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Speeches

of

LORD ERSKINE,

While At The Bar.

Edited By

James Lambert High,

Counselor At Law.

Volume II.

Chicago

Callaghan and Cockcroft.

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CONTENTS OF VOL. II.

	Page.
Subject of the Trial of John Stockdale for a Libel.	5
The Attorney-General's Speech in Support of the Prosecution.	6
Mr. Erskine's Speech for the Defendant.	14
Reply of the Attorney-General.	76
Lord Kenyon's summing up in this Cause.	89
Introduction to the Trial of Mr. John Frost.	94
Speech of the Attorney-General in Support of the Prosecution.	94
Evidence for the Crown in this Cause.	108
Mr. Erskine's Speech for the Defendant.	125
Reply of the Attorney-General.	165
Subject of the Trial of James Perry and another.	180
Speech of the Attorney-General for the Crown in this Cause.	202
Mr. Erskine's Speech for the Defendants.	219
Reply of the Attorney-General.	251
Lord Kenyon's Charge on summing up.	260
Finding of the Jury.	266
Subject of the Trial of Mr. Thomas Walker.	267
Mr. Law's Speech in Support of the Prosecution.	268
Mr. Erskine's Speech in Defence of Mr. Walker.	282
Proceedings against Charles Bembridge for a Misdemeanor.	321
Lord Mansfield's Charge to the Jury.	322
Mr. Erskine's Speech on the Motion for a New Trial.	330
Statement of the Case of John Vint and others.	358
Speech of the Attorney-General for the Prosecution.	359
Mr. Erskine's Speech for the Defendants.	362
Evidence for the Defendants.	378
Reply of the Attorney-General.	379
Lord Kenyon's Summing up.	381
Trial of Thomas Hardy.	386
Mr. Erskine's Application for Delay.	393
Speech of Mr. Erskine for the Defendant.	402
Verdict.	592

Case of the KING against JOHN STOCKDALE, tried in the Court of King's Bench, before Lord Kenyon and a Special Jury at Westminster, on the Ninth of December, A. D. 1798, upon an Information filed against him by the Attorney-General, for a Libel on the House of Commons.

STATEMENT OF THE CASE.

THE trial of Mr. John Stockdale, of Piccadilly, is so immediately connected with the well-known impeachment of Warren-Hastings, 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 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, they were expanded into great length, and were characterized by the 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 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, 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 having an immediate and very extensive sale, was complained of by Mr. Fox, to the house of commons. Upon motion of Mr. Fox, 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; and the information was accordingly filed.

It must be confessed that the book in question contained some very indiscreet and offensive passages. For example, Mr. Logan did not scruple to assert that the charges against Hastings had their origin in misrepresentation and falsehood; that the house of commons, in pushing one of these charges, was "a tribunal of inquisition, rather than a court of parliament," and that the impeachment was "carried on from motives of personal animosity—not from regard to public justice." Still the merits of the case were ably and exhaustively treated, the author seeming desirous of demonstrating the innocence of the illustrious accused. It is deserving of remark that, notwithstanding the book was published pending the trial of Hastings, and doubtless was not without its influence upon the august tribunal before which he was arraigned, yet no effort was made to commit either author or publisher by authority of the commons, and the prosecution was left to take the ordinary course at law.

The evidence consisted simply of the common proof of publication, and is therefore omitted as unnecessary.

The attorney-general, Sir Archibald Macdonald, opened the case as follows :

GENTLEMEN OF THE JURY: This information, which it has been my duty to file against the defendant, John Stockdale, comes before you in con-

sequence 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 everybody must think it, to be the fittest to bring before a jury of the country an offender against themselves, avoiding thereby what sometimes indeed is unavoidable, but which they wish to avoid, whenever it can be done with propriety, the acting both as judges and accusers; which they must necessarily have done had they resorted to their own powers, which are great and extensive, for the purpose of vindicating themselves against insult and contempt, but which, in the present instance, they have wisely forborne to exercise, thinking it better to leave the defendant to be dealt with by a fair and impartial jury.

The offence which I impute to him is that of calumniating the house of commons; not in its ordinary legislative character, but when acting in its accusatorial capacity, conceiving it to be their duty, on adequate occasions, to investigate the conduct of persons in high stations, and to leave that conduct to be judged of by the proper constitutional tribunal, the peers in parliament assembled.

After due investigation, as it is well known to the public, the commons of Great Britain thought it their duty to submit the conduct of a servant of

this country, who had governed one of its most opulent dependencies for many years, to an inquiry before the tribunal. One would have thought that every good subject in this country would have forborne imputing to the house of commons motives utterly unworthy of them, and of those whom they represent; instead of this, to so great a degree now has the licentiousness of the press arisen, that motives, the most unbecoming that can actuate any individual who may be concerned in the prosecution of public justice, are imputed to the representatives of the people. No credit is given to them for meaning to do justice to their country, but, on the contrary, private, personal, and malicious motives have been imputed to the commons of Great Britain.

When such an imputation is made upon the very first tribunal that this country knows; namely, the great inquest of the nation, the commons in parliament assembled, carrying a subject, who, as they thought, had offended, to the bar of the house of lords, I am sure you will think this attack 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 your lordship, will be the ordinary acceptance of the words, and the plain and obvious sense of the several passages ; if there be doubt, or if there be difficulty ; if there be screwing or ingenuity, or unworthy straining, on the part of a public prosecutor, you certainly will pay no attention to that ; but, on the contrary, if he who runs may read ; if the meanest capacity must understand the words, in their plain and obvious sense, to be the same as imputed in this information, in such a case as that, ingenuity on the other side must be laid aside by you, and you will not be over-anxious to give a meaning to words, other than the ordinary and plain one.

In my situation, it does not become me to raise in you more indignation than the words themselves, and the plain and simple reading of the libel will do ; far be it from me, if it were in my power to do so, to provoke any undue passion or animosity in you, against conduct even such as this. The solemnity of the situation in which I am placed on this occasion, obliges me to address the intellect both of the court and jury, and neither their passions nor their prejudices ; for that reason I shall content myself with the few observations I

have made, and betake myself merely to the words of the libel; and leaving that with you, I am most confident that if you follow the rule of interpretation which you always do upon such occasions, it cannot possibly happen that you should differ from me, in the construction which I have put upon them.

Gentlemen, this, I should however mention to you, is a libel of a more dangerous nature than the ribaldry that we daily see crowding every one of the prints which appear every morning upon our tables; because it is contained in a work which discovers the author of it to be by no means ignorant of composition, but certainly to be of good understanding, and eminently acquainted with letters. Therefore when calumny of this sort comes so recommended, and addressing itself to the understandings of the most enlightened part of mankind—I mean those who have had the best education—it may sink deep into the minds of those who compose the thinking and the judging part of the community; and, by misleading them, perhaps may be of more real danger than the momentary misleading, or the momentary inflammation, of common minds, by the ordinary publications of the day.

This book is entitled, “A Review of the Principal Charges against Warren Hastings, Esquire, late Governor-General of Bengal.”

One passage in it is this: "The house of commons has now given its final decision with regard to the merits and demerits of Mr. Hastings. The grand inquest of England has delivered their charges, and preferred their impeachment; their allegations are referred to proof; and from the appeal to the collective wisdom and justice of the nation in the supreme tribunal of the kingdom, the question comes to be determined, whether Mr. Hastings be guilty or not guilty."

Another is this: "What credit can we give to multiplied and accumulated charges, when we find that they originate from misrepresentation and falsehood?"

Another is: "An impeachment of error in judgment with regard to to the *quantum* of a fine, and for an intention that never was executed, characterizes a tribunal of inquisition, rather than a court of parliament."

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

And again: "If success in any degree attends the designs of the accusers of Mr. Hastings, the voice of Britain henceforth to her sons is, Go and serve your country; but if you transgress the line of official orders, though compelled by necessity,

you do so at the risk of your fortune, your honor, and your life; if you act with proper prudence against the interests of the empire, and bring calamity and disgrace upon your country, you have only to court opposition and coalesce with your enemies, and you will find a party zealous and devoted to support you. You may obtain a vote of thanks from the house of commons for your services, and you may read your history in the eyes of the mob, by the light of bonfires and illuminations. But if, after exerting all your efforts in the cause of your country, you return covered with laurels and crowned with success; if you preserve a loyal attachment to your sovereign, you may expect the thunders 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 grievances as well as to punish offences. It has been affirmed that the natives of India have been deeply injured; but has any motion been made to make them compensation for the injuries they have sustained? Have the accusers of Mr. Hastings ever 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 negotiation, the world has every reason to conclude that the impeachment of Mr. Hastings is carried on" — now, gentlemen, I leave you to judge what sort of motives are imputed to the house of commons here — "from motives of personal animosity, not from regard to public justice."

The general meaning, without specifying it in technical language, which I have thought it my duty to impute to these words, is shortly this: That the house of commons, without consideration, without reading, without hearing, have not been ashamed to accuse a man of distinguished situation, and to pervert their accusatorial character from the purposes of deliberate, thoughtful, considerate justice, to immediate, hasty, passionate, vindictive, personal animosity. The work represents that the better a man conducts himself, that the more deserving he has rendered himself of his country's favor 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.

SPEECH OF MR. ERSKINE.

The publication having been proven, Mr. Erskine addressed the jury as follows; first saying:

I admit that the witness has proved that he bought this book at the shop of Mr. Stockdale—Mr. Stockdale himself being in the shop—from a young man who acted as his servant.

GENTLEMEN OF THE JURY: Mr. Stockdale, who is brought as a criminal before you for the publication of this book, has, by employing me as his advocate, reposed what must appear to many an extraordinary degree of confidence, since, although he well knows that I am personally connected in friendship with most of those whose conduct and opinions are principally arraigned by its author, he nevertheless commits to my hands his defence and justification.

From a trust apparently so delicate and singular, vanity is but too apt to whisper an application to some fancied merits of one's own; but it is proper, for the honor 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 proposition, and confirmed by the higher authority of the court, viz. :

First, that every information or indictment must contain such a description of the crime that the defendant may know what crime it is which he is called upon to answer.

Secondly, that the jury may appear to be warranted in their conclusion of guilty or not guilty.

And, lastly, that the court may see such a precise and definite transgression upon the record, as to be able to apply the punishment which judicial discretion may dictate, or which positive law may inflict.

It was admitted also to follow as a mere corollary from these propositions, that where an information charges a writing to be composed or published of and concerning the commons of Great Britain, with an intent to bring that body into scandal and disgrace with the public, the author cannot be brought within the scope of such a charge, unless the jury, on examination and comparison of the whole matter written or published, shall be satisfied that the particular passages

charged as criminal, when explained by the context, and considered as part of one entire work, were meant and intended by the author to vilify the house of commons as a body, and were written of and concerning them in parliament assembled.

These principles being settled, we are now to see what the present information is.

It charges that the defendant, "unlawfully, wickedly, and maliciously devising, contriving, and intending to asperse, scandalize, and vilify the commons of Great Britain in parliament assembled; and most wickedly and audaciously to represent their proceedings as corrupt and unjust, and to make it believed and thought, as if the commons of Great Britain in parliament assembled were a most wicked, tyrannical, base, and corrupt set of persons, and to bring them into disgrace with the public" — the defendant published — What? Not those latter ends of sentences which the attorney-general has read from his brief, as if they had followed one another in order in this book; not those scraps and tails of passages which are patched together upon this record, and pronounced in one breath, as if they existed without intermediate matter in the same page, and without context anywhere. No. This is not the accusation, even mutilated as it is; for the information charges, that, with intention to vilify the house of commons, the defendant published the whole book, describing

it on the record by its title: "A Review of the principal charges against Warren Hastings, Esq., late governor general of Bengal;" in which, amongst other things, the matter particularly selected is to be found. Your inquiry, therefore, is not confined to, whether the defendant published those selected parts of it; and whether, looking at them as they are distorted by the information, they carry in fair construction the sense and meaning which the innuendos put upon them; but whether the author of the entire work — I say the author, since, if he could defend himself, the publisher unquestionable can, whether the author wrote the volume which I hold in my hand, as a free, manly, *bona fide* disquisition of criminal charges against his fellow citizen, or whether the long, eloquent discussion of them, which fills so many pages, was a mere cloak and cover for the introduction of the supposed scandal imputed to the selected passages; the mind of the writer all along being intent on traducing the house of commons, and not 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 the 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 tenor 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 forever, if you convict the defendant.

Gentlemen, to enable you to form a true judgment of the meaning of this book, and of the intention of its author, and to expose the miserable juggle that is played off in the information, by the combination of sentences, which in the work itself have no bearing upon one another—I will first give you the publication as it is charged upon the

record and presented by the attorney-general in opening the case for the crown; and I will then, by reading the interjacent matter, which is studiously kept out of view, convince you of its true interpretation.

The information, beginning with the first page of the book, charges as a libel upon the house of commons, the following sentence: "The house of commons has now given its final decision with regard to the merits and demerits of Mr. Hastings. The grand inquest of England have delivered their charges, and preferred their impeachment; their allegations are referred to proof; and from the appeal to the collective wisdom and justice of the nation in the supreme tribunal of the kingdom, the question comes to be determined, whether Mr. Hastings be guilty or not guilty."

It is but fair however to admit, that this first sentence, which the most ingenious malice cannot torture into a criminal construction, is charged by the information rather as introductory to what is made to follow it, than as libelous in itself; for the attorney-general from this introductory passage in the first page, goes on at a leap to page thirteenth, and reads, almost without a stop, as if it immediately followed the other, this sentence: "What credit can we give to multiplied and accumulated charges, when we find that they originate from misrepresentation and falsehood?"

From these two passages thus standing together, without the intervenient matter which occupies thirteen pages, one would imagine, that instead of investigating the probability or improbability of the guilt imputed to Mr. Hastings; instead of carefully examining the charges of the commons, and the defence of them which had been delivered before them, or which was preparing for the lords; the author had immediately, and in a moment after stating the mere fact of the impeachment, decided that the act of the commons originated from misrepresentation and falsehood.

Gentlemen, in the same manner a veil is cast over all that is written in the next seven pages; for knowing that the context would help to the true construction, not only of the passages charged before, but of those in the sequel of this information; the attorney-general, aware that it would convince every man who read it that there was no intention in the author to calumniate the house of commons, passes over, by another leap, to page twenty; and in the same manner, without drawing his breath, and as if it directly followed the two former sentences in the first and thirteenth pages, reads from page twentieth: "An impeachment of error in judgment with regard to the quantum of a fine, and for an intention that never was executed, and never known to the offending party, charac-

terizes a tribunal of inquisition rather than a court of parliament."

From this passage, by another vault, he leaps over one-and-thirty pages more, to page fifty-one; where he reads the following sentence, which he mainly relies on, and upon which I shall by and by trouble you with some observations: "Thirteen of them passed in the house of commons, not only without investigation, but without being read; and the votes were given without inquiry, argument, or conviction. A majority had determined to impeach; 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 vigor from every exertion, he makes his last grand stride over forty-four pages more, almost to the end of the book, charging a sentence in the ninety-fifth page.

So that out of a volume of one hundred and ten pages, the defendant is only charged with a few scattered fragments of sentences, picked out of three or four. Out of a work consisting of about two thousand five hundred and thirty lines, of manly, spirited eloquence, only forty or fifty lines are culled from different parts of it, and artfully put together, so as to rear up a libel, out of a false context, by a supposed connection of sentences with one another, which are not only entirely independent, but which, when compared with their antece-

dents, 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 hath 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 prosecutors 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 maladministration in India, from the heat and spleen of political divisions in parliament, and not from

any zeal for national honor 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 candor and common sense to take up his impressions from what is written in it, instead of bringing his own along with him to the reading of it, can possibly understand it otherwise.

But it may be said, that admitting this to be the scope and design of the author, what right had

he to canvass the merits of an accusation upon the records of the commons; more especially while it was in the course of legal procedure? This, I confess, might have been a serious question; but the commons, as prosecutors of this information, seem to have waived or forfeited their right to ask it. Before they sent the attorney-general into this place to punish the publication of answers to their charges, they should have recollected that their own want of circumspection in the maintenance of their privileges, and in the protection of persons accused before them, had given to the public the charges themselves, which should have been confined to their own journals. The course and practice of parliament might warrant the printing of them for the use of their own members; but there the publication should have stopped, and all further progress been resisted by authority. If they were resolved to consider answers to their charges as a contempt of their privileges, and to punish the publication of them by such severe prosecutions, it would have well become them to have begun first with those printers who, by publishing the charges themselves throughout the whole kingdom, or rather throughout the 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 honorable 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 remiss-

* Edmund Burke.

ness 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 before you, it must be yet further remembered, for the fact is equally notorious, that under these inauspicious circumstances, the trial of Mr. Hastings at the bar of the lords had actually commenced long before its publication.

There the most august and striking spectacle was daily exhibited, which the world ever witnessed. A vast stage of justice was erected, awful from its high authority, splendid from its illustrious dignity, venerable from the learning and wisdom of its judges, captivating and affecting from the mighty concourse of all ranks and conditions which daily flocked into it, as into a theatre of pleasure;* there, when the whole public mind was at once awed and softened to the impression of every human affection, there appeared, day after day, one after another, men of the most powerful and

* The impeachment was carried on in the great Hall of Westminster.

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 vigor 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 was 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 endeavoring faintly to describe to you might be supposed likely to produce, that the author, whose name I will now give to you, sat down to compose the book which is prosecuted to-day as a libel.

The history of it is very short and natural.

The Rev. Mr. Logan, minister of the Gospel at Leith, in Scotland, a clergyman of the purest morals, and, as you will see, by and by, of very superior talents, well acquainted with the human character, and knowing the difficulty of bringing back public opinion after it is settled on any subject, took a warm, unbought, unsolicited interest in the situation of Mr. Hastings, and determined, if possible, to arrest and suspend the public judgment 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 transaction 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 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 meantime to receive, as an antidote to the unlimited and unpunished poison in circulation against him? This is, without color 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 anything 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 bonds of English freedom, put a copy of what is thus published into his pocket, and send back to the very same shop for publica-

tion 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 labored 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 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 effusions of a zealous temper, engaged in an honorable and legal pursuit. After this preparation, I am not afraid to lay the book in its genuine state before you.

The pamphlet begins thus: "The house of commons has now given its final decision with regard to the merits and demerits of Mr. Hastings.

The grand inquest of England have delivered their charges and preferred their impeachment; their allegations are referred to proof; and from the appeal to the collective wisdom and justice of the nation in the supreme tribunal of the kingdom, the question comes to be determined 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 favor of the impeachment? What credit can we give to multiplied and accumulated charges, when we find that they originate from misrepresentation and falsehood?" every man would have been justified in pronouncing that he was attacking the house of commons, because the groundless accusations 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 impeachment, the proper exercise of such power is a valuable privilege of the British constitution, a formidable guardian of the public liberty and the dignity of the nation. The only danger is, that from the influence of faction, and the awe which is annexed to great names, they may be prompted to deter-

mine before they inquire, and to pronounce judgment without examination."

Here is the clue to the whole pamphlet. The author trusts to and respects the house of commons, but is afraid their mature and just consideration 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, everything is considered as faction that disturbs the repose of the minister in parliament. But, indeed, gentlemen, some things are too plain for argument. The author certainly means my friends, who, whatever qualifications may belong to them, must be contented with the appellation of faction, while they oppose the minister in the house of commons; but the house, having given this meaning to the phrase of faction for its own purposes, cannot in decency change the interpretation in order to convict my client. I take that to be beyond the privilege of parliament.

The same bearing upon individual members of

the commons, and not on the commons as a body, is obvious throughout. Thus, after saying, in page nine, that the East India Company had thanked Mr. Hastings for his meritorious services, which is unquestionably true, he adds, "that mankind would abide by their deliberate decision, rather than by the intemperate assertion of a committee.

This he writes after the impeachment was found by the commons at large; but he takes no account of their proceedings; imputing the whole to the original committee, *i. e.* the committee of secrecy; so called, I suppose, from their being the authors of twenty volumes in folio, which will remain a secret to all posterity, as nobody will ever read them. The same construction is equally plain from what immediately follows: "The report of the committee of secrecy also states that the happiness of the native inhabitants of India has been deeply affected, their confidence in English faith and lenity shaken and impaired, and the character of this nation wantonly and wickedly degraded."

Here again you are grossly misled by the omission of near twenty-one pages; for the author, though he is here speaking of this committee by name, which brought forward the charges to the notice of the house, and which he continues to do onward to the next select paragraph; yet, by arbitrarily sinking the whole context, he is taken to be speaking of the house as a body, when, in the

passage next charged by the information, he reproaches the accusers of Mr. Hastings; although, so far is he from considering them as the house of commons, that in the very same page he speaks of the articles as the charges, not even of the committee, but of Mr. Burke alone, the most active and intelligent member of that body, having been circulated in India by a relation of that gentleman: "The charges of Mr. Burke have been carried to Calcutta, and carefully circulated in India."

Now, if we were considering these passages of the work as calumniating a body of gentlemen, many of whom I must be supposed highly to respect, or as reflecting upon my worthy friend whose name I have mentioned, it would give rise to a totally different inquiry, which it is neither my duty nor yours to agitate; but surely, the more that consideration obtrudes itself upon us, the more clearly it demonstrates that the author's whole direction was against the individual accusers of Mr. Hastings, and not against the house of commons, which merely trusted to the matter they had collected.

Although, from a caution which my situation dictates as representing another, I have thought it my duty thus to point out to you the real intention of the author, as it appears by the fair construction of the work, yet I protest, that in my own apprehension it is very immaterial whether he speaks of

the committee or of the house, provided you shall think the whole volume a *bona fide* defence of Mr. Hastings. This is the great point I am, by all my observations, endeavoring to establish, and which I think no man who reads the following short passages can doubt. Very intelligent persons have indeed considered them, if founded in facts, to render every other amplification unnecessary. The first of them is as follows: "It was known, at that time, that Mr. Hastings had not only descended from a public to a private station, but that he was persecuted with accusations and impeachments. But none of these suffering millions have sent their complaints to this country; not a sigh nor a groan has been wafted from India to Britain. On the contrary, testimonies the most honorable to the character and merit of Mr. Hastings, have been transmitted by those very princes whom he has been supposed to have loaded with the deepest injuries."

Here, gentlemen, we must be permitted to pause together a little; for in examining whether these pages were written as an honest answer to the charges of the commons, or as a prostituted defence of a notorious criminal, whom the writer believed to be guilty, truth becomes material at every step; for if in any instance he be detected of a wilful misrepresentation, he is no longer an object of your attention.

Will the attorney-general proceed then to detect the hypocrisy of our author, by giving us some detail of the proofs by which these personal enormities have been established, and which the writer must be supposed to have been acquainted with? I ask this as the defender of Mr. Stockdale, not of Mr. Hastings, with whom I have no concern. I am sorry indeed to be so often obliged to repeat this protest; but I really feel myself embarrassed with those 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 revenue he has plundered? Where are the witnesses for those unhappy men in whose persons the rights of humanity have been violated? How deeply buried is the blood of the innocent, that it does not rise up in retributive judgment to confound the guilty! These surely are questions, which, when a fellow-citizen is upon a long, painful,

and expensive trial, humanity has a right to propose; which the plain sense of the most unlettered man may be expected to dictate, and which all history must provoke from the more enlightened. When Cicero impeached Verres before the great tribunal of Rome of similar cruelties and depredations in her provinces, the Roman people were not left to such inquiries. All Sicily surrounded the Forum, demanding justice upon her plunderer and spoiler, with tears and imprecations. It was not by the eloquence of the orator, but by the cries and tears of the miserable, that Cicero prevailed in that illustrious cause. Verres fled from the oaths of his accusers and their witnesses, and not from the voice of Tully. To preserve the fame of his eloquence, he composed his five celebrated speeches, but they never were delivered against the criminal because he had fled from the city, appalled with the sight of the persecuted and the oppressed. It may be said, that the cases of Sicily and India are widely different; perhaps they may be; whether they are or not, is foreign to my purpose. I am not bound to deny the possibility of answers to such questions; I am only vindicating the right to ask them.

Gentlemen, the author in the other passage which I marked out to your attention goes on thus:—"Sir John Macpherson, and Lord Cornwallis, his successors in office, have given the same

voluntary tribute of approbation to his measures as Governor General of India. A letter from the former, dated the 10th of August, 1786, gives the following account of our dominions in Asia: ‘The native inhabitants of this kingdom are the happiest and best protected subjects in India; our native allies and tributaries confide in our protection; the country powers are aspiring to the friendship of the English: and from the King of Tidore, towards New Guinea, to Timur Shaw, on the banks of the Indus, there is not a state that has not lately given us proofs of confidence and respect.’”

Still pursuing the same test of sincerity, let us examine this defensive allegation.

Will the attorney-general say that he does not believe such a letter from Lord Cornwallis ever existed? No: for he knows that it is as authentic as any document from India upon the table of the house of commons. What then is the letter? The native inhabitants of this kingdom, says Lord Cornwallis, writing from the very spot, are the happiest and best protected subjects in India, etc., etc., etc. The inhabitants of this kingdom! Of what kingdom? Of the very kingdom which Mr. Hastings had just returned from governing for thirteen years, and for the mis-government and desolation of which, he stands every day as a criminal, or rather as a spectacle, before us. This is matter for serious reflection; and fully entitles

the author to put the question, which immediately follows: "Does this authentic account of the administration of Mr. Hastings, and of the state of India, correspond with the gloomy picture of 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 honorable committee, or upon any individual of it, any more than upon the commons at large; but the defendant is not charged by this information with any such offences.

Let me here pause once more to ask you, whether the book in its genuine state, as far as we have advanced in it, makes the same impression on your minds now, as when it was first read to you in detached passages; and whether, if I were to tear off the first part of it which I hold in my hand, and give it to you as an entire work, the first and last passages which have been selected as libels on the commons, would now appear to be so, when blended with the interjacent parts. I do not ask your answer. I shall have it in your verdict. The question is only put to direct your attention in pursuing the remainder of the volume to this main point, is it an honest, serious defence? For this purpose, and as example for all others, I will read the author's entire answer to the first article of charge concerning Cheit Sing, the Zemindar of Benares, and leave it to your impartial judgments to determine, whether it be a mere cloak and cover for the slander imputed by the information to the concluding sentence of it, which is the only part attacked; or whether, on the contrary, that conclusion itself, when embodied with what goes before it, does not stand explained and justified?

“The first article of impeachment,” continues our author, “is concerning Cheit Sing, the Zemindar of Benares. Bulwant Sing, the father of the rajah, was merely an *Aumil*, or farmer and collector of the revenues for Sujah ul Dowlah, nabob of

Oude, and vizir of the Mogul empire. When, on the decease of his father, Cheit Sing was confirmed in the office of collector for the vizir, he paid 200,000 pounds as a gift or nuzzeranah, and an additional rent of 30,000 pounds per annum.

“As the father was no more than an *Aumil*, the son succeeded only to his rights and pretensions. But by a sunnud granted to him by the nabob, Sujah Dowlah, in September, 1773, through the influence of Mr. Hastings, he acquired a legal title to property in the land, and was raised from the office of *Aumil* to the rank of Zemindar. About four years after the death of Bulwant Sing, the governor-general and council of Bengal obtained the sovereignty paramount of the province of Benares. On the transfer of this sovereignty the governor and council proposed a new grant to Cheit Sing, confirming his former privileges, and conferring upon him the addition of the sovereign rights of the mint, and powers of criminal justice with regard to life and death. He was then recognized by the company as one of their Zemindars; a tributary subject, or feudatory vassal, of the British empire in Indostan. The feudal system, which was formerly supposed to be peculiar to our Gothic ancestors, has always prevailed in the east. In every description of that form of government, notwithstanding accidental variations, there are two associations expressed or understood; one for inter-

nal security, the other for external defence. The king, or nabob, confers protection on the feudatory baron as tributary prince, on condition of an annual revenue in time of peace, and of military service, partly commutable for money, in the time of war. The feudal incidents in the middle ages in Europe, the fine paid to the superior on marriage, wardship, relief, etc., correspond to the annual tribute in Asia. Military service in war, and extraordinary aids in the event of extraordinary emergencies were common to both.*

“When the governor-general of Bengal, in 1778, made an extraordinary demand on the Zemindar

* “Notwithstanding this analogy, the powers and privileges of a Zemindar have never been so well ascertained and defined as those of a baron in the feudal ages. Though the office has usually descended to the posterity of the Zemindar, under the ceremony of fine and investiture, a material decrease in the cultivation, or decline in the population of the district, has sometimes been considered as a ground to dispossess him. When Zemindars have failed in their engagements to the state, though not to the extent to justify expulsion, supervisors have been often sent into the Zemindaries, who have farmed out the lands, and exercised authority under the Duannee laws, independent of the Zemindar. These circumstances strongly mark their dependence on the nabob. About a year after the departure of Mr. Hastings from India, the question concerning the rights of Zemindars was agitated at great length in Calcutta; and after the fullest and most accurate investigation, the governor-general and council gave it as their deliberate opinion to the court of directors, that the property of the soil is not in the Zemindar, but in the government; and that a Zemindar is merely an officer of government appointed to collect its revenues. Cheit Sing understood 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.”

of Benares, for five lacs of rupees, the British empire, in that part of the world, was surrounded with enemies which threatened its destruction. In 1779, a general confederacy was formed among the great powers of Indostan for the expulsion of the English from their Asiatic dominions. At this crisis the expectation of a French armament augmented the general calamities of the country. Mr. Hastings is charged by the committee with making his first demand under the false pretence that hostilities had commenced with France. Such an insidious attempt to pervert a meritorious action into a crime, is new, even in the history of impeachments. On the 7th of July, 1778, Mr. Hastings received private intelligence from a 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 information was afterwards found to be premature; but in the latter end of August a secret despatch was received from England authorizing and appointing Mr. Hastings to take the measures which he had already adopted in the preceding month. The directors and the board of control have expressed their approbation of this transaction by liberally rewarding Mr. Baldwin, the merchant, for sending the earliest intelligence he could procure to Bengal.

It was two days after Mr. Hastings's information of the French war, that he formed the resolution of exacting the five lacs of rupees from Cheit Sing, and would have made similar exaction 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 lacs, 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 necessities of the company, in consequence of the critical situation of their affairs in 1781, calling for a high fine; the ability of the Zemindar, who possessed near two crores of rupees in money and jewels, to pay the sum required; his backwardness to comply with the demands of his superiors; his disaffection to the English interest, and desire of revolt, which even then began to appear, and were afterwards conspicuous, fully justify Mr. Hastings in every subse-

quent step of his conduct. In the whole of his proceedings it is manifest that he had not early formed a design hostile to the Zemindar, but was regulated by events which he could neither foresee nor control. When the necessary measures which he had taken for supporting the authority of the company, by punishing a refractory vassal, were thwarted and defeated by the barbarous massacre of the British troops, and the rebellion of Cheit Sing, the appeal was made to arms, an unavoidable 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 everything 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 lacs of rupees. An impeachment of error in judgment with regard to the *quantum* of a fine, and for an intention that never was executed, and never known to the offending party, characterizes a tribunal of 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 libeler should arraign him before them, instead of presuming to try him himself; but as to writings on general subjects, which are not charged as an infringement on the rights of individuals, but as of a seditious tendency, it is far otherwise. When, in the progress either of legislation, or of high national justice in parliament, they, who are amenable to no law, are supposed to have adopted through mistake or error a principle which, if drawn into precedent, might be dangerous to the public, I shall not admit it to be a libel in the course of a legal and *bonâ fide* publication, to state that such a principle had in fact been adopted. The people of England are not to be kept in the

dark touching the proceedings of their own representatives. Let us therefore coolly examine this supposed offence, and see what it amounts to.

First, was not the conduct of the right honorable gentleman, whose name is here mentioned, exactly what it is represented? Will the attorney-general, who was present in the house of commons, say that it was not? Did not the minister vindicate Mr. Hastings in what he had done, and was not his consent to that article of the impeachment founded on the intention only of levying a fine on the Zemindar for the service of the state, beyond the *quantum* which he, the minister, thought reasonable? What else is this but an impeachment of error in judgment in the *quantum* of a fine?

So much for the first part of the sentence, which, regarding Mr. Pitt only, is foreign to our purpose; and as to the last part of it, which imputes the sentiments of the minister to the majority that followed him with their votes on the question, that appears to me to be giving handsome credit to the majority for having voted from conviction, and not from courtesy to the minister. To have supposed otherwise, I dare not say, would have been a more natural libel, but it would certainly have been a greater one. The sum and substance, therefore, of the paragraph, is only this: that an impeachment for error in judgment is not consistent with the theory or the practice of the English gov-

ernment. So say I. I say, without reserve, speaking merely in the abstract, and not meaning to decide upon the merits of Mr. Hasting's cause, that an impeachment for an error in judgment is contrary to the whole spirit of English criminal justice, which, though not binding on the house of commons, ought to be a guide to its proceedings. I say that the extraordinary jurisdiction of impeachment ought never to be assumed to expose error, or to scourge misfortune, but to hold up a terrible example to corruption and wilful abuse of authority by extra legal pains. If public men are always punished with due severity, when the source of their misconduct appears to have been selfishly corrupt and criminal, the public can never suffer when their errors are treated with gentleness. From such protection to the magistrate, no man can think lightly of the charge of magistracy itself, when he sees, by the language of the saving judgment, that the only title to it is an honest and zealous intention. If at this moment, gentlemen, or indeed in any other in the whole course of our history, the people of England were to call upon every man in this impeaching house of commons, who had given his voice on public questions, or acted in authority civil or military, to answer for the issues of our councils and our wars, and if honest single intentions for the public service were refused as answers to impeachments, we should

have many relations to mourn for, and many friends to deplore. For my own part, gentlemen, I feel, I hope, for my country as much as any man that inhabits it; but I would rather see it fall, and be buried in its ruins, than lend my voice to wound any minister, or other responsible person, however unfortunate, who had fairly followed the lights of his understanding and the dictates of his conscience for 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 and 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 their prerogative 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 honorable deliverance. Whether the minister or the commons meant to found this article of the impeachment, on mere error without corruption, is likewise foreign to the purpose. The author could only judge from what

was said and done on the occasion. He only sought to guard the principle, which is a common interest, and the rights of Mr. Hastings under it. He was therefore justified in publishing that an impeachment, founded in error in judgment was to all intents and purposes illegal, unconstitutional, and unjust.

Gentlemen, it is now time for us to return again to the work under examination. The author, having discussed the whole of the first article through so many pages, without even the imputation of an incorrect or intemperate expression, except in the concluding passage (the meaning of which I trust I have explained), goes on with the same earnest disposition to the discussion of the second charge respecting the princesses of Oude, which occupies eighteen pages, not one syllable of which the attorney-general has read, and 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. Hasting'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 honor; far from it. The attorney-general having orders to prosecute, in consequence of the address of the house to his majesty, had no choice

in the mode; no means at all of keeping the prosecutors before you in countenance, but by the course which has been pursued; but so far has he been from enlisting into the cause those prejudices which it is not difficult to slide into a business originating from such exalted authority, he has honorably guarded you against them; pressing indeed severely upon my client with the weight of his ability, but not with the glare and trappings of 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 company.' His superior genius sometimes acted in the spirit, rather than complied with the letter, of the law; but he discharged the trust, and preserved the empire committed to his care, in the same way, and with greater splendor and success than any of his predecessors in office; his departure from India was marked with the lamentations of the natives, and the gratitude of his countrymen; and on his return to England, he received the cordial 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 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 anything 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 the Asiatic government, if he was a faithful deputy of a power which could not main-

tain 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 vigor and intelligence of insulted nature ; to be governed at all, they must be governed with a rod of iron ; and our empire in the East would, long since, have been lost to Great Britain, if civil skill and military prowess had not united their efforts to support an authority which Heaven never gave, by means which it never can sanction.

Gentlemen, I think I can observe that you are touched with this way of considering the subject, and I can account for it. I have not been considering it through the cold medium of books, but

have been speaking of man and his nature, and of human dominion, from what I have seen of them myself amongst reluctant nations submitting to our authority. I know what they feel, and how such feelings can alone be repressed. I have heard them in my youth from a naked savage, in the indignant character of a prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks in his hand, as the notes of his unlettered eloquence: "Who is it?" said the jealous ruler over the desert, encroached upon by the restless foot of English adventure, "who is it that causes this river to rise in the high mountains, and to empty itself into the ocean? Who is it that causes to blow the loud winds of winter, and that calms them again in the summer? Who is it that rears up the shade of these lofty forests, and blasts them with the quick lightning at his pleasure? The same Being who gave to you a country on the other side of the waters, and gave ours to us; and by this title we will defend it," said the warrior, throwing down his tomahawk upon the ground, and raising the war-sound of his nation. These are the feelings of subjugated man all round the globe; and depend upon it, nothing but fear will control where it is vain to look for affection.*

* The effect of this inimitable passage on all present, is said by an eye witness to have been electrical. The audience was stirred as one man; they seemed to see the Indian chieftain before them and to drink in the entire scene as depicted by the matchless skill of the advocate.

These reflections are the only antidotes to those anathemas of super-human eloquence which have lately shaken the walls that surround us; but which it unaccountably falls to my province, whether I will or no, a little to stem the torrent of, by reminding you that you have a mighty sway in Asia, which cannot be maintained by the finer sympathies of life, or the practice of its charities and affections; what will they do for you when surrounded by two hundred thousand men, with artillery, cavalry, and elephants, calling upon you for their dominions which you have robbed them of? Justice may, no doubt, in such a case forbid the levying of a fine to pay 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 honor, 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 color 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 ordinances of man.

Such a proceeding, gentlemen, begets serious reflections. It would be better perhaps for the masters and the servants of all such governments to join in supplication, that the great Author of violated humanity may not confound them together in one common judgment.

Gentlemen, I find, as I said before, I have not sufficient strength to go on with the remaining parts of the book.* I hope, however, that notwithstanding my omissions, you are now completely satisfied that whatever errors or misconceptions may have misled the writer of these pages, the justification of a person whom he believed to be innocent, and whose accusers had themselves ap-

* Lord Erskine was now so ill that he could scarcely stand up while he addressed the jury.

pealed 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 commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures by which, from time to time, our own constitution, by the exertion of patriot citizens, has been brought back to its standard. Under such terrors, all the great lights of science and civilization must be extinguished, for men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of everything 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 from 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 and 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, honor and respect, but whose future hopes and preferments are linked from free choice with those who, from the mistakes of the author, are treated with great severity and injustice. These are strong retardments; but I have been urged on to activity by considerations which can never be inconsistent with honorable 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

* Mr. Law, afterward Lord Ellenborough, Mr. Plumer, afterward vice-chancellor, and Mr. Dallas.

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 imperfections 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 tenor 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 forever.

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 libelers remember, that no one of my principles of defence can at any time or upon any occa-

sion ever apply to shield them from punishment; because such conduct is not only an infringement on the rights of men, as they are defined by strict law, but is absolutely incompatible with honor, 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 anything resembling a question of law, but is a pure question of fact, to be decided on the principles 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.*

* Mr. Erskine's argument in this celebrated cause may be considered as the first full and exhaustive exposition of a doctrine now generally received both in England and America, in the law of libel, viz.: that the libelous composition must be judged as a whole, and not by detached parts; and that, judging it by this standard, though

heated expressions and invective may be found in some of its parts, which, taken singly, might even be construed as libelous, yet, if taken as a whole it shall not be found to exceed the limits of fair discussion, the defendant shall be acquitted. However individual tastes may differ as to the place which should be assigned this speech of Mr. Erskine's, its high merit none will deny. Comparison has been most frequently instituted between this and his argument in defence of Lord George Gordon, and with varying opinions. A cotemporary of Erskine in a critical review of his published speeches, does not hesitate to pronounce this 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 addressing a jury; as a standard, a sort of precedent for treating cases of libel, by 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 the lovers of pure diction, of copious and animated description, of lively, picturesque, and fanciful 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." See *Edinburgh Review*, Vol. xvi., 110-11.

REPLY OF THE ATTORNEY-GENERAL.

GENTLEMEN OF THE JURY: My learned friend and I stand very much contrasted with each other in this cause. To him belong infinite eloquence and ingenuity, a gift of persuasion, beyond that which I almost ever knew fall to any man's share, and a power of language greater than that which ever met my ear.

In his situation it is not only permitted to him, but it is commendable; it is his duty to his client, to exert all those faculties, to comprehend every possible topic, that by the utmost stretch of ingenuity can possibly be introduced into the most remote connection with the cause. I, on the other hand, gentlemen, must disclaim those qualities which I ascribe to my learned friend, namely that ingenuity, that eloquence, and that power of words; but if they did belong to me, we stand contrasted also in this circumstance, that I durst not in my present situation use them, whatever little effort I might make to that effect, acting the part simply of an advocate in a private cause. All that I must abandon to-day, recollecting the situation in which I stand. Gentlemen, however unworthily, yet so

it is, that I stand in the situation of the first officer of this high court; therefore the utmost fair dealing, the plainest common sense, the clearest argument, the utmost *bonâ fides* with the court and jury, are the duties incumbent upon me. In that spirit therefore, gentlemen, you will not expect from me the discharge of my duty, in any other way than by the most temperate observation, and by the most correct and the fairest reasoning in my power.

One should have thought, from the general turn of my learned friend's arguments, that I had in this information imputed it as a crime to the deceased gentleman whom he 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 purpose 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 anything respecting politics or party, or anything respecting the conduct or opinions of any men in another place; and my learned friend will excuse me also, if I do not state my own. These I avoid for this reason, that when we are within these walls, we are to betake ourselves to the true and genuine principles of our law and constitution; the justest picture of oppression of one man cannot justify the calumniating other men; it may justify the defending that man,

but it will not justify a stain upon the house of commons of this country. And, gentlemen, surely this author, considerable as he is as a man acquainted with composition, betrays the cause of Mr. Hastings, as I should think; at least he does Mr. Hastings no service by going beyond his defence, by deserting and abandoning the declamation, and the reasoning, of which he seems to be a considerable master, and deviating into slander and calumny upon the house of commons, his accusers.

My learned friend has used an analogy. He tells you the house of commons is a grand jury; I close with him in that analogy; I ask you, as lovers of good order, as men desirous of repressing licentiousness, as persons who wish that your country should be decently and well governed, whether you would endure for an instant, if this were an information against the defendant, who had published that a grand jury found a bill, not because they thought it a right thing that the person accused should be put upon his trial, but that they found the indictment against him because he was meritorious; that they did it from principles of private animosity, and not with a regard to public justice. If an indictment were brought before you, for a slander of that sort upon a grand jury, could you hesitate an instant in saying that it was reprehensible, and a thing not to be endured? Why then, if the whole representatives of the nation are

acting in that capacity; if, after many years' investigation, they bring charges against an individual, is it any apology, justification it cannot be, for an author, in his zeal for his friend, to tack to it that which must be a disgrace to the country if it were true, and therefore must not be circulated with impunity? The commendation which even my learned friend has bestowed upon this work, the impassioned and animated manner in which he has recommended it to your perusal, and that of every man in the country, most manifestly prove what I stated in opening this cause; that when such mischief as this is found in a book, written by a person of no mean abilities, it comes recommended to, and in fact misleads, the best understandings in the country. I leave any man to judge of the mischievous tendency of such a composition, compared with the squibs, paragraphs, and idle trash of the day, which frequently die away with it. Upon this principle, those passages which I selected and put into this information, and which immediately regard the house of commons, naturally gave offence to the house. They felt themselves calumniated and aspersed, and entitled to redress from a jury.

My learned friend says: Why don't the house of commons themselves punish it? Is that an argument to be used in the mouth of one who recommends clemency? Does he recommend that the

iron hand of power should come down upon a man of this sort, instead of temperately, wisely, and judiciously submitting to the common law of this country, saying, let him be dealt with by that common law? There he will have a scrupulously impartial trial. There he will have every advantage that the meanest subject of the country is entitled to.

But, says my learned friend, passages are selected from distant pages, and tacked together; the context between must explain the meaning of those passages; and he compares it to taking one-half of a sentence, and tells you that if any man should say, there is no God, taking that part alone, he would be a blasphemer; whereas taking the whole verse, that the fool hath said in his heart, there is no God, in that sense it becomes directly the reverse of blasphemy. Now, has he found any one garbled sentence in the whole course of this information? Is not every one a clear, distinct, and separate proposition? On the contrary, when he himself accuses me, not personally but officially, of not having stated the whole of this volume upon record, and undertaking to supply my defects, he misses this very sentence: "Assertions so hardy, and accusations so atrocious, ought not to have been introduced into the preamble of an impeachment, before an assembly so respectable as the house of peers, without the clearest and

most incontrovertible evidence. In all 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 understanding."

Now, gentlemen, I only adduce this to show that it is possible that two leaves may be turned over at once on the defendant's side of the question; and likewise to show you that I have not, for the purpose of accusation, culled and picked out every passage that I might have picked out, or every one that would bear an offensive construction; but have taken those prominent parts where this author has abandoned the purpose my learned friend ascribes to him, that of extenuating the guilt imputed to Mr. Hastings, and of showing that he had merit rather than demerit with the public. The passages were selected to show that I have betaken myself to the fifth head of the work, as I enumerated them before, where the author does not content himself with executing that purpose, but holds out the house of commons as persons actuated by private malice, not only to the eyes of the subjects of this country, but also to surrounding nations, whose eyes are unquestionably upon us, throughout the whole course of the proceeding.

I ask you whether any reasonable answer has been given to the interpretation which I put upon the various passages in this book? The first of them, I admit, with my learned friend, is simply an introduction, and is stated in the information merely to show that the author himself knew the position and the state of things, viz.: that the impeachment had been carried up to the house of lords, and was there depending for their judgment.

Then, after having reasoned somewhat upon the introduction to these several articles of impeachment, and after having stated that these had been circulated in India, he goes on to say :

“Will accusations, built upon such a baseless fabric, prepossess the public in favor of the impeachment? What credit can we give to multiplied and accumulated charges, when we find that they originate from misrepresentation and falsehood?”

My learned friend himself told you, in a subsequent part of his speech, that those accusations originated from an inquiry which lasted two years and a half, by a secret committee of the house of commons, of which I myself was a pretty laborious member: if that be so, what pretence is there here for impregnating the public with a belief that from false, scandalous and fabricated materials, those charges did originate? Is not that giving a

directly false impression to the public? Are not those to be protected from slander of this sort who take so much pains to investigate what appears to them, in the result, to be a fit matter not for them to decide ultimately upon, but to put in a course of trial where, ultimately, justice will be done?

Has my learned friend attempted any explanation, or other interpretation, to be put upon these words than that which the information imputes?

“If, after exerting all your efforts in the cause of your country, you return covered with laurels and crowned with success; if you preserve a loyal attachment to your sovereign; you may expect the thunders of parliamentary vengeance—you will certainly be impeached, and probably be undone.”

Is it to be said and circulated in print all over the world that the house of commons is composed of such materials that exactly in proportion to a man's merit is their injustice and inhuman tyranny? Is that to be said or printed freely under the pretext that the author is zealous in the interest of a gentleman under misfortune? But it is said there are forty libels every day published against this gentleman, and no one is permitted to defend him. Let all mankind defend him; let every man that pleases write what he will, provided he does it within the verge of the law; if he does it as a

manly and good subject, confining himself to reasonable and good argument.

My learned friend says, if you stop this, the press is gagged; that it never can be said with impunity that the king and the constable are in the same predicament. The king and the constable are in one respect in the same predicament, with great difference indeed in the gradation, and in the comparison; but, without all question, both are magistrates; the one, the highest, to whom we look with awe and reverence; and to the other with obedience when within his sphere; that may be freely said in this country, and ever will be said. But is it the way to secure the liberty of the press, that at the time when the nation is solemnly engaged in the investigation of the conduct of one of its first servants, that servant should not only be defended by fair argument and reason as far as it goes, but that his accusers are to be charged with malice and personal animosity against him?

If the audacious voice of slander shall go so high as that with impunity, who is there that will ever undertake to be an accuser in this country? I am sure I, for one, who sometimes am called upon, I hope as sparingly as public exigency will admit of, to exercise that odious and 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 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 you hands upon your hearts, ask yourselves as men of honor, because I know that binds you as much as your oaths; ask yourselves, whether the true meaning of this libel is not, that not from public grounds, not from conviction, not with a view to render public service, but from private pique, from private malice, from bye motives, which I call corruption, the house of commons have been induced to send this gentleman to an inquiry before the proper tribunal; and that too, as the libel expresses it, without even reading it, without hearing, without consideration; judge,

I say, whether that be not the true exposition of this libel, and then, gentlemen, consider with yourselves what the effect will be, if you ratify and confirm such an offence, by suffering this defendant to escape.

CHARGE TO THE JURY.

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 function 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 what was admitted yesterday by the attorney-general, as counsel for the crown, that you must, upon this information, make up your minds that this was meant as an aspersion upon the house of commons; and I admit also that in forming your opinion you are not bound to confine your inquiry to those detached passages which the attorney-general has selected as offensive matter, and the subject of prosecution. But let me on the other side warn you, that though there may be much good writing, good argument, morality, and humanity, in many parts of it, yet if there are offensive passages, the good part will not sanctify the bad part.

Having stated that, I ought also to tell you, that in order to see what is the sense to be fairly imputed to those parts which 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 retired, and after an absence of two hours, returned with a verdict of "not guilty." Lord Campbell mentions the length of their deliberations as a somewhat remarkable fact in view of the powerful argument of Mr. Erskine, and its wonderful effect upon all who heard it. He alludes, however, as explanatory of the doubts of the jury, and as adding to the triumph of the advocate, to the fact that this trial took place before the passage of Mr. Fox's libel act, and during a period when judges did not hesitate to instruct juries that their only province, in cases of libel, was to determine the bare fact of whether the alleged libel had been published by the defendant.

THE TRIAL OF JOHN FROST.

HILARY TERM, 1793.

THE trial of John Frost, an eminent London attorney, is the first of that remarkable series of state trials in which Mr. Erskine appeared for the defence, and in which his labors accomplished so much for the cause of personal liberty. Mr. Frost was, with the full concurrence of the Lord Chancellor,* indicted by the attorney-general for having, in a coffee-house, while heated with wine, made use of the expression, "I am for equality, and no king." The entire history of the case sufficiently appears in the speech of the attorney-general and in the evidence subjoined.

The indictment having been opened by Mr. Wood, the attorney-general spoke as follows:

GENTLEMEN OF THE JURY: Though I have the honor to attend you, in my official character, it will not have escaped your attention that this charge is brought against the present defendant by an indictment.

Gentlemen, the transaction, with the guilt of which the defendant is charged, happened upon

* Loughborough.

the 6th of November last. I hope I shall not be thought guilty of stating anything that can be considered as improper, when I call your attention to a fact that is notorious to the whole country; that about that period public representations had been made, that the minds of men were alienated from that constitution, which had long been the subject of the warmest encomiums of the best informed men in this country; which we have been in the habit of considering as the best birthright which our ancestors could have handed down to us, and which we have been long in the habit of considering as the most valuable inheritance that we had to transmit to our posterity. This constitution had been represented as that from which the affections of the country had become altogether alienated; we were told that this disaffection was moving along the country with the silence of thought; and something like a public challenge was written to meet men who are fond of other systems, by fair appeals to the public, who are finally to decide upon every question between every individual of this country, and the government.

Gentlemen, the attorney-general of that day, who found himself by the duty of his office called upon to watch over, what he considered, a property and inheritance of inestimable value, thought it necessary to meet this sort of observation, by stripping

himself of what belonged to him in his official character ; and appealing, as far as he could appeal, to the tribunals of the country, which the wisdom of the constitution had established, for the purpose of protecting men from improper accusations ; and he did not therefore call upon those whom he thought proper to prosecute, by the exercise of any official authority of his own, putting them and himself at issue upon these points, as it were, before a jury of the country, but he directed indictments to be carried to the grand juries of the country, to take their sense upon the subject, and to have their opinion, whether it was fit that persons propagating such doctrines as this defendant stands charged with, should, or should not, be suffered in this country to state them with impunity ?

Gentlemen, in consequence of this determination the present defendant stands indicted ; and before I state the words to you, I think it my duty to 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 abate-

ment. Another indictment was carried before the second grand jury, who found that second indictment without any hesitation, and it is in consequence of that proceeding that he is called upon to-day to deny the truth of the charges which this information contains, or to state to you upon what grounds he is to contend, that his conduct as stated in this indictment is to be considered as legal.

Gentlemen, the transaction which the indictment charges him with, happened on the 6th of November last; you will find from the conversation, as it will be given in evidence to you, that Mr. Frost had, I think, returned from France shortly before; that he had dined with a set of gentlemen, whom I believe to be very respectable, at the Percy Coffee-house upon that day. He came into the public coffee-house between nine and ten in the evening, as nearly as I am able to ascertain the time, and a gentleman who had long been acquainted with him, to whom I believe I may venture to say, Mr. Frost was certainly under no disobligations in life, seeing him, addressed him as an acquaintance, asked whether he was lately come from France, and how matters went on in that country? Mr. Frost told him he was lately come from France, and expected soon to go there again; he then added the words that have been read to you from the indictment: "I am for equality; I

can see no reason why any man should not be upon a footing with another; it is every man's birth-right."

Gentlemen, some persons present in this coffee-room, the general conduct of all of whom, I think, will have some influence upon your judgment, with respect to the mind with which Mr. Frost conducted himself upon that day, immediately asked him, what he meant by equality; to which he answered, "Why, I mean no king." "What! dare you own, in any public or private company in this country, such sentiments?" "Yes, I mean no king; the constitution of this country is a bad one."

Gentlemen, what were the other particulars of the conversation that passed I am unable to state to you, but you will find the zeal and anxiety which a number of respectable persons acted with upon this occasion, made it very difficult for Mr. Frost to pursue this sort of conversation any further; and in what manner Mr. Frost left the coffee-house, and under what feelings and apprehensions in the minds of those who were there, I shall leave to you to collect from the witnesses, rather than attempt to state it myself.

