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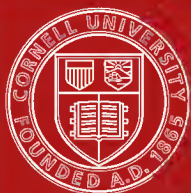
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SPEECHES
OF
LORD ERSKINE,

WHILE AT THE BAR.

EDITED BY
JAMES LAMBERT HIGH,
COUNSELOR AT LAW.



VOLUME III.

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CONTENTS OF VOL. III.

| | Page. |
|---|-------|
| Statement of the Case of John Horne Tooke, | 5 |
| Mr. Erskine's Speech in defence, | 7 |
| Statement of the Case of the Earl of Thanet and others, | 149 |
| Speech of the Attorney-General, | 151 |
| Evidence for the Crown, | 165 |
| Speech of Mr. Erskine for the Defendants, | 245 |
| Evidence for the Defendants, | 330 |
| Reply of the Attorney-General, | 379 |
| Lord Kenyon's Charge to the Jury, | 400 |
| The Verdict, | 405 |
| Remarks of the Earl of Thanet, | 406 |
| Affidavit of the Earl of Thanet, | 410 |
| Remarks of Mr. Fergusson, | 415 |
| Affidavit of Mr. Fergusson, | 418 |
| The Judgment in this Case, | 420 |
| Statement of the Case of William Stone, | 421 |
| Indictment against William Stone, | 423 |
| Speech of Mr. Erskine, | 448 |
| Lord Kenyon's Charge to the Jury, | 503 |

MR. ERSKINE'S SPEECH

IN DEFENCE OF

JOHN HORNE TOOKE,

IN THE SESSIONS HOUSE AT THE OLD BAILEY, ON THE 19TH DAY
OF NOVEMBER, 1794.

STATEMENT.

NOTWITHSTANDING the usual practice in England upon the trial of several jointly charged with high treason, has been, on the acquittal of the first, to abandon the prosecution as to the others, the government blindly and obstinately persisted in pushing the trial of Mr. Tooke after the acquittal of Thomas Hardy. It is indeed difficult to conceive upon what ground the crown could expect a conviction, since the jury upon the former trial, some of whom were also jurors upon the latter, by their verdict negatived the main fact charged in the indictment, and relied upon by the prosecution, viz., the holding of any conversation with intent by force to subvert the constitution and the laws. But, to the surprise of the legal profession, and of the public generally, the government proceeded to the trial of Mr. Tooke, relying upon the same propositions of law and of fact which had been so unsuccessfully urged in the case of Hardy. For, as appears from the report of the trial taken by Mr. Gurney, the eminent short-hand writer, at the conclusion of Mr. Erskine's speech, Mr. Tooke himself addressed the court as to the necessity of going into

the whole of the evidence, when he was answered by the attorney-general as follows:

Mr. Attorney-General. That address being made to me, I think it my duty to Mr. Tooke to inform him, that I speak at present under an impression, that, when the case on the part of the prosecutor is understood, it has received as yet, in the opening of his counsel, no answer; and I, therefore, desire Mr. Tooke to understand me as meaning to state to the jury, that I have proved the case upon the indictment.

Mr. Erskine. Then we will go into the whole case. See Gurney's Trial of Tooke, Vol. I. p. 453.

This took place on Thursday, the 20th of November, 1794, and the trial accordingly continued till Saturday, the 22nd, when the prisoner was acquitted. After the acquittal of Mr. Tooke, even a third trial was proceeded upon, viz., that against Mr. Thelwall, after which all the other prisoners were discharged.

For a statement of the charges upon which Mr. Tooke was tried, the reader is referred to the case of Thomas Hardy, in the preceding volume, as they were identically the same, and the evidence was not materially different.

FOR THE PRISONER.

THE HON. THOMAS ERSKINE.

GENTLEMEN OF THE JURY: When I compare the situation in which, not many days ago, I stood up to address myself to a jury in this place, with that which I now occupy; when I reflect upon the emotions which at that time almost weighed and pressed me down into the earth, with those which at this moment animate and support me, I scarcely know how to bear myself, or in what manner to conduct my cause.

I stood here gentlemen, upon the first trial, not alone indeed, but firmly and ably supported by my honorable, excellent, and learned friend, whose assistance I still have.

[Here Mr. Erskine was interrupted by the noise made by some workmen, which the court ordered to be stopped; which being done, he proceeded.]

Gentlemen, I am too much used to public life to be at all disconcerted by any of these little accidents, and, indeed, I am rather glad that any interruption gives me the opportunity of repeating a sentiment so very dear to me; I stood up here, not alone, but ably and manfully supported by this

excellent friend, who now sits by me ;* yet, under circumstances of distress and agitation, which no assistance could remove, and which I even now tremble to look back upon. I appeared in this place as the representative of a poor, lowly, and obscure mechanic, known only, of course, to persons in equal obscurity with himself; yet, in his name and person, had to bear up against a pressure which no advocate in England ever before had to contend with, for the most favored or powerful subject. I had to contend, in the first place, against the vast and extensive, but, after the verdict that has been given, I will not say the crushing influence of the crown. I had to struggle, from the very nature of the case, with that deep and solid interest which every good subject takes, and ought to take, in the life of the chief magistrate appointed to execute the laws, and whose safety is so inseparably connected with the general happiness, and the stability of the government. I had further to contend with an interest more powerful and energetic — with that generous and benevolent interest — founded upon affection for the king's person, which has so long been, and, I trust, ever will remain the characteristic of Englishmen. These prepossessions, just in themselves, but connected with dangerous partialities, would, at any

* Mr. Gibbs, afterward Sir Vicary Gibbs and attorney-general.

time, have been sufficiently formidable; but at what season had I to contend with them? I had to contend with them when a cloud of prejudices covered every person whose name could be mentioned or thought of in the course of my defence; prejudices not only propagated by honest, though mistaken zeal, but fomented in other quarters by wickedness beyond the power of language to express, and all directed against the societies of which the prisoners were members; only because they had presumed to do what those who prosecuted them had done before them in other times; and from the doing of which they had raised their fortunes, and acquired the very power to prosecute and to oppress.

I had to contend, too, with all this in a most fearful season; when the light and humanity even of an English public, was with no certainty to be reckoned on — when the face of the earth was drawn into convulsions — when bad men were trembling for what ought to follow, and good men for what ought not — and when all the principles of our free constitution, under the dominion of a delusive or wickedly infused terror, seemed to be trampled under foot. Gentlemen, when we reflect, however, upon the sound principles of the law of England, and the exalted history of its justice, I might, under other circumstances, have looked even those dangers in the face. There would still

have remained that which is paramount to the ordinary law, and the corrector of its abuses; there would still have remained that great tribunal, raised by the wisdom of our ancestors, for the support of the people's rights; that tribunal which has made the law itself, and which has given me you to look at; that tribunal, which, from age to age, has been the champion of public liberty, and which has so long, and so often, been planted before it as a shield in the day of trouble. But looking to that quarter, instead of this friendly shield of the subject, I found a sharp and destroying sword in the hand of an enemy; the protecting commons was itself the accuser of my client, and acted as a solicitor to prepare the very briefs for the prosecution. I am not making complaints, but stating the facts as they existed. The very briefs, I say, without which my learned friends, as they themselves agree, could not have traveled through the cause, were prepared by the commons of Great Britain! came before the jury stamped with all its influence and authority, preceded by proclamations, and the publications of authoritative reports, in every part of the kingdom, that the influence of the prejudgment might be co-extensive with the island.

I had, therefore, to contend with an impeachment, without the justice belonging to such a proceeding. When a subject is impeached by the

commons of Great Britain, he is not tried by a jury of his country; why? because the benevolent institutions of our wise forefathers forbade it. They considered, that, when the commons were the accusers, the jury were the accusers also. They considered the commons in parliament, and the commons at large, to be one and the same thing, though one would think, from the proceedings we are now engaged in, and everything connected with them, that they had no connection with one another; but that, on the contrary, the house of commons was holding out a siege against its constituents, and supporting its authority against the privileges of the people, whose representatives they are and ought to be. Upon an impeachment besides, the lords in parliament, upon the same principle, form a criminal court of justice for all the subjects of England. A common man is not forced before that high assembly, but flies to it for refuge; because, as Mr. Justice Blackstone well expresses it, all the rest of the nation is supposed, by the law, to be engaged in the prosecution of their representatives. But did the lords in parliament stand in that situation in the case of the prisoners at this bar? Though not formally arraigned before the great men of the realm, could they look up to them for countenance and support? Gentlemen, the lords united themselves with the commons in the accusation, and, like the commons,

prejudged the cause by the publication of reports, which contain the whole mass of the criminating evidence.

I had, besides all this, to wade through a mass of matter beyond the reach of human understanding to disentangle or comprehend, and which no strength of body could communicate if understood; a situation so new and unparalleled in the criminal justice of the country, that the judges were obliged to make new experiments upon our legal constitution, to invent the means of trial; I go along with the decision of the court as to the adjournment, though I waive no privilege for my client; but what shall we say of a decision, which nothing but necessity could have justified, yet which starts up for the first time in the year 1794, after the constitution has endured for so many centuries; and which brings the judges of the land in consultation together, to consider how, by device, indulgence, or consent, or how, at last, by the compulsion of authority, they might be able to deal with a case, which had not only no parallel, but nothing even analogous to it in the records or traditions of our country?

I had lastly to contend with all that array of ability and learning which is now before me, though with this consolation, that the contention was with honorable men. It is the glory of the

British bar, that the integrity and independence of its members is no mean security of the subject.

When, in spite of all this mighty and seemingly insuperable pressure, I recollect that an humble and obscure individual was not merely acquitted, but delivered with triumph from the dangers which surrounded him; when I call to mind that his deliverance was sealed by a verdict, not obtained by cabal, or legal artifice, but supported by principles which every man who has a heart in his bosom must approve, and which accordingly has obtained the most marked and public approbation; when I consider all this, it raises up a whirlwind of emotions in my mind, which none but He who rides upon the whirlwind could give utterance to express. In that season of danger, when I thought a combination of circumstances existed which no innocence could overcome, and having no strength of my own to rely on, I could only desire to place the jury under the protection of that benevolent Providence, which has so long peculiarly watched over the fortunes of this favored island; sincerely, and from the bottom of my heart, I wished that a verdict should be given, such as a jury might look up to God, as well as around them to man, when they pronounced it. Gentlemen, that verdict is given; it is recorded; and the honor and justice of the men who, as the instruments of Providence,

pronounced it, are recorded, I trust, forever along with it.

It may be said that this way of considering the subject is the result of a warm, enthusiastic temper, under the influence of a religious education, and it may be so, but there is another point of view in which men of all tempers, and however educated, must consider it. All men must agree in considering the decision as a great and solid advantage to the country, because they must see in it that our institutions are sound. All men must acknowledge that no event could be more fortunate than a public trial, which has demonstrated that we hold our lives, and every thing most dear to us, under a law which nothing can supersede; since there is little likelihood that men will desire to change a constitution which so thoroughly protects them. And before this cause is over, you will see that no man has ever had any such disposition.

Gentlemen, we now come to the merits of the cause itself; and though, if I were myself at the bar, instead of the honorable gentleman who is arraigned before you, I should be disposed to trouble you very little in my own defence, yet I mean to pursue no such course as the advocate of others. I say the advocate of others; for my client must forgive me if I almost lose sight of him in the determination of my duties. Indeed, I can hardly find him out in the mass of matter which

has been read to you. One is obliged to search for him through the proceedings, and with difficulty can find his name; whilst others, to whom I owe a similar attention, and who stand behind for trial, are undoubtedly implicated in part of that which has been fruitlessly read against him. It is this alone which obliges me at all to consider the quality of the transactions before you, and to apply them to the law, lest assumed facts and erroneous doctrines should meet me at another time, and in another character, touching in their consequences the safety of the other prisoners, and of the whole people of this land.

The first thing we have to consider in this, as in all other trials, is, the nature of the accusation. What are we here about? For to say the truth, it is a little difficult at first view to find it out. It is the glory of the English law, that it requires, even in the commonest cases (*à fortiori* in a case of blood), the utmost precision of charge, and a proof correspondingly precise; hitting the bird in the very eye; strictly conformable, not merely to the substance of the crime, but to the accusing letter.

Let us see, therefore, what the charge is.

When I had the honor to discuss this subject before, it was to another jury, and, indeed, to another court; for I now see on the bench an honorable and learned judge who was not then present;

some of you also, gentlemen, most probably were in the way of hearing, and of receiving an impression from the address of the able attorney-general, in the introduction of Mr. Hardy's trial; you were bound to be present in court when the jury was called, and it is not to be supposed, that, after having discharged, on that day, your duty to the public by a painful attendance, while the case was opened, you would continue it in order to hear the defence with which you had no manner of concern. If you come, therefore, with any bias upon your minds from the situation you were placed in by your duties, it must be a bias against me; for you heard every thing on one side, and nothing upon the other; it becomes my duty, therefore, to go over again with the same arguments which I employed before, though some of you are not yet recovered from the fatigue of attending to them. Nor is the task less nauseous to myself; but irksome as it is, it must be performed. I am not placed here to establish a reputation for speaking, or to amuse others with the novelty of discourse; but to defend innocence, and to maintain the liberties of my country.

Gentlemen, the charge is this:

The indictment states, "That all the prisoners" (whose names I shall hereafter enumerate when I come to remark upon the evidence), "intending to excite insurrection, rebellion, and war against the

king, and to subvert the rule and government of the kingdom, and to depose the king from his royal state and government of the kingdom, and to bring and put the king to death—maliciously and traitorously, and with force, did among themselves, and together with other false traitors, conspire, compass, and imagine, to excite insurrection, rebellion, and war, against the king, and to subvert the legislature, rule, and government of the kingdom, and to depose the king from the royal state and government of the kingdom, and to bring and put our said lord the king to death.” This is the whole charge. But as it is an offence which has its seat in the heart, the treason being complete by the unconsummated intention, it is enacted by positive statute, and was indeed the ancient practice upon the general principles of English law, that he who is accused of this crime, which consists in the invisible operations of the mind, should have it distinctly disclosed to him upon the same records, what acts the crown intends to establish, upon the trial, as indicative of the treason; which acts do not constitute the crime, but are charged upon the record as the means employed by the prisoner to accomplish the intention against the king’s life, which is the treason under the first branch of the statute.

The record therefore goes on to charge that, “in order to fulfill, perfect, and bring to effect their

most evil and treasonable compassings and imaginations," that is to say, the compassings and imaginations antecedently averred, viz., to bring and put the king to death, "they met, consulted, conspired, and agreed among themselves, and others, to the jurors unknown, to cause and procure a convention and meeting of divers subjects of the realm, to be held and assembled within this kingdom." Now, in order to elucidate the true essence of this anomalous crime, and to prevent the possibility of confounding the treason with the overt act, which is only charged as the manifestation of it, let us pause here a little, and see what would have been the consequence if the charge had finished here, without further connecting the overt act with the treason, by directly charging the convention to have been assembled for the purpose of bringing the king to death. I shall not be put to argue that no proceedings could have been had upon such a defective indictment; since common sense must inform the most unlettered mind, that merely to hold a convention of the people, which might be for various purposes, without alleging for what purpose it was assembled, would not only not amount to high treason, but to no crime whatsoever. The indictment, therefore, of necessity, proceeds to aver, that, "they conspired to hold this convention, with intent, and in order, that the persons so 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 of the kingdom." What then is the charge in this first count of the indictment, when its members are connected together, and taken as one whole? It is, that the prisoner conspired, and confederated, with others, to subvert the rule and government of the kingdom, and to depose the king, and to bring and put him to death; which last of the three is the only essential charge; for I shall not be put to argue that the indictment would have been equally complete without the two former, and wholly and radically defective without the latter; since it has been, and will again be conceded to me, that the compassing the king's death is the gist of the indictment, which nothing can add to, and the omission of which nothing can supply. The indictment, therefore having charged the traitorous compassing, proceeds, in conformity to the statute, to state the act charged to have been committed in fulfillment of it; which, you observe, is not an armed assembly to seize and destroy at once the person of the king, but a conspiracy to effect the same purpose through the medium of a convention; the indictment, therefore, charges their design to assemble this convention, not as a meeting

to petition for the reform of parliament, or to deliberate upon the grievances of the country, but with the fixed and rooted intent in the mind, that this convention, when got together, whatever might be its external pretext, should depose the king and put him to death. It is impossible, therefore, to separate the members of this charge without destroying its whole existence; because the charge of the compassing would be utterly void without the overt act which the statute requires to be charged as the means to be employed by the prisoner to accomplish it, because no other acts can be resorted to for its establishment; and because the overt act would be equally nugatory if separated from the compassing; since the overt act does not substantively constitute the treason when separated from the traitorous purpose of the mind which produced it, but is only the visible manifestation of the traitorous intention, which is admitted, on all hands, to be the crime. Your office, therefore, gentlemen — I defy the wit or wisdom, or artifice of man to move me from the position — your office is to try whether the record, inseparable as I have shown it to be in its members, be true, or false; or to sum up its contents in a word, whether the prisoner conspired, with others, to hold a convention or meeting, with the design that, under the mask of reform of parliament, it should

depose the king from his royal office, and destroy his life.

There are several other overt acts charged in the indictment, to which, however, you will see, at a glance, that the same principle will uniformly apply; since the compassing the death of the king is alike the charge in all of them; the overt acts only differing from one another, as the indictment charges different acts connected with the assembling of this convention, such as how it was to be held, who were to form committees for projecting its meeting, and so on, which I do not particularize just now, because I shall have occasion to consider them distinctly when I come to the particulars of the evidence. There is one of the counts, however, that has been so strongly relied on in argument, and to which so large a portion of the evidence has been thought to apply, that it is necessary, in this place, to attend to its structure. I mean the count which charges the circulation of papers. We have heard a great many of them read, and they will be a lesson to me never again to destroy old newspapers as useless wrappings, but to treasure them up as precious manuscripts for the discovery of plots, and secrets of conspirators; for, with a very few exceptions, the whole of the written evidence — by which so deep-laid and detestable a conspiracy is supposed to have been developed by the seizure of the persons and cor-

respondences of traitors—has been to be found, for two years past, upon the public file of every common newspaper, and retailed, over and over again, in every town and country magazine in the kingdom; and that, too, with the implied consent of his majesty's attorney-general, who could not help seeing them, yet who never thought of prosecuting any man for their publication. Yet these said old newspapers have been on a sudden collected together, and their circulation charged as an overt act of high treason against the honorable gentleman before you; although, with a very few and perfectly harmless exceptions, it has not been shown that he ever wrote them, or published them, or read them, or even knew of their existence.

But supposing him to have been the author of all the volumes which have been read, let us examine how they are charged, in order to erect their circulation into treason.

The indictment states, that “further to fulfill their traitorous intention aforesaid (referring to the antecedent charge of compassing in the former count), they maliciously and traitorously did compose and write, and cause to be composed and written, divers books, pamphlets, letters, and instructions, purporting, and containing therein, amongst other things, 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 as aforesaid, with the traitorous purposes aforesaid," which is agreed to be a reference to the traitorous purposes enumerated in the antecedent part of the indictment. Here, therefore, let us pause again, to review the substance of this accusation.

The charge, you observe, is not the writing of a libel, or libels; or for their publication, or circulation; but their composition and circulation to effect the premeditated, preconcerted treason against the king's life. This intention, in their circulation, was accordingly considered by the court most distinctly and correctly, not only in the charge to the grand jury, but upon the former trial, as the merest matter of fact which could possibly be put upon parchment; totally disentangled from every legal qualification. We are not, therefore, examining whether these papers which have been read, or any of them, are libels; but whether (whatever may be their criminal or illegal qualities) they were written and circulated by men, who, having predetermined, in their wicked imaginations, to depose and put to death the king, wrote and published them to excite others to aid them in the accomplishment of that detestable and traitorous conspiracy.

There is another overt act, in which the publication of the same papers is charged, which I only

read to you to show the uniform application of the principle which obviously pervades every branch and member of the indictment. It states, that “the prisoners, in further fulfillment of the treason aforesaid (*i. e.*, by reference, the treason of putting the king to death), and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid (*i. e.*, by reference, the traitorous purpose against the life of the king), they composed, and caused to be composed, divers books, pamphlets, etc., purporting and containing, amongst 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 such convention and meeting as aforesaid, to aid and assist in carrying into effect such traitorous, subversive alteration and deposition as last aforesaid.” So that this charge differs in nothing from the former. For it is not that criminal pamphlets were published, but that they who published them, having wickedly and maliciously conceived in their minds, and set on foot a conspiracy wholly to overthrow and subvert the government, to depose, and to put to death the king, published them for the express purpose of exciting others to join them in the accomplishment of their treason. It does not

charge the publication of libellous matter, which, peradventure, or even in all probability, might excite others to originate such a conspiracy; but directly charges the criminal purpose of exciting others to assist in the accomplishment of one already hatched in the mind and intention of the prisoner.

Gentlemen, I should not further enlarge upon matter which appears to be so self-evident, more especially as I perceive that I have the assent of the court to the meaning and construction of the indictment as I have stated it, were it not that on the former trial it was directly questioned by the solicitor-general, in an argument which I cannot possibly reconcile with any one principle or precedent of English law. I am persuaded that he will not consider this observation as a personal attack upon his integrity, or any depreciation of his professional learning, for both of which I have always had a great respect. The truth is, when the mind has long been engaged on a particular subject, and has happened to look at it in a particular point of view, it is its natural infirmity to draw into the vortex of its own ideas, whatever it can lay hold of, however unsuited to their support. I cannot account upon any other principle for the doctrine maintained by so very learned a person, in his late reply in this place; a doctrine so extraordinary, that I would not venture to quote it from my own

memory, and which I shall, therefore, read to you from the note I have been furnished with by my learned friend who sits near me ;* a doctrine which I am persuaded the solicitor-general would not, upon reflection, re-maintain to be the law ; and which if it were the law, I would not live in the country longer than to finish my address to you. He says roundly, that the law upon this subject is perfectly clear ; namely, that any act done (attend, I beseech you, to the expression), “that any act done which may endanger the life of the king, is, in the judgment of the law, an act done in pursuance of an intent to compass his death. That the act is, in point of law, demonstrative of the purpose, and constitutes the crime of high treason ; that the imagination of personal harm to the king forms no part of it ; and that it is not material whether the person charged had in contemplation the consequences that might follow from what he did, it being sufficient, independently of all intention ; if the death of the king was a probable consequence of what he was about to do.”

Gentlemen, one hardly knows where one is after reading so strange and confounding a proposition. The argument, in short, is neither more nor less than this : That if I do an act, though with the most innocent mind, and without contemplating that any danger can possibly touch the king ; nay

* Mr. Gurney.

more, if from a mistaken zeal I do an act from which the jury are convinced that I honestly conceived his person would be safer, and his reign more secure and illustrious; yet, if not in the event, but only in the opinion of lawyers, my conduct led to the direct contrary consequence, I am to be adjudged in law, a compasser of the king's death. I am to be found, in point of law, to have intended what I never thought of; and a jury, whose province is to declare the fact, is to be bound in conscience to find me guilty of designing the king's death, though their consciences inform them, from the whole evidence, that I sought nothing but the health of his person and the honor of his crown. Gentlemen, this is such a monstrous, horrible proposition, that I would rather, at the end of all these causes, when I had finished my duty to their unfortunate objects, die upon my knees, thanking God that, for the protection of innocence, and the safety of my country, I had been made the instrument of denying and rebuking it, than live to the age of Methusaleh for letting it pass unexposed and unrebuked.

It may be curious to examine to what conclusions this doctrine of a lawyer's speculation upon probable consequences, shutting out the examination of actual intention, might lead. It is part of the evidence before you against the honorable gentleman at your bar, that a proposition was

made to, and adopted by, the Constitutional Society to send a delegate to the Convention at Edinburgh; and you have been desired, from this measure, and others of a similar bearing, to find an intention to destroy the king, from the probable consequence of such proceedings. Let us try the validity of this logic. The Society of the Friends of the People (some of whose proceedings are in evidence) had a similar proposition made to them to send a delegate to this same convention, and the measure was only rejected, after a considerable degree of debate. Suppose, then, on the contrary, they had agreed to send one, and that I who am now speaking to you, had been of the number who consented, I should then have been in a worse predicament than my client, who appears to have opposed it; I should have been found to have consented to an act, which, according to some legal casuists, had a tendency to destroy the king; and although my life was laboriously devoted to the duties of my profession, which cut me off from attending to the particular conduct of reformers, though approving of their general and avowed object, Mr. Yorke's speech at Sheffield, and all the matter besides, which has consumed our time and patience for three days past, would have been read to establish my conspiracy with people whom I never saw or heard of in the course of my existence. It is, besides, equally high treason to

compass and imagine the death of the heir apparent, as the death of the king; and if the nature of the conspiracy was to reach the king's life, by subverting the government, its subversion would lead as directly, in its consequence, to the destruction of his successor, and consequently would, upon the acknowledged principles of law, be a compassing of the death of the Prince of Wales. See, then, to what monstrous conclusions it would lead, if an act could be considered legally conclusive of an intention, instead of examining it with the eye of reason, and as a fact from the circumstances attending it. It so happened that at this very time, and though a member of this society of reformers, I was attorney-general to the prince; sworn of his privy council; high in his personal confidence; and full of that affection for him which I yet retain. Would it have been said, gentlemen, (I am not seeking credit with you for my integrity), but would it have been said without ridicule, that a man, placed as I was in a high situation about the heir apparent to the crown, who had at once the will and the privilege to reward my services; that I, who was serving him at the very moment in terms of confidence and regard, was to be taken conclusively, as a judgment of abstract law, to be plotting his political destruction, and his natural death?

This doctrine, so absurd and irrational, does not

appear to me to be supported by anything like legal authority.

In the first place, let it be recollected that this is an indictment on a statute, and not upon the common law, which has the precedents made by judges for its foundation; the rule of action here depends upon a written, unalterable record, enacted by the legislature of the kingdom for the protection of the subject's life, and which the judges upon the bench have no right to transgress or alter a letter of, because other judges may have done so before them. As far as the law stands upon tradition, it is made by the precedents of judges, and there is no other evidence of its existence; but a statute is ever present to speak for itself, in all courts, and in all ages; and I say with certainty, speaking in my own name and person, and desiring to stand or fall as a professional man, by what I utter, that the law is as I maintained it upon the trial of Thomas Hardy, and as I maintain it now. I admit that a statute, like the common law, must receive a judicial interpretation; and that, wherever the letter of an act of parliament is ambiguous, the constructions which have been first put upon it, if rational, ought to continue to be the rule. But where a statute is expressed in such plain, unambiguous terms, that but one grammatical or rational construction can be put upon it; when the first departure from that

only construction does not appear to have taken its rise from any supposed ambiguity of its expression in the minds of those who first departed from it, which is the general history of constructive departures from written laws, but comes down tainted with the most degraded profligacy of judges notoriously devoted to arbitrary and corrupt governments; when the very writers and judges whose writings and decisions first supported such original misconstructions, honestly admit them to be misconstructions, and lament and reprobate their introduction; when the same lamentation and reprobation of them is handed down from commentator to commentator, and from court to court, through the whole series of constructive judgments; and lastly, when parliament itself in different ages, as the evil became intolerable, has swept them all away; when, to avoid the introduction of new difficulties, it has cautiously left the old letter of the statute standing to speak for itself, without any other commentary than the destruction of every one that ever had been made upon it, and the reversal of every judgment which ever had departed from its letter, concluding with the positive prohibition, in all future time, of the one and of the other; in such a case I do maintain, and, as an English lawyer, feel myself bound for the public safety to declare, in opposition to whatever authorities may be found to the

contrary, that if the statute of Edward the Third can be departed from by construction, or can be judged otherwise than if it had passed yesterday, there is, properly speaking, no such thing as written law in England.

Gentlemen, you will find me justified in what I say by the language of the statute itself, which is clear and unambiguous, and by the declarations of its genuine meaning by subsequent parliaments.

The words of the statute of the twenty-fifth of Edward the Third are these :

“Whereas divers opinions have been before this time, in what case treason shall be said, and what not; the king, at the request of the lords and commons, has made a declaration as hereinafter followeth :

“When a man doth compass or imagine the death of our lord the king; or of our lady his queen; or of their eldest son and heir; or if a man do levy war against the king in his realm, or be adherent to the king's enemies in his realm, giving them aid and comfort, and thereof be proveably attainted of open deed by people of their condition.”

The reason of passing it, as expressed by the act itself, and by Lord Hale and Lord Coke in their Commentaries, demonstrates the illegality of any departure from its letter; because it was passed to give certainty to a crime which, by judicial

constructions, had before become uncertain. Lord Hale says, "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 of royal power was a 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." He then proceeds to state various instances of cruelty and vexation, and concludes with this 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 faith or allegiance, was by construction, and consequence, and interpretation, raised into the offence of high treason."

To put an end to these evils, therefore, and to give to the harassed subjects of England security and peace, this sacred law was made; but for a season, with very little effect, because wicked judges still broke in upon its protecting letter by arbitrary constructions, insomuch that Lord Hale observes, that although the statute of Edward the Third had expressly directed that nothing should be declared to be treason but cases within its enact-

ing letter, "yet that things were so carried by parties and factions in the succeeding reign of Richard the Second, that it was little observed; but as this or that party got the better, so the crime of high treason was arbitrarily imposed and adjudged, which, by various vicissitudes and revolutions mischiefed all parties, first or last, and left a great inquietude and unsettledness in the minds of the people, and was one of the occasions of the unhappiness of that king." All these mischiefs, he further observes, arose from breaking the great boundary of treason by a departure from the letter of the statute, which was so great a snare to the subject, that after many temporary acts of parliament passed and repealed, and many vexatious and illegal judgments, clashing with, and contradicting one another, the statute of Queen Mary was at last enacted, which swept them all away, and as Lord Coke observes, in his commentary upon it, in the Second Institute, not only set up again the very letter of the statute of the Twenty-fifth of Edward the Third, but repealed all judicial interpretations passed, and prohibited all recurrence to them in future.

I will give it you in his own words: "In this statute of Mary, 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 further attainder, judg-

ment, 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 the Twenty-fifth of Edward the Third, or any other declaration or matter to the contrary notwithstanding.'"

I do therefore maintain, that the statute of King Edward the Third, plain in itself, and rendered still more so by the parliamentary exposition of the Act of Queen Mary, is a peremptory rule, and that no appeal can be had upon the subject to any writers or decisions, whatever may be the reputations of the one, or the authority of the other.

I find nothing, however, in any writer of character, or in any decision, which deserves the name of authority, to which such an appeal could successfully be made. Lord Hale no where says, that a conspiracy to subvert the government, or any rebellion, pointed merely at the king's royal authority, is high treason within this branch of the statute. He uniformly considers the crime as a design against the king's natural life; and treats

nothing even as an overt act of it, that is not so pointed against the king's person, as to be legal evidence of a conspiracy against his existence. "If men," says Hale, "conspire the death of the king, and thereupon provide weapons, or send letters in the execution of it, this is an overt act within this statute." Undoubtedly it is, but mark the principle, and attend to Lord Hale's language, which is plainly this: If men conspire the death of the king, and do these things in execution of the conspiracy, the things so done are legal evidences of the treason; but the treason, which is the intention of the mind against the king's life, must first exist, before any step could be taken in pursuance of it.

Another passage in Lord Hale, upon which the whole argument against us appears in a manner to be built, is, in my mind, equally clear, and perfectly consistent with the letter of the statute:

"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; for it is in effect to depose him of his kingly government, and was so adjudged by all the judges in Lord Cobham's case."

Here, you observe, that the conspiracy, even to imprison the king, is not stated as a substantive

act of treason, independently of a design against his life, but only as an overt act to prove the compassing of his death; and so far was Hale from considering that constructive attempts upon the king's government or authority, without direct force pointed against his person, could even be offered as evidence to support an indictment for compassing his death, that he seems anxious to prevent the reader from running to such a conclusion; for he immediately afterwards says: "But then, this must be intended of a conspiracy forcibly to detain and imprison the king."

Gentlemen, I have only troubled you with these observations, to prevent anything which has been offered as evidence upon this trial, from being at all confounded in your minds, as connected with the charge. We have indeed attempted nothing against the king's government; but leaving that still to be the question, there is not a tittle in the whole body of the proof, which has any the remotest relation to any conspiracy to seize the king, or to depose him, which alone could support a charge of compassing the king's death; for the indictment itself does not point even to any conspiracy to depose the king directly by force against his person, but only constructively, through the medium of a subversion of the government.

Gentlemen, the charge, therefore, which the crown seeks to bring home to us, not only as it is

to be collected from the indictment, but as it is explicitly pointed by the argument, is this, that a design was formed to call a convention of the nation, and that the prisoner at the bar was engaged in it; that he consulted with others for the appointment of committees of co-operation and conference, consisting of the persons now in prison, who were delegated by the two great London Societies at the head of the conspiracy; and that the convention, which was to be assembled as the result of this confederacy, was to destroy, by force, the legal government of the country, and to form itself into a legislature for the nation; thereby superseding, not only the functions of the three branches of parliament, but the executive authority of the crown; that this, and this alone, was the secret object of all these Societies, though covered with popular pretexts of restoring the constitution, until their machinations should be sufficiently ripe to throw off the veil, to avow their principles, and to establish them by force; that this, therefore, amounted to a conspiracy to depose the king, which was an overt act of high treason for compassing his death.

Gentlemen, I am sure I have done justice to the crown in my statement of its proposition; and I will be equally just in my answer to it. For I admit, that if the attorney-general satisfies you upon the fact, that this proposition is true, he gives

you evidence from whence it ought to be left for your very serious judgment, whether those who were engaged in a conspiracy to usurp the king's authority, might not be reasonably supposed to have also contemplated his destruction, which was so likely to follow from the annihilation of his office. I desire it may be remembered, that I have never denied, either now or upon the former trial, that the destruction of the king's natural life was not a probable consequence of a forcible coercion of his person, for the extinction of his authority; nor that an act done with deliberation, leading to a mainly probable consequence, is not good evidence of the intention to produce that consequence. My whole argument has only been, and still is, that the intention against the king's life is the crime, that its existence is matter of fact, and not matter of law, and that it must therefore be collected by you, the jury, instead of being made the abstract result of a legal proposition, from any fact which does not directly embrace and comprehend the intention which constitutes the treason.

But, that this is the law of England, and the law immediately applicable to the present question, fortunately does not depend upon any argument of mine, nor upon any appeals I have made to the authoritative writings of the sages of the profession. I have a much better security for my purpose, the security that what his lordship, who is to

assist you in your deliberations, has said upon one occasion, he will say upon another; I have the express and direct authority of Lord Chief Justice Eyre, in that part of his charge to the grand jury, where he laid before them the very matter we are now engaged in for consideration. "If," says his lordship, "there be grounds 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." This, the learned judge lays down with the greatest propriety as a general rule of evidence, applicable to all cases, and therefore most emphatically applicable to high treason, where the prisoner is not to be criminated by conjectures

and inferences, or strains of wit, but proveably attainted according to the language of the statute. It must be remembered, too, that this sound and salutary doctrine was not delivered by the court as an abstract proposition, but the application of it was directly pointed to the occasion, and given to the grand jury, as a standard to direct their judgments in the very matter before us. The cause, therefore, is brought beyond the power of evasion or controversy, to one short point, disentangled from all ambiguity or legal distinction; since, upon the express authority of the court which sits to try the prisoner, independently of all other authorities, it is a mere naked question of fact which you are to examine; there is nothing which can affect him legally, or which, it is even contended, can affect him, unless you are prepared to say, upon your oaths, in the presence of God and your country, that you have materials in evidence before you, from whence you feel yourselves bound in conscience to pronounce, that the parties who engaged in the proposition of holding a convention, did not engage in it according to their professions to collect the public opinion upon the subject of national abuses, and for the consideration of constitutional redress, but for the direct, though concealed purpose, of resisting, by force, the authority of parliament. I repeat the expression, of resisting, by force, the authority of parliament,

and assuming to themselves the control and dominion of the nation. This is the fact to be made out, and the burden of the proof is upon the crown. I do not stand here to disprove, but to examine what has been proved; and I confess myself, therefore, to be utterly at a loss how to pursue my discourse, for you have heard nothing upon which you would pull a feather out of a sparrow's wing. There is not only no evidence upon which reasonable men might deliberate between a verdict of guilty or not guilty, but, literally, no evidence at all; nothing that I could address myself to, but through the medium of ridicule, which, much as it would apply to the occasion in other respects, it would be indecent to indulge in upon a great state trial, so deeply concerning the dignity of the country, and so seriously affecting the unfortunate persons whom I shall be called upon to defend hereafter.

Let not, however, this condition of a prosecution, commenced under such exalted auspices, depend upon my single assertion, but let it be brought to the test of examination.

The attorney-general contends, that he has made out proveably, *i. e.*, without the possibility of a reasonable doubt, that this convention was projected for the detestable purpose charged by the indictment; and that their avowed objects were nothing but a surface of color and deceit. He says, that two societies were set on foot in this

town for these traitorous objects; that one of them (the Constitutional Society), was instituted by Mr. Tooke, and that he organized and superintended the others; that he prepared their resolutions; that he superintended their correspondence with similar societies, which were established at Sheffield, Manchester, Birmingham, Edinburgh, Perth, and most of the populous towns in both parts of Great Britain; and that the whole body of their communications with one another manifested their design against the very being of the government. This is the proposition; but has he proved it, or any part of it? I answer, he has not. In the first place, did Mr. Tooke set on foot the Constitutional Society? I answer again, he did not. It was instituted by a most honorable and worthy person, who will be called before you as a witness, if you shall not think your time misspent in hearing evidence where nothing has been proved; it was instituted by Major Cartwright, a man as much attached to the constitution of his country, and as enlightened to understand it, as any one who hears me, whatever may be his station. This assertion is not made from the instructions of a brief; I speak from my own knowledge of the man; Major Cartwright, who began that institution, continued to be a member of it during the progress of its proceedings arraigned before you; he is a member of it now; and he will tell you,

that he shall continue to be one, notwithstanding this prosecution, until its objects are accomplished.

The Constitutional Society was instituted by this gentleman, for the object which it has uniformly professed and adhered to, an object which it pursued in common with some of the greatest and wisest men which this country has for ages produced; it was instituted to produce, if possible, by the progressive influence of public opinion, a reform in the commons house of parliament; a measure certainly not originated by Major Cartwright, but forced by the corruptions of parliament itself, and the consequent calamities of our country, upon the attention of every enlightened statesman during the present reign. The father of the present minister uniformly and publicly imputed the calamities of Great Britain to this fatal source. The succession of destructive wars, without a national object; the rash and improvident expenditure of public money; the ravages upon the constitution by the influence of the crown, were all of them ascribed by this great statesman to the loss of that control in the people, over the proceedings of parliament, which they were entitled to by the ancient principles of the constitution. The great Earl of Chatham was one of the first persons who called the attention of the public to the absolute necessity of a reform in parliament, to redeem

the nation from ruin ; it was the great feature of his life, and the foundation of his fame.

As the avowed objects of the society were thus originated and countenanced by persons of the highest station, let us see whether it was instituted for the perversion of these principles by obscure and necessitous men. Gentlemen, the contrary is most notorious ; and it may be established by referring to the names of the original members ; the Duke of Richmond was one of the earliest ; and he pushed the principle and the practice of reformation very much farther than Mr. Tooke has ever been disposed to follow him ; a fact which I promise to establish by the uniform tenor of his life. Mr. Tooke considered the disposition of the popular franchise of election as matter of expediency in government, and to be moulded by parliament in its discretion for the attainment of constitutional freedom ; the duke, on the other hand, considered universal suffrage to be an inherent privilege of the people, to be claimed by men as of right, and not yielded to them as an indulgence. It is not to be wondered at, therefore, that his grace's doctrines should acquire the ascendancy ; since, independently of his illustrious patronage, they were more flattering, and better calculated for a rapid progress. I agree with the Duke of Richmond, that there exists in the people of England, as in every people, an inherent right

to be governed according to the universal assent of the community; but I think that the people would judge weakly for themselves by desiring their representatives to carry forward to the crown, for its ratification, the system of universal suffrage. Yet, while I say this, as Mr. Tooke's sentiments, and as my own, I confess, at the same time, that the arguments by which the Duke of Richmond supported his system, and which have been uniformly followed by all the other prisoners, were not calculated to impose upon the ignorant, but are well worthy of attention and consideration from the wise. The duke's argument was of this sort (I do not profess to adopt the very phrase): "When it is conceded," says his grace, "that some reform of parliament is indispensably necessary for the safety of the country, who is to insure a reform that will give general satisfaction, and produce obedience and stability? If you go to a given extent, founded upon principles of expediency, others, upon the same principles, will seek to push it to an extent still further, and others to an extent beyond that; so that reformation, however pure the design of its author, instead of giving firmness and vigor to government, would only be the parent of discontent." This was the difficulty which occurred to the duke; and out of it he saw no road, as he himself expresses it, but a reform upon principle, which grants nothing from expediency

or favor, "but which gives to every man his own." These were his grace's doctrines, as I shall read them presently from the work which he acknowledged in the course of his former evidence, and which appears, throughout the whole cause, to have been the very scripture of all these societies. These, I doubt not, are his grace's opinions still; for though a man may change his sentiments in matters which depend upon policy and expediency, though he may think it prudent to grant at one time that which further reflection may suggest to be unwise to be granted, yet no honest man can change his mind as to the propriety of giving to every man what he believes and acknowledges to be his own. But the Duke of Richmond's opinions are not the question; it is sufficient for me, that when these opinions were published, and for a long time insisted upon by this intelligent and illustrious person, no man living thought of imputing, or can now reasonably impute, to him a design to overturn the constitution, or to enervate its functions. Yet you are now called upon to devote to infamy and death the gentleman whom I am defending, not indeed for treading in the Duke of Richmond's steps, not indeed for adopting the plan of universal suffrage, or for following it up by the same means which the duke has recommended, but for shrinking to a plan far more restrained and moderate, and declining even to effect that system

of moderation, by the procedure which the duke both inculcated and practiced.

But it seems all these doctrines and proceedings are but color and deceit, manifested by the discipline and regularity of their siege against the character and authority of government. The conspirators sat, it seems, by delegated authority, from multitudes too large for consultation; they did so, certainly; still pursuing the example, in form as well as in substance, of the highest men in the kingdom, among whom, by the bye, are to be found many of the members of that government which has levied this prosecution. I will prove to you, for I have now in court some of the first and most honorable men in the kingdom to prove it, that in the year 1780, the very same plan of delegation from large bodies was adopted, and for the identical object of correcting, by the formidable engine of public discountenance and censure, the improvident expenditure of public money, wrung from the people by corrupt influence in the house of commons. I will prove, that for the express and avowed purpose of reforming the government of the kingdom, these honorable persons, who were never accused or suspected of treason, sat in convention in the Guildhall of the city of London; delegates for different districts were appointed, some of whom are now in my eye; and you will find, in short, that no one step, in form or in sub-

stance, has been taken by the unfortunate persons who are now the subjects of this prosecution, that was not taken, and, in my opinion, legally and constitutionally taken, by their superiors, whose examples they have followed.

Let my expressions be properly understood; I stand upon a great theatre, and should be sorry to say anything which I can have occasion to recall. Let it be recollected, that I am not defending all the papers which have been read; some of them are rash and absurd in the extreme; many of them are indecent; many of them clash with one another, which is not surprising, since they were written by persons of various descriptions, who had no communication with one another. But that is not the question; the question is, what were the objects of these societies, from the result of the whole evidence? These papers are not prosecuted as libels, but are charged to have been written with the intention to promote a convention to supersede and assume the government. But will any honest man say, that he can collect from these writings, taken in a mass, and as indicative of the pursuits of their authors, any such intention or system? On the contrary, it is impossible to listen to them with common candor and attention, without observing, that the needle is not truer to the pole, though, when it is disturbed and agitated, it oscillates round the point of its attraction, than these poor people were to

the promotion of reform in the commons house of parliament, by collecting the sense of the people on the subject; conscious that though parliament, as the Duke of Richmond expresses it, would not spontaneously yield, what those who sway it have a corrupt interest in refusing, yet that it might be obtained by that which must, and will in the end, obtain everything from any government, however constituted, the slow, gradual, and progressive effect of public opinion. This was their object, and I do maintain here, in my own person, that it is the privilege of Englishmen so to collect the opinion of the country; and that it is the duty of parliament, nay, its very use and office in the state, to attend to, and to give effect to the opinions so collected. An eminent person, whose writings I have often had occasion to cite, expresses this sentiment with admirable justness and force: "The virtue, spirit, and essence of the 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 has been taught, by a doctrine of the most pernicious tendency, but was designed as a control for the people. It was supposed originally to be no part of the standing government of this country; but was considered as a control upon it, issuing immediately from the great body of the people, and speedily to be resolved into the mass from whence it arose."

To bring back the house of commons to this genuine office and character, by fixing the public attention to its departure from it, was the obvious drift of all the proceedings of the societies, as they are fairly to be collected from the evidence. Undoubtedly there are among the papers strong invectives against unbridled monarchies, because they were written while monarchs, having no law but their unbridled ambitions, were laying waste the liberties of the world; there are, I admit, strong censures upon those corruptions which have embarked this country in a system (as they thought it), of tyranny and injustice; but there is nothing in them which touches the king of Great Britain's majesty or office, or the hereditary dignity of the peers; there is nothing which glances at a wish to introduce a republic into England; there is strong democracy, indeed, but it is confined to its proper sphere, to the restoration of the house of commons, which is the constitutional democracy of England.

The house of commons is perpetually talked of as if it were a self-existing body, independent of the people; whereas it is their mere agent; the organ by which they speak and act; and which betrays and abdicates its trust the moment that it assumes a language of its own, which the people do not auspicate and approve. Take away such a house of commons from the British government,

remove the control which the people have in it upon the executive authority by the free choice of their representatives, and then tell me how it differs from the most despotic establishments, which are the just detestation of the world. Yet how can it be asserted that the people of England have that control, if they have not the free choice which bestows it? The Society of the Friends of the People, part of whose proceedings the crown has thought fit to make evidence, and to speak of with respect, have placed upon the journals of the house of commons, and demonstrated by positive evidence, this fallen, humiliated condition of the country. They offered to prove, that peers and the treasury actually nominate ninety members, and procure, by influence, the return of seventy-seven more, making, together, one hundred and sixty-seven; that ninety-one individual commoners in the country, procure the election of one hundred and thirty-nine, and that one hundred and sixty-two individuals absolutely return three hundred and six members, a majority of the entire house of commons.

Gentlemen, this is no vague assertion of mine; I am reading the precise state of it, as it was offered by a regular motion in parliament, which I had myself the honor to second; we offered to establish, that one hundred and sixty-two persons did actually return three hundred and six out of

five hundred and fifty-eight, which is a majority of the house. So that everything that is to bind and ascertain your rights or mine; every measure that is to promote the glory, or to bring on the destruction of the country; every act or system of government, which is either to give us the continued prosperity of peace, or to afflict us with wasting and calamitous wars; every event that may render this mighty nation flourishing and happy to the latest posterity, or bend it down to the ignominious yoke of foreign or domestic enemies; all these heart-strings of a people, instead of depending on a house of commons, proceeding from themselves, are to be pulled and torn asunder, as the caprice or interest of one hundred and sixty-two individuals, who choose representatives for the whole kingdom, may suffer or direct. Yet we are told that it is the pride and glory of the English government that by law we are equal, living under the same sanction, and enjoying similar privileges.

Gentlemen, all this was made manifest to the house of commons by the honorable gentleman who made the motion I allude to, and who held a language which the meanest man in England can understand. His language was this: "I assert this to be the condition of England; if you say it is not, do justice to yourselves by calling upon us for the proof, and expose your calumniators to reproach; but if it be the condition of England,

shall it not be redressed?" Gentlemen, the proof was not received, and the grievance continues. This is the clue to the whole evidence.

I do not mean, therefore, to say (and let it be understood that I have not said), that my clients would not be equally guilty, and equally subject to capital punishment, if, under the irritation of this or any other grievance, they had said: Let us supersede this surreptitious parliament, and hold a convention to assume its functions. When I asserted that the people in this, and in every country, had a right to change their government, I never meant, what must have been supposed by the court, from the indulgent interruption I received, I never meant that each individual, choosing for himself, might rise in arms to overturn, by force, an established constitution. Far from it, gentlemen; I meant to say, what the people of England will be the last to misunderstand, as they were the first to practice, that all governments stand upon the public will, and ought to endure only for the public benefit; and that when this sacred maxim is forgotten, or trampled upon, a nation, without the conspiracy of individuals, which criminal law can act upon, will, sooner or later, do itself justice. I meant further to say, that when I observe men referring to these great and original principles of society, when I see them recurring, in argument, to the deeds of freedom

which their ancestors have achieved ; when I see Englishmen particularly referring to the glorious era of the revolution, when their fathers drove from the inheritance of the crown a race of kings which had reigned over them almost time beyond memory, and sent for a private man (to them at least), to govern in their stead, when I contemplate this disposition, I am so far from considering it to be an attack on the king's authority, that, in my mind, it is a fresh confirmation of, and exultation in his title. His majesty is the king of the people, upon the principle alone that the people can change their kings ; and it is the most glorious title which any prince can enjoy. These are my sentiments. I love the king, but I can have no other respect or affection for him than that which grows from the common relation of prince and subject. But speaking of him who by the course of nature is to succeed him, and feeling much more than a common interest in his prosperity and glory, I hold the same language, and have ever, publicly and privately, held it. If he is not to inherit and to fill the throne upon that best and most honorable title, his inheritance is not worth having, and is not long to be had. They who act upon any other principle, betray the king, and endanger his establishment. Say to the people of England, this is your constitution. It is not fastened upon you as a weight to crush you, but has descended

to you from your wise forefathers, for your protection and happiness. It is their institution, the work of their wisdom, and their heroic valor. As they made it for themselves and their posterity, so you may change it for you and for yours. But will you wantonly destroy your inheritance? Say this to them, and, to use the expression of a celebrated speaker, in the case of America, "They will cling and grapple to their constitution, and no force under heaven will tear them from their allegiance to it." Let those, then, who govern the country, beware how they propagate the fashionable doctrines of corrupt power. Let them recollect that the English people are generous and enlightened, and know the value of their own institutions. Treat them with liberality, confidence, and justice, and nothing is to be feared. But if, on the other hand, a system of constraint and terror is to be pursued, and one part of the nation frightened or corrupted to defame the other, I tremble to think of, I dare not give utterance, in this place, to the consequences.

This was foreseen by the Duke of Richmond, and was the avowed and wise reason for his earnestness in the cause of reform; and he so expresses it in his publication, which the whole proof has demonstrated to have been the cause and the model of all the proceedings before you; why then are their motives assumed or argued, against the whole

evidence, to be different? I will read the passage:

“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.” From what quarter was there nothing to hope? From the house of commons, which had been tried, in which not one proselyte had been gained from corruption. What then was his resource? I shall give it to you in his own words: “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.” Rights that are repugnant and contradictory cannot exist. If there be a right in the people to universal suffrage, it is the government which conspires against the people, and not the people against government. But my

client offers no such argument; he differs totally from the Duke of Richmond; and therefore, when his grace comes here to give evidence, he ought not, upon the only principle which can justify these proceedings, to be permitted to retire; since he has written and done ten times more than can be imputed to the unhappy, miserable men who are now languishing in prison, for following much less than his example. His grace, in the same paper, expresses himself further, in these remarkable words: "When the people are fairly and equally represented in parliament, when they have annual opportunities of changing their deputies, and, through them, of controlling every abuse of government in a safe, easy, and legal way, there can be no longer any reason for recurring to those ever dangerous, though sometimes necessary expedients of an armed force, which nothing but a bad government can justify. Such a magnanimous end to your proceedings, when, after having restored liberty, commerce and free government to your country, you shall voluntarily retire to the noble character of private citizens, peaceably enjoying the blessings you have procured, will crown your labors with everlasting glory, and is worthy the genuine, patriotic spirit which animates the Irish volunteers." Let it not be forgotten, that this letter was addressed to Colonel Sharman, command-

ing a large armed force in Ireland, without commission from the crown.

Gentlemen, it is amazing, the different effect which the same writings have, according as the author happens to be cited when the work is read. If this letter, which, coming from the pen of the Duke of Richmond, is only a spirited remonstrance against corrupt ministers, had been read in evidence by Mr. Shelton at the table, as the letter of Citizen Margarot, Skirving, or Yorke, the whole mass would instantly have been transmuted into high treason against the king.

But it seems that their objects were different, for that it is plain they had abandoned the constitutional mode of petition, which was alone recommended in this letter. I maintain that this imputation is directly in the teeth of the whole body of the evidence. All the witnesses, both now, and upon the former trial, and the witnesses too for the crown, prove the very reverse; they all say that they looked to success through the slow operation of reason; that they knew the house of commons would disregard, as it had often disregarded, the scattered petitions of small numbers; but that if they could collect the universal sense of the people upon the subject, the success of their object would be insured, and insured through the regular organs of government. How else were the questions on the slave trade carried? Parliament had treated

the measure, in its origin, with contempt; and I must say, that the arguments against its sudden or speedy abolition were so weighty, in my mind, that I could not give my assent to it; because I knew, from an acquaintance with the islands, that part of the evidence was erroneous and exaggerated, and because I thought the white population totally inadequate and insufficient to maintain the settlements established under the faith of the nation; but when at last the great voice of the people of England came to be collected together—when parliament was surrounded, not with arms, but by petitions—I recollected that I was a representative of the people, and that my opinion ought to be controlled by the judgment of the nation. Many others, I believe, conducted themselves upon the same principle. The constituents of any given member have no right to control his judgment, but the voice of the people of England, upon any subject, ought to be a rule to the house of commons. These very petitions, upon the subject of the slave trade, were collected, too, in the very manner which now gives such mighty offence; they were managed by delegation and committees of conference and co-operation in every part of the kingdom.

Let us next examine what part of the offence, upon the principles it is contended to exist, applies peculiarly to the unfortunate prisoners who have

been selected for criminal justice; and if their guilt can be established, let us see how many are to be involved in it; for Mr. Attorney-general is a person of too much wisdom and experience to impute to the seven people in Newgate the design to call a parliament without a wide-spread combination. How then is the line to be drawn? And to what circumference is the empire of destruction to extend? If the evidence of the conspiracy is to be collected from the whole mass and tenor of the conduct of these societies, and is to attach upon the prisoners, not from any specific acts of their own, but principally because they belong to some one of them as members, it is plain that all who have at any time belonged, or yet belong to them, are equally implicated in guilt, and equally subject to death under the law. How many tenants at the will of the ministers are upon this principle to hold their lives in Great Britain? All the hundred and eighty delegates who met at Edinburgh, and all the thousands who sent them, are of that description; and thousands more in every populous town in this part of the kingdom.

Let every man, therefore, be responsible for his own acts, and not for the writings and opinions of others, and more especially of others whom he never saw or heard of. When men co-operate for some public object, which in common they agree in, it can never happen that they shall agree in

everything belonging to it; nor are a man's opinions ever to be taken, even by the result of the resolutions of those with whom he associates for an avowed object. I shall exhibit to you a proof of this in one of the most enlightened men that England ever bred, and to whom she owes unparalleled obligations. I mean to call Mr. Fox, who will tell you that he was a delegate for Westminster, in the year 1780, when a convention was held to consider of the best means for obtaining a reform in parliament; his opinions were always adverse to universal suffrage, yet, nevertheless, his name appears to the petition which asked it of the house of commons, being signed to it as chairman of the body; governed by its majority, and bound to give effect to its proceedings. In the same manner vicious men may mix themselves among the honest, with the ulterior design of establishing evil upon the basis of what is good; it ever must be so in all the transactions of the world; and parts of the evidence may lead to a suspicion, that it might be so in the present instance; but for that very reason a jury ought to be the more abundantly cautious of the effect of foreign and irrelevant matter; and should examine into each man's guilt or innocence, by his own individual conduct.

Gentlemen, I have hitherto insisted upon the views of the Constitutional Society as they are to be collected from its origin and its acts; and I am

equally prepared to show—indeed it most decisively appears already—by everything which has been proved by the crown, that the objects of the Corresponding Society were precisely similar; that they were avowed by their original institution, which they published to the world; and which, though published upwards of three years ago, and though ever since in most extensive circulation, were not by the crown even considered as in any respect injurious or illegal; yet now, after having for all that time been transcribed into every newspaper, and sold publicly by every bookseller in the kingdom, without even a common information being put upon the file against any printer for a libel, they have been suddenly got together, not against their authors, but against a stranger to their very existence, and have furnished the elaborate commentary upon the statute of high treason, which you have been obliged to listen to for so many days together.

Let us now examine the original institution of the Corresponding Society, and see whether in sobriety and fairness it furnishes the remarks which have been made upon it.

It is charged with the introduction of dangerous novelties, yet on the very front of it where they set out with describing their objects, they say: “Laying aside all pretensions to originality, we claim no other merit than that of reconsidering

what has already been urged in our common cause, by the Duke of Richmond, Mr. Pitt, and their then honest party, years back, and persevere in supporting with candor and zeal the banners of truth already displayed by them." Now I ask any person, who will only consent to exercise the common candor of a gentleman, to say nothing of the scrupulous reserve of criminal justice, whether it was possible for a society, whose object was to persevere in the cause which Mr. Pitt and the Duke of Richmond had originated and deserted, better or more distinctly to express it. The language is most precise and unambiguous — but it seems that it is all color and deceit—it may be so, but they who assert that a man's meaning is the very reverse of his expressions, must prove that variance as a matter of fact, by comparing his conduct with his declarations. Has any such proof been given in the instance before us? So far from it, that we are now upon the second trial, after the acquittal of Mr. Hardy, who stood before a jury to answer for this very paper, of which he was the author, and to which his name was signed. The whole object of that trial was to show this variance between the conduct of the society, and this its original and public profession; with what success the late verdict has recorded; not a witness appeared for the crown who did not prove the very reverse of the imputation; and though possessed

as it was of the most private papers of all whom rashness thought fit to suspect, not a scrap of writing was produced to establish any departure from the open, avowed objects of their institution; yet, notwithstanding the acquittal of the avowed author and publisher of this paper, to the expressed satisfaction of the court and country, it is now read over again as evidence, and vehemently insisted upon with the same arguments which had been before rejected, with this difference only, that instead of being urged as formerly against him who was accountable for its contents, they are now employed against a gentleman who does not appear, from any proof, to have been even acquainted with its existence; and who began, and had been pursuing his object (whatever it was), for years before the paper had a being, which is used to decipher his intentions. How completely is the lord chief justice's argument subverted, and torn to pieces, by this procedure! So far from sanctioning the principle, that men are not entitled to the benefits to be derived from a fair construction of their expressions, his lordship told the jury, that, in a case so highly penal, they were not even strictly to be bound by their literal interpretation; yet you are now gravely asked to condemn to death the gentleman at the bar, by taking the meaning to be directly the reverse of what language has established, although all the extrinsic

evidence by which alone such a latitude of judgment could be endured, falls in with and supports the ordinary construction of the writing.

The logic by which this mode of judgment is established keeps pace in novelty with the proposition itself: "People may talk of their loyalty," says the solicitor-general, "and of their love for the constitution, when nothing like it is in their hearts. Lord Lovat did so when he was plotting the destruction of his country." Surely this observation is hardly worthy of so learned a man. Lord Lovat took up arms against the king; he was actually taken in open and banded rebellion; and, therefore, to be sure, anything he might have said or written upon the subject of his principles or intentions could be of no avail; whatever he might have said or written, his open deed condemned him. If a man holds a knife at my throat to destroy me, it is in vain for him to say he loves me. But to give the case of Lord Lovat any bearing upon the present, you must first prove that our design was to arm; and I shall then admit the argument and conclusion. But has any such proof been given upon the present trial? It has not been attempted—the abortive evidence of arms has been abandoned—even the solitary pike, that formerly glared rebellion from the corner of the court, no longer makes its appearance; and the knives have retired to their ancient office

of carving. Happy was it, indeed, for me, that they were ever produced; for so perfectly common were they throughout all England, and so notoriously in use for the most ordinary purposes, that public justice and benevolence, shocked in the perversion of truth in the evidence concerning them, kept pouring them in upon me from all quarters. The box before me is half full of them; and if all other trades should fail me, I might set up a cutler's shop in consequence of this cause.

The next passage of the original institution, which the solicitor-general selected for observation, is precisely of the same sort. It is impossible to support his argument upon it without confounding the whole structure of language. If, say they, we can once regain an annual parliament, to be fairly chosen by the people, they will then be restored to their just share in the government of their country. The expression is, regain annual parliaments, yet the charge is, that the constitution was to be wholly subverted, and a new and different one established. How is it possible to regain that which was never before established? How were they to regain that which they were themselves to invent and to create? How was that to be restored which never before had an existence?

The next accusation against the Corresponding Society is so manifestly and so glaringly unjust, that I feel I have a right to complain of its intro-

duction; though not of its introduction by my learned friends, who were bound to lay before the jury all the materials which the two houses of parliament, representing the nation, had adopted upon the subject; the attorney-general was undoubtedly bound in justice to the prisoner, as well as in deference to parliament, not to garble the proceedings, but to submit the whole of them to your consideration. I have no complaint against him, or against any of the honorable men who assist him. So far from it, I have nothing more at heart, at this moment, than that the impression of my observations should reach beyond the court, and affect the attorney-general himself, whose candor and integrity I know will be open to receive them. It was impossible he could know what he has learned from the evidence in the last cause, or what he is yet to learn from it in this. And as I foresee that the most beneficial consequences may arise to others hereafter, from the subject being seen by my learned friend in its true and genuine colors, I shall, whatever may be the labor to myself, proceed in the detection of the fallacies which have been heaped on one another, though many of them have little or no application to the defence I am now engaged in. My client, indeed, generously imposes this burden; as he looked only to the general happiness, in the conduct which brings him a prisoner before you, without any possible

view of advantage to himself, so he now looks anxiously round him with the same generous and independent spirit, and enfeebles, by expansion, the argument of his own innocence, that it may extend to protect the innocence of others, and to vindicate the freedom of his country.

Gentlemen, the accusation which the house of commons made part of its report, and the injustice of which I complain, is, that the Corresponding Society had no sooner been established, than a Society at Norwich wrote to them to know the object of their institution; and that so conscious were they that their designs were different from their public professions, that, instead of at once appealing to their printed institution, to speak for itself upon the occasion, they wrote a dark, guarded, enigmatical letter, in order to conceal a purpose which could not, with prudence or safety, be revealed. I confess, I never in my life was so much surprised as at the impudence and falsehood of this assertion; for I maintain, that it is not possible for language to furnish an answer more explicit, nor one that in more direct terms did appeal to their public declarations for their designs. I will read to you the very words of the correspondence. The Norwich Society say: "Our principal design in writing, is, that we may have an opportunity of knowing more exactly what may be thought the most eligible steps to be taken, in

carrying on this great business of our associated brethren, and to have an opportunity to ask such sort of questions as may be thought very reasonable among the brethren; especially when we think that publications are covered with a sort of obscurity in it, as the Sheffield people's declaration, which seemed determined to support the Duke of Richmond's plan only; but since we find, in a printed letter received from them in a book, that they mean to abide by some moderate reform, as may hereafter be brought forward by the Friends of the People, which method is uncertain to us. Again, we find that the Friends of the People, and the Society for Constitutional Information, do not exactly agree; we could be glad to know the reason. It seems to me as though the difference was this: the Friends of the People mean only a partial reform, because they leave out the words expressing the Duke of Richmond's plan, and talk only of a reform; while the Manchester people seem to intimate, by addressing Mr. Paine, as though they were intent on republican principles only. Now, to come closer to the main question, it is only desired to know whether the generality of the societies mean to rest satisfied with the Duke of Richmond's plan only, or whether it is their private design to rip up monarchy by the roots, and place democracy in its stead."

