedent) to any motion being made for a new trial, because the time for making such a motion was expired. Lord Mansfield said, no motion could be made for a new trial: but if it came out incidentally by the report that it was proper, the Court might grant one. The defendant was then committed to prison. On the 28th of June, lord Mansfield (who had desired to have affidavits from some of the commissioners of the victualling-office respecting part of the transaction which gave rise to the prosecution) said he wished to aprise the counsel concerned, of the method which the Court were taking. That there was no rule for a new trial, nor was it intended that there should be. His lordship added, "I have directed these inquiries for the satisfaction of my own mind, and of the world at large: if the Court conceive a doubt that justice is not done, it is never too late to grant a new trial, but not on the application of the party." The defendant was brought up again in the next term, when, after hearing the affidavits of the commissioners of the victualling-office read, and the defendant's counsel, the Court were clearly of opinion that they ought not to grant a new trial.

† Bembridge appeared in court the next day, being the fourth day of the term, and moved, by his counsel, for a new trial, which was refused. See Howell's State Trials, Vol. XXII. p. 77.

* The defendant was convicted of perjury at the sittings after Easter term, 25 Geo. 3. The Trinity term began on the 27th of May. On the first day of June, Mr. Erskine for the defendant (having had leave until that day) applied for a new trial, but, the defendant not being present, the Court said that no such motion could be made. Mr. Erskine then moved for a Habeas Corpus to bring him up (he being then in custody) and for leave to move on the morrow, which the Court granted. But this rule for a new trial was afterwards discharged on hearing the merits.

† The defendant, who was convicted of perjury at the sittings after Mich. term, 28 Geo. 3. obtained on the 26th of January following (being the fourth day of Hilary term) a rule to show cause why there should not be a new trial, which was afterwards made absolute.

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Mr. *Erskine.* My lords, the efendant now in court, being called upon on a former day to receive your lordships judgment, and the report of the learned judge upon which alone he can receive that judgment, being read, I humbly suggested to your lordships that there

permission to do which he now prayed the leave of the Court.

Lord *Kenyon*, Ch. J. There seems now to be no difference of opinion upon the subject; and I am glad to find that the rule, by which the Court supposed themselves to be bound, is admitted to be the rule of the Court. I well remember the case of the King *v.* Gough; where the objection to the verdict was taken by the Court themselves, who thought that substantial justice had not been done. And there are not wanting other instances of the same kind, where the court in criminal cases have shown themselves anxious to be satisfied whether or not the defendant had been properly convicted, without any motion of the party for that purpose. This was done by lord Mansfield in the King *v.* Morris [2 Burr. 1189], and the same has often occurred in other cases. But that all objections to the verdict, intended to be made by the party interested, must regularly be made within the four first days of the term, there cannot be a doubt. And this point being now clearly ascertained, if the counsel for the defendant have any thing to offer, in order to show that justice has not been administered to the defendant in this instance, the Court will readily hear it.

Mr. *Erskine* then stated that he was under some difficulty in bringing his objections properly to the notice of the Court, because the learned judge who tried the cause having died since, and a very short report having been made, which was, as he understood, copied from his note book, the objection did not appear upon the report.

Lord *Kenyon* observed, that upon the death of sir Dudley Ryder, between the circuit and the following term, accounts of those causes, in which motions for new trials were made, were brought before the Court upon affidavit.

Messrs. *Erskine*, *Dayrell*, and *Clarke*, then submitted their objections against the verdicts. 1st, With respect to the libel, intituled, "A Letter addressed, &c." The allegation that divers addresses had been presented to the king, &c. was not proved at the trial; the only proof of it being the production of the Gazette, in which it was stated that such addresses [stating them] had been presented to the king. It is not disputed but that the Gazette, purporting to be printed by the king's printer, must be taken to be the London Gazette, published under the authority of government: but the bare production of the Gazette is no evidence that the addresses therein set forth had been presented. The averment that divers addresses had been presented to the king must be proved in the same way that an averment of any particular address having been so presented must be proved. Suppose a seditious address had been presented to the king, for which a prosecution had been instituted against the party presenting it, it cannot be contended that the statement of such a fact in the Gazette would have been evidence to convict the defendant of sedition. In the case of the seven bishops [12 Howell's State Trials, p. 183.], would a Gazette have been evidence of the address presented by them to king James? If the Gazette would be evidence of such a fact as is here contended for, it would be equally evidence of any other fact stated therein. But it cannot be contended that it would be evidence of a commission of bankrupt having issued against a particular person; though a notice in the Gazette requiring a bankrupt to surrender is conclusive against him, because the statute [5 G. 2. c. 30. s. 1.] has made it good evidence. But the very circumstance of this being made evidence by a particular statute is a strong proof that in other cases not provided for by any act of parliament, the Gazette is not evidence of any fact therein stated, with respect at least to matters which are not acts of state. Neither could the Gazette be evidence of the king's presentation to a living; or of his grant to a subject: and if not in matters of mere civil controversy, *à fortiori* not in criminal cases, where it is brought forward as evidence of a fact necessary to constitute the guilt of the party. If the averment had merely been that it had before appeared in the London Gazette that such addresses had been presented to the king, such an averment might have been proved by the production of the Gazette; but the presentation of those addresses is averred as an independent fact, and therefore must be proved like all other facts by the best evidence which the nature of the thing will admit; and the crown might have produced better evidence by subpœnaing any of the persons who presented those addresses, or saw them presented. The proclamation purporting on the face of it to be printed by the king's printer is good evidence of the fact of such a proclamation having issued, because it is the usual mode by which such acts are notified from authority to the public: for the same reason perhaps the proclamation might have been proved by the Gazette in which it was inserted. But this in its nature must be confined to acts of state flowing from the crown or government; of which nature it cannot be contended that addresses delivered by private individuals are. Such acts as these are of no authority, and can no more be considered as acts of state than any petition of any individual presented to the king.

As to the other information upon the libel, intituled, "An Address to the Tradesmen, &c." the defendant offered evidence, that the

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was matter apparent on the face of it, which entitled me to ask your lordships not to pass the judgment of the Court, but to grant a new trial.

paper published by him was not his composition, but had been published in the year 1783 by other persons now in office under government, who had not been prosecuted for it, and that he had only reprinted the same work; which evidence was rejected by the learned judge. Now if the seditious intent imputed by the information be merely a matter of inference from the thing published, the evidence was properly rejected. But if the seditious intent be a matter of fact to be collected as well from extrinsic circumstances as from the publication itself, which it must be considered to be, then this was important evidence to rebut the seditious intent; and it having been rejected, a new trial ought to be granted upon this as well as the other information. In Dr. Sacheverell's case [15 Howell's State Trials, pp. 206, *et seq.* 244, *et seq.*], sir Simon Harcourt, counsel for the defendant, was permitted to give evidence, that parts of the sermons, for the publishing of which he was prosecuted, were taken from former publications held in high estimation by the Church of England, and that many eminent persons, amongst whom were many of the bishops at that time on the bench, had before published similar sentiments. But whatever doubts may have existed prior to the late statute [32 Geo. 3. c. 60. See it *antè* p. 306.] for the regulation of trials for libels, that act gives the jury a right to take into their consideration the intention of the party accused of publishing a libel; and this evidence was admissible under that act. But if the Court should be of opinion that the evidence tendered on behalf of the defendant was inadmissible, then a new trial ought to be granted for the improper admission of similar evidence against him. For it was permitted to be given in evidence that a servant in the defendant's shop had been seen with a cap on his head marked with the words "Liberty and Eq." (for Equality), in order to show that the defendant published the libel with a seditious intent. Either, therefore, extraneous matter is or is not admissible to prove the seditious intent on a trial for a libel; if it be, the defendant ought to have been permitted to give the evidence he tendered; if not, the evidence which was received was improperly admitted; and in either case a new trial should be granted.

The *Attorney General contrà*. 1st. In answer to the first objection; the Gazette was as good evidence of the addresses having been presented as the nature of such an averment required. The addresses were a matter of public notoriety, referred to in the libel as such, and the Gazette an authentic medium of proof of such a fact. It was not indeed conclusive, but it was *primâ facie*, evidence of

In that stage the business stood then; in that stage the business stands now; and what I am to state to the Court is neither more nor less than this: and to state it with that sub-

the fact. It is admitted that if the averment had been that certain addresses had before that time been published in the London Gazette, then the production of the Gazette would have been proper evidence. But if there be any weight in the present objection, it would extend also to the case of such an averment; for the question might still have been asked, how is it proved that the writings therein announced were addresses? Whether they were or not, it might equally be urged, can only appear from the production of the writings themselves: even the persons themselves who presented those writings to the king, could not, according to this mode of reasoning, have given parole evidence of their contents, but the writings themselves would have been required to be produced under the king's sign manual. Upon the same principle it might have been objected that the proclamation, printed by the king's printer, could not be legal evidence of the fact that such a proclamation had issued. The counsel for the prosecution might with equal propriety have been called upon to prove that Mr. Strahan was the king's printer; the patent to that purpose must have been produced, being the best evidence of his appointment; again, it might have been required to prove that the printed proclamation was an exact copy of the writing under the sign manual from whence it was taken; or, perhaps, that the writing itself should be produced. But as all this extreme particularity of proof has never been required in such cases, there is no reason for requiring it in the present instance. The Gazette is of itself *primâ facie* evidence of matters of state and of public acts of the government. It is published by the authority of the crown; it is the usual way of notifying such acts to the public; and therefore is entitled to credit in respect of such matters. Lord Holt held it a high misdemeanor to publish any thing as from royal authority, which was not so. In a late case at Lancaster, upon an occasion similar to the present, judge Buller, held that the Gazette was evidence of the king's proclamation contained therein. So it has been held by all the judges that the articles of war, printed by the king's printer, are good evidence of such articles [Withers's case, Nov. 17th, 1784]. As to the Gazette's not being evidence that a commission of bankrupt has been properly issued, it is sufficient to say that the commission itself would not be evidence without proving the petitioning creditor's debt, &c. Besides it is merely a muniment of a private nature, and not a public matter of state. And this answer applies to the other cases mentioned. But this sort of evidence is admitted in all public matters relating to the state, amongst which addresses

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mission which every advocate ought to show to the Court, and what I am sure I am always disposed to show; to suggest at no great length,

of the nature in question are undoubtedly to be ranked.

Secondly, as to the improper rejection of evidence upon the other information; there is no foundation for the objection, because the evidence if admitted would have proved nothing. How can it operate as an excuse to one man for having published a libel that another man has before done the same thing? If that could be admitted as evidence on the part of a defendant, then the crown might also give in evidence that other persons had been convicted for publishing the same or similar sentiments. It would also be evidence that other persons thought that what the defendant had published was not libellous, and had published sentiments to that effect. In short, the position of the defendant's counsel, if maintainable, would lead to the most absurd consequences, and to the admission of evidence perfectly foreign to the issue. This is very different from the evidence given of the manner in which the sale of these libels was conducted by the defendant, namely, his servant appearing with the words "Liberty and Equality" on his cap, because that was strong evidence in aggravation of his intention in publishing the libels in question.

