THE

FACTORY CONTROVERSY;

A WARNING AGAINST

MEDDLING LEGISLATION.

BY

HARRIET MARTINEAU.

ISSUED BY THE NATIONAL ASSOCIATION OF
FACTORY OCCUPIERS,
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PREFATORY LETTER.

TO

HENRY WHITWORTH, Esq.,

SECRETARY TO THE NATIONAL ASSOCIATION OF FACTORY OCCUPIERS.

My Dear Sir,

I propose to place at the disposal of your Association an article which I wrote for the "Westminster Review," the history of which is simply this:—

In October, 1854, there appeared in the "Westminster Review" an article (or a portion of one, for the writer was carried off by cholera before he had finished his work) on the Proper Sphere and Duties of Government. This essay, on the most important of all subjects of domestic politics, impressed me deeply, carrying out solidly, as it did, some ideas which had long been floating in my mind. I felt at once, and I have felt ever since, that it would be a good public service to illustrate in all possible ways the truths of that essay.

Some weeks ago, a representation made by Mr. Horner determined me to reproduce the subject of Meddling Legis-

lation, and to take the working of the Factory Acts as my illustration, as the most complete exhibition that could be desired of the vice of the principle of Meddling Legislation, and the social mischiefs caused by its injustice and impracticableness. I did not then even know of the existence of your Association: and I mention these facts to obviate all pretext for the charge that my article was in any way instigated by any factory occupiers. What instigation there was was supplied by Mr. Horner, whose views it appeared to me highly necessary to controvert, for the sake at once of employers and employed, and indeed of all who live under the laws of England.

I mentioned my desire to obtain the facts on both sides of the question to a member of your Association who visited me soon after; and it was from Mr. Horner's Report thus obtained that I first learned the origin, date, and circumstances of your Association. What I now send you is so far from being a brief held for the Association, that it was your adversary who first put it into my head to write the article; and it was his side of the question that I read before I looked at yours.

I proposed my article to the editor of the "WESTMINISTER REVIEW," and the proposal was accepted. From the MS., however, he started back. In regard to the doctrine, he agrees with me, he declares, entirely; but he disapproves the manner in which I have treated the sayings and doings of Mr. Horner,

Mr. Dickens, and others. I, for my part, cannot conscientiously modify what I have said. These gentlemen have publicly assumed a ground which, in the opinion of sound statesmen, cannot be maintained; and I believe my article proves that they have supported their position by inaccurate statements, and in a temper and by language which convey their own condemnation. In a matter of literary judgment or taste, one may soften one's tone of criticism and opposition to the gentlest breath of dissent; but in a matter of political morality so vital as this, there must be no compromise and no mistake. Mr. Horner and Mr. Dickens, as Inspector and Editor, have taken up a ground which they do not pretend to establish on any principle; and they hold it in an objectionable temper, and by indefensible means. It seems to me, therefore, necessary to meet them unflinchingly, and expose, with all possible plainness, the mischief they are doing. *They* cannot complain, with any appearance of reason, of any plainness of speech. I have judged them by their own published statements; and the language of Mr. Horner's Reports, and of Mr. Dickens's periodical, in regard to the Factory Occupiers of England, leaves them no ground of remonstrance on the score of courtesy. I like courtesy as well as anybody can do; but when vicious legislation and social oppression are upheld by men in high places, the vindication of principle and exposure of the mischief must come before considerations of private feeling. These gentlemen have offered a challenge to society,—and certainly in no spirit or tone of courtesy; and they will not, if they claim to be rational men, object to a fair encounter of

their challenge. On these grounds, I declined to modify my article, preferring to publish it unaltered through some other channel. As the best means of meeting the mischief it denounces, I offer it to your Association, to be published as a pamphlet, or in any way which, in the judgment of your committee, may ensure the widest circulation for it. In my present state of health, it has been something of an effort to write this article; and if I had consulted my own ease, I should have let the matter alone altogether; but the struggle for the establishment of a good or bad principle in this vital case is so important, and the existence of your Association appears to me a social fact of such extraordinary significance, that I could not have been easy to let the occasion pass without an effort on my part, for no better reason than its occasioning me fatigue and many painful emotions.

I now see additional reason to believe that no effort on the side of sound principle can be unnecessary. What influence Mr. Oastler's "Letter" of commentary on the Special Report of your Association may have I know not; but the republication of the Factory Acts by "Thomas Tapping, Esq., Barrister-at-Law," with notes which he calls explanatory, but which to his readers appear to be rather something very different, seems to show that it was high time the passionate advocates of Meddling Legislation should be met by opponents of such legislation who are by position likely to be at once dispassionate and disinterested. What can instigate any lawyer, who cannot be supposed an interested party, to write such

a preface as Mr. Tapping's, it is difficult to imagine. On opening it, my eye falls at once on a false statement, which ought to destroy the authority of all the rest. Mr. Tapping writes (p. vi.) that "the manufacturers have instituted the 'National Association of Factory Occupiers,' the special purpose of which, *it is said*, is to raise a fund for defraying thereout all fines for not fencing which may be inflicted upon members. For the sake of suffering humanity it is hoped that, notwithstanding such illegal association, the inspectors will vigorously prosecute all violations of the law in this respect." This statement is dated October 2nd, 1855; whereas the Special Report of your Association, dated July, expressly declares that the Association will pay no penalties awarded under Factory Acts. Mr. Tapping tells us "it is said;" but he is not justifiable in publishing such a statement, and thereupon declaring your Association "illegal," without fully ascertaining the fact.

If the publication of my MS. should induce any considerable number of persons to inquire into the facts of the case, and investigate the principle of such special legislation as that which has singled out one class for stringent restraint, and may impose similar restraint on every other class in turn, I shall be glad that I have offered to you this spontaneous plea on behalf of your cause. I trust it can do that cause no harm, if it does no good.

I suppose, and hope, that you will print the paper just as

it stands,—in the form of an article intended for a quarterly review. Not only does this seem to me the most simple and honest course, but it will ensure the reader against lapsing into a supposition that the writer is an agent or advocate of your committee, or in some way or other less independent and impartial than I really am.

I shall be not only thankful, but compelled, to turn over to you, as I should have done in due course to the editor of a review, any correspondence which may result from the publication of my article. My state of illness—worse since the paper was written—incapacitates me for correspondence; and I hope therefore, that you will kindly allow all letters on the subject to be addressed to you, as the Secretary of the "National Association of Factory Occupiers."

Believe me, Dear Sir, truly yours,

HARRIET MARTINEAU.

NOTE.—*It is requested, in conformity with the wishes of Mrs. Harriet Martineau (expressed in the above prefatory letter), that any correspondence occasioned by the publication of this pamphlet be addressed to the undersigned,*

HENRY WHITWORTH,
SECRETARY TO THE NATIONAL ASSOCIATION OF FACTORY OCCUPIERS,

13, *Corporation Street, Manchester.*

SPECIAL LEGISLATION.—THE FACTORY CONTROVERSY.

1. *Reports of the Inspectors of Factories, to Her Majesty's Principal Secretary of State for the Home Department, for the Half-year ending 31st October*, 1854.
2. *Reports, &c. &c. for the Half-year ending 30th April*, 1855.
3. *The Factories Acts.* 1833 and 1844.
4. *Special Report of the Executive Committee of the National Association of Factory Occupiers.* July, 1855.
5. *Rules of the National Association of Factory Occupiers.* Established 17th April, 1855.
6. *Oldham Chronicle.* February 10th, 1855.
7. *Worthington and Others* v. *the Magistrates of Oldham.* April 12th, 1855.
8. *Manchester Guardian.* February 22nd, 1854.
9. *Schofield* v. *Schunck.* April, 1855. In the Queen's Bench.
10. *Ashworth* v. *Wild.* April, 1855.
11. *Table of Accidents in Factories by Machinery.*
12. *Household Words.* Vol. XI. Nos. 264, 268, 274, 279. *Articles :—*
    - "*Fencing with Humanity.*"
    - "*Death's Cyphering Book.*"
    - "*Deadly Shafts.*"
    - "*More Grist to the Mill.*"

Somebody says, every day, at present, that some subject or other must stand over till the end of the war. For two parliamentary sessions, this has been the plea of the politic for ignoring troublesome topics, and the excuse of the timid for postponing difficult discussions. We have never admitted the soundness of the plea or the excuse, in regard to any matter of real

importance and interest, because we saw, as any body may see who chooses to look, that science, art, manufactures, and education, made progress during the very worst days of the last war. When the Berlin Decrees were in full force; when the marine highway was as infested with enemies as the great roads of the Continent; when we had no allies, or worse than none, in carrying on the struggle for our national existence, we were trying our first experiments in popular education, working out the leading principles of political economy, developing our cotton manufacture, trying our first experiments with steam, laying the foundations of geological science, obtaining glimpses into an entirely new world through the avenues of chemistry, cataloguing the stars, enjoying enthusiasms about authors and new departments of literature, and going wild after Siddons and Catalani. After such an experience as that, it is really nonsense to talk of a stagnation of national interests through our present war. If, in the very crisis of our national existence and fortunes, Wollaston, and Davy, and Cavendish, and Maskelyne, and Herschel were extending the bounds of science; and Horner and Malthus were discovering principles and propounding theories in political economy; and the machinery of our cotton manufacture was adding two millions to our population; and the *Edinburgh* and *Quarterly Reviews* arose; and Wilberforce and Hannah More taught in adult schools; and Romilly reformed the criminal law; and musical festivals arose; and the stage was at its culminating point of influence and prosperity,—what an absurdity it seems to pretend that we are too busy with our one enemy, whom we have cooped up within his own frontier, to attend to national, or social, or personal objects! It ought not to be true, and it is not true: witness the amount of autumn travelling, and of autumn sporting this year, and the great round of agricultural celebrations; and the Glasgow meeting of the British Association; and the Birmingham Festival,—spirited, and successful beyond all precedent; and

the sale of Tennyson's "Maud;" and the interest in the Paris Exposition, and almost every sign of the time that can be adduced. It ought not to be true, and it is not true, that the war has made us disregard objects of genuine interest and importance.

If it had, we should now have felt bound to make a solemn appeal to the fears of our fellow-citizens, where we hope and believe that it will be enough simply to request and attract their attention. If we believed that their wits were wool-gathering in the East, we should recal them by a loud alarm about the danger of their liberties at home; but, confident as we are, that our neighbours are nearly as much in earnest as ever about affairs at home, we feel that we need only put before them certain facts of the day to induce them to watch their own liberties while sacrificing so largely as they are doing on behalf of those of all Europe.