This is the letter, the language of which has

been so mightily relied upon, and which is printed in italics and capitals in the reports of both houses of parliament. But what, in the first place, have the Corresponding Society to do with the language of this letter; and how, in common decency or common sense, can it affect them? Is it to be endured that treason shall be fastened upon me, because I am absurdly or impertinently asked whether my intentions be traitorous, unless my previous conduct or declarations have excited a reasonable suspicion, or unless the evidence of bad intention can be collected from my answer? If my answer, indeed, furnishes evidence against me, that is quite another thing. Let us, therefore, examine that; for the question is no evidence at all but as it is introductory of the reply; yet, would you believe it? the answer is not even printed, that I can find, in the reports; it is wholly suppressed; and is only introduced, by the candor of the crown, in the conduct of the prosecution. The answer, which bears date the 26th of November, 1792, begins, as was natural, with recapitulating the questions put to them, nearly in the language of the letter itself; and then they say: "And as to the object we have in view, we refer you to our addresses; you will therein see we mean to disseminate political knowledge, and thereby engage the judicious part of the nation to demand a restoration of their rights in annual parliaments; the

members of those parliaments owing their election to the unbought, and even unbiased, suffrage of every citizen in possession of his reason, and not incapacitated by crimes." This is the answer of the Corresponding Society. And having set myself to rights with my learned friends at the bar, but meaning to extend my courtesy no further, because justice confines it to them, surely I have a right to ask whether it be consistent with the dignity or character of a great and august tribunal to accuse persons capitally arrested, and before the season of their trial, of having shrunk from questions put to them for an exposition of their motives, although they were possessed of the answer I have just read to you, which refers the questions positively and unambiguously to their original address; which repeats the same legal objects, if possible, with additional precision; and which tells them, that from these objects, so a second time delineated and expressed, they mean neither to deviate to the right or left, but to pursue them by all means consistent with the law and constitution of the kingdom.

The next observation, which is made upon the language of their proceedings, is still of the same complexion, and turns round directly in their support.

The charge, you observe, is for conspiring to hold a convention in England, in the year 1794, to

usurp the government, and to depose and destroy the king; all the papers and letters which have been read, with earlier dates, having been only produced to convince you that the convention was projected for that detestable purpose. To establish this from their own compositions, Mr. Solicitor-General says (he will give me leave to remind him of his expression), "Look to the language in which they themselves speak of the proceedings in agitation—Let us agree to hold another British Convention—What could this mean?" says my learned friend, laying a strong emphasis upon the word another—"What could it possibly mean, but a resolution to hold another convention similar to that which had been held in North Britain, consisting of delegates from the different societies, and which had been before dispersed by the authority of the law?" I take him at his word, it could have no other meaning. They most unquestionably intended a convention, similar, in all respects, to the one at Edinburgh, which had been suddenly dissolved; and consequently, upon his own principles, to make out a case of treason against the prisoners who projected this English convention, he must show that the assembling the convention at Edinburgh was an act of high treason in all who were engaged in it. To establish, upon his own principle of their designs being similar, that the English convention was projected with the

view of assuming and exercising all the functions of parliament, he is inevitably bound to show that the convention at Edinburgh, of which it was a type, did actually assume and exercise them. Has he established either of these proofs? Has he shown, by evidence, that the hundred and eighty persons who, as delegates from the different societies in Scotland, assembled at Edinburgh under the name of convention, did in fact assemble to supersede the parliament of the kingdom, and were guilty of the crime of high treason? Has he shown, which, to maintain his argument, he is bound to do, that all those, who sent them for that purpose, were implicated in the same guilt? If he has, he has struck at the lives of thousands and ten thousands of his majesty's most affectionate subjects in North Britain, who were members of those societies. Has he proved distinctly that this Edinburgh convention did actually assume to itself all, or any, of the functions of government, which he says would have been assumed here, by the meeting in agitation, had it not been nipped in the bud by the arrest of the prisoners, the seizure of their papers, and the institution of this solemn proceeding?

The Solicitor-General having himself made this the question, as, indeed, he could not avoid it, let us examine what has been proved upon the subject. And in entering upon this duty, it really fills me

with horror to think that the lives of men — what do I say — of men! that the lives of Englishmen should depend upon the successful resolution of such a chaos of matter as is spread before me, in which every faculty of the mind is bewildered and confounded; that they should not only have their own writings to explain, and their own transactions to answer for, but that there should be heaped upon their heads everything that has been said, written, or transacted, for years together, in every corner of the kingdom, by persons with whom they not only never acted, but whose names or existences they never heard of. If the criminal law of England countenances such a proceeding, how is the subject to contend with any prosecution which the crown chooses to institute? Where is the man capable of assisting him upon such a trial? What purse is equal to the expense of witnesses? and where is the tribunal equal, in body and in mind, to its decision?

In the first place, however, and before I proceed to explore the proceedings of the Edinburgh convention, in the best way I can, through the maze of materials before us, let me ask, as a preliminary question, what the honorable gentleman, whom I represent, had to do with them? Supposing all its transactions had been treason, how is he affected by them? It has been assumed that Mr. Tooke was an active promoter of the Scotch convention,

because his name stands entered in the books of the Constitutional Society as present when the sending of a delegate to Edinburgh was under deliberation. Good God! gentlemen, how gross is this conclusion, and how pernicious is the principle which concludes it! This entry would not be evidence in an action for ten pounds; yet what would not do upon such an occasion, or upon a charge for killing a hare or a partridge, is to be used as evidence to destroy the life of an English subject, and with it the law and constitution of the kingdom. The society has been considered as a corporation; its books have been laid upon the table as authoritative acts, binding upon all its members; and the pen of the secretary of a club is to conclude upon a fact which is to affect life. The real truth is (and it ought to be a solemn warning to courts of justice not to depart from the strict rules of evidence), Mr. Tooke was not present when the proposition for sending a delegate to Edinburgh was made; neither did the proposition, when made, on that day, receive the concurrence or approbation of the society, but, on the contrary, was objected to by the majority; not because they thought it criminal, but because they believed it to be useless. The further discussion of the subject was, therefore, postponed from the 25th to the 28th of October, when a special, extraordinary meeting was appointed, and Mr. John Williams,

the mover of the proposition, was sent to Wimbledon to request Mr. Tooke to attend and support it; but it appears by Mr. Adam's evidence that he absolutely refused to come, and treated the proposal as frivolous and impertinent, insomuch that he was considered as a man bribed and pensioned to betray the cause of parliamentary reform, by withholding his support to a legal and well-meant proposition in favor of the proceedings in Scotland. Yet this gentleman, greatly advanced in years, and declining in his health, who was shut up at this time, and long before, within the compass of his house and garden at Wimbledon, where he used to wish an act of parliament might confine him for life — who was painfully bestowing a greater portion of his time to the advancement of learning, than the rudest health could with safety bring to it; who was intensely devoted to researches which will hereafter astonish, and will not be soon forgotten by the world; who was, at that very moment, engaged in a work such as the labor of man never before undertook, nor perhaps his ingenuity ever accomplished; who had laid out nearly a hundred pounds only in packs of cards, to elude by artifice and contrivance the frailty of memory and the shortness of life, otherwise insufficient for the magnitude of his pursuit; who never saw the Constitutional Society but in the courtesy of a few short moments, after dining with some of

its most respectable members; and who positively objected to the very measure which is the whole foundation of the prosecution — is, nevertheless, gravely considered to be the master-string, which was continually pulling and directing all the inferior movements of a conspiracy as extensive as the island, the planner of a revolution in the government, and the active head of an armed rebellion against its authority. Gentlemen, is this a proposition to be submitted to the judgment of honest and enlightened men, upon a trial of life and death? Why, there is nothing in the Arabian Nights Entertainments, or in the Tales of the Fairies, which is not dull matter of fact compared with it. But the truth is, as it stands already upon Mr. Adams' evidence, that so little was the energy of the society upon the subject, that, at the general, adjourned, and extraordinary meeting, which was to decide upon this great question, which Mr. Tooke thought so small a one, but upon which the fate of Great Britain is considered here as having depended, only seven people gave their attendance; and, although Mr. Yorke was chosen delegate to give countenance to the cause, and to former resolutions, yet there were obstacles to the completion of his mission, because the ways and means could not be provided for his support.

It appears, also, by Mr. Adams' evidence, that

the Constitutional Society, which, for the purposes of this proceeding, has been represented as a sanguinary and widely-extended conspiracy, consisted only of a few gentlemen, who wished well to the cause of constitutional reform, which they were too honest to abandon, but too insignificant in wealth, or numbers, efficaciously to support. In order, therefore, to prevent themselves from being laughed out of a very honorable purpose, and to prevent the honest and independent part of the public from giving up the cause of reform, from the despair of countenance and support, they published in their resolutions thousands of papers which they never printed, and expended large sums which they never had. I might, therefore, wholly decline all consideration of the Scotch convention as impertinent and irrelevant, and if I were my own master I would do so; but the honorable gentleman who has a right to direct my conduct, with a generosity which must endear him to everybody, even in this very moment, when he sees me preparing to measure my discourse by the exigency of his own particular defence, insists upon my meeting the solicitor-general upon the major proposition of his argument: "I could maintain," says my client, interrupting his own counsel, in his own defence, "I could maintain that I am not criminal, you have already, indeed, amply maintained it, but that is not enough, when the lives of others, and the

privileges of my country, are embarked in the controversy; I call upon you, therefore, Mr. Erskine, to maintain, that there is no criminality. I desire that the acts of others, through whose sides I am vainly sought to be wounded, in order that the reverberating stroke may pierce them the deeper, may be vindicated and explained." In obedience to the task-master, then, let us see what this convention did:

One of their first declarations, and which is preposterously relied on to prove their usurpation of the powers of government, is in these words:

"Resolved, That this convention, considering the calamitous consequences of any act of the legislature"—act of the legislature! Why, according to these gentlemen, they were themselves the legislature, for the legislature was gone, if their argument be founded, the moment the convention sat. "Resolved, That this convention, considering the calamitous consequences of any act of the legislature, which may tend to deprive the whole, or any part of the people, of their undoubted right to meet by themselves, or their delegates, to discuss any matter relative to their rights, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of the known and acknowledged constitutional liberties of Englishmen." Gentlemen, I must pause here, though

in the very middle of a sentence, because every limb and member of it furnishes a decisive refutation of the charge. Here are men accused of having assumed the supreme authority, and as the subverters of English law, who are yet peaceably claiming, under the banners of the law, the indisputable privileges of subjects to discuss the rights which that law bestows. They then say, and here, it seems, lies the treason, "We do therefore declare, before God and our country, that we shall pay no regard to any act which shall militate against the constitution of our country." But, according to the other side of the table, the constitution of the country was at an end, and all its powers assumed by this convention, although, in the very proceeding which they thus most unaccountably select for commentary, they bow obedience to all acts consistent with the constitution, and only refuse it to such as, in their minds, militated against the first principles of the English government, which they were determined to support, instead of being banded to overturn. But, in what manner, and to what extent, did they project a resistance to acts militating against their rights? Did they meditate, by force, the destruction of parliament which infringed them? Listen to the conclusion of this declaration, upon which so much has been said, and then tell me whether this body can, with common decency or justice, be charged as in a state

of rebellion. "We will continue to assemble to consider the best means by which we can accomplish a real representation of the people, and annual parliaments, until compelled to desist by superior force." What is this but saying, that they will, for an honest end, abide the penalties of an unjust law, rather than escape from them by its observance? Mr. Justice Blackstone truly says, that there is nothing even immoral in such disobedience, for that, if there were, prohibitory and penal regulations would be snares to the conscience of the subject. The fact is there never had been a law in England, nor was there any then in existence, to prohibit the measures they were engaged in. An act which had just been passed in Ireland, had, for the first time, declared such proceedings to be a misdemeanor, though without an act we are now treating them as high treason; and the introduction of a similar bill into the English parliament being the common report, they resolved not to sanction its unconstitutional principle, much less before the law existed, by a voluntary obedience, but to wait its regular enforcement by the magistrates. This is not only the obvious meaning of the resolution itself, but it is established beyond a doubt, by their subsequent conduct, as it appears by the letter of Margarot, the delegate of the Corresponding Society, who, giving an account of their dispersion by the magistrates, as I shall pres

ently read it to you, expresses himself to this effect: "If," says he, "we had desisted without the exertion of superior force, it would have been surrendering our rights, and the privileges of others; but, when called upon by superior force, *i. e.*, by the authority of the magistrate, the submission could not be considered as an acknowledgment of transgression on our parts." The dissolution of this parliament, as it is gravely styled, is described by Margarot's letter, to have been effected thus: "Two messengers came again into our room with Gerald; they left a summons to appear at ten o'clock; with Margarot they left nothing but a request to accompany Gerald to the office; yet, when arrived there, he found that a warrant was issued against him for the purpose of detaining him a prisoner. On Thursday the whole convention were equally ill-used; the provost went, and after pulling Matthew Campbell Brown, of Sheffield, out of the chair, ordered the convention to disperse, and told them he would allow no such meetings in future. The next day, the convention having agreed to meet at another place, out of the jurisdiction of the provost, we had not long been assembled, before the sheriff appeared amongst us, and having asked whether the meeting was the British convention, and being answered in the affirmative, ordered us to depart. He asked who was president, upon which Marga-

rot, having openly asked and obtained leave from the convention, placed himself in the chair, and told the sheriff he would not break up the meeting, unless unconstitutionally forced thereto, by the sheriff's pulling him out of the chair; which the latter, after some hesitation, complied with. The ex-president, Gerald, was then put into the chair, in order to be pulled out by the sheriff also, which being done, the meeting was then closed with prayer, and the company departed peaceably." Now, does the whole history of human folly furnish anything so extravagantly absurd and ridiculous, as to consider this as the suppression of an extensive and armed rebellion, and as a sort of counter-revolution in Great Britain.

Upon the trial of a solemn and important cause, upon which not only the lives of innocent men are depending, but the existence of the laws themselves under which we live, I am afraid to run into observations which are ludicrous; but such is the preposterous nature of this whole business, that it is impossible to avoid it. In reading the minutes of this convention, as the regular proceedings of a parliament, holding at once the sword and purse of the kingdom, we have frequently encountered with matter which, whether we would or no, has convulsed us with laughter in the midst of the awful duty we are engaged in. In the minutes of the fifth day, the 21st of November, 1793, we find

the deputy secretary informing the convention that he had last night received fifteen shillings from six visitors, which was ordered to be paid to Mr. Skirving, with three shillings more already collected; and, on the day following, we have Mr. Margarot moving (I suppose in the committee of ways and means), that a general collection should be made, which being consented to, and Mr. Callendar and Mr. Scott being appointed collectors, these gentlemen made their report instanter:

| | £ | s. | d. |
|--|---|----|----|
| That there had been drawn | 4 | 5 | 8 |
| But of which there being two bad shillings, the balance was | 4 | 3 | 8 |

To which a person by the name of Moore added a shilling. Yet this assembly of poor, unarmed people, collecting sixpences to pay for their room and their advertisements, who were dispersed by a common justice of the peace, with less bustle than a watchman puts an end to a brawling in the corner of the street every night throughout the year, are now considered as having intended to assume to themselves, and indeed, for a season, to have exercised all the functions of this great country, protected as it is by a vast standing army, by a national militia, consisting of all the gentlemen of England whose landed interests depend upon the stability of the government, and by the great body of opulent merchants and moneyed men,

whose fortunes are vested in the public funds, and thereby their possessions and the hopes of their families entwined with the very bowels of the state.

There is another point of view, from whence, if we examine this proceeding, it must appear, if possible, still more extraordinary. I admit that, in consequence of the dispersion which they considered to be illegal, a great many inflammatory papers were written; and that it was thought advisable, upon the whole, to subject the principal persons engaged in this convention, to a legal prosecution. But how were they prosecuted? and by that very government which has instituted the present proceedings? Were they prosecuted for high treason? No. Was the charge of treason ever thought of, or connected with their names? I answer, never. Although they were not met together, like Mr. Hardy and the other unfortunate prisoners, to consider how they should in future hold a convention, but were taken, *flagrante delicto*, in the very act of holding one, and of holding precisely such a one as the prisoners are charged with having only projected, they were only accused of a misdemeanor. I repeat the expression, they were only prosecuted for a misdemeanor, although taken in the act of holding precisely such a convention as the prisoners only projected. For I again refer to the solicitor-general, whether he did not twice assert, and his

learned coadjutor more than twice, that the conspiracy charged upon the record was to hold a convention similar to that which had been held and put down in Scotland.

I assert also that government had the same materials in its hands for conviction which it has at this hour — they had spies in every corner.

———“There was not a man
But in his house they had a servant fee'd.”

And the minutes of the convention, which have been read at your table as evidence of high treason, were seized by the provost and sheriff of Edinburgh, in 1793, and read as evidence against Margarot and Gerald, when prosecuted only for libels in the Justiciary Court.

What shall we say then of a government which lays a snare for innocent blood, by giving to an act the character of a misdemeanor, waiting for future victims when it should be exalted to the denomination of rebellion and treason? Gentlemen, I make no such charge upon government — I acquit them of all schemes upon the subject, good or evil — I believe that the fit of alarm came very suddenly, and very lately upon them; and that they do not know, even now, upon what principle they are here, or what they have to hope from their proceedings.

The magistrates of Edinburgh having brought

the leaders of the convention before the Court of Justiciary, they were convicted of misdemeanors; but these judgments, instead of producing the effect that was expected from them, produced, as ever happens from perverted authority, great irritation and discontent. They were, in my mind, and in what is far more important, in some of the greatest minds in this country, illegal proceedings. And although I do not mean, in this place, to make any attack upon magistrates in the execution of their duty —

Lord Chief Justice Eyre. It should not be stated here that they were illegal.

Mr. Erskine. I did not say that they were illegal. I said, that in my opinion they were so, and that they were questioned in parliament as such. It is not my purpose to give offence to his lordship, who has given us an indulgent and attentive hearing through the whole course of this cause; but it is material to state, because it accounts for some of the writings in evidence, that the opinion and conduct of the Scotch judges were questionable; that they were actually questioned in parliament, as they may yet hereafter be questioned; and were pronounced by the greatest men in both houses of parliament, to have been harsh, unconstitutional, and illegal. Smarting, therefore, under the lash of these sentences, which they considered to be unjust, and believing that their

colleagues had done nothing more than the law authorized, and their consciences suggested, they came to an intemperate resolution concerning the Scotch judges, which, though so strongly relied on, can certainly have no sort of application to the cause, since if they had knocked on the head the lord chief justice clerk and all his brethren, while presiding in their court, instead of contenting themselves with libeling them, it would not have been high treason within the statute of Edward the Third. This mighty bugbear of a resolution is in these words. I am not afraid to meet it:

“Resolved, That law ceases to be an object of obedience whenever it becomes an instrument of oppression.”

This is a mere abstract proposition, to which I would subscribe my own name at any time.

“Resolved, That we call to mind, with the deepest satisfaction, the fate of the infamous Jefferies, once lord chief justice of England, who, at the era of the glorious revolution, for the many iniquitous sentences he had passed, was torn to pieces by a brave and injured people.

“Resolved, That those who imitate his example, deserve his fate.”

Gentlemen, if the application of this maxim was meant to be made to the recent proceedings of the Scotch judges, it may be a libel upon their persons and authority for anything I know or care.

I see nothing that is either criminal or indecent. In my mind, on the contrary, the promulgation of such awful and useful reflections should not be left to the irregular and often misapplied promulgation of private men, but should be promulgated at solemn festivals, by the authority of the state itself. There ought, in my opinion, to be public anniversaries of the detestable, as well as of the illustrious actions of mankind, in order that, by the influence of negative, as well as of positive example, the greatest possible hold may be taken of the grand ruling passion of our nature, and the surest indication of its immortality, the passion of living in the minds of others beyond the period of our frail and transitory existence. By such an institution, public men would every moment be impelled forward in the path of their duty by the prospective immortal rewards of an approving posterity; and, what is still more important, and far more applicable to my present purpose, wicked men, clothed with human authority over their fellow creatures, would be deterred by the same means from the abuse of them; because, in the very moment when they were about to barter away the life of innocence, or the public justice of their country, for some miserable advance of ambition in the decline of a transitory life, they might, perhaps, start back from the temptation, appalled by the awful view of future ages rising up before the imagination, sit-

ting in judgment upon their characters, and proclaiming them with indignation to the universe.

But how, after all, do these resolutions, whatever praise or blame may belong to them, apply to the matter in hand? For Mr. Tooke positively refused to sanction them. Though chairman of the meeting, he would not remain in the chair when they were passed; and I will call, if you think it material, the very person who took his place while they were passing. Yet, nevertheless, they are brought forward against him, and insisted upon with the same arguments as if he had been their author. Gentlemen, this is intolerable. The whole history of human injustice can produce nothing like it. The principle seems to be, that all the libels written by any man in the world who at any time has supported a reform in parliament, whatever may be the subject of them, and however clashing with one another in design or opinion, may be drawn into the vortex, and pointed to convict of high treason Mr. John Horne Tooke. By reading these contradictory performances as the evidence of his designs, they make him one day a reformer of the house of commons; the next a rank republican; the third, well affected to our mixed constitution; and the fourth, relapsing into a republican again. In this manner, by reading just what they please, and insisting upon their own construction of what they read, the honorable gen-

tleman is made to oscillate like a pendulum, from side to side, in the vibrations of opinion, without pursuing any fixed or rational course; although I will show you that, of all men in the world, he has been the most uniform, firm, and inflexible in his political course.

The next paper which they read, is hardly, I think, at all connected with the important subject of the trial, being a mere squib upon the present just and necessary war. It is a resolution of the Constitutional Society, of the 24th of January, to which Mr. Tooke was privy, in which it was: "Resolved, That an excellent address of the Corresponding Society should be inserted in their books. And that the king's speech to his parliament be inserted under it, in order that they may both be always ready for the perpetual reference of the members of this society during the continuance of the present unfortunate war; and that, *in perpetuam rei memoriam*, they may be printed in one sheet at the happy conclusion of it, which happy conclusion according to the present prosperous appearances, we hope and believe not to be many months distant."

Gentlemen, surely it is not treason to believe that which ministers are daily holding forth, surely it is not treason to expect and believe upon the authority of parliament, that the war we are engaged in will soon be brought to a prosperous issue.

Would the people of this country have been so composed in a conjuncture, which for calamity has no parallel in the history of Great Britain, but for these constant declarations of the king's ministers, which Mr. Tooke is only accused of having believed? Were we not told (I am not entering upon political controversy, but defending my client) — but were we not told daily, that the war would be brought to a speedy and happy termination? And can it be criminal in a subject to give faith to the acts and declarations of government? But supposing it, on the other hand, to be only irony upon administration, and a ridicule of their proceedings, which may perhaps be the best construction; is a man's life to depend in this country upon his admiration or support of any particular set of ministers? I care not a straw what you, the jury, who are to decide upon my client's conduct, may think upon these topics, or upon the ministers of the day; I rely upon your judgments as honest men, impressed with a sense of religion, who know the sanctity of the oath you have taken, and the duty which it imposes, and I only introduce these subjects, not because I think them relevant, but because they have been thought so by the crown who read these papers to condemn us.

But it is the conclusion of this resolution, I believe, which gives the offence, where, upon motion,

the words "faithful and honorable," which stood applied to the parliament, were expunged, and the words "his and his only," inserted in their stead. What then? This is no denial of the fidelity of the king to his parliament, but is an insinuation, on the contrary, that the parliament was unfaithful to the king. If it can be considered, therefore, in the serious light of a libel upon any authority, it is a defamation of the house of commons. But we are not brought here to answer for a libel upon that assembly; we are accused of a conspiracy to cut off the king, and in order to prove it, they give in evidence an idle squib against the house of commons, for not faithfully serving him; so that if the paper were deserving of any consideration one way or the other, it makes quite against the purpose for which it is used, unless it is meant to be contended, that the king and the house of commons are one and the same thing.

Another matter equally irrelevant has been also introduced, very fortunately, however, for the honorable gentleman at your bar, because it affords a signal instance of his generosity and nobleness of mind. I speak of his letter promoting a subscription for Mr. Sinclair, who had been convicted in Scotland for acting as a delegate at the convention.

Although Mr. Tooke not only never sent him as delegate, but strenuously objected to his delega-

tion; though he so uniformly opposed the whole measure which led to his conviction and punishment, as to lead to the question of his own sincerity in the minds of some who supported it; although the consequence of the sentence could not have pulled a hair out of his head, but led, on the contrary, to confirm the prudence and propriety of his conduct; yet, in the hour of Mr. Sinclair's distress, he was the first man to step forward to support him, and to take upon himself the public odium of protecting him, though he had privately discountenanced every act which could give the sufferer any claim to his countenance or support. I am perfectly sure that my worthy friend the attorney-general is too honorable a man to make a single observation on this generous act of disinterested benevolence. But I am not the less obliged to Mr. Gibbs for not suffering me to omit in its place, a matter which redounds so highly to the honor of the gentleman we are defending.

It is the same spirit that dictated the other part of the letter which regards Mr. Pitt. Filled with indignation that an innocent man should be devoted to a prison for treading in the very steps which had conducted that minister to his present situation, he says (I have mislaid the letter, but can nearly remember the expression), "That if ever that man should be brought to his trial for his desertion of the cause of parliamentary reform, for which Mr.

Sinclair was to suffer, he hoped the country would not consent to send him to Botany Bay."

Gentlemen, I have but one remark to make upon this part of the letter; Mr. Tooke is not indicted for compassing and imagining the death of Mr. Pitt.

Gentlemen, we come at last to the very point of the charge, *viz.* the conspiracy to hold the convention in England, and the means employed for that purpose; and it is a most striking circumstance, a circumstance in my mind absolutely conclusive of the present trial, unless you mean to reverse the former verdict, which none of you will, and which all of you certainly cannot, that Mr. Hardy, who has already been acquitted, was the very first and single mover of the proposition to hold this convention, and that all the subsequent steps taken in the accomplishment of it, down to the day when the prisoners were sent to the tower, were taken not only with his privity, but through his direct agency; and that every letter and paper which has been read upon the subject, bears the signature of his name, many of them being also of his own composition. If the convention, therefore, was originated for the detestable purpose charged by this indictment, Mr. Hardy, who has been acquitted, was the original, and the principal traitor; whatever was known, he certainly knew; whatever was done upon it, he not only did, but actually

led the way to the doing of it by others. If there was a conspiracy, he was manifestly the principal conspirator.

This is no assertion or argument of mine, it was avowed by the crown which now prosecutes Mr. Tooke, and Mr. Hardy was therefore first, and most properly, selected for trial; because the object of the one we are now engaged in, and of every other that can succeed to it, are only to apply by remote implication and collateral circumstances, the very acts which were directly brought home to Mr. Hardy, who stands acquitted by his country, nay, which were without controversy admitted by his counsel. The court said, in summing up the evidence in the former trial, that it had been but feebly argued that Mr. Hardy was not implicated in a great part of the evidence.

Gentlemen, this was but a cautious and indulgent mode of statement by the court, lest admissions might be supposed to have been made by us which counsel ought not to make; for certainly we neither did, nor could attempt to deny that Mr. Hardy was cognizant of, and active in every transaction which regarded the British convention, the very treason charged upon the record. The attorney-general, therefore, is reduced to this dilemma, either to contest the justice of the former verdict which acquitted Hardy, or to surrender the present prosecution. That this is the true

position of the cause will appear incontestably from the proofs.

The origin of the convention appears to have been this: Mr. Hardy, who has already been acquitted by his country, having received a letter, which has been read to you, from a country correspondent, stating that as the Edinburgh convention had been improperly and illegally dispersed, it would be proper to hold another; he laid the proposal before the Corresponding Society, who adopted it upon the 27th of March, 1794, and transmitted a copy of their resolutions upon the subject to the Constitutional Society for their approbation. Mr. Hardy, therefore, was not merely active as secretary in the progress of the convention, but was, in his own person, the first mover and proposer of it; and it is impossible that the jury could have honorably acquitted him upon any other principle than their total and absolute disbelief that the measure was pursued for the detestable purposes imputed by this indictment.

Gentlemen, the best way to support that judgment, and to bring you to the same conclusion, is to examine the proceedings, and to let them speak for themselves.

The Corresponding Society, upon Mr. Hardy's proposition, having, on the 27th of March, 1794, adopted a resolution which they transmitted to the Constitutional Society for approbation, that society

met the next day, the 28th of March, to consider it; the resolution was sent in the form of a letter from Mr. Hardy himself, in these words:

“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.”

To pause here a little. Does not this incontestably show that their cause, with whatever irregularity it might have been pursued, was no other than the cause of parliamentary reform; is it not demonstration that they considered the persons convicted in Scotland as wrongfully convicted? It is not in human nature, it is beyond the flight of human impudence or folly, that men under a government of law should publicly declaim against prosecutions as illegal, tyrannical, and unheard of, if they had either themselves considered them, or if they had been held by others to have been the regular proceedings against traitors arrested in rebellion against their country. Construing, therefore, this part of the letter as common charity, and

common sense must concur in the construction, and as the former jury construed it; it is no more than this, they say to the Constitutional Society: "As we are in the progress of an honest cause, as we are pursuing a legal purpose by legal means, which others have adopted before us; shall we abandon it, terrified by the unrighteous judgments of another country? or shall we unite and persevere in its support, confident that whatever may be the condition of Scotland, there is no law here in England which can condemn us, nor any judges who can be interested in its perversion? Let us concur, therefore, in the necessity of another convention, as the only legal and constitutional means of redressing the grievances which oppress us, and which can only be effectually redressed by a full and free representation of the people of Great Britain."

The crime, therefore, imputed to the Constitutional Society is only this, that, addressed in this manner by the Corresponding Society so describing its objects, it assented to the appointment of a committee of their society, to meet a committee appointed by the other, to consider of the proper steps to be taken for the accomplishment of the object so described.

This is the whole that can be charged upon this society; for there is no evidence whatever, even of any of its members being acquainted with the

design of considering of a convention, until it came to them in the shape of a letter from Mr. Hardy, who has been acquitted; all the antecedent part being absolutely and entirely his own. This proposition, indeed, was so far from coming to the Constitutional Society as the members of a secret conspiracy, that it was made in the most public manner to other societies, with whom they notoriously were not connected; it was made to the Society of the Friends of the People, of which I have the honor to be a member, whose principles and conduct have been spoken of with respect throughout these proceedings. When we received their proposal we were as well acquainted with all the antecedent proceedings of the societies, as the evidence makes us acquainted with them now; and we still flatter ourselves that we were as capable of understanding the meaning of what was addressed to ourselves, as those who since then have assumed to themselves the office of decipherers; yet, with all this knowledge, we returned an affectionate answer to these bloody conspirators; we wrote to them, that we heartily concurred with them in the objects they had in view, but differed from them in the expediency and prudence of the means by which they had proposed to give them effect. We, therefore, understood their object in the same light with the Constitutional Society, viz., the reform in the house of commons only; and the difference be-

tween us is reduced to a difference in judgment, as to the means for producing an end which in common was approved.

Gentlemen, the Constitutional Society having agreed, as I have just now stated to you, to appoint some of their members to confer with others appointed by the Corresponding Society, upon the subject of the resolution of the 27th of March, understood by them as I have explained it to you, we are brought by the evidence to the consideration of that overt act upon the record which charges these committees so appointed, with the crime of high treason in these words: "That with force and arms they did traitorously consent and agree, that Jeremiah Joyce, John Augustus Bonney, John Horne Tooke, Thomas Wardle, Matthew Moore, John Thelwall, John Baxter, Richard Hodgson, John Lovett, William Sharpe, and one John Pearson, should confer, and meet, and cooperate together, for and towards the calling and assembling such convention for the traitorous purposes aforesaid;" *i. e.*, as it is agreed on all hands, for subverting the government, and deposing and destroying the king. Here another dilemma inevitably encloses the crown; because this charge of conferring together towards the calling a convention which was to be held for these traitorous purposes, cannot possibly be urged against these eleven persons appointed to confer together con-

cerning it, unless the major proposition can first be established, that such a traitorous convention was originally in the contemplation of those who appointed them. For these eleven persons are not charged as having originated the convention, but each prisoner in his turn is charged with having consented and agreed that these persons should confer together upon the means to give effect to a treason already hatched and contemplated, which inevitably throws them back upon Mr. Hardy, who has been acquitted; for how, in the name of common sense, can their guilt be consistent with his innocence? I say this is a dilemma, because there is no road out of this absurdity but by running into another; since to confine the guilt to the prisoners who co-operated together, in exclusion of those who appointed them to do so, it must be assumed that they were, *bonâ fide*, appointed to confer towards calling a meeting, which had for its real and honest object, a reform in parliament; but that they were no sooner appointed, than, without the consent of those who had deputed them, they confederated to change the purpose of the deputation, and conspired among their eleven selves to form a parliament for ruling by force of arms over this mighty kingdom.

Now, I appeal to you, gentlemen, whether there ever was a proposition so utterly out of the whole course of human affairs, as that six men of one very

numerous society, and five out of another equally numerous, unanimously appointed to confer upon any given object, no matter what, should be taken without a shadow of evidence, to have in an instant departed from the trust reposed in them, and to have set on foot a secret plan which they durst not communicate even to their principals and co-conspirators, and which, with or without communication, was wholly visionary and impracticable.

Gentlemen, I know that my learned friends are incapable of publicly maintaining so preposterous a proposition; I admit that they never did maintain it, and I only state it to give them the choice of the alternative; because either these eleven persons are only guilty from having changed the purpose of a deputation originally not traitorous, a thing admitted to be absurd and irrational, or else all who deputed them were traitors also; the conclusion is inevitable; because it is impossible to say that the societies who deputed them did not know their own motives and their own objects; and the supposition is further absolutely excluded by the evidence; as the committees so appointed were to do nothing of themselves, but were to report to the society at large the result of their deliberations: and reports from them were accordingly actually read at the society, in the presence of many respectable members now at large, and whose names

have not been even mentioned as suspected in the course of these proceedings.

It is, therefore, impossible to impute guilt to the prisoners selected for punishment, without extending it to a compass to which no man will be hardy enough to say it shall or can be extended; how many persons upon such a scale would be principals in treason, or guilty of a misprison of it? Every man who attended the various societies throughout the kingdom, or who knew, by belonging to them, that a convention was on foot. To say nothing of the extravagance of such a wide imputation of disloyalty and rebellion, what can be more dangerous impolicy than to invite foreign nations to believe, whilst attempts are making from abroad to destroy our constitution, that the people of England are already ripe for a revolt?

But there are inconsistencies, if possible, still more glaring to be encountered with, in maintaining the charge against the prisoners selected for trial, than even in this wide extension of it to others; for if any of the few persons (being only twelve in number) be guilty of this treason, they must all be guilty; it is quite in vain to think of distinguishing or separating them; yet some of them are not even accused, and others are judicially separated from accusation. Mr. Sharpe the engraver, though one of the committee, was examined for the crown, but not examined as an accomplice;

and the bill was thrown out by the grand jury against Mr. Lovett, another of them, whom I am, therefore, entitled to consider as an innocent man who ought not even to have been accused, and who will tell you upon his oath, for I shall call him as a witness, that there was not a syllable passed at these meetings, which the king upon his throne might not have heard; that neither his name nor office were mentioned with irreverence; and Lovett, speaking for himself, and for his own motives, will further solemnly tell you, that in his honest conscience he believed, that from the consequences of a timely reform in the house of commons, to which all their deliberations were singly directed, the king's title would be more firm, his person more secure, his crown more illustrious, and its inheritance in his line more certain, than by seeking their support from the continuation of abuses which had so recently overturned a throne, that, propped as it was by armies, and the bigotry of the people, seemed destined to endure for many generations, but which, nevertheless, undermined by its own corruptions, suddenly crumbled into dust, and shook, or more properly shakes at this moment, the whole habitable world with its fall.

That Mr. Richter, another of the committee, and now in Newgate, meant nothing more than the reform in the house of commons, I will prove

to you by Mr. Rous, one of the most respectable men in our profession, and whose honor and veracity are above all question. He will tell you, that he saw him after the Friends of the People had refused to concur in sending delegates to the proposed convention, when Richter assured him, that in the plan they had adopted they had acted for the best, but that they were desirous to act cordially with the Friends of the People in whatever they thought the most conducive to promote the constitutional object they were engaged in. I believe, indeed, that the mass of these societies thought with many others, of which class I profess myself to be one, though I differ with them in the means, that nothing can so certainly tend to support the throne as a reform in the commons house of parliament. Whether you think with them or with me on this subject is of no consequence, it is enough if you believe that they thought so, and honestly acted upon their opinions; opinions which at all events were entertained and acted upon by many illustrious persons now present, some of whom I will call as the willing, and others as the unwilling witnesses to the fact.

But as the quality of their acts is best to be ascertained by the acts themselves, let us examine what the committees did, and what was done by the societies who supported them.

On the 11th of April they made their report in these words:

“Resolved, That it appears to this committee very desirable that a general meeting or convention of the friends of liberty should be called.” For what? to depose the king? to subvert the government? No. But, in the concluding words of the resolution, “For the purpose of taking into consideration the proper means of obtaining a full and fair representation of the people in parliament.” This resolution, after some objection to the word convention, was adopted. Now, I desire distinctly to know why this resolution is to be perverted from its ordinary meaning any more than many similar resolutions in other times? The lord chief justice in the former trial said, in so many words, that it must be conceded to these societies, and to the prisoner Hardy, that they set out originally upon the Duke of Richmond’s plan. If this be so, it is for the crown to establish at what period, and by whom, this system was abandoned, and what is the evidence of the abandonment. Does the attorney-general mean to say that it is high treason for a number of persons collected together to make a delegation to a smaller number among themselves for any purposes, legal or illegal? He will certainly not say that. So that, in whatever view the matter for deliberation is examined, the question still returns, and must forever

return to its only legal centre, viz., the object they had in view in this delegation; and that examination cannot rationally take place but either by looking at the acts themselves, and judging of them as they present themselves to view, or else by showing, from extrinsic evidence, that they are not what they appear upon the surface, but are directed to concealed and wicked objects.

With regard to the first, it has been conceded from the beginning, even by the court (as I have just observed in its charge to the grand jury), that their avowed object was a constitutional reform; and as to the last, I call aloud upon those who ask you to pronounce that a forcible subversion of the government was intended, to confess that the very idea of such a charge was disavowed and reprobated even by the very witnesses they brought forward to establish it. Upon the first trial they called a great number, who, without a single exception, one after another, positively swore that hostility to the government, or an attack upon it by force, never entered into their contemplation; and Mr. Gibbs, as I am informed, in my absence to-day, established the same truth by cross-examination of the Sheffield witnesses, who, with one assent, as I see from a note now before me, all declared they had been insulted and abused, which was the origin of a few pikes manufactured for their defence; and the attorney-general appears to have

been so well satisfied, that the whole evidence concerning arms was a "beggarly account of empty boxes," unfit for a second introduction in so momentous a cause, that he gave up the whole of it, and we have heard not a syllable of that which assumed so grave an aspect when Hardy lately stood in judgment before you; nor has even Franklow himself, or the Loyal Lambeth Association, made their appearance. In my opinion, it was sound discretion to abandon that parol evidence. To have called people who literally knew nothing of the societies, would have been to expose weakness; to have again called honest witnesses, who knew anything, would have been to prove too much, because the falsehood of the imputation would again have been manifested; and to have attempted it a second time by spies and informers, would only have been uselessly bringing up their ragamuffins to be peppered; a conduct which sinks a cause in the opinion even of Jefferies himself, who, when Serjeant Jefferies, upon the trial of Lord Russell, said to the jury: "Remember we bring no ignominious persons here; we have not raked the gaols for evidence; we have brought before you no scandalous spies and informers, but men worthy of credit."

To say the truth, gentlemen, their parol testimony being thus subtracted, there has been brought forward in this cause no evidence either

creditable or scandalous; for, with the exception of a few papers not worth a farthing, I will undertake to collect from the coffee-houses of London a complete fac-simile of the report of both houses of parliament, which has consumed so many days in reading, and for no part of which, as I have already noticed formerly, any author, printer, or publisher, has been ever called to account.

We have now reached the *finale* of the business, the great catastrophe, and it is awful to examine upon what small pivots the fate of nations depends, and to contemplate the miraculous escape of our country. The two committees agree to meet on Mondays and Thursdays in Beaufort Buildings, and no time was to be lost; for Hessians and Hanoverians were upon them.

When the 14th of April came, which should have been their first meeting, there was no meeting at all, but a great multitude of people, of different descriptions, assembled at Chalk Farm. My learned friends, I see, are taking notes on this subject; but let them recollect, that Lovett, whose case has been before the accusing jury, and who stands wholly discharged from guilt or suspicion, was chairman of this meeting, and, at the same time, a member of the committees of conferences and cooperation; yet now when the leader himself is exculpated, and not exposed even to the hazard and inconvenience of a trial, he is to be hung to

day round the neck of the gentleman at your bar; who never was at Chalk Farm in his life; who never heard of the meeting, nor of the existence of the place it was held at, till he read it in the newspapers, as we all did, and who never saw Mr. Lovett till he met him in the Tower, when he was pointed out to him as one of the persons with whom he had long been engaged in a conspiracy. Thank God, these experiments are not only harmless, but useful: they serve as a clue when the contrivance is more plausible.

The next Thursday after the meeting at Chalk Farm was the 17th of April. Now attend to the proceedings of these conspirators, pressed to a moment in point of time, and whose schemes were ripe for execution. Not one of them came. The 24th of April was the third Thursday, when the committee from the Corresponding Society attended, but, not being met by the other, there was, of course, no conference. On the 28th of April, full three weeks after their original appointment, they at last assembled; and, after having conferred concerning the news of the day, and co-operated in taking snuff out of one another's boxes, they retired to their homes without uttering a syllable concerning the king or his parliament. These important transactions were repeated on the 5th of May; and on Monday, May the 12th, although no other meeting had then been held, and though

these proceedings, as I have stated them to you, had been fully investigated before the privy council ; though the societies were constituted for purposes perfectly notorious, and long unopposed ; though all their meetings had been publicly advertised, and their correspondence as open as the day, Mr. Hardy was suddenly arrested, dragged out of his bed in the night, torn from the arms of an affectionate wife, who fell a sacrifice to terror and affright, although he can now tell you, upon an oath accredited by his full and honorable acquittal, that he had not a conception in his mind, even after he was in the custody of the law, that high treason, or any other crime which verged towards disloyalty or rebellion, was to be imputed to him.

Gentlemen, the alarm which seized upon government at this period seems to have invested the most frivolous circumstances with mystery and design against the state, of which we have had a notable instance, in a letter written by Mr. Joyce to Mr. Tooke, on the day Hardy was arrested, which, being intercepted, was packed up into the green box there, and reserved as evidence of a plot. The letter runs thus : “ Hardy and Adams were taken up this morning by a king’s messenger, and all their books and papers seized ; ” and then, following a long dash, “ can you be ready by Thursday ? ” This letter, gentlemen, is another lesson of caution against vague suspicions ; the

Red Book was not a list of persons to be saved, in opposition to the Black Book, of those to be sacrificed; but Mr. Tooke having undertaken to collect, from the court calendar, a list of the titles, offices, and pensions bestowed by Mr. Pitt upon Mr. Pitt, his relations, friends, and dependents, and being too correct to come out with a work, of that magnitude and extent, upon a short notice, had fixed no time for it, which induced Mr. Joyce, who was impatient for its publication, to ask if he could be ready with it by Thursday. Another curious circumstance, of similar importance, occurred about the same time, which I marvel has not appeared in evidence before you. I will tell you the story, which is so stamped with the wit which distinguishes my client, that it will speak for itself without proof. A spy came one night into the society to see what he could collect, when there happened to be present a Mr. Gay, a man of large fortune, and a great traveler (the gentleman I speak of is a member of the Friends of the People, introduced by my friend Mr. Tierney, now in my eye). This Mr. Gay, in the course of his travels, had found a stone inscribed by Mr. Stuart, another great traveler, as the end of the world; but resolving to push on farther, and to show his contempt for the bounded views of former discoveries, wrote upon it, "This is the beginning of the world;" treating it as the ground from which he meant to

start upon his tour. The plan being introduced for consideration while Mr. Gay was present, Mr. Tooke said, "Look ye, gentlemen, there is a person in the room disposed to go to greater lengths than any of us would choose to follow him." This allusion to the intrepid traveler was picked up by the spy as evidence of the plot; and if I had the rummaging of the green boxes, I would undertake to find the information among the papers.

Gentlemen, in tracing, as I have done, the proceedings of the societies, towards holding this convention, I have continued to follow the instructions of my client, in totally losing sight of his defence, in order to keep danger at a distance from others; for I have now only to remind you, since the fact has appeared already, that the prisoner took no share whatsoever in any of these proceedings. He considered them, indeed, to be legal, but, in his enlightened judgment, not convenient, nor likely to be attended with advantage to the object; and, therefore, when the resolution of appointing a committee was adopted, and his name was proposed as a member, he objected to it, declared he would not attend, nor have anything whatever to do with it. You may ask, perhaps, why, after that refusal, he suffered his name to stand upon the committee? and why did he not withdraw himself wholly from the society? In answer to that, he has told you much better than I can, as he can,

indeed, tell you anything much better, that, as he considered the proposition not to be criminal or illegal, he did not feel himself at liberty to abandon a laudable pursuit by breaking up or dividing the society, for mere difference of opinion with respect to the mode of obtaining it. This conduct was manly and honorable, and it by no means stands upon Mr. Tooke's assertion; the fact, and a most important one it is, rests upon evidence, and not upon our evidence, for our season of giving it is not yet arrived, but upon the evidence relied on by the crown for the establishment of guilt; and which, therefore, must be wholly adopted, or wholly rejected.

It will appear further, and more distinctly, that Mr. Tooke persisted in his resolution; that he was a total stranger to their proceedings; that the committee of correspondence, of which he objected to be a member, never met; and that the only reason why his name stands as a member of the committee of correspondence, which he not only did not assent to, but the formation of which he never knew, was, that it was resolved, in his absence, that the committee which before had been appointed to confer, should also be a committee to co-operate; and of so little account was this same committee, that Mr. Adams, when examined for the crown, though secretary of the society, declared upon his oath, that he never had heard of it until

he read it out of a book, as a witness in the court.

It is evident, therefore, that the great substantive leading overt act in the indictment, viz., the conspiracy to hold a convention to subvert the government, to which all the other charges are undoubtedly subservient, is not only not brought home to the honorable gentleman at the bar, but appears to be without foundation altogether; and it is equally evident, by the conduct of the crown, that they think so; for, if they had proved their charge by the evidence of the facts which belonged to it, their task was finished; and all matter, collateral or foreign, would not only have been irrelevant, but injurious to the prosecution; but, conscious that the traitorous intention could neither be legally or rationally collected from any one fact appertaining to the subject in agitation, they have heaped matter upon matter on his head from various quarters, totally disconnected with the charge, and with one another, in order that these transactions, though singly neither treason, nor any other crime, might, when tacked together, amount to whatever might be found necessary to destroy him. In this manner that unfortunate statesman, Lord Strafford, was sacrificed; but the shameful violation of the law of England, which alone could have supported his condemnation, has ever been spoken of with detestation by every lawyer, of whatever party, who has lived since his trial; and

what is the next evidence of its turpitude and illegality, has been considered as a blot in the page of English history, by historians of all parties and opinions. Mr. David Hume, a man not to be named as a compiler of mere facts, but as a profound politician and philosopher, speaks of it in the manner which I will read to you, notwithstanding his leaning to high and arbitrary principles of government. In his sixth volume, page 431, speaking of Lord Strafford's attainder, he says: "As this species of treason, discovered by the commons," the commons have also the merit of discovering this, "is entirely new and unknown to the laws; so is the species of proof by which they pretend to fix that guilt upon the prisoner. They have invented a kind of accumulative or constructive evidence, by which many actions, either totally innocent in themselves, or criminal in a much inferior degree, shall, when united, amount to treason, and subject the person to the highest penalties inflicted by the law. A hasty and unguarded word, a rash and passionate action, assisted by the malevolent fancy of the accuser, and tortured by doubtful constructions, is transmuted into the deepest guilt; and the lives and fortunes of the whole nation, no longer protected by justice, are subjected to arbitrary will and pleasure."

Gentlemen, it may be said that the shameful

case I have cited is not like the present. Certainly it is not, for the unguarded words which the historian reprobates the enhancing into treason, were the unguarded words of Lord Strafford himself; the rash writings were his writings; and the passionate actions were his own. But what is accumulated and lifted up into treason against the prisoner to-day, are the unguarded words, the rash writings, and the passionate actions of others; of some with whom he differed; of many whom he never saw; and mostly of those to whose very existence he was a stranger.

Gentlemen, I have no fears for my client; but in what language shall I speak of this dreadful principle for the benefit of my country? I will speak of it in the language of the innocent victim to them; in the eloquent words of Lord Strafford himself upon his trial.

“Where has this species of guilt lain so long concealed,” said Strafford in conclusion, “where has this fire been so long buried, during so many centuries, that no smoke should appear till it burst out at once, to consume me and my children? Better it were to live under no law at all, and, by the maxims of cautious prudence, to conform ourselves, the best we can, to the arbitrary will of a master, than fancy we have a law on which we can rely, and find at last, that this law shall inflict a punishment precedent to the promulgation, and

try us by maxims unheard of till the very moment of the prosecution. If I sail on the Thames and split my vessel on an anchor, in case there be no buoy to give warning, the party shall pay me damages; but if the anchor be marked out, then is the striking on it at my own peril. Where is the mark set upon this crime? Where the token by which I should discover it? It has lain concealed, under water; and no human prudence, no human innocence, could save me from the destruction with which I am at present threatened.

“It is now full two hundred and forty years since treasons were defined; and so long has it been since any man was touched to this extent, upon this crime, before myself. We have lived, my lords, happily to ourselves at home; we have lived gloriously abroad to the world; let us be content with what our fathers have left us; let not our ambition carry us to be more learned than they were, in these killing and destructive arts. Great wisdom it will be in your lordships, and just providence for yourselves, for your posterities, for the whole kingdom, to cast from you into the fire, these bloody and mysterious volumes of arbitrary and constructive treasons, as the primitive Christians did their books of curious arts, and betake yourselves to the plain letter of the statute, which tells you where the crime is, and points out to you the path by which you may avoid it.

“Let us not, to our own destruction, awake those sleeping lions by rattling up a company of old records, which have lain for so many ages by the wall, forgotten and neglected. To all my afflictions, add not this, my lords, the most severe of any; that I, for my other sins, not for my treasons, be the means of introducing a precedent so pernicious to the laws and liberties of my native country.

“However, these gentlemen at the bar say they speak for the commonwealth; and they believe so; yet, under favor, it is I who, in this particular, speak for the commonwealth. Precedents, like those which are endeavored to be established against me, must draw along such inconveniences and miseries, that, in a few years, the kingdom will be in the condition expressed in a statute of Henry IV., and no man shall know by what rule to govern his words and actions.”

Proud as I am of being a subject of this country, my duty compels me to remind you, that all this splendor of truth and eloquence was unavailing before an abandoned tribunal, which had superseded all the rules of law and the sober restraints of justice, and which could listen unmoved to even these concluding words: “My lords, I have troubled your lordships a great deal longer than I should have done. Were it not for the interest of these pledges, which a saint in heaven left me, I

should be loath"—“Here,” says the historian, “he pointed to his children, and his weeping stopped him;” and if I were to attempt to proceed farther in this melancholy page, my tears would stop me also.

But let us look to what followed from these proceedings; they were condemned and reversed, and stand recorded as a beacon to future generations. The act recites: “That the turbulent party seeing no hopes to effect their unjust designs by ordinary way or method of proceedings, did at last resolve to attempt the destruction and attainder of the said Earl, by an act of parliament to be therefore purposely made to condemn him upon accumulative treason. None of the pretended crimes being treason apart, and so could not be in the whole, if they had been proved, as they were not. Therefore it is enacted, that all records and proceedings relating to the said attainder, be wholly cancelled and taken off the file, to the intent that the same may not be visible in after-ages, or brought into example, to the prejudice of any person whatsoever.”

A similar fate attended the attainders of Lord Russell and Sidney, and will, sooner or later, attend every flagrantly unjust judgment, whilst England preserves her free constitution; and, therefore, notwithstanding the ridiculous figure too frequently made by modern prophets, whose pro-

phetic writings remain unfulfilled after the period of their fulfilment, I will hazard this public prediction; that long, long before one-half of the audience which fills these benches, shall, by the course of nature, be called from the world, these very judgments in Scotland, which, more than anything else, have produced the present trial, will be stigmatized, repealed, and with indignation reversed; not by violence, or in irregular convention, but in the ordinary legal forms of a British parliament.

The attorney-general will perhaps say, that the collateral facts are not established in order to be accumulated into guilt, as in the case of Lord Strafford; that he disavows, which I admit, to his honor, he most distinctly did, all accumulations and constructive treasons, but that he establishes them to manifest the intention which led to the transaction, charged upon the record. Be it so, provided they do lead distinctly to that manifestation. But let us shortly examine them; and then, if the rules of the court would permit me, I would not only ask of you twelve men, but of every man, aye, and of every woman within the reach of my voice, whether they would kill a fly upon them; yet you are asked to devote to destruction upon them the honorable gentleman who now stands before you.

The collateral facts, as my memory serves me to

recollect them, and from whence the traitorous intention is to be inferred, are, that Mr. Tooke contributed to the circulation of the works of Thomas Paine, containing gross matter against the monarchy of the country; that he consented to send a congratulatory address to the convention of France; that he was privy to the approbation of Mr. Joel Barlow, who had delivered this congratulation at Paris; and lastly, that he had himself written a letter to the president of the convention, offering to subscribe four thousand livres towards carrying on the war then existing between the states of Europe and France, even though part of it, in the event, should happen to be applied when this country should be involved in the same contest.

Gentlemen, though I feel myself very much exhausted, I have strength enough left just to touch upon these matters in their order.

With regard to the first, I am surprised that the history of Mr. Paine's writings, and the approbation they met with, as connected with the new constitution of France, are so very little understood; and it is necessary to understand it, to account for the assent and encouragement which many persons, attached to the free constitution of Great Britain, were forced to bestow upon many parts of a work, though written undoubtedly by an author who was an enemy to its principles.

Gentlemen, it happened that when France threw

off the galling yoke of arbitrary monarchy, which had been attended with such infinite evils to herself, and which had produced so many calamities to Great Britain, a very general exultation pervaded this country; and surely it was a natural theme of exultation to the inhabitants of a country which had given light and freedom for ages to the world, to see so large a portion of the human race suddenly emancipated from a bondage not only ignominious to France but dangerous to this island. They recollected the desolating wars which her ambition had lighted up, and the expensive burdens which our resistance to them had entailed upon us; they felt also, in the terrible disasters of France, a just pride in the wisdom of our forefathers, and a wholesome lesson to the present age and posterity not to degenerate from their example. They saw France falling a victim to the continuation and multiplication of those abuses in government, which our wise progenitors had perpetually mitigated by temperate and salutary reformatations; and they saw, therefore, nothing to fear from the contagion of her disorders; her arbitrary state, her superstitious church, had undergone no alterations; and for want of those repairs which the edifices of civil life equally require with material structures, they crumbled suddenly into dust; whereas, by the fortunate coincidence of accident, as much as by the exertions

of wisdom and virtue, our condition had been slowly and progressively ameliorated, our civil power had been tempered and moderated, and our religion purified and reformed; the condition of civil life had changed and bettered under their influence, and the country had started up even amid revolution with superior security and illustration.

Gentlemen, these reflections were not merely the silent, but the avowed expressions of some of the first persons in England, on the first burst of the French revolution; and, I verily believe, the same sensations diffused themselves widely throughout the kingdom; but, very unfortunately for France, for England, for Europe, and for humanity, this sensation, the natural result of freedom and independence, was not universally felt; very unfortunately the powers of Europe would not yield to an independent nation the common right of judging for itself in its own concerns, nor in prudence leave to it the good and evil of its own government. All Europe combined against France, and levied war against her infant constitution. The despots of the earth, with whom the king of Great Britain had no common interest, trembling for their own rotten institutions, and looking to the wrongs and sufferings of their subjects, drew the sword, as was natural for despotism to draw it, to dispute the right of a people to change their ancient institu-

tions. This very combination naturally assimilated with the patriotism of France the public spirit of England, since our own revolution was supported upon no other foundation than the principle which was not only denied, but was by violence to be exterminated; and many persons, therefore, notoriously attached to the British government, expressed their reprobation of this conspiracy against the freedom of the world. This honest and harmless enthusiasm, however, met with a very sudden, and, in its consequence, an unfortunate check. A gentleman, of the first talents for writing in the world, composed a book, I am bound to believe, with an honorable mind, but a book which produced a more universal and more mischievous effect, than any which perhaps our own or any other times have produced. When Mr. Burke's book upon the French revolution was first published, at which period our government had taken no active part against it, no man assimilated the changes of France to the condition of our country, no man talked of, or figured in his imagination, a revolution in England, which had already had her revolution, and had obtained the freedom which France was then struggling to obtain. Did it follow, because men rejoiced that France had asserted her liberty, that they thought liberty could exist in no other form than that which France had chosen? Did it follow, because men,

living under the government of this free country, condemned and reprobated the dangerous precedent of suffering the liberty of any nation to be overborne by foreign force; did it follow from thence that they were resolved to change for the accidental and untried condition of France, the ancient and tried constitution of our own country? I feel within myself that I can rejoice, as I do rejoice, in the liberty of France, without meaning to surrender my own, which, though protected by other forms, and growing out of far more fortunate conjectures, stands upon the same basis, of the right of a people to change their government and be free. Can any man in England deny this? Yes, gentlemen, Mr. Burke has denied it; and that denial was the origin of Mr. Paine's book. Mr. Burke denied positively and in terms, that France had any right to change her own government, and even took up the cudgels for all the despots of Europe, who, at the very time, were levying a barbarous, scandalous, and oppressive war, to maintain the same proposition by the sword.

This work brought forward again, after a long silence, Mr. Thomas Paine, who, indeed, was a republican beyond all question, but who had become so in consequence of the same corrupt and scandalous attempt to beat down by force the liberties of a nation; he became a republican in consequence

of the similar and lamentable contest between Great Britain and America; and it is rather a curious circumstance, that this very Mr. Burke, who considers Mr. Paine as a man not to be reasoned with, but only to be answered by criminal justice, and who condemns as a traitor every man who attempts to name him, himself expressed his approbation of the very same doctrines published by Mr. Paine, when Mr. Burke himself was pleading the cause of a nation determined to be free; not the cause of a foreign nation which had always been independent, but the cause of colonial America, in open war and rebellion against the crown and parliament of Great Britain. Mr. Paine, during the same crisis, wrote his book called *Common Sense*, addressed to the Americans in arms against England, exciting them to throw off the yoke of the mother-country, and to declare their independence. Gentlemen, from having defended Mr. Paine upon his trial for writing his later work, which Mr. Tooke is accused of having approved, I am, of course, intimately acquainted with its contents, and with those of his former writings; and I take upon me to say, that every offensive topic against monarchy, and all the principles of the *Rights of Man*, now regarded with such horror, are substantially, and in many instances almost verbatim, to be found in the former publication. When Mr. Paine wrote his *Common Sense*,

acts of parliament had declared America to be in a state of rebellion, and England was exerting every nerve to subdue her; yet, at that moment, Mr. Burke, not in his place in parliament, where his words are not to be questioned, but in a pamphlet publicly circulated, speaks of this book, *Common Sense*, by name, notices the powerful effect it had upon the mind of America, in bringing them up to emancipation, and acknowledges, that if the facts assumed by the author were true, his reasonings were unanswerable. In the same pamphlet, several parts of which I stated to the former jury, he declared, that he felt every victory obtained by the king's arms against America as a blow upon his heart; he disclaimed all triumph in the slaughter and captivity of names which had been familiar to him from his infancy; and, with all the splendor of his eloquence, expressed his horror that they had fallen under the hands of strangers, whose barbarous appellations he scarcely knew how to pronounce. Gentlemen, I am not censuring Mr. Burke for these things; so far from it, that they sanctify his character with me, and ever prevent me from approaching him but with respect. But let us, at least, have equal justice. While these writings continue the object of admiration, and their author is held forth as the champion of our constitution, let not Mr. Tooke stand a prisoner at the bar of the Old Bailey for having,

in time of profound peace with France, and when every speech from the British throne breathed nothing but its continuance, expressed only the same detestation of the exertions of foreign despotism against freedom, which the other did not scruple, in a similar cause, and in the time of open war, to extend to the exertions of his country.

To expose further the extreme absurdity of this accusation, if it be possible further to expose it, let me suppose that we were again at peace with France, while the other nations who are now our allies should continue to prosecute the war; would it then be criminal to congratulate France upon her successes against them? When that time arrives, might I not honestly wish the triumph of the French arms? and might I not lawfully express that wish? I know certainly that I might, and I know, also, that I would. I observe that this sentiment seems a bold one; but who is prepared to tell me that I shall not? I will assert the freedom of an Englishman; I will maintain the dignity of a man; I will vindicate and glory in the principles which raised this country to her pre-eminence among the nations of the earth; and as she shone the bright star of the morning, to shed the light of liberty upon nations which now enjoy it, so may she continue in her radiant sphere, to revive the ancient privileges of the world, which have been lost, and still to bring them forward to

tongues and people who have never yet known them in the mysterious progression of things!

It was the denial of these rights of men, which Englishmen had been the first to assert, that provoked Mr. Paine to write his book upon the French revolution, but which was written when we were not only at peace with France, but when she was holding out the arms of friendship to embrace us. We have subpoenaed the officer of the house of lords to attend with the correspondence between Lord Grenville and Mr. Chauvelin, long, long after that period, in which you will find an absolute denial of enmity, and professions of peace and friendship, the sincerity of which declarations had been uniformly experienced by our countrymen in France, who had been received with affection, cordiality, and respect. I admit that the work of Paine contained at the same time strong and coarse reflections against the system of the British government; but Mr. Tooke not only disapproved of those parts of the book, but expressed his disapprobation of them to the author; he repeatedly argued with him the merits of our government, and told him plainly that he had disfigured his work by the passages which applied to England, and which were afterwards selected for prosecution. Is it fair to pronounce, then, against the whole tenor of life and conversation, that Mr. Tooke approved of the destruction of monarchy,

because he promoted the circulation of a book, nine-tenths of which was wholly collateral to the subject, and which contained important and valuable truths, consistent with, and even tending to its preservation? Only twelve pages of Mr. Paine's book were ever selected as inimical to the constitution, whilst above two hundred contain reflections which, if properly attended to, might secure it from the very attack he makes upon it, in the rest.

Let us try Mr. Burke's work by the same test. Though I have no doubt it was written with an honest intention, yet it contains, in my mind, a dangerous principle, destructive of British liberty. What then? Ought I to seek its suppression? Ought I to pronounce him to be criminal who promotes its circulation? So far from it, that I shall take care to put it into the hands of those whose principles are left to my formation. I shall take care that they have the advantage of doing in the regular progression of youthful study, what I have done even in the short intervals of laborious life; that they shall transcribe with their own hands from all the works, of this most extraordinary person, and from the last, among the rest, the soundest truths of religion; the justest principles of morals, inculcated and rendered delightful by the most sublime eloquence; the highest reach of philosophy brought down to the level of common

minds, by the most captivating taste; the most enlightened observations on history, and the most copious collection of useful maxims, from the experience of common life. All this they shall do, and separate for themselves the good from the evil, taking the one as far more than a counterpoise to the other.