Now, gentlemen, it is for you to decide, whether, in cases of this nature, prosecutions shall be carried on against defendants who think proper to use language so contemptuous to the sovereign of the country; and surely, I need not in this place con-

tend, that anything that is contemptuous to the sovereign of the country, anything grossly reflecting upon the administration of the magistracy of this country, or persons holding the offices of magistrates, according to the law of this country, such as it is, and such as I hope it will continue to be, has never been suffered with impunity.

Gentlemen, when you consider, not merely whether the prosecution is to produce a verdict of guilty, but whether the prosecution is expedient and proper, it is not unnecessary to advert to the circumstances of the times, and the temper with which the particular defendant may have proceeded, who is charged with guilt by an indictment brought before a jury of this country.

Gentlemen, this doctrine of equality and no king has been held in this country, which never did, and which, I hope, never will, interfere with the right of free, of temperate, of sober, and of ample discussion, conducted under those restraints, upon every political subject, in which the interests and the happiness of Englishmen can be concerned; but, gentlemen, when a doctrine of this sort, equality and no king, a doctrine which either means this, or it means nothing, that there shall be no distinction of ranks in society, is brought forward, under circumstances so peculiar as those which attended the statement of this doctrine by the defendant, it becomes the duty of those who are entrusted with

watching over the laws of this country, under the control of juries who are finally to decide between them and individuals who may be charged with a breach of them, at least to do their duty in stating this to the public, that no one shall dare to hold language like this, without being prepared to tell a jury of this country upon what grounds he conceives himself justifiable in holding it under the circumstances of the present case.

Gentlemen, advert a little to the time; this was in November, 1792. There does not exist upon the face of the earth, I hope, a man more zealously attached to this doctrine than I am. I mean, that every man in this country, and in every country, has an equal right to equal laws, to an equal protection of personal security, to an equal protection of personal liberty; to an equal protection of that, without which, it requires no reasoning to prove, that neither personal security, nor personal liberty, ever can exist, I mean to an equal protection of property, that property which the labor 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 labor 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 everything 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 anything, meant this, it meant equality of property, for all other equality had been before provided for.

Gentlemen of the jury, it is every man's birth-right to have a certain species of equality secured to him, but it neither requires reasoning, nor is it consistent with common sense, and cannot be consistent with reason and common sense, because it is not consistent with the nature of things, as established by the Author of nature, that any other system of equality should exist upon the face of the world.

Gentlemen, this equality, recommended by this gentleman, advisedly, as I think you will be satisfied in this transaction of the 6th of November, 1792, is a system which has destroyed all ranks, is a system which has destroyed all property, is a system of universal proscription, is a system which is as contrary to the order of moral nature as it is contrary to the order of political nature; it is a system which cuts up by the roots all the enjoyments that result from the domestic relations of life, or the political relations of life; it is a system which cuts up by the roots every incentive to virtuous and active industry, and holds out to the man who chooses to live a life of profligacy and idleness, that he may take from him who has exerted through life a laborious and virtuous conduct, those fruits which the God of justice, and every law of justice, have endeavored 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 demeanor, and in what manner, these words were uttered ; and I allude again to that which will be described to you, I mean the feelings of the persons present, as some degree of evidence, which will have its due, and not more than its due weight, in your minds.

Gentlemen, I will read to you the words of Mr. Justice Forster, as containing the principle upon which, though the law holds seditious expressions as an exceeding high 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 sworn to by witnesses from a motive truly criminal. You will be to judge, whether the evidence of the witnesses to be called to you to-day proceeds from motives truly criminal, or whether laudable zeal for the constitution of their country is not their only motive for stating to you the conduct of this defendant.

Gentlemen, there is another circumstance. I will say but a word to you upon it; that is this: that the propriety of prosecuting for words of this sort depends a great deal upon the time and season at which those words are uttered.

Gentlemen, we know that in this country the legislature found it necessary to interfere, and by a positive law to enact that any man who should dare to affirm that the king and parliament could not regulate the succession to the crown, should be guilty of high treason; God forbid the time should ever come, and I do not believe it ever can come, when the legislature, acting upon the same principle, shall be obliged to say, that, if it is at this hour high treason for men deliberately to affirm that the king and parliament of this country cannot regulate the succession to the crown, it shall be innocent for men to say that the king and parliament of this country have no right to continue any government in this country. Why then, gentlemen, if this doctrine of equality and no king has been attended with such consequences as it is

notorious to all mankind it has been attended with, the notoriety of the fact renders it incumbent upon those, whose duty it is to bring such defendant before a jury of their country, for that jury to say, as between the country and individuals, whether, under such circumstances as will be laid before you, he is to be publicly permitted to hold such doctrines as those which are stated, in a manner that seems to evince that they are not stated for any useful purpose; but that they are stated for the purpose of trying, whether there is any law in this country that will secure the government of the country from attacks, which mean nothing but to display the audacity with which men dare to attack that government? And if you shall be convinced, upon the whole of the evidence before you, that the case is such as I have stated it to be, this I am sure of, that you will duly weigh the consequences of the verdict, however you shall be disposed to give it, for the crown, or for the defendant; and I am sure the crown, upon the temperate consideration of what the jury does, will not be dissatisfied with that verdict, let it be what it may. The constitution of this country, if it be excellent, if it has really handed down to us those great and invaluable blessings, which, I believe, ninety-nine persons out of a hundred are convinced it has, and if it be a matter of anxiety to transmit them to our posterity, you will remember that the

stability of those blessings finally and ultimately depends upon the conduct of juries. It is with them, by their verdicts, to establish their fellow-subjects in the enjoyment of those rights; it is with them to say in what cases those rights have been invaded; and the same constitution that has left it to them to say in what cases those rights have been invaded, has also bound every honest man to say, that when they have given their decision upon it, they have acted properly between the country and the individual who is charged with the offence.

Gentlemen, under these circumstances, I shall proceed to lay the case before you, and I have only again to repeat, if you shall find, upon a due consideration of this case, that this is an hasty, an unguarded, and unadvised expression of a gentleman otherwise well disposed, and who meant no real mischief to the country, you will be pleased, with my consent, to deal with the defendant as a person under those circumstances ought to be dealt with. I never will press a jury for a verdict, in a case in which, whatever may be the strictness of the law as between man and man, acting upon moral and candid feelings, it ought not to be asked for; and having given you my sentiments, I leave the defendant in your hands.

EVIDENCE FOR THE CROWN.

JOHN TAITT, of Oxford street, upholsterer, sworn.
Examined by Mr. SOLICITOR-GENERAL.

Q. Do you know Mr. John Frost ?

A. I never saw him but that evening in my life.

Q. What evening ?

A. The 6th of November last.

Q. Where were you that evening ?

A. In the Percy coffee-house.

Q. Who was with you ?

A. Mr. Paul Savignac.

Q. Were there any other persons in the coffee-house ?

A. Yes, several gentlemen.

Q. Can you name any ?

A. Mr. Yatman was there ; Mr. Bullock ; there were not many that I knew.

Q. Did you see Mr. Frost there ?

A. Yes.

Q. At what time ?

A. About ten in the evening.

Q. Where did Mr. Frost come from ?

A. He came from a room above stairs with several gentlemen in the coffee-room.

Q. What did you first perceive with respect to Mr. Frost?

A. He addressed himself, I think, first to Mr. Yatman, but of that I am not certain; he was asked how long he had been returned from France.

Lord Kenyon. Was he asked that by Mr. Yatman?

A. By Mr. Yatman or some of the other gentlemen. He said he was very lately returned.

Mr. Solicitor-General. What did he say more?

A. He asked him what they were doing there, and he said things were going on very well there; they were doing very well.

Q. Did you hear him say anything more?

A. That he should very shortly return there.

Q. What more?

A. There was nothing more till a few minutes after, he went into the body of the coffee-room, two or three boxes from where I was. I heard him exalting his voice, and he was for equality. "I am for equality." Upon which I got off my seat, and I went forward and inquired, "Who are you, sir?"

Lord Kenyon. You asked him?

A. Yes, because I did not know him. Mr. Yatman answered, That is Mr. Frost; upon which I asked him how he dared to utter such words. He

still continued, "I am for equality and no king." Mr. Yatman asked him if he meant no king in this country, and he said yes, no king, or no kings; I rather think it was in the plural number. That the constitution of this country was a very bad one.

Q. Did he say anything more?

A. He said nothing more. I said he ought to be turned out of the coffee-room; upon which he walked up the room and placed his back to the fire, and wished, I believe, rather to retract, if he could have retracted, what he had said; but he still continued, he was for no king, and he was for equality. He quitted the room very shortly after by a general hiss from all the company.

Q. How long did he continue there?

A. I suppose not above five minutes.

JOHN TAITT — cross-examined by Mr. ERSKINE.

Q. You went, I suppose, to the coffee-house, just in the ordinary course of your recreation, I take for granted?

A. It is a coffee-house I very seldom go to.

Q. How came you there that night?

A. I went there to sup.

Q. You have been there often?

A. Very often.

Q. Then of course you went to have your supper and read the newspaper?

A. Exactly so.

Q. I take it you remember all the conversation that passed between Mr. Savignac and you that night?

A. I believe Mr. Savignac wrote down to the same effect.

Q. I dare say you wrote down this?

A. I wrote none down.

Q. But do you recollect the conversation between Mr. Savignac and you?

A. No.

Q. Mr. Frost had been above stairs?

A. Yes.

Q. With whom he was dining you do not know?

A. No.

Q. Can you get out of that room without going through the coffee-room?

A. I don't know.

Q. Don't you know the contrary?

A. I do not.

Q. You must have seen people coming from above stairs, having frequented that house?

A. Yes.

Q. Then you know the way from up-stairs is through the coffee-room?

A. Yes.

Q. You say you are not certain that Mr. Frost addressed himself first to Mr. Yatman?

A. No, I am not.

Q. The first of the conversation, you will venture to swear to, was a question put by Yatman to him?

A. Yes.

Q. Will you venture to swear that when Mr. Frost came down stairs, he was not going straight through the coffee-house into the street, till Mr. Yatman stopped him and asked him that question?

A. That I cannot say.

Q. What time was it?

A. About ten in the evening, rather before than after.

Q. Mr. Frost was perfectly sober, I suppose?

A. I cannot say whether he was or not.

Q. There was a good dinner, where a number of gentlemen had been present?

A. I cannot say.

Q. You saw other gentlemen come down?

A. Yes.

Q. Were they not all drunk?

A. They might be; I don't know.

Q. He asked Mr. Frost how long he had been from France, and he told him he was lately returned; the conversation went about France?

A. Yes.

Q. Will you venture to swear, the conversation

did not continue between Mr. Yatman and Mr. Frost from the time it first began till the time you heard him say he was for equality?

A. I cannot say; I did not attend to it till he exalted his voice, and said, he was for equality.

Q. Then what question was put to him, and what turn the conversation was taking, you don't know, till you heard him exalt his voice?

A. No.

Q. Then you did not know whether the conversation respected France or England; but hearing the word equality, you was all a-gog?

A. No, I was not all a-gog.

Q. You was in another part of the coffee-house?

A. I was in the next box.

Q. By your own account you don't appear to have been very attentive; but hearing his voice louder than before, you immediately went up, and asked him how he dared to utter such words?

A. Yes.

Q. You said that in a tone of voice that showed you felt yourself insulted?

A. Yes.

Q. Before you knew to what his words alluded; for he had been talking about France, you know, and how things went on there, and you immediately then interfered. I believe several other persons interfered in the same insulting manner?

A. Yes, I believe they did.

Q. At this time you make use of an expression which probably may be owing to my dullness, but I cannot understand you. You said, he seemed to wish to retract, but still continued to say the same thing over again?

A. He did not say much.

Q. You said, he ought to be put upon the fire, you know?

A. Yes.

Q. Somebody talked of sending for a constable?

A. Yes; and he said every man there was a constable.

Mr. Solicitor-General. Did Mr. Frost appear to be disabled by liquor?

A. If I had known him before, I should have been better able to say, but I think there was hardly a doubt but he might; but as I don't know, I cannot say whether he was or no, but I rather believe he was.

Q. Did he repeat the words more than once?

A. I don't think he did.

Q. You said, he wished to retract, but still continued, that he was for no king and equality?

A. He did not repeat that twice.

Q. What did you mean by saying he wished to retract?

A. I rather thought he was sorry for what he had said; that is what I meant by it.

PAUL SAVIGNAC, of Carshalton, in Surrey, sworn.
Examined by MR. BEARCROFT.

Q. Do you remember being at the Percy coffee-house with Mr. Taitt, upon the 6th of November last?

A. Yes.

Q. Do you remember seeing Mr. Frost there?

A. I saw a person whom they called Mr. Frost, but I never saw him before nor since.

Q. That gentleman that sits there? [pointing to Mr. Frost.]

A. I cannot say.

Q. What time in the evening did you see him in the room?

A. Between nine and ten.

Q. Did you hear any particular expressions he made use of?

A. When he passed the box I was sitting in, he was in the company of Mr. Yatman; and I heard him say, "I am for equality and no king."

Lord Kenyon. What did he say?

A. He was not in the box; he was walking up the middle of the coffee-room, and he said, "I am for equality and no king." I heard Mr. Yatman, pressing his brow, say, "What! equality and no king in this country?" Upon which Mr. Frost answered, "Yes, no king; there ought to be no

king." I heard nothing more in conversation pass. I stepped from the box, and asked him how he dared to hold a doctrine of that kind in a public coffee-room? He made some reply as before, that he was for equality and no king. I told him if he was not under the protection of the very king he was then reviling, I would kick him out of the coffee-room. Upon which he asked me if I doubted his courage. I told him, certainly he would not have made use of such expressions without, because I should have supposed it to be an insult to make use of such expressions in a public coffee-house. He was then handled by other gentlemen, and I sat down; but very soon afterwards he left the room, under the execrations and hisses of all the room.

Q. Did you see him when he first came down into the public coffee-room?

A. I don't know that I might. I saw him soon after I saw Mr. Yatman.

Q. Recollect yourself, and tell me how long you can speak to it, as near as you can, recollect how long he was in the public coffee-room before he went away.

A. Not ten minutes; not more I am sure.

Q. I would ask you whether this conduct and these expressions of his produced any, and what kind of notice in the company?

A. That every gentleman there was under the

same idea with me, that he ought to be kicked out of the coffee-room.

PAUL SAVIGNAC—cross-examined by Mr. Serjeant
RUNNINGTON.

Q. You don't live in that neighborhood, do you?

A. No, in Carshalton, in Surrey.

Q. How long had you been in the coffee-room, before you saw Mr. Frost come in?

A. He was up stairs.

Q. Was he obliged to come through the coffee-room from up-stairs to to go into the street?

A. I cannot say.

Q. How far were you from Mr. Yatman?

A. They were walking up the coffee-room close to me.

Q. Did anything pass from Mr. Yatman to Mr. Frost?

A. Yes.

Q. Before Mr Frost spoke at all?

A. No.

Q. Do you recollect Mr. Yatman saying as he come down stairs, "Well, Mr. Equality, where are you going to?"

A. No, I do not.

MATTHEW YATMAN, of Percy street, sworn.

Examined by MR. BALDWIN.

Q. Were you at the Percy coffee-house on the 6th of November, in the evening?

A. I was.

Q. Did you see Mr. Frost there?

A. I did.

Q. You have long known Mr. Frost?

A. Mr. Frost was in the commission for watching and lighting the street in which I live, and I am one of the commissioners.

Q. Tell us what passed between Mr. Frost and you at the Percy coffee-house?

A. He came from the room where he dined into the coffee-room; he came up to where I was, and knowing he was lately come from France, I said, Well, how do they go on in France? He seemed to be stimulated at the question, and he extended his arm, and exalted his voice sufficiently to be heard up-stairs, if the door had been open, "I am for equality and no king." "What!" says I, "no king in this country?" "No king!" as loud as he could halloo.

Q. Did anything more pass between you and your old friend?

A. No, I had enough. Upon this, the gentlemen in the coffee-room seemed to be stimulated

with anger, and Mr. Taitt and Mr. Savignac got up, and so enraged at him, I supposed they would have kicked him out of the coffee-room, and I believe it would have been done, but one gentleman got him to the door, and prevailed on him to go out.

Q. Did he say anything more that you recollect?

A. No, it was all confusion after that.

Q. And the manner of it was as you have described it?

A. Yes.

Q. With vehemence?

A. Yes; he was very warm.

MATTHEW YATMAN — cross-examined by Mr.
ERSKINE.

Q. It was all general confusion after Mr. Taitt had interfered?

A. Yes.

Q. I believe Mr. Frost said this extremely loud, that he might have been heard up stairs?

A. I am just of that opinion.

Q. And then it was that Mr. Taitt interfered?

A. Yes.

Q. After that was all confusion?

A. Yes.

Mr. Baldwin. Though there was confusion afterwards, there was not when he spoke those words?

A. No.

Q. Did he speak it coolly or otherwise, excepting the warmth with which you have spoken? How was he in his understanding?

A. He spoke it very distinctly, and wished to be heard by everybody.

Q. Was he sober or no?

A. Certainly he was not drunk.

Mr. Erskine. It was ten o'clock, was it not?

A. Between nine and ten. I don't know whether it was quite ten.

Q. Do you mean to say he was just as sober as he might be at twelve o'clock in the day?

A. That he walked.

Q. Do you mean to stake your character and your honor before the jury, by saying he was as sober as if you had seen him before dinner?

A. I don't say he was sober.

Q. I ask you whether you mean to stake your character and your honor before the jury, by saying that he was as sober as at twelve o'clock at day?

A. I should not have known that he was not by his conversation and his walk. Whether he was in his right senses when he used those words, is another thing.

Q. Do you mean to say he spoke in the manner and the pitch of voice like a sober man?

A. He was stimulated.

Q. He extended his arm?

A. Yes.

Q. You think that a mark of sobriety, do you?

A. I do not think it a mark of good sense.

— BULLOCK, of —, sworn. — Examined by
Mr. WOOD.

Q. Were you at the Percy coffee-house on the 6th of November last?

A. I was.

Q. Did you see Mr. Frost there?

A. I did.

Q. Be so good as to tell us whether you heard him say anything, and what it was.

A. I did not attend to the conversation till I heard what I thought very treasonable words, upon which I committed them to paper. I wrote it at the time with an idea of having it signed.

Q. Be so good as to read it slowly.

A. [Reads.] Percy coffee-house, 6th of November, 1792. We, the undermentioned, do hereby certify, that at about ten o'clock this evening, Mr. John Frost came into this coffee-room, and did then, and in our presence, openly declare, that he

wished to see equality prevail in this country, and no king, in a loud and factitious way; and upon being asked whether he meant that there should be no king in this country, he answered yes. That is all I recollect of seditious words.

Lord Kenyon. You put this down with a view that they might have been signed.

A. I did.

Mr. Wood. Was Mr. Frost drunk or sober at that time?

A. I never saw Mr. Frost before that time; but he did not appear to me to be a man in liquor; not in the least so.

Q. Have you ever seen him at any other time?

A. I have frequently since.

Q. Where may that be?

A. In Paris.

Q. How soon after this was it?

A. I arrived in 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 anywhere, and whether, from any conversation he had with him, he can take upon him to judge of the state in which Mr. Frost was upon the 6th of November, 1792; that is, comparing his modes of conversing at future times, near or distant from that 6th of November, 1792. I don't wish to ask a single question respecting Mr. Frost's conversation since that time, whatever the law may be upon the subject. I have a still more important reason for not asking it.

Mr. Erskine. My objection is by no means cured, but still more important. The question was this: whether the witness shall be allowed to say from conversations with Mr. Frost —

Mr. Bullock. I believe I can save you a great deal of trouble. I know nothing about it.

Lord Kenyon. I am clearly of opinion that it might have been asked in the way in which the attorney-general put it, if by his general deportment afterwards he could judge whether he was in liquor or not. I have not the least particle of doubt.

Mr. Erskine. Neither have I certainly upon that point, my lord.

Q. Where have you seen him since?

A. At Calais the first time.

Lord Kenyon. I will not have all his life and conversation brought forward; I would not have him give evidence from conjecture or knowledge of what he was doing at Paris; all that I mean to allow is, whether from his general deportment at other times he thinks he was sober at that time?

Q. How many times might you see him, think you?

A. It is impossible to say. I have frequently seen him at a coffee-house.

Q. Are you able to judge from that, whether he was sober or not when you saw him at Percy street coffee-house?

A. He was what you may call a sober man.

Mr. Erskine. Was he like a man that had been drinking?

A. Drinking moderately.

Q. Two bottles of port; what do you say to that?

A. I cannot say.

Q. It is very difficult to judge by weights and scales?

A. I thought he was sober by his manner.

SPEECH OF MR. ERSKINE.

GENTLEMEN OF THE JURY: I rise to address you under circumstances so peculiar that I consider myself entitled, not only for the defendant arraigned before you, but personally for myself, to the utmost indulgence of the court. I came down this morning with no other notice of the duty cast upon me in this cause, nor any other direction for the premeditation necessary to its performance, than that which I have ever considered to be the safest and the best, namely, the records of the court, as they are entered here for trial, where for the ends of justice the charge must always appear with the most accurate precision, that the accused may know what crime he is called upon to answer, and his counsel how he may defend him. Finding, therefore, upon the record which arraigns the defendant, a simple, unqualified charge of seditious words, unconnected, and uncomplicated with any extrinsic events, I little imagined that the conduct of my client was to receive its color 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 connection with the most hostile purposes to the state, and assuming a shape still more interesting from its dangerous connection 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 honor of my learned friend too well to impute to him the introduction of them for any improper or dishonorable 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 monarchial 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 endeavor at least to remove it.

The late revolutions in France have been represented to you as not only ruinous to their authors, and to the inhabitants of that country, but as likely to shake and disturb the principles of this and all other governments; you have been told, that though the English people are generally well affected to their government, ninety-nine out of one

hundred, upon Mr. Attorney-General's own statement, yet that wicked and designing men have long been laboring 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 establishment 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 very 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 endeavored to lead the public mind to the necessity of reforming the corruptions of our own government, to find any reasons for their continuance and conformation, when they operated as engines to support themselves in the exercise of powers, which were only odious when in other hands. For this honorable 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 honorable 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 everything 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 at 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

* Mr. Erskine read the following minutes from Mr. Pitts's handwriting :

THATCHED HOUSE TAVERN, *May 18th*, 1782.

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

The Duke of Richmond,	Sir C. Turner,	Dr. John Jebb,
Lord Surry,	Mr. Taylor	Major Cartwright,
Lord Mahon,	Mr. Amherst,	Mr. Hill,
The Lord Mayor,	Mr. Duncombe,	Mr. Baynes,
Hon. Wm. Pitt,	Mr. J. Martin,	Mr. Shove,
Sir Watkin Lewes,	Mr. Ald. Townsend,	Mr. Churchill,
Rev. Mr. Wyvill,	Mr. Ald. Creighton,	Mr. Tooke,
Mr. Falconer,	Mr. Ald. Wilkes,	Mr. Horne,
Mr. Redman,	Rev. Mr. Bromley,	Mr. Frost,
Mr. Withers,	Mr. B. Hollis,	Mr. Trevanion,
Mr. Bodely,	Mr. Disney Fitcher,	Mr. Brocklesby,
Mr. Vardy,	Mr. Edmunds,	Rev. Dr. Rycroft,
Mr. Sheridan,	General Hale,	Colonel Byron,
Mr. Ald. Turner	Sir. Cecil Wray,	Major Parry,
Mr. Trecothick,	Mr. B. Hayes,	Mr. Green,
Mr. Vincent,	Sir. J. Norcliffe,	Etc., etc., etc.

Resolved unanimously, That the motion of the Honorable 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 gen-

and the Duke of Richmond at the Thatched House Tavern, in St. James' 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.*

eral 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, unanimsly, That the thanks of this meeting be given to the Honorable William Pitt for moving, John Sawbridge, Esq., for seconding, and the one hundred and forty-one 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.

WILLIAM PLOMER, *Chairman*.

And they resolved to have another meeting at the same place on Saturday, June 1.

*(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 honor to call.

May I beg the favor 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

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

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 honor to be, with great respect and esteem, sir,

Your most obedient and most humble servant,

W. PITT.

Lincoln's Inn, Friday, *May 10th*,

JOHN FROST, Esq., Percy Street.

LINCOLN'S INN, *May 12th*, 1782.

SIR.—I have received the favor of your note, and shall be proud to receive the honor 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.

was, in short, what all the friends of government of course are, the best and most approved. To save words, he was, like all the rest of them, just what he should be. But the election being over, and, with it, professional agency, and Mr. Frost, as he lawfully might, continuing to hold his former opinions which were still avowed and gloried in, though not acted on, by his ancient friends, he unfortunately did not change them the other day, when they were thrown off by others. On the contrary, he rather seems to have taken fire with the prospect of reducing them to practice; and being, as I have shown you, bred in a school which took the lead in boldness of remonstrance of all other reformers before or since, he fell, in the heat and levity of wine, into expressions which have no correspondence with 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 deciphering their causes. Men to the full as wise as those who pretend to be wiser than Providence, and stronger than the order of things, may perhaps reflect that a great fabric of unwarrantable power and corruption could not fall to the ground without a mighty convulsion; that the agitation must ever be in proportion to the surface agitated; that the passions and errors inseparable from humanity must heighten and swell the confusion, and that perhaps the crimes and ambition of other nations, under the mask of self-defence and humanity, may have contributed not a little to aggravate them; may have tended to embitter the spirits and to multiply the evils which they condemn; to increase the misrule and anarchy which they seek to disembroil, and in the end to endanger their own governments, which by carnage and

bloodshed, instead of by peace, improvement, and wise administration, they profess to protect from the contagion of revolution.

As to the part which bodies of men in England have taken, though it might in some instances be imprudent and irregular, yet I see nothing to condemn or to support the declamation which we daily hear upon the subject. The congratulations of Englishmen were directed to the fall of corrupt and despotic power in France, and were animated by the wish of a milder and freer government, happier for that country and safer for this. And 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 energies that give a title to it; a receipt of policy made up of a detestable compound of malice, cowardice, and sloth. They would govern men against their will; but in that, government would be discharged from the exercise of vigilance, providence, and fortitude; and therefore that they may sleep on their watch, consent to take some one division of the society into partnership of the tyranny over the rest. But let government, in whatever form it may be, comprehend the whole in its justice, and restrain the suspicious by its vigilance; let it keep watch and ward; let it discover by its sagacity, and punish by its firmness, all delinquency against its power, whenever it exists in the overt acts, and then it will be as safe as God and nature intended it should be. Crimes are the acts of individuals, and not of denominations; and therefore arbitrarily to class men under general descriptions, in order to proscribe and punish them in the lump for a presumed delinquency, of

which perhaps but a part, perhaps none at all, are guilty, is indeed a compendious method, and saves a world of trouble about proof; but such a method, instead of being law, is an act of unnatural rebellion against the legal dominion of reason and justice; and a vice, in any constitution that entertains it, which at one time or other will certainly bring on its ruin.”*

Gentlemen, let us now address ourselves to the cause, disembarrassed by foreign considerations; let us examine what the charge upon the record is, and see how it is supported by the proofs; for, unless the whole indictment, or some one count of it, be in form and substance supported by the evidence, the defendant must be acquitted, however in other respects you may be dissatisfied with his imprudence and indiscretion. The indictment charges, “That the defendant, being a person of an impious, depraved, seditious disposition, and maliciously intending to disturb the peace of the kingdom; to bring our most serene sovereign into hatred and contempt with all the subjects of the realm, and to excite them to discontent against the government, he, the said defendant, his aforesaid wicked contrivances and intentions to complete, 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

* Edmund Burke.

with a precision which marks the true principle of English criminal law. It does not merely charge the speaking of the words, leaving the wicked intention to be supplied and collected by necessary and unavoidable inference, because such inference may or may not follow from the words themselves, according to circumstances, which the evidence alone can disclose; it charges therefore the wicked intention as a fact, and as constituting the very essence of the crime, stating as it must state, to apprise the defendant of the crime alleged against him, the overt act, by which such malicious purpose was displayed, and by which he sought to render it effectual. No man can be criminal without a criminal intention, *actus non facit reum nisi mens sit rea*. God alone can look into the heart, and man, could he look into it, has no jurisdiction over it, until society is disturbed by its actions; but the criminal mind being the source of all criminality, the law seeks only to punish actions which it can trace to evil disposition; it pities our errors and mistakes; makes allowances for our passions, and scourges only our crimes.

Gentlemen, my learned friend, the attorney-general, in the conclusion of his address to you, did more than ratify these propositions; for, with a liberality and candor very honorable to himself, and highly advantageous to the public which he represents, he said to you, that if the expressions

charged upon the defendant, should turn out in your opinion to be unadvised and unguarded, arising on the sudden, and unconnected with previous bad intention, he should not even insist upon the strictness of the law, whatever it might be, nor ask a verdict but such as between man and man, acting upon moral and candid feelings, ought to be asked and expected. These were the suggestions of his own just and manly disposition, and he confirmed them by the authority of Mr. Justice Forster, whose works are so deservedly celebrated; but judging of my unfortunate client, not from his own charity, but from the false information of others, he puts a construction upon an expression of this great author, which destroys much of the intended effect of his doctrine; a doctrine which I will myself read again to you, and by the right interpretation of which I desire the defendant may stand or fall. In the passage read to you, Forster says, "As to mere words, they differ widely from writings in point of real malignity and proper evidence; they are often the effect of mere heat of blood, which in some natures, otherwise well-disposed, carrieth the man beyond the bounds of prudence; they are always liable to great misconstruction, from the ignorance or inattention of the hearers, and too often from a motive truly criminal." Forster 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 favorable judgment, one would have almost considered the quotation as a tacit consent to an acquittal; but Mr. Attorney-General, still looking through the false medium of other men's prejudices, lays hold of the words, "otherwise well-disposed," and engrafts upon them this most extraordinary requisition. Show me, he says, that Mr. Frost is otherwise well-disposed. Let him bring himself within the meaning of Forster, and then I consent that he shall have the fullest benefit of his indulgent principle of judgment. Good God, gentlemen, are we in an English court of justice? Are we sitting in judgment before the chief justice of England, with the assistance of a jury of Englishmen? and am I in such a presence to be called upon to prove the good disposition of my client, before I can be entitled to the protection of those rules of evidence which apply equally to the just and to the unjust, and by which an evil disposition must be proved before it shall even be suspected? I came here to resist and to deny the existence of legitimate and credible proof of disloyalty and disaffection; and am I to be called upon to prove that my client has not

been, nor is disloyal 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. 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 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 misstated from misapprehension, nor wilfully exaggerated.

Mr. Frost, the defendant, a gentleman, who upon the evidence stands wholly unimpeached of any design against the public peace, or any indisposition to the constitution of the kingdom, appears to have dined at the tavern over the Percy coffee-house, not even with a company met upon any political occasion, good or evil, but, as has been admitted in the opening, with a society for the encouragement of agriculture, consisting of most reputable and inoffensive persons, neither talking nor thinking about government, or its concerns ; so much for the preface to this dangerous conspir-

acy. 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 drank 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 connection 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 everything 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 clamors 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 pre-judged 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 tranquility, which constitutes its very essence everywhere, 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 honor 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

neighbors 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 restraint 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 honorably 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

* The King's Bench sat in the small Court of Common Pleas, the impeachment having shut up its own court.

in this damned corner? I wish to God 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 irreverent 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 honor.

This tacit but well understood and delightful compact of social life is perfectly consistent with its safety. The security of free governments, and

the unsuspecting confidence of every man who lives under them, are not only compatible but inseparable. It is easy to distinguish where the public duty calls for the violation of the private one; criminal intention but not indecent levities, not even grave opinions unconnected with conduct, are to be exposed to the magistrate; and when men, which happens but seldom, without the honor 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

* Edmund Burke.

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 habits. The blood of wholesome kindred is infected. Their tables and beds are surrounded with snares. All the means given by Providence to make life safe and comfortable are perverted into instruments of terror and torment. This species of universal subserviency, that makes the very servant who waits behind your chair the arbiter of your life and fortune, has such a tendency to degrade and abase mankind, and to deprive them of that assured and liberal state of mind which alone can make us what we ought to be, that I vow to God, I would sooner bring myself to put a man to immediate death for opinions I disliked, and so to get rid of the man and his opinions at once, than to fret him with a feverish being, tainted with the jail distemper of a contagious servitude, to keep him above ground, an 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 publicly professed, and though followed up by corresponding conduct, how irresistibly do they devote to contempt and execration all eaves-dropping 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 juncture. 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 had not sufficient authority to make laws for limiting the succession, should be guilty of high treason, and suffer as a traitor;" and then enacts, "That if any person shall maliciously, and directly, by preaching, teaching, or advised speaking, declare and maintain the same, he shall incur the penalties of a *præmunire*."

"I will make a short observation or two," says Forster, "on the act. First, the positions condemned by them had as direct a tendency to involve

these nations in the miseries of an intestine war, to incite her majesty's subjects to withdraw their allegiance from her, and to deprive her of her crown and royal dignity, as any general doctrine, any declaration not relative to actions or designs, could possibly have; and yet in the case of bare words, positions of this dangerous tendency, though maintained maliciously, advisedly, and directly, and even in the solemnities of preaching and teaching, are not considered as overt acts of treason.

“Secondly. In no case can a man be argued into the penalties of the act by inferences and conclusions drawn from what he hath affirmed; the criminal position must be directly maintained, to bring him within the compass of the act.

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

He afterwards adds, “Seditious writings are permanent things, and if published, they scatter the poison far and wide. They are acts of deliberation, capable of satisfactory proof, and not ordinarily liable to misconstruction; at least they are submitted to the judgment of the court, naked and undisguised, as they came out of the author's hands. Words are transient and fleeting as the

wind ; the poison they scatter is, at the worst, confined to the narrow circle of a few hearers ; they are frequently the effect of a sudden transport, easily misunderstood, and often misreported."

Gentlemen, these distinctions, like all the dictates of sound policy, are as obvious to reason as they are salutary in practice. What a man writes that is criminal and pernicious, and disseminates when written, is conclusive of his purpose ; he manifestly must have deliberated on what he wrote, and the distribution is also an act of deliberation ; intention in such cases is not therefore matter of legal proof but of reasonable inference, unless the accused, by proof on his side, can rebut what reason must otherwise infer : since he who writes to others, undoubtedly seeks to bring over other minds to assimilate with his own. So he who advisedly speaks to others upon momentous subjects, may be presumed to have the same intention ; but yet so frail is memory, so imperfect are our natures, so dangerous would it be to place words, which, to use the language of Forster, are transient and fleeting, upon a footing with deliberate conduct, that the crinating letter of the law itself interposes the check and excludes the danger of a rash judgment by curiously selecting from the whole circle of language an expression which cannot be mistaken ; for nothing said upon the sudden without the evidence of a context, and sequel in thought or

conduct, can in common sense deserve the title of advised speaking. Try the matter before you upon the principle of the statute of Queen Anne, and examine it with the caution of Forster.

Suppose then, that, instead of the words imputed by this record, the defendant coming half drunk through this coffee-house, had, in his conversation with Yatman, denied the right of parliament to alter the succession: could he have been adjudged to suffer death for high treason under the statute of Queen Anne? Reason and humanity equally revolt at the position, and yet the decision asked from you is precisely that decision; for if you could not have found advised speaking to bring it within that statute of treason, so neither can you find it as the necessary evidence of the intention charged upon the present indictment, which intention constitutes the misdemeanor.

If anything 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 color 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, stripped 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 color of popular freedom, destroys all the securities and blessings of life; but how does it destroy them? How, but by the very means that these new partners of executive power would themselves employ, if we would let them, by inflicting, from a mistaken and barbarous state necessity, the severest punishments for offences never defined by the law; by inflicting them upon suspicion instead of evidence, and in the blind, furious, and indiscriminate zeal of persecution, instead of by the administration of a sober and impartial jurisprudence. Subtracting the horrors of invading armies which France cannot help, what other mischief has she inflicted upon herself? From what has she suffered but from this undisciplined and cruel spirit of accusation and rash judgment? A spirit that will look at nothing dispassionately, and which, though proceeding from a zeal and enthusiasm for the most part honest and sincere, is nevertheless as pernicious as the wicked fury of demons, 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 favor 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 honor 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 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 con-

dition of an English subject with that of a citizen of France, which he is supposed in theory to prefer. These are the true criterions by which, in the long run, individuals and nations become affectionate to governments, or revolt against them; for men are neither to be talked nor written into the belief of happiness and security when they do not practically feel them, nor talked or written out of them when they are in the full enjoyment of their blessings. But if you condemn the defendant upon this sort of evidence, depend upon it he must have his adherents, and, as far as that goes, I must be one of them.

Gentlemen, I will detain you no longer, being satisfied to leave you, as conscientious men, to judge the defendant as you yourselves would be judged; and if there be any amongst you who can say to the rest that he has no weak or inconsiderate moments; that all his words and actions, even in the most thoughtless passages of his life, are fit for the inspection of God and man, he will be the fittest person to take the lead in a judgment of guilty, and the properest foreman to deliver it with good faith and firmness to the court.

I know the privilege that belongs to the attorney-general to reply to all that has been said; but perhaps, as I have called no witnesses, he may think it a privilege to be waived. It is, however, pleasant to recollect, that if it should be exercised,

even with his superior talents, his honor and candor will guard it from abuse.

REPLY OF THE 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 merce-

nary informers, but certainly whom he has been anxious to represent as officious informers; as a prosecution which it was my duty, independently of any considerations that I might feel myself upon the subject, to bring before you, that it was what I could not approve of, but what I was bound to persevere in till I received your verdict.

Gentlemen, with respect to bringing the cause before the court, my learned friend has not confined his observations to that point. He has stated also, and every thing that falls from him, and more especially in a case that concerns the crown and an individual, deserves and must have an answer from me. He has given you a comment upon words, upon which I likewise offered you some humble observations; I mean the words, "otherwise well-disposed. I remarked that where words in their natural meaning did import a seditious mind, it would be competent to a defendant to show upon a general principle that, whatever might be the words uttered, the circumstances attending the expression of them might be stated to the jury, in order to give a different sense to them from their primary import.

Gentlemen, I hold it to be my duty, standing here responsible to the public for the acts that I do — deeply impressed with a consciousness that I am so responsible, to state to you that I must be extremely guilty of a breach of my duty if I

should now call upon you for a verdict, or if I should now take your opinion; because there is not a single tittle of evidence before you which was not before me when the indictment was laid. I protest against that doctrine that the attorney-general of England is bound to prosecute because some other set of men choose to recommend it to him to prosecute, he disapproving of that prosecution. I know he has it in his power to choose whether he will or not, and he will act according to his sense of duty. Do not understand me to be using a language so impertinent as to say that the opinions of sober-minded persons in any station in life as to the necessity that calls for a prosecution ought not deeply to affect his judgment. But I say it is his duty to regulate his judgment by a conscientious pursuance of that which is recommended to him to do. And if any thing is recommended to him which is thought by other persons to be for the good of the country, but which he thinks is not for the good of the country, no man ought to be in the office who would hesitate to say, "My conscience must direct me, your judgment shall not direct me." And I know I can do this — I can retire into a situation in which I shall enjoy what, under the blessings of that constitution thus reviled, is perhaps the best proof of its being a valuable constitution — I mean the fair fruits of an humble industry, anxiously and con-

scientifically exercised in the fair and honorable pursuits of life. I state, therefore, to my learned friend that I cannot accept that compliment which he paid me when he supposed it was not my act to bring this prosecution before you, because it was not what I myself could approve. Certainly this prosecution was not instituted by me, but it was instituted by a person whose conduct in the humane exercise of his duty is well known; and I speak in the presence of many who have been long and often witnesses to it; and when it devolved upon me to examine the merits of this prosecution it was my bounden duty to examine, and it was my bounden duty to see if this was a breach of the sweet confidences of private life. If this is a story brought from behind this gentleman's chair by his servants, I can hardly figure to myself the case in which the public necessity and expediency of a prosecution should be so strong as to break in upon the relations of private life. But, good God! is this prosecution to be so represented—when a man goes into a coffee-house, who is from his profession certainly not ignorant of the respect which the laws of his country require from him as much as from any other man; and when he, in that public coffee-house (provided it was an advised speaking) uses a language, which I admit it is clear upon the evidence given you to-day, provoked the indignation, if you please so to call it, of all who

heard it — when persons, one, two, three, or more, come to ask him what he meant by it, when he gives them the explanation, and when he makes the offensive words still more offensive by the explanation that he repeatedly gives — will any man tell me, that if he goes into a public coffee-house, whether he comes into it from up-stairs, or whether he goes into it from the street, that he is entitled to the protection that belongs to the confidences of private life, or that it is a breach of the duties that result out of the confidences of private life to punish him ?

Gentlemen, I call upon you seriously to consider the case, to act with candor, 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 blessings 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 would 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 everything 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 act 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 anything—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 read to you by Mr. Erskine, from Mr. Justice Forster's Reports?—that the penalties in high treason are so exceedingly great, that, although treasonable words were spoken, yet if not spoken with such intention, they would not, as in the case of high treason, expose the subject to those pains and penalties. Did they mean to say they should be no offence at all, if the conscience of the jury should be satisfied that they were used in a way to make them criminal? By no means. But if you are of opinion that these words were advisedly spoken, if the words themselves import that seditious intent which this record ascribes to them, I say it falls directly within the principle of Mr. Justice Forster, namely, that it would be competent to the defendant to give evidence of his general demeanor 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 demeanor, 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 drank; 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 endeavor 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 in 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 had 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 favor 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 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; 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 having summed up the evidence, the jury retired for an hour and a half, and then returned with a verdict of "Guilty." The prisoner was sentenced to six month's imprisonment in Newgate, to stand one hour in the pillory at Charing Cross, and to be stricken off the roll of attorneys, a disgrace from which he never recovered.

TRIAL
OF
MR. PERRY AND MR. LAMBERT,
EDITOR AND PRINTER OF THE MORNING CHRONICLE,
FOR A LIBEL.

THE trial of Mr. Perry and Mr. Lambert on the 9th of December, A.D., 1793, derives additional importance from the fact of its being the first case of a libel tried after the passage of Mr. Fox's celebrated Libel Act. The attorney-general's information charged the defendants, Mr. Perry and Mr. Lambert, as editor and printer of the *Morning Chronicle*, with publishing an address of a society for political information, held at the Talbot Inn, at Derby, which had been sent to the *Morning Chronicle* for insertion, in the ordinary course of business; neither Mr. Perry nor Mr. Lambert having had any kind of connection or correspondence with the authors.

A sufficient presentation of the facts of the case is given in the following extracts from the address selected by the attorney-general from the information itself, with the innuendoes:

“ We (meaning the society aforesaid), feel too much not to believe that deep and alarming abuses exist in the British government (meaning his said majesty's government of this kingdom), yet we are

at the same time fully sensible that our situation is comfortable compared with that of the people of many European kingdoms, and that as the times are, in some degree, moderate, they ought to be free from riot and confusion.

“III. Yet we think there is sufficient cause to inquire into the necessity of the payment of seventeen millions of annual taxes, exclusive of poor-rates, county-rates, expenses of collection, etc., etc., by seven millions of people; we think that these expenses may be reduced, without lessening the true dignity of the nation (meaning this kingdom), or the government (meaning the government of this kingdom), and therefore wish for satisfaction in this important matter.

“IV. We view with 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 labor 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 make 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 burdens (meaning burdens of the subjects of this kingdom), are owing, in a great measure, to cruel and impolitic wars (meaning cruel and impolitic wars entered into by his said majesty against foreign powers), and therefore we will do all on our part, as peaceable citizens, who have the good of the community at heart, to enlighten each other, and protest against them.

“ V. The present state of the representation of the people (meaning the representation of the people of this kingdom in the parliament thereof), calls for the particular attention of every man who has humanity sufficient to feel for the honor and happiness of his country, to the defects and corruptions of which we are inclined to attribute unnecessary wars, etc., etc. 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 laborer 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 worst, by the triennial and septennial acts (meaning acts of the parliament of this kingdom); we lost annual parliaments, besides which, the wholesome provisions for obliging (meaning obliging), privy counsellors to subscribe their (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 must (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.

“VI. In short, we see with the most lively concern an army of place-men, pensioners, (meaning persons holding places and pensions under the government of this kingdom), etc., 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, etc., though the nation (meaning this kingdom) pays taxes equal to the whole land rental (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 deprivations — a criminal code of laws (meaning the criminal code of laws of this kingdom) sanguine and inefficacious — a civil code (meaning the civil code of laws of this kingdom) so 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 have their true interest at heart—we see with equal sensibility the present outcry against reforms, and a proclamation (meaning his said majesty's royal proclamation) tending to cramp the liberty of the press, and discredit the true friends of the people, receiving the support of numbers of our countrymen—we see the continuation of oppressive game laws (meaning the game laws of this kingdom) and destructive monopolies; we see the education and comfort of the poor (meaning the poor of this kingdom) neglected, notwithstanding the enormous weight of the poor-rates; we see burdens multiplied, the lower classes (meaning the lower classes of the subjects of this kingdom) sinking into poverty, disgrace, and excesses; and the means of these

shocking abuses increased for the purpose of revenue for the same, and the excise laws (meaning the excise laws of this kingdom), those badges and sources of oppression, kept up and multiplied; and when we cast our eyes on a people just formed in a free community, 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 burdens (meaning the burdens of the subjects of this kingdom) to be as heavy as the most enslaved people? Is the condition of the poor (meaning the poor of this kingdom) never to be improved? Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry against reforms and improvements is inhuman and criminal; but we hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present 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.

VII. Lastly, we invite the friends of freedom throughout Great Britain to form similar societies, and to act with unanimity and firmness, till the people (meaning the people of Great Britain) be too wise to be imposed upon, and their influence in the government be commensurate with their dignity and importance; then shall we be free and happy. By order of the society, S. Eyre, chairman (meaning the chairman to the said society)."

IN Trinity term a rule was made in the usual way, on the motion of the prosecutor, for a special jury. Forty-eight jurors were struck; and in Easter term they were reduced by the parties to twenty-four. In the sittings after Easter the cause came on, and seven of the special jurors came into the box. Sir John Scott, the then attorney-general, did not pray a tales, and the trial went off as a *remanet pro defectu juratorum*.

In Michaelmas term the prosecutor, on a motion of course, took out a rule for a new special jury. This the defendants thought irregular.

On Friday, the 15th day of November, the Hon. Thomas Erskine moved the court as follows:

My lord, the motion which I am about to address to the court will deserve your lordship's particular attention, as it relates to one of the

most essential rights and liberties of the subject, the trial by jury.

Your lordship may recollect that at the sittings after the last term in this place, an information, filed by the attorney-general, against the proprietors and printer of the *Morning Chronicle*, for a supposed libel in that newspaper, was called on for trial in the ordinary course of things. Seven of the special jurors, struck under the rule obtained by the crown itself for the trial of the cause, appeared, and came into the box to be sworn; but the attorney-general did not think proper to pray a tales to complete the panel. The cause, therefore, of course, went off *pro defectu juratorum*.

My lord, if any special reason existed why the jury so appearing should not be permitted to try the information when it came on again for trial, and the crown had moved upon such special matter, verified by affidavit, to discharge the original rule under which the jury was appointed, I should, according to the nature of the objections, have been prepared to give them an answer. But, my lord, no such proceedings have been had or attempted. The crown has made no objection to the jurors, nor any motion in court to discharge the original rule under which the jury was impaneled; 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 under the signature of counsel out of court, obtained a second rule for striking a jury, as if no former rule had ever existed, and as if no jury had been struck under it.

I confess I was not a little surprised at this attempt to impanel a jury, without the consent of the defendants, between whom and the crown the former had been reduced and ascertained under the first rule. On their part I therefore now object to the proceeding, as totally illegal and hostile to the freedom of trial; and I humbly move that this new rule may be discharged.

I do not know that I am able to state, at this moment, any direct precedent for my motion, nor is it necessary that I should, because I found my application upon the whole statute law of the kingdom respecting the trial by jury, which is positive and unequivocal on the subject, which no practice can shake, and which no decisions of the court, if there were any, could repeal or overrule.

Lord Kenyon. The application crosses all my ideas of the law upon the subject. It would be highly dangerous to impartial trial if the juries were known to the parties so long before the trial. It is very strange if the law be so.

Mr. Erskine. My lord, the authors of our laws seem to have thought very differently on this subject. They seem to have entertained no jealousy that the trial by the country, which was instituted

for the people's protection, could ever be too favorable to them; on the contrary, the most ancient statutes of the kingdom express no fears for the crown, but for the subject only, and provide that jurors shall be struck so long before the day of trial, that the defendant may know them, and be prepared to take his challenges. The act of the 42nd of Edward III. chap. 11, expressly gives this reason. After stating that divers of the people had been disheartened and oppressed from not having had knowledge beforehand of those who were to pass in the inquest, it enacts that the names of the jurors should be returned into court in the term before the assizes, and that in the mean time, the parties on demand should view the same.

The whole statute law, from that period, speaks the same language, down to the famous statutes of King William and Queen Anne, which give to defendants, accused of high treason, the names and abodes not merely of the jurors, but of the very witnesses to be examined against them on the trial. So far, indeed, is it from being true, that, by the common law, a jury once summoned and not attending, could not be distrained again to appear at a future day, as is supposed by Mr. Justice Page, in Masterman's note, that they were bound to give their attendance from assizes to assizes, *in infinitum*, until the reign of William the Third.

The statute of the 13th Edward I. chapter 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 impaneled under the first writ. It is therefore only by the effect of this statute that a jury, once summoned, is discharged before trial; and the statute not extending, nor indeed relating at all to special juries, they remain upon the old footing. Special juries do not exist, as many people seem to suppose, by the authority of a statute; on the contrary, they are as ancient as the law itself, and were always struck, as they are at this day, by direction of the court, when trials were had at the bar and not at *nisi prius*; the act of the 3rd of George II. chapter 25, having no relation to such juries, except as it removes a doubt with regard to the legality of striking them for the trial of misdemeanors. This legality the statute recognizes; and

putting special juries, struck in the crown office, on the same footing with those in civil cases, directs them to be struck by rule, as they anciently were in cases of trial 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 3rd of George II., returns one panel for all, which effectually prevents a defect of jurors; but special juries remain untouched by that statute. The reason and justice

of the thing, moreover, support my construction. The attorney-general alone can pray a tales in a criminal cause, for the statutes go no farther than to give defendants a right to pray the tales in penal actions, prosecuted *qui tam* with the crown, but not in cases where the crown is the prosecutor alone. It is true that the attorney-general now grants his warrant of course to a defendant to pray one, but he may legally refuse it; and the subject's liberties are not to rest upon the courtesies of the officers of the crown. What, then, is contended for in this right to change the jury? Why, nothing short of this, that if the attorney-general does not like his jury, he may forbear to pray a tales himself; he may also refuse his warrant, without which the defendant cannot pray one; and this he may do, *toties quoties* until he has got a jury to his fancy. I am not arguing that Mr. Attorney-General is likely to attempt this practice for such purposes; but the country is not to hold its rights upon the courtesy of the prerogative, or the honesty of those who may occasionally represent it.

Mr. Erskine then proceeded to state the modern cases, which clearly showed that the practice of the court bore him out in the law on the subject. He stated the *King v. Hart*, and the *King v. Joddrell*; but he relied implicitly, he said, on the law.

One of the officers of the crown office handed up to Mr. Justice Buller, an opinion of Judge Page,

in the 13th of George II., that a new jury ought to be granted; but Mr. Justice Buller said, the defendants should take a rule to show cause, as it was of great importance to be argued and ascertained.

Lord Kenyon said, he thought it scarcely necessary; but granted they might take a rule. A rule was therefore granted.

On Monday, the 25th of November, 1792, the rule came on to be argued.

Mr. Bearcroft, on the part of the crown, contended that the cases cited by Mr. Erskine were not in point. In the case of the king against Hart, the special jury of forty-eight had not been reduced to twenty-four by the parties, and the jurors had not come into court. In the case of the king against Joliffe, the cause had been put off on account of some publications, which might have influenced the jury. In the next term, a new jury was struck, so that the case was in point for the crown, and it was so much the more so, as the new jury was moved for by a solicitor as well versed in the general practice as any solicitor of that court. Their lordships would agree with him in this description, when they heard that the solicitor for the defendant in that cause was Mr. Lowten, and he was solicitor also for the present defendants. In that cause, then, Mr. Lowten had moved for a new trial, and here he opposed a new jury. [Mr. Bearcroft

was set right in the case of Joliffe. In that instance the trial first went off, because, from the publications which had been made, the court thought that the jury might be influenced. In the term after this, the cause came on again, and both parties agreed to have a new jury. A second time it was put off, through the delicacy of Mr. Justice Gould; and on the third time it was brought on again, and the prosecutor moved for a new jury, without any pretext of influence, or of any other argument for a new jury. This, Mr. Lowten, as solicitor for the defendant (and who had not been employed in the beginning of the cause), objected to, and the court refused.]

Mr. Bearcroft read from the notes of the late Mr. Masterman, one of the secondaries of the crown office, a case, where it was his opinion, that a new jury was conformable to the practice; and he quoted also a cause against Lord Charles Fitzroy, where Mr. Lowten had also, as solicitor for the defendant, moved for a new jury, and had succeeded; but he owned, that in this case it had been consented to by both parties.