Lord *Kenyon*, Ch. J. The real points in this case are so clear, and have been so perfectly well settled, that I think they cannot admit of any serious doubt. That the Gazette is evidence of many acts of state is not doubted; that it is evidence of the king's proclamation seems not to be disputed in this case, and that it is evidence of a proclamation for the performance of quarantine cannot be doubted. In order to encounter this general proposition (a doctrine adopted at all times) cases have been put at the bar, which have no reference to the state, grants by the king to a subject of a tract of land, or of presentations; but these are the evidence of private titles, and become parts of the private muniments of the families to whom they are granted. But they have no resemblance whatever to the acts which have been the subject of discussion in this case, acts done by and to the king in his regal character; they are the addresses of different bodies of subjects going to offer their loyalty at the foot of the throne, and received by the king in his public capacity. They then become acts of state; and of such acts, announced to the public in the Gazette, it is admitted that the Gazette is evidence in courts of justice. The attorney-general, in his answer to this objection, has shown the impossibility of giving other evidence of such acts. I am therefore clearly of opinion that the decision of the judge at the trial was founded on principles of law (and it seems as if he thought it that by the precedents of the Court;—by the rules and practice of it;—and by the rules and principles of English jurisprudence, you ought

of too little importance to take notice of in his notes of the trial) and that there is no foundation for this objection.

The other objection, which applies only to the second information is, that evidence, tendered by the defendant, was improperly rejected; and that evidence was merely offered to show, that ten years ago other persons published a paper similar to that which is the subject of this prosecution. But the consequence of admitting that evidence would have been, that those persons, who were not only not called upon, but could not have had any opportunity, to defend themselves against this charge, might have been pronounced to be guilty. Such evidence would lead to the most dangerous consequences; and the guilt or innocence of those persons could not affect the decision of this case. If the defendant could have shown that he had published the paper in question without knowing its contents, as that he could not read and was not informed of its tendency until afterwards, that argument might have been pressed upon the jury. But as the defendant knew of the contents of the paper before he published it, and as it is not disputed but that the paper is criminal, I confess that I cannot see the relevancy of the evidence which was tendered. It has been argued, however, that the evidence was rendered admissible by the late act of parliament, which enables the jury to decide upon the whole question, including also the intention of the party accused of publishing a libel: but it seems to me that the defendant has had the full benefit of that statute; for the question left to the jury embraced every thing that could be left to their consideration. And, they having found that the defendant published this paper with a seditious intention, there is nothing left for our deliberation.

Mr. J. *Ashhurst*. The rule, with regard to the time of moving for new trials, seems now admitted to be the same in criminal as in civil cases. But, though that be the general rule, when the Court see reason to suspect that justice has not been done to any particular defendant, they will in their discretion direct a further inquiry into the merits of the cause. The question now before the Court is, whether any evidence were improperly received, or improperly rejected, which will entitle the defendant to a new trial in either of these cases. With regard to the first, I think that the evidence given was legal and satisfactory. The Gazette states that different addresses had been presented to the king: Now the Gazette is an authorative mean of proving all acts relating to the king and the state; otherwise the proof would run into endless niceties, as has been stated by the attorney-general. Then, taking that to be

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to send this cause to another trial; but I am not in such a situation as to be necessarily called upon to ask a new trial of your lordships. I may ask the Court, "Whether, upon hearing the report read, it is not open to me, without offending the Court; or without

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the general rule, was this a matter touching the king and the state? Of that I think no person can doubt: these addresses at the time they were presented concerned the king and the state very materially; they manifested the detestation of the public concerning certain doctrines which had lately before been propagated inimical to the government and the constitution of the country.

The other question merely respects the second information; and I am clearly of opinion that the evidence tendered was not admissible. One of the consequences of admitting that kind of evidence would be, that the publisher of a libel could not be indicted before the author, and that would be tantamount to saying, that in many instances there should be no punishment at all.

Mr. J. *Buller*. The case of R. *v.* Gough was one of the first cases in which the Court granted a new trial after the expiration of the time allowed by the practice of the Court to move for a new trial. I read the report of the first trial; immediately on my reading it, the Court thought that the defendant ought not to have been convicted; and lord Mansfield said, we must either grant a new trial, or defer giving judgment for ever. But the Court did not interpose, without being apprized that they were exceeding the rules of the Court; and nothing would have induced them to break through those rules but the clear opinion which they entertained that injustice would otherwise have been done to the defendant. In the case of R. *v.* Atkinson, it is impossible to overlook the extreme caution expressed by lord Mansfield to prevent the public seeing that what had been done in R. *v.* Gough was irregular. Lord Mansfield himself mentioned the case on the third day of the term, and said, if no motion for a new trial were made on the fourth day, it could not be made at all. The result of all the cases which have been mentioned is, that if the defendant do not move for a new trial within the four days, he cannot be heard at all on the subject of a new trial: all that he can do afterwards is to move in arrest of judgment, which may be done at any time before judgment is pronounced, or address himself to the Court in mitigation of the punishment; and if in the course of that address it incidentally appear that justice has not been done, the Court will interpose of themselves.

Two questions of law have been made in these cases; the first, whether the Gazette were legal evidence to prove that the addresses had been presented to the king. As this question arises on the report, we are bound to give our opinion upon it. In the case alluded to, as having happened at Lancaster, I admitted the Gazette in evidence upon this principle, that every thing which relates to the king, as king of this country, is in its nature public; and that a Gazette which contains any thing done by his majesty, in his character of king, or which has passed through his majesty's hands, is admissible evidence in a court of law to prove such thing. The case of R. v. Francklin [17 Howell's State Trials, p. 636.], though not directly on the point, establishes this to be evidence; for there the Court admitted the Journals of the House of Lords, not only to prove the address to the king, but the king's answer to the House. Now if the Journals were evidence to prove both those things in that case, it seems to me that the Gazette, which is published by royal authority, is good evidence to prove that these addresses had been presented to the king. The other case of R. *v.* Withers was also tried before me at Stafford. The prisoner, who was a common soldier, was indicted for the murder of a serjeant in the same regiment. It became a material question to consider how far the prisoner was to be obedient to his serjeant; that depended on the articles of war; and, the prosecution being strangely neglected, the articles of war were not produced at the trial: it occurred to me that there was great reason to doubt on the propriety of the conviction founded on this defective evidence: and I reserved the case for the opinion of the judges, who thought that the articles of war ought to have been produced, and if they had been produced, as printed by the king's printer, it would have been sufficient evidence. However, on this information I do not think the prosecutor need have given any evidence at all of these addresses: the averment respecting these addresses seems unnecessary; for the information, after stating the proclamation and the addresses, charges the defendant with "a seditious intent to bring the said proclamation into contempt," without noticing the addresses again. The distinction between material and immaterial averments is perfectly well settled; if the averment be material, that is, if it be connected with the charge, it must be proved; but if it be totally immaterial, and if the libel be not connected with the averment, it need not be proved.

I do not differ in opinion with the Court on the point made respecting the other information; but, for the sake of the precedent, I will confine myself to this observation, that as this objection does not appear on the judge's report, I think we ought not to take any notice of it after the expiration of the four days.

Mr. J. *Grose*. The motion for a new trial seems to have been made on a misapplication of the rule respecting motions in arrest of judgment; for the objection by the prosecutor that it is now too late for the defendant

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reaking through any of those rules by which our lordships conceive yourselves bound, to sk your lordships to stay this judgment?" nd I shall certainly not be removed from hat position.

Your lordships had the indulgence to give ne an opportunity of considering this matter, nd I have no difficulty in saying, I had entertained an idea that there was a great difference between criminal and civil cases. I am confirmed in that idea; and I am persuaded that nothing I shall hear to day will shake my judgment in that matter.

In civil cases, your lordships stand (thanks to the constitution of our fathers), in a situation very different from that which you fill in criminal cases, between the crown and the subject. Your lordships, in administering civil justice, have no rule but that of strict law to guide you, and the civil litigant must have his judgment when he can call for it. Your lordships stand, as criminal judges, in a situation much more pleasant to yourselves, and much more to the aggrandizement of magistracy. Although the attorney-general alone can guide the course of criminal justice, as servant for the crown, yet your lordships guide the administration of criminal justice paramount to him, and no prosecution can advance a step further than the Court thinks it ought to advance.—In a recent case,—which I cite to your lordship's honour, tried before you at Guildhall, for perjury;—On the trial of that cause contradictory evidence appeared, and your lordship interposed on the part of the defendant. Had that been a civil suit, I have no difficulty in saying, that the evidence which made that impression on your lordship's mind, would have made no such impression. Had it been a civil case, I should have taken the judgment of the Court on what fell from your lordship. But in a criminal case, and where I was standing for the crown, and there was no civil litigant to claim his rights; your lordships in that case represented the majesty of the public, and the liberty of the defendant, and held the scales between them. No man who knows his character, will advance one step beyond what is proper.—I find the whole course of criminal justice falling in with that idea, and I trust I shall not live to see the time when it is otherwise. In civil cases the party may help himself; the verdict is a warrant for judgment. He may give a rule on the *postea*, and when that rule is expired he may sign the judgment of the Court, unless the opposite party has moved for a new trial. The Court has said, that rule shall be within the first four days of the next term, and therefore your lordships see the party can sign judgment of himself, unless the judgment which he can sign is stayed by the interposition of the Court on motion. I contend that I may move in arrest of judgment after the four days, and any time before the judgment is pronounced. When your lordships are addressed in civil cases, in the middle of a term for a new trial, is there any instance of the Court's refusing, on the ground that it would be breaking through the rules and practice of the Court? No counsel can state that ever such a motion was refused him, therefore the right of the party to his civil remedy must be governed according to the strict practice of the Court; whereas, in criminal cases, your lordships have interfered very differently;—yet even in civil cases, where there has been any misapprehension, any mistake, judgment has been arrested, and your lordships have received a motion for a new trial, when, by the rules of the Court, judgment ought to have been given.

The first case that I shall mention, is that of Birt and Barlow, reported in Douglas, 162; that was an action tried before Mr. Justice Blackstone, at the assizes for Kent. Mr. Rous moved for a new trial. Wednesday the 21st of April, was the first day of the term, and by the practice of the Court it must be

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to move for a new trial is perfectly well founded. But what passes every day in this court will leave the subjects of this country in no difficulty upon this point; for though the rule be settled that, after the first four days, the defendant cannot move for a new trial, wherever the Court have seen of themselves, or on the suggestion of counsel, that the defendant has been improperly convicted, they always have interposed (and I take it for granted always will interfere) to prevent judgment being passed on an innocent man.

As to the objection that the Gazette was improper evidence; I cannot add to what has been said already; the cases cited by my brother Buller are clear; and the answer given by the attorney-general to the objection seems decisive. With regard to the other objection: it does not clearly appear to me what this supposed paper was, which the defendant wished to give in evidence; and as it does not appear on the judge's report, it would be sufficient to give that answer to the objection. But supposing a paper, precisely similar to that which is the subject of this indictment, had been offered in evidence, the vindication of this publication could not be made out by a prior publication of the same kind. It does not follow that, because one libeller has not been punished, another should not even for the same publication at a future time. The admitting of such evidence as that alluded to would lead to all those mischievous consequences already pointed out; and therefore I am of opinion, that if the paper which the defendant tendered in evidence was exactly similar to that for the publication of which he was prosecuted, the learned judge did right not to receive it.

The Court on a subsequent day sentenced the defendant to pay a fine of 50*l*., and to be committed to Newgate for two years, for each of these offences; and to find sureties for his good behaviour for five years afterwards.

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moved within four days inclusive, so that Saturday was the last day for moving;—however, the learned counsel moved on the fourth day exclusive of the first; and the rule was granted. I mention this case to your lordships, to show, that it is not refused after the expiration of the first four days; if, under the circumstances of the particular case, there is any reason and propriety for the Court to interpose, I once more beg leave to remind the Court, that I am making no motion for a new trial, but am directing the judgment and attention of the Court to the report of the learned judge. I am therefore now doing what the defendant, standing silent before your lordships, could not do for himself. I might look round to all the gentlemen at the bar, and ask, whether any thing is more notorious, than that there are a hundred instances where the Court have not refused to grant a new trial after the expiration of the four days.

Lord *Kenyon*. Mr. Erskine, what is the meaning of this practice, that when a person has been found guilty, four days must elapse before there can be a judgment, *quod capiatur*?