Gentlemen, Mr. Tooke had an additional and a generous motive for appearing to be the supporter of Mr. Paine; the constitution was wounded through his sides. I blush, as a Briton, to recollect, that a conspiracy was formed among the highest orders, to deprive this man of a British trial. This is the clue to Mr. Tooke's conduct, and to which, if there should be no other witness, I will step forward to be examined. I assert that there was a conspiracy to shut out Mr. Paine from the privilege of being defended; he was to be deprived of counsel; and I, who now speak to you, was threatened with the loss of office, if I appeared as his advocate; I was told, in plain terms, that I must not defend Mr. Paine. I did defend him, and I did lose my office.*

It was upon this occasion that Mr. Tooke interfered. Mr. Paine was not in circumstances to support the expense of his trial, and Mr. Tooke

* When Paine was brought to trial, Lord Erskine (then Mr. Erskine) was attorney-general to the Prince of Wales, and was removed; but his royal highness afterwards appointed him his chancellor, which office he held till he received the great seal from the king.

became a subscriber to his defence, though he differed from him, as I have told you, in the application of his principles to the British government, and had both publicly and privately expressed that difference. That Mr. Tooke's approbation of Mr. Paine's work, and of the French revolution, were founded upon no disgust to our own constitution, was manifested in the most public manner, at the very same period. A meeting was held at the Crown and Anchor, not called by Mr. Tooke, but at which he was present, to celebrate the first anniversary of the French revolution, where a noble lord, Earl Stanhope, was in the chair, and a motion was made, "That this meeting does most cordially rejoice in the establishment and confirmation of liberty in France, and that it beholds, with peculiar satisfaction, the sentiments of amity and goodwill which appear to pervade the people of that country towards this, especially at a time when it is the manifest interest" (as God knows it is), "of both states, that nothing should interrupt the harmony between them, which is so essential to the freedom and happiness, not only of both nations, but of all mankind." Mr. Horne Tooke — and I do not think after I have read this, that I shall be suffered to go on making any more remarks on this part of the subject, because it is a key of the whole; Mr. Horne Tooke begged that the honorable gentleman, who was the mover, would

add to his motion, some qualifying clause, to guard against misunderstanding and misrepresentation; that there was a very wide difference between England and France; that the state-vessel of France had not only been tempest-beaten, and shattered, but absolutely bulged; whereas, in England, we had a noble, stately, and sound vessel, sailing prosperously upon the bosom of the ocean; that it was true, after so long a course, she might, upon examination, appear somewhat foul at the bottom, and require some necessary repairs, but that her main timbers were all sound. He therefore regretted that there should be an addition to the motion, but that, if that addition was not made, he should move it himself; accordingly he did move in public, "That this meeting feel equal satisfaction, that the people of England, by the virtuous exertions of their ancestors, have not so hard a task to perform as the French are engaged in, but have only to maintain and improve the constitution which their ancestors have transmitted to them." When Mr. Tooke moved this amendment, he did it in the face of the whole country, and published; of course, to all mankind, those opinions, which I will prove to have been uniformly his, if, indeed, it is necessary to prove them, when the attorney-general has been so liberally wasting his strength in proving them for the last three days. Mr. Tooke, when he proposed this motion,

was acting on the ordinary principle of his life, which, for his own satisfaction, rather than for yours, I shall prove from year to year. I will take him up in the year 1780, and bring him down to the very time when he comes to your bar, and show that he has ever been steadfast in favor of the pure, uncorrupted constitution of Great Britain, but a mortal enemy to its abuses.

This disposition is so far from being dangerous to public tranquility, that it is its surest and its best support. Would you prevent the infection of French government from reaching this country, give to the people the practical blessings of their own. It is impossible to subdue the human mind by making war against opinions; it may succeed for a season, but the end thereof is death. Milton has truly said, that a forbidden book is a spark of truth that flies up in the face of him who seeks to tread it out; and that government which seeks its safety in the suppression of the press by sanguinary penalties, is like the gentleman who heightened the walls of his park to keep out the crows; the human mind cannot be imprisoned; it is impassive and immortal; reform, therefore, the abuses which obscure the constitution, and I will answer for its safety. Above all other things, let men feel and enjoy the impartial protection of mild and equal laws. Thanks be to God, we have lately felt and enjoyed them in this place, and our

constitution stands the firmer from the event; whilst in other countries, at the same moment, the dominion of persecution and terror has made revolution follow upon revolution, and filled the earth with blood and desolation.

Gentlemen, I will now lay before you Mr. Tooke's political sentiments when they could not possibly be written to serve a purpose; and I hope his lordship will permit Mr. Gibbs to read them, as my voice and strength begin to fail me.

Lord Chief Justice Eyre. What is it?

Mr. Erskine. A piece of evidence I have to offer. I am too much exhausted to read it.

Lord Chief Justice Eyre. If you wish to refresh yourself, sit down; we will wait patiently; but we should know what it is.

Mr. Erskine. I have nearly finished. It is a letter written to Lord Ashburton, who formerly, your lordship knows, was the celebrated Mr. Dunning, who was engaged in a reform of parliament; and Mr. Horne Tooke wrote this letter to him upon the subject of parliamentary reform, in the year 1782.

[MR. GIBBS *here read the following extract.*]

“By the vote of the house of commons on Tuesday last, parliament, it seems, do not yet think it necessary to take into consideration the state of

representation in this country. However, my lord, notwithstanding that vote, I am still sanguine enough to believe, that we are at the eve of a peaceful revolution, more important than any which has happened since the settlement of our Saxon ancestors in this country; and which will convey down to endless posterity all the blessings of which political society is capable.

“My lord, my expectations are greatly raised, instead of being depressed, by the objections which were urged against Mr. Pitt’s motion.

“One gentleman says, ‘he cannot see any good purpose the motion would answer; for it would not assist government with a ship, a man, or a guinea, towards carrying on the war with vigor, or towards establishing that much wished for object, peace.’

“My lord, I hope the measure will be made to produce to government, both ships, and men, and guineas. For they would be very poor politicians, indeed, who could not in one measure comprehend many purposes; and still poorer who should miss the present opportunity of obtaining, by this one measure of reform, every desirable object of the state.

“Another gentleman apprehends that ‘nothing less than giving every man in the kingdom a vote would give universal satisfaction.’

“My lord, I trust that there are very few persons

in the kingdom who desire so improper and impracticable a measure. But, if there were many, the wisdom of parliament would correct their plan, and the corrected could be well pleased at the correction.

“My lord, I shall not waste a word to show the necessity of a reform in the representation of this country. I shall only consider the mode of reform; and endeavor to show that it is not difficult to embrace every interest in the state, and to satisfy well-meaning men of every description. To this end I am compelled first to remove the prejudices, and, indeed, just objections, which some persons entertain to all the modes of reform which have hitherto been recommended.

“My virtuous and inestimable friend, Major Cartwright, is a zealous and an able advocate for equal and universal representation; that is, for an equal and universal share of every man in the government. My lord, I conceive his argument to be this: Every man has an equal right to freedom and security. No man can be free who has not a voice in the framing of those laws by which he is to be governed. He who is not represented has not this voice; therefore, every man has an equal right to representation, or to a share in the government. His final conclusion is, that every man has a right to an equal share in representation.

“Now, my lord, I conceive the error to lie

chiefly in the conclusion. For there is a very great difference between having an equal right to a share, and a right to an equal share. An estate may be devised by will amongst many persons in different proportions; to one five pounds, to another five hundred, etc.; each person will have an equal right to his share, but not a right to an equal share.

“This principle is farther attempted to be enforced by an assertion, that ‘the all of one man is as dear to him as the all of another man is to that other.’ But, my lord, this maxim will not hold by any means; for a small all is not, for very good reasons, so dear as a great all. A small all may be lost, and easily regained; it may very often, and with great wisdom, be risked for the chance of a greater; it may be so small as to be little or not at all worth defending or caring for. *Ibit eo qui zonam perdidit.* But a large all can never be recovered; it has been amassing and accumulating, perhaps, from father to son for many generations; or it has been the product of a long life of industry and talents; or the consequence of some circumstance which will never return. But I am sure I need not dwell upon this, without placing the extremes of fortune in array against each other; every man whose all has varied at different periods of his life can speak for himself, and say whether the dearness in which he held these different alls was equal. The lowest order

of men consume their all daily, as fast as they acquire it.

“My lord, justice and policy require that benefit and burden, that the share of power, and the share of contribution to that power, should be as nearly proportioned as possible. If aristocracy will have all power, they are tyrants and unjust to the people, because aristocracy alone does not bear the whole burden. If the smallest individual of the people contends to be equal in power to the greatest individual, he too, in his turn, is unjust in his demands, for his burden and contribution are not equal.

“Hitherto, my lord, I have only argued against the equality; I shall now venture to speak against the universality of representation, or of a share in the government; for the terms amount to the same.

“Freedom and security ought surely to be equal and universal. But, my lord, I am not at all backward to contend that some of the members of a society may be free and secure, without having a share in the government. The happiness, and freedom, and security of the whole, may even be advanced by the exclusion of some, not from freedom and security, but from a share in the government.”

Mr. Erskine. These are Mr. Tooke's sentiments, and they speak for themselves, without any commentary. It is very fortunate for me, therefore, as well as for the unfortunate gentleman whom I represent, that the subject of his defence is almost exhausted, because I myself am entirely so; and surely that circumstance must present in the strongest colors to men of your justice and discernment, the fatal precedent of such a trial; since, if I were even capable of grasping in my mind more matter than the greatest reach of human thought and memory could comprehend, the bodily strength of the strongest man would sink under the delivery.

I have been placed here, as you know, in a most arduous and anxious situation for many days during the late trial; I have had no opportunity of rest in the interval, but have been called incessantly to the other labors of my profession, and am now brought back again to the stake without the refreshment which nature requires, for it must be a dishonest mind which could feel the tranquillity necessary for its reception; I came into court this morning perfectly subdued with fatigue and agitation, and although I know the disposition of my honorable and learned friends to have left me at home, till the season arrived for the defence of the prisoner; yet amid the chaos of matter which the fulfillment of their duty obliged them to lay be-

fore you, it was impossible for them to know, within even hours, the time I should be wanted. I hope, however, that amidst all these pressures I have been able to lay before you sufficient information for the discharge of your duty to the prisoner and to the public, the matter for your consideration being a mere matter of fact: Has the prisoner at the bar conspired, with others, to depose the king, and to subvert by force the government of the kingdom?

The sentiments of Mr. Tooke upon the subject of our excellent government, which my learned friend, Mr. Gibbs, has just read to you, would in themselves be sufficient to expose the falsehood of the charge. The publication cannot be considered as a pretext, because they have ever been uniformly supported by his conduct. One of the most honorable men in this country now present will prove to you that he acted upon these principles at the time he published them, and offered all his influence and exertions to promote Mr. Pitt's plan, which was then in agitation; and I will lead him on in your view, day by day, from that period till within a fortnight of his apprehension for this supposed treason. Mr. Francis, a most honorable member of the house of commons, and one of the society called the Friends of the People, having suggested a plan for the reform of parliament, which appeared to him to be moderate and reason-

able, applied to Mr. Tooke, who was then supposed to be plotting the destruction of his country, to give him his assistance upon it. Mr. Tooke's answer was this: "One-fifth, or one-tenth, nay one-twentieth part of what you are asking will be a solid benefit, and I will give it my support." Mr. Francis will tell you this upon his oath, and he will add what he has told me repeatedly in private, that he grew in his esteem from the candid and explicit manner in which he made this declaration. Mr. Sharpe has also proved, that at the very time when all this scene of guilt is imputed, Mr. Tooke was uniformly maintaining the same sentiments in the most unreserved confidence of private friendship. I could go on indeed, calling witness after witness throughout the wide-extended circle of all who have ever known him, that a firm and zealous attachment to the British government, in its uncorrupted state, has been the uniform and zealous tenor of his opinions and conduct; yet in the teeth of this evidence of a whole life, you are called upon, on your oaths, to shed his blood, by the verdict you are to give in this place.

Gentlemen, I cannot conclude without observing that the conduct of this abused and unfortunate gentleman, throughout the whole of the trial, has certainly entitled him to admiration and respect. I had undoubtedly prepared myself to conduct his cause in a manner totally different

from that which I have pursued ; it was my purpose to have selected those parts of the evidence only by which he was affected, and, by a minute attention to the particular entries, to have separated him from the rest. By such a course I could have steered his vessel safely out of the storm, and brought her, without damage, into a harbor of safety, while the other unfortunate prisoners were left to ride out this awful tempest. But he insisted on holding out a rope to save the innocent from danger ; he would not suffer his defence to be put upon the footing which discretion would have suggested. On the contrary, though not implicated himself in the alleged conspiracy, he has charged me to waste and destroy my strength to prove that no such guilt can be brought home to others. I rejoice in having been made the humble instrument of so much good ; my heart was never so much in a cause.

You may see that I am tearing myself to pieces by exertions beyond my powers — I have neither voice nor strength to proceed further — I do not, indeed, desire to conciliate your favor, nor to captivate your judgments by elocution in the close of my discourse ; but I conclude this cause, as I concluded the former, by imploring that you may be enlightened by that power which can alone unerringly direct the human mind in the pursuit of truth and justice.

Upon the conclusion of the evidence for the defence, and the summing up of the judge, the jury immediately returned a verdict of "not guilty." Mr. Tooke, in a graceful speech, returned thanks to the court and jury for the fair trial accorded him, and acknowledged, in a feeling manner, his indebtedness to Mr. Erskine, who had done such effectual service to the cause of liberty.

THE TRIAL OF
SACKVILLE, EARL OF THANET,
AND OTHERS,
FOR
A MISDEMEANOR.

STATEMENT.

THE trial of the Earl of Thanet was had at the bar of the King's Bench, Lord Kenyon presiding, April 25th, 1799. Mr. Erskine appeared as counsel for the Earl, and likewise for Robert Fergusson and Dennis O'Brien. The proceedings were directed mainly against the three persons here named, since, though the information included Thomas Gunter Browne and Thomas Thompson, the evidence was deemed insufficient to put them upon their defence, and at the close of the case for the crown, Lord Kenyon directed the jury to acquit them, which was accordingly done.

Mr. Erskine's argument for the prisoners rests so largely upon the evidence adduced at the trial that the editor has deemed it necessary to insert the proceedings without abridgment, omitting only the information, especially since, throughout the entire speech, constant reference is had to the facts and circumstances related in detail by the witnesses. The precise nature of the charge against the prisoners is so concisely and admirably stated by Mr. Erskine in the prefatory part of his address to the jury, that

an extract in this connection will serve to give the reader a clearer idea of the case. It is as follows:

“In adverting to what the charge is, I need not have recourse to the abstract I have made of this information. The substance and common sense of it is this: that Mr. Arthur O'Connor had been brought by legal process into the custody of the sheriff of Kent; that a special commission had assembled at Maidstone to try him and others for high treason; that upon the opening of the commission he had been again committed by the court to the same custody; that he was afterwards again brought up to the bar, and found not guilty; and that after he was so acquitted, but before he was in strict form discharged by the order of the court, the defendants conspired together to rescue him. This is the essence of the charge. The disturbance of the court, and the assaults stated in the different counts of the information, are only the overt acts charged to have been done in pursuance of the purpose to rescue the prisoner.”

SPEECH OF THE ATTORNEY-GENERAL

SIR JOHN SCOTT.

MAY it please your lordships and gentlemen of the jury: I can very unfeignedly assure you, that I should have felt infinite satisfaction, if, in any view that I could take of what my country required of me, I could have determined not to have instituted the present prosecution.

Gentlemen, many reasons would have influenced me to act upon that wish. The first and most important is, that I am obliged by this information, to impute to a nobleman who is one of the defendants, and to the gentlemen whose names occur upon this record as the other defendants, an offence which appears to me to be one of the most heinous, the consideration of which has been offered in the history of our law to the decision of a jury.

Gentlemen, in so viewing the subject, I hope I may be allowed, though I am the prosecutor of this nobleman and these gentlemen, to express my regret that I am to make such an imputation in a court of justice with respect to any of them; but, gentlemen, when I consider that the pure administration of law in this country is the great security

upon which all the public blessings known to the country rest ; when I recollect that it is absolutely necessary for the free and uncontrolled administration of that justice, that those who have duties relative to any part of it should act under the impression that they are perfectly secure in the administration of the justice of the country, it is quite impossible for me to act upon any other principle but this, namely, that it must be known that the attorney-general of the country is bound, where there is a probable cause to impute to individuals that they have grossly violated that principle which requires that the administration of justice should be safe, to put upon them at least the necessity of satisfying a jury of the country that they are innocent of that charge.

Gentlemen, I agree that the charge is not to be made upon light grounds ; that circumstances ought to be laid before the officer of the crown which may justify him in the exercise of a fair and honorable discretion to bring forward the accusation ; and I shall go along with my learned friends in admitting, that the circumstance of the accusation being made, by no means decides that it is justly made. It is for you carefully and anxiously to examine the circumstances of the evidence, and then to decide whether the first appearances of guilt have been also attended with actual guilt.

Gentlemen, the information states to you, that at a special session of *oyer* and *terminer*, held at Maidstone in the month of May last, Mr. O'Connor, together with several other persons, were tried for the crime of high treason, of which they had been accused, by a grand jury of the county of Kent. The information states that the jury had found four of the defendants, Mr. O'Connor being one of the four, not guilty of the offence with which they were charged. The information states, that before he was discharged, these defendants, and you will give me leave to point out particularly to you the substance of the different charges in this information, did, in open court, and before any discharge, make a riot, and attempt to rescue him out of the custody of the sheriff; that they assaulted three persons named in the first count of the information, John Rivett, Edward Fugion, and Thomas Adams; that they riotously impeded and obstructed the commissioners of his majesty in the due and lawful holding of the session. The second count charges them with having, before the discharge of Mr. O'Connor, assisted him to rescue himself out of the custody of the sheriff, and having assaulted Thomas Adams, who was acting in aid of the sheriff. The third count charges them with having made a riot in open court, without the circumstances of the assault; and the last count charges them with a riot, without any addition of

circumstances; and it will be for you to determine whether they are guilty of all, or any of the charges stated in this information.

Gentlemen, I will endeavor now to open to you as much of this case as may enable you to understand as much of this evidence as is offered to you; not entering into the minutiae of the evidence, but endeavoring to assist you in the information you will presently receive from the witnesses, by stating so much of the case as may make it intelligible to you, without presuming to state more to you; because, perhaps, in all cases where justice is to be administered, more particularly in criminal cases, it would be my wish that the jury should learn it from those who are to state it upon their oaths, rather than receive any impression from the person standing in the situation in which have the honor to address you.

Gentlemen, the trial at Maidstone was, as I need not tell those to whom I have the honor to address myself, an extremely long one. The witnesses on both sides had been desired to withdraw from the court previous to the commencement of the trial. In the natural course of proceeding, the witnesses for the defendants were called after the witnesses for the prosecution; and the noblemen and gentlemen who gave evidence in favor of Mr. O'Connor and the other defendants in that trial for high treason, after respectively giving their evidence,

remained in court. It may be necessary for me here to state to you so much of the construction of the court as will enable you to understand what I am now representing to you ; you will have plans of the court offered to you by-and-by, in order to make the evidence more intelligible. Give me leave to represent his majesty's commissioners to sit in the place where the learned judges now sit ; you will consider the jury as sitting very nearly in the position, with respect to the judges, as you now sit with relation to the judges who now sit here. The counsel for the prosecution sat, I think, in that part of the court where that gentleman is now sitting with a yellow waistcoat ; and above them was a place in which the several witnesses were examined.

The witnesses were therefore directly opposite the jury, and the prisoners at the bar were removed somewhat behind the counsel, who sat, as it were, in the place where I am now standing ; there being some little distance between them and the prisoners, who were in the bar behind.

Gentlemen, after the several witnesses had been examined for the prisoners, most of them, I believe, remained in court ; and I should not make the observation, if it did not appear to me material with reference to the present case. Indeed, I should not be justified in making the observation, if I did not find it to be material to the present

case; for the circumstance of the witnesses having been removed out of court before the trial began was extremely favorable, I do not mean to say otherwise than justly so, to the prisoners, because, after the case had been proved, such as it was, on the part of the prosecution, one feels it a little difficult to believe, that if that evidence had been heard by the witnesses for the defendants which had been given by the witnesses for the prosecution, the evidence that was given for the defendants could have been given; and this is material in this point of view, because, with respect to the noble lord who is one of the defendants upon this record, and with respect to some other defendants upon this record, although they had not heard the evidence in the course in which it was offered to the attention of the jury, yet, before the circumstances happened which are charged in this information as circumstances of criminal guilt, no one of the defendants, as far as I know, I mean, could have been ignorant of the circumstances actually proved with respect to Mr. O'Connor, as that evidence applied to his relation to England, or his relation to Ireland; and I will state presently the use I mean to make of that circumstance. Gentlemen, in the course of the afternoon which preceded the conclusion of the trial, I have reason to believe that Lord Thanet, and the other persons upon this record, very studiously and anxiously placed them-

selves in that part of the court in which they could act with effect with respect to the rescue of Mr. O'Connor.

Gentlemen, with respect to one of the defendants whom, as a gentleman in the profession to which I belong, I certainly prosecute with all the regret that can belong to that circumstance, but which, at the same time, must not supersede the obligations I owe to the public, that gentleman had been in court during the whole of the trial; he had been counsel for some or one of the prisoners; and he was placed, in consequence of the duty he had to discharge, in a situation in which, if he chose so to exert himself, he certainly could be useful in this attempt to rescue Mr. O'Connor. With respect to the noble lord, I need not, I am sure, in this place, state to you, that he holds in this country the character of an hereditary member of the constitution; and with respect to the last gentleman whom I mentioned, Mr. Fergusson, I take leave to say, besides the general duty he owed to the public in a matter of this nature, there was another very high duty imposed upon him, which I hope and trust gentlemen who sit behind me will never forget—that that gentleman, as a barrister, owed a duty to the court, that it is their bounden duty, that it is a very sacred duty of theirs, instead of interrupting the course of justice,

to assist it in every fair, honorable, and effectual way.

Gentlemen, a verdict of not guilty was given in the case of Mr. O'Connor; and here I am very ready to admit this, that if I could have persuaded myself that the circumstances which then took place, namely, that Mr. O'Connor, in consequence of that verdict, misconceiving that he was discharged, and acting under that impulse, had intended merely to mix himself with the rest of the court, and that those who had been charged with the care of his interests, or those who thought well of him, had acted upon the impulse of the feelings of that moment, which might certainly have been such as to have misled men who, upon better consideration, would not have so acted, it would have become me to have hesitated before I determined, consistently with an attention to the public safety and to the public interests, to have instituted this prosecution.

Now, gentlemen, before I proceed to state to you the circumstances to which I beg your serious attention, I will state to you the motives with which I do it. When I state the circumstance of a warrant having been issued to apprehend Mr. O'Connor, conceiving, as I do, that some persons either knew, or believed, or conjectured, that there might be some other demand of justice upon Mr. O'Connor, and that, therefore, they were deter-

mined he should not remain in court till he was regularly discharged, for the purpose of preventing that other demand of justice being made upon him; I say the offence, even in that way, is of so aggravated a nature, that I have no wish to charge higher upon the record.

Then, gentlemen, I have to state this to you. When the verdict of not guilty was pronounced, Mr. O'Connor endeavored (it will be for you to decide whether or not with the co-operation of the defendants whose names occur upon this record) to get out from the place in which he stood as a prisoner, with a view to get out of court, and for the purpose of not being answerable to some demands of justice which he, and those who were acting with him, had reason to believe would be made upon him, if he staid till he was regularly discharged.

Gentlemen, one of the defendants in this case, I mean Mr. Thompson, a member of parliament, was bound, certainly, from his situation as a subject of this country, and bound from the high situation in which he stands in the country, not to be acting in the execution of such a purpose as this information imports; but you will find that he, together with Mr. O'Brien, had taken great pains, in the course of the afternoon, to sift from certain persons who will be called to you as witnesses, one of whom, indeed, I cannot call, because the hand of God has

removed him by death, but who would have spoken of important circumstances (I mean Fugion, the officer), but I think you will find very satisfactory evidence independent of that; and I should not have mentioned his name, but his name will be introduced in a very striking manner by the witnesses—you will find that Mr. O'Brien and Mr. Thompson were, in the course of the afternoon, extremely anxious to inquire, and to know with certainty, whether there was any demand of justice upon Mr. O'Connor, supposing him to be acquitted of the present charge.

Gentlemen, you will hear and you will attend to the evidence that will be given upon that part of the case; and when the conduct of Mr. Thompson is stated to you by the persons who will relate how he acted at the moment when Mr. O'Connor first attempted to escape out of this court, you will then consider with yourselves, whether the same is not, by that evidence, most completely made out against Mr. Thompson. I distinguish him in this part of the case because, according to the evidence which I have now to offer to you, I have no testimony to give with respect to Mr. Thompson as to his conduct in what I call the second riot which happened; and I think it right to say so, that the case may be disembarassed in the first instance, and, in the second, that I may do him justice.

Gentlemen, you will hear what part Mr. Fergus-

son took in this; and here I cannot but observe, that it is quite impossible that I can do Mr. Fergusson the discredit to suppose, that he could believe, after the evidence he had heard, that it was so unfit that justice should make any other demand upon Mr. O'Connor, that it was fit that he should forcibly resist the execution of that demand if it was made. I must give him credit for his professional knowledge; I must give him credit for the accurate knowledge which he must have had upon the occasion.

But, gentlemen, it does not rest there; for the officer being charged to arrest Mr. O'Connor, the fact was made known to the court; and the learned judge who presided there—I mean Mr. Justice Buller, whose absence I cannot but lament, when I recollect that that absence is occasioned by extreme illness—Mr. Justice Buller expressly stated, that the prisoners were not to be discharged; and expressly directed, that all the prisoners, except that one upon whom sentence of death was to be passed, should be kept back for the present. This was therefore a distinct notice, that there was an act to be done upon the part of the court.

Now, gentlemen, be so good, without my entering into a detail of that evidence, to attend to the circumstances as to the conduct of the different defendants, during the time the learned judge was executing the painful duty of passing the sentence

of death, giving your attention also to what was the conduct of the several defendants when this notice had been publicly given in court, the moment that that sentence was finished ; and unless I am deceived, indeed, with respect to the effect of that evidence, you will have no difficulty in coming to that conclusion, that those defendants did mean to take Mr. O'Connor out of reach of the demands which it had been publicly declared justice had upon him.

Gentlemen, I do not know how the defendants are to deliver themselves from this charge, because I will give any case to my learned friend that he chooses to ask me ; I will suppose that he was absolutely discharged ; I will admit that, under a misconception that there was no other demand of justice upon him, they supposed he ought to be liberated immediately, under the circumstances in which he stood, and that that was a mistake, a misapprehension ; but, gentlemen, what is to become of the justice of the country if such an example is to be set, that a peer of this realm, and a learned gentleman in my own profession, together with these other gentlemen named in this record, shall take the justice of the country into their own hands ? that you shall hear in a court of justice men saying to a prisoner, "Spring !" another, "Put out the lights !" In fact the lights were put out, and a great deal of confusion

ensued, which, if it had not been met with a great deal of spirit by the witnesses who will be called to you, no man could be answerable for what might have been the serious consequences attending it; and the duty imposed upon me is this, to take care of you, to take care of the learned judges, to take care of all who have either acted in the administration of justice, or who are present with those who are acting in the administration of justice; and I should have been deeply responsible if I had not instituted this prosecution, whatever may be your verdict upon the circumstances of the case, as a public lesson to all mankind that the courts of justice must be treated with respect.

Gentlemen, I presume we shall have evidence given, and it is very fit that it should be given, whether these acts were done intentionally, or under a misconception. It may admit of an explanation of that sort, with reference to which, I beg leave to call your attention to circumstances very material for that attention, when you are determining upon the character of the acts done by the defendants, and the view with which they did those acts. It will be, for instance, for Mr. Fergusson to explain what could put into the hands of a professional man a stick, with which he attempted to strike at those who were executing their duty; it will be for him to explain what was the meaning of the expressions he used; and,

with respect to the noble Lord Thanet, I shall prove to you, that when advice was given to him that it would be better for him, in the high and great situation which he held, to recommend a peaceable demeanor, to endeavor that the quiet of the court should be kept, that that noble lord expressed himself to this effect, "It is but fair that he should have a run for it;" and when you couple that expression, as it will be proved by respectable witnesses, with his acts, as they will be proved by respectable witnesses, I think you can have no doubt what was the character of the acts, and what the intention of that noble lord.

Gentlemen, having thus stated the circumstances, I shall proceed to call the witnesses. I am perfectly sure that you will give that attention which is due to the public, and to the defendants. It is not for the interests of justice, unquestionably, that any man should be convicted who ought not to be convicted; you will hear, therefore, the evidence with as favorable an eye to the several defendants as the nature and interests of justice will permit; but, on the other hand, I am sure you will remember, that no station or rank in life ought to protect any man from the operation of law; and in truth, in a moral view, the higher the situation of men who are guilty of offences of this nature, the higher the offence is, and the more that offence calls for punishment.

EVIDENCE FOR THE CROWN.

JOHN STAFFORD *sworn.*

Mr. Law. My lord, I only call this witness at present, for the purpose of producing a copy of the record ; I shall afterwards examine him more at large.

Q. You are clerk to Mr. Knapp, clerk of assize on the home circuit ?

A. I am.

[Produces a copy of the record of the conviction of O'Coigly and of the acquittal of O'Connor and others.]

Q. Have you examined it ?

A. I have.

(*It was read by MR. BARLOW.*)

Mr. Garrow. We proposed to have troubled Mr. Justice Heath ; but as he is not yet come down, we will now call Mr. Serjeant Shepherd.

MR. SERJEANT SHEPHERD *sworn.*—*Examined by*
MR. GARROW.

Q. We have collected from the record, that you were one of the commissioners appointed to try certain persons at Maidstone.

A. I was.

Q. Did you attend upon the bench upon that occasion?

A. I did.

Q. Do you remember the circumstance of the jury, after they had retired, coming into court to deliver their verdict?

A. I do.

Q. Are you acquainted with the person of my Lord Thanet?

A. I am. I had seen my Lord Thanet examined as a witness on that day for Mr. O'Connor; I did not know his person before.

Q. Are you acquainted with the person of Mr. Dennis O'Brien?

A. I am.

Q. Are you acquainted with the person of Mr. Gunter Browne?

A. I cannot say I am. I knew Mr. Gunter Browne a great many years ago; I had no recollection of its being Mr. Gunter Brown, but I saw a person upon the table, after the riot was over, who was said to be Mr. Gunter Browne.

Q. Are you acquainted with Mr. Fergusson, a gentleman at the bar?

A. I am.

Q. Are you acquainted with Mr. Thompson?

A. I am acquainted with the person of Mr. Thompson; but I do not recollect seeing Mr. Thompson at Maidstone.

Q. Be so good as to state to the court, whether, after the jury had given their verdict, and judgment of death had been pronounced upon the prisoner who was convicted, you made any observation upon any of these persons, or their conduct?

A. After the jury had given their verdict, and indeed, I think, at the time the jury gave their verdict, my Lord Thanet was standing before the bar at which the prisoners stood, with his back to the prisoners, and his face, of course, towards the court. I am not quite sure whether my Lord Thanet was on the bench at which the solicitors for the prisoners stood, or whether there was any space between the bench and the bar; that I could not sufficiently observe.

Mr. Garrow. It may not be improper here to state, and we shall certainly prove it, that there was no such space. I believe everybody knows that the bench to which the learned* serjeant alludes was made for the accommodation of the solicitors, and was as this may be, supposing this to be the bar. [Describing it.]

Mr. Serjeant Shepherd. My Lord Thanet stood with his face towards the court, and his back to the prisoners; he was rather to the right hand of O'Connor; I don't mean upon a line with O'Connor, of course, but rather to his right hand.

Q. May I interrupt you to ask whether the

right-hand side was the side upon which the jailor was placed?

A. I am not quite sure whether it was the side on which the jailor was placed; it was the side on which O'Coigly, the convicted prisoner, stood; and it was the side on which the Bow street officers afterwards endeavored to advance.

Mr. Erskine. The side nearest to the great street of Maidstone?

Mr. Garrow. Certainly so, which is the side on which we all know the jailor is placed.

Q. You recollect the jailor has a box on that side next the great street?

A. I recollect he has, and, therefore, it was certainly on that side on which the jailor was placed. Mr. O'Brien stood, or sat, at that time, I don't exactly recollect which; but Mr. O'Brien was on the same line with Lord Thanet, but rather to the left-hand of Mr. O'Connor. Whether there was any person between my Lord Thanet and Mr. O'Brien I do not recollect.

Q. When I interrupted you, you were about to state something of the Bow street officers advancing.

A. I think something had been said before the jury brought in their verdict. When there was an expectation that they were coming, something had been said about the Bow street officers being there. There was a sort of noise or buzz in court;

and somebody said, I don't know who, that the Bow street officers were making a noise. In consequence of that it was that I observed one of the officers, I think Rivett; it was either Fugion or Rivett; I am not quite sure that I recollect the person of one from the other.

Q. You had seen them and heard them give evidence?

A. I had; and I rather think it was Rivett who I observed standing at the corner of the bar; and they were desired to be quiet—not particularly the Bow street officers, but the court desired that everybody would be quiet—and they were quiet; and the jury then brought in their verdict. When the jury pronounced their verdict of not guilty upon Mr. O'Connor, some person, but whom I don't recollect, said, "Then they are discharged;" other persons sitting around the table said, "No, they are not discharged;" and at that time Mr. O'Connor, I think, had raised his knee to the bar, as if to get over. Whether he was pushed back or pulled back, I don't know; but he was restored to his former position behind the bar. A question was put to the court, by somebody—whether by the prisoners, or the counsel for the prisoners, or bystanders, I cannot tell, but some one said, "Are they not discharged, my lord?" or, "Have they not a right to be discharged?" or some such terms. Mr. Justice Buller, I think, said, "No, they are

not to be discharged yet; put the other prisoners back, and let O'Coigly stand forward;" I don't pledge myself for the exact words, but they were certainly to that effect.

Q. I will trouble you to repeat that, according to the best of your recollection.

A. "Put the other prisoners back, and let O'Coigly (who was the convicted prisoner) stand forward." I should have told your lordship, that when it was asked, whether they were not to be discharged before the riot, if I may so speak, began, one of the Bow street officers, I think, got up upon the bench, or form, I should rather say, and said, "No, my lord, I have a warrant against Mr. O'Connor;" whether he added for treason, or for high treason, I do not recollect. It was immediately upon the officer's saying that, that Mr. Justice Buller said, "They are not discharged." I don't mean in answer to that, but he said as a direction of the court, "They are not discharged; put the others back, and let O'Coigly stand forward."

Q. I would ask you whether that form upon which the officer raised himself to address the court was near the place where, as you before described, the Bow street officers were before the bar, and near Lord Thanet?

A. Certainly. He set his foot upon the end of the form before which Lord Thanet stood, with

certainly, I think, the interval of three or four persons.

Q. Was that expression of the officer's addressed audibly to the court?

A. Certainly. I heard it most distinctly, and, I think, every one must have heard it.

Q. Did he produce a paper?

A. Yes; he said, "No, my lord, they are not to be discharged. I have a warrant against Mr. O'Connor;" and he certainly extended his hand with a paper in it.

Q. After that direction had been given by the court which you have stated, what then passed?

A. Mr. Justice Buller proceeded to pronounce sentence upon the prisoner O'Coigly. During the first part of the time that he was pronouncing sentence, my attention was particularly attracted to O'Coigly, the prisoner; I was looking at him, and attending to him.

Q. The form of the sentence was introduced by a prefatory address?

A. Yes. During the former part of it, my attention was directed to him. Towards the conclusion of the sentence, I think just as Mr. Justice Buller came to that part of the sentence which pronounces the specific punishment, I observed Lord Thanet and Mr. O'Brien standing in the same position as they stood before, and I observed Mr. O'Brien turn round and look up at Mr.

O'Connor — I wish, my lord, here, only to state what I saw, and not what my conjecture or construction was upon it.

Q. I may take the liberty, however, of asking you, whether what you saw made an impression upon your mind? What that impression was, I shall not ask.

A. It did. He looked up at Mr. O'Connor, and then looked down to the place before him, which cannot be so well expressed in words as by an imitation of the manner; he looked down with a very slight motion, certainly an inclination of his head. Lord Thanet was standing with his back against the bar, behind which Mr. O'Connor stood. I can describe it in no other way than standing square as I do now. I did not see Lord Thanet make use of any motion or gesture, at that time, certainly. The moment the last word of the sentence had been pronounced by Mr. Justice Buller, the instant he had finished, Mr. O'Connor raised himself upon the bar. He jumped with his left foot upon the bar; he put his hand upon the shoulder of Mr. O'Brien, and, I think, his right upon Lord Thanet's shoulder, jumped over the bar between Lord Thanet and Mr. O'Brien, passed Mr. O'Brien towards the door of the court, which was on that side next the small street of Maidstone —

Q. That is, from the Bow street officers?

A. Yes; then I lost sight of Mr. O'Connor. Whilst Mr. O'Connor was getting over the bar, which, though it takes some space to describe, was done almost in an instant, the Bow street officers were pressing, endeavoring to get towards him, for the purpose of stopping him, I suppose.

Q. That is, in the narrow pass between the back of the seat for the counsel for the prisoners and the bench that was made for the accommodation of their solicitors?

A. Yes. Lord Thanet certainly stood in the position in which I had observed him. There was a great noise, of course, took place at that time, at the moment that Mr. O'Connor was getting over the bar, and some people calling to stop him; there was a great noise certainly. Lord Thanet stood, in the way that I have described to your lordship, in the pass; the officers were endeavoring to press by him; and he stood till, I think, in a very short space of time, he held up his stick with both his hands over his head. There was then a great deal of confusion: persons got upon the table; and there was a press, in the narrow pass, of officers and persons from that side of the court, attempting to press towards the door to which O'Connor had rushed; and other persons, whom I cannot say, appeared to me to push the other way, as if to prevent them from passing. I saw sticks raised, and fists raised, by individuals; but who

did so, I cannot speak to. There became then a general confusion in that part of the court, so that I lost sight of particular individuals; the candles were some of them thrown down -- they were upon the table -- and there was a general riot and confusion, certainly, in that part of the court. At that time a great number of persons had got upon the table, and there was certainly a great deal of confusion. In a very short time, somebody called out, "O'Connor is stopped;" and he was brought back again to the bar. I should state to your lordship, that, just at the time that I lost sight of Lord Thanet, and of the particular individuals, a person had got upon the table, which drew off my attention from what was going on at the bar, and had drawn a sabre which was lying there.

Q. That was part of the baggage of Mr. O'Connor, which had been produced upon the trial?

A. It was. He drew that sabre, and placed himself between the judges and the part of the court where the confusion was, obviously to prevent any persons from advancing towards the judges, if I may use the phrase, to defend the judges. I did not at that time see the face of the person who had it; and, therefore, I had some apprehension it might be in the hands of some imprudent man, who might do mischief; if I had known who it was, I should have known that he had discretion enough not to misuse it

Q. It was Mr. Stafford, the witness, was it not?

A. Yes. I said to him, not seeing his face, "Don't strike." When I saw who it was I was satisfied. After the riot had ceased, a number of persons got upon the table towards the judges, some to ask questions upon the subject of the legality of this warrant; and others, whether the prisoners were not entitled to their discharge; and others, certainly, to allay the fervor that seemed to be at that time operating upon the minds of many persons who were in court—to restore order, in fact; I should, perhaps, use that phrase. The particular conversations and expressions that were used by any of those persons upon the table I cannot pledge myself to recollect.

Q. I will take the liberty of asking you, I believe you were at a distance from the learned judge, Mr. Justice Lawrence?

A. I was. Mr. Justice Heath and Mr. Justice Buller both sat between me and Mr. Justice Lawrence.

Q. Therefore, I would ask you, whether you had an opportunity of hearing any particular conversation addressed to the learned judge who is now present?

A. No. I think I remember Mr. Sheridan speaking to Mr. Justice Buller, or Mr. Justice Heath, or both; and I remember Lord Thanet

being upon the table after Mr. O'Connor was brought back, apparently to me, conversing with the learned judge, Mr. Justice Lawrence.

Q. What he said you did not hear?

A. I did not; for at that time there was a great deal of noise in the court.

Q. Was it after that, that you observed Mr. Sheridan talking with the learned judge?

A. I think it was; the object of Mr. Sheridan seemed to be to allay the tumult; and then he crossed the table, and conversed with the learned judges.

Q. After the direction which you have stated to have been given by the court, and after the sentence of death had been passed, was any order given by the court for the discharge of Mr. O'Connor, or any intimation that he was to be discharged?

A. Certainly not; but it was broadly expressed by the court that he was not to be discharged.

Cross-examined by MR. ERSKINE.

Q. I have very few questions indeed, to put to you. You state, that when the verdict of not guilty had been pronounced, some persons, but whom you do not know, seemed to inquire, as if for information, whether the prisoners were to be discharged or not?

A. Not quite so: not to inquire; but some persons exclaimed, "Then they are discharged."

Q. Who those persons were you do not know?

A. I do not.

Q. You say that you observed Lord Thanet standing fronting the court, as I am now fronting the court?

A. Yes, certainly.

Q. With his back to the prisoner?

A. Certainly so.

Q. He was in that position when the jury came in with their verdict?

A. I think so.

Q. You have observed that Mr. O'Brien looked round to Mr. O'Connor, and then looked down as you have described it; did Lord Thanet continue all that time in the same position?

A. The time when Mr. O'Brien looked round was a very short time before Mr. O'Connor jumped over the bar; from that time, certainly, Lord Thanet had continued in the same position, standing as I described.

Q. While the learned judge was passing sentence of death upon O'Coigly, did Lord Thanet still continue in the same position?

A. Certainly he did.

Q. He was standing, as you observed, not looking this way towards the jury-box, or that way

towards the narrow street, but he was looking towards the court?

A. Certainly he had his back against the bar, and looking directly towards the court.

Q. You then describe, that upon the officers coming in and pressing through this narrow place, the next that you saw of Lord Thanet was with a stick with both his hands up?

A. Yes. I did not mean that the officers came in then, but that they had come in some time before, having declared that they had a warrant; but certainly, upon Mr. O'Connor's jumping over the bar, the officers rushed forward to follow him; after they had made several pushes it was that I saw Lord Thanet in that position.

Q. Did you ever observe any change in the position of Lord Thanet, from the time you first saw him, till you saw him in the situation you have now described to the court?

A. I did not observe any change.

Q. But a stick over his head?

A. Yes; and, perhaps, I should say this, it seemed to be, when he held it in that way, that it was to defend his head.

REV. WILLIAM HUSSEY *sworn.*—*Examined by*
MR. ADAM.

Q. I believe you are a clergyman of the Church of England?

A. I am.

Q. Were you at Maidstone, at the trials of Mr. O'Connor and Mr. O'Coigly?

A. I was.

Q. Were you there at the time the jury were out deliberating upon their verdict?

A. Part of the time.

Q. Were you in court at the time they returned with their verdict?

A. I was.

Q. Do you remember seeing Lord Thanet in court at that time?

A. I saw Lord Thanet in court.

Q. In what part of the court were you placed?

A. At that immediate period of time, I cannot expressly say in what part; I saw Lord Thanet in two different parts of the court.

Q. In what part of the court did you first see Lord Thanet?

A. The first time, when he came to give his evidence, and the next time, at the table, fronting the judges, and afterwards sitting under the bar at which the prisoners stood.

Q. Upon a bench with his back to the prisoners?

A. With his back to the prisoners.

Q. Do you remember seeing the Bow street officers there ?

A. I saw a person who I was informed afterwards, was a Bow street officer ; I did not know, at that period, that he was a Bow street officer.

Q. Do you recollect the jury delivering their verdict ?

A. I do.

Q. Can you state to my lord and the court anything that struck your attention upon the jury delivering their verdict of not guilty with respect to Mr. O'Connor ?

A. After the jury returned their verdict of not guilty, I observed Mr. O'Connor make a feint to get over the bar ; he put up his foot as if he would get over.

Q. Did you observe anything more pass at that time ?

A. I cannot speak expressly as to the direct period of time at which I saw the circumstance happen ; whether it was at that period or a future period, I must say that I cannot immediately recollect.

Q. What was that circumstance ?

A. That the Earl of Thanet was in that situation which I before mentioned, sitting with his back towards the bar, nearly under the prisoners, or under the jailor ; and as the person was pressing

forward from that side of the court to get towards the prisoners —

Lord Kenyon. What person?

A. I cannot say who the person was; I was informed afterwards he was a Bow street officer; and, indeed, from the circumstance of his mentioning to the jury what was the matter — he said he had a warrant to apprehend Mr. O'Connor — I supposed him to be a peace-officer.

Mr. Adam. Then, as this person, who held a paper in his hand, and pressed forward —

A. I saw no paper in his hand; Lord Thanet seemed to press himself against the bar with his body inclined somewhat towards that person, apparently with an intention to interrupt his progress towards the prisoner.

Q. In what situation was Mr. O'Connor at that time?

A. Mr. O'Connor, at that period, was standing at the bar.

Mr. Adams. Go on, and state what you saw after this.

A. Upon my word, from the confusion that was in the court, I do not recollect any particular circumstance that I can take upon me to speak to.

LORD ROMNEY *sworn*.—*Examined by MR. WOOD.*

Q. Was your lordship in court at the time of the trials of the prisoners at Maidstone?

A. Yes.

Q. In what part of the court did your lordship sit?

A. Next to Mr. Justice Lawrence, upon the bench.

Q. Does your lordship know the defendant, Mr. Fergusson?

A. I did not know Mr. Fergusson before the trials at Maidstone; I had seen him so often then, that I knew him in his gown; if I was to see him out of his gown, I do not know that I should know him; I knew him perfectly in his gown.

Q. After the riot began what did your lordship observe?

A. When the riot first began, I looked very much towards the prisoner O'Connor, and saw him get over the bar and go towards the narrow street. I looked at the other part of the court, where there were individuals forcing a passage through, which were the Bow street officers; I saw them forcing their way, and blows were struck. I paid particular attention to Mr. O'Connor, and then, almost at the same moment, turned my eyes to a different part upon the table, where there was a sword brandishing about; I don't know whether it was

drawn or not, for I could not see at that time ; but I should imagine that it was drawn ; upon which I thought things seemed to bear a very serious aspect, and I let myself down from the bench, where I was sitting, and crossed the table directly to where I saw the prisoner escaping from. I dipped my head under the broadsword that was brandishing about ; I got immediately to the end of the table, near that part of the court where the prisoner escaped from ; and as soon as I got there, I immediately saw the prisoner O'Connor brought back to that part of the table by several javelin-men and others. I then immediately said to the javelin-men, "Form yourselves round the prisoner, and let no one approach you," or, "Let no one come round you," or words to that effect ; "for he is not yet," I meant to say, and imagine I did say, "discharged." I was told afterwards that I had said wrong, for I had said he was not acquitted ; upon which I answered, I might very possibly make use of the word acquitted ; but if I did, it was a mistake ; I meant discharged.

Mr. Garrow. Will your lordship mention who it was that said that ?

A. I think it was Mr. Fergusson ; he said, "My lord, you are mistaken ; you said, 'he is not acquitted ;' he is acquitted." I think it was Mr. Fergusson. I have no doubt myself, as Mr. Fergusson mentioned it but that I did make use of

the word acquitted, in the hurry; I have no doubt of it; it was not my intention to say he was not acquitted, but that he was not discharged; I meant to make use of the word that I heard Mr. Justice Buller make use of from the bench.

Mr. Wood. Does your lordship recollect whether the court said anything before that, about his not being discharged?

A. Yes; and I meant to make use of the word discharged, because I had heard Mr. Justice Buller use the word discharged.

Q. Publicly in court?

A. Yes; I had no private communication with Mr. Justice Buller at all, because Mr. Justice Lawrence sat between us.

Q. Did your lordship notice any particular persons that were acting in the riot?

A. Really, I felt myself so engaged in a thing of this sort, and I should have been so much hurt if, in the confusion, any disgrace had been brought upon a court of judicature generally, and for myself, in my situation in the county of Kent in particular, that I did not take such notice of the circumstances that were taking place, as I did to take care, with others, to prevent a rescue, which I should have considered an indelible disgrace and stain upon our county. I certainly could not say who it was in the passage that was struck by the Bow street officers; for when I looked to that part,

the confusion was very great, and the blows very frequent in that part.

Q. Did your lordship hear any conversation between Lord Thanet and Mr. Justice Lawrence, after Mr. O'Connor was secured?

A. It is really a very considerable time since the riot; and, at the same time, as many different things were going on at that moment, I cannot positively swear; and, therefore, unless I was perfectly convinced, it can be of no consequence.

Lord Kenyon. It is my duty, and I am bound to say your lordship must recollect as well as you can.

A. If your lordship will give me leave to say, that at this distance of time, ten or eleven months, I really cannot swear whether I heard it at the time, or whether it was a conversation afterwards, that such and such things had passed; and, therefore, as I cannot answer positively, I must, for myself, beg leave to decline answering it. I certainly had forgot it; and some time past, three or four months ago, after considering with myself, I thought I did recollect something of such a conversation passing; but it certainly had for some time slipped my memory; and, therefore, without I could absolutely ascertain it, I cannot speak to it; there was a great deal of confusion.

Cross-examined by MR. GIBBS.

Q. You say, you intended to say that the prisoner had not been discharged; but you had been informed by some one, that you had said he was not acquitted; and then you corrected yourself, and said you meant to say discharged?

A. I have no doubt but that, in directing my speech to somebody, in the hurry of the business, I said he was not acquitted.

Q. There was but one person that said that?

A. Mr. Fergusson said it repeatedly; and then I said, "I meant to have said discharged; if I had said acquitted, it was a mistake;" and then Mr. Plumer came up, and I told him that Mr. Fergusson had said so.

Lord Kenyon. There can be no occasion to go into all that conversation.

Mr. Gibbs. All I wish to have the honor of asking your lordship is this: There was a person who said to your lordship, "You have said he is not acquitted;" and then you corrected yourself?

A. Yes; and that person, to the best of my knowledge and belief, was Mr. Fergusson; and I told Mr. Plumer that Mr. Fergusson had said it repeatedly; three or four might have repeated it in the confusion of the court; I could not distinguish voices.

SIR JOHN MITFORD *sworn*.—*Examined by Mr. FIELDING.*

Q. Have the goodness to describe what was your particular situation in the court at Maidstone.

A. You mean after the jury had withdrawn, I suppose?

Q. If you please.

A. I went up to Mr. Justice Buller and spoke to him; and then I placed myself immediately under him, opposite Mr. O'Connor, upon whom I kept my eye fixed when the jury came into court and gave their verdict. I observed Mr. O'Connor and Mr. Fergusson; I particularly fixed my eyes upon them. I observed Mr. Fergusson speaking to Mr. O'Connor, and Mr. O'Connor put his leg over the bar; I called out "Stop him!" Mr. Fergusson said, "He is discharged." I said, "He is not discharged." Mr. Fergusson then addressed Mr. O'Connor, and said, "You are discharged." I repeated, "He is not discharged," I believe more than once. I observed the jailor leaning over towards Mr. O'Connor, and I think he took hold of him.

Mr. Garrow. The other prisoners were between the jailor and Mr. O'Connor, were they?

A. Two of them were, and the other two behind Mr. Binns and Mr. O'Coigly; and then Mr. Allen and Mr. Leary were behind. Then Mr.

O'Connor drew back his leg: there was then a disturbance immediately under Mr. O'Connor, and some person or persons pressing forward, and Mr. Fergusson made some complaint to the court upon the subject; then Rivett, the officer, who appeared to be the person pressing forward, said —

Mr. Fielding. When you say pressing forward, in what kind of direction was that pressure?

A. Towards Mr. O'Connor.

Q. That was not forward towards the body of the court, but towards Mr. O'Connor?

A. It was towards the body of the court, in order to get to Mr. O'Connor, and place himself under Mr. O'Connor, as I conceived. Rivett said he had got a warrant against Mr. O'Connor; and the jailor also said something upon the same subject, but I do not recollect the particular words; and Mr. Justice Buller spoke to the officers, as I understood, to keep the prisoners back, or some expression of that description, and then almost instantly began addressing Mr. O'Coigly.

Lord Kenyon. With a view to pass sentence?

A. With a view to pass the sentence. I recollect that this was almost instantaneous; because I was about to speak to the court, and it was so sudden, that I thought it was indecent to interrupt Mr. Justice Buller, otherwise I should have spoken to the court.

Mr. Garrow. Mr. Attorney-General had retired from the court?

A. He had retired from the court, and had desired me to speak to Mr. Justice Buller upon the subject, which I had done after Mr. Justice Buller had passed sentence upon Mr. O'Coigly. I fixed my eye particularly upon Mr. O'Connor, and I observed Mr. Fergusson, and some other persons whom I did not know, encouraging Mr. O'Connor to go over the bar. Mr. O'Connor appeared for a little while to hesitate, but it was only for a moment; he then sprung over the bar, and leaped into the lower part of the court, between the bar and the jury-box, which was on the right hand of the judges. From that time I did not see Mr. O'Connor until he was brought back by the officers; for at the same instant that Mr. O'Connor jumped over the bar, three or four persons whom I did not know leaped over the box opposite the jury-box upon the table.

Mr. Garrow. Was that box the box where the witnesses were examined?

A. Where the witnesses had been examined, and where persons who attended the trial through curiosity had been. They went to the spot where the riot was, and jumped among the rioters; all the lights, except those before the judges, and the lights which hung in the middle of the court in a kind of branch or chandelier — I do not recollect

exactly what sort of a thing it was, it gave a considerable light — but all the other lights were extinguished.

Mr. Garrow. The chandelier that hung over the prisoners?

A. In the middle of the court; there were, I think, three patent lamps in it; it gave a great deal of light. Mr. Fergusson, at the moment that Mr. O'Connor jumped over the bar, turned himself round, and appeared to me to follow Mr. O'Connor; but I cannot positively say that he did so, because the persons who rushed from the other side of the court came between me and him; but I recollect that when they were passed I did not see him. I then attended to the prisoner O'Coigly, apprehensive that he might escape; and that attracted my attention in some degree from what was passing in the riot; he was perfectly tranquil, and I was convinced from his behavior that he did not mean to stir; and therefore my attention was drawn back again to the riot. Mr. Knapp's clerk, Mr. Stafford, jumped upon the table, and drew Mr. O'Connor's sword, a kind of broad sword, I think, which was lying upon the table; and he flourished it over the heads of the persons who were engaged in the riot below. I got up to speak to him, to desire him to put up the sword, which, after some time, he did; and soon after Mr. O'Connor was brought back. Mr. Stafford being between me

and the riotors, prevented me from seeing what passed after the riot was over. I do not recollect anything material except Lord Thanet; that is, a person whom I understood to be Lord Thanet. I did not know Lord Thanet's person; that is, I did not recollect him; I had seen him many years ago. I saw a person whom I understood to be Lord Thanet, come across the table; and I saw him in conversation with Mr. Justice Lawrence; that conversation was a little warm, but I did not hear the particulars of it. When my Lord Thanet left Mr. Justice Lawrence, and went across the table again, I heard him say, "I thought it was fair he should have a run for it."

Q. Was that addressed to the judge in parting from him and going across the table?

A. I think it was not addressed to the judge, but as he turned from the judge; he said it rather in a tone of anger; I think it was in consequence of what had fallen from Mr. Justice Lawrence, which I did not exactly hear. I do not recollect anything else.

Mr. Fielding. Will you have the goodness to explain what you meant by encouraging Mr. O'Connor to get over the bar?

A. It was not immediately encouragement, by any words that I could hear; but by action, as if he was encouraging him to come over the bar, and by insisting that he was discharged.

Cross-examined by MR. BEST.

Q. While Mr. Fergusson was speaking to Mr. O'Connor, he was in his place at the bar?

A. He was.

Q. There was a vast number of other persons at the same time speaking to Mr. O'Connor?

A. Yes.

Q. I believe it was generally understood in the court at that time that Mr. O'Connor would be acquitted?

A. I do not know whether they were congratulating him; it was after he was acquitted.

Q. You say he was in his place at the bar; do you recollect ever seeing him quit his place at the bar?

A. I have already said I think he did; I have already stated, I am not positive as to the time, but that I did not see him when the rush that passed between me and Mr. O'Connor was made.

MR. JUSTICE HEATH *sworn.*—*Examined by MR. ATTORNEY-GENERAL.*

Q. Your lordship, I believe, was one of the commissioners of *oyer and terminer* at Maidstone?

A. I was.

Q. Did your lordship observe any riot that took place?

A. I did; and if you will give me leave I will state all that I observed. I was applied to in the course of the day by a messenger from the secretary of state, who informed me that a warrant was issued for the apprehension of Mr. O'Connor in case he should be acquitted, and desiring to know if the Court would permit him to execute that warrant if he should be acquitted; and we gave leave. After the verdict had been given, and, I believe, after sentence of death had been passed, this messenger very unadvisedly went from that corner of the box where the prisoners were confined to that corner which was near the door, and said aloud, "My lord, may I now execute my warrant?" Presently after I saw Mr. O'Connor thrust one leg over the box, and then draw it back again; afterwards, in the space of a minute, I saw him leap over the box. I could not see any person between him and the door at that moment. Immediately a great scuffle and a riot ensued, and a great deal of fighting, such as I never saw before in a court of justice; it appeared to me to be between the constables with their staves on one side, and those who favored the escape of O'Connor on the other. I know not from whence the favorers of Mr. O'Connor came; it being dark, I could not see exactly the number of the combatants; it was dark in that place where they were fighting; but from the exertion of the constables in plying their

staves, it seemed to me that there must have been ten or twenty, I suppose, all fighting together. I saw a man with a naked sabre, brandishing it over the heads of the combatants. One of the officers of the court, I believe, came up to me with a brace of pistols, which, I believe, belonged to Mr. O'Connor, and lay upon the counsel-table, saying, "I have secured these at last." This combat, I suppose, might last five, six, or seven minutes; I cannot exactly say how long; but in the course of it, I saw Mr. Fergusson standing upon the table, together with many others; he turned round toward the commissioners, and said, I believe particularly addressing himself to me, "My lords, the constables are the persons that are the rioters; they are the occasion of it," or words to that effect. Before I could give him an answer he turned round again towards the combatants; it was impossible, from the noise, for him to hear anything I could say to him; my attention was chiefly turned from him to the more interesting scene of the fight; but I must do him the justice to say, that, in the very short time I saw him, which was not above a minute or so, I did not observe him say or do anything to encourage the riot. I thought myself in great danger, and that we were all so. I could not guess at the view of the rioters, how far it extended, or whether they had any and what arms; indeed we were more alarmed, because we had

intelligence beforehand that there was a very disaffected party in the town. That is all I have to say.

CHARLES ABBOTT, ESQ. *sworn.*—*Examined by MR. LAW.*

Q. Were you in court when the jury brought in their verdict?

A. I was.

Q. Did you observe any motion made by Mr. O'Connor towards quitting the bar?

A. I do recollect that Mr. O'Connor made a motion with his body as if he would leave the bar. Mr. Fergusson, almost at the same instant, said, "He is discharged." Mr. Solicitor-General then called across the table, "No, stop him; he is not discharged." Just at the same instant one of the officers, either Rivett or Fugion, but I cannot say which, got upon the form and pressed forward towards Mr. O'Connor, and at the same time said he had a warrant; there was then a little confusion for a short space of time, but not very long; the prisoners resumed their places, and Mr. Justice Buller proceeded to pass the sentence upon Mr. O'Coigly. During this time I had been sitting almost immediately under Mr. Justice Buller, very nearly so. At the very instant that Mr. Justice Buller had closed the sentence, I observed Mr. O'Connor leap over from the bar towards his left

hand; a very great tumult and confusion immediately took place; and, shortly afterwards, I saw a person, whom I soon learned to be Mr. Stafford, draw a sabre, and went to that corner of the table where the confusion was. Mr. Garrow cautioned him not to strike; and he did not appear to aim the sabre at anybody, but merely to keep it moving over their heads. When this second tumult began I rose up and stood upon the form upon which I had been sitting, so that I was standing before Mr. Justice Buller and Mr. Justice Heath, with my back towards them; when the confusion began to abate I turned round, and entered into some conversation with Mr. Justice Buller; and soon after this, while I was in that situation, I saw my Lord Thanet standing on the table, nearly before Mr. Justice Lawrence, which was towards my right hand. I heard Mr. Justice Lawrence speak to Lord Thanet to this effect: "I think it would be an act of kindness in Mr. O'Connor's friends to advise him to go quietly to prison, lest some mischief should happen;" I do not pretend to state the learned judge's words; but the substance, I believe, I am correct in. Lord Thanet then turned abruptly round towards his right hand, which brought his back towards me; and I did not distinctly hear the first words that he uttered, but the concluding words were either "to have a run for it," or "fair to have a run for it." I will not

be quite certain of the word "fair;" but of the words "to have a run for it," I am quite certain. I have the more particular recollection of this, because, shortly afterwards, I observed Mr. Sheridan at the same part of the table, and heard Mr. Justice Lawrence speak to him to the same effect that he had before spoken to my Lord Thanet. Mr. Sheridan answered with great civility, either that he had done so, or that he would do it; it was the different manner of Mr. Sheridan to that of my Lord Thanet that made me recollect that.

Q. Do you recollect Mr. Justice Lawrence making any observation upon that?

A. Yes.

Mr. Erskine. To whom?

A. To Mr. Sheridan.

Q. In the presence of Lord Thanet?

A. No; he was gone; and I recollect that Mr. Justice Lawrence said to Mr. Sheridan, that he had made the same observation to another gentleman.

Mr. Law. Have you any doubt of the words spoken by Lord Thanet, "to have a run for it?"

A. I have not.

JOHN RIVETT *sworn*.—*Examined by MR. GARROW.*

Q. Did you attend at Maidstone as a witness upon the trial of O'Connor and others?

A. I did.

Q. Was any application made to you by one of his majesty's messengers to assist in apprehending Mr. O'Connor if he should be acquitted by the jury?

A. Yes, there was.

Q. Did you, in consequence of that, go into the court with a view to give that assistance?

A. Yes, I did.

Q. Who went with you?

A. Fugion, my brother-officer.

Q. He was another officer of the police?

A. Yes, and the messenger; we all three went into the court together.

Q. Is Fugion since dead?

A. He is.

Q. After you had gone into court, do you remember seeing a gentleman of the name of Thompson?

A. I was informed that was the gentleman's name.

Q. Should you know him now if you were to see him?

A. I think I should; I have never seen him since; I was very near the bar where the prisoners stood.

Q. At which end of the bar were you? were you on the side the farthest from Mr. O'Connor, or the nearest?

A. Nearest to the jailor, which was the right-hand side of the bar.

Q. While you were in this position had you any conversation with a gentleman you understood to be Mr. Thompson?

A. Yes.

Q. State it to the court.

A. The gentleman whom I understood to be Mr. Thompson, a member of parliament, asked me, what I did there. I made him little or no answer. He then said, "What business have you here?" or words to that effect; "have you got anything against Mr. O'Connor?" meaning, as I supposed, a warrant; I did not know what his meaning was; I replied, "No." I believe he asked Fugion likewise, to the best of my recollection.

Q. You and Fugion had both been examined as witnesses upon the circumstance of the apprehension of Mr. O'Connor?

A. We had.

Q. And, to the best of your recollection, Mr. Thompson put the same inquiry to Fugion?

A. He did.

Q. What then passed?

A. I then observed a gentleman, whom I knew to be Mr. O'Brien, at the farther end of the court;

I observed Mr. O'Brien whispering something to Mr. O'Connor over the bar.

Q. Describe particularly where Mr. O'Brien was placed during that time?

A. He was on the left-hand side of the bar, by Mr. O'Connor; I was on the right-hand side, and he on the left; a few minutes might elapse, when Mr. Thompson put up his finger to catch the eye of Mr. O'Brien, and beckoned to him; a few minutes might elapse, when Mr. O'Brien came to the same side where I stood.

