

SPEECHES
OF
THOMAS LORD ERSKINE.

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With Memoir of His Life

BY

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CONTENTS OF VOL. II.

| | PAGE |
|--|------|
| TRIAL OF THOMAS HARDY, FOR HIGH TREASON— | |
| The Subject, | 1 |
| The Indictment, | 8 |
| Speech of the Attorney-General, | 7 |
| Speech for the Defence, | 136 |
| SPEECH OF MR ERSKINE IN DEFENCE OF HON. RICHARD BINGHAM, AFTERWARDS LORD LUCAN— | |
| The Subject, | 225 |
| The Speech, | 225 |
| SPEECH OF MR ERSKINE IN DEFENCE OF JOHN HORNE TOOKE, Esq.— | |
| The Subject, | 234 |
| The Speech, | 235 |
| TRIAL OF THE BISHOP OF BANGOR AND OTHERS, FOR A RIOT AND ASSAULT— | |
| The Subject, | 301 |
| Speech of Mr Adam for the Prosecution, | 302 |
| Speech for the Defence, | 316 |
| Mr Justice Heath's Summing-up, | 332 |
| CASE OF MR CUTHELL FOR PUBLISHING A LIBEL— | |
| The Subject, | 338 |
| Speech for the Defence, | 341 |
| PROCEEDINGS AGAINST SACKVILLE, EARL OF THANET, FOR A MISDEMEANOUR— | |
| The Subject, | 354 |
| The Information, | 355 |
| Speech of the Attorney-General, | 361 |
| Evidence for the Crown, | 368 |
| Speech for the Defence, | 406 |
| Evidence for the Defendants, | 446 |
| Attorney-General's Reply, | 469 |
| Lord Kenyon's Charge to the Jury, | 479 |
| Speech of the Earl of Thanet, | 482 |

| | PAGE |
|--|------------|
| Affidavit of the Earl of Thanet, | 484 |
| Speech of Mr Ferguson, | 486 |
| Affidavit of Mr Ferguson, | 487 |
| CASE OF JAMES HADFIELD, FOR SHOOTING THE KING— | |
| The Subject, | 489 |
| Speech for the Defence, | 490 |
| CASE OF REV. GEORGE MARKHAM AGAINST JOHN FAWCETT— | |
| Preface, | 512 |
| Speech of Mr Erakine for the Plaintiff, | 513 |
| PROCEEDINGS OF THE FRIENDS OF THE LIBERTY OF THE PRESS, | 524 |

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SPEECHES OF LORD ERSKINE.

TRIAL of THOMAS HARDY, for High Treason, at the Sessions House in the Old Bailey, 28th of October to 5th of November 1794.

THE SUBJECT.

We have not been without considerable difficulties in preparing the introduction to Mr Erskine's speech upon this most memorable state trial.

It was our original intention, as we have before stated, to have published such of Mr Erskine's speeches as we were able to collect, in the same manner as those of the Master of the Rolls in Ireland had been printed in Dublin, which led, as we have said, to the present publication—prefixing only, as in that collection, a short account of the occasions on which they were delivered. But as we advanced in the work, we found some of the speeches which we had collected so closely connected with political differences in our own times, that, to avoid even the appearance of partiality, or of any desire to render the work subservient to the sentiments or views of any particular class of persons, however eminent;—above all, to avoid the most distant appearance of entering into the *imputed* or *supposed* designs of the persons prosecuted by Government, and defended in the speeches in question, we found it advisable, because in those instances practicable, to print not only the speeches for the Crown, but the whole substance of the evidence. This could not be done upon the present occasion without printing the whole trial, which occupies three large volumes: yet, to give to Mr Erskine's speech—the publication of which is our principal design—its true spirit and effect, we found that it would be necessary to explain the nature of the arguments it opposed, and of the evidence which it appealed to, and had prepared a concise statement of the whole case. Still apprehensive, however, that we might be suspected of leaning to the side of the parties accused by Government, and be charged with giving a garbled publication from motives foreign to our professions, we resolved to print the entire speech of the Attorney-General, in which he detailed the whole body of the evidence, and also the law respecting high treason, as he meant to apply it against the prisoners, which, with the answer to it by Mr Erskine, brings forward the whole outline of this interesting proceeding.

Never, perhaps, were any persons accused of high treason (certainly not since the government became settled at the Revolution) exposed to such great difficulties in making their defence. It will be seen by the following speeches, and by the indictment prefixed to them, that the prisoners were charged with compassing and imagining the death of the King; the overt act being a conspiracy, which, though masked under the pretence of procuring by legal means a reform in the Commons House of Parliament, had for its real object the subversion by rebellious force of the whole frame of the constitution of the country.

In support of this indictment it will be seen by the following speeches that the evidence for the Crown was divided into two distinct branches, viz. to establish, first, that such a conspiracy existed, and, secondly, to prove that the prisoners were parties to it. This course of proceeding had been sanctioned by the opinions of the judges upon other trials, but the adoption of it upon this occasion, however legal, undoubtedly exposed the prisoners to great peril of prejudgment, because almost the whole of the evidence given by the Crown against them had been collected by both Houses of Parliament just before the trial, and printed by their authority; and a statute* had even been passed, declaring that the treacherous conspiracy, which constituted the first and very important branch of the evidence, did in fact exist within the kingdom. We say a very important branch of the evidence, because undoubtedly if the jury had considered that the evidence supported the truth of the preamble to the Act of Parliament, the prisoners must have been in a manner without a defence. Authority was also given to detain, without bail, persons already in custody, on suspicion of being engaged in the above conspiracy, or who should be thereafter committed on that account.

With regard to this Act of Parliament, it is impossible, on the one hand, to deny the constitutional competency of Parliament to declare the existence of a dangerous and extended conspiracy, endangering not only the safety, but the very existence of the state. On the other hand, the persons who may become obnoxious to suspicion, and be subjected to a public prosecution in consequence of such a legislative proceeding, come to a trial under seemingly insurmountable disadvantages.

In the very case before us, the two Houses of Parliament had collected and arranged the greater part of the written evidence afterwards produced by the Crown against the prisoners, and in the preamble of the Act had given it the character of a detestable conspiracy to subvert the monarchy, although, as has been already stated, the inquiry of the jury was to be divided into two branches—first, whether the evidence, great part of which had been so collected and arranged in Parliament and published, substantiated the declaration made in the preamble of the bill, of the existence of such a conspiracy to subvert the Government; and, secondly, whether the prisoners had any, and what share in it? Now, it is most obvious that if, in deference to the judgment of Parliament, the first part of this division had been found by the jury, and the law of high

* 34th Geo. III., c. 54. The preamble to the bill states, that "whereas a treacherous and detestable conspiracy has been formed for subverting the existing laws and constitution, and for introducing the system of anarchy and confusion which has so lately prevailed in France," &c.

treason, as stated by the counsel for the Crown, had been adopted, the prisoners could scarcely have had any defence, as they then must have been taken, upon the whole of the evidence, to have been privy to proceedings throughout the whole kingdom, directed to the subversion of the monarchy, and destruction of the king.

All that can be said upon such a case is, first, that dependence must be had upon the sacred trust of the Legislature, not without urgent necessity to adopt such a proceeding, and carefully to consider the fair result of the evidence, when made the foundation of an Act of Parliament; and, secondly, that the British constitution provides for the safety of all who have the happiness to live under its protection, by giving to twelve men, to be taken from the mass of the people, the privilege and the duty to sit in judgment upon all that the authority of Parliament may have decided to be the *fact*, and all that the learning of the judges may consider to be the application of the *law*.

In that respect, whatever may be the merits of this case, and whatever, amidst the variety of judgments in a free country, may be the prevailing opinion concerning it, the trial by jury must ever be dear to Englishmen. The verdict of acquittal, instead of giving encouragement to whatever spirit of sedition might have existed at that period, produced an universal spirit of content and confidence in the people. Nothing indeed could more properly excite such sentiments than so memorable a proof of safety under the laws.

THE INDICTMENT.

SESSION HOUSE IN THE OLD BAILEY,
Saturday, October 25, 1794.

PRESENT,—Lord Chief-Justice EYRE; Lord Chief-Baron MACDONALD; Mr Baron HOTHAM; Mr Justice BULLER; Mr Justice GROSE; and others His Majesty's Justices, &c.

THOMAS HARDY, JOHN HORNE TOOKE, JOHN AUGUSTUS BONNEY, STEWART KYD, JEREMIAH JOYCE, THOMAS HOLCROFT, JOHN RICHTER, JOHN THELWALL, and JOHN BAXTER, were arraigned, and severally pleaded Not guilty.

The indictment charged, that the prisoners, being subjects of our Lord the King, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the devil, as false traitors against our said Lord the King, their supreme, true, lawful, and undoubted lord, and wholly withdrawing the cordial love and true and due obedience which every true and faithful subject of our said Lord the King should and of right ought to bear towards our said Lord the King, and contriving, and with all their strength intending, traitorously

to break and disturb the peace and common tranquillity of this kingdom of Great Britain, and to stir, move, and excite insurrection, rebellion, and war against our said Lord the King within this kingdom, and to subvert and alter the legislature, rule, and government now duly and happily established in this kingdom, and to depose our said Lord the King from the royal state, title, power, and government of this kingdom, and to bring and put our said Lord the King to death, on the first day of March, in the thirty-third year of the reign of our sovereign Lord the now King, and on divers other days and times, maliciously and traitorously, with force and arms, &c., did amongst themselves, and together with divers other false traitors, to the said jurors unknown, conspire, compass, imagine, and intend to stir up, move, and excite insurrection, rebellion, and war against our said Lord the King, within this kingdom of Great Britain, and to subvert and alter the legislature, rule, and government now duly and happily established within this kingdom of Great Britain, and to depose our said Lord the King from the royal state, title, power, and government of this kingdom, and to bring and put our said Lord the King to death. And that to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, they, with force and arms, maliciously and traitorously did meet, conspire, consult, and agree among themselves, and together with divers other false traitors, to the said jurors unknown, to cause and procure a convention and meeting of divers subjects of our said Lord the King to be assembled and held within this kingdom, with intent and in order that the persons to be assembled at such convention and meeting should and might wickedly and traitorously, without and in defiance of the authority, and against the will of the Parliament of this kingdom, subvert and alter, and cause to be subverted and altered, the legislature, rule, and government now duly and happily established in this kingdom, and depose and cause to be deposed our said Lord the King from the royal state, title, power, and government thereof. And further to fulfil, perfect, and to bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and thereby to accomplish the same purposes, they, together with divers other false traitors, to the jurors unknown, maliciously and traitorously did compose and write, and did then and there maliciously and traitorously cause to be composed and written, divers books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings, and did then and there maliciously and traitorously publish, and did then and there maliciously and traitorously cause to be published divers other books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and

writings, the said books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings so respectively composed, written, published, and cause to be composed, written, and published, purporting and containing therein, among other things, incitements, encouragements, and exhortations to move, induce, and persuade the subjects of our said Lord the King to choose, depute, and send, and cause to be chosen, deputed, and sent, persons as delegates, to compose and constitute such convention and meeting as aforesaid, to be so holden as aforesaid, for the traitorous purposes aforesaid. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and thereby to accomplish the same purposes, they did meet, consult, and deliberate among themselves, and together with divers other false traitors, to the said jurors unknown, of and concerning the calling and assembling such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and how, when, and where such convention and meeting should be assembled and held, and by what means the subjects of our said Lord the King should and might be induced and moved to send persons as delegates to compose and constitute the same. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid, and thereby to accomplish the same purposes, maliciously and traitorously did consent and agree that the said Jeremiah Joyce, John Augustus Bonney, John Horne Tooke, Thomas Wardle, Matthew Moore, John Thelwall, John Baxter, Richard Hodgson, one John Lovett, one William Sharp, and one John Pearson, should meet, confer, and co-operate among themselves, and together with divers other false traitors, to the jurors unknown, for and towards the calling and assembling such convention and meeting as aforesaid, for the traitorous purposes aforesaid. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, they maliciously and traitorously did cause and procure to be made and provided, and did then and there maliciously and traitorously consent and agree to the making and providing of divers arms and offensive weapons, to wit, guns, muskets, pikes, and axes, for the purpose of arming divers subjects of our said Lord the King, in order and to the intent that the same subjects should and might unlawfully, forcibly, and traitorously oppose and withstand our said Lord the King in the due and lawful exercise of his royal power and authority in the execution of the laws and statutes of this realm, and should

and might unlawfully, forcibly and traitorously subvert and alter, and aid and assist in subverting and altering, without and in defiance of the authority and against the will of the Parliament of this kingdom, the legislature, rule, and government now duly and happily established in this kingdom, and depose, and aid and assist in deposing, our said Lord the King from the royal state, title, power, and government of this kingdom. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, they with force and arms maliciously and traitorously did meet, conspire, consit, and agree among themselves to raise, levy, and make insurrection, rebellion, and war within this kingdom of Great Britain, against our said Lord the King. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, they maliciously and traitorously did meet conspire, consult, and agree amongst themselves, and together with divers other false traitors, to the jurors unknown, unlawfully, wickedly, and traitorously to subvert and alter, and cause to be subverted and altered, the legislature, rule, and government now duly and happily established in this kingdom, and to depose and cause to be deposed our said Lord the King from the royal state, title, power, and government of this kingdom. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, and in order the more readily and effectually to bring about such subversion, alteration, and deposition as last aforesaid, they maliciously and traitorously did prepare and compose, and did then and there maliciously and traitorously cause and procure to be prepared and composed, divers books, pamphlets, letters, declarations, instructions, resolutions, orders, addresses, and writings, and did then and there maliciously and traitorously publish and disperse, and did then and there maliciously and traitorously cause and procure to be published and dispersed, divers other books, pamphlets, letters, declarations, instructions, resolutions, orders, addresses, and writings, the said several books, pamphlets, letters, declarations, instructions, resolutions, orders addresses, and writings so respectively prepared, composed, published, dispersed, and caused to be prepared, composed, published, and dispersed, as last aforesaid, purporting and containing therein (amongst other things) incitements, encouragements, and exhortations, to move, induce, and persuade the subjects of our said Lord and King to aid and assist in carrying into effect such traitorous subversion, alteration, and deposition as last aforesaid, and also containing therein (amongst other things) information, instructions, and directions to the subjects of our said Lord the King, how, when, and upon what occasions the traitorous purposes last aforesaid should and might be carried into effect. And further to

fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, they did maliciously and traitorously consent and agree to the procuring and providing arms and offensive weapons, to wit, guns, muskets, pikes, and axes, therewith to levy and wage war, insurrection, and rebellion against our said Lord the King within this kingdom, against the duty of their allegiance, against the peace of our said Lord the now King, his crown and dignity, and against the form of the statute in that case made and provided.

Mr Attorney-General stated to the Court, that he had been informed by the counsel for the prisoners it was their wish the prisoners should be tried separately. It was therefore his intention to proceed first on the trial of Thomas Hardy.

At the request of the prisoner's counsel, the Court adjourned to Tuesday, the 28th October.

On Tuesday, the 28th of October, the Attorney-General opened the case for the Crown against the prisoner Thomas Hardy in the following speech:—

MAY IT PLEASE YOUR LORDSHIP, AND GENTLEMEN OF THE JURY,—
In the course of stating what I have to offer to your most serious attention in this great and weighty cause, affecting, as it certainly does, the dearest interests of the community, affecting, as you will remember throughout this business, every interest which can be valuable to the prisoner at the bar, I shall have frequent occasion to call that anxious attention to the different parts of the indictment which has just been opened to you. I forbear to do so at this moment, because I think that attention will be more usefully, both with respect to the public, and to the prisoner, given and required in another part of what I am to address to you.

Gentlemen, the prisoner who is before you stands charged (to state the indictment generally) with the offence of compassing His Majesty's death: he was committed upon that charge by His Majesty's Privy Council. I will explain to you presently why I state this and the following facts. In consequence of the apprehension of this prisoner, of several others charged by this indictment, and of others whose names do not occur in this indictment, proceedings of some notoriety were had in Parliament, and an Act passed empowering his Majesty to detain such persons as he suspected were conspiring against his Government. That Act has asserted that a traitorous and a detestable conspiracy had been formed for subverting the existing laws and government of the country, and for introducing that system of anarchy and confusion which had so fatally prevailed in France. The Act, upon the spur of the emergency which it contemplated, authorised the detention,

without bail, mainprize, or discharge, of the persons then in prison for high treason or treasonable practices, or who should afterwards be committed for high treason or treasonable practices, by warrants from the Privy Council or Secretary of State, until the 1st of February 1795.

Gentlemen, this measure, which did not suspend the operation of the Habeas Corpus Act, that great palladium of English liberty, but with reference to particular persons, under particular commitments, for particular offences, is a measure never adopted in this country by Parliament but in cases in which it is understood, after giving all possible attention to secure the right of the subject from being broken in upon, to be of the last possible necessity, and which has been repeatedly put in force, in the best of times, in such cases where the wisdom of Parliament apprehended that it was matter of their duty to provide that the nation should part with its liberty for a while, that it might not lose it for ever.

Gentlemen, appearing before you this day in discharge of that duty which I have been commanded to execute, and the execution of which appears to me to be absolutely necessary, you will collect from the fact that I do appear here this day, that, according to the true constitutional meaning of such an Act of Parliament, it is not that the trial of such persons shall be delayed during the period of the suspension of the Act, but that the Act shall, with reference to the time of trial, be allowed, in the right execution of it, an operation only to that extent in which the due consideration of the public safety, tempered with a due attention to the liberty of the individual subject, may require.

Gentlemen, the proceedings of the Legislature having been such as I have stated to you, His Majesty, constitutionally advised in the exercise of his duty, as the great conservator of the public peace, directed a commission to issue to inquire whether any such treasons as the presumption of such a traitorous conspiracy must necessarily suppose to have existed, had been committed by any persons, and by whom. In the execution of the duties of that commission, a grand jury of this county, upon their oaths, have declared that there is ground of charge against the person at the bar, and against others, sufficient to call upon them, in a trial to be had before you, their country, to answer to an accusation of high treason, in compassing his Majesty's death.

Gentlemen, I have stated these circumstances that I may convey to you, in as strong terms as I can express it, this observation, that, as the proceedings of Parliament ought to have had (and I am persuaded, from the deliberation which they gave the subject, that they had) no influence upon the judicial mind of the grand inquest, neither ought these proceedings to affect your inquiries, or to induce you to any determination which you are to make upon the issue which you are now sworn to try.

Gentlemen, there is no one circumstance of any proceedings before Parliament with reference to which you ought to suffer yourselves to be influenced in the trial of this issue. It is obvious that such proceedings as were had in Parliament, providing for great emergencies, may be required and authorised by the genuine spirit of the constitution, even in cases in which a grand jury might not, upon anything that could be offered to their consideration, be justified in finding a bill: it is much more obvious that, in a proceeding before you, a consideration of the wisdom and propriety of the acts of the Legislature is not called for.

You therefore, gentlemen of the jury, will consider the prisoner as standing before you in full possession of an absolute right to the presumption of innocence, notwithstanding he is charged with guilt by this indictment, as you will hear, except so far as that presumption is met by the single simple fact that he has been accused by a grand jury of his country.

Gentlemen, before I conclude these general observations, you will permit me to say, on the other hand, that if there has been anything that has fallen under your observation, by act or publication—any attempt to make any impression upon the minds of those who are this day impanelled to try this great cause, to disparage that advice which, under the most responsible sanction, may be given you in matter of law, to work in your minds any prejudice either against the prisoner or on the prisoner's behalf; on the one hand I am perfectly sure that your integrity will be security to the public that you will not permit any attempt of that kind to have any operation; on the other hand, gentlemen of the jury, I am equally sure that I need not ask from an English jury that they would permit no such attempt to prejudice them against the prisoner at the bar,—no, not even an injudicious or ill-executed attempt to influence them in his favour.

Gentlemen, in order to understand the law of treason, and the indictment, I shall take the liberty first to state to you the character which I apprehend the King, for the protection of whose person and government the statute in question was made, has in the state and constitution of this country.

Gentlemen, the power of the state, by which I mean the power of making laws, and enforcing the execution of them when made, is vested in the King; enacting laws, in the one case, that is, in his legislative character, by and with the advice and consent of the Lords spiritual and temporal, and of the Commons in Parliament assembled,—assembled according to the law and constitutional custom of England; in the other case, executing the laws, when made, in subservience to the laws so made, and with the advice which the law and the constitution have assigned to him in almost every instance in which they have called upon him to act for the benefit of the subject. The King's authority, under the check of constitu-

tional and legal provisions and limitations, convenes and regulates the duration and existence of Parliament, convening those whom, according to the law and custom of the country, he is bound to convene. The King, in his Parliament, sitting in his royal political capacity, and the Lords and Commons there assembled, form the great body politic of the kingdom, by which is exercised sovereign authority in legislation. Gentlemen, whilst the present law, the present constitution, and present government of Great Britain exist, no law can be made but by that authority; no legislative power can be created against the will and in defiance of that authority. Whether in any or in what circumstances, an attempt to create such a power is a treason forbidden by the statute of the 25th of Edward III., I propose to examine presently.

Gentlemen, as in the King the power of legislation is vested, as well as the executive power of the state, to be exercised with consent and advice, to be exercised according to those laws which are the birthright and inheritance of the subject, having upon him the care and protection of the community; to him, in return, the allegiance of every individual is, according to the law of England, due; that allegiance by which the subject is bound, in the language of the statutes of this country, to defend him "against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, his crown, or his dignity."

Gentlemen, to ascertain to whom this care and protection is committed—to ascertain to whom this allegiance is due, the breach of which, according to the venerable Lord Hale, constitutes high treason—is necessary to the peace of the community; to ascertain and to define accurately what constitutes a breach of that allegiance, is essentially and absolutely necessary to the security of all that our ancestors have claimed, demanded, and insisted upon, as the ancient undoubted rights and liberties of our country.

Gentlemen, the former of these objects is secured by the law and constitutional custom of England: that law which alike secures to you every right, whether it be a right of person or of property. It has made the crown which his Majesty wears hereditary (and I beg your attention to that), subject to limitation by Parliament. The latter object has been most anxiously secured by the statute referred to in the indictment, which brings forward the charge the truth of which you are now to try.

Gentlemen, the King having this hereditary crown, the law and constitution have also ascertained his duties—those duties which it is incumbent upon him to execute for the benefit of the subject; in the execution of which duties they have aided him with counsel, and in consideration of which duties they have clothed him with dignity, and vested him with high prerogatives. With respect to the duties of the King, they attach upon him the instant he becomes such; from the moment that his title accrues, in the same

instant the duty of allegiance (the breach of which is high treason) attaches to it; he recognises these as his duties in that oath, to which, throughout this business, I must again call your attention, in that oath which he is bound to take upon him, at his coronation, to promise and swear "to govern the people of this country,"—mark the words, gentlemen,—"*according to the statutes in Parliament agreed upon, and the laws and customs of the same*; that to his power he will cause law in justice and mercy to be administered; that he will maintain the laws of God, and the true profession of religion established by law."

Gentlemen, this oath, stated by that great and venerable constitutional Judge, Mr Justice Foster, to be a solemn and a public recognition, not only of the duties of the King, but of the fundamental rights of the people, imposeth upon him (and throughout this case it cannot be too strongly recollected that it imposeth upon him) the most sacred obligation to govern according to the laws and statutes in *Parliament* agreed upon, according to the laws and customs of *the same*, and no other.

Gentlemen, addressing this Court, which is a court of law, in which you, the jury, are sworn to make a true deliverance according to the law of England, can I impress it too strongly that it cannot be supposed by possibility—not by possibility—that the King can, consistently with his oath, and with the antecedent duty recognised in the explicit engagement, the terms of which you have heard, either act, or permit himself to act, as King, according to any rules of government, formed by any bodies of men, assuming any character, functions, or situations, those rules of government being meant to operate as laws, *the statutes agreed upon in Parliament, and the laws and customs of the same, only excepted?*

Gentlemen, it seems to me to follow, as a necessary conclusion from the reasoning to be addressed to a court of law, not only that those who conspire to remove the King out of the government altogether, but that those who conspire to remove him, unless he will govern the people according to laws which are not statutes in Parliament agreed upon, and the laws and customs of the same, or as the head of a government framed and modified by any authority not derived from that Parliament, do conspire to depose him from *that royal state, title, power, and government, which the indictment mentions*, and to subvert and alter the rule and government now established in these kingdoms. He *ought not* so to govern—I say, he cannot so govern—he is bound to resist such a project at the hazard of all its consequences; he must resist the attempt; resistance necessarily produces deposition, it endangers his life.

Gentlemen, to that King upon whom these duties attach, the law and constitution, for the better execution of them, have assigned various counsellors and responsible advisers: it has clothed him, under various constitutional checks and restrictions, with various

attributes and prerogatives, as necessary for the support and maintenance of the civil liberties of the people: it ascribes to him sovereignty, imperial dignity, and perfection: and because the rule and government, as established in this kingdom, cannot exist *for a moment* without a person filling that office, and able to execute all the duties from time to time which I have now stated, it ascribes to him also that he never ceases to exist. In foreign affairs, the delegate and representative of his people, he makes war and peace, leagues and treaties: in domestic concerns, he has prerogatives, as a constituent part of the supreme legislature; the prerogative of raising fleets and armies: he is the fountain of justice, bound to administer it to his people, because it is due to them: the great conservator of public peace, bound to maintain and vindicate it; everywhere present, that these duties may nowhere fail of being discharged; the fountain of honour, office, and privilege: the arbiter of domestic commerce, the head of the national church.

Gentlemen, I hope I shall not be thought to misspend your time in stating thus much, because it appears to me that the fact that such is the character, that such are the duties, that such are the attributes and prerogatives of the King in this country (all existing for the protection, security, and happiness of the people in an established form of government), accounts for the just anxiety, bordering upon jealousy, with which the law watches over his person—accounts for the fact that, in every indictment, the compassing or imagining his destruction or deposition seems to be considered as necessarily co-existing with an intention to subvert the rule and government established in the country: it is a purpose to destroy and to depose *him* in whom the supreme power, rule, and government, under constitutional checks and limitations, is vested, and by whom, with consent and advice in some cases, and with advice in all cases, the exercise of this constitutional power is to be carried on.

Gentlemen, this language, the tenor and charge of every indictment, is most clearly expressed by Lord Hale when he says that high treason is an offence more immediately against the *person* and *government* of the King. I cannot state it more strongly to you, or from an authority the authenticity of which will be less questioned by those who are to defend the prisoner at the bar, than when I state to you the language of one of the counsel for Lord George Gordon upon the last trial for high treason; indeed, it is no more than what follows the law of England, as delivered by all those great lawyers, whose authority, I am persuaded, will not be attempted to be shaken in the course of this trial, when it states this principle thus:—"To compass or imagine the death of the King, such imagination or purpose of the mind, visible only to its great Author, being manifested by some open act, an institution obviously directed not only to the security of his natural person,

but to the stability of the government, the life of the Prince being so interwoven with the constitution of the state that an attempt to destroy the one is justly held to be a rebellious conspiracy against the other."

Gentlemen, it will be my duty to state to you presently what is in law an attempt against the life of the King. It seems, therefore, that when the ancient law of England (and I would beg your attention to what I am now stating to you), that when the ancient law of England was changed, which, even in the case of a subject, held the intent to kill, homicide, as well as, in the case of the King, the intent to kill or depose, without the fact, where a measure was taken to effectuate the intent, treason, with a difference, however, as to the nature of the acts deemed sufficient, in the one case or in the other, to manifest the one or the other intent, that, to use the words of a great and venerable authority, I mean Mr Justice Foster, "it was with great propriety that the statute of treason retained the rigour of the law in its full extent in the case of the King. In the case of him," says he, "whose life must not be endangered, because it cannot be taken away by treasonable practices without involving a nation in blood and confusion: levelled at him, the stroke is levelled at the public tranquillity."

Gentlemen, that it may be fully understood what it is that I have to contend for in the course of this trial, I put you in mind again that I have before stated that, as it is absolutely necessary to the security of individuals, not less necessary to the security of individuals than it is necessary to the security of the nation which they compose, that the person and government of the King should be thus defended; on the other hand, for the security of the subject, it is equally necessary that the crime of high treason should not be indeterminate, that it should not be unascertained or undefined, either in the law itself, or in the construction to be made of that law.

Gentlemen, this necessity is not to be collected merely in this country from reasoning, though it may obviously enough be collected from reasoning. The experience of your ancestors has informed you,—I admit it, and I beg to press it upon your attention, as much as any man in this Court can press it upon your attention,—the experience of your ancestors has informed you, in the just and bitter complaints which are to be found in their annals, of the periods in which no man knew how he ought to behave himself, to do, speak, or say, for doubt of pains of treason;—in the anxiety with which the statute of Edward III. reserved the judgment of all treasons not there expressly specified—"that the justices should tarry, without going to judgment of the treason, till the cause be showed and declared before the King and his Parliament;"—in the expressive language which our ancestors have used when the provisions of the statute of Edward were first introduced into the

code of law under which we live, and of those statutes by which treasons were brought back to the provisions of that statute. The experience of your ancestors, thus handed down to you, has demonstrated this necessity. I admit too (and my treating the subject thus in the outset may ultimately save your time), that before the statute was made upon which the indictment proceeds, the security of the subject was not sufficiently provided for. I admit that security is not sufficiently provided for now, if construction can be allowed to give an exposition to the statute which the Legislature did not intend it should receive.

Gentlemen, upon each of these heads it was necessary for me to trouble you with some, and but with a few observations.

That the law of treason should be determinate and certain, though clearly necessary for the security of the subject, is not more necessary for their security than that there should be a law of treason, and that this law should be faithfully, duly, and firmly executed.

Gentlemen, every state must have some form or regimen of government; in other words, it must determine by whom, and under what modifications, the sovereign power is to be exercised in the country; for no government can exist unless this power is placed somewhere: and the attempt to subvert that power is, in the nature of the thing, an attempt to subvert the established government. It is of necessity that an attempt of this sort should be guarded against by severer penalties than offences which, being breaches of particular laws, do not endanger the very existence of the state itself, which do not involve, in the destruction of the state, the destruction of all laws, but which leave the law, though violated in particular cases, sufficient, in general cases, for the protection of the personal security, the liberty, and happiness of the subject.

Gentlemen, this is also the reasoning of that great Judge whose name I before mentioned to you, my Lord Hale. "The greatness of the offence," he says, "and the severity of the punishment, is upon these reasons:—First, because the safety, peace, and tranquillity of the kingdom is highly concerned in the safety and preservation of the person, dignity, and government of the King, and therefore the laws of the kingdom have given all possible security to the King's person and government, and under the most severe penalties."

Gentlemen, to describe this great offence with precision and accuracy was what the Legislature in Edward's time proposed when they enacted the sacred statute upon which this indictment is founded. That statute was made for the more precise definition of this crime, which, by the common law, had not been sufficiently extended, and "the plain unextended letter of it,"—you will mark the words,—"the plain unextended letter of it was thought to be a

sufficient protection to the person and honour of the Sovereign;" but not only to the person and honour of the Sovereign, but "*an adequate security to the laws committed to his execution.*"

Gentlemen, in addressing a jury in a court of law, sworn to make deliverance according to that law which constitutes the Court in which they sit, there are two propositions which appear to me to be alike clear. The first is, that I ought not, that I cannot, dare to call upon you to say that there has been committed under this statute any offence, if the facts of the case to be laid before you, by plain, manifest, authorised interpretation of the statute, do not constitute an offence under it. If the statute should seem to any man, or to you, not to be a sufficient and adequate security to the person and honour of the Sovereign, and the due execution of the laws, it is nevertheless all the security which the law has authorised you to give them, and God forbid that you should think of giving more. On the other hand, you are bound by your oaths, if this law has been violated in fact, if the fact of violation is proved by evidence, convincing in its nature, and such in its form as the law requires (for the law in this case requires not only convincing but formal evidence), then you are bound to give to the person and honour of the Sovereign, and to the laws of your country, that protection which a verdict, asserting in substance that the statute has been violated, would give, and which the statute intended should be given.

Gentlemen, men of honour and of conscience, acting under the sanction of the oath they have taken, must come to the same conclusion, judging of the same facts, by the same law, whatever their principles of government may be, unless they differ upon the effect of facts laid before them. In the trial of a person whose name I shall have abundant reason to mention to you in the course of this proceeding,—I mean the author of the "*Rights of Man,*"—charged with a libel against the monarchy of the country, it was judiciously, truly, justly, and strongly admitted in effect, that if the jury had been composed (if there are twelve such men in this country) of republicans, wishing to overturn the government of the country, yet administering the law of England, in a court of English law,—if they were convinced that the crime had, alluding to that law, been committed, no man would have the audacity to say they could be capable of that crime against the public, to think for a moment of not coming to the conclusion which the facts called for, according to the law by which they were sworn to decide upon the matter before them.

Gentlemen, the statute upon which this indictment proceeds is to the following effect—it states (and it states most truly), "That divers opinions had been had before this time," that is, the 25th Edward III., "in what case treason should be said, and in what not, the King, at the request of the Lords and of the Commons,

hath made a declaration in the manner as hereafter followeth ; that is to say, when a man doth compass or imagine the death of our Lord the King, or of our Lady his Queen, or of their eldest son and heir ; or if a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir ; or if a man do levy war against our Lord the King in his realm, or be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and thereof be provably attainted"—by which words I understand be attainted by evidence that clearly and forcibly satisfies the minds and consciences of those who are to try the fact—"attainted of open deed by people of their condition." Then there is this, to which you will be bound to give your attention for the sake of the prisoner, as well as for the sake of the public, the interests of both being blended in this great cause:—"and because that many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time, it is accorded that, if any other case, supposed treason, which is not above specified, doth happen before any justices, the justices shall tarry, without any going to judgment of the treason, till the cause be showed and declared before the King and his Parliament, whether it ought to be judged treason or other felony."

Gentlemen, I desire to point out here, in the most marked way in which I can state it, the anxiety with which the Parliament wished to preserve to itself the judgments of treasons, not being the specified treasons in the statute, but being like treasons, those which, by a parity of reasoning, might be said to be treason. They would not trust the subjects of the country in the hand of any court of justice upon that point. I mark the circumstance, because it appears to me to give a degree of authority to the law of England upon the subject of treason, and to the constructions which have been made upon it, and to the distinctions which have been made between like treasons, and overt acts of the same treason, that perhaps does not belong to constructions and distinctions adopted in the course of judicial proceedings upon any other law in the statute-book.

Gentlemen, having read the statute to you, it is not unimportant, as it seems to me, to observe that Lord Hale and Mr Justice Foster, who have stated the judicial and other expositions of this statute, have stated them, and have expounded the statute, under the weighty caution, which they most powerfully express, under the solemn protests which they most strongly state, against extending this statute by a parity of reason. This circumstance alone appears to me to give infinite authenticity to the expositions which they state of it as sound, and as being such as, according to the interpretation which the Legislature in Edward the Third's time meant, should be put upon this statute.

Gentlemen, I think it may also save your time, and that of the Court, if I trouble you here by reading, before I state to you the expositions of the statute which Lord Hale has given us, deducing them from judgments which had been actually made in the history of the country, the language which he holds, as describing the obligations which courts of justice, and men looking at this statute for the purpose of executing it, are under to construe it according to the real specified meaning, not by a parity of construction as to the reason itself, when they came to construe it.

Lord Hale states it thus:—"Although the crime of high treason is the greatest crime against faith, duty, and human society, and brings with it the greatest and most fatal dangers to the government, peace, and happiness of a kingdom or state, and therefore is deservedly branded with the highest ignominy, and subjected to the greatest penalties that the law can inflict, yet by those instances"—he is stating those that had occurred before the statute of Edward III., and between that and the 1st of Henry IV.—"yet by those instances, and more of this kind that might be given, it appears—first, how necessary it was that there should be some fixed and settled boundary for this great crime of treason, and of what great importance the statute of the 25th of Edward III. was in order to that end; secondly, how dangerous it is to depart from the letter of that statute, and to multiply and enhance crimes into treason by ambiguous and general words—as accroaching of royal power, subverting of fundamental laws, and the like; and thirdly, how dangerous it is by construction and analogy to make treasons, where the letter of the law has not done it, for such a method admits of no limits or bounds, but runs as far as the wit and intention of accusers, and the odiousness and detestation of persons accused, will carry men."