One of the fair features of the just war in which we are engaged is, that it is sweeping away some of the corruptions, and rehabilitating some of the degeneracies bred by the long peace. One of the duties of patriotism is to see that the besom is not turned from its course by fear or favour; that no damp, dirty corner is shut up from purification, in the hope that people will be too much engrossed to find it out: and it is in discharge of this duty that we now call attention to certain facts, showing that the false philanthropy, which is one of the bad growths of the recent time—the proud-flesh of our body politic—is corrupting our social condition, and encroaching on the very principles of our liberties, as actively as before the war began. For twenty years past, the most enlightened and reflective men in all advanced nations have lamented, as the most disastrous of the ignorances and incapacities of the time, the universal disorder of men's minds on the all-important point of the true sphere and proper duties of government. In England, where there are no revolutions going forward,—either periodical,

as in the United States; or occasional, as on the Continent,—it might be expected that the government, or at least the parliamentary portion of it, would have some notion, fixed enough for common use, as to what its own business was, even if speculative philosophers were still far from the end of their controversies as to the true scope of legislation, and function of the executive. But experience shows that even in stable, quiet, constitutional England, there is still plenty of uncertainty about the relations between the government and several classes, if not the whole, of the nation. Our fathers outgrew the meddling of successive governments with the cost of their food and the mode of their dress. Our own fathers told us we had nothing more to fear from attempts to fix the rate of wages by Act of Parliament. Yet here we are once again in the midst of confusion and actual danger to our liberties, from the same tendency in busy and shallow minds to recur to legislation for the carrying of their objects, encouraged as that tendency is by the ignorance and carelessness of our law-makers and their constituents, as to the principles which should prescribe and limit the sphere of legislation. When we are in Paris, we thank our stars that we are not trammelled by law and police in every act of our lives; that we can buy a dose of medicine without a permit, and draw our supplies from the country without paying a tax at the city gates, When we talk by the fire-side with our elderly relations, we hear wonderful stories of the old plagues of excise intrusion, and the custom-house tyranny which made our whole coast a harbourage for smugglers; and we think it a fine thing to live in times of such domestic freedom as the present. Yet, in this very present, so free, and so convenient in its freedom, there has been an advancing encroachment on the liberty of the citizen, aggravated since the war began to an intolerable degree, which justifies our appeal to government, and yet more to the constituents of government, to take care what they are about. The false philanthropy, which is one of the unwholesome growths of a protracted period

of abeyance of national objects, has so acted upon the ignorance and carelessness of society, in regard to the true function of our rulers, as to place us in more serious social danger than our fathers supposed we had yet to go through from such a cause.

There is nothing like a true story, fully told, for illustrating truths of a moral or political class. We shall, therefore, relate a true story, making choice of our narrative for its fulness and clearness, and not through any partiality on other grounds. It is nothing to us whether, in exhibiting the mischiefs of meddling legislation, we tell the story of the Maine Liquor Law in America, or the passport system in Austria, or sumptuary legislation in Sweden, or Sabbatarian enactments in England. Whatever illustrates our meaning is good for our purpose, and whatever best illustrates our meaning is best for our purpose. We prefer, on this ground, out of a pretty large class of stories which we might relate, the narrative of the proceedings of the Factory Inspectors, under the countenance of the government, since the opening of the war. When the question is of the mischiefs arising from meddling legislation, it is difficult to say which case out of any number may be most important through the harm done; for the harm done is altogether immeasurable in every instance: but we may safely say that no case could well be more serious than this of the rupture between the government and the body of textile manufacturers of Great Britain, because the issue to which the controversy is now brought is that of the supersession of either the textile manufactures or the existing factory law. The two cannot longer coexist. This very serious case is the one we have selected to exhibit in full. The facts are as open to all the world as to ourselves. The documents from which we derive our materials are all public; and if our readers should be surprised presently to find what a point the controversy has reached, it will not be because we have any revelations to make, but simply because we have been led to observe what has escaped their attention.

It can hardly be necessary to offer any excuse for the commonplace aspect of the incidents of the story. The justification of the narrative lies in the one particular that an all-important principle is involved in it. Every reader will here think of *ship-money*. We need, therefore, say nothing about it,—at least, more than this. If it should flit across anybody's mind that we are making much ado about tiresome and trivial matters, let him *then* think of ship-money, and he will read to the end.

It is a very small department of factory legislation that we are going to speak of. The great subjects of hours of labour and wages do not concern us here; nor does the general heading of the security of machinery, though Lord Palmerston and the Factory Inspectors mislead the public, and, perhaps, themselves into thinking that it does. The one point on which the existing controversy proceeds is not the securing the entire machinery in factories, but only horizontal shafts; and not all horizontal shafts, but only those which are, at least, seven feet from the ground. Upon this one point a story has now to be told, on the result of which must depend a long train of consequences, not only to the manufacturing interest (that is, to several millions of our people), but to the liberties of the whole nation. The question is of persistence in a wrong principle of legislation, or return to a right one.

The provisions of the Factory Acts (of 1833 and 1844) for the protection of the factory population from accidents by machinery, were not enforced for nine years. In 1853, the Factory Inspectors brought under the notice of the Secretary of State the "enormous amount" of accidents caused by contact with machinery, in comparison with other accidents among factory operatives. The whole number of accidents from machinery, in three years, was reported to be 11,716, of which 3,434 were of a serious character. The serious ones are all that require any notice, as the others are of so slight a nature that they would not be

noticed anywhere but in a special registration like that provided by the Factory Act. For instance, 700 are cases of cut fingers. Any worker who rubs off a bit of skin from finger or thumb, or sustains the slightest cut which interferes with the spinning process for a single day, has the injury registered under the Act. Now, it should be observed that, of the whole number of accidents in three years, 128 had occurred from shafts; that is about 42 in a year. Of the 128, 35 resulted in death, or a fraction above 11 in a year. In other words, the number of persons affected by the factory law being from 500,000 to 600,000, the proportion injured in any way by accident from this cause is (assuming the lowest number of people) about one in 12,000; and the proportion of deaths among them is about one in 45,000. This is the proportion on the showing of the Inspectors; and those who care to institute a comparison between the danger of this and other modes of occupation will find that in no other is the proportion of deaths so small. Coroners' returns have been examined with this view, and the results are very interesting; but we are not concerned with them here. We need only say, in illustration of the spirit of the Inspectors' reports and of Lord Palmerston's proceedings, that the coroners' reports show that, in the factory districts, the fatal accidents from carts and other agencies concerned in labour were 79 to 29 in factories; and of the factory accidents, not five per cent are owing to machinery. In the year preceding that in which the Inspectors made their appeal to Lord Palmerston, there were 12 deaths from factory machinery in the whole kingdom; whereas the deaths from other accidents, in Manchester alone, were 531. By as near a computation as can be made in the imperfect state of our statistics, the number of fatal accidents in the United Kingdom averages about 5,000, of which 12 are cases of mill accidents from all kinds of factory machinery. These particulars will show how ill authorised is the Inspectors' representation of the "enormous amount" of accidents in factories; but otherwise they are of no

consequence here. Whether it is true or not, that there are fewer accidents from the shafting of mills than from any other industrial apparatus of any magnitude, it is our business to see how accidents can be best guarded against,—in other words, what is the true relation between the millowner and the government on the one hand, and his workpeople on the other. Whether the deaths be 12 or 12,000 in a year, the question is—what ought to be done? There is the Common Law, which operates for the protection of all; and there are the Factory Acts, which are intended for the special protection of factory operatives. The question is, how these special Acts stand in relation to the protection of life and constitutional liberty; what they contain, and how they are administered.

In reply to the Inspectors' Report of April, 1853, Lord Palmerston called the attention of the inspectors to the accidents "from machinery" which had occurred, to the number of 2,119, in the preceding half-year. In the Report by which they replied to the then Home Secretary, the Inspectors pass over altogether without notice, 2,098 of these accidents, and report only on 128, which had occurred from shafting in the course of three years (six times the period in question). Lord Palmerston seems to have been satisfied with their notice of one in a hundred of the cases he commended to their examination, and he certainly asked no questions about the two thousand and odd, and "how to prevent their recurrence." If he had known that the bulk of the larger number were mere finger cuts, rubs, and bruises, the omission might be less remarkable; but it is clear, from the next proceeding, that he had no idea of the sort.

At the suggestion of the Factory Inspectors, Lord Palmerston resolved that the Factory Acts should be enforced in those provisions which had hitherto been left unused; and happy was this determination, in another sense than that which was intended. The immediate effect of this resolution was to convulse the manufacturing interests of the kingdom; but the necessary

result will be the ascertainment of what the powers of the Factory Acts really are, and a testing of their practicability. In January, 1854, a circular was issued by the Factory Inspectors, stating that they had represented to the Secretary of State that they found the time had arrived for insisting that shafts at any distance whatever from the floor should be fenced. In their own words:—

"In these circumstances, although fully aware of the great trouble and expense it will cause to millowners, we feel that we have no alternative but henceforth to enforce the provisions of sec. 21 (7 Vic.) strictly, by requiring that every shaft, whether upright, oblique, or horizontal, shall be securely fenced, whatever may be its height from the floor, unless it should be demonstrated to us that any particular shaft cannot be fenced without interfering with the action of the machinery."—*Report of Inspectors, April*, 1855, *p.* 57.

It is clear that the interpretation of this order rests upon the meaning of the words "securely fenced." The circular was submitted to Lord Palmerston before it was issued; and it was revised and abridged by him. Here begins a world of difficulty and misunderstanding, which proves, if nothing else, the dubious and ineffectual character and operation of minute legislation, interfering with industrial processes. Lord Palmerston and the Inspectors seem to be chargeable with loose statements and shifting requirements, through their own inexperience in industrial methods, and the want of precision in the law; and the manufacturers are naturally indignant at being subject to the imperious bidding of authorities whose language is inaccurate, and whose conduct has been, in some respects, as will appear, unconstitutional and illegal.