Q. Did Mr. Thompson still continue standing by you?

A. Yes, he did.

Q. How long was this before the verdict was given?

A. While the jury were out considering their verdict.

Q. When Mr. O'Brien came to the place where you and Mr. Thompson were standing, what took place?

A. Mr. O'Brien and Mr. Thompson spoke to each other; but what they said I cannot tell. Mr. O'Brien then addressed me, and said, "Have you got a warrant against Mr. O'Connor?" I said, "No." Then he said, "Then Fugion has."

Q. Do you mean that he made use of Fugion's name?

A. Yes; Fugion was present, and he answered

immediately, that he had not. He said "Fugion, have you got the warrant?" He addressed himself to Fugion; Fugion said, "No." Then Mr. O'Brien said, "Then the messenger has."

Q. Had Wagstaffe his badge as king's messenger on at that time?

A. I do not recollect.

Q. Do you mean to say that he addressed himself to the messenger?

A. No; he said, "Then the messenger has." I then replied, "I can answer only for myself." Mr. O'Brien then said, "I will bet you three guineas," I think it was, to the best of my recollection, "that you have." Fugion said, "Done," I believe, or words to that effect. Mr. O'Brien then left the side of the court that I was on, and returned to the left-hand side where Mr. O'Connor was, and whispered something to Mr. O'Connor; but what I cannot tell.

Q. What observation did you make at that time with respect to any other persons in the court, as to any change of position?

A. It remained quiet till the jury were coming in; a number of gentlemen seated themselves directly before me in the place where I stood.

Q. That was upon the bench made for the prisoners' attorney?

A. Yes.

Q. Many gentlemen seated themselves there?

A. Yes.

Q. Did you know any of those persons?

A. Not that were sitting down before me; some time had elapsed, when there was some noise when the jury were coming into court, "Make way for the jury," or something to that effect. I then endeavored to get as nigh Mr. Watson, the jailor, as I possibly could. I went to step my foot up to get nigh the bar, and I was pulled down again by my leg; I turned round, and the person who pulled me down, I supposed, was Mr. Thompson.

Q. Do you mean to say you know it was Mr. Thompson; or, from the situation he was in, that you apprehended it was Mr. Thompson?

A. Exactly so.

Q. You do not aver the fact positively?

A. No; but when I turned round he was close to me.

Q. And therefore you conclude he was the person who pulled you?

A. Yes. The jury then came in, and I endeavored to get up again as near the bar as I possibly could.

Q. When you use the expression, that you endeavored to get up as near the bar as you could, was there anything that prevented you from getting there?

A. Only the gentlemen sitting there.

Q. With what view was that?

A. With a view to assist in securing Mr. O'Connor if he should attempt to make his escape.

Q. Upon your endeavoring to get as near the bar as you could, what happened?

A. The jury were in, and the court called "Silence!" The jury had given their verdict—Mr. O'Connor and the others, not guilty; and Mr. O'Coigly, guilty; and then I got up nigh the bar. I observed something in Mr. O'Connor that struck me as if he meant to make his escape. At that moment there was some noise in the court, and Mr. Fergusson says, "What business has that fellow there, making such a noise?"

Lord Kenyon. Who was that addressed to?

A. It was addressed to the court, I believe. Upon that I got up upon one of the benches, and addressed the judge, and told him my reasons for being there. I told his lordship I had a warrant from the Duke of Portland to arrest Mr. O'Connor; the judge replied, "You shall have him," or words to that effect; and desired the jailor to take care of all the prisoners for the present.

Q. Which of the judges was that?

A. Judge Buller. Then the sentence was passed upon Mr. O'Coigly. As soon as the judge had so done, Mr. O'Connor immediately jumped out of the bar; there was then a very great confusion in court; those gentlemen who had so placed them-

selves before me, stood up; I called out, "Shut the door! shut the door!" several times.

Q. After Mr. O'Connor had jumped over the bar, which way did he take?

A. He took to the left.

Q. He took the direction going from you?

A. Yes.

Q. That was, as we have been describing, towards the narrow street?

A. Yes. I then endeavored to get forward, but was prevented by those gentlemen who had so placed themselves quite before me and Fugion and the messenger.

Q. Now describe particularly what passed, which prevented you, with your assistants, from following Mr. O'Connor.

A. I was pulled down, or shoved down, twice or three times; but by whom, I am not able to say. I then jumped forward as well as I was able, and was endeavoring to pursue Mr. O'Connor; Mr. Fergusson jumped upon the table, and with a stick flourished it in this way, to prevent my getting forward.

Q. Flourished it over your head?

A. He flourished it with an intent, as I presume, to stop me.

Q. Was Mr. Fergusson in his professional dress?

A. Yes; he was. I then sprung at him and

wrenched the stick out of his hand, and he returned back to his former situation.

Q. He went from off the table, and returned to his place at the table?

A. Yes; otherwise I should have struck him with the stick which I had wrenched from him, if he had not that moment got away.

Q. Describe what more took place.

A. As soon as I recovered myself, I was then knocked down by some person who drove against me—not with a stick; and as soon as I had recovered myself, I saw the person who had so shoved me down. I immediately struck him with my stick; I repeated my blows three or four times; that person called out, “Don’t strike me any more.” I replied, “I will; how dare you strike me?” That person I so struck was, as I understood while I was in court, the Earl of Thanet.

Q. Are you quite certain that the person you struck and repeated your blows with a stick, was the person who shoved you down?

A. Yes.

Q. And that person, whilst you continued in court, you understood was my Lord Thanet?

A. Yes.

Q. Should you know his person now?

A. I think I should.

Q. Look round the court, in all parts of it, and

see if you see his lordship here ; is that the person you struck who sits next Mr. Gibbs ?

A. I believe it is ; I cannot positively say, because I have never seen the gentleman but once since that time.

Q. From the appearance of his lordship, from his person and make, do you now believe him to be the person ?

A. I cannot positively say.

Q. Have you reason to believe that that gentleman is the person ?

A. I have some reason to believe so, from his size.

Q. Did you afterwards, in the course of your continuance in court, see Lord Thanet in any other part of the court ?

A. He was pointed out to me immediately after.

Q. Upon the spot ?

A. Upon the spot.

Q. I don't know whether you recollect how he was dressed ?

A. No, I do not.

Q. Who was the person that told you that the name or title of the person with whom you had the contest was Lord Thanet ?

A. Mr. O'Connor, after being secured and brought back again to the bar.

Q. Mr. O'Connor gave the title of Lord Thanet to the person with whom you had the contest?

A. Yes.

Lord Kenyon. Was it a conversation addressed by Mr. O'Connor to you?

A. It was.

Mr. Garrow. After you had given these blows to the person supposed to be Lord Thanet, what passed?

A. I observed Mr. O'Connor was in custody — he had been secured by the door-way; I then assisted in getting him back to the bar.

Q. You described just now, that when you were attempting to push on to prevent Mr. O'Connor escaping, you were interrupted by the persons who had placed themselves before you?

A. Yes.

Q. Do you mean that it was merely by the accident of their being there, or that they gave you any obstruction?

A. While the jury were out, they came, and a great number more than had been there at the time of the trial, and placed themselves just before where I stood.

Q. Are you acquainted with Mr. Gunter Browne?

A. No, I am not.

Q. Do you remember anybody remarkable in

his appearance, or person, obstructing Fugion or Wagstaffe?

A. No, I did not observe it, I was so engaged myself.

Cross-examined by Mr. ERSKINE.

Q. You have stated to my lord and the jury that, from something that passed, you expected Mr. O'Connor to attempt to make his escape?

A. Yes.

Q. I take it for granted, that the apprehension that he wanted to make his escape, induced you to go forward?

A. Yes. I got as near the bar as I could.

Q. It made you more desirous with the other officers to push forward quickly?

A. Surely so.

Q. If you had had no reason to suppose Mr. O'Connor was endeavoring to escape, and that others had a disposition to assist him, I take it for granted you would have gone on more leisurely?

A. No doubt.

Q. But the apprehension that you had, that you might be disappointed in the execution of your warrant, made you go on with considerable rapidity?

A. I went swifter than I should have done if I had not been molested, no doubt.

Q. The line that you were going in at that time,

was a place not very unlike where I am standing now, immediately before the prisoners?

A. Yes.

Q. That is to say, a place like that I am now standing in, divided by something like this from the place where the counsel sat?

A. Just so.

Q. You say that you jumped forward as well as you were able, and were endeavoring to pursue Mr. O'Connor, when Mr. Fergusson jumped upon the table, and with a stick flourished in this way, to stop you?

A. Yes.

Q. That was the first obstruction you met with?

A. No. I was pulled by the leg.

Q. But, except that pulling by the leg, after you pursued your progress through the solicitors' box, the first interruption you met with, was by Mr. Fergusson jumping upon the table?

A. No. I had been pushed down before that.

Q. Had you struck anybody before that?

A. No.

Q. Had you shoved or pushed anybody?

A. I cannot tell that; in the confusion I might.

Q. You had not seen Lord Thanet till after this had passed with Mr. Fergusson?

A. To my knowledge, I had not.

Q. Lord Thanet is a very strong, big man?

A. Yes, he is so.

Q. Then you had not seen Lord Thanet till after you had been with Mr. Fergusson, at this time upon the table?

A. No, I had not.

Q. And you had shoved against several others?

A. I probably might, in the endeavor to get forward.

Q. I would ask you, how you came to leave the line of the solicitors' box, as you was advancing towards Mr. O'Connor to go up where Mr. Fergusson stood?

A. I did not go up to where Mr. Fergusson stood; the first time I placed myself, was by the right-hand side of the bar; Mr. Fergusson might have attacked me about the middle of the bar.

Q. After you saw Mr. O'Connor jump over the bar, and when you were apprehending that you might be disappointed in arresting him, you went forth with all the rapidity you could. Now, how came you to leave the course which directly led to him, to go up to the table where Mr. Fergusson stood?

A. There had been a great many gentlemen in the corner, and I got a little farther to the right.

Q. Towards the table where Mr. Fergusson was?

A. Yes.

Q. He was standing upon the table, and you upon the ground?

A. No; upon the bench. I might be upon the ground sometimes; for I was up and down several times.

Q. Mr. Fergusson was upon the table, flourishing a stick over you, in his wig and gown, and you forcibly wrenched it out of his hand?

A. Yes; and if he had not got away he would have recollected me another time.

Q. Now you take upon you to say, that when this transaction took place, he returned to the table, and went to his seat?

A. He turned back, and went from me to the table.

Q. Did he go towards Mr. O'Connor?

A. No; he turned towards the judges.

Q. Then it was not until after this transaction had passed, when Mr. Fergusson had flourished his stick in this manner, and had gone away towards the judges, that you met with Lord Thanet?

A. Just so.

Q. What interval of time might there be between Mr. Fergusson's going away in the manner you describe, and your meeting with Lord Thanet?

A. A very few minutes — a minute or two.

Q. Where was it you met with Lord Thanet?

A. A very little distance from me.

Q. Was he in the counsel's seat, or where?

A. I don't know what you call the counsel's seat; he was upon the benches. As soon as I turned from Mr. Fergusson, I was immediately shoved down.

Q. Was the person you took to be Lord Thanet upon a bench by where the table stood?

A. I cannot say.

Q. Had he a stick?

A. He had no stick, that I recollect.

Q. Then, Lord Thanet having no stick, what assault did he make upon you?

A. With his fist, in this way, shoved me down as I was going forward — he shoved me back.

Q. And you then struck him?

A. Yes; as soon as I recovered myself, I struck him two or three blows.

Q. With what?

A. With the stick that I took from Mr. Fergusson.

Q. My Lord Thanet had no means of parrying that blow?

A. No; he did not attempt to strike me afterwards.

Q. Where was he at the time you struck him two or three times?

A. When I hit him the first time, he fell upon his side, this way.

Q. Did you strike him after that?

A. Yes.

Q. Mr. Fergusson was gone away?

A. Yes.

Q. Mr. Fergusson did nothing to endeavor to extricate Lord Thanet from you?

A. No.

Q. Did you strike anybody else but Lord Thanet?

A. I do not know that I did; I might by accident.

Q. If you struck anybody else besides Lord Thanet, it was by accident?

A. Yes.

Q. Did you see either Fugion, Adams, or Wagstaffe, who were there, strike anybody?

A. No, I did not.

Mr. Garrow. Do you remember seeing Fugion strike anybody?

A. No.

Q. You said you were not before acquainted with the person of Mr. Thompson?

A. No.

Q. Should you know him again now?

A. I should think that little gentleman is him.

Mr. Gibbs. This gentleman? [putting his finger on Mr. Thompson.]

A. No; the next gentleman.

Q. This gentleman? [putting his finger on Mr. Bonney.]

A. Yes; I think that is him.

SIR EDWARD KNATCHBULL *sworn.*—*Examined by*
MR. ADAM.

Q. Were you at the trial of O'Coigly, O'Connor, and others, at Maidstone?

A. I was.

Q. Were you present in court at the time the riot took place?

A. I was.

Q. Will you state to my lord and the jury, whether you saw Rivett, the Bow street officer, engaged with any person, and with whom?

A. Previous to the sentence being passed upon O'Coigly, I saw Rivett, the Bow street officer, on the prisoner's right hand; he produced some paper which I understood at the time to be a warrant from the Duke of Portland to secure the person of Mr. Arthur O'Connor; after that, there was some conversation passed between the judge and Rivett, which I do not immediately recollect. I saw Lord Thauet seat himself under the prisoners at the bar, immediately at the conclusion of the sentence being passed upon O'Coigly. I saw Rivett, who appeared to me to be placed in a situation in order to prevent Mr. O'Connor's escape. I saw Mr. O'Connor put his right foot, I think it was, upon the bar, his left hand upon the railing, and his right hand either upon some person's shoulder that was sitting under or else upon the rail, and jump into the crowd. I can only speak now as it struck

me at the time ; it appeared to me that Lord Thanet rose from his seat as soon as Mr. O'Connor jumped into the crowd ; he rose from his seat in order to prevent Mr. Rivett from securing the person of Mr. O'Connor. There was some person—who it was I cannot pretend to say ; but it was some person rather with a bald head—a person whom I should not know again if I was to see him—

Q. Can you tell how he was dressed ?

A. No, I cannot ; but there was some person who took hold of Rivett, at least it had that appearance to me in the bustle ; he took hold of Rivett, and pulled him, endeavoring to keep him back. Lord Thanet was between Rivett and where Mr. O'Connor had leaped out of the pound. I know nothing further ; that is all I saw of the business. I cannot pretend to say what passed afterwards.

Q. Did you see any fighting, or any blows struck ?

A. It did appear to me, but I can by no means speak positively to it, than when a person, whoever it was, was endeavoring to keep Rivett back, Rivett, if I may make the gesture, for I do not know how to describe it, Rivett, in this kind of way, struck Lord Thanet in the side, as it appeared to me ; but I cannot say whether he struck Lord

Thanet or not, at that distance; nor did I see him make a blow at any person.

Q. Are you sure that Lord Thanet was standing in that part of the court?

A. I am quite certain that he went there when sentence had passed.

THOMAS WATSON *sworn.*—*Examined by MR.*
WOOD.

Q. You are the jailor of Maidstone, I believe?

A. I am.

Q. Were you in court at the trial of these prisoners?

A. Yes, I was.

Q. Do you remember the judges giving any directions not to discharge the prisoner?

A. Yes.

Q. When were these directions given?

A. Just before it ended.

Q. Do you mean before the sentence of death was pronounced?

A. Yes; I believe it was, to the best of my knowledge.

Q. Before the sentence was finished, did you say anything to Mr. O'Connor?

A. I did; I said, "Mr. O'Connor, remember you are not to be discharged, though you may be acquitted." He said, "Why?" and I said, "Be-

cause I have no authority to discharge you, and therefore you must not go."

Q. Was anything said after that to Mr. O'Connor by any body?

A. A person just below him, after sentence was passed, said to Mr. O'Connor, "You are acquitted; what do you stand there for? why don't you jump over?"

Q. You don't know who that person was, I suppose?

A. No. Mr. O'Connor said, "Mr. Watson says I am not to go;" the gentleman below said, "Pshaw! you are acquitted; what do you stay there for? jump over." He instantly sprung, and I instantly caught hold of the skirt of his coat as he got over, and held him. I then cried out, "Stop him! stop him!" There were some of them shoving him behind to shove him through the wicket, and others shoving him back; but he was so secured that they got him into his place again.

Q. Did you see Rivett?

A. I did.

Q. Did you give any directions to Rivett?

A. I called to him, or his companion, and said, "I wish you would go out and get some constables and assistants;" for I suspected there would be something amiss by and by.

THOMAS ADAMS *sworn.*—*Examined by MR. FIELD-
ING.*

Q. You were coachman to Mr. Justice Buller at the time of the trial?

A. I was.

Q. Tell my lord, and the gentlemen of the jury, what you observed in the court after Mr. Justice Buller had passed sentence of death upon O'Coigly. First of all, where was your situation?

A. At the wicket-door that leads into the body of the court, and that part of the court that the spectators stand in.

Q. By the jury-box?

A. Yes.

Q. Now, when sentence of death was passed, what did you observe going forward in court?

A. Some person said, "Spring!" but who, I know not. Immediately Mr. O'Connor jumped over the bar into the body of the court.

Q. Did you observe the person of the man from whom the voice came?

A. No, I did not. He came to the wicket-door, where I stood, and immediately caught him by the collar.

Q. Then he had made his escape so far as to get to the place where you were?

A. He had; I caught him by the collar of the coat, and says, "I'll be damned if I let you go;" and immediately the wicket-door was opened, I

took the wicket-door in my left hand, and pulled it to, and bolted it; and the moment I had bolted it some person knocked me down.

Q. Did you see that person afterwards, to know him?

A. My whole attention was to stop Mr. O'Connor.

Q. Then you don't know the person that knocked you down?

A. I do not; I immediately got up and seized Mr. O'Connor again, and said, "I'll be damned if I let you go, let the consequence be what it will."

Q. When you had recovered yourself, and caught him again, do you remember who were the persons immediately about Mr. O'Connor?

A. I saw several gentlemen between the officers and Mr. O'Connor.

Q. Did you know any of them by name, as it appeared afterwards?

A. I saw my Lord Thanet; his lordship was as close to me as possible—rather behind me.

Q. How far was that situation, in which you saw Lord Thanet, from the immediate front of the bar from whence Mr. O'Connor had escaped?

A. He might be as far from the bar, not quite so far, as I am from you—rather nearer to the wicket, where I stood.

Q. Did you see Lord Thanet do any thing?

A. I saw Lord Thanet with a small stick in his

hand in this position, directly behind me; and Rivett, the officer, came up and struck at him with a stick; Lord Thanet says, "What did you strike me for? I did not strike you." "You struck me first," says Rivett.

Q. Did you know any of the other persons that were by him?

A. I did not.

Q. Did you see any person there with a bald head?

A. I did not take notice of a bald head; I saw a gentleman with a black collar and a pepper-and-salt coat on.

Q. What did that person do?

A. I did not see him do anything; he was in the passage among the other persons that were endeavoring to obstruct the officers from taking Mr. O'Connor; I called out to some person to come forward to my assistance, for he made a spring, and the wicket-door was opened again; I made a spring and shut it again, and then Rivett and Fugion came up.

Q. How many persons do you think there were between you and the officers, Rivett and Fugion, who were coming up?

A. I cannot say how many there were; there might be seven, eight, or nine; or there might not be quite so many.

Q. Do you know the persons of either Mr. Thompson, Mr. O'Brien, or Mr. Gunter Browne?

A. I do not.

Q. Do you know the person of Lord Thanet?

A. Yes, I believe I do know him; I saw his lordship give his evidence in court.

Q. When Mr. O'Connor was last stopped by you, what became of him?

A. I delivered him up to two officers.

Q. How near to the bar from whence he had escaped, did you come with him?

A. I came quite up to the end of the bar with him.

Q. At that time what was the number of the people standing about?

A. They were directly opposing the officers from coming, when I was at the corner of the bar with him.

Q. Do you know the person of Mr. Fergusson?

A. I do not.

Q. Did you see any person in a bar-wig and gown?

A. Yes.

Q. In what situation was he?

A. He was one of those who wanted to obstruct the officers from coming forward.

Q. What did you observe him do?

A. I saw them stand all of a body together, so that the officers could not pass to take him.

Q. Do you remember any complaint being made to the judge, by any person, of having their head broke?

A. Yes; a gentleman said, "What recompense am I to have? I have got a broken head;" but I do not know who it was.

Q. Was that the person you spoke of with a black collar?

A. I cannot say.

Q. Had he a bald head?

A. I cannot say.

HENRY WILLIAM BROOKE *sworn.*—*Examined by*
MR. ABBOTT.

Q. I believe you have some situation in the secretary of state's office?

A. Chief clerk in the alien department.

Q. Was you at Maidstone at the trials?

A. Yes.

Q. Do you know the person of Mr. Dennis O'Brien?

A. I do.

Q. Do you recollect seeing Mr. O'Brien in court during the time the jury retired to consider of their verdict?

A. I do.

Q. Where did you see him? where was he?

A. I saw him near the dock, on the side where Mr. O'Connor stood.

Q. Was he in conversation with any person that you observed?

A. He was in conversation with Mr. O'Connor.

Q. Do you recollect what happened immediately after the jury had pronounced their verdict?

A. I recollect that Rivett, one of the Bow street officers, attempted to get up on the side where the jailor sat.

Q. Did he declare the purpose of his attempting to go that way?

A. To the best of my recollection, he said he had a warrant from the secretary of state to arrest Mr. O'Connor.

Q. Did you observe that any attempt was made to resist this person who was endeavoring to come forward?

A. I observed some persons endeavoring to pull him back.

Q. Do you recollect whether any direction was given to the jailor with respect to the prisoners, by either of the learned judges?

A. Yes.

Lord Kenyon. It cannot be necessary to go into that.

Mr. Erskine. There can be no doubt of any of these facts.

Mr. Abbott. Did Mr. O'Connor do anything?

A. Mr. O'Connor placed, as far as I recollect,

his left hand upon the side of the bar where he stood, and leaped over.

Q. Did you hear any voices crying out any thing?

A. At that time the tumult became general. I heard some cry out, "Stop! stop!" and others, "Run! run!"

Q. Are you able to identify any person who was resisting Rivett?

A. I saw a person, to the best of my recollection, who was dressed in a gray coat and a black collar, and his head was bald on the top.

Q. What did you see that person doing?

A. He seemed to have hold of the officer's coat.

Q. Of Rivett's coat?

A. Yes.

Q. Did you afterwards learn who that person was?

A. I afterwards understood that person to be a Captain Browne.

Q. Did that person, after the tumult was over, prefer any complaint to the court that you recollect?

A. I cannot identify the person of the gentleman that endeavored to make a complaint to the court of ill-usage; but there was some gentleman upon the table, who complained, whether generally,

or to the bench, I cannot say, "Am I to be ill-treated in this way?" or to that effect.

Q. Was that the person with the bald head and black collar?

A. I cannot say.

Q. Did you know Mr. Fergusson, the counsel?

A. I have not the honor of Mr. Fergusson's acquaintance; but I had his person pointed out to me as being Mr. Fergusson.

Q. Did you see him do anything?

A. He appeared to have something in his hand; but whether it was a stick or a sword that lay upon the table, or what, I cannot say; but he was brandishing it over the heads of the people.

Q. Was he in his professional dress at this time?

A. He was.

Cross-examined by MR. ERSKINE.

Q. Where was Mr. Fergusson standing when you apprehend, rather than express, that you saw him brandishing something which you do not describe, but which you think was a stick or a sword?

A. He was standing near the side of the court upon which Mr. O'Connor stood.

Q. Upon the ground, upon the bench, or upon the table?

A. He appeared to me, as far as I can charge

my recollection, to have been upon a bench; he appeared to be elevated from the ground.

Q. This was after the sentence had been pronounced, and after Mr. O'Connor had gone out of the dock?

A. It was about that time, as far as I can recollect.

Q. At the time of the confusion in court, was it not?

A. It was at the time of the confusion.

JOHN STAFFORD *called again.*—*Examined by MR. LAW.*

Q. I will not examine you to the preliminary circumstances, which have been proved by several witnesses, confine yourself now to the time Mr. O'Connor was endeavoring to get over the bar; at that period of time did you see any of the defendants, and particularly Mr. Fergusson or Lord Thanet, do, or endeavor to do, anything?

A. At the instant that Mr. O'Connor leaped over the bar, I saw my Lord Thanet and Mr. Fergusson. I had been paying particular attention to Mr. Justice Buller in passing sentence; and the moment that he was done, I turned my eyes round to the bar, and saw Mr. O'Connor in the act of getting over; he had his left hand upon the bar, and his right hand extended; my Lord Thanet stood next to him, to the right of him; Mr. Fer-

gusson, at that instant, was in front of him, with his back to me, facing Mr. O'Connor.

Mr. Erskine. Where did you sit at this time?

A. Supposing this to be the court at Maidstone, I sat directly under the jury.

Mr. Law. You sat so that you could observe the whole of the transaction?

A. Clearly; but the whole of the transaction was of that sudden nature, that I was rising part of the time; I rose and seized one of the sabres which lay upon the table, and which was a part of Mr. O'Connor's baggage.

Q. Did you see Lord Thanet or Mr. Fergusson do anything in aid of Mr. O'Connor in the act of escaping?

A. When Mr. O'Connor extended his arm, he either laid it upon Lord Thanet's shoulder or Mr. Fergusson's arm; Lord Thanet being between me and Mr. Fergusson, I could not distinguish on which of them he put his hand.

Q. Did you see any obstruction given by them to any persons in passing from one part of the court to the other?

A. I did not observe Lord Thanet make any obstruction; Mr. Fergusson had his back turned to that side of the court from whence the officers were endeavoring to approach to the bar.

Q. With his back towards the great street of Maidstone?

A. Yes. At the instant I am now speaking of, I was upon the table.

Q. Did you see any thing in particular done by Mr. Fergusson?

A. Mr. Fergusson extended his arms in this manner; seemingly to me to keep the persons back who were forcing themselves forward. I saw no other act done by him.

Q. Then did Mr. Fergusson appear to you to be putting himself in a position to stop the way?

A. Certainly so.

Q. To stop the way for who?

A. I said before, to stop the way of the persons who were approaching that side of the court where the officers were.

Q. Were any persons at that time attempting to come from the side of the court where the officers were, to the side where Mr. O'Connor was?

A. Rivett and the Bow street officers were. I at this time stood upon the table with a drawn sabre in my hand.

Q. Did you see anybody, before that, have hold of the flap of Mr. O'Connor's coat?

A. Yes; before Mr. O'Connor got from the bar, I observed that Mr. Watson, the jailor, had got hold of the tail of his coat.

Q. Was it at the same period of time when you saw the officers rush forward, and Mr. Fergusson

attempt to stop the way in the manner that you have described?

A. Yes; the whole transaction was of the shortest duration possible; Mr. Fergusson forced himself between Mr. O'Connor and Mr. Watson, the jailor; Mr. Watson, the jailor, reached across — he sat on the other side from where Mr. O'Connor the prisoner sat — he reached across behind Binns, and seized the flap of O'Connor's coat, as he was getting over the table; the coat was extended for a small distance between O'Connor and the bar, and Mr. Fergusson forced himself in between the two, and Mr. Watson let go his hold.

Q. Do I understand you, that by the action of Mr. Fergusson, the jailor was separated from his prisoner?

A. That I cannot say; the jailor might have let go his hold without the action of Mr. Fergusson; it appeared to me to be in consequence of the action of Mr. Fergusson.

Q. Do you know the person of Mr. O'Brien?

A. No, I do not; I saw a gentleman in court who spoke to Mr. O'Connor two or three times; that gentleman I had previously seen in the witness box, standing by Mr. Sheridan, Mr. Fox, and the other gentlemen that were there; and I saw him afterwards; but I do not know, of my own knowledge, who he was at all.

Q. You mentioned standing upon the table with

this sabre in your hand—did you strike anybody, or create any confusion?

A. I certainly struck no one; I menaced many that I saw, apparently to me, endeavoring to force Mr. O'Connor out; I brandished the sabre, and cried out very loudly, "Keep back!" and made motions as if I would strike; but I did not strike any one.

Q. From the observations you were enabled to make, to what cause, and to what efforts, did you attribute the riot?

A. The riot must be attributed, most certainly, to Mr. O'Connor's attempt to escape, and the assistance that his friends gave him. I did not know of any warrant there was to apprehend him, till I heard Rivett call out in the manner I have described, before the sentence was passed.

Q. Did you observe any other circumstances of actual assistance given by the friends of Mr. O'Connor to his escape, besides those you have mentioned?

A. No; the transaction was so short, it was impossible to observe minutely.

Cross-examined by MR. ERSKINE.

Q. This scene of confusion you represent as almost instantaneous, and to have continued but a very short time?

A. Yes.

Q. You were sitting, as clerk to Mr. Knapp, under the jury-box?

A. Yes.

Q. And your face, of course, towards the great street of Maidstone?

A. Yes.

Q. Now, after Mr. Justice Buller had pronounced sentence of death upon O'Coigly, did you see O'Connor jump out of the bar?

A. I did.

Q. Where do you mean to represent that you saw Mr. Fergusson at that time?

A. Mr. Fergusson did not attract my eye till I was upon the table; seeing the act of O'Connor, I immediately sprang up.

Q. You did not see Mr. Fergusson till the confusion had advanced?

A. It was just at the very instant; they all happened almost at the same time.

Q. Mr. Fergusson did not attract your attention till you had got upon the table in consequence of that instantaneous confusion having begun?

A. I got upon the table in consequence of seeing Mr. O'Connor leap over.

Q. Then, when your attention was first attracted to Mr. Fergusson, it was in the midst of the confusion?

A. Yes.

Q. Several persons appeared to be pressing forward, and there seemed to be a scuffle?

A. Yes.

Q. You observed Lord Thanet very distinctly?

A. I had never seen Lord Thanet before that day — I saw him give his evidence — I saw him afterwards, I think, sitting between Mr. Dallas and Mr. Fergusson; and I think I cannot err when I say I am sure it was Lord Thanet.

Q. Did you not see distinctly the person you took to be Lord Thanet?

A. Most distinctly.

Q. How far was he from you?

A. I am sure, not more than two yards; for the space between the table and the bar is very small; and it was between the table and the bar that I saw Lord Thanet.

Q. Where the counsel sat?

A. Not in the seat where the counsel sat.

Q. At this time you were upon the table, and saw Mr. Fergusson in the midst of the confusion; was he upon the table where you were, or in his place?

A. Neither upon the table, nor in his place.

Q. Where then?

A. Immediately behind where he had formerly sat; he had sat in the front of O'Connor, and he had got just behind the seat where he had sat before.

Q. You had a sword which you brandished for

the purpose of keeping off any danger that might happen ?

A. Yes.

Q. Do you mean to represent that Mr. Fergusson was at that time in the solicitors' box ?

A. I don't know whether I can call it the solicitors' box or not ; he sat at the extremity of the seat wherein the solicitors sat ; he was certainly directly before me at the end of the trial.

Q. At that time was not Mr. Fergusson surrounded by a great number of people, who were pushing and shoving, and making a disturbance ?

A. The persons behind him were certainly crowding upon him ; but there was a small space before him that was vacant.

Q. Was there not a pressing upon him every way ?

A. No, not from the table.

Q. Were there not persons in the place where the solicitor's box was, pushing and crowding at the time Mr. Fergusson extended his arms ?

A. Certainly ; but I saw him only pressed on the side that I describe.

Q. Do you mean to swear that you saw Mr. Fergusson shift his place where he had been, and go nearer to Mr. O'Connor.

A. No, I did not see him shift it.

Mr. Garrow. There was a low-backed seat for the counsel for the prisoners ?

A. Yes.

Q. Behind that was a space and bench for the solicitors?

A. Yes.

Q. And if I understand you right, Mr. Ferguson appeared to you to be over that low back to the counsel's seat?

A. Yes, certainly so.

Q. Between the back of the counsel's seat and the bar?

A. Yes; I had not immediately before this observed where Mr. Ferguson was.

THE HONORABLE ROBERT CLIFFORD *sworn.*—*Examined by MR. GARROW.*

Q. I shall not trouble the court to hear from you over again the detail of the circumstances. Did you hear Lord Thanet examined as a witness upon the trial of Mr. O'Connor?

A. I did; it was a few minutes before five.

Q. Very soon after that, I believe, Mr. Dallas summed up on the part of the prisoner?

A. He began to sum up, I believe, about five.

Q. Did you observe where Lord Thanet sat while Mr. Dallas was speaking?

A. Mr. Dallas left his place, which was exactly opposite Mr. Justice Buller, and Lord Thanet came and sat in Mr. Dallas' place.

Q. Mr. Dallas had removed from the place

where he had sat, to a more convenient place for addressing the jury.

A. Yes; to the left hand of the counsel for the crown. Lord Thanet sat opposite Mr. Justice Buller; the attorneys' bench was between the prisoner and Lord Thanet.

Q. Did you, at any time after that, see Lord Thanet move from that place, Mr. Dallas's seat, to any other?

A. He went over the back of the seat, and went into the attorneys' place.

Q. To that seat which was immediately under the bar?

A. Exactly. I do not know whether it was the first or second seat; there are two seats, one is directly against the wood, and then there is the thickness of a man. I do not know which of them he was upon.

Q. When the jury returned, and had given their verdict, what observations did you make respecting either Lord Thanet, Mr. Fergusson, Mr. O'Brien, Mr. Thompson, or Mr. Browne?

A. When they had returned a verdict of guilty against O'Coigly, I observed Mr. O'Connor put his left leg over the bar of the dock, I believe they call it, leauing upon his left hand. Lord Thanet rose up, and Mr. O'Connor's hand was within this distance (six or seven inches) of Lord Thanet's left shoulder — it was below his head; I did not see

it touch his shoulder, because Mr. Fergusson rose up, and was exactly between Lord Thanet and myself.

Mr. Erskine. Where did you sit?

A. I sat as marshal under the jury-box.

Mr. Garrow. Be so good as to describe that rising of Mr. Fergusson's.

A. They ran off all together — they followed Mr. O'Connor, as it appeared to me — I bent myself as far as I could see, when so many people came jumping from the witness-box, that I was almost overpowered.

Q. The witness-box was opposite the jury-box?

A. Yes; and they all went off to the left hand, behind the crier's box.

Lord Kenyon. Do you mean that they all ran off together?

A. Mr. Fergusson and the rest of them went off towards the narrow street of Maidstone.

Mr. Garrow. There you lost sight of them, on account of the number of persons that came to intercept your view?

A. I was sitting here, and they all went there.

Q. Did you see any thing more of the conduct of Lord Thanet?

A. I saw no more of them after that; I saw a gentleman, that was almost bald, come up and complain that he had received a blow upon his

head, and asked, whether there was no redress for the blow he had received.

Q. Did you learn afterwards that that was Mr. Gunter Browne?

A. I understood his name was Browne.

Q. Did you see him favoring the escape of O'Connor?

A. No.

Q. Did you see Mr. O'Connor do anything?

A. I saw a person in a grey coat hanging his left arm over the jury-box for some time; he afterwards came down, and was seated on the right of Mr. O'Connor, upon the bar that was there. Just before Mr. O'Connor made his escape, that person disappeared from that place, and I saw no more of him.

THOMAS WAGSTAFFE sworn.—*Examined by MR. ADAM.*

Q. You are a king's messenger?

A. Yes.

Q. You went to Maidstone, in May last, with a warrant to apprehend Mr. O'Connor?

A. Yes.

Q. Did you go into the court with Fugion and Rivett for that purpose?

A. No; Fugion and Rivett were in the court before I went in, and I went in to them.

Q. Do you remember any gentleman coming and asking you any questions about your warrant?

A. Yes; a gentleman came and asked if I had a warrant, or anything against Mr. O'Connor. I told him no.

Q. Did any other gentleman come to you?

A. No.

Q. Do you know who that gentleman was?

A. No; I understood afterwards it was Mr. O'Brien.

Q. Did anything further pass between you and Mr. O'Brien at that time?

A. He offered to bet some money with Fugion and Rivett.

Q. Did anything more pass?

A. No.

Q. Had you your escutcheon as messenger on?

A. No.

WILLIAM CUTBUSH sworn.—*Examined by* MR. GARROW.

Q. I believe you are a clock-maker at Maidstone?

A. Yes.

Q. Were you in court at Maidstone when sentence of death was passed upon a prisoner of the name of O'Coigly?

A. Yes, I was.

Q. Upon that occasion, did you see Mr. O'Connor do anything?

A. Yes; I saw him get over the bar.

Q. At that time did you see Lord Thanet? and if you did, what did you see him do?

A. After that, I saw a man with a sword in his hand beating over a gentleman's head.

Q. The court have been sitting many hours, and have heard the general detail of the transaction; be so good as to answer my questions. Did you see Lord Thanet?

A. I did.

Q. Did you see his lordship do anything, and what?

A. I saw Rivett strike Lord Thanet over the back—I did not know it was Rivett at that time—I knew Lord Thanet very well.

Q. Where was Lord Thanet at the time that Rivett struck him?

A. Two or three yards from Mr. O'Connor, or thereaway.

Q. Was Lord Thanet nearer to the great street of Maidstone, than he was to Mr. O'Connor, or to the narrow street?

A. They were all on the left side.

Q. You was on the side on which Mr. O'Connor was endeavoring to get out?

A. Yes.

Q. What was the first thing you saw?

A. I saw nothing till I saw the sword hit upon Lord Thanet's back.

Q. That was not Rivett?

A. Yes, it was he hit Lord Thanet upon the back with a sword; I did not know it was Rivett till afterwards.

Q. Were any of the lights put out?

A. One.

Q. Did you hear any expression about putting out the lights?

A. Yes; I heard some person say, "Put out the lights."

— OMROD sworn.—*Examined by MR. ADAM.*

Q. I have but one question to ask you—Did you see anybody at the time of the pronouncing of the verdict at Maidstone, in the case of O'Coigly and O'Connor, lay hold of Rivett, or any of the officers?

A. Yes; Rivett, Fugion, Wagstaffe, and I, were standing together; they wanted to cross the court where Mr. O'Connor was.

Q. What was done to Rivett?

A. Two gentleman in black got up and opposed him very much. I said to one of them, "You must not obstruct this man; he is an officer of justice."

ROBERT PARKER *sworn.*—*Examined by MR.*
GARROW.

Q. Were you in court at Maidstone when the jury returned into court with their verdict, in the case of O'Connor and others ?

A. Yes.

Q. Were you near the under-sheriff ?

A. I was very near — behind him.

Q. Nearest the great street of Maidstone, and far from O'Connor ?

A. Yes.

Q. Did you see anything happen upon that verdict being brought in ?

A. Upon the verdict being brought in he put his leg over the bar, feeling himself discharged, as he afterwards explained ; a Bow street officer then stepped up and said, "There is a warrant to detain him ;" Mr. O'Connor then put his leg back again, and said, "I thought I was discharged ;" and one of the judges said, "He is not to be discharged," or something of that sort ; and he was quiet till sentence was over.

Q. Did you see Lord Thanet ?

A. Yes ; I saw him on a seat at the front of the bar ; I am perfectly sure I saw Lord Thanet.

Q. After sentence had passed did you see the Bow street officers make any attempt to pass the bar where Mr. O'Connor stood ?

A. Mr. O'Connor jumped over the bar, and then the Bow street officers both advanced in order to stop Mr. O'Connor; the jailor cried out, "My Lord, am I to let him go?" or something to that effect, and there was a contention; several persons were assisting Mr. O'Connor to get out at the opposite door, and the Bow street officers were attempting to stop him.

Q. Did you at that time see Lord Thanet?

A. I did.

Q. In what situation? and what was he doing?

A. Lord Thanet evidently appeared to me to be obstructing the officers in their attempt to stop Mr. O'Connor.

Q. Did you see any other person engaged in the same attempt?

A. Not any one whose person I then knew.

Q. Did you observe any person whose dress was remarkable?

A. I saw a gentleman in a bar gown and wig endeavoring to assist the escape of O'Connor; but at that time I did not know the person of the gentleman.

Q. Do you since know who that gentleman was?

A. I only know by report.

Q. Did you see any other person in a gown and wig acting as you have described?

A. No, I did not.

Q. Had you been in court during any considerable portion of the trial?

A. No, very little; I had been in, for five minutes at a time, perhaps, three times during the trial.

Q. So that you had not an opportunity of observing that gentleman in the course of his professional duty.

A. No.

Cross-examined by MR. GIBBS.

Q. You say Lord Thanet appeared to you to be obstructing the officers; did you see him do anything?

A. I saw him resisting with his hands.

Q. Pray when was this, before or after the sentence?

A. It began immediately after the sentence; it began upon Mr. O'Connor getting over the bar.

Q. What did he do with his hands?

A. The Bow street officers pushed forward; and against one of them it was that he was making resistance.

Q. Pray, which of them?

A. I cannot tell, I do not know which, I did not know either of them.

Q. Did you see the warrant?

A. Yes, I saw it handed over to be read.

Q. Can you tell whether it was against either

of those two men, or against the messenger, that he was making that resistance?

A. I cannot.

Q. But you saw him put his hand against one man that was coming forward?

A. Yes, certainly.

Q. You said that you saw a gentleman in a bar gown that appeared to assist O'Connor?

A. Yes.

Q. What did you see him do?

A. I recollect that gentleman was ranged with the counsel for the prisoners; and then he turned round with his face to the bar, and was in that manner contending to resist their advancing towards the prisoner.

Q. He was standing upon the ground and reaching over?

A. Yes.

Q. Standing, as I may be standing now, supposing this to be the bar?

A. Yes; supposing you were turned round, it would be exactly so, he turned round towards the bar

END OF THE EVIDENCE FOR THE CROWN.

MR. ERSKINE'S SPEECH.

GENTLEMEN OF THE JURY: It now becomes my duty to address you, but for three of the defendants only; because, though nothing could possibly have separated their cases in argument, yet it was thought prudent not to embarrass the mind of any one advocate with so many facts and circumstances as the defence of all of them might eventually have involved. My learned friends who sit behind me were, therefore, to have defended the other two gentlemen; but as they have not been at all affected by any part of the evidence, it may, perhaps, be thought advisable by the court, that they should now be acquitted, lest their testimony should become material hereafter for those who remain under trial.

Several observations were made by the attorney general, in his short and dispassionate address to you, well worthy of your attention. He told you that he could not conceive a greater offence against the justice of any country, nor indeed against the very character of justice itself, than an attempt to confound and overbear its judges and ministers in the administration of law. I admit it freely. The undisturbed and unruffled course of justice is the

universal source of human security. Statesmen have, in all ages, distracted governments by their ambition; parties will always create animosities, and sometimes confusion, by their discordant interests; tumults will occasionally arise out of the best of human passions, in the best-ordered states; but where an enlightened and faithful administration of justice exists in any country, that country may be said to be secure.

It has pleased God to give us a long reign of that security in England. Indeed, if I were to be asked what it is that peculiarly distinguishes this nation from the other nations of the world, I should say, that it is in her courts she sits above them; that it is to her judicial system she owes the stability of all her other institutions; her inhabitants have for ages lived contented under her laws, because they have lived in safety.

Gentlemen, the attorney-general had certainly no occasion to enter into any explanation of his own conduct in the course of this prosecution; it was never my purpose to impeach it. The question is not, whether he is justified in having arraigned the defendants, but whether, upon the whole evidence, they are guilty or not guilty. I say, upon the whole evidence; because, to secure myself an impartial hearing, I think it my duty to tell you, in this early part of my address to you, that I mean to call witnesses in their defence.

You have heard attentively the accusing testimony; *audi alteram partem*. It is not two days ago that, in a similar stage of an important trial, the noble judge upon the bench took occasion to remark to a jury, that this was so sacred a maxim of justice, that we were frequently reminded of it by seeing it inscribed upon the very walls of our courts.

It has been also truly observed to you (as the observation applies to the first of the defendants upon the record, my noble friend and client, Sackville, earl of Thanet), that the charge against him is of a most deep and serious complexion. I think so too. He is a man of illustrious rank—a hereditary judge and legislator of the kingdom; and a judgment therefore against him, is of far greater consequence than to a mere private man. It is a great impeachment of such a person that he infringes the constitution of his country, of which he is a dignified guardian; that he disturbs the execution of those laws of which he is a high magistrate; and that, forgetting the duty annexed to his exalted station, the duty of giving the example to the people of order and obedience, he excites them to tumult, and violates even the sanctuary of justice with misrule and violence. Mr. Fergusson, though inferior in rank to the noble earl, stands eventually in a situation, perhaps, of still greater delicacy, and is involved in deeper consequences.

The son of a late eminent lawyer in the other part of the island, who filled also a high situation in its magistracy — himself bred to the English bar, not as a fashionable branch of education, or as a useful introduction into life, but engaged in it learnedly, honorably, and successfully, as a profession, and as a profession by which he must live — a young man so circumstanced, has surely a most serious claim to your attention, and even to the most indulgent consideration. As to the other gentlemen, I need hardly speak of them; because, though their names have of course been reiterated in the questions put to the witnesses, nothing approaching to criminal conduct has been established against them. We are here, therefore, upon a mere question of fact. You cannot but have observed, that the attorney-general and myself, instead of maintaining opposite doctrines, perfectly agree upon the principles which ought to govern your decision. The single object of inquiry is, the truth of this record. Is the charge proved to your satisfaction? or, rather, will it be so proved when the whole cause has been heard?

In adverting to what the charge is, I need not have recourse to the abstract I had made of the information. The substance and common sense of it is this: that Mr. Arthur O'Connor had been brought, by legal process, into the custody of the sheriff of Kent; that a special commission had

assembled at Maidstone to try him and others for high treason; that, upon the opening of the commission, he had again been committed by the court to the same custody; that he was afterwards again brought up to the bar, and found not guilty; and that after he was so acquitted, but before he was in strict form discharged by the order of the court, the defendants conspired together, and attempted to rescue him. This is the essence of the charge—the disturbance of the court, and the assaults stated in the different counts of the information, are only the overt acts charged to have been done, in pursuance of this purpose to rescue the prisoner. The criminal purpose to rescue Mr. O'Connor, is the fact, therefore, of which you must be convinced, to justify the verdict which the crown has called upon you to pronounce.

Before I proceed to address myself to you upon the evidence, I will do that which must make it manifest that it is not my wish to confound your understandings in the investigation of facts; for I will begin by relieving your attentions from the consideration of all circumstances that are neither disputed, nor fairly disputable, either as they are the result of what you have heard already, or as I think they must remain when the whole case is before you. I admit, then, that Mr. O'Connor, when he heard the verdict of the jury in his favor, was disposed to leave the court; the presumption,

indeed, as it arises out of universal practice as well as out of the law that warrants it, is, that he, as well as the others, thought that the verdict of not guilty entitled him to do so. Neither can it be disputed that a warrant did in fact exist, and that its existence was known, since it appears that the officers stated in open court that they had one; and it is not material for me to dispute, nor is it, perhaps, disputable, that Mr. O'Connor knew of their intention to arrest him; and, if he did know it, human nature is stronger than all the evidence in the world to convince every man of his disposition to escape from it; and I admit further, that a most honorable person, who gave his evidence with a candor which reflects high honor on his character, has added a circumstance which, though it could not be strictly received as proof, may be true, for any thing that touches the merits of the case, viz: that there had been a communication to the court that there were disaffected persons disposed to rescue the prisoner.

Having admitted these facts, I, in my turn, have a right to bring to your recollection, that it is an indisputable fact, resting upon the whole of the crown's evidence, that the officers, strongly impressed with this idea, rushed suddenly and impetuously forward, on Mr. O'Connor's stepping over the bar when the verdict of not guilty was delivered; and indeed Rivett, upon his cross-

examination, distinctly admitted, that owing to the apprehension of a rescue, he rushed into court with more precipitation than under other circumstances he could have justified; and that a great bustle and confusion existed before he approached any of the defendants, or even saw their persons. This admitted origin of the disturbances removes all difficulties from the consideration of the cause; and Mr. Justice Heath declared, that there was a scene of confusion and violence in court, such as he had never seen, nor could possibly have expected to see, in a court of justice. The single question, therefore, is, what share the defendants had in it. Did the disturbance arise from any original acts of theirs? or were they, on the contrary, first pressed upon by the officers and their assistants, who, though they might be engaged in what they mistakeably supposed to be their duty, from an expectation of resistance, necessarily created confusion by their forcible entry into a crowded court? Were the defendants engaged in any conspiracy or combination to deliver Mr. O'Connor? That is the great, or rather the only question; because, if this does not appear from the evidence, all their acts, even if they were ultimately to remain as they appear at present, are perfectly consistent with the conduct of gentlemen suddenly and rudely trampled upon in a tumult,

though without, perhaps, being the particular objects of violence by those who created it.

The natural course of considering which of these propositions ought to be adopted by reasonable men is, to set out with tracing a motive. There can be no offence without some corresponding inducement to commit it. It is not alleged that these gentlemen ignorantly or wantonly insulted the court, an indiscretion which can only happen among the lowest orders of the people; the charge upon them is a deliberate and pre-existing combination to deliver Mr. O'Connor, by confusion and force, from a warrant which they knew to be impending; and the acts attempted to be proved upon them can find no place in any reflecting mind, but as they are believed to be the result of such a conspiracy.

Now, I have always understood it to be the great office of a court of justice, when evidence is to be opposed to evidence, to consider the probabilities of the transaction; indeed, a judicial decision is nothing else but the bringing up facts to the standard of reason and experience. I have already described the situations of the only two defendants whose cases you can have occasion to consider; the one as a high peer and magistrate of the kingdom, with the natural consciousness of the duties inseparable from exalted stations; the other, standing in a manner for his very existence upon the dignity

and decency of his deportment in the courts, which habit, as well as principle, had taught him to reverence and respect. Yet the charge upon such persons is, that open, undisguised acts of violence were committed by them, in a place which the attorney-general has, with great propriety, assimilated to the place where we now sit, because nothing more forcibly assists the judgment than bringing the scene under the immediate notice of the senses; and I am, besides, speaking to gentlemen of the county of Kent, who must themselves know the place without the aid of this comparison, though you cannot know it better than I do. I have spent many laborious hours of my life in the court at Maidstone; though the labor was always rendered delightful by the reflection that I never had to plead in vain, before gentlemen of your description, in the cause of innocence or truth. The attorney-general, then, has assimilated the court of Maidstone to this court. He says, that the prisoner sat where my learned friends now sit behind me; that the bench of the solicitors, where the confusion began, cannot be better described than by the place occupied by the king's counsel now sitting around me; the seat of the counsel may be considered to be placed where these gentlemen are now sitting before me; and the vacancy in the middle, between the bench and me at this moment, must be supplied with the table of which we have

heard so much; while the judges there must be considered to be placed as they are here, elevated in situation as in rank, and commanding the most distinct and immediate view of every part of the court. Under these circumstances, you are asked to believe that Lord Thanet and Mr. Fergusson, the one possessed of a large hereditary fortune in Kent, and who could not but know that his person was as well known to every man in Maidstone as St. Paul's Church to the inhabitants of Ludgate Hill; the other standing upon a table within six yards of the judges, in the robes of his profession, close by a large chandelier, described at that time by all the witnesses to have been fully lighted; you are desired, I say, to believe, that these two persons, without any motive upon earth brought home to them by any part of the evidence, engaged publicly in a scene of audacious riot and violence, in the public face of the most dignified court; in the presence of all its numerous officers; of an acute and intelligent bar; of the sheriff and all his train; of a jury composed of the principal gentlemen of the county, and of all that concourse of attendants upon an important state prosecution which either duty or curiosity had collected. I maintain that the history of the world does not furnish an example of such a total departure from every principle of human action, and from all common sense and prudence in the commission of a

crime. The interest of the parties to commit it appears to be nothing — the project utterly impracticable — detection absolutely certain — the reproach, to men of character, severe and inevitable — the legal punishment, not less so; and all those consequences notorious to men of the meanest and most uncultivated understandings.

Gentlemen, the mind of man cannot avoid collecting and accumulating these absurdities; but they are too important to be thus run over, they must be viewed separately, to have their proper effect.

First, then, let us search for a motive strong enough to impel honorable men to encounter such desperate difficulties, in the pursuit of a dishonorable, useless, and impracticable purpose. Have you any evidence, have you the suggestion, have you even the insinuation of counsel, that the defendants ought to be classed amongst those evil-disposed persons, if any such existed, whom Mr. Justice Heath took notice of, but upon report only, as attendant on the trial? The noble earl came down, under the process of a subpcena, to give evidence for the prisoner; not even of any fact connected with his conduct, but merely to state what he knew of Mr. O'Connor as an acquaintance, and what he had collected from others concerning his character in the common intercourse with the world. But why should I seek by observation to remove the impu-

tation of a motive corresponding with the misconduct which is imputed, when it is but common justice to the attorney-general to admit that he did not even attempt to insinuate any thing of the sort? Yet my noble friend remains as a criminal before you, charged with the violation of that which is the most sacred in civil society, branded with the resistance of authorities the most dignified and important, in order that a person supposed to be an object of high suspicion by the government of the country might be left at liberty to perpetrate the treasons which the Duke of Portland's warrant had for its object to defeat; treasons which, if successfully perpetrated, were, in their most direct and obvious consequences, to strip the noble earl of all the splendid inheritance of rank and property descended to him from his ancestors through so many generations. Mr. Fergusson will forgive me, if I say, that the principal property which he can be supposed to possess must be the fruits of a profession which the same treasons were pointed to destroy; yet he, too, must be believed, without a shadow of evidence, or even the suggestion of his accusers, to have engaged in the desperate effort of affording shelter and opportunity for treasons which were to dissolve the courts in which he practices, to destroy that system of law which he has been bred to understand, and to set up, instead of it, a new order of things, by which he must

descend from the eminence conferred by education and experience, and mix in the common ranks with ignorant and undisciplined competitors.

But, it seems they were not indifferent to the deliverance of Mr. O'Connor; for, upon his acquittal, they hastened to the bar, and congratulated him on the verdict. They certainly did so, in common with many others; and, although the impulse of personal kindness which directed them was honorable, it may be set down, not so much to the individuals, as to the characteristic benevolence of Englishmen. The characteristics of nations depend more upon their histories and their governments, than upon the temperaments of men arising from natural causes. The English constitution was always, in theory, a constitution of freedom; but it only became so in practice by the numerous and finally successful struggles of our free and virtuous ancestors against oppressive abuses of authority. Many eminent persons to whom this country is indebted for her liberties, having stood upon their trials, and having obtained deliverances from the tribunals of justice, have gradually produced a general sympathy in the minds of Englishmen, when men are standing for life or for death before their country. This is an almost universal, and peculiarly characteristic feature of the inhabitants of Great Britain. It is not confined to the vulgar, as an ignorant and even an immoral prejudice, but

pervades all the classes of society. It is compounded of a principle of humanity, of a spirit of national pride and dignity in the freedom of our institutions, and of a sense of security derived from them. No reasoning, therefore, can be more false than that, when men are accused, and even upon pregnant evidence, of conspiracies against the government, they who seem to feel an interest in their deliverance are alienated in their affections to the State. Englishmen of all descriptions receive their sense of innocence from their country's verdict; and they feel a sort of satisfaction which, I verily believe, exists in no other country. Irreligion and false liberty have been seen to delight in blood,—to rejoice in revengeful sacrifices,—to think it music to hear the agonizing groans of expiring sufferers—and a spectacle of triumph to gaze upon their mutilated bodies; but the sense of liberty in a country long humanized by the influence of a free government shrinks back even from the consequences of the justest prosecutions,—looks with an eye of tenderness upon the accused even before the conscience is convinced of innocence, and feels an invincible impulse of pleasure in the legal deliverance from guilt. Long, long may this remain the characteristic feature of our country! When Mr. O'Connor, therefore, was pronounced not guilty, was it any proof of a conspiracy to rescue him from other charges, that he was congratulated on

his deliverance, which he was not only entitled to by the verdict of the jury, but which the evidence on the trial, and the judge's remarks on it, had previously and distinctly anticipated? The question, therefore, again recurs — Were the defendants the active authors of the rescue, for the purpose charged in the indictment? The motive is gone already, not only as wholly unascrivable from the total absence of evidence, but because my learned friend who laid the case before you was too much a man of honor (as I have already done him the justice to acknowledge) to ascribe, or even to insinuate, a motive which he knew did not exist, and which he had neither evidence nor reasonable presumption to support.

If, however, a criminal act, though without the proof, or even the imputation of a referable principle of action, may still be believed by a jury dispensing the mild and rational justice of this country, the next consideration in weighing the probabilities, is, how this purpose, supposing it still to exist, without any corresponding interest, was possible to be accomplished? for men cannot be presumed to engage in the most perilous enterprises, not only without inducement, but without even a shadow of hope or prospect that their object is practicable. The situation of the court is not only present to your own recollections from your perfect acquaintance with it, but is brought

before your eyes by its just comparison with this; Mr. O'Connor stood at the bar where my learned friends now sit, surrounded by hundreds of persons not attempted to be implicated in any design to favor his escape; on the right, and on the left, and behind, were the public streets of Maidstone, from whence no passage without observation was to be expected; and before they could even be approached, an outlet must first have been made through groves of javelins in the hands of those numerous officers which the exemplary attention of the sheriffs of Kent has always provided for the security and dignity of the court. It was, therefore, not merely improbable, but naturally impossible, to deliver, or even hope to deliver, a prisoner from the public bar of such a court, in the view of all its judges, its counsel, and attendants, without the support of great force and numbers, and without, likewise, a previous concert and combination to direct them with effect. The next consideration, therefore, which directly follows these immutable principles of judgment, is the fact as it applies to them — Was there either force exerted, or numbers collected, or measures concerted? The defendants cannot be made responsible for any act of violence which might be committed by any disorderly persons in the street. It is nothing to them that Mr. Justice Buller's servant was knocked

down in one of the avenues of the court, whilst they were admitted to have been in its centre.

What act of disorder or violence do you find committed by Lord Thanet, by Mr. Fergusson, by Mr. O'Brien, or by Mr. Gunter Browne, who has been made a defendant only because, without any offence on his part, he appears to have had his head broken! for this gentleman is literally not identified by any part of the proof as having been even in court at all, except as he was seen complaining to the judges of an assault committed on himself? Lord Thanet is a man of high spirit and of a strong body; it must have been a warm interest, as I have repeatedly observed to you, that could have embarked him at all in such a business; and, when embarked in it, he must reasonably be supposed to have engaged with activity in the accomplishment of an object for which he risked so much. Yet, it has appeared already, by the testimony of one of the most respectable and the most correct of all the witnesses for the crown, and it will be made manifest hereafter beyond all doubt or question, that, at the very moment, and it was but a moment, when the evidence has the remotest application to any of the defendants, he lay back inactively, holding his stick with both hands across his body, to defend himself from the assaults of only one man, not stronger than himself, and whose blows he neither attempted to return, nor

invited the aid of others to repel; so far from it, that Mr. Fergusson, who is supposed to have put his character and situation to so much hazard, though he stood close by, is not even charged with having exerted his strength on the occasion, but to have contented himself with flourishing a small stick in his hand, without striking or aiming at any body; a circumstance neither true, nor possibly consistent with the truth of the designs which are imputed to him; and no act of violence, or even gesture to incite it, is imputed to any other person near this supposed focus of confusion, at the only time when Lord Thanet and Mr. Fergusson are affected even by the solitary evidence of Rivett.

So much for the force exerted in the pursuit of a purpose which no force proceeding from a few persons could have accomplished; and as to any previous concert or combination amongst numbers which can possibly involve them, it is rendered absolutely incredible by the whole body of the evidence; for the attorney-general has proved that there were attendant on court a great number of gentlemen known to profess the same principles and opinions with the defendants, and most intimately acquainted with Lord Thanet in private life — gentlemen who, I have no doubt, are here at this moment assembled by the just anxiety of friendship and affection — yet it is not imputed to

any of those numbers I allude to, though all present in court, and within reach of whatever was transacted in it, that they took any part, directly or indirectly, by force, by speech, or by seeming encouragement, in the scene of disorder which took place. If Lord Thanet then, is a conspirator, with whom did he conspire? since, with the exception of the four other defendants, three of whom must be acquitted for want of evidence, accusation itself does not even attempt to implicate one man of his numerous friends and acquaintance, who must naturally be supposed to have been impressed with similar feelings, nor, indeed, any one man, high or low, whom he can be proved to have ever spoken to, or seen, in the whole course of his existence; and if obscure and unknown persons are to be taken to have been instruments in this confusion, there must have been some evidence of direction or encouragement to others proceeding from the defendants, which is not attempted to be sworn by any of the witnesses. This most important part of the case shall not, however, be left upon the failure of evidence, or even upon the absence of accusation, for I will call many of those gentlemen, who will tell you that they were wholly ignorant of any design to rescue the prisoner; that they saw no confusion or riot, except that which the precipitate entry of the officers occasioned; and who, by tracing the de-

fendants in their eyes through the whole of the period in question, will be able positively to contradict the most material parts of the evidence which personally affects them.

Gentlemen, the next question upon the score of probability is this: supposing that, contrary to everything either proved or asserted, the defendants had felt an interest in the escape of Mr. O'Connor, and had conceived it to be practicable, could they possibly have hoped to escape detection, more especially Lord Thanet and Mr. Fergusson, whose persons were so notorious; the one, from his high rank and residence in the county, whose principal inhabitants surrounded him; and the other, from being in his professional dress, in the place assigned to him as counsel on the trial, and, in the very midst of his companions, engaged in the business of the court? Lord Thanet, therefore, and Mr. Fergusson, upon the attorney-general's own admission, who has justly assimilated the court at Maidstone to the one we are now assembled in, could no more have hoped to escape immediate detection and punishment for the riot they are supposed to have engaged in, than I could hope to escape from them, if, taking a strong interest, as I must be supposed to do, in the acquittal of my clients, and thinking there was no safety for them but by making such a confusion in court as to prevent your hearing the evidence, or the judge's observa-

tions on it, I should, when I had finished my address to you, and the judge was beginning to sum up to you, publicly begin or join in a scene of noise and uproar, under the eyes of the judges, as they now look at me, of the officers, now sitting before me, of you, the jury, to whom I am speaking, of my numerous friends at the bar, whose honor is connected with the dignity of the court, and of the whole crowd of spectators, hundreds of whom I am known to personally, and all of whom are acquainted with my person.

Gentlemen, I can observe, from the absurdity and impossibility of the case I am putting, that I seem to be trifling with the subject; but that sensation, which I have no doubt is general, and which I cannot help even feeling myself, displays the irresistible force of the actual case before you; because I defy the wit, or wisdom, or imagination of man, to attempt even a shadow of distinction between the case I have put to you and that of Mr. Fergusson; for, why should he be supposed, any more than myself, who am the object of comparison, to have embarked in this impracticable project of disgrace, dishonor, and injustice; in the dress of counsel, as much as I am, on the trial which engaged the court; and in a place, the exact similarity of which to the room which holds us is no assertion of mine, but a fact, so unalterably established by the whole evidence, as to be em-

ployed by both sides as an assistant to the mind in judging of the accuracy and consistency of the proof?

The next recourse to probability, if your judgments, as in all other cases, are to be governed by reason and experience, is, if possible, still more unanswerable and decisive.

Supposing the defendants, without interest or motive, and without the possibility of success, and without even a chance of escaping from detection and punishment, to have, nevertheless, publicly insulted and disturbed the court by acts of disorder and violence, who must have been the witnesses to such a scene? Who, for instance, must have been the witnesses, if Mr. Fergusson, as has been asserted, had stood upon the table of the court, the table round which the counsel are ranged, directly under the eyes of the judges and the jury, and had flourished a stick round his head, to favor the escape of the prisoner, by preventing the officers from approaching him — who, I say again, must have been the witnesses to such a phenomenon? who amongst the judges, or counsel, or officers, or spectators, but must have seen it? who that had seen it could possibly have forgotten it? and who that remembered it could have hung back from the proof of such inexcusable misconduct? Yet the proof of this fact, to which the whole court must have been, as it were, but

one eye, and an eye of indignation, is not supported by any one person, either upon the bench, or at the bar, or amongst the numerous officers of the court. On the contrary, we shall see, by-and-by, the difference between the testimony of a reverend judge of England and that of a Bow street officer, when I come to advert to the evidence of Mr. Justice Heath, which is directly and positively inconsistent with Rivett's, on whose single and unsupported testimony this extravagant and incredible part of the case is alone supported.