In another passage, after having given his comment upon this statute—after having stated what are the overt acts which fall within the letter of it, and the sound interpretation of it, he says, "It has been the great wisdom and care of the Parliament to keep judges within the bounds and express limits of this Act, and not to suffer them to run out upon their own opinions into constructive treasons, though in cases that seem to have a parity of reason (*like cases of treason*), but reserves them to the decision of Parliament. This is a great security as well as direction to judges, and a great safeguard even to this sacred Act itself; and therefore, as before I observed, in the chapter of levying of war, this clause of the statute leaves a weighty memento for judges to be careful that they be not over-hasty in letting in constructive or interpretative treasons, not within the letter of the law, at least in such new cases as have not been formerly expressly resolved and settled by more than one precedent."

Gentlemen of the jury, I am persuaded, as those were persuaded

who conducted the defence of Lord George Gordon, that we live in days in which the judges of the country neither have the inclination nor the courage to stretch the law beyond its limits. I think myself bound to state that; and those who dare to state the contrary, in any place, do not do the justice to the country which is due from every individual in it.

Gentlemen, having stated thus much to you, I now state, in order to be perfectly understood, that I do most distinctly disavow making any charge of *constructive treason*; that I do most distinctly disavow stating in this indictment *any like case of treason* not specified in the statute; that I do most distinctly disavow stating anything that can be called *cumulative treason*, or *analogous treason*; that I do most distinctly disavow *enhancing anything, by a parity of reason, into treason, which is not specified in that statute*; that I do most distinctly disavow *enhancing crimes of any kind, or a life spent in crimes, if you choose so to put it, into treason, if it be not treason specified in the statute*: and the question between us I state distinctly to be this—Whether the defendant is guilty of a *treason specified in the statute*? and whether the evidence that is to be brought before you amounts to that proof that will be satisfactory to your minds and consciences, your minds and consciences being prepared to admit no proof but what you think you ought to receive under the obligation of an oath, proof high enough that he may be provably attainted of open deed, of a *treason specified in the statute*?

Then, gentlemen, to state the charge to you:—The indictment charges the defendant with compassing and imagining the King's death, and with having taken measures to effectuate that purpose. Now, that it may be thoroughly understood, you will permit me to state to you here, that there is not only a manifest distinction in reason, but a settled distinction in the course of judicial practice—settled for no other cause but that it was a manifest distinction in reason—between "like cases of treason," constructive, analogous, or cumulative treasons, and various overt acts of the same treason.

Gentlemen, whether the acts laid as overt acts of treasons, specified in the statute, and specified in the indictment, amount, in all their circumstances, to an open deed, or deeds, by which a person may be provably attainted of the specified treason, is the question which a jury are to try. To explain myself upon this, I take it to be clear, and I will not, in this stage of the business at least, enter into the discussion of what I call the clear and established law of England; because I will not, in a case of high treason, any more than I would in a dispute about the estate of any gentleman who hears me, for the purpose of arguing points, enter into discussions upon what I take to be the clear and established law of England; and not only the security of the subject in this respect, but the security of the subject in no respect, in his person, his life, or his

property, can be taken to exist in this country, if I am not as fully authorised to state to you, with as much confidence, what the law is in case of treason, from the decisions which for centuries have been made in courts respecting it, as I am to state to you, from decisions of courts respecting property, what the law of property is. I say I take it to be clear that deposing the King, entering into measures for deposing the King, conspiring with foreigners and others to invade the kingdom, going to a foreign country to procure the invasion of the kingdom, or proposing to go there to that end, and taking any step in order thereto—conspiring to raise an insurrection, either to dethrone the King, imprison the King, or oblige him to alter his measures of government, or to compel him to remove evil counsellors from him, are, and have all been held, as Mr Justice Foster says, to be deeds proving an intent to do that treason which is mentioned in the statute to be overt acts of treason in compassing the King's death.

It would be very extraordinary if these great Judges, Foster and Hale, after holding the language they have stated, were to be represented by any man as not acting themselves under the effect and influence of that weighty memento which they held out to those who were to succeed them in the seat of judgment; yet I state all this to you in the words in which these learned Judges have handed down the exposition of the statute, who would have suffered death—for they both valued the liberties of their country—before they would have charged "a like case of treason" in an indictment; and yet they have concurred (as all the judges of England have done, and the Parliament into the bargain) in the construction and exposition of the statute (and, in fact, executions have been made upon it), that all these things are overt acts of the same treason that is specified in the statute. What is the reason of it? Because the law holds that he who does an act, meaning to do it, which may endanger the King's life, compasses and imagines the death of the King, if he does an act which may endanger his life, if, in the ordinary course of things, and according to the common experience of mankind, the measure which he takes, in pursuance of a purpose to take it, will bring the King to his grave.

This, therefore, is not raising constructive treason, it is not raising treason by analogy, it is not stating "like cases of treason" not specified in, but reserved by the statute to the judgment of Parliament; but it is stating overt acts, which are measures taken in pursuance of treasonable purposes, which measures must necessarily be as various in their kinds as the ways and means by which, in facts and open deeds, taken in pursuance of its purposes, the human heart manifests its intent to commit some one or other of the treasons specified in the statute.

Gentlemen, the reserving clause in the Act is extremely material, and if courts and juries have done wrong in the manner in which

they have executed this statute, if the interpretations which they have made of the statute are not right, they have done it against a prohibition in the statute, which they were called upon by their oaths duly to expound, and they have done it in the presence and under the eye of that Parliament which had expressly forbidden them to do it. I say, the conclusion upon that is, that they have done it rightly.

Gentlemen, the judgments of the courts of law are in this country perfectly familiar to Parliament. Acts have been made, over and over again, in order to bring back the expositions of the law to the true construction, to the letter, which is the true construction, in a sound judicial sense—to bring it back again to the statute of Edward III. ; but we have lived to this hour without Parliament thinking that they were to make so perfectly a dead letter of the letter of the statute, as that they should say that an overt act which expressed and imported the imagination of the mind to do the treason specified, should not be taken to be an act of high treason within the statute, because the statute only mentions the thing which is to be compassed and imagined, and does not mention the ways and means by which the human heart may show and manifest that it does compass and imagine what the statute speaks of.

Gentlemen, this is not all, because this is not only according to the law of England, as it is administered in courts of justice, but also to the proceedings in Parliament, which are a parliamentary exposition, if I may so state it, of the law. Proceedings in Parliament have been had, where the statute has been thus construed, and where this distinction that I am stating between overt acts of the specified treason and the "like cases of treason," has been expressly taken, expressly acted upon, proposed by one House of Legislature to the other House, and acted upon by the Crown in executing the sentences of that House.

Gentlemen, the distinction, then, is only this—"a like case of treason" is a case of treason not specified in the statute, a case of the like mischief as a case specified in the statute ; but the identical case specified in the statute must be before you, or, to avoid all dispute upon the subject, I say, if it is a case that is not specified in the statute, it is a case that must be shown to Parliament according to the directions of the statute ; but that facts alike in their nature, that open deeds alike in their nature and tendency, however various in their circumstances, may prove the same intention to exist in the minds of those who do them, and may be measures taken in pursuance of the same purpose, and to effectuate the same thing, is a distinction that appears to my mind to be perfectly obvious.

Gentlemen, I conceive, therefore, that the question of compassing the King's death is this—Whether the jury are fully satisfied, conscientiously satisfied, that they have that evidence by which they find

that the acts laid as overt acts of compassing the particular specified treason mentioned in the indictment, were measures taken in pursuance of and to effectuate that treason, specified at once in the statute and in the indictment.

Gentlemen, I protest for myself I am sorry to trouble you thus much at large by general reasoning, but you will find that it has an application, and a close application, to the case. This is an important public cause, and therefore we should be thoroughly understood. I cannot understand what constructive overt acts mean, though I do understand constructive treasons. Levying war against the King, not against his person, but against his royal majesty, is constructive treason: that is, if men assemble together without any intent to do an act which, in the natural consequence of things, will affect the King's life, such as pulling down all prisons or houses of any other description,—that is constructive treason, it being, by construction, as Mr Justice Forster says, against the King's royal majesty, not levied against his person; not one of the acts of a more flagitious kind, wilfully done or attempted to be done, by which the King's life may be in danger, but which are levelled against his royal majesty; these have by construction been held to be treason: but even these the Legislature has never considered as not authorised by the letter of the statute; these they have permitted to be proceeded upon in the country as sound decisions and constructions upon the Act of Parliament: many have been convicted upon them; execution hath followed; and no one hath ever doubted either the law or the justice of these determinations. But as to constructive overt acts of compassing and imagining the death of the King, where the indictment lays the imagining and compassing as the offence, the overt act is not constructive; the step taken to effectuate it must be such an act, wilfully and deliberately done, as must satisfy the conscience of a jury that there was an intention, by deposing or otherwise, to put the King in circumstances in which, according to the ordinary experience of mankind, his life would be in danger.

Gentlemen, I have before stated to you, for another purpose, various acts which are overt acts of compassing the King's death. I will repeat them shortly:—"Deposing him,—entering into measures to depose him,—conspiring to imprison him."—which you observe is an act that may be done without an actual intent to put him to death,—a man may conspire to imprison the King without an actual intent to put him to death, but you will find the reason why that is held to be compassing and imagining the death of the King, with the sanction of all times since this statute of Edward III., and with the sanction of every species of judicial authority which the country could give: "to get his person into the power of conspirators." Why is all this treason? "Because," says Mr Justice Foster, "the care which the law hath taken for the per-

sonal safety of the King is not confined to actions or attempts of a more flagitious kind, such as attempts either to assassinate or to poison, or other attempts, directly and immediately aiming at his life; it is extended to everything, wilfully and deliberately done, or attempted, whereby his life may be endangered; and therefore the entering into measures for deposing or imprisoning him, or to get his person into the power of the conspirators, these offences are overt acts of treason within this branch of this statute; for experience hath shown that between the prisons and the graves of kings the distance is very small," and experience has not grown weaker upon this subject in modern times: offences which are not so personal as those already mentioned have been, with great propriety, brought within the same rule, as having a tendency, though not so immediate, to the same fatal end.

Lord Hale, upon this, says, "Though the conspiracy be not immediately, and directly, and expressly the death of the King, but the conspiracy is of something that in all probability must induce it, and the overt act is of such a thing as must induce it, this is an overt act to prove the compassing the King's death." The instance he gives, as expository of his text, is this: "If men conspire to imprison the King by force and a strong hand till he hath yielded to certain demands, and for that purpose gather company or write letters, this is an overt act to prove the compassing of the King's death." What is the reason? He gives the same in substance, though different in the terms of it, as that which has been assigned by Mr Justice Foster: "for it is in effect to despoil him of his kingly government." These are the words of Lord Hale; and, though the reasons given by Lord Hale and Mr Justice Foster are different in words, they are the same in substance. It may be said, with equal truth, between despoiling a king of his kingly government and the graves of kings, the distance is very small. Imprisonment is the same as deposition, and he who compasses the deposition of the King, according to all judicial construction, compasses his death; it is the same as deposition, because it is a temporary despoiling him of his kingly government, which, according to this interpretation of the law, usually ends in death.

Gentlemen, offences not so personal as those enumerated fall within the same rule, as having a tendency to the same fatal end. If foreigners are not at war with you, the offence of going into a foreign country, or proposing to go there, or taking any step thereto, in order to invite foreigners into this kingdom for a treasonable purpose, can only fall within that branch of treason of compassing the King's death: if they are at war with you, then the same act amounts to another species of treason, which is an "adhering to the King's enemies;" and perhaps you will find that the case I have to state is not without pregnant evidence of this species of overt act.

Gentlemen, having stated thus much to you, I proceed now to consider the indictment; and what I have stated, before I mentioned the substance of the indictment, I have stated to lay in my claim to full credit with you, when I say, that no man living can wish to express to you more strongly than I wish to do (we have, indeed, each of us, as great an interest in the true construction of this law as any other man can have in it), that the law of treason, in considering the charge that I have brought before you under the command that has authorised me to bring it here, must not be extended one single iota beyond what is the established law in this country, as established as the law is, that says that the property that you bought yesterday you may give to whom you please to-morrow.

Gentlemen, the indictment, finding several persons, entitled to be tried separately, though indicted jointly, combined in a particular act, which I will state by and by, has charged them with compassing the King's death: it has then proceeded—because the compassing and imagination of the heart cannot be known to man, and there must be an overt act to manifest it—it has charged them with meeting among themselves to cause and procure a convention of divers subjects of the King to be held within this kingdom, and not only a convention to be held within the kingdom, but to be held *with intent and in order that the persons to be assembled at such convention and meeting should and might, wickedly and traitorously, without and in defiance of the authority, and against the will of the Parliament of this kingdom, subvert and alter the legislature, rule, and government established in it, and depose the King from the royal state, title, power, and government thereof.*

It then charges them with having composed, written, and published, and caused to be composed, written, and published, divers books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings, such books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings, so respectively composed, written, published, and caused to be composed, written, and published, purporting and containing therein (among other things) incitements, encouragements, and exhortations, to move, induce, and persuade the subjects of the King to choose, depute, and send persons as delegates, to compose, not a convention, but such a convention and meeting, that is, *a convention to act in the manner that the first overt act has stated it, to be holden for the traitorous purposes before mentioned.*

It then states, as a third overt act, consultations among them, how, when, and where *such* convention and meeting should be assembled and held, and by what means the subjects of the King might be induced and moved to send persons as delegates to constitute it.

It then charges that these persons did consent and agree that Mr Joyce, and several other persons named, should meet, confer, and co-operate among themselves, and with other traitors, to cause the calling and assembling *such* convention and meeting for *such traitorous purposes*.

It then charges the providing of arms, of different descriptions, for these purposes; and then it charges a conspiracy to make war in the kingdom, and it charges a conspiracy to subvert and alter the legislature and government of the kingdom, and to depose the King; that is, as I understand it, that if you should not be satisfied that the calling such a convention as is mentioned in the first part of the indictment was a mean to effectuate that compassing and imagination which is mentioned in the introductory part of the indictment, yet you will find in the evidence which is to be laid before you, even if you pay no attention to that circumstance of calling a convention, sufficient evidence of a *conspiracy to depose the King*.

It then states again, that they published several books, and other matters of the same kind, in order to bring about the traitorous purposes *last mentioned*; and charges, as a further overt act, providing arms for that purpose.

Now, gentlemen, having before stated to you that a conspiracy to depose the King—and I have not stated it to you in my own words, but in the words of the authorities I mentioned—that a conspiracy to depose the King, that a conspiracy to imprison the King, a conspiracy to procure an invasion, with steps taken to effectuate such a conspiracy (a conspiracy indeed itself being a step for that purpose), is treason, you will observe that, in this indictment, a conspiracy to depose the King is expressly charged, and, I think, it will be clearly proved. If a conspiracy to depose the King be an overt act of high treason, permit me then to ask you, what can a conspiracy to subvert the monarchy of the country, including in it the deposition of the King, be, but an overt act of high treason? In the object of such a conspiracy the King is necessarily involved, and it is already shown that conspiring to depose him is compassing his death.

Gentlemen, read as you are in the history of the country, give me leave to ask you, if measures had been taken after the Revolution to effectuate a conspiracy to dethrone King William, and to restore King James, without all doubt, the measure taken, would have constituted the crime of high treason within the clause of compassing the King's death, although the conspirators could have been shown satisfactorily to have no more meant the actual natural death of King William, than they meant the actual natural death of King James, whom they intended to replace on the throne. But what says the law to that? The law says you cannot mean to depose the King without meaning to endanger his

life; and if you mean to endanger his life, you must abide the consequences of it.

Put it another way: If the project had been to depose the same King William, and measures had been taken upon it—not with a view to bring back to the throne King James II., but merely to send back King William to his former character of Prince of Orange, and not to restore King James, but to restore a commonwealth, which is, what I think, I shall satisfy you, those who are charged by this indictment meant by “a full and fair representation of the people,” whether you call it “a full and fair representation of the people in *Parliament*,” or do not use the words “in *Parliament*,”—can a lawyer be found to say, that it could be stated in law that it is not high treason? I don't know what may not be stated. All that I mean to say at present is, that according to the best lights which I can get of the law under which I have lived, it does not appear to me to be probable that any man will so state it. Far be it from me, however, to have the vanity to say that (avowing that I should certainly not think of encountering the current authorities of the country for centuries) I am, without the possibility of contradiction, stating that I am following the authorities of the country for centuries; but I am ready to say this, that I cannot conceive or imagine by what species of reasoning, or upon what principle, or upon what authority, it is to be contended that this would not have been high treason.

Gentlemen, take it another way: If the regicides of King Charles I. had been tried for compassing the death of King Charles I., supposing they had only deposed him, instead of putting him to death, could they have contended, that though they would have been guilty of high treason if they had placed another individual upon the throne (which would have been alike to the case I have put of conspiring to put James in the place of William), could they have contended then that they were not guilty of high treason, because they deposed the King without substituting another king in his place, and because they left the government to be filled up by the commonwealth, without a king?

Give me leave to ask another thing: Suppose it had happened, after King William came to the throne, that not those events that did actually happen took place, but that any set of men in this country should have ventured to meet in a convention of delegates from affiliated societies, for the purpose of deposing King William, under pretence of assembling a convention of the people, having or claiming the civil and political authority of the country, and intending to have no king in the country, would it have been possible in King William's time to have contended, because they met under pretence of being a convention of the people, assuming to themselves civil and political authority, and with such meaning, that the conspiracy was not as completely a

compassing the death of King William as if the conspiracy had been, by the same persons, in the case of affiliated societies, forming the like convention of delegates, to bring King James again to the throne?

If I levy war in this country against the King, with intent to bring another upon the throne, I am guilty of high treason. If I levy war, that is an overt act of compassing the King's death. If I conspire to levy direct war, that is a compassing of the King's death, unless all the branches of the Legislature have put a man to death upon an error. If I hold a fortress against the King to put another upon his throne, I am guilty of high treason. Am I guilty of no offence if I do the same acts, not for the purpose of continuing the monarchy of the country in another person, but for the purpose of destroying the monarchy altogether? What is this but doing an act involving in it high treason, and more?—high treason in deposing the King; more in bringing about all that additional anarchy which we know, which the experience of mankind proves, to be consequent upon the change, where the change is not only of the persons who administer the government, but of the government itself, if *destruction* can be called a *change*!

Gentlemen, to assert, therefore, that measures taken for a total subversion of the monarchy of the country, including in it an intention to depose the King (mark the words—I state, including in it an intention to depose the King), are not overt acts of compassing the King's death, merely because the statute of Edward III. has not included all overt acts in words, but has left to juries to determine what are overt acts, by which they can provably attain —to assert that the statute does not include the case, because it is compassing the death of the King, *and more*; if this were to be asserted in a court of justice (what is asserted out of a court of justice no man pays much attention to), I should certainly say of it, that it was the assertion of those who had ill considered the law; and if asserted out of a court of justice, and with a reference to what is to be done in a court of justice, I should say it deserved to have an observation of a harsher kind made upon it.

This indictment, besides charging a conspiracy to depose the King in express terms, of which I shall insist before you there is abundant evidence, charges a conspiracy to call a convention *against the will, in defiance of and against the authority of Parliament, for the purpose of deposing the King*. It charges further acts, namely, that they caused to be composed and written divers books, pamphlets, letters, instructions, resolutions, orders, declarations, addresses, and writings, containing incitements, inducements, and exhortations, to move, seduce, and persuade the subjects of the King to send delegates to *such convention*; as to which I say of many of them, though I did not know their real character till I

had seen them all together, that they are both overt acts and evidence of overt acts of high treason.

Now, before I state to you the particulars of the evidence, I am afraid I must, however painful it is to me to ask so great a portion of your attention, trouble you with some general observations that I think will have a tendency to render intelligible to you the complicated mass of evidence which I have to lay before you.

Gentlemen, the convention meant to be called by those who are charged with the conspiracy in this indictment, was, as I collect from the effect of the evidence, a convention of persons who were to assume the character of a convention of the people, claiming, as such, all civil and political authority, proposing to exercise it by altering the government, otherwise than by acts of the present constituted Legislature, otherwise than by those statutes, according to which the King has sworn at the hazard of his life to govern.

Gentlemen, if this is made out, it appears to me to follow necessarily on the part of all who took a step to assemble it, that they are guilty of a conspiracy to depose the King, to depose him from the character which he holds in the constitution of the sovereign power of this kingdom, as by law established, that law by which, I again repeat to you, he is sworn to govern.

Gentlemen, if they conspire to assemble in a convention, which was of its own authority, and against the will of the Legislature, and in defiance of it, to act as an assembly to constitute a government, and to assume so far sovereign power, it is, I conceive, according to the law of England, a conspiracy to depose from the sovereignty him who, under the restraints of the constitution and the law, now holds that sovereignty. There cannot be two sovereign powers in a state; there may be a complication of authorities vested in a great variety of persons, making up one sovereign power, but there cannot be two sovereign powers in a state: it is impossible. If a meeting assembled, as a convention of the people, arrogating to themselves all civil and political authority as such, and meaning to exercise it, one or other of these consequences must follow: the King and the Parliament must be obedient to the meeting, or the meeting, assembled as a convention, must be obedient to the King and Parliament: if the meeting is to be obedient to the King and Parliament, it cannot effect its purposes; it is impossible: if its purpose be to depose the King, I say, a conspiracy to call such a meeting is an overt act of high treason.

Gentlemen, I beg your attention to my expressions: if the meeting means to oblige the King and Parliament to be obedient to them by the exertion of open force, though it may not effect its purpose, that makes no difference; the law must be the same. I may be wrong perhaps in stating the law, but it appears to me that the law must be the same if the meeting projects the purpose,

whether the force of the meeting is sufficient to effect the purpose or not.

This, I say, is a conspiracy to assume the sovereign power; it is a conspiracy therefore of necessity meant to depose the existing power, and of necessity to depose the King. I say, meant to depose; for, I repeat it, that whether the conspiracy is successful or not is immaterial.

Gentlemen, though the particular fact of calling such a convention, now alleged as an overt act of treason, may be represented to be new in the history of this country, it is not therefore, and because it is new, only inasmuch as it is more than ordinarily audacious, less an overt act of compassing the death or deposition of the King, if the intent of it was to subvert the sovereign ruling power.

Gentlemen, there is another distinction which I would beg your attention to. It is of no consequence whether the first meeting proposed to be assembled *was designed to be a convention that should assume all civil and political authority, or was only to devise the means of forming a constituent assembly, a body which should assume it*; for any act taken towards assuming it against the will, in defiance of and against the authority of the King and Parliament, and removing him from that situation in the character of sovereign which he has in this country—any act taken towards the formation of a body which was to assume such authority, is an act of conspiring the deposition of the King; any act towards convening a national assembly, to act with sovereign power, not formed by the Legislature, is an act done towards deposing the King, who now has, under the restraints of the constitution, and the provisions and limitations of the law, the sovereign power vested in him. You cannot set about organising a body which is thus to act, without meaning to depose the King, without meaning to form a body that is to usurp the powers of government.

Gentlemen, I think the evidence that I shall lay before you will most abundantly satisfy you that the convention which the persons charged conspired to form, was a convention to alter the whole form of the sovereign power of this country; that it was to form, or to devise the means of forming, *a representative government*—to vest in a body, founded upon universal suffrage and the alleged inalienable, and, as they are called, imprescriptible rights of man, *all the legislative and executive government of the country*. That a conspiracy to this end would be an overt act of high treason, I presume cannot be disputed: it deposes the King in the destruction of the regal office in the constitution of the state.

Gentlemen, I go further: If it had been intended to have retained the name and office of the King in the country, and to have retained it in the person of the present King, creating, however, by the authority of the intended convention, a new legis-

lature, to act with him, provided they would allow him to act with such new legislature, and thus calling upon him to act against the express obligations of his coronation oath, if he could forget it, it still would have been a conspiracy to depose him from his royal authority, as now established: if he refused to act, he must necessarily be deposed from that authority; if he did accept, he was not the King of England as he is established by law the King of England. But he could not accept; he could not so govern; he is sworn not so to govern; he must refuse, must resist, and, in consequence of resisting, his life must be in danger.

Take it either way, that persons conspired to form a convention to assume all civil and political authority, as pretending to be a convention of the people (I care not with how much audacity they pretend to be a convention of the people), or to devise the means of constituting such a convention, in order, and with the intent, and against the authority of Parliament, that there should be no King, or in order to the erecting, by their own authority, a new legislature to act together with a King, and together with *the* King, if they permitted *the present* to be *the King*, I submit that such a conspiracy is an overt act in the true construction of law, and high treason in compassing the King's death. The King must be deposed while such a new constitution was framing; he could not treat with such a convention till he had been deposed; it could be those only that had sovereign authority that could frame a constitution: then he is surely, by this, despoiled of his kingly government, even as in a case of temporary imprisonment. I repeat again, that he could not, consistently with his coronation oath, do otherwise than reject it when framed: it must be taken for granted he would reject it; his life, therefore, could not but be in danger. To suppose that such a meeting, which proposed a new constitution, would depart quietly home, and not act, if it was not accepted, is out of the reach of all human credulity; it is not according to the ordinary course and experience of mankind to suppose that they should meet in numbers, and make no use of their numbers, if the show of them did not produce the effect intended: this is not according to the ordinary course and experience of mankind.

Gentlemen, the King in his Parliament could not be the sovereign power the moment the meeting could act as a national constituting assembly, or could direct, with effect, such an assembly to meet. The power so to act, or to organise with effect such a meeting that should so act, must *pro tempore* depose every other power. This is the character of a convention of the people. I think, as given in the evidence I have to lay before you. With respect to the defendant, I think I shall satisfy you he conspired to call such a convention; and that he said that the convention which I am to call is irresistible, it is unlimited, it is uncontrol-

lable, and that by such a convention my *full and fair representation of the people*, or a *full and fair representation in Parliament* (if you choose to take that expression, for it is not mere expression that determines what men mean), is to be accomplished.

Gentlemen, in the country in which I am speaking, when a vacant throne was given (I am now alluding to the time of King William) by those who, as they are stated in the Bill of Rights, represented all the estates of the people of this realm, to King William and Queen Mary, they who gave it ceased to have or to exercise the power of sovereignty: in that instant, as every lawyer must speak of it, in that instant the sovereign power of this country became vested in *the King and Queen* upon the throne, to be exercised in legislation, undoubtedly with the advice and consent of Parliament, formed according to the law and custom of the country—incapable of being exercised otherwise, and, as to the executive authority, exercised under the control of provisions and limitations of the law and constitution, and with the advice which, in every act which the King does, makes somebody responsible.

I insist that the design of conspiring to assemble the people who were to act as a convention of the people, claiming all civil and political authority, or claiming power to alter, against its will, the constituted Legislature, or a meeting to form the means of bringing together such a convention so to act, is an attempt to create a power subversive of the authority of the King and Parliament, a power which he is bound by oath to resist at all hazards. But it will not rest here: this will be sufficiently proved; but evidence will likewise be offered to you as satisfactory to prove that the express object of calling this convention, the express object of appointing a committee of conference and co-operation, which was to devise the means of constituting such a convention, was ultimately, and finally, and in their respect, *the deposition of the King*.

Gentlemen, beyond this, and supposing it not to be proved, the indictment has charged as overt acts, a conspiracy, without the mean of a convention, and not through that medium, to depose the King. If that conspiracy is made out by other acts, though neither a convention assuming all political authority, nor a meeting to devise the means of calling a convention which should assume all political authority, was intended, yet the indictment is made good.

Gentlemen, the indictment further charges as an overt act of compassing the King's death, which without question it is, the conspiracy to levy war. I do not mean constructive war. This I state, without question, to be an overt act of compassing the King's death. A rising to oblige the King to alter his measures of government amounts to levying war within the statute. A conspiracy to levy war for this purpose is an overt act of compassing the King's death. If they conspired to form a *representative*

government, excluding the King entirely, which I say is the fact, or if they conspired not to form a representative government excluding the King entirely, but yet to compel him, by their own strength and force, to govern with others, and without those which he chose to remain with him, by whose advice and consent alone he is sworn and bound to govern, I mean the great council of the nation, the Lords in Parliament assembled, the Commons in Parliament assembled, according to the constitution of the country, and to substitute, against his will, and against the will of the present constituted authority of the country, another authority, formed on the principles of universal suffrage and annual representation, and so formed without the authority of Parliament I must submit to the Court, and to you, that conspiring to do this would be an overt act of treason of deposing the King, and therefore of compassing his death.

Gentlemen, you will also observe the indictment has charged, and proof will be offered to you to make it out, that these objects were meant to be carried by force—by actual force

Gentlemen, the case, as I have hitherto represented it, is not a case aiming merely at intimidating the Legislature, and inducing it by an act done, which was, according to the forms of the constitution, to bury the constitution in its grave, to new-mould the sovereign power; the case goes far beyond this. Application in any shape to Parliament was not only disavowed, but the very competency of Parliament, if applied to, to make a law to new-model the government was disputed, and denied: the idea of that competency was held to be irreconcilable to the very principle upon which these persons assembled. I must, however, insist, and I mean to do it with the full concurrence of my humble opinion, that a conspiracy to compel the King, by force, against his will, to give his assent to an Act obtained from the Houses of Parliament in order to alter the government and frame of the constitution of the country, whether it was obtained from the two Houses of Parliament, or either of them, by overawing them, or not overawing them,—that a conspiracy, by force, to compel the King, in the exercise of the highest and most essential act of the sovereignty of this country, in the act of giving his consent to such an Act,—to compel him by force to do that, is unquestionably an overt act of treason in deposing him, and in compassing his death. It is neither more nor less, to explain it in a word, than to substitute the will of those who conspired to force him, in the room of that royal will, in which, and by which alone, the laws of this country, and the constitution of this country, have said that a bill (however obtained before it comes to him) shall receive the authority of a statute.

Gentlemen, I have thought it necessary to state thus much before I come to state the circumstances of the case, and I will state to you in a word why. It is not to be expected by persons who exe-

cute the great and important duty, in the great and important station, the functions of which you are now called upon to execute, that counsel at the bar shall be able to state to you law that no man can question the soundness of: nay, gentlemen, it is not to be expected by you that counsel at the bar should be able to state to you in all cases, law, which men of grave character and excellent understandings, of great reason and great experience in their profession, may not dispute the soundness of. It is the duty of counsel—more particularly it is the duty of that counsel who ought to remember that, if, in prosecuting the subject, he presses him unfairly, he betrays in the most essential point the duty which he owes to the sovereign,—it is his duty to endeavour faithfully and honestly to explain and expound the law; that is, to apply to the facts of the particular case, reasoning upon the law, according as he is able to do it, in the exercise of painful industry, exerted under the reflection that he is under much obligation at least to endeavour to represent the law truly.

Gentlemen, I have thought it my duty, in a prosecution the principles of which interest the civil happiness of all mankind, to mention distinctly and fairly what are the principles upon which I proceed. I have no doubt in my own mind but that I have stated these doctrines as the law of England would state them; and I claim from you and from the public that, in the fair exercise of my duty, conducted under such a sense and understanding of that duty as I have now explained to you, you and they will do me the credit at least to think, that the principles which I have stated are such as I believe to be sanctioned by the law of England.

Gentlemen, I shall presume for a moment, after having read to you the indictment, and given you that exposition of it which I humbly offer to your attention, that the law has (at least, according to my judgment, it certainly has) been complied with in these respects; namely, the indictment has told you with sufficient certainty what it is that is meant to be imputed as an overt act of compassing the King's death. It is not necessary to be disputing that now, because, if I have failed in the due execution of my duty in that respect, the prisoner cannot be injured by it.

Gentlemen, I have before said to you, that, in a case of high treason, the evidence must not only be convincing, but it must be formal; and though the object of the security of the person and government of the King is the highest object that the law has looked to, yet I must, at the same time, inform you, that the law for the security of the public, which is in truth part of the object involved in the *object* of the security of the *person* and government of the King, is essentially united with it, and inseparable from it: the law has required not only that you shall have one witness, if he were the most credible man in the world, to give convincing evidence of the fact, but that that convincing evidence must be

rendered yet more conclusive by the testimony of two witnesses; that you should at least have one witness to one overt act, and another to another overt act of the same species of treason.

Gentlemen, having stated to you the project, in a general way, to which I apprehend this indictment applies, I presume that you may possibly reason thus:—When this indictment charges that these persons compassed the death of the King and to depose him, —that they conspired to assemble a convention in defiance of the authority of Parliament,—to subvert the rule and government of the kingdom, against the will and in defiance of the Legislature,—to dethrone the monarch, reigning in the hearts of a great majority of his people,—you will naturally ask, By what process was it that such persons as these could effectuate such a purpose? When the indictment charges that they composed a great variety of books, containing incitements to choose persons as delegates to compose a convention for such traitorous purposes,—in what language, you will naturally ask, could such incitements to such a momentous project have been conveyed, and to whom could that language have been addressed? When it charges that they met and deliberated among themselves, together with divers other false traitors,—at what time, in what manner, and in what place, it may be asked, have these people met to deliberate upon that project, for the accomplishment of which so many persons must be engaged? — by what means were they to bring together the subjects of the country, to send delegates to such a traitorous convention, to assume such sovereign power? This sort of question may be pursued. I shall not pursue it by observations upon every overt act in this indictment.

Now, gentlemen, my answer to this is a short one. I think it will be proved to your satisfaction, that, as they meant, in the words of the Act of Parliament, to introduce that system of misery and anarchy which prevailed in France, they meant to introduce it by the same means,—to proceed upon the same principles to the same end,—and by the same acts to execute the same purposes.

Gentlemen, if the experience of Europe had not manifested what has passed in France (and this project might perhaps be brought from France into Great Britain by but an individual or two), if that experience had not shown us what has passed in France, to the destruction of its old government—to the destruction alike of that government which they substituted in the room of its old government, and which, in the last act of its power, protested against the existence of clubs, as incompatible with the security of any country,—I say, till the subversion of government in France took place, and upon principles to a blind admiration of which in this country,—a country which, under the peculiar favour of Providence, is alike in its blessings, as it is in its situation, "toto

divisos orbe Britannos," but in which we have found a disposition to sacrifice all those blessings,—it could not, perhaps, have entered into the heart of man to conceive that a project so extensive should have been set on foot by persons in number so few;—that a project, existing almost everywhere, should yet be visible nowhere;—that a project should be so deeply combined and complicated,—should exist to such an almost inconceivable extent,—should be formed with so much political craft;—it could not enter into the heart of man to conceive that it should have existed in any country, much less that it was possible that it should exist in this country of Great Britain to the extent to which I am sure, whatever your verdict may say upon the guilt of the prisoner, you will be satisfied it has existed in this country.

But the law of England does not require that any such case as this should be proved before you. If you are satisfied that what the indictment charges was imagined, and that a step was taken to effectuate that intent, it is enough. It is not the extent in which the project was proceeded upon,—it is not the extent to which the project was ruinous,—it is not necessary to prove that the means were as competent to the end proposed as they were thought to be by those who used them. No, gentlemen; the providence of the law steps in upon their first motion, whether they furnish themselves with means adequate or inadequate to their purposes. The law steps in then, conceiving its providence at that moment to be necessary for the safety of the King and the security of the subject.

The project, the general character of which I shall give you, proving it by the particular facts, and applying the particular facts (for I have no right to give you the general project unless I can so apply the particular facts) to the person now accused, seems to me to have been this:—Imported from France in the latter end of the year 1791 or 1792—by whom brought hither it does not much matter—the intent was to constitute in London, with affiliated societies in the country, clubs which were to govern this country upon the principles of the French Government, the alleged inalienable, imprescriptible rights of man, such as they are stated to be, inconsistent, in the very nature of them, with the being of a King or of Lords in a government; deposing, therefore, the moment they come into execution, in the act of creating a sovereign power, either mediately or immediately, the King, and introducing a republican government with a right of eternal reform, and, therefore, with a prospect of eternal revolution.