Mr. *Erskine*. No one instance can be stated, where the Court has said to a man standing for judgment, "you come too late to ask for a new trial; you ought to have come within the first four days of the term." I contend that the case of the King and Gough is precisely in point; it is reported by Mr. Douglas, in a manner very different from that in which it was reported by the Court; and no man will persuade me that that learned gentleman did not know what the Court was about when he reported that case. This is a remarkable case in every part of it, and will apply very particularly to the present case. The case of the King and Gough, was an indictment which came on to be tried at the Spring assizes for Gloucester, 1777. The objection was, want of jurisdiction in the county jury to try an offence charged to have been committed within the county of the city: the evidence was not before the Court; the defendant stood guilty on the evidence:—it was not pretended to be said that he had suffered injustice, because he was ordered to pay a penalty where the mind was innocent; but it was a technical objection to the jurisdiction of the Court that tried it. The integrity of the jury was not called in question; the trial was not disputed, nor was it doubted that he had justice duly administered to him, and he came under that objection on the 23d of May 1781, after the lapse of fourteen terms.—I come before your lordships without the intervention of one.—In that case the defendant was brought up for judgment, when Mr. Justice Buller read over the report of the evidence given at the trial of that case, as Mr. Justice Grose has done in the present case; after which the Court observed that the conviction appeared extraordinary, and that a new trial was proper.* Mr. Dunning said he should have made a motion for that purpose, if he had thought it competent after so long a time after the conviction; yet the Court in their discretion granted a rule for a new trial. What does lord Mansfield do in this case—he did, what he always did, and what he will be remembered for hereafter;—he declared that enough did not appear upon the face of the report to convict the defendant. He thought that the defendant ought not to be convicted, and therefore granted a new trial.

Lord *Kenyon*. The case of the King and Morris, I remember perfectly; I may say, as well as if it happened yesterday; and there are several other cases of the same sort.

Mr. *Erskine*. My lord, I cannot mention the cases all at once. I shall not move for a new trial. I may move to stay the judgment, and the single question for your lordships' consideration, is, whether previous to the defendant receiving the judgment of the Court,

* In the King and Gough, as reported Dougl. 797: "The defendant having been brought up for judgment, the report of the evidence having been read, and Dunning having been heard on his behalf; the Court observed, that, from the state of the evidence, the conviction appeared extraordinary, and hinted that a new trial would be proper. Dunning said, he should have made a motion for that purpose, if he had thought it was competent, after such a long interval of time since the conviction. Upon this lord Mansfield declared, that it was still competent, because the report of the evidence coming regularly now before the Court, if enough appeared to raise an inclination in them to think the defendant ought not to have been convicted, they could only grant a new trial, or postpone for ever pronouncing judgment; for that there would be an absurdity in a judgment on a conviction for perjury, where a fine of a shilling should be imposed as a punishment.

A new trial awarded."

In R. *v.* Waddington 1 East. 146, the Court said, that "although the defendant had thought proper to wave any objection in arrest of judgment, yet if upon a review of the whole case they were satisfied he had not been guilty of any offence, they should not give judgment against him. According to what had been said with great wisdom and justice by lord Mansfield, in the case of the King *v.* Gough, Dougl. 797, 798, on a question respecting the propriety of granting a new trial in a criminal case, where the motion had not been made within the regular time; that if the defendant could show that he had not been guilty of any offence, it was never too late to take advantage of it; and that the Court would inflict no punishment if there had been no offence. They therefore expressed a desire to hear any arguments, in whatever shape urged, which went to do away with the offence altogether."

See also R. *v.* Teal and others, 11 East, 308.

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after having read over the report, your lordships of yourselves must find out the errors of that report, if any exist; or, whether I shall have an opportunity of suggesting to your lordships in what part of the report the error lies? I confess, if there be any distinction between these two modes of detecting error, it is a shame it should exist, and I know it cannot exist, consistently with those principles which adorn our government; and your lordships would lament when you consider the feeble nature of man; and your lordships have very frequently admitted, very much to your honour, the same sentiment: and I think you would not be much pleased to consider the consequences which might be of the most fatal kind to an individual, if he was obliged to stand dumb before you, and if your own minds did not furnish you with sufficient light to point out the error, he himself must not point it out, at the same time.—Fiat justitia ruat cœlum.—If I must be silent, I shall be silent because the law commands me.

The next case I find analogous to the present, is the case of the King and Atkinson. There is no printed report of that case, but I have a manuscript note of it: my learned friend Mr. Bearcroft was in it. Lord Mansfield having heard that a new trial was intended to be moved for, and that the defendant was not forth-coming, that a motion would be made, and my lord Mansfield observing it could not be made without the personal attendance of the defendant, I met Mr. Bearcroft afterwards on the reading of the report, when the defendant came up for judgment; but at the interval of two terms, I asked leave to move for a new trial upon the authority of the case of the King and Gough, but lord Mansfield took a distinction between an application for a new trial and this case. His lordship said there could be no application for a new trial before the Court; but that the Court itself was to examine whether the party was to be tried *de novo*. The Court were to look upon the face of the report, and to consider whether any error occurred to them sufficient to induce them to grant a new trial.

With regard to the case of the King and Aylett, I had leave to move it after the expiration of the four days. My lords, the matter which I have humbly to state to the Court, is this: I think, according to the rules of the Court as far as I can collect them from these cases, that the party, strictly speaking, ought to make this motion within the first four days subsequent to the conviction, and that your lordships, without departing from any one principle of law or of justice, might refuse to hear a defendant applying at a later period, and so your lordships may do to day. I confess I think it is fit that there should be a rule, and when it exists, that it should be carried into effect, and that false humanity should never induce judges to break through those rules which when once established should be observed.—What then ought I to do in this case, but to surrender up my client to the discretion and mercy of the Court, who I am sure will make the proper distinction where a defendant is called upon to answer for an offence of a trivial, and an offence of a dangerous nature; where such a defendant is conscious that he is guilty, and instead of laying open his real situation, gives instructions to his counsel to aggravate the evil which the indictment seeks to abate,—such a defendant becomes no object of mercy; but where he comes submissively to urge any rule of law, he stands in no such situation;—and when my objections comes to be overruled, I shall have this consolation, that I have offered nothing to your lordships to induce any one to think the worse of my client, or of the government under which we live.

Lord *Kenyon*. I am not aware that there is any very great difference of opinion, and I am very glad to find that those rules by which the Court have supposed themselves to be governed, are in fact the rules of the Court.

The case of the King and Gough is within my own memory. I was counsel in the cause. I have also a manuscript note of the King and Morris, which case is also in print, and is to be found in the 2nd volume of sir James Burrow's Reports. In that case the defendant was tried for perjury, was convicted, and was brought up for judgment, and no counsel objected to the conviction; but lord Mansfield, to satisfy his own mind, put this question: "Whether there was sufficient evidence to convict the defendant?" And his lordship was pleased to say, if any mistake had been committed at the trial, and if the defendant had been illegally convicted, it was never too late to annul an error. This being the case Mr. Erskine, you will now suggest to the Court why we ought not to pass sentence.

Mr. *Erskine*. Your lordships know that the defendant has been convicted upon two informations. The first charging him with publishing that part of Mr. Paine's works, which is intituled "An Address to the Addressers;" and the other intituled "An Address to the Tradesmen, Mechanics, Labourers, and other Inhabitants of the town of Newark, on the subject of a Parliamentary Reform." Now, my lords, my objections to the two reports of the learned judge who tried the two informations are of a very different nature; and I cannot but here lament that sir John Wilson* being now no more, we cannot have recourse to him to receive any light or information with respect to the report. My lords, the matter I am about to offer to your lordships, on the subject of the first of these informations, even if I ought to sustain the objection, does not go to the guilt

* Mr. Justice Wilson, before whom the cases had been tried, in July 1793, died on the 18th of October following.

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or innocence of the defendant; it shows no more than this, that if the objection had been made at the trial, and if when made, the learned judge had accepted of it, he never would have been convicted. I mean to say nothing upon the libel itself, but shall leave the defendant to your lordship's mercy. In viewing this subject, I think we must not look at men's natural rights, or moral rights, but we must look at the rights they enjoy under the laws. I am persuaded that if the objection which I shall make, shall appear to your lordships to be well-founded, indeed I entertain no doubt, but that your lordships will consider it some how or other, although it was not made at the trial.

Lord *Kenyon*. Mr. Erskine, I will go farther in favour of the defendant. Though the objection was not made at the trial, yet, if it shall appear to us to have force, we shall give full scope to it.

Mr. *Erskine*. I lament the situation in which I stand, not from any suspicion of a want of integrity in any quarter, but because I cannot appeal to the learned judge who is now no more. It is not an uncommon thing when there is any difference of recollection at the bar, and when the judge's report is short, to appeal to the learned judge himself. There can no mischief arise from this when the integrity and independence of the bench is recollected.

Lord *Kenyon*. If I mistake not, when the country had the misfortune to lose sir Dudley Ryder,—if I mistake not,—certain causes were brought before the Court by affidavit.

Mr. *Erskine*. This publication, intituled "An Address to the Addressers," was written by a person who has been already convicted, and it was written subsequent to the time of his majesty's proclamation, and the general tendency of that publication was charged in the indictment to bring his majesty's proclamation into contempt; and as divers addresses had been presented to his majesty, expressing their loyalty and attachment to his majesty's government, it was charged also, that this publication insinuated that these addresses did not contain the true and genuine sentiments of the loyalty of his majesty's subjects, but that they had been fabricated to serve the purposes of corrupt and interested men. These are averments in the information, and must be proved by the ordinary rules of evidence.

They are matters of fact, and must be proved as all other matters of fact are. Now upon the report it appears that they were proved by evidence which I object to, and which was objected to at the trial, but which objections were resisted and over-ruled by the learned judge. The averment that "several" addresses had been presented by various bodies of his majesty's subjects, was proved by no other evidence than the London Gazette.*

If this point affected the defendant only, it would be nothing. I might safely leave my client to your lordships discretion and humanity, but I speak of a matter of great importance; it is a question of evidence; and evidence is one of the most important branches of the law. The information states that "divers" addresses had been presented to the king. Now that "divers" addresses had been presented to the king must be proved by the same evidence that any one address was presented. I will advance a step farther; I will suppose that a seditious address had been presented, signed by a number of persons, and that this address, on the presentation of it, had become the subject of a criminal prosecution, and the information had averred, that A, B, and C, had presented that address to the king, would the Gazette have proved that individual case? It may be said, that an act of government may be proved by the Gazette. If I wish to ask a favour of the king, would the Gazette be evidence that I had received it? The question is not, whether the Gazette be good evidence;—but the question is, whether it proves the existence of the facts which it states?

Lord *Kenyon*. The report of the learned judge is extremely short.

Mr. *Erskine*. The information states, that "divers" addresses had been presented to his majesty. This is a most material relevant averment, and the whole body of the information falls to pieces without it. Your lordships therefore will perceive that the nature of my objection is this. I say, these addresses are stated on the record as facts, and that consequently they must be proved, like any other facts, by such evidence as the law of England calls for. Suppose a commission of bankruptcy was lost, would the London Gazette be evidence that such a commission ever existed? I contend that it would not. The general rule in all questions of evidence is, that in all cases, you must produce the best evidence and the highest authority which the nature of the particular thing in question will admit. I contend, that the Gazette is no evidence whatever that such addresses had been presented to the king. It probably will be said, that the Gazette is the only evidence of state matters, and of things which affect the state, but an address surely cannot come under that head. It is surely no matter of state, and only refers to the acts of individuals. This therefore being the case, I contend, that this evidence ought not to be admitted. Your lordships therefore clearly see, that if this objection had been sustained at the trial, the defendant would not have been convicted. I do not pretend to say what weight is due to this objection, but if it has

* The question of the admissibility of the London Gazette as evidence was agitated in the case of captain Quelch for piracy;—see Vol. XIV, p. 1084, of this collection.