Mr. Bearcroft then said he would argue the question on the reason of the rule. It struck him as a most important point indeed, that juries should not be continued from term to term, as they might be tampered with by the parties; a thing so outrageous to justice, and so opposite to the spirit of

our jurisprudence, that it had been ever the study of the courts, and indeed the very aim of parliament, in making the statute of the 3rd of George II. to prevent juries from becoming permanent, or from being so long known beforehand, as to be subject to influence. That in regard to the prayer for a tales, though undoubtedly the defendant must have the warrant of the attorney-general to enable him to pray a tales, yet the attorney-general never denied such a warrant. Another argument against the continuance of a jury was, that it must subject gentlemen to great inconvenience — they never would know when they were to be discharged. Here seven of them attended to do their duty, and they were again to be called upon; eleven of them might attend, and still be subject to be called again; there was no end of this, and he owned he did not know how they could call upon them again, for he did not know an instance of an *alias distringas* to bring up special jurors.

Mr. Adam stated, on the part of the defendants, that there were many instances in the books, especially in Brooke's Abridgment, where an *alias distringas* had gone to compel the attendance of jurors of all descriptions.

Mr. Justice Buller said that as this case comprehended so important a rule of practice he had taken pains to inform himself on the point, and he had found a case which, in his mind, determined

the rule. He would read it, and then Mr. Bearcroft would see what he could make of the argument. Mr. Justice Buller then read a manuscript note of the case the King *v.* Franklin, the publisher of the famous paper called the *Craftsman*. It was important to remark the time and the judges—it was the 5th of George II. only three years after the law recognizing special juries in misdemeanors had passed, and the judges on the bench were Mr. Justice, afterwards Lord Chief Justice Lee, Mr. Justice Page,* etc.; and the crown lawyers were men of the first eminence. Franklin was convicted of printing and publishing a libel in the *Craftsman*. The case was only so far different from the present that the defendant there moved the court to reverse the judgment, because the cause, after being put off from one term to another, had not been tried by a new jury. Here the defendants moved to continue the same jury. The doctrine was the same in both cases, only that in this case it is upon the application of the attorney-general that the new jury is required; in that case the attorney-general or the crown contended that the old jury should continue. Chief Justice Lee pronounced the opinion of the court, which Mr. Justice Buller read. The opinion of the court was, that the words of the statute were

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

express, and could not be departed from, unless cause could be shown that there had been some irregularity in the striking of the jury, or in the reducing, or in some part of the proceeding, or in the writ of *venire*, or otherwise. The words of the statute were, "that the jury so struck and so reduced shall be the jury to try the issue joined in such cause." The jury were not dissolved until the cause was determined, and an *alias distringas* might issue. The opinion was at great length, and detailed the practice of striking juries by the ancient statutes downwards, and showed that by the act then recently passed, the 11th of George II. the alteration with respect to juries related only to the common jury, and left the practice as to special jurors exactly as it stood by the ancient law, except as it declared that special jurors might be demanded by the crown in cases of misdemeanor. In regard to common juries, it was thought hard and severe to compel their attendance from time to time; but the special jury was left by that act precisely as it stood before. This opinion, Mr. Justice Buller said, delivered so soon after the act had passed, so solemnly and argumentatively, in a question discussed by such great legal characters must in his mind, determine the question. He concluded with saying, that he could not see how the crown officers could go on without creating error on the record.

Lord Chief Justice Kenyon said, he must bow to such great authority, though the inclination of his disposition was the other way. But a point so solemnly argued (and where such a man as Mr. Pulteney, Earl of Bath, being implicated, error would have been pleaded, if they could have found error on the record), must decide the present case. He made no inquiry at all, and did not take into his consideration the merits of the question at issue between the present parties; but it was, in his opinion, of the utmost interest to criminal jurisprudence, that juries should not be subject to influence. It was that consideration which gave rise to the law for the balloting-box. Every lawyer knew the necessity that there was for that statute; as all the provisions which had been previously made to guard against influence, had proved ineffectual, though any person convicted of trying to influence jurors, was subject to a penalty of ten times the amount of the object at issue in the cause. What held good as to civil suits was equally applicable to criminal prosecutions. The principle of the balloting-box was equally applicable to both; but it was impossible to resist the precedent, standing as it did upon so high authority.

Mr. Justice Grose and *Mr. Justice Ashurst* were of the same opinion.

The case of the King v. Franklin,* therefore,

*In consequence of that case, viz. : the King v. Franklin, it became unnecessary for Mr. Erskine and Mr. Adam, as counsel for the defendants, to say anything 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 of the King v. Franklin.

Special juries existed long before the statute of the third George II., by the act of the parties; and that as well in misdemeanor as in other cases. One party applied for a special jury, and the other party consented; so that the special jury was then the result of compact between the parties. But when the parties had so contracted, the authority of the court was necessary to give validity to the compact. Accordingly the court, upon application, made a rule for a special jury; and that rule ran in the same words before the statute, that are used now since the statute; an observation very material, especially in considering the last words. The rule ordered then, and it orders now, that forty-eight shall be returned; that the prosecutor shall strike twelve and the defendant twelve; and that twenty-four, the remainder of the forty-eight, shall be the jury returned for the trial of the issue joined in that cause.

This being agreed between the parties, and enforced by a rule of court, the parties, before the statute, chose their forum, and by this forum, their own compact, and the authority of the rule of court compelled them to abide; insomuch, that they could not get quit of the jury by the common mode of challenging the array; that is, challenging the whole panel of jurors; such challenge, after the rule of court, being deemed, like every other breach of the authority of the court, a contempt, by the party who should so challenge.

This had met with a decision in several cases, but particularly in the case of the King v. Burrige, for a misdemeanor, which came before the Court of King's Bench, in Trinity Term, 10 George I., a very short time before the passing of the act respecting special juries.

That case is reported in Lord Strange's Reports, vol. I., p. 593; in Lord Raymond, 1364; in Andrew's Reports, 52; in 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 twenty-four 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

decided this question; and the court determined, that the rule for another special jury, obtained upon the motion of the crown lawyers, must be discharged.

synonymous, and meaning the same thing, the above phrase; and that they shall be the jury who shall actually try the 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 George II. came the statute; and it is very material to observe, that the statute transcribes verbatim the latter words of the rule used before the statute. Therefore whatever was the construction of those words in the rule, the same must be their construction in the statute. It has been shown in what sense the judges considered the words in the rule, and it will not be contended that the words in the statute, "which said jury, so struck, shall be the jury returned for the trial of the said issue," can bear a different construction. There is, therefore, judicial authority, added to that of common sense, to settle the meaning of these words. The only other consideration in this case is, what change the statute made in the rights of the parties, if it made none from the words of the rule; and it is evident that it did no more than convert into a statutory obligation, carried into execution by a rule of court, what had been a matter of compact, executed by a rule of court; but that in all other respects, except that the one party was, after the statute, bound to agree to a special jury, if the other proposed it, the consequences were the same.

The disobedience to the rule remained a contempt, and the rule remained valid, unless the court, for particular cause of corruption, or undue interference, properly verified, should see ground to have another jury; but that otherwise, the jury of compact or statute must continue.

This was the more material, because of the attorney-general's power to refuse the defendant a warrant to have a tales, to make up the special jury, if deficient, out 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:

SPEECH OF THE ATTORNEY-GENERAL.

On the 9th of December, 1793, the cause having been called on for trial, Mr. Attorney-General opened the case for the crown as follows :

GENTLEMEN OF THE JURY: The information charges the defendants with having printed and published a seditious libel, the contents of which you have now heard stated. The information originally was not filed by me, but by my predecessor in office, who was then, as you now are, sworn to discharge an important duty to the public according to the best of his judgment. It has since fallen to my lot to execute that duty, in stating to you the grounds upon which this information has been filed. And I have no difficulty in saying

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 I. Keb. 195. Rex. v. Jones. And the granting a *nisi prius* amounts to a consent.

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 consequences 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 foundation of civil liberty. Thus, the will of individuals is left still 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 can-

not 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

* Blackstone’s Commentaries, vol. IV., page 151, 8vo. edition, 1791.

learned judge, the defendants be guilty, as the information charges them to be?" With respect to the fact, the paper stated in the information, appeared in the *Morning Chronicle* on the 25th of December, 1792. And here I must particularly beg the attention of the jury to the date of the libel. This paper, charged to be the libel, is dated at the Talbot Inn, at Derby, on the 16th of July, 1792; and it did not appear in the *Morning Chronicle* till the 25th of December, 1792. Thus you will observe that the date of the paper preceded its appearance in the *Morning Chronicle* six months.

Having said this upon the paper itself, it is now my duty to the defendants to state, that it appeared not to be a publication actually composed by the defendants, but was said to be, with what truth I do not know, composed and agreed to at a society for political information, held at the Talbot Inn, Derby, signed S. Eyre, chairman. Whether there was such a person, or, if there was, whether he was the author, is to me entirely unknown. It was said to be unanimously agreed to by the persons holding the meeting, and ordered to be printed; how it happened that that order was not executed till the 25th of December, I am unable to explain to you. But be that circumstance as it may, the defendants are the persons interested in the property and management of the newspaper

in which this publication appeared. And I apprehend that the proprietors, printers, and publishers of a newspaper are responsible for whatever it may contain, unless it be admitted as a doctrine, that men may carry on a trade, which is a source of great profit and emolument, entirely through the medium of servants, without being themselves in the smallest degree accountable. Can it be deemed a sufficient apology for the evil tendency of a publication, of which they reap the advantage, that they are not its authors, or that they had no immediate hand in its insertion, and therefore are not bound to answer for what they themselves did not actually commit? On the contrary, I apprehend, that by adopting any publication, they become liable in law for the consequences of that publication, as much as if they were themselves the authors. It is true that there are many circumstances to be considered, either by me in moving judgment, or when it comes to be determined by the court, what ought to be the nature and extent of the penalty. The consideration of the degree of guilt incurred by the particular act, might then be attended to, independent of the law of the case. Negligence, omission, inadvertence, all of which, however, constituted a degree of 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 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

unfavorable 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 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 colors, while they draw a veil over the good. The writers of this paper in describing the government of this country as productive only of one scene of misery, must have acted contrary to their own knowledge of its blessings, and in opposition to the sense which they could not but perceive was entertained by the

people at large of the happiness of their condition. To what motives, I will ask, can such a representation be ascribed, or what are the effects to which it is naturally calculated to lead? Are the motives such only as can be set down to fair and honest intention, and the effects only such as can terminate in a legal and peaceable line of conduct? We are to consider, too, that this mode of representation is adopted with respect to a constitution which has been the admiration of the wisest and best men in all ages, who have thought it barely possible that a constitution should exist so nearly approaching to a model of perfection. It is a constitution under which a greater degree of happiness has been enjoyed than by the subjects of any government whatever; and the sense entertained of its blessings depends not upon the vague results 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 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 of 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 neighboring country. The effects which had there been produced did not surely hold out to

British subjects any encouragement to adopt a system of experiment and innovation. The result of this, in my mind, is, that no man should be at liberty, without a specific object, to state truly or falsely what appears to him to be a grievance merely for the purpose of exciting a spirit of general discontent, which I will venture to say never can be called into action without endangering the public prosperity and happiness. We have always been in the habit of regarding the revolution as the greatest blessing that ever befell this country. But how do the writers of this paper reason with respect to this event? They enumerate all the abuses which they pretend have since crept into the constitution, while they mention none of the many improvements which have taken place since that period. Is this, I will ask, a fair mode of stating the question? Besides, they show themselves ignorant of that revolution, by talking of the annual parliaments which we then lost. What was the end of all this? The cause of truth and justice can never be hurt by fair and temperate discussion; if you, gentlemen of the jury, consider this paper as coming under that description, you will of course acquit the defendants. Look at the beginning and conclusion of their paper. You will find that they set out with declaring that they are in the 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 connection 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 deduc-

tion be made of the national taxes from the amount of the national wealth, and I am confident that this country will appear in a higher state of opulence and prosperity than it ever was at any former period. What purpose then can such partial and unfair statements answer, except to inflame the discontented and encourage the seditious? Whatever I have said of the tendency of this paper, I have stated only as my own opinion; it does not follow that the society at Derby might not view the subject in a very different light. All that my duty demands is, solemnly to declare that I considered this prosecution, though not originating with myself, as a proper case to be submitted to the consideration of a jury. You have now heard from me almost all that I intended to say at present, or thought necessary to submit to you, except what may fall from my learned friend shall require me to add some farther observations in reply. You will hear from the evidence all the facts which the defendants have to urge in their own justification, and from his lordship all that shall appear to him to be the law on this subject. I now leave the matter to your decision. If you think the defendants ought to be acquitted, I shall retire from the court with a full conviction, not inconsistent however with that respect which I owe to your decision, that in bringing this matter before

you, I have acted according to the best of my judgment.

Mr. Wood, the junior counsel on the part of the prosecution, was then proceeding to call witnesses, and Mr. Berry was called, when the counsel for the defendants said he was instructed to save the court all this trouble, as the defendants were anxious to try the question on its own merits. As counsel for the defendants, he therefore admitted that John Lambert, charged in the information as printer of the *Morning Chronicle*, was in fact printer of that paper; that the paper was purchased at the printing-house; and that the defendants, James Perry and James Gray, charged in the information as 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.

SPEECH OF MR. ERSKINE 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 anything 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 everything 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 learn-

ed friend, or from myself, to interfere with your own honest and unbiased judgments. You are to take everything 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 biased by no motive of party or political convenience. There is this essential difference between criminal and civil cases: in criminal cases, the jury have the subject entirely in their own hands; they are to form their judgment upon the whole of it, not only upon the act alleged to be criminal, but the motive by

which it was influenced; the intention with which it was committed; and according to their natural sense of the transaction, they ought to find a man innocent or guilty; and their verdict is conclusive. Not so in civil cases: in these the jury are bound to abide in their decision by the law as explained by the judge; they are not at liberty to follow their own opinions. For instance, if I am deprived of any part of my property, the loss of my property lays a foundation for an action, and the fact being found, the jury are bound to find a verdict against the person who has occasioned my loss, whatever might be his intentions. Here the judge pronounces law, the jury only find the fact. The law and the fact are as distinct and separate, as light from darkness; nor can any verdict of a jury pass for a farthing in opposition to the law, as laid down by the judge, since the courts have a power to set such a verdict aside. But in criminal cases, the very reverse has been immemorially established, the law and the fact have been inseparably joined; the intention of the party accused is the very gist of the case. We are criminal only in the eyes of God and man, as far as the mind and intention in committing any act have departed from the great principles of rectitude, by which we are bound as moral agents, and by the indispensable duties of civil society. It is not the act itself, but the motive from which it proceeds, that constitutes

guilt, and the general plea therefore in all criminal cases is not guilty. Such is the answer which the justice and clemency of our laws have put into the mouth of the accused; leaving him the right of acquittal, if the circumstances of the transaction shall be found to exculpate his motives.

The criminality of a person under the libel act, is not to be taken as an inference of law from the fact, as Mr. Attorney-General has stated it; but if, as one of the authors of that bill, I may be allowed to interpret its meaning, it connects and involves the law and the fact together, and obliges the jury to find in this crime, as in all others, by extrinsic as well as intrinsic means, the mind and intention with which the fact was committed. Nothing can be more simple than the doctrine. It goes directly to the reason of the thing. Two men, for instance, are in company, and one of them is killed. It is not an inference in the law from the fact of the killing that the person was guilty of murder; it might be manslaughter, justifiable homicide, chance-medley, or it might be murder; the fact does not infer the crime; it is the intention with which the act was committed, and this the jury are bound to discover and decide upon from all the accompanying circumstances. If I had been wrong in holding this opinion, all my opposition to that great luminary of the law now departed, but who will always live in public memory, was

wrong and false; I revered his venerable authority, I admired the splendor of his talents which illustrated the age he lived in, and perhaps ages will pass without producing his rival. I still opposed him, in the meridian of his fame, on the doctrine that the law of libel was an inference from the fact, and now the legislature have solemnly confirmed my opinion, that the law and fact are compounded together, and are both to be found by the jury. I could not have held up my head in this court, nor in the world, if it had been adjudged otherwise; and how my learned friend can hold an opinion that the question of libel is to be tried precisely like all other criminal cases, and yet that criminal intent is an inference from 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 means 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 candor, 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 at the indictment, which sets out with referring to his majesty's proclamation which had appeared against all seditious writings, previous to the publication of the libel. I will not here talk of the propriety of that proclamation; it is not 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 pre-

caution and useful tendency. I will only remind its authors when it was issued. It was issued at a period the most extraordinary and eventful which ever occurred in the annals of mankind; at a period when we beheld ancient and powerful monarchies overturned, crumbled into dust, and republics rising upon their ruins; when we beheld despotic monarchy succeeded by the despotism of anarchy. In this state of alarm, confusion, and devastation in other countries, the defendants are accused by this information of wickedly, maliciously, and seditiously endeavoring to discharge his majesty from the hearts of his subjects, and to alienate the people of England from what their affections were riveted 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 neighboring 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 neighboring 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 can not 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 sedi-

tious 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 tranquility, 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 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 favorite 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 cer-

tain our present heavy burdens are owing, in a great measure, to cruel and impolitic wars, and, therefore, we will do all, on our part, as peaceable citizens who have the good of the community at heart, to enlighten each other, and to protest against them." Here it is evident that the author considers the state of the representation as the cause of our present evils, and to a constitutional reform of parliament he looks as their remedy. In the conclusion of the fifth section he thus explicitly states his sentiments :

"An equal and uncorrupt representation would, we are persuaded, save us from heavy expenses and deliver us from many oppressions ; we will, therefore, do our duty to procure this reform, which appears to us of the utmost importance." How is it proposed to procure this reform ? Why, "by constitutional means ; by the circulation of truth in a peaceable, calm, unbiased 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 of 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 honorable gentleman was asked by those who had so often listened to his eloquence in favor of the people, why he had excluded his former favorite topic from a share in his work, and made monarchy the sole subject of his vindication and panegyric? Whatever may belong to the work itself, the answer which he gave upon that occasion must be admitted to be sound and forcible. When the rights of the people appeared to him to be in

danger, from the increasing and overpowering influence of the crown, he brought forward, he said, sentiments favorable 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 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 it; he calls forth all its powers and energy to the discussion, and allows nothing that has not an immediate relation to the object he has in view to divide his feelings or distract his attention. But if the observations of Mr. Attorney General are to be adopted as a rule, it will be impossible to discuss any point of a question without

entering into the whole merits; no man will dare to complain of any abuse of the constitution, without, at the same time, enumerating all its excellencies, or venture to touch upon a topic of grievance, without bringing forward a recital of blessings. A paragraph would be swelled to a pamphlet, and an essay expanded to a dissertation.

But it seems the circumstances of the times render any opinion in favor 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 revolu-

tion and anarchy. There are many diseases which might be removed by gentle medicines in their beginning, and even corrected by timely regimen, which, when neglected, are sure to bring their victims to the grave. A slight wound, which may be certainly cured by the simplest application seasonably administered, if left to itself will end in gangrene, mortification, and death. If experience can be of any service to warn men of their danger, and to instruct them how to avoid it, this is the season to teach men the best sort of wisdom, that wisdom which comes in time to be useful. I have myself no hesitation in subscribing to all the great points in this declaration of the meeting at Derby. To the abuses of our representative system they ascribe our unnecessary war, our heavy burdens, our many national calamities. And at what period have not the best and wisest men whom this country ever produced adopted the same sentiments and employed the same language? The illustrious Earl of Chatham has dignified the cause by the noblest specimens of eloquence. And who has not read the beautiful and energetic letter of Sir George Saville, to his constituents, on the same subject—a letter which is so much in point that I must beg leave to repeat it to you.

“I return to you, baffled and dispirited; and I am sorry the 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 honors 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 endeavored 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, whoever 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 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 of both 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 rumored 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 endeavored to enlighten the minds of their fellow-subjects, while they have avoided everything 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 neighboring country, and the impartiality with which they have stated them, do them the greatest credit. I trust that it will be no objection to them in their character of editors, that they have sought only for the truth, and, wherever they have found facts, have not hesitated to bring them before the public. They have thus enabled their readers to

judge for themselves, and have furnished them with the means to form a proper judgment. This is the true value of a free press. The more men are enlightened, the better will they be qualified to be good subjects of a good government; and the British constitution, as it has nothing to fear from comparison, so it can receive no support from those arts which disguise or suppress the truth respecting other nations. Wherever the defendants have delivered their sentiments upon public occurrences, they have equally avoided being misled by the credulity of alarm, and the frenzy of innovation; and have reprobated, with the same spirit and boldness, the abuse of freedom and the perversion of power, the outrages of a sanguinary mob and the expressions of an unprincipled despot. Whatever may have been their political partialities, they are such as cannot but do them the highest honor, and their partialities have been the result of honest conviction. Though uniformly consistent in their friendship, they have never been accused by those who know them of being partisans for interest. Their opinions have been honest, as well as steady; and through life they have maintained and asserted the pure principles of rational freedom, and given the most strenuous support to the best interests of man. They have, in their daily task, ever preserved reverence for private character, and in no instance violated the decorums of life, by low

ribaldry or wanton defamation. Though adverse in their sentiments to ministers and their measures, they have confined themselves to manly discussion, and fair argument: and never descended to indecent attack, or scurrilous abuse.

My learned friend cannot produce a single instance in the course of seventeen years, the term of my acquaintance with them, in which they have been charged in any court with public libel, or with private defamation; and I challenge the world to exhibit a single instance in which they have made their journals the vehicles of slander, or where from interest, or malice, or any other base motive, they have published a single paragraph to disturb the happiness of private life, to wound the sensibility of innocence, or to outrage the decencies of well-regulated society. I defy the world to produce a single instance. Men who have so conducted themselves are entitled to protection from any government, but certainly they are particularly entitled to it where a free press is part of the system. In the fair and liberal management of their paper, fifteen shillings out of every guinea which they receive flow directly into the public exchequer; and besides the incessant toil, and the unwearied watching, all the expenses by which this great gain to government is produced, are borne exclusively by them. They essentially contribute therefore, by their labors, 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 is alleged, that the pecuniary interest which the proprietors have in a newspaper, ought to subject them to a severe responsibility for its contents, let it be recollected, that they have only an interest in common with the public. I again call upon Mr. Attorney-General to state, whether the fact appears to him clearly established, that the writers of this paper were influenced by seditious motives. I put it to you, gentlemen of the jury, as honest men, as candid judges of the conduct, as fair interpreters of the sentiments of others, whether you do not, in your hearts and consciences believe, that these men felt as they wrote—that they complained of grievances which they actually experienced, and expressed sentiments with the truth of which they were deeply impressed. If you grant this, if you give them the credit of honest feelings and upright intentions, on my part any farther defence is unnecessary; we are already in possession of your verdict; you have already pronounced them not guilty; for you will not condemn the conduct when you have acquitted the heart. You will rather desire that

British justice should resemble that attribute of Heaven which looks not to the outward act, but 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 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 endeavored 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 ardor 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, the necessity of a reform, as the best and perhaps the 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 unbiased judgment.

THE ATTORNEY-GENERAL'S REPLY.

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 a charge to be brought against them. In everything, therefore, that I know of the defendants, you are to take them as men standing perfectly free from any imputation but the present; and I will also say, from

all I have ever heard of the defendants, and from all I have ever observed of their morals in the conduct of their paper, I honestly and candidly believe them to be men incapable of wilfully publishing any slander on individuals, or of prostituting their paper to defamation or indecency. But my learned friend, Mr. Erskine, has stated some points which my duty calls upon me to take notice of. I bound myself by the contents of the paper only; I did not know the author of it. I did not know any society from which the paper purported to have originated. It is said to be the production of a man of great abilities; I do not know that he is the author; at any rate, this is the first time I ever heard of that circumstance. There is one fact on which we are all agreed, that the paper itself was dated on the 16th of July, 1792, and that it appeared in the *Morning Chronicle* on the 25th of December, 1792. It was then presented to the public with a variety of other advertisements, which it will be proper for you to peruse; and for that purpose you will carry out the paper with you, if you find it necessary to withdraw, in order to see what the intent of the defendants was in publishing this paper. A bill, I also admit, passed into a law, the last session of parliament, upon the subject of libels; but it would be exceedingly unfortunate for the 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 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 anything 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 insert it, they have not said. They have brought no exculpatory evi-

dence 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 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 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 neighboring country. The many excellent men

who there began to try experiments on government, confining their views within certain limits of moderation, and having no other object than the public good, little did they foresee in their outset the excesses and crimes which would follow in the progress of that revolution, of which they were the authors, and of which they were themselves destined to become the victims. They are now lying in the sepulchres of the dead, and the tombs of mortality; and most willingly, I am persuaded, would they have consigned themselves to their fate, if, by their death, they could have saved their unhappy country from the horrors and miseries of that dreadful anarchy into which it has fallen. Never, with such examples before my eyes, will I stake the blessings which we possess under the government of this country, upon the precarious consequences of innovation; nor consent to any alteration, of which, whatever may be stated as its object, the precise effects can never be ascertained. Indeed, I must think that my friend, Mr. Erskine, in his propositions with respect to a reform, allows himself to talk like a child, and does not sufficiently consult that excellent judgment which he displays on 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 favor 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 libelous 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 with 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 entrusted, and whose interests you are to consult in the verdict which you shall give. Let me remind you of the necessity of checking, in proper time, the spirit of sedition, and frustrating the designs of the factious, before it be too late. Let me conclude with observing, that I have brought forward this prosecution as a servant of the public, influenced by my own judgment, and acting from what I conceived to be my duty. *I had no other view than the public advantage; and should you be of opinion that the defendants ought to be declared not guilty, I trust you will acquit me of any intention of acting either impertinently with respect to you, or oppressively to the defendants. I shall then retire, conscious of having done my duty in having stated my opinion, though inclined, in deference to your verdict, to suppose myself mistaken.

LORD KENYON'S CHARGE TO THE JURY.

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 favorite 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 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 humor to bring about such a measure.

The merits or demerits of the late law respecting libels, I shall not enter into. It is enough for me that it is the law of the land, which, by my oath I am bound to give effect to, and it commands me to state to juries what my opinion is respecting this or any other paper brought into judgment before them. In forming my opinion on this paper, or on any other, before I arrive at a positive decision on that point, I would look about, and see what the times were when the publication took place. I would look at all the attendant circumstances, and, with that assistance, I would set about to expound the paper. The observations which this cause calls for, form a part of the notorious history of the country. How long this paper was penned before it appeared in this newspaper, I know not; the 25th of December is the day when it was published, and it is dated the 16th of July, 1792.

Gentlemen, you will recollect the appearance of public affairs, and the feelings of every mind in the country, at the time that parliament met, and for some time after, in December last. I do not know whether I color 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 neighboring 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 everything done in

this country; I am bound on my oath to answer, that I think this paper was published with a wicked, malicious intent, to vilify the government, and to make the people discontented with the constitution under which they live. That is the matter charged in the information; that it was done with a view to vilify the constitution, the laws, and the government of this country, and to infuse into the minds of his majesty's subjects a belief that they were oppressed, and on this ground I consider it as a gross and seditious libel. This is the question put to you to decide.

It is admitted the defendants are the proprietors of the paper in which this address was published.

There is one topic more. It is said they were not the authors of the address, and that it got inadvertently into their paper. It never was doubted, and I suppose it never will be doubted, that the publishers of a newspaper are answerable for the contents of it. Those who think most favorably 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 anything baneful in the contents, to show how it came to them, and whether it was inserted inadvertently or otherwise. If anything 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 favor.

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 good moral 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 traveling 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 give 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, favor, or affection, without regard either to the prosecutor or the defendants, look at the question before you, and on that decide on the guilt or innocence of the defendants.

The jury then withdrew, at two o'clock in the afternoon. The 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."

This verdict Lord Kenyon refused to receive, insisting that it was 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."

Trial of Mr. THOMAS WALKER, of Manchester, Merchant, and six other persons, indicted for a conspiracy to overthrow the Constitution and Government of Great Britain, and to aid and assist the French, being the King's enemies, in case they should invade England. Tried at Lancaster, before Mr. Justice Heath, one of the Judges of the Court of Common Pleas, and a Special Jury, on the 2nd of April, 1794.

SUBJECT.

It has not seemed necessary for the full understanding of this interesting and extraordinary case, to print the evidence given upon the trial; because, to the honor of Lord Ellenborough, then Mr. Law, who conducted the prosecution for the crown, after hearing positive contradiction of the only witness in support of it, by several unexceptionable persons, he expressed himself as follows:

“I know the characters of several of the gentlemen who have been examined; particularly of Mr. Jones. I cannot expect one witness alone, unconfirmed, to stand against the testimony of all these witnesses; I ought not to desire it.” To which just declaration, which ended the trial, Mr. Justice Heath said, “You act very properly, Mr. Law.”

The jury found Mr. Walker “Not guilty;” and the witness was immediately committed, indicted for perjury, and convicted at the same assizes.

Mr. Law's speech to the jury is first given, which contains the whole case, afterwards proved by the witness, who was disbelieved. The speech of Mr. Erskine in reply, states the evidence afterwards given to contradict him.

SPEECH OF MR. LAW.

THE indictment having been opened by Mr. James, Mr. Law addressed the jury as follows:

GENTLEMEN OF THE JURY: The indictment which has been read to you, imputes to the defendants a species of treasonable misdemeanor, second only in degree, and inferior only in malignity, to the crime of high treason itself. It imputes to them a conspiracy for the purpose of adhering with effect to the king's enemies, in case the calamity of foreign invasion or of internal and domestic tumult should afford them the desired opportunity of so doing — a conspiracy for the purpose of employing against our country those arms which should be devoted to its defence, and of overthrowing a constitution, the work of long-continued wisdom and virtue in the ages that have gone before us, and . . . which, I trust, the sober-minded virtue and wisdom of the present age will transmit unimpaired to ages that are yet to succeed us. It imputes to them a conspiracy, not indeed levelled at the person and life of our sovereign, but at that constitution at the head of which he is placed, and at that system of

beneficial laws which it is his pride and his duty to administer; at that constitution which makes us what we are, a great, free, and, I trust, with a few exceptions only, a happy and united people. Gentlemen, a conspiracy formed for these purposes, and to be effected eventually by means of arms; a conspiracy which had either for its immediate aim or probable consequence, the introduction into this country, upon the model of France, of all the miseries that disgrace and desolate that unhappy land, is the crime for which the defendants stand arraigned before you this day; and it is for you to say, in the first instance, and for my lord hereafter, what shall be the result and effect in respect to persons, against whom a conspiracy of such enormous magnitude and mischief shall be substantiated in evidence.

Gentlemen, whatever subjects of political difference may subsist among us, I trust we are in general agreed in venerating the great principles of our constitution, and in wishing to sustain and render them permanent. Whatever toleration and indulgence we may be willing to allow to differences in matters of less importance, upon some subjects we can allow none; to the friends of France, leagued in unity of counsel, inclination, and interests with France, against the arms and interests of our country however tolerant in other respects, we can afford no grains of allowance, no

sentiments of indulgence, or toleration whatsoever; to do so, at a time when those arms and counsels are directed against our political and civil, against not our national only, but natural existence (and at such a period you will find that the very conspiracy now under consideration was formed), would be equally inconsistent with every rule of law and every principle of self-preservation: it would be at once to authorize every description of mischievous persons to carry their destructive principles into immediate and fatal effect; in other words, it would be to sign the doom and downfall of that constitution which protects us all.

I am sure, therefore, that for the crime, such as I have represented it to be, my learned friend will not, in the exercise of his own good sense, choose to offer any defence or apology; but he will endeavor to make the evidence I shall lay before you appear in another point of view: he will endeavor to conceal and soften much of that malignity which I impute, and I think justly, to the intentions and actings of these defendants.

It was about the close of the year 1792, that the French nation thought fit to hold out to all the nations on the globe, or rather, I should say, to the discontented subjects of all those nations, an encouragement to confederate and combine together, for the purpose of subverting all regular established authority amongst them, by a decree of the 19th

of November, 1792, which I consider as the immediate source and origin of this and other mischievous societies. That nation, in convention, pledged to the discontented inhabitants of other countries, its protection and assistance, in case they should be disposed to innovate and change the form of government under which they had hitherto lived. Under the influence of this fostering encouragement, and meaning, I suppose, to avail themselves of the protection and assistance thus held out to them, this and other dangerous societies sprang up and spread themselves within the bosom of this realm.

Gentlemen, it was about the period I mentioned, or shortly after, I mean in the month of December, which followed close upon the promulgation of this detestable decree, that the society on which I am about to comment, ten members of which are now presented in trial before you, was formed.* The vigilance of those to whom the administration of justice and the immediate care of the police of the country is primarily entrusted, had already prevented or dispersed every numerous assembly of persons which resorted to public-houses for such purposes; it therefore became necessary for persons thus disposed, to assemble themselves, if at

*The Manchester Constitutional Society was instituted in October, 1790; the Reformation Society, in March, 1792; the Patriotic Society, in April, 1792.

all, within the walls of some private mansion. The president and head of this society, Mr. Thomas Walker, raised to that bad eminence by a species of merit which will not meet with much favor or encouragement here, opened his doors to receive a society of this sort at Manchester, miscalled the Reformation Society; the name may, in some senses, indeed, import and be understood to mean a society formed for the purpose of beneficial reform; but what the real purposes of this society were, you will presently learn, from their declared sentiments and criminal actings. He opened his doors, then, to receive this society; they assembled, night after night, in numbers, to an amount which you will hear from the witnesses; sometimes, I believe, the extended number of such assemblies amounting to more than a hundred persons. There were three considerable rooms allotted for their reception. In the lower part of the house, where they were first admitted, they sat upon business of less moment, and requiring the presence of smaller numbers; in the upper part, they assembled in greater multitudes, and read, as in a school, and as it were to fashion and perfect themselves in everything that is seditious and mischievous, those writings which have been already reprobated by other juries, sitting in this and other places, by the courts of law, and in effect, by the united voice of both houses of parliament. They read, amongst other

works, particularly the works of an author whose name is in the mouth of everybody in this country ; I mean the works of Thomas Paine ; an author, who, in the gloom of a French prison, is now contemplating the full effects, and experiencing all the miseries of that disorganizing system of which he is, in some respect, the parent, certainly, the great advocate and promoter.

The works of this author, and many other works of a similar tendency, were read aloud by a person of the name of Jackson, who exercised upon those occasions the mischievous function of reader to this society. Others of the defendants had different functions assigned to them ; some were busied in training them to the use of arms, for the purpose, avowedly, in case there should be either a landing of the French, with whom we were then, I think, actually at war or about to be immediately at war ; or in case there should take place a revolt in the kingdoms of Ireland or Scotland, to minister to their assistance, either to such invasion or to such revolt. That they met for such purposes is not only clear from the writings that were read aloud to them, and the conversations that were held, but by the purposes which were expressly declared and avowed by those who may be considered as the mouth-pieces and organs of the society upon these occasions.

The first time, I think, that the witness Dunn,

whom I shall presently produce to you, saw the defendant, Mr. Walker, Mr. Walker declared to him, "that he hoped they should soon overthrow the constitution." The witness I have alluded to was introduced to the society by two persons, I think of the names of M'Callum and Smith, and who, if I am not misinformed, have since taken their flight from this country to America. The first night he was there, he did not see their president, Mr. Walker, but on the second night that he went there, Mr. Walker met him as he entered the door, and observing, from his dialect, that he was a native of Ireland, Mr. Walker inquired of him how the volunteers went on, and said, with a smile as he passed him in his way up-stairs to the rest of the associated members, "we shall overthrow the constitution by-and-by." The witness was then ushered into this room, where he saw assembled nearly to the number of a hundred or a hundred and fifty persons. The room was, I understand, a large warehouse at the top of the house; there were about fourteen or fifteen persons then actually under arms, and some of those whose names are to be found in this record were employed in teaching others the military exercise. It would be endless, as well as useless, to relate to you the whole of what passed at these several meetings.

Upon some occasions, Mr. Walker would talk in the most contumelious and abominable language

of the sacred person of our sovereign. In one instance, when talking of monarchy he said, "Damn kings! what have we to do with them, what are they to us?" and, to show the contempt in which he held the lives of all kings, and particularly that of our own sovereign, taking a piece of paper in his hand, and tearing it, he said, "If I had the king here, I would cut off his head as readily as I tear this paper."

Upon other occasions, others of the members, and particularly a person of the name of Paul, who I believe is now in court, held similar language; damning the king; reviling and defaming him in the execution of his high office; representing the whole system of our public government as a system of plunder and rapacity; representing, particularly, the administration of a neighboring kingdom by a lord-lieutenant, as a scheme and device merely invented to corrupt the people, and to enrich and aggrandize the individual to whose care the government of that kingdom is more immediately delegated; in short, arraiging every part of our public economy as directly productive of mis-government and oppression. The king himself was sometimes more particularly pointed at by Mr. Walker. He related of him a strange, incredible, and foolish fable, which I never heard suggested from any other quarter: "That his majesty was possessed of seventeen millions of money in some

bank or other at Vienna, which he kept locked up there, and would not bestow a single penny of it to relieve the distresses and indigence of any part of his own subjects." Many other assertions of this sort were made, and conversations of a similar import held, between Mr. Walker and the persons thus assembled.

About three months after the formation, as far as I can collect it, of this society, that is, about the month of March, 1793, a person of the name of Yorke—Yorke of Derby, I think he is called—arrived at Manchester, with all the apparatus of a kind of apostolic mission, addressed to the various assemblies of seditious persons in that quarter of the kingdom. He harangued them upon such topics as were most likely to interest and inflame them; he explained to them the object of the journey he was then making through the country; he said he was come to visit all the combined societies, in order to learn the numbers they could respectively muster, in case there should be an invasion by the French, which was then talked of, and is yet, I am afraid, talked of but upon too much foundation; to know, in short, what number they could add to the arms of France, in case these arms should be hostilely directed against Great Britain itself. He stated that the French were about to land in this country, to the number of forty or fifty thousand men, and that he was collecting, in the different

societies, the names of such persons as could be best depended upon, in order to ascertain what number in the whole could actually be brought into the field upon such an emergency.

When this person was present, there seems to have been a sort of holiday and festival of sedition; each member strove with his fellow which should express sentiments the most injurious and hostile to the peace and happiness of their country. Dunn, the witness I have already alluded to, will speak to the actual communication of all the several persons who are defendants upon this record in most of the mischievous councils which were then held, and which are the subject of this prosecution. They met during a considerable length of time he attended, (and here you will not be called upon to give credit to a loose and casual recollection of a few random expressions, uttered upon one or two accidental occasions, capable of an innocent or doubtful construction); but he attended, I believe, at nearly forty of these meetings; he attended them from about the month of December or January, down to the month of June, when, either through compunction for the share he had himself borne in those mischievous proceedings, or whatever else might be his motive — I trust it was an honorable one, and that it will in its effects prove beneficial to his country — he came forward and detailed this business to the magistrates of

this country. It became them, having such circumstances related to them, and having it also confirmed by other evidence, that there were numerous nightly meetings of this sort held at stated intervals at the house of Walker, upon having the objects of these meetings detailed and verified to them—it became them, I say, to use means for suppressing a mischief of such extent and magnitude. It was accordingly thought proper to institute this prosecution for the purpose of bringing these enormous proceedings into public discussion and inquiry, before a jury of the country, and for the purpose of eventually bringing to condign punishment the persons immediately concerned in them.

Gentlemen, the evidence of this person, the witness I have mentioned, will unquestionably be assailed and attacked by a great deal of attempted contradiction. His character will, I have no doubt, be arraigned and drawn in question from the earliest period to which the defendants can have an opportunity of access for materials respecting it. Upon nothing but upon the effectual impeachment of the character of this witness, can they bottom any probable expectations of acquittal; to that point, therefore, their efforts will be mainly directed. I wish their efforts had been hitherto directed innocently towards the attainment of this object, and that no opportunities had been recently

taken, in occasional meetings and conversations, to attempt to tamper with the testimony of this witness. There are other practices, which, next to an actual tampering with the testimony of a witness, are extremely mischievous to the regular course and administration of justice. I mean attempts to lure a witness into conversations respecting the subject of his testimony; of this we have seen many very blamable instances in the course of the present circuit, where conversations have been set on foot for the purpose of catching at some particular expressions, inadvertently dropped by a witness, and of afterwards bringing them forward, separately and detached from the rest of the conversation, in order to give a different color and complexion to the substance of his evidence, and to weaken the effect and credit of the whole.

Gentlemen, these attempts are too commonly made; happily, however, for public justice, they are commonly unsuccessful, because they do and must, with every honorable mind, recoil upon the party making them. Private applications to a person not only known to be an adverse witness, but to be the very witness upon whose credit the prosecution most materially depends; private conversations with such a witness, for the purpose of getting from him declarations which may be afterwards opposed in seeming contradiction to his solemn testimony upon oath, are of themselves so

dishonorable, that, with every well-disposed and well-judging mind, they will naturally produce an effect directly contrary to the expectations of the persons who make them.

I know, gentlemen, what I have most to fear upon this occasion; I know the vigor and energy of the mind of my learned friend. I have long felt and admired the powerful effects of his various talents; I know the ingenious sophistry by which he can mislead, and the fascination of that eloquence by which he can subdue the minds of those to whom he addresses himself. I know what he can do to-day, by seeing what he has done upon many other occasions before. But at the same time, gentlemen, knowing what he is, I am somewhat consoled in knowing you. I have practiced for several years in this place; I know the sound discretion and judgment by which your verdicts are generally governed; and upon the credit of that experience, I trust that it will not be in the power of my friend, by any arts he is able to employ, to seduce you a single step from the sober paths of truth and justice. You will hear the evidence with the attention which becomes men who are deciding on the fate of others. If these defendants be innocent, and my learned friend is able to substantiate their innocence, to your satisfaction, for God's sake let them be acquitted; but if that innocence cannot be clearly and satisfactorily estab-

lished, I stand here interested as I am in common with him in the acquittal of innocence, at the same time, however, demanding the rights of public justice against the guilty. It imports the safety of yourselves, it imports the safety of our country, it imports the existence and security of everything that is dear to us, if these men be not innocent, that no considerations of tenderness and humanity, no considerations of any sort, short of what the actual abstract justice of the case may require, should prevent the hand of punishment from falling heavy on them.

Having therefore, gentlemen, given you this short detail and explanation of the principal facts which are about to be laid before you in evidence, I will now close the first part of the trouble I must give you. I shall, by-and-by, when my learned friend has adduced that evidence by which he will attempt to assail the character and credit of the principal witness for the prosecution, have an opportunity of addressing you again; and, I trust, in the meantime, whatever attention you may be disposed to pay to the exertions of those who will labor to establish the innocence of the persons now arraigned before you, that you will, at the same time, steadily bear in mind the duties which you owe to yourselves and to your country; recollecting, as I am sure you will, that we all look up to your firmness and integrity at this moment, for the

protection of that constitution from which we derive every blessing we individually or collectively enjoy.

SPEECH OF MR. ERSKINE.

GENTLEMEN OF THE JURY: I listened with the greatest attention, and in honor of my learned friend I must say with the greatest approbation, to much of his address to you in the opening of this cause; it was candid and manly, and contained many truths which I have no interest to deny; one in particular which involves in it indeed the very principle of the defence, the value of that happy constitution of government which has so long existed in this island. I hope that none of us will ever forget the gratitude which we owe to the Divine Providence, and, under its blessings, to the wisdom of our forefathers, for the happy establishment of law and justice under which we live, and under which, thank God, my clients are this day to be judged. Great indeed will be the condemnation of any man who does not feel and act as he ought to do upon this subject; for surely if

there be one privilege greater than another, which the benevolent Author of our being has been pleased to dispense to his creatures since the existence of the earth which we inhabit, it is to have cast our lots in this age and country. For myself, I would in spirit prostrate myself daily and hourly before Heaven to acknowledge it, and instead of coming from the house of Mr. Walker, and accompanying him at Preston, the only truths which the witness has uttered since he came into court, if I believed him capable of committing the crimes he is charged with, I would rather have gone into my grave than have been found as a friend under his roof.

Gentlemen, the crime imputed to the defendant is a serious one indeed; Mr. Law has told you, and told you truly, that this indictment has not at all for its object to condemn or to question the particular opinions which Mr. Walker and the other defendants may entertain concerning the principles of this government, or the reforms which the wisest governments may from time to time require; he is indeed a man of too enlarged a mind to think for a moment that his country can be served by interrupting the current of liberal opinion, or overawing the legal freedom of English sentiment by the terrors of criminal prosecution; he openly disavows such a system, and has, I think, even more than hinted to us that there may be seasons

when an attention to reform may be salutary, and that every individual under our happy establishment has a right upon this important subject to think for himself.

The defendants, therefore, are not arraigned before you, nor even censured in observation, for having associated at Manchester to promote what they felt to be the cause of religious and civil liberty; nor are they arraigned or censured for seeking to collect the sentiments of their neighbors and the public concerning the necessity of a reform in the constitution of parliament; these sentiments and objects are wholly out of the question; but they are charged with having unlawfully confederated and conspired to destroy and overthrow the government of the kingdom by open force and rebellion, and that to effect this wicked purpose they exercised the king's subjects with arms, perverting that which is our birthright, for the protection of our lives and our property, to the malignant purpose of supporting the enemies of this kingdom in case of an invasion; in order, as my friend has truly said, for I admit the consequence if the fact be established, in order to make our country that scene of confusion and desolation which fills every man's heart with dismay and horror, when he only reads or thinks of what is transacting at a distance upon the bloody theatre of the war that is now desolating the world. This, and nothing different

or less than this, is the charge which is made upon the defendants, at the head of whom stands before you a merchant of honor, property, character, and respect; who has long enjoyed the countenance and friendship of many of the worthiest and most illustrious persons in the kingdom, and whose principles and conduct have more than once been publicly and gratefully acknowledged by the community of which he is a member, as the friend of their commerce and liberties, and the protector of the most essential privileges which an Englishman can enjoy under the laws.

Gentlemen, such a prosecution against such a person ought to have had a strong foundation; putting private justice and all respect of persons wholly out of the question, it should not, but upon the most clear conviction and the most urgent necessity, have been instituted at all. We are at this moment in a most awful and fearful crisis of affairs; we are told authentically by the sovereign from the throne, that our enemies in France are meditating an invasion, and the kingdom, from one end to another, is in motion to repel it. In such a state of things, and when the public transactions of government and justice in the two countries pass and repass from one another as if upon the wings of the wind, is it politic to prepare this solemn array of justice upon such a dangerous subject, without a reasonable foundation, or rather without

an urgent call? At a time when it is our common interest that France should believe us to be, what we are and ever have been, one heart and soul to protect our country and our constitution, is it wise or prudent, putting private justice wholly out of the question, that it should appear to the councils of France, apt enough to exaggerate advantages, that the judge representing the government in the northern district of this kingdom should be sitting here in judgment in the presence of all the gentlemen whose property lies in this great county, to trace and to punish the existence of a rebellious conspiracy to support an invasion from France? a conspiracy not existing in a single district alone, but maintaining itself by criminal concert and correspondence in every district, town, and city in the kingdom; projecting nothing less than the utter destruction and subversion of the government. Good God! can it be for the interest of government that such an account of the state of this country should go forth? Unfortunately, the rumor and effect of this day's business will spread where the evidence may not travel with it, to serve as an antidote to the mischief; for certainly the scene which we have this day witnessed can never be imagined in France or in Europe, where the spirit of our law is known and understood; it never will be credited that all this serious process has no foundation either in fact or probability, and that it stands

upon the single evidence of a common soldier, or rather a common vagabond, discharged as unfit to be a soldier; of a wretch, lost to all reverence for God and religion, who avows that he has none for either, and who is incapable of observing even common decency as a witness in the court; this will never be believed; and the country, whose best strength at home and abroad is the soundness of all its members, will suffer from the very credit which government will receive for the justice of this proceeding.

What, then, can be more beneficial, than that you should make haste, as public and private men, to undeceive the world, to do justice to your fellow-subjects, and to vindicate your country? what can be more beneficial than that you, as honest men, should upon your oaths pronounce and record by your verdict, that, however Englishmen may differ in religious opinions, which in such a land of thinking ever must be the case; that however they may separate in political speculations as to the wisest and best formation of a house of commons; that though some may think highly of the church and its establishment, whilst others, but with equal sincerity, prefer the worship of God with other ceremonies, or without any ceremonies; that though some may think it unsafe to touch the constitution at this particular moment, and some, that at no time it is safe to touch it, while others think that

its very existence depends upon immediate reformation; what, I repeat, can be more beneficial than that your verdict should establish that though the country is thus divided upon those political subjects, as it ever has been in every age and period of our history, yet that we all recollect our duty to the land which our fathers have left us as an inheritance; that we all know and feel we have one common duty and one common interest? This will be the language of your verdict, whatever you yourselves may think upon these topics connected with, but still collateral to the cause; whether you shall approve or disapprove of the opinions or objects of the defendants, I know that you will still, with one mind, revolt with indignation at the evidence you have heard, when you shall have heard also the observations I have to make upon it, and what is far more important, the facts I shall bring forward to encounter it. To these last words I beg your particular attention. I say, when you shall hear the facts with which I mean to encounter the evidence. My learned friend has supposed that I had nothing wherewith to support the cause, but by railing at his witness, and endeavoring to traduce his character by calling others to reproach it. He has told you, that I could encounter his testimony by no one fact, but that he had only to apprehend the influence which my address might have upon you; as if I, an utter stranger here,

could have any possible weight or influence, to oppose to him who has been so long known and honored in this place.

But although my learned friend seems to have expected no adverse evidence, he appears to have been apprehensive for the credit and consistency of his own; since he has told you that we have drawn this man into a lure not uncommon for the purpose of entrapping witnesses into a contradiction of testimony; that we have ensnared him into the company of persons who have drawn him in by insidious questions, and written down what he has been made to declare to them in destruction of his original evidence, for the wicked purpose of attacking the sworn testimony of truth, and cutting down the consequences which would have followed from it to the defendants. If such a scene of wickedness had been practiced, it must have been known to the witness himself; yet my learned friend will recollect, that though he made this charge in his hearing before his examination, he positively denied the whole of it; I put it to him point by point, pursuing the opening as my guide, and he denied that he had been drawn into any lure; he denied that any trap had been laid for him; he denied that he had been asked any questions by anybody. If I am mistaken, I desire to be corrected, and particularly so by my learned friend, because I wish to state the evidence as it

was given. He has then denied all these things; he has further sworn that he never acknowledged to Mr. Walker that he had wronged or injured him, or that the evidence he had given against him was false; that he never had gone down upon his knees in his presence, to implore his forgiveness; that he never held his hands before his face, to hide the tears that were flowing down his cheeks in the moment of contrition, or of terror at the consequence of his crimes: all this he has positively and repeatedly sworn in answer to questions deliberately put to him; and instead of answering with doubt, or as trying to recollect whether anything approaching such a representation had happened, he put his hands to his sides, and laughed, as you saw, at me who put the questions, with that sneer of contempt and insolence which accompanied the whole of his evidence, on my part at least of his examination. If nothing therefore was at stake but the destruction of this man's evidence, and with it the prosecution which rests for its whole existence upon it, I should proceed at once to confound him with testimony, the truth of which my learned friend himself will, I am sure, not bring into question; but as I wish the whole conduct of my clients to stand fairly before you, and not to rest merely upon positive swearing destructive of opposite testimony: and as I wish the evidence I mean to bring before you, and the falsehood of

that which it opposes, to be clearly understood ; I will state to you how it has happened that this strange prosecution has come before you.

The town of Manchester has been long extremely divided in religious and civil opinions ; and while I wish to vindicate those whom I represent in this place, I desire not to inflame differences which I hope in a short season will be forgotten ; I am desirous, on the contrary, that everything which proceeds from me may be the means of conciliating rather than exasperating dissensions which have already produced much mischief, and which perhaps, but for the lesson of to-day, might have produced much more.

Gentlemen, you all know that there have been for centuries past in this country various sects of Christians, worshipping God in different forms, and holding a diversity of religious opinions ; and that the law has for a long season deprived numerous classes, even of his majesty's protestant subjects, of privileges which it confers upon the rest of the public, setting as it were a mark upon them, and keeping them below the level of the community, by shutting them out from offices of trust and confidence in the country. Whether these laws be wise or unwise, whether they ought to be continued or abolished, are questions for the legislature, and not for us ; but thus much I am warranted in saying, that it is the undoubted privilege of every man or

class of men in England, to petition parliament for the removal of any system or law, which either actually does aggrieve, or which is thought to be a grievance. Impressed with the sense of this inherent privilege, this very constitutional society, which is supposed by my learned friend the attorney-general, to have started up on the breaking out of the war with France, for the purpose of destroying the constitution — this very society owed its birth to the assertion of this indisputable birthright of Englishmen, which the authors of this prosecution most rashly thought proper to stigmatize and resist. It is well known that in 1790 the dissenters in the different parts of the kingdom were solicitous to bring before parliament their application to put an end forever to all divisions upon religious subjects, and to make us all, what I look forward yet to see, one harmonious body, living like one family together. It is also well remembered with what zeal and eloquence that great question was managed in the house of commons by Mr. Fox, and the large majority with which the repeal of the test acts was rejected ; it seems therefore strange that the period of this rejection should be considered as an era either of danger to the church or of religious triumph to Christians ; nevertheless, a large body of gentlemen and others at Manchester, whose motives I am far from wishing to scrutinize or condemn, considered this very wish of the dis-

senters as injurious to their rights, and as dangerous to the church and state; they published advertisements expressive of these sentiments, and the rejection of the bill in the commons produced a society styled the Church and King club, which met for the first time to celebrate what they called the glorious decision of the house of commons in rejecting the prayer of their dissenting brethren.

Gentlemen, it is not for me to say, that it was unjust or impolitic in parliament to reject the application; but surely I may without offence suggest that it was hardly a fit subject of triumph, that a great number of fellow-subjects, amounting, I believe, to more than a million in this country, had miscarried in an object which they thought beneficial, and which they had a most unquestionable right to submit to the government under which they lived; yet for this cause alone, France and every other topic of controversy being yet unborn—the church and king were held forth to be in danger; a society was instituted for their protection, and an uniform appointed with the church of Manchester upon the button.