Gentlemen, we have all heard of a club called the Jacobin Club at Paris. This, with its affiliated societies,—however impossible it was thought that it should effect such things,—however wild the man would have been thought into whose head such an imagination could have entered as that it could effect them,—first overset

the old constitution, then introduced another, which could not exist upon the principles which gave it birth, and has finally introduced government after government, till it has at last left the country in that indescribable state of things in which we now see it.

Gentlemen, the great end of the persons concerned in this project, though not altogether visible, or not much disclosed upon its first formation, was, when they had sufficiently diffused their principles through this country, by artifice, by union, by combination, by affiliation, by fraternisation (those who formed the project, whoever they were, endeavouring to force it into execution by means which perhaps would shock the minds of men that are not always dwelling upon political subjects), to assemble a convention of delegates from clubs, to assume the power of the people, supported in the assumption and exercise of that power by the individual members of the affiliated societies, and by their combined strength.

Gentlemen, we have no occasion in this cause to be disputing upon abstract questions as to the power of the people to change their government. I state to you that the intention was to assemble a convention of delegates from those clubs, to assume the powers of government. The people, the infinite majority of the people, adverse to any change, distinguishing between abuses in the administration of the government, and vices in the form of the government administered,—nay, ardently attached to the old government,—must have been averse to have been subdued by a convention of the delegates from these societies, who meant to have assumed the representation of the people, and to have exercised the powers which they stated to be inherent in those whom they professed to represent.

Gentlemen, it is not difficult to conceive, after what has happened in fact in France, how it should happen that the opinion of these fraternising societies should have the force of the will of a majority of the nation, though they constituted a vast and infinite minority indeed. You will find, in the evidence to be laid before you, that it was perfectly understood how this might be by those who are named in this indictment. The great bulk of the community, engaged in different pursuits, are therefore incapable of being combined in opposition to the execution of a purpose which is to be brought about by great bodies of men that are combined. I need not give you a stronger instance of it than this. It is within the memory of most of us living, that a few thousand men in St George's Fields, combined in one purpose, reduced this metropolis to an absolute state of anarchy, a state in which no government existed. If any man had been asked, a fortnight before the event to which I am now alluding, Is it possible for four or five thousand men to assemble in St George's Fields, and

to rob and plunder everybody they choose in London and ten miles round it?—that would have been thought utterly impossible; but yet it happened—why? because a combination of the few will subdue the many who are not combined, and with great facility, and combined bodies of men have had, as you will find, an existence in this country to an extent which few men had any idea of.

You will find them organised,—prepared for emergencies and exigencies,—relying upon their own strength,—determined to act upon their combined strength, in a system of acting together; in some instances acting with a secrecy calculated to elude observation; in other instances, proceeding by directly contrary means to the same end,—representing their numbers as greater than they were, and therefore increasing their number by the very operation of the influence of the appearance of strength upon the minds of others, without a possibility that that misrepresentation should be set right. You will find them inflaming the ignorant, under pretence of enlightening them;—debauching their principles towards their country, under pretence of infusing political knowledge into them;—addressing themselves principally to those whose rights, whose interests are, in the eye of the law and constitution of England, as valuable as those of any men, but whose education does not enable them immediately to distinguish between political truth and the misrepresentations held out to them,—working upon the passions of men, whom Providence hath placed in the lower, but useful and highly respectable situations of life, to irritate them against all whom its bounty hath blessed by assigning to them situations of rank and property,—representing them as their oppressors, as their enemies, as their plunderers, as those whom they should not suffer to exist;—and in order, at the same time, to shut out the possibility of correcting original error, or rectifying the opinions of those whom they had so inflamed, misinformed, debauched, and misled, not admitting them into these affiliated societies till they had subscribed tests, the principles of which they were not to examine after they had been admitted, but the principles of which they were to carry into execution when assembled in a convention—to carry into execution those principles, as acting for the people, by a great majority of whom they were held in utter detestation.

Gentlemen, to say that an act done was meant to be done as a means taken in the execution of such a project as this is, till the person who takes it thinks the scheme practicable, I admit is not reasonable, but undoubtedly he may think it practicable long before it is really so. Now, you will be abundantly satisfied that these conspirators thought that the time was now come,—that the time for a convention, which had been the object of anxious expectation, doubting for a year or two whether it would ever be

gratified, that that time was *now* come, and the measures taken were taken upon that supposition—that the opportunity had arrived, which, if not laid hold of now, would be lost for ever.

Gentlemen, the people of this country have in general a rooted attachment to its government. The public opinion of government is in this country, as well as in every other, its principal support: and therefore it became necessary to infuse, where so much could be safely suggested, where the mind was prepared for it, an opinion that the form of the British Government was radically vicious—that it was founded on principles of oppression—that it was founded on the destruction of natural, imprescriptible, and inalienable rights. With others, you will find they thought it necessary to use a little more caution—not to alarm them, but to humour their attachment to the form of the constitution, by taking advantage of well-meaning ignorance, under pretence of instructing it, to enlist them also alike in the project of destroying that constitution to which they were attached. To them, therefore, the form of the government was not spoken of in terms which they might understand to be a condemnation of it, though they were really such, but by making use of general expressions, such as obtaining "a full and fair representation of the people in Parliament"—"a full representation of the people,"—sometimes without mention of Parliament, never with actual mention of the King and Lords, as coexisting together with Parliament,—by using terms which certainly may mean what it may be contended in the defence they did mean; but terms the same in their expression, certainly the same in their import, as those which were used in every act which passed in this country during the time of the Commonwealth, when we neither had King nor Lords—that may signify a government existing without Lords or King, by declaring the obtaining such a representation of the people as necessary to the natural, inalienable, imprescriptible rights of man, as stated by Mr Paine. By these means and artifices they attempted to engage in their service the physical strength of men who might not and did not discover the real nature of the plan which that strength was to be employed in executing—who had not information enough to discover what the representation was meant finally to do or to execute. But you will find the persons mentioned in this indictment had no doubt about it. I mark these circumstances to you, because, in the evidence that is to be laid before you (and I am now stating the general character of the evidence, and not the principles upon which the charge is made)—in the evidence to be laid before you of the plan for the execution of these purposes, some very remarkable particulars occur; and when you come to decide upon this case, I humbly beg your attention to those particulars;—some very remarkable particulars will occur.

You will find that the leading clubs, by which I mean the Cou-

stitutional Society, judging of its conduct for the purpose of this cause, though in some other cases we must go further back, but, for the purpose of this cause, judging of its conduct from about the beginning of the year 1792; and the London Corresponding Society, which was formed,—whether created, I will not say,—but which was modelled by some leading members of the Constitutional Society, and received its corporate existence, if I may use the term, as it will be proved, under their own handwriting—most distinctly from the handwriting of some who yet belong, and some who have ceased to belong, to the Constitutional Society;—these leading societies, you will find enlisting into their affiliation many societies in the country, composed of men who expressed their doubts as to the views of these societies in London,—who expressed their fears as well as their doubts about those views,—who required information as to the purposes of those societies in London—some of these societies in the country professing one set of principles, some another; but all assistance is taken that is offered. Accordingly, you will see that the London societies enlist persons who profess “that they ought to submit to no power but what they have themselves immediately constituted.” To these they give answers, couched in dark, cautious, prudent, but satisfactory and intelligible terms. Those who profess still to have attachments to the monarchy of the country, and who express apprehensions about its safety from the principles of the London societies, and the conflicting principles of various country societies, they sooth into fraternisation, by telling them that all would be set right “by a full and fair representation of the people in Parliament,”—a name which was given to the Commons under Cromwell, as well as to the legitimate Parliaments of this country at different periods,—without telling them either what these words meant, or how that Parliament was to operate to reconcile these differences, which you will find amounted *only* to the differences between an attachment to an absolute republic, and an attachment to a limited monarchy.

They enlist alike those who expressed a wish to know whether they proposed *to reform the House of Commons*, and those who wished to know whether they intend *to rip up monarchy by the roots*. Their answers were calculated to satisfy each of them, to satisfy whatever might be the disposition of those who address the questions to them, requiring information upon subjects so totally different.

Gentlemen, this is not all. You will find, again, that for these purposes, publications upon the government of the country, which are alluded to in this indictment, and which will be given to you in evidence,—that publications upon the government of the country were adopted by those societies as their own, and circulated, if I may so express myself, in a mass round the country, circulated in

a manner that totally destroys the liberty of the press in this country. The liberty of the press in this country never ought to be under an undue correction of the law, but it must always be, for the sake of the people, subject to the correction of the law. You will find that these publications are either brought into the world with such a secrecy as baffles all prosecution,—published without names of authors or of printers,—published by contrivance,—I am sorry to say by contrivance,—published in the dead of night (though they are the works of men who have talents to state them to open day, if fit to be stated to open day),—and published in quantities which make the application of the wholesome provisions of the law utterly incompetent to the purpose of allowing the correction of the law to be as frequent as the commission of the offences against it.

Gentlemen, with respect to many of these publications I may take notice of what has happened in the history of this country; and though no man wishes less to talk of himself than I do, yet I am speaking in the presence of many who have heard me both in court and in Parliament respecting those publications to which I allude (and which will be offered to you in evidence), express the difficulty that my mind laboured under to concede that such a publication as the "Address to the Addressors" was not, according to law, an overt act of high treason. It did appear to me that the publication of the book called the "Address to the Addressors" was an overt act of high treason, for the purpose of deposing the King; at least I thought it required an ingenuity and subtlety, much beyond that which belonged to my mind, to state satisfactory reasons why it was not so; but there were reasons satisfactory to those who can judge better than I can, and therefore that book was treated only as a libel;—but when I come to see it, as connected with the mass of publications alluded to in this indictment, as connected with measures that I have to state to you in the course of opening this cause, and as connected with the project which this indictment imputes to depose the King, I say it is either most distinct evidence of an overt act of high treason, or it is an overt act of high treason itself.

Gentlemen, you will also not fail to observe (and I state it as a general feature and character of the evidence that I have to lay before you) the malignant art, and, if I may so express myself, the industrious malignity with which discontent has been spread by these two societies in London; and the means of spreading it have been studiously and anxiously taught from society to society,—the means of spreading sedition, fresh as from London, in every town, all with reference (for they are not material if you do not find they had such a reference) to the final accomplishment of the same purpose. You will not fail to observe how the passions and interests of individuals have been assailed, and the method of assailing them taught accord-

ing to their stations in life,—not merely upon Government, but, for the purpose of subverting Government, upon tithes, corn-bills, taxes, game-laws, impress service, anything that could be represented as a grievance, as well as the Government itself; and to this intent, that, in aid and assistance of each other, societies, as they expressed it, “might overspread the whole face of the island,” and “that the island might become free”—you will mark their expressions—“by the same means by which France became so.”

Gentlemen, in stating to you the character of the evidence, it is necessary for me to make one observation, and it is the last I shall trouble you with: it is with respect to the principles upon which construction is to be given to the written evidence that will be adduced in this cause. Now, I desire to state this to your minds, as a principle perfectly reasonable in the administration of justice towards men who are called upon to answer for offences, that the language which they use ought to be considered according to its obvious sense. If the language admits, and naturally admits, of a double interpretation, it must then be considered according to the nature of the *principle* which that language is calculated to carry into execution; each paper must be considered with reference to the context of the same paper, and with reference to the contents of all other papers that form the evidence of the same system which the paper produced is meant to prove.

Now, if you should find that in *detailing* the objects of this society, in detailing what they meant to do, and in detailing how they meant to execute what they purposed, they should in fact have stated that they meant neither that which was legal, nor that which was constitutional, nor that which was other than treason: it will be in vain that they have thought fit (for the greater prudence, the greater care, and the greater caution, which you will have most abundant evidence to prove they exercised occasionally, but add to the guilt by increasing the danger) to assert at other times, when they have used general language, that what they meant to effect was legal, and that they meant to effect it in a legal and constitutional manner. It will become those who have the defence upon their hands to state to you how, in a legal and constitutional manner, those things could be done which were intended to be done, and which this indictment states were intended to be done, if I prove to your satisfaction that they were intended to be done by the means and instruments which the indictment refers to.

Gentlemen of the jury, their principle, as you will find, was, that equal active citizenship is the right of all men, and that, upon this principle, their representation of the people was to be asked for. Now, it requires no reasoning to state that a representation of the people founded upon the principle of equal active citizenship of all men, must form a Parliament into which no King nor Lords could enter. There is an end of equal active citizenship the moment that

either of them exists, according to my construction of equal active citizenship, and according to *their construction of it*; for they state that the effect of it is a *representative government*. But it is not enough for me to tell you that; in reasoning, this is the consequence; it is a circumstance to be taken into your consideration. But I say I shall satisfy you, if I am bound to go further, that the application of the principle of equal active citizenship, according to *them*, was to be the foundation of a *representative government*, rejecting the King and Lords out of the system. The principles were the principles upon which the constitution of France, in the year 1791, was formed. The principles of that constitution were the principles of equal active citizenship; they attempted, indeed, to preserve a King in the constitution, and to form what I may call a royal democracy. But I shall prove to demonstration, that the leaders of these clubs in London knew that that constitution could not exist, that their principles led them to a distinct knowledge that that constitution could not exist. It was in the month of August 1792 entirely overturned; and you will find from the transactions of this society in the months of October and November 1792, unless I mistake the effect of the evidence, the clearest demonstration that these societies meant, in applying those principles, which they themselves state had destroyed the existence of a King in France, because they must destroy the existence of a King in any country,—you will find that, from October 1792 at least, these societies meant to destroy the King in this country, and that this was the natural effect of their own principles as they understood them.

Gentlemen, you will now give me leave to state to you, as well as I can, and as intelligibly as I can, the mass of evidence, and the case which I have to lay before you.

The particular act, the nature of which will be to be explained by all the rest of the evidence, which has led to the including these particular persons in one indictment, arose out of a letter, dated the 27th of March 1794, which was written by the prisoner, then the secretary to the London Corresponding Society, to the Society for Constitutional Information. The words of it are these:—

“ I am directed by the London Corresponding Society to transmit the following resolutions to the Society for Constitutional Information, and to request the sentiments of that society respecting the important measures which the present juncture of affairs seems to require. The London Corresponding Society conceives that the moment is arrived”—mark the words; for, in the rest of what I have to state, you will frequently hear of the time to which that alludes—“ when a full and explicit declaration is necessary from all the friends of freedom, whether the late illegal and unheard of prosecutions and sentences shall determine us to abandon our cause, or shall excite us to pursue a radical reform with an ardour proportionate to the magnitude of the object, and with a zeal as

distinguished on our part as the treachery of others in the same glorious cause is notorious. The Society for Constitutional Information is therefore required to determine whether or no they will be ready, when called upon, to act in conjunction with this and other societies to obtain a fair representation of the people." Gentlemen, give me your attention presently to what they conceive to be a fair representation of the people, when I come to state the resolutions which they transmit. "Whether they concur with us in seeing the necessity of a speedy *convention* for the purpose of obtaining" (then they used the words) "in a constitutional and legal method"—of the effect of which you will judge presently, for the method will not be the more constitutional and legal for their calling it so, if the method is in fact unconstitutional and illegal—"a redress of those grievances under which we at present labour, and which can only be effectually removed by a full and fair representation of the people of Great Britain. The London Corresponding Society cannot but remind their friends that the present crisis demands all the prudence, unanimity, and vigour, that ever may or can be exerted by men or Britons; nor do they doubt but that manly firmness and consistency will finally, and they believe shortly, terminate in the full accomplishment of all their wishes."

They then resolve, and these resolutions are enclosed—"1st, That dear as justice and liberty are to Britons, yet the value of them is comparatively small without a dependency on their permanency, and there can be no security for the continuance of any rights but in equal laws.

"2d, That equal laws can never be expected but by a full and fair representation of the people; to obtain which, in the way pointed out by the constitution"—you will see what that is in the third resolution—"has been and is the sole object of this society: for this we are ready to hazard everything, and never but with our lives will we relinquish an object which involves the happiness, or even the political existence, of ourselves and posterity.

"3d, That it is the decided opinion of this society, that, to secure ourselves from the future illegal and scandalous prosecutions, to prevent a repetition of wicked and unjust sentences, and to recall those wise and wholesome laws which have been wrested from us, and of which scarcely a vestige remains"—Gentlemen, you will permit me to call your attention to what the objects were which were to be accomplished—"there ought to be immediately"—what?—"a *convention of the people by delegates deputed for that purpose from the different societies of the friends of freedom.*" And what are the purposes which this convention, which they themselves represent as a convention of the people, are to execute? Why they, the delegates, forming a convention *of the people*, are to recall those wise, wholesome laws, which they say have been wrested from them. Before I have done, I shall prove distinctly

that this is the meaning of the passage, and the meaning of the passage will be to be collected from the whole of the evidence undoubtedly, not from this particular part of it.

The Constitutional Society, there being present at that time six of the persons mentioned in this indictment, without any deliberation whatever upon a proposition so material as this is—and therefore it must be left to you, upon the whole of the evidence, whether it is fairly to be inferred or not, that this, like a great many other papers of the London Corresponding Society, really came from the Constitutional Society,—they immediately ordered that their secretary shall acquaint the London Corresponding Society that they had received their communication; that they heartily concur with them in the objects they have in view; and that, for that view, and for the purpose of a more speedy and effectual co-operation, they invite them to send to this society, next Friday evening, a delegation of some of their members.

Without now going into the particulars of what followed upon this, give me leave to state, that some members of the society included in this indictment were named to compose that delegation; that there was named at the same time a committee of correspondence of six members of this society; that afterwards the London Corresponding Society formed another committee; that the two committees met; that the two committees meeting, came to a determination that this project of calling a convention of the people should be carried into effect; and then, that a joint-committee of co-operation of both societies was formed by resolutions of both.

Having stated what happened upon the 27th of March 1794, and connecting it, as I shall do presently, with the very singular facts which you will find also happened in that year, you will give me leave, in order to show what the true construction of this act is, as well as to state the grounds upon which the indictment, even without this act, charges a conspiracy to depose the King. You will give me leave to state the transactions of these societies from the month of March 1792.

Gentlemen, in or about the month of March 1792,—whether before that time the London Corresponding Society had existed or not, seems to me to be dubious, and therefore I will make no assertion of that one way or other; but supposing it to have existed, it will be made extremely clear that this society existed at that time without a constitution, as they call it, and was indebted to a gentleman of the name of Tooke for the constitution under which the society was modified, and was indebted, I think, to a gentleman of the name of Vaughan for his assistance in the composition of the code of its laws.

The first correspondence that I find between the Constitutional Society and the London Corresponding Society, which I have to

state to you, is in the communication of the principles of the Corresponding Society, sent with a letter signed by the prisoner at the bar, which letter is in the following words:—"I am ordered by the committee to send to the Society for Constitutional Information in London, a copy of our motives for associating, and the resolutions we have come to. We mean to persevere in the cause we have embarked in, that is, to have (if possible) an equal representation of the people of this nation in Parliament."

I observe here for a moment that you will not be surprised, when I get to the conclusion of this business, that this cautious language was used in the outset: it will be for you to judge whether a studied caution is fairly imputable to the language. It proceeds thus:—"We should be exceedingly happy to enter into a correspondence with that society, if it is not too much presumption in us to expect such an honour; but, as our cause is one, we hope that they will deign to take some notice of us, who are now entering upon a matter of such vast importance."

This is extremely condescending language on the part of Mr Hardy to the Constitutional Society: it accompanies the resolutions of that society, which resolutions purported to be signed "Thomas Hardy, Secretary." It happened, by an accident not very easy to be accounted for at present, and, notwithstanding which, I shall prove distinctly to you that the resolutions are the act of Mr Hardy, that this signature—"Thomas Hardy, Secretary"—is a signature, as I am instructed, in the handwriting of Mr Horne Tooke; that is, Mr Hardy, in the London Corresponding Society, sends the resolutions of the London Corresponding Society (apologising extremely for the liberty he takes in presuming to send them) to the Constitutional Society, the signature to those resolutions bearing the name of Thomas Hardy in the handwriting of Mr Tooke. Whether those resolutions were finally settled by that gentleman or not I do not know, but you will find that there exists a paper which contains, I think, distinct evidence upon the face of it, that those resolutions have been settled, with a good deal of deliberation, by the same gentleman whose handwriting occurs in the signature which I have been stating.

Gentlemen, before these resolutions were sent, and before I state the matter of them to you, you will allow me to mention that there had been a correspondence between other societies and the Society for Constitutional Information, of such a nature as, in order to make this case intelligible, will require some observations from me, and some attention from you; it is the correspondence of other societies, but which correspondence I shall connect in such a manner with the London Corresponding Society as in fact to make the acts of the other societies the acts of that society.

Upon the 23d of March 1792, with a view to show you what were the principles of this Constitutional Society, I must state that they

come to a resolution. "That the thanks of this society be given to Mr Thomas Paine for his most masterly book entitled 'The Rights of Man,' in which not only the malevolent sophistries of hireling scribblers are detected, and exposed to merited ridicule, but many of the most important and beneficial political truths are stated so irresistibly convincing as to promise the acceleration of that not very distant period, when usurping borough-sellers and profligate borough-buyers shall be deprived of what they impudently dare to call their property—the choice of the representatives of the people. The Constitutional Society cannot help expressing their satisfaction that so valuable a publication has proceeded from a member of that society, and they sincerely hope that the people of England will give that attention to the subjects discussed in Mr Paine's treatise which their manifest importance so justly deserves."

Then they resolved,—for what purpose you will judge of when I come to state to you the subsequent evidence in this business,—
 "That the foregoing resolutions, and all future proceedings of this society, be regularly transmitted by the secretary to all our Corresponding Constitutional Societies in England, Scotland, and France."

Now, gentlemen, as I shall prove what the book was to which this resolution alluded, I shall take the liberty at present to state in a few words to you, as far as they affect the existence of a King in this country, those subjects which, according to the language of this resolution, the Constitutional Society sincerely hope that the people of England would give attention to, as discussed in Mr Paine's first book. In that book these doctrines, with respect to Great Britain, are laid down:—"A constitution is not a thing in name only, but in fact; it has not an ideal, but a real existence." And you will find this extremely important, because in the result of the whole evidence that I have to lay before you, it will appear that they did not only distinctly disavow making any application to Parliament, but the competence of Parliament to do anything by way of reform, because the country had as yet no constitution formed by the people. Mr Paine proceeds: "Can Mr Burke produce the English constitution? If he cannot, we may fairly conclude that no such thing as a constitution exists."

After stating that the Septennial Bill showed that there was no such thing as a constitution in England, the book states a further fact, not immaterial, that the bill, which Mr Pitt brought into Parliament some years ago to reform Parliament, was upon the same erroneous principle; that is, upon *the principle that Parliament was able to reform itself*. With respect to other subjects, to which the attention of the people of England was called, you will find that this book, speaking of modes of government (and this is also extremely material with reference to the construction of what is afterwards to be stated to you), represents that "the two modes of

government which prevail in the world are, first, governments by election and representation; secondly, governments by hereditary succession: the former is generally known by the name of republican, the latter by that of monarchy and aristocracy."

He divides government into government by election and representation; a representation founded upon election, and election founded upon universal suffrage; and government by hereditary succession. He then states that, from the revolutions of America and France, and the symptoms that have appeared in other countries, it is evident the opinion of the world is changing with respect to government, and that revolutions are not within the progress of political calculation; and that the British government, not existing upon the principles he recommends, is not a government existing upon such principles that a nation ought to submit to it; and that the Parliament of the country is not able to form a government that will exist upon those principles.

Gentlemen, it is a very remarkable circumstance, as it strikes me, that, though various societies had existed in other parts of Great Britain, till about the time of the formation of the London Corresponding Society, none of these societies had asked or invited the affiliation with the London Constitutional Society which you will find they all ask and all invite about March 1792, whether by management or not, I do not pretend to determine—it will be for you to judge; but they all ask and all invite affiliation with the Constitutional and Corresponding Societies, as soon as the latter is formed.

Upon the 16th of March 1792, you will find a resolution of the Society for Constitutional Information which states and returns thanks for a communication from Manchester, signed "Thomas Walker, President," and "Samuel Jackson, Secretary;" in which "they return the thanks of the society to Mr 'Thomas Paine,' who appears to have been a member, a visitor of this Constitutional Society. "for the publication of his 'Second Part of the Rights of Man, combining *Principle and Practice*.'" I shall endeavour to state to you in a few words what is the combination of the practice stated in the Second Part of the 'Rights of Man' with the principle in the First Part, "a work," they say, "of the highest importance to every nation under heaven, but particularly to this, as containing excellent and practicable plans for an immediate and considerable reduction of the public expenditure, for the prevention of wars, for the extension of our manufactures and commerce, for the education of the young, for the comfortable support of the aged, for the better maintenance of the poor of every description, and finally, for lessening greatly, and without delay, the enormous load of taxes under which this country at present labours.

"That this society congratulate their country at large on the influence which Mr Paine's publications appear to have had in

procuring the repeal of some oppressive taxes in the present session of Parliament: and they hope that this adoption of a small part of Mr Paine's ideas will be followed by the most strenuous exertions to accomplish a complete reform in the present inadequate state of the representation of the people, and that the other great plans of public benefit which Mr Paine has so powerfully recommended will be speedily carried into effect."

Now, gentlemen, as Mr Paine's plan for the remedy of the present inadequate state of the representation of the people was alluded to, and this book was alluded to, which combined "principle" and "practice," and as it is stated that the other great plans of public benefit which he had so powerfully recommended would be speedily carried into effect, it will be necessary to show you, from this letter, what were those plans for the remedy of the inadequate state of the representation of the people, and other plans of public benefit, which this society, receiving the thanks of the Constitutional Society, hoped would be carried into effect.

Gentlemen, I do not take up your time in stating the passages to you, but represent to you the substance of that book; that it is a book distinctly and clearly recommending the deposition of the King: if the passages in that book do not prove that assertion, there is no evidence that can prove any assertion. It is a book, moreover, which not only puts the King out of the system of the government of the country, but, according to which, if a perfect representation of the people is to be formed, it is to be formed not by a Parliament existing in a country—in which that gentleman states that no constitution exists—not by that Parliament, which he states to be totally and absolutely inadequate to the great work of forming the constitution upon the rights of man and equal active citizenship, which he recommends: it is a work which calls upon the people of England to do themselves justice in another way of proceeding, and to form a constitution for themselves before they can have any government, which is to exist upon true principles. There is then, I say, in the beginning of this thing, a development of these purposes; and I say, beyond that, that if I understand the effect of evidence at all, I shall satisfy you that those who voted this resolution of thanks knew that the principles there referred to were principles that would have this operation, and meant that they should have this effect.

The next thing I have to state, which I shall not go through very particularly, is contained in a resolution of the Constitutional Society (some of the members of which, I shall prove to you, began to leave the Society about this time, stating distinctly that they understood its principles to be now different from the principles it had formerly acted upon, and to be such principles as I have stated), entered into upon the 23d of March 1792. They resolved that another communication, which is from Sheffield, should be

published in the *Morning Chronicle*, and in several other newspapers, which they mention.

With respect to the communication from Sheffield—(and it is a remarkable thing that from Sheffield and from Norwich they should be writing on the same day for the same purpose—that the societies of Sheffield and Norwich might be affiliated with the London Constitutional Society; and the Sheffield people were so anxious about it, if it were their own act and deed, that they wrote more than one letter in order to ask it)—it is to this effect.—

“It is now about four months since this society first formed itself into a regular body; they were then but very few in number, the enclosed will inform you of their increase, and, which is most probable, will soon become very numerous; and not only this large and populous town, but the whole neighbourhood for many miles round about, have an attentive eye upon us: most of the towns and villages indeed are forming themselves into similar associations, and strictly adhere to the mode of copying after us. You will easily conceive the necessity for the leading members of this body to pay strict attention to good order and regularity, and the need we have of consulting and communicating with those who are sincere friends and able advocates for the same cause. For these reasons we took the liberty to write to Mr Horne Tooke, that worthy friend and patriot for the rights of the people, informing him of our earnest desire of entering into connexion with the society of the same denomination of ours in London; his very obliging and affectionate answer favours us with your address; in consequence, we have taken the liberty herewith to transmit to you some resolves, which were passed at our last meetings by the whole body, and the committee was charged with the despatch of printing and forwarding them to you accordingly, for the purpose of submitting them to the consideration of your society, and to make use of them as they think most prudent. You will also notice the Belpar address. They applied to us about two months ago for instructions as to our mode of conducting, &c., had not then formed themselves into any regular association. Belpar is nearly thirty miles from this place, in Derbyshire, and eight or ten miles from Derby.

“If the Society for Constitutional Information in London should vouchsafe so far to notice us as to enter into a connexion and correspondence with us, it cannot fail of promoting honour, and adding strength to our feeble endeavours, and to the common cause, which is the entire motive we have in view.”

They then, upon the 14th of March 1792, knowing that there was a connexion between the London Constitutional and London Corresponding Society (and that they should know that fact on the 14th of March, which is sixteen days before the 30th, when Mr Hardy sent to Mr Tooke the resolutions which were signed in the name of Mr Hardy by Mr Tooke, as a communication to him that

there was such a body as the London Corresponding Society, is a circumstance that affords observation), they then add, "We have taken the liberty of enclosing a parcel for Mr Hardy, in answer to a letter from him to this society, requesting some information concerning our method of conducting the business we had embarked in &c., also informing us there are in London a number of mechanics, shopkeepers, &c., forming themselves into a society on the broad basis of the rights of man. You will be so obliging as to let the packet remain with you until he call for it, as by this post I have wrote him thereof. We have given him our manner of proceeding from our setting out to this time, and hope it may be of some use. The improvement we are about to adopt is certainly the best for managing large bodies, as in great and populous towns, viz., dividing them into small bodies or meetings of ten persons each, and these ten to appoint a delegate; ten of these delegates form another meeting, and so on, delegating from one to another, till at last they are reduced to a proper number for constituting the Committee or Grand Council."

There is another letter, of the same date, which has a remarkable circumstance about it. It is addressed to the Constitutional society. Gentlemen, it states that "this society," that is, the same Sheffield society, "feeling, as they do, the grievous effects of the present state defects and abuse of our country"—(the word originally in this letter was *constitution*, but the word *constitution* not being that which was liked, by some very odd accident in the letter from Sheffield, the word *country*, in the handwriting of Mr Tooke, is substituted for *constitution*)—"the great and heavy oppressions which the common people labour under, as the natural consequence of that corruption, and at the time being sensible to a degree of certainty that the public minds and the general sentiments of the people are determined to obtain a radical reform of the country,"—you will mark these words,—“as soon as prudence and discretion will permit, believes it their duty to make use of every prudent means, as far as their abilities can be extended, to obtain so salutary and desirable an object as a thorough reformation of our country,”—the word *country* being again in the handwriting of Mr Tooke,—“established upon that system which is consistent with the rights of man.” For these reasons they state their forming into clubs, as the former letter did, and they conclude thus—“that being thus strengthened, the society may be better enabled to govern itself with more propriety, and to render assistance to their fellow-citizens in this neighbourhood, and in parts more remote, that they in their turn may extend useful knowledge still further from town to village, and from village to town, until the whole nation be sufficiently enlightened and united in the same cause, which cannot fail of being the case wherever the most excellent works of Mr Thomas Paine find residence.”

These works are the works which have held an hereditary monarchy, however limited, to be inconsistent with the rights of man; which have held the constitution of Parliament in this country to be inconsistent with the rights of man; and those works, upon the principles of that inconsistency, have held even the Parliament itself incompetent to reform any abuses in government.

The paper they transmit states as a fact, that the number of members at Sheffield were, in March 1792, two thousand. That the Constitutional Society in London and the Constitutional Society at Sheffield, thus numerous, should have had no connexion by affiliation till the 14th of March 1792, though on that 14th of March 1792 it appears that the Sheffield society had had correspondence, and had become connected with the London Corresponding Society, prior to the London Corresponding Society sending the paper, I before stated, to the Constitutional Society, is somewhat remarkable.

The paper proceeds thus: "This society, composed chiefly of the manufacturers of Sheffield, began about *four months ago*, and is already increased to nearly two thousand members." In this letter, dated March 14, 1792, they state it to have amounted to two thousand, exclusive of neighbouring towns and villages, who were forming themselves into similar societies. They then state the principles upon which the societies are formed, and that "they have derived more true knowledge from the two works of Mr Thomas Paine, entitled 'Rights of Man,' Part the First and Second, than from any other author on the subject. The practice as well as the principle of government is laid down in those works in a manner so clear and irresistibly convincing, that this society do hereby resolve to give their thanks to Mr Paine for his two said publications entitled 'Rights of Man.'"

Gentlemen, I beg your pardon for addressing you so much at length on this case, but I feel it my bounden duty to the public, to you, and to the prisoner at the bar, to warn you fully of the whole of it. There is nothing which, I am sure, would more certainly happen, than that I should go, not only out of this court, but to my grave, with pain, if I should have stated to you, in a proceeding of this nature, the doctrines of Mr Paine otherwise than as I think of them. If that is meant to be intimated, that we may have no dispute about them, and that we may not misunderstand what is that principle and that practice to which the passage I have now read alludes, you will allow me to read a few passages out of this Second Part of the "Rights of Man," said to contain both the principle and practice of government; and then I ask you what those must have intended, with respect to the government of this country, who meant to take any step in order to make a change in it, in such a way as the principle and practice laid down in that book would require them to make it, recollecting that the govern-

ment of this country is a government consisting in a King, having an hereditary crown, together with Lords and Commons, forming a Parliament according to the laws and constitution of England?

Now, that author, in the first place, expresses a great deal of what possibly may be differently thought of by other persons, but what I cannot call good-will to the people of England; for he says—"That during the time of the American war, he was strongly impressed with the idea, that if he could get over to England without being known, and only remain in safety till he could get out a publication, that he could open the eyes of the country with respect to the madness and stupidity of its Government."

Let us see in what that madness consisted according to him. Having stated in his former book that a Government ought to exist in no country, but according to the principles of the rights of man, he repeats again the distinction he had stated in his former book, between what he calls the two systems: he says—"That the one now called the old is hereditary, either in whole or in part,"—which is that of England; "and the new is entirely representative,"—that is, a Government consisting of a Commons House, if you choose so to call it. We know that in 1649 the ruling Government in this country was called a Parliament, called a Commons House, and it was then enacted, that if any persons should attempt to put a King into this country, they should be deemed traitors, with much less of an overt act manifested than is necessary at this day. Again it is stated—"An heritable crown, or an heritable throne, or by whatever fanciful name such things may be called, have no other significant explanation than that mankind are heritable property. To inherit a government is to inherit the people, as if they were flocks and herds."

"Hereditary succession is a burlesque upon monarchy. It puts it in the most ridiculous light by presenting it as an office which any child or idiot may fill. It requires some talents to be a common mechanic, but to be a King requires only the animal figure of man, a sort of breathing automaton. This sort of superstition may last a few years more, but it cannot long resist the awakened reason and interest of man;" then "in whatever manner the separate parts of a constitution may be arranged, there is one general principle that distinguishes freedom from slavery, which is, that all hereditary government over a people is to them a species of slavery, and representative government is freedom;" then, speaking of the crown of England, that crown, in which, according to the law and constitution of this country, according to its principle and practice, is vested the sovereignty in the manner in which I have stated it, he says, "having thus glanced at some of the defects of the two Houses of Parliament, I proceed to what is called the Crown, upon which I shall be very concise,

"It signifies a nominal office of a million sterling a year;"—

again, gentlemen, give me leave to observe that this, which has been so often detailed for the worst of purposes, cannot but be known to those who know anything of the constitution of the country—(I charge nobody else—those who know anything of the constitution—I charge not those who do not know it)—to be in substance a gross misrepresentation ;—“ the business of which consists in receiving the money. Whether the person be wise or foolish, sane or insane, a native or a foreigner, matters not. Every minister acts upon the same idea that Mr Burke writes, namely, that the people must be hoodwinked, and held in superstitious ignorance by some bugbear or other ; and what is called the Crown answers this purpose, and therefore it answers all the purposes to be expected from it.”