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made any impression upon your lordships minds, I have no doubt but that the defendant will have the full effect of it.

The objection which I have to the other information, is of a very different sort; and goes, as I apprehend, to the complete innocence of the defendant The matter which I have to offer to your lordships on this point, will involve in it the construction of a law lately made, and if I do not succeed in my objection in this case, I shall consider this act of parliament as a dead letter, which cannot be taken off the statute book too soon, as it will only have the effect of disordering the whole system of English jurisprudence.

The subject of the second information upon which the defendant has been convicted, is intituled, "An Address to the tradesmen, mechanics, labourers, and other inhabitants of the town of Newark, on the subject of a parliamentary reform."—The love of our particular country is the first of all virtues, and a desire to promote its interests and prosperity, the first of all duties. But how that duty may be best performed is another question, and on which great authorities may lift up their heads on different sides.—Those who originally wrote this publication are persons who at present surround the king; who bask in the sunshine of royal favour; and administer, as they think at least, the affairs of this country gloriously. Now I humbly conceive, for a man to print a paper in the year 1793, which was originally published in 1783, and which, as no criminal proceeding has been had upon it, he must consider as innocent: the *reprinting* of that cannot be a libel. The defendant may say, "Shall I be exhibited in the pillory by the servant of those persons who have set me the example; who were the authors and original composers of it?" The defendant offered to prove this at the trial, but was not permitted to do so. He offered to prove, not only that the sentiments were similar, but also that it was the same *in totidem verbis*. He offered to prove that it was not originally composed or printed by him, but that it was composed and printed in the year 1783, by a body of persons of exalted rank, and some of whom hold the highest situations in his majesty's government. This however was refused. I contend, that a seditious intention, which was laid in this information, was matter of fact, and not matter of law; and that therefore it ought to have been left to the jury. My lords, if I am not entitled by the late act of parliament to consider the subject in this light, the libel bill,* in which I had some share, must be considered as a dead letter, and had much better be expunged from the statute book; for if it is to have no operation, I shall be as desirous of mending what I had a share in doing. as in the first attempt. Will any person tell me, that a man may not publish a fair, candid, legal disquisition upon this subject? Will any man tell me, that I cannot state, *bonâ fide*, to my fellow citizens, my sentiments on the subject of a parliamentary reform? I know I may do it with perfect safety, because I have done it: and will the attorney-general prosecute me for it? At the same time it is not to be wondered at, if the sentiments of great and good men on this subject are found to vary; and although no man, more than myself, loves and venerates the constitution under which we live, yet I am one of those who think that great improvements may be made in it. Whether I am innocent or guilty by the mode in which I have done it, is not for me to determine; but I am very ready to admit, that if under the pretence of a parliamentary reform, I have been seeking to pull down the fabric of the constitution, by rendering the people discontented with their condition, then I am a libeller, and whoever seeks to sow and propagate sedition, ought to be the just object of the execration of mankind. With respect to this paper, I have only to observe, that it was published ten years ago, and that it has been circulated far and wide, throughout the kingdom, and has never been productive of any sedition.

Lord Thurlow, with several other noble lords, were of opinion, that libel or no libel, was matter of law;* I am of a different opinion; and, although a man may be inferior to another in learning, yet like an honest man he may maintain his own opinion; but I think it may justly be made a question, if I do not succeed in my objection, whether any improvement has been made by the late law? or—whether it has not disordered the whole system of our jurisprudence?

It never occurred to me that a jury were to be judges in abstract points of law; the judges should maintain their authority over the law, and the jury over the fact. The jury are the judges whether libel or no libel upon the seditious intention as matter of, or coupled with, the fact. The jury ought not to condemn a man but on sufficient evidence, and if they had admitted the evidence, which I contend ought to have been admitted, there would have been no evidence to have convicted the defendant; but on the other hand, there would have been the most decisive evidence that the publication of this was not with a seditious intention. The foreman of the jury asked the judge, "Whether they, in the discharge of their public duty, could not decypher the intentions of the defendant?" The judge told them that they might, and that if this was not the case there would be no safety for the subject. I have already observed that this paper, which was the subject of the second information against the

* See it p. 306, of this Volume.

* See the Protest signed by lord Thurlow and other members of the House of Lords, against the passing of the Libel Bill *ante* p. 306.

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defendant, was the very paper which was composed and published ten years ago. As the persons who wrote and composed it, may be ashamed to have their names published, although I should not, and as they are tired of their opinions, although I am not, I shall not name them.

The jury was not permitted to decypher the whole meaning of the defendant, and to say what passed in his mind at the time.—But it is the fashion of these times to cry down by "bell, book, and candle" every man who takes up opinions that other people are tired of. The defendant who has published this address, has very great merit; the principles of it are just, and had they been clothed in better language, he could not employ his time better than by publishing it again. I shall take the liberty of reading the latter part of this publication:

"Petition then, with one voice, my friends and countrymen, for that share in making your own laws to which, by the constitution, and the laws of nature, you are entitled. Pursue the only course which can ever effect any considerable reduction of debts and of taxes, materially advance the interests of manufactures and commerce!—In short be Englishmen! be free, prosperous, and happy! and give your posterity the same cause to revere your memories, as you have to bless those progenitors who left you an inheritance in a free constitution!"

I say this is what any man may and ought to publish in and out of gaol, and I am persuaded, that the adoption of these principles alone can save this country. Give the English public the satisfaction of enjoying their happy and glorious constitution, and they will grapple in the defence of it, and no power under heaven will be sufficient to tear them from their allegiance. Our constitution is the sanctuary of English liberty, and no government will be able to equal it; for I am persuaded that it is destined, by the great Author of all nature, to be the happiest, the freest, and most glorious country in the world. It was by the intrigue and corrupt practices of courtiers, that the constitution of France was pulled down, and the constitution of this country may be pulled down by the same means.

With regard to the time in which the defendant published this paper, I apprehend, my lords, that no objection can fairly be made on that head; for it is well known that some time before this, Mr. Grey had given notice of bringing forward a petition before parliament praying for a parliamentary reform. Now when this paper was originally written, there was a petition presented, praying for a parliamentary reform. This paper, this libel, as it is called, was originally composed and written by Mr. Pitt, the duke of Richmond, and other eminent persons who stand high in his majesty's favour! and shall the defendant be set on the pillory, for that which set them so near the throne?* Shall he be branded with the charge of sedition, for only being a humble copier, and for republishing that which has been published ten years ago; and which, though circulated through every part of the country, has produced no sedition?—My client offered to produce a witness to prove, that this paper was originally composed by these gentlemen. I conceive he had a right to rebut the seditious purpose that has been ascribed to him, but this was refused. This is not all; for on the part of the prosecution, evidence was examined to show, out of the case itself and upon topics entirely extrinsic, the general disposition of the defendant. For that purpose they produced a witness to prove, that the defendant caused this paper to be distributed by a man wearing a cap on his head, on which were inscribed the words "liberty and equality." This might have, and I believe actually had, an effect upon the minds of the jury. Thus they received evidence to inflame, and nothing to extenuate the case on the part of the defendant.—I say that seditious intention is not matter of law, but matter of fact, and ought to have been left to the jury. These, my lords, are the observations that I have to submit to your lordships, and I have no doubt but your lordships will do justice between the defendant and the public.

Mr. *Dayrell* and Mr. *Clark*, proceeded on the same line of argument on the point of evidence. They maintained, that the London Gazette ought not to have been received as evidence that "divers" addresses had been presented to the king by various classes of his subjects; and secondly, that the evidence which was offered by the defendant, to show that he had no seditious purpose in publishing the address for a parliamentary reform, ought to have been received.

Mr. *Attorney-General*. My lords, I am very shortly to answer the two objections that have been made to the reports of the learned judge by my learned friends who are counsel for the defendant. I am perfectly ready to admit that if this Court shall think that there is any weight in these objections, the defendant ought unquestionably to have the full benefit of it. It is not enough that justice be administered, but the satisfactory administration of justice is an object of the first importance. The first objection now taken is, that sufficient evidence was not given to the Court in the case of a material averment; namely, to prove that addresses had been presented to the king by various bodies of his subjects. I conceive it would be extremely difficult to make out these objections as supported by any principle of law. The objection might be as well stated in this way, "How do you prove them to be addresses at all?" And until you prove that, you prove nothing. I thought when I heard this

* But see the extract from major Cartwright's letter *ante* p. 1198, *note*.

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objection first, it would embarrass the discussion at the other part of the case; and had I been aware of it, the better way would be to postpone the subject, because it is not only my duty to consider the objection, but because there is a great deal of authority upon the question: but I shall now, with your lordships permission, proceed upon the whole case. I was aware that objections might be offered to the proclamation, as being evidence of the act of his majesty, but this cannot be insisted upon with any effect. Nor can a better objection be started against the Gazette. If learned gentlemen are pleased to persist in these objections, I must tell them that they have to encounter, not only the uniform practice of this Court for one hundred years past, but also the clear decision of lord Holt, and that upon a principle which removes the present objection entirely; which is, that in the opinion of that learned judge it was a high misdemeanor for any person to notify an act which can only be done by the king, and that all legal means for that notification should be reserved for the king alone. The medium for that purpose is the Gazette. I will tell your lordships what I understand the Gazette to be. A gazette is a publication, evidence, and notification of a royal act, be it what it may, and all the public acts of his majesty are notified in the Gazette.

Having made these observations upon the evidence, I must now take notice of what my learned friend, Mr. Erskine, was pleased to throw out upon myself. He called me the servant of certain persons in power; an expression which he afterwards seemed to qualify, and to allow me to be the servant of the crown. I can only say that the sentiments which I entertained when it pleased his majesty to call for my services, I entertain now; I have often expressed them on questions of parliamentary reform, and on other subjects, and have differed, perhaps, from those who are highest in his majesty's confidence. That has never yet been the cause of the least uneasiness to me. I shall always retain the independence with which I commenced; and the moment I am called upon to act in a manner that is inconsistent with that spirit, that moment will I abandon the office which I now hold. As to the point of law respecting the evidence of the trial, I might be content with saying that Mr. Justice Wilson had no doubt upon the point, and all who had the pleasure to know that learned judge, admitted his merit, both as a lawyer and a man.—The nature of the evidence has been already stated with sufficient accuracy and precision, and I humbly conceive that every thing that can be necessary in this case to convey information to the Court, appears upon the face of the report. The defendant, your lordships see, has been convicted for selling a book called, "An Address to the Addressers," of the nature of which I am persuaded the defendant could not be ignorant and if a man will continue to sell a book of this kind and cannot pretend to be ignorant—

Mr. *Erskine*. My lords, I have said nothing upon the contents of that book. I shall reserve what remains for me to urge in favour of the defendant—

Lord *Kenyon*. The business of the day is to examine into all the merits of this case. I wish to apprize all parties that all the business upon this subject is to be gone through.

Mr. *Attorney General*. I have already observed that the defendant could not be ignorant of the tendency of the publication called "An Address to the Addressers." I believe he published the second libel with as much knowledge of the tendency of it, and with the same intent. And as to the observation made by my learned friend Mr. Erskine, or rather the question which he put to me "Whether I should think of prosecuting him for the opinions which he has sent into the world with his own name to them?" I will tell him candidly, that if he goes to the Freemason's Tavern, or to any other such public place, where such societies are held, with this paper in his possession, and with a label on his head or breast, with the words "Liberty and Equality" on it, and the cap of liberty on his head, I will prosecute EVEN HIM.