But, it seems, they have given judgment against themselves, by their demeanor and expressions upon the occasion. Lord Thanet, it seems, said to Mr. Justice Lawrence, as Mr. Abbott expressed it, who did not hear what the learned judge had said, to which Lord Thanet's words were an answer, "that it was fair he should have a run for it;" — words which cannot be tortured into any other meaning, more especially when addressed to one of the judges of the court, than that, speaking in extenuation of Mr. O'Connor's conduct, who had visibly made an effort to escape, he thought it fair that a person so circumstanced should have a run for it, if he could; — a sentiment which, by the by, no man in his senses would have uttered, more especially in such a quarter, if he had felt himself at all implicated in a criminal endeavor to assist him; and if Lord Thanet did not speak at this

moment with all that complacency which in general so much distinguishes him, nor offer, as Mr. Sheridan did, his assistance to the judges, it is not at all to be wondered at; for it must be recollected that he had just suffered in his person, not as you have it upon the evidence at present, but had been most roughly and severely assaulted. Mr. Justice Buller is proved to have said, that Mr. Sheridan conducted himself in a manner greatly to his satisfaction; but the very contrast which this evidence is introduced to furnish, instead of operating against Lord Thanet, is an additional argument in his favor. Lord Thanet and Mr. Sheridan are as one man in everything which relates to public opinions, and friends in private life. Upon what principle, then, can it be made out that Mr. Sheridan should be assisting the judge, whilst Lord Thanet, who had no connection with Mr. O'Connor which did not equally belong to the other, should be behaving like a madman, unsupported by any of his friends or acquaintances, who were attending as witnesses upon the trial? But the time of this conversation, if I had before adverted to it, would have rendered all these observations wholly unnecessary; for it was after the riot (as it, indeed, must have been) that Mr. Justice Lawrence conversed with Lord Thanet, saying to him, among other things, that he "hoped Mr. O'Connor's friends would advise him to submit to his sit-

uation." Now, I may safely assert that, high as Lord Thanet's rank is, that learned judge would not have spoken to him as a person from whom he solicited and expected assistance, if he had himself observed him, or if he had known him to have been observed by others, disturbing the order of the court. On the contrary, if there had been a reasonable ground for impeaching Lord Thanet's conduct, the learned judge would have executed the law upon him — he would have attached him for his contempt; and surely no person in court had a better opportunity of observing everything that passed in it. Mr. Justice Lawrence was one of the youngest of the learned judges who presided at the trial, with stronger health than belonged to all of them, which enabled him to keep up his attention, and to observe with acuteness; he was, besides, deeply interested in whatever concerned the honor of the court; and the elevation of the bench on which he sat gave him a full view of every person within it. Indeed, Lord Thanet, at the time this misdemeanor is imputed to him, was directly before him, and under him, and not farther from him than Lord Kenyon at this moment is from me. I have, therefore, a right to say, that not only nothing is to be presumed against Lord Thanet from what he said, but that, on the contrary, a strong presumption arises in his favor when we hear the evidence from any other mouth

than that of the learned judge himself; since, if he to whom the discourse was addressed, and who was the best judge of the fair construction to be put upon it, had considered it in the light it had been represented and relied on, he might have been called as a witness. Mr. Justice Heath and Mr. Serjeant Shepherd, the judges in the same commission, were examined to matters infinitely less material.

Gentlemen, let us now pause a little to consider the effect which I feel myself entitled to derive from these observations. I consider myself to have advanced no further in the argument than this—

First, That there was no assigned nor assignable motive for the criminal purpose charged by the indictment.

Secondly, That it was a purpose palpably impracticable, and which, therefore, no reasonable men could possibly have engaged in with any prospect of success.

Thirdly, That whatever might have been the probable issue of such an enterprise, detection and punishment were certain.

Fourthly, That, admitting the evidence you have heard to be free from all errors, the defendants did not conduct themselves like men engaged in such a pursuit, nor appear to have been supported in a manner reasonably, or even possibly, consistent with the alleged conspiracy.

Fifthly, That, although the witnesses against them, if the transaction had been justly represented, must probably have been the greater part of the court, and certainly all that part of it elevated both by situation and authority above the rest, yet that there has been not only no such concurrence of testimony against the defendants, but, on the contrary, the most correct and respectable witnesses have concurred in destroying the remainder of the proof.

Sixthly, That the expressions imputed to Lord Thanet cannot possibly affect him, without supposing that he publicly gave evidence against himself, even to one of the judges, who, upon the evidence of his own senses, had authority to have punished him upon the spot.

Lastly, That it appears, by the whole body of the proof, that the confusion arose when the officers burst with improper and indecent precipitation into court; that it began and ended almost in the same breath; and that, during the short moment of its continuance, there was such a scene of tumult and confusion as to render it impossible for the most attentive observer to give any clear and distinct accounts of the transaction.

If these conclusions, gentlemen, be the unavoidable result of the crown's evidence when brought to the common standard of man's reason and experience, it appears to me that you are bound to

return a verdict for all the defendants, even if I should call no witnesses ; because, to justify a verdict of guilty, it is not enough to collect from the evidence that defendants may be guilty, or probably are guilty ;— no ; their innocence must be quite incompatible with the fair result of the whole proof ; for, if two different conclusions may be reasonably drawn from the same state of facts, you are bound in justice to adopt the one which is supported by the greater number of probabilities. Now, if this plain rule of judgment be not wholly departed from, and even trampled under foot, I take upon me to say positively and firmly, because I am making my appeal to men of understanding and liberal education, that the evidence for the crown, without any at all on my part to oppose it, taking it all together, and considering the fair result of it, is not sufficient to convict any of the defendants. This proposition, however, cannot be supported by general observations, nor by that general appeal to the proof which I have been engaged in, it must be examined accurately in the detail. I shrink from no part of it. I will sum it up to you as if I spoke to you from the bench ; and I pledge myself to make out, to the satisfaction of every unprejudiced mind, that all that I have hitherto said to you, though absolutely necessary by way of introduction, has suffered from its generality ; and that the particulars of the proof will

illustrate and confirm, beyond all question, every proposition of fact, and every principle of judgment, which I have already brought before you.

The first witness examined for the crown is Mr. Serjeant Shepherd, who was joined with the judges in the special commission. This examination is highly important in every part of it; because, when it becomes necessary to compare the evidence of different witnesses in order to arrive at a safe conclusion from the whole, nothing can be so satisfactory as to find some person on whose testimony the judgment may repose with safety. My learned friend (as all who know him must have anticipated) delivered his evidence with the greatest clearness and precision, and in a manner most dispassionate; and when you recollect, besides, that he is a man of singular ability, and that, from his elevated situation in the court, he had the best opportunity of observing everything that passed, you cannot fail to pay greater attention to his testimony, and to that of Mr. Justice Heath, who immediately followed him, than to any other witnesses, however respectable.

In bringing before you Mr. Serjeant Shepherd's evidence, I will not trouble you with that part of it which went to facts which are now no longer disputed, but will take it up from the time when the jury returned into court. Mr. Serjeant Shepherd says, "Lord Thanet was standing before the

bar at which the prisoners stood, with his face turned towards the court; he was rather to the right hand of Mr. O'Connor — nearest to the great street of Maidstone, where the gaoler sat." Speaking of Mr. O'Brien, he said, that "he stood in the same line, but rather to the left of Mr. O'Connor;" that "something had been before said by the Bow street officers, who were making a noise, and had been desired to be quiet. When the verdict of not guilty was delivered, some persons (but whom, I know not) said, 'Then they are discharged;' and somebody at the table replied, 'No, they are not discharged.'" And here I have no objection that what Mr. Serjeant Shepherd omitted may be filled up by Mr. Solicitor-General's evidence, and that the answer from the table was to Mr. Fergusson, who on hearing the verdict pronounced had said the prisoner was discharged; he said it, however, before the court had declared the law upon the subject. As counsel for the prisoners, it was natural he should be interested in their deliverance; and he is not indicted for having mistaken the effect of the law, but for having conspired to obstruct the court in administering it. The attorney-general said very properly, "I bring the defendants before you, not for considering the prisoners discharged by the verdict, but for an attempt to rescue them by violence and tumult, after the court had declared they were in custody." "At this time,"

continued the learned serjeant, "Mr. Justice Buller said to the gaoler, 'Put the other prisoners back, and let O'Coigly stand forward;' when one of the Bow street officers stood up on a form, and said he had a warrant against Mr. O'Connor." This, you observe, was the first time there was any mention of a warrant in court; so that what had before fallen from Mr. Fergusson was merely his sudden idea of the effect of the verdict of not guilty at the moment it was pronounced, and which, at all events, must, in a few minutes afterwards, have delivered the prisoner; and there is no evidence whatever, that, at the time he said so, a fresh custody was a matter of apprehension or contemplation. "Whilst Mr. Justice Buller was passing sentence, my attention," continued Mr. Serjeant Shepherd, "was directed to O'Coigly; and when he had finished, I observed Mr. O'Brien turn round and look at Mr. O'Connor, and, immediately afterwards, look down with a very slight motion and inclination of his head."

And here, gentlemen, it is impossible not to admire that delicate sense of justice which no man possesses more than my learned friend the serjeant, and which dictated to him the remarkable reserve which accompanied this part of his evidence. He recollected that a witness is not to put himself in the place of a jury by drawing his own conclusions from his own tes-

timony, but accurately to state what he hears and sees, and to leave the conclusion to those whose province it is to decide. He, therefore, with the utmost propriety, forebore from expressing what appeared to him to be Mr. O'Brien's purpose, but said to you, "I rather choose to describe his gesture;" which he accordingly did. This fact, therefore, delivered with the restraint which the integrity and understanding of the witness so properly suggested, affords no evidence whatever of evil design in Mr. O'Brien, much less of concert or combination with the other defendants; and indeed the proceedings of this very day have afforded an instance, how dangerous it would be for the most sagacious persons to collect, from gestures only, what passes in the mind of another. When Lord Romney, not choosing to advance in his evidence beyond what his memory with certainty suggested, declined giving a farther answer to a question put to him, the noble and learned chief justice interposed, and put the question to him again. I admit that it was his duty to do so—but his lordship will forgive me if I say, and I appeal to his honor for the truth of it, that he was convinced at the moment, not only that I thought the direct contrary, but that I had publicly and rudely expressed a sensation of dissatisfaction; since, looking at me very significantly, his lordship told me that it was his duty to repeat the question. Neverthe-

less, I do declare upon my honor, and I appeal to Mr. Gibbs, to whom I was speaking at the moment on quite a different subject, that no such idea was passing in my mind as my gestures were supposed to have expressed; yet no man is a more acute observer of human nature than his lordship; and nobody, certainly, was ever better acquainted with my countenance. So much for gestures.

It is, indeed, strongly in Mr. O'Brien's favor, that at the moment he looked down, as described by the witness, he could not be acting in concert with Lord Thanet; for Serjeant Shepherd saw Lord Thanet at the very same moment, and swore that he was standing with his face to the court, and that he never changed his position. The serjeant added, that "when the last word of the sentence was pronounced, Mr. O'Connor jumped with his left foot upon the bar, and his left hand upon the shoulder of Mr. O'Brien," but who does not appear to have held out his hand to assist him. Mr. O'Brien, on the contrary, though he could not but have continued in view for some time longer, is charged with no one act whatsoever; and it would be strange indeed to convict a gentleman of a rescue because, standing near a prisoner meditating an escape, he had laid his hand upon his shoulder. But this part of the case will be put quite at rest hereafter; because Mr. O'Brien is perfectly well

known to several gentlemen of distinction present in court at the time, and not at all implicated in the riot, who will all tell you that they saw him distinctly, and that he was not concerned in any violence or disturbance whatsoever. I am not however called upon to do this, because there is literally no proof to be answered.

The remainder of Serjeant Shepherd's evidence, as it applies to Lord Thanet, is so absolutely decisive, that you will be driven to pronounce by your verdict whether you give credit to this most respectable and observing witness, or to a Bow street officer, who was himself the author of the confusion; for the serjeant added, that when Mr. O'Connor had jumped over the bar, and he had lost sight of him, the officers rushed into court to arrest him, and a great noise ensued; "and at this time" (Gentlemen, the time is most material and critical, because it can apply to no other than the precise time sworn to by Rivett) "I saw Lord Thanet," said the serjeant, "standing as I have described him, with both his hands over his head," — which he also described to you by putting himself in the same defensive posture, as far more expressive of his situation than any words could communicate. This, I say, is the single point of time to be looked at; for the remainder of the serjeant's original evidence, applying to a subsequent period, described a scene of great confusion,

in which he said he could discover nothing distinctly ; that many persons were upon the table — some asking questions, and others endeavoring to restore order. It is not therefore at this period that you are to look, since no part of the evidence at all applies to it ; but at the moment when Lord Thanet is alone affected by Rivett's evidence, the serjeant's testimony has a direct and decisive application ; for upon his cross-examination he said, in so many words, " I never saw Lord Thanet look round or change his position, as I have before described it, till the very instant the officers rushed into court ; and then I saw him with his stick held as I before described it ; but I am bound to say, that he appeared to me to be acting on the defensive wholly." This concluding evidence is an exculpation of Lord Thanet, and must have been so intended. I did not even put the question to the witness ; he himself conscientiously added that he was bound (bound, of course, in justice to Lord Thanet, who was accused of active violence) to say, that he appeared to be only acting in his own defence. Now, gentlemen, there can be neither honor, nor advantage, nor security, bestowed upon the administration of government or justice, which this prosecution is avowedly instituted to support, if men can be punished, not merely upon doubtful evidence, but upon evidence which directly contradicts the

charge. That a court of justice must not be insulted, or even disturbed, is a proposition which must be acceded to by every man acquainted with the first elements of civil life — that a charge of such a high misdemeanor well justifies the solemnity of a trial in this place, is another proposition which cannot be disputed; but the heinousness of offences, and the necessity of suppressing them by punishment, does not alter the quality of the proofs by which they are to be established; on the contrary, it was pleasant to attend to the just reserve in that respect with which the attorney-general laid the case before you; he stated his own evidence in general terms, but without commenting upon it, or enforcing it, reserving his observations till the evidence on both sides should be heard; but we are not even engaged at present in balancing contradictory evidence, but in showing that the accusing evidence is in itself defective and even exculpatory.

Mr. Serjeant Shepherd was properly selected as the first witness for the crown. He sat, from his station as judge, in an elevated position, where he had a better opportunity for observing than others; and he accordingly appears to have observed everything which passed; yet, instead of fastening guilt on Lord Thanet, he sees him from the time the jury returned into court standing in one position; not looking round, as if he was watching the

motions of Mr. O'Connor, or engaged with others in attending to them; not even looking towards the side of the court from whence the arrest was to proceed, but upwards to the judges; not opposing his body as an obstacle in a narrow passage through which the officers were to pass; not presenting a front to them which a man of his strength, with the intentions imputed to him, must naturally have been expected to do; but standing, as any other person attentive to the trial, till the officers, apprehending a rescue, rushed with violence into court, and pressed upon and assaulted him; for, had he not been pressed upon and assaulted, he could not have been seen by Serjeant Shepherd in a posture of defence; and if he was first active in obstructing and assaulting Rivett, in the manner which he, and he only, has sworn to, why should not Serjeant Shepherd have seen it? since his eye was so constantly fixed upon Lord Thanet from the time the jury returned with their verdict till the confusion became general, which is subsequent to the period of Rivett's evidence, as to enable him to tell you that he did not shift his position, nor make a gesture or motion, till the officers and others rushed in upon him; and then, *i. e.* immediately, at the same moment to which alone the evidence has any application, he sees Lord Thanet with a stick over his head, which he thinks himself bound to express and

even to describe to you, as a passive posture of defence. This evidence, which so completely exculpates Lord Thanet, is not less applicable to Mr. Fergusson; for if he, who is placed by all the witnesses as standing close by him, had been an active conspirator, armed with a stick, which he was flourishing over the heads of the officers, can you possibly suppose that he would have withheld his assistance from Lord Thanet, who was visibly overpowered; or that a man of Lord Thanet's strength, though assisted by Mr. Fergusson, who is above six feet high, and a young man of great activity and strength, should be perfectly passive under the blows of Rivett, endeavoring only to save his person from violence, without retaliation, or even a motion to the accomplishment of his object?

The evidence of Rivett is farther exposed by his having denied that Lord Thanet had a stick — a fact established beyond all question; and by his swearing that he took the stick from Mr. Fergusson, and struck him with it — when it will appear by and by that he took it from behind his own coat, when he assaulted Lord Thanet. This last fact, however, I ought to have passed over at present, because it arises out of my own evidence, which I do not wish at all to mix with my observations on the case of the crown.

Gentlemen, the other judges, with the exception

of Mr. Justice Heath (whose testimony will also support the innocence of the defendants), have not been examined, though their positions in court were so highly favorable; neither has the bar been examined, who, if Lord Thanet had been in the situation which some of the witnesses have described, must have all seen it to a man; and their not having been called, affords a strong inference that their evidence would not have been favorable.

Mr. Hussey, who was next examined, said, "I saw Mr. O'Connor attempt to get over the bar" (a fact never disputed), "and at that time Lord Thanet was standing with his back to the prisoners. I saw somebody pressing forward who said he had a warrant; but I saw no paper. Lord Thanet seemed to press himself towards the bar, and seemed to be desirous to interrupt his progress." I dare say the Rev. Mr. Hussey meant to tell you what he saw, but he has expressed nothing. What can be collected from such expressions? Can you convict any man upon evidence which imputes no act, but only a seeming desirousness? "Lord Thanet seemed to press himself towards the bar, and seemed to be desirous of interrupting the officer's progress." Did the witness see him do the one or the other? If he had, he would, of course, have so expressed it; and if Lord Thanet had actually done so, why should not Mr. Serjeant Shepherd have

equally seen it, who observed him accurately at the very same moment? The same answer was given by the last witness, Mr. Parker; and from which one might have been desired also to conclude that Lord Thanet was an active rioter; — “he seemed to be encouraging” — but what did he do when he seemed to be encouraging? “He put his hand so!” What then? If I am not proved to be in combination or concert with any one, nor to have myself committed any act of violence, is riot or disorder to be imputed to me only because, in the midst of a scene of uproar, I appear to be irritated from a sense of danger, or from insults which I have received? If, indeed, a person could not account for his presence in a scene of riot, the case might be different; the presumption might then supply the defect of actual proof. If people were engaged in the destruction of a house, or in the commission of any other violence, and I was seen bustling or making gestures in the midst of them, my very presence might be evidence against me: “How came you there, Mr. Erskine,” might be the question, “at a distance from your own house, and in the middle of the night?” But these presumptions have here no application; for Lord Thanet was attending as a witness under the process of the court, and is described by one of the learned judges as standing originally in his proper place, and not changing his position. The whole of Mr.

Hussey's evidence, therefore, amounts only to this — that Lord Thanet seemed to press forward, and that, too, at the very same moment when Mr. Serjeant Shepherd described him as unmoved and motionless, with his back to the prisoner, and his face, of course, towards the court.

Gentlemen, I feel that it must be painful to you to be obliged to attend to these minute observations; but it is a solemn duty imposed upon me to point out every fact and circumstance of the proof, by which you are sworn to regulate your verdict; the sameness and repetition are nauseous; but that is the very strength of the defendants' case, because it shows the concurrence of the testimony which acquits them. How, indeed, can one expect variety in the discussion of a transaction which, all the witnesses say, was like a flash of lightning, beginning on a sudden, when, from the apprehension of a rescue, the officers rushed into court, and ending (as far as the evidence goes) in the confusion which almost immediately followed; leaving only for your decision, whether, if, in such a crowd, it happens that I am rudely pressed upon, I am a criminal for defending myself? and whether, if, in the midst of such a scene of confusion, some of my postures or gestures are not understood by others who see me, and who may be unacquainted with what has happened to me, I am to be convicted of a crime which not only affects my property, but my

personal liberty, and, what is still dearer to me, my personal honor and reputation?

Lord Romney is the next witness, whose evidence was just what might have been expected from a person in his situation — highly interested in the honor of the country, where he has great hereditary estates and honors, where he has important duties to perform, and where, owing a particular attention to the king's court, he felt, no doubt, a corresponding anxiety that it should suffer no disgrace or interruption in its proceedings. He was placed, besides, in that part of the court where he was entitled by his rank to sit, from whence he had an opportunity of observing what was transacting. Thus circumstanced, he says, "I saw the Bow street officers forcing a passage and striking blows — whom they struck I do not know; there was a sword brandishing on the table. Thinking things bore a serious aspect, I crossed the table, and saw the prisoner escaping; he was brought back by the javelin-men. I said to them, 'Form yourselves round the prisoner, for he is not yet discharged.' I was told afterwards I had said 'he was not yet acquitted;' I believe Mr. Fergusson said so. I have no doubt I made the mistake." Gentlemen, undoubtedly Lord Romney meant only to say that Mr. O'Connor was not discharged; though the answer was not made to him by Mr. Fergusson — for I shall call the gentleman

himself who answered him ; not that it is in the least material, except that it proves that Mr. Fergusson was noticed at that time by Lord Romney ; and surely, gentlemen, if he had been acting like the fool and madman, and, I will add, like the knave he has been represented to you — if, in his professional dress, he had been publicly flourishing a stick upon the table, Lord Romney, who was close by him, must inevitably have observed him ; yet his lordship does not speak of him as out of his place, or as engaged in any act of disorder or violence.

Another most important fact is established by Lord Romney's evidence ; for though his lordship said that he should have been so much hurt if the county had been disgraced, that his attention was not directed to individuals, and that in the confusion he could not tell who had been struck in the passage by the officers, yet he added, that very many blows were struck, and many persons hurt ; yet Rivett says that Fugion struck no blows ; that Adams struck no blows ; that the messenger struck none ; nor he himself any but those which were struck at Lord Thanet. Rivett, therefore, according to his own account, was the only person engaged, and successfully engaged, against the rioters ; yet you are desired to believe that a large combination of strong and active conspirators were favoring an escape by violence.

This is quite impossible ; and the blows, therefore, which were observed by Lord Romney, were the blows which the officers themselves wantonly inflicted ; since it will appear hereafter, by witnesses whom the court cannot but respect, but whose evidence cannot be reasonably rejected, that they rushed in like madmen, striking with violence the most harmless and inoffensive persons, which compelled others to put themselves into that passive posture of defence that Lord Thanet has been so frequently and so distinctly described in. There is nothing more that is material in Lord Romney's examination. Something was alluded to respecting a conversation with Mr. Justice Lawrence ; but his lordship, with the greatest propriety, not choosing to advance beyond his most perfect recollection, did not particularize it ; nor could it be material ; for, besides that it appears to be supplied by other evidence, if it had been of any importance, Mr. Justice Lawrence himself would no doubt have been called as a witness. For my own part, I think it extremely likely that it has been already correctly represented. Lord Thanet, smarting under the blows he had received, did not probably exhibit the same courtesy with Mr. Sheridan ; but I have already observed to you, that this circumstance gives me another important witness — no other than Mr. Sheridan himself, whose deportment was thus remarked and ap-

proved of; for besides that it is impossible to ascribe a criminal motive, either from public opinion, or acquaintance with the prisoner, which did not apply as much to the one as to the other, Mr. Sheridan will tell you upon his solemn oath, that he observed all that passed; and he will be able most distinctly to exculpate both Mr. Fergusson and Lord Thanet from every part of the charge.

Gentlemen, I will now state to you the solicitor-general's evidence. He says, "I kept my eye fixed on Mr. O'Connor. When the jury gave their verdict, I observed him and Mr. Fergusson; I particularly fixed my eyes upon them. I observed Mr. Fergusson speaking to Mr. O'Connor, and Mr. O'Connor put his leg over the bar. I called out, 'Stop him!' Mr. Fergusson said, 'He is discharged.' I answered, 'He is not discharged.' Mr. Fergusson then said to Mr. O'Connor, 'You are discharged.' I repeated, 'He is not discharged.' I observed the jailor lean over and lay hold of Mr. O'Connor. Some person was at this time pressing forward, and Mr. Fergusson complained to the court. The officer was pressing into court, in order to get round to Mr. O'Connor." Now, gentlemen, it is fit just to pause here a little, to consider this part of the evidence. The time filled by it is not above two or three minutes—for it is only the interval occupied by the sentence upon

O'Coigly; and if a combination had existed between Lord Thanet and Mr. Fergusson, and other persons in the secret, is it probable that Mr. Fergusson would have made himself the conspicuous figure which I am supposing the evidence truly to represent him to have done? His conduct, besides, appears quite different, from Rivett's account of it. Did he enter into private resistance or altercation? No; he made a regular and public motion to the court; the judge yielded to the suggestion — the officers were directed to stand back for the present, and then the sentence was pronounced. This is not the natural deportment of a person engaged in a conspiracy; nothing but the purity of Mr. Fergusson's intentions, and the unconsciousness of offence, could have induced him to put himself so publicly forward by a regular motion to the court; and such a conduct is surely very inconsistent with that of a person who was meditating at the moment to carry his point by violence, in the teeth of the court which he addressed. The solicitor-general further said, "Rivett, the officer, said he had a warrant against Mr. O'Connor. Mr. Justice Buller spoke to the officers, commanded silence, and proceeded to pass sentence. When the sentence was finished, I observed Mr. Fergusson, and some other persons whom I did not know, encouraging Mr. O'Connor to go over the bar." Here we must pause again. Mr. Gibbs asked the witness, upon

his cross-examination, "Did you hear him say anything? Did you see him do anything?" The solicitor-general proved no one thing which Mr. Fergusson said or did. I am sure I mean nothing in the least disrespectful to the learned gentleman, but it certainly did not occur to him at the moment that it is not the office of a witness to pronounce by his own evidence that a man encourages or supports; but he is to depose what he heard him say or saw him do, from whence the jury are to draw the inference which is fit. I really mean no sort of reflection; perhaps it arose from the habits of the court of chancery, whose practice is different from ours, and where the depositions are of a very general nature; but suppose the solicitor were to die whilst I am speaking to you, and that, though you should be satisfied as to all the rest of the evidence, you wished to have it explained with precision what was intended to be conveyed when it was said Mr. Fergusson was encouraging, would you condemn Mr. Fergusson upon that evidence, without knowing distinctly what act he had committed? Could you convict a fellow-subject upon the general evidence that he encouraged mischief, without knowing what he did? Certainly not. You must hear the fact; and it is then for you, and for you only, when you have heard it, to draw your own conclusion. The noble and learned lord, with whom we in a man-

ner spend our lives in this place, is in the constant course of saying to witnesses, "Tell us what was done, and we will judge of its quality." By these observations I am not impeaching the evidence of the solicitor-general, — I am commenting as a lawyer upon the result of it; and I do say, as a lawyer, that it is giving no evidence at all, to swear that a man encouraged, or appeared to be encouraging, without stating the facts on which that impression of his mind was founded.

Mr. Solicitor-General went on to say, "I did not see Mr. O'Connor till he was brought back by the officers; for at the instant that Mr. O'Connor jumped over the bar, three or four persons leaped from the witnesses' box upon the table, and mixed among the rioters; all the lights, except those before the judges, and the chandeliers, were extinguished. Mr. Fergusson, at the moment Mr. O'Connor jumped over the bar, turned round and appeared to follow Mr. O'Connor; but I will not positively swear it." I am very glad, gentlemen, that he did not; because it would have been unpleasant to swear that positively which will be positively contradicted — by those too, who are of as good faith, and who had as good an opportunity of observing. It is a mere misapprehension; and I would say to the solicitor-general, if I were to see him at his own table or at mine, that he is mistaken. Indeed,

in a scene of confusion, no man can tell what he sees with any certainty or precision, and images are frequently confounded in the memory. The solicitor-general then said, that Mr. Stafford jumped upon the table, and drew a sword; and, speaking of Lord Thanet, he said he went across the table, and that he saw him in conversation with Mr. Justice Lawrence, the particulars of which he did not hear; but that when he went across the table again, he said he thought it fair he should have a run for it; he said it rather in a tone of anger, in consequence of what had fallen from Mr. Justice Lawrence. Gentlemen, this last part of the evidence applies to a point of time when the disturbance was at an end — after everything had passed in the presence and observation of the court — after the disturbance had given manifest and just offence to the judges, and after they had declared that their proceedings had been interrupted, and their authority insulted; you cannot, therefore, believe that under such circumstances, when Lord Thanet could not but know that high offence had been given to the justice of the county, he should come voluntarily forward, in the hearing of the king's judges, and confess himself to be an accomplice in a high misdemeanor. These observations are not made to induce you to believe that Lord Thanet's expressions have been misrepresented to you, but to convince you that the making

them at the time, and to the persons to whom they were made, arose from a consciousness that he had no share in assisting Mr. O'Connor; any other construction of the expression would amount to the confession of a crime of the magnitude of which Lord Thanet could not, from his education and knowledge, be ignorant;— a crime which is, perhaps, put by the attorney-general in a very modest shape on this record; for, without meaning to moot the point of law, I am not quite sure, that rescuing a person from a warrant for high treason, though impending, and not actually executed, is not felony at the least. The right of Mr. O'Connor to deliver himself from such a warrant, if he could escape before it was executed on his person, was an opinion which Lord Thanet might correctly or incorrectly entertain; but to enhance the confession of such an opinion into an admission of the crime in himself, is contrary to every human principle and feeling, and, therefore, not a reasonable conclusion of human judgment.

Gentlemen, these are my observations upon the evidence of the solicitor-general, as it affects Lord Thanet; and, as it applies to Mr. Fergusson, it is very important; for if Mr. Fergusson had been flourishing a stick in the manner which has been falsely sworn against him, what should have induced the solicitor-general to say, only in general terms, that

he saw him encouraging? Will any of my learned friends maintain, that if the solicitor-general could have proved in terms, that Mr. Fergusson had a stick in his hand till it was wrested from him by the officers in repelling violence by violence, that he would not have distinctly stated it? It is not, indeed, asserted, that the solicitor-general meant to convey that meaning by the term "encouraging" which he employed; nor is it possible that the attorney-general should not have stated a fact so material in his opening, if he had known he could establish it from the mouth of a gentleman placed in so respectable a station in the world.

Gentlemen, Mr. Justice Heath was next examined; and there is no part of the proof more important, particularly as it affects Mr. Fergusson, than the evidence of that very learned, and, I must add, that truly honorable witness, who was one of the judges in the commission, and presiding at the trial. He said, that "a messenger from the secretary of state had applied to the court for liberty to execute a warrant upon Mr. O'Connor;—that permission had been accordingly granted;" so that Mr. O'Connor was not to be ultimately liberated, but was to remain amenable to the process in the hands of the officers;—that, "after the verdict had been given, and the sentence pronounced, the messenger, very unadvisedly, went to the corner most removed from the door,

and said aloud, 'My Lord, may I now execute my warrant?' Presently afterwards, I saw Mr. O'Connor put one leg over the bar, and draw it back again." I have already reminded you, gentlemen, that at this time there was a doubt in the minds of some as to the effect of the verdict to liberate the prisoner; and I admit that Mr. O'Connor, when he put his leg over the bar, knew of the existence of the warrant, and intended to evade it. Mr. Justice Heath then said, "A violent riot and fighting took place, such as I never before saw in a court of justice. It seemed to me to be between the constables on one hand, and those who favored the escape of the prisoner on the other." This shows plainly that Rivett did not speak the truth when he said that the blows were all on the side of the rioters against the officers; whereas the fray, as described by Mr. Justice Heath, arose at first from the activity, if not the violence of the officers; which I will confirm hereafter by the most respectable testimony. "It being dark," continued the learned judge, "I could not see the numbers of combatants; but I think there must have been ten or twenty engaged in it. I saw Mr. Stafford brandishing a sword over their heads. The combat might last for five or six minutes. I saw Mr. Fergusson, in his professional dress, standing upon the table with many others. He turned round and said, 'My Lord the constables are the

persons to blame ; it is they that are the occasion of the disturbance.' Before I could give him an answer, he turned round towards the combatants ; and then my attention was drawn from him to the more interesting scene of the fight." Every part of this evidence is a decisive exculpation of Mr. Fergusson. When was it that Mr. Justice Heath saw him upon the table ? I answer, at the very moment, nay, at the only moment, when blame is attempted to be imputed to him. By whom was he thus observed ? Not by a common person, unqualified to judge, or uninterested in the order of the court, but by one of its highest and most intelligent magistrates. It appears further, that at the moment Mr. Fergusson publicly, and in the proper quarter, imputed blame to the officers (I do not mean such blame as should subject them to punishment, because they might be acting in the supposed discharge of their duty, but blame as it occasioned the disturbance), he did not endeavor to conceal his person from the judges at this only period of imputed disorder, but regularly addressed the court in the dress of his profession, and openly complained of the authors of the confusion. It is, therefore, quite impossible, upon Mr. Justice Heath's evidence, to mix Mr. Fergusson with violence ; for the learned judge distinctly stated that, after having seen and heard him as he described him to you, he observed him no longer, his atten-

tion being drawn from him to "the more interesting scene of the fight." Is not this a most positive declaration of Mr. Justice Heath, that the place where Mr. Fergusson stood was not the scene of the fight, and that he was not personally engaged in it? for he turned his eyes from him to the scene of the combat, and, of course, to the persons of the combatants; whereas, if Mr. Fergusson, with a person so remarkable, and in the dress of his profession, had been himself a rioter, the learned judge must have pursued him with his eyes instead of losing sight of him, and must have seen him more distinctly. But the truly honorable judge does not leave the exculpation of Mr. Fergusson to any reasoning of mine, having concluded his evidence with these remarkable words: "I must do him the justice to say, that in the short time I saw him, which was not above a minute or two, I did not see him do, or hear him say, anything to encourage the riot. I thought myself in great danger, and all of us also." This testimony, gentlemen, is absolutely conclusive. He saw, indeed, Mr. Fergusson for but a minute or two; yet it is the only period to which the evidence against him has any reasonable application; it was not a riot of long duration, in which a man might be guilty of one part of it, though not at another; it was almost momentary; and the whole of the scene within the observation of any one

spectator. When we consider, therefore, that this learned and reverend person stood in the same situation with the first witness who was examined for the crown — that he had an opportunity, from his situation in court, of seeing everything which belonged to the scene of combat, as he termed it — and when he, nevertheless, so separated Mr. Fergusson from it as to feel himself compelled to say what he did in the close of his testimony—we ought to give to his words a weight beyond the voice of a thousand witnesses. A judge can have no interest in such a subject; and you cannot justly appreciate such a testimony, without taking into your consideration his excellent character, his long experience in the world, and the deep regard which he cannot but feel for the faithful administration of justice.

Gentlemen, it is impossible for me to know how these observations affect you. Self-complacency (too common among mankind) frequently makes false estimates of the effects of argument upon others, by measuring them with the results of one's own understanding — an infirmity which frequently leads us to repose upon them as finished and conclusive, when the most material parts belonging to them have been omitted. This, perhaps, may be my own case at this moment; but it does strike me, I confess (accustomed as I am to the proceedings of courts of justice), that I should be perfectly

safe in now leaving in your hands the honors and character of my clients, even if I had not a witness to bring before you in their defence; indeed, I have studiously avoided all consideration of my own evidence, in my remarks upon the case of the crown; in every thing that I have said, I have wished you to consider that I had none at all to offer; and when I reminded you in the preface of my address, that I had witnesses to bring before you, it was rather addressed to the court than to you, and rather directed to secure attention to my observations, than arising from any resolution to trouble you with hearing them. Nothing that I have hitherto advanced has been built upon any new fact to be introduced by me; I have been dissolving the evidence of the crown by its own weakness; I have been insisting that the respectable body of it is the strongest proof for the defendants, and that its only inconsistency is to be found where it affects them with guilt.

The next witness was Mr. Abbott, a gentleman at the bar. "He saw Mr. O'Connor make a motion to leave the court, and heard Mr. Fergusson say he was discharged. Mr. Solicitor-General answered that he was not discharged; and then either Rivett or Fugion said he had a warrant; there was then a little confusion; but the prisoners resumed their places, and Mr. Justice Buller proceeded to pass sentence on O'Coigly. When that

was finished, Mr. O'Connor leaped over the bar towards his left hand; a great tumult and confusion took place." No part of all this, gentlemen, was ever disputed. "I saw Lord Thanet on the table nearly before Mr. Justice Lawrence." This is also nothing. If Lord Thanet mixed in the riot, it could not be near Mr. Justice Lawrence, but in the other part of the court where the prisoners were placed. "The learned judge spoke to Lord Thanet, and said it would be an act of kindness in Mr. O'Connor's friends to advise him to go quietly to prison, lest some mischief should happen. Lord Thanet then turned round, and said,—I did not distinctly hear the first words, but the concluding words were, 'to have a run for it,' or 'fair to have a run for it.'"

Gentlemen, I will not weary you with a long repetition of the same observations. I have observed more than once already, that if Mr. Justice Lawrence had considered Lord Thanet as having done anything to promote the riot, he would have acted accordingly; and it would be, therefore, trifling with your time and patience to detain you farther with Mr. Abbott's testimony.

Gentlemen, we are now arrived at Mr. Rivett; and, retaining in your minds the testimony of the crown's most respectable witness, on which I have been so long observing, I shall leave you to judge for yourselves, whether it be possible that what he

says can be the truth, independently of the positive contradiction it will receive hereafter. Indeed, the evidence of this man administers a most important caution to juries, not to place too implicit a confidence in what is sworn with positiveness, but to found their judgments upon the most probable result from the whole body of the proof.

Rivett says, "I saw a gentleman whom I was told was Mr. Thompson, and I have never seen him since. He asked me what business I had there, and if there was anything against Mr. O'Connor?" evidently meaning a warrant, as he afterwards explained it. I need not, however, pursue this part of his evidence, because he did not identify Mr. Thompson, though he sat before him in court, but pointed to another person. I pass on, therefore, to that part where he described the state of the court. "Many gentlemen," he said, "were seated upon the solicitors' bench," which has been already described to you as immediately before the prisoners, and without the counsels' seat, in which Lord Thanet appears to have sat till he stepped into that of the solicitors', where he was heard to speak to Mr. O'Connor, and congratulate him on his acquittal. It was in this place, and before and after this time, that Mr. Serjeant Shepherd described him as standing unmoved, with his face to the court, and his back to the prisoners. Rivett went on to say, "When the jury were com-

ing in, I endeavored to go nigh to the gaoler, when I was pulled down by the leg; and as soon as I turned round I saw Mr. Thompson,"—who turns out not to have been Mr. Thompson. "I thought Mr. O'Connor looked as if he intended an escape. At that time there was a noise and violence; and Mr. Fergusson said to the court, 'What business has this fellow here, making a noise?'" Now, gentlemen, this cannot be a correct statement as it respects Mr. Fergusson, since it has been sworn by all the crown's most respectable witnesses, that he made it a regular motion from the bar, and the officers were desired to stand back. "I told his lordship I had a warrant from the Duke of Portland to arrest Mr. O'Connor; and the judge said I should have him, and desired the gaoler to take care of the prisoners for the present. The sentence was then passed on O'Coigly; and as soon as it was finished, Mr. O'Connor immediately jumped out from the bar. There was then a great confusion in court; the gentleman who sat before me got up; Mr. O'Connor took to the left, and I called out to shut the door. I endeavored to get forward, but was prevented by those gentlemen who had placed themselves before me and the other officers. I was pulled and shoved down two or three times; but by whom I know not. I jumped forward as well as I was able, and was endeavoring to pursue

Mr. O'Connor, when Mr. Fergusson jumped on the table and with a stick flourished it in this way to stop me. Mr. Fergusson was in his gown. I sprang at him, and wrenched the stick out of his hand; and then he returned from the table and went to his seat." I will not pause at this part of the evidence as it applies to Mr. Fergusson, but pursue it as it goes on to Lord Thanet; because if I can show you that its application to him is demonstratively false when compared with the rest of the crown's evidence, on which it must lean for support, it will destroy all its credit as it implicates Mr. Fergusson also. He says, "I was then knocked down by a person who pushed at me with both hands, and I immediately struck that person three or four blows." You will here be so good, gentlemen, as to consult your notes, as I wish to be correct in stating his evidence. Will your lordships have the goodness to see how you have got it?

[Lord Kenyon and Mr. Justice Lawrence referred to their notes.]

Lord Kenyon. I have it, "I struck him with my stick."

Mr. Erskine. Gentlemen, you will now see, by the observations I am about to make upon this part of the evidence, that I could have no interest in stating it incorrectly, because, whichever way you take it, it involves a direct and palpable con-

tradiction; but there is nothing like the truth, and it is always the best course to appeal to the authority of the court. His words were, "He shoved me with both hands;" and, in his cross-examination, he afterwards described it, "I struck that person three or four blows; he called out, 'Do not strike me any more;' I replied, 'I will; how dare you strike me?'" You observe that he describes Lord Thanet as having no stick, and as having struck him; whereas Mr. Serjeant Shepherd saw Lord Thanet, at what must necessarily be the same point of time, standing with his face to the judges, and his back to the prisoners, motionless, as I have repeatedly described him, till he must have received violence from some other person, since the serjeant saw him leaning back and defending himself with a stick which he held in both hands over his head—an account which, if any corroboration of such a witness could be necessary, I will establish by eight gentlemen who were present, and who will add, besides, in contradiction of Rivett, that Lord Thanet was himself beaten severely, and never struck the officer with fist or stick. That Lord Thanet had a stick, is beyond all controversy; and, having one, is it likely that a man of his strength and activity, engaged in such an enterprise, would only push at his opponent with both his hands, or that Mr. Fergusson, who is charged with being an accom-

plice, would have contented himself with flourishing a little stick over his head?

Mr. Attorney-General. I do not find that Rivett has at all said that Lord Thanet had a stick.

Mr. Erskine. I have been reading his original examination. I will state his cross-examination by and by, and then set both of them against the truth. He says farther, and to which I desire your most particular attention, "I saw Mr. Fergusson flourishing a stick about the middle of the table. I went that way to avoid the persons who had stopped up the passage. He endeavored to prevent me; but I wrenched it from him and struck him. I had not then seen Lord Thanet." Now, gentlemen, I have only to beg that you will have the goodness to make some mark upon the margin of your notes of this fact, which the witness has had the audacity and wickedness to swear to. I use these severe expressions, which I have applied to no other witness in the cause, because I never wantonly employ epithets that are unjust. He was in such a situation that he cannot be mistaken in what he swears; neither does he qualify it with his belief; but takes upon himself to marshal the proceedings in his memory, and to affirm positively both as to persons and times. Yet I will prove Mr. Fergusson to have been within the bar in his place when Rivett speaks of him as on the table, and certainly without a stick. I will

prove this — not by Bow street officers, but by gentlemen as honorable as any who have been examined. Mr. Rivett told you too, “that he came along from the great street where the Star Inn is towards the prisoner to arrest him; but that he went to the table to avoid the gentlemen who interrupted him in his passage towards him.” Lord Thanet is one whom he positively fixed on as having done so. Lord Thanet then interrupted him in his passage to the prisoner, which induced him to go to the table, where he had the conflict with Mr. Fergusson; and yet, according to his own deliberate declaration, he never saw Lord Thanet till after the stick had been flourished by Mr. Fergusson over his head, and till after he had wrenched it out of his hand; for then it was, and for the first time, that he swears to have seen Lord Thanet. This is totally inconsistent, not only with the whole course of the evidence, but even with his own. And I will prove, besides, by a gentleman who sat next his lordship, Mr. George Smith, the son of the late chairman of the East India Company, a gentleman at the bar, and of independent fortune, that one of the first things Rivett did when he came into court was to press rudely upon him; and that Lord Thanet, without having struck a blow, or offered any resistance, was attacked by these men in a most furious man-

ner ; which accounts for the attitude of defence in which he has been so often described.

No embarrassment or confusion can possibly attend the consideration of time, because, from the evidence of Mr. Serjeant Shepherd, there could be no interval. It was all in a moment. He saw Lord Thanet sitting down ; he rose, and stood with his face to the judges ; and then the confusion began. But at this time, I engage to prove most positively by many witnesses, that Mr. Fergusson was in his place at the bar, that he was forced upon the table in consequence of the tumult after Lord Thanet had been knocked down, and that he had no stick. This, indeed, is incontestably established by the evidence of Mr. Justice Heath, who saw him in that situation till he removed his eyes from him to the scene of confusion, which he could not possibly have done if the confusion had not become general whilst Mr. Fergusson remained in his place ; and so far was he from seeking to mix himself with the riot which the officers were occasioning, that when Sir Francis Burdett, a gentleman possessed both of strength and spirit (if a rescue had been the object), was coming hastily across the table, from seeing the situation Lord Thanet was placed in, Mr. Fergusson, knowing that it would only tend to embroil instead of abating the confusion, took hold of him to prevent him, carried him bodily towards the judges, de-

sired the officers to be quiet, and, addressing the court, said publicly, and in his place, "My lord, it is the officers who are making all this disturbance."

What, then, is to be said for this Mr. Rivett, who swore that he never saw Lord Thanet till after his conflict with Mr. Fergusson on the table, although Mr. Fergusson will appear to have at this time been in his place? Mr. Smith was as near Lord Thanet as I am now, when Rivett rushed by him and attacked him, Mr. Fergusson being still in his station at the bar.

Gentlemen, he said farther, in his cross-examination, that "he struck Lord Thanet several blows; that Lord Thanet desired him to desist, but that he had struck him once or twice afterwards." This was after Mr. Fergusson had gone across towards the Judges; so that the scene he describes, as relative to Lord Thanet, is not immediately upon his first coming into court, but afterwards, when, having gone out of his course towards the prisoner from the resistance he had met with in the passage towards him, he was obstructed by Mr. Fergusson at the table; whereas all the witnesses agree in placing Lord Thanet in the solicitors' box, the very passage which Rivett states himself to have left in consequence of resistance; and, therefore, he must have passed Lord Thanet in the solicitors' box before he could have approached Mr. Fergusson at the table; and if he

met with any blows or interruption from him at all, he must have met with them immediately upon his entering the court; for Mr. Serjeant Shepherd's evidence establishes that at that period violence must have been used on Lord Thanet, as he was in an attitude of defence. Rivett further said, that "Lord Thanet had nothing to defend himself against his blows," though Serjeant Shepherd saw and described him with a stick; and that "he saw no blows struck by anybody but himself." What, then, is the case as it stands upon Rivett's evidence — that no blows were struck but his own; though a learned judge has sworn to having seen many struck, and upon many persons; that he received no blows from Mr. Thompson — none from Mr. O'Brien — none from Mr. Ferguson — none from any of the defendants but Lord Thanet, nor from any other person in the court. It is for you to say, gentlemen, whether this statement be possibly consistent with a wide-spread conspiracy to rescue a prisoner by violence, of which the defendants were at the head.

Sir Edward Knatchbull saw no blow given to Rivett. He said, "I can by no means speak positively; but it appeared to me that when somebody was endeavoring to keep Rivett back, he struck Lord Thanet with his fist. I saw no blow given to Rivett." So that Sir Edward Knatch-

bull's evidence, instead of confirming Rivett's story, mainly and importantly contradicts it.

Mr. Watson, the gaoler, was next examined. He remembers the directions given him, not to discharge the prisoner, which I will not detain you with, and says, that "after sentence was passed, some person said to Mr. O'Connor, 'You are acquitted, what do you stand there for? Why don't you jump over?' that Mr. O'Connor answered, 'Mr. Watson says I am not to go;' but that immediately afterwards he sprang over," etc.

Thomas Adams, who was then Mr. Justice Buller's coachman, "saw Lord Thanet with a stick in his hand, and saw it lifted up." We had got rid of that stick upon Rivett's evidence, and now it comes back upon us again when it is convenient to have it lifted up. He describes the stick as lifted up in this position (imitating the witness); whereas it could be in no such posture, as you must be convinced of from the observations I have already made to you. But this man's evidence is very material in this respect, viz., that in describing the assault of Rivett on Lord Thanet, he says, "I heard Lord Thanet say to him, 'What do you strike me for? I have not struck you;'" — an expression of great importance in the mouth of such a person as Lord Thanet; and falling from him at the very moment when it could have proceeded from nothing but consciousness; and an

expression that I will confirm his having used by several of my own witnesses.

Mr. Brooks, who was next called, says, he "saw Mr. O'Connor when the jury returned. Mr. Fergusson held a sword or stick over the heads of the people." A sword or something else, given to us in this confused manner, adds no force to the evidence; more especially when, upon being asked if he can swear with positiveness, he admits that he cannot.

Mr. Stafford was then examined, who says, "he sat under the jury-box, and could see Lord Thanet distinctly." I particularly asked him that question, and how far distant he was from him; he answered me, "Not above two yards from me—three times nearer than I am to you." He saw Lord Thanet, then, distinctly, at two yards' distance, and from the beginning to the end of the confusion; yet he swears he "did not observe him engaged in any obstruction." Afterwards, when the tumult became general, this witness has been described as brandishing a drawn sword—no doubt from a sudden apprehension of danger, and to avert it from that quarter. Now, suppose Mr. Stafford had come down, out of mere curiosity, to Maidstone, to hear the trial, and had been seen flourishing this drawn sword in the midst of the affray, what should have prevented Mr. Rivett from considering this gentleman as the

greatest rioter of them all? Why might he not the rather have represented him as brandishing it to favor the escape of the prisoner? One cannot, indeed, imagine a case of greater cruelty and injustice; but what could have been his protection, if Mr. Fergusson can be convicted on the evidence you have heard? Was not his situation in court, as counsel at the bar, equally respectable as that of clerk of the arraigns? and is not the presumption of an evil design against the dignity of the court equally removed from both of them? Yet the one is only described as flourishing a small stick; whilst the other was so wielding his metallic tractor, that if he had not pleaded a flat bar to the assize in the manner he conducted this falchion, the issue must have been blood. Mr. Garrow said to him at the moment, "Take care that you do no mischief;" and undoubtedly Mr. Stafford neither did nor intended any; but that makes the stronger for my argument, and shows how little is to be built upon appearances which grow out of a scene of tumult. The case for your consideration seems, therefore, to be reduced to this—Whether you will believe the two learned judges, and the other respectable witnesses, or whether you will depend upon the single and unsupported evidence by which violence has been imputed? Mr. Stafford, who was within two yards of Lord Thanet, has completely acquitted him; for had he been in the

situation in which Rivett has placed him, what could possibly have prevented him from seeing it? It was also sworn by Rivett that Mr. Fergusson had a stick; but on appealing to Mr. Stafford's evidence, who sat just opposite to him, we find that he had none, but that he extended his arms seemingly to prevent persons approaching that side of the court. Mr. Stafford admits that when he saw Mr. Fergusson it was in the midst of confusion; and it would be a harsh conclusion indeed, that Mr. Fergusson is guilty of the conspiracy charged on this record because, upon being forced out of his seat by the tumult which surrounded him, as I will show you he was by several witnesses, he had extended his arms in the manner you have heard. Mr. Stafford added, that the gaoler had hold of Mr. O'Connor's coat; that Mr. Fergusson forced himself between them, and that the gaoler stretched his hand behind Binns to take hold of the prisoner. This must be a mistake; for Watson sat as where my learned friend Mr. Wood is at present (pointing to him), and Mr. O'Connor stood as where Mr. Raine is now sitting (pointing to him); and at no part of the time is it even asserted that Mr. Fergusson was in the box of the solicitors, and consequently it was utterly impossible that he could have prevented the gaoler from keeping hold of the coat of the prisoner.

Mr. Clifford says, he sat near the marshal. I

thought he had said that he sat there as marshal ; and, not knowing the person of the honorable gentleman, I thought he had been the marshal of the court. There was no new fact introduced by this witness.

Next came Mr. Cutbush. My learned friends appeared to be soon tired of his evidence ; and it seemed to produce an emotion of surprise upon the bench, that a witness, in such a stage of the cause, should give such extraordinary testimony. He said, "I saw Lord Thanet ; he was two or three yards from Mr. O'Connor. I observed nothing particular till I saw Rivett striking Lord Thanet on the back with a sword." Now, as it is admitted on all hands that no such thing ever happened, it affords another instance of the difficulty with which juries can collect any evidence to be relied on in a scene of uproar and confusion.

The evidence of the last witness, Mr. Parker, contains nothing which I need detain you with.

Gentlemen, I have now faithfully brought before you all that is material or relevant in the case of the crown ; and having accompanied this statement with the observations which appeared to me to apply to it, let me suppose that my task was finished ; that I had nothing by which I could farther defend my clients ; and that I were now to leave you to the attorney-general's reply, and the assistance of the court. Were this my situation, I

should sit down confident that you could not pronounce a verdict against them upon such equivocal evidence, either honorable to yourselves or beneficial to your country. I will not tire your patience by an extended recapitulation of arguments which you have heard already with so much patience and attention; but I feel it to be my duty just to point out the inadequacy of the testimony.

The charge against the defendants is, a conspiracy to rescue Mr. O'Connor from legal custody by tumult and violence; — all the other acts, as they are put upon the record, and brought before you by evidence, being no otherwise relevant nor credible than as the means employed to effectuate that criminal purpose. Your belief of that purpose can, therefore, be the only foundation of a righteous verdict. Yet not only no part of the proof applies to establish it, but the existence of it is negatived by every principle which can guide the human judgment. No motive, either built upon fact or flowing from reasonable presumption, has appeared; none has even been suggested; the object thus pursued without an interest was palpably useless and impracticable — detection and punishment inevitable — the crime, if committed, committed before the whole court, its judges and officers; yet the evidence of it painfully and lamely extracted from a few, and that few overborne by

the testimony of the most respectable witnesses, best situated to observe, and best qualified to judge of what was passing. I have, therefore, no more to ask of you, gentlemen, than a very short audience, while I bring before you the defendants' evidence. My case is this :

It stands admitted, that the confusion had not begun when the jury returned with their verdict — that there was only a motion towards it when the officers were directed by the court to be silent, and to stand back. The period, therefore, to be attended to is the conclusion of the sentence on O'Coigly, when the officers, from their own account of the transaction, believing that Mr. O'Connor intended to escape from them, and giving them credit that such intention could not be frustrated without some violence and precipitation, rushed suddenly through the solicitors' box, where they met indeed with resistance, which was the natural consequence of their own impetuosity, and not the result of any conspiracy to resist the execution of the warrant.

To establish this truth with positive certainty (if, indeed, it is not already manifest from the whole body of the proof), I shall produce, as my first witness, Mr. George Smith, whom I before named to you, and who was one of the first persons in their way on their entering the court. He sat as near Lord Thanet as I now stand to where

his lordship sits before you, and who upon the principle of this prosecution, should, above all others, have been made a defendant; for he will admit freely, that he endeavored to push them from him with his elbow, when they pressed upon him with great and sudden violence; he will tell you that at this time Mr. Fergusson was in his place at the bar; that Lord Thanet was in the place where Serjeant Shepherd described him; that he was violently struck, without having given the smallest provocation, without having made any motion, directly or indirectly, towards the rescue of the prisoner, or even looked round at that time to the quarter where he stood; that Lord Thanet, in order to escape from this unprovoked violence, so far from approaching Mr. O'Connor, endeavored to get nearer where the counsel sat; when Rivett, instead of advancing straight forward in pursuit of his object, which was to arrest the prisoner, levelled repeated blows at him, as he was obliged himself to admit, while Lord Thanet lay back in the manner which has been so often described to you, protecting his head from the blows he was receiving.

In the same seat was Mr. Bainbridge, a gentleman educating for the bar, a near relation of the Duke of St. Albans, and a pupil, I believe, of my honorable and learned friend, Mr. Wood; a person who cannot reasonably be suspected of giving

false testimony to encourage violence and outrage against the laws of his country. Mr. Bainbridge will swear positively, that when the officers came forward, Lord Thanet was in the solicitors' box and Mr. Fergusson in his place at the bar, where he remained till the witness saw him forced out of his place, and obliged to stand upon the table, and that he had no stick. What then becomes of Rivett's evidence, who swore he never saw Lord Thanet till after this period, although it is admitted that it must have been by the tumult, in which he falsely implicated his lordship, that Mr. Fergusson was driven out of his place? This is absolutely decisive of the case; — for it will appear farther, that Mr. Fergusson continued in his place after the period when Lord Thanet was seen defending himself. It was rather insinuated than sworn to distinctly, that there were gentlemen coming from the other end of the court, as if to lend their assistance; but this operates directly in exculpation of Mr. Fergusson, who prevented Sir Francis Burdett from approaching to that quarter of the court. Sir Francis was certainly not advancing for the purpose of riot, but to extricate Lord Thanet; yet Mr. Fergusson, lest it should add to the confusion, publicly prevented him, under the eye of the whole court.

The next witness I shall produce to you will be Mr. Charles Warren, son of the late highly cele-

brated physician — a most honorable young man, and who, I verily believe, will be as great an ornament to our profession as his father was to his. Mr. Warren was placed at the table, attending in his gown as counsel, and had the most undeniable opportunity of seeing Mr. Fergusson, who sat near him, in his gown also. What Mr. Fergusson did cannot be matter of judgment or opinion in such a witness, but matter of certainty; the conduct imputed, if it really existed, could neither be unobserved nor forgotten; it was exactly the same as if I were at this moment to break out into madness and insult the court. In such a case, would any of you qualify your evidence of such a scene, passing before your eyes, with “I think,” or “I believe?” No; you would say at once, “I saw” that gentleman hold up his fist and insult and threaten the judges. Such extraordinary transactions address themselves directly to the senses, and are not open to qualifications of opinion or belief. For the same reason, Mr. Smith and Mr. Bainbridge must both be perjured if the evidence of Rivett be the truth; and Mr. Warren (subject to the very same observation) will swear positively that he saw Lord Thanet severely assaulted, and that he did not strike. Is this a mere negative in opposition to Rivett’s affirmative oath? Certainly not; for there are some negatives which absolutely

encounter the inconsistent affirmatives, and with equal force.

Let me suppose any man to say at this moment, "Mr. Mackintosh" (who sits close by me) "struck Lord Thanet," who is just before me, whilst I was speaking to you, the jury, and I were to answer that "he did not" — that would, no doubt, be in form a negative proposition; but it would comprehend a counter-affirmative if I had seen Mr. Mackintosh in such a situation, relative to Lord Thanet, as that he was not near enough to strike him, or that, if he had struck him, I must inevitably have seen him. Upon this principle, which it is indeed pedantry to illustrate, because common sense obtrudes it upon the weakest, Mr. Warren will tell you positively that Lord Thanet did not strike Rivett; and that, at the time when this violence is imputed to him, Mr. Fergusson, who is reported to have begun the affray, and who had, it seems, a stick wrenched from him, was in his place at the bar.

I will then call to you Mr. Maxwell, a gentleman of rank and fortune in Scotland, who lately married a daughter of Mr. Bouverie, member of parliament for Northampton. He stood under the witness-box, which may be as in that corner (pointing to a corner of the court), commanding a full and near view of everything that could pass; and he will confirm, in every particular, the evidence

of Mr. Warren, Mr. Bainbridge, and Mr. Smith: I will also call Mr. Whitbread, who attended the trial as a witness, who was near Mr. Sheridan, and, like him, did everything in his power to preserve the peace. Mr. Whitbread's situation I need hardly describe to you. He is a man of immense fortune, acquired most honorably by his father in trade, and who possesses almost incalculable advantages, which are inseparably connected with the prosperity and security of his country; yet, from the mouth of this most unexceptionable witness, the most important parts of the evidence will receive the fullest confirmation. I shall also call Mr. Sheridan, who showed his disposition upon the occasion by his conduct, which was noticed and approved of by the judges. This will furnish the defence of Lord Thanet and Mr. Fergusson.

As to Mr. O'Brien, it is almost injurious to his interests to consider him as at all affected by any part of the proof; he does not appear to have been at all connected with Mr. O'Connor. It has been said, indeed, that he proposed a bet to the officer on the existence of the warrant, and that he afterwards whispered to Mr. O'Connor; but at that period it could not relate to an escape. It has been said, farther, that he was on the spot, and that Mr. O'Connor put his hand on his shoulder; but that was no act of Mr. O'Brien's; he neither touched him nor used any effort to assist him—

no violence or obstruction is even imputed to him; even Rivett himself has not attempted to say that, in his progress towards the prisoner, he was insulted by Mr. O'Brien, or that he even saw him.

I am not counsel for Mr. Thompson or Mr. Browne; but I apprehend I have a right to call them as witnesses, and upon that I shall presently take the court's opinion. Rivett was desired to look round to identify Mr. Thompson, but pointed to another gentleman who sat next him, and who had no sort of resemblance to him in person. Mr. Thompson, therefore, is not touched by any part of the proof; and nobody has said a word concerning Mr. Browne (as I before remarked to you), except that there was a gentleman in a gray coat with a black collar, who had the misfortune to have his head broken, and of which he made a complaint to the court.

Gentlemen, I am now, therefore, very near relieving you from the painful duty which this important cause has imposed upon you; a cause which, independently of the attorney-general's privilege to choose the form of trial, was well worthy of the attention of this high tribunal. So far from complaining of a trial at bar as an oppression of the defendants, I acknowledge the advantages they have received from it, not only in the superior learning and discrimination of the court, but in the privilege of being tried by a jury of gentlemen

assembled at a distance from all local prejudices, which has enabled them impartially to listen to both sides with such equal and such patient attention. I have yet another advantage from a trial in this place, which it is fit I should advert to. It enables me to remind the noble and learned chief justice of a course of practice from which he has never deviated, and from whence my clients will receive most abundant advantage.

Throughout the numerous criminal trials which it has fallen to my lot to see his lordship judicially engaged in, I have observed this uniform course. Where the decisions will not fit exactly the interest of the accused, and where counsel, as far as professional honor will warrant, are driven in argument to qualify them, and to divert their rigorous application, the noble lord summons up all the vigor of his mind, and fills up the full scope of his authority to prevent the violation of the law; because the law is an abstract and universal rule of action, the application of which can suffer no modification. But when the law is clear, and the question only is, whether persons accused of a breach of it are guilty or not guilty upon evidence, above all upon evidence which is contradictory; where testimony is opposed to testimony, and witness to witness, in such confounding equality as that a jury cannot with clearness arrive at the truth, I have a right

to bring it to his lordship's own recollection, and, for his honor, to the recollection of others, that it has been his uniform practice, not merely to lean towards acquittal by his directions to juries, but even to interpose his opinion with the prosecuting counsel. In a civil case, indeed, where one man asserts that to be his right or property which his opponent controverts, a jury must give a verdict for the one or the other, though the scales may appear to be equal. In such cases a judge is frequently obliged to lament to juries that they have a task imposed upon them which neither the conscience nor understanding of man can fulfill with satisfaction; but I speak the language of his lordship, and of all judges, when I say, that between the public and individuals there can be no such race for judgment. Far different is the character of English justice; and there occurs to my mind at this moment a recent and memorable example. While the attention of the house of commons was attracted to the great cause of humanity, in its proceedings upon the abolition of the slave trade, a case was brought up for the consideration of a jury arising out of the ill-treatment of a negro in an African ship. The captain upon his oath denied the alleged cruelty, and a bill of indictment for perjury was found against him. I conducted that prosecution at Guildhall, and established the ill treatment by several witnesses; and although

not one man who was in the ship at the time was called to contradict them, yet on its only coming out, not from their admission, but upon the evidence for the defendant, that they had held a different language in an alehouse at Bristol, Lord Kenyon interposed on my rising to reply for the crown. I had myself no doubt of the guilt of the defendant; but his lordship, though without even expressing that he himself entertained a different opinion, declared that the interest of the public never could be served by a conviction on such contradictory evidence. "We ought not," he said, "with such materials, to leap in the dark to the conclusion of guilt." I acquiesced, as it was my duty; and the defendant, without any appeal to the jury on the evidence, was acquitted. I should only weary you, gentlemen, by a repetition of similar instances which crowd into my memory at this moment. I am sure I could name above twenty, in this very place, upon proceedings for the obstruction of officers in the execution of their duty (proceedings most important to the public), where the evidence has been very contradictory, and where the noble and learned lord, not being able to detect perjury in the defence, has uniformly held this language to juries, and even to the counsel for prosecutions: "This is not a case for conviction; the defendant may be guilty, but there

is not a sufficient perponderation in the evidence to pronounce a penal judgment."