Gentlemen, in another part of this work you will find that Mr Paine was very well aware of what these Sheffield correspondents were aware of, if they were the composers of the letter to which I have alluded ; that the principles laid down in the constitution of France, which these two books were to recommend, and the principles stated in Paine's first book, were absolutely inconsistent with the constitution itself of France, as it existed at that moment ; and Paine prophetically (he would not have had common sense if he had stated it otherwise), even in the beginning of 1792, when he publishes this book, foretells that the Government of France, with a King a part of it, upon his principles, and the principles professed by the constitution of France, could not exist : he foresaw that in August 1792, and I will prove that those persons, who were thus approving the principles and practice of Paine, knew that a King could not exist consistently with those principles, and they adopted them therefore, as we insist, in order that a King should not exist in this country.

Gentlemen, these resolutions being received, perhaps from Sheffield, a step is taken upon them in the Constitutional Society, and a step which gives an authenticity to the book I have in my hand, namely, the book of their proceedings, which is remarkable enough ; for in this society's book there are these resolutions, which are supposed to be received from Sheffield, watered to the book, and then, with a view of a publication of them in the *Morning Chronicle*, *World*, *Post*, *Times*, *Argus*, *English Chronicle*, and *General Evening Post*, for the purpose of circulating the principles of Mr Thomas Paine, and for the purpose of circulating the representation which is made in these resolutions. There is first of all in Mr Tooke's handwriting,—“ Society for Constitutional Information, London, March 23, 1792. This society having received the following and other communications from Sheffield, viz.,—his handwriting—then, “ March 14, 1792,”—his handwriting—then the words “ two thousand members,” scored under, I cannot say by him, but by somebody, I suppose for the purpose

of being printed in italics; and there is at the conclusion of this minute, in the handwriting of Mr Tooke,—“That the secretary do return the thanks of this society to the Society for Constitutional Information established at Sheffield, and that he express to them with what friendship and affection this society embraces them, as brothers and fellow-labourers in the same cause;”—of principle and practice I suppose. “That he do assure them of our entire concurrence with their opinion, viz., that the people of this country are not, as Mr Burke terms them, swine;”—the writer of this must have known very well the sense in which an improper word, I readily admit, was used by the person to whom he now alludes,—“but rational beings, better qualified to separate truth from error than himself, possessing more honesty and less craft.”

Resolved that this society will, on Friday next, March 31, ballot for the twelve associated members recommended by the Sheffield committee, and approved at this meeting.” Then this paper is thus ordered to be published, for the primary purpose, I submit, of recommending that principle and practice which makes the Sheffield people “fellow-labourers” with the Constitutional Society in the same cause of principle and practice, and which, both in the principle and practice, was aimed at the destruction of the Government of the country—of that hereditary monarchy which Paine represents as tyranny—of that limited monarchy which he represents as tyranny; and for the purpose of recommending that *representative government* which, I say, is the true sense of all the words which these people use. But this is not all. You will observe that this paper of resolutions was accompanied by a letter, in which letter there is also the handwriting of Mr Tooke, and that the paper states that two thousand members belong to the society at Sheffield, and that this number is to be stated by publication as the number of persons belonging to the society at Sheffield. In another publication they are stated to amount to two thousand four hundred. In November 1793, it is stated that they were many thousands. Now you will see from the witnesses, some of these correspondents, these able men, who are so little corrupt, in the course of examination. You will see, unless I am mistaken in the effect of the evidence I have to offer, the truth of an observation that I made, that mankind were to be misled, and societies were to be invited to be created, by the misrepresentation of numbers, and by giving to existing societies a colour in that respect which did not belong to them; for to this hour, after all the pains which have been taken with the Sheffield people (and what pains you will hear), those persons who were two thousand, have yet arrived to but about six hundred.

Gentlemen, this society having in this letter expressed an inclination that they should have some associated members in the Constitutional Society, that affiliation begins in the Constitutional

Society in London which I have alluded to; and, accordingly, you will find that, upon the 31st of March, twelve persons were balloted for as from the Sheffield society, and became associated members of this society. You observe that this letter had stated from Sheffield that they had received before a communication from Mr Tooke, and Mr Tooke afterwards writes a draught of a letter which is sent to them, in which he states, "I am directed by the Society for Constitutional Information to acknowledge the receipt of your letter, and to express to you that very great pleasure and satisfaction which they received from your communication. The society have unanimously elected twelve" (here follow the names of the persons), "as associated members of this society;"—these persons being certainly gentlemen, extremely respectable men as subjects of Great Britain, but at the same time men that one wonders a little should, upon such a purpose as this, without a little more instruction being infused into their minds, have been associated as members into this society;—"and we flatter ourselves, that when any business or other occasion shall lead any of those gentlemen to London, they will be kind enough to honour the society by their presence, and give us an opportunity of cementing that friendship between us, which all the zealous friends of public freedom and the happiness of mankind ought to feel and exercise towards each other.

"P.S.—I am desired by Mr Horne Tooke to request each of the associated members to honour him with the acceptance of the books which accompany this letter;"—which were, I apprehend, it appears, so many parts of the "Rights of Man."

Gentlemen, upon the 24th of March 1792, a paper appears to have been sent to the Constitutional Society from a nest of societies, the United Constitutional Societies at Norwich. This was the 24th of March 1792; and it appears, as I am instructed, that the words "24th March 1792" are also in the handwriting of Mr Tooke.

"At a meeting of the delegates of the United Constitutional Societies, held the 24th March 1792, at the Wheel of Fortune, St Edmund's, in the city of Norwich, it was unanimously agreed to communicate to the gentlemen of the London Society for Constitutional Information the following resolutions:—

"First, We are happy to see the success of the Sheffield Society for Constitutional Reform, and approve of the delegations which you and they have made in order to form a plan of general information. We humbly beg that you would grant to us the same favour; and it is our wish that all the societies of a similar kind in England were only as so many members strongly and indissolubly united in one political body.

"Secondly, We believe that instructing the people in political knowledge, and in their natural and inherent rights as men, is the

only effectual way to obtain the grand object of reform; for men need only be made acquainted with the abuses of government, and they will readily join in every lawful means to obtain redress. We have the pleasure to inform you that our societies consist of some hundreds, and new societies are frequently forming, which, by delegates, preserve a mutual intercourse with each other, for mutual instruction and information; and the greatest care has been taken to preserve order and regularity at our meetings, to convince the world that riot and disorder are no parts of our political creed.

“Thirdly, We believe, and are firmly persuaded” (and if any man thought so, he had a right to say so if he pleased), “that Mr Burke, the once friend of liberty, has traduced the greatest and most glorious revolution ever recorded in the annals of history. We thank Mr Burke for the political discussion provoked, and by which he has opened unto us the dawn of a glorious day.

“Fourthly, To Mr Thomas Paine our thanks are especially due for the First and Second Parts of the ‘Rights of Man,’ and we sincerely wish that he may live to see his labours”—that is, the destruction of hereditary government and limited monarchy, and consequently the Government of England—“crowned with success in the general diffusion of liberty and happiness among mankind.”

Gentlemen, this letter does not appear (though the words the “24th of March” are in the handwriting of Mr Tooke) to have been read in the Constitutional Society till the 14th of May 1792, when they read this letter, and also another, which I will now state to you, from the society called the Norwich Revolution Society.

“The Norwich Revolution Society wishes to open a communication with you at this time, when corruption has acquired a publicity in the senate which exacts from the honour of the British nation renewed exertions for parliamentary reform. Without prejudging the probable event” (this is a material passage, when you connect it with what is found in other subsequent papers) “even of such an application to the Legislature, the society is willing to circulate the information, and to co-operate in the measures that may seem best adapted to further so desirable and so important an end: it is willing to hope the redress of every existing grievance at the hands of a Government resulting from an extraordinary Convocation in 1688—an extraordinary Convention of all who had at any preceding time been elected representatives of the people, assisted by the hereditary counsellors of the nation, and a peculiar deputation from the metropolis; which national constituting assembly cashiered for misconduct a King of the House of Stuart.”

The opinions and principles of this society are best explained by an appeal to their literary representative—“To James Mackintosh, author of the ‘Vindiciæ Gallicæ,’ the society offers the tribute of

its approbation and gratitude for the knowledge, the eloquence, and the philosophical spirit with which he has explained, defended, and commented on the revolution of France. It hesitates to assent to this only of his opinions: that there are but two interests in society—those of the rich, and those of the poor;—if so, what chance have the latter? Surely the interests of all the industrious, from the richest merchant to the poorest mechanic, are, in every community, the same—to lessen the numbers of the unproductive, to whose maintenance they contribute, and to do away such institutions and imposts as abridge the means of maintenance, by resisting the demand for labour, or by sharing in reward. As the means most conducive to this comprehensive end, the Norwich Revolution Society desires an equitable representation of the people.

“The ‘Rights of Man’ by Thomas Paine, and the ‘Advice to the Privileged Orders’ by Joel Barlow,”—a book which I shall give in evidence, and therefore shall state some passages from presently,—“have also been read with attention and circulated with avidity.” Now Barlow’s book, you will find, is, in the plainest and most unequivocal language, as I understand it, an exhortation to all people to get rid of kingly government, and addressed more particularly to the two societies I have mentioned, as containing the substance of the business in which they are interested, as you will see when I come to state the transactions of October 1792.

“The ‘Rights of Man’ by Thomas Paine, and the ‘Address to the Privileged Orders’ by Joel Barlow, have also been read with attention and circulated with avidity: they point out with clearness most of the abuses which have accumulated under the British Government; they attack with energy most of the prejudices which have tended to perpetuate them.”

Now, how any man living could thank these people without informing them that, if they really meant well to their country, they must be ignorant in the extreme, or something worse, if they could reconcile either the “Rights of Man” or Joel Barlow’s book on the privileged orders with the principles of that Convention in 1688 which is the foundation of the liberties of this country, is to me quite inexplicable. But, after stating the constitution of this country, in a letter fabricated with great art, there follow the twelve names of the intended associated members from Norwich, and the description of some of these twelve happens also, from a singular circumstance, to be in the handwriting of Mr Tooke. Then this society returns thanks to the societies at Sheffield and Norwich for these communications.

The resolutions of the London Corresponding Society, which I told you were sent on the 30th of March, are to this effect:—

“Resolved, That every individual has a right to share in the government of that society of which he is a member, unless incapacitated.

" Resolved, That nothing but nonage, or privation of reason, or an offence against the general rules of society, can incapacitate him

" Resolved, That it is not less the right than the duty of every citizen to keep a watchful eye on the government of this country, that the laws, by being multiplied, do not degenerate into oppression, and that those who are intrusted with the government do not substitute private interest for public advantage.

" Resolved, That the people of Great Britain are not properly represented in Parliament.

" Resolved, That in consequence of a partial, unequal, and inadequate representation, together with the corrupt method in which representatives are elected, oppressive taxes, unjust laws, restrictions of liberty, and wasting of the public money, have ensued.

" Resolved, That the only remedy to those evils is a fair and impartial representation of the people in Parliament.

" Resolved, That a fair and impartial representation can never take place until partial privileges are abolished, and the strong temptations held out to electors afford a presumptive proof that the representatives of this country seldom procure a seat in Parliament from the unbought suffrages of a free people.

" Resolved, That this society do express their abhorrence of tumult and violence; and that, as they aim at reform, not anarchy, —reason, firmness, and unanimity be the only arms they employ, or persuade their fellow-citizens to exert against abuse of power."

Gentlemen, in this which I have now read to you, I am willing, if you please, that you should construe every word of it—though certainly it is not consistent with the principles of the British Government—upon this principle, that those who sent that paper to the Constitutional Society, if it even was sent there at all, really understood it to be consistent with the principles of the British Government; and I claim no credit for the veracity with which I assert that this conspiracy has existed, unless I show you by subsequent acts of this society, that, at this moment, they meant what Mr Paine says, in principle and practice, is the only rational thing—a *representative government*; the direct contrary of the government which is established here.

You will find, by what I shall lay before you, that there was a society in Southwark. To this society the London Corresponding Society, in a letter which I have to read to you presently, stated their adoption of all Mr Paine's *principles*, with a view, as I think, to the *practice* recommended in his works. This society also received the thanks of the Constitutional Society for a communication which I am about to state to you; and the London Corresponding Society afterwards entered, as it seems to me, into a combination with them, upon the principles stated in that communication. I say it is impossible, attending to these facts, for any man who

reasons fairly, to doubt that the principle of the London Corresponding Society and of the Constitutional Society was to form a *representative government* in this country.

A declaration from a society in Southwark was read:—"Resolved, that the thanks of this society be given to the Southwark society for the following communication, and that it be published in the newspapers:—

" 'April 19, 1792,—At the Three Tuns Tavern, Southwark—Resolved, That we do now form ourselves into a society for the diffusion of political knowledge.

" 'Resolved, That the society be denominated the 'Friends of the People.'

" 'Resolved, That the following be the declaration of this society'" —which is the preamble to the constitution in France in the year 1791.

" 'Considering that ignorance, forgetfulness, or contempt of the rights of men, are the sole causes of public grievances, and the corruption of government, this society, formed for the purpose of investigating and asserting those rights, and of uniting our efforts with others of our fellow-citizens for correcting national abuses, and restraining unnecessary and exorbitant taxation, do hereby declare,—

" 'First, That the great end of civil society is general happiness.

" 'Secondly, That no form of government is good any further than it secures that object.

" 'Thirdly, That all civil and political authority is derived from the people'" —that people of whom they were afterwards to form a convention.

" 'Fourthly, That equal active citizenship is the inalienable right of all men; minors, criminals, and insane persons excepted.'"

Now, will my friend dispute with me what these principles, according to the ideas of those who state them, lead to?

" 'Fifthly, That the exercise of that right, in appointing an *adequate representative government*'"—that is, the government which Mr Paine tells you rejects everything that is hereditary—is what?—" 'the wisest device of human policy;' " not only that, but it is " 'the only security of national freedom.'" Then, is not that a direct assertion that the British Government exists upon principles not reconcilable with the principles of a Government that can have any security, or such a security as it ought to have for general freedom?

The Society for Constitutional Information return their thanks upon that also, and then those persons who write this letter say farther in the same paper,—

" 'We call upon our fellow-citizens, of all descriptions, to institute societies for the same great purpose,'"—that is, the purpose of

introducing representative government,—“and we recommend a general correspondence with each other,”—but attached and riveted to the Constitutional Society,—“and with the Society for Constitutional Information in London, as the best means of cementing the common union, and of directing with greater energy our united efforts to the same common objects.”

What were the objects of this society? You will find that the objects of this society were the objects of the Constitutional Society; and you will find presently that they were the objects of the Corresponding Society. The Constitutional Society resolved, “That every society desiring an union or correspondence with this, and which doth not profess any principles destructive to truth or justice”—now this gives occasion for the first remark I have to make upon language—“or subversive to the liberties of our country; but which, on the contrary, seeks, as we do, the removal of corruption from the Legislature and abuses from the government, ought to be, and we hope will be, embraced with the most brotherly affection and patriotic friendship by this society.”

I observe upon this, that all this handsome language is perfectly consistent with this principle in the minds of those who write it, and they do not venture to explain it, because I think they durst not explain it, with this idea in their minds, that those principles were destructive of truth and justice, were subversive of the liberties of the country, which were principles in opposition to those of Mr Paine; and that all practice that was in opposition to the practice he recommends was subversive of the liberties of the country.

I come now to a circumstance or two, which lead me to state shortly what will be proved to be the original constitution of the London Corresponding Society. The plan (the efficacy of which had been tried in France, and which men who came from that country were probably well acquainted with) was to unite first small bodies of men; as soon as they came to a greater number, to divide them into smaller parties, and so to spread themselves by degrees (as you will find in the letters was the purpose of these societies), from town to town, from village to village, from hamlet to hamlet, till, as they explain it, there should not be an unenlightened man in the country.

The constitution of the London Corresponding Society was formed upon this principle. It will appear from the written evidence which will be produced to you, that a gentleman of the name, I think, of Felix Vaughan, was appointed a delegate upon the 30th of April, for No. 63; that Mr Hardy consulted him; and being also appointed to form a constitutional code of laws for the London Corresponding Society, Mr Hardy consulted him upon that subject. The preamble to the resolutions which formed their constitution was this: “Whereas it is notorious that very numerous burdensome and unnecessary taxes are laid on the persons and families of

us and others the industrious inhabitants of Great Britain, an exceedingly great majority of whom are, notwithstanding, excluded from all representation in Parliament; and as, upon inquiry into the cause of this grievance, which is at once an obstruction to our industry, and a diminution of our property, we find that the constitution of our country, which was purchased for us at the expense of the lives of our ancestors, has, by the violence and intrigue of criminal and designing men, been injured and undermined in its most essential and important parts, but particularly in the House of Commons, where the whole of the supposed representation of the people is neither more nor less than an usurped power:—"I hope, gentlemen, it cannot be required that I should contend against such an assertion in this place, if a court of law in this country has not lost all the character that belongs to law. How that usurped power was ever to be employed as an organ in the constitution of that new representative body that this society aimed at, consistent with their own principles, remains to this moment unintelligible to me:—" arising either from abuses in the mode of election and duration of Parliaments, or from a corrupt property in certain decayed corporations, by means of which the liberties of this nation are basely bartered away for the bribed profit of the members of Parliament. And as it further appears to us that, until this source of corruption shall be cleansed by the determination, perseverance, firmness, and union of the people at large, we are robbed of the inheritance so acquired for us by our forefathers, and that our taxes, instead of being lessened, will go on increasing, as they will furnish more bribes, places, and pensions, to ministers and members of Parliament: we, therefore, having resolved to unite ourselves into one firm and permanent body, for the purpose of informing ourselves and others of the exact state of the present parliamentary representation, for obtaining a peaceable but adequate remedy to this intolerable grievance, and for corresponding and co-operating with other societies, united for the same objects, have unanimously adopted the following regulations for the internal order and government of our society." They then state their regulations; and their constitution having been thus formed, they publish it afterwards in the month of May. What observations they state to the public upon it in the month of May, I shall have occasion to represent presently. You will see the manner of proceeding with respect to the election of their delegates, by the production of a particular paper. On the 13th of April, a person, whom you have heard much of, Mr Margarot, is appointed a delegate. Upon the 30th of April, Mr Vaughan was, as far as the paper is evidence of the fact, appointed delegate for No. 63. Mr Richter, a party named in this indictment, and Mr Martin, another party against whom the grand jury have found a bill, but who is not named in this indictment, are also appointed delegates. Mr

Hardy is not only secretary, but he is appointed, upon the 13th of April, a delegate; and there is a choice of delegates for the whole of these bodies. You will find they afterwards met, from time to time, to pursue the great purposes of their incorporation, at an alehouse, I think the Bell, in Exeter Street, in the Strand, from which place some of the correspondence I am about to state to you comes.

Gentlemen, the Society for Constitutional Information having affiliated several societies very suddenly with themselves—whether Mr Paine remained in this country or not I cannot tell—they felt an inclination to affiliate with another society, which is to be, as it appears to me, in justice to them, very strongly distinguished indeed with respect to the principles upon which they acted.—I mean the society calling itself the “Friends of the People,” meeting at Freemasons’ Tavern. With what prudence or discretion that society formed itself, is a subject which I shall not discuss; but it is a most important fact that, in the first attempt which the Society for Constitutional Information made (and it ought to be known in justice to the Friends of the People), the first attempt they made to affiliate themselves with the Society of the Friends of the People, that society, in correspondence that will be read to you, acts as some individual members of the Constitutional Society had done, they say, “No, we discover your design from what you are doing: you tell us, from your approbation of resolutions entered into at Manchester, signed by Mr Walker and Mr Jackson, that you approve the sort of schemes Mr Paine has set forth; that you approve projects of giving, in loose and indefinite terms, the full extent of what you call the rights of the people to the people. That is not our intent. We think”—and, gentlemen, many a man may very honestly think it, but he must go about the execution of his thoughts in a legal way if he does so think, if he means to reduce his thoughts into practice—“we think that Parliament is not adequate to all the ends for which it is instituted as a body, through which is to be spoken, as far as the constitution requires, the will of the people; but we do not mean what you mean: we mean to preserve the forms of the constitution, which it is clear you do not; we mean,” says Lord John Russell, in a letter which will be read, “to preserve the forms of the constitution, and therefore must decline all correspondence with you.”

Gentlemen, it happens—it belongs to societies of this nature, and I desire to be understood, therefore, in stating it, only as stating a circumstance which in its nature does belong to those societies, and which will happen—that it was thought necessary, for the great purpose of doing that which was eventually to be done, that a society which had rejected co-operation with the Society for Constitutional Information, should still be kept, for the purposes of the Society for Constitutional Information, in fact and

effect corresponding and connected with it. Accordingly you will find that this Society of the Friends of the People, rejecting upon principle the plan which they thought abandoned the forms of the constitution, that this society retained in its own bosom, according to the account I have of it, many members who happened to belong to the other society, and the work of both societies went on by the same instruments; they were thus, therefore, connected in fact, though they did not choose as a body to have one society in connexion with the other.

Gentlemen, having stated that, you will allow me now to mention, though it is a little out of date, but it also connects itself with and illustrates the last observations I made, that the society at Sheffield, which had connected itself by affiliation with the Society for Constitutional Information, and you will also find, with the London Corresponding Society, had received, about the 24th of May, intelligence from the Society of the Friends of the People, which stated to them very correctly what their objects were, the means by which they meant to accomplish them, and the attention which they meant to pay to the forms of the constitution. You will now see what the Society for Constitutional Information understood to be the objects of the Sheffield Society, and what the Sheffield society understood to be the objects of the Society for Constitutional Information. The Sheffield society (though I do not know that they kept their word) distinctly disavowed, in a letter of the 26th May to the Constitutional Society, having anything more to do with that society called the Friends of the People, which meant to preserve the forms of the constitution; represented that they had totally misunderstood them, and would have nothing more to do with them, but to the extent to which the Society for Constitutional Information permitted.

You will find in a letter from Sheffield, of the 26th May, and this corrected by Mr Tooke, that they thank the Constitutional Society for accepting their members. They then state that they had increased to two thousand four hundred. "On Saturday last, the 19th instant, we received a packet of printed addresses, resolutions, &c., from the society (Freemasons' Tavern), which, on mature consideration, we find ourselves not so well reconciled to the ideas they convey to us as we could wish, if they had appeared in a different point of view; nor do they afford us such a flattering prospect, as we were apprehensive might be expected from an association of so respectable a body, under the high denomination of the Friends of the People. In our opinion, their answer of the 12th instant to your letter of the 27th ultimo is no ways compatible with that appellation. From the known respectability of many names which appear amongst them, we had entertained great hopes of their real use"—mark the words, gentlemen—"in obtaining a thorough reform"—now mind what that reform is—"in obtain-

ing a thorough reform upon the principles of the rights of man,"— that is, a representative government, rejecting the King, and rejecting every other part of the constitution of this country, except so far as it was consistent (indeed it is not consistent with any part of it) with the principles of the rights of man,—“ which can never be accomplished until ever man enjoys his lawful and just privileges.

“ Previous to the reception of this packet, we did communicate to them by letter the pleasing hopes it reflected on us on looking forward, viewing such respectable characters signalling themselves in support of the people's rights, agreeable to the above principles, and the denomination by which they have entitled themselves, &c. In due course they would receive our letter last Thursday seven-night; and in consequence, we apprehend the packet was forwarded to us on the same day, but without any written communication. We shall not attempt any further communication with them, until we are favoured with your sentiments upon the subject, or until matters of doubt which are at present entertained be removed.” Then there is a note, which shows the necessity of this fostering care of the Constitutional Society: they say, “ Birmingham, in particular, claims all the assistance from established societies which possibly can be administered.”

Having written to the Constitutional Society upon the 26th of May, they find it expedient, for the same purpose, to trouble their correspondents of the London Corresponding Society: “ We were favoured with your very affectionate letter of the 7th ultimo, and communication, in due course; and I am directed by this society to inform you, that it is with infinite satisfaction they receive the information that your firm and laudable endeavours are directed to that effectual and necessary purpose of opening and enlightening the public mind, and disseminating useful knowledge amongst the general mass of the people; by an orderly proceeding in a firm pursuit of truth and equity, there cannot be a doubt but that our joint endeavours will in due time be crowned with success.

“ As brothers and fellow-labourers, we congratulate you on the rapid progress of useful and real knowledge in the various parts of this nation, which sufficiently indicates that the time cannot be far distant when truth will be more predominant, equity more generally administered, and sound wisdom more universally sought after. When pride, ambition, and ignorance give place to these virtues, when oppression ceases and charity abounds, when men in principle and practice verify the necessity and advantage of doing to others as they wish to be done by; then, and not till then, can any people or nation be said to be happy.

“ We have herewith enclosed our rules, &c. Should have written you much sooner, but on account of a disappointment in the printing of our articles, &c.

"Our numbers continue to increase, both here and in the adjacent towns and villages; a general concurrence prevails as to the necessity of the business, and the measures adopted by this society for obtaining our object. It will be of great importance to the cause we are engaged in, that a more frequent communication be maintained amongst all the similar institutions; for which reason we beg the favour of your correspondence at every convenient opportunity, which will be highly obliging to this society, who in return pledge themselves to observe the same rule."

Gentlemen, having stated to you now what it was that the Society of the Friends of the People discovered to be the object of the Constitutional Society, and I agreeing with them in thinking their discovery upon that subject was accurate and right, you will find it necessary to go back, and to proceed in the order of time to the 7th of April. Mr Hardy sent from the London Corresponding Society a copy of their resolutions to the Society for Constitutional Information, which was established at Manchester, and desired also to have correspondence with them, as they were all engaged in one common cause; that Manchester Society, you will recollect, which hoped that the other great benefits which Mr Paine had stated would be carried into effect.

He says, "We began this society about ten weeks ago; it is composed chiefly of tradesmen and shopkeepers. The enclosed will inform you of the principles we set out upon. When we first associated, we flattered ourselves that no other societies in the nation were formed upon the same principles; but in two or three weeks afterwards we were most agreeably informed of our brethren at Sheffield having taken the lead in so glorious a cause; we immediately wrote to them, and were answered without delay, expressing a wish to unite with us, for promoting the ends we have in view, and we are assured of success, by persevering prudently, and with unanimity."

Upon the 18th of April 1792, in furtherance of this plan, you will find Mr Hardy writes a letter to the president of the society in the Borough. Now that is the society, the principles of which I have so distinctly stated before as leading to *representative government*, as the only security for liberty in the country. It appears that their declarations had also been sent to the London Corresponding Society; and Mr Hardy, upon the 18th of April 1792, says, I am ordered by the London Corresponding Society to send a copy of their resolutions to the society that meets at the Three Tuns Tavern, in the Borough, established on purpose for restoring the rights of election, or, in other words, to obtain an equal representation of the people of this nation in Parliament."

Now they had avowed, and avowed in their declaration, that their object of a representation of the people in Parliament was

precisely that more extended one in its principle which obtained at the time of the Commonwealth in England, namely, a representation of the people in Parliament, termed a Parliament, but without King or Lords, a *representative government* :—" We should be very happy to enter into a correspondence with your society, as we are all engaged in the same grand and important cause, there is an absolute necessity for us to unite together, and communicate with each other, that our sentiments and determinations may centre in one point, viz. to have the rights of man re-established, especially in this nation ; but our views of the rights of man are not confined solely to this small island, but are extended to the whole human race, black or white, high or low, rich or poor. I give you the following as my own opinion—perhaps you may think it a singular sentiment." And then an opinion is given, which it is my duty to state, though I do not understand it. " That the King and the nobles, as much as the peasant and ignoble, are equally deprived of their rights. Our society meets every Monday night."

Gentlemen, there is an answer to this, from a person of the name, I think, of Favell, who is chairman of the Friends of the People in Southwark. He says, " I duly received your letter, containing the resolutions of the London Corresponding Society, which I have communicated to our society in the Borough ; and I am directed to return them the thanks of that society, and to assure them they shall cordially unite with them, and all similar societies throughout the kingdom, in endeavouring to effect those great objects for which they are associated, namely, to engage the attention of their fellow-citizens to examine the general abuses of Government, and to exercise their deliberative wisdom in a calm but intrepid manner in applying those remedies." This is in April ; and in August they expressly tell you that there was to be no remedy from Parliament. " In applying those remedies which the country at large may ultimately require ; and they sincerely agree with you in hoping that the long-neglected rights of man will be restored, not only in this country, but in every part of the globe where man may dwell. We shall very soon transmit you a copy of our declaration, and hope for your further correspondence."

A letter and resolutions from the Revolution and Constitutional Societies at Norwich, dated 26th of April 1792, were read at the meeting of the Society for Constitutional Information on the 4th of May following. They distinctly state that Mr Paine's books were to be the medium through which the prejudices that had grown up under the British Government were to be got rid of, and the Constitutional Society return them their thanks in these words :—" This society receives the above communication with the most heartfelt satisfaction, and desires earnestly to concur and co-operate with these societies in their laudable objects ; that the secretary do inform them of the same, and that this society has unanimously

elected the twelve members of the Norwich societies to be associated members of this society."

Upon the 11th of May 1792, the Constitutional Society resolved that there should be a communication from that society with the Society of the Friends of the Constitution at Paris, known by the name of Jacobins. They send an address to them, which is in these words:—" Brothers and fellow-citizens of the world,—The cordial and affectionate reception with which you have honoured our worthy countrymen, Mr Thomas Cooper, and Mr James Watt, members of the Society of Manchester, and united with our society, has been communicated to us by the correspondence of those gentlemen.

" In offering you our congratulations on the glorious revolution which your nation has accomplished, we speak a language which only sincerity can dictate.

" The formality of courts affords no example to us. To do our thoughts justice, we give to the heart the liberty it delights in, and hail you as brothers.

" It is not among the least of the revolutions which time is unfolding to an astonished world, that two nations, nursed by some wretched craft in reciprocal hatred, should so suddenly break their common odious chain, and rush into amity.

" The principle that can produce such an effect is the offspring of no earthly court; and whilst it exhibits to us the expensive iniquity of former politics, it enables us with bold felicity to say we have done with them.

" In contemplating the political condition of nations, we cannot conceive a more diabolical system of government than that which has been generally practised over the world, to feed the avarice and gratify the wickedness of ambition; the fraternity of the human race has been destroyed, as if the several nations of the earth had been created by rival gods; man has not considered man as the work of one Creator.

" The political institutions under which he has lived have been counter to whatever religion he professed.

" Instead of that universal benevolence which the morality of every known religion declares, he has been politically bred to consider his species as his natural enemy, and to describe virtues and vices by a geographical chart.

" The principles we now declare are not peculiar to the society that addresses you; they are extending themselves with accumulating force through every part of our country, and derive strength from an union of causes which no other principles admit.

" The religious friend of man, of every denomination, records them as his own; they animate the lover of rational liberty, and they cherish the heart of the poor, now bending under an oppression of taxes, by a prospect of relief.

" We have against us only that same enemy which is the enemy of justice in all countries, a herd of courtiers fattening on the spoil of the public.

" It would have given an additional triumph to our congratulations, if the equal rights of man, which are the foundation of your declaration of rights, had been recognised by the governments around you, and tranquillity established in all ; but if despotisms be still reserved to exhibit, by conspiracy and combination, a further example of infamy to future ages, that Power that disposes of events best knows the means of making that example finally beneficial to his creatures.

" We have beheld your peaceable principles insulted by despotic ignorance ; we have seen the right hand of fellowship, which you hold out to the world, rejected by those who riot on its plunder ; we now behold you a nation provoked into defence, *and we can see no mode of defence equal to that of establishing the general freedom of Europe.*

" In this best of causes we wish you success ; our hearts go with you ; and in saying this, we believe we utter the voice of millions."

Gentlemen, this address was signed by the chairman of the Constitutional Society, and transmitted to Mr Watt, at Paris ; and, upon the 28th of May 1792, was ordered to be published.

After this, the principles of Mr Paine, which, you observe, contain the doctrines that I have been stating to you, were carried further in a third book (I mean in that book called, " The Address to the Addressers," which I shall also be able to give in evidence to you). Mr Paine having there gone the length of asserting the folly, absurdity, and wickedness of the Government under which we live ; not only of asserting the incompetency of government, as it is constituted, to change itself, but having asserted that a conventional representation of the people, in that sense in which we speak of it, must do this work, he proceeds to the extent of stating the plan and form of an organisation, of that sort, upon which the convention was to be framed.

Gentlemen, it was impossible not to apply to the justice of the law against the attack made upon our Government by the person who went to the extent I am now stating, with the approbation, published over and over again, of these societies, who, in their corporate character, if I may so speak, could not be prosecuted for doing it—it became necessary to ask a jury of this country whether these doctrines were to be tolerated ? What is the consequence of that ? It is, that these societies immediately enter into subscriptions for the support of Mr Paine, and they consider themselves as engaged in propagating his works in that way, in which no work ever was propagated,—to the intent to produce that convention without which the nation, in no organisation of its government,

could be said, according to them, to exist in a state of freedom as a nation.

Gentlemen, you will not be surprised if it also appears that, in going on progressively to the execution of the mischief that was intended, they became more mischievous; and you will find members parting from the society, expressly telling them that they meant to destroy the Government of the country; that they cannot, therefore, stay among them; and to which members, as far as appears from any information that I have had, they did not condescend to explain themselves; to say, No, you have mistaken our object, this is not what we mean; but they leave them unanswered, and go on to execute the purposes they were about.

Having come to those resolutions in order to support Mr Paine in these prosecutions, they publish the resolutions, they publish the books of Mr Paine; they publish these resolutions in the various newspapers (the editors of these newspapers insuring, if I may so say, themselves against the hazards of the law, some for more, some for less, and they risk the hazard of propagating the doctrines, provided the consideration paid is ample enough as a premium for the risk); and then these publications are sent down to the country to various places in hundreds and thousands—I am sorry to say, to persons of all professions—to distribute; I am sorry to say, to some of the most sacred professions, whose names will appear to you when they come to be read—and this mode of propagating these doctrines is adapted to the utter impossibility of detection, and for the very purpose of having that effect—to make the law of the country unequal to the mischief which it was to meet.

At this time a proclamation was issued by the executive government of the country, in order to restrain these publications; and both the societies, you will find, cloaking themselves under the words, "a full and fair representation of the people," which words they have never condescended to explain, which words never do exist in any text of any writing of theirs, as I can find, with the mention of a King, or other house of legislature; they vilify the proclamation, and make the very means the executive government took to suppress the mischief a mean by which they should spread the effect of the mischief more widely and diffusely than otherwise they could have done.

Upon the 24th of May 1792, there is a letter sent from Mr Hardy, I believe not in his own handwriting, but I believe in the handwriting of Mr Vaughan, whom I before named to you, in which he states that, by the direction of the London Corresponding Society, he had the honour of enclosing to them a copy of their address and regulations, which he requests they will communicate to the Constitutional Society. The thanks of the society were given to them for this; and that is a publication more guarded than another you will find published upon the 6th of August 1792.

After stating their constitution, which I before mentioned to you, it says:—"But as Providence has furnished men in every station with faculties necessary for judging of what concerns themselves, shall we, the multitude, suffer a few, with no better right than ourselves, to usurp the power of governing us without control? Surely not: let us rather unite in one common cause to cast away our bondage, being assured that in so doing we are protected by a jury of our countrymen, while we are discharging a duty to ourselves, to our country, and to mankind."

Gentlemen, you will find, from a paper of the 6th of August, that that which they supposed was to meet with protection from a jury of the country, was a combination to reform the government of the country by means other than application to Parliament—which binds together, with the King, as the great political body of the country, the whole system under which we live.