The millowners understood this circular to convey an order that all shafts should be "permanently cased with wood or iron," Mr. Leonard Horner having repeatedly declared that sort of fencing to be the only secure one for vertical shafts, and for horizontal

ones under seven feet in height; whereas he at the same time declared that rectangular hooks (of which more presently) are a security against one danger, "but not against other accidents;" while he stated in the same paragraph, that "adequate means must be adopted" "against all accidents from an horizontal shaft." Most people, we think, would understand by these instructions that Mr. Horner required the millowners to secure their horizontal shafts by permanent cases of wood or iron. If nothing else was safe in regard to shafts under seven feet high, and rectangular hooks were a security against one only out of various kinds of danger, at the same time that the owners were required to render "all accidents" impossible, the conclusion of the manufacturers, that they were required to enclose all their horizontal shafts in permanent casings, seems not only justifiable, but almost unavoidable. There seems to be no doubt that Lord Palmerston himself so understood the direction. He was waited upon in March, 1854, by a large deputation of millowners and master-manufacturers, who represented to him, that only shafts under seven feet high, and in particular circumstances of position, could need casing; that there was no objection made to casing these, which indeed was generally done; and that there were insuperable objections, which they fully explained, to casing shafts above that height—objections, not only on account of the expense and trouble (which, however, Lord Palmerston seemed entirely to appreciate), but on the ground of aggravated danger to the workers, and to the safety of the mill altogether. "The deputation," say the Inspectors, on Lord Palmerston's information, "expressed on their own part, and on the part of their constituents, a most anxious desire to protect the lives and limbs of their workpeople. Lord Palmerston," they continue, "is inclined to think, from the representations thus made to him, that the security required by the Factory Act might, in regard to horizontal shafts at a greater height from the floor than seven feet, be attained by various means; and his Lordship has

directed, that inasmuch as the circular of the 31st of January last has been construed to require the universal adoption of a permanent fixed casing, that circular should be for the present suspended, and need not be acted upon."—*Report, October*, 1854.

It appears that before Mr. Horner stimulated Lord Palmerston (as he avows he did) to command the issue of the circular, he consulted Mr. Fairbairn, the engineer, as to the practicability of fencing the higher range of horizontal shafting in mills. Mr. Fairbairn's reply, dated December 20th, 1853, appeared in the newspapers, and is now before us. The first sentence contains the pith of the whole. "I do not see how it is possible to fence off the horizontal shafts of mills driving machinery, without incurring greater evils, and probably more danger, than at present exists by their being left entirely open." So far the engineer. At the same time the agent of a Fire Insurance Company gave it as his opinion, that, if the government order were carried out, there ought to be "an increased rate of assurance upon mills which had these boxed-up channels of wood, choked with highly inflammable substances, so that they would act like trains of gunpowder; and if a fire arose, away went the mill without any possibility of salvation." In giving evidence on a trial a year later, Mr. Fairbairn said that "his attention had been directed to the question of fencing shafts, from the time the thing was first mooted; and his conclusion was, that the use of casing would be exceedingly inconvenient, and would greatly increase danger instead of lessening it. He alluded to horizontal shafts; for vertical shafts were now commonly fenced off. Horizontal shafts, less than seven feet from the floor, should be fenced or boxed; but when they were more than seven feet high, he was decidedly of opinion that they were safer when not boxed. There must always be danger caused from the necessity of suspending the fencing for shafts,—danger to those who had to put on the straps, and also from the possibility of the suspenders giving way. His decided conviction was that the best way of securely

fencing a shaft 11 feet from the ground was to turn it truly, polish it brightly, and leave it open, so that its operation might be seen, and any attempt to tamper with straps and pulleys at once discovered."—*Oldham Chronicle, February 10th*, 1855.

Mr. Fothergill, consulting engineer, whose experience in the working of machinery extends over France and Switzerland, as well as the United Kingdom, gave evidence on the same occasion, precisely to the effect of Mr. Fairbairn's. Thus, if the millowners were sanctioned by the Secretary of State in their understanding of the circular, and by engineers of high repute in their opinion of the mischief of casing their shafts, it is no wonder that their remonstrances were strong. As for Mr. Horner, he retreated, for the moment, on the allegation that the millowners had misunderstood the circular, though we find him, in the next autumn, harping upon the benefits of casings, ignoring the danger of the casings bringing down the whole structure, at the time of an accident, on the heads of the workers, and declaring that "if shafts *less* than seven feet from the floor can thus be securely fenced by iron or wood casings, those *more* than seven feet can surely also be guarded."—*(Report, October*, 1854.) Thus, in January of that year, Mr. Horner was understood by everybody to insist on these casings; in March he declared that he by no means intended to prescribe casings rather than other means of security; in October, he remonstrates in his Report against the absence of casings; and, finally, in the next spring, he complains bitterly of being misrepresented as indicating casings rather than any other methods the millowners may prefer. So much for the looseness of Mr. Horner's representations in the first instance.

As for Lord Palmerston, his active mind went to work at once to teach the manufacturers how to manage their business. We must trouble our readers to bear with a little more detail about the mill-machinery; and then we shall get on to more interesting matter.

Lord Palmerston, we are told *(Report, Oct.* 1854*)* "pointed out various modes and precautions by which danger to the work-people from horizontal shafts might be prevented." It is rather amusing to find the Inspectors, when the Factory Acts are found to be in any respect impracticable, taunting the manufacturers with pretending to be wiser than parliament; while we here find the Secretary of State not only apparently failing to distinguish the single cases of accident from shafting from the thousands which occur among "machinery" generally, but setting up his opinion against that of eminent engineers, and pressing his suggestions in a case in which they declare that none can avail. Lord Palmerston's confident genius in the matter of rectangular hooks brings us to the consideration of that device.

In the second circular of the Inspectors, dated March 15th, 1854, by which the circular of the preceding January was withdrawn, the following paragraph occurs :—

"It is well known that the greater number of serious accidents of this kind have been caused by the lapping of straps upon revolving shafts; and it has been stated to Lord Palmerston that such accidents have, in some mills, been prevented by the adoption of rectangular hooks fastened to the ceiling, and hanging downwards, on each side of each drum, with their horizontal branches running under the side edges of the drum, or by the placing of a beam or strong rod parallel to the shaft, and over it; so that whenever a strap slips off a drum it is caught by the hook, or by the beam or rod, instead of falling on the revolving shaft."—*Report, Oct.* 1854, *p.* 15.

Such is Lord Palmerston's suggestion. Mr. Fothergill and Mr. Fairbairn, the engineers, were examined, on occasion of the Oldham trial, about these hooks, and their opinion was found to coincide with that of experienced overlookers, and the workers themselves, whose life and limbs were in question. Mr. Fothergill "explained to the court that, with rectangular hooks affixed, a person putting on the strap would be more likely to receive

injury than when they were not there. He remembered seeing a mill at Darlington in which there was a rectangular hook, and the persons in putting on the straps were very liable to be injured. There should be a ready means of putting on the straps when the mill is in motion,—the difficulty of doing so would be increased by having the casing." Mr. Fairbairn's reply, when questioned, was, "He disapproved of hooks for catching straps. They were generally in the way, and he would certainly not recommend the addition of any such things in Messrs. Worthington's mill. The hooks would increase the complexity of the arrangements, and increase the danger when putting on the straps. It is next to impossible to fix those hooks when very near the ceiling, for the straps would get entangled with the hooks, and pull all about the people's ears." Mr. Potter, manager of Messrs. Worthington's mill, "stated that he had occupied that situation for seventeen years; and for twenty-five years he had been connected with mills. During the time he had been with defendants (Messrs. Worthington) no accident had occurred from the shafting, or gearing, or straps. Had applied the rectangular hooks in the mill; but they had been taken down at the request of the workpeople, as they were very much in the way when putting the strap on. Did not think the hooks were any means of safety. Did not think fencing would make the shafting any more secure; if anything, it would rather increase than diminish the danger." Mr. William Rye, a machinist, "Could not conceive that a shaft ten or eleven feet high could be at all dangerous, unless the workpeople climbed up to it intentionally; and if a shaft at such a height were cased, the casing would be constantly liable to be torn down by a strap lapping, or getting out of its place." The witness explained at great length that when a shaft was cased, the straps were more likely to lap, and to come off the drum, the casing giving it a tendency to work against the keys. He also stated that he was clearly of opinion that the rectangular

hooks, if applied, would increase, instead of diminishing, the danger.

We need not go any further with our citations. We have shown that the opinion of Lord Palmerston's instigators is met by that of several well-qualified persons. It is no business of ours to decide which opinion is the right one, or the most likely to be the right one. Our business is simply to show that Mr. Horner's representations of the temper and conduct of the millowners, in his Reports and elsewhere, are not justified by the facts. He has repeatedly declared that life or limb has been lost in the mill of A. B. or C., because the millowner would not save either by the expenditure of half-a-crown in hooks, or a few shillings in casing. It may be thought needless to rebuke such misrepresentations on the part of any one who knows so little of human nature as to suppose that the most selfish of capitalists would subject himself to the annoyance and public inquiry, and certain expense,—to say nothing of the anguish of mind,—of having an operative killed or maimed in his mill, for the sake of any number of shillings. In his Report of October, 1854, including seven months from Lord Palmerston's recommendation of rectangular hooks, Mr. Horner says (p. 5): "Very little attention has been paid to the recommendations of your Lordship:" and yet this fact does not awaken in him any misgiving as to the value of his lordship's suggestions. He assumes throughout that life and limb might be saved by the expenditure of a few shillings, while yet his own testimony of various dates might have shown him, as it has shown everybody else, that his habit of thought and expression is too loose to entitle him to any reliance. In the first place, we find him, in the first circular, insisting upon the fencing of all shafts in a way which certainly induced Lord Palmerston, as well as the millowners, to suppose that he contemplated permanent casings of wood or iron. In the next place, he is found protesting that he was misunderstood; that he did not presume to prescribe any particular

method of fencing. Again, we find him declaring that there is no security from shafts under seven feet from the floor but in such permanent casing, and enquiring why, if some shafts are cased, all should not be so fenced. Again, he is found insisting that he is wronged in being charged with desiring casings, when hooks would do. And finally, we meet with his signature appended to a circular, which avows that the hooks, or other devices for catching the strap, are available against only a certain class of accidents; and that the millowners are required to obviate "all accidents." In one place, he declares himself to be entirely unable to imagine why the millowners do not obey requirements so easy and so important; and in another place, he answers his own question by an intimation that they want to save a few shillings. All this is in the face of the evidence of practical engineers and other experienced persons, that casings and hooks would increase the danger. The desire of the manufacturers,—very natural, apart from all considerations of humanity,—that there should be no accidents in their mills makes them hesitate in adopting, or refuse to adopt, questionable methods; and Mr. Horner immediately sets about enforcing what he assumes to be the law. This brings us to the next order of proceedings.