Gentlemen, without calling for any censure upon this proceeding, but leaving it to every man's own reflection, is it to be wondered at or condemned, that those who thought more largely and liberally on subjects of freedom both civil and religious, but who found themselves persecuted for sentiments

and conduct the most avowedly legal and constitutional, should associate for the support of their rights and privileges as Englishmen, and assemble to consider how they might best obtain a more adequate representation of the people of Great Britain in parliament?

Gentlemen, this society continued with these objects in view until the issuing of the proclamation against Republicans and Levellers, calling upon the magistrates to exert themselves throughout the kingdom to avert some danger with which, it seems, our rulers thought this kingdom was likely to be visited. Of this danger, or the probability of it, either generally or at Manchester in particular, my learned friend has given no evidence from any quarter but that of Mr. Dunn; he has not proved that there has been in any one part of the kingdom anything which could lead government to apprehend that meetings existed for the purposes pointed at; but that is out of the question; government had a right to think for itself, and to issue the proclamation. The publicans however (as it appears upon the cross-examination of the witness), probably directed by the magistrates, thought fit to shut up their houses opened by immemorial law to all the king's subjects, and to refuse admission to all the gentlemen and tradesmen of the town who did not associate under the banners of this Church and King club. This illegal

proceeding was accompanied with an advertisement containing a vehement libel against all those persons, who, under the protection of the laws, thought themselves as much at liberty to consider their various privileges, as others were to maintain the establishment of the church. . Upon this occasion Mr. Walker honorably stood forth, and opened his house to this constitutional society at a time when they must otherwise have been in the streets by a combination of the publicans to reject them. Now, gentlemen, I put it to you as men of honor, whether it can be justly attributed to Mr. Walker as seditious, that he opened his house to a society of gentlemen and tradesmen, whose good principles he was acquainted with, who had been wantonly opposed by this Church and King club, whose privileges they had never invaded or questioned, and against whom, in this day of trial, there is no man to be found who can come forward to impeach anything they have done, or a syllable they have uttered. Vehement as the desire most apparently has been, to bring this gentleman and his associates, as they are called, to justice, yet not one magistrate, no man of property or figure in this town or its neighborhood, no person having the king's authority in the country, has appeared to prove one fact or circumstance from whence even the vaguest suspicion could arise, that anything criminal had been intended or transacted; no constable, who

had ever been sent to guard, lest the peace might be broken, or to make inquiries for its preservation; not a paper seized throughout England, nor any other prosecution instituted except upon the unsupported evidence of the same miserable wretch who stands before you; the town, neighborhood, and county, remaining in the same profound state of tranquility as it is at the moment I am addressing you.

Gentlemen, when parliament assembled at the end of 1792, previous to the commencement of the war, these unhappy differences were suddenly, and, as you will see, from no fault of Mr. Walker's, brought to the crisis which produced this trial; a meeting was held in Manchester to prepare an address of thanks to the king for having embodied the militia during the recess of parliament, and for having put the kingdom in a posture of defence. I do not seek to question the measure of government which gave rise to this approbation, or the approbation itself which the approvers had a right to bestow; but others had an equal right to entertain other opinions. On all public measures the decision is undoubtedly with government; but the people at the same time have a right to think upon them, and to express what they think; surely war, of all other subjects, is one which the people have a right to consider; surely it can be no offence for those whose properties were to be taxed, and

whose inheritances were to be lessened by it, to pause a little upon the eve of a contest, the end of which no man can foresee, the expenses of which no man can calculate, or estimate the blood to flow from its calamities. Surely it is a liberty secured to us by the first principles of our constitution, to address the sovereign, or instruct our representatives, to avert the greatest evil that can impend over a nation.

Gentlemen, one of those societies, called the Reformation Society, met to exercise this undoubted privilege, and in my mind, upon the fittest occasion that ever presented itself; yet mark the moderation of Mr. Walker, whose violence is arraigned before you. Though he was no member of that body, and though he agreed in the propriety of the measure in agitation, yet he suggested to them, that their opposition might be made a pretence for tumult, that tranquility in such a crisis was by every means to be promoted, and therefore advised them to abstain from the meeting; so that the other meeting was left to carry its approbation of government and of the war, without a dissenting voice. If ever, therefore, there was a time when the church and king might be said to be out of danger at Manchester, it was at this moment; yet on this very day they hoisted the banners of alarm to both; they paraded with them through every quarter of the town;

mobs by degrees were collected, and in the evening of this very 11th of December, the houses of Mr. Walker and others were attacked. You will observe, that before this day no man has talked about arms at Mr. Walker's; if an honorable gentleman upon the jury who has been carefully taking notes of the evidence, will have the goodness to refer to them, he will find that it was not till near a week after this, so Dunn expresses it, that a single firelock had been seen; nor indeed does any part of the evidence go back beyond this time, when Mr. Walker's house was thus surrounded and attacked by a riotous and disorderly mob. He was aware of the probable consequences of such an attack; he knew, by the recent example of Birmingham, what he and others professing sentiments of freedom had to expect; he therefore got together a few fire-arms, which he had long had publicly by him, and an inventory of which, with the rest of his furniture at Barlow Hall, had been taken by a sworn appraiser, long before anything connected with this indictment had an existence; and with these, and the assistance of a few steady friends, he stood upon his defence. He was advised, indeed, to retire for safety; but knowing his own innocence, and recollecting the duty he owed to himself, his family, and the public, he declared he would remain there, to support the laws, and to defend his property, and that he

would perish, rather than surrender those privileges, which every member of the community is bound both from interest and duty to maintain; to alarm the multitude, he fired from the windows over their heads, and dispersed them; but when, the next morning, they assembled in very great numbers before his house, and when a man got upon the churchyard wall, and read a most violent and inflammatory paper, inciting the populace to pull the house down, Mr. Walker went out among them, and expostulated with them, and asked why they had disgraced themselves so much by attacking him the night before; adding, that if he had done any of them, or any person whom they knew, any injury, he was, upon proof of it, ready to make them every satisfaction in his power; he also told them, that he had fired upon them the night before, because they were mad as well as drunk; that, if they attacked him again, he would, under the same circumstances, act as he had done before; but, that he was then alone and unarmed in the midst of them, and if he had done anything wrong, they were then sober, and had him completely in their power.

Gentlemen, this was most meritorious conduct. You all live at a distance from the metropolis, and were probably, therefore, fortunate enough neither to be within or near it in 1780, when, from beginnings smaller than those which exhibited them-

selves at Birmingham, or even at Manchester, the metropolis of the country, and with it the country itself, had nearly been undone. The beginning of these things is the season for exertion; I shall never indeed forget what I have heard the late mild and venerable magistrate, Lord Mansfield, say upon this subject, whose house was one of the first attacked in London; I have more than once heard him say, that perhaps some blame might have attached upon himself and others in authority, for their forbearance in not having directed force to have been at the first moment repelled by force, it being the highest humanity to check the infancy of tumults.

Gentlemen, Mr. Walker's conduct had the desired effect; he watched again on the 13th of December, but the mob returned no more, and the next morning the arms were locked up in a bed-chamber in his house, where they have remained ever since, and where, of course, they never could have been seen by the witness, whose whole evidence commences above a week subsequent to the 11th of December, when they were finally put aside. This is the genuine history of the business; and it must therefore not a little surprise you, that when the charge is wholly confined to the use of arms, Mr. Law should not even have hinted to you that Mr. Walker's house had been attacked, and that he was driven to stand upon his defence, as if such

a thing had never had an existence; indeed the armory which must have been exhibited in such a statement, would have but ill suited the indictment or the evidence, and I must therefore undertake the description of it myself.

The arms having been locked up as I told you, in the bed-chamber, I was shown last week into this house of conspiracy, treason, and death, and saw exposed to view the mighty armory which was to level the beautiful fabric of our constitution, and to destroy the lives and properties* of ten millions of people. It consisted, first, of six little swivels purchased two years ago at the sale of Livesey, Hargrave & Co., of whom we have all heard so much, by Mr. Jackson, a gentleman of Manchester, who is also one of the defendants, and who gave them to Master Walker, a boy of about ten years of age. Swivels, you know, are guns so called because they turn upon a pivot; but these were taken off their props, were painted, and put upon blocks resembling carriages of heavy cannon, and in that shape may be fairly called children's toys; you frequently see them in the neighborhood of London adorning the houses of sober citizens, who, strangers to Mr. Brown and his improvements, and preferring grandeur to taste, place them upon their ramparts at Mile-End or Islington. Having, like Mr. Dunn (I hope I resemble him in nothing else) having, like him, served his majesty

as a soldier (and I am ready to serve again if my country's safety should require it), I took a closer review of all I saw, and observing that the muzzle of one of them was broken off, I was curious to know how far this famous conspiracy had proceeded, and whether they had come into action, when I found the accident had happened on firing a *feu de joie* upon his majesty's happy recovery, and that they had been afterwards fired upon the Prince of Wales' birthday. These are the only times that, in the hands of these conspirators, these cannon, big with destruction, had opened their little mouths; once to commemorate the indulgent and benign favor of Providence in the recovery of the sovereign, and once as a congratulation to the heir apparent of his crown on the anniversary of his birth.

I went next, under the protection of the master-general of this ordnance, Mr. Walker's chambermaid, to visit the rest of the formidable array of death, and found a little musketoen about so high (describing it); I put my thumb upon it, when out started a little bayonet like the Jack-in-a-box which we buy for children at a fair; in short, not to weary you, gentlemen, there was just such a parcel of arms of different sorts and sizes as a man collecting amongst his friends, for his defence against the sudden violence of a riotous multitude, might be expected to have collected. Here lay

three or four rusty guns of different dimensions, and here and there a bayonet or broad-sword, covered over with dust and rust, so as to be almost undistinguishable; for, notwithstanding what this infamous wretch has sworn, we will prove by witness after witness, till you desire us to finish, that they were principally collected on the 11th of December, the day of the riot, and that from the 12th in the evening, or the 13th in the morning, they have lain untouched, as I have described them; that their use began and ended with the necessity, and that, from that time to the present, there never has been a fire-arm in the warehouse of any sort or description. This is the whole on which has been built a proceeding that might have brought the defendants to the punishment of death, for both the charge and the evidence amount to high treason; high treason indeed, under almost every branch of the statute, since the facts amount to levying war against the king by a conspiracy to wrest by force the government out of his hands, to an adherence to the king's enemies, and to a compassing of his death, which is a necessary consequence of an invading army of republicans or of any other enemies of the state. Yet notwithstanding the notoriety of these facts, the unnamed prosecutors, and indeed I am afraid to slander any man or body of men by even a guess upon the subject, have been beating up as for

volunteers, to procure another witness to destroy the lives of the gentlemen before you, against many of whom warrants for high treason were issued to apprehend them. Mr. Walker, among the rest, was the subject of such a warrant, and as soon as he knew it, he behaved, as he has throughout, like a man and an Englishman; he wrote immediately to the secretary of state, who was summoned here to-day, and whose absence I do not complain of, because we have by consent the benefit of his testimony. He wrote three letters to Mr. Dundas, one of which was delivered by Mr. Wharton, informing him that he was in London on his business as a merchant; that if any warrant had been issued against him he was ready to meet it, and for that purpose delivered his address where it might be executed. This Mr. Walker did when the prosecutors were in search of another witness, and when this Mr. Dunn was walking like a tame sparrow through the New Bailey, fed at the public or some other expense, and suffered to go at large, though arrested upon a criminal charge, and sent into custody under it.

And to what other circumstances need I appeal for the purity of the defendants, than that, under the charge of a conspiracy extensive enough to comprehend in its transactions, if any existed, the whole compass of England, the tour of which was to have been made by Mr. Yorke, there has not

been one man found to utter a syllable about them; no, not one man, thanks be to God, who has so framed the characteristics of Englishmen, except the solitary infamous witness before you, who, from what I heard since I began to address you, may have spoken the truth when he claimed my acquaintance, as I have reason to think he has seen me before in a criminal court of justice.

Having now, for the satisfaction of the defendants rather than from the necessity of the case, given you an account of their whole proceedings, as I shall establish them by proof; let us examine the evidence that has been given against them, and see how the truth of it could stand with reason or probability, supposing it to have been sworn to by a witness the most respectable.

According to Dunn's own account, Mr. Walker had not been at the first meeting, so that when he first saw Dunn he did not know either his person or his name; he might have been a spy (God knows there are enough of them), and at that season in particular, informers were to be expected; Mr. Walker is supposed to have said to him, "What is your business here?" to which he answered, "I am going to the society," which entitled him at once to admission without further ceremony; there was nobody to stop him; was he asked his name? was he balloted for? was he questioned as to his principles? No; he walked in at once; but first, it

seems, Mr. Walker, who had never before seen him, inquired of him the news from Ireland, observing by his voice that he was an Irishman, and asked what the volunteers were about, as if Mr. Walker could possibly suppose that such a person was likely to have been in a correspondence with Ireland, which told him more than report must have told everybody else. Mr. Dunn tells you indeed he was no such person, he was a friend, as he says, to the king and constitution, which Mr. Walker would have found by asking another question; but, without further inquiry, he is supposed to have said to him at once, "We shall overthrow the constitution by and by;" which the moment Dunn had heard, up walked that affectionate subject of our sovereign lord the king into Mr. Walker's house, where the constitution was to be so overthrown; but then he tells you he thought there was no harm to be done, that it was only for the benefit of the poor, and the public good; but how could he think so after what he had that moment heard? but he did not know, it seems, what Mr. Walker meant. Gentlemen, do you collect from Mr. Dunn's discourse and deportment to-day, that he could not tell but that a man meant good when he had heard him even express a wish to overthrow the government? would you pull a feather out of a sparrow's wing upon the oath of a man, who swears that he believed a person to have

been a good subject in the very moment he was telling him of an intended rebellion? But why should I fight a phantom with argument? Could any man but a driveller have possibly given such an answer, as is put into Mr. Walker's mouth, to a man he had never seen in his life? However many may differ from Mr. Walker in opinion, everybody, I believe, will admit that he is an acute, intelligent man, with an extensive knowledge of the world, and not at all likely to have conducted himself like an idiot. What follows next? Another night he went into the warehouse, where he saw Mr. Yorke called to the chair, who said he was going the tour of the kingdom, in order to try the strength of the different societies, to join fifty thousand men that were expected to land from France in this country, and that Mr. Walker then said, "Damn all kings—I know our king has seventeen millions of money in the bank of Vienna, although he won't afford any of it to the poor." Gentlemen, is this the language of a man of sense and education? If Mr. Walker had the malignity of a demon, would he think of giving effect to it by such a senseless lie? When we know that, from the immense expense attending his majesty's numerous and illustrious family and the great necessities of the state, he has been obliged over and over again to have recourse to the generosity and justice of parliament to maintain the dignity of

the crown, could Mr. Walker ever have thought of inventing this nonsense about the bank of Vienna, when there is a bank too, in our own country, where he might legally invest his property for himself and his heirs? But Mr. Walker did not stop there; he went on and said, "I should think no more of taking off the king's head than I should of tearing this piece of paper." All this happened soon after his admission; yet this man, who represents himself to you upon his oath this day, as having been uniformly a friend to the constitution, as far as he understood it; as having left the society as soon as he saw their mischievous inclinations, and as having voluntarily informed against them, I say this same friend of the constitution tells you, almost in the same breath, that he continued to attend their meetings from thirty to forty times, where high treason was committing with open doors; and that, instead of giving information of his own free choice, he was arrested in the very act of distributing some seditious publication.

Gentlemen, it is really a serious consideration, that upon such testimony a man should even be put upon his defence in the courts of this country; upon such principles what man is safe? I was indeed but ill at ease myself when Mr. Dunn told me he knew me better than I supposed. What security have I at this moment that he should not

swear that he had met me under some gateway in Lancaster, and that I had said to him, "Well Dunn, I hope you will not swear against Mr. Walker, but that you will stick to the good cause: damn all kings: damn the constitution:" if the witness were now to swear this, into gaol I must go; and if my client is in danger from what has been sworn against him, what safety would there be for me? The evidence would be equally positive, and I am equally an object of suspicion as Mr. Walker; it is said of him, that he has been a member of a society for the reform of parliament; so have I, and so am I at this moment, and so at all hazards I will continue to be, and I will tell you why, gentlemen — because I hold it to be essential to the preservation of all the ranks and orders of the state, alike essential to the prince and to the people; I have the honor to be allied to his majesty in blood, and my family has been for centuries a part of what is now called the aristocracy of the country; I can therefore have no interest in the destruction of the constitution.

In pursuing the probability of this story (since it must be pursued), let us next advert to whether anything appears to have been done in other places which might have been exposed by this man's information. The whole kingdom is under the eye and dominion of magistracy, awakened at that time to an extraordinary vigilance; yet has

any one man been arrested even upon the suspicion of any correspondence with the societies of Manchester, good, bad, or indifferent? Or has any person within the four seas come to swear that any such correspondence existed? So that you are desired to believe, upon Mr. Dunn's single declaration, that gentlemen of the description I am representing, without any end or object, or concert with others, were resolved to put their lives into the hands of any miscreant who might be disposed to swear them away, by holding public meetings of conspiracy with open doors, and in the presence of all mankind, liable to be handed over to justice every moment of their lives, since every tap at the door might have introduced a constable as readily as a member; and to finish the absurdity, these gentlemen are made to discourse in a manner that would disgrace the lowest and most uninformed classes of the community.

Let us next see what interest Mr. Walker has in the proposed invasion of this peaceable country; has Mr. Law proved that Mr. Walker had any* reason to expect protection from the French from any secret correspondence or communication more than you or I have, or that he had prepared any means of resisting the troops of this country? How was he to have welcomed these strangers into our land? What, with this dozen of rusty muskets, or with those conspirators whom he

exercised? But who are they? They are, it seems, "to the jurors unknown," as my learned friend has called them, who drew this indictment, and he might have added, who will ever remain unknown to them. But has Mr. Walker nothing to lose, like other men who dread an invasion? He has long had the acquaintance and friendship of some of the best men in this kingdom, who would be destroyed if such an invasion should take place. Has he, like other men, no ties of a nearer description? Alas, gentlemen! I feel at this moment that he has many. Mr. Dunn told you that I was with Mr. Walker, at Manchester; and it enables me to say, of my own knowledge, that it is impossible he could have had the designs imputed to him. I have been under his roof, where I have seen him the husband of an amiable and affectionate woman, and the happy parent of six engaging children; and it hurts me not a little to think what they must feel at this moment. Before prosecutions are set on foot, those things ought to be considered; we ought not, like the fool in the proverbs, to scatter firebrands and death, and say, "Am I not in sport?" Could we look at this moment into the dwelling of this unfortunate gentleman, for so I must call him, I am persuaded the scenes would distress us; his family cannot but be unhappy; they have seen prosecutions equally unjust as even this is, attended with a success of

equal injustice, and we have seen those proceedings, I am afraid by those who are at the bottom of this indictment, put forward for your imitation. I saw, to my astonishment, at Preston, where, as a traveller, I called for a newspaper, that this immaculate society (the Manchester Church and King club), had a meeting lately, and had published to the world the toasts and sentiments which they drank; some of them I like, some of them deserve reprobation: "The Church and King;" very well. "The Queen and Royal Family;" be it so. "The Duke of York and the Army;" be it so. But what do you think came next?

[Here Mr. Justice Heath interrupted Mr. Erskine, by saying, "We are not to go into this, of which you cannot give evidence."]

Mr. Erskine. I don't know what effect these publications may have upon the administration of justice; why drink "The Lord Advocate and the Court of Justiciary in Scotland," just when your lordship is called upon to administer justice according to the laws of England? if I had seen "The king and his judges upon the northern circuit" published as a toast —

Mr. Justice Heath. You know you cannot give this in evidence.

Mr. Erskine. Gentlemen, considering the situation in which my clients stand at this moment, I expressed the idea which occurred to me, and

which I thought it right not to suppress; but let it pass; this is not the moment for controversy; it is my interest to submit to any course his lordship may think proper to dictate; the evidence is more than enough for my purpose; so mainly improbable, so contrary to everything in the course of human affairs, that I know you will reject it even if it stood unanswered; what then will you say, when I shall prove to you by the oaths of the various persons who attended these societies, that no propositions of the sort insinuated by this witness ever existed; that no hint, directly or indirectly, of any illegal tendency, was ever whispered; that their real objects were just what were openly professed, be they right or wrong, be they wise or mistaken, namely, reformation in the constitution of the house of commons, which my learned friend admitted they had a right by constitutional means to promote. This was their object; they neither desired to touch the king's authority, nor the existence or privileges of the house of lords; but they wished, that those numerous classes of the community, who, by the law as it now stands, are excluded from any share in the choice of members to the parliament, should have an equal right with others, in concerns where their interests are equal. Gentlemen, this very county furnishes a familiar instance; there are, I believe, at least thirty thousand freeholders in Lancashire, each of

whom has a vote for two members of parliament; and there are two boroughs within it, if I mistake not, Clithero and Newton, containing a handful of men who are at the beck of two individuals; yet these two little places send for themselves, or rather for these two persons, two members each, which makes four against the whole power and interest of this county in parliament, touching any measure, how deeply soever it may concern their prosperity. Can there be any offence in meeting together to consider of a representation to parliament, suggesting the wisdom of alteration and amendment in such a system?

Mr. Justice Heath. There can be no doubt but that a petition to parliament, for reform or anything else, can be no offence.

Mr. Erskine. Gentlemen, I expected this interruption from the learning of the judge; certainly it can be no offence, and consequently my clients can be no offenders.

Having now exposed the weakness of Dunn's evidence, from its own intrinsic defects, and from the positive contradiction every part of it is to receive from many witnesses, I shall conclude with the still more positive and unequivocal contradiction which the whole of it has received from Dunn himself. You remember that I repeatedly asked him whether he had not confessed that the whole he had sworn to-day was utterly false; whether he

had not confessed it to be so with tears of contrition, and whether he had not kneeled down before Mr. Walker, to implore his forgiveness. My learned friend, knowing that this would be proved upon him, made a shrewd and artful observation to avoid the effects of it; he said that such things had fallen often under the observation of the court upon the circuit, where witnesses had been drawn into similar snares by artful people to invalidate their testimony. This may be true, but the answer to its application is, that not only the witness himself has positively denied that any such snare was laid for him, but the witnesses I have to call, both in respect of number and credit, will put a total end to such a suggestion; if I had indeed but one witness, my friend the attorney-general might undoubtedly put it to you in reply, whether his or mine was to be believed, but I will call to you, not one, but four or five; or, if necessary, six witnesses, above all suspicion, in whose presence Dunn voluntarily confessed the falsehood of his testimony, and, with tears of apparent repentance, offered to make any reparation to these injured and unfortunate defendants. This I pledge myself to prove to your satisfaction.

Gentlemen, the object of all public trial and punishment is the security of mankind in social life. We are not assembled here for the purposes of vengeance, but for the ends of justice; to give

tranquility to human life, which is the scope of all government and law; you will take care, therefore, how, in the very administration of justice, you disappoint that which is the very foundation of its institution; you will take care that in the very moment you are trying a man as a disturber of the public happiness, you do not violate the rules which secure it.

The last evidence I have been stating ought by itself to put an instant end to this cause. I remember a case, very lately, which was so brought to its conclusion, where, upon a trial for perjury of a witness who had sworn against a captain of a vessel in the African trade, it appeared that the witnesses who swore to the perjury against the defendants, had themselves made deliberate declarations which materially clashed with the testimony they were giving. Lord Kenyon, who tried the cause, would after this proceed no further, and asked me, who was counsel for the prosecution, whether I would urge it further, saying emphatically, what I hope every judge under similar circumstances will think it his duty to say also, "No man ought or can be convicted in England, unless the judge and the jury have a firm assurance that innocence cannot, by any possibility, be the victim of conviction and sentence." And how can the jury or his lordship have that assurance here, when the only source of it is brought into

such serious doubt and question? Upon the whole, then, I cannot help hoping that my friend the attorney-general, when he shall hear my proofs, will feel that a prosecution like this ought not to be offered for the seal and sanction of your verdict. Unjust prosecutions lead to the ruin of all governments. Whoever will look back to the history of the world in general, and of our own particular country, will be convinced, that exactly as prosecutions have been cruel and oppressive, and maintained by an inadequate and unrighteous evidence, in the same proportion, and by the same means, their authors have been destroyed instead of being supported by them. As often as the principles of our ancient laws have been departed from in weak and wicked times, so often the governments that have violated them have been suddenly crumbled into dust. And therefore wishing, as I most sincerely do, the preservation and prosperity of our happy constitution, I desire to enter my protest against its being supported by means that are likely to destroy it. Violent proceedings bring on the bitterness of retaliation, until all justice and moderation are trampled down and subverted. Witness those sanguinary prosecutions previous to the awful period in the last century, when Charles the First fell; that unfortunate prince lived to lament those vindictive judgments by which his impolitic, infatuated followers imagined they were

supporting his throne; he lived to see how they destroyed it; his throne, undermined by violence, sunk under him, and those who shook it were guilty in their turn, such is the natural order of injustice, not only of similar, but of worse and more violent wrongs; witness the fate of the unhappy Earl of Stafford, who, when he could not be reached by the ordinary laws, was impeached in the house of commons, and who, when still beyond the consequences of that judicial proceeding, was at last destroyed by the arbitrary, wicked mandate of the legislature. James the Second lived to ask assistance in the hour of his distress, from those who had been cut off from the means of giving it by unjust prosecutions; he lived to ask support from the Earl of Bedford, after his son, the unfortunate Lord Russell, had fallen under the axe of injustice. "I once had a son," said that noble person, "who could have served your majesty upon this occasion," but there was then none to assist him.

I cannot possibly tell how others feel upon these subjects, but I do know how it is their interest to feel concerning them; we ought to be persuaded that the only way by which government can be honorably or safely supported, is by cultivating the love and affection of the people; by showing them the value of the constitution by its protection; by making them understand its principles

by the practical benefits derived from them; and above all, by letting them feel their security in the administration of law and justice. What is it in the present state of that unhappy kingdom, the contagion of which fills us with such alarm, that is the just object of terror? what, but that accusation and conviction are the same, and that a false witness or power without evidence is a warrant for death? Not so here; long may the countries differ! and I am asking for nothing more, than that you should decide according to our own wholesome rules, by which our government was established, and by which it has been ever protected. Put yourselves, gentlemen, in the place of the defendants, and let me ask, if you were brought before your country, upon a charge supported by no other evidence than that which you have heard to-day, and encountered by that which I have stated to you, what would you say, or your children after you, if you were touched in your persons or your properties by a conviction? May you never be put to such reflections, nor the country to such disgrace! The best service we can render to the public is, that we should live like one harmonious family, that we should banish all animosities, jealousies, and suspicions of one another; and that, living under the protection of a mild and impartial justice, we should endeavor, with one heart, accord-

ing to our best judgments, to advance the freedom and maintain the security of Great Britain.

Gentlemen, I will trouble you no further; I am afraid, indeed, I have too long trespassed on your patience, I will therefore proceed to call my witnesses.

On the examination of the witnesses, to the matters mentioned by Mr. Erskine in his speech, the witness for the crown, Thomas Dunn, was so entirely contradicted, that Mr. Law interposing, in the manner stated in the preface, the trial ended, and Mr. Walker and the other defendants were acquitted.

PROCEEDINGS
AGAINST CHARLES BEMBRIDGE,
FOR A
MISDEMEANOR. 1783.

IN Trinity Term, 1783, an information was filed by the attorney-general against Charles Bembridge, an accountant in the pay-office, charging him with having willfully and fraudulently concealed numerous large and important items which were a charge against Lord Holland, a paymaster, and which should have been so returned. The trial came on in the Court of King's Bench, July 18th, 1783. Mr. Erskine, though of counsel for the defendant, and participating in the trial, did not address the jury, the argument being reserved for Mr. Bearcroft, a prominent barrister who appeared in many important trials either with or against Mr. Erskine. No further report of the trial, therefore, is here presented than the charge of Lord Mansfield to the jury, from which the reader will be enabled to gain a clear idea of the merits of the case. Following this will be found Mr. Erskine's speech on the motion for a new trial.

LORD MANSFIELD'S CHARGE TO THE JURY.

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 of the accounts of paymasters out of the 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 willfully, 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 10s. 11d. 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 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 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 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, etc. 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 paymasters after they are out of office, as well as of 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 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, and to his clerk £500.

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 was 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 willful, 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 came 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 these observations; he sees them, and he does not say a word with regard to any of these 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 more to charge them with, I have no farther observations to make; they are referred to Mr. Powell, and then comes the account with a pencilled 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 pencilled 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, amounting to £48,700 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 everything; but the strength of the charge here is, that the defendant being examined before the lords of the treasury, owned, that for a long time before the account of the pencilled balance was sent back, which account did not contain any of those items,

that he knew of them all. Now, with whatever, view, whether in aid 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 willfully 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 willful 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.

PROCEEDINGS ON THE MOTION FOR A NEW TRIAL.

The motion for a new trial, in the case of the KING *vs.* BEMBRIDGE, came on to be argued, November 10th, 1783, and was opened by Mr. Bearcroft and Mr. Scott, afterward Lord Eldon. These gentlemen were succeeded by Mr. Erskine in the following speech:

SPEECH OF MR. ERSKINE,

ON THE MOTION FOR A NEW TRIAL IN THE CASE OF
CHARLES BEMBRIDGE.

My duty at present, according to the common practice of the court, I conceive to be, to offer grounds to your lordships 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.

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 circumstance 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 paymasters.

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 those 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 willful 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 willful misprision or not.

The next material consideration, therefore, is, to see how the evidence does support that averment. Your lordship has had nothing of an 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 in 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, anything, in short, written to establish 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 lordship 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 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 application 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 willful misprision, taking that willful 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 to 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 Sounds, telling Mr. Bridge, 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 paymasters' 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, and it is a strange sort of presumption that neither that officer, nor any of his predecessors, ever knew anything of their duties; if the accountant, I say, had conceived himself 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 willful 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 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, I shall presently remark, out of the mouth of the defendant, Mr. Bembridge himself which was the great pressure at the trial? 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 criminate him, here or elsewhere, most unquestionably he would not have given them; his admissions, therefore, proved 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 car-

ries 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 entrust 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, too, 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 impost; 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 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 fulfill it, I admit he is responsible.

Most unquestionably, if a man takes upon himself the doing of anything in which the public has an interest, and is guilty either of a willful 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 entrusted to Mr. Powell in virtue of his office. Mr. Powell made it up. Mr. Powell delivered it to the auditor of the imprest; and the only charge against Mr. Bembridge is, the concealing these 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 willful 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 parol 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 it 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 offence, as stated by the information, is a willful 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 willful 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 receive 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, but from a man's neglect of his own duties.

Unless, therefore, Mr. Bembridge was bound to do 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 entrusted to make up these accounts ; if, though it was his duty to make them up, he had entrusted it to another to do it, whose duty it was not ; in such case, whether he knew of the criminal neglect or not, he would be a criminal for having entrusted that to another which he ought to have done himself. Then, is there anything upon the evidence that can warrant the court to say that the jury have not done wrong in drawing such 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 the 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 everything found on such accounts from which the public may suffer, shall be chargeable on this 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 whom 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 entrusted it, if the public suffered for it; yet, in the whole course of the negotiation with those persons who were

called upon to animadvert upon this misdemeanor, not one of them ever said to Mr. Bembridge, you are referring 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 negotiation went through Mr. Powell.

Upon these grounds I hope that the first averment to 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 willfully and corruptly concealed. Now, it appears upon the evidence, as plainly as I ever saw anything 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 they 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, 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 a 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 the jury, suppose, without any sort of evidence of a motive of corruption in Mr. Bembridge, that he willfully, 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, 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 opened, was guilty of any willful omission in not letting the public know there were these particular items; since the account was not closed, nor could be till the consideration of these items of Paris Taylor's account could be closed also.

Therefore, it is evident, 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 those 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 magistrate, as either the general law of the country takes any cognizance 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 labor 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 the 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 such 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 refuse the labor 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 these cases that have been cited by the gentleman 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 seems not to me to be considered as a 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 cer-

tain sums of money would be issued to the paymaster 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 accountable for 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 can 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 effect 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 labored 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 calls 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. 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.

The court having refused the motion for a new trial sentenced Bembridge to be committed to the custody of the marshal for six calendar months, to pay a fine of £2,650, and to be imprisoned until payment of the fine.

Trial of JOHN VINT, GEORGE ROSS, and JOHN PARRY, for a libel on his Imperial Majesty, Paul the First, Emperor of all the Russias : tried by a Special Jury, before the Right Hon. Lloyd Lord Kenyon, Lord Chief Justice of the Court of King's Bench, at Guildhall, London, on the 4th day of March, 39 George III. A. D. 1799.

STATEMENT.

The information filed by the attorney-general against John Vint printer, George Ross publisher, and John Parry proprietor of *The Courier*, a newspaper published in London, charged them with the publication of a libel against the emperor of Russia. The tenor of the alleged libelous publication was that the emperor had "made himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency." The crown sought to establish, that, a close friendship existing between the king of England and the emperor of Russia, a libel upon the one monarch was an offence of which the other might take cognizance, and that each nation was bound to enforce a decent respect to the ruling powers of the other. The information is omitted as the substance of the charge sufficiently appears in the arguments of counsel and in the summing up of Lord Kenyon. The information was opened by the attorney-general, Sir John Scott, afterwards Lord Chancellor Eldon

SPEECH OF THE ATTORNEY-GENERAL.

GENTLEMEN OF THE JURY: This is an information filed against three persons: John Vint, printer; George Ross, publisher; and John Parry, proprietor of a newspaper called the *Courier*, which, from its extensive circulation, I have no doubt you have all of you had frequent occasion to see. The information states, that there was a strict and firm friendship and alliance between our present sovereign lord the king and his imperial majesty, Paul the First, emperor of all the Russias, etc.; and that the defendants, well knowing the premises, but wrongfully and maliciously contriving and intending, not only to defame, traduce and vilify, his said imperial majesty, but also, as much as in them lay, to interrupt, disturb, and destroy the friendship, good-will, and harmony, subsisting between our said sovereign lord the king, and his imperial majesty, and their said respective subjects; and to create, stir up, and excite hatred, jealousies, and discord between our said lord the king and his subjects, and his said imperial majesty and his subjects; on the first day of November, in the thirty-ninth year of the reign of

our said present sovereign lord, George the Third, king of Great Britain, etc., at London, to wit: in the parish of St. Dunstan, in the West, in the ward of Farringdon, Without, in London, did print and publish, and cause to be printed and published, in a certain public newspaper, called *The Courier and Evening Gazette*, a most malicious, mischievous, and scandalous libel, of and concerning his said imperial majesty, to the tenor and effect following: "The emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency. He has now passed an edict, prohibiting the exportation of timber, deals, etc. In consequence of this ill-timed law, upwards of one hundred sail of vessels are likely to return to this kingdom without freights."

Gentlemen, I have been commanded to file the information now before you for trial, in order to vindicate the character of the emperor of Russia; a prince in amity with his country, defamed in a libel, contrary to the laws and usual policy of nations, which protect not only the magistracies but the individuals of each other from insult and reproach.

With regard to the just limits of the liberty of the press, I have never entertained different opinions from Mr. Erskine, even when representing defendants at the bar; their applications, of course,

create differences, and these are to be considered in this trial. I admit the right of free discussion, as it regards all subjects of importance to the interest or happiness of mankind; and that it is only the malevolent and useless excess which ought to be punished.

The attorney-general, after several other preliminary observations, said, the emperor had made an edict against the importation of timber, which, in friendship to Great Britain, he had relaxed as to this country, and the paragraph in question not merely charges him with this act as one of foolish impolicy in the management of his own empire, but with a system of tyranny and oppression in various instances, wholly unconnected with the edict which it condemns. The principle, therefore, upon which the prosecution proceeds, is perfectly plain and simple, and I will not enlarge upon it farther than to remind you of the consequences of permitting such unwarrantable publications to pass unpunished. I am aware that there are plausible and ingenious arguments which may occur to the learned advocate for the defendants, from whom you will no doubt have the gratification of a brilliant speech; but without rejecting the pleasure and information which may be fairly derived from it, I know you will still recollect the solemnity of your oaths, and the obligation you owe to the laws of your country.

[The treaty with Russia was then produced, and the publication of the newspaper proved.]

MR. ERSKINE'S SPEECH IN DEFENCE.

GENTLEMEN OF THE JURY: I never rose with so little anxiety as counsel for defendants in a criminal prosecution as I at this moment feel; because I do not recollect to have ever before had to answer a charge so completely and manifestly unfounded. My only embarrassment would be, if I were less accustomed to this place, that the attorney-general had bespoken from me a brilliant speech; which is like suddenly calling in a large company for a song from a man who is but little of a singer, and the more disqualified by so unexpected a summons. The case, however, of the defendants, requires neither eloquence nor music to set it off, being the plainest and clearest that can be imagined; whilst that of the crown, if it is seriously to be insisted on, demands the most determined resistance from all who wish to preserve that freedom and security of political discus-

sion, the right of which the attorney-general has so honestly acknowledged, and the value of which acknowledgment is so clear, because when principles are once ascertained and admitted by those who prosecute for the crown, it must be the fault of juries only if the press is not free.

It has been admitted, then, that it is the clear right of every man in England to examine every subject connected with its interests, and to observe upon the transactions of other nations and the general affairs of the world, and without that restraint which turns into a service of danger the propagation of useful information, and the sacred assertion of truth. Malicious mischief indeed, whether it appears in printing or in any other human action, ought to be punished; but the representation of facts acknowledged to be true, and the promulgation of useful opinions fairly connected with them, can never in conscience or in reason be accounted a misdemeanor, unless they are obviously directed and intended to excite disobedience and disaffection to the government of our own country; a charge upon this occasion quite out of the question.

Is every writing necessarily to be adjudged a libel, which questions the wisdom or integrity of a foreign prince, or which condemns his counsels as weak, capricious, and unjust, though manifestly injurious to our own people, merely because not

being at war with his nation, he is styled as in amity with our state? This is a prosecution which cannot possibly be supported, without saying that the contemporaneous history of the world is shut out from the British press; because if it is open to it at all, it must be liberally, impartially, and fearlessly open to it, and ought not to be dependent upon the interests or passions of the transient rulers of the day. I am prepared fairly to examine this, and not speculatively, but practically as it appears from the whole reason, intelligence, and custom of our country, as it is embodied in all our publications, not merely from private presses without an instance of prosecution or interruption, but from the public councils of the kingdom. The world, gentlemen, is at this moment so singularly circumstanced, and the characters and conduct of foreign princes are unfortunately so inseparably connected with British interests, that there must be an universal and perilous silence of the only rational policy of this empire, or a reasonable latitude must be allowed, not only to consider the transactions of foreign governments, but the dispositions and characters of their princes; because it is notorious that the councils of their nations are dependent upon their sovereign's will. At this very moment, gentlemen, above all others the British government, should be very slow indeed to lay down a rule which must shut the mouths, and

break the presses of its own subjects and defenders, to prevent their showing that guilt and dishonor, which must be fixed somewhere, does not rest here, but with those princes of Europe, who, if protected by our laws from all examination of their conduct, the disgrace must attach upon ourselves.

It is by no means my purpose, either by assertion or insinuation, to bring before this court and jury, who have no jurisdiction upon the subject, any reproach or reflection upon our own ministers or counsels; I can appeal, indeed, confidentially to the noble judge, that though as a private man I have a right to my own opinions, I have never mixed such topics with any pleadings, unless they were not merely relevant, but the very subject to be discussed; and I feel a pleasure that my duty to-day directs to me a very different course, and which will lead to the justification of this supposed misdemeanor. It is, indeed, the best defence of British ministers, or rather the only one they have against responsibility for our present condition, that no libel can be written upon the sovereigns of Europe; but that on the contrary, no language is sufficiently impressive or copious to express the indignation and contempt that every Briton who loves his country ought to feel for them; but even if it could be decided that the law may be set in motion against those who speak the truth concern-

ing them, yet privilege of speech at the bar is above this legal jurisdiction, and if any one happens to be here who is writing correctly what I am now saying to you, I will send it emblazoned to their foreign majesties that they may know what every body thinks at least concerning them, even if nobody should have the privilege of expressing it.

Our country, to speak plainly, is at this moment in a most tremendous crisis of her affairs; no man can look forward to the future without affliction, nor the bravest without dismay. Suppose, then, that any political writer, impressed with a sense of our danger, and actuated by the purest patriotism, were thus to address the councils of the king: "It is true that England stands at this moment the first amongst the nations of the world, and that her activities have been more honorable and more distinguished than at any former period in her history; but to what rational object have they been exerted? And what useful end are her exertions likely to produce? Neither humanity nor reason would consent to tear to pieces the muscles of a noble animal for the mere exhibition of its strength; you ought to have known from the beginning that your contest with France would end exactly as with the present management it is most likely to do." Would this, if committed to writing, be a libel even on our own government?

Against such a charge, could no defence be made consistently with our laws and constitution? Could the many worthy and independent men, who from honest principle, for opinions may be various upon such subjects, supported the war in its commencement, have no means of defence for exposing a mad and disgraceful waste of national strength without a national object? Suppose a man to be convinced that if the war had been conducted with integrity and concert by all the powers engaged, it might, in fair probability, have been successful; can it be contended that such a person, though he saw the disgust of the people excited by such disasters against our own government, must nevertheless suffer it to take its unjust and dangerous course, for fear of offending those worthy and active allies which it has pleased God to bless us with? Might not a political writer publish in a pamphlet his opinion that the war had not miscarried from any default in our own arms or councils, and show to what causes so many reverses were fairly to be imputed? And would the attorney-general prosecute, because truth impelled such a writer to cast the blame upon our allies? And who can doubt that truth must so direct and impel every writer upon the subject?

If the princes of Europe were convinced, as they declared themselves to be, that the very principles, even without the arms of the French republic,

lic, threatened the existence of their establishments, was not this an earnest to Great Britain of a most faithful and energetic confederacy, sufficient to overwhelm a power then in the first throes and convulsions of a sanguinary revolution? Was not this state of things a signal for universal activity and concord from the Mediterranean to the Baltic? Did it not promise a bond of union more sacred and indissoluble than ever before had united nations in the leagues of war? Was not their very existence as monarchs clearly at stake, whilst England, from her insular situation, was more secure? And from the moment when their war-like confederacy was declared and acted upon, was there not then another and still stronger pledge for their fidelity, since, having declared that republican France was incompatible with the safety of Europe, they could not but know, that, like the first law of nature in the action and reaction of matter, the motto of republican France would be the destruction of all thrones? Now, all this forms the defence of our own country and its government for carrying on the war; and could it possibly be considered as a libel in our courts of justice, to prove that from no fault of ours, it had been unsuccessful, and even disastrous? Would it, I say, be a libel in a man fairly thinking and acting with government, and writing from unanswerable facts in its defence, to expose the causes which disap-

pointed so just an expectation, and ended in the rout and discomfiture of this seemingly invulnerable phalanx? If, then, the right of defending our own government be admitted, and the attorney-general will not deny it, how, in God's name, could such a defence or history be written, without holding up to the ridicule and contempt of the world, the very princes concerning whose edicts it seems we must not dare to write, even though they most materially affect the commerce and prosperity of our country, and relate to nothing political, but only to the exportation of deal timber. For my own part, gentlemen, if I were to write my own thoughts concerning them, they would be very shortly expressed, but would throw very far into the shade the writing which is now prosecuted; I should probably express myself in some such manner as this: If the princes of Europe were not convinced, from the strongest and the clearest evidence, that the consequences of the French revolution did actually violate the freedom and independence of other nations, they ought to have been wholly neutral; but if they were justified in thinking the contrary, which it is not my province, and therefore would not be a fair exercise of my privilege to agree to or deny in this place, then they ought to have made an united, continued, and unexampled exertion, which no sacrifices, however great, or difficulties, however perplexing, should

for a single instant have disappointed or relaxed. Now, has this been their conduct? Directly the reverse; and for this reason the friends of our government, and all its subjects interested in its honor or security, have a right to complain in terms which no bitterness of sarcasm could adequately express, but which ought rather to be criticised for tameness than censured as a libel.

Gentlemen, this is not declamation, but a correct introduction to facts which I mean to state; and I will therefore first examine, to support it, the conduct of the late king of Prussia, who was the first to accede to the confederacy and to provoke the war. He penetrated into the heart of France with a mighty army, and then, as if he had been predestinated to establish that invasion was impracticable, he turned quickly round as if he had seen a spirit in his path, and dissolved his army as by enchantment. At that critical time the French were in a manner a naked and defenceless people, tearing from the sepulchres the transmutation of animal substances for the materials of war, which thus death itself was to furnish for the destruction of the living; whilst the bells of their churches and the irons that surrounded them, were the principal weapons she could present against the invading sovereigns of Europe, though supported by their immense military establishments and the energies of their ancient governments, undisturbed by civil

commotions or by external war. Yet this was the period when these confederate princes, to whom all wisdom is, it seems, alone with safety to be imputed, lay upon their arms in slumbrous unison, whilst civil fury was preying upon the bowels of republican France! Peace then be to the remains of the late king of Prussia. He was succeeded by the present, who began his reign in an ominous vibration between peace and war, between empty threats and contemptible submission, suffering his nearest and dearest kindred to remain exiles from the countries and ancient inheritances of their fathers, whilst he was engaged in some slippery, shabby compromise for his own security, magnanimously contending as he was at that moment with Hamburg for the imprisonment of Napper Tandy, after having suffered without a remonstrance the ancient states of Switzerland to be over-run and subverted; whilst he himself, a leader and chief of the Germanic empire, with one hundred and fifty thousand men in arms was contented to suffer it to be dissolved for ever.

If this prince thought it better that France should prevail, and acted upon this principle, why was he not her ally? Why did he tamper and temporize? Why did he keep the word of promise to the ear but break it to the hopes of Europe? I apprehend, therefore, that it is out of the power, at least of a British subject, to libel the king of

Prussia; and to defame the emperor of Germany would scarcely be less difficult. They had played their parts of pusillanimity and folly together in rapid and disgraceful succession. The present emperor I have heard described as an amiable man, and it is therefore painful to speak of him when truth must be spoken. What was his conduct when he listened to the treaty of Campo Formio? Did he suppose that Bonaparte, the most able and enterprising general since the days of Alexander, would have offered him peace on his near approach to Vienna, if he had had full confidence in his own security? That sagacious officer knew the contrary; he knew that Italy was conquered, but not organized, and might follow his steps in the revulsion of conquest; and other impending dangers suggested the treaty. The bait to the emperor was Venice: a bauble to please a child, to be taken away again when it went to sleep; yet for this he gave up the key of Italy. It may be said that this was an act of necessity; but if it was, why did he not yield to its imperious dictates, and, if the continuance of the war was impolitic, act fairly upon the principles of peace? But he did neither; and, when he saw danger approaching the thrones of Tuscany, Naples and Sardinia, instead of calling out the legions of Bohemia and Hungary, and making one great and last effort to baffle the gigantic projects of France, he contented

himself with sending a harlequin into Italy to assist at a carnival. Now I desire to ask the attorney-general, whether it would be a libel to publish that the timidity and distracted weakness of this prince had contributed to exhaust the finances, and to defeat the objects of the ministers and parliament of Great Britain? And if it must be admitted, for this reason, to be no libel, can any writing be declared one which stands upon the same principles, merely because it is considered one by the crown?

As to the emperor of Russia, whose character is to be supported by this prosecution of a transient publication in a daily newspaper, he might have laid for it a lasting foundation, if he had consulted his own honor and security; he had been bred in the school of adversity, and the world looked up to him with high expectation, realized by some acts of sound policy and wisdom on his first coming to the throne; but he had afterwards but too much vindicated the paragraph complained of. Instead of endeavoring, like one of his great predecessors, who worked in dock-yards in England, to carry the useful arts of the world into his own country, no man could enter it for purposes of trade or science, without a passport, and even personal recommendation; a regulation founded upon the weak imagination, that evil principles could be imported like corporeal pestilence, and

shut out by a police on the principle of quarantine; an idea which reminds me of what Milton says, in his *Areopagitica*, of a wise country gentleman who raised the wall of his park to keep out the crows.

Gentlemen, I shall close here this disgusting history; for the introduction of which, or any part of it, I ought to apologize to the court, but for its direct and unanswerable application. I persuade myself that there is not a man in England, who would consider as a libel, any of the instances I have insisted on by way of example; and if the principle is once admitted, it is impossible to draw any rational line in the application, except the one I have freely admitted, viz., whether the writing be honestly intended, or malicious. If malicious, I abandon the justification.

As to the danger to the state from these sort of writings, more especially as when in this case, there has been no kind of complaint; I should think that Russia, from its immense distance, and from the circumstance that our newspapers do not circulate there as in France and Germany, and that our language is but little known among the inhabitants, was of all instances of apprehension on that score the most singular to select; and if it succeeds I expect to see, very soon, an information filed for a libel upon the planet Saturn, setting forth that the printer of some London newspaper, maliciously intending and contriving to disturb

the laws of gravitation, and to create great disorder and mutiny amongst the planets, had printed and published that Saturn had no dependence on the sun, and was not governed in his orbit by its influence; with another count for publishing that he had only four satellites, whereas in truth, and in fact, he had five.

Gentlemen, this may be thought a ridiculous parallel, as the laws of nature could not be changed by a paragraph in a newspaper, but so neither can any relations amongst states that are worth preserving. The only thing the resemblance fails in, is that Saturn does not send an ambassador to the earth; but I have already said, and I am ready to prove, that the Russian ambassador has neither directly nor indirectly interfered.

I have already, gentlemen, or rather with the most tiresome tautology very frequently, admitted that none of the cases I have troubled you with, by way of illustration and example, apply to cases of malicious falsehood; but where a jury can plainly see that the writing, however severe, was intended to be real history and observation, it does not fall, upon any just or useful principle, under the acceptance of a libel.

Since the libel act, the judge cannot say what is a libel, as a judgment of law; he can only give his opinion, as I have, upon general principles, though with the high authority of his station; but

the jury, after all, are bound upon their oaths to decide from all the circumstances of the case, and I feel myself obliged to say, cannot, in the present instance, decide against the defendants without manifest injustice. Writers, in all times, have not only written with impunity on such subjects, but the press has literally teemed with them without censure or question. Paragraphs, ten times more severe than the present, against the Emperor and King of Prussia, have been in great circulation within these few hours past, which the *Times* and *True Briton* have re-printed, and I confess I see no fault in it; but, be that as it may, I will, for a most trifling premium, underwrite their security, because they are truths which nobody can deny, and which all England has an interest in exposing.

[Mr. Erskine here read the letters from Mr. Sharp, the British consul at St. Petersburg, to the governor of the Russia Company, to prove that the edict was in fact issued and existed as represented in the *Courier* by the article in question, and made a forcible appeal to the feelings of the jury upon the injustice of subjecting innocent men, perhaps, to an ignominious punishment, as the punishment was discretionary, and the judgment of the court, when a humiliating sacrifice was to be made to a supposed insult upon a foreign ally, on the principle adverted to, might not be easily satisfied.]

I do not wish, continued Mr. Erskine, to see the laws relaxed; but it would be still worse to see them strained for any foreign power, however deserving, in opposition to the liberal policy of our ancestors, and the freedom of the British constitution, both of which would be grossly violated by a verdict against any of the defendants. Mr. Parry I know personally to be a liberal gentleman, incapable of malicious falsehood, and it has been candidly admitted by the attorney-general himself, as well as established by proof, that the paragraph was a literal narration of a fact extremely important to be generally known, and which had, therefore, been circulated by the Russia Company, for the express purpose of communicating it to the mercantile world. Thus, what related to the edict was strictly the fact, not enlarged upon in any manner whatsoever; and as to the introduction so much complained of, it was general and just observation, quite within the scope of history upon the transactions of the great political world; for who ever heard of a history which confined itself to facts only, without the qualities and characters which belonged to them? Justice, too, should be impartially administered; the matter complained of did not originate with the *Courier*, but notoriously came to it from the *Caledonian Mercury*, whose proprietors, or publishers, have never been questioned by the crown. If, therefore, the pro-

prietor, printer, or publisher now before you is to be held responsible, and deprived of liberty on such an account as this, our boasted liberty of the press is but an empty sound.

EVIDENCE FOR THE DEFENDANTS.

Mr. Forster, the governor of the Russia Company, was called to prove Mr. Sharp's letters; which were brought by the waiter of Batson's coffee-house, where they had been sent for the information of merchants.

The attorney-general objected to their admissibility, but said he waived the objection.

Lord Kenyon, however, disapproving of the production of the papers, the admission was therefore taken, without reading the letters.

REPLY OF THE ATTORNEY-GENERAL.

GENTLEMEN OF THE JURY: It is plain that I have not much embarrassed my learned friend by bespeaking from him a brilliant speech. After twenty years experience of him, I knew I might safely do it; I knew also his clients had bespoken it, and were not likely to be disappointed. I never desire to deprive defendants of their defences, and the argument of their learned counsel is entitled to attention; but I trust, that you, gentlemen, will distinguish between the charges which the councils of nations may have against each other, and the unauthorized invectives of newspapers. These libels might produce the very coldness and indifferences complained of. The question is just what I stated it in the opening to be, namely, whether the paragraph is a libel, and whether the defendants printed and published it. In the case of Mr. Reeves, perhaps, I hardly conducted myself as I ought to have done, having from delicacy abstained in the house of commons from taking any share in the debate; whereas, I ought rather to have followed the example of Lord

Hardwicke, and have spoken my sentiments upon it, and after the address was voted, have begged that his majesty might command the alleged libel to be prosecuted by some other of his servants. I admit the paragraph complained of in the book of Mr. Reeves was improper, but upon reading the whole of it, I thought it manifest that the author had no evil intention. In the present case I have no doubt, gentlemen, that you will decide according to the sound rule and principle of law, and rather take the noble and learned judge for your guide in that respect than either Mr. Erskine or myself.