Gentlemen, the London Corresponding Society, as to the King's proclamation, followed the example of the Constitutional Society, and on the 31st of May 1792, in a paper that will be read to you, they vilify the proclamation; and this paper having been communicated by the London Corresponding Society to the Constitutional Society, they, aware of the nature of it, order that that paper should be published in such newspapers as *will* receive the advertisements of this society. They were pretty well aware that they were of such a nature as made it somewhat hazardous to publish them.

You will find a letter, dated the 14th of June 1792, from certain persons styling themselves the editors of the *Patriot* (who they are I am not able to state to you, but who, for the purposes of these societies, thought it necessary to conceal their names), in which they desire the Corresponding Society to take an opportunity of enlightening the public mind by publications, by advertisements, by circulating those papers in villages to country farmers, desiring, as I stated, to conceal their name, but requesting that the papers might be sent to a person who holds an important situation in a subsequent part of this business—a Mr Gale, a bookseller at Sheffield.

Gentlemen, there will be laid before you various parts of the proceedings of the Constitutional Society which relate to Mr Paine, which I shall now pass over, except for the purpose of calling your attention to another publication of his upon the 6th of June 1792, and which was addressed to Mr Dundas. You will likewise find that that book, which will be given you in evidence, distinctly disavows all hereditary government—all monarchy, under whatever qualifications; and then, for the purpose of circulating this doctrine, as they had before circulated the doctrines in other works of this gentleman, they order, "that twelve thousand copies of that letter shall be printed for the society, for the purpose of being transmitted to our correspondents throughout Great Britain, and that a committee be appointed to direct the same."

Gentlemen, I pass on now to the 6th of August 1792, at which time there appears to me to have been an extremely important transaction in the London Corresponding Society; it is the propagation of an address of that date, which first develops, as it seems to me, though in somewhat of covert language, the determination of these societies to work what they call a reform without any communication whatever with that Parliament which they held to be incompetent to bring about the business.

You will find that, upon the 8th of August, Mr Hardy wrote a letter to Mr Tooke; that he sent him a proof copy of this address; that he hoped it would merit his attention and his approbation; that he should be exceedingly happy to be favoured with his opinion of it before it was printed.

The address, after stating what they considered as the grievances of the country, states this:—"Such being the forlorn situation of three-fourths of the nation, how are Britons to obtain information and redress? Will the Court, will Ministry afford either? Will Parliament grant them? Will the nobles or the clergy ease the people's sufferings? No. Experience tells us, and proclamations confirm it, that the interest and the intention of power are combined to keep the nation in torpid ignorance."

It then states the only resource to be in these societies; it then states various detailed reasons, which you will hear, and then proceeds to this effect:—

"Numerous other reforms would undoubtedly take place, even in the first session of Parliament so elected, dependent only on their electors, the people; untorn therefore by faction, undivided by party, uncorrupted by Ministry, and uninfluenced but by the public good. Every transaction would tend to reform, and a strict economy, its natural consequence, might soon enable us to reduce our taxes; and by the integrity of Parliament, that reduction would light upon such objects as best might relieve the poor; this to the people would prove an advantageous and a novel session, and to an honest Parliament not a tiresome one.

"Therefore, Britons, friends, and fellow-citizens, with hand and heart unite, claim what is your right, persevere and be free, for who shall dare withstand our just demands? Oppression, already trembling at the voice of individuals, will shrink away and disappear for ever, when the nation united shall assert its privileges and demand their restoration."

Gentlemen, the address you will find was circulated with infinite industry to every corresponding society in the kingdom, conveyed through every possible channel, the doctrine adopted by all the affiliating societies; and the plan, which they went upon from this 6th of August 1792, appears to have been a plan to redress themselves by their own power and by their own strength, and not by application to that Parliament which alone can act in legislation:

it seems to me to be impossible that you can mistake what is meant by this paper, if you will give your more particular attention to a paper which was received from a society at Stockport, and found in the possession of Mr Hardy upon the 27th of November 1792. This, after adverting to those numerous grievances stated in the address of the 6th of August 1792, is to this effect:—

“In obedience to the wishes of the society here, I have the pleasure of acknowledging the honour of your letter, and the packet which the kindness of our brothers of the London Corresponding Society so opportunely presented us with.

“It is doubly deserving our thanks, as it shows your kindness, and as it will be useful in the formation of our infant society; we stand much in need of your experience in this particular, and we doubt not of your best assistance; we are surrounded by a majority, a formidable one indeed in power, abilities, and numbers, but we are not dismayed.

“We have carefully perused the addresses, and I am to observe upon their contents in general, that the sentiments hardly arise to that height which we expect *from men sensible to their full claims to absolute and uncontrollable liberty, i.e., unaccountable to any power which they have not immediately constituted and appointed.*

“These are our sentiments, whatever may be yours; though, in the present state of political knowledge, it may be prudent not to avow them openly. We desire your sentiments on the means of accomplishing that object, which we presume you have in view in common with us; we think it expedient that we should perfectly understand each other in the beginning, lest the appearance of disunion might furnish matter of triumph to our enemies; we observe one expression,—you will take notice that Mr Hardy at this time was a member both of the London Corresponding and the Constitutional Societies,—“we observe one expression, which says, ‘numerous other reforms would take place,’ &c. &c.; but we ask how is that Parliament to be chosen? *Can we expect it from the present order of things?* Would not all the evil be done away at once *by the people assembling in convention?* Does it appear probable that the odious laws which we complain of will be abolished any other way? Can the grievances arising from aristocracy be redressed while the — retains its present authority in the legislature?”—whether this blank is to be filled up with Crown or the House of Lords, is for you to judge,—“retains its present authority in the legislature? Is the universal right of conscience ever to be attained while the B— maintain their seats on the —

“Your thoughts on those important points we most earnestly desire may be transmitted to us as soon as possible, not directed as the last,”—and this you will find often occurs: letters sent under a feigned direction,—“we fear it will excite suspicion.”

The Stockport society say of the address of the 6th of August 1792, sent to them, that they think it hardly amounts to sentiments such as theirs, namely, that they must have absolute and uncontrollable liberty, unaccountable to any power which they have not immediately constituted. That could not be the King and Parliament of Great Britain. They say, "we presume you have the same view in common with us, and we desire to have your sentiments upon the means of accomplishing that object." What object? The object of putting themselves in a situation of being unaccountable to any power which they themselves had not immediately constituted and appointed. How was that to be done?—was it to be done by Parliament? The address of the 6th of August had disavowed that it was to be done by Parliament. Is it to be done while the other parts of the legislature hold their situation in the legislature? We presume you have the same object: tell us what you think upon this occasion. This was the occasion upon which the address of the 6th of August ought to have been explained, if they meant to disavow that they had any such object. But what is the answer? The answer in effect is: That full and fair representation of the people, that we are aiming at, is that which is to be the mediate or immediate instrument of removing all the grievances we labour under, though prudence does not permit us to speak all we think upon the subject.

"With infinite satisfaction the London Corresponding Society's Committee perused your letter; they are happy to learn your steady determination, in spite of all obstacles, to pursue that sole means of political felicity, a perfect representation of the people."

Now, what was the sole means of this political felicity—a perfect representation of the people? Why, the formation of a power by the people, making themselves unaccountable to any other power, to any power but that which they had immediately themselves constituted, namely, an assembly by a convention of the people. Then, why don't they speak out? They say, "With regard to our publications, our sentiments are expressed in as strong terms as prudence will permit, yet plain enough to convince the public that, while we expect everything from an honest and an annual Parliament,"—a body might exist under the term Parliament in a commonwealth, as well as under a King—"nothing short of such a *senate*, chosen by the whole nation, will satisfy us

"True generosity, the characteristic of this nation, and of all unperverted men throughout the globe, calling upon us to countenance at this juncture the arduous struggle of the French nation against despotism and aristocracy, those foes to the human race, we have resolved upon addressing the French National Convention." You will permit me to observe, this was upon the 11th of October 1792. The King of France was deposed in effect upon the 10th of August 1792. This passage, in the Transactions of this society,

appears to me to be peculiarly worthy your attention :—" Without entering into the probable effects of such a measure,—effects which your society will not fail to discover,—we invite you to join us; and, to that end, herewith you have a copy of our intended address. If you approve the idea, and will concur in sending it, be pleased to return us, without delay, a copy signed by your president; we will then associate your body with ours, and with some others who have already assented to the measure. If, on the contrary, you disapprove that mark of zeal towards the only nation that has hitherto undertaken to restore to mankind its just rights, please to communicate to us your objections." This was upon the 11th of October 1792. Upon the 6th of October 1792, Mr Barlow (whose name occurs before with respect to his publication relative to the privileged orders) writes a letter to the Society for Constitutional Information, accompanied with a book called " Advice to the National Convention of France;" and you will be pleased to observe that Mr Barlow, and a Mr Frost, afterwards, in the month of November, were sent with an address from the Constitutional Society to Paris, as their delegates for that purpose. The letter of Mr Barlow is in these words:—

" I have lately published a small treatise, under the title of ' A Letter to the National Convention of France on the Defects of the Constitution of 1791, and the Extent of the Amendments which ought to be applied.' Although the observations contained in this letter are more particularly applicable to the French nation in the present crisis of its government, yet, as the true principles of society are everywhere the same, their examination cannot be unseasonable in any nation, or at any time; believing, therefore, that the subject of this treatise will not be thought foreign to the great object of your association, I present a copy of it to you, with the same confidence as I have done to the National Convention, and to the Constitutional Society at London, a confidence arising from the full persuasion that the work is founded in truth and reason. I take the liberty, at the same time, to send you a copy of another publication, entitled ' Advice to Privileged Orders.' The present disposition in Europe towards a general revolution in the principles of government is founded in the current of opinion, too powerful to be resisted, as well as too sacred to be treated with neglect; and it is the duty of every individual to assist, not only in removing the obstructions that are found in the way of this revolution, but in ascertaining, with as much precision as possible, the nature of the object to be aimed at, and the consequence to be expected from the attainment. It is above all things to be desired, that the convictions to be acquired from national discussion should precede and preclude those which must result from physical exertion."

Now, you will give me leave to state to you what the doctrine is in this book for which the Society for Constitutional Information—

Mr Hardy then a member of it—thank Mr Barlow, make him an honorary member, and afterwards depute him to the National Convention of France.

Gentlemen, the doctrine—I can explain it to you generally, without troubling you by reading particular passages—amounts to this: Mr Barlow, after stating the principles of equal active citizenship, which found their way into the constitution of France in 1791, and which constitution had made the King a part of the system of that government, informs them of the glorious victory of the 10th of August, as the papers, which I have to adduce presently, represent it; that it had accomplished finally the effect of those principles, which he understands to be the principles of those to whom he was writing; that it is impossible they should consist with this sentiment, *that a king could be retained in a government*; that the constitution was at variance with itself; that those who made it had not discovered that, or, having discovered it, they thought the time was not yet come when they could reduce the constitution to that pure government which was the object of these societies; he then tells you, that in government, the maxim being, *that a king can do no wrong*, the maxim ought to be, *that he can do no good*.

This gentleman, so stating his doctrine as an explanation of the principles upon which they are acting, is voted by them an honorary member, and afterwards sent to Paris with the papers which I am about to read to you. A great deal of evidence will be laid before you, to prove that they had beat up all the country for letters and addresses to express the same principles to France, not on account of the cause of France, but of the cause of England, and with a view to introduce the same effects into England. I shall state but two of these addresses, because they seem to contain the effect of all the rest that were actually sent.

The London Corresponding Society first of all communicated to the Constitutional Society, in the month of October 1792, their intention of sending an address to France. The Constitutional Society fully approve the purpose; they see the end that it aims at, and they determine not to concur in the same address, but to send a separate address; and in their paper you may see the principles of both to be principles which were expressed for the very purpose of aiding the co-operation of the societies in excluding the King from the government of the country, and of raising a republic. This is the letter:—

“ Frenchmen, while foreign robbers are ravaging your territories under the specious pretext of justice, cruelty and desolation leading on their van, perfidy and treachery bringing up the rear, yet mercy and friendship impudently held forth to the world as the sole motive of their incursions; the oppressed part of mankind”—that is, Great Britain—“ forgetting for a while their own sufferings, feel only for yours, and with an anxious eye watch the event, fer-

rently supplicating the Almighty Ruler of the universe to be favourable to your cause, so intimately blended with their own"—that cause which, upon the 10th of August, had excluded the King from the government of the country. "Frowned upon by an oppressive system of control, whose gradual but continued encroachments have deprived this nation of nearly all its boasted liberty, and brought us almost to that abject state of slavery from which you have so emerged, five thousand British citizens, indignant, manfully step forth to rescue their country from the opprobrium brought upon it by the supine conduct of those in power; they conceive it to be the duty of Britons to countenance and assist, to the utmost of their power, the champions of human happiness, and to swear to a nation, proceeding on the plan you have adopted, an inviolable friendship. Sacred from this day be that friendship between us, and may vengeance to the utmost overtake the man who hereafter shall attempt to cause a rupture!

"Though we appear so few at present, be assured, Frenchmen, that our number increases daily. It is true that the stern uplifted arm of authority at present keeps back the timid; that basely circulated impostures hourly mislead the credulous; and that court intimacy with avowed French traitors has some effect on the unwary and on the ambitious; but with certainty we can inform you, friends and freemen, that information makes a rapid progress among us; curiosity has taken possession of the public mind; the conjoint reign of ignorance and despotism passes away; men now ask each other, What is freedom? what are our rights? Frenchmen, you are already free, and Britons are preparing to become so; casting far from us the criminal prejudices artfully inculcated by evil-minded men and wily courtiers, we, instead of natural enemies, at length discover in Frenchmen our fellow-citizens of the world, and our brethren by the same Heavenly Father, who created us for the purpose of loving and mutually assisting each other, but not to hate, and to be ever ready to cut each other's throats at the command of weak and ambitious kings and corrupt ministers; seeking our real enemies, we find them in our bosoms, we feel ourselves inwardly torn by and ever the victim of a restless and all-consuming aristocracy, hitherto the bane of every nation under the sun. Wisely have you acted in expelling it from France.

"Warm as our wishes are for your success, eager as we are to behold freedom triumphant, and man everywhere restored to the enjoyment of his just rights, a sense of our duty, as orderly citizens, forbids our flying in arms to your assistance. Our Government has pledged the national faith to remain neutral in a struggle of liberty against despotism. Britons remain neutral! O shame! But we have trusted our King with discretionary powers; we, therefore, must obey. Our hands are bound, but our hearts are free, and they are with you.

" Let German despots act as they please, we shall rejoice at their fall ; compassionating, however, their enslaved subjects, we hope this tyranny of their masters will prove the means of reinstating in the full enjoyment of their rights and liberties millions of our fellow-creatures.

" With unconcern, therefore, we view the Elector of Hanover"—that is, the King of Great Britain—" join his troops to traitors and robbers ; but the King of Great Britain will do well to remember that this country is not Hanover. Should he forget this distinction, we will not.

" While you enjoy the envied glory of being the unaided defenders of freedom, we fondly anticipate in idea the numerous blessings mankind will enjoy ; if you succeed, as we ardently wish, the triple alliance (not of *crowns*, but) of the *people of America, France, and Britain*, will give freedom to Europe, and peace to the whole world. Dear friends, you combat for the advantage of the human race ; how well purchased will be, though at the expense of much blood, the glorious unprecedented privilege of saying,—Mankind is free : tyrants and tyranny are no more : peace reigns on the earth, and this is the work of Frenchmen ! "

Gentlemen, this address, which was sent by that society, was followed by another from the Society for Constitutional Information, upon the 9th of November 1792, which seems likewise to state their principles.

" Servants of a sovereign people, and benefactors of mankind,—We rejoice that your revolution has arrived at that point of perfection which will permit us to address you by this title"—Servants of a sovereign people, that is not the character of a British government ; this is the principle of the Southwark resolutions—" it is the *only one* which can accord with the character of true legislators. Every successive epoch in your affairs has added something to the triumphs of liberty, and *the glorious victory of the 10th of August* has finally prepared the way for a constitution which, we trust, you will establish on the basis of reason and nature." Mr Barlow had in effect said (and they had made him an honorary member, and had transmitted their address by his hands), that no constitution could reform upon the basis of reason and nature, that left a king in the government, however the government was modified.

They proceed thus in their address—" Considering the mass of delusion accumulated on mankind to obscure their understandings, you cannot be astonished at the opposition that you have met both from tyrants and from slaves ; the instrument used against you by each of these classes is the same : for, in the genealogy of human miseries, ignorance is at once the parent of oppression and the child of submission.

" The events of every day are proving that your cause is

cherished by the people in all your continental vicinity ; that a majority of each of those nations are your real friends, whose governments have tutored them into apparent foes ; and that they only wait to be delivered by your arms from the dreadful necessity of fighting against them.

"The condition of Englishmen is less to be deplored ; here the hand of oppression has not yet ventured completely to ravish the pen from us, nor openly to point the sword at you."

They then go on to say :—"From bosoms burning with ardour in your cause, we tender you our warmest wishes for the full extent of its progress and success ; it is indeed a sacred cause ; we cherish it as the pledge of your happiness, our natural and nearest friends, and we rely upon it as the bond of fraternal union to the human race, in which union our own nation will surely be one of the first to concur.

"Our government has still the power, and perhaps the inclination, to employ hirelings to contradict us ; but it is our real opinion, that we now speak the sentiments of a great majority of the English nation. The people here are wearied with imposture, and worn out with war ; they have learned to reflect that both the one and the other are the offspring of unnatural combinations in society, as relative to systems of government, not the result of the natural temper of nations as relative to each other's happiness.

"Go on, legislators, in the work of human happiness ; the benefit will in part be ours, but the glory shall be all your own ; it is the reward of your perseverance, it is the prize of virtue, the sparks of liberty preserved in England for ages, like the corruscations of the northern aurora, serving but to show the darkness in the rest of Europe. The lustre of the American republic, like an effulgent morn, arose with increasing vigour, but still too distant to enlighten our hemisphere, till the splendour of the French Revolution burst forth upon the nations in the full fervour of a meridian sun, and displayed"—attend to the words—"in the midst of the European world the practical result of principles which philosophy had sought in the shade of speculation, and which experience must everywhere confirm,"—the principles of Mr Paine, who went over to form one in that Convention, the existence of which shows the practical result of those principles which philosophy had sought, and which experience was to confirm—"it dispels the clouds of prejudice from all people, reveals the secrets of all despotism, and creates a new character in man.

"In this career of improvement your example will be soon followed ; for nations, rising from their lethargy, will reclaim the rights of man with a voice which man cannot resist."

Gentlemen, it will not be matter of surprise to you, that letters, such as these to the National Convention in France, should have produced opinions in that country respecting the attachment of

individuals in this to their government. It is not therefore very extraordinary that, upon the 19th of November 1792, that famous decree passed of fraternisation with all subjects in all countries, who choose to resist the governments under which they live; but I think you will be surprised that any man could receive in this country, and read with approbation, and enter upon their proceedings, the answers which these addresses brought from France, and which were read in the presence of the prisoner at the bar, without being astonished that they did not at least take some means to reject from them the imputation that they meant, in their own country, all that these answers suppose they mean, and all that these answers promise to assist them in accomplishing.

You will find, upon the 14th of December 1792, that a letter from the Society of the Friends of Liberty and Equality, sitting at Laon, the head of the department of the Aisne, to the Patriotic Society of London, called the Society for Constitutional Information, is read, and referred to their committee of correspondence: it is in these words:—"The Society of the Friends of Liberty and Equality sitting at Laon, the head of the department of the Aisne, to the Patriotic Society of London, called the Society for Constitutional Information.—Generous republicans, the philanthropic gift that you have presented to the warriors of France"—they had sent some shoes, and were at that time thinking of giving them some arms—"announces with energy the great interest that you take in the sacred cause which they are defending. Accept the thanks of a society that does honour to itself in esteeming you. The time perhaps is not far distant when the soldiers of our liberty shall be able to testify their gratitude to you: then their arms, their blood itself, shall be at the service of all your fellow-citizens, who, like you, acknowledge no rights but the rights of man; then France and England shall form together a treaty of union as lasting as the course of the Seine and the Thames; then there, as here, there shall exist no other reign but that of liberty, equality, and friendship. May this day of felicity and glory soon shine upon the horizon of two nations formed to admire each other!"

Gentlemen, they then enter upon the minutes of the society another letter from another fraternising society,—whether one of those societies which they speak of in the beginning of 1792, as affiliating societies in France, or not, I do not know;—whether they had been assisting to reduce their principles into practice I do not know; but it is clear that the affiliating society in France offered them their assistance for that purpose. Accordingly, you will find that the Society of the Friends of Liberty and Equality, established at Macon, write to the Constitutional Society at London, adverting to what they had said in their address to the nation about the glorious victory of the 10th August 1792, the circumstances of which shall be described to you in evidence, be-

cause you will find that some of the persons who are charged in this indictment (and whose conduct in this conspiracy will, upon the clearest principles of law, affect all of them) were then present in Paris. They write thus:—"Yes, citizens, our brethren and friends, the 10th of August 1792 shall be distinguished"—what, in the annals of France?—"distinguished in the annals of the world, as the day of the triumph of liberty. Our first revolution"—(Mr Joel Barlow or Mr Paine, one should have thought, had wrote it)—"our first revolution did but show to us the salutary principles of the imprescriptible rights of man: all, except the faithless and the enemies of humanity, adopted them with enthusiasm. It was then that we formed ourselves into a society, in order the better to impress them upon ourselves, and afterwards to teach them to our fellow-citizens.

"Our first constitution had consecrated them, but had not always taken them for its base: the dominion of the passions, the force of habit, the impression of prejudices, and the power of the intrigues employed in our constituent assembly, found the secret to preserve sufficient authority to our tyrants, to extinguish at some time the sacred rights of nature, and to re-establish despotism on its throne of iron.

"But royalty, thus preserved, was not content with the victory secured to it by a set of men, the greatest part of whom it had corrupted. It was impatient to reap the fruits that it appeared to promise itself; but its too great eagerness has hastened its ruin, and secured the triumph of reason.

"The French, proud of their own existence, soon perceived the fruit of their first legislature; became sensible of the imperfections of their first laws, saw that they made a surrender of the rights of liberty and equality which they had embraced; they roused themselves anew to demand at length laws impartial and humane.

"From thence the necessary day of the 10th of August 1792, from thence a second revolution, but a revolution which is only the completion of the first, which has received our vows and our oaths, and which we will bless for ever, if it leads us, as we hope it will, to the happiness of the nation, to the constant maintenance of liberty and equality.

"Let intriguers, fools, and tyrants, calumniate us; we despise them too much to condescend to answer them, and seek for their esteem.

"That which flatters us is the interest that *you* take in our labours: *your* attention has contributed to the success of our arms. We desire your esteem, we are proud of your approbation.

"We smile at the expression of the sentiments that you manifested to our representatives. We behold a nation of brethren rouse itself to support the cause of humanity; we behold the brave English adopt our principles, become our friends: we say to each

other with pleasure, soon will they become our allies; and, uniting our efforts, we shall go on to deliver the universe from the yoke of tyrants, to restore the nations to reason and nature. That day is not far distant, if we may rely on our own courage, and the hope of your alliance. In the meantime, receive our thanks, and correspond with brethren who set a high value on your esteem."

Gentlemen, on the 17th of December 1792, the popular and republican society of another department at the mouth of the Rhone wrote them this letter:—"The Popular and Republican Society of Apt, department of the Mouths of the Rhone, to the Popular Society sitting at London. Live free or die. Citizens, brethren, and friends,—When two great nations, acquainted with their rights, approximated by their commercial connexions and their national situation, formed to live and to act in concert with each other, begin to form the glorious project of uniting themselves for the regeneration of the human race, one may then say with reason that kings are ripe and ready to fall. How glorious it will be for France and England to have formed alone a confederacy destructive of tyrants, and to have purchased at the price of their blood the liberty of Europe; we may say more of the whole universe! Courage, brethren and friends! It is for you to follow in the glorious and hazardous career of the revolution of the world; can you any longer groan under the yoke of a government that has nothing of liberty but the name? for, although your land was inhabited before ours by freemen, can you, without delusion, consider your government as such? Will you content yourselves with a partial freedom? Will the English be satisfied with principles? Will that bold nation, that has produced philosophers the most profound, and that first of all perceived the sparkling rays of freedom, remain a spectatrix in so noble a cause? No, brethren and friends, no; you will soon lift yourselves up against that perfidious Court of St James's, whose infernal policy, like that which found its doom in the Tuilleries, has made so many victims in our two nations, and does disunite them perpetually to rule over them. Your love for liberty has fixed your attention upon the wants of our defenders; your generosity towards them has a title to the acknowledgment of the republic; we are impatient to furnish you the same advantages: the Popular Societies of France desire ardently the epoch that shall permit them to address their voice to the National Assembly of Great Britain, and to offer to the soldiers of liberty of your nation, arms, bayonets, and pikes."

This is the private correspondence between the societies and the Society for Constitutional Information; but some of the persons named in this indictment were present at the scenes I am now going to state, at the bar of the National Convention in France others of them delivering these sentiments by their ambassador,

Mr Barlow, whose principles you have seen, and Mr Frost, of whom I must state it, because I shall prove it, that he has been convicted in this country of coming from that country with the doctrine of No King. They offer these addresses to the National Convention of France in terms the substance of which I will state to you, as far as I understand it to be, and I believe it is an accurate translation.

"Mr Barlow and Mr Frost, English citizens, being admitted to the bar, one of them pronounced the following address." Gentlemen, the actual fact of his pronouncing it will be given in evidence. The date is the 28th of November 1792, nine days after the decree of the National Convention which had promised fraternal assistance to the subjects of any country that found themselves oppressed by any of their casts and privileged orders.

"Citizens of France, we are deputed from the Society for Constitutional Information in London, to present to you their congratulations on the triumphs of liberty. This society had laboured long in the cause with little prospect of success, previous to the commencement of your revolution; conceive, then, their exultations and gratitude when, by the astonishing efforts of your nation, they beheld the reign of reason acquiring an extension and solidity which promised to reward the labour of all good men, by securing the happiness of their fellow-creatures. Innumerable societies of a similar nature are now forming in every part of England, Scotland, and Ireland. They excite a spirit of universal inquiry into the complicated abuses of government, and the simple means of a reform. After the example which France has given, the science of revolutions will be rendered easy, and the progress of reason will be rapid. It would not be strange if, in a period far short of what we should venture to predict, addresses of felicitation should cross the seas to a *National Convention in England*. We are also commissioned to inform the Convention, that the society which we represent has sent to the soldiers of liberty a patriotic donation of a thousand pairs of shoes, which are by this time arrived at Calais; and the society will continue sending a thousand pairs a week for at least six weeks to come; we only wish to know to whose care they ought to be addressed."

Why, gentlemen, am I to be told, then, that in the month of November 1792, those who, in August 1792, had said they could apply with no effect to Parliament, had no idea of such a National Convention in England as that National Convention in France which they were addressing, and from which they were expecting to receive addresses? Am I to be told that they had no idea of such a convention as should overturn the constitution of this country? It is impossible to put such a construction upon such proceedings.

Gentlemen, you will likewise find that the president of the Con-

vention thought it necessary to give an answer to this address. I will state the substance of it: it will be read in evidence; therefore I shall not take up time in looking for it. The president, considering them as generous republicans (and well he might after what had passed), makes an address to them, expressing much the same sentiments as those in which they had addressed him, and then he concludes by saying—"Without doubt the time approaches when we shall soon send congratulations to *the National Convention of England.*"

Gentlemen, you will likewise find that the London Corresponding Society, and the Constitutional Society, endeavoured to excite persons in all parts of this kingdom to send these addresses; that, in point of fact, there are various other addresses sent, of similar import, at the instigation of these societies, and the intent of them, I think, cannot possibly be misunderstood. But take the intent of them to be what you will, let my learned friend tell you, as he will, that there as yet was no war between Great Britain and France, you will allow me to say that there is evidence of a distinct intent that there should be a National Convention in England, and that the French soldiers of liberty should assist, what they would call the soldiers of our liberty, whether there should be a war between Great Britain and France or not; and you will allow me to say that, in that very month of November 1792, a passage occurs in which France does in effect declare war against all nations that did not adopt her principles, and allow the people to put them into execution.

In a conspiracy, as widely extended as this is, I shall undoubtedly insist, before you and the Court, that the acts of individuals, and particularly the acts of persons sent to present addresses to a foreign country, that what they do in reference to these acts, is evidence against all of them; and likewise, that letters, which the persons write relative to the same addresses, are evidence against each of them, whether written by the particular individual or no, as being in the prosecution of the same purpose. Upon the 20th of September 1792, Mr Frost, who was then at Paris, states his notions, in a letter to Mr Tooke, of the real effect of this transaction of the 10th of August 1792, about which time Mr Paine made his first appearance in the National Convention:—"Without the affair of the 10th of August, liberty was over. We dine to-day with Petion. Paine has entered his name on the roll of Parliament, and went through the forms of office with a great deal of nonchalance. We are well lodged, and beside our bedrooms have an entertaining room for members to be shown into, and several have called upon us this morning."

Then you will find that there being a project to send shoes to the soldiers of France, and arms and muskets—with respect to which project the prisoner was a contributor—for the purpose of

having this present from England to France properly distributed in France, the following letter is written to the Mayor of Paris :—

“ Sir, you are in no want of friends in England, who ardently wish to be useful to French liberty; but we wish to know some one of your friends who resides in London, in whom you have an entire confidence, and to whom we may give our money, in the assurance that it will be remitted to you without delay and without fraud. Mr Frost, to whom I intrust this letter, is going to set out immediately with Mr Paine for Paris, and allows me no time for ceremony, if it were necessary. I request you to send me the name of some Frenchman in London, merchant, or other, for the purpose above mentioned. We can now begin the public contribution towards our patriotic gift with a thousand pounds sterling, and I have no doubt but it will amount in time to several thousands. If you consider this step in the same point of view that we do, you will see in it much use to *the common cause* in England and France. I entreat you to give me your sentiments upon the subject, and to point out to me the means by which I may be useful to you.”

This is answered, upon the 1st of October, by Petion, thus: “ You cannot, sir, doubt of my eagerness to second views so useful, which will for ever merit our gratitude, will rivet the links of fraternity between us, and must produce the greatest advantages to *England and France*. I shall have the honour, sir, of sending you, without delay, the name of the person in whose hands you may place the funds which you destine to the support of a cause which, in truth, is that of all people who cherish liberty.”

Gentlemen, it may be in the recollection of perhaps most who now hear me, that circumstances of this sort, which were supposed to be in existence, but which, in fact, were not capable of being proved to be in existence, had excited in this country considerable alarm in the minds of many persons who live in it. This alarm, it seems to have been thought necessary, both in the Constitutional Society, and also in the London Corresponding Society, in some degree to lay asleep, as far as it affected them; they thought it necessary, therefore, to give some declaration, as they call it, of their principles, and I will state to you shortly what that was; but the explanation which the London Corresponding Society gave was thought so little safe, though it was given for the purpose of laying asleep alarms, that it will be distinctly proved to you, that being written, as I am instructed to state to you—(and I do it because I am instructed, and it is my duty)—being written by Mr Vaughan, it was agreed to be stuck up round the town at midnight; that accordingly, a person of the name of Carter, a bill-sticker, was employed for that purpose; that some mistake happened between him and his employers; that having made that mistake, he was not thought a proper person to be employed

in considerable business in the society afterwards. This person was taken up in the act of sticking the bills round this town, which contains this address. He was prosecuted, he was convicted, and lay six months in a gaol in consequence of that conviction; and this was the fate that attended the issuing into the world an address which was to appear, not originally by daylight, but by midnight.

With respect to the address of the Constitutional Society, I think I shall not be thought to make an unfair observation upon it when I say this—that if I had not read to you what I have already read, you would have found it impossible to say what it was, upon reading that paper, that they meant to say, who published it; but after what I have read to you, I think you can have no difficulty to determine that the paper they published, and the paper of the Corresponding Society, were by no means such as were calculated in any manner to disavow those principles, which I think I have shown you satisfactorily, from March 1792, were the principles they acted upon and adopted.

Gentlemen, the address of the London Corresponding Society is in these words:—"Friends and fellow-countrymen, unless we are greatly deceived, the time is approaching when the object for which we struggle is likely to come within our reach. That a nation, like Britons, should be free, it is requisite only that Britons should will it to become so"—that is a passage borrowed from Mr Paine;—"that such should be their will, the abuses of our original constitution, and the alarms of our aristocratic enemies, sufficiently witness. Confident in the purity of our motives, and in the justice of our cause, let us meet falsehood with proofs, and hypocrisy with plainness; let us persevere in declaring our principles, and misrepresentation will meet its due reward—contempt.

"In this view the artifices of a late aristocratic association, formed on the 20th instant, call for a few remarks on account of the declarations they have published relative to other clubs and societies formed in this nation. It is true that this meeting of gentlemen (for so they style themselves) have mentioned no names, instanced no facts, quoted no authorities"—it was a little difficult to do it, unless they had the means of seeing all the correspondences at home and abroad,—“but they take upon themselves to assert that bodies of their countrymen have been associated, professing opinions favourable to the rights of man, to liberty and equality”—mark these expressions,—“and, moreover, that these opinions are conveyed in the terms, *No King, No Parliament.*”

Gentlemen, what I have been endeavouring to state to you is this, that it is necessarily to be inferred from their principles that they did mean to assert, when they were ripe for it, *No King, No Parliament.* It is not my imputation—I do not know whose it was, to which this alludes—that they did express their opinion in the

language, *No King, No Parliament*; but I say that they expressed their opinions in language which, when accurately looked at, as forcibly import the ideas, as if they had used the words *No King, No Parliament*.—"If this be intended to include the societies to which we respectively belong, we here, in the most solemn manner, deny the latter part of the charge." What is the latter part of the charge?—that they do not mean to have a King or Parliament? No: but that the opinions are conveyed in the terms, *No King, No Parliament*. "Whoever shall attribute to us the expressions of *No King, No Parliament*, or any design of invading the property of other men, is guilty of a wilful, an impudent, and a malicious falsehood:—"and then this paper, stating a great deal more, which, in justice to the paper itself, shall be read to you, concludes thus: "Let us wait and watch the ensuing session of Parliament, from whom we have much to hope and little to fear. The House of Commons may have been the source of our calamity, it may prove that of our deliverance; should it not, we trust we shall not prove unworthy of our forefathers, whose exertions in the cause of mankind so well deserve our imitation."

Now, gentlemen, I ask, after concluding this letter, what this means "if Parliament should not do it." If we are ready to admit that Parliament is formed upon principles that make it competent to do the thing, if it please to do it, it is all well; but if it won't—then we will not prove unworthy of our forefathers, whose exertions in the cause of mankind so well deserve our imitation. And referring you back to the correspondence between the Norwich and the London Corresponding Society, to the declaration of the 6th of August 1792, which said they had nothing to look for from Parliament—to the correspondence with the National Convention of France—to the conduct which, in the presence of their delegates, was permitted, and never repudiated by any act of the London Corresponding Society; and referring you, moreover, to the subsequent evidence, which I have to offer to you; I think you will find that the sentiment which is expressed by the author of this paper, upon the 19th of November 1792, was a sentiment which, if followed up by those who continue to hold it, meant that, if Parliament did not give them redress, they would have it by their own force.

With respect to the Constitutional Society, all it thinks proper to say upon the subject is this: "That the object of this society, from its first institution to the present moment of alarm, has uniformly been to promote the welfare of the people"—I beg your attention to these words,—"has uniformly been to promote the welfare of the people by all constitutional means." Now, if I were to stop here, with a view to show you what you are to understand by the words "all constitutional means," are the means I have been stating constitutional means? Will it make the

means more constitutional than they really are because they choose to call them so?—"And to expose in their true light the abuses which have imperceptibly crept in, and at last grown to such a height as to raise the most serious apprehensions in every true friend of the constitution.