The provisions of the Acts which relate to the fencing of machinery, were, it may be remembered, left inoperative for nine years. The reason was that the provisions were impracticable; and the Secretaries of State during that period saw, on the showing of the mill occupiers, that they were so. The Act does not say, as the Inspectors quote it, that "all shafting must be securely fenced," but that "every part of the *mill gearing* shall be securely fenced." As there are parts of the mill gearing which cannot be fenced without stopping the works, the strict enforcement of the Act is impossible; and it is admitted by the Inspectors to be so. This difficulty, together with the ambiguity of the word "fenced," has given rise to the construction (as we shall presently see) that

there may be a sufficient fencing in the position of a shaft or drum, or in the position of some other part, as mules underneath a shaft, which render access to the shaft impossible except by express and most reckless intention. After nine years' quiescence, the Inspectors stirred up Lord Palmerston to require an enforcement of the law; and Mr. Horner began to enforce, at a great rate, what he assumed to be the law. He did not perceive that if the law was of uncertain interpretation, he was imposing his own construction, and holding up the millowners to censure upon that construction; or that if, on the other hand, the law was clear and unquestionable, he was acting the part of police man, or informer, in a manner not only very expensive in comparison with the employment of police, but wholly fatal to his influence with the entire class of manufacturers on behalf of the factory workers. Since the resort to law has shown the inspectors how much less clear their ground of confidence is than they supposed, they have remarkably changed their tone. They assure the millowners, and all other listeners, that they were forced to enter upon their course,—just as they before told Lord Palmerston that the law compelled them to request his commands to enforce the law. The difference between Mr. Horner and the other Inspectors is this; that they, finding the interpretation of the law to be doubtful, and seeing that interpretation committed to the Court of Queen's Bench, have the modesty and moderation to pause in their course of "enforcement," while Mr. Horner presses his informations, and intimates to the world, in his Reports and otherwise, that the National Association of Millowners and Occupiers, whom he has compelled to organise themselves for the ascertainment of their rights and liabilities, are banded together to defy the law. The Secretary of State, who derives his information on the whole subject avowedly from Mr. Horner, spoke of the Association to those of its members who went to him, as a deputation, last spring, as "a combination to resist the law." We shall see hereafter what

their objects are, when, perhaps, our readers will perceive more clearly than Mr. Horner seems to do, the difference between testing a law, in order to its amendment on a matter of the deepest and broadest principle, and refusing obedience to it. A company of brigands organising a life of plunder in the Midland Counties is about as probable an incident as an association of manufacturers banded together to defy the law. In the last half-yearly Report of the Inspectors (June 1st, 1855), they draw attention to "the following remarkable admonition :—'The deputation (of millowners and occupiers) beg to caution the trade against the adoption of any compromise, whether of hooks or otherwise.' It thus appears," say the Inspectors, still without either perceiving the object of the Association to be the testing of the law, or noticing the difference of opinion about the efficacy of hooks, "that an association of mill-occupiers, formed at Manchester, are doing their utmost to prevent others throughout the United Kingdom from adopting precautions, &c." These gentlemen seem really to suppose that the objection of the manufacturers is to "precautions" against accidents, and not to indefensible prosecutions, and a meddling legislation which at once encroaches upon the liberties of the citizens, and tends to aggravate the very mischiefs it assumes to preclude.

The leading facts of the prosecutions which originated the National Association of Factory Occupiers, and brought on the decisive collision between the Inspectors and the manufacturers, are these :—In November, 1854, a man was killed at the factory of Messrs. Folson and Collins, of Oldham, by being caught up by a strap lapping round the shaft overhead. The Sub-inspector, Mr. Graham, laid an information against the employers; and the complaint was heard at Oldham Petty Sessions before five magistrates. The chairman was the Rev. T. S. Mills ; and the others were Messrs. Platt, Worthington, Wright, and Barlow. After retiring to consult, the magistrates dismissed the complaint. Without furnishing himself with the grounds of the

decision, Mr. Horner inserted this case, happening in November, and another which happened in December, in his Report for October, with this remark, for which he so far apologised in his next Report as to say (p. 4,) that if he had been informed of the grounds of the decision of the magistrates, he would have given them the benefit of their publication in his report. While still in ignorance of the reasons for the judgment, he wrote as follows:—"Thus, in little more than six weeks, two men, in the prime of life, have lost their lives in my district from unfenced horizontal shafts, by the neglect of the owners of the factories to obey *a clear enactment of the law*, formed expressly for the purpose of preventing such fearful accidents, and by not adopting a simple and inexpensive precaution not exceeding a few shillings, viz.—the application of strap hooks, which in both instances would have been effective. In the proceedings against the owners of the factories, the magistrates, in the one case, setting the law aside, dismissed the complaint; in the other, they held Ten Pounds to be a sufficient vindication of the law, when a man's life was lost."—*Report. October*, 1854, *p.* 7.

Thus begging every question involved—the scope and bearing of the enactment, the neglect and sordid heartlessness of the employers, the violation of the law by some magistrates, and the estimate of the value of a man's life at ten pounds by others, Mr. Horner proceeded to act upon his own view with singular confidence. "In laying the result (of the Folson and Collins Case) before Lord Palmerston," says Mr. Horner in his Spring Report, "I added that, of the five magistrates on the bench, three were occupiers of large cotton factories in Oldham, viz.—Messrs. Worthington, E. A. Wright, and G. Barlow; that, 'in their factories, *as well as in a large majority of the factories in my district*,* there were numerous horizontal shafts, at various heights from the floor, that were not securely fenced, and that

* The italics are Mr. Horner's own.

none of the recommendations of his Lordship that might be adopted to prevent straps falling upon, and lapping round horizontal shafts (as communicated to them in the Circular Letter of the Inspectors of the 15th of March, 1854) had been carried into effect; so that a fatal accident, similar to that on which they had adjudicated, might happen in their own mills any day.'"—*(Report, April*, 1855, *p.* 4.*)* Lord Palmerston seems never to have been struck with the possibility that the magistrates had not set aside the law, after all. Instead of asking their reasons, he "was indiscreet enough," as the Report of the Committee of the Association relates (p. 7), "to write a threatening letter to four magistrates at Oldham, of most unquestioned respectability, who had differently, but correctly, as they conceive, interpreted the law. His Lordship, moreover, directed the Inspector to commence prosecutions against three of these magistrates, who were pointedly reported to him, by Mr. Horner, to be *factory occupiers*, for neglecting to fence the horizontal shafts in their own factories; and he did not scruple to assign as his reason for this peremptory act, that they had presumed to adopt a different interpretation of the law from his own." That this representation of Mr. Horner's conduct is correct, we learn by a letter of his own, published in the *Oldham Chronicle* of February 10th, 1855:—

"Factory Inspectors' Office, London,

"Messrs. J. Worthington & Sons, 2nd January, 1855.
Brook Mills, Hollinwood.

"Gentlemen,—After the dismissal of the information laid against Messrs. Folson and Collins, for not having securely fenced a certain horizontal shaft in their factory, on which occasion your Mr. N. Worthington was one of the magistrates who heard the complaint, I directed Mr. Sub-Inspector Davies to visit your mills, to ascertain, for the information of Viscount Palmerston, whether there were in your mills any horizontal shafts not securely fenced as the law directs, and whether any measures had been adopted by you towards the prevention of straps lapping on horizontal shafts since the circular letter of the

Inspectors of the 15th of March last. Mr. Davies reported, as the result of his inquiry, that there are several horizontal shafts in your mills which are not securely fenced, and that no measures had been taken to afford additional security since the 15th of March last ; and I informed Lord Palmerston accordingly. I have this day been directed by his Lordship to cause proceedings to be taken against you, for having horizontal shafts in your mills which are not securely fenced. The Act takes no account of the height from the floor at which any horizontal shaft may revolve.

"I am, Gentlemen, your obedient servant,

(Signed) "LEONARD HORNER."

By Mr. Horner's Report, it seems as if a Memorial from the magistrates, explanatory of their decision, had crossed on the road Lord Palmerston's instructions to Mr. Horner. "Before receiving these explanations," says Mr. Horner, "his Lordship, by a letter to me, dated the 1st of January, directed that informations should be laid against Messrs. Worthington, Wright, and Barlow." The Report proceeds to relate that the case of Messrs. Worthington, which it was agreed was to rule the other two, was heard before Messrs. Jones and Schofield; "and the defendants were each convicted in a penalty of £5." Here Mr. Horner seems to conclude that the matter was settled; but, as the very question concerned was the meaning and scope of the law which Mr. Horner declared to be so perfectly clear, Messrs. Worthington appealed against the conviction, which was quashed, subject to the opinion of the judges as to the interpretation of the words "securely fence." Thus far, the course and results of the prosecutions seem to show that the interpretation assumed by Lord Palmerston and Mr. Horner is wrong, and that of the Oldham magistrates right. This is the point remaining to be settled by the Court of Queen's Bench, to which two causes have been carried up, to obtain a decision, to clear the ground for further action. Lord Palmerston's account of the affair was given in Parliament, no longer ago than the 6th of July last. He said: "The real state of the case was, that an accident did take place,

as was stated by the hon. and gallant officer, and the subject was brought before certain magistrates, who dismissed the case. He had not felt satisfied with the ground upon which they had so acted, and he had, therefore, expressed an opinion to that effect. Upon that a correspondence took place: and after he had quitted the Home Office he had an interview with certain of those magistrates, who were, he was bound to say, men of the highest respectability: and he could not concur in thinking with the hon. and gallant member that the fact of some of them being millowners, or employing workmen, disqualified them from performing with fairness the duties of a magistrate. He had at first thought that, in this particular instance, they had taken a partial view of the case; but, upon communications which had been made to him, and which had been officially made to his right hon. friend who had succeeded him at the Home Office, he had been led to believe that the view which he had originally taken of the law was an erroneous view, and that those gentlemen were borne out by law in disposing of the case as they did: and, therefore, no implication could rest upon them. With regard to the motion of the hon. and gallant gentleman, he personally had no objection to the production of the correspondence, and he thought that its production would turn out to the credit of the magistrates to whom reference had been made; but, as to agreeing to the motion, which would have the effect of superseding the Committee of Supply, he felt himself bound to oppose it."

The interest excited by the prosecution of Messrs. Worthington was very strong, for various reasons, but especially because no accident had ever happened from the machinery of their mills. Their establishments are regarded as pattern mills, in their erection, management, and constant condition. It was understood that they were prosecuted because one of them had, as a magistrate, given a decision which was disapproved by Mr. Horner; and this incident is just of the kind which is sure to

excite the demand for fair play in the minds of the English public.

The decision of the Quarter Sessions, in April last, on the appeal of Messrs. Worthington, was, that there must be evidence of danger in order to bring the alleged offence under the cited section of the act; and that no evidence had been produced of danger to be guarded against. The point to be settled by the Superior Court is, whether the Act requires the fencing of horizontal shafts,—danger or no danger. Then must follow the inquiry and decision—What constitutes fencing?