These are the maxims, gentlemen, which have given to British courts of justice their value in the country, and with mankind. These are the maxims which have placed a guard around them in the opinions and affections of the people, which, I admit, is at the same time the sting of this case, as it deeply enhances the guilt of him who would disturb the administration of such an admirable jurisprudence. But, if the courts of England are, on this very account, so justly popular and estimable; if they have been, through ages after ages, the source of public glory and of private happiness, why is this trial to furnish an exception? For myself, I can only say that I wish to do my duty, and nothing beyond it. Govern us who will, I desire only to see my country prosperous, the laws faithfully administered, and the people happy and contented under them. Let England be secure, and I am sure no ambition of mine shall ever disturb her. I should rather say, if I were once disengaged from the duties which bind me to my profession—

“ Oh! for a lodge in some vast wilderness,
 Some boundless contiguity of shade,
 Where rumor of oppression and deceit,
 Of unsuccessful or successful war,
 Might never reach me more!”

To conclude; if you think my clients, or any of them, guilty, you are bound to convict them; but if there shall be ultimately before you such a case, upon evidence, as to justify the observations I have made upon the probabilities of the transaction, which probabilities are only the results of every man's experience in his passage through the world; if you should think that the appearances were so much against them as to have justified honorable persons in describing, as they have done, their impressions at the moment, yet that the scene of confusion was such that you cannot arrive at a clear and substantial conclusion — you will acquit all the defendants.

[The attorney-general retired from the court.]

Mr. Rous. My lord, I am of counsel for Captain Browne.

Lord Kenyon. When the attorney-general comes in, I will put the question to him whether he thinks there is sufficient evidence against him or Mr. Thompson?

[The attorney-general returned.]

Mr. Garrow. My lord, the attorney-general has returned; if your lordship pleases, I will put that question to him.

Mr. Attorney-General. I understand, since I went out of court (and I beg pardon of your lordships for so doing), that something has been said relative to Mr. Thompson and Mr. Gunter Browne. With respect to the former of those gentlemen, undoubtedly, his person having been mistaken here in court, I should think it extremely improper that I should withhold from these defendants the benefit of his testimony. With respect to Mr. Gunter Browne, I think there is some evidence against him, if I were struggling in this case, in a way in which I am perfectly sure your lordship knows the attorney-general never does struggle, for a conviction; but I am very ready fairly to say, I should act very improperly if I showed any inclination to convict at all, and therefore I give up the prosecution with respect to him also.

Lord Kenyon. If you mean to avail yourself of their testimony, now is the time.

Mr. Rous. Mr. Gunter Browne is confined to a bed of sickness.

Lord Kenyon. Gentlemen of the jury, as far as I can recollect the evidence, there is not sufficient evidence to call upon these gentlemen for their defence; if you think so, you will acquit them.

MR. BROWNE, *Not guilty.*

MR. THOMPSON, *Not guilty.*

EVIDENCE FOR THE DEFENDANTS.

MR. GEORGE SMITH *sworn.* — *Examined by MR. GIBBS.*

Q. You were present at this trial?

A. I was.

Q. The row in which the solicitors sat represents that where we are now sitting, and the counsel before us?

A. It does.

Q. And the place in which the prisoner stands was behind?

A. Yes.

Q. In what part of the court were you?

A. Almost during the whole of the trial I sat in the solicitors' seat.

Q. Are you at the bar?

A. I am.

Q. I believe the prisoners stood in the place allotted for them, three in the front, and two behind?

A. Exactly.

Q. Who were the three in front?

A. Mr. O'Coigley, Mr. Binns, and Mr. O'Connor — Mr. O'Connor was on the left as he looked at the judges, and on the right as they looked at

him ; Mr. Binns in the middle, and Mr. O'Coigly next the gaoler. My seat was directly under the gaoler, at the end of the seat.

Q. Do you remember the time when the verdict was brought in ?

A. Perfectly.

Q. Did you observe any thing happen at that time ?

A. I recollect that Mr. O'Connor put his leg over the bar, and there was a press behind, but a very trifling one, to get at him.

Q. This was before sentence was pronounced ?

A. Before sentence was pronounced.

Q. Did that cease ?

A. Yes ; silence was called, and that disturbance ceased. The judge then proceeded to pronounce sentence. I was at that time sitting, as I have described, at the end of the seat directly under the gaoler ; and I leaned against a projecting desk, looking up at O'Coigly during the whole of the sentence, so that my back was to the Bow street officers. The instant that the judge concluded his sentence, Mr. O'Connor put his leg over the bar, and the gaoler caught hold of his coat.

Q. At this time did you observe where Lord Thanet sat ?

A. At that particular moment I cannot say I saw my Lord Thanet, but I know that he and Mr.

Browne were both sitting on the solicitors' seat within one of me.

Q. Where was Mr. Fergusson at this time?

A. I do not know; I did not observe him at that time.

Q. You were proceeding to state what passed after the sentence was pronounced?

A. At the same moment that Mr. O'Connor put his leg over the bar, before I had recovered myself from the leaning position in which I sat, one of the Bow street officers, I am not sure whether it was Rivett or Fugion, set his foot upon my back. I immediately started up and drove the man off, and asked him what he meant.

Q. How did you drive him off?

A. With my elbow, and by starting up.

Q. What was his answer?

A. He damned me, and told me he had business, and would press on.

Q. Was there good room for him to get by, or was this a narrow place?

A. It was so narrow that it was impossible that two people should pass without contrivance; a short struggle followed between the officers and myself, for there were several people who were pressing behind, and I could not get out of the seat where I was without making that resistance.

Q. How did you get out at last?

A. At last I struggled a great while with my

elbows to make room for myself; I got up, stepped upon the division between the solicitors' and the counsels' seats, and from thence to the table; I then turned round immediately, and I then saw the same man pressing upon my Lord Thanet, in the same way in which he had been pressing upon me.

Q. You said Lord Thanet and Mr. Gunter Browne were within one of you?

A. Yes.

Q. Did you observe this immediately upon your extricating yourself?

A. The instant I extricated myself I turned round and saw a man pressing upon Lord Thanet, with this difference, that when I resisted him, I did not observe that he had any staff or stick, but when I saw him with Lord Thanet he was striking Lord Thanet with a stick; but what the stick was I cannot say. Lord Thanet stood with a short stick in both his hands, dodging with his stick, receiving the blows of the Bow street officer upon that stick.

Q. Lord Thanet was guarding himself, with his hands up, from Rivett's blows?

A. Exactly so.

Q. You do not know which officer it was?

A. I am not certain; I think it was Rivett.

Q. Before this happened, Rivett had had a struggle with him?

A. I had had a struggle with Rivett in the first

instance; and I should state that, during that struggle, Mr. O'Connor, who had endeavored to get away, had effected his escape from the gaoler; and the consequence was, that the people pressed forward from the opposite end of the bench to prevent Mr. O'Connor from effecting his escape; by which means every person who sat in that narrow seat was placed, if I may say so, between two fires; for the Bow street officers were pressing up from one side, and the crowd were pressing up from the other side.

Q. You say, as soon as you got from Rivett, you saw him instantly engaged in this way with Lord Thanet?

A. Yes.

Q. Could Rivett, in the interval between the struggle with you and the struggle you instantly saw him have with Lord Thanet, have got over to the counsels' table, and had a contest with a man who had a stick, and taken that stick from him?

A. Impossible;—I think so, at least. The interval was no longer than that which elapsed from my getting from the seat to the division, and from thence to the table.

Q. Which you did as expeditiously as possible?

A. Certainly; for I felt myself in danger.

Q. When you say impossible, I need not ask you whether you saw the thing happen?

A. Certainly not.

Q. Had you your gown and wig on ?

A. I had. Very shortly after I got upon the table, a man took up one of the swords, and drew it, and flourished it about over the heads of the people ; very shortly afterwards I saw this sword coming in a direction immediately to my own head ; I avoided the blow by springing off the table into the passage leading into the street.

Q. Did you at any time see Lord Thanet strike this officer, let him be whom he may.

A. I never saw Lord Thanet in any situation but acting upon the defensive.

Q. If Lord Thanet had struck the officer, do you think you must have seen it ?

A. Certainly ; during the time I had my eyes upon him.

Q. I think you told me you saw the officer first pressing by Lord Thanet, and then striking him ?

A. Yes.

Q. And if he had struck the officer, you must have seen him ?

A. Certainly ; at that time.

Q. Do you remember Lord Romney coming down from the bench ?

A. Perfectly well.

Q. Do you recollect, upon Lord Romney's saying the prisoner was discharged, or acquitted, any person making an observation to him ?

A. I remember there was an altercation between

Lord Romney and myself, in consequence of his saying that the prisoners were not acquitted.

Q. There was a misapprehension between the words acquitted and discharged?

A. I apprehend so.

Q. However, you were the person that had the conversation with him?

A. Yes.

Cross-examined by MR. ATTORNEY-GENERAL.

Q. You insisted that they were acquitted, and Lord Romney insisted that they were not acquitted?

A. Exactly so.

A Juror. I wish to ask whether you left the court during the riot?

A. No, I did not; I jumped off the table in consequence of a blow that I saw coming at my head, and I shortly after returned to the table again.

Q. Did you observe Lord Thanet leave the solicitors' box.

A. No, I did not.

Q. Do you know whether he did, or not, leave the solicitors' box?

A. I cannot say, for the riot lasted a very short time after I had left the table.

Lord Kenyon. Was the blow aimed at your head?

A. By no means; it appeared to me that all the blows struck by that sword were struck by a man that did not know what he was about.

Q. Were there any wounds?

A. I heard there were, but I do not know of any.

MR. BAINBRIDGE *sworn.* — *Examined by MR. BEST.*

Q. You are a student of the law?

A. I am.

Q. Were you in court during the trials at Maidstone?

A. I was.

Q. In what part of the court did you sit at the time of the riot?

A. When the jury returned, I left my place at the table, and went to the place where the solicitors of the defendants sat, to speak to Mr. Fergusson?

Q. Did you observe Mr. Fergusson during this time?

A. Mr. Fergusson sat directly before me.

Q. Did you observe Lord Thanet?

A. Lord Thanet sat on my right hand, close to me.

Q. So that you had a complete opportunity of observing them?

A. I had a complete opportunity till the fray began.

Q. Do you recollect the Bow street officers coming in?

A. I remember observing the Bow street officers standing on the right hand side of the dock.

Q. Do you remember seeing those Bow street officers at the time the jury pronounced their verdict?

A. I did.

Q. What did you observe them doing at this time?

A. I observed two standing with their eyes fixed upon Mr. O'Connor, as the impression struck me.

Q. Do you recollect them after the sentence was pronounced?

A. Yes, I do.

Q. What did you see them do at that time?

A. I observed one whom I had, from observation upon the trial, known to be Rivett, put his knee upon the bench that came over into the solicitors seat, and get over, and press directly forward.

Q. You say he pressed forward; in what direction?

A. He pressed directly on to the bench where the solicitors for the defendants had sat and the counsel for the defendants had sat.

Q. Where was Lord Thanet at this time?

A. My Lord Thanet was on the right hand of me, and in the place where the solicitor for Mr. O'Connor had sat, I believe, the most part of the day.

Q. Where was Mr. Fergusson then?

A. Directly before me, in his place.

Q. Was Mr. Fergusson at that time in the solicitors' place, or the place appropriated for the counsel?

A. Mr. Fergusson was in his own place, and the place which he had kept the whole day.

Q. Did you see the Bow street officers attempt to pass Lord Thanet?

A. I saw the Bow street officers attempt to pass Lord Thanet; and Lord Thanet, upon being pressed upon, moved upwards, as if to prevent being overpowered or crushed, and got upon his legs.

Q. Did Lord Thanet do anything to obstruct this officer?

A. To my opinion, nothing in the world.

Q. I think you say, on the contrary, he moved up?

A. He endeavored to get upon his legs; for the pressure of the people upon him was such, that, if he had not got up, he must have been totally knocked under the bench.

Q. At this time, did you see whether Lord Thanet struck this Bow street officer or not?

A. I never observed Lord Thanet strike the Bow street officer, or anybody else.

Q. From the situation in which you were at this time, if he had struck him, do you think you must have seen him?

A. Certainly I must

Q. If Lord Thanet, at this time, had been taking an active part in the riot, must you have seen that also?

A. I must have observed that, too.

Q. Did Lord Thanet do any thing to aid the escape of Mr. O'Connor, or add to the tumult which then prevailed in court?

A. Nothing in the world, that I saw.

Q. Did you observe Mr. Fergusson at this time?

A. I did.

Q. Now, I will ask you if Mr. Fergusson struck anybody?

A. I never saw Mr. Fergusson strike anybody; and, if he had struck anybody, I think I must have seen it.

Q. Did it appear to you that Mr. Fergusson encouraged Mr. O'Connor, or at all favored him in his escape?

A. Not the least; quite the contrary.

Q. Did you observe whether Mr. Fergusson had any stick?

A. I observed no stick whatever.

Q. If Mr. Fergusson had, at this time, been

brandishing a stick, do you think you must have seen it?

A. I must certainly have seen it, from the situation I was in.

Q. During this time did Mr. Fergusson continue in the same situation in which he was?

A. He continued in his seat till he was pressed upon, and the whole was a scene of confusion.

Q. Did it then appear to you that Mr. Fergusson only left his seat in consequence of the pressure upon him?

A. That was the only cause, as it struck me.

Q. Do you recollect seeing Rivett engaged with Lord Thanet?

A. I do; he appeared to me to be striking him, and trying to beat him down; in short, he was in the act of offence, with his hand uplifted, as it appeared to me.

Q. Do you recollect Mr. Fergusson saying or doing any thing at that time?

A. I remember Mr. Fergusson asking him to desist, and asking him if he knew who he was striking.

Q. Did he give any answer to that?

A. He, I think, made use of words to this effect: "I neither know nor care." Upon which Mr. Fergusson said, "That is Lord Thanet, I insist upon your not striking him."

Q. Do you recollect whether Rivett had a con-

test with Mr. Fergusson before he got to Lord Thanet?

A. Not to my observation; I had seen none

Q. From the situation in which Mr. Fergusson was, could Rivett have got a stick out of Mr. Fergusson's hand?

A. I think, if he had had a stick in his hand, he might; I observed no stick in his hand.

Q. Could he have struck him, and wrested the stick out of his hand, without your seeing it?

A. I think not.

Q. You were there during the whole of this tumult?

A. I was in court during the whole of the trial.

Q. Was Mr. Fergusson any part of that time in the place allotted for the solicitors?

A. Never.

Q. Was he ever nearer to Mr. O'Connor than the place for the counsel?

A. Never; I was between them.

Q. Where did he go when he quitted that place?

A. Towards the judges, and away from the tumult.

Q. During the whole of this time, did Mr. Fergusson at all appear to encourage the tumult?

A. Quite the contrary, I think.

Cross-examined by MR. LAW.

Q. You have said that Mr. Fergusson, so far from encouraging this tumult, acted quite the contrary?

A. Yes.

Q. Am I to understand you, that he endeavored to dissuade them from riot?

A. I heard him say to Mr. O'Connor, "Be quiet, and keep your place, nothing can hurt you."

Q. Was that after the acquittal?

A. It was after the verdict of acquittal had been given, and before the sentence was passed upon O'Coigly.

Q. But after the sentence was pronounced, did you observe Mr. Fergusson doing anything that was quite the contrary?

A. He seemed to say, "Be quiet!" and, from Mr. Fergusson desiring him to keep his place, and having complained to the court of a person that wished to make a tumult, he appeared to me to be a person who wished to keep everything quiet and in order.

Q. You have told us that, during the whole day, Mr. Fergusson kept the same place?

A. As to the same place, I believe he might have moved to the right; he might have been, perhaps, to the right of Mr. Plumer in the morning; but what I mean is, that he never moved out of the place where the counsel sat.

Q. Then he must have been under your own observation the whole of the day?

A. Yes.

Q. Did he never appear to be upon the table in the course of that day?

A. While the jury were retired, he went across the table, and, I believe, went to speak to somebody near the witnesses' box; but at that time people were conversing and walking about, but there was no idea of a riot then.

Q. Will you say, after the verdict was brought in, he was never upon the table?

A. He was never upon the table that I know of, till he was pressed upon by the Bow street officers.

Q. Did you, during the day, see a stick in his hand, or that he had not had a stick?

A. I will swear that I did not see a stick in his hand.

Q. And you had him so much under your observation that you must have seen it?

A. As much as a person could do, sitting in a court of justice; it was quite ridiculous to suppose he had a stick in his hand.

Q. Were you a witness, or concerned in that trial?

A. No; I went from mere curiosity.

Q. You did not go with Mr. Fergusson?

A. No.

Q. And will you swear that he never had a stick in his hand?

A. I will swear that I did not see a stick in his hand; and I think that I must have seen it if he had.

Q. If you had him constantly in view you must?

A. It cannot be supposed that I had my eyes upon him for fourteen hours.

Q. Will you venture to swear that during the riot he had no stick?

A. I will.

A Juror. Did Lord Thanet leave the court during the riot?

A. Lord Thanet moved as Mr. Fergusson did — upon being pressed upon, he got up upon the bench; and when he moved up, Rivett was above him, and trying to strike him; and Mr. Fergusson then said, “Who are you striking, sir?”

A Juror. Did you see Lord Thanet, during any part of the period, near the wicket-gate that leads to the narrow street?

A. I saw Lord Thanet, I think, during the whole riot; and I think, instead of being there, he went, when he did move, quite the contrary way, and not at all towards the gate.

Mr. Justice Lawrence. From Mr. Fergusson complaining of a tumult, it seemed as if he wished to keep everything in order; who was the person that he complained of?

A. Rivett.

Q. That was before the sentence was passed?

A. Yes.

Q. How far was Rivett from Mr. Fergusson at that time?

A. I think he must have been about three yards.

Q. At that time was he not making use of this motion (describing it), and saying, "Keep back! Where are you going?"

A. Yes; and I think Mr. Justice Buller then said, "What is the matter?" Mr. Fergusson then said, "Here is a person making a noise, and will force himself into court." Mr. Justice Buller then said, "What do you mean, sir?" He then said, "My lord, I have a warrant against Mr. O'Connor." He then told him to keep back.

MR. WARREN *sworn.*—*Examined by MR.*
MACKINTOSH.

Q. I believe you was present at the trials for high treason at Maidstone?

A. I was.

Q. Were you present the second day of those trials?

A. I was.

Q. Where did you sit during the evening of the second day?

A. Just by the witness-box, opposite to the jury.

Q. After the sentence was pronounced upon O'Coigly, tell us what you observed of the confusion that arose in the court?

A. After the sentence of death was pronounced upon O'Coigly, the first part of the affray that I recollect was this: Mr. O'Connor endeavored to get out of the dock; he got almost out of the dock, on the left side; the gaoler, who was on the other side of the dock, reached across the dock, and caught him by the coat; he detained him for a very short space of time in that situation; the coat tore, or slipped through his hands.

Q. At that time, when the gaoler had hold of Mr. O'Connor's coat, did anybody reach or step backwards between them.

A. Nobody.

Q. Then Mr. Fergusson did not?

A. Certainly he did not. Mr. O'Connor got away, either from the coat being torn, or slipping through the gaoler's hands; he got down upon the ground; he soon mixed with the crowd, and I lost sight of him. As soon as he endeavored at first to get away, two persons, who had before appeared to be officers from Bow street, with several others, rushed forward to apprehend him. In their endeavor to apprehend him, the first person upon whom they appeared to rush with any great vio-

lence was Mr. George Smith, who was sitting at the end of the seat of the solicitors for the prisoners; he was forced from thence, and came to the place where I was sitting. The next person that I observed forced from his seat, was Mr. Dallas, one of the counsel for the prisoners; he came likewise and sat near me. The officers still rushed on towards the end of the counsels' seat, and of the solicitors' seat. At the farther end of the counsels' seat, or near the end of it, Mr. Fergusson was sitting, to the best of my recollection.

Q. Had he a stick in his hand?

A. No stick that I saw.

Q. Had you your eye upon him; and if he had, must you have seen him?

A. He is an acquaintance of mine, and he was in his professional dress; and if he had, I think I could not have mistaken it. Lord Thanet was sitting upon the solicitors' bench, almost immediately behind Mr. Fergusson. By this time the confusion had become general, and a number of people had got upon the table, from all parts of the court.

Q. If Mr. Fergusson had brandished a stick, or presented it to Rivett, must you have seen it?

A. I certainly must.

Q. I need not ask you if you did see it?

A. I did not see it. Mr. Fergusson had risen up, and Lord Thanet had risen up.

Q. Supposing it possible that a stick had been in Mr. Fergusson's hands, and it had escaped your eye, do you think it possible, from time and place, that Rivett could have wrenched it out of his hands before he attacked Lord Thanet?

A. I do not think it possible he could have a stick of any sort.

Q. Was Lord Thanet nearer to Rivett than Mr. Fergusson?

A. I think he was rather; one of the officers, but I do not know which, I do not know their persons, pressed very rudely, as it appeared to me, upon Mr. Fergusson; I believe that Mr. Fergusson might shake his shoulder when he felt a man's hand upon it; that is all the resistance that I saw made on the part of Mr. Fergusson?

Q. What did you see pass between these officers and Lord Thanet?

A. The first thing I observed particularly of Lord Thanet was, that he was lying almost down upon his back upon the table, with a small stick or cane, which he held in both hands over his head or face, in this manner; one of the officers was striking him with a stick, and Lord Thanet endeavored, with very little success, to defend himself by the use of this stick, which he held in both his hands.

Q. Now, before that period of which you last

spoke, did you observe Lord Thanet give a blow, or any provocation, to this officer?

A. I never saw him give a blow; I never saw him give any provocation; I never saw him in any other way than I have mentioned, till he left his seat. How he left his seat I cannot tell; they had risen up upon their seats; when they were pressed upon, they rose towards the left hand side of the prisoner, as the prisoner faced the judges.

Q. Did they go out of sight?

A. No.

Q. Did they go off that table?

A. They were not upon that table; Mr. Fergusson was upon the table afterwards, but not on the table at any time that I have yet spoken to — Lord Thanet was then lying upon the table. I am not able to say how Lord Thanet got from that situation; I do not know that I took particular notice of what passed after, with respect to Lord Thanet; Mr. O'Connor was brought into court, and then the riot ceased.

Q. Did you take any particular notice of Mr. Fergusson between the last time you have been speaking of, and the time of Mr. O'Connor being brought into court?

A. No; I do not recollect anything more.

Q. I need not ask you if you saw Mr. Fergusson brandish a sword?

A. No.

Q. Did you see Mr. Fergusson, after the sentence of death was passed, go back to his old place?

A. I did not.

Q. Were your eyes fixed upon that part of the court?

A. They were most particularly; I was placed in a situation in which I could very well see.

Q. So that it was impossible for Mr. Fergusson to have gone backwards from his seat without having struck your eye?

A. I think it was impossible.

Q. Did you see Mr. Fergusson upon the table, before Lord Thanet was beaten by Rivett?

A. I did not.

Mr. Justice Lawrence. In what part of the court were you?

A. Under the witness-box; I rose from thence and got upon the table, as other people did.

Mr. Mackintosh. Did you see Lord Thanet or Mr. Fergusson take any part in anything that had the appearance of disturbance or riot?

A. No, I did not. I saw Lord Thanet defend himself; and I have stated, that I did not see Mr. Fergusson do any act at all, except shaking that man's hand off his shoulder.

Q. Do you remember Mr. Dallas quitting his place before he began to address the jury?

A. I do, perfectly.

Q. And Mr. Plummer also, I believe?

A. I do not.

Q. Do you recollect Mr. Fergusson leaving his own place, in consequence of that?

A. I am rather inclined to think it was so; but I cannot swear to that.

Q. I understand you to swear most positively that Mr. Fergusson never interposed between the gaoler and Mr. O'Connor?

A. I do most positively swear I do not think he did; and if he had, I think I must have seen it.

Cross-examined by MR. GARROW.

Q. The dock or bar, by which the Bow street officers were placed, could only occupy five or six persons?

A. No more.

Q. Only the gaoler and the prisoners?

A. It might be three yards long, perhaps.

Q. You stated that after the sentence of death had been passed, and Mr. O'Connor had been left upon the floor, the officer pressed forward to apprehend him;—what induced you to think these were officers rushing forwards for that purpose?

A. I took them to be the persons who had produced the warrant in court. When they had forced themselves up to the end of the solicitors' seat, Mr. Fergusson said, I think: "Here are two

men obtruding themselves between the prisoners and the jury." Mr. Justice Buller said, "What are you about? sit down!" and one of them produced a paper, saying either that it was a warrant to take up Mr. O'Connor, or a warrant upon a charge of high treason against Mr. O'Connor, or something to that effect; and therefore I supposed them to be Bow street officers, or officers of justice.

Q. I do not know whether you happened to be present in court when those two witnesses were examined as witnesses to prove the fact of apprehending Mr. O'Connor at Margate?

A. I should suppose I was in court, but I am not certain.

Q. But before the judgment of death was passed, it is perfectly in your recollection that one of those persons had hinted in court, that they had a warrant for the purpose of apprehending Mr. O'Connor?

A. That was after the jury had returned their verdict, and before that verdict was pronounced.

Q. Do you know Mr. O'Brien?

A. I saw him the other day for the first time in my life.

Q. You did not know him at Maidstone?

A. No; I did not.

MR. MAXWELL *sworn.*—*Examined by MR. ERSKINE.*

Q. Were you in court, at Maidstone, during any part of the trial of Mr. O'Connor and others?

A. I was, frequently.

Q. Did you hear Mr. Justice Buller pronounce sentence of death upon O'Coigly?

A. I did.

Q. In what part of the court were you at that time?

A. At that time I was immediately to the left of the witness-box, rather farther from the judge than the witness-box.

Q. Were you elevated above the court?

A. I was elevated above the table where the counsel sat.

Q. Did that elevation and position give you a view of that part of the court where the Bow street officers entered, and where the solicitors for the prisoner sat?

A. That gave me a distinct view of that part of the court.

Q. Do you remember when Mr. Justice Buller had finished pronouncing sentence upon Mr. O'Coigly—do you remember any persons rushing forwards, as if to seize Mr. O'Connor?

A. I remember some of the Bow street officers, among whom I knew Rivett and Fugion, rushed violently to that place where Mr. O'Connor was.

Q. At the time that those two persons, Rivett and Fugion, rushed forwards in the direction you have described, did you observe where Lord Thanet was?

A. I did; my Lord Thanet sat at that time in the solicitors' place.

Q. Did you observe where Mr. Fergusson was at the same time?

A. Mr. Fergusson sat in his own place, where he had been as counsel for some time, on the bench before the solicitors' bench.

Q. Which of them was nearer to that side of the court where the jury-box is, and where Mr. O'Connor was?

A. I think Lord Thanet was rather, perhaps, the nearest of the two; but there was very little difference.

Q. Did you see anything pass between Rivett, the officer, and Lord Thanet?

A. I did.

Q. Describe to my lord and the jury what you saw.

A. After Rivett had forcibly overturned and driven from their places those who stood between him and Mr. O'Connor, he got to Lord Thanet, who was one of the nearest. Lord Thanet, when he was pressed upon, got out of the place where he was, and went from the scene of tumult towards the table.

Q. Was that farther from the prisoners than he was before?

A. Considerably farther from the prisoners than when he was first pressed upon.

Q. When Lord Thanet retired in that manner out of the solicitors' box, over towards the counsel's table, did Rivett pursue his course on towards the prisoners in the line of the solicitors' box, or how else?

A. He followed Lord Thanet, and struck him repeatedly.

Q. Had Lord Thanet struck Rivett before he went over from the solicitors' seat towards the table?

A. Lord Thanet never struck Rivett before nor after that.

Q. Had you such a view of the situation in which Lord Thanet was placed, and what he did, as to swear merely to your opinion and belief, or do you swear it positively?

A. I had such a view, that I swear it positively; by that time, I had quitted the place where I was, and got nearer to Lord Thanet and the other persons who were struck.

Q. Were any other persons struck besides Lord Thanet?

A. I saw several blows given, but I cannot say to whom, by the Bow street officers and those who followed them.

Q. Do you know whether Rivett struck any person besides Lord Thanet?

A. I do not positively know whether he struck any person or not.

Q. But you swear positively that Lord Thanet did not strike Rivett at all?

A. He did not; but merely put himself in a posture of defence, lying back upon the table.

Q. Had Lord Thanet a stick?

A. He had a small stick, which he held up over his head to defend himself; he was leaning back upon the table, an attitude in which it would have been difficult to have acted offensively.

Q. Did you see Lord Thanet subsequent to the time that he was in that situation?

A. I did.

Q. You say that the officers, and particularly Rivett, rushed into the court, and, having passed one or two that were before Lord Thanet, attacked Lord Thanet; what length of time might elapse between Rivett first rushing in and the time he struck Lord Thanet?

A. A very short space of time indeed.

Q. Was it possible that before Rivett struck Lord Thanet he could have gone within the counsels' place, where you have described Mr. Ferguson to be, and have wrested a stick out of his hand before he came to Lord Thanet?

A. Rivett did not go to take a stick out of his

hand, for he had no stick in his hand; he did not go up to Mr. Fergusson, but immediately went up to Lord Thanet and struck him.

Q. If Rivett should have said here, that he never saw Lord Thanet till after he had taken a stick from Mr. Fergusson, from what you observed, is that true or false?

A. I should certainly say it was false, without any hesitation.

Q. During the time that you thus observed Lord Thanet in the attitude of defence, retreating from the scene of tumult, and pursued by Rivett, where was Mr. Fergusson?

A. He was in his place, and remained in his place till he was pressed upon, and then he got out of the scene of tumult upon the table.

Q. Did you see him while he was in the seat, and did you see him move from his seat to the table by the pressure that was upon him?

A. I did.

Q. If whilst Mr. Fergusson was in his seat, or if while he was pressed upon when he rose from his seat, if in either of these situations he had not only had a stick, but had brandished and flourished that stick, I ask, must you have seen it or not?

A. I must have seen it; he was so directly before me, that it is quite impossible but I should have seen it; I can swear that Mr. Fergusson had

nothing in his hand but a roll of paper in his right hand.

Q. And was in his professional dress?

A. He was.

Q. If Mr. Fergusson had done any one act to encourage the tumult that was undoubtedly then existing, or done any one act inconsistent with his duty as counsel, or committed any one act of indecency or turbulence, must you have seen it?

A. I must.

Q. Then let me ask you, upon your solemn oath, did he do any such thing?

A. He did not; on the contrary, he endeavored to keep quiet in the court, by admonishing the people in court to be quiet. Mr. Fergusson said particularly to Rivett, when he was striking Lord Thanet, "Do you know who you are striking? That is not a person likely to begin a riot."

Q. Did you see where Mr. Fergusson went to after he was on the table?

A. He got upon the table, and got farther from the scene of tumult; and I do not know whether he sat down upon the table or not; he went towards the crown lawyers.

Q. Did you see Sir Francis Burdett?

A. I did. He at first stood by me in the witness-box, and when the confusion began, he got nearer to the place of confusion at the same time that I did. I saw Mr. Fergusson remove Sir

Francis Burdett from the scene of confusion, and put him farther from it.

Q. And you saw him also place himself at a distance from it.

A. Yes.

Q. Did you afterwards see him go upon the table towards the judges?

A. I did; I saw him till all the violence was over.

Q. Then can you take upon you to swear positively that neither Mr. Fergusson nor Lord Thanet, during the tumult, went towards Mr. O'Connor?

A. They went in a directly opposite direction.

Q. Do you swear that from your own opinion and belief, or from certain knowledge?

A. I swear it positively from certain knowledge.

Cross-examined by MR. ADAM.

Q. You saw Rivett and Fugion pressing forward.

A. I did.

Q. Did you know them before?

A. I knew them from having seen them examined in court upon that trial.

Q. Only from that circumstance?

A. Only from that circumstance.

Q. During this affray you shifted your situation to another part of the court?

A. Yes; I got upon the table.

Q. And you say you saw Sir Francis Burdett shift his place?

A. He shifted his place at the same time.

Q. From what part of the court did he come?

A. From the witness-box; he stood on my right hand.

Q. To what part of the court did he go?

A. He also went on to the table.

Q. Do you mean that he remained upon the table?

A. I cannot say whether he remained upon the table, but he went there with me.

Q. Did he remain on the table any considerable time?

A. The tumult was over very soon after that.

Q. The counsel for the crown sat immediately under the witness-box?

A. They sat on the same side.

Q. Round the angle?

A. Yes.

Q. Therefore it was necessary, when you and Sir Francis Burdett shifted your places, that you should go over the heads of the counsel for the crown to get to the table?

A. Exactly so; we jumped from the neighborhood of the witness-box.

Q. Do you remember when Sir Francis Burdett jumped from the neighborhood of the witness-box

to the table, did he not jump immediately from the table into the crowd?

A. I cannot say whether he did or not; but I saw him standing upon the side of the table, or sitting upon the side of the table, till Mr. Fergusson removed him.

Q. But that was near the conclusion of the affray?

A. It was.

Q. What circumstance was it that brought you to Maidstone?

A. Merely to be present at the trials.

Mr. Erskine. You are a gentleman possessing an estate in Scotland?

A. Yes.

Q. And I believe married a daughter of Mr. Bouverie?

A. Yes.

Lord Kenyon. Did you see Mr. O'Connor go out of the dock?

A. Yes.

Q. How soon was he out of your sight?

A. I do not know that he was out of my sight.

Q. Do you know the situation of the wicket?

A. Yes.

Q. Where were Mr. Fergusson and Lord Thanet during the time that elapsed between his leaving the bar and being brought back again?

A. Upon the table.

Q. Did the crowd coming upon them prevent you from seeing them ?

A. No; I was so situated that I saw them both distinctly; I was a great deal higher than they.

SAMUEL WHITBREAD, ESQ., *sworn.*—*Examined by*
MR. GIBBS.

Q. You were present, I believe, at the time of this trial ?

A. I was in court the latter part of it, after I had been examined as a witness.

Q. In what part of the court were you ?

A. After having been examined as a witness, I retired out of the witness-box behind, and came into the court again.

Q. Whereabouts were you when the verdict was brought in ?

A. Considerably behind the witness-box.

Q. Had you from thence a perfect view of the court ?

A. Of the lower part of the court.

Q. Had you a perfect view of the dock in which the prisoners were, the solicitors' seat and the seat where the counsel sat ?

A. I had certainly a view of the whole of that part of the court.

Q. Between the verdict and the sentence we understand some Bow street people came in, and spoke of a warrant ?

A. There was some tumult, and that subsided upon Mr. Fergusson calling the attention of the court to the cause of it. He waved his hand and spoke to them; he then turned to the bench and said, "My lord," or some such word, just to draw the attention of the court; upon that, Rivett, whom I knew before, said he had a warrant against Mr. O'Connor, and he thought he was going to escape. Mr. Justice Buller then said, "Patience!" or some such word; and then sentence was pronounced.

Q. After sentence was pronounced, did you observe Mr. O'Connor?

A. I observed him put his foot upon the front part of the dock, and get out of the dock. Having carried my eye after him some time, my eye returned to the bar, and there I saw Rivett violently attacking Lord Thanet; he had a stick in his hand; I did not see him strike a single blow; I saw many blows struck at him, and he was endeavoring to ward them off.

Q. Did it appear to you that Lord Thanet made any attack upon Rivett to provoke this?

A. No; on the contrary, he was defending himself against a violent attack of Rivett's upon him.

Q. Where was Lord Thanet at the time that you observed this?

A. I think he was close to the table, leaning back upon the table in the act of defending him-

self, with his hands up, in which I think he had a stick.

Q. Did you see at this time where Mr. Fergusson was?

A. I did not observe Mr. Fergusson at that time: before the tumult had quite subsided I observed Mr. Fergusson upon the table, not far from the judges.

Q. Had you your eyes upon Lord Thanet from the time you saw Rivett striking him in this way?

A. No, I had not, because there was a great deal of tumult behind, and of persons trying to get out at the door behind the bench, and the bailiffs resisting their attempts, which engaged my attention some time.

Q. Did you see Mr. O'Brien during this time?

A. I do not recollect that I did.

Q. Did you know Mr. O'Brien well?

A. I knew him perfectly by sight.

Q. If he had been acting in this scene, must you have noticed it?

A. In a scene of confusion many things must have escaped the observation of every person; but I think it is more than probable that I must have seen such a person as Mr. O'Brien, if he had been active.

Cross-examined by MR. ATTORNEY-GENERAL.

Q. How long did you remain at Maidstone?

A. The next morning, I think, I passed you on the road to London.

Mr. Attorney-General. I beg your pardon, I did not recollect that circumstance.

Q. Previous to the officers approaching the place where Mr. O'Connor was, had you heard that there was to be a rescue?

A. I had not.

RICHARD BRINSLEY SHERIDAN, ESQ., *sworn.*—

Examined by MR. ERSKINE.

Q. You were subpoenaed as a witness to attend the trials at Maidstone?

A. I was.

Q. Were you in court at the time when the jury retired to consider of their verdict, and also when they returned with it?

A. I was.

Q. And during the remaining part of the time till the tumult ceased?

A. During the whole of that time.

Q. In what part of the court were you when the jury brought in their verdict?

A. Sitting with Sir Francis Burdett in the witness-box; that box was raised very considerably above the table, so that I had a direct view of everything passing in the court.

Q. Had you then an opportunity of perfectly observing the place where the solicitors sat, and the dock where the prisoners were, and the place where the counsel were?

A. A most perfect opportunity, without being in the least annoyed or mixed with the tumult.

Q. Do you remember the gaoler laying hold of Mr. O'Connor; perhaps you did not see that?

A. The first that I observed of the tumult was prior to the sentence being passed upon O'Coigly; I did not see Mr. O'Connor make an attempt to go, but I had observed to the high sheriff that I fancied he would come out, for that I had observed at the Old Bailey, that they had left the bar immediately upon the jury pronouncing them not guilty. The riot then commenced, and I observed some men pressing very violently towards the box where Mr. O'Connor was — my attention was taken up with that; — Mr. Fergusson then appealed to the court and said, "Here are two riotous fellows," or something of that sort, "disturbing the peace of the court." Rivett then said, "I have a warrant to apprehend Mr. O'Connor." Mr. Justice Buller desired him to be quiet, and then put on his cap to pass sentence, and everything subsided.

Q. After that did you observe the Bow street officers rushing in, in the way that we have heard?

A. The first thing I saw was Mr. O'Connor getting very nimbly over the front of the dock,

and going towards the narrow street, and these men rushing after him. Certainly the man who could have thrown himself most in the way of the men was Mr. O'Brien, if he had chosen to do it.

Q. Are you acquainted with Mr. O'Brien?

A. I know him intimately.

Q. Is he a strong man?

A. Certainly he is.

Q. If Mr. O'Brien had been desirous of opposing himself to the officers, and to prevent them from going after him, might he?

A. He was precisely in the best situation to have done it.

Q. Had you an opportunity of seeing whether he did or not?

A. He did not; and I am sure he was not there in the subsequent part of the tumult.

Q. Can you take upon yourself to swear positively that he gave no manner of assistance?

A. Positively.

Q. And Mr. O'Brien had an opportunity of affording the most essential means of escape to Mr. O'Connor if he had chosen?

A. I think the whole idea was folly and madness, and that no assistance could have effected it.

Q. But Mr. O'Brien did the contrary?

A. Yes; he retired behind the box, and I did not see him afterwards. I was very attentive to the whole of it, and was making my observations

with the high sheriff, who, more than once, endeavored to persuade me to leave the witness-box, and endeavor to quell it.

Q. Did you see Lord Thanet at the time the officers rushed in?

A. I did not see him till the time he was struck; I saw him struck.

Q. Did he return the blow, or show any thing like activity, or a disposition to activity?

A. I saw him when he was first pressed upon. It was not a tumult merely near the dock, but the whole court was a scene of general tumult, and a scene of panic, and certainly with the least reason; there was a tumult behind us in the witness-box; there was a general calling out not to open the doors, some calling out for soldiers and constables, and there did appear to me a sincere panic and apprehension that there was a planned rescue. I perceived plainly there was no such thing, and endeavored all I could to persuade them so. The officers were beating down everybody, forcing their way and pressing upon everybody. Lord Thanet had a stick in his hand, with which he was parrying the blows, which came amazingly quick; it seemed to me an incredible thing that he was not extremely hurt, and he never returned a blow, but retired from the scene of tumult farther into the court away from the prisoners; Sir Francis Burdett was with me; and by this time Mr. O'Connor

was stopped, and they were bringing him back again; he had attempted to go towards the gate with the wicket, and I observed everybody to put up their hands and stop him; he might as well have attempted to get through a stone wall; if there had been six or eight persons there who were so disposed, he might, perhaps, have got as far as the door, but he could not possibly have got farther. I then saw a person upon the table, brandishing Mr. O'Connor's scimitar over the heads of the people; he seemed very much alarmed, and not knowing what he was about; I am sure it must have gone very near several persons' heads; it seemed quite miraculous that he did not do some mischief; in short, it was difficult to discover whether he meant to keep the peace or break the peace. Sir Francis Burdett saw that they had collared Mr. O'Connor, was frightened, and said with great agitation to me, that they would kill O'Connor; and he jumped over the railing. He could not go from where we were without jumping upon the table, and he ran forward; Mr. Maxwell followed him, or went at the same time; they both went towards Mr. O'Connor; I then saw very distinctly Mr. Fergusson stop Sir Francis Burdett, and use some action, saying, "You had better keep away, and not come into the tumult at all:" I could not hear what he said, but it appeared so to me.

Q. Did you see Mr. Fergusson from the beginning of this scene, when sentence of death was pronouncing?

A. I saw him plainly in his place, after the judge had passed sentence of death.

Q. Did you see the crowd press upon Mr. Fergusson, and did you see him get upon the table?

A. I did not see him get upon the table; but as the crowd pressed upon him, he was forced upon the table.

Q. Did Rivett attack Lord Thanet before he could possibly have attacked Mr. Fergusson, and wrenched a stick out of his hand?

A. He came immediately upon Lord Thanet, when the tumult began.

Q. He could have had no conflict with Mr. Fergusson till after the conflict with Lord Thanet?

A. Certainly not.

Q. Do you know Mr. Fergusson?

A. Perfectly.

Q. If he had been upon the table flourishing and waving a stick, in the manner that has been described, in his bar dress, must you not have seen it?

A. Yes; it must have been a most remarkable thing, indeed, for a counsel in his bar dress to have a stick flourishing in his hand; he had a roll of paper in his hand.

Q. Does that enable you to swear that Mr. Fergusson was not in that situation?

A. Certainly.

Q. Do you think if he had taken such a part in the riot, in the presence of the judges, that you must have observed it?

A. I must have observed it.

Q. Did Lord Thanet or Mr. Fergusson ever go nearer to Mr. O'Connor after he had jumped out of the dock, or did not Lord Thanet and Mr. Fergusson retire farther from the scene of tumult?

A. They certainly did. Upon some farther conversation, I got over this place myself, and went down, and the first thing I did was to speak to the man with the sword. I told him I thought he with his sword made half the riot himself; and he put it away. I passed Lord Thanet, who, so far from staying in the riot, went towards the judges, as if he was going to make a complaint. I then went into the riot, and endeavored to persuade them that there was no such thing as an attempt to rescue O'Connor; and a man that had hold of him, who knew me, said there was; and added, "These fellows are come down from London; they are Corresponding Society people, and they are come down on purpose to rescue him." One person in particular called to them not to believe me; and I laid hold of him, and said he should go with me to Mr. Justice Buller; I insisted upon his name

and address, and he would not give it me. I then turned to the judges, and he ran away. So far was Lord Thanet from going towards the wicket, that I passed him going up to the judges; and Mr. Fergusson remained with me, desiring them not to treat Mr. O'Connor so, and generally endeavoring to quiet them; the only moment they were out of my eye was while I was getting over this place.

Cross-examined by MR. LAW.

Q. You saw Lord Thanet distinctly from the time he was struck?

A. I do not mean with the stick; I corrected that by saying, from the time he was assaulted and driven from the seat he was in at first.

Q. Can you take upon you to say whether he gave a blow before he was struck?

A. I said from the time he was pressed upon or assaulted.

Q. You say you saw Lord Thanet going towards the judges, as if he was going to complain; did you hear him make any complaint to the judges?

A. I did not hear him, certainly.

Q. I will ask you, whether you do or do not believe that Lord Thanet and Mr. Fergusson meant to favor O'Connor's escape, upon your oath?

A. Am I to give an answer to a question which amounts merely to opinion?

Q. I ask, as an inference from their conduct, as it fell under your observation, whether you think Lord Thanet or Mr. Fergusson, or either of them, meant to favor Mr. O'Connor's escape, upon your solemn oath?

A. Upon my solemn oath, I saw them do nothing that could be at all auxiliary to an escape.

Q. That is not an answer to my question.

A. I do not wish to be understood to blink any question; and if I had been standing there, and been asked whether I should have pushed or stood aside, I should have had no objection to answer that question.

Q. My question is, whether, from what you saw of the conduct of Lord Thanet and Mr. Fergusson, they did not mean to favor the escape of O'Connor, upon your solemn oath?

A. The learned counsel need not remind me that I am upon my oath. I know as well as the learned counsel does, that I am upon my oath; and I will say that I saw nothing that could be auxiliary to that escape.

Q. After what has passed, I am warranted in reminding the honorable gentleman that he is upon his oath. My question is, whether, from the conduct of Lord Thanet or Mr. Fergusson, or either of them, as it fell under your observation, you believe that either of them meant to favor O'Connor's escape?

A. I desire to know how far I am obliged to answer that question. I certainly will answer it in this way, that from what they did, being a mere observer of what passed, I should not think myself justified in saying that either of them did. Am I to say whether I think they would have been glad if he had escaped? That is what you are pressing me for.

Q. No man can misunderstand me; I ask whether, from the conduct of Lord Thanet or Mr. Fergusson, or either of them, as it fell under your observation, you believe upon your oath that they meant to favor the escape of O'Connor?

A. I repeat it again, that from what either of them did, I should have had no right to conclude that they were persons assisting the escape of O'Connor.

Q. I ask you again, whether you believe, from the conduct of Lord Thanet or Mr. Fergusson, or either of them, upon your oath, that they did not mean to favor the escape of O'Connor?

A. I have answered it already.

Lord Kenyon. If you do not answer it, to be sure we must draw the natural inference.

Mr. Sheridan. I have no doubt that they wished he might escape; but from anything I saw them do, I have no right to conclude that they did.

Mr. Law. I will have an answer;—I ask you again, whether, from their conduct, as it fell under

your observation, you do not believe they meant to favor the escape of O'Connor?

A. If the learned gentleman thinks he can entrap me, he will find himself mistaken.

Mr. Erskine. It is hardly a legal question.

Lord Kenyon. I think it is not an illegal question.

Mr. Law. I will repeat the question, whether, from their conduct, as it fell under your observation, you do not believe they meant to favor the escape of O'Connor?

A. My belief is that they wished him to escape; but from anything I saw of their conduct upon that occasion, I am not justified in saying so.

Q. I will ask you whether it was not previously intended that he should escape if possible?

A. Certainly the contrary.

Q. Nor had you any intimation that it was intended to be attempted?

A. Certainly the contrary. There was a loose rumor of another warrant, and that it was meant that he should be arrested again, which was afterwards contradicted. Then the question was mooted, whether the writ could be issued before he was dismissed from custody? Certainly there was no idea of a rescue. There was no friend of Mr. O'Connor's, I believe, but saw with regret any attempt on his part to leave the court.

Q. From whom did you learn that there was such a warrant ?

A. It was a general rumor.

Q. From whom had you heard this rumor ?

A. I believe from Sir Francis Burdett ; but I cannot tell.

Q. At what time was that ?

A. About four or five o'clock.

Q. Have you ever said that the defendants were very blameable — Lord Thanet, Mr. Fergusson or any of them ?

A. Certainly not.

Q. At no time since ?

A. Certainly never.

Mr. Erskine. You were asked by Mr. Law, whether you believed that the defendants wished, or meant, to favor the escape of Mr. O'Connor ; I ask you, after what you have sworn, whether you believe these gentlemen did any act to rescue Mr. O'Connor ?

A. Certainly not ; and I have stated upon my oath, that every man in the narrow gateway endeavored to stop him ; I remarked it particularly ; because, there being a common feeling amongst Englishmen, and he being acquitted, I thought they might form a plan to let him escape.

Q. You have stated that you saw no one act done or committed by any one of the defendants

indicative of an intention to aid O'Connor's escape?

A. Certainly.

Q. I ask you then, whether you believe they did take any part in rescuing Mr. O'Connor?

A. Certainly not.

[End of the Evidence for the Defendants.]

MR. ATTORNEY-GENERAL.

GENTLEMEN OF THE JURY: At this late hour of the day, I do not think that the duty which I owe the public can require me to detain you any considerable time in reply to the observations of my learned friend.

Gentlemen, my learned friend has addressed you with great ability, and unquestionably with great but guarded zeal on behalf of his clients; this his duty called upon him to do; for certainly the best exertion of his abilities was due to them. On the other hand, your attention is now to be occupied by a person who must address you upon principles which forbid him to have any zeal upon the subject.

The attorney-general of the country, as it appears to me, has a public duty to execute, in reference to which he ought to conceive, that he has properly executed that duty, if he has brought a fit and proper accusation before a jury, and has proceeded to the length of honestly and fairly examining the several circumstances given in evidence in support of, and in answer to, that accusation; always recollecting that the jury will finally hear, from that wisdom which cannot mislead

them, the true inferences that will arise upon facts which have been given in evidence on both sides. They will hear it from a person unquestionably less prejudiced than I can be (though I have endeavored as much as possible to guard myself against any prejudice), because it belongs to the mind of man to be influenced by circumstances, which one's duty as a prosecutor obliges him to look at a little anxiously.

Gentlemen, having been charged with the duty of laying this important case before you, I have not the least doubt but you will discharge the duty which is now imposed upon you with a full and conscientious regard to justice; and I dismiss here all the observations my learned friend has made upon the high rank and situation of Lord Thanet, upon the respectable situation in his profession of Mr. Fergusson, and of the situation of Mr. O'Brien; because it is quite enough for me, according to my sense of duty, to say this, that, as a jury sworn to make a true deliverance, you are not to convict any of them, whatever rank or situation belongs to them, unless you are conscientiously satisfied that they are guilty. You will deliver the same verdict that you would between the king and defendants of any other description.

Gentlemen, what has fallen from the last witness obliges me to take the character of the proceeding which gives rise to the cause, from his friend,

who, when he was addressing you, in the course of this afternoon, said, and truly said, that such a proceeding in a court of justice, which the last witness represented as an idle panic, most loudly called for the interposition of the law. That witness may have represented those transactions, as I have no doubt he did, as it seemed just to him to represent them. Certainly I was not personally present; but I was within hearing, and I can say that that gentleman is a man of stronger nerves than any other man in this country, if the representation he has given of this scene is a true one. By a true one, I do not mean that it is not one that the gentleman believes to be true, but the evidence of Mr. Justice Heath gives it a character which I believe every man in the county of Kent who was present would give it, namely, that it was a proceeding utterly inconsistent with the safe administration of justice; that it was attended with a degree of indecency and tumult that was never witnessed in a court of justice before, and I trust will never be witnessed in a court of justice again.

Gentlemen, having no anxiety about the fate of this or any other cause, except so far as it is fit for me to have an anxiety founded upon the public interests, whenever this cause comes to its conclusion, I think the noble peer, the defendant, who holds a situation high in this country, ought to

join with all his fellow-subjects in thankfully acknowledging, that the attorney-general, having reasonable accusing evidence to lay before a jury (whether it is satisfactory to their minds is another consideration), should show to the country that transactions of this sort shall not be carried on without being brought under the notice of a court of justice.

Gentlemen, accusations of all sorts are tried in this country with great propriety; but if you acquit a man of treason, is a man to start up and say, that the public are to be indignant, because another warrant has been issued against him? I remember in this very court, in the last cause that was tried here at bar, my lord exerted himself with great vigor, by taking immediate notice of such an insult as was then offered to the court. My learned friend says, why did not the judges, who were present, do their part, by taking notice of the fact at the moment? I will give the answer to that: The judges of the country are but men. Although they are placed in high, judicial, and honorable situations, yet they are placed in situations in which they are to see that their conduct is not only the best that they can pursue, but, when they proceed to acts of punishment, that their conduct is perfectly adapted to the subject with which they are dealing. If the five judges upon the bench had seen this as an idle panic, per-

haps those judges would have treated it as an idle panic. But how does Mr. Justice Heath, upon whom my learned friend relies so much—how does he mention the scene that was passing? He says that he never witnessed such a scene before. My learned friend says, “I might have called another learned judge as a witness; but when I call witnesses who are above all suspicion, men as honorable as any men in this country, to state to you all that that learned judge would have had to state to you, I think I shall have acted neither unfitly for the public or the defendants.” But with reference to that conversation (upon which I must farther observe by-and-by) that has been stated by Mr. Solicitor-General and by Mr. Abbott to have passed between Mr. Justice Lawrence and Lord Thanet, I should be glad to know what foundation there is for the reasoning of my learned friend, that Mr. Justice Lawrence ought to have committed or attached Lord Thanet. I think I am entitled, under the circumstances of the evidence in this case, to represent him as perfectly ignorant of those causes which occasioned so much confusion in the court.

Mr. Erskine. I never meant to say so.

Mr. Attorney-General. My learned friend certainly did not state it exactly in these words; but he will, I am sure, excuse me for putting him in mind of the expression he made use of, and I shall

now endeavor to repeat the very words he used: "Mr. Justice Lawrence, instead of asking Lord Thanet to do him a kindness, should have attached him."

My learned friend will not, I am sure, interrupt me again; for when I take notice of anything that is said in so able a defence, I do not mean to lay it down that counsel are to be responsible for every expression that hastily falls from them; but expressions may have an application which I feel it my duty to remove; and I only wish to set right one of the most respectable, and, indeed, all those respectable characters who presided on the bench on that day. I shall, therefore, say no more upon that subject.

Gentlemen, the question is now before you; and I am happy to have the testimony of my learned friend, that, taking this proceeding as a mere proceeding of accusation, it is a highly proper one; and when I state that, I mean to state merely the satisfaction I feel in the concurrence of his opinion with my own judgment.

Gentlemen, having said thus much, give me leave to concur most fully in all that my learned friend says, with respect to the beneficial effects of a lenient administration of the law, but not so lenient as to make the law ineffectual.

Gentlemen, it was hinted to me, before my learned friend began his address to you, that, with

respect to two of the defendants, it might be consistent with the interests of justice that the trial should end there ; and why did I consent to that ? There was evidence to go to the jury as against Mr. Thompson, I admit, not evidence to convict him, not evidence, perhaps, with respect to his identity, but with respect to Mr. Gunter Browne, there was much more considerable evidence to go to you, subject still to the question of identity. But I know this, that the great interests of public justice are better satisfied by not pressing for conviction, even when you can, perhaps, obtain it, if you think there are doubts whether or not you ought to obtain it.

Gentlemen, another circumstance is, that I thought it due particularly to one defendant, with respect to whom I think this the clearest case, Mr. O'Brien. I wished to give him the benefit of Mr. Browne's and Mr. Thompson's evidence, if he thought proper to call them, with respect to some material circumstances.

Gentlemen, attend to what I am now stating. When Mr. Sheridan is asked whether, from the circumstances that fell within his observation, he believes that Lord Thanet and Mr. Fergusson meant to favor the escape of Mr. O'Connor, he says: "From the facts that fell within my observation, I answer it in the negative." So I say in this case, it is not merely (for the rules of evi-

dence permit one so to state), it is not merely from what does appear, that a jury is to judge, but also from that which does not appear. Now see what is the case on the part of the crown, with respect to Mr. O'Brien. In the first place, you have the evidence of a most honorable person, Mr. Serjeant Shepherd. My learned friend says, that you, gentlemen of the jury, are not to attend to general questions, such as, "Did a person appear to do so and so?" but you are to have the facts as the grounds upon which that appearance is inferred. That proposition is to be carried this length, that, as far as the nature of the transaction will admit, instead of giving the impression of your mind, as collected from the circumstances, you shall give the circumstances which have created that impression. I am sure his lordship will remember, that in the case of Kyd Wake, who was tried for that detestable riot with respect to the king's person, a question was put, "Did he appear to be active in the riot?" and the jury concluded that which they did conclude, upon that circumstance; recollecting that the nature of the transaction was such, that they must be content with such an answer. And indeed my learned friends themselves put the question to Mr. Smith and Mr. Warren — respectable witnesses, unquestionably — "Did they (the defendants) appear to encourage the riots?" But permit me to say, it did not rest

so with Mr. Serjeant Shepherd, for he told you, he wished to give the evidence upon which he formed his opinion. Gentlemen you will next observe, that giving Lord Thanet all the benefit that might arise upon this statute of 14 George III (upon which I shall say a word by-and-by), can Mr. O'Brien allege anything of that kind? Rivett has told you distinctly, and so it turns out from Mr. Sheridan's evidence, that there was a rumor of a warrant, which created so much indignation; Mr. Sheridan admits that there was that rumor, but Mr. O'Brien did not choose to rely upon that, he wanted to know how the truth of the rumor was; and accordingly, in the presence of Mr. Thompson, a member of parliament, he did make inquiries of Rivett, and coming to him, as Rivett relates, he, Mr. O'Brien, proposed a bet; he says that Mr. O'Brien then went back again to where Mr. O'Connor was; there was some conversation between them, and when the verdict is brought in Mr. O'Connor attempts to escape. Now, I ask you, as honest jurymen, if this is not true, why is it not contradicted; and if it is true, is it possible to acquit Mr. O'Brien?

Now, with respect to the case of my Lord Thanet, and the case of Mr. Fergusson, gentlemen, I declare to you most solemnly, that I respect the high situation of the one, as I respect the professional situation of the other; but in this case, gentlemen,

the question, and the only question, is, "Did they make a riot?" I desire that the question may be put upon its true merits. My learned friend says, "It is a most extraordinary thing, that in such a case as this, stating that there was a general riot, we have not been able to fix the name of any other rioter than these five defendants." Has my learned friend denied that this was a general riot? Has my learned friend denied that it was a very serious riot, affecting a great variety of persons? Now, though he is bound to admit the existence of a riot, my learned friend is just as much at a loss to find the names of the other persons as I am; and why? Because the circumstances attending the transaction are such, that if you will not attend to the conduct of the few individuals who have been pointed out, it is not in the nature of things that you should bring any man to punishment in such a case. Then, my learned friend says, "What motive could Lord Thanet have?" Mr. O'Connor, who has been represented as an extremely judicious man upon some occasions, was certainly so foolish as to think such a project as this might have been practicable; but it is in fact imputed to these persons, that they meant to turn Mr. O'Connor loose, in order to subvert the constitution of this country (for so my learned friend states it); and to do all this mischief, which, he is pleased to represent to you, must have been the consequence

of Mr. O'Connor's escape. He seems to have forgot, that all I meant to impute (for aught I know, there may be men in the country who know more of it than I do), that all I am charging upon these defendants is, that they meant to rescue Mr. O'Connor from any further demand that justice might have upon him. Whether Mr. O'Connor was immediately to take himself out of this country into a situation in which he could do no mischief, or whether he was to remain in this country to do mischief, is a question with which I have no business. I have no necessity either to impute to the noble lord or the learned gentleman any particular knowledge or intention upon that subject. Then, my learned friend says, "Do you think persons in the situation in which these two defendants are (I mean Lord Thanet and Mr. Fergusson) would further such a purpose as this?" Why, gentlemen, if I am to give an answer to this question, I am bound (for I would not have brought this prosecution if I had not thought it a fit question for the decision of a jury) to speak out plainly upon the subject, and I say, fairly, that if any man had asked me before this trial was over, whether Mr. Fergusson and Lord Thanet, having heard the particulars of the evidence, would not have removed to situations where they could not have been implicated in this charge, I should have thought the imprudence of doing otherwise so great,

that it could not have happened. Mr. Fergusson knew all the particulars of the evidence, and so did Lord Thanet, because he heard the evidence summed up, and I cannot help feeling here some degree of surprise, when the question was put to me, upon what was probable or what was improbable, after hearing the evidence upon that trial.

Gentlemen, that there was a riot is clear beyond all doubt. Now let us see how it is occasioned:—Mr. O'Brien knew of this rumor at the time the application was made to the court, by Rivett and Fugion. He was aware that Mr. O'Connor was not discharged. He learned, and Lord Thanet learned, and I believe nobody doubts the fact, that everybody learned this circumstance, not only that he was not then to be discharged (with reference to which I am happy to find that my learned friend and I agree upon the point of law), not only that he was not then to be discharged, but it was publicly taught to everybody in court what was the reason and what the cause for which his discharge was to be withheld from him. And here, without commenting upon that measure, which is supposed to have raised so much indignation, I take leave to say, most confidently, that it does not belong to any person, of any rank or situation whatever, to interpose in the execution of a warrant, upon his notion whether the magistrate has acted right or wrong in granting it. It is granted, and must be

acted upon. If the magistrate has acted improperly, the law of the country is not so feeble, as not to be able to reach the misconduct of the magistrate. If every man is to judge in such a case, surely the country is in a situation most embarrassing, most difficult, and most awful; for, remember, if men will take the law into their own hands where there are verdicts of acquittal, they may where there are verdicts of guilty. Well, then, the parties have distinctly learned that there was a warrant, and having been authoritatively told that this warrant having issued, Mr. O'Connor was not to be discharged, I shall call your attention to what I take to be the few circumstances that must decide this case. Gentlemen, if you please, I will put it so, not to give Rivett any credit, if, upon any other part of the case, he is contradicted; but I should do that with great reluctance till I am satisfied that he is not worthy of credit. But I will say this, that you may reject the whole of the evidence of Rivett with respect to Lord Thanet and Mr. Fergusson out of the case, and say whether, out of the negative evidence given on the other side, you can get rid of the facts sworn and deposed to by persons whose characters are out of the reach of the breath of suspicion.

In the first place, with respect to the evidence of somebody, whose name I forget, upon the trial at Maidstone, a witness was asked, whether Mr.