"Resolved, 2dly, That this society disclaims the idea of wishing to effect a change in the present system of things by violence and public commotion; but that it trusts to the good sense of the people"—you will find, before I have done, that in April 1793, it could not trust to the good sense of the people,—“when they shall be fully enlightened on the subject, to procure, without disturbing the public tranquillity, an effectual and permanent reform.

"Resolved, 3dly, That the intentions of this and similar societies have of late been grossly calumniated by those who are interested to perpetuate abuses, and their agents, who have been industrious to represent the members of such societies as men of dangerous principles, wishing to destroy all social order, disturb the state of property, and introduce anarchy and confusion instead of regular government.

"Resolved, 4thly, That, in order to counteract the operation of such gross aspersions, and to prevent them from checking the progress of liberal inquiry, it is at this time peculiarly expedient that this and similar societies should publicly assert the rectitude of their principles.

"Resolved, That the said resolutions be adopted, in order for printing in the newspapers."

Now, I desire any person to read that paper through again, and then, gentlemen of the jury, if it is relied upon, be so good as to ask yourselves what is the definite meaning in any one passage in it?

About the same time there is an address from the Manchester society, dated the 14th of December 1792, which appears to have been read in the Constitutional Society, in the presence of the prisoner, and which address has some very particular circumstances about it, for you will find that there was a resolution upon the 14th of December 1792, in these words:—"Read a printed address from Manchester. Resolved, that the said address be approved for publishing in the newspapers."

It appears by a paper, which I shall produce to you, that the words, *Read a printed address from Manchester*, are in the handwriting of Mr Tooke; that the address itself is in the handwriting of Mr Tooke. Whether it was a copy of any address at Manchester or not I do not know. This address appears afterwards to be in print; it is sent for publication. And with a view to show to the public what extent the distribution of libels has arisen to in the progress of a treasonable purpose in London, this address was ordered to be printed, and that a hundred thousand copies of it

should be distributed to their correspondents in Great Britain and Ireland. The report that was made upon it was, that it had been offered to the *Morning Chronicle* and *Morning Post*, and that the paper itself, though drawn by a masterly hand, was such that they durst not venture to print it. I believe it was, however, printed in London. You will occasionally see papers printed in the country, at Manchester, if London will not do it; or if the law of England has reached as far as this side of the Tweed, so as to check the publication of a libel, then it is carried over the Tweed, in order to be published in Scotland, where it might be more safely done.

Now in this paper, which bears date upon the 14th of December 1792, and recollecting, as I hope you will do, what I have already stated to you of the principles of those who were concerned in this transaction, as these principles had been manifested in all the other transactions I have stated to you, you will find there is this passage: he says, "To gull the poor with the insolent falsehood, that the laws are the same for the poor as the rich, or with idle panegyrics on a rotten constitution, which you have not examined, and of which you feel not the benefit. The real friends of the people hear with pity and bear with patience the hourly calumnies to which they are exposed; they entertain, however, no personal enmities, no aversion but to the enemies of the people, and no disrespect to the constitution but where it is hostile to the rights of the people."

Now, why it is said to be hostile to the rights of the people, I think, can be pretty well understood, after what I have stated to you about these communications with France; but it need not be left there, for you will find that this is more distinctly stated in the draught of an answer to a letter which was likewise read and entered among the minutes of this society upon the 26th of October 1792. The draught of the answer seems to have been prepared on the 2d November 1792; it was to be sent to the editors of the *Patriot*. The editors of the *Patriot* were persons who were living at Sheffield; and it will appear by the papers, the substance of which I have not really bodily strength enough to state to you, were affiliated at the same time with the London Corresponding Society, and also with the Constitutional Society, in the propagation of their principles, and this to an extent which no language can do justice to, which it is impossible to describe to you without reading a particular letter, in which they themselves state their mode of proceeding, and which, for the purpose of informing you in this respect, shall be presently read to you. To one of them the following is an answer, and I beg your attention to it, of the 2d of November 1792:—

"We rejoice with you in the increase of the members of the societies of freedom; our bosoms glow with the sentiments—we are

brothers in affection with you and with the freemen of Stockport" (who wrote that letter which I before observed upon, which states that nothing can do but a convention, and that their object is a government immediately constituted by the people; that that cannot be while the Crown or the Lords, as you choose to construe the letter, retain their authority). They add, "Freedom, though an infant, makes Herculean efforts." Now, they meant nothing in the world to the prejudice of the monarchy, they meant nothing in the world but a full representation of the people in a Parliament co-existing with King and Lords. They add, "The vipers, aristocracy"—that is, persons who have got coats upon their backs—"and monarchy"—we have it yet in England, gentlemen—"are panting and writhing under its grasp: may success, peace, and happiness attend those efforts!" That letter, so prepared, will be produced to you, with the corrections of Mr Horne Tooke, in his own hand.

Gentlemen, I have now gone through, as well as I am able—and I hope you will keep in view the case I have stated—the principles and practices of these societies, with all their affiliations. I ought to mention to you, that you will find in the evidence, as it is laid before you, most uncommon industry in picking up fresh connexions. If a paper appeared in the country, stating that a society of any sort was formed, you will find immediate industry to connect them, and affiliate them with the London Corresponding and Constitutional Societies. If these societies professed—as, for instance, the Stockport Society professed—that they would have nothing but a government constituted immediately by themselves, they contrive to give an answer satisfactory to them. If the societies professed attachment to the monarchy, and desired explanation whether they meant Mr Pitt's plan, which Mr Paine laughs at—or whether they meant the Duke of Richmond's plan—or whether they meant, as a letter you will hear by and by says, to rip up monarchy by the roots, you will find they satisfied them all sufficiently to enlist them all for that purpose, which, from their own transactions, I state to be neither more nor less than to do what Mr Paine did in his book—to combine the principles which they stated, when the times were ripe for it, with the practices which were correspondent with those principles; to apply those principles, which were alike the principles of these societies and of the French constitution of 1791, and which Mr Paine, Mr Barlow, and those addresses to the Convention, receiving such answers from the Convention in 1792, declared had produced a constitution in France upon the 10th of August 1792; to apply them not to form that, which in its nature is an absurdity, a royal democracy, but that which upon principle is consistent, though it is a wretched bad government, a *representative government*, to be exchanged here in lieu of our limited monarchy, in lieu of our government, under

which I state it, with a defiance to the world to tell me that I do not state it truly, that a people never did enjoy, since the providence of God made us a people (you may talk about theories as you please), that they never did enjoy, for so long a time together, such a quantum of actual private happiness and private prosperity, public happiness and public prosperity, under any constitution, as we have enjoyed under the constitution, to the destruction or the support of which it is for you to judge whether such means as I have been stating to you were designed to be employed.

The next thing that was to be done was to go on in strengthening themselves by affiliation: and you will find accordingly that they have connexions at Norwich, Sheffield, Leeds, and other places: indeed, there was hardly a county in which they had not affiliated societies, and, if you believe them, in great numbers.

The next step they took was, not that they should have it accomplished—their principles would not let them accomplish it—but it was for the purpose of attaching more and more affiliated societies, that they began now to think, in the year 1793, of making applications to Parliament. Gentlemen, in the course of that year 1793, whilst they are to make applications to Parliament, you will find that they distinctly discuss the utility of doing so. The London Corresponding Society, it will be proved to you, take the opinion of the societies in the country with respect to three distinct propositions. Mark this.

Now, gentlemen, in September 1792, the Stockport society told the London Corresponding Society that there was no hope of doing anything but in a *convention*; the London Corresponding Society give the answer that I have before stated. They began to think of this thing called a Convention in the beginning of the year 1793, and they propose having communication, on the other hand, from the country societies. They state three propositions. What is it we are to do? Are we to make an application to Parliament? Are we to make an application to the King? That would have been, to make application to the King, that he would be graciously pleased, according to the oath which he takes upon his coronation, to give his consent to measures which were to destroy the government of the country as it exists, and of himself as a part of it! Or are we to have a convention? You will find, when the whole of the evidence is laid before you, there is a vast deal of discussion about this measure of a convention, there is a vast deal of discussion about applying to Parliament. The application to the King is thought futile without more debate; but they come to this determination, that things are not yet ripe, but that the application to Parliament, however, may be one means of ripening that which is not yet mature; and then soliciting petitions from all parts of the kingdom, telling those from whom they ask them, that they do not mean that they should have any effect, that they are all waste

paper; canvassing all parts of the kingdom, and getting signatures in the way you will find, they send the petitions to Parliament, which, for myself and my posterity, I thank God Parliament did not attend to; I mean petitions to introduce a change in the government upon the principle of annual suffrage and universal representation.

They determined for the present that they would content themselves with petitions; that this would occasion a great deal of debate; that that would give them a vast variety of opportunities of discussing the point they had had in agitation since 1792; and, if the public mind was not ripe for a convention in 1793, the proceedings and transactions of 1793 had a natural and obvious tendency, when these transactions were made a proper use of, to bring to maturity the project, not yet come to maturity. You will find, therefore, that both the London Corresponding Society and the Society for Constitutional Information keep this object in view.

The Norwich society, upon the 5th of March 1793, write thus to the Society for Constitutional Information, and which you will see had held correspondence also with the London Corresponding Society upon the subject of the same proposition:—"It is with peculiar satisfaction that we are favoured with your correspondence,"—they first say,—“We wish to find out a method of redress; *at present* we see a great propriety in universal suffrage and annual elections; but we beg you will be obliging enough to inform us of what you have collected of the sense of the people by your correspondence. We have to inform you that our worthy Corresponding Societies of London have recently submitted three propositions for our investigation; first, whether a petition to Parliament, or an address to the King, or a convention.”

When I find here the word convention, I think I may address this question to you as men of common sense: If, in August 1792, the London Corresponding Society, by the address which I have read to you, have told you distinctly that they cannot get any redress from Parliament, is it not marvellous how it is to be made out in argument, that, in March 1793, they were to have a convention in order to get it from Parliament, and more particularly to get it from that Parliament which, upon their own principles, *was not competent to give it*, if they had a mind to take it from Parliament?

“Permit us briefly to state our views for your revision; and with respect to the first, we behold we are a conquered people; we have tamely submitted to the galling yoke, and resistance, *in the present circumstances*, is vain; we cannot, we cannot act the man; and, as necessity has no law, we think ourselves under that degrading necessity to state our grievances to the House of Commons, with a request for redress; and should they refuse”—which they did—

"to grant our reasonable petition, we have still got (no thanks to them)"—here is an accurate, a short description of the affiliated societies—"a formidable engine, that will convey the insult to the remotest parts of the kingdom. As to the propriety of the second, we wish to submit to your superior judgment, and should esteem it a favour to be informed of the result; for at present we are dubious of its good consequences. Lastly, a *convention*; and oh! that the period were arrived; but in the present state of affairs, alas! it is impracticable; yet *this* is the object we pursue, and esteem any other means only in subordination to, and as having a tendency to accomplish that desirable end.

"We wish to be in unison with our brethren and fellow-labourers, and should be glad of any information, as soon as it is convenient; and we beg your advice whether it is necessary, as soon as possible, to collect signatures to a petition *for a real representation of the people?*"

This letter, of the 5th of March 1793, having been received from Norwich, you will find that Mr Frost, who had then lately come from France, and was about that time, I believe, talking of No King in this country, in which it is not yet quite lawful to say so, was thought an extremely proper person to draw up a letter in answer to this; and accordingly it is stated upon the books of the society, that Mr Frost was ordered to prepare that answer. However, it got into abler hands; for, unless I am again misinstructed, it was settled by counsel, and the substance I will now read to you. It is dated the 16th of April 1793. "From the secretary of the Society for Constitutional Information to the secretary of the United Political Societies at Norwich. We have to acknowledge with great satisfaction the letter which you favoured us with, dated the 5th instant, relative to the most desirable of all other objects, the reform of a parliamentary representation. The honour you do us in supposing that we are better fitted than yourselves for the promotion of political knowledge, we must disclaim, because we observe, with the greatest pleasure, that our country correspondents have too much zeal and information to want success in their public endeavours, whether at Norwich, at Sheffield, at Manchester, or elsewhere, throughout the nation. In our sincerity for the good of our country we trust that we are all equal, and, as such, we doubt not of our ultimate success.

"We see with sorrow the existence of those evils which you so justly represent as the streams of corruption overflowing this once free and prosperous country. We see with surprise and abhorrence that men are to be found both able and willing to support these corruptions. It is, however, no small consolation to find that others are not wanting, in every point of the nation, of an opposite character, who are ready to remedy, by all laudable and honourable means, the defect in our representation, the usurped

extension of the duration of Parliaments, and other grievances, such as you notice in your letter.

"That the constitution of England has no more of that character it once possessed; that the supposed democracy of the country has become a matter of property and privilege, and that we have therefore no longer that mixed government which our adversaries are praising, when they know it is no longer in our possession, are facts notorious and indisputable. Where, then, are we to look for remedy?" Most assuredly those who had said on the 6th of August 1792, they would not look to Parliament, would not be so inconsistent as to say that they would look to it in April 1793. "To that Parliament of which we complain? to the executive power, which is implicitly obeyed, if not anticipated, in that Parliament? or to ourselves?"

Now, who are ourselves? Why, those affiliated societies!—"Ourselves represented in some meeting of delegates for the extensive purpose of reform, which we suppose you understand by the term *convention*." The Norwich Society writes to the Constitutional Society, and it proposes a convention as the only means of doing this business. The Constitutional Society states that it is to be done only in a convention. Of what?—of themselves. Why, then, I say, upon the 16th of April 1793, the Constitutional Society construed the acts of the 20th of January 1794, which I shall allude to presently, and the 27th of March 1794, because the Constitutional Society said that a convention was a convention of themselves, represented in some meeting of delegates. And for what purpose?—for the extensive purposes of reform. How?—by applying to Parliament? No. Why, this passage states expressly that the reason why they would have a convention was, because they would not apply to Parliament. And can I impute to men of understanding, that are employed in this business—for there are men of understanding enough employed in this business; whether that understanding is properly employed in this business, it is not for me to say anything about,—can I impute anything so absurd to men of understanding as that they meant to form a convention, which convention should carry their petition to Parliament?

"It is the end of each of these propositions that we ought to look to; and, as success in a good cause must be the effect of perseverance and the rising season of the time, let us determine with coolness, but let us persevere with decision. As to a *convention*, we regard it as a plan the most desirable and most practicable." When?—so soon as the great body of the people shall be virtuous enough to join us in the attempt? No; but "so soon as the great body of the people shall be *courageous and virtuous* enough to join us in the attempt." You will see whether the interpretation which I give of the word "courageous" by the manner in which I mean to express it, is due to it or not, by what I have to state to you.

Gentlemen of the jury, with a view to explain this thing called a convention, as contradistinguished from Parliament, give me leave to carry back your attention for a moment to January 25, 1793. In this society, which, in November 1792, had the correspondence with France, which I stated in January 1793, when we were on the eve of a war, and upon the eve of a war which had been produced by the principles which brought fraternisation into this country, and took place soon after that decree of November 1792, you will find that these resolutions were come to: "That Citizen St André, a member of the National Convention of France,"—that convention which had deposed a king, as that which could not exist in a government formed upon the principles of the rights of man, as disclosed by Mr Paine, his fellow-member in that convention,—"as one of the most judicious and enlightened friends of human liberty, be admitted an associated honorary member of this society.

"Resolved, That Citizen Barrère, a member of the National Convention of France, being considered by us as one of the most judicious and enlightened friends of human liberty, be admitted an associated honorary member of this society.

"Resolved, That Citizen Roland, being also considered by us as one of the most judicious and enlightened friends of human liberty, be admitted an associated honorary member.

"That the speeches"—Gentlemen, I particularly request your attention to this—"that the speeches of Citizen St André and Citizen Barrère, associated honorary members of this society, as given in the *Gazette Nationale, ou Moniteur Universel* of Paris, on the 4th, 6th, and 7th of January 1793, be inserted in the books of this society;"—and, as far as this society could effectuate it, they endeavoured also to have these resolutions published in the newspapers, and it will be in proof to you that, in the books of the society, it is resolved that each of these resolutions should be so published.

Now, gentlemen, I shall prove to you, by evidence completely effectual for that purpose, what these speeches were, and then, if you will be so good as to ask yourselves what the Constitutional Society, which in January and February ordered these speeches to be published, meant by a *convention* in that letter of the 16th of April 1793, you will judge whether that convention was to be the means (because they would neither apply to the King, the executive power, nor to the Parliament), was to be the means of handing their application to Parliament; or whether, on the other hand, it was to be the means of introducing, by its own force, a *representative government* in this country; that assembly, which, you will find they insist, would for the time absorb all the powers of government, which, if it did exist, would delegate its legislative power only so long as they choose to delegate it, a body competent to create a legislature, and possessing within itself an eternal

power of reform, an eternal source of revolution. With respect to St André, speaking to the convention, he says, "Your right to decide the fate of kings arises from your being a revolutionary assembly, created by the nation"—a revolutionary assembly created by the nation, in such a state, is at least that thing which I think no good Englishman ever will wish to exist, to see—"a revolutionary assembly created by the nation in a state of insurrection."

Speaking of the trial of the King of France, they say, "This proceeding is of the highest importance to public order, absolutely necessary to the existence of liberty, and connected with whatever is held most sacred by the nation.

"The people of Paris"—this is upon the question whether the person of the King be inviolable, a maxim unquestionably true in the constitution of this country, a maxim perfectly consistent with the civil liberties of the people, because, though the King's person is inviolable, he has advisers, who are violable as to every act that he does. "The people of Paris, by making a holy insurrection against the King on the 10th of August,"—that 10th of August which, in Mr Frost's letter to Mr Tooke, was absolutely necessary to the existence of liberty in France—"deprived him of his character of inviolability. The people of the other departments applauded this insurrection, and adopted the consequence of it. The people have therefore formally interposed to destroy this royal inviolability. The tacit consent of the people rendered the person of the King inviolable; the act of insurrection"—I pray Heaven defend us from the operation of such principles in this country—"the act of insurrection was a tacit repeal of that consent, and was founded on the same grounds of law as the consent itself: the King's person is inviolable only with relation to the other branches of the legislature, but not with relation to the people."

Now, I ask, what did those gentlemen who ordered this speech to be published, that the King's person was inviolable only with relation to the other branches of the legislature, when they were talking of conventions, mean? I am sorry to say that my mind is drawn to the conclusion that they thought the King's person was not inviolable with relation to the people, a convention of whom was to be formed, and was to be formed because an application to Parliament was useless.

Now, let us see the description of a convention. "A convention differs from an ordinary legislature in this respect: a legislature is only a species of superintending magistracy, a moderator of the powers of Government: a convention is a perfect representation of the Sovereign: the members of the Legislative Assembly acted in August upon these principles, in summoning the convention; they declare"—precisely as is declared in the letter I have been reading to you—"that they saw but one measure which could save France, namely, to have recourse to the supreme will of the people, and to

invite the people to exercise immediately that inalienable right of sovereignty which the constitution had acknowledged, and which it could not subject to any restriction. The public interest required that the people should manifest their will by the election of a national convention, formed of representatives invested by the people with unlimited powers. The people did manifest their will by the election of that convention. The convention being assembled, is itself that sovereign will, which ought to prevail. It would be contrary to every principle to suppose that the convention is not alone exclusively the expression of the general will.

"The powers of the convention must, from the very nature of the assembly, be unlimited with respect to every measure of general safety, such as the execution of a tyrant. It is no longer a convention if it has not power to judge the King: a convention is a constituent body, i.e., a body that is to make a constitution for the people; a legislature makes laws under an established constitution, and in conformity to it. It is despotism when, in the ordinary and permanent establishment of a state, there is no separation of powers; but it is of the very essence of a constituent body to concentrate for the time all authority; it is the very nature of a national convention to be the temporary image of the nation, to unite in itself all the powers of the state, to employ them against the enemies of liberty, and to distribute them in a new social compact called a constitution."

Gentlemen, after I have stated that to you, I think I cannot possibly be mistaken when I conceive that you can do no otherwise than put the same construction upon this letter which I did.

I will now take the liberty of calling your attention to a letter of the 17th of May 1793, and the answer of the 26th of May 1793, passing over a great many letters, the substance of which you will inform yourselves of by having them read, namely, letters that prove affirmations solicited and granted to Leeds, Tewkesbury, Coventry, and many places in the kingdom, more numerous than I apprehend you will believe, till you see what the number of them is by evidence actually before you.

Gentlemen, I beg leave now to call your attention, in order of time, to a letter of the 17th May 1793, for it begins a correspondence most excessively material with that part of the country in which the convention has been already held; I mean Scotland;—a convention which, I think I shall satisfy you, did, for the time, act upon the principles that I have stated to you, from the speech of Barrère, as far as it could act, and in which I think, at the moment that I address you, if it had not been stopped in the execution of its purposes, but had been joined by those whose acts we are considering this day, you might have seen, in the speeches of a National Convention in Great Britain, a repetition of the language of Barrère, instead of hearing it from me in a court of justice.

Gentlemen, I hold it, in the office that I fill, to be due to the administration of the justice of this country to say distinctly, if I understand the case upon which certain persons were tried for the acts which they did in Scotland, that, if they had been tried for high treason, they would have had no right to complain; no right to complain if the question upon their conduct had been agitated in that shape before a jury of the country.

Gentlemen, upon the 17th of May, a Mr Urquhart going from London, Mr Hardy, and a person of the name of Margarot, celebrated in the future history of this business, join and write a letter. Parliament had, as they expected it would, and as they meant it should, rejected their petition. "The London Corresponding Society eagerly seizes the opportunity of Mr Urquhart going back to Edinburgh, to request of your society a renewal of correspondence, and a more intimate co-operation in that which both societies alike seek, viz., a reform in the parliamentary representation. We are very sensible that no society can by itself bring about that desirable end; let us therefore unite as much as possible, not only with each other, but with every other society throughout the nation. Our petitions, you will have learned, have been all of them unsuccessful: our attention must now, therefore, be turned to some more effectual means; from your society we would willingly learn them, and you, on your part, may depend upon our adopting the firmest measures, provided they are constitutional, and we hope the country will not be behindhand with us."

Now, by "constitutional measures" it is clear that they meant that a *convention*, as contradistinguished from a Parliament, would be constitutional: it is clear they mean it, because they have said it.

Then Mr Skirving writes thus: "Mr Urquhart did me the pleasure to call on Thursday afternoon, and delivered your letter of the 17th inst. I am much pleased with the contents of it, and shall lay it before the first meeting of our societies here, which, however, does not take place till Monday sevensnight. I would have acknowledged the receipt of your favour by yesterday's post, but was too much employed in removing our household to another lodging to attend to anything else." Now, I beg your attention to this, because you will see in the transactions of the people in convention in Edinburgh, that they looked to what they were to do in case of a rebellion as well as any other.

"If either you in England or we in Scotland should attempt separately the reform which we, I trust, seek to obtain, we should, by so doing, only expose our weakness, and manifest our ignorance of the corruption which opposes our important undertaking. If we sought only the extirpation of one set of interested men from the management of national affairs, that place might be given to another set, without affecting the vitals adverse to the system of reform, these might be easily accomplished; but to cut up deep and

wide-rooted prejudices, to give effectual energy to the dictates of truth in favour of public virtue and national prosperity, in opposition to self and all its interested habits, and to withstand and overawe the final efforts of the powers of darkness, is the work of the whole, and not of a part; a work to which mankind till this awful period were never adequate, because never till now disposed to fraternise, not merely or only, I trust, from the sense of the common danger to which we are exposed, but from the ennobling principle of universal benevolence.

"I know no greater service that I can do my country than to promote the union you so wisely desire; and I am happy to assure you that I have hitherto discovered no sentiment in our association adverse to the most intimate and brotherly union with the associations in England.

"I think the minds of all must, in the nature of things, be now turned to *more effectual means of reform*. Not one person was convinced of the necessity of it by the most convincing arguments of reason, together with the most unequivocal expressions of universal desire. What then is to be hoped for from repetition? I am only afraid that the bow in England against reform was so contracted that in returning it may break. You would willingly learn, you say, from us. I own that we ought to be forward in this: we have at once in great wisdom perfected our plan of organisation; and if we were in the same independent state of mind as the people of England, we would be able to take the lead. The associations with you are no more, I fear—excuse my freedom—than an aristocracy for the good of the people: they are indeed moderate, firm, and virtuous, and better cannot be; but we are the people themselves, and we are the first to show that the people can both judge and resolve, if undirected by faction, with both wisdom and moderation.

"I have not a higher wish, in the present exertions for reform, than to see the people universally and regularly associated; because I am persuaded that the present disastrous engagements will issue in ruin, and the people must then provide for themselves; and it would be unhappy, when we should be ready to act with unanimity, to be occupied about organisation, without which, however, anarchy must ensue. We will not need but to be prepared for the event—to stand still and see the salvation of the Lord. Let us therefore take the hint given us by our opposers; let us begin in earnest to make up our minds relative to the extent of reform which we ought to seek, be prepared to justify it, and to controvert objections; let us model the whole in the public mind; let us provide every stake and stay of the tabernacle which we would erect, so that, when the tabernacles of oppression in the palaces of ambition are broken down, under the madness and folly of their supporters, we may then, without anarchy and all dangerous delay, erect at once our tabernacle of righteousness, and may the Lord himself be in it."

Gentlemen, these are things all very easy to be understood.

"How hurtful to the feelings of a reflecting mind, to look back to the wretched state in which the Roman monarchy, enfeebled and broken by its own corruptions, left the nations which it subjected, like sheep without a shepherd; they soon became a prey to every invader, because there was none to gather and unite them. Had they, foreseeing the evil, associated for mutual defence, no robber would have been able to enslave them; they would have given laws to all parties, as well as to themselves; all separate colonies and nations would have sought their alliance; but not having virtue to associate, and heal the divisions, and root out the selfish spirit, which ambition-fostering governments procure to their subjects, they fell under oppressions, from under whose iron sceptre they have never yet been able to deliver themselves.

"We may suppose an event which we deprecate; nay, should we not be prepared for every possible issue of the present unprecedented divisions of mankind. We have a right to be apprehensive of the abilities of our own managers, who are so afraid to depart from precedent that, like men of detail, they may be inadequate to the task of preserving the vessel from shipwreck, now grappling with danger not only great, but new and uncommon. If the present Ministry fail, who after them shall be trusted? It requires little penetration to see the anarchy and discord which will follow; it will be such that nothing short of a general union among the people themselves will be able to heal. Hasten therefore to associate, at least to be ready to associate. If, then, such a broken state of things should take place, the civil broils that would necessarily ensue would soon subside before the united irresistible voice of the whole. Do not, I entreat you, hesitate, thinking such a work premature as yet,"—this is written in May 1793,—“but a month, and then it may be too late; a malignant party may be already formed, and only waiting for the halting of the present managers; it will then be too late to seek to subject to deliberation, after a party has dared the act of rebellion. If you go no further than separate meetings in different towns, we will not be able to confide in your contraternity, because, while in such a state, you may be but the tools of a faction: we could have all confidence, and unite with all affection, in *one assembly of commissioners* from all the countries of the world.”

Gentlemen, observe that expression. This letter, in the beginning of it, speaking with reference to the war, does not know but the palaces of ambition may be all overset; the pillars will tumble with their supporters. Then it says, “We could have all confidence, and unite with all affection, in *one assembly of commissioners* from all countries of the world,—if we knew they were chosen by the unbiassed voice of the people, because they would come up with the same disinterested views and desires as ourselves,

having all agreed to a common centre of union and interest; but we could not confide in fellow-citizens who kept aloof from such union, and would not previously affiliate in one great and indivisible family."

Gentlemen, I have before told you that there was a society at Birmingham. Upon the 10th of June 1793, the London Corresponding Society writes to that society in these terms:—"It is with singular satisfaction the committee of the London Corresponding Society received your letter; they are very glad to see the spirit of freedom springing up in Birmingham, and they make no doubt but that the zeal of your society, and the increase of your numbers, will soon do away the stigma thrown on your town by the unjustifiable behaviour of a Church-and-King mob. We are entirely of your opinion with regard to the necessity of a general union; and we believe, as you do, that when once the country shall have so united,"—what then?—"the Neroses of the day will be forced to yield to the just demand of a long and sore oppressed people."

Gentlemen, the Political Societies at Norwich also write to the London Corresponding Society with respect to this convention upon the 25th of June 1793, in which they say, "We also received your friendly letter, prior to that wherein you stated three propositions: First, a petition to his Majesty, or to Parliament, or a National Convention; and ordered one of your committee to answer it; should be glad if you will inform me whether it was attended to. I gave my opinion on the subject to the Constitutional Society of London, and found their ideas congenial to my own,"—that alludes to the letter they wrote him,—"*viz.*, an address to the King—futile; a petition to Parliament (as a conquered people)—tolerable; a National Convention (if circumstances admitted), best of all."

Gentlemen, you will find that, upon the 28th of June 1793, whilst these societies were holding so much correspondence with respect to this national convention as the only effectual means, it was thought an address to the nation should be prepared. That is not immaterial, because you will find afterwards that the project of a national convention in Scotland was thought by many of the members of it, and many of the members of those bodies, to have failed for want of such a previous address to the nation; and upon this occasion two gentlemen are brought together—I do not know whether one of them at that time was a member of the society or not—but two members are brought together, Mr Horne Tooke and a person of the name of Yorke, who, you will find, was a delegate to the convention in Scotland, and who, you will find, has acted a considerable part in other parts of this country, were to be employed in preparing that address.

Upon the 6th of July 1793, a letter having been received from

the Political Societies at Norwich, the answer, signed by the prisoner at the bar, is given in these terms:—

“Fellow-citizens,—The London Corresponding Society have received, and read with pleasure, your letter of the 25th of June: but the answer which you mention to have been made to our three questions has not yet come to hand: we shall be glad to be informed by your next whether it was ever put in the post-office.

“With regard to the questions themselves, however individuals may have made up their minds on them, the public seemed most to approve the mode of petitioning Parliament.”

Then it states the effect of the petitions. “Exhorting you therefore to throw aside all unavailing complaint, we wish you to occupy yourselves in instructing the people, in introducing and maintaining order and regularity in your own society, and in forming a junction with all others associated for the same purpose throughout the nation, by keeping up a constant correspondence with them; but, above all, orderly and courageously preparing yourself for the event,”—now mark the event,—“for, as it is natural to suppose that those who now prey on the public will not willingly yield up their enjoyments, nor repossess us of our rights without a struggle, which by their behaviour in Ireland,”—that alludes to the bill in Ireland to prevent a convention,—“we have some reason to think they are meditating, and perhaps may intend to effect by means of those very foreign mercenaries who are now paid by the sweat of our brow, and whom, under some plausible pretence, it would be no difficult matter to land on our shore; it may be more advantageous to humanity to show them at first that their opponents are neither mob nor rabble, but an indignant, oppressed people, in whom is not yet entirely extinct the valour of their forefathers.”

Gentlemen, in a letter to Hertford, which is written by the same Corresponding Society, upon the 31st of July 1793, and which society at Hertford had desired to know their principles, they state themselves in the same manner:—“We receive with pleasure your assurance of co-operating with us for a reform in Parliament, an object to which all our endeavours tend, and on which our hearts are invariably fixed. But as your declaration that you will not pledge yourselves to demand universal suffrage and annual Parliaments is followed by no specific plan of reform of your own, we are under some difficulty how to conclude. Perhaps, as *strangers*, you write to us with that prudent reserve which is sometimes necessary, and that idea receives strength from your appearing afterwards convinced that the common object of the two societies is the same, which we readily admit. But, as mutual confidence is the basis of union, and the only rational pledge and support for co-operative exertion, we trust your next will do away every difficulty.

“With respect to universal suffrage and annual Parliaments, a

mature conviction of their justice and necessity for the preservation of liberty and prosperity to the great body of the people, and for securing the independence of Parliament, was our primary inducement to associate. We therefore candidly assure you, that these our principles, as already announced to the public, remain immutable, unconnected with any party whatever; we can consider no reform radical but such as will enable every individual of the community to enjoy the advantages thereof equally with ourselves; for, if ignorance of the nature of government, or the merits of the candidates, be an argument against universal suffrage, as our opponents pretend, the same reasons would equally incapacitate a great majority of those who now enjoy that privilege, to the exclusion of very many thousands much better informed than themselves; not to mention that, under a more equalised mode of government, the people would be at once induced and empowered to improve themselves in useful knowledge. In a word, we know no principle, consistent with justice or reason, by which we could exclude conscientiously any part of the community from an equality of rights and privileges, which every member of society, as he contributes to its support, ought equally to enjoy.

"With respect to annual Parliaments, we will just remark, that good members may be re-elected, whilst twelve months we think fully sufficient for the welfare of millions to remain at the mercy of a bad representative. Having thus unequivocally stated our principles, we shall conclude by observing, that the bill just passed in Ireland is of a nature to awaken the jealousy of every friend to freedom and humanity—will render every exertion justifiable, should a similar attack upon constitutional freedom be attempted here."

In October 1793, the Scotch convention having met, of which we have all of us heard so much out of this place, you will find that a letter had been received from a Mr Sinclair, together with an address from Skirving, who was secretary to the Convention and Friends of the People in Scotland, by the London Constitutional Society; an extraordinary meeting of the society was therefore called, at the "Crown and Anchor," to consider the utility and propriety of sending delegates to a convention of delegates of the different societies in Great Britain, at Edinburgh, for the purpose of obtaining a parliamentary reform.

Upon the 28th of October 1793, this society came to a resolution to send delegates to that convention, and the two persons elected were Mr Sinclair and Mr Yorke; and perhaps one cannot state a more striking instance of the extraordinary power of a small society, affiliating itself with societies spread all over the whole kingdom, than by stating that Sinclair, who was deputed from this society, meeting with other delegates in Scotland, had no difficulty of assuming with others the title of a delegate to the British Conven-

tion, to assert their right to do acts in contradiction to the legislature—than by telling you that this Yorke and Sinclair were deputed from this society by a poll, in which he, who had the majority, had seventeen votes only. Mr Yorke and Mr Sinclair are accordingly sent down, and they go with all the delegation of the power of the people which this Constitutional Society, thus affiliated, could give them; and what they thought it was you will see presently. The London Corresponding Society was not to be backward in forming this convention in Scotland; and, accordingly, you will see in the evidence which I have to state to you a considerable deal of contrivance on the part of the prisoner at the bar in order to bring about that convention in Scotland; for, gentlemen, he writes a letter to the Norwich Constitutional Society, which deserves your very serious attention, in which he expresses himself thus:—"We have to acknowledge, at once, your favours of the 3d of September and 14th instant. Multiplicity of business prevented my answering your first, but will now inform you that the spirit shown in it gave great satisfaction to our society at large. The rejoicings for the capture of Valenciennes were not confined to Norwich alone. The ignorant everywhere else throughout the nation betrayed their imbecility on the occasion—the taking of a town, the slaughtering of thousands of human beings, the laying waste whole provinces, or the enslaving a nation (however great evils they may be), can only retard for a small space of time the progress of truth and reason. Be not disheartened, therefore; pursue your plan, instruct mankind, and constitutionally set your faces against existing abuses. Be assured that many are our friends who only wait a favourable opportunity to openly join us, while our enemies have much enfeebled themselves and their cause by their arbitrary exertions. Despotism is at its last gasp—one or two campaigns more will terminate its existence.

"We are glad to see that you begin to make a proper use of delegation. Where bodies of men are too numerous to be convened easily on every occasion, delegation is the best, and indeed the only way to obtain the general opinion. Scotland, improving on the idea, have not only summoned their own delegates, but also invite those of every other society to attend a kind of convention" (as if Mr Hardy knew nothing about it), "which is to be held at Edinburgh on the 29th instant. The enclosed paper, which I, previous to the communicating your letter to our committee (which will meet only to-morrow), make haste to transmit to you, will show you that your society is included in the general invitation to send delegates to that meeting, which we exhort you to do, if you possibly can; I firmly believe our society will not miss the opportunity of doing the same."