With regard to the question of a parliamentary reform, a subject of which the second paper treats, I can only say, that it is one which ought to be more accurately explained than I have seen it yet, before I can form a distinct opinion on it. I know it is a subject of very weighty consideration, and has interested the minds of the wisest and best people in this country; but no man should be allowed to disturb the peace of a nation which enjoys the most free and happy constitution upon earth, and for which we ought to express our gratitude to God; for I verily believe that in all this world, since he framed it, there has not been established a government which for all political blessings can be compared with our own: whosoever therefore shall endeavour, by any means, to subvert it, or lessen the esteem which the people have for it, deserves to be severely punished. For my own part, I must confess freely that as to a reform, as it is called, of parliament, I think it an object of such magnitude, and involving points of the greatest difficulty, that I am afraid that a man possessed of the deepest penetration and the greatest political sagacity, will never, upon that subject, be able to give us an adequate consideration for the risk of any alteration. It is said that this paper was published ten years ago, and that no complaint was then made against the tendency of it. But is the conduct of parliament ten years ago to be compared with the time when this paper was republished? The defendant, after seeing the effect of publishing and disseminating these pernicious doctrines all over the kingdom, comes forward with this paper, to assist the

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spirit that was then raised, without having the fairness to state that it was a paper published ten years ago. What has been the conduct of the defendant? Why, that of maliciously stirring up and reviving doctrines that were dangerous to the constitution, at a time when it was likely that, if spread, they would do much mischief. What does he mean to prove? Does he mean to say, that in reality he had no seditious intention when he published this paper? Does he mean to say, that because this paper was published by the Constitutional society, the London Corresponding society, or any where else, that therefore his intentions in publishing the paper were innocent?—My learned friend, Mr. Erskine, asked me whether I should prosecute him if he had sent forth any thing with his name, concerning a reform of parliament. God forbid I should prosecute any man for temperately discussing that subject, or any other subject; but I will tell him as a friend, that he will deal out hard measures for himself, if he will undertake to be accountable before your lordships for every doctrine maintained by many individuals of the society of which he is a member, and to which he is an ornament. I will tell your lordships freely, that if my learned friend had published this paper under all the circumstances with which this defendant published it, I should have been a traitor to my country if I hesitated a moment in bringing him forward as a defendant before your lordships, as I have brought forward the present defendant; and I now ask of your lordships whether you think of him as I do. —As to the evidence which was preferred on the behalf of the defendant, at the trial, I say it would have proved nothing, for it could only amount to this; that this paper was published before, by somebody else;—what has that to do with this charge against the defendant? But your lordships are called upon now to hold this proposition;—that it is competent to one man to publish in a court of justice, the opinions of other people upon a libel with a view to show, that these other persons held the same doctrines as the defendant. Your lordships will see the length which this proposition leads to. If Mr. Erskine is to be allowed this for the defendant, I must be allowed something of the same sort for the prosecution. If he gives the opinion of some persons in favour of the paper, I shall give the opinion of juries upon the same doctrine; and then the defendant would be in a worse situation than if he had not offered that sort of evidence: therefore I think the learned judge was not only right in strictness of law, but also kind to the defendant in rejecting this sort of evidence.

The next thing to be considered, is the law upon this question. What is the present limitation of what is called the liberty of the press? I say that under that limitation, this paper is a scandalous libel. I take the law with regard to the press to be this: That you may discuss the most important points if you please: You may abuse the constitution if you please, and the general form of our government; provided you choose to be answerable in a court of law. Now I ask, is this paper, or is it not a scandalous and infamous libel, traducing and vilifying the existing magistracy of the country?—Now is this the way that the grievances of the people of this country, if they feel any, are to be redressed?

"Parliaments chosen as they now are, and continuing for seven years as they now do, will ever be composed, for the most part of a few factions under the guidance of particular noblemen, perpetually contending for the power and emoluments of office. The common soldiery of these several factions, like that of all other standing armies, is made up of mercenaries from the most idle and profligate orders of the community. Who so idle as men of pleasure, and the vicious part of our nobility and gentry? Who so profligate as murdering nabobs, prostitute lawyers, and unprincipled adventurers, who, through the iniquity of corrupt elections, make their way into parliament, and there let out their tongues and their votes for hire?"

Is this treating parliament fairly? Is this merely informing the public of a fact, or is it a temperate commentary? Is the whole parliament corrupt? or are there not men among them, who by the blessing and providence of God, are such as will be praised by posterity, and perhaps make future ages wish they had such men among them as these are, to guide their counsels?—If persons will publish commentaries on parliament, let them do justice to its character and to the different men in it; and let them make a jury believe, that when they discuss any public matter, they discuss it temperately, and then a question will never arise between any defendant and myself before your lordships.

One sentence more and I have done. It is said that Mr. Justice Wilson omitted something which he ought to have laid before the jury in favour of the defendant. I cannot possibly conceive how that learned judge could have done more for the defendant than he did; for, after summing up the whole of the evidence, he asked the jury this question. "Are you satisfied that the defendant published this paper with a seditious intent?" The jury said they were satisfied he published it with a seditious intent, and therefore they found the defendant guilty.

These, my lords, are all the observations I have to submit. With regard to myself, I can only say, that I have done my duty as my conscience has directed me, and if I satisfy that, I shall not give myself trouble about what some people may think of me.

Mr. *Erskine*. My lords, am I now allowed to address your lordships for the defendant?

Lord *Kenyon*. I take the rule to be, that the advocate for the prisoner commences the case and speaks generally, either against judg-

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ment, or in mitigation of punishment, and therefore the attorney-general is to speak last.

Mr. *Erskine.* I apprehend, my lords, that I am not in the situation in which your lordship seems to think I am. I think I have a right to speak in mitigation.

Lord *Kenyon.* I think the major part of your address, Mr. Erskine, was in mitigation of punishment. Almost the whole of it appeared to be so. However, as you desire it, you will now go on in mitigation of punishment.

Mr. *Erskine.* That is not the point at all, my lord. The question is, whether I am not to hear the attorney-general upon the whole matter before the Court, and reply?

Lord *Kenyon.* If there is a rule to guide the Court, and I understand there is, as I have stated, you are not, strictly speaking, entitled to proceed. We certainly shall not pronounce judgment to day, but all the business from the bar must be finished in this case. You have rejected the idea of moving in arrest of judgment; and if you have any thing to address to the Court in mitigation of punishment, I wish you would now be so good as to say it.

Mr. *Erskine.* The two papers of which the defendant stands charged, are distinct and separate. I shall not address the Court upon the first, because there are judgments upon that publication already. I shall therefore leave my client upon that part of his case entirely to the mercy of the Court, seeing as they do, that he has done every thing in his power to extenuate, for he discontinued the sale on the instant it was complained of. With regard to the other publication, unquestionably he stands in a different situation; for by publishing the second paper, he certainly meant nothing but that which as a subject of this country he thought he might legally do, not seeking to produce or occasion any of the anarchy or confusion which has been so much talked of. If I cannot say any thing farther on the point of law, I must leave my client in your lordships' hands.

Lord *Kenyon.* I hope that this doctrine will never go forth into the world, that a man may safely and legally publish what has been published before, provided it has not been the subject of a criminal prosecution in a court of justice. If any man adopts that doctrine, his judgment must be very much perverted indeed. All the mischief may be done that a publication can do, if no legal steps can be taken till somebody has been arrested upon that account.

I hope that the transactions of this day, and some of the transactions of this term, will not be quoted as the authorities for the Court to proceed by. I am extremely sorry that any thing has been applied to this case, which did not arise out of the judge's report. I will say nothing of the character of the late sir John Wilson, who tried these informations; nor will I make any remarks on his reports, but shall leave them entirely on the character which that gentleman has carried with him to the grave. I am very sorry at some of the remarks that have been made on the reports of the judges. The character of the judges is public property, and if they have done any thing amiss, they ought to be censured. But if not, their characters ought to be respected; otherwise the most mischievous consequences will arise to the public. I do not aim this at any body, I assure you, but I speak it from the conviction of my own mind, and feel myself bound to say thus much.

It cannot but occur to every person's observation, that as long as parties exist in the country, (and perhaps it is for the good of the country that parties should exist to a certain degree, because they keep ministers on their guard in their conduct), they will have their friends and adherents. A great political character, who held a high situation, in this country some years ago, but who is now dead, used to say that ministers were the better for being now and then a little peppered and salted. And while these parties exist, they will have their friendships and attachments, which will sometimes dispose them to wander from argument to declamation. And this is very often the case with respect to questions relating to libels.

The present question seems to lie in the least compass in the world, and to relate to points so long and so clearly settled, that no doubt can remain with respect to them. Both the points, to my mind, appear as clear as the sun. No man ever yet doubted but that the Gazette was evidence of all matters of state. And therefore I am perfectly satisfied that the opinion of sir John Wilson, formed at the trial, was perfectly correct.

Another question is, whether something or another ought not to have been admitted in evidence that was refused by the learned judge at the assizes. And it was said that if that evidence had been admitted, it would have gone to the innocence of the defendant. In answer to that, I can only say, that this evidence which was not admitted, is not to be found in the judge's report, and our determination must proceed on what appears on the face of the report. No motion in arrest of judgment can be made upon account of either of these two points as far as I can see. I verily believe no one man can entertain a doubt but that when four days are past, the season for moving for a new trial is over. It is competent after that, and any time before judgment, to move in arrest of judgment, and if the reasons which are adduced by the counsel shall appear to the Court to have weight, they will interfere. And if when the defendant is brought up for judgment, and no application is made on his part, yet if the Court perceive any error in the report, the Court will interpose, as in mercy they ought.

Mr. Justice *Ashhurst* said, he entirely con-

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curred in opinion with lord Kenyon on both points. I think, said he, the Gazette was properly admitted to prove that addresses had been presented to the king in consequence of his most gracious proclamation. And I am also of opinion that the evidence which was refused by the learned judge on the trial of the other information was properly rejected. It has been said that if this paper is a libel now, it was also a libel ten years ago. I am not certain of the truth of that proposition. I conceive that a writing may be a libel at one time which is not so at another.

Mr. Justice *Buller*. The only two cases which apply to the present, are the King and Gough, and the King and Atkinson. In the first of these two cases, lord Mansfield said, "we must either grant a new trial, or defer judgment for ever." The result of these two cases is no more than this; if you do not move for a new trial within four days, you cannot be heard at all. The only resource left is either to move in arrest of judgment (I take it that it is good time to move in arrest of judgment at any time before judgment is pronounced), or you may address yourself to the Court in mitigation of punishment. And if in the course of that address, the Court see that injustice was done, they will interfere, but not otherwise.

As to the question whether the Gazette is good evidence to prove that addresses were presented to the king, I think that can hardly be made a question. At the same time I am of opinion that was an immaterial averment in the information, and that therefore it was unnecessary to give evidence of it.

As to the second objection I think there is no force in it; but I must not enter into it, as it does not arise out of the report, and I conceive we are bound to confine ourselves to the report.

Mr. Justice *Grose* was of the same opinion.

Lord *Kenyon*. The defendant must be remanded.

The defendant was accordingly, as before, taken to the King's-bench prison.—On the Wednesday following he was again brought up to receive the judgment of the Court.

The *Attorney General* moved the Court for judgment.

Mr. Justice *Ashhurst*. Daniel Holt, you have been tried and found guilty on two several indictments for printing and publishing two very atrocious libels; the one intituled "An Address to the Addressers" and the other intituled "An Address to the Tradesmen, Mechanics, Labourers, and other Inhabitants of the town of Newark, on the subject of a parliamentary reform."