As to the punishment, it does not follow that it must be severe. The conviction is the legal consequence of the offence against the law; but the ambassador of the emperor at our court, is a man of mild and amiable manners, concerned, of course, for the dignity of his sovereign, but greatly attached to the subjects of Great Britain; and proper representations might obtain for the defendants what the law, in its just administration, could not possibly confer.

LORD CHIEF JUSTICE KENYON'S SUMMING UP.

GENTLEMEN OF THE JURY: I shall make no apology for any punishment which the Court of King's Bench has ever ordered any individual to undergo, during the time I have been one of its judges. They, and all their proceedings are before the public; they may be brought before parliament, and they are liable to punishment themselves in case of misbehavior. They are bound by their oaths to discharge their duty to the king and his subjects, and to discharge it conscientiously, as the king himself is bound to do, who, by his coronation oath is sworn in the most solemn manner to administer justice in mercy. I shall say nothing, therefore, on the anticipation of justice from the judges; I trust they are fully conscious of having always discharged their duty.

The learned counsel for the defendants has told you that the situation of the country is critical and awful; and I am afraid he has drawn too faithful a picture of some of the causes to which it may be ascribed.

That the contest is left chiefly to our own exertions, and that our nearest and dearest interests are embarked in it, is most true. What remains at the foot of this account I know not, but the whole seems now to rest upon the emperor of Russia and ourselves.

The learned counsel has very properly avoided all political discussions unconnected with the subject, and I shall follow his example. Courts of justice have nothing to do with them, but I admit that his observations as they regard the princes of Europe, were relevant to the cause, and open to him to enlarge on, as illustrations that the press could not be free if discussions of that nature were held to be illegal; but it is pretty plain to me that the learned counsel presented with great dexterity, — and, indeed, who is more dextrous — the best part of his case, concealing from you that which was vulnerable, drawing his arguments from materials so very near the subject as to appear convincing, though differing in fact, when you had freed yourselves from the delusion. What could have induced the princes of Europe to the conduct some of them have pursued, I will not venture to investigate; but sitting in a court of law, I am bound to say that it does not absolve states from enforcing a decent respect to the magistracies of each other, and to the persons of sovereigns executing the law, etc. A breach of these rules might produce

discord. In the last century, when there was less connection between us and the powers of the continent, and when, perhaps, the assistance of the court of Russia was less important, the legislature thought it wise to interpose. In the reign of Queen Anne, if I mistake not, when an ambassador had been detained on a civil suit, which was complained of as contrary to the law of nations, an act of parliament was not only passed to protect the persons of foreign ministers from detention against civil demands, but the act was sent over to the capital of that kingdom.

All governments rest mainly on public opinion, and to that of his own subjects every wise sovereign will look. The opinion of his subjects will force a sovereign to do his duty, and by that opinion will he be exalted or depressed in the politics of the world. Our papers, it is well known, are not only circulated over Europe, but much farther; and the sentiments they contain are interesting and popular, so that if poison appears in them without its antidote, the effect might be fatal to ourselves, as it might be reasonably concluded, that if government winked at or slumbered over such a publication, it was disposed to adopt it. Letters from the consul to the Russia Company were produced, and it was proposed, on the part of the defendants, that they should be received. They were not, however, read, and it

was well for the government of that company that they were not; they were state papers, and were very improperly brought into court. They related to the interests of a great commercial company, whose concerns no person charged with having committed a misdemeanor had any business to unravel. There was no power upon earth to force them here without the consent of their owners, and most strangely had they mistaken their duty in producing them. There was no real interest of any served by their production, and the interests of the company, and through theirs, those of the commercial world might be materially injured by it, if it became a precedent.

As to the paragraph itself, gentlemen, you have heard it; the substance of it is, that the Emperor of Russia is a tyrant to his own subjects, and ridiculous in the face of Europe. Between the sovereign and the people of every country there is an express or an implied compact for a government of justice; by which the former is most solemnly and emphatically bound not to be tyrannical or unjust; yet here he is wantonly said to be a transgressor against all decency in the administration of his trust. I can only say, that if one were so to offend another in private life in this country, it might be made the subject of an action; and when these papers went to Russia, and held up this great sovereign as being a tyrant, and

ridiculous over Europe, it might tend to his calling for satisfaction as for a national affront, if it passed unrebated by our government and in our courts of justice.

It is for you, gentlemen of the jury, who come out of that rank which enables you to judge of the interests of the commercial world, to pronounce whether this is, or is not, a dangerous publication. I am bound by my oath to declare my own opinion; and I should forget my duty, if I were not to say to you that it is a gross libel.

The jury withdrew, and, after remaining out of court nearly an hour, returned a verdict of guilty against all the defendants. On the 30th day of May sentence was passed, that the proprietor of the *Courier* be confined six months in the King's Bench Prison, and pay a fine of one hundred pounds, besides giving sureties for his good behavior for five years. The printer and publisher were each sentenced to one month's confinement in the same prison.

THE
TRIAL OF THOMAS HARDY
FOR HIGH TREASON.

THIS prominent, and in every way remarkable trial, had its origin in the measures of parliamentary reform which were, by the aid of secret societies, attempted to be brought about during the latter part of the last century. In the year 1794, several of these societies were in existence and in active operation throughout England, among others, the "Corresponding Society," and the "Society for Constitutional Information." Though some of their proceedings and printed addresses were of an inflammatory character, yet in the main the members and leaders were warmly devoted to the government and the constitution.

No other explanation of the conduct of the government in indicting the members of these societies for high treason, can be satisfactorily given than a foolish and causeless dread of the influence of the French Revolution upon the public mind in England. Never, perhaps, in the history of any free state, were more frantic efforts attempted on behalf of government to secure a conviction than in these memorable "State Trials." Secret committees were appointed in both houses of parliament, upon whose reports the *habeas corpus* act was suspended to facilitate the prosecutions. The preamble to the bill suspending the writ recited that, "whereas a treacherous and detestable conspiracy has been formed for subverting the existing laws and constitu-

tion, and for introducing the system of anarchy and confusion which has so lately prevailed in France," etc. In addition to thus declaring by act of parliament that the treacherous conspiracy, which should have been left to the finding of a jury, already existed, a large mass of testimony was collected by the committees just before the trial of Hardy, the printed reports of which had been circulated, from which most of the evidence used by the crown upon the trial was drawn. Authority was also given for the detention, without bail, of persons then in custody or who should thereafter be committed on mere suspicion of being engaged in the supposed conspiracy.

These legislative preparations to secure a judicial conviction having been completed, the grand jury for the county of Middlesex found an indictment for high treason against twelve members of the reform societies, charging them with having conspired to call a convention for the purpose of effecting a revolution.

The indictment charged, in substance, that the prisoners, being subjects of our lord the king, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said lord the king, their supreme, true, lawful, and undoubted lord, and wholly withdrawing the cordial love and true and due obedience which every true and faithful subject of our said lord the king should and of right ought to bear towards our said lord the king, and contriving, and with all their strength intending, traitorously to break and disturb the peace and common tranquility of this kingdom of Great Britain, and to stir, move, and excite insurrection, rebellion, and war against our said lord the king within this kingdom, and to subvert and alter the legislature, rule, and government now duly and happily established in this kingdom, and to depose our said lord the king from his royal state, title, power, and government of this kingdom, and to bring and put our said lord the king to death, on the first day of March, in the

thirty-third year of the reign of our sovereign lord the now king, and on divers other days and times, maliciously and traitorously, with force and arms, etc., did amongst themselves, and together with divers other false traitors, to the said jurors unknown, conspire, compass, imagine, and intend to stir up, move, and excite insurrection, rebellion, and war against our said lord the king, within this kingdom of Great Britain, and to subvert and alter the legislature, rule, and government now duly and happily established within this kingdom of Great Britain, and to depose our said lord the king from the royal state, title, power, and government of this kingdom, and to bring and put our said lord the king to death. And that to fulfill, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, they, with force and arms, maliciously and traitorously did meet, conspire, consult, and agree among themselves, and together with divers other false traitors, to the said jurors unknown, to cause and procure a convention and meeting of divers subjects of our said lord the king to be assembled and held within this kingdom, with intent and in order that the persons to be assembled at such convention and meeting should and might wickedly and traitorously, without and in defiance of the authority, and against the will of the parliament of this kingdom, subvert and alter, and cause to be subverted and altered, the legislature, rule, and government now duly and happily established in this kingdom, and depose and cause to be deposed our said lord the king from the royal state, title, power, and government thereof. And further to fulfill, perfect, and to bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and thereby to accomplish the same purposes, they, together with divers other false traitors, to the jurors unknown, maliciously and traitorously did compose and write, and did then and there maliciously

and traitorously cause to be composed and written divers books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings, and did then and there maliciously and traitorously publish, and did then and there maliciously and traitorously cause to be published, divers other books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings, the said books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings so respectively composed, written, published, and caused to be composed, written, and published, purporting and containing therein, among other things, incitements, encouragements, and exhortations to move, induce and persuade the subjects of our said lord the king to choose, depute, and send, and cause to be chosen, deputed, and sent, persons as delegates, to compose and constitute such convention and meeting as aforesaid, to be so holden as aforesaid, for the traitorous purposes aforesaid. And further to fulfill, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and thereby to accomplish the same purposes, they did meet, consult, and deliberate among themselves, and together with divers other false traitors, to the said jurors unknown, of and concerning the calling and assembling such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and how, when, and where such convention and meeting should be assembled and held, and by what means the subjects of our said lord the king should and might be induced and moved to send persons as delegates to compose and constitute the same. And further to fulfill, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and thereby to accomplish the same pur-

poses, maliciously and traitorously did consent and agree that the said Jeremiah Joyee, John Augustus Bonney, John Horne Tooke, Thomas Wardle, Matthew Moore, John Thelwall, John Baxter, Richard Hodgson, one John Lovett, one William Sharp, and one John Pearson, should meet, confer, and co-operate among themselves, and together with divers other false traitors, to the jurors unknown, for and towards the calling and assembling such convention and meeting as aforesaid, for the traitorous purposes aforesaid. And further to fulfill, perfect, and bring to effect, their most evil and wicked treason and treasonable compassings and imaginations aforesaid, they maliciously and traitorously did cause and procure to be made and provided, and did then and there maliciously and traitorously consent and agree to the making and providing of divers arms and offensive weapons, to wit, guns, muskets, pikes, and axes, for the purpose of arming divers subjects of our said lord the king, in order and to the intent that the same subjects should and might unlawfully, forcibly, and traitorously oppose and withstand our said lord the king in the due and lawful exercise of his royal power and authority in the execution of the laws and statutes of this realm, and should and might unlawfully, forcibly, and traitorously subvert and alter, and aid and assist in subverting and altering, without and in defiance of the authority and against the will of the parliament of this kingdom, the legislature, rule, and government now duly and happily established in this kingdom, and depose, and aid and assist in deposing, our said lord the king from the royal state, title, power and government of this kingdom. And further to fulfill, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imaginations aforesaid, they with force and arms maliciously and traitorously did meet, conspire, consult, and agree among themselves to raise, levy, and make insurrection, rebellion, and war within this kingdom of Great Britain, against our said lord the king. And further to fulfill, perfect, and bring to effect their most evil and

wicked treason and treasonable compassings and imaginations aforesaid, they maliciously and traitorously did meet, conspire, consult and agree amongst themselves, and together with divers other false traitors, to the jurors unknown, unlawfully, wickedly, and traitorously to subvert and alter, and cause to be subverted and altered, the legislature, rule, and government now duly and happily established in this kingdom, and to depose and cause to be deposed our said lord the king from the royal state, title, power, and governments of this kingdom. And further to fulfill, perfect, and bring to effect their most evil and wicked treason and treasonable compassing and imaginations aforesaid, and in order the more readily and effectually to bring about such subversion, alteration, and despotism as last aforesaid, they maliciously and traitorously did prepare and compose, and did then and there maliciously and traitorously cause and procure to be prepared and composed, divers books, pamphlets, letters, declarations, instructions, resolutions, orders, addresses, and writings, and did then and there maliciously and traitorously publish and disperse, and did then and there maliciously and traitorously cause and procure to be published and dispersed, divers other books, pamphlets, letters, declarations, instructions, resolutions, orders, addresses, and writings so respectively prepared, composed, published, dispersed, and caused to be prepared, composed, published, and dispersed, as last aforesaid, purporting and containing therein, amongst other things, incitements, encouragements, and exhortations, to move, induce, persuade the subjects of our said lord and king to aid and assist in carrying into effect such traitorous subversion, alteration, and deposition as last aforesaid, and also containing therein, amongst other things, information, instructions, and directions to the subjects of our said lord the king, how, when, and upon what occasions the traitorous purposes last aforesaid should and might be carried into effect. And further to fulfill, perfect, and bring to effect their most evil and wicked treason and treasonable com-

passings and imaginations aforesaid, they did maliciously and traitorously consent and agree to the procuring and providing arms and offensive weapons, to wit, guns, muskets, pikes, and axes, therewith to levy and wage war, insurrection, and rebellion against our said lord the king within this kingdom, against the duty of their allegiance, against the peace of our said lord the now king, his crown and dignity, and against the form of the statute in that case made and provided.

Mr. Erskine and Mr. Gibbs, afterwards attorney-general and chief justice of the common pleas, were assigned as counsel for the prisoners. The prisoners having requested a separate trial, the attorney-general decided to proceed first with the case of Thomas Hardy, a shoemaker, against whom he was most hopeful of securing a verdict.

The trial began at the session house in the Old Bailey, on the 28th of October 1794, and continued until the 5th of November, before a special commission of oyer and terminer, Lord Chief Justice Eyre, presiding.

The attorney-general, Sir John Scott, afterwards Lord Eldon, opened for the crown, with a speech of nine hours duration. So prolonged was his address that, though the trial proceeded until midnight, but little of the evidence for the government had been adduced. It was therefore necessary to adjourn from day to day, it being the first trial for high treason in England which had not been closed at a single sitting. The court assembled at nine in the morning and continued in session until past midnight. The case for the crown occupied Tuesday, Wednesday, Thursday and Friday, and the attention of the counsel for the prisoner being thus constantly occupied, not a moment's time was offered for arranging and preparing their defence. When the court, therefore, was about adjourning at two o'clock

Saturday morning, the evidence for the crown being almost closed, thus throwing upon Mr. Erskine the necessity of opening the case for the prisoner at nine o'clock the same morning, the following proceedings took place:

Mr. Erskine. My lords, this is the fourth day that my friend Mr. Gibbs and myself have stood in a very anxious situation; there has been a most voluminous body of written evidence, all of which has not been printed; copies of that part which is unprinted have not as yet reached me: there have been two days spent in hearing parol evidence; and we, being but two, assigned as counsel for the prisoner, have been obliged to be constantly engaged in court, in cross-examining the witnesses for the crown; and your lordships very well know, that the cross-examination of the witnesses presents an important feature in our case on the part of the prisoner, a great deal of which has fallen upon me: your lordships must be sensible that it was impossible I could, at the time of cross-examining a witness, take any particular note of what he had said. When the evidence for the crown was near closing, I humbly requested of your lordships the indulgence of an hour or two to look over the papers; your lordships were pleased to grant my request, which I considered as a personal civility to myself; but I was prevented, by extreme sickness, from availing myself of those two hours, for I was indeed so ill, that nothing less than a case of

this magnitude could have brought me into court. Since that time I have not had natural rest, not having got home till between two and three o'clock in the morning, and having been here again at nine; so that I can say with a safe conscience, I have not had an opportunity of even casting my eye upon any part of the evidence, though I trust I have something of the general result of it in my mind. I should hope, under these circumstances, that the prisoner might be indulged with some opportunity for my friend Mr. Gibbs and myself to arrange our papers, and consider them together as counsel for the prisoner, before we are called upon to make our defence. It is necessary to do this, not for my address to the jury only, but that, when I do address them, I may present to them properly the prisoner's case, which depends much upon the arrangement of the evidence. I feel myself in no condition to do this, either in a manner respectful to the court, or for the safety of the prisoner. I do not wish to propose any particular time, but merely to leave it to the indulgence and justice of the court, perfectly sure, that when I leave it there, I leave it in a safe place.

Lord Chief Justice Eyre. I feel the weight of your observations, of the difficulty under which you labor, in an extraordinary case, which can hardly be judged of by the common rules on which we proceed in cases of this nature; the court are

of a disposition to give you all the indulgence they possibly can, because there is a vast mass of evidence; the case arises out of the evidence, and it is fit the case should be thoroughly canvassed. At the same time, it is certainly notorious that the great bulk of that evidence has been in print a great while, and I cannot believe that it has not been very well considered as far as it has been in print; I am sure that must be understood.

Now, I will tell you very fairly, if the question was only the personal accommodation of yourself and Mr. Gibbs, at the expense of the personal convenience of myself, my lord, and my brothers, I am quite sure we should have no difficulty in the sacrifice of our personal convenience; but there is a great deal more in the case: we have a jury who have been thrown into the most arduous service that ever I saw jury engaged in; they have borne it in a manner that does them infinite honor, and I have no doubt, that, as far as it is necessary that they should continue in the situation they are in, they will bear it cheerfully. I have seen such a specimen of their behaviour, that I cannot entertain a doubt of that; but that we could give you an absolute suspension of the business in the situation that we are in, upon the terms of keeping the jury in the situation in which they must be kept, is a thing that it is perfectly impossible for us to think of. Now this occurs to me, my

brothers will consider of it; I merely throw it out for their consideration. You are men of honor, you will tell us whether you really do mean to call witnesses, or to take the case upon the ground upon which it is already made: if you mean to call witnesses, you may call them to-morrow; you may go on with the case as far as it will be necessary for you to go on, to fill up all the time that ought to be filled up, leaving only a part of Sunday, the common interval of rest, without our keeping the jury in a situation to do nothing. If you do not mean to call witnesses, but mean to leave the case with the observations which arise upon the evidence that is before the court, we will go as far as we can; but if witnesses are to be called, and you desire not to address the jury immediately, you must immediately begin to examine your witnesses, as soon as they have closed on the part of the crown; and fill up the time that will intervene between that time and the time when you will be ready to go on with your address to the jury. In that way I think we shall put the jury under no unnecessary hardships, because, whether they hear the witnesses before or after the speech, is a matter of no importance to them.

Mr. Erskine. I should be afraid to take upon myself the experiment of trying a cause, particularly of this magnitude, in a manner totally different from any that has ever occurred in the

annals of this country. I should be afraid to begin an experiment of that sort, more especially when counsel in a capital case; because evidence comes with infinitely more weight, by which I mean the proper weight evidence ought to have, from the bearing of it upon the case when it is first stated by the counsel who is to support his cause by it; much of the effect of evidence is lost, and much of it distorted by the cross-examinations of counsel, until the true bearing of it has been explained. I do not propose what can be properly termed a suspension of the trial, or which can throw any sort of inconvenience upon the jury, which would, I am sure, give me as much pain as anybody in the world; but your lordships will recollect that the attorney-general in opening his case, I am sure I think as highly as is possible of his ability, and of the manner in which he performed his duty, but he found it necessary to spend nine hours in the opening of his case. The prisoner most unquestionably may expect an equal time, if it were necessary, for his counsel to take the same course in opening his; and if I were thrown upon it in the present moment, not having a sufficient recollection of the great points of the evidence, if I were put upon speaking to the jury, at this moment, I must take that course of reading at great length, great numbers of papers; whereas, if I had the opportunity of a few hours more, which is the nature of my

application, merely to arrange my papers, and to select such as, in the judgment of my learned friend and myself, we shall think sufficient for our defence, it would save time —

Lord Chief Justice Eyre. I dread the explanation of a few hours. Mr. Attorney-General, what further evidence have you to produce?

Mr. Attorney-General. I think my evidence will not take up more than forty minutes.

Mr. Erskine. I do not know whether your lordships mean to sit on Sunday?

Lord Chief Justice Eyre. I shall sit late on Saturday night; I say nothing of Sunday.

Mr. Erskine. I am literally at this moment, and have been all day yesterday and to-day, so extremely unwell, that I do not think if I were called upon to speak for any length of time, I could possibly support it.

Lord Chief Justice Eyre. I can easily think that to be the case, and it is a circumstance I am extremely sorry for; on the other hand, I cannot hazard the situation of the jury.

Mr. Erskine. I should be sorry to put the jury to any inconvenience. I do not shrink from the business, I am extremely willing to endure anything, but I assure your lordship that my health is extremely suffering by it.

Lord Chief Justice Eyre. What is it you ask for?

Mr. Erskine. As I stated before, the attorney-general found it necessary to consume nine hours; I shall not consume half that time, I think at least I shall not consume half that time, if I have an opportunity of doing that which I humbly request of the court, that is, of arranging the materials in such a manner, that I should be able to make only those observations which occur to me to be the fittest to be made, as counsel for the prisoner.

Lord Chief Justice Eyre. We have offered you an expedient; neither of you say to us whether you can accept it.

Mr. Gibbs. With respect to that expedient, I have no doubt to say that it is utterly impossible, for Mr. Erskine and myself, in the situation in which we are, respecting ourselves, respecting the court, and respecting the public and the jury, it is utterly impossible for us to think of that, because, if anything adverse should happen when we have taken such a line, the imputation will lie upon us.

Lord Chief Justice Eyre. That it may not be in your judgment a desirable thing, is very well; but that there is any other objection to it, I cannot agree to. Whether the case is taken upon the summing up of the evidence, or whether it is taken upon the opening of the evidence, is, as to all legal purposes, the same; I can see no difference; it may make a vast difference in your judgment, as to what is the best manner and the best

method of laying your case before the jury; undoubtedly we are assisting the prisoner by putting the counsel in a situation to do his business in the best manner, by proposing it thus; whereas, if they were put upon doing it in the ordinary course, they would lie under a peculiar difficulty and disadvantage. Mr. Erskine has not yet told us what he asks.

Mr. Erskine. Since it is put expressly to me, I shall propose, unless the jury profess it to be a very serious inconvenience to them, that instead of coming in the morning at the time we generally come, our coming should be at twelve o'clock, so that the attorney-general can finish at one. Mr. Gibbs will have the goodness to take a note of the few facts stated by the witnesses, and I shall be able by that time to come.

Lord Chief Justice Eyre. Then suppose we adjourn to eleven o'clock.

Mr. Gibbs. We conceive your lordships will permit Mr. Erskine to open the case of Mr. Hardy; then our witnesses will be examined, and then I shall be heard after our witnesses.

Lord Chief Justice Eyre. You will conduct your case in the manner you think best for the interest of your client.

Mr. Erskine. I should be glad if your lordships would allow another hour.

Lord Chief Justice Eyre. I feel so much for the

situation of the jury, that on their account I cannot think of it.

Mr. Erskine. My lord, I never was placed in such a situation in the whole course of my practice before, with so many gentlemen on the other side; however, I don't shrink from it.

One of the Jury. My lord, we are extremely willing to allow Mr. Erskine another hour, if your lordship thinks proper.

Lord Chief Justice Eyre. As the jury ask it for you, I will not refuse you.

Accordingly an adjournment was had until twelve o'clock of the same day, when two hours being spent in finishing the evidence for the crown, Mr. Erskine came into court, and addressed the jury as follows:

SPEECH OF MR. ERSKINE.

GENTLEMEN OF THE JURY: Before I proceed to the performance of the momentous duty which is at length cast upon me, I desire in the first place to return my thanks to the judges, for the indulgence I have received in the opportunity of addressing you at this later period of the day, than the ordinary sitting of the court; when I have had the refreshment which nature but too much required, and a few hours' retirement, to arrange a little in my mind that immense matter, the result of which I must now endeavor to lay before you. I have to thank you also, gentlemen, for the very condescending and obliging manner in which you so readily consented to this accommodation; the court could only speak for itself, referring me to you, whose rest and comforts had been so long interrupted. I shall always remember your kindness.

Before I advance to the regular consideration of this great cause, either as it regards the evidence or the law, I wish first to put aside all that I find in the speech of my learned friend, the attorney-gen-

eral, which is either collateral to the merits, or in which I can agree with him. First, then, in the name of the prisoner, and speaking his sentiments, which are well known to be my own also, I concur in the eulogium which you have heard upon the constitution of our wise forefathers. But before the eulogium can have any just or useful application, we ought to reflect upon what it is which entitles this constitution to the praise so justly bestowed upon it. To say nothing at present of its most essential excellence, or rather the very soul of it, viz.: the share the people ought to have in their government, by a pure representation, for the assertion of which the prisoner stands arraigned as a traitor before you, what is it that distinguishes the government of England from the most despotic monarchies? What, but the security which the subject enjoys in a trial and judgment by his equals; rendered doubly secure as being part of a system of law which no expediency can warp, and which no power can abuse with impunity?

The attorney-general's second preliminary observation, I equally agree to. I anxiously wish with him that you shall bear in memory the anarchy which is desolating France. Before I sit down, I may perhaps, in my turn, have occasion to reflect a little upon its probable causes; but waiting a season for such reflections, let us first consider what the evil is which has been so feelingly lament-

ed, as having fallen on that unhappy country. It is, that under the dominion of a barbarous state necessity, every protection of law is abrogated and destroyed; it is, that no man can say, under such a system of alarm and terror, that his life, his liberty, his reputation, or any one human blessing, is secure to him for a moment; it is, that, if accused of federalism, or moderatism, or incivism, or of whatever else the changing fashions and factions of the day shall have lifted up into high treason against the state, he must see his friends, his family, and the light of heaven, no more; the accusation and the sentence being the same, following one another as the thunder pursues the flash. Such has been the state of England, such is the state of France; and how then, since they are introduced to you for application, ought they in reason and sobriety to be applied? If this prosecution has been commenced, as is asserted, to avert from Great Britain the calamities incident to civil confusion, leading in its issues to the deplorable condition of France, I call upon you, gentlemen, to avert such calamity from falling upon my client, and through his side upon yourselves and upon our country. Let him not suffer under vague expositions of tyrannical laws, more tyrannically executed. Let not him be hurried away to pre-doomed execution, from an honest enthusiasm for the public safety. I ask for him a trial by this applauded constitution of our

country: I call upon you to administer the law to him, according to our own wholesome institutions, by its strict and rigid letter; however you may eventually disapprove of any part of his conduct, or viewing it through a false medium, may think it even wicked, I claim for him, as a subject of England, that the law shall decide upon its criminal denomination; I protest, in his name, against all appeals to speculations concerning consequences, when the law commands us to look only to intentions. If the state be threatened with evils, let parliament administer a prospective remedy, but let the prisoner hold his life under the law.

Gentlemen, I ask this solemnly of the court, whose justice I am persuaded will afford it to me; I ask it more emphatically of you, the jury, who are called upon your oaths to make a true deliverance of your countryman, from this charge: but lastly, and chiefly, I implore it of Him in whose hands are all the issues of life; whose humane and merciful eye expands itself over all the transactions of mankind; at whose command nations rise, and fall, and are regenerated; without whom not a sparrow falleth to the ground; I implore it of God himself, that He will fill your minds with the spirit of justice and of truth; so that you may be able to find your way through the labyrinth of matter laid before you, a labyrinth in which no man's life was ever before involved, in the annals

of British trial, nor indeed in the whole history of human justice or injustice.

Gentlemen, the first thing in order, is to look at the indictment itself; of the whole of which, or of some integral part, the prisoner must be found guilty, or be wholly discharged from guilt.

The indictment charges that the prisoners did maliciously and traitorously conspire, compass, and imagine, to bring and put our lord the king to death; and that to fulfill, perfect, and bring to effect, their most evil and wicked purpose, that is to say, of bringing and putting the king to death, "they met, conspired, consulted, and agreed amongst themselves, and other false traitors unknown, to cause and procure a convention to be assembled within the kingdom, with intent (I am reading the very words of the indictment, which I entreat you to follow in the notes you have been taking with such honest perseverance), with intent, and in order that the persons so assembled at such convention, should and might traitorously, and in defiance of the authority, and against the will of parliament, subvert and alter, and cause to be subverted and altered, the legislature, rule and government of the country; and to depose the king from the royal state, title, power, and government thereof." This is the first and great leading overt act in the indictment; and you observe that it is not charged as being treason substantially and

in itself, but only as it is committed in pursuance of the treason against the king's person, antecedently imputed; for the charge is not, that the prisoners conspired to assemble a convention to depose the king, but that they conspired and compassed his death; and that, in order to accomplish that wicked and detestable purpose, *i. e.* in order to fulfill the traitorous intention of the mind against his life, they conspired to assemble a convention, with a view to depose him. The same observation applies alike to all the other counts or overt acts upon the record, which manifestly indeed lean upon the establishment of the first for their support; because they charge the publication of different writings, and the provision of arms, not as distinct offences, but as acts done to excite to the assembling of the same convention, and to maintain it when assembled; but above all, and which must never be forgotten, because they also uniformly charge these different acts as committed in fulfillment of the same traitorous purpose, to bring the king to death. You will, therefore, have three distinct matters for consideration, upon this trial: First, What share, if any, the prisoner had, in concert with others, in assembling any convention or meeting of subjects within this kingdom: Secondly, What were the acts to be done by this convention, when assembled: and Thirdly, What was the view, purpose, and intention of those who

projected its existence. This third consideration, indeed, comprehends, or rather precedes and swallows up the other two; because, before it can be material to decide upon the views of the convention, as pointed to the subversion of the rule and order of the king's political authority, even if such views could be ascribed to it, and brought home even personally to the prisoner, we shall have to examine whether that criminal conspiracy against the established order of the community was hatched and engendered by a wicked contemplation to destroy the natural life and person of the king; and whether the acts charged and established by the evidence, were done in pursuance and in fulfillment of the same traitorous purpose.

Gentlemen, this view of the subject is not only correct, but self-evident; the subversion of the king's political government, and all conspiracies to subvert it, are crimes of great magnitude and enormity, which the law is open to punish; but neither of them are the crimes before you. The prisoner is not charged with a conspiracy against the king's political government, but against his natural life. He is not accused of having merely taken steps to depose him from his authority, but with having done so with the intention to bring him to death. It is the act with the specific intention, and not the act alone, which constitutes the charge. The act of conspiring to

depose the king, may indeed be evidence, according to circumstances, of an intention to destroy his natural existence; but never as a proposition of law, can constitute the intention itself. Where an act is done in pursuance of an intention, surely the intention must first exist; a man cannot do a thing in fulfillment of an intention, unless his mind first conceives that intention. The doing an act, or the pursuit of a system of conduct which leads in probable consequences to the death of the king, may legally, if any such be before you, affect the consideration of the traitorous purpose charged by the record, and I am not afraid of trusting you with the evidence. How far any given act, or course of acting, independently of intention, may lead probably or inevitably to any natural or political consequence, is what we have no concern with; these may be curious questions of casuistry or politics; but it is wickedness and folly to declare that consequences unconnected even with intention or consciousness, shall be synonymous in law with the traitorous mind; although the traitorous mind alone is arraigned, as constituting the crime.

Gentlemen, the first question consequently for consideration, and to which I must therefore earnestly implore the attention of the court, is this: What is the law upon this momentous subject? And recollecting that I am invested with no au-

thority, I shall not presume to offer you anything of my own ; nothing shall proceed from myself upon this part of the inquiry, but that which is merely introductory, and necessary to the understanding of the authorities on which I mean to rely for the establishment of doctrines, not less essential to the general liberties of England, than to the particular consideration which constitutes our present duty.

First, then, I maintain that that branch of the statute 25th of Edward the Third, which declares it to be high treason “ when a man doth compass or imagine the death of the king, of his lady the queen, or of his eldest son and heir,” was intended to guard by a higher sanction than felony, the natural lives of the king, queen, and prince ; and that no act, therefore, either inchoate or consummate, of resistance to, or rebellion against, the king’s regal capacity, amounts to high treason of compassing his death, unless where they can be charged upon the indictment, and proved to the satisfaction of the jury at the trial, as overt acts, committed by the prisoner, in fulfillment of a traitorous intention to destroy the king’s natural life.

Secondly, that the compassing the king’s death, or in other words, the traitorous intention to destroy his natural existence, is the treason, and not the overt acts, which are only laid as manifesta-

tions of the traitorous intention, or, in other words, as evidence competent to be left to a jury to prove it; and that no conspiracy to levy war against the king, nor any conspiracy against his regal character or capacity, is a good overt act of compassing his death, unless some force be exerted, or in contemplation, against the king's person; and that such force, so exerted or in contemplation, is not substantively the treason of compassing, but only competent, in point of law, to establish it if the jury, by the verdict of guilty, draw that conclusion of fact from the evidence of the overt act.

Thirdly, that the charge in the indictment, of compassing the king's death, is not laid as legal inducement or introduction, to follow as a legal inference from the establishment of the overt act, but is laid as an averment of a fact; and, as such, the very gist of the indictment, to be affirmed or negatived by the verdict of guilty or not guilty. It will not, I am persuaded, be suspected by the attorney-general, or by the court, that I am about to support these doctrines by opposing my own judgment to the authoritative writings of the venerable and excellent Lord Hale, whose memory will live in this country, and throughout the enlightened world, as long as the administration of pure justice shall exist; neither do I wish to oppose anything which is to be found in the other learned authorities principally relied on by the

crown, because all my positions are perfectly consistent with a right interpretation of them; and because, even were it otherwise, I could not expect successfully to oppose them by any reasonings of my own, which can have no weight, but as they shall be found at once consistent with acknowledged authorities, and with the established principles of English law. I can do this with the greater security, because my respectable and learned friend, the attorney-general, has not cited cases which have been the disgrace of this country in former times, nor asked you to sanction by your judgment those bloody murders, which are recorded by them as acts of English justice; but, as might be expected of an honorable man, his explications of the law, though I think them frequently erroneous, are drawn from the same sources which I look up to for doctrines so very different. I find, indeed, throughout the whole range of authorities, I mean those which the attorney-general has properly considered as deserving that name and character, very little contradiction; for, as far as I can discover, much more entanglement has arisen from now and then a tripping in the expression, than from any difference of sentiment amongst eminent and virtuous judges, who have either examined, or sat in judgment upon this momentous subject.

Gentlemen, before I pursue the course I have prescribed to myself, I desire most distinctly to be

understood, that in my own judgment, the most successful argument that a conspiracy to depose the king does not necessarily establish the treason charged upon this record, is totally beside any possible judgment that you can have to form upon the evidence before you; since throughout the whole volumes that have been read, I can trace nothing that even points to the imagination of such a conspiracy; and, consequently, the doctrines of Coke, Hale, and Forster, on the subject of high treason, might equally be detailed in any other trial that has ever been proceeded upon in this place. But, gentlemen, I stand in a fearful and delicate situation. As a supposed attack upon the king's civil authority has been transmuted, by construction, into a murderous conspiracy against his natural person, in the same manner, and by the same arguments, a conspiracy to overturn that civil authority, by direct force, has again been assimilated, by further construction, to a design to undermine monarchy by changes wrought through public opinion, enlarging gradually into universal will; so that I can admit no false proposition, however wide I may think it of rational application. For as there is a constructive compassing, so also there is a constructive deposing; and I cannot, therefore, possibly know what either of them is separately, nor how the one may be argued to involve the other. There are, besides, many

prisoners whose cases are behind, and whose lives may be involved in your present deliberation; their names have been already stigmatized, and their conduct arraigned in the evidence you have heard, as a part of the conspiracy. It is these considerations which drive me into so large a field of argument, because, by sufficiently ascertaining the law in the outset, they who are yet looking up to it for protection, may not be brought into peril.

Gentlemen, I now proceed to establish, that a compassing of the death of the king, within the twenty-fifth of Edward the Third, which is the charge against the prisoner, consists in a traitorous intention against his natural life; and that nothing short of your firm belief of that detestable intention, from overt acts which you find him to have committed, can justify his conviction. That I may keep my word with you in building my argument upon nothing of my own, I hope my friend, Mr. Gibbs, will have the goodness to call me back, if he finds me wandering from my engagement; that I may proceed, step by step, upon the most venerable and acknowledged authorities of the law.

In this process I shall begin with Lord Hale, who opens this important subject by stating the reason of passing the statute of the twenty-fifth of Edward the Third, on which the indictment is founded. Lord Hale says, in his pleas of the crown, vol. i., page 82, that "at common law there

was a great latitude used in raising offences to the crime and punishment of treason, by way of interpretation and arbitrary construction, which brought in great uncertainty and confusion. Thus accroaching, *i. e.*, encroaching, on royal power was an usual charge of treason anciently, though a very uncertain charge; so that no man could tell what it was, or what defence to make to it." Lord Hale then goes on to state various instances of vexation and cruelty, and concludes with this striking observation: "By these and the like instances that might be given, it appears how arbitrary and uncertain the law of treason was before the statute of the twenty-fifth of Edward the Third, whereby it came to pass that almost every offence that was, or seemed to be, a breach of the faith and allegiance due to the king, was, by construction, consequence, and interpretation, raised into the offence of high treason." This is the lamentation of the great Hale upon the state of this country previous to the passing of the statute, which, he says was passed as a remedial law, to put an end to them; and Lord Coke, considering it in the same light, says, in his Third Institute, page 2nd, "The parliament which passed this statute was called, as it well deserved, *Parliamentum Benedictum*; and the like honor was given to it by the different statutes which from time to time brought back treasons to its standards, all agreeing in magnifying and

extolling this blessed act." Now this statute, which has obtained the panegyric of these great men, whom the chief justice in his charge looked up to for light and for example, and whom the attorney-general takes also for his guide, would very little have deserved the high eulogium bestowed upon it, if, though avowedly passed to destroy uncertainty in criminal justice, and to beat down the arbitrary constructions of judges, lamented by Hale, as disfiguring and dishonoring the law, it had, nevertheless, been so worded as to give birth to new constructions and uncertainties, instead of destroying the old ones. It would but ill have entitled itself to the denomination of a blessed statute, if it had not in its enacting letter which professed to remove doubts, and to ascertain the law, made use of expressions the best known and understood; and it will be found accordingly that it cautiously did so. It will be found that in selecting the expressions of compassing the death, it employed a term of the most fixed and appropriate signification in the language of English law, which not only no judge or counsel, but which no attorney or attorney's clerk, could misunderstand; because, in former ages, before the statute, compassing the death of any man had been a felony, and what had amounted to such compassing, had been settled in a thousand instances. To establish this, and to show, also, by no reasoning of mine,

that the term "compassing the death" was intended by the statute, when applied to the king, as high treason, to have the same signification as it had obtained in the law when applied to the subject as a felony, I shall refer to Mr. Justice Forster, and even to a passage cited by the attorney-general himself, which speaks so unequivocally and unanswerably for itself, as to mock all commentary: "The ancient writers," says Forster, "in treating of felonious homicide, considered the felonious intention manifested by plain facts, in the same light, in point of guilt, as homicide itself. The rule was, *voluntas reputatur pro facto*; and while this rule prevailed, the nature of the offence was expressed by the term compassing the death. This rule has long been laid aside as too rigorous in the case of common persons; but, in the case of the king, queen, and prince, the statute of treasons has, and with great propriety, retained it in its full extent and vigor; and in describing the offence has likewise retained the ancient mode of expression, when a man doth compass or imagine the death of our lord the king, etc., and thereof be upon sufficient proof, provablement, attainted of open deed by people of his condition; the words of the statute descriptive of the offence, must, therefore, be strictly pursued in every indictment for this species of treason. It must charge that the defendant did traitorously compass and

imagine the king's death, and then go and charge the several acts made use of by the prisoner to effectuate his traitorous purpose; for the compassing the king's death is the treason and the overt acts are charged as the means made use of to effectuate the intentions and imaginations of the heart; and, therefore in the case of the regicides, the indictment charged that they did traitorously compass and imagine the death of the king, and the cutting off the head was laid as the overt act, and the person who was supposed to have given the mortal stroke was convicted on the same indictment."

This concluding instance, though at first view it may appear ridiculous, is well selected as an illustration; because, though in that case there could be no possible doubt of the intention, since the act of a deliberate execution involves, in common sense, the intention to destroy life, yet still the anomaly of the offence, which exists wholly in the intention, and not in the overt act, required the preservation of the form of the indictment. It is surely impossible to read this commentary of Forster, without seeing the true purpose of the statute: The common law had anciently considered, even in the case of a fellow subject, the malignant intention to destroy, as equivalent to the act itself; but that noble spirit of humanity which pervades the whole system of our jurisprudence, had, before the

time of King Edward the Third, eaten out and destroyed this rule, too rigorous in its general application; but, as Forster truly observes in the passage I have read: "This rule, too rigorous in the case of the subject, the statute of treasons retained in the case of the king, and retained also the very expressions used by the law when compassing the death of a subject was felony.

The statute, therefore, being expressly made to remove doubts, and accurately to define treason, adopted the ancient expression of the common law, as applicable to felonious homicide, meaning that the life of the sovereign should remain an exception, and that *voluntas pro facto*, the wicked intention for the deed itself, as it regarded his sacred life, should continue for the rule; and, therefore, says Forster, the statute meaning to retain the law which was before general, retained also the expression. ' It appears to me, therefore, incontrovertible, not only by the words of the statute itself, but upon the authority of Forster, which I shall follow up by that of Lord Coke and Hale, contradicted by no syllable in their works, as I shall demonstrate, that the statute, as it regarded the security of the king's life, did not mean to enact a new security never known to the common law in other cases, but meant to suffer a common law rule which formerly existed universally, which was precisely known, but which was too severe in common cases,

to remain as an exception in favor of the king's security. I do, therefore, positively maintain, not as an advocate merely, but in my own person, that, within the letter and meaning of the statute, nothing can be a compassing the death of the king that would not, in ancient times, have been a felony in the case of a subject; for otherwise Forster and Coke, as will be seen, are very incorrect when they say the statute retained the old law, and the appropriate word to express it; for if it went beyond it, it would, on the contrary, have been a new rule, unknown to the common law, enacted for the first time, for the preservation of the king's life. Unquestionably the legislature might have made such a rule; but we are not inquiring what it might have enacted, but what it has enacted. But I ought to ask pardon for having relapsed into any argument of my own upon this subject, when the authorities are more express to the purpose than any language I can use. For Mr. Justice Forster himself expressly says, *Discourse First, of High Treason*, p. 207: "All the words descriptive of the offence, viz., 'If a man doth compass or imagine, and thereof be attainted of open deed,' are plainly borrowed from the common law, and therefore must bear the same construction they did at common law." Is this distinct? I will read it to you again: "All the words descriptive of the offence, viz., 'If a man

doth compass or imagine, and thereof be attainted of open deed,' are plainly borrowed from the common law, and therefore must bear the same construction they did at common law."

Gentlemen, Mr. Justice Forster is by no means singular in his doctrine. Lord Coke, the oracle of the law, and the best oracle that one can consult, when standing for a prisoner charged with treason, as he was the highest prerogative lawyer that ever existed, maintains the same doctrine; even he, even Coke, the infamous prosecutor of Raleigh, whose character with posterity, as an attorney-general, my worthy and honorable friend would disdain to hold, to be the author of all his valuable works; yet even this very Lord Coke himself, holds precisely the same language with Forster. For, in his Commentary on this statute, in his third Institute, p. 5, when he comes to the word, "doth compass," he says, "Let us see first what the compassing the death of a subject was before the making of this statute, when *voluntas reputabatur pro facto*." Now, what is the plain English of this? The commentator says, I am going to instruct you, the student, who are to learn from me the law of England, what is a compassing of the death of the king; but that I cannot do, but by first carrying you to look into what was the compassing of the death of a subject at the ancient common law; because the statute having made a

compassing, as applied to the king, the crime of high treason, which, at common law, was felony in the case of a subject, it is impossible to define the one without looking back to the records which illustrate the other. This is so directly the train of Lord Coke's reasoning, that in his own singularly precise style of commentating, he immediately lays before his reader a variety of instances from the ancient records and year-books, of compassing the subject's death; and what are they? Not acts wholly collateral to attacks upon life, dogmatically laid down by the law from speculations upon probable or possible consequences, but assaults with intent to murder, conspiracies to waylay the person with the same intention, and other murderous machinations. These were only compassings before the statute against the subject's life, and the extension of the expression was never heard of in the law till introduced by the craft of political judges, when it became applicable to crimes against the state. Here again I desire to appeal to the highest authorities for this source of constructive treasons; for although the statute of Edward the Third had expressly directed that nothing should be declared to be treason but cases within its enacting letter, yet Lord Hale says, in his pleas of the crown, page 83, that "things were so carried by parties and factions, in the succeeding reign of Richard the Second, that this statute was but little

observed, but as this or that party got the better. So the crime of high treason was in a manner arbitrarily imposed and adjudged, to the disadvantage of the party that was to be judged, which, by various vicissitudes and revolutions, mischiefed all parties, first and last, and left a great unsettledness and inquietness in the minds of the people, and was one of the occasions of the unhappiness of that king.

“All this mischief was produced by the statute of the 21st of Richard the Second, which enacted, That every man that compasseth or pursueth the death of the king, or to depose him, or to render up his homage liege, or he that raiseth people and rideth against the king, to make war within his realm, and of that be duly attainted and adjudged, shall be adjudged a traitor, of high treason against the crown.

“This,” says Lord Hale, “was a great snare to the subject, insomuch that the statute, first of Henry Fourth, which repealed it, recited that no man knew how he ought to behave himself, to do, speak, or say, for doubt of such pains of treason; and therefore, wholly to remove the prejudice, which might come to the king’s subjects, the statute, first of Henry Fourth, chap. 10, was made, which brought back treason to the standard of the twenty-fifth of Edward the Third.”

Now if we look to this statute of Richard the

Second, which produced such mischiefs—what are they? As far as it re-enacted the treason of compassing the king's death, and levying war, it only re-enacted the statute of Edward the Third, but it went beyond it by the loose construction of compassing to depose the king, and raising the people, and riding to make war, or a compassing to depose him, terms new to the common law. The actual levying of force, to imprison, or depose the king, was already and properly high treason, within the second branch of the statute; but this statute of Richard the Second enlarged only the crime of compassing, making it extend to a compassing to imprison or depose, which are the great objects of an actual levying of war, and making a compassing to levy war, on a footing with the actual levying it. It seems, therefore, most astonishing, that any judge could be supposed to have decided, as an abstract rule of law, that a compassing to imprison or depose the king was high treason, substantively, without previous compassing of his death; since it was made so by this statute, twenty-first of Richard the Second, and reprobated, stigmatized, and repealed by the statute, first of Henry the Fourth, chap. 10. “And so little effect,” says Mr. Justice Blackstone, “have over-violent laws to prevent any crime, that within two years after this new law of treason respecting imprisonment and depos-

ing, this very prince was both deposed and murdered.”

Gentlemen, this distinction, made by the humane statute of Edward the Third, between treason against the king's natural life, and rebellion against his civil authority, and which the act of Richard the Second, for a season, broke down, is founded in wise and sound policy. A successful attack may be made upon the king's person by the malignity of an individual, without the combination of extended conspiracy, or the exertions of rebellious force; the law therefore justly stands upon the watch to crush the first overt manifestation of so evil and detestable a purpose. Considering the life of the chief magistrate as infinitely important to the public security, it does not wait for the possible consummation of a crime, which requires neither time, combination, nor force to accomplish, but considers the traitorous purpose as a consummated treason; but the wise and humane policy of our forefathers extended the severity of the rule, *voluntas pro facto*, no further than they were thus impelled and justified by the necessity; and therefore an intention to levy war and rebellion, not consummated, however manifested by the most overt acts of conspiracy, was not declared to be treason, and upon the plainest principle in the world. The king's regal capacity, guarded by all the force and authority of the state, could not, like

his natural existence, be overthrown or endangered in a moment, by the first machinations of the traitorous mind of an individual, or even by the unarmed conspiracy of numbers; and therefore this humane and exalted institution, measuring the sanctions of criminal justice by the standard of civil necessity, thought it sufficient to scourge and dissipate unarmed conspirators by a less vindictive proceeding.

These new treasons were, however, at length all happily swept away on the accession of king Henry the Fourth, which brought the law back to the standard of Edward the Third; and, indeed, in reviewing the history of this highly-favored island, it is most beautiful, and, at the same time, highly encouraging to observe, by what an extraordinary concurrence of circumstances, under the superintendence of a benevolent Providence, the liberties of our country have been established. Amidst the convulsions, arising from the maddest ambition and injustice, and whilst the state was alternately departing from its poise, on one side, and, on the other, the great rights of mankind were still insensibly taking root and flourishing; though sometimes monarchy threatened to lay them prostrate, though aristocracy occasionally undermined them, and democracy, in her turn, rashly trampled on them, yet they have ever come safely round at last. This awful and sublime con-

temptation should teach us to bear with one another when our opinions do not quite coincide; extracting final harmony from the inevitable differences which ever did, and ever must exist amongst men.

Gentlemen, the act of Henry the Fourth was scarcely made when it shared the same fate with the venerable law which it restored. Nobody regarded it. It was borne down by factions, and, in those days, there were no judges, as there are now, to hold firm the balance of justice amidst the storms of state; men could not then, as the prisoner can to-day, look up for protection to magistrates independent of the crown, and awfully accountable in character to an enlightened world. As fast as arbitrary constructions were abolished by one statute, unprincipled judges began to build them up again, till they were beat down by another; to recount their strange treasons would be tiresome and disgusting; but their system of construction, in the teeth of positive law, may be well illustrated by two lines from Pope:

“Destroy his fib and sophistry in vain,
The creature’s at his dirty work again.”

This system, both judicial and parliamentary, became indeed so intolerable in the interval between the reign of Henry the Fourth, and that of Philip and Mary, that it produced, in the first

year of the latter reign, the most remarkable statute that ever passed in England, repealing not only all former statutes upon the subject, except that of Edward the Third, but also stigmatizing, upon the records of parliament, the arbitrary constructions of judges, and limiting them, in all times, to every letter of the statute. I will read to you Lord Coke's commentary upon the subject. In his third Institute, page 23, he says: "Before the act of the twenty-fifth of Edward the Third, so many treasons had been made and declared, and in such sort penned, as not only the ignorant and unlearned people, but also learned and expert men, were trapped and snared, * * so as the mischief before Edward the Third, of the uncertainty of what was treason and what not, became so frequent and dangerous, as that the safest and surest remedy was by this excellent act of Mary to abrogate and repeal all, but only such as are specified and expressed in the statute of Edward the Third. By which law the safety of both the king and of the subject, and the preservation of the common weal, were wisely and sufficiently provided for, and in such certainty, that *nihil relictum est arbitrio judicis.*"

The whole evil, indeed, to be remedied and avoided by the act of Queen Mary was, the *arbitrium judicis*, or judicial construction beyond the letter of the statute. The statute itself was per-

fect, and was restored in its full vigor; and to suppose, therefore, that when an act was expressly made, because judges had built treasons by constructions beyond the law, they were to be left, consistently with their duty, to go on building again, is to impute a folly to the legislature, which never yet was imputed to the framers of this admirable statute. But this absurd idea is expressly excluded, not merely by the statute, according to its plain interpretation, but according to the direct authority of Lord Coke himself, in his commentary upon it. For he goes on to say: "Two things are to be observed, first, that the word expressed, in the statute of Mary, excludes all implications or inferences whatsoever; secondly, that no former attainder, judgment, precedent, resolution, or opinion of judges, or justices, of high treason, other than such as are specified and expressed in the statute of Edward the Third, are to be followed or drawn into example. For the words be plain and direct; that from henceforth no act, deed, or offence shall be taken, had, deemed, or adjudged to be high treason, but only such as are declared and expressed in the said act of the twenty-fifth of Edward the Third, any act of parliament, or statute after twenty-fifth of Edward the Third, or any other declaration or matter, to the contrary notwithstanding."

Gentlemen, if the letter of the statute of Mary,

when coupled with Lord Coke's commentary, required further illustration, it would amply receive it from the preamble, which ought to be engraved on the heart of every man who loves the king, or who is called to any share in his councils; for, as Lord Coke observes in the same commentary: It truly recites, that "the state of a king standeth and consisteth more assured by the love and favor of the subjects toward their sovereign, than in the dread and fear of laws, made with rigorous and extreme punishment; and that laws, justly made for the preservation of the common weal, without extreme punishment or penalty, are more often and for the most part better kept and obeyed, than laws and statutes made with extreme punishment."

But, gentlemen, the most important part of Lord Coke's commentary on this statute is yet behind, which I shall presently read to you, and to which I implore your most earnest attention; because I will show you by it, that the unfortunate man, whose innocence I am defending, is arraigned before you of high treason, upon evidence not only wholly repugnant to this particular statute, but such as never yet was heard of in England upon any capital trial; evidence which, even with all the attention you have given to it, I defy any one of you, at this moment, to say of what it consists; evidence, which, since it must be called by that name, I tremble for my boldness in presuming to

stand up for the life of a man, when I am conscious that I am incapable of understanding from it, even what acts are imputed to him ; evidence, which has consumed four days in the reading ; not in reading the acts of the prisoner, but the unconnected writings of men, unknown to one another, upon a hundred different subjects ; evidence, the very listening to which has deprived me of the sleep which nature requires ; which has filled my mind with unremitting distress and agitation, and which, from its discordant, unconnecting nature, has suffered me to reap no advantage from the indulgence, which I began with thanking you for ; but which, on the contrary, has almost set my brain on fire, with the vain endeavor of collecting my thoughts upon a subject never designed for any rational course of thinking.