Now you will find that, upon the 5th of October 1793, Hardy, who wrote this letter upon the 17th, wrote to Skirving in this way:

—"With pleasure I peruse your favour of the second instant, but, as yet, have seen nor heard nothing of the two copies of Mr Muir's trial which you mention as being sent to the society and to myself. Be kind enough, notwithstanding, to return that gentleman thanks for his polite attention, and assure him that we view him in the light of a martyr to freedom, as well as Mr Palmer, and that our warmest hopes are, that the oppressors of mankind will either be ashamed or afraid of carrying their revengeful malice into execution.

"The general convention, which you mention, appears to Mr Margarot (to whom alone I have communicated your letter) and myself to be a very excellent measure, *and as such, I could wish you, without delay, to communicate it officially to our society, without any ways mentioning that you had written to me privately.* If in your official letter you should require us to send a deputation to that meeting, I have no doubt but our society would, with pleasure, accept the invitation; and I am persuaded it may do much good. Our freedom, as you justly observe, depends entirely upon ourselves, and upon our availing ourselves of this opportunity, which, once lost, may not be recovered so soon. I am glad to discover by your testimony that I was by no ways mistaken in the high opinion I always had of Lord Daer's patriotism. A title may be a bar to disinterested patriotism, but it seems he has evinced it not to be an insuperable one.

"You are right, it is true, that we have had another general meeting, at which a hastily-composed and suddenly-produced address to the King was read, applauded, and agreed to be presented; but on a cool revisal, the said address being found to be more ill-natured than spirited, more dangerous in its language than advantageous in its object, besides being too long, the committee, with the approbation of the majority of the society, have adopted another, much safer, more apposite, and relating solely to the war. Enclosed you have a copy of it; but you was misinformed when you was told we passed any resolutions at that meeting, for we only came to one, and that rather of a private nature, namely, that the conduct of Sir James Sanderson, in preventing the meeting of the London Corresponding Society, at the Globe Tavern, Fleet Street, was of such a nature as to place him below our censure."

Gentlemen, the London Constitutional Society gave their delegates, Mr Yorke and Mr Sinclair, certain instructions; and I ought here to tell you, by way of explaining the effect of what I am now to state, that the manner of keeping the books of the London Constitutional Society, as I understand it, was this: The resolutions made upon one night were taken upon loose minutes, either by the secretary or by other persons, who acted in his absence or in his presence when he was not doing that duty himself: they were entered, before the subsequent night of meeting, regularly in the book, and

the first thing done upon the subsequent night of meeting was to read the resolutions which were made upon the former night, and to see that they were correct. Now, it will naturally occur that the minutes may explain the book, and the book may explain the minutes. Now, when they come to draw the minutes, which you will have, for the instruction of their delegates at a convention which was to be held in Scotland, the first idea was to instruct those delegates to petition Parliament; but they seem to have recollected that that was a measure which had been abandoned some months before by all the societies with whom they were affiliated: they therefore struck out of their minutes the purpose of applying to Parliament, and they send instructions in these words:—

"The delegates are instructed, on the part of the society, to assist in bringing forward and supporting any constitutional measures for procuring a real representation of the Commons of Great Britain in Parliament; that, in specifying the redress to be demanded of existing abuses, the delegates ought never to lose sight of the two essential principles, general suffrage and annual representation, together with the inalienable right in the people to reform, and that a reasonable and known compensation ought to be made to the representatives of the nation by a national contribution." What they meant by the *representatives* of the nation, after what I have already read to you, I think you cannot possibly mistake.

The London Corresponding Society are somewhat bolder in the instructions which they send with their delegates to the convention in Scotland. You will find these instructions are to the following effect:—By article the 1st, the delegate is instructed "that he shall on no account depart from the original object and principle of this society; namely, the obtaining annual Parliaments and universal suffrage by rational and lawful means.

"2d, To support the opinions that representatives in Parliament ought to be paid by their constituents.

"7th, That it is the duty of the people"—now, gentlemen, I beg your attention to this; it is the principle upon which the convention of Scotland was formed, and upon which it acted,—"That it is the duty of the people to resist any Act of Parliament repugnant to the original principles of the constitution, as would be every attempt to prohibit associations for the purpose of reform."

Gentlemen, there is no government in this country, if this principle is to be acted upon, because nobody can tell to what extent it will go; and, accordingly, you will see that these delegates, who went into Scotland with this authority in their hands, carried the authority far beyond the resistance which they were authorised to make according to the principles here laid down, and they state a great variety of cases, all approved afterwards both by the London Corresponding and the Constitutional Society, in which the people, and the convention of the people, were to resist Parliament.

Gentlemen, these societies having sent delegates to the convention in Scotland, I proceed now to state that the acts of that convention, to the extent at least to which the delegates from this country were authorised to act, are evidence against those who sent them, and therefore against the persons here indicted. But, further, they communicated to the societies here, particularly to the prisoner at the bar, their acts; and the societies here, in distinct resolutions, acting upon consideration, approved their whole conduct: they therefore made that conduct of their delegates in the convention in Scotland, whether it was agreeable to the original authority which was given them or not, their own; they adopted it by giving it their subsequent approbation.

Gentlemen, you will find, first of all, that they received a letter from the Sheffield society, affiliating with them, in which it was proposed to determine like Englishmen.

After receiving a great deal of other correspondence, which I will not trouble you with reading, the societies here prepare to send delegates to Scotland. Mr Skirving sent a circular letter upon the arrival of the English delegates to the delegates of all the associations in Scotland, which were extremely numerous and very widely extended; and I think the delegates of these different societies came together to the number of one hundred and eighty. After sitting some time, Mr Margarot, you will find, who was the delegate of the London Corresponding Society, represents to the body there met—"That the societies in London were very numerous, though sometimes fluctuating; that in some parts of England whole towns are reformers; that in Sheffield and the environs there are fifty thousand; that in Norwich there are thirty societies in one; that if they could get a convention of England and Scotland called, they might represent six or seven hundred thousand males, which is a majority of all the adults in the kingdom."

You will find Mr Margarot moves that, previous to publishing an address to the public, a committee should be appointed to consider the means, and draw up a plan of general union and co-operation—between what? Not between any societies in the two nations, but a plan of general union and co-operation *between the two nations*. In their constitutional pursuit of a theory of parliamentary reform, they style themselves a convention; and this, gentlemen, is extremely material for you to attend to: they style themselves, "The British Convention of the Delegates of the People, associated to obtain Universal Suffrage and Annual Parliaments." Then I ask what is a convention of the people according to these societies? According to the proceedings in Scotland, a convention of the people is a convention of the delegates from these societies in England and Scotland.

They assert that the people have in them all civil and political authority; and they repeatedly, again and again, from the moment

that this convention was formed in Scotland to the moment of its dispersion, more especially at the time of its dispersion, more especially still from the time of its dispersion till the time of a meeting on the 20th of January, at the Globe Tavern; and on the 27th of March, when another convention was proposed, as I stated at the outset, they repeatedly and in the most pressing terms state that *now or never* was the time when the people were to meet, when they were to act by their own force, when they were courageously to prepare themselves for the event, and to show those whom they called their oppressors and plunderers that they were a brave people, in whom valour was not extinct.

Having thus met together, upon the principles of the French system, which took place upon the 10th of August 1792, they proceeded directly to the French practices, which took place then in the National Assembly of France,—took place then, because the people of France were understood to be represented by a convention. These delegates, taking upon themselves also to be a convention of the people, they instituted *primary societies*, they divided the country into *departments*, they appointed *provincial assemblies*, they have *committees of union*, they thank for *patriotic donations*, they *assume an epoch*, they appoint a *secret committee* to be called together upon extraordinary emergencies; and upon the 28th of November 1793 they come to a resolution to which I must beg your most serious attention.

Gentlemen of the jury, you will remember that they went with authorities, which stated to them that it was the duty of the people—which people they had taken upon themselves to represent—to resist any Act of Parliament that should be made for a particular purpose. It is hardly, I think, to be contended that the great bulk of the people of this country, happy in their political existence, as undoubtedly they are remaining happy in their political existence, because they do not feel grievances (till they are taught by malignant industry to believe that they exist), I mean, to such a degree as to call for measures of this sort, could believe that the legislature of the country, doing justice to the subjects whom it is bound to protect, would permit a proceeding of this kind to go on; yet, gentlemen, confiding so much as these persons did in the supposed state of their number in that country, and of those who were to be connected with them in this, you will find that, upon the 28th of November 1793, one of the persons belonging to that convention, Citizen Sinclair, I think, the members all standing up upon their feet for the greater solemnity of the thing, proposes this resolution: “Resolved, that the following declarations and resolutions be inserted at the end of our minutes:—‘That this convention’—now, if it be possible to say that any convention means to act as a convention of the people, it is that which sets itself above the legislature in the act it is doing—“ ‘that this convention, con-

sidering the calamitous consequences of any Act of the legislature which may tend to deprive the whole or any part of the people of their undoubted right to meet, either by themselves or by delegation, to discuss any matter relative to their common interest, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive of our known and acknowledged constitutional liberties."

Gentlemen, permit me to call your attention to this—that this declaration, in its principles, follows the instructions that they had received, that, if any attempt was made to bring in a Convention Bill, they were then to do so and so. They then proceed thus—“Do declare before God and the world, that we shall follow the wholesome example of former times, by paying no regard to any Act which shall militate against the constitution of our country.” That is saying that the will of the legislature is not a better judge of what is an Act against the constitution of the country than the affiliated clubs at Edinburgh;—“and shall continue to assemble and consider of the best means by which we can accomplish a real representation of the people,”—is that a Parliament?—“and annual election until”—what?—“until compelled to desist by superior force.

“And we do resolve that the first notice given”—The first notice—Parliament is not even to discuss the thing: but, if an intimation of it is made in Parliament—“that the first notice given for the introduction of a Convention Bill, or any bill of a similar tendency to that passed in Ireland in the last session of their Parliament, or any bill for the suspension of the *Habeas Corpus* Act, or the Act for preventing wrongous imprisonment, and against undue delays in trials in North Britain, or in case of an invasion.”

Gentlemen, I call back to your recollection the letter of Skirving—I call back to your recollection not only the letter of Skirving, but that the troops of liberty were promised to be sent with bayonets and pikes from that country, which at this moment was likely to invade us—“or the admission of any foreign troops whatsoever into Great Britain or Ireland.” If the Parliament of this country, for the purpose of protecting itself against that foreign invasion, had brought these foreign troops into Great Britain or Ireland, not being the troops of a nation with which we were at war, *this convention of the people* was to act upon the introduction of such foreign troops in the same manner as they would act in case of an invasion by those who were at war with us. What is the construction that follows upon that? That, even if foreign troops, to meet the exigence of an invasion, were introduced—What then?—“all or any one of these calamitous circumstances”—Why calamitous? they might be necessary for the very existence of the country—“shall be a signal to the several delegates to repair to such place as

the secret committee of this convention shall appoint, and the first seven members shall have power"—to do what?—to do that exactly which a national convention in France would do—"to declare the sittings permanent." Why? Because the duly-constituted legislature of the country had dared not to do an act, but to entertain a deliberation upon doing an act. The first notice was to call together this convention, and, being called together, their sittings were to be *permanent*.

Gentlemen, are the parties to this convention in Scotland such men as would think of bringing themselves together to declare their sittings permanent upon such a ground as they state here, namely, the legislature of a great country acting in the execution of the great duties which belong to the legislature of that country, without supposing, by that solemn declaration, that they could make their meeting effectual by the acts which were to be carried on for the purpose of preventing that legislature from deliberating upon such duties? By what acts could it be done but by exertions, as they style them, in the manner of their forefathers—by force? By affiliated societies exerting their physical strength, that physical exertion which Mr Barlow observes is to be preceded or precluded by spreading useful knowledge, and that useful knowledge being that which is to beat down the existing authority of King, Lords, and Commons.

"The convention therefore resolve that each delegate, immediately on his return home, do convene his constituents, and explain to them the necessity of electing a delegate or delegates, and of establishing a fund without delay against any of these emergencies, for his or their expense, and that they do instruct the said delegate or delegates to hold themselves ready."

Gentlemen, you see what they expected from the legislature; they knew that what they were doing ought to provoke the legislature to do what they meant to forbid the legislature to do; and they instruct their delegate or delegates to hold themselves ready "to depart at one hour's warning." Well might Mr Skirving say that *a month's delay, and the whole was lost*. Well might Mr Hardy say, what he says in letters I shall produce presently, that if the opportunity is lost now, it is lost for ever—we must act now, or we never can. Having some reason to suppose that this convention would be dispersed, they then with great solemnity come to another resolution:—

"That the moment of any illegal dispersion of the British convention shall be considered as a summons to the delegates to repair to the place of meeting appointed for the convention of emergency by the secret committee, and that the secret committee be instructed without delay to proceed to fix the place of meeting." Gentlemen, after these resolutions it became necessary to do a little more, that is, to declare upon what principles this convention existed. Now,

mark the principles, and do your country justice. Apply so much of the observations that I have made to you as are worthy your attention, to what I have before stated as the necessary connexion between the principle and practice of Mr Paine, and of these societies.

Gentlemen, these principles brought together the French Convention. What is the practice, then, that flows out of the principle? Why, it is the assembling of a convention upon principles obliging it to sit for the purpose of declaring that the legislature shall do nothing but what they liked: that is to all intents and purposes a national convention; if not a convention for an eternal reform, at least a convention that prohibits the legislature to do anything but what is agreeable to them. Then, having met for the execution of the practice, they proceed immediately to the declaration of the principle, but they do not proceed to a declaration of the principle till they have done that strong and solemn act which I have stated. Then they resolve "That a committee be appointed to draw up a declaration." This is France exactly. It is the Southwark society in 1792—"a declaration of the natural imprescriptible rights of man, and that the same be prefixed to an address to the people of Great Britain. That a committee of observation"—that is, for the better effectuating the purpose that they had before declared—"be appointed in London to give the earliest intimation of any motion of the kind mentioned in the foregoing resolutions to the different societies."

You will then find that they met in a place which they call *Convention Hall*, under the name of the *British Convention*, and then they are informed that the London Corresponding Society would undertake to be that committee of observation which they say ought to exist. And then you will find that the members mentioned that they had thousands of their constituents in London, Sheffield, Norwich, Leeds, &c., and that the convention was to look at itself as in its true nature a *committee of the people*,—that therefore it was necessary to have, as they have in France, *primary societies*, who shall be consulted,—in other words, that this committee of the people at Edinburgh, which was to overrule the legislature, was itself to be overruled by *these primary societies*, these primary societies themselves being overruled by the leaders of the great clubs, from which they emanated, and so forming in this country a government under the power of a Jacobin club, and that government destroying the present existing legislature of the kingdom.

You will also find that, before these persons parted, Mr Margatot communicated to his constituents the proceedings of this body, which he styles always the *Convention of the People*, associated to obtain annual Parliaments and universal suffrage. There are letters which I shall lay before you, without detailing

them, stating that they looked up to the London Corresponding Society, and the Society for Constitutional Information—that their active exertions were necessary for the accomplishing the projects which they sitting in Edinburgh were to execute: and then the two delegates of the London Corresponding Society write to Mr Hardy, as the secretary of that society, an account of their proceedings—they give him an account of that solemn motion, and of the manner of making it, which I have just been detailing to you. They state to him that they had determined to assemble in convention in any such case—that the appointment of the place—which is a circumstance I beg your most serious attention to—was left to a *secret committee*; but then they send to him an account of the motion, informing him in the letter that “letters convey but very imperfectly, and with no great degree of safety, what we might wish to inform each other of.”

Now, what do you think it is that they do not inform him of in this letter? They do not inform him in this letter, because letters will not convey everything safely, *that the convention was to meet in case of invasion*; that was a secret which durst not be trusted to correspondence by letter; and because it existed in that motion which was made, every other part of it being communicated even in a letter, they consider it of such a nature that they determine not to insert it even in their own minutes.

This secret committee having been appointed in the Scotch convention, the fact being communicated to the London Corresponding Society by their delegates, you will likewise find that Mr Sinclair, the delegate from the Constitutional Society to the society at Edinburgh, was not behindhand in the communication of it: he communicates the proceedings, and desires that a secret committee may be appointed in that society. It was not long after this that the wisely-exerted power of the magistracy of that country dispersed that convention. The dispersion of that convention, which, from what I have before stated to you, was conceived to be a body that must then do its work, or its work never would be done, suggested to the societies of this country the necessity of undertaking the same business, of undertaking it at the same hazard, knowing that the project must either *then* be accomplished, or that it *never* could thereafter be attempted—for that no government could permit such a convention as this to meet, when its nature was really understood, without taking some means to protect itself against the consequences of the existence of such a convention.

Gentlemen, you will therefore find that, after they had been dispersed, and after, in consequence of that dispersion, some of them had been punished in Scotland, by sentences which were pronounced upon offences, not stated in the records of that court in so aggravated a way against them as they might, in my humble

opinion, have been stated, that it then became necessary that some step should be taken immediately to prevent the mischief which was meditated; for you will find in the evidence propositions in these societies about a rescue, which failed; but you will find in their correspondence from Scotland, and their correspondence from those ships in which the members of the Scotch convention were, before they sailed in execution of their sentences, not only the strongest invitations to do some strong acts in this country, to both societies, but, on the other hand, the strongest and most unequivocal declaration, by both societies, that these strong acts must be done.

Gentlemen, you will find that before they left Scotland, upon the 11th of December 1793, there is a letter from Mr Margarot to Mr Hardy to this effect—"We received your letter and remittance yesterday, and shall be glad to receive another such without delay.

"The convention, you will see, has declared itself permanent; they are to sit in some other part of the country, which is not yet declared."

Gentlemen, Mr Sinclair, the delegate of the Constitutional Society, came to London. I have before observed to you, from a letter of Gerald and Margarot, that there were some things that could not safely be conveyed by letter. Margarot writes a letter from Edinburgh to the prisoner, in which he says—"My colleague Gerald also proposes to leave this place the latter end of this, or the beginning of the next week: he will explain himself to you: pray send him money for this journey, &c. He is now gone to *Perth* on very urgent business. Since Sinclair's departure nothing new has occurred, except the formation of a society somewhere about the Grampian Hills"—this shows the spirit of fraternisation;—"they have already made a subscription towards it: again we are interrupted, and likely to lose the post, unless I despatch this immediately."

Upon the 22d of December 1793, another letter is written to Mr Hardy by the same gentleman, which probably led, in some degree, to the transactions that I have to state, as having passed in January 1794; for, after stating what had happened to himself in Scotland, he says—"Sheffield has on this occasion exhibited a most manly spirit." The Sheffield society had at that time sent out some excessively strong resolutions, which I shall give you in evidence in the course of this business. "I am extremely mortified to find so great a difference between them and the London Corresponding Society; it is not, however, too late. For God's sake, send forth some very strong resolutions; and above all, talk of impeachments, and of petitioning the King to remove from their offices those persons who have thus violated the laws of the realm."

You will find from a letter of the 24th of December that Margarot, a delegate from the London society, a delegate of Norwich, and a Mr Brown, who was the delegate from Sheffield, had gone to attend a general meeting of the Society of the Friends of Freedom, in East Lothian, and then the expression is—"The time is come that we must show ourselves worthy of liberty, or deservedly lose it. The opposition of our adversaries is demonstration of the propriety and efficacy of the means which we have employed to obtain it."

Upon the 27th of December 1793, you will find Mr Margarot states that Mr Gerald was gone to Perth; that he himself had been in East Lothian; that they had been well employed; that they must send out spirited resolutions; and you will find that, upon the 11th of January 1794, Mr Hardy writes a letter to Norwich relative to the proceedings I have now been stating, the Constitutional Society first, and the London Corresponding Society afterwards, having in their public acts approved everything that this convention had done. Mr Hardy's letter runs thus:—

"I have just received a letter from Citizen Margarot, at Edinburgh, with some of the Edinburgh Gazetteers, where you will see that Citizen Skirving is found guilty, and sentenced for fourteen years' transportation to Botany Bay. Margarot's trial comes next; he meets it with great firmness and resolution. I have no time to make my comments on the proceedings, but I think our opponents are cutting their own throats as fast as they can. *Now is the time for us to do something worthy of men; the brave defenders of liberty, south of the English Channel, are performing wonders, driving their enemies before them like chaff before the whirlwind.* Margarot tells me that he has not time to write to you just now, but he hopes to have time very soon, when his trial is over, and immured in a prison. The London Corresponding Society is to have a general meeting and an anniversary dinner on Mouday the 20th instant, at the Globe Tavern, Strand."

Gentlemen, you will find that Mr Margarot, this delegate, with whom Mr Hardy is thus in correspondence, writes to the Norwich United Societies: "This morning ten ships of war have left Spithead for the Channel; and it is here reported that the Brest fleet is out. Rumour, always magnifying things, says there are seventy sail of the French at sea; if so, there *must be a number of transports among them, and a descent may probably be the consequence. For God's sake, my worthy friends, do not relax in the cause of freedom.*"—Now, what connexion had a descent with the cause of freedom?—"Continue as you have begun; consolidate your own societies—unite with others—persevere, and make no doubt but, sooner or later, your endeavours will be crowned with success."

Gentlemen, I come now to state to you the proceedings of the year 1794, as far as they depend upon written evidence; and it

must be a satisfaction to the mind of every man who hears me, that, in the course of this business, whatever observations may arise upon the parole evidence that will be given you, I think you will find so strong a confirmation of all you are to hear in the written evidence that is to be laid before you, that these observations cannot possibly mislead you from coming to the true conclusion upon the whole of the evidence, whatever that may be.

Gentlemen, the Constitutional Society having sent their delegate to the Scotch convention, you will find that, at a meeting of the 17th of January 1794, the following resolutions were come to, to which I must desire your particular attention, more especially as there are some circumstances belonging to the composition of those resolutions which appear to me to be worthy of attention. I have before told you that these resolutions were usually drawn from minutes—the original minutes still exist, and perhaps they show that discretion, with which men are sometimes able to state, in different ways, precisely the same thing: I say, that these resolutions of the 17th of January 1794, were meant to excite the subjects of this country to resistance:—

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

“Resolved, That we recall to mind, with the deepest satisfaction, the merited fate of the infamous Jefferies, once Lord Chief-Justice of England, who, at the era of the glorious revolution, for the many iniquitous sentences which he had passed, was torn to pieces by a brave and injured people.” This is applied to the judges of Scotland, who executed the law upon such facts as I have been stating. “That those who imitate his example deserved his fate.” This sort of imitation might have a tendency—I hope it had not—to put in any peril those who did, in the regular course, and in the due course of their judicial duties, pass those sentences to which these resolutions allude.

“That the Tweed, though it may divide countries, ought not, and does not, make a separation between those principles of common severity in which Englishmen and Scotchmen are equally interested; that injustice in Scotland is injustice in England; and that the safety of Englishmen is endangered whenever their brethren in Scotland, for a conduct which entitles them to the approbation of all *wise*, and the support of all *brave* men, are sentenced to Botany Bay, a punishment hitherto inflicted only on felons.

“That we see with regret, but we see without fear, that the period is fast approaching when the liberties of Britons”—this was in January—“must depend, not upon reason, to which they have long appealed, nor on their powers of expressing it, but on their firm and undaunted resolution to oppose tyranny by the same means by which it is exercised.” Now what is the tyranny? The

exercise of the regular government of the country. What is the means by which it is exercised? The application of the force of the country in support of the Government of the country. What is this resolution then? Why, that the means which the Government takes, in the regular exercise of its functions, ought now to be resisted—"We see it with regret, but do not see it with any fear."

That a breach of allegiance was contemplated you can have no doubt, for you will see in the original of this that it stood thus: that, "as allegiance and protection are reciprocal, law ceases to be an object of obedience whenever it becomes an instrument of oppression." Couple that, as it stood originally, with the third resolution, and what is it? Why, it is—"That the protection, which was due from him to whom allegiance is due, has not been afforded: therefore allegiance is no longer due. "We see with regret, but we see without fear, that the period is fast approaching when the liberties of Britons must depend, not upon reason, to which they have long appealed, nor on their powers of expressing it, but on their firm and undaunted resolution to oppose tyranny by the same means by which it is exercised."

You will also find that it stood, "That Englishmen feel the oppression of Scotchmen, which they are determined to resist at the hazard of their lives." You will find the last resolution in the minutes, comparing the genuine representatives of this country in the House of Commons, with this convention in Scotland, which convention in Scotland had taken upon itself to resolve upon resistance to even a motion, in either House of Parliament of this country, in the execution of their duty, thus:—

"That we approve of the conduct of the British convention, who, though assailed by force, have not been answered by arguments, and who, unlike the members of a certain assembly, have no interest distinct from the common body of the people." The words originally stood—who "being the incorrupt representatives of *many thousands*, have spoken the language of truth and firmness." Can I make this Court the instrument of conveying to the public, what I confess I do most anxiously wish to make it the instrument of conveying to the public, as far as it is fit, in the execution of the duty that I am now discharging, that they may understand what it is that men, when they are scattering these libels through the country, mean? "This convention, assailed by force, have not been answered by arguments." How was it possible to answer those by arguments, who were coming to solemn and sacred resolutions which they did not even dare to put upon the face of their own minutes? How were we to answer those by argument, who were working underground till they had blown up the Government, and then say, You cannot point out that we have been acting ill, because we won't tell you how we have been acting?

Upon the 16th, Mr Margarot writes again, leaving them to pursue what sort of conduct they please.

Then there is a letter of some importance of the 28th of January, which is written to the person who stands at the bar:—"We have just received notice from the Sheriff to hold ourselves ready to depart at an hour's warning: we go by night, we imagine to Newgate: look out for us."

Gentlemen, you will likewise find a letter from Mr Margarot to Mr Hardy of great consequence, as it explains many of the passages in the evidence between the 20th of January 1794, and the time that those persons were apprehended. Margarot writes from Edinburgh in this manner:—"Armed associations are, I perceive, now set on foot by the rich; wherefore should not the poor do the same? Are you to wait patiently till twenty thousand Hessians and Hanoverians come to cut your throats? And will you stretch forth your necks like lambs to the butcher's knife, and like lambs, content yourselves with bleating? Pray let me hear from you soon. Remember me to Moffatt, Muir, and Palmer, and all suffering brethren."

Gentlemen, upon the 20th of January 1794, there was a meeting at the Globe Tavern; that meeting which, you will permit me to observe, Hardy mentioned in his letter of the 11th of January 1794, which I before have spoken of, when he said the London Corresponding Society were to have a general meeting and an anniversary dinner. Gentlemen, the proceedings of that day will deserve your very particular attention.

"At a general meeting of the London Corresponding Society, held at the Globe Tavern, Strand, on Monday, the 20th day of January 1794, citizen John Martin in the chair,"—when I state this to you, I ought to say that I shall prove the prisoner to have been present, or to have been connected with all the transactions that I have been stating,—"the following address to the people of Great Britain and Ireland was read and agreed to:—

"Citizens, we find the nation involved in a war, by which, in the course of one campaign, immense numbers of our countrymen have been slaughtered; a vast expense has been incurred; our trade, commerce, and manufactories are almost destroyed; and many of our manufacturers and artists are ruined, and their families starving.

"To add to our affliction, we have reason to expect that other taxes will soon be added to the intolerable load of imposts and impositions with which we are already overwhelmed, for the purpose of defraying the expenses which have been incurred in a fruitless crusade to re-establish the odious despotism of France.

"When we contemplate the principles of this war, we confess ourselves to be unable to approve of it as a measure either of justice or discretion; and if we are to form our calculation of the result

from what has already passed, we can only look forward to defeat, and the eternal disgrace of the British name.

“ ‘ While we are thus engaged in an extensive and ruinous foreign war, our state at home is not less deplorable.

“ ‘ We are every day told by those persons who are interested in supporting the corruption list, and an innumerable host of sinecure placemen, that the constitution of England is the perfection of human wisdom ; that our laws (we should rather say their laws) are the perfection of justice ; and that their administration of those laws is so impartial and so ready, as to afford an equal remedy both to the rich and to the poor, by means of which we are said to be placed in a state of absolute freedom.’ ” The paper then goes on, and reasons upon the state of the law in this country, under an exposition of Magna Charta, which gives us nearly the true meaning of it as a man would give who had never seen it.

“ ‘ If we look to Ireland, we find that acknowledged privilege of the people to meet for the support and protection of their rights and liberties, is attempted, by terror, to be taken away, by a late infamous Act of Parliament.’ ” That was an Act to prevent convention by delegates with dangerous objects. “ ‘ Whilst titles of honour—no—but of dishonour, are lavished, and new sources of corruption opened, to gratify the greedy prostitution of those who are the instruments of this oppression.

“ ‘ In Scotland, the wicked hand of power has been impudently exerted without even the wretched formality of an Act of Parliament.’ ” A piece of parchment justice they call an act in the convention of Scotland. “ ‘ Magistrates have forcibly intruded into the peaceful and lawful meetings of freemen, and by force (not only without law, but against law) have, under colour of magisterial office, interrupted their deliberations, and prevented their association.

“ ‘ The wisdom and good conduct of the British convention in Edinburgh has been such as to defy their bitterest enemies to name the law which they have broken ; notwithstanding which their papers have been seized and made use of as evidence against them, and many virtuous and meritorious individuals have been as cruelly, as unjustly, for their virtuous actions, disgraced and destroyed by infamous and illegal sentences of transportation ; and these unjust and wicked judgments have been executed with a rancour and malignity never before known in this land ; our respectable and beloved fellow-citizens have been cast fettered into dungeons, amongst felons in the hulks, to which they were not sentenced.

“ ‘ Citizens, we all approve the sentiments, and are daily repeating the words, for which these our respectable and valuable brethren are thus unjustly and inhumanly suffering. We do associate’ ”—mark the expression—“ ‘ in order to obtain a fair, free, and full representation of the people in a house of real national representatives.’ ”

Now, did the convention at Edinburgh then associate for the purpose to obtain a fair, free, and full representation of the people in a house of real national representatives? If they did, they associated to form that house of real representatives upon this principle: that they were, as Mr Skirving calls them, the people in Scotland; that they were to affiliate, and to associate themselves with societies in England; and that, in that state of affiliation and association, holding a convention, as they call it, of the people, from delegates of these societies, and not from the people—to do what?—why, to meet as an assembly, which assembly was to control the operations of Parliament, of that Parliament which must be the representatives of the commons of the nation; an expression which, by the way, they never used, adopting, generally, terms of a different import, “real national representatives.”

“Are we also willing to be treated as felons for claiming this our inherent right, which we are determined never to forego but with our lives, and which none but thieves and traitors”—that is, persons acting in the regular execution of the functions of magistracy—“can wish to withhold from us? Consider, it is one and the same corrupt and corrupting influence which at this time dominates in Ireland, Scotland, and England. Can you believe that those who send virtuous Irishmen and Scotchmen fettered with felons to Botany Bay, do not meditate, and will not attempt to seize the first moment to send us after them? Or, if we had not just cause to apprehend the same inhuman treatment, if, instead of the most imminent danger, we were in perfect safety from it, should we not disdain to enjoy any liberty or privilege whatever in which our honest Irish and Scotch brethren did not equally and fully participate with us? Their cause, then, and ours is the same, and it is both our duty and our interest to stand or fall together.”

Gentlemen, recollect the expressions that I read to you from Skirving's letter: “Will you wait till barracks are erected in every village, and till subsidised Hessians and Hanoverians are upon us?” You will now see from the proceedings I am stating to you that *the time was come* that they were not only virtuous but *courageous* enough to do an act which, in 1792 and 1793, though they were virtuous enough to do, they were not courageous enough to do.

“You may ask, perhaps, by what means shall we seek redress? We answer, that men in a state of civilised society are bound to seek redress of the grievances from the laws, as long as any redress can be obtained by the laws; but our common Master, whom we serve (whose law is a law of liberty, and whose service is perfect freedom), has taught us not to expect to gather grapes from thorns, or figs from thistles: *we must have redress from our own laws.*” Were they to be a convention of the people, then, without making laws? They approve the whole conduct of the British Convention,

that would not let others make laws; and yet were they not to make laws?

“ ‘We must have redress from our own laws,’ and not from other laws. The laws of Great Britain are thus described: “ ‘The laws of our plunderers, enemies, and oppressors.’ ” Indeed, if the legislature of their country were their plunderers, enemies, and oppressors, in their notions, it would be very difficult to suppose that they were to have redress from the laws of that legislature; but then it follows, of course, that they meant to have redress from laws made by some other body that had authority to make laws; and what that other body is, but the convention which they determine upon, must be left for those to say who can find it out. They go on then to say:—

“ ‘There is no redress for a nation circumstanced as we are, but in a fair, free, and full representation of the people.’ ” Now, here again I ask, what is that fair, full, and free representation of the people, not mentioned to be in Parliament?—but if it was, it would be precisely the same phrase as occurred at the time of the Commonwealth. But they take upon them to approve of the British Convention, and to unite the two nations of England and Scotland, to be a British convention formed by delegates from the different societies in this country, and professing to act as a convention of the people; I say, that it is that species of convention which, in their opinion, was a fair, free, and full representation of the people, in which, and which alone, they hoped for that redress which they could not hope for from the Parliament of Great Britain, those who were their plunderers, their enemies, and oppressors? Could it be possible for them to suppose that they could make Parliament the willing or unwilling organ of bringing about this representation of the people, to subsist by annual suffrage and universal representation? Could it have entered into their imagination that those whom they call their plunderers, enemies, and oppressors, would ever become the voluntary or involuntary instrument of doing that which was the object of all these societies, from March 1791 till they were checked in the execution of their purposes?

Then follows a resolution that will require likewise your very particular attention:—“ ‘Resolved, That during the ensuing session of Parliament, the general committee of this society do meet daily, for the purpose of watching the proceedings of the Parliament and of the administration of the government of this country.’ ” This was to be published; they do not, therefore, venture to insert *totidem verbis* that resolution which I have stated to you was so solemnly made, and so sacredly sworn to in the Scotch convention; but they resolve, “ ‘That upon the first introduction of any bill or motion inimical to the liberties of the people, such as for landing foreign troops in Great Britain or Ireland, for suspending the Habeas Corpus Act, for proclaiming martial law, or for preventing the

people from meeting in societies for constitutional information." What the meaning of the term *constitutional* is, we can judge by this time: that upon any express motion of this nature, "or any other innovation of a similar nature; that on any of these emergencies the general committee shall issue summonses to the delegates of each division, and also to the secretaries of the different societies affiliated and corresponding with this society, forthwith to call a *general convention of the people*, to be held at such place and in such a manner as shall be specified in the summons, for the purpose of taking such measures into their consideration." They omit the case of invasion in this publication. But what is this, supposing nothing had passed in Scotland of what I have stated to you? What! Is the legislature, is the rule and government in this great country, reduced to this state, that it shall find no protection in the administration of the law of the country against persons associating and affiliating themselves for the purposes which they declare here? Is no motion to be made in Parliament for any purpose which these societies choose to comprehend under the terms "any other innovation," without explaining what it means?—but what?—but that bodies of men are to come together, claiming to themselves the civil and political authority which exists in the natural and physical qualities of the people, and then to contend that they have got a *convention of the people!*

Now, do they convene the people? In fact, it will be said, nothing like it. But they call themselves a *convention of the people* in the very terms that they use. The summonses are to go to the delegates of each meeting, and also the secretaries of the different societies corresponding with this society, and nowhere else. For what purpose? To call a *general convention of the people!* Then, what is the meaning of all that, taking it with its context? It is this: from your laws—the laws of you, our plunderers, enemies, and oppressors—we can expect no relief. We do not mean to come to you for any: but we will watch you, and if you dare to propose an innovation of any sort, we shall call a *fair, free, and full representation of the people*. Composed, pray how? By delegates from our societies, to seek, as a general convention of the people, redress from our own laws. It appears to me that the reasoning upon this paper is so whole and entire, that it is out of the power of human ingenuity to touch it.