The first of these libels alludes to his majesty's most gracious proclamation, which is in every body's memory, and to the addresses of loyalty sent from all parts of the kingdom in consequence of it. These loyal addresses very much counteracted the designs of men of such a description as the author of this publication. The general tendency of this libel is to bring his majesty's proclamation into contempt, and to insinuate that these addresses did not contain the genuine sentiments of the loyalty of his majesty's subjects, but that they had been set on foot by corrupt and interested men:—that the system of our government was a system of tyranny and oppression;—and that the formation of it was radically bad, and wanting reformation;—and that a parliamentary reform was to be brought about by the people only, and not by the parliament of Great Britain. And it daringly recommends a national convention to be held, as the proper means of reform. This publication also tends to traduce and vilify all kingly governments, in this and all the countries of Europe, and boldly calls on the subjects of this kingdom to insurrection and revolt; and insinuates that the example of a neighbouring nation was proper to be followed in this.

This paper falls very little short of high treason, and certainly stands in the very first rank of sedition.

The second of these libels most grossly and impudently asperses the parliament of this kingdom, and brands them with the imputation of venality and corruption, and calls for a parliamentary reform. As to the mode by which that reform was to be conducted, this paper does not so largely enter into it; that had been sufficiently pointed out by the former publication, intituled "An Address to the Addressers," which recommends it to be done by a national convention. The bloody advisers of such a measure have been acting a scene in a neighbouring country, which when we look upon we have the strongest reason to congratulate ourselves on our own condition when compared with the tyranny, rapine, murder, and desolation, which have ravaged that unfortunate country.

It has been alleged, in extenuation of your crime, that you were not the author or the first publisher of this pamphlet. But how does that apply in your favour?—Was it not enough that such a horrid production had been once stifled in the birth? and must you foster and nourish the unnatural and diabolical offspring, and give it fresh life and existence? Though the nation in general had shown their abhorrence and detestation of the doctrines contained in this publication, yet you were determined to cram it down the throats of his majesty's subjects.

What has been said in extenuation for the second publication can stand you in little stead; with respect to the subject of the publication, that it was published ten years ago, and that you only re-published it, and therefore are innocent, and that it could only mean the parliament which then existed, and not the present parliament of Great Britain. Let any man of common sense take that paper in his hand, and say, whether the utmost

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extent of charity can consider it a simple, innocent republication. If you had meant it in that view, why not publish it with the ancient title, and why not state that it was published in such a year? Though even if you had done that, it ought not inevitably to retain one sense. But you yourself give it a present application; you address it to the "tradesmen, mechanics, labourers, and other inhabitants of the town of Newark, on the subject of a parliamentary reform." How are they to know that it ever was published before? how can they apply it but to the present existing parliament of Great Britain? The learned judge who tried this information, left the case to the jury, in a fair and candid way. He put this question to them: "Are you satisfied that the defendant published this paper with a malicious intent, or not?"—There could not be two opinions on the subject among honest men, and the jury found you guilty.

The malignity of this paper having been established by the jury, it only remains for this Court to do its office. This Court will always know to temper mercy with justice where there is room for it, but here there is no palliation

As to the first of these libels, at least, your own counsel owned that nothing could be said for you. It behoves, then, this Court to try what can be done by the severity of punishment. And though there are but small hopes of your reformation, it may at least operate to deter others from being guilty of the same enormities. This Court has taken the magnitude of your offence into their consideration, and this Court doth order and adjudge, that for the first libel you pay a fine to the king of fifty pounds, and that you be imprisoned in his majesty's gaol of Newgate for the term of two years. And that for the second offence, you pay a further fine of fifty pounds, and be imprisoned in his majesty's gaol of Newgate for the further term of two years, to be computed from the expiration of your first imprisonment. And that after the expiration of your imprisonment, you find security for your good behaviour for the term of five years, yourself in 200*l.* and two sureties in 50*l.* each, and that you be imprisoned till such fines be paid, and till such securities are found, as aforesaid.

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586. Proceedings against Alexander Whyte, on an Indictment for publishing a Seditious Libel; tried at the Quarter Sessions, holden for the Town and County of Newcastle-upon-Tyne, on Wednesday, July 17th: 33 George III. A. D. 1793.

Before reading the indictment, Mr. Clayton, town clerk, asked the defendant if he had a copy of the indictment.—The defendant answered, No.—He then asked if he had any gentleman of the law employed?—The defendant answered, he had none. Mr. Clayton asked if he had received the advice of any lawyer in the present case?—The defendant told him, none. He said, the Court had been informed the defendant wished to withdraw his former plea, and plead guilty to the indictment. The defendant said, he had never any such intention.

Mr. *Clayton* said, the defendant might object to any of the jury he did not approve of before they were sworn.

The *Defendant* said, he knew none of the gentlemen impanelled, and therefore could have no reasonable objection to any of them.

Mr. *Wilkinson*, on the part of the crown, in a speech of some length, opened the cause; wherein he depicted the heinousness of the offence, and the necessity of exemplary punishment.

John Ridley sworn.

Mr. *Clayton*. Do you know the prisoner at the bar?—Yes, Sir.

What business is he?—He is a baker.

How long have you known Mr. Whyte?—I have known him these twelve or eighteen months.

How came you acquainted with Mr. Whyte?—By seeing him sometimes in Mr. Loggie's, and thinking from his conversation he was a man I might learn something from.

Do you mean you might learn something of politics from him?—No, Sir, we seldom discoursed upon these matters.

When did you see Mr. Whyte last at Mr. Loggie's?—It was on the morning of the 17th of February.

What is Mr. Loggie?—He's a beer-brewer, and keeps a public-house in Grindon-Chare, upon the Quay-side.

What time of the day was it you saw Mr. Whyte there; was it fore or afternoon?—It was about eight o'clock in the morning.

You were then drinking together in Mr. Loggie's house, were you?—Yes, Sir.

Had you any appointment to meet Mr. Whyte that morning?—None, Sir.

Did you see him then have any paper in his hand?—He pulled a paper out of his pocket, and I desired him to read it.

Did he read that paper to you in Mr. Loggie's on the morning of the 17th of February?—He read a part of it.

Did he afterwards lend you that paper?—Yes, Sir.

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What was his reason for lending you that paper?—I asked the favour he would lend me the paper till next day.

What was your reason for asking Mr. Whyte to lend you that paper till next day?—I thought there might be something curious in it; and though Mr. Whyte is a good reader, I did not then understand what he said; he was in liquor at the time.

Did you understand there was any thing seditious intended by that paper?—No, Sir; I did not.

Did Mr. Whyte, when he lent you that paper, say you might read it to any other person?—He said I might read it to a few friends.

Did you then, in consequence of his permission, read that paper to any of your friends?—I was reading that paper to some of my acquaintance at the Angel Inn, when serjeant Punshon plucked it out of my hand, and carried it to a magistrate.

How many might there be in company when you were reading that paper at the Angel-Inn?—There might be ten or twelve.

Would you know that paper again?—I think I would.—[The paper produced.]

Is that the paper you received from Mr Whyte on the 17th of February?—That is the paper.

Look at it; have you any mark to know it by?—Yes, that is the very paper; there's my mark.

Did you make any alteration in that pp er after you received it from Mr. Whyte?—No, Sir; I made no alteration in it.

Cross-examination by the *Defendant*.

You say I read part of that paper on the morning of the 17th of February, will you inform the Court and jury what part of the paper it was I then read?—I cannot positively say; but think it was a page or two in the beginning of the paper.

Have you ever seen me write?—No.

Do you know my hand-writing?—I think I do.

Can you positively swear I wrote that paper?—I think you wrote that paper.

Can you upon your oath positively say I wrote that very paper; or do you only believe I had wrote it?

[Here the witness began to hesitate; the Court required him to give a direct answer to the question.]

You say you desired me to read, and you asked the favour I would lend you that paper?—Yes, Sir.

Did you then understand there was any seditious purpose intended by that paper?—No; I thought it perfectly innocent, and intended only for amusement.

Did you ever look upon me in the light of a malicious or seditious person?—I always looked upon you in the light of a friendly and agreeable companion.

Now you have said you did not understand one word I read in Mr. Loggie's, as I was then in liquor; how came you then to understand what I said, when you say I gave you directions to read it to your friends?—I understood so much.

[This being again put in nearly the same words, he gave the same answer.]

Can you say, that you understood when I lent you that paper I intended thereby to publish it?—No, I certainly did not; I never thought it was intended for the public.

Serjeant *Punshon* sworn.

Do you know John Ridley?—Yes, Sir.

What business is he?—He is a butcher.

Do you know that paper?—Yes, Sir; I took it from J. Ridley on the 18th of February last.

Was J. Ridley then reading that paper?—He pulled out that paper from his pocket, and desired me to read it to the company.

How many might there be in the company at the time?—About a dozen.

Did you then read that paper?—No; I looked at it—I thought it nonsense, and returned it to him again.

What do you understand to be nonsense?—I cannot say, I cannot say; I did not understand it.

How came you to sieze the paper, when you say you did not understand it?—J. Ridley fell a reading of it, and I then thought it was queer; then I laid hold of it—he d——d my soul I should not have it; I carried it to alderman ————, who sent me with it to Mr. Mayor.

What did the mayor say to you when you brought him that paper?—The mayor desired me to bring J. Ridley before him

Did the mayor order you to bring Mr. Whyte before him?—No; but he was then passing by, and J. Ridley, who was then on the Court stairs, pointed at him, and said, yonder is Mr. Whyte who wrote the paper.

What did you do then?—I went after Mr. Whyte—I did not know him then—I asked if that was his name, and desired him to come and speak to J. Ridley; then I went in to Mr. Mayor, and got an order to detain him.

Cross-examination.

Was I present when you seized that paper?—No; you were not present.

Had you any warrant from a magistrate for seizing that particular paper?—No; but we had an order to seize all such papers we could find, and bring them before a magistrate.

Who gave you that order?—It was alderman ————.

Was that order or warrant delivered to you in writing?—No; it was by word of mouth.

Did you consider that any such general order or warrant, by word of mouth from any magistrate, was sufficient to authorize you to seize either men or papers?

[Mr. Clayton said, that was not a fair question; but since the defendant desired it, he would put it to him.—Mr. Punshon answered in the affirmative.]

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Did you then think the magistrates could protect you in the execution of such a warrant?—I thought they could.

ADDRESS TO THE JURY.

Gentlemen of the Jury;—You have heard me arraigned at this bar, and in the presence of this honourable Court, as a wicked, malicious, and seditious person; and as such, having wrote and published to the world, a wicked, false, malicious, and seditious libel—with a view to subvert the constitution of this kingdom, and sow sedition in the minds of the people. It is you, gentlemen, who are appointed to try the truth of these assertions; and it is the undoubted, it is the dearest privilege of every British subject, that he is entitled to a fair and impartial trial. No Englishman should have reason to say that he has been deprived of justice by the slightest impediment thrown in the way to stop its impartial current. It is from the full conviction of the justice the subject has a right to expect from the wisdom and candour of an English court and jury, that I stand with confidence before you, destitute of counsel, or the means of procuring any advice or assistance.

Though my case has been hitherto peculiarly hard, having already suffered five months rigorous confinement from a frivolous prosecution, and might lay claim to the feelings of the humane; I shall not, on this occasion, mention it with any view of exciting those tender emotions so congenial to Englishmen. The present case, I am sensible, stands in need of no such defence; had the conductors of this prosecution observed the same degree of moderation, you would never have seen brought forward in this court an indictment loaded with bitter invective, evidently calculated, upon the spur of the occasion, to inflame the minds of the jury, by making the paper, of which I am charged as the author and publisher, speak a language foreign to itself. But I hope, from the candour and integrity of an English jury, I shall have nothing to fear, from either the insinuations or artifice of the advocate for the prosecution; whatever pains those who conducted it may have taken to blacken my character, which, thank God! after six years residence, stands as yet unimpeached in the neighbourhood in which my family still reside; and I may with safety appeal to any magistrate here present, if, during that period, I have been accused of one single act other than that for which I am now upon my trial.