We mentioned above a second case, related by Mr. Horner in his Report for October, 1854, though the event happened in December. James Ashworth, employed by Messrs. Wild and Son, of Heywood, threw away his life by an act which is forbidden in mills so expressly that there is no pretence for saying that he was killed in the course of his occupation. One of two straps which had slipped from its pulleys had become entangled with the other; and Ashworth had the foolhardiness to attempt to disentangle them with his hands. The second strap slipped off, lapped round the shaft, and drew the poor man up to the ceiling, where his brains were dashed out. The man could not but be aware of his danger and his disobedience; neither, one would think, could the Inspectors. Yet Mr. Horner omits this point of the case, not only in this instance of Ashworth, but of all the rest (and they are nearly the whole) who lose life or limb through disobedience and wanton exposure of themselves to danger. Mr. Horner invariably speaks of the sufferers as victims of their employers,—as cut off in the course of their occupation, or their "occasional employments." A whitewasher who, against orders, chooses to work while the shaft is revolving; the boy who resists all advice and all commands to replace the strap from behind, where he would be perfectly safe, and throws himself upon destruction; and the man who handles entangled straps, or climbs to help with a broken strap which ought to be

mended on the floor;—all, in short, who take no heed to the notices posted in the mills, or to the express orders of their employers, but climb up to the death which is carefully removed out of their natural reach, are assumed to be murdered by their employers' carelessness and not their own, and pointed out to their comrades, not as fatal examples of their own obstinacy, but of that of their masters. A more flagrant instance could not be found of a temper and views unsuited to the office of inspection. Inspectors should, in the very first place, discharge their function without fear or favour. Mr. Horner's rash confidence in his own interpretation of law, and enforcement of incompatible explanations and orders, show that he may be absolved from any charge of fear; but, as to favour, there is no acquitting him of most serious and disqualifying offences. In the Reports before us, there is no hint, from beginning to end, of any of the injuries he reports being caused by the fault of the sufferers themselves, and not "in the course of their employments" at all,—either ordinary or occasional. Mr. Horner's reply to this objection is found in the Circular which requires the millowners to guard against "*all* accidents" which can happen from shafting; and he declares his inability to see why it is not done. He appears to be entirely unconscious that he is thus bringing into the field of argument, of political morality and of law, one of the greatest problems which can occupy the minds of men; or that he is begging the question on a point which has hitherto defied the wisdom of legislators from the earliest days of social organisation till now. Without entering in an episodical way upon the great question of the proper sphere and duties of Government, we may refer Mr. Horner, and all who suppose the matter to be as simple as he does, to cases out of factory bounds. Are railway proprietors or directors to be held up to society as the murderers of all the people who perish by leaving the train before it has completely stopped; or by trespassing on the rail, or other recklessness? Is every drunken vagabond who lies down in the

track,—every deaf old man who chooses the railway for his walk,—every fidgetty traveller who steps out while the train is in motion, in the face of extra-large print, on the station walls, which forbids him to do so,—to be regarded as the victims of the railway proprietors? The universal practice, in the preparation of the annual railway statistics, is to class under separate headings those who have suffered through and without fault of their own. Mr. Horner makes no such distinctions, and thus points out the innocent and injured employers to the indignation and jealousy of their operatives on precisely the same terms as the most culpable. Taking the law and principle of the case into his own hands, without misgiving or modesty, Mr. Horner (for here the other Inspectors retreat from his side while the legal decision is pending) pillories, as culprits, some of the first citizens in the kingdom, side by side with such hard-hearted, sordid, law-hating men as Mr. Dickens chooses for his heroes or his butts; and as "Household Words" supposes to be fair specimens of the mill-occupiers of Great Britain. Messrs. Worthington, under this method of official partiality, are brought into court, though no accident has ever happened from their long-established machinery; and Messrs. Wild are treated, as we shall see, on account of the death of a man, who, knowingly and disobediently, put himself in the way of destruction—to the great pain, annoyance, and loss of his employer, at best, even if Mr. Horner had not instigated Lord Palmerston and his successor in office to a course of illegal and unconstitutional proceedings against Messrs. Wild.

James Ashworth was killed, in the way described, on the 23rd of December, 1854. He had a father and mother, a wife, and two children. On the 24th, the Factory Inspector, Mr. Patrick, called on the widow, and told her that she might bring an action against her husband's employers, under the Factory Act. By his advice, she went to the office of the Inspectors' Solicitor at Manchester, and there took out letters of administration to her husband's

effects, and gave the required authority to commence an action. Messrs. Wild had already sent down to offer to pay the expenses of the funeral; but received for answer, that the £7 due from the sick club would meet that expense. Messrs. Wild refused the rent brought by the mother, and desired the family to remain as long as they liked in the rent-free house; and, moreover, expressed their intention of aiding the widow, when a method of arrangement should be fixed upon. Early in February, Mr. Patrick, in visiting the mill, informed one of the managers that the firm would hear something about the death of James Ashworth; whereupon the partners wrote to him to say that they had throughout expressed their intention to do what was right for the widow, and that there was no occasion to go to law when an arbitration would satisfy all the needs of the case. They were willing to abide by the award of an arbitrator to be mutually agreed upon, and had every desire to avoid a suit at law. Mr. Patrick desired them to make their proposal in writing, which he would deposit with Mr. Horner, who would forward it to Government or not, as he thought proper. Messrs. Wild acted on this suggestion, and in three days after were informed that their proposal was declined.

The day before the date of this reply, Messrs. Wild were served with a writ issued by the Solicitors to the Treasury; an incident which showed them that they had the Government to deal with, under the name of Widow Ashworth. There was no application for compensation, no alternative from prosecution proposed; and the usual courtesy of asking the defendant to name an attorney to accept service for him was omitted. In the course of Messrs. Wild's attempt to avoid legal proceedings, the Solicitors employed in London heard from the Solicitors of the Treasury that the action was brought, under the direction of Lord Palmerston, for an infraction of the Factory Act. Again the defendants' agents inquired whether they could not settle matters with the widow without the interference of Government;

and they received a negative answer. The opinion of counsel was then obtained; and that opinion was that the action of Government had taken the case out of the plaintiff's hands. There remained a doubt whether the prosecution was to take place under the Factory Act, or under Lord Campbell's Act (two years later in date). Counsel was disposed to think that it would be under the two together, by which means the Factory Act might be made to apply to an action in the name of an administratrix, which it could not do without the help of the later Act.

The case went to trial, before Mr. Justice Cresswell, the damages being laid at £1,000. Glad as Messrs. Wild would have been to have done whatever was required without coming into court, they were not at all ready to accede to the suggestions of the Judge in the course of the trial—that the affair should be settled elsewhere. They had incurred the annoyance of the prosecution, and its severe expenses; and they now insisted on the matter being gone through with. Twice, therefore, they declined an agreement out of court, as the Judge recommended; and when they yielded to his third recommendation, it was on the condition that the sum they should pay to the widow (£150) should be regarded as a pure benefaction on their part, and by no means as damages decided in a court of law. On that understanding the case was closed. Yet, did the spirit of the prosecution manifest itself in the final transaction, as clearly as in any prior circumstances of the case. It will scarcely be believed that the Solicitors to the Treasury forwarded, through a Liverpool office, a demand for the £150. Of course, they received a refusal, they having no business whatever with the money. Much surprise was expressed at this refusal, and an assurance was given that the money should be carefully laid out by Government for the benefit of the widow. The final reply of Messrs. Wild's Solicitor to the Liverpool agents closed the business with due spirit, and baulked the Inspectors and the Home Office of the

appearance of a triumph which they sought to obtain by treating Messrs. Wild's benefaction as damages.

"A man who gives an alms," says the letter, "is entitled to see it duly applied; and I shall not waive that privilege. I gave no promise to Mr. Robinson to remit the money, and I now repeat that the money shall not leave my hands till I am thoroughly satisfied as to its appropriation. If those who instruct you have any scheme to suggest, let it be submitted to me for approval, as I will not entrust a single sixpence of it to any man claiming authority through the Secretary of State, or the Factory Inspectors." Messrs. Wild have, therefore, been their own almoners. The costs of the trial, amounting to £318, were paid by the Committee of the Association of Mill-Occupiers. Their Report says (p. 11): "Considering the circumstances of the case, viz. the doubt which existed as to the Inspectors' interpretation of the law,—the offer of the defendants to arbitrate,—and the great expense to which they would be put by the action, even if it resulted in their favour (Government not being liable, like other plaintiffs in case of failure, to pay the costs of the defendant) there cannot be a doubt that the action was most "improper;" and that while factory occupiers are liable to such actions, they are justified in combining for mutual protection. The Committee did not pay the £150 given by Messrs. Wild and Son to the widow. They have not paid, and they do not intend to pay, damages or penalties in any case whatever."

The reasons why this prosecution has been declared by competent professional authorities unconstitutional and illegal in some of its incidents, can be easily and briefly explained; and the explanation will show what strong inducements Messrs. Wild had to agree at last to the Judge's repeated recommendation of a compromise. The action was so brought, by a skilful combination of the Factory Act and Lord Campbell's Act, as to give the nominal plaintiff all the powers derivable from a private action, and all the resources at the command of the Factory

Inspectors. Sir George Grey said that the suit was brought, not under the Factory Act, but Lord Campbell's; but the Judge told the Attorney-General, on the trial, that under Lord Campbell's Act he had no case, and that, but for the 21st section of the Factory Act, he would be out of Court. "The desire of the widow herself" was certainly necessary to the prosecution; but when the Factory Inspectors had excited that desire by their representations, and obtained her sanction, the whole affair was taken out of her hands. Here intervened the stretch of law and power by the Secretary of State, which placed the respective parties in the following position :—

Messrs. Wild were liable to injury by a verdict either way.* If there had been a verdict in their favour, they must have paid the widow's costs as well as their own,—she being a pauper. In case of an unfavourable verdict, they would have had to pay damages in addition to all the costs. As it ended, the government must pay their costs out of some public fund. If the plaintiff had won the suit, she would have been the Factory Inspector or the Secretary of State. If she had lost it, she would have been the pauper widow Ashworth. Surely a state of affairs which induces sharp practice, and a stretch of law and power

* The 25th section of the Factory Act provides, "And in case a verdict shall "be found for the defendant, or judgment shall be recovered against the plaintiff, "or the plaintiff shall be non-suited, the defendant shall have the like remedies "for his costs, against the Inspector, as he might have had against the plaintiff."

But upon this provision, a very able lawyer, Mr. Lumley, has given the following opinion :—"It is difficult to see how this can be done according to the practice of "the courts. A defendant has a writ of *fi. fa.* or *ca. sa.* for the recovery of his "costs against the plaintiff" (*i. e.* in all actions between ordinary individuals). "But such writ cannot be issued, as a matter of course, against the Inspector, "who will not be the plaintiff on the record."