O'Connor wished to favor an invasion of Ireland, he said, "Quite the contrary." So here, a witness when he was asked whether Mr. Fergusson appeared to be favorable to this rescue, he said, "Quite the contrary." This was a much stronger negation than that of the Maidstone witness; but upon being asked what was the circumstance from which he inferred that Mr. Fergusson's demeanor was quite the contrary, he says, he complained of the Bow street officers coming forward. Now, Mr. Fergusson must have known them to be Bow street officers, because he was present when they were examined; and being a gentleman who wears the robe that I wear, he could not but understand that they were not to be disturbed, because they were officers. The great proof of his demeanor then being quite the contrary is, that he makes a complaint of these persons standing between the prisoner and the jury; whether the fact was so or not, I do not know. Mr. Garrow says, he apprehends, from the state of the court, it could not be at that period of the trial. Then what is the answer to that? I will put it in plain, intelligible words: If Mr. Fergusson had been misled by reading the statute 14 Geo. III, which says "that gaolers shall not detain prisoners for their fees, but that they shall be discharged;" if he had not found out the difference between a verdict of not guilty and that judgment which authorizes a man

to go without paying his fees; if it had not occurred to him that, when this discharge is given, detainers may be lodged in civil suits, or for other felonies, I hope in God we are not so revolutionized as to contend that a man shall not be charged with two treasons, as well as with two felonies. Upon Mr. Fergusson being told that there was this warrant (the warrant being publicly exhibited), it is not for me to examine what it became Mr. Fergusson to do, because of that he is himself the judge; but I say, if, after he was apprised of that, he took any part, not by positive, actual conduct, but by encouragement, capable of being exhibited to the understandings, and impressed upon the minds of the jury, as such (however differently persons may tell their stories with reference to certain facts in which they do not agree, however strongly individuals may speak with respect to facts that they did not observe, however negatively they may say they did not see this or that, and they do not think it possible, and so forth); if there are positive circumstances sworn, which amount to acts of encouragement, which a jury can feel and act upon, they must look to that positive evidence; and if in this case, gentlemen, you find that positive evidence existing, however unwilling you may be to find such a verdict, you are sworn, upon your oaths, to give a verdict according to law; and you must

find a verdict, therefore, in support of this information.

Gentlemen, I will not go into a detail of the evidence which you will hear from his lordship; but with reference to Lord Thanet and Mr. Fergusson, I cannot part with the evidence given by Mr. Solicitor-General, but I shall first make this observation upon the evidence of Mr. Serjeant Shepherd, to whose credit, honor, and accuracy we all do justice, that where that evidence presses upon Mr. O'Brien, he says, "Mr. O'Brien having turned round and looked up at Mr. O'Connor, it made an impression upon his mind;" and also that, "as far as he observed, Lord Thanet was defending himself." He judges, therefore, of appearances, both with reference to Lord Thanet and with reference to Mr. O'Brien; and what he says of the appearances with reference to Mr. O'Brien certainly throws a great degree of credit upon his accuracy when he speaks with respect to Lord Thanet. The same credit is due, I take it, to Mr. Solicitor-General; and you will have the goodness also to attend to the evidence of Mr. Hussey; for if you believe what he states, that when the man was pressing forward to execute the warrant, Lord Thanet inclined towards the bar, and put his person in the way; if that fact is proved to your satisfaction, Lord Thanet is guilty upon this record. And if other facts are proved against Lord

Thanet, and similar facts are proved against Mr. Fergusson, you must decide upon all the evidence, and not from what other men did not see or observe; you are not to decide upon the eloquence of my learned friend, but upon the oaths of persons who depose positively to facts. Then my learned friend made an observation upon the evidence of Mr. Solicitor-General, with reference to whom, as a moral character, I say nothing, because he is above all praise that I can bestow upon him; I have no doubt that it was an extremely painful thing for him to give his evidence this day; but his evidence is extremely material, because he speaks to the circumstance of Mr. Fergusson crying out that Mr. O'Connor was discharged. He tells you the pains he took with his brother in the profession to tell him that he was not discharged; and he speaks of the warrant being produced, and, therefore, there was a public notice, that there were further demands of justice upon Mr. O'Connor. He states upon his oath, that he did most distinctly and cautiously attend to the conduct of Mr. Fergusson and Mr. O'Connor; and then he says this: "I fixed my eye upon O'Connor, and I observed Mr. Fergusson, and other persons whom I did not know, encouraging Mr. O'Connor to go over the bar." Encouraging is a general word undoubtedly; but it is a word which expresses the impression which facts falling under

his eye had made upon his mind ; and when he was asked what he meant by encouragement, he describes it to have been by his actions. But he not only gives his evidence in this way as to that particular fact, but he gives it also with a caution which entitles it to the same degree of credit which Mr. Serjeant Shepherd's evidence derives from its accuracy ; for when he comes to speak of a circumstance with reference to which he is not certain, he tells you, " Mr O'Connor jumped over the bar, and Mr. Fergusson turned himself round and appeared to me to follow Mr. O'Connor ; but I cannot say that he did." He qualifies that apprehension in his mind, by telling you that he may be mistaken, and then he gives you the reason why that apprehension was or was not justly founded ; and he finally states in his evidence a circumstance respecting Lord Thanet which I think will deserve a great deal of your consideration.

Gentlemen, a learned friend of mine behind me, Mr. Abbott, has told you that he heard Lord Thanet express himself in the manner which he has described, and I trust I shall not be told that the manner of an expression is not evidence of the import of the mind of the man from whose mouth the expression flows. He states to you the circumstance of Mr. Sheridan's conversation with the learned judge, and he was struck with the extreme

difference of the manner in which Mr. Sheridan expressed himself to that learned judge, from the manner in which Lord Thanet expressed himself. Am I to be surprised that Lord Thanet could be engaged in such a project, if I can believe that he, a peer of the realm, made use of such language to a judge of the country, that "he thought it fair that he (the prisoner) should have a run for it?" — a run for what? why, a run to elude justice! — a run to get out of the hands of a court of justice — a run to prevent being brought to justice; and this is the sentiment of a peer of the realm! — "he thought it fair to have a run for it." And, considering it to be fair, he acted upon that apprehension, as far as he had the power of acting. This is a circumstance requiring your anxious consideration. Whether this noble peer struck Rivett first, which I do not find Rivett to say that he did, is of no importance. These men have a certain temper and degree of spirit about them, which might, perhaps, induce them to thrash a peer more than anybody else, if they felt themselves ill-treated; but Mr. Rivett may take this advice of me — I hope, in future, he will not use such treatment if he can avoid it. But what presses upon my mind is, that if Lord Thanet, treated in the manner he was by Rivett, had no connection with this project of rescue; if he had not, either from the circumstances that fell under Mr. Sheridan's

observation, or from other circumstances, manifested that he meant there should be a rescue, is it the conduct of a man of considerable situation — is it the conduct of a man of common sense, instead of making a serious complaint upon the subject, instead of stating as he naturally would have done, “this project of rescuing a man from the hands of justice is that species of project, which, in my situation, it must be known, I must feel to be inconsistent with propriety, duty, and honor to have embarked in?” On the contrary, he is perfectly neutral; no complaint is made upon the subject. It appears to me, that if I had been struck two or three times by that officer, the manner in which I would have acted upon that occasion would certainly not have been to have immediately stated that “it was fair the prisoner should have a run for it,” but to have made some application to have those punished of whose conduct I had a right to complain.

Now, this evidence of the solicitor-general is also confirmed by Mr. Abbott, and by Mr. Serjeant Shepherd, who states to you what Lord Thanet did; and he states it to you, that he was not holding up his hands for the purpose of rescuing himself from the pressure of the mob, but was holding up his hands to defend himself against those persons who were pursuing Mr. O'Connor; and he gives his evidence in such a way, that you can

have no doubt as to the personal conduct of Lord Thanet. Then when you have heard this evidence on the part of the prosecution, I mean the evidence that goes to positive facts, it will be for you to decide whether they are not all reconcilable with the negative evidence given on the part of the defendants. I have not gone into the whole of the evidence, because I feel that my lord has a painful and an anxious duty to perform, and whatever your verdict may be, I am confident and sure that this prosecution will have been very beneficial to the country. I hope and trust that I shall never see such another; but whenever I see an occasion which calls for it, whilst I hold the situation which I have the honor to fill, I will not fail to institute it.

Gentlemen having said thus much, and having endeavored to discharge myself of my duty, you will be good enough to say what is due as between the public and the defendants.

LORD KENYON'S CHARGE TO THE JURY.

GENTLEMEN OF THE JURY: If, consistently with my own sense of my duty, or consistently with the public expectations — consistently with the expectations of the bar on the one side and the other, and with your expectations, I could relieve myself from going through, in detail, all the particulars of this case, after considerable bodily and mental exertions already, I should certainly save myself from a great deal of trouble. But I will not shrink from the discharge of my duty, though it may be attended with labor and pain.

This is a case of the first importance. I do not remember any case that ever happened in my time, in the shape of a misdemeanor, of more importance to the public; and it has been conducted in the most solemn manner. It is brought before the whole court, assisted by a jury of gentlemen from the county of Kent, taken from the highest orders of the people, and whose educations and stations in the world qualify them to decide causes of such importance. It is usual, in causes of this kind, where there is a number of defendants, and where the evidence does not extend sufficiently to

them all, to submit to the jury, before the end of the cause, whether those upon whom the evidence does not attach, ought not to be acquitted, in order that the other defendants may avail themselves of their evidence, if they shall think proper. It was with a view to that very state of the question that I took the liberty to submit to you, that two of the defendants ought to be acquitted before the other defendants produced their evidence; and I did it with a view that the others might, if they thought fit, appeal to their evidence, to show, on the rest of the case, what the real state and justice of it was.

In dispensing the criminal justice of the country, we have sometimes an arduous task to perform. It is not a pleasant thing, most certainly, to condemn any one of our fellow-creatures to punishment; but those who are entrusted with the administration of the criminal justice of a country, must summon up their fortitude, and render justice to the public as well as justice tempered with mercy to the individual. I have the authority of Lord Hale, one of the greatest and best men that ever lived, for saying, that juries are not to overlook the evidence, that they are not to forget the truth, and to give way to false mercy; but without looking to the right hand or the left, they are to weigh the evidence on both sides, and then, according to the best of their judgment and under-

standing, to do justice to the public, as well as to the defendants.

Before I proceed to sum up the evidence, I shall only make one other observation, which was made by Mr. Whitbread in giving his evidence, the tone of whose voice I never heard before. Having gone through his evidence, he gave us this legacy, as a clue to direct us in the decision of this case: "that, in a scene of so much confusion, there are many things which must escape the observation of every individual." Having stated thus much to you, I will now proceed to sum up the evidence; and when I have done that, I shall make some few observations on it. [His lordship here summed up the evidence on both sides, and then proceeded as follows:]

I now proceed to make a few observations of my own. There is no occasion to give you my authority, or the authority of those who hear me, upon this point. There is no doubt that the prisoner was not entitled to be discharged; for, when a verdict of acquittal is entered, a judge may order a party to be detained, and compel him to answer other charges that may have been brought against him. On this point there is no difference of opinion; it is not even disputed at the bar; the case is clear; and there is no doubt upon earth that a prisoner, in many cases, though he may be acquitted, as in the case of an appeal of murder,

cannot be discharged though he be acquitted of the murder.

I have stated the evidence on the one side and the other; and although there is strong contradictory evidence, yet I think there is a great deal of evidence which goes in support of the charge. There were some observations made by the learned counsel for the defendants, which, perhaps, were not altogether warranted. Counsel are frequently induced, and they are justified in taking the most favorable view of their client's case; and it is not unfair to pass over any piece of evidence they find difficult to deal with, provided they cite, fairly and correctly, those parts of the evidence they comment upon. The learned counsel for the defendants, in his remarks on the evidence, totally forgot the evidence of Mr. Parker. If his evidence is to be believed, and I know no reason why it is not, he certainly gave important evidence in support of this charge, that the defendants evidently appeared to be attempting to stop the officers, and assisting the escape of Mr. O'Connor. The learned counsel for the defendants did not choose to deal with this evidence, though he conducted the cause with all possible discretion, abilities, and eloquence. As I have before observed, there is apparently a great deal of contradiction in this cause. I must again state the observation of Mr. Whitbread, and which was obvious if he had not made it, that, "in such

a scene of tumult and confusion, many things must pass which escape the observation of every individual." But there is no doubt of one thing — one thing is clear — if Rivett had not the scuffle which he swears he had with Mr. Fergusson and my Lord Thanet, and if he did not wrench a stick out of Mr. Fergusson's hand, he is palpably forsworn, and grossly perjured. For him there is no excuse in the world. What motive he might have, I do not know; he has no interest; and in weighing the testimony of witnesses, I can not consider the rank of a person, nor his station. It is clear, if he has not told the truth, he is guilty of perjury. In this scene of tumult, men's minds must have been greatly distracted. It is for you to say what degree of credit you will give to all the witnesses. These are the observations I have to make; and I should retire from my duty if I had not made them to you.

It has been said, in the course of this cause, that it was against all probability. Was it probable that an attempt was meditated to effect the escape of a person such as Mr. O'Connor in a court of justice, in a large town, and in a public part of that town? Was it probable that this man himself should attempt that, which, Mr. Sheridan said, appeared to him to be an act of madness? Is it most likely that he should have attempted this with hopes of success, with or without assistance?

This is matter for your consideration. It is very likely you have forestalled all the observations I have made; but still it was not less my duty to make them. The whole of this case is for your decision. It is a case in which the interests of the individuals, as well as of the public, are highly embarked.

At eleven o'clock at night the jury retired; and after being out over an hour, they returned with the following verdict:

| | |
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| THE EARL OF THANET, ROBERT FERGUSSON, ESQ., | } <i>Guilty.</i> |
| DENNIS O'BRIEN, ESQ., | |

Not Guilty.

On Friday, the 3rd of May, Mr. Attorney-General prayed the judgment of the court.

Lord Kenyon (to Mr. Erskine). Have you anything to say for the two persons convicted?

Mr. Erskine. The cause having been tried at bar, your lordships are already apprised of every thing I could have to offer. I believe Lord Thanet and Mr. Fergusson wish to say something to your lordships.

LORD THANET.

My lords, before the sentence is pronounced, I beg leave to address a few words to the court; not for the purpose of impeaching the veracity of the witnesses for the prosecution, or of arraigning the propriety of the verdict; on those points I shall say nothing. What I mean to submit to the court is, a short, distinct narrative of the facts as far as I was concerned in them.

I attended the trial at Maidstone in consequence of a subpoena. When I had given my evidence, I retired from the court, without any intention of returning until I was particularly requested to be present at the defence made by Mr. Dallas, the prisoner's counsel. At that time I had never heard of the existence of a warrant against Mr. O'Connor, nor of any design to secure his person if he should be acquitted. The place I sat in was that which Mr. Dallas had quitted when he removed to one more convenient for addressing the jury. While sitting there, I heard, for the first time, from Mr. Plummer, that he had reason to believe there was a warrant to detain Mr. O'Connor. When the verdict was pronounced, I went into the solicitors' box to shake hands with

Mr. O'Connor, which I did without even speaking to him. Many others pressed forwards, apparently for the same purpose. Upon a call for silence and order from the bench, or from one of the officers of the court, I immediately sat down on the seat under that part of the dock where Mr. O'Connor stood. At that period some confusion arose from several persons attempting to get towards him, one of whom said he had a warrant to apprehend him, for which he appeared to me to be reprimanded by Mr. Justice Buller, in some few words which I did not distinctly hear. The moment the judge had passed sentence on O'Coigly, a most violent pushing began from the farther end of the seat on which I sat. From the situation I was in, I did not perceive that Mr. O'Connor was attempting to escape. He was a good deal above me, and I sat with my back to him. I continued sitting in my place until several persons on the same seat were struck, among whom, I imagine Mr. Gunter Browne was one, from the complaint he afterwards made of ill-treatment, but whom I never saw before or since to my knowledge. I then began to feel the danger I was in; but the tumult increased about me so rapidly, that I was unable to get over the railing before me. I stood up, however, and used all the efforts in my power to go towards the judges, as to a place of safety; but at that moment, by some

person or other, I was borne down on the table, where a man (I afterwards found was Rivett) struck at me several times with a stick, which I warded off, as well as I was able, with a small walking-stick. Rivett, as he struck me, charged me with striking him first, which I denied, and called out to him as loud as I could that I had not struck him.

I have now detailed, as clearly as I am able, my situation and conduct, during the disturbance; and I do most solemnly declare on my word of honor, which I have been always taught to consider equally sacred with the obligation of an oath, and am ready to confirm by my oath if I am permitted to do so, that I never did any one act but what was strictly in defence of my person. It is not at all unlikely, that, in such a scene of confusion, I might have pushed others who pressed against me, to save myself from being thrown down; but I most solemnly deny that I lifted my hand or stick offensively, or used any kind of violence to any person. I declare upon my word of honor, that I knew nothing of the existence of a warrant to detain Mr. O'Connor until I heard it from Mr. Plummer; and that, even then, it never entered into my mind that it was to be served upon him in the court, until some person called out that he had a warrant. I declare upon my word of honor, that the obstruction which the officers

met with on the seat where I sat, was perfectly unintentional on my part, and was solely owing to the situation I was in; that I did nothing offensively, but, on the contrary, was violently attacked and assaulted; and that I retired from the scene of confusion as soon as I was able. And, finally, I do most solemnly declare upon my word of honor, that I did not concert with any person the rescue of Mr. O'Connor, by violence, or by any other means whatsoever; that I had no idea of doing it alone; and that I was not privy to any consultation of other persons, either for the purpose of rescuing Mr. O'Connor out of the custody of the court, or of preventing the execution of the warrant.

As I hold myself bound to state fairly, not only what I did, but what I said, as far as it is in my power to recollect what passed, with the agitation of such a tumult on my mind, I acknowledge that some words may have escaped me which I ought not to have spoken. I am charged with having said, that I thought "it fair that he should have a run for it." I will not dispute about the exact words. I confess they were extremely inconsiderate. Some allowance, however, I think, may be made for the instant feelings of a man so ill-treated as I had been.

My lords, I am not sanguine enough to expect any immediate advantage from these declarations.

I know they will not avail me against the verdict ; but the truth of them will not be suspected by those who know me ; and hereafter, when all the circumstances of this transaction shall be coolly reconsidered, I am confident they will have weight with the public.

My lord, I have an affidavit prepared, if your lordship will accept of it.

Lord Kenyon. To the same effect ?

Lord Thanet. Yes, my lord.

Lord Kenyon. We can not here receive an affidavit against the verdict of a jury ; but I believe it may be ordered to be filed. I believe there is no objection to that.

Mr. Erskine. I believe there is not, my lord.

It was ordered to be filed.

A F F I D A V I T .

The defendant, the earl of Thanet, maketh oath and saith, that he attended at the special commission held at Maidstone, in the county of Kent, for the trial of Arthur O'Connor, Esq., and others, for high treason, in consequence of a subpoena served upon him, to give evidence on behalf of the said Arthur O'Connor, and which was the sole cause of his attending at the said trial ; and he saith,

that after he had given his evidence, he retired from the court, and had no intention of returning thereto, till he was particularly pressed to be present to hear the defence of the counsel for the prisoners, merely as a matter of attention and countenance to the said Arthur O'Connor, who was his acquaintance; and he further saith, that at that time he had no knowledge whatever of the existence of any warrant against the said Arthur O'Connor, nor of any intention of securing his person if he should be acquitted on the indictment. And this deponent further saith, that he sat in the place which Mr. Dallas had left when he went to a more convenient one for the purpose of addressing the jury; and that, whilst he was sitting there, he for the first time heard from Mr. Plummer, that he had reason to believe there was a warrant to detain Mr. O'Connor. And this deponent further saith, that on the verdict's being pronounced, he stepped into the solicitors' seat to shake hands with Mr. O'Connor, which he did without even speaking to him, and without any other motive than that of congratulating him as a friend on his acquittal, at which time many others were coming to the same place where this deponent was; that upon a call for order and silence from the bench, or from one of the officers of the court, he immediately sat down on the seat under that part of the dock where Mr. O'Connor stood, and at that period a slight con-

fusion arose from several persons attempting to get towards Mr. O'Connor, one of whom said he had a warrant to apprehend him, for which he appeared to be reprimanded by the Honorable Sir Francis Buller, in a few words which this deponent did not distinctly hear. And this deponent further saith, that at the moment the judge had passed sentence of death on O'Coigly, the most violent pushing began on the seat on which he sat (this deponent not observing that Mr. O'Connor was attempting to get away), and he continued sitting in his place till several persons on the same seat were struck, and amongst whom he believes was Mr. Gunter Browne, whom he never before, nor since, had seen to his knowledge; and from that moment this deponent began to feel the danger he was in, the tumult about him increasing so rapidly that he was unable to get over the railing before him; that, however, he stood up, and used all the efforts in his power to go towards the judges as a place of safety, but he was instantly pushed down on the table, when a man, whom he has since found was John Rivett, struck at him several times with a stick, which blows he warded off as well as he was able with a small walking-stick, the said Rivett charging this deponent, as he struck at him, with striking him first, which this deponent denied, calling out at the same time as loud as he could that he had not struck him. And this

deponent further saith, that he never did, during the said disturbance, any one act but what was strictly in the defence of his person, though he admits that he might have pushed several persons that pushed against him, to prevent his being thrown down, but that he did not lift hand or stick, or use any violence whatsoever, to the said John Rivett, or to any other person. And this deponent positively saith, that he was not privy to, or acquainted with the existence of any warrant to detain the said Arthur O'Connor, until he heard of such warrant from Mr. Plummer, as before set forth; and that it never entered into his mind that it was to be served upon him in court, until the person before mentioned called out that he had a warrant. And this deponent further saith, that the obstruction the officer met with on the seat on which this deponent sat, was perfectly unintentional on his part, and solely owing to the unfortunate situation in which he had accidentally placed himself, as the seat was so narrow that it was with great difficulty any person could pass that way. And this deponent further saith, that he did nothing with intention to offend the court, or any other person; but, on the contrary, he was violently attacked and assaulted, and that he retired from the scene of confusion as soon as he was able. And this deponent further saith, that he doth most solemnly upon his oath declare, that he

had not consulted, concerted, or advised with any other person or persons whomsoever, to favor the escape of the said Arthur O'Connor, either by violence, or any other means whatsoever; and that he had no idea of doing it alone; and that he was not privy to the consultation or agreement of any other person or persons, either for the purpose of rescuing the said Arthur O'Connor out of the custody he was then in, or preventing the execution of any other warrant upon him.

THANET.

Sworn in Court, the 3d of May, 1799.

By the Court.

MR. FERGUSON.

My lords, I have nothing to offer to your lordships, either with respect to the charge itself, the manner in which it was proven, or with respect to my own peculiar situation upon which your lordships' judgment, whatever it may be, must make a deep and lasting impression. I can not so soon have forgotten the manner in which these topics were urged in your lordships' presence, in the course of that defence which was made for me by the most zealous of friends, the most able and eloquent of men.

I gladly, however, avail myself of the privilege of addressing your lordships, because it enables me thus publicly to say, that, whatever be the political opinions which some may choose to ascribe to me — whatever be those which I do in fact entertain — opinions which I believe to be strictly consonant to the best principles of the law and constitution of my country; but whatever be those opinions, whatever, even, my lord, be the appearances against me, standing where I now do, still I can with truth and sincerity declare, that there is no man who hears me, who is more deeply impressed with a sense of the respect which is due

to the administration of justice, of the strict obedience which should be paid to the proceedings of its courts, and of the honor and reverence which should ever attend the persons of its judges. Weak, indeed must be the opinions, or wicked must be the views, of that man who wishes to degrade the authority of the law ; for without it, not one of the blessings of society can have security for one moment. My lords, I can safely acquit myself of this part of the charge, because my reason, as well as my conscience, tells me it is the last offence I am capable of committing.

I appear, however, before your lordships, to receive that judgment which your duty calls upon you to pronounce, in consequence of the verdict of a jury. That verdict I do not mean to arraign ; it was given on contradictory evidence, the value and balance of which it was the peculiar province of the jury to weigh and to decide.

But if your lordships' long practice in the courts of justice shall have shown you the fallibility of human testimony, if it shall have shown you, still more, the fallibility of human judgment founded upon human testimony, I hope I may meet with your indulgence, if I here make a solemn declaration of that, with respect to which I alone can not be mistaken.

My lords, upon the occasion which has given rise to these proceedings, I was of counsel for one

of the prisoners who was tried at Maidstone. I was seated in the place which was allotted for the counsel for the prisoners; and, being wholly engaged in the discharge of my duty, I solemnly aver, that whatever might be the previous consultations or conversations of others, with respect to the practicability or impracticability of a rescue, I never had even heard the rumor that a fresh warrant was in existence until after the jury had retired to consider of their verdict. It was not till after they had so retired, and very shortly before they returned into court, that I learned that circumstance. I was in my place, seated where I had been during the greater part of the day, at the moment the verdict was delivered; and I do most solemnly aver, that from that moment until I was pressed upon by the crowd, I did not stir from that seat. I do further declare, that when I was forced upon the table, I used no violence to any one; that the whole of my endeavors went to allay the ferment, and to remove those of my friends whom I loved and regarded, from the scene of disturbance, in order that they might not be implicated in any charge that might afterwards be brought against those who were the authors of it.

I can therefore say, in the presence of this court, and under the eyes of my countrymen, that

which, in the name of my God, I have already sworn — that I am innocent of this charge.

Here Mr. Fergusson put in an affidavit, which he had previously sworn.

AFFIDAVIT.

Robert Fergusson, of Lincoln's Inn, Esquire, one of the said defendants, maketh oath and saith, that he was of counsel assigned by the court for John Allen, one of the prisoners indicted with Arthur O'Connor, for high treason, at a special session held at Maidstone, in May last, and that as such counsel he was employed in court during the whole of the day, in the night of which the riot charged in the information took place; he saith, that he neither knew, or had heard, of any fresh warrant against the said Arthur O'Connor until the jury had gone to consider of their verdict, and very shortly before they returned to deliver it. And this deponent further saith, that he was in the place allotted to him as counsel when the jury returned into court with their verdict; and that about that time, he complained to the court of the interruption which was given to its proceedings by the violence of a person who was pressing forward between the prisoners and the court; and that

upon the complaint of this deponent, Mr. Justice Buller ordered the said person to be quiet. And this deponent further saith, that from the time when the jury returned with their verdict until after sentence was pronounced, and the disturbance began, the said deponent remained in his place as counsel, and did not leave it until compelled by the violence of those who pressed upon him from the bench behind. And this deponent further saith, that when forced upon the table, he used no violence to any one, but used every means in his power to allay the ferment, and save the Earl of Thanet from the blows of John Rivett, without offering any violence to the said John Rivett. And this deponent further saith, that he had not, during any part of the disturbance, any stick, sword, or other weapon in his hand, and that he did not use, or offer, violence to any one. And this deponent further saith, that he neither attempted to rescue the said Arthur O'Connor, nor did he at any time agree with others to attempt such rescue, nor was he in any way aiding or assisting, nor did he at any time agree with others to aid or assist, the said Arthur O'Connor, in any attempt to be made by him to escape.

ROBERT FERGUSSON.

Sworn in Court, the 3rd day of May, 1799.

By the Court.

On the 1st of June, the court gave judgment:

The Earl of Thanet was fined a thousand pounds, and imprisoned for a year in the Tower.

Mr. Fergusson was fined a hundred pounds, and imprisoned for the same period in the King's Bench prison.

Proceedings on the trial of WILLIAM STONE, for High Treason, at the Bar of His Majesty's Court of King's Bench, Westminster, on the 28th and 29th of January; 36 George III, A.D. 1796.

The trial of William Stone for high treason affords a striking illustration of the feverish and excited state of public sentiment in England during the "Reign of Terror" and for some years subsequent to the French Revolution of 1793. Mr. Stone, a prosperous and worthy merchant of London, was indicted for the crime of high treason in compassing the death of the king, and in adhering to the king's enemies. He was charged with having conspired with one Jackson, who, it was claimed, was in the employ of the French government, for the purpose of determining whether an invasion of England and Ireland by France were practicable. He was also charged with communicating intelligence to the government of France for the purpose of aiding and abetting in the prosecution of the proposed invasion. Much of the proof relied upon by the crown in support of these charges consisted of letters received by the prisoner from his brother, resident in Paris, and there engaged in extending the same manufacturing business with which the prisoner was occupied in London. These letters, on ordinary business topics relating to the affairs of the two brothers, were, as was claimed by the crown, mere covers for communicating weightier information. The most harmless expressions were distorted, and it was sought to attach a treasonable construction to passages of the most inoffensive business character.

The cause came on for trial before Chief Justice Kenyon, in the King's Bench, January 28th, 1796. Considerable difficulty was experienced in empanneling a jury, none being sworn who were not freeholders of the county, or who were

over seventy years of age. The trial lasted two entire days, and resulted in the acquittal of the prisoner. The indictment is inserted for the purpose of giving the reader an exact idea of the charges; after which follows the speech of Mr. Erskine, and the summing up of Lord Kenyon.

INDICTMENT.

MIDDLESEX TO WIT:

The jurors for our lord the king, upon their oath, present, that on the first day of March, in the thirty-fourth year of the reign of our sovereign lord, George the Third, by the grace of God, of Great Britain, France and Ireland king, Defender of the Faith, etc., and long before, and continually from thence hitherto, an open and public war was, and yet is, prosecuted and carried on between our said lord the king and the persons exercising the powers of government in France (that is to say), at Old Ford, in the county of Middlesex, and that William Stone, late of Old Ford aforesaid, in the county of Middlesex aforesaid, merchant, a subject of our said lord the king, of his kingdom of Great Britain, well knowing the premises, but not regarding the duty of his allegiance, nor having the fear of God in his heart, and being moved and seduced by the instigation of the devil as a false traitor against our said lord the king, and wholly withdrawing the allegiance, fidelity and obedience which every true and faithful subject of our said lord the king of right ought to bear towards our said lord the king, and contriving and

with all his strength intending the peace and common tranquility of this kingdom to disquiet, molest and disturb, 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 heretofore, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, maliciously and traitorously, with force and arms, did compass, imagine and intend 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 to fulfill, perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid; with force and arms, maliciously and traitorously did conspire, consult, consent and agree with one John Hurford Stone, one William Jackson, and divers other false traitors whose names are to the said jurors unknown, to aid and assist, and to seduce, persuade and procure divers subjects of our said

lord the king to aid and assist the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in an hostile invasion of the dominions of our said lord the king, and in the prosecution of the said war against our said lord the king.

And further to fulfill, perfect, and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did conspire, consult, consent, and agree with the said John Hurford Stone, William Jackson, and divers other false traitors, whose names are to the said jurors unknown, to raise, levy, and make insurrection, rebellion, and war within this kingdom against our said lord the king, and to invite, persuade, and procure the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, to invade this kingdom with ships and armed men, and to prosecute and carry on the said war against our said lord the king within this kingdom.

And further to fulfill, perfect, and bring to effect

his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, well knowing the said William Jackson traitorously to have come to and landed in this kingdom for the traitorous purpose of procuring and obtaining intelligence and information whether the subjects of our said lord the king were or were not well affected to our said lord the king and his government, and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in case an hostile invasion of this kingdom should be made by them for the prosecution of the said war against our said lord the king, and of sending and of causing to be sent such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king, did with force and arms maliciously and traitorously receive

and treat with the said William Jackson, at Old Ford aforesaid, in the county of Middlesex aforesaid, for the aid, assistance, and direction of the said William Jackson in the prosecution, performance, and execution of his traitorous purpose aforesaid, and did then and there maliciously and traitorously treat, consult, and converse with, and did then and there maliciously and traitorously aid, comfort, abet, and assist the said William Jackson in, about, and concerning the prosecution, performance, and execution of his (the said William Jackson's) traitorous purpose aforesaid.

And further to fulfill, perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did conspire, consult, consent and agree with the said John Hurford Stone, William Jackson, and divers other false traitors whose names are to the said jurors unknown, to collect and obtain, and cause to be collected and obtained, information and intelligence within this kingdom and the kingdom of Ireland whether any and what part of the subjects of our said lord the king were disposed to

aid and assist the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in an hostile invasion of any and what part of this kingdom or of the kingdom of Ireland for the prosecution of the said war against our said lord the king, and to communicate, notify and reveal, and cause to be communicated, notified and revealed, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king.

And further to fulfill, perfect, and bring to effect his most evil and wicked treason and treasonable compassings and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms maliciously and traitorously did inquire and cause to be inquired of divers persons in this kingdom, and did collect and obtain, and cause to be collected and obtained from such persons, information and intelligence whether the subjects of our said lord

the king were or were not well-affected to our said lord the king and his government, and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in case an hostile invasion should be by them made into this kingdom for the prosecution of the said war against our said lord the king, with intent to communicate, notify, and reveal, and cause to be communicated, notified, and revealed such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king.

And further to fulfill, perfect, and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did obtain and in his custody and possession did keep divers letters, notes, memorandums, and instructions in writing, contain-

ing information and intelligence how the subjects of our said lord the king were affected to our said lord the king and his government, and in what manner the said subjects were likely to act in case an hostile invasion of this kingdom should be made by the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the prosecution of the said war against our said lord the king, with intent to communicate, notify, and reveal, and cause to be communicated, notified, and revealed such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the king, as aforesaid, in their conduct and prosecution of the said war against our said lord the king.

And further to fulfill, perfect, and bring to effect his most evil and wicked treason and treasonable compassings and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did send, and

cause and procure to be sent, from this kingdom, to be delivered in foreign parts beyond the seas, divers other letters, notes, memorandums, and intelligence in writing, containing information and instructions how the subjects of our said lord the king were affected to our said lord the king and his government, and in what manner the said subjects were likely to act in case an hostile invasion of this kingdom should be made by the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the prosecution of the said war against our said lord the king, with intent to communicate, notify and reveal, and cause to be communicated, notified and revealed, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king.

And further to fulfill, perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day,

at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did, with the said William Jackson, and divers other false traitors whose names are to the said jurors unknown, conspire, consult, consent and agree to raise, levy, and make insurrection, rebellion and war against our said lord the king within his kingdom of Ireland, and to cause, procure and incite the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, to invade the kingdom of Ireland with ships and armed men, and to carry on the said war against our said lord the king within the kingdom of Ireland.

And further to fulfill, perfect and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did conspire, consult, consent and agree to and with the said William Jackson, and divers other false traitors whose names are to the said jurors unknown, that he, the said William Jackson, should go to and land in the kingdom of

Ireland for the traitorous purpose of procuring and obtaining intelligence and information whether the subjects of our said lord the king, of his kingdom of Ireland, were or were not well affected to our said lord the king and his government, and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king, as aforesaid, in case an hostile invasion of the said kingdom of Ireland should be made by them for the prosecution of the said war against our said lord the king, and of sending or causing to be sent such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king, as aforesaid, for the aid, assistance, direction and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king, and did then and there maliciously and traitorously aid and assist the said William Jackson in going to and landing in the said kingdom of Ireland for the prosecution, performance and execution of the traitorous purpose last mentioned, and which said William Jackson, in pursuance of the said last mentioned conspiracy, consultation, consent and agreement, heretofore and during the said war, to wit, on the twenty-eighth day of March, in the thirty-fourth year aforesaid, did go to and land in

the kingdom of Ireland, and did stay and continue there for a long time, to wit, for the space of one month, for the prosecution, performance and execution of the traitorous purpose last mentioned.

And further to fulfill, perfect, and bring to effect his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, after the said William Jackson had gone to and landed in the said kingdom of Ireland for the traitorous purpose last mentioned, and while the said William Jackson remained and continued in the said kingdom of Ireland for the traitorous purpose last mentioned, and during the said war, to wit, on the fifth day of April, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did correspond with, advise, counsel, aid, abet, and assist the said William Jackson in and about the prosecution, performance and execution of the traitorous purpose last mentioned.

And further to fulfill, perfect, and bring to effect, his most evil and wicked treason and treasonable compassing and imaginations aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year afore-

said, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did furnish and supply, and cause to be furnished and supplied, and aid and assist in furnishing and supplying the said William Jackson with divers sums of money, bills of exchange, and notes for payment of money thereby to enable the said William Jackson to fulfill, perform, and execute his, the said William Jackson's traitorous purposes before mentioned, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, contrary to the duty of the allegiance of him, the said William Stone, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present that on the said first day of March, in the thirty-fourth year aforesaid, and long before and continually from thence hitherto, an open and public war was and yet is prosecuted and carried on between our said lord the king and the persons exercising the powers of government in France, to wit, at Old Ford aforesaid, in the county of Middlesex aforesaid, and that the said William Stone well knowing the premises but not regarding the duty of his allegiance, nor

having the fear of God in his heart, and being moved and seduced by the instigation of the devil as a false traitor against our said lord the king, and wholly withdrawing the allegiance, fidelity, and 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 his strength intending to aid and assist the said persons exercising the powers of government in France, and being enemies of our said lord the king in the prosecution of the said war against our said lord the king heretofore and during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, with force and arms, at Old Ford aforesaid, in the county of Middlesex aforesaid, maliciously and traitorously was adhering to and aiding and comforting the said persons exercising the powers of government in France, then being enemies of our said lord the king as aforesaid, and that in the prosecution, performance, and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms

maliciously and traitorously did conspire, consult, consent, and agree with the said John Hurford Stone, William Jackson, and divers other false traitors, whose names are to the said jurors unknown, to aid and assist, and to seduce, persuade, and procure divers subjects of our said lord the king to aid and assist the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in an hostile invasion of the dominions of our said lord the king, and in the prosecution of the said war against our said lord the king.

And in further prosecution, performance and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did conspire, consult, consent and agree with the said John Hurford Stone, William Jackson, and divers other false traitors whose names are to the said jurors unknown, to raise, levy, and make insurrection, rebellion and war within this kingdom against our said lord the king, and to invite, and persuade, and procure the said persons exercising the powers of government in France, and being enemies of our said lord the

king as aforesaid, to invade this kingdom with ships and armed men, and to prosecute and carry on the said war against our said lord the king within this kingdom.

And in further prosecution, performance and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, well knowing the said William Jackson traitorously to have come to and landed in this kingdom for the traitorous purpose of procuring and obtaining intelligence and information whether the subjects of our said lord the king were or were not well affected to our said lord the king and his government, and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king, as aforesaid, in case an hostile invasion of this kingdom should be made by them for the prosecution of the said war against our said lord the king, and of sending and causing to be sent such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king, as aforesaid, for the aid, assistance, direction

and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king, did, with force and arms, maliciously and traitorously receive and treat with the said William Jackson, at Old Ford aforesaid, in the county of Middlesex aforesaid, for the aid, assistance and direction of the said William Jackson in the prosecution, performance and execution of his traitorous purpose last mentioned, and did then and there maliciously and traitorously treat, consult and converse with, and did then and there maliciously and traitorously aid, comfort, abet and assist the said William Jackson in, about and concerning the prosecution, performance and execution of his, the said William Jackson's, traitorous purpose last mentioned.

And in further prosecution, performance and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did conspire, consult, consent, and agree with the said John Hurford Stone, William Jackson, and divers other false traitors whose names are to the said jurors unknown, to collect and obtain, and cause to be

collected and obtained, information and intelligence, within this kingdom and the kingdom of Ireland, whether any, and what part of the subjects of our said lord the king were disposed to aid and assist the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in an hostile invasion of any and what part of this kingdom, or of the kingdom of Ireland, for the prosecution of the said war against our said lord the king, and to communicate, notify, and reveal, and cause to be communicated, notified, and revealed, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction and instruction of the said enemies of our said lord the king, in their conduct and prosecution of the said war against our said lord the king.

And in further prosecution, performance, and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did inquire, and cause to be inquired, of divers persons in this king-

dom, and did collect and obtain, and cause to be collected and obtained, from such persons, information and intelligence, whether the subjects of our said lord the king were or were not well-affected to our said lord the king and his government, and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, in case an hostile invasion should be by them made into this kingdom for the prosecution of the said war against our said lord the king, with intent to communicate, notify, and reveal, and cause to be communicated, notified, and revealed, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king, in their conduct and prosecution of the said war against our said lord the king.

And in further prosecution, performance, and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms maliciously and traitorously did obtain and in his custody and possession did keep divers letters, notes, memorandums, and instructions in

writing containing information and intelligence how the subjects of our said lord the king were affected to our said lord the king and his government, and in what manner the said subjects were likely to act in case an hostile invasion of this kingdom should be made by the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the prosecution of the said war against our said lord the king, with intent to communicate, notify, and reveal, and cause to be communicated, notified and revealed, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king.

And in further prosecution, performance, and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did send and cause, and procure to be sent from this kingdom,

to be delivered in foreign parts beyond the seas, divers other letters, notes, memorandums, and instructions in writing, containing information and intelligence how the subjects of our said lord the king were affected to our said lord the king and his government, and in what manner the said subjects were likely to act in case an hostile invasion of this kingdom should be made by the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the prosecution of the said war against our said lord the king with intent to communicate, notify, and reveal, and cause to be communicated, notified, and revealed, such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction, and instruction of the said enemies of our said lord the king in their conduct and prosecution of the said war against our said lord the king.

And in further prosecution, performance, and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms,

maliciously and traitorously did, with the said William Jackson and divers other false traitors whose names are to the said jurors unknown, conspire, consult, consent and agree to raise, levy, and make insurrection, rebellion and war against our said lord the king, within his kingdom of Ireland, and to cause, procure, and incite the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, to invade the kingdom of Ireland with ships and armed men, and to carry on the said war against our said lord the king, within the kingdom of Ireland.

And in further prosecution, performance and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did conspire, consult, consent and agree to and with the said William Jackson, and divers other false traitors whose names are to the said jurors unknown, that he, the said William Jackson, should go to and land in the kingdom of Ireland for the traitorous purpose of procuring and obtaining intelligence and information whether the subjects of our said

lord the king, of his kingdom of Ireland, were or were not well affected to our said lord the king and his government, and were or were not likely to join with and assist the forces of the said persons exercising the powers of government in France, and being enemies of our said lord the king, as aforesaid, in case an hostile invasion of the said kingdom of Ireland should be made by them for the prosecution of the said war against our said lord the king, and of sending and causing to be sent such intelligence and information to the said persons exercising the powers of government in France, and being enemies of our said lord the king as aforesaid, for the aid, assistance, direction and instruction of the said enemies of our said lord the king, in their conduct and prosecution of the said war against our said lord the king, and did then and there maliciously and traitorously aid and assist the said William Jackson in going to and landing in the said kingdom of Ireland for the prosecution, performance and execution of the traitorous purpose last mentioned, and which said William Jackson, in pursuance of the said last-mentioned conspiracy, consultation, consent and agreement, heretofore and during the said war, to wit, on the twenty-eight day of March, in the thirty-fourth year aforesaid, did go to and land in the kingdom of Ireland, and did stay and continue there for a long time, to wit, for the space of one

month, for the prosecution, performance and execution of the traitorous purpose last mentioned.

And in further prosecution, performance and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, after the said William Jackson had gone to and landed in the said kingdom of Ireland, for the traitorous purpose last mentioned, and while the said William Jackson remained and continued in the said kingdom of Ireland, for the traitorous purpose last mentioned, and during the said war, to wit, on the fifth day of April, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did correspond with, advise, counsel, and abet, and assist the said William Jackson in and about the prosecution, performance and execution of the traitorous purpose last mentioned.

And in further prosecution, performance, and execution of his treason and traitorous adhering aforesaid, he, the said William Stone, as such false traitor as aforesaid, during the said war, to wit, on the said first day of March, in the thirty-fourth year aforesaid, and on divers other days, as well before as after that day, at Old Ford aforesaid, in the county of Middlesex aforesaid, with force and arms, maliciously and traitorously did furnish and

supply, and cause to be furnished and supplied, and aid and assist in furnishing and supplying the said William Jackson with divers sums of money, bills of exchange, and notes for payment of money, thereby to enable the said William Jackson to fulfill, perform, and execute his, the said William Jackson's, traitorous purposes before mentioned, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, contrary to the duty of the allegiance of him, the said William Stone, against the form of the statute in such case made and provided, and against the peace of our said lord and king, his crown and dignity.

SPEECH OF MR. ERSKINE.

GENTLEMEN OF THE JURY: We were anxious on our parts, for the prisoners, that this case should be thoroughly investigated and understood; and, as we can have no reason not to wish that justice should be done to the prosecution as well as to the unfortunate person whom we represent, we resolved not to go on with many witnesses to prove what had already been established, wishing that you should not only hear me, but the counsel for the crown equally, while yet your understandings were sufficiently fresh to embrace all the complicated matters which belong to this important trial.

Gentlemen, I have been resolving in my own mind what course I should pursue in standing up before you this day; and I confess that if I were counsel for myself—if I had been arraigned of high treason at this bar, and had asked my honorable and learned friend to do that duty towards me which he has done for our client, and, being of the profession, had reserved for myself that indulgent privilege which the laws of our wise forefathers have given us to observe upon the whole evidence in my defence, I should have remained silent—I should have thought that I best consulted

my own safety by not taking off anything from the most impressive address that it was possible for any man to offer to a jury in a case which required all the learning and ability which my friend so amply possesses ; but standing as I do for another, I can not pursue that course ; I must therefore endeavor to make you understand, as well as I can, the principles, and examine with as much care as possible the evidence, by which alone your verdict ought to be governed.

The first matter for consideration in all courts, upon all occasions, is, to see distinctly what the charge is, and, for the honor of the crown be it spoken, and of my worthy friend the attorney-general, who opened to you this prosecution, there is nothing left for me to vary or contradict ; he made no concessions to the prisoner ; — if he had, he would not have done his duty, because the counsel for the crown are not to plead for the defendant, but to state with ability and precision the case of the adverse party. But what I honor the attorney-general for is, that, though he made no concessions, and stated nothing differently from what must afterwards have been summed up by the court, yet he did not attempt to bewilder your understandings by leading you away from the charge, but stated the case with an anxious precision which does honor, not only to himself, but to the laws of the country he represents ; since when

we are upon the subject of invasions, and when the whole object of the prosecution is, as must be acknowledged, to give stability to our government, and to prevent it from being overborne by foreign force, what can make our subjects cling to it so strongly — what can more unite them in the manner in which it seems admitted that they are united, than to compare the mildness and beneficence of our institutions with those tribunals of blood which we might expect to be erected here if an invasion of the nature spoken of were effected? What can so well support a government as a just, mild, indulgent court of justice, hearing with equal complacency the prisoner and the officers of the crown, when not conducting themselves so as to stink in the nostrils of posterity, like those in other times before our happy constitution was vindicated and established?

Gentlemen, there is no question of law in this case. The charges are two in number: compassing the king's death, and an adherence to his enemies; but it is not sufficient to state the guilt of the one or the other as existing in the imagination of the heart, it is necessary to charge the overt act — which is the manifestation of the treason the prisoner is called upon to answer.

The charge made upon the prisoner is, that he has fallen off from his allegiance — from the love of his country and its magistracy, and devoted him-

self to the destruction of both; and the record then charges what he has done as the manifestation of that traitorous spirit which the law arraigns and punishes. For this purpose the indictment appears to me to be ably and properly drawn; and whatever the result of the cause may be, we make no complaints of the crown or the government, but come here—as we have a right to do—to defend ourselves.

The indictment charges the prisoner with being engaged in a conspiracy with his brother, residing in France, and with a person of the name of Jackson, now dead; which conspiracy had for its object, to accomplish, as is charged, an invasion of the French upon the dominions of the king, both here and in Ireland.

There are other counts, stating it more generally, viz, to afford intelligence and make communication to the enemy of the dispositions of the king's subjects with regard to their own government and to that of France; and the indictment is drawn with this double aspect, because the principal overt act, as far as it can be connected with any evidence is, not that Mr. Stone invited an invasion, but that, on the contrary, he, with anxiety, endeavored to avert it. The indictment then is drawn in order to embrace this case. That the prisoner at the bar did afford that communication to the enemy—not for the reasons which he gave

to the witnesses — not for the reasons which he gave when he prepared the paper — not for the reasons which we, who are his counsel, assign for his conduct, but that he did it in pursuance of a previous confederacy and conspiracy with those who exercised the powers of government in France, in order to inform them that their invasion would not be successful; to point it to another place and to a better occasion; and that he did it, shall I say how? No; I need only have recourse to what fell from the attorney-general, following his correct account of the accusation, viz., that the French government, intending an invasion at the end of the year 1793, employed Jackson to see whether England might be successfully invaded, and to examine the state of Ireland also. That this man was sent through Hurford Stone at Paris; and the whole evidence is pointed to establish that the prisoner, knowing Jackson to have come over on this invasion, received him and assisted him in the treason. There can be no doubt, continued the honorable and learned gentleman, that if these overt acts, as laid in the indictment, are proved, and proved to have been committed with the intention charged, that proof will support both the charges of high treason. So say I, who am the prisoner's counsel; for if, with the intention of averting an invasion, not for the benefit of England but of France, that she might come at another time with better pre-

paration, and with accumulated force, he said or did any thing, traitorously looking to the destruction or danger of his own country, it would, undoubtedly, be not only an adherence to the enemies of the king, but an imagination of his death, since his death would be but too inevitable a consequence of such a successful adherence.

The attorney-general then pursues the matter thus: And I conjure you, gentlemen, by all that is sacred, to attend to his words, upon which I put my whole cause, as I shall plead it for the prisoner, that if the evidence satisfies you that Jackson was here for the purpose of informing the enemy from what enterprises they should refrain, and what they might undertake, for the benefit of France, the prisoner can not be delivered from the charge in this indictment, if he knew Jackson's views, and gave him aid, countenance and assistance. Now, this is just what you would have been told hereafter that it was your office to decide. You have already heard it from my learned friend, you now hear it from me, and must ultimately hear it from the court; but if you had not thus heard it in the earliest stage of the proceedings, your understandings might have been bewildered, and you might have been imbibing the poison of collateral matter, unconnected with the merits of the case, and your consciences might have been ensnared.

Gentlemen, the accusation is of the highest

nature (I speak now again almost the words of my honorable and learned friend), the highest offence that can be stated in an English court against an English subject; and this truth ought deeply to impress you with the difficulty of the duty you have to perform, since, if we consider the interest that every Englishman must take in the security of his country, it is almost too much to expect that your imaginations may not be affected, and your minds inflamed, leading to a kind of proneness to connect the person charged with the offence itself. Abominable as any attempt upon human life is, this constructive attack upon the sacred person of the king is infinitely more wicked and dangerous, inasmuch as his safety is interwoven with the great fabric of the state; but it is no disloyalty to the king to say, that this species of compassing his death is an infinitely more dangerous and fatal crime than a direct attack upon his person, because, in that case, though the magistrate might fall, the laws might remain; but he who invites a foreign enemy into the land is a traitor indeed. He lays prostrate at once all that the wisdom of our ancestors had built up during ages for our protection; he exposes our liberties, and, what ought to be dearer to us than even our lives, the liberties of those who derive from us their existence, to the ignominious bondage of a foreign power, and the whole property of the country to the destructive

pillage of the most regulated and best-conducted war. How must I suppose then that you feel upon this subject, when I protest that in speaking only of such a crime and its consequences to our country, I almost forget where I am, and the duty I owe to the person who is now under the imputation of it?

Is it too much to say, then, that, in the same proportion, you ought to demand a proof corresponding with the enormity and the improbability of the offence?

Where then, is there any proof of this description? What are the facts in evidence, not brought forward by us, but by the attorney-general himself? He has called into court several high and honorable men, and has selected them principally from amongst those who are in opposition to the measures of those who are at present entrusted with the administration of the government; yet they all tell you, with one accord, what the attorney-general must know in his conscience to be truth, that if France were to invade England, all England would rise in a mass against her; that however men may be split into parties, though some may hold higher than others the popular part of the constitution, as thinking it struck at and oppressed—though others, on the contrary, may think the crown rather in danger—though others, again, may hold too high the aristocratical branch of the constitution; however, in short, the

opinions of men may and must be divided in a free country, where they are constantly engaged in discussing opinions concerning government, yet — yet what?—yet, as against France, all would be united.

Then what is the proposition you are desired to support to-day? It is not that Mr. Stone is guilty of a crime of which many others may be guilty, and which may beset other men with temptations, but they take Mr. Stone as an exception, out of the whole mass of English subjects. They give in evidence, and profess their belief, that all England would rise as one man against France, but not Mr. Stone. They single him out, and set him upon a pinnacle, and say, although all England would rise in a mass to defend it, yet you, Mr. Stone, are a traitor, who would not rise; you, Mr. Stone, are singly a traitor, who alone felt an interest in the destruction of your country; but having no one in it to conspire with you, were driven to pick out a man in France, not a native of England, but of Ireland, residing in France, to join you in a scheme which not one man in your own country would support. Am I then asking you to reject such evidence as the law ought to accept, according to the principles of human reason, which is the foundation of all testimony? Do I claim that the prisoner should be acquitted by the rejection of such a proof? Certainly not. My proposition is, and from which I can not be removed, that there

is an improbability here so strong, even upon their own showing, that you must have proof to oppose it above all question — proof which leaves no loop to hang a doubt upon; which compels you to contrast one of your unfortunate fellow-creatures with all that breathe the same air with him, which compels you to separate this single tare, and to pluck it out from the close-connected wheat-sheaf to which all the rest of the country is by themselves likened and compared.

Surely, gentlemen, before you could devote a man to ignominy and to death, the presumption of guilt must be as strong as in this case the presumption of innocence. The attorney-general does not ask you to reason yourselves into an opinion that the prisoner is guilty, but has said, on the contrary, that everybody must receive great satisfaction if you shall be able to acquit the prisoner, and will go out of court happy at the event; and it is the most exalted principle of English justice, that those feelings should be yours also. Let me examine, therefore, whether the crown has made out such a case as you are not able to resist; that you can see no road out of, nor reconcile with reason; the innocence which I ask you to pronounce. To palliate the weakness of the accusing evidence, you are reminded that crimes do not admit of the same species of proof which accompany contracts. Certainly they do not; and that very observation

goes in a manner at once to the acquittal of my client, on the principle of what is said by our judges every day. Crimes shun the light; contracts, which are innocent, are made in the light. Crimes are concealed, so as that justice shall have no clue to follow them through the various connections by which alone they can be detected; contracts have witnesses to them, whereas you never are to expect publicity in crimes, which can have no security but in the dark. Be it so—since this act had nothing of secrecy thus admitted to belong to crimes. It was done in the open face of day, and gloried in as merit, when it was about to be publicly committed. When a man has committed a treason, or any other crime, it will certainly not do for him to go upon the Royal Exchange to proclaim it. But here, before the act was done, and while it was only in agitation, before he had sent over the paper or any communication whatsoever, we find Mr. Stone going publicly to the places that have been stated, and consulting the most respectable persons upon the subject. Surely, this demonstrates that he could not possibly have conceived that he was doing any thing inconsistent with his duty.

I do not mean to contend, and it is unnecessary that I should, that it is an act either wise or advisable, or, strictly speaking, within the privilege of a mere private man, to do good in this

manner to his country. I am perfectly ready to admit, that it is always the most safe and proper course, if you know of any matter of that description which can serve your country, to go at once and make it known to government, which, by adding your information to others they were in possession of, might use it for the public service. But we are not examining to-day the discretion or propriety of Mr. Stone — I am not asking you to put a wreath around him for a benefit done to his country, because, however I may think that, as an honest man, he not only meant well, but was doing well, yet my business to-day is, not to call for your particular approbation, or to desire you by your verdict to sanction what he did as a matter for imitation, but to determine only upon the evidence whether he acted with good faith and honesty; whether, taking him to be right or wrong, he meant what he said, and acted for the reason he professed, or, on the contrary, from the traitorous motives which are charged by the indictment.

The attorney-general has truly said, that this question must be decided, as all such questions must, by looking not merely at the evidence, but by measuring it with the safe standard of the human character; and he truly tells you, that you can not judge of what any man has done, nor correctly examine his conduct, but by comparing it

with the general conduct and character of man; and upon that principle he asks, whether you can conceive that any man could have so conducted himself but from the criminal motive which he suggests? Now, I close with the attorney-general upon that; and be the cause tried upon that. I maintain, that it is impossible for any man who looks at this whole transaction to refuse to say, that if Mr. Stone be guilty of the act charged upon this record, he has conducted himself in a manner that has no parallel, to which human experience can give us nothing equal or similar, because no person ever so conducted himself before; and it is impossible, therefore, upon his own principle, to say that Mr. Stone is guilty, unless he had established his guilt by circumstances so cogent and so conclusive, that all appeals to reasonings and to the analogies of human life and nature must vanish, under the clear and absolute conviction that must follow from facts.

If the attorney-general had done as some officers of the crown in former times have done, he might have conducted his case very differently, and more unfavorably for the prisoner; but he could not so conduct it, because he can do nothing that is unworthy. Suppose he had laid down the paper which has been read in evidence, which I will call, if you please, Mr. Vaughan's paper, or the papers

copied by Mr. Stone, with some variations from it, and had said, I will prove upon you, Mr. Stone, that you prepared this intelligence concerning the state of this country whilst a person was here under your protection who was so far connected with France as to have been hanged here for high treason, and who was also in correspondence with your brother, for whom this intelligence was intended, then living and domiciled in France, and under the protection of her government, and I will leave you to explain this matter; and then, when we came to offer our evidence in explanation, he had said, this is but the prisoner's explanation, and is therefore no explanation at all. But, gentlemen, I stand upon the evidence of the crown, and you must take it altogether. I beg this may be attended to. What is the evidence against Mr. Stone? The evidence is not that he drew up a paper upon which you might have been desired to collect from the act itself *quo animo* he did it. If the cause had been so conducted, the paper, for a time at least, must have spoken for itself, and with what mind he did it must also have been collected from the paper, because there would have then been no evidence to explain or qualify his intention, except that which the writing itself furnished, but that is not the course in which the cause now stands. The proof is, that Mr. Stone informed several respectable persons that an American gen-

tleman had arrived here from France; that an invasion from thence was meditated; that he publicly expressed the anxiety which, as a good subject, he felt for the condition of this country, knowing the evils which necessarily would follow, whether the invasion were successful or unsuccessful;* and that he thought he had it in his power to avert that calamity. This is the account given by Lord Lauderdale, by Mr. Sheridan, by Mr. Rogers, by Mr. Towgood, and by every one of the witnesses whom the attorney-general has called; and you will recollect that this was not an account given of what a man had said in vindication of an act he had done, but the motive assigned for one which he was about to do.

I do not know which of my learned friends is to reply to me, but on whichever of them that important office is cast, I desire to have this distinctly answered. I say, that in this view of the case, the crown can not have a verdict but upon this principle: we have proved the act you have done, but also certainly your declaration at the time you were doing it, that you were acting from a motive highly honorable, and we admit from our evidence, for we can not contradict our own witnesses, that you held this language before any act was committed; but then we say all this was color;—and no doubt, gentlemen, they have a right so to argue it; but then, to support such an argument, the *onus*

probandi is shifted from me upon them. They do not lay it upon me as if they had only proved the paper, leaving me affirmatively to prove a motive which the paper itself might not have established, but like just and honorable men, knowing what the truth was, they would not deprive the prisoner of the just advantage which belonged to him, and therefore the bane and antidote came together. The act of which they must desire you to take the worst construction is not laid nakedly before you to collect that construction from itself, the negative of which it might not be in the prisoner's power consistently with the law so clearly to produce, but they give you the whole transaction from the beginning to the end, which manifestly shows that the prisoner acted from a motive which I maintain to be no more like treason than any other crime in the whole catalogue of offences, — being more like, indeed, to some virtues in a very different catalogue; because it is an act of merit, and, though not so according to the general policy of a state, is, at the very worst, the act of an honorable man mistakingly zealous for his country's service. Then let me tell the learned gentleman who is to reply to me, whoever he may be, that he has a heavier burthen than he can walk under, viz., to show that the whole testimony of the crown's witnesses is false; that they were themselves imposed upon by Mr. Stone, who was acting from the

motives charged by the indictment, and not from those given in evidence by themselves. Nevertheless, they have unquestionably a right to attempt this; but they must do it, not merely by suspicion, not by throwing a cloud over us, for they, as I have just said to you, and not I, are to maintain the affirmative propositions, and it is for them to maintain it, as Lord Coke, the oracle of our law, requires of them. Would to God he had resembled my honorable and learned friend when he came to put his own law in practice in criminal courts of justice! But still he who was the highest authority has left this upon record as the law: that the prisoner must be convicted, “not upon conjectural presumptions or inferences, or strains of wit,” for, as he truly says, the words of the statute of Edward III are not that the prisoner shall be probably attainted, for then a common conclusion might serve, but provably — *i. e.* in the full and unerring force of demonstration — not of course that which belongs to mathematical science and matter, but that moral demonstration without which no honest man could sleep after having delivered a verdict which must lead to the consequences of yours.

Now, before I enter upon the particulars of the evidence, which I shall come to by-and-by, let me examine by what magic they are to do this, when the prisoner stands upon the act he has done as

explained by himself, upon the crown's own evidence before it was consummated. Was the act which he did beneficial to his country, or the contrary? Will any man dare to say that it was not beneficial, notwithstanding it certainly would have been more regular to have made a communication to those who have the administration of the government — although I think that what was hawked about publicly at the Coal Exchange would probably find its way there very soon? Will any man, I repeat, contend that it was not beneficial to this country? If there could be found any man hardy enough to say so, he would be, like other bullies, the last man to be found if an invasion actually happened. He must be a very shallow man indeed, who does not contemplate the danger at any time, but above all in the year 1794, compared with the period in which we live, if an invasion had been accomplished by France.

Gentlemen, would it have been any consolation to have seen myriads upon myriads rising to defend their country, mowed down like grass in the autumn, though rising up again, and going on from exertion to exertion, and from re-conquest to re-conquest? Would it have been an advantage that an hundred thousand Frenchmen should have landed in England, because the united loyalty and bravery of Englishmen would have driven them back? They who recollect the condition of a

country where paper credit is subject to every blast, and although the great body of our people feel how inseparably their own interests are combined with the support of the sovereign and the laws, yet consider how much blood must have been shed, and how much might have been put in hazard by treachery; for money, gentlemen, can, unfortunately, purchase disaffection, as long as men are men. Who can state what might have been the general consequences if this great capital had by a sudden and successful effort been pillaged, though the next moment the pillagers had been destroyed? Have they brought any military or naval men, or any officers of state, to lament the misfortune that befel England from the French not being permitted to land here, and to swear that Mr. Stone had ruined the prosperity of the country by keeping the French out of it? I believe no man will venture that in a court of justice. Nobody has said it in parliament; and I take upon me to say that neither in public nor in private life have I ever heard any person rash or adventurous enough to utter such a wish; nor can I conceive greater wickedness or folly than to volunteer the prowess of the country at the expense of our treasure, our public credit, and our blood, which the providence of God has hitherto preserved from the fatal consequences of hostile invasions.

Let us next examine who Mr. Stone is, that was to bring about this national destruction — a man who is not proved, notwithstanding the admissibility of such evidence, to have opened his mouth with reproaches either of the governors or of the government. Not one of those violent and hot reformers who have made themselves objects of suspicion, but who happened to belong to a society, not, I think, very darkly described by Mr. Jackson, in a letter which, by-the-by, never came into the hands of Mr. Stone, being, I believe, the one which came back from Basle. He has not been, indeed, one of a set of men amongst us, contending only for public stations, who think of nothing like a freedom beneficial to the people, or any reform at all, except that of place-hunting, the only object of their pretended public spirit.

Mr. Stone, then, is not proved to have uttered a syllable against government; not one word against the war with France; nothing against those who are engaged in the rule of the country; why then select him from all others for this charge of treason? Indeed, this reserve on the part of Mr. Stone in times like these could scarcely be predicted of any other man, I am sure it could not be predicted of myself, who am speaking to you, though I trust, like other Britons, I should protect my country, and be not among the last to resist, if an atom of our constitution were touched from within

or from without; but, for all this, I should be extremely sorry if everything I may have said at any moment of my life were to be brought before you, in order to show what my sentiments were concerning some men and some things. Mr. Stone, however, is not in this situation; for though you have seen every paper he had, though his whole correspondence has been laid open, though he has had no opportunity of protecting himself from the consequences of any rash and unguarded moment, yet they have not been able to state to you, they can not state it with honor, and it will therefore not be stated to you, that his conduct in any respect whatsoever, made him in the smallest degree an object of suspicion, or at all distinguishable from the rest of his majesty's subjects. On the contrary, let me remind you of the evidence, which you will hear summed up by the court, that Mr. Stone always held forth publicly, that a man must be a fool or a madman, as indeed he must be, who would wish for a revolution. An enthusiast, I admit him to be, for human liberty, an enthusiast for all the rights and privileges of mankind, and consequently in the same proportion a friend to the British constitution and this country, the first nation upon earth, or rather, the only one, which ever knew what human privileges are, which has enlightened and astonished an admiring world, and which, I trust, will be found forever the stand-

ard and example of the wisest and happiest government in the universe.