It was incumbent on the counsel for the crown to make good his charge as to every part of the indictment, and under favour of the Court and jury I must say, he has totally failed in every particular; he has proved nothing criminal done by me.—The writing of the paper—the place where it was wrote—the reading of it on the morning of the 17th of February—the delivery of it to J. Ridley—together with the falsity, and the wicked and malicious design of the paper—the seditious purposes it was intended to serve—and the actual publication of the paper, are all of them facts necessary to be proved, before I can be found guilty by your verdict.

The evidence is now before the Court, which the prosecutor has adduced to establish the facts held forth in the indictment. The jury will consider how far it goes to establish any thing criminal in me. It is such conduct only as I am charged with in this indictment with which the jury have to do at present; and should the jury find my conduct not such as it is represented to have been by this indictment, or otherwise not of such a malignant or criminal nature, with due submission I affirm, I stand before you an innocent, persecuted man. And I hope, gentlemen of the jury, you will see from the whole tenor of the evidence, that I am neither that wicked, malicious, or seditious person, this indictment has represented me, nor the author or publisher of the paper set forth in that indictment.

The first witness, John Ridley, in whose custody that paper was found, and who, if ever it was published, must have been the publisher—swears, that on the morning of the 17th of February last, he saw me in Mr. Loggie's house, in a state of intoxication; our meeting there, he says, was accidental; some time after, he says, I pulled a paper out of my pocket, which he desired the favour I would read to him; he says, I read part of the paper; he thinks it might have been the first and second pages of the paper, but I was then so much in liquor he did not understand what I said; and after having read part of the paper, he says, he asked the favour I would lend it him till next day, with permission to read it to a few of his friends:—and this, he says, is the same paper now produced in court.

Now, were all that this witness has said true, I humbly presume,—that no wicked design—no seditious purpose—no intention to disseminate doctrines hostile to the constitution, which are the very essence of the crime with which I am charged, can be drawn from this man's evidence, nor from any circumstance of such an accidental interview. Were it proved that I had wrote any paper from malice prepense—had used every endeavour to publish it—and for that purpose, had appointed this witness to meet me at the house of Mr. Loggie or any where else; and then, after having read to him such a paper, desired him to take it, and circulate it amongst his friends and acquaintance, for the purpose of stirring up sedition amongst the people, and alienating the minds of his majesty's subjects from the legal government and constitution of this country;—gentlemen of the jury, did such appear to be the case, you would be justified in your own consciences, as well as in the eyes of the world, in finding a verdict against me. But, even according

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to this interested witness—I say interested, because his accusing me was necessary to exculpate himself; he declares upon his oath there was no such thing—no previous appointment—no premeditated scheme—no apparent design to disseminate doctrines hostile to the constitution—he is persuaded the paper had never been intended for the public—he obtained a few hours possession of it only as a favour—no occasion was sought on my part to publish this paper—no urging of this or any other person to take and publish it.—On the other hand, all that was done, according to this witness, was done at his own particular request, and under such circumstances as generally render men incapable of reflection. This is his own account of the matter; and the jury will consider what degree of credit is due to this man's evidence, which is so necessary, and goes all along to exculpate himself.

This paper, for which I have been searched as a felon—kept in confinement in Newgate these five months—and part of that time debarred the sight and speech of my own wife, or any other person—was found in his custody—not in mine; he was heard reading this paper—not me. I was not so much as in the company at the time this paper was reading; how much then is he interested to come forward and accuse me in order to save himself? And how much my alleged situation, on the morning of the 17th of February, favoured such an accusation, I leave with the jury to judge. But I must insist upon it, that my reading or delivering a paper to this witness on the morning of the 17th of February, is no proof of its being the same paper found in his custody on the morning of the 18th. It might have been a paper of a quite different nature I then read or delivered; a private letter, or any thing else. It is direct, it is positive evidence the jury are to found their verdict upon. This is not an action at law, brought to discover some secret deed of enormity; which, from the nature of the crime, cannot be supposed to admit of the most positive proof! No: this is a prosecution for a crime of a quite different nature, and requires the highest degree of positive evidence. It is not sufficient for a witness to say, he thinks or persuades himself; for the Court must give judgment upon unquestionable evidence, for publishing to the world a libel upon the constitution.—See Hawkins's Pleas of the Crown, vol. 2, p. 613, sixth edition.

And will you, an English jury, find a man guilty of publishing to the world a libel, of which publication by him there is no evidence? A libel must be proved to be wrote or published in the county laid in the indictment, all matters respecting libels being local; —see State Trials, Vol. XII. pp. 316, 319, 8vo edit.; and of positive proof, with respect to the publisher—see Burn's Justice, vol. 4, p. 672. There is no proof of my having wrote or published this paper in any county.

As to the evidence of serjeant Punshon, it does not affect me—it goes only to prove, that he found the paper now before the Court, in the custody of J. Ridley, on the morning of the 18th of February; when he has declared upon his oath I was then absent; which I hope will be sufficient to convince you, gentlemen, that I was by no means so much as accessary to the publication of it.

The evidence on the part of the crown, adduced to establish the fact, I contend, is defective and inconclusive in every part of it; so far as it is thereby endeavoured to bring home the fact to me, in proof of the allegations set forth and charged upon me in the indictment. I say, from the whole evidence now before the jury, there is nothing more clear, than that this paper was never published at all; and at most, does only amount to an attempt made by J. Ridley towards publishing this paper, when it was, in an illegal manner, wrested from his hand by serjeant Punshon, who was then possessed of no legal warrant under the hand or seal of any magistrate for that purpose. And how far such an illegal seizure of a paper, not so much as found in my possession, or read in my presence, ought to have subjected me to such rigorous confinement, and subsequent prosecution, is not now to be inquired into.

According to the evidence of J. Ridley, there was only a part of that paper read by me on the morning of the 17th of February; he supposes a page or two; and he did not understand one word that I then read. It ought to have been in proof before this honourable Court, what part of that paper it was I then read, that the jury may be able to judge what degree of criminality was contained in the paragraph or paragraphs, then said to have been read. For if what I then read was innocent—perhaps it was laudable —the jury will not find me guilty of publishing a libel upon the constitution. This, I contend, is absolutely necessary to be proved, in order to affix the guilt of publishing a seditious libel upon me, or upon any other person. It is not sufficient in the eye of the law to criminate any man that a libel has been published, but it must be proved to have been published by him in a seditious manner. —The managers of the prosecution seem sufficiently sensible of this, when they have loaded this indictment with so many epithets of criminality, they have hitherto been unable to prove. Thus they seem willing to have their fellow-subjects criminated upon general averments, as it had formerly been attempted to seize and confine their persons upon general warrants; but as an upright judge and an impartial jury saw the dangerous tendency of the one,—it is hoped an English jury will never suffer themselves to be influenced or imposed upon by the other.

No one fact previous to the publication is so much as attempted to be proved—nothing to delineate the malignity—the wicked de-

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gn—the seditious spirit, with which it is so nfidently asserted that I had wrote and pub-shed to the world the paper now before the ourt. There is no proof of my having wrote is paper—none of the witnesses have seen e write—none of them can swear to my and-writing; and with due submission I ust contend, that there has been no legal roof before this Court, that I had delivered is, or any other paper, to J. Ridley on the orning of the 17th of February; for the are, unsupported assertion of J. Ridley in e present case is totally irrelevant, for the easons already mentioned.

A libel is justly termed the least definable, nd the most ambiguous of all misdemeanors. ur best judges and lawyers have been, and till are, divided upon the subject; which ave cardinal Mazarine, prime minister to ouis 14th of France, to boast, "That if he had ut two lines of any man's writing, he could ut off his head." So dangerous a thing it is o the liberties of a free people to encourage rosecutions for libels, that, I am persuaded, o gentleman here present, would ever wish o see himself or his countryman reduced to uch a deplorable situation; therefore it has ften been attempted to wrest all such trials ut of the hands of English juries. The nu-nerous and various prosecutions, on pretence f libels, during the reigns of the Stuarts, gave ord Sommers occasion of writing his valuable ract, intituled, "Security of Englishmen's ives." Wherein his lordship says, page 30, 'Could we call ourselves any longer freemen, when neither the liberty of free writing or ree speech, about every body's concern, bout the management of public money, pub-ic law, and public affairs, was permitted, but padlock was put, both upon the mouth and he press as to these matters, and every body as afraid to speak or write, what every ody, however, could not help thinking?" is lordship was sensible, that the liberty of he press was so inseparably connected with he liberty of the subject, that every attempt o abridge the one, must necessarily endan-er the other.——The author of a tract, inti-uled, "An Inquiry into the Doctrines lately ublished concerning Libels," published in he year 1764, shows, that it is to such writ-ngs as have been prosecuted for libels, we re at present indebted for our civil and reli-ious liberties; he says, page 33, "I am fully onvinced, that were it not for such writings s have been prosecuted by attorney-generals or libels, we should never have had a revo-ution, nor his present majesty a regal crown, or should we now enjoy a protestant reli-ion, or one jot of civil liberty." Montes-uieu, in his Spirit of Laws, says, "Were the iberty of the press permitted, even in the espotic states of Asia, there would be the awn of liberty."

It is not that I am concerned to defend the erits of the paper in question; which, were deprived of the glossary afforded by the gentleman who filed the indictment, might, perhaps, have appeared according to its original state and intention, perfectly innocent, and nothing more than a piece of harmless amusement, never intended to go beyond the threshold of the author; the fictitious character affixed to the paper shows, that it never was intended it should be taken in a serious point of view. It must be allowed, that even the productions, or rather amusements of a leisure hour, could have been no longer innocent, after, by misfortune or otherwise, they should have fallen into the hands of a Richelieu or a Mazarine. But the fatal effects of their arbitrary measures, the sole cause of the present disturbances, which still continue to deluge that unhappy country with blood, ought to be a caution to the subjects of other princes to beware of their footsteps. Though vexatious and cruel prosecutions may sometimes, though seldom, meet with the plaudit of the moment, allow me to say, the very names of the prosecutors have uniformly been handed down to posterity as infamous.

As to the paper being charged as a libel upon the constitution, lord Coke says, "That there can be no libel, where no person is reflected upon or scandalized." Now I do not find that any person is so much as mentioned throughout the whole paper before the Court. The whole language of the indictment in this particular, is foreign to the explanation lord Bacon* would have put upon the words of a supposed libel: his lordship says, "That when any word or sentence will bear two senses, one in which they are actionable, and another in which they are not, they are to be taken in the sense in which they are not actionable."—See Bacon's Abridgment, vol. 6, p. 238, 5th edition.

The jury cannot but be sensible how far the managers of the prosecution have deviated from so salutary a rule, as well as from the spirit and principle of English jurisprudence; which by no means authorizes the overstraining of penal laws, and would rather that twenty guilty persons should escape, through default of justice, than one innocent person should suffer.† It is the inestimable, it is the inviolable privilege of Englishmen, that in all cases they are to be tried by a jury of their peers, which cannot do wrong to their fellow-subjects, nor deprive them of any of their properties or privileges to-day, by an unjust verdict, which may not be supposed to affect themselves to-morrow. Now I affirm, that unless it can be proved, which I contend it has not been, that I had wrote this paper in a certain county, and afterwards published it for the purpose of exciting individuals to rebellion against the national will, from an evil and seditious mind,—you cannot convict me of a libel upon this indictment.

* The name of lord Bacon is here introduced erroneously.