Let us, therefore, see how the unexampled condition I am placed in, falls in with Lord Coke upon this subject, whose authority is appealed to by the crown itself ; and let us go home and burn our books if they are to blazon forth the law by eulogium, and accurately to define its protector, which yet the subject is to be totally cut off from, when even under the sanction of these very authors, he stands upon his trial for his existence. Lord Coke says in the same commentary, page 12, that the statute had not only accurately defined the charge, but the nature of the proof on which

alone a man shall be attainted of any of the branches of high treason. "It is to be observed," says he, "that the word in the act of Edward the Third is •provablement, *i. e.*, upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit, but upon good and sufficient proof. And herein the adverb provably hath a great force, and signifieth a direct, plain proof, which word the lords and commons in parliament did use, for that the offence of treason was so heinous, and was so heavily and severely punished, as none other the like, and therefore the offender must be provably attainted, which words are as forcible as upon direct and manifest proof. Note, the word is not probably, for then *commune argumentum* might have served, but the word is provably be attainted."

Nothing can be so curiously and tautologously labored as this commentary, of even that great prerogative lawyer, Lord Coke, upon this single word in the statute; and it manifestly shows that, so far from its being the spirit and principle of the law of England to loosen the construction of this statute, and to adopt rules of construction and proof, unusual in trials for other crimes, on the contrary, the legislature did not even leave it to the judges to apply the ordinary rules of legal proof to trials under it, but admonished them to do

justice in that respect in the very body of the statute.

Lord Hale treads in the same path with Lord Coke, and concludes this part of the subject by the following most remarkable passage, vol. i. chap. xi. 86.

“Now although the crime of high treason is the greatest crime against faith, duty, and human society, and brings with it the greatest and most fatal dangers to the government, peace, and happiness of a kingdom or state, and therefore is deservedly branded with the highest ignominy, and subjected to the greatest penalties that the law can inflict, it appears, first, how necessary it was that there should be some known, fixed, settled boundary for this great crime of treason, and of what great importance the statute of twenty-fifth of Edward the Third was, in order to that end. Second, how dangerous it is to depart from the letter of that statute, and to multiply and enhance crimes into treason by ambiguous and general words, such as accroaching royal power, subverting fundamental laws, and the like. And third, how dangerous it is by construction and analogy, to make treasons where the letter of the law has not done it. For such a method admits of no limits or bounds, but runs as far and as wide as the wit and invention of accusers, and the detestation of persons accused, will carry men.”

Surely the admonition of this super-eminent judge ought to sink deep into the heart of every judge, and of every juryman, who is called to administer justice under this statute; above all, in the times and under the peculiar circumstances which assemble us in this place. Honorable men, feeling, as they ought, for the safety of government, and the tranquillity of the country, and naturally indignant against those who are supposed to have brought them into peril, ought for that very cause to proceed with more abundant caution, lest they should be surprised by their resentments or their fears; they ought to advance, in the judgments they form, by slow and trembling steps; they ought even to fall back and look at everything again, lest a false light should deceive them, admitting no fact but upon the foundation of clear and precise evidence, and deciding upon no intention that does not result with equal clearness from the fact. This is the universal demand of justice in every case, criminal or civil; how much more then in this, when the judgment is every moment in danger of being swept away into the fathomless abyss of a thousand volumes; where there is no anchorage for the understanding; where no reach of thought can look round in order to compare their points; nor any memory be capacious enough to retain even the imperfect relation that can be collected from them?

Gentlemen, my mind is the more deeply affected with this consideration, by a very recent example in that monstrous phenomenon which, under the name of a trial, has driven us out of Westminster Hall for a large portion of my professional life. No man is less disposed than I am to speak lightly of great state prosecutions, which bind to their duty those who have no other superiors, nor any other control; least of all am I capable of even glancing a censure against those who have led to or conducted the impeachment, because I respect and love many of them, and knew them to be amongst the best and wisest men in the nation. I know them, indeed, so well, as to be persuaded that could they have foreseen the vast field it was to open, and the length of time it was to occupy, they never would have engaged in it; for I defy any man, not illuminated by the Divine Spirit, to say, with the precision and certainty of an English judge deciding upon evidence before him, that Mr. Hastings is guilty or not guilty; for who knows what is before him, or what is not? Many have carried what they knew to their graves, and the living have lived long enough to forget it. Indeed, I pray God that such another proceeding may never exist in England; because I consider it as a dishonor to the constitution, and that it brings, by its example, insecurity into the administration

of justice.* Every man in civilized society has a right to hold his life, liberty, property, and reputation, under plain laws that can be well understood, and is entitled to have some limited specific part of his conduct, compared and examined by their standard; but he ought not for seven years, no nor for seven days, to stand as a criminal before the highest human tribunal, until judgment is bewildered and confounded, to come at last, perhaps, to defend himself, broken down with fatigue, and dispirited with anxiety, which, indeed, is my own condition at this moment, who am only stating the case of another. What then must be the condition of the unfortunate person whom you are trying?

The next great question is, how the admonitions of these great writers are to be reconciled with what is undoubtedly to be found in other parts of their works; and I think I do not go too far, when I say, that it ought to be the inclination of every person's mind who is considering the meaning of any writer, particularly if he be a person of superior learning and intelligence, to reconcile, as much as possible, all he says upon any subject, and not to adopt such a construction as necessarily raises up one part in direct opposition to another.

* It was the good fortune of Mr. Erskine to remedy, in his own person, the evil thus complained of, when he presided as chancellor on the trial of Lord Melville.

The law itself, indeed, adopts this sound rule of judgment in the examination of every matter which is laid before it, for a sound construction; and the judges, therefore, are bound by duty as well as reason to adopt it.

It appears to me, then, that the only ambiguity which arises, or can possibly arise, in the examination of the great authorities, and in the comparison of them with themselves, or with one another, is from not rightly understanding the meaning of the term overt act as applied to this species of treason. The moment you get right upon the true meaning and signification of this expression, the curtain is drawn up, and all is light and certainty.

Gentlemen, an overt act of the high treason charged upon this record, I take, with great submission to the court, to be plainly and simply this: the high treason charged, is the compassing or imagining, in other words, the intending or designing, the death of the king; I mean his natural death; which being a hidden operation of the mind, an overt act is anything which legally proves the existence of such traitorous design and intention. I say, that the design against the king's natural life, is the high treason under the first branch of the statute; and whatever is evidence, which may be legally laid before a jury to judge of the traitorous intention, is a legal overt act;

because an overt act is nothing but legal evidence embodied upon the record.

The charge of compassing being a charge of intention, which, without a manifestation by conduct, no human tribunal could try, the statute requires by its very letter, but without which letter, reason must have presumed, that the intention to cut off the sovereign should be manifested by an open act; and as a prisoner charged with an intention, could have no notice how to defend himself without the charge of actions from whence the intention was to be imputed to him, it was always the practice, according to the sound principles of English law to state, upon the face of the indictment, the overt act, which the crown charges as the means made use of by the prisoner to effect his traitorous purpose; and as this rule was too frequently departed from, the statute of the seventh of King William enacted, for the benefit of the prisoner, that no evidence should even be given of any overt act not charged in the indictment. The charge, therefore, of the overt acts in the indictment is the notice, enacted by statute, to be given to the prisoner for his protection, of the means by which the crown is to submit to the jury the existence of the traitorous purpose, which is the crime alleged against him, and in pursuance of which traitorous purpose the overt acts must also be charged to have been committed. Whatever,

therefore, is relevant or competent evidence to be received in support of the traitorous intention, is a legal overt act, and what acts are competent to that purpose, are, as in all other cases, matter of law for the judges; but whether, after the overt acts are received upon the record as competent, and are established by proof upon the trial, they be sufficient or insufficient in the particular instance, to convince the jury of the traitorous compassing or intention, is a mere matter of fact, which, from its very nature, can be reduced to no other standard than that which each man's own conscience and understanding erects in his mind, as the arbiter of his judgment. This doctrine is by no means new nor peculiar to high treason, but pervades the whole law, and may be well illustrated in a memorable case lately decided upon writ of error in the house of lords, and which must be in the memory of all the judges now present, who take a part in its decision; there the question was, whether, upon the establishment of a number of facts by legal evidence, the defendant had knowledge of a fact, the knowing of which would leave him defenceless. To draw that question from the jury to the judges, I demurred to the evidence, saying, that though each part of it was legally admitted, it was for the law, by the mouth of the judges, to pronounce whether this fact of knowledge could legally be inferred from it; but the lords, with the assent of

all the judges, decided, to my perfect satisfaction, that such a demurrer to the evidence was irregular and invalid; that the province of the jury over the effect of evidence, ought not to be so transferred to the judges, and converted into matter of law; that what was relevant evidence to come before a jury, was the province of the court, but that the conclusion to be drawn from admissible evidence, was the unalienable province of the country.

To apply that reasoning to the case before us: The matter to be inquired of here is the fact of the prisoner's intention, as in the case I have just cited it was the fact of the defendant's knowledge. The charge of a conspiracy to depose the king is, therefore, laid before you to establish that intention; its competency to be laid before you for that purpose is not disputed; I am only contending, with all reason and authority on my side, that it is to be submitted to your consciences and understandings, whether, even if you believed the overt act, you believe also that it proceeded from a traitorous machination against the life of the king. I am only contending that these two beliefs must coincide to establish a verdict of guilty. I am not contending that, under circumstances, a conspiracy to depose the king, and to annihilate his regal capacity, may not be strong and satisfactory evidence of the intention to destroy his life; but only

that in this, as in every other instance, it is for you to collect or not to collect this treason against the king's life, according to the result of your conscientious belief and judgment, from the acts of the prisoner laid before you; and that the establishment of the overt act, even if it were established, does not establish the treason against the king's life, by a consequence of law; but, on the contrary, the overt act, though punishable in another shape, as an independent crime, is a dead letter upon this record, unless you believe, exercising your exclusive jurisdiction over the facts laid before you, that it was committed in accomplishment of the treason against the natural life of the king.

Gentlemen, this particular crime of compassing the king's death, is so complete an anomaly, being wholly seated in unconsummated intention, that the law cannot depart from describing it according to its real essence, even when it is followed by his death; a man cannot be indicted for killing the king, as was settled in the case of the regicides of Charles the First, after long consultation among all the judges; it was held that the very words of the statute must be pursued, and that although the king was actually murdered, the prisoners who destroyed him could not be charged with the act itself, as high treason, but with the compassing of his death; the very act of the executioner in be-

heading him being only laid as the overt act upon the record. There, though the overt act was so connected with, as to be even inseparable from the traitorous intention, yet they were not confounded, because of the effect of the precedent in dissimilar cases; and although the regicides came to be tried immediately on the restoration of the king, in the day-spring of his authority, and before high prerogative judges, and under circumstances when, in any country but England, their trial would have been a mockery, or their execution have been awarded without even the forms of trial; yet in England, that sacred liberty, which has forever adorned the constitution, refused to sacrifice to zeal or enthusiasm, either the substance or the forms of justice. Hear what the chief baron pronounced upon that occasion: "These persons are to be proceeded with according to the laws of the land, and I shall speak nothing to you but what are the words of the law. By the statute of Edward the Third, it is made high treason to compass and imagine the death of the king; in no case else imagination or compassing, without an actual effect, is punishable by law." He then speaks of the sacred life of the king, and speaking of the treason, says: "The treason consists in the wicked imagination which is not apparent; but when this poison swells out of the heart, and breaks forth into action, in that case it is high

treason. Then what is an overt act of an imagination, or compassing of the king's death? Truly, it is any thing which shows what the imagination of the heart is."

Indeed, gentlemen, the proposition is so clear, that one gets confounded in the argument from the very simplicity of it; but still I stand in a situation which I am determined at all events to fulfill to the utmost; and I shall, therefore, not leave the matter upon these authorities, but will bring it down to our own times, repeating my challenge to have produced one single authority in contradiction. Lord Coke, in his Third Institute, pages 11 and 12, says: "The indictment must charge that the prisoner traitorously compassed and imagined the death and destruction of the king." He says, too: "There must be a compassing or imagination; for an act, without compassing, intent, or imagination, is not within the act, as appeareth by the express letter thereof. *Et actus non facit reum nisi mens sit rea.*" Nothing in language can more clearly illustrate my position. The indictment, like every other indictment, must charge distinctly and specifically the crime; that charge, must, therefore, be in the very words of the statute which creates the crime; the crime created by the statute not being the perpetration of any act, but being in the rigorous severity of the law, the very contemplation, intention and contrivance of a purpose

directed to an act; that contemplation, purpose, and contrivance, must be found to exist, without which, says Lord Coke, there can be no compassing; and as the intention of the mind cannot be investigated without the investigation of conduct, the overt act is required by the statute, and must be laid in the indictment and proved. It follows from this deduction, that upon the clear principles of the English law, every act may be laid as an overt act of compassing the king's death, which may be reasonably considered to be relevant and competent to manifest that intention; for, were it otherwise, it would be shutting out from the view of the jury, certain conduct of the prisoner, which might, according to circumstances, lead to manifest the criminal intention of his mind; and as more than one overt act may be laid, and even overt acts of different kinds, though not in themselves substantively treason, the judges appear to be justified in law when they ruled them to be overt acts of compassing the death of the king; because they are such acts as before the statute of King William, which required that the indictment should charge all overt acts, would have been held to be relevant proof; of which relevancy of proof the judges are to judge as matter of law; and therefore being relevant proof, must also be relevant matter of charge, because nothing can be relevantly charged which may not also be relevantly

admitted to proof. These observations explain to the meanest capacity in what sense Lord Coke must be understood, when he says, in the very same page, that "a preparation to depose the king, and to take the king by force and strong hand, until he has yielded to certain demands, is a sufficient overt act to prove the compassing of the king's death." He does not say as a proposition of law, that he who prepares to seize the king, compasseth his death, but that a preparation to seize him is a sufficient overt act to prove the compassing; and he directly gives the reason, "because of the strong tendency it has to that end." This latter sentence destroys all ambiguity. I agree perfectly with Lord Coke, and I think every judge would so decide, upon the general principles of law and evidence, without any resort to his authority for it; and for this plain and obvious reason: The judges who are by law to decide upon the relevancy or competency of the proof, in every matter, criminal and civil, have immemorially sanctioned the indispensable necessity of charging the traitorous intention as the crime, before it was required by the statute of King William.

As the crime is in its nature invisible and inscrutable, until manifested by such conduct as in the eye of reason is indicative of the intention, which constitutes the crime; no overt act is therefore held to be sufficient to give jurisdiction, even to a jury to

draw the inference in fact of the traitorous purpose, but such acts from whence it may be reasonably inferred; and therefore as the restraint and imprisonment of a prince has a greater tendency to his destruction than in the case of a private man, such conspiracies are admitted to be laid as overt acts upon this principle; that if a man does an act from whence either an inevitable or a mainly probable consequence may be expected to follow, much more if he persists deliberately in a course of conduct, leading certainly or probably to any given consequence, it is reasonable to believe that he foresaw such consequence, and by pursuing his purpose with that foreknowledge, the intention to produce the consequence may be fairly imputed. - But then all this is matter of fact for the jury, from the evidence, not matter of law for the court; further than it is the privilege and duty of the judge to direct the attention of the jury to the evidence, and to state the law as it may result from the different views the jury may entertain of the facts; and if such acts could not be laid as overt acts, they could not be offered in evidence; and if they could not be offered in evidence, the mind of the prisoner, which it was the object of the trial to lay open as a clue to his intention, would be shut up and concealed from the jury, whenever the death of the sovereign was sought by circuitous, but obvious means, instead of by a direct and

murderous machination. But when they are thus submitted, as matter of charge and evidence to prove the traitorous purpose which is the crime, the security of the king and of the subject is equally provided for; all the matter which has a relevancy to the crime, is chargeable and proveable, not substantively, to raise from their establishment a legal inference, but to raise a presumption in fact, capable of being weighed by the jury with all the circumstances of the transaction, as offered to the crown and the prisoner: their province being finally to say, not what was the possible or the probable consequence of the overt act laid in the indictment, but whether it has brought them to a safe and conscientious judgment of the guilt of the prisoner; *i. e.*, of his guilt in compassing the death of the king, which is the treason charged in the indictment.

Lord Hale is, if possible, more direct and explicit upon the subject. He says, page 107, "The words compass or imagine, are of a great latitude; they refer to the purpose or design of the mind or will, though the purpose or design takes not effect; but compassing or imagining, singly of itself is an internal act, and, without something to manifest it, could not possibly fall under any judicial cognizance but of God alone; and therefore this statute requires such an overt act as may render the compassing or imagining

capable of a trial and sentence by human judicatures." Now can any man possibly derive from such a writing, proceeding, too, from an author of the character of Lord Hale, that an overt act of compassing, might in his judgment be an act committed inadvertently without the intention? Can any man gather from it, that a man, by falling into bad company, can be drawn in to be guilty of this species of treason by rash conduct, while the love of his sovereign was glowing in his bosom? Can there be any particular acts which can entitle a judge or counsel to pronounce as a matter of law, what another man intends? or that what a man intends is not a matter of fact? Is there any man that will meet the matter fairly, and advance and support that naked proposition? At all events, it is certainly not a proposition to be dealt with publicly; because the man whose mind is capable even of conceiving it, should be treasured up in a museum, and exhibited there as a curiosity, for money.

Gentlemen, all I am asking, however, from my argument, and I defy any power of reason upon earth to move me from it, is this; that the prisoner being charged with intending the king's death, you are to find whether this charge be founded or unfounded; and that, therefore, put upon the record what else you will—prove what you will—read these books over and over again—and let us stand

here a year and a day in discoursing concerning them—still the question must return at last to what you, and you only, can resolve, is he guilty of that base, detestable intention, to destroy the king? Not whether you incline to believe that he is guilty; not whether you suspect; nor whether it be probable; not whether he may be guilty; no, but that proveably he is guilty. If you can say this upon the evidence, it is your duty to say so, and you may, with a tranquil conscience, return to your families; though by your judgment the unhappy object of it must return no more to his. Alas! gentlemen, what do I say? He has no family to return to; the affectionate partner of his life has already fallen a victim to the surprise and horror which attended the scene now transacting. But let that melancholy reflection pass, it should not perhaps, have been introduced, it certainly ought to have no effect upon you, who are to judge upon your oaths. I do not stand here to desire you to commit perjury from compassion; but at the same time my earnestness may be forgiven, since it proceeds from a weakness common to us all. I claim no merit with the prisoner for my zeal; it proceeds from a selfish principle inherent in the human heart. I am counsel, gentlemen, for myself. In every word I utter, I feel that I am pleading for the safety of my own life, for the lives of my children after me, for the happiness of my

country, and for the universal condition of civil society throughout the world.

But let us return to the subject, and pursue the doctrine of Lord Hale upon the true interpretation of the term overt act, as applicable to this branch of treason. Lord Hale says, and I do beseech most earnestly the attention of the court and jury to this passage: "If men conspire the death of the king, and thereupon provide weapons, or send letters, this is an overt act within the statute." Take this to pieces, and what does it amount to? "If men conspire the death of the king," that is the first thing, viz., the intention; "and thereupon," that is, in pursuance of that wicked intention; "provide weapons, or send letters for the execution thereof," i e., for the execution of that destruction of the king which they have meditated; "this is an overt act within the statute." Surely the meaning of all this is self-evident. If the intention be against the king's life, though the conspiracy does not immediately and directly point to his death, yet still the overt act will be sufficient if it be something which has so direct a tendency to that end, as to be competent, rational evidence of the intention to obtain it. But the instances given by Lord Hale himself furnish the best illustration: "If men conspire to imprison the king by force and a strong hand, until he has yielded to certain demands, and for that purpose gather company, or

write letters, that is an overt act to prove the compassing the king's death, as it was held in Lord Cobham's case, by all the judges." In this sentence Lord Hale does not depart from that precision which so eminently distinguishes all his writings; he does not say, that if men conspire to imprison the king until he yields to certain demands, and for that purpose to do so and so, this is high treason—no, nor even an overt act of high treason, though he might in legal language correctly have said so; but to prevent the possibility of confounding the treason with matter which may be legally charged as relevant to the proof of it, he follows Lord Coke's expression in the third institute, and says: "This is an overt act to prove the compassing of the king's death," and as if by this mode of expression he had not done enough to keep the ideas asunder, and from abundant regard for the rights and liberties of the subject, he immediately adds: "But then there must be an overt act to prove that conspiracy; and then that overt act to prove such design, is an overt act to prove the compassing of the death of the kings." The language of this sentence labors in the ear from the excessive caution of the writer; afraid that his reader should jump too fast to his conclusion upon a subject of such awful moment, he pulls him back, after he has read that a conspiracy to imprison the king is an overt act to prove the

compassing of his death, and says to him: But, recollect that there must be an overt act to prove, in the first place, that conspiracy to imprison the king, and even then, that intention to imprison him so manifested by the overt act, is but in its turn an overt act to prove the compassing or intention to destroy the king. Nor does the great and benevolent Hale rest even here, but after this almost tedious perspicuity, he begins the next sentence with this fresh caution and limitation: "But then this must be intended of a conspiracy, forcibly to detain and imprison the king." What then is a conspiracy forcibly to imprison the king? Surely it can require no explanation: it can only be a direct machination to seize and detain his person by rebellious force. Will this expression be satisfied by a conspiracy to seize speculatively upon his authority, by the publication of pamphlets, which, by the inculcation of republican principles, may in the eventual circulation of a course of years, perhaps in a course of centuries, in this king's time, or in the time of a remote successor, debauch men's minds from the English constitution, and, by the destruction of monarchy, involve the life of the monarch? Will any man say that this is what the law means by a conspiracy against the king's government, supposing even that a conspiracy against his government were synonymous with a design upon his life? Can any case be pro-

duced where a person has been found guilty of high treason, under this branch of the statute, where no war has been actually levied, unless where the conspiracy has been a forcible invasion of the king's personal liberty or security? I do not mean to say that a conspiracy to levy war, may not, in many instances, be laid as an overt act of compassing the king's death, because the war may be mediately or immediately pointed distinctly to his destruction or captivity; and as Lord Hale truly says: "small is the distance between the prisons and graves of princes." But multiply the instances as you will, still the principle presents itself. The truth of this very maxim, built upon experience, renders an overt act of this description rational and competent evidence to be left to a jury, of a design against the king's life; but it does not, therefore, change the nature of the crime, nor warrant any court to declare the overt act to be legally and conclusively indicative of the traitorous intention; because, if this be once admitted to be law, and the jury are bound to find the treason upon their belief of the existence of the overt act, the trial by the country is at an end, and the judges are armed with an arbitrary uncontrollable dominion over the lives and liberties of the nation.

Gentlemen, I will now proceed to show you that the doctrines which I am insisting on have been held by all the great judges of this country, in even the

worst of times, and that they are, besides, not at all peculiar to the case of high treason, but pervade the whole system of the criminal law. Mr. Justice Forster, so justly celebrated for his writings, lays down the law thus: It may be laid down as a general rule, that "indictments founded upon penal statutes, especially the most penal, must pursue the statute so as to bring the party within it." And this general rule is so expressly allowed to have place in high treason, that it is admitted on all hands, that an indictment would be radically and incurably bad, unless it charged the compassing of the king's death, as the leading and fundamental averment, and unless it formerly charged the overt act to be committed in order to effectuate the traitorous purpose. Nobody ever denied this proposition; and the present indictment is framed accordingly. Now it is needless to say, that if the benignity of the general law requires this precision in the indictment, the proof must be correspondingly precise, for otherwise the subject would derive no benefit from the strictness of the indictment; the strictness of which can have no other meaning in law or common sense, than the protection of the prisoner; for if, though the indictment must directly charge a breach of the very letter of the statute, the prisoner could, nevertheless, be convicted by evidence not amounting to a breach of the letter, then the strictness of the indictment

would not only be no protection to the prisoner, but a direct violation of the first principles of justice criminal and civil, which call universally for the proof of all material averments in every legal proceeding. But Mr. Justice Forster expressly adverts to the necessary severity of proof, as well as of charge — for he says, that “although a case is brought within the reason of a penal statute, and within the mischief to be prevented, yet, if it does not come within the unequivocal letter, the benignity of the law interposeth.” If the law then be thus severe in the interpretation of every penal proceeding, even down to an action for the killing of a hare or a partridge, are its constructions only to be enlarged and extended as to the statute of high treason, although the single object of passing it was to guard against constructions?

Gentlemen, the reason of the thing is so palpably and invincibly in favor of this analogy, that it never met with a direct opposition. The attorney-general himself distinctly admits it in one part of his address to you, though he seems to deny it in another. I hope that when I state one part of his speech to be in diametrical opposition to another, he will not suppose that I attribute the inconsistency to any defect, either in his understanding or his heart; far from it—they arise, I am convinced,

from some of the authorities not being sufficiently understood.

In the beginning of his speech he admits that the evidence must be satisfactory and convincing as to the intention; but in the latter part he seems, as it were, to take off the effect of that admission. I wish to give you the very words. I took them down at the time; and if I do not state them correctly, I desire to be corrected. "I most distinctly disavow," said my honorable friend, "every case of construction. I most distinctly disavow any like case of treason not within the letter of the statute. I most distinctly disavow cumulative treason. I most distinctly disavow enhancing guilt by parity of reason. The question undoubtedly is, whether the proof be full and satisfactory to your reasons and consciences that the prisoner is guilty of the treason of compassing the king's death." Gentlemen, I hope that this will always with equal honor be admitted. Now let us see how the rest of the learned gentleman's speech falls in with this. For he goes on to say, that it is by no means necessary that the distinct, specific intention should pre-exist the overt act. "If the overt act," says he, "be deliberately committed, it is a compassing." But how so, if the intention be admitted to be the treason? What benefit is obtained by the rigorous demand of the statute, that the compassing of the king's death shall be

charged by the indictment as the crime, if a crime different, or short of it, can be substituted for it in the proof? And how can the statute of Richard the Second be said to be repealed, which made it high treason to compass to depose the king, independently of intention upon his life, if the law shall declare, notwithstanding the repeal, that they are synonymous terms, and that the one conclusively involves the other?

Gentlemen, if we examine the most prominent cases, which have come in judgment before judges of the most unquestionable authority, and after the constitution had become fixed, you will find every thing that I have been saying to you justified and confirmed.

The first great state trial, after the revolution, was the case of Sir John Freind, a conspirator in the assassination plot. Sir John Freind was indicted for compassing and imagining the death of King William; and the overt acts charged, and principally relied on, were, first, the sending Mr. Charnock into France to King James, to desire him to persuade the French king to send forces over to Great Britain, to levy war against, and to depose the king, and that Mr. Charnock was actually sent; and, secondly, the preparing men to be levied to form a corps to assist in the restoration of the pretender, and the expulsion of King William, of which Sir John Freind was to be colonel. In

this case, if the proofs were not to be wholly discredited, and the overt acts were consequently established, they went rationally to convince the mind of every man of the pre-existing intention to destroy the king. The conspiracy was not to do an act which, though it might lead eventually and speculatively to the king's death, might not be foreseen or designed by those who conspired together; the conspiracy was not directed to an event, probably leading to another, and a different one, and from the happening of which second, a third, still different, might be engendered, which third might again lead, in its consequences, to a fourth state of things, which might, in the revolution of events, bring on the death of the king, though never compassed or imagined. Freind's conspiracy, on the contrary, had for its direct and immediate object the restoration of the pretender to the throne, by the junction of foreign and rebellious force. In my opinion, and I am not more disposed than others to push things beyond their mark in the administration of criminal justice, Sir John Freind, if the evidence against him found credit with the jury, could have no possible defence; since the evidence went directly to prove the dispatch of Charnock to France, under his direction, to invite the French king to bring over the pretender into England, and to place him on the throne. The intention, therefore, of Sir John

Freind, to cut off King William, was a clear inference from the overt act in question; not an inference of law for the court, but of fact for the jury, under the guidance of plain common sense; because the consequence of the pretender's regaining the throne, must have been the attainder of King William by act of parliament. Some gentlemen seem to look as if they thought not, but I should be glad to hear the position contradicted. I repeat, that if the pretender had been restored, as king of England, the legal consequence would have been, that King William would have been a traitor and an usurper, and subject as such to be tried at the Old Bailey, or wherever else the king, who took his place, thought fit to bring him to judgment. From these premises, therefore, there could be no difficulty of inferring the intention; and, therefore, if ever a case existed where, from the clearness of the inference, the province of the jury might have been overlooked, and the overt act confounded with the treason, it was in the instance of Freind; but so far was this from being the case, that you will find, on the contrary, every thing I have been saying to you, since I began to address you, summed up and confirmed by that most eminent magistrate, Lord Chief Justice Holt, who presided upon that trial.

He begins thus: "Gentlemen of the jury, look ye, the treason that is mentioned in the indictment

is conspiring, compassing, and imagining the death of the king. To prove the conspiracy and design of the king's death, two principal overt acts are insisted on." He does not consider the overt act of conspiracy and consultation to be the treason, but evidence, as it undoubtedly was in that case, to prove the compassing the death. The chief justice then states the two overt acts above mentioned, and sums up the evidence for and against the prisoner, and leaves the intention to the jury as matter of fact. For it is not till afterwards that he comes to answer the prisoner's objection in point of law, as the chief justice in terms puts it: "There is another thing," said Lord Chief Justice Holt, "he did insist upon, and that is matter of law. The statute of the twenty-fifth of Edward the Third was read, which is the great statute about treasons, and that does contain divers species of treason, and declares what shall be treason: one treason is the compassing and imagining the death of the king; another is the levying war. Now, says he" (*i. e.*, Freind), "here is no war actually levied; and a bare conspiracy to levy war does not come within the law against treason." To pause here a little. Freind's argument was this: Whatever my intentions might be; whatever my object of levying war might have been; whatever might have been my design to levy it; however the destruction of the king might have been

effected by my conspiracy, if it had gone on; and however it might have been my intention that it should, it is not treason within the twenty-fifth of Edward the Third. To which Holt replied, a little incorrectly in language, but right in substance: "Now for that I must tell you, if there be only a conspiracy to levy war, it is not treason;" *i. e.*, it is not a substantive treason; it is not a treason in the abstract. "But if the design and conspiracy be either to kill the king, or to depose him, or imprison him, or put any force or restraint upon him," *i. e.*, personal restraint by force, "and the way of effecting these purposes is by levying a war, there the conspiracy and consultation, to levy war for that purpose, is high treason, though no war be levied; for such consultation and conspiracy is an overt act, proving the compassing the death of the king." But what sort of war is it, the bare conspiracy to levy which is an overt act to prove a design against the king's life, though no war be actually levied? Gentlemen, Lord Holt himself illustrates this matter so clearly, that if I had any thing at stake, short of the honor and life of the prisoner, I might sit down as soon as I had read it; for if one did not know it to be an extract from an ancient trial, one would say it was admirably and accurately written for the present purpose. It is a sort of prophetic bird's-eye view of what we are engaged in at this moment. "There

may be war levied," continues Lord Holt in Freind's case, "without any design upon the king's person, which, if actually levied, is high treason, though purposing and designing such a levying of war is not so. As for example: if persons do assemble themselves, and act with force, in opposition to some law, and hope thereby to get it repealed; this is a levying war, and treason, though the purposing and designing of it is not so. So when they endeavor, in great numbers, with force, to make reformation of their own heads, without pursuing the methods of the law, that is a levying war, but the purpose and designing is not so. But if there be, as I told you, a purpose and design to destroy the king, and" (not or to depose him, but and to depose him) "to depose him from his throne, which is proposed and designed to be effected by war that is to be levied; such a conspiracy and consultation to levy war for the bringing this to pass," *i. e.*, for bringing the king's death to pass, "is an overt act of high treason. So that, gentlemen, as to that objection which he makes, in point of law, it is of no force, if there be evidence sufficient to convince you that he did conspire to levy war for such an end." And he concludes by again leaving the intention expressly to the jury.

It is the end, therefore, for which the war is to be levied, and not the conspiracy to do any act

which the law considers as a levying of war, that constitutes an overt act of treason against the king's life. The most rebellious movements towards a reform in government, not directed against the king's person, will not, according to Lord Holt, support the charge before you. I might surround the house of commons with fifty thousand men, for the express purpose of forcing them, by duress, to repeal any law that is offensive to me, or to pass a bill for altering elections, without being a possible object of this prosecution. Under the other branch of the statute I might indeed be convicted of levying war, but not of compassing the king's death; and if I only conspired and meditated this rising to repeal laws by rebellion, I could be convicted of nothing but a high misdemeanor. I would give my friends the case upon a special verdict, and let them hang me if they could. How much more might I give it them if the conspiracy imputed was not to effect a reform by violence, but, as in the case before us, by pamphlets and speeches, which might produce universal suffrage, which universal suffrage might eat out and destroy aristocracy, which destruction might lead to the fall of monarchy, and, in the end, to the death of the king. Gentlemen, if the cause were not too serious, I should liken it to the play with which we amuse our children: This is the cow with a crumpledy horn, which gored the dog,

that worried the cat, that ate the rat, etc., ending in the house which Jack built.

I do therefore, maintain, upon the express authority of Lord Holt, that, to convict a prisoner, charged with this treason, it is absolutely necessary that you should be satisfied of his intention against the king's life, as charged in the indictment, and that no design against the king's government will even be a legal overt act to be left to a jury as the evidence of such an intention, much less the substantive and consummate treason, unless the conspiracy be directly pointed against the person of the king. The case of Lord George Gordon is opposed to this as a high and modern decision; and the attorney-general descended indeed to a very humble and lowly authority, when he sought to maintain his argument by my own speech, as counsel for the unfortunate person. The passage of it alluded to lies at this moment before me; and I shall repeat it, and re-maintain it to-day. But let it first be recollected, that Lord George Gordon was not indicted for compassing or imagining the king's death, under the first branch of the statute, but for levying war under the second. It never indeed entered into the conception of any man living, that such an indictment could have been maintained, or attempted against him; I appeal to one of your lordships now present, for whose learning and capacity I have the greatest

and highest respect, and who sat upon that trial, that it was not insinuated from the bar, much less adjudged by the court, that the evidence had any bearing upon the first branch of treason. I know that I may safely appeal to Mr. Justice Buller for the truth of this assertion; and nothing surely in the passage from my address to the jury, has the remotest allusion to assimilate a conspiracy against the king's government, collateral to his person, with a treason against his life. My words were, "To compass, or imagine the death of the king; such imagination, or purpose of the mind, visible only to its great Author, being manifested by some open act; an institution obviously directed, not only to the security of his natural person, but to the stability of the government; the life of the prince being so interwoven with the constitution of the state, that an attempt to destroy the one, is justly held to be a rebellious conspiracy against the other."

What is that but to say that the king's sacred life is guarded by higher sanctions than the ordinary laws, because of its more inseparable connection with the public security, and that an attempt to destroy it is therefore made treason against the state? But the attorney-general is, I am sure, too correct in his logic to say, that the converse of the proposition is therefore maintained, and that an attack upon the king's authority, without design

upon his person, is affirmed by the same expression to be treason against his life. His correct and enlarged mind is incapable of such confusion of ideas.

But it is time to quit what fell from me upon this occasion, in order to examine the judgment of the court, and to clothe myself with the authority of that great and venerable magistrate, whose memory will always be dear to me, not only from the great services he rendered to his country in the administration of her justice, but on account of the personal regard and reverence I had for him when living.

Lord Mansfield, in delivering the law to the jury upon Lord George Gordon's trial,—I appeal to the trial itself, and to Mr. Justice Buller, now present, who agreed in the judgment,—expressly distinguished between the safety provided for the king's natural person, by the first branch of the statute, and the security of his executive power, under the second. That great judge never had an idea that the natural person of the king, and the majesty of the king, were the same thing, nor that the treasons against them were synonymous; he knew, on the contrary, for he knew all that was to be known, that as substantive crimes they never had been blended. I will read his own words: "There are two kinds of levying war: one against the person of the king; to imprison, to dethrone, . . ."

or to kill him ; or to make him change measures, or remove counsellors : the other, which is said to be levied against the majesty of the king, or, in other words, against him in his regal capacity ; as when a multitude rise and assemble to attain by force and violence any object of a general public nature ; that is levying war against the majesty of the king ; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government ; and, by force of arms, to restrain the king from reigning according to law." But then observe, gentlemen, the war must be actually levied ; and here again, I appeal to Mr. Justice Buller, for the words of Lord Mansfield, expressly referring for what he said to the authority of Lord Holt, in Sir John Freind's case, already cited, " Lord Chief Justice Holt, in Sir John Freind's case, says : If persons do assemble themselves and act with force, in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is a levying war and treason. In the present case it don't rest upon an implication that they hoped by opposition to a law to get it repealed ; but the prosecution proceeds upon the direct ground, that the object was, by force and violence, to compel the legislature to repeal a law ; and therefore, without any doubt, I tell you the joint opinion of us all, that, if this multitude assembled with intent,

by acts of force and violence, to compel the legislature to repeal a law, it is high treason." Let these words of Lord Mansfield be taken down, and then show me the man, let his rank and capacity be what they may, who can remove me from the foundation on which I stand, when I maintain that a conspiracy to levy war for the object of reformation, is not only not the high treason charged by this indictment, when not directly pointed against the king's person, but that even the actual levying it would not amount to the constitution of the crime.

But this is the least material part of Lord Mansfield's judgment, as applicable to the present question; for he expressly considers the intention of the prisoner, whatever be the act of treason alleged against him, to be all in all. So far from holding the probable or even inevitable consequences of the thing done as constituting the quality of the act, he pronounces them to be nothing as separated from the criminal design to produce them. Lord George Gordon assembled an immense multitude around the house of commons, a system so opposite to that of the persons accused before this commission, that it appears from the evidence they would not even allow a man to come amongst them, because he had been Lord George's attorney. The lords and commons were absolutely blockaded in the chambers of parliament; and if control was the intention of the

prisoner, it must be wholly immaterial what were the deliberations that were to be controlled; whether it was the continuance of Roman Catholics under penal laws, the repeal of the septennial act, or a total change of the structure of the house of commons, that was the object of violence; the attack upon the legislature of the country would have been the same. That the multitude were actually assembled round the houses, and brought there by the prisoner, it was impossible for me as his counsel even to think of denying, nor that their tumultuous proceedings were not in effect productive of great intimidation, and even danger, to the lords and commons, in the exercise of their authority; neither did I venture to question the law, that the assembling the multitude for that purpose, was levying war within the statute. Upon these facts therefore, applied to the doctrines we have heard upon this trial, there would have been nothing in Lord George Gordon's case to try; he must have been instantly, without controversy, convicted. But Lord Mansfield did not say to the jury, according to the doctrines that have been broached here, that if they found the multitude assembled by the prisoner, were in fact palpably intimidating and controlling the parliament in the exercise of their functions, he was guilty of high treason, whatever his intentions might have been. He did not tell them that the inevitable conse-

quence of assembling a hundred thousand people round the legislature, being a control on their proceedings, was therefore a levying war; though collected from folly and rashness, without the intention of violence or control. If this had been the doctrine of Lord Mansfield, there would, as I said before, have been nothing to try; for I admitted in terms, that his conduct was the extremity of rashness, and totally inconsistent with his rank in the country, and his station as a member of the house of commons. But the venerable magistrate never for a moment lost sight of the grand ruling principle of criminal justice, that crimes can have no seat but in the mind; and upon the prisoner's intention, and upon his intention alone, he expressly left the whole matter to the jury, with the following directions, which I shall read verbatim from the trial: "Having premised these several propositions and principles, the subject matter for your consideration naturally resolves itself into two points:

"First, whether this multitude did assemble and commit acts of violence, with intent to terrify and compel the legislature to repeal the act called Sir George Saville's. If upon this point your opinion should be in the negative, that makes an end of the whole, and the prisoner ought to be acquitted; but if your opinion should be, that the intent of this

multitude, and the violence they committed, was to force a repeal, there arises a second point:

“Whether the prisoner at the bar incited, encouraged, promoted, or assisted in raising this insurrection, and the terror they carried with them, with the intent of forcing a repeal of this law.

“Upon these two points, which you will call your attention to, depends the fate of this trial; for, if either the multitude had no such intent, or, supposing they had, if the prisoner was no cause, did not excite, and took no part in conducting, counselling, or fomenting the insurrection, the prisoner ought to be acquitted; and there is no pretence that he personally concurred in any act of violence.”

I therefore consider the case of Lord George Gordon as a direct authority in my favor.

To show that a conspiracy to depose the king, independently of ulterior intention against his life, is high treason within the statute, the attorney-general next supposes that traitors had conspired to depose King William, but still to preserve him as Stadtholder in Holland, and asks whether that conspiracy would not be a compassing his death. To that question I answer, that it would not have been a compassing of the death of King William, provided the conspirators could have convinced the jury that their firm and *bonâ fide* intention was to proceed no further, and that, under

that belief and impression, the jury, as they lawfully might, have negatived by their finding the fact of the intention against the king's natural existence. I have no doubt at all, that, upon such a finding, no judgment of treason could be pronounced; but the difficulty would be, to meet with a jury, who, upon the bare evidence of such a conspiracy, would find such a verdict. There might be possible circumstances to justify such a negative of the intention, but they must come from the prisoner. In such a case the crown would rest upon the conspiracy to depose, which would be *prima facie* and cogent evidence of the compassing, and leave the hard task of rebutting it, on the defendants. I say the hard task, because the case put is of a direct rebellious force, acting against the king; not only abrogating his authority, but imprisoning and expelling his person from the kingdom. I am not seeking to abuse the reasons and consciences of juries in the examination of facts, but am only resisting the confounding them with arbitrary propositions of law.

Gentlemen, I hope I have now a right to consider that the existence of the high treason charged against the unfortunate man before you, is a matter of fact for your consideration upon the evidence. To establish this point, has been the scope of all that you have been listening to, with so much indulgence and patience. It was my inten-

tion to have further supported myself, by a great many authorities, which I have been laboriously extracting from the different books of the law; but I find I must pause here, lest I consume my strength in this preliminary part of the case, and leave the rest defective.

Gentlemen, the persons named in the indictment are charged with a conspiracy to subvert the rule, order, and government of this country; and it is material that you should observe most particularly the means by which it alleges this purpose was to be accomplished. The charge is not of a conspiracy to hold the convention in Scotland, which was actually held there; nor of the part they took in its actual proceedings; but the overt act, to which all the others are subsidiary and subordinate, is a supposed conspiracy to hold a convention in England, which never, in fact, was held; and consequently all the vast load of matter which it has been decided you should hear, that does not immediately connect itself with the charge in question, is only laid before you, as the court has repeatedly expressed it, to prove that in point of fact such proceedings were had, the quality of which is for your judgment; and as far, and as far only, as they can be connected with the prisoner, and the act which he stands charged with, to be left to you, as evidence of the intention with which

the holding of the second convention was projected.

This intention is therefore the whole cause, for the charge is not the agreement to hold a convention, which it is notorious, self-evident, and even admitted that they intended to hold; but the agreement to hold it for the purpose alleged, of assuming all the authority of the state and in fulfillment of the main intention against the life of the king. Unless, therefore, you can collect this double intention from the evidence before you, the indictment is not maintained.

Gentlemen, the charge being of a conspiracy, which, if made out in point of fact, involved beyond all controversy, and within the certain knowledge of the conspirators, the lives of every soul that was engaged in it, the first observation which I shall make to you, because in reason it ought to precede all others, is, that every act done by the prisoners, and every sentence written by them, in the remotest degree connected with the charge, or offered in evidence to support it, were done and written in the public face of the world; the transactions which constitute the whole body of the proof, were not those of a day, but in regular series of two years together; they were not the peculiar transaction of the prisoners, but of immense bodies of the king's subjects, in various parts of the kingdom, assembled without the

smallest reserve, and giving to the public, through the channel of the daily newspapers, a minute and regular journal of their whole proceedings. Not a syllable have we heard read, in the week's imprisonment we have suffered, that we had not all of us read for months and months, before the prosecution was heard of; and which, if we are not sufficiently satiated, we may read again upon the file of every coffee-house in the kingdom. It is admitted distinctly by the crown, that a reform in the house of commons is the ostensible purpose of all the proceedings laid before you; and that the attainment of that object only, is the grammatical sense of the great body of the written evidence. It rests, therefore, with the crown to show, by legal proof, that this ostensible purpose, and the whole mass of correspondence upon the table, was only a cloak to conceal a hidden machination, to subvert by force the entire authorities of the kingdom, and to assume them to themselves. Whether a reform of parliament be a wise or an unwise expedient; whether, if it were accomplished, it would ultimately be attended with benefits, or dangers, to the country, I will not undertake to investigate, and for this plain reason; because it is wholly foreign to the subject before us. But when we are trying the integrity of men's intentions, and are examining whether their complaints of defects in the representation of the house of com-

mons be *bona fide*, or only a mere stalking-horse for treason and rebellion, it becomes a most essential inquiry, whether they be the first who have uttered these complaints; whether they have taken up notions for the first time, which never occurred to others; and whether, in seeking to interfere practically in an alteration of the constitution, they have manifested, by the novelty of their conduct, a spirit inconsistent with affection for the government, and subversive of its authority.

Gentlemen, I confess for one, for I think the safest way of defending a person for his life before an enlightened tribunal is to defend him ingenuously, I confess for one, that if the defects in the constitution of parliament, which are the subject of the writings, and the foundation of all the proceedings before you, had never occurred to other persons at other times, or, if not new, they had only existed in the history of former conspiracies, I should be afraid you would suspect, at least, that the authors of them were plotters of mischief. In such a case I should naturally expect that you would ask yourselves this question: Why should it occur to the prisoner at the bar, and to a few others in the year 1794, immediately after an important revolution in another country, to find fault, on a sudden, with a constitution which had endured for ages, without the imputation of defect, and which no good subject had ever thought of touching with

the busy hand of reformation? I candidly admit that such a question would occur to the mind of every reasonable man, and could admit no favorable answer. But surely this admission entitles me, on the other hand, to the concession, that if, in comparing their writings, and examining their conduct with the writings and conduct of the best and most unsuspected persons in the best and most unsuspected times, we find them treading in the paths which have distinguished their highest superiors; if we find them only exposing the same defects, and pursuing the same or similar courses for their removal, it would be the height of wickedness and injustice to torture expressions, and pervert conduct, into treason and rebellion, which had recently lifted up others to the love of the nation, to the confidence of the sovereign, and to all the honors of the state. The natural justice of this reasoning is so obvious, that we have only to examine the fact; and, considering under what auspices the prisoners are brought before you, it may be fit that I should set out with reminding you, that the great Earl of Chatham began and established the fame and glory of his life upon the very cause which my unfortunate clients were engaged in, and that he left it as an inheritance to the present minister of the crown, as the foundation of his fame and glory after him; and his fame and glory were accordingly raised

upon it; and if the crown's evidence had been carried as far back as it might have been—for the institution of only one of the two London societies is before us—you would have found that the Constitutional Society owed its earliest credit with the country, if not its very birth, to the labor of the present minister, and its professed principles to his grace the Duke of Richmond, high also in his majesty's present councils, whose plan of reform has been clearly established by the whole body of the written evidence, and by every witness examined for the crown, to have been the type and model of all the societies in the supposed conspiracy, and uniformly acted upon in form and in substance by the prisoner before you, up to the very period of his confinement.

Gentlemen, the Duke of Richmond's plan was universal suffrage and annual parliaments; and urged too with a boldness, which, when the comparison comes to be made, will leave in the background the strongest figures in the writings on the table. I do not say this sarcastically; I mean to speak with the greatest respect of his grace, both with regard to the wisdom and integrity of his conduct; for although I have always thought in politics with the illustrious person whose letter was read to you; although I think with Mr. Fox, that annual parliaments and universal suffrage would be nothing like an improvement in the con-

stitution; yet I confess that I find it easier to say so than to answer the Duke of Richmond's arguments on the subject; and I must say besides, speaking of his grace from a long personal knowledge, which began when I was counsel for his relation, Lord Keppel, that, independently of his illustrious rank, which secures him against the imputation of trifling with its existence, he is a person of enlarged understanding, of extensive reading, and of much reflection; and that his book cannot therefore be considered as the effusion of rashness and folly, but as the well-weighed, though perhaps erroneous, conclusions drawn from the actual condition of our affairs, viz., that without a speedy and essential reform in parliament — and there my opinion goes along with him — the very being of the country, as a great nation, would be lost. This plan of the Duke of Richmond, was the grand main-spring of every proceeding we have to deal with; you have had a great number of loose conversations reported from societies, on which no reliance can be had; sometimes they have been garbled by spies, sometimes misrepresented by ignorance; and even if correct, have frequently been the extravagances of unknown individuals, not even uttered in the presence of the prisoner, and totally unconnected with any design; for whenever their proceedings are appealed to, and their real object examined, by living mem-

bers of them, brought before you by the crown, to testify them under the most solemn obligations of truth, they appear to have been following, in form and in substance, the plans adopted within our memories, not only by the Duke of Richmond, but by hundreds of the most eminent men in the kingdom. The Duke of Richmond formally published his plan of reform in the year 1780, in a letter to Lieutenant-Colonel Sharman, who was at that time practically employed upon the same object in Ireland; and this is a most material part of the case; because you are desired to believe that the terms convention, and delegates, and the holding the one, and sending the other, were all collected from what had recently happened in France, and were meant as the formal introduction of her republican constitution; but they who desire you to believe all this, do not believe it themselves; because they know certainly, and it has indeed already been proved by their own witnesses, that conventions of reformers were held in Ireland, and delegates regularly sent to them, whilst France was under the dominion of her ancient government. They knew full well that Colonel Sharman, to whom the Duke's letter was addressed, was at that very moment supporting a convention in Ireland, at the head of ten thousand men in arms, for the defence of their country, without any commission from the king, any more than poor Franklow had, who is

now in Newgate for regimenting sixty. These volunteers asserted and saved the liberties of Ireland; and the king would, at this day, have had no more subjects in Ireland than he now has in America, if they had been treated as traitors to the government. It was never imputed to Colonel Sharman and the volunteers, that they were in rebellion; yet they had arms in their hands, which the prisoners never dreamed of having; whilst a grand general convention was actually sitting under their auspices at the Royal Exchange of Dublin, attended by regular delegates from all the counties in Ireland. And who were these delegates? I will presently tear off their names from this paper and hand it to you. They were the greatest, best, and proudest names in Ireland; men who had the wisdom to reflect, before it was too late for reflection, that greatness is not to be supported by tilting at inferiors, till, by the separation of the higher from the lower orders of mankind, every distinction is swept away in the tempest of revolution; but in the happy harmonization of the whole community; by conferring upon the people their rights; sure of receiving the auspicious return of affection, and of insuring the stability of the government, which is erected upon that just and natural basis. Gentlemen, they who put this tortured construction upon conventions and delegates, know also that repeated meet-

ings of reforming societies, both in England and Scotland, had assumed about the same time the style of conventions, and had been attended by regular delegates long before the phase had, or could have had, any existence in France; and that upon the very model of these former associations, a formal convention was actually sitting at Edinburgh, with the lord chief baron of Scotland in the chair, for promoting a reform in parliament, at the very moment the Scotch convention, following its example, assumed that title.

To return to this letter of the Duke of Richmond: It was written to Colonel Sharman, in answer to a letter to his grace, desiring to know his plan of reform, which he accordingly communicated by the letter which is in evidence; and which plan was neither more nor less than that adopted by the prisoners, of surrounding parliament, unwilling to reform its own corruptions, not by armed men, or by importunate multitudes, but by the still and universal voice of a whole people claiming their known and unalienable rights. This is so precisely the plan of the Duke of Richmond, that I have almost borrowed his expressions. His grace says: "The lesser reform has been attempted with every possible advantage in its favor; not only from the zealous support of the advocates for a more effectual one, but from the assistance of men of great weight, both in and out of power.

But with all these temperaments and helps it has failed. Not one proselyte has been gained from corruption, nor has the least ray of hope been held out from any quarter, that the house of commons was inclined to adopt any other mode of reform. The weight of corruption has crushed this more gentle, as it would have defeated, any more efficacious, plan in the same circumstances. From that quarter, therefore, I have nothing to hope. It is from the people at large that I expect any good; and I am convinced, that the only way to make them feel that they are really concerned in the business, is to contend for their full, clear, and indisputable rights of universal representation." Now how does this doctrine apply to the defence of the prisoner? I maintain that it has the most decisive application; because this book has been put into the hands of the crown witnesses, who have one and all of them recognized it, and declared it to have been, *bona fide*, the plan which they pursued.

But are the crown's witnesses worthy of credit? If they are not, let us return home, since there is no evidence at all, and the cause is over. All the guilt, if any there be, proceeds from their testimony; if they are not to be believed, they have proved nothing; since the crown cannot force upon you that part of the evidence which suits its purpose, and ask you to reject the other which

does not. The witnesses are either entirely credible, or undeserving of all credit, and I have no interest in the alternative. This is precisely the state of the cause. For, with regard to all the evidence that is written, let it never be forgotten, that it is not upon me to defend my clients against it, but for the crown to extract from it the materials of accusation. They do not contend that the treason is upon the surface of it, but in the latent intention; which intention must, therefore, be supported by extrinsic proof; but which is, nevertheless, directly negatived and beat down by every witness they have called, leaving them nothing but commentaries and criticisms against both fact and language, to which, for the present, I shall content myself with replying in the authoritative language of the court, in the earliest stage of their proceedings:

“If there be ground to consider the professed purpose of any of these associations, a reform in parliament, as mere color, and as a pretext held out in order to cover deeper designs — designs against the whole constitution and government of the country; the case of those embarked in such designs is that which I have already considered. Whether this be so, or not, is mere matter of fact; as to which I shall only remind you, that an inquiry into a charge of this nature, which undertakes to make out that the ostensible purpose is a

mere veil, under which is concealed a traitorous conspiracy, requires cool and deliberate examination, and the most attentive consideration; and that the result should be perfectly clear and satisfactory. In the affairs of common life, no man is justified in imputing to another a meaning contrary to what he himself expresses, but upon the fullest evidence." To this, though it requires nothing to support it, either in reason or authority, I desire to add the direction of Lord Chief Justice Holt to the jury, on the trial of Sir John Perkyms :

"Gentlemen, it is not fit that there should be any strained or forced construction put upon a man's actions when he is tried for his life. You ought to have a full and satisfactory evidence that he is guilty, before you pronounce him so."