Let us next see what kind of invasion it was that Mr. Stone was averting, not, it seems, for his country's benefit, but that it might come at a better time for her destruction. Was it the invasion of a regulated state in support, for instance, of the claims of another family, such as was meditated by France in the time of King William to restore the exiled house of Stuart, where, if it had been accomplished, the prince only would have been changed, but the laws might have been asserted and remained? Where one regulated state makes war against another, it is almost like a duel between private men, only upon a larger scale, with all courtesies and civilities of modern war; was it such an invasion that he sought to avert? No; but an invasion from a country convulsed and agonized with a revolution — a country in which those who sent forth her armies could give no security to any man who supported them, but, on the contrary, could only subject its partisans to probable destruction from some new faction which might succeed.

I should be glad here to ask — for everything I am saying is to challenge the reply, that it may be seen whether I am imposing upon you or stating anything which, independently of my character as counsel, I should be prepared to say here or

anywhere — let me ask, then, what evidence there is before you that Mr. Stone had received anything like security that if this invasion should take place he would have been safe? Is there anything in the letters of Hurford Stone whence you can collect that he was an agent of the French government? Mr. Jackson could never possibly have been sent to prevent an invasion, but to try whether it could be successfully made. Then, for God's sake, if we are to execute one of the king's subjects, let us have some kind of reason, some principle, some facts. All the letters from Hurford Stone at Paris have found their way to you to-day. Do any of them say to Mr. William Stone, Do not be afraid of the consequences of invasion, you will be safe? Quite the contrary. You find that before Mr. Jackson was spoken of, he writes, "Sell your house at Old Ford, or it will be taken;" and in the last letter which has been produced of that class, which run from one to ten, to some parts of which I shall hereafter more particularly advert, there is this remarkable expression (I speak of No. 10, written from Paris after Jackson was here), he there tells his brother that the letters which he is to write back to him will probably be examined in France, that it can not be wondered at that he, Hurford Stone, is an object of suspicion, though, as he says, I am treated with a good deal of delicacy. Now, this has not been offered to you as a

colorable letter, not being even sent to William Stone directly, but under cover to Lawrence and Company, for the prisoner's perusal, and it was found among the papers by the officers for the crown.

Is it possible, then, to consider this as a letter of a man who was the agent of the French government, which knew he had sent Jackson as their instrument, and that they were engaged together in a conspiracy with an Englishman in London, from whom they were to receive accounts of the progress of a mission in the success of which the government of France was at stake? Could such a man have been an object of suspicion in France, and his letters be subject to examination? It would be folly to say this. Neither has it been considered at all colorable. He writes, in short, like a man who is suspected at Paris, because he is an Englishman. It may be worth your while, gentlemen, to take a note of what I am now saying. This is the last of the letters when Jackson's treason was consummate; when he was preparing to proceed to Ireland, and when Hurford Stone, if a conspiracy with his brother had existed, must have been expecting him to send an account of the mission from the French government transacting under his own agency here. Yet you find him trembling for himself as an object of suspicion at Paris, and holding a clandestine correspondence

with his brother, likely to be more dangerous to him (Hurford Stone, in France) than it could be to his brother, who was in safety in England.

As far as we have got, then, what is there against this gentleman? There are letters that go from 1 to 10, the last of which I have read to you, and read to you the first, although it stands last, for the benefit of the observation I have just made upon it. What do they all consist of? Many of them are merely on matters of commerce or manufactures, for there was a manufactory established there, and a great variety of bill and money transactions; so that it seems probable Hurford Stone might wish,—or for anything I know or care for, did wish,—through Jackson, to draw on his brother here, to invest his money in an illicit trade, which had begun to be but too much an object in different parts of Europe, in consequence of the pressure of the English power upon France, by our navy blocking up her extensive coast. This could not but create so great a lure for men having money at command to violate the laws of this country, that it becomes necessary for parliament to pass an act to beat down that traffic. You accordingly find several of the letters about such common concerns, all as wide of anything connected with Jackson as with any of yourselves, and you find others of them not merely indifferent, but which place this gentleman, at

Paris, in a most respectable light, as we see him exerting himself with great humanity in the support of several oppressed and miserable women, who had been the victims of poverty and misfortune here, and who were then languishing in the prisons of France.

Were there any other letters of Mr. Stone's except those before you? Is there the smallest reason to think from the correspondence that there were any other? Mark what the evidence is in that respect. Although government had, most properly, been in the course, without the knowledge of the prisoner, of watching Jackson in Ireland, and of intercepting all his correspondence, and although Jackson did not know that what he was engaged in had been discovered, yet you find nothing passing between them. If there had been any clue, or any connection whatever, between the prisoner and Jackson in the treason he was committing, is it to be conceived that there would have been no letter from William Stone to his brother in Paris, stopped at our post-office, or any from his brother to him, except those found in his possession? and if he had had the smallest idea of destroying his letters, as containing any matters which could have brought him into this place, what could have prevented him from destroying even those that you have seen, more especially as he knew that he had publicly spoken of the Ameri-

can gentlemen? I invite you to read all the letters that are in evidence, and see from them whether he knew any more of Jackson than that he was an American gentleman who had many things to state to him; and although Hurford Stone informs him that he will hear from Jackson, who, having come from France, must have been an object of suspicion to government, why he should sell his house at Old Ford, yet he leaves all these letters just as men deal in general with an ordinary correspondence.

Is Mr. Stone, then, though there is a profession to try his conduct by comparing it with the general conduct and character of man, to be the victim of a total departure from the professed comparison? Let it be therefore for me to follow it up by examining his conduct upon the seizure of his papers.

Nothing is so easy as to distinguish innocence from guilt under the pressure of unexpected detection. At that awful moment when a man who supposes his conduct has been concealed from all eyes, finds it suddenly exposed to view, and that he must answer with his life for the consequences, it is not, nor ever was, in human nature to conceal his emotions, above all from a person possessed of the understanding and knowledge of Mr. King; and I hope we shall always have men in that station who, when like him they are capable of

making important discriminations, are honorable enough to state the impressions made upon them as witnesses for the crown.

Mr. King expressly said, that when he entered, as secretary of state, Mr. Stone, so far from appearing guilty, showed less embarrassment than even an innocent man might on such an occasion have been expected to have shown. The evidence of this gentleman is not merely that he did not observe any appearance of embarrassment, which might well enough have happened, but, on the contrary, that he did take particular notice of Mr. Stone's deportment, and that it made an impression upon him at the time that he was blameless.

Look also at his conduct upon the same honorable testimony, when all these papers were reading in his presence without an apparent consciousness of blame. I could have wished to ask the other honorable gentlemen the impression made upon them by Mr. Stone's conversation with them, but I could not do it consistently with the rules of evidence, and I have nothing to complain of on account of the rejection of that proof, as it was explained by the court; yet enough was received to produce the same conviction of his innocence. I asked Mr. Rogers whether, when Mr. Stone met him in the street, and spoke to him of the American gentleman, and asked him to read the paper, it was under the impression of any thing like

secrecy; I asked him whether, if he had met me in the street five minutes afterwards, he would not have told me of it, and his answer was, probably he might. Now can there be a more signal proof of innocence than this, or a more decisive refutation of the only possible way in which the crown can shape its case?

The attorney-general does not contend that the letters standing by themselves would be sufficient for conviction, but he says that they receive a support in their criminal construction from his subsequent conduct, and prove all that I am saying to you now, concerning his motives, to be unfounded. This is certainly the only way in which any rational man can apply the crown's evidence; yet I conceive the whole of Mr. Stone's subsequent conduct, as I have just stated it to you, repels this argument, and maintains his innocence throughout.

Gentlemen, in saying this, however, I am not attempting to impeach the conduct of the government, or the propriety of the prosecution. Accusation and the propriety of it on the one hand, can not impeach the propriety of an acquittal on the other; and I am always happy when a defendant is acquitted, that the government is not lowered. We live in times when one ought to give all due support and vigor to lawful authority; and a jury, in acquitting a prisoner, are so far from making any attack upon it, even by a side wind, that they

support it by supporting the laws. Without our free and liberal constitution, our country would be like a prison-ship, from which our people would be escaping by emigration to avoid the hardships resulting from the heavy revenue with which she is laden; but, thanks be to God for the extraordinary provisions which his providence has ever lavished upon this happy island, we are endeared to our condition by the unexampled character of our laws, which are cherished and obeyed from the security and protection which they bestow, and I am an advocate for nothing else but their just administration.

With respect to the admissibility of the evidence, and the principles of its reception, I am extremely happy not to be found in any difference of opinion from the court. If I had, I am sure I should have been found to be in the wrong; neither my capacity nor my experience put me on a footing with those who compose it. It would have been an unfortunate thing in other respects, if the nature and effect of such evidence had been at all disputable. I collect from what has fallen from the lord chief-justice to-day, that I was correct in what I stated last night; I thought the evidence admissible upon the ground alone which has been explained by his lordship in a manner too strong to be forgotten. In examining a transaction which has many parts belonging to it, and

many persons connected with them, a court must begin somewhere. I have often, on that account, been repressed, both by Lord Mansfield and by his lordship, for objecting too soon. They have said, "You will surely let the thing begin; if it does not afterwards come home to your client, you will not be hurt." I agree to the evidence so qualified and explained. If, for instance, a house has been set on fire by the treachery of servants conspiring to rob and plunder their master, and I am charged as a member of that conspiracy, must not the crown first prove that the house was set on fire, and all the circumstances attending it? Must not it prove this treachery of the servants? But suppose my name did not appear, or only that one of the guilty servants had borrowed a lantern of me, without in any manner acquainting me with the act which was the very essence of the whole inquiry, nobody would say that I could be at all affected or injured by such antecedent proof. I have the volumes spread out before me of the late trials at the Old Bailey, by which it will be seen throughout, that all the facts given in evidence which had no immediate connection with the prisoners, being the acts of persons whom they had never even seen, were, on that principle only, admitted. The court said there are two branches of the cause. The first is to establish a general conspiracy against the government. The second,

to prove that the prisoners were members of it. In the same manner to-day a letter has been read because found in the possession of Jackson, because Jackson is one of the persons charged as a conspirator; but the crown must carry it a step farther, and connect Mr. Stone with it, before it is contended by anybody that it can affect him. This principle of evidence is founded on reason, and is not at all hostile to the principles of humanity or justice. The court must have the full scope of examination, so as to see everything connected with the subject; but that latitude of proof can not touch any individual because charged to be connected with a conspiracy, unless it is brought home to his knowledge, and acted upon by himself; yet that which was said by the court at the same time I undoubtedly agree to also, viz.: that when such knowledge and participation have been established, the act of any one conspirator is then the act of all. But we are only examining now whether Mr. Stone has in any manner conspired.

In the letters from France, which I have just stated to you, running as I told you from 1 to 10, written upon various subjects, the parts that relate to Mr. Jackson are very few; they are all in general terms, and there is a remarkable circumstance in one of them, where he tells him that Jackson is coming, and states the nature of the credit he has upon him. It is a confidential letter,

as they are all admitted to be, not colorable, nor charged to be so, as my learned friend, the serjeant, stated; and nothing surely can be a more striking proof of the real truth of this business than the insignificant credit which Jackson had upon the prisoner. Was it the credit of a government upon a national object? Nothing like it; it was neither more nor less than for the sums left in Mr. John Stone's hands, who was Jackson's debtor to that amount. He states the very sums, and after mentioning the gross amount as the basis of the credit, he deducts from it the money he had received abroad, leaving a balance in his favor of five hundred and forty louis-d'ors, and then Mr. Stone gives him, I think, £20, and takes his receipt. Now, you observe these papers were not found at Old Ford, but in London; because government having seen by the letters that Jackson had a credit upon the prisoner, and being justly anxious to discover the extent of it, and what was its nature, expecting no doubt something that would decipher the conspiracy, and show the prisoner to be an agent of the French government, the messenger accompanied the prisoner to his counting-house in Thames street, where the papers were opened, all lying without the smallest concealment; and it was proved by Mr. King that Mr. Stone expressed particular satisfaction, as well he might, at the finding this account, since it showed, as he

had uniformly asserted, his entire innocence of any criminal design against his country, by exhibiting the very limited credit which this Jackson had upon him.

Let me suppose, therefore, that the cause rested here; the evidence being the production of the papers, together with the parole evidence of Mr. Towgood, Mr. Sheridan, Lord Lauderdale, and Mr. Rogers, explanatory of the intentions of Mr. Stone, and no letter being found in his possession that could discover to him that Jackson came here upon the mission imputed by the indictment, nor any probability existing that there were other letters, because all had been seized and none discovered, the case for the crown closing with this account and receipt. Against this evidence I apprehend I could not have been called upon for a defence, because the crown having assigned the motive for the act by the mouth of its own witnesses, before it was consummate, and having shown that whilst Jackson was inviting an invasion, the prisoner was seeking to avert one, it, in fact, disproved the conspiracy which it was its object to establish, and proved itself out of court; for who ever heard of conspirators acting in diametrical opposition to each other? Consider, too, if it can be still necessary, that the prisoner was not then a desperate man, but in flourishing circumstances, happy in his family, and connected

with many valuable friends. Alas! how different is his present condition! It is called a deliverance which you are soon to give him. Would to God I could call it one! It is a deliverance from this bar, but not from the bars of a prison. I make no complaints; I have precluded myself from making any by everything I have said, but surely it is a painful consideration that his affairs have gone to ruin, and that, instead of returning to his home, he must go back into confinement, not as a criminal, but as a debtor. This is a misfortune which cannot be mitigated by your verdict, but I should not have felt myself to be a man if it had not affected me too forcibly to be repressed.

Gentlemen, the solicitor-general will, I am sure, not say to you, if he replies, that the paper, as a communication to the enemy, was in itself indicative of a criminal intention so as to shut out the motive which we rely upon; he will not say so, because it would be inconsistent with his character. It is asked, who proves this honest intention? I answer again, the crown itself has given it to you, not conclusively I admit, but conclusive at least until the prisoner's declarations accompanying the whole transaction are proved to have been fraudulent and false. The state trials, God knows, are well known to us. It is a wonder, indeed, that we know any thing else, having been so long engaged

in them. Let me hear then from those state trials, or from all the volumes of our laws, from all the convictions in our courts of justice, any one instance of a man in the very act of committing a crime the most atrocious, and the most penal in its consequences, going about to every man he met, not only exposing what he was doing, but giving the clue by which it might be defeated. Could any man in his senses have acted in this manner if a traitorous conspiracy with Jackson had actually been on foot? Since, if in consequence of the prisoner's declarations they had been thrown into separate prisons, might not Jackson, considering himself betrayed, have redeemed his own life by impeaching Stone? Nothing, therefore, but the consciousness of integrity, and that he had nothing to conceal, can rationally account for such otherwise unaccountable conduct. The real truth is, that he knew nothing of what Jackson was actually engaged in, and it is abundantly clear from Mr. Cokayne's evidence, that his communications with the prisoner were only directed towards a clandestine trade, which Jackson had endeavored to embark him in, but which appears to have been declined. I do not know, gentlemen, whether any of you have read the trial in Ireland, when almost a whole day was consumed in pulling Mr. Cokayne to pieces, and for the plainest of all reasons, because if the jury believed his evidence, Jackson could

have no defence. They therefore charged him as an accomplice; and attacked him so strongly on the score of perjury, for which he had been indicted, that the attorney-general, with great propriety, considered him as a witness who stood under such circumstances that the jury ought to expect the corroboration of his testimony, which I admit to have been sufficiently supported.

Mr. Attorney-General. With respect to the perjury, it is due to the character of that gentleman to state, that though there was an accusation of perjury, he was most honorably acquitted.

Mr. Erskine. I was going to do this justice to Mr. Cokayne, who will be the first man in court to acknowledge it. I have no interest as an advocate to impute falsehood to him, and I should think it unworthy and unmanly, under any circumstances, even by a side wind, to misrepresent him. They who conducted the defence of Jackson in Ireland, knew they must pull down Cokayne, or that Jackson must fall; they saw that his innocence was incompatible with Cokayne's testimony, and they had a right, therefore, to sift his character, which was open to just inquiry; whereas my friend who sits before me knows, that from my own personal knowledge, I have reason to believe that Cokayne acted from no interest or willingness to convict Jackson, nor have we any interest whatever in establishing Jackson's innocence. We

thought, besides, that it would ill become us, when we were asking a fair construction of the conduct of our client, to become the defamers of other men. Let Mr. Cokayne, therefore, stand clear in your opinions. It is impossible I could wish that he should be thought by you to have been perjured, when he had been acquitted by his country; an acquittal should leave no stain from imputation, unless supported by circumstances with which I am not acquainted, and which I had no thoughts of introducing.

Mr. Cokayne, indeed, is a strong witness for the prisoner. He was a friend of Jackson's; so much so, that he reposed great confidence in him, telling him that he was in debt, and that his creditors were at his heels, and asked that his letters might be under cover to him, that his name and character might not be traced; yet, though Jackson, from his first arrival in Ireland, was engaged in his traitorous pursuits, the name of Stone was never heard of by Cokayne. They may call him again now, by my consent, and ask him the question, because I have reason to know the answer he must give. Since Cokayne, then, never heard the name of Stone from Jackson, and since one letter only was written to the prisoner, which was intercepted, and never reached him, and since Cokayne himself knew nothing of Jackson's mission whilst he was in England, what color is there for saying

that Mr. William Stone was acquainted with it? Is it proved that he was? If it be, show me the evidence; name the witness, and turn to what he said in your notes. Cokayne, on the contrary, said that he did not know of Jackson's going to Ireland till he went there; that Jackson only told him he wished to establish commercial dealings, and asked whether he knew of any merchant who would supply the French government with provisions, for which he had an unlimited credit; whereas he had none with Mr. Stone but the very limited one that has been proved. Now even if they could have established that Mr. Stone had engaged in such a contract to supply the enemy with provisions, which does not at all appear, it would not help them upon this record, as, though it might connect him with other crimes, it is not the overt act charged by the indictment. What would it be to me either if Hurford Stone had given Jackson reason to believe that his brother would enter into his views, knowing them to be traitorous? That would be for Hurford Stone to answer for if he ever returned to England, but would be nothing at all to the prisoner, unless it could be farther shown that he fell in with such expectations by seconding the treason that was on foot.

It is farther extremely important that in none of Jackson's conversations with Hamilton, Rowan

and Tone, was the name of the prisoner ever mentioned. If any such connection had existed, what could possibly have prevented him from saying, "You have only to write over to Stone, and he will supply the money?" And during the whole time Jackson was in Ireland, and whilst Mr. Stone remained here a prisoner, and his deliverance waiting the issue of Jackson's trial, during all which time the post officers of the kingdom (or they are very unfit ones) were under the control of his majesty's ministers to guard against the treason then under public examination, nothing whatever appeared. Mr. Cokayne's evidence gave no countenance to it, nor does it seem that the counsel for the crown were ever instructed to put questions as if any such correspondence had been suspected.

What account then, gentlemen, could we be prepared to give to the world of the transactions of this day, if the blood of a subject of this country were to be shed upon such testimony, for doing an act manifestly beneficial, for which no possible motive can be imagined but the one assigned by the prisoner? His own destruction was involved in that of his country; he could have had no individual security, and he was engaged, besides, at the very time in many commercial transactions which could not possibly have been wound up before this invasion took place, and legions of armed men are surely the very last accountants with whom

a merchant would choose to settle his affairs; and to swell the improbability, a man not proved to have been even in doubtful circumstances, not at all disaffected to the government, nor open to the suspicion of it from any act or expression throughout his life, and the invulnerable strength of whose case does not rest upon testimony brought forward in his defence, but upon the accusing evidence of the crown, from the mouths of Mr. Sheridan, Mr. Rogers, Mr. Towgood, and the other witnesses who have been examined.

But, though Mr. Stone could not be impeached by evidence of any act or expression of disaffection, yet his loyalty might by censorious people be questioned, perhaps, on the score of his opinions; and nothing surely so exalts a court of justice as that it will hear no such censures, but looks only to facts. We are but too apt in common life to deal out our opinions of others with an unsparing hand, always taking everything in the extreme against each other, without any centre but ourselves of what is right; but many excellent men have been found on both sides of every political controversy, and the truth is very often in the middle. I mention this because Mr. Stone is known to have gloried in the French revolution. It would be idle in me to waste your time upon such a subject, except to say that it is still more to his honor that, with a most enthusiastic temper, and with such

unexampled matter for its excitation, his conduct has been so guarded as not even to have been an object of suspicion, nor the loyalty even of his sentiments in any manner impeached.

I am almost ashamed to resume any details of the evidence, but I am afraid to leave any thing untouched. You have had a long correspondence in evidence, but a very small portion only selected for your attention. I am not blaming this, which is absolutely of course, but it has had the effect no doubt of making you think, by the parts selected, that Jackson was its whole burthen and subject, that he was some great character, that all other concerns were swallowed up and lost in its importance; but so contrary is the truth of the case, that I can not omit reading a part of the letter which announced him, if I can find it from out the mass.

In this very letter — which must be taken to be the credential of invasion — in this very letter, announcing its missionary, he says, “he will open to you a variety of business, of which my reason for your parting with the house at Old Ford is of the slightest importance;” so that though Jackson was introduced by the letter as the organ and instrument of the invasion, and that Old Ford house was to be parted with on account of it, yet everything relating to that subject was nevertheless of the slightest importance when compared with the pro-

posals of a commerce, which, after all, were not accepted, and which scarcely seems to have been the subject of conversation between them.

But what is most remarkable of all is Jackson's letters, who wrote that an invasion here would produce universal panic, which is quite at cross-purposes with everything the prisoner ever wrote or said, though he is called a conspirator with him, as he is not even charged with pretending to avert an invasion, whilst, by a counter-paper exposing the weakness of England, he was inviting one. This charge could not have been made, when its falsehood was so notorious, by his having altered Mr. Vaughan's paper, which stated the defenceless state of the country, from the small number of troops, except a few cavalry on the coast, a fact which Mr. Stone thought ought not to be exposed, and therefore scratched it out. In this only the papers now exhibited in court differ from one another, the prisoner's edition having left out what Mr. Vaughan had imprudently inserted.

The papers, however, are just nothing in themselves without the clue of the parole evidence which introduced them. Indeed, the answer to the whole case may be said to arise out of the evidence of the very first gentleman selected for examination, since, if there had been anything in the conduct of Mr. Stone to correspond with the indictment, would Mr. William Smith have been

the man to be informed and consulted? Mr. William Smith, gentlemen, is a person of immense fortune — I could not ask him its extent — great part of it invested in the public funds of the country, all of which would vanish like an enchantment even by an unsuccessful invasion; a person, besides, in too high a situation of life to be a fisher in such troubled waters; all of which must have been perfectly well-known to Mr. Stone. Would such a man, I repeat it, have been the first object for communication by any human being in his senses, meditating treason, and without the smallest invitation to secrecy? And is it possible that Mr. Smith, instead of telling him that it was his instant duty to give information to the secretary of state, should, instead of that, prepare a paper with his own views on the subject, so little in reprehension of Mr. Stone's conduct that the counsel for the crown, knowing Mr. Smith's conviction of his innocence, would not waive the legal objection to the question which would have proved it, just as I waived this morning my objection to the evidence of Mr. Pitt? They had undoubtedly a right to persist in it, but it is pretty plain what they conceived the answer of the witness would have been, otherwise it would not have been incumbent upon them to guard the notorious rules of evidence with so much anxiety and tenderness, to shut out the result of an improvident and thoughtless ques-

tion. The same remark might be extended to all the other witnesses for the crown.

It seemed to make an impression, that two addresses were left with the prisoner by Jackson on his going to Ireland, by which letters were afterwards sent to him, and forwarded; but can it be fitly said in a trial for high treason, that though I am not proved by any fact to have been privy to a traitorous project, I am nevertheless to be presumed to have known it, because addresses were left with me by the traitor, according to which, sealed letters were sent abroad, and came to the hands of enemies abroad, the answers to which would have come to me had they not been intercepted. Suppose I were standing here for my life, and that a person at Bristol, engaged in a treasonable conspiracy, had sent up his sealed letters to me, desiring me to forward them by their addresses to different parts of the kingdom; and suppose farther, that this man was connected with me in various matters of business, so as to give a general appearance of our being connected together throughout, could it therefore, in common sense, be asserted that because treason was found contained in the answers to these sealed letters, which were intercepted, and never even came to my hands, that I could be convicted of high treason?

We all know, that upon Jackson's trial in Ireland every man put his own construction and comments

upon these letters, and the name Nicholas was supposed to mean the French minister of war, which turned out afterwards to be Nicholas Madgett; this ought to administer caution to decipherers of letters in a case of blood, as, after a man had been swinging three months, the discovery of such a mistake would be rather late. I mean no attack upon the ministers of the crown in Ireland, who, I have no doubt, are deserving and honorable men.

As to the letters which constitute the *gravamen* of the case, and well justified the crown in all its activities on the subject, my learned friend, the serjeant, said they were three in number, and I improperly corrected him when he was in the right. I thought he was mistaken, because it was giving the name of a letter to one of them which it hardly deserved, being nothing but a sealed letter with a direction; but in correct statement there are three letters, two from Mr. Stone to Jackson, and one in answer to Jackson's letter. Now, let me suppose that these letters had not been produced, I might surely finish the trouble I have been but too long giving you, and therefore, nothing can remain but to consider their effect and operation, and what the counsel for the crown must work by them or fail. It is not enough, even if they could lead you to suspect or conceive or suppose that the prisoner may be guilty, because they must establish by evidence the fact of his

being guilty, and not we the negative that he is not. My learned friend said — I am persuaded in the true spirit of his feelings, — that he hoped in God we should be able to do what he thought was incumbent upon us; but I have only to thank God that nothing has been done which calls upon me to do any thing more than to ask you, the jury, whether, after what you have heard from my honorable and excellent friend who preceded me, which has made it only an abuse of your time and patience to have heard me at all, the crown has given you reason, as I have just before said, not merely to suspect the guilt of the prisoner, but has compelled you, speaking each man singly for himself, to pronounce that he is guilty, remembering whilst you pronounce it the mild and charitable spirit of the laws, and the protection which our forefathers have raised up against attacks of the state.

Now, do those letters amount to such a proof? Let us try that proposition.

We learn from the evidence that Jackson left this country with Mr. Cokayne, his confidential attendant, who yet knew nothing of any mission to Ireland, and to whom he had never mentioned the name of Stone, nor is there any proof whatever that they were antecedently connected. It appears that he was first announced by Mr. Hurford Stone; and when he went over to Ireland and wrote to

the prisoner, the latter could not but suppose that he had business to transact there. I am not at all afraid of this letter, and will read it to you :

“DUBLIN, *April 5th*, 1794.

“DEAR SIR: Owing to a variety of incidents, which I will explain when I have the pleasure of seeing you, I have been prevented writing until the present moment. Some very excellent friends, to whom I owe most singular obligations, being apprised of my arrival, have endeavored to render me service, and were their power equal to their wishes, I am confident I should experience the benefit of their good intentions; accepting as I do, the will for the act, they have a claim on my gratitude. I must request you not to make use of any of the addresses I left you, the price and nature of the articles being entirely changed.”

Now, the counsel for the crown say this has nothing to do with commerce, and is only a masked way of desiring the prisoner not to make use of the papers he left with him on the subject of the invasion; but that can not be, because they were already dispatched. He then goes on to say: “I request, my dear sir, that you will dedicate an instant, on the return of the post, in acknowledging the receipt of this letter; and if you have any letters from the family at Shields which regard their affairs in this country, you can not too soon enclose them to me, as the assizes at Cork are about to commence.”

It is then asked — and since the burden is cast upon one, I can take it up and carry it — I am asked by what means Mr. Stone knew that the family at Shields meant the people of France, unless he was

in criminal concert with the writer of this letter? To that I answer, that Mr. Stone had long been accustomed to correspond with his brother, whose letters of business had, upon various occasions, been opened; and Jackson also, even if he had honestly come from France, might desire to know, without interruption, through Stone, what was going on there, and might have agreed, for anything I know, that the family at Shields should stand for France. It is nothing whether my guesses are well or ill-founded, as the prisoner is neither to be convicted nor acquitted by guesses, but by the force of the evidence for the crown; yet I think it is impossible not to see, from Mr. Stone's answer, that though he understood the family at Shields to mean France, yet that he interpreted the inquiries to be touching the general concerns of that distracted country. If, indeed, he had said in answer, "I long to hear how the affairs of the family at Shields go on in Ireland; I have had no letters yet upon that subject, but expect some every day, and will send them when the assizes at Cork commence;" and had he followed it up by any expressions by which it could be fairly collected that the business of the family at Shields meant rebellion there, Mr. Stone could have no defence; but there is not a syllable in it that applies to Jackson's interrogatory; and the whole of it shows it to have been regarding general politics

in France, under the cipher which had been resorted to. "I have not made use of what you left me." Now this could not mean the address, for the reason I have already given you, and can not therefore connect itself with this indictment; and he then goes on to say, "What a wonderful change there is in the family." [Taking it to be France.] "Will it tend to good? I confess I think better of it now than before. I want what you possess, a knowledge of the several branches of it, to form a proper judgment of the last fracas." This can only be taken to allude to the hourly-shifting changes in the French revolution, at that time an interesting topic with people of all descriptions; but there is not one syllable in reply to any affairs in Ireland, but, on the contrary, if it does not apply to France, which I think it must be taken to do, it contains matter which rather goes in destruction of the charge. "Will," he says, "the change be for the better?" and then, in answer to his question, seems to intimate that nothing could make it worse; *i. e.*, nothing worse than the government of France. Yet this unfortunate gentleman, seemingly in total ignorance regarding Ireland, and though writing against the French government as a government of evil, never likely to be better, is supposed, nevertheless, to have made up his mind, at the very same moment, to expose all that was dear to him to the sword

of this nation, which, in his own deliberately-written opinion, had neither a government that could protect his friends, nor secure them from the gripe of the succeeding faction, which might destroy it. He was an enthusiast, it is true, to the principles which first led, and may still ultimately lead, in the providence of God, to the universal improvement and happiness of her people, without at all disturbing the settled forms of government in other nations; for constitutions may happily exist under various forms, and he must be a fool who thinks that there can be no good government but our own.

It farther appears, that without at all questioning the justice of Jackson's punishment, Mr. Hurford Stone, the third person charged as a conspirator, can not be said to be proved to have been an agent of France; as it is clear that even after Jackson was in Ireland he was alarmed for his own safety in France, and all his letters, even from his brother, the prisoner, were open to the examination of the French government; and the prisoner himself, as I have before observed to you, even in this very letter which is to let fall the axe upon his neck, if you put the construction upon it which you are asked by the counsel for the prosecution to put, condemns the government, of which he is supposed to be the spy and the supporter, speculates upon its instability, and asks if it possibly can come to

good, whilst, at the very same moment, from the love of this same government, he is giving up his wife and his daughters to the ravishings of her soldiery, his whole property to their pillage, the revered constitution of his forefathers to inevitable destruction, and, by his disconnection with all the moral principles which govern us, and distinguish us from the beasts that perish, sets himself up in his own person as a spectacle of infamy, to the abhorrence of all future generations.

Gentlemen, if this presumption could be supported without any rational motive, and in the teeth of the whole evidence, I am sure I should care much less about an invasion from the French; I could then almost say, let them come when they please; we can not be worse by their coming; I would rather England were invaded from any quarter of the world, even by savages, who know no law, and give no quarter, than live to see that her courts had forgotten all the principles which were the great standards of our security, the pride and glory of our country in all ages, and the most majestic fabric of human wisdom which either tradition or history can record, for the dignity and happiness of mankind.

Gentlemen, there are several other matters which I shall pass by, particularly the details of some of the letters which have been relied on, because, if Mr. Stone be innocent, as I really believe him

to be, how could he possibly have instructed me to comment upon letters he never saw, or to observe upon the conduct of men whose actions were never submitted to his consideration, and with whom he was in no concert? If, indeed, because Jackson wrote the letters in question, and because they were rightly admitted in evidence, they therefore made Mr. Stone responsible for all the crimes Jackson was committing, or had committed, then why, in the name of Heaven, have we been shut up here for two days together? since the instant the court admitted the paper and the letters, the case, so circumstanced, was reduced to this short syllogism: Jackson is a traitor — whoever receives letters from him is a traitor — *ergo*, you, Mr. William Stone, are a traitor; and then you had only to have folded up your notes, and given in your verdict of guilty; but when it has been admitted on all hands that those acts which affect Jackson can only affect the prisoner as he could by proof be connected with him in turpitude, as being the man who set him in motion, or acted with him when he was in motion, knowing the nature of his mission, and intending to give effect to the criminal purpose he was engaged in, then the case is just inverted, and there is no guilt at all.

Gentlemen, I seek to set no snare for your consciences, nor to lead you to think that there is a greater duty to acquit than to condemn. Cer-

tainly there is not. The same sense of duty which binds a humane court to acquit when it can administer a saving justice, calls upon it equally to convict where there is undoubted evidence of guilt. In such a case mercy can have no entrance; it can then only flow from the crown, when the criminal is delivered into the hands of the king. I admit, therefore, that you must conduct yourselves as the noble judge has frequently said in this place, like firm men, discharging the duties of your office as your consciences demand. No man can doubt that this is your indispensable obligation, though I have been very often placed in such situations here as not to have thought myself at all bound to advert to it; but standing in a case where it is impossible, with the view at least I have of it—and I have endeavored to understand it—that you should not consider it your clear duty to acquit the prisoner, I have not been afraid to remind you that I ought to expect nothing from you but the results of justice and law; because the results of both must forever repel a judgment founded upon suspicions and imaginations of guilt.

It is not enough, therefore, for the crown to raise so thick a cloud over this transaction that you can not be sure which way you walk through it, but the light must surround you throughout. This alone can enable you to judge on which side is the balance of the evidence, so as to pronounce

that verdict of acquittal which, to use the language of the attorney-general, that can not be too often repeated, will make every man contented when it is delivered.

LORD KENYON'S

CHARGE TO THE JURY.

GENTLEMEN OF THE JURY: This cause has engaged your attention for a long space of time; and, indeed, in the annals of Westminster Hall there have been very few causes that have occurred that have occasioned such an adjournment as took place last night; it was reserved for the necessities of modern times to consume so much time as has necessarily been consumed to lay before juries properly cases of the great importance that this case is; for it is impossible to impress too much on your minds the importance of the cause. It has on each side been impressed upon you, by those who prosecute for the public, and by the counsel for the prisoner at the bar. On the one side, everything that is dear to the prisoner is concerned; and, on the other side, everything that is dear to the community is concerned. Societies — considering the corrupt nature of man — societies can not keep together without penal laws, and the sanctions of punishment; they have existed in all polished countries; they have been found necessary; and if they have been found necessary to

be enacted, it is necessary that they should be executed, whenever offences exist.

I agree with the learned gentleman, and every man of humanity must agree, that the wishes of every humane man are, that guilt may not be fixed upon any man; but I confess I am one of those who have not the weakness, which weakness a judge, at least, and a jury, must get rid of, before they fit themselves to fill the respective stations which they are to fill in the administration of the justice of the country; I say, therefore, I am not one of those who wish, under false compassion, inconsistent with the administration of criminal justice, that a person on whom guilt is fairly fixed should escape the punishment which the law annexes to his guilt.

Gentlemen, I hope you are come to consider this case at a time, which I dare say you are, when your minds and your bodily strength are not wearied sufficiently to prevent you from proceeding to discuss it, and to form that judgment which now at this instant certainly none of you have formed upon the case, because it would be premature. I can not but lament a little that, in my own case, I certainly do feel a very considerable degree of fatigue; but the duty is cast upon me, and I will perform it as well as I am able.

The offence imputed to the prisoner at the bar is the highest offence that can be committed in

society, namely, an intention of demolishing the government, which keeps civil society together, and, instead of rule and order, converting all into misrule, anarchy, confusion, and no government at all, by overthrowing and annihilating the government, which does at present keep this community together.

The statute of treason, which has existed upon the statute book for some centuries, has delineated, in plain terms, and in terms at least upon which the constructions have been uniform, what treasons are; and those two which are imputed to the prisoner at the bar, are, compassing the death of the king, and adhering to the king's enemies; and it has been very fairly admitted by both the learned counsel for the prisoner at the bar, that the evidence which has been given is evidence advancing, at least to a degree, to charge him with the offences under both the counts in the indictment. It certainly was properly so admitted, because such has been the construction in all times; and one should be sorry to see, upon questions which so materially affect everybody, shifting opinions by those who are to deliver what the laws are to the subjects who are to be governed by them.

Gentlemen, it does appear to me, that the justice of this case will be perfectly satisfied by my calling your attention to the second count contained in the indictment; namely, that which imputes to the

prisoner that he adhered to the king's enemies; and that for the aid, assistance, direction and instruction of the enemies of the king, as to their conduct and prosecution of the war, he sent them certain communications.

It has been decided by the highest authority, and no person doubted the law when it was laid down, and no person has doubted the law since — I choose to give it in the words of my Lord Mansfield, at a time when the court was filled by judges as able and as willing to protect the civil liberties of the subject as ever adorned a court of justice, and with their concurrence he thus laid down the law to gentlemen who stood in the place in which I now have the honor of addressing you — “Letters of advice, and correspondence and intelligence to the enemy to enable them to annoy us, or to defend themselves, written and sent in order to be delivered, certainly constitute the crime of treason — of adhering to the king's enemies.”

It was very properly stated by the learned counsel for the prisoner, that it is the happiness of this cause, that neither upon the law of the case, nor upon the evidence adduced on the behalf of the prosecution, has there been any dispute whatever. The law is agreed to as laid down. All the evidence that has been laid before you comes unquestionably as evidence which you may listen to in point of law. It has been attended and checked

by two gentlemen, most eminent in their profession, and has passed muster with them. It became me, if any doubts arose in my mind, to state them. I expressed my doubts when I had any; and, undoubtedly, if they had incautiously let evidence pass which I thought ought not to have passed, I should have expressed my doubts to the learned judges whose assistance I have the happiness to have upon this occasion, if any doubts had occurred to me.

I have stated what are the charges in the indictment, and what the law is. This case has been discussed by the counsel on both sides; the evidence has been given, and it waits for me to do that which it is my bounden duty to do — to assist you, as well as I am able, before you deliberate upon the cause. It would have been my duty, if I had seen that the counsel for the crown bore hard upon the prisoner, to have rescued him from improper suggestions. It would have been my duty also, if I should have discovered that infinite eloquence, that ardent expressions and infinite zeal had probably had a considerable effect upon the minds of the jury, to give the jury an opportunity to pause before they went on to a conclusion, and to consider what conclusion ought to be drawn from the evidence given in the cause; for the evidence given in the cause is the only source of information to which you can refer; all the rest is

to assist you in that, and, if it tends to confound you, and to lead you astray from that, it is all ill done — it is of use as far as it leads you to understand and apply the evidence; it is all of a bad tendency if it has any other effect.

Gentlemen, I told you at the beginning, that the trouble that I should give you would be very little indeed; everybody before he endeavors to communicate knowledge to another, must somehow or other have made up his own mind, not what are the conclusions to be drawn in the case, but as to the important points in the case; and, though it may be proper in the outset to bring intelligence from every quarter in a cause, yet, generally, long before the cause gets to its conclusion, the great leading and prominent parts of the case are sufficiently obvious to everybody; and whoever bends his attention solely to the small points of the cause, does not, perhaps, yield much assistance to those who are to judge upon it; but upon the great and small points of the cause, let me not presume to impose my judgment upon you; you are to see what are the great and small points of the cause. It is my duty to lay before you, for your assistance, what appear to me to be the great points of the cause.

A great number of the letters which were read at the beginning of the cause seem to me to have received a very proper construction from the learned gentlemen of counsel with the prisoner at

the bar; they certainly were, many of them, letters really respecting a trade existing, and establishments in trade meant to be carried on in France. I verily believe it. I believe with them, also, for it was expressly so said by the learned counsel who first addressed you for the prisoner — and when I make an observation presently, it will appear, for if the concession had been made inadvertently, but surely it was not, it ought not to be abided by, but it appeared to me it was properly stated by him — that all that is said of the people at North Shields, of the assizes at Cork, certainly did not respect any commercial negotiations between those parties, but referred to something which one of the letters says is mysterious; for the language of one of the letters, No. 5, after it had been talking about a person who would come, says, “The person alluded to will explain all mysteries;” therefore, that there was something mysterious in these letters, that they were, as has been so often repeated, something enigmatical, beyond all controversy, appears from the letters themselves.

Gentlemen, the letters present to us three persons, who also appear in every step that we take in the business, the prisoner at the bar, his brother, who, from the style of all the letters, and from everything that has appeared in the cause, appears to be a person who considered himself as

having exchanged his country, and having become interested in, and a well-wisher to France, in short, become a Frenchman; for whenever he speaks in these confidential letters to his brother, which were to be directed to the house, but not to be opened by the house, of the French, he calls them us, and of the people of England, you; therefore he considered himself, it is pretty clear, though this is no very important observation in the cause, yet certainly he all along considered himself as a person who was domiciled in France, and wished to be understood by his domiciliation there to have become a member of the community in France. The third person was a Mr. Jackson, now no more, who also is admitted in the cause to be an agent for the French; how far his agency went, you will consider in the sequel of the cause.

Gentlemen, I shall now lay before you the two emphatical and important papers in the cause; and I am authorized to lay them before you, because they are proved expressly, by evidence which is uncontroverted, to have been in the possession of Mr. Stone, and to have been in the possession of Mr. Jackson also, for in the custody of both of them these letters are found; how communicated, the evidence which follows in the cause will present to you proof; whether decisive proof or not it is for you, and not for me, to decide.

The first of these is a letter which is admitted

on all hands to have been written by a member of the House of Commons, Mr. William Smith, to Mr. Stone, the prisoner at the bar. Gentlemen, I wish you would attend to this, though, indeed, I need not bespeak your attention; your attention has been marked throughout.

[Here his lordship read the letter.]

This is the letter which was written by Mr. Smith; the other paper, which I also desire to call your attention to, and which, as I have before stated, was found in the hands both of Mr. Stone and of Mr. Jackson, is that which is said to have come from Mr. Vaughan to Mr. Stone, and got somehow into the hands of Mr. Jackson; that paper is this:

[Here his lordship read the paper.]

Gentlemen, you have heard these papers, and in the sequel of the cause you are bound upon your oaths to consider whether they contain information which, if given to the French government, must be of use to them in the future progress of their concerns. As this indictment is framed, and as the whole cause is laid before you, it appears to me that your attention was rather led, in a considerable part of the cause, to a point which is not important in the cause, for it was supposed that

the criminality of the papers rested in their tempting the French to invade the country. Nothing like it; if that was the only crime which might have been committed, perhaps it would be straining this paper too much to infer, when they state to the French in such formidable terms what the difficulties would be, that this letter at all tended to tempt the French to invade this country; but if any thing of that kind was said, it is necessary for me to state to you that that is nothing like the point in cause.

I say, in the language of Lord Mansfield, that if the communication made is a communication which may tend to be of any assistance to the subjects of another country to annoy this country, or to defend themselves, or to shape in any manner the nature of their attacks upon this country, that that, beyond all controversy, is high treason. I state this so positively, because I know the learning and candor of the gentlemen, that nobody will suppose that I over-state it. Beyond all doubt it is so; therefore, if upon your serious consideration of these letters, you should find that those letters communicated any information to the French, being in a state of hostility with this country—and therefore every thing which helped to assist them drew back from the interest of this country—if you should find that, I do not mean to state that the offence is complete till I have stated to you

something else, and then it is for you to deliberate whether it is complete ; but it is for you to look at these papers under the view and representation I have made of these papers, because it is what I am upon my oath bound to state to you ; if I misstate it I shall be correctable by the learned judges, and I shall not be sorry to be interrupted if I state any thing that renders interruption necessary, because it never comes too late when the blood of a fellow-subject is at stake ; but I am bound to do it ; it is not a pleasant task, but thus circumstanced, unpleasant as the task is to any man of feeling, I must meet my situation and summon up my fortitude as well as I can to discharge it as well as my faculties will permit me.

These papers being read, I will proceed to state at length the evidence which was given by the several witnesses who were called. I shall not state the evidence of witnesses who found papers here and there, and proved hands-writing, and those kind of things.

Mr. King, the under-secretary of state, was called, and he told you what papers he found in the house of the prisoner, and where he found the several papers ; and he tells you what the behaviour of the prisoner was when they were found ; that he did not demonstrate any marks by which he could collect that he thought himself in a state of guilt. He tells you farther, that he asked the prisoner to

produce the letters which were signed Popkins and Enots; and told him that if he would deliver those letters, his other papers should be delivered to him again; in answer to which the prisoner told him, that he had no letters of that signature by him.

Gentlemen, the next witness who was called is Mr. Reuben Smith, whose evidence I believe I need not state.

The next witnesses were the persons from Dublin, who found the papers; but the next witness who gave any evidence important to the cause was Mr. Smith, a member of parliament. He says he has known the prisoner six or seven years; he says No. 12, the first of the two papers I read, is of his hand-writing, and that he sent it to the prisoner; that he had conversation with the prisoner about a person of the name of Jackson, whom the prisoner named to him, and talked to him about; that he met the prisoner several times, sometimes at Freemason's Hall, and that at one of the meetings at Freemason's Hall the prisoner came to him and said, "My correspondence with my brother has been interrupted for a considerable time, but a person has lately brought me a letter from him, to which he requests I would send him an answer;" he appeared to be much alarmed at that time with apprehensions that the French intended to invade this country; but he thought if any means could be used of counteracting here the

impressions there entertained, respecting the state of affairs in England, it might be advantageous. "The prisoner expressed himself under similar alarm; he asked me what my opinion was upon the subject; I told him, in effect, that I thought he must be well acquainted with my opinion upon that point, because he must often have heard me express my persuasion that such an attempt would never be made, and I believe that I stated reasons similar to what appear in that paper. After some little conversation, he told me he had had a conversation with Mr. Vaughan upon the same subject; that Mr. Vaughan had told him he thought there would be no impropriety in giving his brother that general information for which he seemed to wish, and that Mr. Vaughan had given him a paper containing some of his opinions upon that head." He says, in the same conversation, "he showed me a paper, and asked my opinion; I told him I thought the opinions in that paper might be very true, or words to that purport, but that its expressions appeared to me, in many points of view, exceptionable; he informed me he had shown it to several gentlemen, to Lord Lauderdale and Colonel Maitland, among others—I am not sure that he mentioned anybody else;—that they appeared, on the whole, to think the paper was innocent, but had objected to many expressions in it; I am sure he gave me to understand that he

did not mean to make any use of this paper (Mr. Vaughan's paper), if, upon consulting any friends, they should advise him against it. I remember nothing farther material, except that I told him, that, lest he should forget or misunderstand me, I would put down what I had to say in writing. He said, an American gentleman, of the name of Jackson, had brought him a letter; I did not know who he was. I understood from the prisoner that what his brother wanted of him was to know some gentlemen's opinions; I do not know that ever I saw him afterwards. Mr. Stone told me an American gentleman had come from his brother, in consequence of the interruption of their correspondence." He says, the paper marked No. 11, with a cross, is the paper the prisoner showed him as Mr. Vaughan's paper; he believes it corresponds in language with that which he had seen; there were some scratches upon the paper, in the manner in which the paper showed him was scratched.

Upon his cross-examination, he says he was not in confidence with the prisoner; he had been occasionally in his company at the house of Dr. Crawford, who married Mr. Stone's sister; he had seen him frequently at Freemason's Hall. Mr. Stone, applied to him to get a bill passed in parliament, which he wanted to have for some private purpose of his own; he said "the prisoner imposed no confidence on me; he acquainted me he had

mentioned it to some other persons, and I believe he said he intended to mention it to more."

The next witness who was called was Mr. Sheridan, and it is essential that you should attend minutely to the evidence of Mr. Sheridan. Mr. Sheridan says, that the prisoner, in March, 1794, applied to him at his house; that Mr. Wilson wrote a letter, in consequence of which the prisoner and Mr. Wilson came to him. He said, the "prisoner wanted my opinion on something which had been communicated to Lord Lauderdale and Colonel Maitland, which he conceived might be of great public benefit; he said he had frequent communications from his brother in Paris, that he understood from him the idea of attempting an invasion in this country was a plan resolved upon by the executive government of France; he thought, from his brother, that this plan proceeded from an ill-grounded opinion of the state of the public mind, and the prevalence of discontent in this country; the prisoner then proceeded to state, that the mode he would make this communication by would be through a circuitous channel of communication; that he would, through that channel, undeceive the government of France, that he would give them the real state of this country, and convince them how little could be expected from any thing like assistance or co-operation from any description of men in this country; that he hoped the conse-

quence might be their abandoning a project evidently taken up on false information. The prisoner stated that in order to effect this purpose, he had endeavored to collect the opinion of several political characters in this country, whose opinion he thought would be likely to advance his object, and for this purpose he had had an interview with several gentlemen; he named Mr. Smith and others; he then mentioned that he had communicated with Mr. Vaughan, who had put down his sentiments in writing, and he produced a written paper of this opinion, which he said was Mr. Vaughan's, and began reading the paper. I said I did not like to meddle in the business, as I thought him likely to be imposed upon by the person who was the channel of communication between him and his brother, whom he had stated to be an American gentleman. I said that I had always made it a rule not to enter into any conversations of this kind under the then circumstances, and politely begged he would excuse my listening farther; I told him he ought to have no communication with his brother at all, but what went through the secretary of state's hands, and that if I had been in Mr. Dundas' situation, I would take care that he had no communication with his brother but what I should know; I told him the way to do good would be by a direct communication with his majesty's ministers; he seemed

to hesitate, but I think he said he had had some communication with some of his majesty's ministers upon the subject;" afterwards Mr. Sheridan recollected himself, and he says he thought he said he had communicated something to General Murray; to be sure General Murray was no minister.

The next witness who was called was the Earl of Lauderdale. He says, "in March, 1794, I had a communication with the prisoner, my brother was with me, I met the prisoner at a coffee-house in Bond street, there was a conversation about the state of things in France, the prisoner pulled out a paper, which he read, and said it was given him by Mr. Vaughan; my brother expressed his surprise at Mr. Vaughan's giving him such a paper, he pointed out a particular passage, and asked if Mr. Vaughan had wrote this, the prisoner said the substance was received from Mr. Vaughan; Mr. Wilson came into the coffee-house, there was some general conversation, and we left the room; I can not recollect the passage objected to; I was much disappointed at the meeting, I thought it a very foolish meeting, and was sorry I had been there." His lordship says, "I believe Mr. Stone never received any letter from my brother nor me; a letter was written by me, I believe, to the prisoner, but was not sent. I believe No. 11, with a cross, was the paper communicated to me."

The next witness was Mr. John Towgood. He

says, the prisoner, in April, 1794, told him that he had seen a gentleman who had just come from Paris, who had brought him news from his brother; that this person had asked him about the state of parties in this country, and how it was likely the people would be affected towards the French in case of an invasion. The prisoner then said he thought it an opportunity of doing good to this country; that it was his opinion, that in case of such an attempt, whatever difference of opinion there might be on other subjects, there would be but one mind as to resisting any such attempt, in case it should be made; he farther said, he thought it would be doing good if this opinion should be forwarded to his brother in France by this American gentleman. "I said it was a very delicate subject indeed to converse about; he said he would do nothing that should implicate me in any difficulty. The prisoner then read a paper expressing those sentiments that I have just mentioned; he farther said, that he had mentioned it to some persons of consequence, among others, I think he mentioned Lord Lauderdale, Mr. Sheridan, Mr. Smith, Mr. Vaughan, and Colonel Maitland, and the reason he gave was, that he thought it would be doing more good if the opinion went sanctioned with those names, than if it was his opinion only." The witness says, "some days afterwards I saw the prisoner again, who said that he

had delivered the paper to the American gentleman, strongly expressing the sentiments I have just mentioned, and he expressed himself much satisfied that, by considerable pains and trouble, he had done what he conceived an essential good to his country, in preventing the attempt of an invasion, if such had ever been intended."

On his cross-examination, he says he has seen Mr. Vaughan write, but he does not know enough of his hand to speak to it, though he rather believes the paper to be Mr. Vaughan's hand; there are some parts in Mr. Stone's hand-writing. He says he has known Mr. Stone well many years; he never heard him express any thing disloyal; he believes he is a friend to reform, but he is also a friend to the constitution.

Mr. Rogers is next called. He has known both the Mr. Stones for many years. He says, "in March, 1794, Mr. Stone met me in the street, and mentioned having received a letter from his brother at Paris, and the arrival of a gentleman who wished to collect the sentiments of the people of this country with respect to a French invasion;" he says he rather declined the conversation; he says Mr. Stone called upon him a few days afterwards, and showed him a paper written by somebody else, that the English would unite to repel an invasion; he said he thought he should do his duty, if, by stating what was true, he could

save his country from an invasion ; he says there was no injunction of secrecy ; that he has known the prisoner many years, and always thought him to be a well-meaning man.

Gentlemen, this is the important evidence that has been given in support of the charge which is made by the counsel for the public against the prisoner at the bar ; and, gentlemen, it is admitted, I think by the counsel for the defendant, that this is important evidence, if the mind of the prisoner went to communicate the intelligence contained in this paper to the government of France.

Mr. Erskine. No ; pardon me ; I disavow it positively ; I never would come again into this place if I had admitted any such thing.

Lord Kenyon. I understood you to state that the only question in this cause was, what was the intention ; I understood you both to say, in terms, that the question was reduced pretty much to the point, whether he had a criminal intention towards the country in that which was done.

Mr. Erskine. I did not, I thank God, express myself in that manner. I said, that the question was, whether the prisoner gave this communication to France with an intention to benefit France, instead of with an intention to avert that calamity from this country ; that is what I said.

Mr. Attorney-General. I beg to say a single

word, with your lordship's permission, in this stage of the cause, that what I opened to the jury may not be misunderstood. I put myself upon the words of the indictment — that if the intention was to make that communication to aid and assist the government of France in carrying on its war against this country, I state it now distinctly, as I stated it before, to be high treason.

Mr. Erskine. I was only speaking for myself, but Mr. Serjeant Adair also said the same thing.

Mr. Justice Grose. The counsel for the prisoner do not differ.

Mr. Erskine. Not in the least; we do not presume to say we are right, but we do not choose to be misinterpreted.

Lord Kenyon. Gentlemen of the jury, this is, I think, important evidence in the cause; these papers are proved to have been sent, and to be found in the custody of Mr. Jackson in Ireland; it is for you to say what the character of Mr. Jackson was; the original copies of both these papers were found in the custody of Mr. Stone in England; one was proved by Mr. Smith to have been delivered by him to Mr. Stone, and the prisoner confessed to the witnesses who have been called, that the other paper he had from Mr. Vaughan; they get into the hands of Jackson, who was in Ireland. Mr. Sheridan, in his evidence, you will

recollect, states that the prisoner told him he meant to communicate this to the French government, and that the mode he should take would be through a circuitous channel of communication, to undeceive the French government.

Now, gentlemen, it is for you to conclude upon this evidence; I shall consider the answer and the observations as well as I am able, whether these papers, the effect of which I have before commented upon, were not communicated to Mr. Jackson in Ireland in order to go by that circuitous channel of communication he spoke of to Mr. Sheridan to the government in France. But it is said by the counsel, and the evidence that has been adduced, that he could not mean anything amiss in this, because these communications had been made frequently in the streets, and upon the Coal Exchange, and in places very public, to divers other persons.

These communications involve no crime at all; the writing of these papers, independent of the use that was to be made of them, was no crime; he might have shown them with perfect confidence, satisfied that no one could derive from them accusation against him, if he had shown them at all points of the compass, provided he had not shown them with a view that they should be transmitted to France, or in any way put into the power of the government of France, to assist and aid the coun-

cils of that country; that is the single purpose which constitutes the offence; and, therefore, when it is said that all this goes to prove the innocence of the man, it is for you to judge whether, with these observations, it tends to prove any thing at all.

It is said that at the time when his house was examined, he made no difficulty in producing his papers, but that all his papers were communicated to the officers who came. Gentlemen, you will recollect that I have before stated to you, and you must recollect it before you form your judgment of the matter, that when he was asked for what was thought by the under-secretary of state to be the essential papers, namely, those signed Popkins and Enots, and told that all his other papers should be delivered to him as of little importance compared with them, that he then positively said he had no papers with those signatures, he had no correspondence of the kind. These papers were afterwards found.

It has been said, and every thing that has been said ought to receive its full force, that, when it was essential to make communications, he had not been backward in making communications. I am bound to observe upon this also, that these communications were made in the preceding year, 1793 — the last of them in the month of April, 1793 — and that every one of these communications was

prior to the important time when the messenger from France, Mr. Jackson, came into this country, for the time when he came into this country appears by the direction he left at the port of Hull.

Gentlemen, I have stated to you the evidence which was given by Mr. Sheridan, my Lord Lauderdale, Mr. Towgood, and Mr. Rogers; you will recollect what the advice was that Mr. Sheridan gave the prisoner — that it was a ticklish kind of business that he meddled with, and that he thought he ought not to receive any letters from his brother; that he ought to have nothing to do with the business without communicating to the minister. It was therefore contrary to the advice of these four gentlemen, whose evidence I have read, that he proceeded to do any thing with this paper of Mr. Vaughan's, which the two noble brothers of the house of Maitland, my Lord Lauderdale and Colonel Maitland, told him contained exceptionable passages, which they wondered Mr. Vaughan should write.

It is said, by all this* he did not mean to injure this country, and assist France. The great Searcher of hearts knows the heart of man; we can only judge of men's hearts, and their intentions, from their overt acts. The paper was sent, according to his own express account of the paper to Mr. Sheridan, with a view to be communicated to the government of France — it was sent there in

direct opposition to the advice of the four gentlemen whose names I have mentioned to you; it is for you to say whether it was sent innocently or not; for when you have drawn that conclusion, you arrive at the end of your business; but before you make that conclusion, you will attend to the character, which has been given by a great number of witnesses, of this person, and of his general demeanor and conduct in life.

We are certainly not trying his character otherwise than as it comes to assist him in his defence upon this case; we are trying the fact, whether he communicated this important paper in the course of going by a circuitous communication — I choose to put it in the words he used to Mr. Sheridan — to the government of France. The use of the evidence of character you all, in your several situations of grand jurymen, and otherwise in your commerce with the world, are abundantly acquainted with; in doubtful cases recourse may be had to it; and God forbid a man should not appeal to his character, in order to help him in the day of distress; but if evidence of character in doubtful cases is made to go farther than that; if it is to blot out all the evidence on one side, and to reinstate the party, it is saying, in other terms, that a man of character may commit any licentiousness, any thing that he pleases, and he shall

be free from accusation, or free from punishment, because he has before had a good character.

Gentlemen, these do appear to me the main parts of the case, and the only parts which I am aware are important in the case, or else I should drudge through all the rest as well as I am able. It is my duty to lay before you those things which I conceive evince either the guilt or innocence of the party, and it is your part to draw the conclusion.

One of the Jury. Is not the intention of the prisoner necessarily to be considered, or the mere act?

Lord Kenyon. You will consider the intention in the evidence.

Mr. Justice Lawrence. It has been stated by the counsel for the prisoner, as I understand — if I am mistaken I wish to be corrected — that the question was, whether he acted *bonâ fide*, or with the traitorous intention stated in the indictment. I believe it was stated by my brother Adair, that the question would be, whether the prisoner, from what he knew of Mr. Jackson, gave the paper to Mr. Jackson with the criminal intention imputed in the indictment, or with an intention of averting the calamities of an invasion. In order to disprove that intention, a good deal has been said with respect to that which the prisoner communicated to

Mr. Sheridan, Mr. Smith, and other persons, with respect to the motive with which he had collected this information.

Gentlemen, if you attend to the evidence of Mr. Smith, you will see this : he said that the prisoner came to him and told him that his correspondence with his brother had been interrupted for a considerable time, but a person had lately brought him a letter from his brother, to which he requested he would send him an answer ; that his brother appeared to be much alarmed with the apprehension that the French intended to invade this country ; but he thought if any means could be afforded him of counteracting the impression there entertained respecting the state of affairs in England, it might be advantageous ; he said he thought there could be no impropriety in giving his brother that general information. I think the account he gave Mr. Sheridan was to the same effect, that, by means of his brother, that information might reach the government of France. The account he gave the other gentlemen was not exactly the same, but I think he said the information was to get to the government of France by the means of some American gentleman.

Now, when you consider as to the truth of that, see whether he is consistent. In the first place, I observe that the account is not exactly the same ; but that does not particularly strike me, therefore

I would not have it much the subject of your attention ; but I think there is something material in the evidence of Mr. Smith ; he informed Mr. Smith that his correspondence with his brother had been interrupted for a considerable time, but a person had lately brought him a letter from him, to which he requested an answer ; he appeared to be much alarmed at that time with apprehensions that the French intended an invasion of this country.

Now, that the correspondence was interrupted does not seem to me to be proved by the evidence ; for I think it appears that the letter No. 10 was dated on the 4th of March, the post-mark the 24th ; and it appears likewise that two letters were directed to him, one the 14th of February, with no post-mark, the other the 16th of February, the post-mark to which I think is the 1st of March : so there does not seem any interruption of the correspondence between him and his brother. And in that letter of the 4th of March, No. 10, it is remarkable that he desires his letters to be directed to him in the future to the house of Jean Louis Bouchard and Company, at Basle, in Switzerland, though, he says, he has met with no interruption in their receipt, but as it is most likely, from circumstances, that an interruption may take place. Therefore, it appears, taking this letter with the account he gave to Mr. Smith, that it

was not the fact that there had been any interruption in the correspondence between him and his brother.

Mr. Serjeant Adair. There had been an interruption of their correspondence of eight months, from April to November.

Mr. Attorney-General. This is getting into great irregularity; but if counsel are thus to break in after the court has summed up, I should wish to observe concerning the account of Popkins and Enots.

Mr. Justice Lawrence. I should have to lament if by any misapprehension of mine the prisoner labored under any disadvantage whatever; but, if I understood Mr. Smith right, the prisoner stated to him, that a gentleman who had brought a letter to him informing him that his brother was very much alarmed with respect to an invasion of this country, and that the correspondence between them was interrupted.

Mr. Erskine. Had been interrupted. Mr. Stone's letter from France states, in terms, that interruption; and it had in fact existed for eight or nine months.

Mr. Attorney-General. I mean to say, Mr. Justice Lawrence is perfectly accurate.

Mr. Justice Lawrence. I am almost certain he said his correspondence had been interrupted for a

considerable time, and that an American gentleman, whose name was Jackson, had brought him a letter; it did not point out when it was interrupted; but I could not help observing this, that his account of the thing was, that his brother was very apprehensive of an invasion of this country, and under that pretence he endeavored to get that information; that was the ground upon which I understood it was put. I wished to point that out to the observation of the jury, that it might have the consideration it deserves.

Mr. Justice Grose. I have taken the words thus: "The prisoner came to me and said, my correspondence with my brother has been interrupted for a considerable time."

Lord Kenyon. I stated it in those very words to the gentlemen of the jury.

Mr. Attorney-General. All that is material upon that is, to observe the dates of the letters.

Mr. Justice Grose. I was only solicitous that the question should be perfectly understood; and now, upon this latter part, it is clear.

The jury withdrew at ten minutes past eight o'clock, and returned into court at eleven, with a verdict of not guilty. Upon the verdict being pronounced, some persons in court clapped their hands, and indulged in sundry demonstrations of applause; one gentleman, Mr. Richard Thompson, being particularly observed by the court, was fined twenty pounds.

END OF VOLUME III.