† See Vol. VII, p. 1529, *note.*

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The cells of priests, and the studies of the great, have been ransacked, in order to furnish matter for prosecution, and for a single paper found there, the author has been brought to the block; as was the case of colonel Sydney.* The parliament, sensible of the enormity and dangerous tendency of such proceedings, subversive of all law, and destructive to every principle of liberty, set aside his attainder, and rendered his memory respectable to the world; since which his works have come down to posterity with applause, and particularly that part of them for which he suffered, viz. his "Essay on Government."

I am sensible that no such arbitrary measures will ever be countenanced by his present majesty, whose every wish has centered in the public good, and the sole principle of whose reign has been the law of the land. Neither, I presume, will any such measures be attempted by any minister or magistrate, who is at bottom a friend to the constitution of this country, and the illustrious family upon the throne. And who shall say, if such measures should be adopted by any interested magistrate, which are equally destructive to the rights of the sovereign—the liberties of the people—the constitution of the kingdom—and the law of the land, that their fellow-subjects have not a right to point out their error, and show them wherein they have departed from the line of their duty and allegiance, without being liable to be thrown into a Bastile and prosecuted?—Prosecuted for a libel upon that constitution they had all along been endeavouring to support, and would wish to see handed down to posterity entire, as the surest pledge of their future happiness.

Gentlemen of the jury, as to any declaration of mine, when before the mayor on the 18th of February, being offered as proof in this case, it was partially taken—I refused to sign it. I saw no paper in the mayor's chamber, and therefore could not say, if the Court was then possessed of any, that it was mine. Such evidence is precluded by the law of the land; which is so tender and guarded in this particular, that though a crime should be ever so notorious, and even confessed in writing, under hand and seal before justices of the peace, secretaries of state, or the king and council, yet this is no legal or admissible evidence in any court of criminal law in the kingdom;—it is the proof that has been taken in your presence, gentlemen, with which you have to do in the present case, it is that must govern you in returning your verdict into court.

From the evidence now before you, gentlemen, whether taken in the whole or in part, I humbly presume, that there is nothing of evil design, malice, or seditious purpose appears in the whole of this affair; neither, with due submission, is it proved, that I was in any manner of way concerned, in either writing or publishing the paper now before the Court. And I would humbly ask any gentleman here present (who has attended to the evidence), what harm has that paper done to the public peace of the kingdom?—What injury has it done to any individual in it, that ought to have subjected its real author to the cruel treatment I have met with on that account? To be torn from a tender wife, a sick and infant family, and consigned over to the gloomy cells of a solitary prison; where, for some time at least, the very sight of them or any other friend was denied me; whilst the cutting reflection of their distressed situation was still before my eyes—the double load of misery to which they were thereby reduced—the want of the necessaries of life, being deprived of the profits of my labour, by which alone they were supported—the husband and the father's fate hanging in suspence, and all relief sternly denied.

Gentlemen of the jury, your verdict in this case cannot be void of importance to your fellow-citizens; you will not only thereby declare me guilty or innocent, in whole or in part, of the crime laid to my charge, which is so far as your verdict can affect me as an individual; your verdict, together with the sentence of this honourable Court, will be entered upon record, and may be pleaded in all similar cases. Put the case, then, that any gentleman within the jurisdiction of this Court, shall, in future, be found reading a paper, a private letter from a friend, or any thing else—a busy by-stander plucks the paper or letter from his hand—says it is seditious—and runs directly to a magistrate with it, who, thereupon, calls upon the gentleman to give up and turn evidence against his friend who had wrote him that letter, otherwise he himself will be taken into custody. Must not such procedure strike at the root of all free correspondence, and all friendly intercourse? This is similar to the case of lord Saville; who, A. D. 1643, was committed close prisoner to the Tower of London, for refusing to name the person who had wrote a letter to him, the parliament had thought treacherous? But I hope no gentleman here present, would ever wish to see these busy arbitrary scenes acted over again here in England, from which we had been so happily freed by the ever-memorable Revolution.

Gentlemen of the jury, I leave it with you to do in this case as your consciences may direct, and as you would wish to be done by in a similar situation.

Three unexceptionable witnesses having spoken to the defendant's character, Mr. Recorder proceeded to charge the jury, who, in about an hour and a half, returned into court, finding the prisoner NOT-GUILTY OF PUBLISHING.—The Court seemed dissatisfied with the

* See his trial, Vol. IX. p. 817 of this collection.

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verdict—Mr. Clayton turned to Mr. Recorder, and said, it was the same thing as finding Mr. Whyte not-guilty upon a general verdict, as the grand jury had found a bill for publishing only. The question being again put, the jury said, they were unanimous in finding the prisoner NOT-GUILTY.—Upon which he was dismissed from the bar.

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ADDENDA.

To the case of lord viscount Strangford, pp. 161, and seq.

The proceedings in the case of Hume *v.* Burton, are reported in Ridgeway's Cases in the High Court of Parliament in Ireland, Vol. i. pp. 16, 204, 554.

To the case of lord George Gordon, p. 236. The following passage was by accident omitted at the conclusion of this case.

Burke, in his Reflections on the French Revolution, takes occasion thus to introduce the conduct and character of lord George Gordon :—

" We are generous enemies; we are faithful allies. We spurn from us with disgust and indignation the slanders of those who bring us their anecdotes with the attestation of the flower-de-luce on their shoulder. We have lord George Gordon fast in Newgate; and neither his being a publick proselyte to Judaism, nor his having, in his zeal against Catholic priests and all sorts of ecclesiasticks, raised a mob (excuse the term, it is still in use here), which pulled down all our prisons, have preserved to him a liberty, of which he did not render himself worthy by a virtuous use of it. We have rebuilt Newgate and tenanted the mansion. We have prisons almost as strong as the Bastile, for those who dare to libel the queens of France. In this spiritual retreat let the noble libeller remain, let him there meditate on his Thalmud, until he learns a conduct more becoming his birth and parts, and not so disgraceful to the ancient religion to which he has become a proselyte; or until some persons from your side of the water to please your new Hebrew brethren, shall ransom him. He may then be enabled to purchase, with the old hoards of the synagogue, and a very small poundage, on the long compound interest of the thirty pieces of silver (Dr. Price has shown us what miracles compound interest will perform in 1790 years), the lands which are lately discovered to have been usurped by the Gallican church. Send us your Popish archbishop of Paris, and we will send you our Protestant rabbin. We shall treat the person you send us in exchange like a gentleman and an honest man, as he is; but pray let him bring with him the fund of his hospitality, bounty, and charity; and depend upon it, we shall never confiscate a shilling of that honourable and pious fund, nor think of enriching the treasury with the spoils of the poor-box."—Burke's Works, Vol. V. pp. 162—164, 8*vo.*, 1808.

To the case of Stockdale, pp. 294, and seq.

The debates which took place in parliament on Mr. Fox's Libel Bill will be found in the New Parl. Hist., Vol. XXIX.

To the case of John Frith, p. 311, note.

The reasoning of Mr. Hume on the practice which prevails in the Scottish courts in cases of this nature is worthy the reader's attention.

" There are also several pleas in bar of trial, though they do not occur so frequently, which consist mainly in fact; as if it be alleged for the pannel, that he is insane at the time, and incapable of providing for his just defence. Now, as to this plea, I know not if it can be affirmed, that we are yet in possession of a rule. It is true, that a jury were empannelled to try the matter of lunacy, in the case of Harries, [Maclaurin, No. 85] in April 1770, where they found that his disorder was affected; and also in that of John Philp, on the 27th of January 1777, who was found to be truly insane, and not in a proper condition to be tried. Yet in spring [May 13th] 1786, in a circuit court held by the lords Hailes and Henderland, at Aberdeen, the insanity of Ann Simpson, a person indicted of child-murder, was inquired into and found proved, upon evidence,* which was laid before the Court alone. And in this, those judges had the authority of what was done by the whole Court, in the trial of Thomas Caldwall [June 13th, July 15th, 1787] for murder and robbery (as far as I know the oldest precedent on the subject), where, on a proof taken before themselves only, they " found that the madness

* " The lords Hailes and Henderland having considered the depositions of Dr. Skene and Dr. Bannerman, this day emitted in their presence, find it sufficiently thereby instructed, that the pannel Ann Simpson is at present insane, and not a proper object for trial; they therefore desert the diet against the said Ann Simpson." This woman having been liberated, was afterwards guilty of another act of child-murder (for this was the particular turn of her insanity), and was tried for it (Sept. 16th and 17th, 1796), and found by the jury to be insane. She was in consequence, ordered into confinement as insane, in the gaol of Bamff. In that situation, she bore a child, as was alleged, to the gaoler; and this also being made away with, he was tried for the murder in April 1798, but was acquitted. In this last trial, Ann Simpson was called as a witness. *Hume.*

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and fatuosity alleged for the pannel was only affected, and wilfully feigned by him to screen himself from justice;" and therefore they remitted him to an assize, who found him guilty of the charge. It thus seems to be doubtful at least, if we have yet sufficient authority for annexing to the province of the jury, a pre-judicial inquiry of this nature, which is utterly exclusive of the very libel whereupon, and the purposes for which they are summoned, as these are announced in the concluding clause of the libel itself. This too is such a matter, with respect to which, especially as the condition of the man is under the eye of the audience, as well as of the Court at the time, there seems not to be any reasonable cause for jealousy of judges, nor the same natural inlet to prejudice or passion, as in trying the merits of human actions, or in weighing the proof by which the guilt or the innocence of the accused shall finally be determined. And indeed, after his plea of insanity has been repelled by the judge, the pannel has still his refuge with the assize, who may do with respect to his conviction, as they themselves shall see cause." 1 Hume's Comm. Tr. for Crimes, 229.

"The pannel must not only be present with his person in court, but in that due state of sobriety also, and possession of himself, which are requisite towards conducting this solemn part of the trial with decency, and with hope of benefit to the audience. If, therefore, he appear to be intoxicated (as happened in the case of Maccuillin, in 1797), the Court will adjourn the diet, and take order for keeping and presenting him, in a state of mind more befitting his unfortunate condition. Or if he seem to be disordered in his senses, sentence shall in like manner be delayed from time to time, that it may be ascertained whether his disease be real or affected, and whether it be fixed and incurable, or an occasional derangement only, of which he may be expected to recover. Such an objection was stated, at receiving the verdict in the trial of Thomas Gray (August 3rd 1773). And the diet was in consequence adjourned from time to time, till at last, if I mistake not, the case dropped out of the record: at least, I have not been able to discover, that it came to any issue." 2 Hume's Comm., 342.

To the case of William Hudson, p. 1019.

I have observed that in the publications of the day, this man is sometimes called Dr. Hodgson. Pigott, his companion, calls him Hodgson in a pamphlet relating to these proceedings, which he published in 1793, under the following title:—

"PERSECUTION.—The case of Charles "Pigott contained in the defence he had "prepared, and which would have been "delivered by him on his trial if the grand "jury had not thrown out the bill preferred "against him. By Charles Pigott, author "of Strictures on the New Political Tenets "of Edmund Burke, and other well known "popular publications. London, printed "for Daniel Isaac Eaton."

CORRIGENDA.

P. 442, L. 13 from bottom, the * should be a †.
L. 11 from bottom, for June 1737: and, *read* June 1737, and.

P. 509, last line, for EDIT. *read Editor of Erskine's Speeches.*

P. 509, last line but one, *for* cases there cited; and, *read* cases there cited, and.

P. 577, the second and third notes are wrongly marked.

P. 1006, L. 15 from bottom, to the words "i *the case of Mr. Holt the printer,*" shou have been subjoined a reference to th case, p. 1225 of this Volume.

END OF VOL. XXII.

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