In this assimilation of the writings of the societies to the writings of the Duke of Richmond and others, I do not forget that it has been truly said by the lord chief justice, in the course of this very cause, that ten or twenty men's committing crimes, furnishes no defence for other men in committing them. Certainly it does not; and I fly to no such sanctuary; but in trying the prisoner's intentions, and the intentions of those with whom he associated and acted, if I can show them to be only insisting upon the same principles that have distinguished the most eminent men for wisdom and virtue in the country, it will

not be very easy to declaim or argue them into the pains of death, whilst our bosoms are glowing with admiration at the works of those very persons who would condemn them.

Gentlemen, it has been too much the fashion of late to overlook the genuine source of all law and authority, but more especially totally to forget the character of the British house of commons as a representative of the people; whether this has arisen from that assembly's having itself forgotten it, would be indecent for me to inquire into or to insinuate; but I shall preface the authorities which I mean to collect in support of the prisoner, with the opinion on that subject of a truly celebrated writer, whom I wish to speak of with great respect; I should, indeed, be ashamed, particularly at this moment, to name him invidiously, whilst he is bending beneath the pressure of a domestic misfortune, which no man out of his own family laments more sincerely than I do.* No difference of opinion can ever make me forget to acknowledge the sublimity of his genius, the vast reach of his understanding, and his universal acquaintance with the histories and constitutions of nations; I also disavow the introduction of the writings with the view of involving the author in any apparent inconsistencies, which would tend, indeed, to defeat rather than to advance my purpose. I stand here

* Mr. Burke's son was then dying.

to-day, to claim at your hands, a fair and charitable interpretation of human conduct, and I shall not set out with giving an example of uncharitableness. A man may have reason to change his opinions, or perhaps the defect may be in myself, who collect that they are changed; I leave it to God to judge of the heart; my wish is, that Christian charity may prevail; that the public harmony which has been lost may be restored; that all England may re-unite in the bonds of love and affection; and that, when the court is broken up by the acquittal of the prisoners, all heart-burnings and animosities may cease; that, whilst yet we work in the light, we may try how we can save our country by a common effort; and that, instead of shamelessly setting one half of society against the other by the force of armed associations, and the terrors of courts of justice, our spirits and our strength may be combined in the glorious cause of our country. By this, I do not mean in the cause of the present war, which I protest against as unjust, calamitous, and destructive; but this is not the place for such a subject; I only advert to it to prevent mistake or misrepresentation.

The history and character of the English house of commons was formerly thus described by Mr. Burke: "The house of commons was supposed originally to be no part of the standing government of this country, but was considered as a con-

trol issuing immediately from the people, and speedily to be resolved into the mass from whence it arose; in this respect it was in the higher part of government what juries are in the lower. The capacity of a magistrate being transitory, and that of a citizen permanent, the latter capacity, it was hoped, would of course preponderate in all discussions, not only between the people and the standing authority of the crown, but between the people and the fleeting authority of the house of commons itself. It was hoped, that, being of a middle nature, between subject and government, they would feel with a more tender and nearer interest, everything that concerned the people, than the other remoter and more permanent parts of legislature.

“Whatever alterations time and the necessary accommodation of business may have introduced, this character can never be sustained, unless the house of commons shall be made to bear some stamp of the actual disposition of the people at large; it would, among public misfortunes, be an evil more natural and tolerable, that the house of commons should be infected with every epidemical frenzy of the people, as this would indicate some consanguinity, some sympathy of nature with their constituents, than that they should, in all cases, be wholly untouched by the opinions and feelings of the people out of doors. By this want of sym-

pathy, they would cease to be a house of commons.

“The virtue, spirit, and essence of a house of commons, consists in its being the express image of the feelings of the nation. It was not instituted to be a control upon the people, as of late it has been taught, by a doctrine of the most pernicious tendency, but as a control for the people.”

He then goes on to say, that to give a technical shape, a color, dress, and duration to popular opinion, is the true office of the house of commons. Mr. Burke is unquestionably correct; the control upon the people is the king's majesty, and the hereditary privileges of the peers; the balance of the state is the control for the people upon both, in the existence of the house of commons; but how can that control exist for the people, unless they have the actual election of the house of commons, which, it is most notorious, they have not? I hold in my hand a state of the representation which, if the thing were not otherwise notorious, I would prove to have been lately offered in proof to the house of commons, by an honorable friend of mine now present, whose motion I had the honor to second, where it appeared that twelve thousand people return near a majority of the house of commons, and those again, under the control of about two hundred. But though these facts were admitted, all redress, and even discussion, was refused. What ought to be said of a

house of commons that so conducts itself, it is not for me to pronounce; I will appeal, therefore, to Mr. Burke, who says, "that a house of commons, which in all disputes between the people and administration, presumes against the people, which punishes their disorders, but refuses even to inquire into their provocations, is an unnatural, monstrous state of things in the constitution."

But this is nothing; Mr. Burke goes on afterwards to give a more full description of parliament, and in stronger language, let the solicitor-general take it down for his reply, than any that has been employed by those who are to be tried at present as conspirators against its existence. I read the passage to warn you against considering hard words against the house of commons as decisive evidence of treason against the king. The passage is in a well-known work called, "Thoughts on the Causes of the Present Discontents;" and such discontents will always be present whilst their causes continue. The word present will apply just as well now, and much better than to the times when the honorable gentleman wrote his book; for we are now in the heart and bowels of another war, and groaning under its additional burdens. I shall therefore leave it to the learned gentleman who is to reply, to show us what has happened since our author wrote, which renders the parliament less liable to the same observations now.

“It must always be the wish of an unconstitutional statesman, that a house of commons, who are entirely dependent upon him, should have every right of the people entirely dependent upon their pleasure. For 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 violence; 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 in its original stamina irresistible principles of decay and dissolution.”

What is this but saying that the house of commons is a settled and scandalous abuse fastened upon the people, instead of being an antagonist power for their protection; an odious instrument of power in the hands of the crown, instead of a popular balance against it? Did Mr. Burke mean that the prerogative of the crown, properly under

stood and exercised, was an antiquated prejudice? Certainly not; because his attachment to a properly balanced monarchy is notorious; why then is it to be fastened upon the prisoners, that they stigmatize monarchy, when they also exclaim only against its corruptions? In the same manner, when he speaks of the abuses of parliament, would it be fair to Mr. Burke to argue, from the strict legal meaning of the expression, that he included, in the censure on parliament, the king's person, or majesty, which is part of the parliament? In examining the work of an author you must collect the sense of his expressions from the subject he is discussing; and if he is writing of the house of commons as it affects the structure and efficacy of the government, you ought to understand the word parliament so as to meet the sense and obvious meaning of the writer. Why then is this common justice refused to others? Why is the word parliament to be taken in its strictest and least obvious sense against a poor shoemaker, or any plain tradesman at a Sheffield club, while it is interpreted in its popular, though less correct acceptation, in the works of the most distinguished scholar of the age? Add to this, that the cases are not at all similar: for Mr. Burke uses the word parliament throughout, when he is speaking of the house of commons; without any concomitant words which convey an explanation, but the sense

of his subject; whereas parliament is fastened upon the prisoner as meaning something beyond the house of commons, when it can have no possible meaning beyond it; since from the beginning to the end it is joined with the words "representation of the people;" the representation of the people in parliament! Does not this most palpably mean the house of commons, when we know that the people have no representation in either of the other branches of government?

A letter has been read in evidence from Mr. Hardy to Mr. Fox, where he says their object was universal representation. Did Mr. Fox suppose, when he received this letter, that it was from a nest of republicans clamoring publicly for an universal representative constitution like that of France? If he had, would he have sent the answer he did, and agreed to present their petition? They wrote also to the Society of the Friends of the People, and invited them to send delegates to the convention; the attorney-general, who has made honorable and candid mention of that body, will not suppose that it would have contented itself with refusing the invitation in terms of cordiality and regard, if, with all the knowledge they had of their transactions, they had conceived themselves to have been invited to the formation of a body, which was to over-rule and extinguish all the authorities of the state; yet

upon the perversion of these two terms, parliament and convention, against their natural interpretation, against a similar use of them by others, and against the solemn explanation of them by the crown's own witnesses, this whole fabric of terror and accusation stands for its support. Letters, it seems, written to other people, are to be better understood by the gentlemen round this table, who never saw them till months after they were written, than by those to whom they were addressed and sent; and no right interpretation, forsooth, is to be expected from writings when pursued in their regular series, but they are to be made distinct by binding them up in a large volume, alongside of others totally unconnected with them, and the very existence of whose authors was unknown to one another.

I will now, gentlemen, resume the reading of another part of Mr. Burke, and a pretty account it is of this same parliament: "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 stronghold of parliament itself. If they have any evil design to which there is no ordinary legal power commensurate, they bring it into parliament. There the whole is executed from the beginning

to the end; and the power of obtaining their object absolute; and the safety in the proceeding perfect; no rules to confine, nor after-reckonings to terrify. For parliament cannot, with any great propriety, punish others, for things in which they themselves have been accomplices. Thus its control upon the executory power is lost."

This is a proposition universal. It is not that the popular control was lost under this or that administration, but, generally, that the people have no control in the house of commons. Let any man stand up and say that he disbelieves this to be the case; I believe he would find nobody to believe him. Mr. Burke pursues the subject thus: "The distempers of monarchy were the great subjects of apprehension and redress in the last century—in this, the distempers of parliament." Here, the word parliament, and the abuses belonging to it, are put in express opposition to the monarchy, and cannot therefore comprehend it; the distempers of parliament then are objects of serious apprehension and redress. What distempers? Not of this or that year, but the habitual distempers of parliament; and then follows the nature of the remedy, which shows that the prisoners are not singular in thinking that it is by the voice of the people only that parliament can be corrected. "It is not in parliament alone," says Mr. Burke, "that the remedy for parliamentary disorders can be com-

pleted; and hardly, indeed, can it begin there. Until a confidence in government is re-established, the people ought to be excited to a more strict and detailed attention to the conduct of their representatives. Standards for judging more systematically upon their conduct ought to be settled in the meetings of counties and corporations, and frequent and correct lists of the voters in all important questions ought to be procured. By such means something may be done."

It was the same sense of the impossibility of a reform in parliament, without a general expression of the wishes of the people, that dictated the Duke of Richmond's letter; all the petitions in 1780 had been rejected by parliament; this made the Duke of Richmond exclaim, that from that quarter no redress was to be expected, and that from the people alone he expected any good; and he, therefore, expressly invited them to claim and assert an equal representation as their indubitable and unalienable birthright. How to assert their rights, when parliament had already refused them without even the hope, as the Duke expressed it, of listening to them any more? Could the people's rights, under such circumstances, be asserted without rebellion? Certainly they might, for rebellion is, when bands of men within a state oppose themselves, by violence, to the general will, as expressed or implied by the public authority; but the sense

of a whole people, peaceably collected, and operating by its natural and certain effect upon the public councils, is not rebellion, but is paramount to, and the parent of, authority itself.

Gentlemen, I am neither vindicating, nor speaking, the language of inflammation or discontent; I shall speak nothing that can disturb the order of the state; I am full of devotion to its dignity and tranquility, and would not for worlds let fall an expression in this or in any other place that could lead to disturbance or disorder; but for that very reason, I speak with firmness of the rights of the people, and am anxious for the redress of their complaints; because I believe a system of attention to them to be a far better security and establishment of every part of the government, than those that are employed to preserve them. The state and government of a country rest, for their support, on the great body of the people, and I hope never to hear it repeated, in any court of justice, that peaceably to convene the people upon the subject of their own privileges, can lead to the destruction of the king; they are the king's worst enemies who hold this language. It is a most dangerous principle, that the crown is in jeopardy if the people are acquainted with their rights, and that the collecting them together to consider them, leads inevitably to the destruction of the sovereign. Do these gentlemen mean to say that the king sits

upon his throne without the consent, and in defiance of the wishes of the great body of his people, and that he is kept upon it by a few individuals who call themselves his friends, in exclusion of the rest of his subjects? Has the king's inheritance no deeper or wider roots than this? Yes, gentlemen, it has; it stands upon the love of the people, who consider their own inheritance to be supported by the king's constitutional authority; this is the true prop of the throne; and the love of every people upon earth will forever uphold a government, founded, as ours is, upon reason and consent, as long as government shall be itself attentive to the general interests which are the foundations and the ends of all human authority. Let us banish, then, these unworthy and impolitic fears of an unrestrained and enlightened people; let us not tremble at the rights of man, but, by giving to men their rights, secure their affections, and through their affections, their obedience; let us not broach the dangerous doctrine, that the rights of kings and of men are incompatible. Our government at the revolution began upon their harmonious incorporation; and Mr. Locke defended King William's title upon no other principle than the rights of man. It is from the revered work of Mr. Locke, and not from the revolution in France, that one of the papers in the evidence—the most stigmatized—most obviously flowed; for

it is proved that Mr. Yorke held in his hand Mr. Locke upon government, when he delivered his speech on the Castle Hill at Sheffield, and that he expatiated largely upon it; well, indeed, might the witness say he expatiated largely, for there are many well-selected passages taken verbatim from the book; and here, in justice to Mr. White, let me notice the fair and honorable manner in which, in the absence of the clerk, he read this extraordinary performance. He delivered it not merely with distinctness, but in a manner so impressive, that, I believe, every man in court was affected by it.

Gentlemen, I am not driven to defend every expression; some of them are undoubtedly improper, rash and inflammatory; but I see nothing in the whole taken together, even if it were connected with the prisoner, that goes at all to an evil purpose in the writer. But Mr. Attorney-General has remarked upon this proceeding at Sheffield, and whatever falls from a person of his rank and just estimation deserves great attention, he has remarked that it is quite apparent they had resolved not to petition. They had certainly resolved not at that season to petition, and that seems the utmost which can be maintained from the evidence. But supposing they had negatived the measure altogether; is there no way by which the people may actively associate for the purposes of

a reform in parliament, but to consider of a petition to the house of commons? Might they not legally assemble to consider the state of their liberties, and the conduct of their representatives? Might they not legally form conventions or meetings, for the name is just nothing, to adjust a plan of rational union for a wise choice of representatives when parliament should be dissolved? May not the people meet to consider their interests preparatory to, and independently of, a petition for any specific object? My friend seems to consider the house of commons as a substantive and permanent part of the constitution; he seems to forget that the parliament dies a natural death; that the people then re-enter into their rights, and that the exercise of them is the most important duty that can belong to social man; how are such duties to be exercised with effect, on momentous occasions, but by concert and communion? May not the people, assembled in their elective districts, resolve to trust no longer those by whom they have been betrayed? May they not resolve to vote for no man who contributed by his voice to this calamitous war, which has thrown such grievous and unnecessary burdens upon them? May they not say: "We will not vote for those who deny we are their constituents; nor for those who question our clear and natural right to be equally represented?" Since it is illegal to carry

up petitions, and unwise to transact any public business attended by multitudes, because it tends to tumult and disorder, may they not, for that very reason, depute, as they have done, the most trusty of their societies to meet with one another to consider, without the specific object of petitions, how they may claim, by means which are constitutional, their imprescriptible rights? And here I must advert to an argument employed by the attorney-general, that the views of the societies towards universal suffrage, carried in themselves, however sought to be effected, an implied force upon parliament; for that, supposing by invading it with the vast pressure, not of the public arm, but of the public sentiment of the nation, the influence of which upon that assembly is admitted, ought to be weighty, it could have prevailed upon the commons to carry up a bill to the king for universal representation and annual parliaments, his majesty was bound to reject it; and could not, without a breach of his coronation oath, consent to pass it into an act; I cannot conceive where my friend met with this law, or what he can possibly mean by asserting that the king cannot, consistently with his coronation oath, consent to any law that can be stated or imagined, presented to him as the act of the two houses of parliament; he could not, indeed, consent to a bill sent up to him framed by a convention of delegates assuming

legislative functions; and if my friend could have proved that the societies, sitting as a parliament, had sent up such a bill to his majesty, I should have thought the prisoner, as a member of such a parliament, was at least in a different situation from that in which he stands at present; but as this is not one of the chimeras whose existence is contended for, I return back to ask, upon what authority it is maintained, that universal representation and annual parliaments could not be consented to by the king, in conformity to the wishes of the other branches of the legislature? on the contrary, one of the greatest men that this country ever saw, considered universal representation to be such an inherent part of the constitution, as that the king himself might grant it by his prerogative, even without the lords and commons; and I have never heard the position denied upon any other footing than the union with Scotland. But be that as it may, it is enough for my purpose that the maxim, that the king might grant universal representation, as a right before inherent in the whole people to be represented, stands upon the authority of Mr. Locke, the man, next to Sir Isaac Newton, of the greatest strength of understanding that England, perhaps, ever had; high, too, in the favor of King William, and enjoying one of the most exalted offices in the state. Mr. Locke says, book 2d, chap. 13, sect. 157 and 158: "Things

of this world are in so constant a flux, that nothing remains long in the same state. Thus people, riches, trade, and power, change their stations, flourishing, mighty cities come to ruin, and prove, in time, neglected desolate corners, whilst other unfrequented places grow into populous countries, filled with wealth and inhabitants. But things not always changing equally, and private interest often keeping up customs and privileges, when the reasons of them are ceased, it often comes to pass, that in governments, where part of the legislature consists of representatives chosen by the people, that in tract of time this representation becomes very unequal and disproportionate to the reasons it was at first established upon. To what gross absurdities the following of custom, when reason has left it, may lead, we may be satisfied, when we see the bare name of a town, of which there remains not so much as the ruins, where scarce so much housing as a sheep-cote, or more inhabitants than a shepherd is to be found, sends as many representatives to the grand assembly of law-makers as a whole county, numerous in people and powerful in riches. This, strangers stand amazed at, and every one must confess needs a remedy."

"*Salus populi suprema lex*, is certainly so just and fundamental a rule, that he who sincerely follows it, cannot dangerously err. If, therefore, the executive, who has the power of convoking

the legislative, observing rather the true proportion, than fashion of representation, regulates, not by old custom, but true reason, the number of members in all places that have a right to be distinctly represented, which no part of the people, however incorporated, can pretend to, but in proportion to the assistance which it affords to the public, it cannot be judged to have set up a new legislative, but to have restored the old and true one, and to have rectified the disorders which succession of time had insensibly, as well as inevitably introduced; for it being the interest as well as the intention of the people to have a fair and equal representative, 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; prerogative being nothing but a power, in the hands of the prince, to provide for the public good, in such cases, which depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct; whatsoever shall be done manifestly for the good of the people, and the establishing the government upon its true foundations, is, and always will be, just prerogative. Whatsoever cannot but be acknowledged to be of advantage to the society, and people in general, upon just and lasting measures, will always, when done, justify itself; and whenever the people shall choose their

representatives upon just and undeniably equal measures, suitable to the original frame of the government, it cannot be doubted to be the will and act of the society, whoever permitted or caused them so to do." But as the very idea of universal suffrage seems now to be considered not only to be dangerous to, but absolutely destructive of monarchy, you certainly ought to be reminded that the book which I have been reading, and which my friend kindly gives me a note to remind you of, was written by its immortal author, in defence of King William's title to the crown; and when Dr. Sacheverel ventured to broach those doctrines of power and non-resistance, which, under the same establishments, have now become so unaccountably popular; he was impeached by the people's representatives for denying their rights, which had been asserted and established at the glorious era of the revolution.

Gentlemen, if I were to go through all the matter which I have collected upon this subject, or which obtrudes itself upon my mind, from common reading, in a thousand directions, my strength would fail long before my duty was fulfilled; I had very little when I came into court, and I have abundantly less already; I must, therefore, manage what remains to the best advantage. I proceed, therefore, to take a view of such parts of the evidence as appear to me to be the most material for

the proper understanding of the case; I have had no opportunity of considering it, but in the interval which the indulgence of the court, and your own, has afforded me, and that has been but for a very few hours this morning; but it occurred to me, that the best use I could make of the time given to me was, if possible, to disembroil this chaos; to throw out of view everything irrelevant, which only tended to bring chaos back again, to take what remained in order of time, to select certain stages and resting-places, to review the effect of the transactions, as brought before us, and then to see how the written evidence is explained by the testimony of the witnesses who have been examined.

The origin of the Constitutional Society not having been laid in evidence before you, the first thing, both in point of date, and as applying to show the objects of the different bodies, is the original address and resolution of the Corresponding Society on its first institution, and when it first began to correspond with the other, which had formerly ranked amongst its members so many illustrious persons; and before we look to the matter of this institution, let us recollect that the objects of it were given without reserve to the public, as containing the principles of the association; and I may begin with demanding, whether the annals of this country, or indeed the universal

history of mankind, afford an instance of a plot and conspiracy voluntarily given up in its very infancy to government, and the whole public, and of which, to avoid the very thing that has happened, the arraignment of conduct at a future period, and the imputation of secrecy where no secret was intended, a regular notice by letter was left with the secretary of state, and a receipt taken at the public office, as a proof of the publicity of their proceeding, and the sense they entertained of their innocence. For the views and objects of the society, we must look to the institution itself, which you are indeed desired to look at by the crown; for their intentions are not considered as deceptions in this instance, but as plainly revealed by the very writing itself.

Gentlemen, there was a sort of silence in the court, I do not say an affected one, for I mean no possible offence to any one, but there seemed to be an effect expected from beginning, not with the address itself, but with the very bold motto to it, though in verse :

“Unblest by virtue, government a league
 Becomes, a circling junto of the great
 To rob by law ; religion mild, a yoke
 To tame the stooping soul, a trick of state
 To mask their rapine, and to share the prey.
 Without it, what are senates, but a face
 Of consultation deep and reason free,
 While the determin'd voice and heart are sold?
 What boasted freedom, but a sounding name?
 And what election, but a market vile,
 Of slaves self-bartered?”

I almost fancy I heard them say to me, what think you of that to set out with? Show me the parallel of that. Gentlemen, I am sorry, for the credit of the age we live in, to answer, that it is difficult to find the parallel; because the age affords no such poet as he who wrote it; these are the words of Thomson; and it is under the banners of his proverbial benevolence, that these men are supposed to be engaged in plans of anarchy and murder; under the banners of that great and good man, whose figure you may still see in the venerable shades of Hagley, placed there by the virtuous, accomplished, and public-spirited Lyttelton; the very poem, too, written under the auspices of his majesty's royal father, when heir-apparent to the crown of Great Britain, nay, within the very walls of Carlton House, which afforded an asylum to matchless worth and genius in the person of this great poet; it was under the roof of a Prince of Wales that the Poem of Liberty was written; and what better return could be given to a prince for his protection, than to blazon, in immortal numbers, the only sure title to the crown he was to wear, the freedom of the people of Great Britain? And it is to be assumed, forsooth, in the year 1794, that the unfortunate prisoner before you was plotting treason and rebellion, because, with a taste and feeling beyond his humble station, his first proceeding was ushered into view, under

the hallowed sanction of this admirable person, the friend and defender of the British constitution; whose countrymen are preparing at this moment (may my name descend amongst them to the latest posterity!) to do honor to his immortal memory. Pardon me, gentlemen, for this desultory digression—I must express myself as the current of my mind will carry me.

If we look at the whole of the institution itself, it exactly corresponds with the plan of the Duke of Richmond as expressed in the letters to Colonel Sharman, and to the high sheriff of Sussex; this plan they propose to follow, in a public address to the nation, and all their resolutions are framed for its accomplishment; and I desire to know in what they have departed from either, and what they have done which has not been done before, without blame or censure, in the pursuance of the same object. I am not speaking of the libels they may have written, which the law is open to punish, but what part of their conduct has, as applicable to the subject in question, been unprecedented. I have, at this moment, in my eye, an honorable friend of mine, and a distinguished member of the house of commons, who, in my own remembrance, I believe in 1780, sat publicly at Guildhall with many others, some of them magistrates of the city, as a convention of delegates, for the same objects; and, what is still more to the point, just before the

convention began to meet at Edinburgh, whose proceedings have been so much relied on, there was a convention regularly assembled, attended by the delegates from all the counties of Scotland, for the express and avowed purpose of altering the constitution of parliament; not by rebellion, but by the same means employed by the prisoner; the lord chief baron of Scotland sat in the chair, and was assisted by some of the first men in that country, and amongst others, by an honorable person to whom I am nearly allied, who is at the very head of the bar in Scotland, and most avowedly attached to the law and the constitution.* These gentlemen, whose good intentions never fell into suspicion, had presented a petition for the alteration of election laws, which the house of commons had rejected, and on the spur of that very rejection they met in a convention at Edinburgh, in 1793; and the style of their first meeting was, "A convention of delegates, chosen from the counties of Scotland, for altering and amending the laws concerning elections"—not for considering how they might be best amended—not for petitioning parliament to amend them; but for altering and amending the election laws. These meetings were regularly published, and I will prove, that their first resolution, as I have

* The Hon. Henry Erskine, Mr. Erskine's brother, then Dean of the Faculty of Advocates, at Edinburgh.

read it to you, was brought up to London, and delivered to the editor of the *Morning Chronicle*, by Sir Thomas Dundas, lately created a peer of Great Britain, and paid for by him as a public advertisement. Now, suppose any man had imputed treason or sedition to these honorable persons, what would have been the consequence? They would have been considered as infamous libellers and traducers, and deservedly hooted out of civilized life; why then are different constructions to be put upon similar transactions? Why is everything to be held up as *bonâ fide* when the example is set, and *malâ fide* when it is followed? Why have I not as good a claim to take credit for honest purpose in the poor man I am defending, against whom not a contumelious expression has been proved, as when we find the same expressions in the mouths of the Duke of Richmond or Mr. Burke? I ask nothing more from this observation, than that a sober judgment may be pronounced from the quality of the acts which can be fairly established; each individual standing responsible only for his own conduct, instead of having our imaginations tainted with cant phrases, and a farrago of writings and speeches, for which the prisoner is not responsible, and for which the authors, if they be criminal, are liable to be brought to justice.

But it will be said gentlemen, that all the con-

stitutional privileges of the people are conceded; that their existence was never denied or invaded; and that their right to petition and to meet for the expression of their complaints, founded or unfounded, was never called in question; these, it will be said, are the rights of subjects; but that the rights of man are what alarms them: every man is considered as a traitor who talks about the rights of man; but this bugbear stands upon the same perversion with its fellows.

The rights of man are the foundation of all government, and to secure them is the only reason of men's submitting to be governed; it shall not be fastened upon the unfortunate prisoner at the bar, nor upon any other man, that because these natural rights were asserted in France, by the destruction of a government which oppressed and subverted them—a process happily effected here by slow and imperceptible improvements—that, therefore they can only be so asserted in England, where the government, through a gradation of improvement, is well calculated to protect them. We are, fortunately, not driven in this country to the terrible alternatives which were the unhappy lot of France, because we have had a happier destiny in the forms of a free constitution; this, indeed, is the express language of many of the papers before you, that have been complained of; particularly in one alluded to by the attorney-gen-

eral, as having been written by a gentleman with whom I am particularly acquainted; and though in that spirited composition there are, perhaps, some expressions proceeding from warmth which he may not desire me critically to justify, yet I will venture to affirm, from my own personal knowledge, that there is not a man in court more honestly public-spirited and zealously devoted to the constitution of king, lords, and commons, than the honorable gentleman I allude to (Felix Vaughan, Esq., barrister-at-law); it is the phrase, therefore, and not the sentiment expressed by it, that can alone give justifiable offence; it is, it seems, a new phrase, commencing in revolutions, and never used before in discussing the rights of British subjects, and therefore can only be applied in the sense of those who framed it; but this is so far from being the truth, that the very phrase sticks in my memory, from the memorable application of it to the rights of subjects, under this and every other establishment, by a gentleman whom you will not suspect of using it in any other sense. The rights of man were considered by Mr. Burke, at the time that the great uproar was made upon a supposed invasion of the East India Company's charter, to be the foundation of, and paramount to all, the laws and ordinances of a state; the ministry, you may remember, were turned out for Mr. Fox's India Bill, which their opponents termed an attack

upon the chartered rights of man, or in other words, upon the abuses supported by a monopoly in trade. Hear the sentiments of Mr. Burke, when the natural and chartered rights of men are brought into contest. Mr. Burke, in his speech in the house of commons, expressed himself thus: "The first objection is, that the bill is an attack on the chartered rights of men. As to this objection, I must observe that the phrase of 'the chartered rights of men,' is full of affectation; and very unusual in the discussion of privileges conferred by charters of the present description. But it is not difficult to discover what end that ambiguous mode of expression, so often reiterated, is meant to answer.

"The rights of men, that is to say, the natural rights of mankind, are indeed sacred things; and if any public measure is proved mischievously to affect them, the objection ought to be fatal to that measure, even if no charter at all could be set up against it. And if these natural rights are further affirmed and declared by express covenants, clearly defined and secured against chicane, power, and authority, by written instruments and positive engagements, they are in a still better condition; they then partake not only of the sanctity of the object so secured, but of that solemn public faith itself, which secures an object of such importance. Indeed, this formal recognition, by the sovereign

power, of an original right in the subject, can never be subverted, but by rooting up the holding radical principles of government, and even of society itself."

The Dukè of Richmond also, in his public letter to the high sheriff of Sussex, rests the rights of the people of England upon the same horrible and damnable principle of the Rights of Man. Let gentlemen, therefore, take care they do not pull down the very authority which they came here to support; let them remember, that his majesty's family was called to the throne upon the very principle, that the ancient kings of this country had violated these sacred trusts; let them recollect, too, in what the violation was charged to exist: it was charged by the bill of rights to exist in cruel and infamous trials; in the packing of juries, and in disarming the people, whose arms are their unalienable refuge against oppression. But did the people of England assemble to make this declaration? No! because it was unnecessary. The sense of the people, against a corrupt and scandalous government, dissolved it, by almost the ordinary forms by which the old government itself was administered. King William sent his writs to those who had sat in the former parliament; but will any man, therefore, tell me, that that parliament re-organized the government without the will of the people? and that it was not their con-

sent which entailed on King William a particular inheritance, to be enjoyed under the dominion of the law? Gentlemen, it was the denial of these principles, asserted at the revolution in England, that brought forward the author of the Rights of Man, and stirred up this controversy which has given such alarm to government; but for this the literary labors of Mr. Paine had closed. He asserts it himself in his book, and every body knows it. It was not the French revolution, but Mr. Burke's reflections upon it, followed up by another work on the same subject, as it regarded things in England, which brought forward Mr. Paine, and which rendered his works so much the object of attention in this country. Mr. Burke denied positively the very foundation upon which the revolution of 1688 must stand for its support, viz., the right of the people to change their government; and he asserted, in the teeth of his majesty's title to the crown, that no such right in the people existed; this is the true history of the Second Part of the Rights of Man. The First Part had little more aspect to this country than to Japan; it asserted the right of the people of France to act as they had acted, but there was little which pointed to it as an example for England. There had been a despotic authority in France which the people had thrown down, and Mr. Burke seemed to question their right to do so.

Mr. Paine maintained the contrary in his answer ; and having imbibed the principles of republican government, during the American revolution, he mixed with the controversy many coarse and harsh remarks upon monarchy as established, even in England, or in any possible form. But this was collateral to the great object of his work, which was to maintain the right of the people to choose their government ; this was the right which was questioned, and the assertion of it was most interesting to many who were most strenuously attached to the English government. For men may assert the right of every people to choose their government without seeking to destroy their own. This accounts for many expressions imputed to the unfortunate prisoners, which I have often uttered myself, and shall continue to utter every day of my life, and call upon the spies of government to record them. I will *say anywhere, without fear, nay, I will say here, where I stand, that an attempt to interfere, by despotic combination and violence, with any government which a people choose to give to themselves, whether it be good or evil, is an oppression and subversion of the natural and unalienable rights of man ; and though the government of this country should countenance such a system, it would not only be still legal for me to express my detestation of it, as I here deliberately express it, but it would become my interest and

my duty. For, if combinations of despotism can accomplish such a purpose, who shall tell me, what other nation shall not be the prey of their ambition? Upon the very principle of denying to a people the right of governing themselves, how are we to resist the French, should they attempt by violence to fasten their government upon us? Or, what inducement would there be for resistance to preserve laws, which are not, it seems, our own, but which are unalterably imposed upon us? The very argument strikes, as with a palsy, the arm and vigor of the nation. I hold dear the privileges I am contending for, not as privileges hostile to the constitution, but as necessary for its preservation; and if the French were to intrude by force upon the government of our own free choice, I should leave these papers and return to a profession that, perhaps, I better understand.

The next evidence relied on, after the institution of the Corresponding Society, is a letter written to them from Norwich, dated the 11th of November, 1792, with the answer, dated the 26th of the same month; it is asserted, that this correspondence shows, they aimed at nothing less than the total destruction of the monarchy, and that they therefore, veil their intention under covert and ambiguous language. I think, on the other hand, and I shall continue to think so, as long as I am capable of thought, that it was impossible for

words to convey more clearly the explicit avowal of their original plan for a constitutional reform in the house of commons. This letter from Norwich, after congratulating the Corresponding Society on its institution, asks several questions arising out of the proceedings of other societies in different parts of the kingdom, which they profess not thoroughly to understand.

The Sheffield people, they observe, seemed at first determined to support the Duke of Richmond's plan only, but that they had afterwards observed a disposition in them to a more moderate plan of reform proposed by the Friends of the People in London; whilst the Manchester people, by addressing Mr. Paine, whom the Norwich people had not addressed, seemed to be intent on republican principles only; they therefore put a question, not at all of distrust, or suspicion, but *bona fide*, if ever there was good faith between men, whether the Corresponding Society meant to be satisfied with the plan of the Duke of Richmond? or, whether it was their private design to rip up monarchy by the roots, and place democracy in its stead? Now hear the answer, from whence it is inferred that this last is their intention; they begin their answer with recapitulating the demand of their correspondent, as regularly as a tradesman, who has an order for goods, recapitulates the order, that there may be no ambiguity in the refer-

ence or application of the reply, and then they say, as to the objects they have in view they refer them to their addresses. "You will thereby see that they mean to disseminate political knowledge, and thereby engage the judicious part of the nation to demand the recovery of their lost rights in annual parliaments — the members of these parliaments owing their election to unbought suffrages." They then desire them to be careful to avoid all dispute, and say to them, put monarchy, democracy, and even religion, quite aside, and "Let your endeavors go to increase the numbers of those who desire a full and equal representation of the people, and leave to a parliament so chosen, to reform all existing abuses; and if they don't answer, at the year's end, you may choose others in their stead." The attorney-general says this is lamely expressed; I, on the other hand, say that it is not only not lamely expressed, but anxiously worded to put an end to dangerous speculations. Leave all theories undiscussed; do not perplex yourselves with abstract questions of government; endeavor practically to get honest representatives, and, if they deceive you, then what? bring on a revolution? No! Choose others in their stead. They refer also to their address, which lay before their correspondent, which address expresses itself thus: "Laying aside all claim to originality, we claim no other merit than that of reconsidering and verify-

ing what has already been urged in our common cause by the Duke of Richmond and Mr. Pitt, and their then honest party.”

When the language of the letter, which is branded as ambiguous, thus stares them in the face as an undeniable answer to the charge, they then have recourse to the old refuge of *mala fides*; all this they say is but a cover for hidden treason. But I ask you, gentlemen, in the name of God, and as fair and honest men, what reason upon earth there is to suppose that the writers of this letter did not mean what they expressed? Are you to presume in a court of justice, and upon a trial for life, that men write with duplicity in their most confidential correspondence, even to those with whom they are confederated? Let it be recollected, also, that if this correspondence was calculated for deception, the deception must have been understood and agreed upon by all parties concerned; for otherwise you have a conspiracy amongst persons who are at cross purposes with one another; consequently the conspiracy, if this be a branch of it, is a conspiracy of thousands and ten thousands, from one end of the kingdom to the other, who are all guilty, if any of the prisoners are guilty; upwards of forty thousand persons, upon the lowest calculation, must alike be liable to the pains and penalties of the law, and hold their lives as tenants at will of the ministers of the

crown. In whatever aspect, therefore, this prosecution is regarded, new difficulties and new uncertainties and terrors surround it.

The next thing in order that we have to look at, is the convention at Edinburgh. It appears that a letter had been written by Mr. Skirving, who was connected with reformers in Scotland, proceeding avowedly upon the Duke of Richmond's plan, proposing that there should be a convention from the societies assembled at Edinburgh. Now you will recollect, in the opening, that the attorney-general considered all the great original sin of this conspiracy and treason to have originated with the societies in London; that the country societies were only tools in their hands, and that the Edinburgh convention was the commencement of their projects; and yet it plainly appears that this convention originated from neither of the London societies, but had its beginning at Edinburgh, where, just before, a convention had been sitting for the reform in parliament, attended by the principal persons in Scotland; and surely, without adverting to the nationality so peculiar to the people of that country, it is not at all suspicious, that, since they were to hold a meeting for similar objects, they should make use of the same style for their association; and that their deputies should be called delegates, when delegates had attended the other convention from all the coun-

ties, and whom they were every day looking at in their streets, in the course of the very same year that Skirving wrote his letter on the subject. The views of the Corresponding Society, as they regarded this convention, and consequently the views of the prisoner, must be collected from the written instructions to the delegates, unless they can be falsified by matter which is collateral. If I constitute an agent, I am bound by what he does, but always with this limitation, for what he does within the scope of his agency; if I constitute an agent to buy horses for me, and he commits high treason, it will not, I hope, be argued that I am to be hanged. If I constitute an agent for any business that can be stated, and he goes beyond his instructions, he must answer for himself beyond their limits; for beyond them he is not my representative. The acts done, therefore, at the Scotch convention, whatever may be their quality, are evidence to show, that, in point of fact, a certain number of people got together, and did anything you choose to call illegal; but, as far as it concerns me, if I am not present, you are limited by my instructions, and have not advanced a single step upon your journey to convict me; the instructions to Skirving have been read, and speak for themselves; they are strictly legal, and pursue the avowed object of the society; and it will be for the solicitor-general to point out, in his reply,

any counter or secret instructions, or any collateral conduct, contradictory of the good faith with which they were written. The instructions are in these words: "The delegates are instructed, on the part of this society, to assist in bringing forward and supporting any constitutional measure for procuring a real representation of the commons of Great Britain." What do you say, gentlemen, to this language? how are men to express themselves who desire a constitutional reform? The object and the mode of effecting it were equally legal; this is most obvious from the conduct of the parliament of Ireland, acting under directions from England—they passed the convention bill, and made it only a misdemeanor, knowing that, by the law as it stood, it was no misdemeanor at all. Whether this statement may meet with the approbation of others, I care not; I know the fact to be so, and I maintain that you cannot prove upon the convention which met at Edinburgh, and which is charged to-day with high treason, one-thousandth part of what, at last, worked up government in Ireland to the pitch of voting it a misdemeanor.

Gentlemen, I am not vindicating anything that can promote disorder in the country, but I am maintaining that the worst possible disorder that can fall upon a country is, when subjects are deprived of the sanction of clear and unambiguous

laws. If wrong is committed, let punishment follow according to the measure of that wrong; if men are turbulent, let them be visited by the laws according to the measure of their turbulency; if they write libels upon government, let them be punished according to the quality of those libels; but you must not, and will not, because the stability of the monarchy is an important concern to the nation, confound the nature and distinctions of crimes, and pronounce that the life of a sovereign has been invaded, because the privileges of the people have been, perhaps, irregularly and hotly asserted; you will not, to give security to government, repeal the most sacred laws instituted for our protection, and which are, indeed, the only consideration for our submitting at all to government. If the plain letter of the statute of Edward the Third applies to the conduct of the prisoners, let it in God's name be applied; but let neither their conduct nor the law that is to judge it, be tortured by construction; nor suffer the transaction, from whence you are to form a dispassionate conclusion of intention, to be magnified by scandalous epithets, nor overwhelmed in an undistinguishable mass of matter, in which you may be lost and bewildered, having missed the only parts which could have furnished a clue to a just or rational judgment.

Gentlemen, this religious regard for the liberty

of the subject, against constructive treason, is well illustrated by Dr. Johnson, the great author of our English Dictionary, a man remarkable for his love of order, and for high principles of government, but who had the wisdom to know that the great end of government, in all its forms, is the security of liberty and life under the law. This man, of masculine mind, though disgusted at the disorder which Lord George Gordon created, felt a triumph in his acquittal, and exclaimed, as we learn from Mr. Boswell, "I hate Lord George Gordon, but I am glad he was not convicted of this constructive treason; for, though I hate him, I love my country and myself." This extraordinary man, no doubt, remembered, with Lord Hale, that, when the law is broken down, injustice knows no bounds, but runs as far as the wit and invention of accusers, or the detestation of persons accused, will carry it. You will pardon this almost perpetual recurrence to these considerations; but the present is a season when I have a right to call upon you by everything sacred in humanity and justice; by every principle which ought to influence the heart of man, to consider the situation in which I stand before you. I stand here for a poor, unknown, unprotected individual, charged with a design to subvert the government of the country, and the dearest rights of its inhabitants; a charge which has collected against him a force sufficient to crush

to pieces any private man; the whole weight of the crown presses upon him; parliament has been sitting upon ex-parte evidence for months together; and rank and property is associated, from one end of the kingdom to the other, to avert the supposed consequences of the treason. I am making no complaint of this; but surely it is an awful summons to impartial attention; surely it excuses me for so often calling upon your integrity and firmness to do equal justice between the crown, so supported, and an unhappy prisoner, so unprotected.

Gentlemen, I declare that I am utterly astonished, on looking at the clock, to find how long I have been speaking; and that, agitated and distressed as I am, I have yet strength enough remaining for the remainder of my duty; at every peril of my health it shall be exerted; for although, if this cause should miscarry, I know I shall have justice done me for the honesty of my intentions; yet what is that to the public and posterity? What is it to them, when, if upon this evidence there can stand a conviction for high treason, it is plain that no man can be said to have a life which is his own? For how can he possibly know by what engines it may be snared, or from what unknown sources it may be attacked and overpowered? Such a monstrous precedent would be as ruinous to the king as to his subjects. We are in

a crisis of our affairs; which, putting justice out of the question, calls in sound policy for the greatest prudence and moderation. At a time when other nations are disposed to subvert their establishments, let it be our wisdom to make the subject feel the practical benefits of our own; let us seek to bring good out of evil; the distracted inhabitants of the world will fly to us for sanctuary, driven out of their countries from the dreadful consequences of not attending to seasonable reforms in government; victims to the folly of suffering corruptions to continue, till the whole fabric of society is dissolved and tumbles into ruin; landing upon our shores, they will feel the blessings of security, and they will discover in what it consists; they will read this trial, and their hearts will palpitate at your decision; they will say to one another, and their voices will reach to the ends of the earth: May the constitution of England endure forever! the sacred and yet remaining sanctuary of the oppressed; here, and here only, the lot of man is cast in security. What though authority, established for the ends of justice, may lift itself up against it; what though the house of commons itself should make an ex-parte declaration of guilt; what though every species of art should be employed to entangle the opinions of the people, which in other countries would be inevitable destruction; yet in England, in enlightened England,

all this will not pluck a hair from the head of innocence; the jury will still look steadfastly to the law, as the great polar star, to direct them in their course; as prudent men they will set no example of disorder, nor pronounce a verdict of censure on authority, or of approbation or disapprobation beyond their judicial province; but, on the other hand, they will make no political sacrifice, but deliver a plain, honest man, from the toils of injustice. When your verdict is pronounced, this will be the judgment of the world; and if any amongst ourselves are alienated in their affections to government, nothing will be so likely to reclaim them. They will say: Whatever we have lost of our control in parliament, we have yet a sheet-anchor remaining to hold the vessel of the state amidst contending storms; we have still, thank God, a sound administration of justice secured to us, in the independence of the judges, in the rights of enlightened juries, and in the integrity of the bar; ready at all times, and upon every possible occasion, whatever may be the consequences to themselves, to stand forward in defence of the meanest man in England, when brought for judgment before the laws of the country.

To return to this Scotch convention. Their papers were all seized by government. What their proceedings were, they best know; we can only see what parts they choose to show us; but,

from what we have seen, does any man seriously believe, that this meeting at Edinburgh meant to assume and to maintain by force all the functions and authorities of the state? Is the thing within the compass of human belief? If a man were offered a dukedom, and twenty thousand pounds a year for trying to believe it, he might say he believed it, as what will not man say for gold and honors? but he never, in fact, could believe that this Edinburgh meeting was a parliament for Great Britain; how, indeed, could he, from the proceedings of a few peaceable, unarmed men, discussing, in a constitutional manner, the means of obtaining a reform in parliament? and who, to maintain the club, or whatever you choose to call it, collected a little money from people who were well disposed to the cause, a few shillings one day, and perhaps as many pence another? I think, as far as I could reckon it up, when the report, from this great committee of supply was read to you, I counted that there had been raised, in the first session of this parliament, fifteen pounds, from which, indeed, you must deduct two bad shillings, which are literally noticed in the account. Is it to be endured, gentlemen, that men should gravely say, that this body assumes to itself the offices of parliament? that a few harmless people, who sat, as they profess, to obtain a full representation of the people, were themselves, even in their own

imagination, the complete representation which they sought for? Why should they sit from day to day to consider how they might obtain what they had already got? If their object was an universal representation of the whole people, how is it credible they could suppose that universal representation to exist in themselves—in the representatives of a few societies, instituted to obtain it for the country at large? If they were themselves the nation, why should the language of every resolution be, that reason ought to be their grand engine for the accomplishment of their object, and should be directed to convince the nation to speak to parliament in a voice that must be heard? The proposition, therefore, is too gross to cram down the throats of the English people, and this is the prisoner's security. Here, again, he feels the advantage of our free administration of justice; this proposition, on which so much depends, is not to be reasoned upon on parchment, to be delivered privately to magistrates for private judgment; no, he has the privilege of appealing aloud, as he now appeals by me, to an enlightened assembly, full of eyes, and ears, and intelligence, where speaking to a jury is, in a manner, speaking to a nation at large, and flying for sanctuary to its universal justice.

Gentlemen, the very work of Mr. Paine, under the banners of which this supposed rebellion was

set on foot, refutes the charge it was brought forward to support; for Mr. Paine, in his preface, and throughout his whole work, reprobates the use of force against the most evil governments; the contrary was never imputed to him. If his book had been written in pursuance of the design of force and rebellion, with which it is now sought to be connected, he would, like the prisoners, have been charged with an overt act of high treason; but such a proceeding was never thought of. Mr. Paine was indicted for a misdemeanor, and the misdemeanor was argued to consist not in the falsehood that a nation has no right to choose or alter its government, but in seditiously exciting the nation, without cause, to exercise that right. A learned lord (Lord Chief Baron Macdonald), now on this bench, addressed the jury as attorney-general upon this principle; his language was this: The question is not what the people have a right to do, for the people are, undoubtedly, the foundation and origin of all government; but the charge is, for seditiously calling upon the people, without cause or reason, to exercise a right which would be sedition, supposing the right to be in them; for though the people might have a right to do the thing suggested, and though they are not excited to doing it by force and rebellion, yet, as the suggestion goes to unsettle the state, the propagation of such doctrines is seditious. There is no other

way, undoubtedly, of describing that charge. I am not here entering into the application of it to Mr. Paine, whose counsel I was, and who has been tried already. To say that the people have a right to change their government, is indeed a truism; everybody knows it, and they exercise the right; otherwise the king could not have had his establishment amongst us. If, therefore, I stir up individuals to oppose by force the general will, seated in the government, it may be treason; but to induce changes in a government, by exposing to a whole nation its errors and imperfections, can have no bearing upon such an offence; the utmost which can be made of it is a misdemeanor, and that, too, depending wholly upon the judgment which the jury may form of the intention of the writer. The courts, for a long time, indeed, assumed to themselves the province of deciding upon this intention, as a matter of law, conclusively inferring it from the act of publication; I say the courts assumed it, though it was not the doctrine of Lord Mansfield, but handed down to him from the precedents of judges before his time; but even in that case, though the publication was the crime, not, as in this case, the intention, and though the quality of the thing charged, when not rebutted by the evidence for the defendant, had so long been considered to be a legal inference, yet the legislature, to support the province of the

jury, and in tenderness for liberty, has lately altered the law upon this important subject. If, therefore, we were not assembled, as we are, to consider of the existence of high treason against the king's life, but only of a misdemeanor for seditiously disturbing his title and establishment, by the proceedings for a reform in parliament, I should think the crown, upon the very principle which, under the libel law, must now govern such a trial, quite as distant from its mark; because, in my opinion, there is no way by which his majesty's title can more firmly be secured, or by which (above all, in our times) its permanency can be better established, than by promoting a more full and equal representation of the people, by peaceable means; and by what other means has it been sought, in this instance, to be promoted?

Gentlemen, when the members of this convention were seized, did they attempt resistance? Did they insist upon their privileges as subjects under the laws, or as a parliament enacting laws for others? If they had said or done anything to give color to such an idea, there needed no spies to convict them; the crown could have given ample indemnity for evidence from amongst themselves; the societies consisted of thousands and thousands of persons, some of whom, upon any calculation of human nature, might have been produced; the delegates, who attended the meetings,

could not be supposed to have met with a different intention from those who sent them; and, if the answer to that is, that the constituents are involved in the guilt of their representatives, we get back to the monstrous position which I observed you before to shrink back from, with visible horror, when I stated it; namely, the involving in the fate and consequence of this single trial every man who corresponded with these societies, or who, as a member of societies in any part of the kingdom, consented to the meeting which was assembled, or which was in prospect; but, I thank God, I have nothing to fear from such hydras, when I see before me such just and honorable men to hold the balance of justice.

Gentlemen, the dissolution of this parliament speaks as strong a language as its conduct when sitting. How was it dissolved? When the magistrates entered, Mr. Skirving was in the chair, which he refused to leave; he considered and asserted his conduct to be legal, and, therefore, informed the magistrate he must exercise his authority, that the dispersion might appear to be involuntary, and that the subject, disturbed in his rights, might be entitled to his remedy. The magistrate on this took Mr. Skirving by the shoulder, who immediately obeyed; the chair was quitted in a moment, and this great parliament broke up. What was the effect of all this pro-

ceeding at the time, when whatever belonged to it must have been best understood? Were any of the parties indicted for high treason? Were they indicted even for a breach of the peace in holding the convention? None of these things. The law of Scotland, arbitrary as it is, was to be disturbed to find a name for their offence, and the rules of trial to be violated to convict them; they were denied their challenges to their jurors, and other irregularities were introduced, so as to be the subject of complaint in the house of commons. Gentlemen, in what I am saying, I am not standing up to vindicate all that they published during these proceedings, more especially those which were written in consequence of the trials I have just alluded to; but allowance must be made for a state of heat and irritation; they saw men whom they believed to be persecuted for what they believed to be innocent; they saw them the victims of sentences which many would consider as equivalent to, if not worse than, judgment of treason; sentences which, at all events, had never existed before, and such as, I believe, never will again with impunity. But since I am on the subject of intention, I shall conduct myself with the same moderation which I have been prescribing; I will cast no aspersions, but shall content myself with lamenting that these judgments were productive of consequences, which rarely follow from authority

discreetly exercised. How easy is it then to dispose of as much of the evidence as consumed half a day in the anathemas against the Scotch judges! It appears that they came to various resolutions concerning them; some good, some bad, and all of them irregular. Amongst others, they compare them to Jefferies, and wish that they, who imitate his example, may meet his fate. What then? Irreverent expressions against judges are not acts of high treason! If they had assembled round the court of justiciary, and hanged them in the execution of their offices, it would not have been treason within the statute. I am no advocate for disrespect to judges, and think that it is dangerous to the public order; but, putting aside the insult upon the judges now in authority, the reprobation of Jefferies is no libel, but an awful and useful memento to wicked men. Lord Chief Justice Jefferies denied the privilege of English law to an innocent man. He refused it to Sir Thomas Armstrong, who in vain pleaded, in bar of his outlawry, that he was out of the realm when he was exacted (an objection so clear, that it was lately taken for granted in the case of Mr. Purefoy). The daughter of this unfortunate person, a lady of honor and quality, came publicly into court to supplicate for her father; and what were the effects of her supplications, and of the law in the mouth of the prisoner? "Sir Thomas Armstrong," said Jefferies,

“you may amuse yourself as much as you please with the idea of your innocence, but you are to be hanged next Friday;” and, upon the natural exclamation of a daughter at this horrible outrage against her parent, he said, “Take that woman out of court;” which she answered by a prayer, that God Almighty’s judgments might light upon him. Gentlemen, they did light upon him; and when, after his death, which speedily followed this transaction, the matter was brought before the house of commons, under that glorious revolution which is asserted throughout the proceedings before you, the judgment against Sir Thomas Armstrong was declared to be a murder under color of justice! Sir Robert Sawyer, the attorney-general, was expelled the house of commons for his misdemeanor in refusing the writ of error, and the executors of Jefferies were commanded to make compensation to the widow and the daughter of the deceased. These are great monuments of justice; and, although I by no means approve of harsh expressions against authority, which tend to weaken the holdings of society, yet let us not go beyond the mark in our restraints, nor suppose that men are dangerously disaffected to the government, because they feel a sort of pride and exultation in events, which constitute the dignity and glory of their country.