From the spirit evinced by the Government and the Inspectors in the actions under discussion, and in all their proceedings against the factory occupiers, it cannot be doubted that payment of the costs of the defendant would be refused, while the doubt, expressed by Mr. Lumley, exists of the power to enforce their payment. Further legal proceedings would have to be resorted to, his own share of the costs of which the defendant would have to pay, if he was successful, and, if unsuccessful, the costs of the government officers also.

like this, is one which every citizen should inform himself of, and vigilantly watch; one which justifies the organisation of the National Association of Mill-Occupiers; one which renders Mr. Horner's tone of assumption deeply offensive; one, we may add, which cannot continue to exist in a free country, Such an anomalous condition of affairs must and will be rectified, however absorbing other interests may be. The issue of the next campaign in the East is, in the apprehension of wise men, of less consequence than the removal of late excrescences,—the unwholesome growth of an unprincipled sensibility,—which have overgrown the good old Common Law, which is found sufficiently protective of the workers in every other department of industry.

Our readers have seen that the Inspectors and the Secretary of State first took for granted that casing the shafts was required by law; and then backed out of this position, and threw their whole force into a recommendation of rectangular hooks,—wondering how anybody could make a difficulty about them. One particular of the conduct of the manufacturers was held up to special reprobation,—their warning to the mill-owners and occupiers to make no compromise, as to rectangular hooks or otherwise, till the bearing and scope of the law were ascertained, "there being reason to anticipate an attempt to divide the union of the trade on this subject." This recommendation was exhibited as a wanton defiance of law and authority, and threatening of human life and limb. Events have proved that the Committee of Manufacturers had reasonable ground for their warning. During the backing out from the casing order, Sir George Grey said in Parliament: "If it were supposed that the Act required a solid casing round the shafts, extending sometimes to a mile in length if the whole measurement were taken, it would subject the mill-owners to a ruinous expense; and by a recent decision of Mr. Justice Cresswell, it had been held that the Act was sufficiently complied with where it was proved that proper precautions, such as a reasonable man

ought to take, had been adopted." One of the Inspectors, Sir John Kincaid, declared in his Report, last May, that the casing of horizontal shafts seven feet high "was neither required nor expected." Elsewhere, he and Mr. Horner eagerly declare that any notion of the kind was "a mistake;" and they rest upon their "hooks." In a Circular of last January, however, the hooks themselves are so spoken of as to justify the warning of the Committee to the mill-occupiers to enter into no compromise, by hooks or otherwise,—for, if they had, their case would have been worse than ever. This Circular of January, 1855, explains that hooks are a safeguard only against the danger of the strap; and it recurs to the ambiguous language of the law,—to the words now to be interpreted by the Court of Queen's Bench, "securely fenced,"—leaving it to the mill-owners to choose their own methods, under the warning that they must prevent "*all* accidents." The most sensible thing that has been said yet, on the side of the Inspectors, is in the last paragraph of Mr. Redgrave's Report (*Inspectors' Reports, April*, 1855, *p.* 42):—"It has been recently determined that the question of the true construction to be placed upon the term 'securely fenced' shall be argued before the Court of Queen's Bench, upon an appeal against a conviction in Lancashire; and as such decision must have considerable influence upon the proceedings of the Inspectors, and must guide them in any communication they may have with the mill-owners of their districts, it is obviously impossible for the Inspector to issue a statement of what will be held to be the intention and scope of the law while that law is under discussion before the highest Court which can pronounce an opinion upon its meaning and application."

We have now arrived at the grand incident of the controversy,—at the event by which the dispute will be brought to a conclusion,—whatever that issue may be. We have seen that the circular of January, 1854, was withdrawn, and another substituted,—the second being so far from clear and effective as to

necessitate a third. Sir George Grey expressed to the deputation of factory occupiers in March, 1855, his regret at the lack of clearness and consistency in these circulars. One wonders whether it struck him that there must be a lack of clearness in the law or in the heads of its administrators, if the latter could not make their own requirements intelligible and consistent. The first circular was withdrawn in consequence of the representations of a deputation to Lord Palmerston in the following March. The renewal, presently after, of attempts to enforce the Inspectors' interpretation of an obscure law, showed the manufacturers that they must, if they chose to prosecute their business, organise themselves into a society,—not as Sir George Grey, and Mr. Horner, and Mr. Dickens conclude,—"to resist the law,"—but to resist unwarranted interpretations of the law, on the part of the Inspectors, and to get the law amended. At the preliminary meeting, on the 6th of March, 1855, representatives from about 750 firms were present. A committee was appointed, and a deputation organised to wait on Sir George Grey at the Home Office. At a meeting on March 22nd, the case of the mill-owners and occupiers against the Inspectors and the law was expressed in a series of Resolutions, moved and seconded by a large number of gentlemen best known throughout the kingdom, and far beyond it, for their intelligence, beneficence, public spirit, and devotedness to the cause of popular advancement, in the way of education, improved habits of living, and progress by every practicable way. These gentlemen are the employers of the factory population: that population, who, by their conduct during the years of adversity preceding the repeal of the Corn Laws, raised the hope and self-respect of the nation; showing, by their patience in suffering, their superiority to the old ignorance and prejudice, which rendered former periods of adversity seasons of outrage and fatal conflict with their employers. These were the gentlemen who had educated their people up to the needs of the time; who carried them through

the stress by unexampled generosity, and who now see in the factory population about them the most favourably circumstanced class of workers—if not citizens—in the kingdom. Mr. Robert Hyde Greg was in the chair; and Mr. Whitworth accepted the office of Secretary. There were Ashworths, Worthingtons, Thornelys, Whitwells, Whittakers, Ashtons, Holmes, Turners, Bazleys, ——— But it would take too much room to give the list; and there is no occasion for distinctions. A deputation was appointed to wait on Sir George Grey; and they spent two hours at the Home Office, on the 23rd of March, and had another interview on the 30th. Sir George Grey regretted the obscurities and discrepancies of the circulars, and evidently wished to "meet the circumstances of the case;" but he held out no hope that, under the pressure of public affairs, and the state of the times, there would be any amendment of the Factory Laws, at the instance of Government. When this was once ascertained, the members of the Manchester Society enlarged their plan, and constituted themselves a "National Association of Factory Occupiers." This was done on the 17th of April; and when the Special Report of the Committee was prepared in July, the members were computed to employ not less than 250,000 workpeople. In the mode in which we shall exhibit their objects and methods, we shall, at the same time, unavoidably display the operation of passion and prejudice on the part of their antagonists; and the encouragement to unscrupulous statement, insolence, arrogance, and cant, to which the door is opened when meddling legislation is accorded to the pseudo-philanthropy which is one of the disgraces of our times. A good many people have wondered before that Mr. Dickens, who has such a horror of Poor-law reform, and who acted the part of sentimental philanthropist in "Oliver Twist," by charging the faults of the repealed law upon the new one, and other devices common to that order of pleaders, should have fallen foul afterwards of the prison reformers and the African

missionaries, and certain other philanthropic adventurers. But there was the excuse that he was a novelist; and no one was eager to call to account on any matter of doctrine a very imaginative writer of fiction. It might be a pity, as a matter of taste, that a writer of fiction should choose topics in which political philosophy and morality were involved; but the criticism was willingly restricted to this. But Mr. Dickens himself changed the conditions of his responsibilities and other people's judgments when he set up "Household Words" as an avowed agency of popular instruction and social reform. From that time, it was not only the right but the duty of good citizens to require from him some soundness of principle and some depth of knowledge in political philosophy. It is not within our scope now to show how conspicuous has been Mr. Dickens's proved failure in the department of instruction upon which he spontaneously entered. We need refer to only a single instance out of many,—as his Tale of "Hard Times." On this occasion, again, the plea of those who would plead for Charles Dickens to the last possible moment is that "Hard Times" is fiction. A more effectual security against its doing mischief is that the Tale, in its characters, conversations, and incidents, is so unlike life,—so unlike Lancashire or English life,—that it is deprived of its influence. Master and man are as unlike life in England, at present, as Ogre and Tom Thumb: and the result of the choice of subject is simply, that the charm of an ideal creation is foregone, while nothing is gained in its stead. But a much greater responsibility is incurred by Mr. Dickens, in the more recent papers in "Household Words," in which this Factory Controversy is treated of. Who wrote the papers we do not know, and it is of no importance to inquire. Mr. Dickens is responsible for them, and, whoever may be his partner in the disgrace of them, he alone stands before the world as answerable for their contents.

The papers we refer to are contained in "Household Words" for April 14th, May 12th, June 23rd, and July 28th, 1855. There would be no occasion, if our space allowed, to exhibit all the unscrupulous statements, and objectionable representations which are crowded into the few pages involved. A very few citations will sustain our rebuke. The society of mill-occupiers is entitled, by Mr. Dickens or his contributor (p. 495), "The National Association for the Protection of the Right to Mangle Operatives." He uses the opportunities of the subject in the palpable way which a just-minded writer would scrupulously avoid,—vividly describing the crushing of bones and the rending of flesh, and the tearing of joints out of their sockets, carrying this method so far as to speak of the members of the Association as "men not squeamish about a few spots of spilt brain, or a leg or an arm more or less upon a poor man's body." (Page 337.) Mr. Dickens, or his contributor, proceeds throughout on the assumption that the law orders the casing of the shafts, while he takes no notice of this being the very point in dispute; nor yet of the professional evidence as to the danger of both casings and hooks: nor of the objections of the workers to the hooks which caused, at least in certain specified cases, their removal. He makes the extraordinary statement (p. 495) that "these deadly shafts" "mangle or murder, every year, two thousand human creatures:" and, considering the magnitude of this exaggeration (our readers will remember that the average of deaths by factory shafts is twelve per year), it is no wonder that he finds fault with figures, when used in reply to charges so monstrous. When the manufacturers produce facts in answer to romance about the numbers concerned, he presents them as reading out of "Death's cyphering book," and proceeds to beg the question, as usual, in such language as this:—"As for ourselves, we admit freely that it never did occur to us that it was possible to justify, by arithmetic, a thing unjustifiable by any code of morals, civilised or savage;" this "justification" being a quoting of the *coroners' returns*, by