Gentlemen, this resentment against the proceed-

ings of the courts in Scotland, was not confined to those who were the objects of them; it was not confined even to the friends of a reform in parliament—a benevolent public, in both parts of the island, joined them in the complaint; and a gentleman of great moderation, and a most inveterate enemy to parliamentary reform, as thinking it not an improvement of the government, but nevertheless a lover of his country and its insulted justice, made the convictions of the delegates the subject of a public inquiry; I speak of my friend, Mr. William Adam, who brought these judgments of the Scotch judges before the house of commons, arraigned them as contrary to law, and proposed to reverse them by the authority of parliament. Let it not then be matter of wonder, that these poor men, who were the immediate victims of this injustice, and who saw their brethren expelled from their country by an unprecedented and questionable judgment, should feel like men on the subject, and express themselves as they felt.

Gentlemen, amidst the various distresses and embarrassments which attend my present situation, it is a great consolation that I have marked from the beginning your vigilant attention and your capacity to understand; it is, therefore, with the utmost confidence that I ask you a few plain questions, arising out of the whole of these Scotch proceedings. In the first place, then, do you believe

it to be possible, that, if these men had really projected the convention as a traitorous usurpation of the authorities of parliament, they would have invited the friends of the people, in Frith street, to assist them, when they knew that this society was determined not to seek the reform of the constitution, but by means that were constitutional, and from whom they could neither hope for support nor concealment of evil purposes? I ask you next, if their objects had been traitorous, would they have given them, without disguise or color, to the public and to the government, in every common newspaper? And yet it is so far from being a charge against them, that they concealed their objects by hypocrisy or guarded conduct, that I have been driven to admit the justice of the complaint against them, for unnecessary inflammation and exaggeration. I ask you further, whether, if the proceedings, thus published and exaggerated, had appeared to government, who knew everything belonging to them, in the light they represent them to you to-day, they could possibly have slept over them with such complete indifference and silence? For it is notorious, that after this convention had been held at Edinburgh, after, in short, everything had been said, written, and transacted, on which I am now commenting, and after Mr. Paine's book had been for above a year in universal circulation, aye, up to the very day when

Mr. Grey gave notice, in the house of commons, of the intention of the Friends of the People for a reform in parliament, there was not even a single indictment on the file for a misdemeanor; but from that moment, when it was seen that the cause was not beat down or abandoned, the proclamation made its appearance, and all the proceedings that followed had their birth. I ask you, lastly, gentlemen, whether it be in human nature, that a few unprotected men, conscious in their own minds, that they had been engaged and detected in a detestable rebellion to cut off the king, to destroy the administration of justice, and to subvert the whole fabric of the government, should turn round upon their country, whose ruin they had projected, and whose most obvious justice attached on them, complaining, forsooth, that their delegates, taken by magistrates, in the very act of high treason, had been harshly and illegally interrupted in a meritorious proceeding? The history of mankind never furnished an instance, nor ever will, of such extravagant, preposterous, and unnatural conduct! No, no, gentlemen; all their hot blood was owing to their firm persuasion, dictated by conscious innocence, that the conduct of their delegates had been legal, and might be vindicated against the magistrates who obstructed them; in that they might be mistaken; I am not arguing that point at present; if they are hereafter indicted for a misde-

meanor, and I am counsel in that cause, I will then tell you what I think of it; sufficient for the day is the good or evil of it; it is sufficient, for the present one, that the legality or illegality of the business has no relation to the crime that is imputed to the prisoner.

The next matter that is alleged against the authors of the Scotch convention, and the societies which supported it, is, their having sent addresses of friendship to the convention of France. These addresses are considered to be a decisive proof of republican combination, verging closely in themselves upon an overt act of treason. Gentlemen, if the dates of these addresses are attended to, which come no lower down than November, 1792, we have only to lament that they are but the acts of private subjects, and that they were not sanctioned by the state itself. The French nation, about that period, under their new constitution, or under their new anarchy, call it what you will, were nevertheless most anxiously desirous of maintaining peace with this country. But the king was advised to withdraw his ambassador from France, upon the approaching catastrophe of its most unfortunate prince; an event which, however to be deplored, was no justifiable cause of offence to Great Britain. France desired nothing but the regeneration of her own government; and if she mistook the road to her prosperity, what was that

to us? But it was alleged against her in parliament, that she had introduced spies amongst us, and held correspondence with disaffected persons, for the destruction of our constitution; this was the charge of our minister, and it was, therefore, held to be just and necessary, for the safety of the country, to hold France at arm's length, and to avoid the very contagion of contact with her at the risk of war. But, gentlemen, this charge against France was thought by many to be supported by no better proofs than those against the prisoner. In the public correspondence of the ambassador from the French king, and upon his death, as minister from the convention, with his majesty's secretary of state, documents which lie upon the table of the house of commons, and which may be made evidence in the cause, the executive council repelled with indignation all the imputations which to this very hour are held out as the vindications of quarrel. "If there be such persons in England," says Monsieur Chauvelin, "has not England laws to punish them? France disavows them; such men are not Frenchmen." The same correspondence conveys the most solemn assurances of friendship down to the very end of the year 1792, a period subsequent to all the correspondence and addresses complained of. Whether these assurances were faithful or otherwise, whether it would have been prudent to have depended on

them or otherwise — whether the war was advisable or unadvisable — are questions over which we have no jurisdiction; I only desire to bring to your recollection that a man may be a friend to the rights of humanity and to the imprescriptible rights of social man, which is now a term of derision and contempt, that he may feel to the very soul for a nation beset by the sword of despots, and yet be a lover of his own country and its constitution.

Gentlemen, the same celebrated person, of whom I have had occasion to speak so frequently, is the best and brightest illustration of this truth. Mr. Burke, indeed, went a great deal further than requires to be pressed into the present argument; for he maintained the cause of justice and of truth, against all the perverted authority and rash violence of his country, and expressed the feelings of a Christian and a patriot in the very heat of the American war; boldly holding forth our victories as defeats, and our successes as calamities and disgraces. “It is not instantly,” said Mr. Burke, “that I can be brought to rejoice, when I hear of the slaughter and captivity of long lists of those names which have been familiar to my ears from my infancy, and to rejoice that they have fallen under the sword of strangers, whose barbarous appellations I scarcely know how to pronounce. The glory acquired at the White Plains, by Col-

onel Raille, has no charms for me; and I fairly acknowledge, that I have not yet learned to delight in finding Fort Kniphausen in the heart of the British dominions." If this had been said or written by Mr. Yorke, at Sheffield, or by any other member of these societies, heated with wine at the Globe Tavern, it would have been trumpeted forth as decisive evidence of a rebellious spirit, rejoicing in the downfall of his country; yet the great author whose writings I have borrowed from, approved himself to be the friend of this nation at that calamitous crisis, and had it pleased God to open the understandings of our rulers, his wisdom might have averted the storms that are now thickening around us. We must not, therefore, be too severe in our strictures upon the opinions and feelings of men as they regard such mighty public questions. The interests of a nation may often be one thing, and the interests of its government another; but the interests of those who hold government for the hour is at all times different from either. At the time many of the papers before you were circulated on the subject of the war with France, many of the best and wisest men in this kingdom began to be driven by our situation to these melancholy reflections; and thousands of persons, the most firmly attached to the principles of our constitution, and who never were members of any of these societies, considered,

and still consider, Great Britain as the aggressor against France; they considered, and still consider, that she had a right to choose a government for herself, and that it was contrary to the first principles of justice, and, if possible, still more repugnant to the genius of our own free constitution, to combine with despots for her destruction; and who knows but that the external pressure upon France may have been the cause of that unheard-of state of society which we complain of? who knows, but that, driven as she has been to exertions beyond the ordinary vigor of a nation, it has not been the parent of that unnatural and giant strength which threatens the authors of it with perdition? These are melancholy considerations, but they may reasonably, and at all events, be lawfully entertained. We owe obedience to government in our actions, but surely our opinions are free.

Gentlemen, pursuing the order of time, we are arrived at length at the proposition to hold another convention, which, with the supposed support of it by force, are the only overt acts of high treason charged upon this record. For, strange as it may appear, there is no charge whatever before you of any one of those acts or writings, the evidence of which consumed so many days in reading, and which has already nearly consumed my strength in only passing them in review before you. If every

line and letter of all the writings I have been commenting upon were admitted to be traitorous machinations, and if the convention in Scotland was an open rebellion, it is conceded to be foreign to the present purpose, unless as such criminality in them might show the views and objects of the persons engaged in them; on that principle only the court has over and over again decided the evidence of them to be admissible; and on the same principle I have illustrated them in their order as they happened, that I might lead the prisoner in your view up to the very point and moment when the treason is supposed to have burst forth into the overt act for which he is arraigned before you.

The transaction respecting this second convention, which constitutes the principal, or more properly the only overt act in the indictment, lies in the narrowest compass, and is clouded with no ambiguity. I admit freely every act which is imputed to the prisoner, and listen not so much with fear as with curiosity and wonder, to the treason sought to be connected with it.

You will recollect that the first motion towards the holding of a second convention, originated in a letter to the prisoner from a country correspondent in which the legality of the former was vindicated, and its dispersion lamented; this letter was an-

swered on the 27th of March, 1794, and was read to you in the crown's evidence in these words :

“ March 27, 1794.

“ CITIZEN, *I am* directed by the London Corresponding Society to transmit the following resolutions to the Society for Constitutional Information, and to request the sentiments of that society respecting the important measures which the present juncture of affairs seems to require.

“ The London Corresponding Society conceives that the moment is arrived, when a full and explicit declaration is necessary from all the friends of freedom, whether the late illegal and unheard-of prosecutions and sentences shall determine us to abandon our cause, or shall excite us to pursue a radical reform, with an ardor proportioned to the magnitude of the object, and with a zeal as distinguished on our parts as the treachery of others in the same glorious cause is notorious. The Society for Constitutional Information is therefore required to determine whether or no they will be ready, when called upon, to act in conjunction with this and other societies to obtain a fair representation of the people ; whether they concur with us in seeing the necessity of a speedy convention, for the purpose of obtaining, in a constitutional and legal method, a redress of those grievances under which we at present labor, and

which can only be effectually removed by a full and fair representation of the people of Great Britain. The London Corresponding Society cannot but remind their friends that the present crisis demands all the prudence, unanimity, and vigor, that may or can be exerted by men and Britons; nor do they doubt but that manly firmness and consistency will finally, and they believe shortly, terminate in the full accomplishment of all their wishes.

“ I am, Fellow-citizen,

“ (In my humble measure),

“ A friend to the Rights of Man,

(Signed) “ T. HARDY, Secretary.”

They then resolve that there is no security for the continuance of any right but in equality of laws; not in equality of property, the ridiculous bugbear by which you are to be frightened into injustice; on the contrary, throughout every part of the proceedings, and most emphatically in Mr. Yorke's speech, so much relied on, the beneficial subordinations of society, the security of property, and the prosperity of the landed and commercial interests are held forth as the very objects to be attained by the reform in the representation which they sought for.

In examining this first moving towards a second convention, the first thing to be considered is, what

reason there is, from the letter I have just read to you, or from anything that appears to have led to it, to suppose that a different sort of convention was projected from that which had been before assembled and dispersed. The letter says another British convention; and it describes the same objects as the first — compare all the papers for the calling the second convention with those for assembling the first, and you will find no difference, except that they mixed with them extraneous and libellous matter, arising obviously from the irritation produced by the sailing of the transports with their brethren condemned to exile. These papers have already been considered, and separated, as they ought to be, from the charge.

I will now lay before you all the remaining operations of this formidable conspiracy up to the prisoner's imprisonment in the tower. Mr Hardy having received the letter just adverted to, regarding a second convention, the Corresponding Society wrote the letter of the 27th of March, which was found in his hand-writing, and is published in the first report, page 11. This letter, enclosing the resolutions they had come to upon the subject, was considered by the Constitutional Society on the next day, the 28th of March, the ordinary day for their meeting, when they sent an answer to the Corresponding Society, informing them that they had received their communication,

that they heartily concurred with them in the objects they had in view, and invited them to send a delegation of their members to confer with them on the subject.

Now, what were the objects they concurred in, and what was to be the subject of conference between the societies by their delegates? Look at the letter, which distinctly expresses its objects, and the means by which they sought to effect them; had these poor men (too numerous to meet altogether, and therefore renewing the cause of parliamentary reform by delegation from the societies), any reason to suppose that they were involving themselves in the pains of treason, and that they were compassing the king's death, when they were redeeming, as they thought, his authority from probable downfall and ruin? Had treason been imputed to the delegates before? Had the imagining the death of the king ever been suspected by anybody? Or when they were prosecuted for misdemeanors, was the prosecution considered as an indulgence conferred upon men whose lives had been forfeited? And is it to be endured, then, in this free land, made free, too, by the virtue of our forefathers, who placed the king upon his throne to maintain this freedom, that forty or fifty thousand people, in the different parts of the kingdom, assembling in their little societies to spread useful knowledge, and to diffuse the principles of

liberty, which, the more widely they are spread, the surer is the condition of our free government, are in a moment, without warning, without any law or principle to warrant it, and without precedent or example, to be branded as traitors, and to be decimated as victims for punishment! The Constitutional Society having answered the letter of the 27th of March, in the manner I stated to you, committees, from each of the two societies, were appointed to confer together. The Constitutional Society appointed Mr. Joyce, Mr. Kidd, Mr. Wardle, and Mr. Holcroft, all indicted; and Mr. Sharpe, the celebrated engraver, not indicted, but examined as a witness by the crown; five were appointed by the Corresponding Society to meet these gentlemen, viz., Mr. Baxter, Mr. Moore, Mr. Thelwall, and Mr. Hodgson, all indicted, and Mr. Lovatt, against whom the bill was thrown out. These gentlemen met at the house of Mr. Thelwall, on the 11th of April, and there published the resolutions already commented on, in conformity with the general objects of the two societies, expressed in the letter of the 27th of March, and agreed to continue to meet on Mondays and Thursdays for further conference on the subject. The first Monday was the 14th of April, of which we have heard so much, and no meeting was held on that day; the first Thursday was the 17th of April, but there was no meeting; the 21st of April

was the second Monday, but there was still no meeting; the 24th of April was the second Thursday, when the five of the Corresponding Society attended, but nobody coming to meet them from the other, nothing of course was transacted; on Monday, the 27th of April, three weeks after their first appointment, this bloody and impatient band of conspirators, seeing that a convention bill was in projection, and that Hessians were landing on our coasts, at last assembled themselves; and now we come to the point of action. Gentlemen, they met; they shook hands with each other; they talked over the news and the pleasures of the day; they wished one another a good evening, and retired to their homes; it is in vain to hide it, they certainly did all these things. The same alarming scene was repeated on the three following days of meeting, and on Monday, May the 12th, would, but for the vigilance of government, have probably again taken place; but on that day Mr. Hardy was arrested, his papers seized, and the conspiracy which pervaded this devoted country was dragged into the face of day. To be serious, gentlemen, you have literally the whole of it before you in the meetings I have just stated; in which you find ten gentlemen, appointed by two peaceable societies, conversing upon the subject of a constitutional reform in parliament, publishing the result of their deliberations, without

any other arms than one supper-knife, which, when I come to the subject of arms, I will, in form lay before you. Yet for this, and for this alone, you are asked to devote the prisoner before you, and his unfortunate associates, to the pains and penalties of death, and not to death alone, but to the eternal stigma and infamy of having conceived the detestable and horrible design of dissolving the government of their country, and of striking at the life of their sovereign, who had never given offence to them, nor to any of his subjects.

Gentlemen, as a conspiracy of this formidable extension, which had no less for its object than the sudden annihilation of all the existing authorities of the country, and of everything that supported them, could not be even gravely stated to have an existence, without contemplation of force to give it effect; it was absolutely necessary to impress upon the public mind, and to establish, by formal evidence, upon the present occasion, that such a force was actually in preparation. This most important and indispensable part of the cause was attended with insurmountable difficulties, not only from its being unfounded in fact, but because it had been expressly negatived by the whole conduct of government; for although the motions of all these societies had been watched for two years together; though their spies had regularly attended, and collected regular journals of their

proceedings; yet when the first report was finished, and the *habeas corpus* act suspended upon the foundation of the facts contained in it, there was not to be found, from one end of it to the other, even the insinuation of arms; I believe that this circumstance made a great impression upon all the thinking, dispassionate part of the public, and that the materials of the first report were thought to furnish but a slender argument to support such a total eclipse of liberty. No wonder, then, that the discovery of a pike in the interval between the two reports, should have been highly estimated. I mean no reflections upon government, and only state the matter, as a man of great wit publicly reported it; he said that the discoverer, when he first beheld the long-looked-for pike, was transported beyond himself with enthusiasm and delight, and that he hung over the rusty instrument with all the raptures of a fond mother, who embraces her first-born infant, "and thanks her God for all her travail past."

In consequence of this discovery, whoever might have the merit of it, and whatever the discoverer might have felt upon it, persons were sent by government, and properly sent, into all corners of the kingdom to investigate the extent of the mischief; the fruit of this inquiry has been laid before you, and I pledge myself to sum up the evidence which you have had upon the subject, not by

parts, or by general observations, but in the same manner as the court itself must sum it up to you, when it lays the whole body of the proof with fidelity before you. Notwithstanding all the declamations upon French anarchy, I think I may safely assert, that it has been distinctly proved, by the evidence, that the Sheffield people were for universal representation in a British house of commons. This appears to have been the general sentiment, with the exception of one witness, whose testimony makes the truth and *bona fides* of the sentiments far more striking; the witness I allude to, George Widdison, whose evidence I shall state in its place, seems to be a plain, blunt, honest man, and, by the bye,—which must never be forgotten of any of them,—the crown's witness. I am not interested in the veracity of any of them, for, as I have frequently adverted to, the crown must take them for better for worse; it must support each witness, and the whole body of its evidence throughout. If you do not believe the whole of what is proved by a witness, what confidence can you have in part of it, or what part can you select to confide in? If you are deceived in part, who shall measure the boundaries of the deception? This man says he was at first for universal suffrage; Mr. Yorke had persuaded him, from all the books, that it was the best; but that he afterwards saw reason to think otherwise, and was not for

going the length of the Duke of Richmond; but that all the other Sheffield people were for the duke's plan; a fact confirmed by the cross-examination of every one of the witnesses. You have, therefore, positively and distinctly, upon the universal authority of the evidence of the crown, the people of Sheffield, who are charged as at the head of a republican conspiracy, proved to be associated on the very principles which, at different times, have distinguished the most eminent persons in this kingdom; and the charge made upon them, with regard to arms, is cleared up by the same universal testimony.

You recollect that, at a meeting held upon the Castle-hill, there were two parties in the country, and it is material to attend to what these two parties were. In consequence of the king's proclamation, a great number of honorable, zealous persons, who had been led by a thousand artifices to believe, that there was a just cause of alarm in the country, took very extraordinary steps for support of the magistracy. The publicans were directed not to entertain persons who were friendly to a reform of parliament; and alarms of change and revolution pervaded the country, which became greater and greater, as our ears were hourly assailed with the successive calamities of France. Others saw things in an opposite light, and considered that these calamities were made the pretext

for extinguishing British liberty; heart-burnings arose between the two parties; and some, I am afraid a great many, wickedly or ignorantly interposed in a quarrel which zeal had begun. The societies were disturbed in their meetings, and even the private dwellings of many of their members were illegally violated. It appears by the very evidence for the crown, by which the cause must stand or fall, that many of the friends of reform were daily insulted, their houses threatened to be pulled down, and their peaceable meetings beset by pretended magistrates, without the process of the law. These proceedings naturally suggested the propriety of having arms for self-defence, the first and most unquestionable privilege of man, in or out of society, and expressly provided for by the very letter of English law. It was ingeniously put by the learned counsel in the examination of a witness, that it was complained of amongst them, that very little was sufficient to obtain a warrant from some magistrates, and that therefore it was as well to be provided for those who might have warrants as those who had none. Gentlemen, I am too much exhausted to pursue or argue such a difference, even if it existed upon the evidence, because if the societies in question, however mistakenly, considered their meetings to be legal, and the warrants to disturb them to be beyond the authority of the magistrates to grant,

they had a right, at the peril of the legal consequences, to stand upon their defence; and it is no transgression of the law, much less high treason against the king, to resist his officers when they pass the bounds of their authority. So much for the general evidence of arms; and the first and last time that even the name of the prisoner is connected with the subject, is by a letter he received from a person of the name of Davison. I am anxious that this part of the case should be distinctly understood, and I will, therefore, bring back this letter to your attention. The letter is as follows:

“FELLOW-CITIZEN: The bare-faced aristocracy of the present administration has made it necessary that we should be prepared to act on the defensive, against any attack they may command their newly-armed minions to make upon us. A plan has been hit upon, and, if encouraged sufficiently, will, no doubt, have the effect of furnishing a quantity of pikes to the patriots, great enough to make them formidable. The blades are made of steel, tempered and polished after an approved form. They may be fixed into any shafts, but fir ones are recommended, of the girth of the accompanying hoops at the top end, and about an inch more at the bottom.

The blades and hoops, more than which cannot

properly be sent to any great distance, will be charged one shilling. Money to be sent with the orders.

“As the institution is in its infancy, immediate encouragement is necessary.

“Orders may be sent to the Secretary of the Sheffield Constitutional Society. [Struck out.]

“RICHARD DAVISON.

“Sheffield, April 24, 1794.”

Gentlemen, you must recollect, for, if it should escape you; it might make a great difference, that Davison directs the answer of this letter to be sent to Robert Moody, at Sheffield, to prevent post-office suspicion; and that he also encloses it in a similar one, which Mr. Hardy was to forward to Norwich, in order that the society at that place might provide pikes for themselves, in the same manner that Davison was recommending, through Hardy, to the people of London. Now what followed upon the prisoner's receiving this letter? It is in evidence, by this very Moody, to whom the answer was to be sent, and who was examined as a witness by the crown, that he never received any answer to the letter; and, although there was an universal seizure of papers, no such letter, nor any other, appeared to have been written; and, what is more, the letter to Norwich, from Davison, enclosed in his letter to Hardy, was never forward-

ed, but was found in his custody when he was arrested, three weeks afterwards, folded up in the other, and unopened, as he received it. Good God! what is become of the humane sanctuary of English justice, where is the sense and meaning of the term proveably in the statute of King Edward, if such evidence can be received against an English subject, on a trial for his life? If a man writes a letter to me about pikes, or about any thing else, can I help it? And is it evidence (except to acquit me of suspicion) when it appears that nothing is done upon it? Mr. Hardy never before corresponded with Davison, he never desired him to write to him. How indeed could he desire him when his very existence was unknown to him? He never returned an answer; he never forwarded the enclosed to Norwich; he never even communicated the letter itself to his own society, although he was its secretary, which showed he considered it as the unauthorized, officious correspondence of a private man; he never acted upon it at all, nor appears to have regarded it as dangerous or important, since he neither destroyed nor concealed it. Gentlemen, I declare I hardly know in what language to express my astonishment, that the crown can ask you to shed the blood of the man at the bar upon such foundations. Yet this is the whole of the written evidence concerning arms; for the remainder of the plot rests, for its founda-

tion, upon the parole evidence, the whole of which I shall pursue with precision, and not suffer a link of the chain to pass unexamined.

William Camage was the first witness; he swore that the Sheffield Societies were frequently insulted, and threatened to be dispersed; so that the people in general thought it necessary to defend themselves against illegal attacks; that the justices having officiously intruded themselves into their peaceable and legal meetings, they thought that they had a right to be armed; but they did not claim this right under the law of nature, or by theories of government, but as English subjects, under the government of England; for they say in their paper, which has been read by the crown that would condemn them, that they were entitled by the Bill of Rights to be armed. Gentlemen, they state their title truly. The preamble of that statute enumerates the offences of King James the Second; amongst the chief of which was, his causing his subjects to be disarmed, and then our ancestors claim this violated right as their indefeasible inheritance. Let us therefore be cautious how we rush to the conclusion, that men are plotting treason against the king, because they are asserting a right, the violation of which has been adjudged against a king to be treason against the people; and let us not suppose that English subjects are a banditti, for preparing to defend their

legal liberties with pikes, because pikes may have been accidentally employed in another country to destroy both liberty and law. Camage says he was spoken to by this Davison about three dozen of pikes. What then? He is the crown's witness, whom they offer to you as the witness of truth, and he started with horror at the idea of violence, and spoke with visible reverence for the king; saying, God forbid that he should touch him; but he, nevertheless, had a pike for himself. Indeed, the manliness with which he avowed it, gave an additional strength to his evidence, "No doubt," he says, "I had a pike, but I would not have remained an hour a member of the society, if I had heard a syllable, that it was in the contemplation of anybody to employ pikes or any other arms against the king or the government. We meant to petition parliament, through the means of the Convention of Edinburgh, thinking that the house of commons would listen to this expression of the general sentiments of the people; for it has been thrown out, he said, in parliament, that the people did not desire it themselves."

Mr. Broomhead, whose evidence I have already commented upon, a sedate, plain, sensible man, spoke also of his affection to the government, and of the insults and threats which had been offered to the people of Sheffield. He says: "I heard of arms on the Castle-hill, but it is fit this should be

distinctly explained; a wicked hand-bill, to provoke and terrify the multitude, had been thrown about the town in the night, which caused agitation in the minds of the people; and it was then spoken of, as being the right of every individual, to have arms for defence; but there was no idea ever started of resisting, much less of attacking the government. I never heard of such a thing. I fear God," said the witness, "and honor the king; and would not have consented to send a delegate to Edinburgh, but for peaceable and legal purposes."

The next evidence upon the subject of arms, is what is proved by Widdison, to which I beg your particular attention, because, if there be any reliance upon his testimony, it puts an end to every criminal imputation upon Davison, through whom, in the strange manner already observed upon, Hardy could alone be criminated.

This man, Widdison, who was both a turner and hair-dresser, and who dressed Davison's hair, and was his most intimate acquaintance, gives you an account of their most confidential conversations upon the subject of the pikes, when it is impossible that they could be imposing upon one another; and he declares, upon his solemn oath, that Davison, without even the knowledge or authority of the Sheffield Society, thinking that the same insults might be offered to the London Societies, wrote the

letter to Hardy, of his own head, as the witness expressed it, and that he, Widdison, made the pike-shafts, to the number of a dozen and a half. Davison, he said, was his customer; he told him that people began to think themselves in danger, and he therefore made the handles of the pikes for sale, to the number of a dozen and a half, and one likewise for himself, without conceiving that he offended against any law. "I love the king," said Widdison, "as much as any man, and all the people I associated with did the same; I would not have staid with them if they had not; Mr. Yorke often told me privately that he was for universal representation, and so were we all; the Duke of Richmond's plan was our only object." This was the witness who was shown the Duke's letter, and spoke to it as being circulated, and as the very creed of the Societies. This evidence shows, beyond all doubt, the genuine sentiments of these people, because it consists of their most confidential communications with one another; and the only answer, therefore, that can possibly be given to it is, that the witnesses, who deliver it, are imposing upon the court. But this, as I have wearied you with reiterating, the crown cannot say; for, in that case, their whole proof falls to the ground together, since it is only from the same witnesses that the very existence of these pikes and their handles comes before us; and, if you

suspect their evidence in part, for the reasons already given, it must be *in toto* rejected. My friend is so good as to furnish me with this further observation: that Widdison said he had often heard those who called themselves aristocrats say, that if an invasion of the country should take place, they would begin with destroying their enemies at home, that they might be unanimous in the defence of their country.

John Hill was next called; he is a cutler, and was employed by Davison to make the blades for the pikes; he saw the letter which was sent to Hardy, and knew that it was sent, lest there should be the same call for defence in London against illegal attacks upon the Societies; for that at Sheffield they were daily insulted, and that the opposite party came to his house, fired muskets under the door, and threatened to pull it down; he swears that they were, to a man, faithful to the king, and that the reform proposed was in the commons house of parliament.

John Edwards was called, further to connect the prisoner with this combination of force; but so far from establishing it, he swore, upon his cross-examination, that his only reason for going to Hardy's was, that he wanted a pike for his own defence, without connection with Davison or Sheffield, and without concert or correspondence with anybody. He had heard, he said, of the violences

at Sheffield, and of the pikes that had been made there for defence; that Hardy, on his application, showed him the letter which, as has appeared, he never showed to any other person. This is the whole sum and substance of the evidence which applies to the charge of pikes, after the closest investigation, under the sanction, and by the aid of parliament itself; evidence which, so far from establishing the fact, would have been a satisfactory answer to almost any testimony by which such a fact could have been supported; for in this unparalleled proceeding, the prisoner's counsel is driven by his duty to dwell upon the detail of the crown's proofs; because the whole body of it is the completest answer to the indictment which even a free choice itself could have selected. It is further worthy of your attention, that, as far as the evidence proceeds from these plain, natural sources, which the crown was driven to, for the necessary foundation of the proceeding before you, it has been simple, uniform, natural, and consistent; and that whenever a different complexion was to be given to it, it was only through the medium of spies and informers, and of men independently of their infamous trade, of the most abandoned and profligate characters.

Before I advert to what has been sworn by this description of persons, I will give you a wholesome caution concerning them, and, having no

eloquence of my own to enforce it, I will give it to you in the language of the same gentleman whose works are always seasonable, when moral or political lessons are to be rendered delightful. Look then at the picture of society, as Mr. Burke has drawn it, under the dominion of spies and informers; I say under their dominion, for a resort to spies may, on occasions, be justifiable, and their evidence, when confirmed, may deserve implicit credit; but I say under the dominion of spies and informers, because the case of the crown must stand alone upon their evidence, and upon their evidence, not only unconfirmed, but in direct contradiction to every witness, not an informer or a spy, and in a case, too, where the truth, whatever it is, lies within the knowledge of forty or fifty thousand people. Mr. Burke says—I believe I can remember it without reference to the book:

“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 habi-

tudes. The blood of wholesome kindred is infected. The tables and beds are surrounded with snares. All the means given by Providence to make life safe and comfortable, are perverted into instruments of terror and torment. This species of universal subserviency that makes the very servant who waits behind your chair, the arbiter of your life and fortune, has such a tendency to degrade and abase mankind, and to deprive them of that assured and liberal state of mind which alone can make us what we ought to be, that I vow to God, I would sooner bring myself to put a man to immediate death for opinions I disliked, and so to get rid of the man and his opinions at once, than to fret him with a feverish being, tainted with the jail distemper of a contagious servitude, to keep him above ground, an animated mass of putrefaction, corrupted himself, and corrupting all about him."

Gentlemen, let me bring to your recollection the deportment of the first of this tribe, Mr. Alexander, who could not in half an hour even tell where he had lived, or why he had left his master. Does any man believe that he had forgotten these most recent transactions of his life? Certainly not; but his history would have undone his credit, and must, therefore, be concealed. He had lived with a linen-draper, whose address we could scarcely get from him, and they had parted because they

had words. What were the words? We were not to be told that. He then went to a Mr. Killerby's, who agreed with him at twenty-five guineas a year. Why did he not stay there? He was obliged, it seems, to give up this lucrative agreement, because he was obliged to attend here as a witness. Gentlemen, Mr. Killerby lives only in Holborn, and was he obliged to give up a permanent engagement with a tradesman in Holborn, because he was obliged to be absent at the Old Bailey for five minutes in one single day? I asked him if he had told Mr. White, the solicitor for the treasury, who would not have been so cruel as to deprive a man of his bread, by keeping him upon attendance which might have been avoided by particular notice. The thing spoke for itself; he had never told Mr. White; but had he ever told Mr. Killerby? For how else could he know that his place was inconsistent with his engagement upon this trial? No, he had never told him! How then did he collect that his place was inconsistent with his duty here? This question never received any answer. You saw how he dealt with it, and how he stood stammering, not daring to lift up his countenance in any direction, confused, disconcerted, and confounded.

Driven from the accusation upon the subject of pikes, and even from the very color of accusation, and knowing that nothing was to be done without

the proof of arms, we have got this miserable, solitary knife, held up to us as the engine which was to destroy the constitution of this country; and Mr. Groves, an Old Bailey solicitor, employed as a spy upon the occasion, has been selected to give probability to this monstrous absurdity, by his respectable evidence. I understand that this same gentleman has carried his system of spying to such a pitch as to practice it since this unfortunate man has been standing a prisoner before you, proffering himself, as a friend, to the committee preparing his defence, that he might discover to the crown the materials by which he meant to defend his life. I state this only from report, and I hope in God I am mistaken; for human nature starts back appalled from such atrocity, and shakes and trembles at the very statement of it. But as to the perjury of this miscreant, it will appear palpable beyond all question, and he shall answer for it in due season. He tells you he attended at Chalk Farm; and that there, forsooth, amongst about seven or eight thousand people, he saw two or three persons with knives; he might, I should think, have seen many more, as hardly any man goes without a knife of some sort in his pocket. He asked, however, it seems, where they got these knives, and was directed to Green, a hair-dresser, who deals besides in cutlery; and accordingly this notable Mr. Groves went, as he told us, to Green's, and

asked to purchase a knife; when Green, in answer to him, said: "Speak low, for my wife is a damn'd aristocrat." This answer was sworn to by the wretch, to give you the idea that Green, who had the knives to sell, was conscious that he kept them for an illegal and a wicked purpose, and that they were not to be sold in public. The door, he says, being ajar, the man desired him to speak low, from whence he would have you understand that it was because this aristocratic wife was within hearing. This, gentlemen, is the testimony of Groves, and Green himself is called as the next witness; and called by whom? Not by me; I know nothing of him; he is the crown's own witness. He is called to confirm Groves's evidence; but, not being a spy, he declared solemnly upon his oath, and I can confirm his evidence by several respectable people, that the knives in question lie constantly, and lay then, in his open shop-window, in what is called the show-glass, where cutlers, like other tradesmen, expose their ware to public view; and that the knives differ in nothing from others publicly sold in the Strand, and every other street in London; that he bespoke them from a rider, who came round for orders in the usual way; that he sold only fourteen in all, and that they were made up in little packets, one of which Mr. Hardy had, who was to choose one for himself, but four more were found in his possession, because he was

arrested before Green had an opportunity of sending for them.

Gentlemen, I think the pikes and knives are now completely disposed of; but something was said also about guns; let us, therefore, see what that amounts to. It appears that Mr. Hardy was applied to by Samuel Williams, a gun-engraver, who was not even a member of any society, and who asked him if he knew any body who wanted a gun. Hardy said he did not; and undoubtedly, upon the crown's own showing, it must be taken for granted that if at that time he had been acquainted with any plan of arming, he would have given a different answer, and would have jumped at the offer. About a fortnight afterwards, however—Hardy in the interval having become acquainted with Franklow—Williams called to buy a pair of shoes, and then Hardy, recollecting his former application, referred him to Franklow, who had in the most public manner raised the forty men, who were called the Loyal Lambeth Association; so that, in order to give this transaction any bearing upon the charge, it became necessary to consider Franklow's Association as an armed conspiracy against the government; though the forty people who composed it were collected by public advertisement; though they were enrolled under public articles; and though Franklow himself, as appears from the

evidence, attended publicly at the Globe Tavern in his uniform, whilst the cartouch-boxes and the other accoutrements of these secret conspirators lay openly upon his shop-board, exposed to the open view of all his customers and neighbors. This story, therefore, is not less contemptible than that which you must have all heard concerning Mr. Walker, whom I went to defend at Lancaster, where that respectable gentleman was brought to trial upon such a trumped-up charge, supported by the solitary evidence of one Dunn, a most infamous witness; but what was the end of that prosecution? I recollect it to the honor of my friend, Mr. Law, who conducted it for the crown, who, knowing that there were persons whose passions were agitated upon these subjects at that moment, and that many persons had enrolled themselves in societies to resist conspiracies against the government, behaved in a most manful and honorable manner, in a manner, indeed, which the public ought to know, and which I hope it never will forget; he would not even put me upon my challenges to such persons, but withdrew them from the pannel; and when he saw the complexion of the affair, from the contradiction of the infamous witness whose testimony supported it, he honorably gave up the cause.

Gentlemen, the evidence of Lynam does not require the same contradiction which fell upon Mr.

Groves, because it destroys itself by its own intrinsic inconsistency; I could not, indeed, if it were to save my life, undertake to state it to you. It lasted, I think, about six or seven hours, but I have marked under different parts of it, passages so grossly contradictory, matter so impossible, so inconsistent with any course of conduct, that it will be sufficient to bring these parts to your view, to destroy all the rest. But let us first examine in what manner this matter, such as it is, was recorded. He professed to speak from notes, yet I observed him frequently looking up to the ceiling whilst he was speaking; when I said to him, are you now speaking from a note? Have you got any note of what you are now saying? He answered, Oh no, this is from recollection. Good God Almighty! recollection mixing itself with notes in a case of high treason! He did not even take down the words, nay, to do the man justice, he did not even affect to have taken the words, but only the substance, as he himself expressed it. O excellent evidence! The substance of words taken down by a spy, and supplied, when defective, by his memory. But I must not call him a spy; for it seems he took them *bona fide* as a delegate, and yet *bona fide* as an informer; what a happy combination of fidelity! faithful to serve, and faithful to betray! correct to record for the business of the society, and correct to dissolve and to punish it!

What, after all, do the notes amount to? I will advert to the parts I allude to: they were, it seems, to go to Frith street, to sign the Declaration of the Friends of the Liberty of the Press, which lay there already signed by between twenty and thirty members of the house of commons, and many other respectable and opulent men, and then they were to begin civil confusion, and the king's head and Mr. Pitt's were to be placed on Temple Bar. Immediately after which we find them resolving unanimously to thank Mr. Wharton for his speech to support the glorious revolution of 1688, which supports the very throne that was to be destroyed! which same speech they were to circulate in thousands for the use of the societies throughout the kingdom. Such incoherent, impossible matter, proceeding from such a source, is unworthy of all further concern.

Thus driven out of everything which relates to arms, and from every other matter which can possibly attach upon life, they have recourse to an expedient, which, I declare, fills my mind with horror and terror; it is this: The Corresponding Society had, you recollect, two years before, sent delegates to Scotland, with specific instructions, peaceably to pursue a parliamentary reform; when the convention which they were sent to was dispersed, they sent no others, for they were arrested: when only considering of the propriety of another

convention. It happened that Mr. Hardy was the secretary during the period of these Scotch proceedings, and the letters consequently written by him, during that period, were all official letters from a large body, circulated by him in point of form. When the proposition took place for calling a second convention, Mr. Hardy continued to be secretary, and, in that character, signed the circular letter read in the course of the evidence, which appears to have found its way, in the course of circulation, into Scotland. This single circumstance has been admitted as the foundation of receiving in evidence against the prisoner, a long transaction imputed to one Watt, at Edinburgh, whose very existence was unknown to Hardy. This Watt had been employed by government as a spy, but at last caught a Tartar in his spyship; for, in endeavoring to urge innocent men to a project which never entered their imaginations, he was obliged to show himself ready to do what he recommended to others; and the tables being turned upon him, he was hanged by his employers. This man Watt read from a paper designs to be accomplished, but which he never intended to attempt, and the success of which he knew to be visionary. To suppose that Great Britain could have been destroyed by such a rebel as Watt, would be, as Dr. Johnson says, to expect that a great city might be drowned by the overflowing

of its kennels. But whatever might be the peril of Watt's conspiracy, what had Hardy to do with it? The people with Watt were five or six persons, wholly unknown to Hardy, and not members of any society of which Mr. Hardy was a member; I vow to God, therefore, that I cannot express what I feel, when I am obliged to state the evidence by which he is sought to be affected. A letter, viz., the circular letter signed by Hardy for calling another convention, is shown to George Ross, who says he received it from one Stock, who belonged to a society which met in Nicholson street, in Edinburgh, and that he sent it to Perth, Strathaven, and Paisley, and other places in Scotland; and the single unconnected evidence of this public letter, finding its way into Scotland, is made the foundation of letting in the whole evidence, which hanged Watt, against Hardy, who never knew him. Government hanged its own spy in Scotland upon that evidence, and it may be sufficient evidence for that purpose; I will not argue the case of a dead man, and, above all, of such a man; but I will say, that too much money was spent upon this performance, as I think it cost government about fifty thousand pounds. M'Ewen says, that Watt read from a paper to a committee of six or seven people, of which he, the witness, was a member, that gentlemen, residing in the country, were not to leave their habitations under

pain of death; that an attack was to be made in the manner you remember, and that the lord justice clerk, and the judges, were to be cut off by these men in buckram; and then an address was to be sent to the king, desiring him to dismiss his ministers and to put an end to the war; or that he might expect bad consequences. What is all this to Mr. Hardy? How is it possible to affect him with any part of this? Hear the sequel, and then judge for yourselves. Mr. Watt said (*i. e.*, the man who is hanged, said), after reading the paper, that he, Watt, wished to correspond with Mr. Hardy in a safe manner; so that because a ruffian and a scoundrel, whom I never saw or heard of, chooses, at the distance of four hundred miles, to say, that he wishes to correspond with me, I am to be involved in the guilt of his actions! It is not proved, or insinuated, that Mr. Hardy ever saw, or heard of, or knew, that such men were in being as Watt or Downie; nor is it proved, or asserted, that any letter was, in fact, written by either of them to Hardy, or to any other person. No such letter has been found in his possession, nor a trace of any connection between them and any member of any English society; the truth I believe is, that nothing was intended by Watt but to entrap others to obtain a reward for himself, and he has been amply and justly rewarded. Gentlemen, I desire to be understood to be making no

attacks upon government ; I have wished, throughout the whole cause, that good intentions may be imputed to it, but I really confess, that it requires some ingenuity for government to account for the original existence of all this history, and its subsequent application to the present trial. They went down to Scotland, after the arrest of the prisoners, in order, I suppose, that we might be taught the law of high treason by the lord justice clerk of Edinburgh, and that there should be a sort of rehearsal to teach the people of England to administer English laws ; for, after all this expense and preparation, no man was put upon his trial, nor even arraigned under the special commission in Scotland, but these two men ; one for reading this paper, and the other for not dissenting from it when it was read ; and, with regard to this last unfortunate person, the crown thought it was indecent, as it would indeed have been indecent and scandalous, to execute the law upon him ; as a gentleman upon his jury said, he would die rather than convict Downie without a recommendation of mercy, and he was only brought over to join in the verdict, under the idea that he would not be executed, and, accordingly, he has not suffered execution. If, Downie, then, was an object of mercy, or rather of justice, though he was in the very room with Watt, and heard distinctly the proposition, upon what possible ground can they

- demand the life of the prisoner at the bar, on account of a connection with the very same individual, though he never corresponded with him, nor saw him, nor heard of him, to whose very being he was an utter stranger?

Gentlemen, it is impossible for me to know what impression this observation makes upon you, or upon the court; but I declare I am deeply impressed with the application of it. How is a man to defend himself against such implications of guilt? Which of us all would be safe, standing at the bar of God or man, if he were even to answer for all his own expressions, without taking upon him the crimes or rashnesses of others? This poor man has, indeed, none of his own to answer for; yet how can he stand safely in judgment before you, if, in a season of alarm and agitation, with the whole pressure of government upon him, your minds are to be distracted with criminating materials brought from so many quarters, and of an extent which mocks all power of discrimination? I am conscious that I have not adverted to the thousandth part of them; yet I am sinking under fatigue and weakness, I am at this moment scarcely able to stand up whilst I am speaking to you, deprived as I have been, for nights together, of everything that deserves the name of rest, repose, or comfort. I therefore hasten, whilst yet I may be able, to

remind you once again of the great principle into which all I have been saying resolves itself.

Gentlemen, my whole argument then amounts to no more than this, that before the crime of compassing the king's death can be found by you, the jury, whose province it is to judge of its existence, it must be believed by you to have existed in point of fact. Before you can judge a fact, you must believe it, not suspect it, or imagine it, or fancy it, but believe it, and it is impossible to impress the human mind with such a reasonable and certain belief, as it is necessary to be impressed, before a Christian man can adjudge his neighbor to the smallest penalty, much less to the pains of death, without having such evidence as a reasonable mind will accept of, as the infallible test of truth. And what is that evidence? Neither more nor less than that which the constitution has established in the courts for the general administration of justice; namely, that the evidence convinces the jury, beyond all reasonable doubt, that the criminal intention, constituting the crime, existed in the mind of the man upon trial, and was the main-spring of his conduct. The rules of evidence, as they are settled by law, and adopted in its general administration, are not to be over-ruled or tampered with. They are founded in the charities of religion, in the philosophy of nature, in the truths of history, and in the experience of common life;

and whoever ventures rashly to depart from them, let him remember that it will be meted to him in the same measure, and that both God and man will judge him accordingly. These are arguments addressed to your reasons and consciences, not to be shaken in upright minds by any precedent, for no precedents can sanctify injustice; if they could, every human right would long ago have been extinct upon the earth. If the state trials in bad times are to be searched for precedents, what murders may you not commit; what law of humanity may you not trample upon; what rule of justice may you not violate; and what maxim of wise policy may you not abrogate and confound? If precedents in bad times are to be implicitly followed, why should we have heard any evidence at all? You might have convicted without any evidence, for many have been so convicted, and in this manner murdered, even by acts of parliament. If precedents in bad times are to be followed, why should the lords and commons have investigated these charges, and the crown have put them into this course of judicial trial? since, without such a trial, and even after an acquittal upon one, they might have attainted all the prisoners by act of parliament; they did so in the case of Lord Strafford. There are precedents, therefore, for all such things; but such precedents as could not for a moment survive the times of madness and distract-

tion which gave them birth, but which, as soon as the spurs of the occasions were blunted, were repealed, and execrated even by parliaments which (little as I may think of the present) ought not to be compared with it; parliaments sitting in the darkness of former times, in the night of freedom, before the principles of government were developed and before the constitution became fixed. The last of these precedents, and all the proceedings upon it, were ordered to be taken off the file and burnt, to the intent that the same might no longer be visible in after ages; an order dictated, no doubt, by a pious tenderness for national honor, and meant as a charitable covering for the crimes of our fathers. But it was a sin against posterity; it was a treason against society, for, instead of commanding them to be burnt, they should rather have directed them to be blazoned in large letters upon the walls of our courts of justice, that, like the characters deciphered by the prophet of God, to the eastern tyrant, they might enlarge and blacken in your sights, to terrify you from acts of injustice.

In times, when the whole habitable earth is in a state of change and fluctuation; when deserts are starting up into civilized empires around you; and when men, no longer slaves to the prejudices of particular countries, much less to the abuses of particular governments, enlist themselves, like the

citizens of an enlightened world, into whatever communities their civil liberties may be best protected; it never can be for the advantage of this country to prove, that the strict, unextended letter of her laws, is no security to its inhabitants. On the contrary, when so dangerous a lure is everywhere holding out to emigration, it will be found to be the wisest policy of Great Britain to set up her happy constitution, the strict letter of her guardian laws, and the proud condition of equal freedom, which her highest and her lowest subjects ought equally to enjoy; it will be her wisest policy to set up these first of human blessings against those charms of change and novelty which the varying condition of the world is hourly displaying, and which may deeply affect the population and prosperity of our country. In times, when the subordination to authority is said to be everywhere but too little felt, it will be found to be the wisest policy of Great Britain, to instil into the governed an almost superstitious reverence for the strict security of the laws; which, from their equality of principle, beget no jealousies or discontent; which, from their equal administration, can seldom work injustice; and which, from the reverence growing out of their mildness and antiquity, acquire a stability in the habits and affections of men, far beyond the force of civil obligation; whereas severe penalties, and arbi-

trary constructions of laws intended for security, lay the foundations of alienation from every human government, and have been the cause of all the calamities that have come, and are coming upon the earth.

Gentlemen, what we read of in books makes but a faint impression upon us, compared to what we see passing under our eyes in the living world. I remember the people of another country, in like manner, contending for a renovation of their constitution, sometimes illegally and turbulently, but still devoted to an honest end; I myself saw the people of Brabant so contending for the ancient constitution of the good Duke of Burgundy; how was this people dealt by? All, who were only contending for their own rights and privileges, were supposed to be, of course, disaffected to the emperor; they were handed over to courts constituted for the emergency, as this is, and the emperor marched his army through the country till all was peace; but such peace as there is in Vesuvius, or *Ætna*, the very moment before they vomit forth their lava, and roll their conflagrations over the devoted habitations of mankind; when the French approached, the fatal effects were suddenly seen of a government of constraint and terror; the well-affected were dispirited, and the disaffected inflamed into fury. At that moment the archduchess fled from Brussels, and the Duke of Saxe-

Teschen was sent express to offer the *joyeuse entrée* so long petitioned for in vain; but the season of concession was past; the storm blew in every quarter, and the throne of Brabant departed forever from the house of Burgundy. Gentlemen, I venture to affirm, that, with other councils, this fatal prelude to the last revolution in that country might have been averted; if the emperor had been advised to make the concessions of justice and affection to his people, they would have risen in a mass to maintain their prince's authority interwoven with their own liberties; and the French, the giants of modern times, would, like the giants of antiquity, have been trampled in the mire of their own ambition. In the same manner a far more splendid and important crown passed away from his majesty's illustrious brows—the imperial crown of America. The people of that country, too, for a long season, contended, as subjects, and often with irregularity and turbulence, for what they felt to be their rights; and, O gentlemen! that the inspiring and immortal eloquence of that man, whose name I have so often mentioned, had then been heard with effect! what was his language to this country when she sought to lay burdens on America,—not to support the dignity of the crown, or for the increase of national revenue, but to raise a fund for the purpose of corruption; a fund for maintaining those tribes of

hireling skip-jacks, which Mr. Tooke so well contrasted with the hereditary nobility of England! Though America would not bear this imposition, she would have borne any useful or constitutional burden to support the parent state. "For that service, for all service," said Mr. Burke, "whether of revenue, trade, or empire, my trust is in her interest in the British constitution. My hold of the colonies is in the close affection which grows from common names, from kindred blood, from similar privileges, and equal protection. These are ties which, though light as air, are as strong as links of iron. Let the colonies always keep the idea of their civil rights associated with your governments, they will cling and grapple to you, and no force under heaven will be of power to tear them from their allegiance. But let it be once understood, that your government may be one thing, and their privileges another; that these two things may exist without any mutual relation; the cement is gone; the cohesion is loosened; and every thing hastens to decay and dissolution. As long as you have the wisdom to keep the sovereign authority of this country as the sanctuary of liberty, the sacred temple consecrated to our common faith, wherever the chosen race and sons of England worship freedom, they will turn their faces toward you. The more they multiply, the more friends you will have; the more ardently they love

liberty, the more perfect will be their obedience. Slavery they can have anywhere. It is a weed that grows in every soil. They may have it from Spain, they may have it from Prussia. But until you become lost to all feeling of your true interest and your natural dignity, freedom they can have from none but you. This is the commodity of price, of which you have the monopoly. This is the true act of navigation, which binds to you the commerce of the colonies, and through them secures to you the wealth of the world. Is it not the same virtue which does every thing for us here in England? Do you imagine then, that it is the land-tax act which raises your revenue? that it is the annual vote in the committee of supply, which gives you your army? or that it is the mutiny bill which inspires it with bravery and discipline? No! surely no! It is the love of the people; it is their attachment to their government, from the sense of the deep stake they have in such a glorious institution, which gives you your army and your navy, and infuses into both that liberal obedience, without which your army would be a base rabble, and your navy nothing but rotten timber."

Gentlemen, to conclude, my fervent wish is, that we may not conjure up a spirit to destroy ourselves, nor set the example here of what in another country we deplore. Let us cherish the old and venerable laws of our forefathers. Let our judicial

administration be strict and pure ; and let the jury of the land preserve the life of a fellow-subject, who only asks it from them upon the same terms under which they hold their own lives, and all that is dear to them and their posterity for ever. Let me repeat the wish with which I began my address to you, and which proceeds from the very bottom of my heart ; may it please God, who is the author of all mercies to mankind, whose providence, I am persuaded, guides and superintends the transactions of the world, and whose guardian spirit has forever hovered over this prosperous island, to direct and fortify your judgments. I am aware I have not acquitted myself to the unfortunate man, who has put his trust in me, in the manner I could have wished ; yet I am unable to proceed any further ; exhausted in spirit and in strength, but confident in the expectation of justice. There is one thing more, however, that, if I can, I must state to you, namely, that I will show, by as many witnesses as it may be found necessary or convenient for you to hear upon the subject, that the views of the Societies were what I have alleged them to be ; that whatever irregularities or indiscretions they might have committed, their purposes were honest ; and that Mr. Hardy's, above all other men, can be established to have been so. I have, indeed, an honorable gentleman (Mr. Francis) in my eye, at this moment, to be called

hereafter as a witness, who being desirous in his place, as a member of parliament, to promote an inquiry into the seditious practices complained of, Mr. Hardy offered himself voluntarily to come forward, proffered a sight of all the papers, which were afterwards seized in his custody, and tendered every possible assistance to give satisfaction to the laws of his country, if found to be offended. I will show likewise his character to be religious, temperate, humane, and moderate, and his uniform conduct all that can belong to a good subject, and an honest man. When you have heard this evidence, it will, beyond all doubt, confirm you in coming to the conclusion which, at such great length, for which I entreat your pardon, I have been endeavoring to support.

Upon the conclusion of Mr. Erskine's speech, so powerfully had it affected the multitude of eager auditors that they burst into an irrepressible acclamation which spread through the vast multitude outside and was taken up and repeated to a great distance around. Thousands of people thronged the streets, all whose sympathies were in favor of the prisoner. So dense was the crowd that it was for some time impossible for the judges to reach their carriages. Mr. Erskine appeared and spoke to the multitude, asking moderation and desiring them to confide in the justice of the country; reminding them that their only security was

under the laws, and that any attempt to thwart or overawe their execution would endanger the lives of the accused. At his request the vast audience quietly dispersed, and the streets were speedily restored to their usual quiet.

The trial continued to the 5th of November, the evidence for the prisoner being ably summed up by Sir Vicary Gibbs, to which the Solicitor-General, afterwards Lord Redesdale replied. The jury were charged by the Lord Chief Justice who presided over the commission, and returned a verdict of "Not Guilty."

END OF VOL. II.