which "it appears that, out of 858 accidents occasioning loss of life, only 29, or 3½ per cent, had been occasioned by factory machinery" of any kind whatever. "Three and a half per cent!" exclaims Mr. Dickens or his contributor. "The argument is of a substantial character." If he assigns his number, of 2,000 a year, his opponents may surely cite theirs, of 3½ per cent, or 12 in a year. But Mr. Dickens cannot endure a comparative number which may diminish the show he makes with a positive one. He follows up, and improves upon, Mr. Horner's horror at the penalty of Ten Pounds,—adopting, of course, without a hint of there being a doubt in the case, the statement that a few hooks, costing a few shillings, would have saved the life of the poor reckless fellow Ashworth, who, as we have seen, threw it away. "When," says the writer (p. 243), "the mill-owner sets that price (ten pounds) on his workman's brains, who can wonder if the workman sets a price still lower on his master's heart!" The mingled levity and fustian of the style of the specimens we have quoted will neutralise their mischief to educated people; but the responsibility of presenting such pictures, and offering such sentiment, to a half-educated order of readers, is such as few writers would like to be burdened with. We do not believe that there will be any outbreak in factory districts about this matter, with or without Mr. Dickens's incitement; because the factory people understand the value of casings and hooks better than he does; and because an amendment and elucidation of the law may be considered only a question of time; but Mr. Dickens had better consider, for the sake of his own peace of mind, as well as the good of his neighbours, how to qualify himself for his enterprise before he takes up his next task of reform. If he must give the first place to his idealism and sensibilities, let him confine himself to fiction; and if he will put himself forward as a social reformer, let him do the only honest thing,—study both sides of the question he takes up. How far he is from having done this in the present case, a short but not unimportant statement may

show. He says, by his own pen or his contributor's (p. 605), "But the Factory Inspectors will proceed for penalties? Certainly they will; and then, if these gentlemen be members of the National Association of Factory Occupiers, they will have their case defended for them, *and their fine immediately paid.*" Yet, while the writer declares his information to be drawn from the papers of the Association, he ignores the following conspicuous passages from their first Report. (pp. 9. 12.) "Notwithstanding the distinctness with which the Association has declared its objects, it is constantly represented as a 'combination to resist the law,' as if it contemplated the indiscriminate defence of *all* actions and prosecutions under the Factory Act. Sir George Grey thus spoke of it to the deputation who recently presented to him a memorial against the conduct of Mr. Horner. But the Association has no such absurd object. It undertakes to 'protect its members from *improper* prosecutions and legal proceedings instituted or promoted by the Factory Inspectors or by other parties;' and it is acting strictly within the spirit of this undertaking when it relieves its members from the expense of individually testing the soundness of a government interpretation of the law, which, there are very strong reasons to believe, is erroneous, but which, nevertheless, the Government threatens to enforce against all Factory Occupiers, and which, therefore, justice demands, all should share the burden of testing. * * They have not paid, and they do not intend to pay, damages or penalties in any case whatever."

Here is Mr. Dickens's, or his contributor's account of the objects of the Association, declared to be derived from documents which he knew that not one in a thousand of his readers would ever see. Towards the conclusion, the writer declares his disbelief that the Association means what it says about defending only "cases which can be *legitimately* dealt with," and ignores the information of the Report, of a later date, that the association will pay no damages or penalties, in any case whatever. Having

found that doubts might be thrown upon the legality of an association paying the penalties as well as the costs, the Committee published, in their first Report, their resolution to pay no penalties or damages whatever, in the face of which Mr. Dickens or his contributor, while professing to write from the documents of the Association, goes on drawing his pictures and his inferences of the impunity of men-manglers in their horrid cruelties under the shelter of the bank of the Association. His statement, however, reveals the writer's condition of mind clearly enough, by its levity and obvious absurdity, so as to render it unnecessary to point out its misrepresentations. We will simply append the real resolutions of the Association, which will be the best rebuke to the false statement of them.

In order to place the statements fairly side by side, we have quoted that of "Household Words," and have followed its transpositions of the Association's Report,—numbering Mr. Dickens's statements, and the original resolutions burlesqued by him or his contributor.

"It is only because such an Association has been formed that we revert to this distressing topic. If factory occupiers organise a strike against the law—which is an expression of the righteous will of civilised society—they have to be opposed; and, to that end, what they do shall be done openly, so far as we can cause it to be done so. They are now actively engaged among themselves in raising money. The papers which they circulate among themselves are in our hands, and contain matter to this effect:—

1. "That they will labour to procure a repeal of the Inspectors' power of examining operatives privately, that they may speak without fear of the wrath of their employers.

2. "That they will get rid, if they can, of the chief office of Factory Inspectors in London.

3. "That they will put a stop, if possible, to the right vested in Inspectors, of instructing wounded operatives how they may proceed for damages against employers, by whose wilful negligence they have been maimed."

4. "That the certifying surgeon shall, if they can manage it, be got into the power of the petty sessions of his district, and not remain responsible to the Inspector for his conduct.

5. "That no shafts more than seven feet from the floor shall require fencing.

6. "That nothing else shall be fenced, if arbitrators overthrow the opinion of the Inspector that it ought to be fenced.

7. "And that no such protection of operatives shall be held necessary in the case of adult males; but only in the case of women, young persons, and children.

8. "That the clause in the Factory Act which excludes a millowner from deciding upon points closely affecting his own money interests in dealings with the operatives, ought to be repealed, indicating as it does 'an unwarrantable suspicion upon the honourable conduct of that portion of the magistracy who are engaged in manufactures.' Human nature is purely disinterested in the north,—witness the existence of this very National Association, by which the unwarrantable suspicion is, among other measures, for the taking care of Number One, cunningly spurned!

9. "Finally, the representatives of this body—who would seem to go so far as to oppose everything that might tend to save an operative's life, for they 'beg to caution the trade against the adoption of any compromise, whether of hooks or otherwise,'—these gentlemen have arrived at the following conclusion: 'With these views, the deputation are of opinion that a fund of not less than five thousand pounds should be immediately raised; and they suggest that all cases of prosecution which the committee of management may be of opinion can be legitimately dealt with by the Association, shall be defended by, and the penalties or damages paid out of the funds of the Association.'

"Who, after this, can share the indignation of the cotton owners, when poor operatives strike—when they subscribe money to sustain each other in a combination against what they believe—though not always rightly—to be grievous wrong. The operative strikes against hunger; against what he thinks hard dealing on the part of his employers. The employer strikes against humanity, and shows how hardly *he* can deal, by subscribing to help and be helped in a struggle against the necessity of furnishing protection to the lives of his workpeople. The operative has a right to withhold his labour when he is not satisfied with its reward; the master has no right to leave his machinery unfenced, when the law orders him to fence it; and, in spite of the phrase 'cases that can be legitimately dealt with,' it is evident that he associates

with other masters that he may successfully oppose the law by the payment of a slight annual subscription. Application is made for it by the Association to all factory owners, at the rate of one shilling per nominal horse-power. This subscription will enable him to persist in doing wrong, and to take all the consequences, without any great harm to his pocket. Penalties are to be paid out of the funds of the Association. Should the struggle prove expensive, there is a provision made in the rules of the Association for the maintenance of funds to an unlimited amount; for, says the eighth rule, 'when the balance in the hands of the treasurer shall be less than the sum produced by a rate of sixpence per horse-power, the committee shall make a further call.'"

Actual Resolutions of the Association :—

1. "That the powers given to the Inspectors by the 3rd clause of the Act of 1844 : to take with them into factories, without Magistrates' orders, Constables and Peace-officers ; and to examine factory workers secretly, on their employers' premises, should be repealed.

2. "That the Chief Office of the Factory Inspectors in London ought to be immediately abolished, and in lieu thereof, a sufficient number of Inspectors ought to be appointed for each district, who shall reside within the district for which they severally act, and who shall report direct to the Secretary of State.

3. "That being advised that but for this enactment the Inspector causing such actions to be brought would have been guilty of 'Maintenance ;' and being further acquainted with cases where attempts have been made, on the part of the Inspector, to incite factory operatives to commence legal proceedings for damages against their employers, contrary to their own wishes, it is resolved that clauses 24 and 25 should be entirely repealed.

4. "That the 8th clause of the Factory Act of 1844, whereby the Inspector has power to appoint or dismiss a certifying surgeon, should be repealed, and that in lieu thereof such certifying surgeons should be appointed by the Magistrates acting in petty sessions for the district in which such surgeon resides, and for which he is to act: but that, on the application of the Inspector or any Factory Occupier (sufficient cause being shown), the Secretary of State shall have power to remove such surgeon. That clause 14 of the same Act, whereby power is given to the Inspector to annul the certificate of a surgeon previously given, ought to be repealed.

5. * * * "Provided always, that all horizontal, upright, or oblique

shafts more than seven feet from the floor, and all drums and pulleys upon such shafts, which are not over passages, shall be considered by their height to be securely fenced.

6. "That the clauses of the Factory Act of 1844, requiring all mill-gearing and horizontal shafting to be fenced, should be repealed, and that in lieu thereof clauses should be inserted in the bill to be submitted to Parliament, providing that if, in the opinion of any Inspector, any part of the steam-engine, water-wheel, wheel-race, hoist, teagle, machinery, or mill-gearing, is not securely fenced, he shall give notice in writing of such his opinion to the occupier of the factory, who shall be at liberty, within fourteen days thereafter, to give notice to the Inspector, requiring two skilled arbitrators to be appointed, one to be named by the occupier, and the other by the Inspector, who shall examine the premises within fourteen days, and whose decision, or that of their umpire, shall be final, and binding upon both parties; and if the decision of such arbitrators shall be adverse to the opinion of the Inspector, then the expenses shall be payable as other expenses under the Factory Act, 1844; but if in accordance with the opinion of the Inspector, then such expenses shall be paid by the occupier of the factory, and recoverable as penalties, under the Act.

7. * * * "Provided also, that in the opinion of this meeting, these provisions ought not to extend to the protection of adult males, but, carrying out the spirit of the early Acts relating to factories, should be enacted for the protection of women, young persons, and children only.

8. "That so much of clauses 10 and 71 of the Factory Act of 1844 as forbids 'the occupier of a factory, or the father, son, or brother of the occupier of a factory being a Justice of the Peace,' from doing any act as therein provided, ought to be repealed; such provision being, in the opinion of this meeting, a gross reflection upon the known character of the magistracy, and indicating an unwarrantable suspicion upon the honourable conduct of that portion of the magistracy who are engaged in manufactures.

9. "The deputation beg to caution the trade against the adoption of any compromise, whether of hooks or otherwise. They anticipate an attempt to divide the union of the trade on this point. The deputation remind the trade that, although the present Secretary of State may be disposed to modify the application of the law, yet, that his tenure of office is uncertain, and at an early period the trade may again have to take up this and other matters under less advantageous circumstances."

We must say that a mission to Borrioboola-Gha is an inno-

cent enterprise, in comparison with that which Mr. Dickens has undertaken on behalf of meddling and mischievous legislation like that of the fencing clauses of the Factory Acts. If we had room, and if our object was to convict the humanity-monger in "Household Words" of all his acts of unfairness and untruth, we should go into the case of the boy in Mr. Cheetham's factory, who, in defiance of remonstrance, thrust himself into the extremity of danger, and was killed on the instant; and of the overlooker at Bury, George Hoyle, aged 50, of whom his comrades said at the inquest, "It was entirely his own fault; the shaft was quite out of the way of everybody, and unless a person wilfully did something that he ought not to do, he could not be injured by that shaft." Again, "He was very venturesome; the shaft is quite entirely out of the way of every person, and could not do any harm, unless a person went wilfully into danger."—*Report of Association, page* 21. The people in the mill shouted to him to come down, and had done so often before; and when he was killed, the exclamation was, "It is just what I lippened of." Such cases as these, set off with ironical descriptions of spilt brain, puddles of blood, crushed bones, and torn flesh, are exhibited as spectacles for which the masters are answerable, and which they obstinately prefer to an expenditure of a few shillings to make all safe. If Mr. Dickens really believes in such a state of things as he describes, he should not meddle with affairs in which rationality of judgment is required; and if he can be satisfied to represent the great class of manufacturers—unsurpassed for intelligence, public spirit, and beneficence—as the monsters he describes, without seeking knowledge of their actual state of mind and course of life, we do not see how he can complain of being himself classed with the pseudo-philanthropists whom he delights to ridicule. He has exposed philo-criminal, and philo-heathen cant; but his own philo-

operative cant is quite as irrational as either, while it has the distinction of being far more mischievous. The danger is less than it was. In Luddite times, Mr. Dickens might have been answerable for the burning of mills and the assassination of masters; and if no deadly mischief follows now, it will be because the workers understand their own case better than he does. The benevolence of their employers, educating them long before the Factory Law made education compulsory, and feeding them in times of hardship, has generated a mutual understanding, and a common intelligence, which go far to render Mr. Dickens's representations harmless; but not for this is his responsibility the less. If the names of Dickens and Jellaby are joined in a firm as humanity-mongers in the minds of his readers, the gentleman may resent being so yoked with a noodle; but the lady might fairly plead that her mission had no mischief in it, if no good,—no exciting of fierce passions and class hostilities through false principles and insufficient knowledge. In conceit, insolence, and wilful one-sidedness, the two mission-managers may compare with each other; but the people of Borrioboola-gha could hardly be so lowered and insulted by any ministrations of Mrs. Jellaby as the Lancashire operatives would be if Mr. Dickens could succeed in reviving on their behalf the legislation which their ancestors outgrew some centuries ago.

Are there any readers who still feel some lingering doubt, akin to Mr. Horner's confident avowal,—that he cannot for the life of him see why the millowners do not put up casings or hooks, rather than stand out at such cost of every kind? Let us remind such doubters, in the first place, that very high authorities have pronounced those methods of fencing dangerous; and that the workers themselves have so objected, in several cases, to their use, as to cause their removal. Again, it is seen to be untrue that the mill occupiers have refused to fence their shafts. What they have done is ascertaining what the law really means, in the apprehension of the Judges. In one case

we find it decided that height constitutes a sufficient fence; and in another, that the erection of mules immediately under the shaft is an all-sufficient compliance with the law. While such facts as these should not be forgotten, there are more important considerations still; those which involve the principles of legislation. If men and women are to be absolved from the care of their own lives and limbs, and the responsibility cast on anybody else by the law of the land, the law of the land is lapsing into barbarism. If the charge is thrown upon the employers of industry, they will retire from occupations so intolerably burdened. That will be one consequence; and it seems to be agreed by the common sense of all concerned who have any common sense that our manufactures must cease, or the Factory Laws, as expounded by Mr. Horner, must give way. Are we, it may be asked, to stop, leaving one particular interest under the incubus of a special law, while the Common Law suffices for all others? Or are we to go on in the course of special legislation; and if so, where are we to stop? The Common Law provides securities against injuries from neglect or mismanagement in the regular course of the employments of workpeople of all orders. If the law is to be extended, as in the case of the mill-workers, to the prevention of "*all* accidents" from any instrument which can hurt or destroy, we must proceed to obviate all the dangers of life by law. Every landlord who erects cottages for his labourers must be legally compelled to put up fireguards, lest the children should be burnt. Every owner of houses must fence all the windows with gratings, lest people should fall out. At present, a silly servant here and there gets outside a window to clean it, against the most positive prohibition; and when the mistress comes home, she finds that the poor creature, who has taken advantage of her absence to disobey orders, has been impaled on the area rails, and is dying at the hospital. Mr. Horner and Mr. Dickens are bound to do their best to procure a law for putting up gratings at every window in

the kingdom. But nothing is more certainly proved than that such laws do not work. Rash people get killed, whatever their neighbours do to save them. The law might decree that every country gentleman must surround every tree in his park with a chevaux-de-frise, to prevent "all accidents" by boys climbing; but boys would climb nevertheless, and now and then one would be killed. What would be said of the justice of throwing the spilt brain and smashed skull of the sufferer in the face of the owner of the land on which the accident happened? Yet this would be no more than Mr. Horner and Mr. Dickens have done in the case of disobedient servants who have met their deaths by going out of the way of their proper employments. As the Special Report observes—the keeper of the Zoological Gardens, whose "occasional duty" it was to feed the Cobra Capella, put it to his nose, was bitten, and died. Who calls for punishment on his employer, or believes that any special law is needed for the protection of his fellow-servants?

It appears to us that the public are under great obligations to the National Association of Factory Occupiers, for undertaking the important but difficult task of ascertaining,—first, what the law is, as between factory employers and their workers; and next, what it ought to be. The bad principle which they are exposing, and the good one which, it is to be hoped, they will insist upon, are as important to all other interests as to those of the manufacturing classes. We ourselves have selected this case, simply as the best illustration at hand of the mischief of meddling legislation, and as affording the best prospect of an effective discussion, in and out of Parliament, of the true sphere and duties of government. Our review* showed, in our last number, what we had to say about another form of the same mischief, in regard to a Liquor Law. Whether it is Sabbatarian or sumptuary legislation, or a case of public-house law or factory

* Westminster Review. No. XVI. Art. V.

law, is nothing to us. We have no interest in any special case whatever; and we have chosen our illustration by its aptness, and the plenitude of published evidence in regard to it. Having become interested in it through this use of it, we must express a strong hope that the Association will not relax in their exertions till they have brought the principle of special legislation, like that of the Factory Acts, to the most conclusive test before the eyes of the world, and, in freeing themselves from ignorant and factious interference, drawn off a fog from the mind of the nation, purged its legislation from a barbarism, and released its industry and independence from an oppression and a snare.

We miss Sydney Smith in times like these,—in every time when a contagious folly, and especially a folly of cant and selfish sensibility, is in question. This very case, in a former phase, came under his eye; and his recently published Letters show what he thought of it.

"The Ministry are very much vexed at the majority of Lord Ashley, and are making great efforts to beat him; and it does seem to be absurd to hinder a woman of thirty from working as long as she pleases; but mankind are getting mad with humanity and Samaritanism."—*Sydney Smith's Letters, p.* 522.

"What a singular event,—these divisions upon the working hours of the common people! The protection of children is perhaps right; but everything beyond is mischief and folly. It is generally believed that if the Ten Hours Bill is carried, Government will resign. I am a decided duodecimalist. —— is losing his head. When he brings forward his Suckling Act, he will be considered as quite mad. No woman to be allowed to suckle her own child without medical certificates. Three classes, viz. free-sucklers, half-sucklers, and spoon-meat mothers. Mothers whose supply is uncertain to suckle upon affidavit! How is it possible that an Act of Parliament can supply the place of nature and natural affection? Have you any nonsense equal

to this in Northumberland?"—*Sydney Smith's Letters, p.* 529, *to the Countess Grey.*

It appears at times that parliament, as well as the public, has a glimmering sense of the vices and mischiefs of meddling legislation. While oppressing the Factory Occupiers by a system of inquisitorial annoyance, and a new sort of constable in the person of Mr. Horner, who carries the true one-sided temper of the informer into his office, parliament will not hear of introducing the same law and method into other industrial departments, where the injuries to life and limb exceed those in factories. At the close of the last session, a Committee of the House of Commons rejected, by a majority of 125 to 3, a clause which should give to Inspectors of Mines and Collieries powers of prosecution similar to those of the Factory Inspectors. While every factory worker who is prevented from coming to work at nine next morning, by any kind of injury,—whether by a cut, or a bruise of thumb or forefinger (used in the spinning process), or a kick or fall in the play-ground, or any hurt however slight,—is to be reported upon as gravely and precisely as if he had lost head or limb, the Parliamentary Committee rejected, by a majority of 108 to 16, a less stringent provision of the Mines and Collieries Bill. What parliament has to do is to extend equal justice, not by carrying mischievous legal interference into quarries, mines, railways, Sheffield shops, with their fearful circular saws and heavy rollers, or Birmingham foundries, with their molten metal; but to relieve the textile manufactures of the country from the interference which a partial and passionate Inspector may convert into an intolerable legal persecution. When our readers learn that the Inspectors of three out of four districts have laid informations against millocupiers, from 1836 to 1854 inclusive, to the number of 935; while Mr. Horner has laid, in the same time, 2,761, in his one district, it will be no surprise to them to learn that one of the Resolutions of the Committee of Management of Factory Occupiers, meeting

on the 7th of last April, was, "That a memorial be presented to Sir George Grey, praying that Mr. Leonard Horner may be dismissed." We have seen that the desire of the manufacturers is that the Inspectors should be residents of the district,—men who have some acquaintance with the character of the population, both employers and employed, and who will not go forth to their daily duty under the idea that there is an opposition of interests between the two, as between a race of tyrants and a race of slaves. Till the constituencies of the kingdom obtain some clear understanding of the objects of government and the province of law in a constitutional country, such palliations may help us through the dangers of the transition period. Our factories may remain at work if the agents of the law are wiser than its framers, and apply its provisions impartially and reasonably. Another step will be gained when the Association obtains, as it cannot fail to do, such amendments in the law as will render it clear and comparatively rational. That done, we may be growing into a fitness to see that the Common Law, if sufficient for the protection of everybody else, must suffice for the needs of the most intelligent, safe, and prosperous industrial class in the kingdom. We are learning, by Sabbatarian experience at home, and by Temperance examples from America, to leave untouched by law men's personal habits and practices, except where they fall under the penalties of the Common Law. When we have learned to leave to workers in factories, as to other workers, the care of their own lives and limbs, with the ordinary remedy against the misdeeds of their employers, we shall be in the way to a better wisdom than we can boast of yet, as to the great question which concerns every citizen,—of the true Sphere and Duties of Government.

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