Then they resolve, "That a hundred thousand copies of the 'Address to the People of Great Britain and Ireland' shall be printed." Then they follow this up with the publication of a great many toasts; and really when one mentions such a thing as toasts in the trial of a great national cause, such as this undoubtedly is, one is afraid of its sinking into insignificance; and yet this is a great feature in this cause. You will find that, previously to one of the most seditious meetings which was ever held in this country,

it was thought of importance enough that they should meet once, twice, or thrice in committees, in order to frame toasts which were best calculated to inflame their minds, and to urge those forward who were already engaged in these projects: "The rights of man;" "The British Convention;" "Success to the arms of freedom, against whomsoever directed." This is during the war: against whom were the arms of freedom directed in the opinion of these persons? You remember they said, that "the Elector of Hanover may join his troops to traitors and robbers; but the King of Great Britain will do well to remember that this country is not Hanover; should he forget the distinction, we will not." They corresponded with the French in October; and, in November 1792, they state to you that the principles of their resolutions are those upon which they meant to act; that Great Britain was now engaged in a war which they condemned, in which the arms of freedom, as they said, had never been engaged on the part of Great Britain. Then the meaning of the toast is obvious. Another toast was, "The virtuous and spirited citizens now in confinement for matters of opinion." Now, these matters of opinion are acts all done in the long tissue and detail of a conspiracy to subvert the monarchical government of this country, under its present legal provisions and limitations.

The name of Mr Frost being mentioned—I mean him no disrespect in saying this—but it is to the purpose of this business to take notice of it. That gentleman was prosecuted in this country for this doctrine: "No King, none in England; I am for liberty and equality everywhere." What was the consequence of that? The judgment of the law of England upon him was, that he was guilty of an offence. He was punished. He has suffered that punishment, and made an atonement to the law. But these gentlemen, who sent Mr Frost with Mr Barlow to state such doctrine to France, and bring such doctrine back from France, you find that they have a formal resolution that they will sustain this Mr Frost in all his persecutions and prosecutions. Does that mean nothing? If Mr Frost is persecuted for holding doctrines in the country which were to put the King out of the system, is it no evidence of intention with respect to those who engaged in such projects as I have mentioned, that they do come to a resolution in which they declare that the law questioning the propriety of declarations of that kind amounts to a persecution, and that he ought to be sustained against it?

Gentlemen, you will hear from witnesses who were present what the proceedings on the 20th of January, and the general complexion and nature of them were. Mr Martin being in the chair, and Mr Hardy being present, who was a member of both these societies, an attending member in both of them, I will give you Martin's account of the proceedings on the 22d of January 1794, in a letter in his

own handwriting, sent to Maurice Margarot, at Edinburgh, who had advised, you will recollect, the London Corresponding Society to come to some strong resolutions; who had urged that *now is the time, that two months in Scotland would do the business, provided they did their duty in England.*

"My dear Sir,—I dare say you think I have forgot you from my not having written to you, but you know my sentiments so well that it was unnecessary for me, and would probably have been improper, to say much on the subject of your mission." Then he states something about private business.

"We had a meeting on Monday; I was in the chair. The newspaper gives our numbers at 500; but we were nearer 1500. Everything was well conducted, that is to say, regularly, and the proceedings were tolerably bold. Mr Hardy, I dare say, has sent you a copy of the address and resolution.

"Your conduct receives universal approbation; and though I at one time dreaded the want of money, yet that is now over. Those who opposed the subscription at first are now putting their hands to the very bottom of their pockets, and swear by God you shall be supported with the last guinea. We must have another general meeting in a chapel, or some large place, and declare the purpose of a subscription, and I think we shall get plenty of the needful for that and other purposes. Have you read my letter to Lord ——? Do you incline to try the writ of error? What do the Scotch lawyers think of it? and what do you think of the legal knowledge of my countrymen? I firmly believe that the law is the only science of which they know nothing.

"The King went yesterday to meet *his* Parliament;"—so now we have got no Parliament of ours, the people of this country— they sat till six o'clock this morning. The papers are not out; but I am told only twelve members were for peace. I am glad the Minister has so great a majority within doors for the war, and that the people have a greater majority without doors against the war. The swinish rogues had the impudence to write, 'No war,' on all the doors and corners of the Houses of Lords and Commons, and they had even the audacity to groan and hiss while his Most Sacred Majesty was passing to and from the House. Nay, I am told, a woman, moved and seduced by the instigation of the devil, and traitorously intending, &c., did, in St James's Park, take off her patten, and threw it with all her force at his Majesty, whereby the glass of the state-coach was broken, and his Majesty put in fear. God save the King, for if, &c., as Gerald says"—there he leaves it.

"The society is increasing rapidly, both in spirit and in numbers, and the rich now begin to come among us, and to sit down with pleasure among the honest men with the leathern aprons.

"I could write to you strange things, but I know not but this may be read by somebody before it comes to your hands."

Gentlemen, after this had passed, you will find that that letter was written by the Corresponding Society to the Society for Constitutional Information which I first mentioned to you, upon the 27th of March 1794; and now, with your leave, I will read a part of it to you again.

"I am directed by the London Corresponding Society to transmit the following resolutions to the Society for Constitutional Information." I should tell you first, in the order of time, that the Society for Constitutional Information distinctly adopt that paper of the London Corresponding Society of the 20th of January 1794 as their own, and order it to be entered upon their books; they approve of the manly sentiments of it, and they fully take it to themselves, to all intents and purposes, as if it had been a conjunct meeting of them both. Then the London Corresponding Society having held this language respecting the convention, and upon the 24th of January the Constitutional Society having adopted the project of a convention, stated in the address of the London Corresponding Society of the 20th, and the nature of that convention being a convention from the affiliated societies, to take upon themselves the character of a *convention of the people*, it would be surprising indeed, if the convention which they speak of on the 27th of March should be a convention of a different nature from that which they had both agreed to on the 20th and 24th of January; and with that observation I come again to this letter of the 27th of March.

"I am directed by the London Corresponding Society to transmit the following resolutions to the Society for Constitutional Information, and to request the sentiments of that society respecting the important measures which the present juncture of affairs seems to require. The London Corresponding Society conceives *that the moment is arrived*"—throughout the years 1791, 1792, and 1793, they thought it was not arrived—"when a full and explicit declaration is necessary from all the friends of freedom—whether the late illegal and unheard-of prosecutions and sentences shall determine us to abandon our cause, or shall excite us to pursue a radical reform with an ardour proportioned to the magnitude of the object, and with a zeal as distinguished on our parts as the treachery of others in the same glorious cause is notorious? The Society for Constitutional Information is, therefore, required to determine whether or no they will be ready when called upon to act in conjunction with this and other societies, to obtain a fair representation of the people; whether they concur with us in seeing the necessity of a speedy convention, for the purpose of obtaining, in a constitutional and legal method, a redress of those grievances under which we at present labour."

Now, in the first place, with respect to the words "constitutional and legal method," these persons have not much to claim upon the score of the effect and force of the words "*constitutional and legal*

method," which appear through all their transactions of the years 1792 and 1793, and more particularly through the transactions of 1793, as they apply to the British convention in Scotland, to be thought consistent with the existence of a convention of such a character as that had; and if it was their purpose to have a convention of the people by summonses to affiliated societies, that convention to take upon itself the power of the people, it is in vain that they talk of legal and constitutional methods; it is in vain, if the thing they mean to do, and the manner of doing it, is not legal or constitutional. Upon this letter, I apprehend, after what has passed, there can be no doubt what is meant by a convention. But it is not left there; for in the third resolution they state, that "there ought to be immediately a convention of the people by delegates"—mark the words—"deputed for that purpose from the different societies of the Friends of Freedom assembled in the various parts of this nation."

Then here is a convention of the same character, of the same name, and the same constitution, as that mentioned in the resolution of the 20th of January 1794. Now, to whom is this proposed? It is proposed to that Constitutional Society which had adopted the address of the 20th of January 1794, and which had also said, by approving that address, that they were of opinion that redress was not to be obtained by the laws of England, but that they were to have redress against their oppressors, plunderers, and enemies, by their own laws—by that sort of *representation of the people* which is formed by a convention of the people summoned from those associated societies. Then what follows upon it? Though the thing is couched in phrases that are a little ambiguous, yet no human being, judging honestly, can doubt the meaning of it. It is that there shall be this convention, to act as a convention of the people, with the power of the people, having all civil and political authority. The prisoner is sufficiently involved already if such a convention never had been thought of; but then the two societies form a committee of correspondence and co-operation for the purpose of bringing together that convention, which they had said was the only mean by which Britons could enjoy their liberties or protect themselves against the legitimate government of the country, including in it their plunderers, enemies, and oppressors.

Gentlemen, when I lay this evidence before you, if I stopped here I should be glad to learn why this is not a step taken for the execution of such a purpose as I have before stated—a step taken for constituting a body, or a step taken towards devising the means of constituting a body, which was, like the convention mentioned in the speech of Barrère, to supersede the legislature, to depose the King, to suffer him to have no existence but what their good-will and pleasure would allow him, against the will, as the language of the indictment states it, and in defiance of

the authority of the Parliament—to depose the King ;—for if these people have the sovereign power—and they must have the sovereign power upon their own principles—the King of England cannot have it in the manner in which it is vested in him now. He was bound to resist such a project as this ; he owed it to every good subject in his country to resist it ; he was sworn to do it by the solemn obligation of his coronation oath : you cannot therefore contemplate a case of his acting otherwise—the King being bound to resistance for the security of the subject, and for the sake of observing his oath—for the sake of continuing to reign according to the terms of that oath, according to the statutes agreed upon in Parliament assembled and the laws and customs of the same.

But, gentlemen, I do not stop here. You will find also that there was a meeting at Chalk Farm, the particulars of which I will not state further than to say, that when they are read, you will see that that meeting at Chalk Farm was a step taken in the further prosecution of the functions of that committee of co-operation—that it was a measure taken for the express purpose of trying the temper of the people, of seeing what they could do by numbers. That meeting was held in April 1794 ; and it is very remarkable that it appears there were meetings in other parts of this kingdom ; more particularly it appears, from a letter found in the possession of this prisoner, that as there was a meeting in the open air at Chalk Farm, so there were meetings elsewhere. It required vigilance—it required the interposition of some strong hand, by Parliament or otherwise—to preserve you in the situation in which you now are. If it be the will of these persons that you shall not remain in it, it is, at least, the duty of those who are to watch over the country as long as it can exist, that it shall not be destroyed by any fault of theirs ; but you will find there were meetings in the open air at Leeds, Wakefield, Huddersfield, Bradford, Birstall, and at various other places. This project of a convention had been communicated to many parts of the country, and too many of them had assented to it ; not only assented to it, but it will be proved that the prisoner sent a circular letter to the remotest parts of this kingdom (which I will now read) for the purpose of assembling this convention—for the purpose of carrying into effect the project of this British convention, the body of which had been dissipated, but which was still carrying on its purposes by measures precisely the same as those which had existed in this part of the island.

You will find that the prisoner writes this circular letter to all those societies ; and the addressing this circular letter to all the societies shows that the convention that was to be called was not to be a convention of the people at large, but a convention of delegates summoned from these societies, to usurp the character of “ *a convention of the people.*” “ *The critical moment is arrived.*” Mark the difference of language: in 1793 the *time is not yet come,*

men are not virtuous nor courageous enough ; in 1792 they expected nothing from Parliament ; in 1793 they expected everything from the societies in due time ; and now they assert that the due time is come, that the fulness of time is come. "The critical moment is arrived, and Britons must either assert with zeal and firmness their claims to liberty, or yield without resistance to the chains that ministerial usurpation is forging for them. Will you co-operate with us in the only peaceable measure"—a very peaceable measure a convention of this sort !—"that now presents itself with any prospect of success ? We need not intimate to you that, notwithstanding the unparalleled audacity of a corrupt and overbearing faction"—now this corrupt and overbearing faction is the King, Lords, and Commons of Great Britain—"which at present tramples on the rights and liberties of the people, our meetings cannot, in England, be interrupted without the previous adoption of a Convention Bill." A Convention Bill ! this shows the reason for their resolutions in Scotland about permanent sittings and the meeting of another British convention, and for their language which they held upon the 20th of January 1794 : "a measure it is our duty to anticipate"—mark these words—"our duty to anticipate, that the ties of union may be more firmly drawn, and the sentiments and views of the different societies throughout the nation be compared." What was their object in this circular letter ? If, when the British convention in Edinburgh sat, there had been a motion for a Convention Bill in the Parliament of Great Britain, why their object was then, we perceive, that of being ready at an hour's warning, communicating in all parts of the kingdom to their delegates that solemn resolution, which had been made in the British convention upon the 6th of November : they were instantly, before the project of such a bill could in Parliament ripen out of notice of a motion into a bill once read, to be assembled in Edinburgh to prevent any such bill passing ; they solemnly vowed to each other, hand in hand, and standing up, to give the greater solemnity to the declaration, "that the moment such a bill as that was introduced into Parliament, they would resist it at the hazard of their lives." Then what did they mean in this circular letter ? They meant that, while as yet the bare expectation of a Convention Bill might exist, while, as yet, no notice of such a motion was given or heard of in Parliament, that it was their duty to anticipate what Parliament might possibly think of. How to anticipate it ? To anticipate it by means of a convention assuming the character of a British convention of the people, but delegated from these societies, to sit, not at Edinburgh, but to sit at a place, as you will find, which they durst not name, and for the purpose of conducting this project with more security, as you find by this letter, to sit at a place that was to be kept secret in order that the purpose might not be disappointed. "A measure," they proceed, speaking of a Convention Bill, "it is our duty to anticipate,

that the ties of union may be more firmly drawn, and the sentiments and views of the different societies throughout the nation be compared while it is yet in our power, so as to guide and direct the future operations of the friends of freedom. Rouse then to one exertion more, and let us show our consciousness of this important truth. If we are to be beaten down with threats, prosecutions, and illegal sentences, we are unworthy, we are incapable of liberty. *We must, however, be expeditious.* Hessians and Austrians"—here is the idea that came from Scotland again—"are already among us, and if we tamely submit, a cloud of these armed barbarians may shortly be poured in upon us."

The introduction of sick men into this country for the humane purpose of giving them that air which they could not obtain while on board a ship, is made the pretext of this letter for stating that "Hessians and Austrians are already among us, and if we tamely submit, a cloud of these armed barbarians may be poured in upon us. *Let us form then another British convention.*" What was that convention? They expressly state it to be a *convention of the people*, and a convention which is to assume controlling powers over the legislature. "We have a central situation in our view, which we believe would be most convenient for the whole island, but which we forbear to mention (entreating your confidence in this particular) till we have the answer of"—whom?—"of the societies with which we are in correspondence." What! is that a convention of the people? or of the societies assuming the character of a convention of the people? "Let us have your answer then." Now, give me leave to observe how nearly this project was to being carried into effect: "Let us have your answer, then, by the 20th at furthest, earlier if possible, whether you approve of the measure, and how many delegates you can send, with the number also, if possible, of your societies."

Gentlemen, this will be proved to you to have travelled as far as Strathaven, to have been received there, and delegates to have been appointed in consequence of the solicitation. And then, as in the British convention in the month of November 1793, this great project of calling together a body which was to put an end finally to the existence of Parliament, was to be conducted by a secret committee; because its operations, its assembling, and the means which were to be taken for it, could not be committed to numbers, a secret committee was then appointed. This letter ends: "For the management of this business we have appointed a secret committee. You will judge how far it is necessary for you to do the same."

Gentlemen, the next proceedings were at Chalk Farm. In these proceedings, it appears they have stated to the society called "The Friends of the People," this measure of a convention; that measure "The Friends of the People" refused to agree in. You will find

that, refusing to agree in that measure at the meeting at Chalk Farm, when it was stated that the Society of the Friends of the People would not agree in it—indeed, agree in it they could not—you will find what was the reception which the communication of that information met with—an universal groan from a large body of men, amounting, I believe, to a couple of thousand, there assembled.

Gentlemen, this committee of correspondence and co-operation, you will find, met; you will find that there is in the handwriting of the prisoner, in a very short note, an account of what was done when they met; that one of the first steps towards the accomplishment of their purposes was a communication of the correspondences of the country societies to those who were to be the delegates of the Constitutional Society; but the meeting was broken up by the apprehension of the prisoner and others, which has led, as I before stated, to this prosecution.

Gentlemen, I have before told you that I conceived it was competent for me—as indeed I apprehend, without question, it is—after proving the conspiracy, to show the conduct of the persons who were parties in that conspiracy, in furtherance of the conspiracy, when it is proved. You will find that one of the persons who attended the meeting of the 20th of January 1794, and who was a very active member of the London Corresponding Society, and likewise one of the committee of correspondence and co-operation, which I have alluded to as the final act of this business, gives himself this account of the transactions of the 20th of January 1794, and of other circumstances: this is Mr Thelwall.

“ It is with infinite satisfaction that at last I received a letter from you; it was brought this morning by Citizen Lee, and has been delayed, I understand, this fortnight at Rotherhithe by some accident.

“ I am too well acquainted with mankind to be surprised, too much of a philosopher to be angry, at the abuse and misrepresentation of mistaken men; but I shall endeavour, as I wish to preserve the good opinion of a man whom I remember with esteem, to send you such printed documents as will prove to you that, instead of having deserted the cause of liberty, I have redoubled my zeal, and that there is not at this time in England a man that goes bolder lengths, and exposes himself to more danger, in the cause of liberty than myself. I have been for four or five months past almost the sole labourer upon whom the fatigue, the danger, and the exertions of the London Corresponding Societies, the only avowed *sans culottes* in the metropolis, have rested; and have been otherwise so active in the cause, as scarcely to have passed a week without threats and conspiracies from the Government and its purblind adherents. Ever since the famous or infamous, call it which you will, proclamation of November 1792, I have been frequenting all public meetings

where anything could be done or expected, have been urging and stimulating high and low, and endeavouring to rally and encourage the friends of freedom. I have been constantly sacrificing interest and security, offending every personally advantageous connexion, till ministerialists, oppositionists, and moderates, hate me with equal cordiality, and, if I may judge by their conduct, fear me as much as they hate.

"For these four months, I have been giving political lectures and printing, and appropriating the whole receipts, till the last fortnight, to the support of our delegates to the British convention; for the history of which I must refer you to Citizen Talbot, whom I have not seen, but whom I hope to see before he leaves England."

He then gives an account of the meetings I have been stating to you, and of his lectures. Then he says—

"Adieu. I will collect together what political papers I can to send to you when I can find leisure. Do write to me; let me know something about the state of politics and society in America. I fear you are somewhat short of the true *sans culotte* liberty; that you have too much veneration for property, too much religion, and too much law."

"I fear you are somewhat short of the true *sans culotte* liberty." Now, that is, that you have too much veneration for property, too much religion, and too much law.

Gentlemen, having now gone through the written evidence, I am to state to you some other circumstances. I have not, indeed, stated all the written evidence, because you will have written evidence laid before you of stimulations, under singular pretexts, to these societies to arm themselves. You will find, for instance, that if a debate happened in that Parliament, where they meant hereafter to suffer no debate, about the Hessians and Hanoverians, they circulated among them papers—and it will be brought home to those with respect to whom it is stated—to this effect: "The Ins tell us we are in danger of invasion from the French; the Outs tell us that we are in danger from the Hessians and Hanoverians. In either case, we should arm ourselves. Get arms, and learn how to use them."

You will likewise find, upon this part of the case, that, after the dispersion of the British convention in Edinburgh, after it was seen that the law of this country was strong enough to beat down a conspiracy of that kind, acting by their mere naked numbers, that it became then, in their opinion, necessary to the accomplishment of their purpose to act with arms.

Now, gentlemen, where a general conspiracy of this sort, among affiliated societies, existed in Scotland, Sheffield, Norwich, Manchester, and various parts of the kingdom, all aiming at the same end, all acting upon the same principle, all involved in the same

project of having a convention from the different parts of the united kingdoms, it is natural that they should think of arms: but if the conspiracy did not exist, it would seem a very odd thing that it should happen in fact that, in these different parts of the kingdom, in Scotland, in Sheffield, and in London, we should find persons preparing arms of a sort, and of a denomination, which of late years we have not heard of in this country, except as existing in France, and except as stated in a letter from France, which I have read to you.

But, gentlemen, you will find, from the evidence I have to offer—and indeed it is not surprising that you should so find, after I shall tell you that, in the pocket of one of the parties in this conspiracy, and distributed also in divisions in the London Corresponding Society, were papers importing that, upon the 1st of April 1794, was to be performed, "The Guillotine, or George's Head in a Basket,"—papers in which the sacred person of the King is so spoken of, and in which all orders of men, under ludicrous representations of them to their country, were doomed to lamp-irons and to suspension;—after I shall tell you, that I am instructed that Mr Thelwall could, when retiring from Chalk Farm, take a pot of porter in his hand, with a knife take off the head, and say, "Thus I would serve all kings;" if you should find such language used, I am persuaded you will not be surprised to find pikes in the hands of these men and their associates—to find muskets in the hands of these men and their associates. Do not, gentlemen, let us be misled by the great doctrine of the Bill of Rights, that every man has a right to arms for his own protection. He has without question a right to convenient arms for his own defence; but the point before a jury will be, for what purpose had he the arms? If he attempts to say that he had them for his own defence, if he had them in fact for a worse purpose, the attempt to colour the fact makes the fact more criminal.

Gentlemen of the jury, you will find that Mr Yorke, in the month of November 1793, will be proved to have been at one of the divisions of the London Corresponding Society, stating, that he was going among the sons of liberty in Belgium, to bring into this country the true friends of liberty. You will find that he was a member of the London Corresponding Society, and constituted a delegate of the Constitutional Society to Scotland; that he has been propagating at Sheffield the same doctrine as his brother associates were propagating in London; that he was there directing the form in which pikes should be made to persons who were to make such instruments; that the persons at Sheffield enter into a correspondence with the prisoner at the bar; that they inform him that these pikes are made; that he delivers the direction to persons of the Corresponding Society, in order that they may furnish themselves with these instruments; and that they were to be fur-

nished from Sheffield to a place here, I think, the Parrot, in Green Arbour Alley, or some other place in this town; and that, if the apprehension of these persons here, and at Sheffield, had not put an end to the further execution of the project, there would have been a large importation of these pikes into this part of the kingdom.

Gentlemen, you will find that this idea of arms was carried further. You will find that, for the use of this society, a plate with figures, showing the manner of learning the military exercise, was engraved by a Mr Worship, a member of this society. You will find that there was a military society in Lambeth, and another in Turnstile, Holborn. They were small, in their beginnings, I admit; but these things must be so in their beginnings. And you will find that the prisoner at the bar gave to a witness of the name of Edwards, a direction of whom to obtain pikes at Sheffield. Mr Williams, another witness, who will be called to you, who is a gun-engraver in the Tower, made muskets for the use of these societies in Lambeth and in Turnstile, with an express protest that he should not be employed, unless he himself became a member of the societies. You will find accordingly that he did become a member of them. You will find that they drilled at particular places. Gentlemen, I give you this outline of this part of the evidence, because I do not wish to enter more into the particulars than to give you a general impression of the nature of the case which I have to lay before you.

You will likewise see, what is natural enough to happen, when you find in the book of the Society for Constitutional Information that Mr Horne Tooke could think of giving notice, that he would move "that two books should be opened, one of them (bound in black) in which should be entered all the enormities of those who deserve the censure; and in the other, the merits of those who deserve the gratitude of the society." You will not be surprised if you should find persons in these affiliated societies of lower descriptions holding conversations about seizing the most august persons in the nation; if you should hear of their holding conversations about the situation of persons in the House of Commons, and the means by which they could know their persons.

Upon the whole, gentlemen of the jury, I shall now lay the testimony before you, submitting this written evidence to you, calling witnesses, above all exception, to a great part of the case; calling some witnesses whom, I now avow to you, you will find were persons employed by Government to watch over the proceedings of these societies, and who therefore became informed, in consequence of such employment, of some of their transactions; and Government would have been wanting to itself, and would have been wanting to a degree of criminality which no man can describe, if this country had at this moment been in the state in which it would have been, if these pikes had been brought into actual exertion.

At Sheffield, indeed, I am told they had got to the length of forming iron instruments which were to disable horse, which they called night-cats, and which would immediately insert themselves into the hoofs of horses' feet. I say, if with these projects going on in the country, a secretary of state, or any other person in the executive government, had hesitated a moment to procure information, these parties might have been able to put into execution the projects they were meditating, and he would have been answerable for it.

Gentlemen, it is the great province of a British jury—and God forbid these prisoners should not have the benefit of the reflection—that British juries are able to protect us all—are able to sift the characters of witnesses—to determine what credit is due to them—listening to men of good character without any impression against their evidence—listening to men such as I have stated with a strong impression against their evidence; that impression, however, to be beat down by the concurrent unsuspecting testimony arising out of the rest of the case, if, upon the whole, you should find the case to be made out as I have stated it to you.

Gentlemen, I forgot to mention to you, that you will likewise find, about the time that this convention was talked of, that there was a new constitution framed for the Corresponding Society, in which they speak of a royalist as an enemy to the liberties of his country, of a democrat as a friend to the liberties of his country; and you will find, that in a constitution again revised, the whole was thrown into a scheme, and into a system, which was to add physical strength to the purposes of that convention, which was, I submit to you, to assume all civil and political authority.

If you find all these things, and if under the direction of that wisdom that presides here—with respect to which, gentlemen, let me say again, that the situation of this country is indeed reduced to a most miserable one, if the respect which is due to the administration of the law is suffered to be weakened in any manner—if the respect which is due to the administration of the law, that administration which perhaps is the best feature of the constitution under which we live, is destroyed, miserable indeed must be the situation of your country!—if you find, under that direction, that the case being proved in fact, is also made out in law, you will do that on behalf of the public which is due to yourselves, to the public, to your posterity, and theirs.

But on the other hand, if after hearing this case fully stated, and attempted to be fully proved, you should be of opinion that it is not proved, or you should be finally of opinion that the offence is not made out, according to the *hallowed* interpretation of the statute of Edward III.; I say, then, in the conclusion, I join from my heart in the prayer which the law makes on behalf of the prisoner,—God send the prisoner a safe deliverance!

Before Mr Erskine's speech for the prisoner, we think it right to introduce a remarkable circumstance that attended this trial, namely, that it being impracticable to bring the evidence within the compass of the longest possible sitting, it became necessary, from day to day, to adjourn the Court; and the following extract from the proceedings will show to what disadvantages, even with the indulgence of the Court and jury, the prisoner's counsel were subjected. The trial began on Tuesday, the 28th of October, and the Court sat till a late hour on that day, Wednesday, Thursday, and Friday, assembling at nine every morning. It is plain that not a moment's time was afforded for considering and arranging the various matters to be observed upon in the defence. When the Court, therefore, was about to adjourn at two in the morning of Saturday (being the fourth day of the trial), and the evidence for the Crown being about to close, which would have rendered it necessary for Mr Erskine to open the case of the prisoner at nine the same morning, the following dialogue took place:—

Mr ERSKINE. My Lords, this is the fourth day that my friend Mr Gibbs and myself have stood in a very anxious situation. There has been a most voluminous body of written evidence, all of which has not been printed—copies of that part which is unprinted have not as yet reached me; there have been two days spent in hearing parole evidence; and we (being but two) assigned as counsel for the prisoner, have been obliged to be constantly engaged in Court, in cross-examining the witnesses for the Crown; and your Lordships very well know, that the cross-examination of the witnesses presents an important feature of our case on the part of the prisoner, a great deal of which has fallen upon me. Your Lordships must be sensible that it was impossible I could, at the time of cross-examining a witness, take any particular note of what he had said. When the evidence for the Crown was near closing, I humbly requested of your Lordships the indulgence of an hour or two to look over the papers. Your Lordships were pleased to grant my request, which I considered as a personal civility to myself; but I was prevented, by extreme sickness, from availing myself of those two hours, for I was indeed so ill, that nothing less than a case of this magnitude could have brought me into Court. Since that time I have not had natural rest, not having got home till between two and three o'clock in the morning, and having been here again at nine; so that I can say with a safe conscience, I have not had an opportunity of even casting my eye upon any part of the evidence, though I trust I have something of the general result of it in my mind. I should hope, under these circumstances, that the prisoner might be indulged with some opportunity for my friend Mr Gibbs and myself to arrange our papers, and consider them together as counsel for the prisoner, before we are called upon to make our defence. It is necessary to do this, not for my address to the jury only, but that when I do address them, I may present to them properly the pri-

soner's case, which depends much upon the arrangement of the evidence. I feel myself in no condition to do this, either in a manner respectful to the Court or for the safety of the prisoner. I do not wish to propose any particular time, but merely to leave it to the indulgence and justice of the Court, perfectly sure that when I leave it there, I leave it in a safe place.

LORD CHIEF-JUSTICE EYRE. I feel the weight of your observations, of the difficulty under which you labour, in an extraordinary case, which can hardly be judged of by the common rules on which we proceed in cases of this nature. The Court are of a disposition to give you all the indulgence they possibly can, because there is a vast mass of evidence. The case arises out of the evidence, and it is fit the case should be thoroughly canvassed. At the same time, it is certainly notorious that the great bulk of that evidence has been in print a great while, and I cannot believe that it has not been very well considered as far as it has been in print,—I am sure that must be understood.

Now I will tell you very fairly, if the question was only the personal accommodation of yourself and Mr Gibbs, at the expense of the personal convenience of myself, my Lord, and my brothers, I am quite sure we should have no difficulty in the sacrifice of our personal convenience ;—but there is a great deal more in the case. We have a jury who have been thrown into the most arduous service that ever I saw a jury engaged in ; they have borne it in a manner that does them infinite honour ; and I have no doubt but that, as far as it is necessary that they should continue in the situation they are in, they will bear it cheerfully. I have seen such a specimen of their behaviour, that I cannot entertain a doubt of that. But that we could give you an absolute suspension of the business, in the situation that we are in, upon the terms of keeping the jury in the situation in which they must be kept, is a thing that it is perfectly impossible for us to think of. Now this occurs to me,—my brothers will consider of it—I merely throw it out for their consideration :—You are men of honour, you will tell us whether you really do mean to call witnesses, or to take the case upon the ground upon which it is already made. If you mean to call witnesses, you may call them to-morrow ; you may go on with the case as far as it will be necessary for you to go on, to fill up all the time that ought to be filled up, leaving only a part of Sunday, the common interval of rest, without our keeping the jury in a situation to do nothing. If you do not mean to call witnesses, but mean to leave the case, with the observations which arise upon the evidence that is before the Court, we will go as far as we can ;—but if witnesses are to be called, and you desire not to address the jury immediately, you must immediately begin to examine your witnesses, as soon as they have closed on the part of the Crown, and fill up the time that will intervene between that time and the time when you will be ready to go on with your address to the jury. In that

way I think we shall put the jury under no unnecessary hardships, because, whether they hear the witnesses before or after the speech, is a matter of no importance to them.

MR ERSKINE. I should be afraid to take upon myself the experiment of trying a cause, particularly of this magnitude, in a manner totally different from any that has ever occurred in the annals of this country. I should be afraid to begin an experiment of that sort, more especially when counsel in a capital case; because evidence comes with infinitely more weight, by which I mean the proper weight evidence ought to have, from the bearing of it upon the case when it is first stated by the counsel, who is to support his cause by it: much of the effect of evidence is lost, and much of it distorted by the cross-examination of counsel, until the true bearing of it has been explained. I do not propose what can be properly termed a suspension of the trial, or which can throw any sort of inconvenience upon the jury, which would, I am sure, give me as much pain as anybody in the world. But your Lordships will recollect that the Attorney-General in opening his case—(I am sure I think as highly as is possible of his ability, and of the manner in which he performed his duty)—but he found it necessary to spend nine hours in the opening of his case; the prisoner most unquestionably may expect an equal time, if it were necessary, for his counsel to take the same course in opening his;—and if I were thrown upon it in the present moment, not having a sufficient recollection of the great points of the evidence, if I were put upon speaking to the jury at this moment, I must take that course of reading at great length great numbers of papers; whereas, if I had the opportunity of a few hours more, which is the nature of my application, merely to arrange my papers, and to select such as, in the judgment of my learned friend and myself, we shall think sufficient for our defence, it would save time.

LORD CHIEF-JUSTICE EYRE. I dread the explanation of a few hours. Mr Attorney-General, what further evidence have you to produce?

MR ATTORNEY-GENERAL. I think my evidence will not take up more than forty minutes.

MR ERSKINE. I do not know whether your Lordships mean to sit on Sunday?

LORD CHIEF-JUSTICE EYRE. I shall sit late on Saturday night; I say nothing of Sunday.

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

LORD CHIEF-JUSTICE EYRE. I can easily think that to be the case, and it is a circumstance I am extremely sorry for; on the other hand, I cannot hazard the situation of the jury.

MR ERSKINE. I should be sorry to put the jury to any incon-

venience. I do not shrink from the business, I am extremely willing to endure anything ; but I assure your Lordship that my health is extremely suffering by it.

LORD CHIEF-JUSTICE EYRE. What is it you ask for ?

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

LORD CHIEF-JUSTICE EYRE. We have offered you an expedient ; neither of you say to us whether you can accept it.

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

LORD CHIEF-JUSTICE EYRE. That it may not be in your judgment a desirable thing, is very well ; but that there is any other objection to it, I cannot agree to. Whether the case is taken upon the summing-up of the evidence, or whether it is taken upon the opening of the evidence, is, as to all legal purpose, the same ; I can see no difference. It may make a vast difference in your judgment as to what is the best manner and the best method of laying your case before the jury. Undoubtedly we are assisting the prisoner by putting the counsel in a situation to do his business in the best manner, by proposing it thus ; whereas, if they were put upon doing it in the ordinary course, they would lie under a peculiar difficulty and disadvantage. Mr Erskine has not yet told us what he asks.

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

LORD CHIEF-JUSTICE EYRE. Then suppose we adjourn to eleven o'clock.

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

LORD CHIEF-JUSTICE EYRE. You will conduct your case in the manner you think best for the interest of your client.

Mr ERSKINE. I should be glad if your Lordships would allow another hour.

LORD CHIEF-JUSTICE EYRE. I feel so much for the situation of the jury, that on their account I cannot think of it.

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

One of the JURY. My Lord, we are extremely willing to allow Mr Erskine another hour, if your Lordship thinks proper.

LORD CHIEF-JUSTICE EYRE. As the jury ask it for you, I will not refuse you.

It now being half-past one o'clock on Saturday morning, the Court adjourned till twelve o'clock of the same day.

The Court having adjourned to twelve o'clock instead of nine, as above mentioned, and two hours being spent in finishing the evidence for the Crown, Mr Erskine came into court, and addressed the jury as follows:—

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

Before I advance to the regular consideration of this great cause, either as it regards the evidence or the law, I wish first to put aside all that I find in the speech of my learned friend, the Attorney-General, which is either collateral to the merits, or in which I can agree with him. First, then, IN THE NAME OF THE PRISONER, and speaking *his* sentiments, which are well known to be my own also, I concur in the eulogium which you have heard upon the constitution of our wise forefathers. But before this eulogium can have any just or useful application, we ought to reflect upon what it is which entitles this constitution to the praise so justly bestowed upon it. To say nothing at present of its most essential excellence, or rather the very soul of it, viz., the share the people ought to have in their government by a pure representation, for the assertion of which the prisoner stands arraigned as a traitor before you,—what is it that distinguishes the Government of England from the most despotic monarchies? What, but the security which the subject enjoys in a trial and judgment by his equals; rendered

doubly secure as being part of a system of law which no expediency can warp, and which no power can abuse with impunity?

The Attorney-General's second preliminary observation I equally agree to. I anxiously wish with him that you shall bear in memory the anarchy which is desolating France. Before I sit down, I may perhaps, in my turn, have occasion to reflect a little upon its probable causes; but waiting a season for such reflections, let us first consider what the evil is which has been so feelingly lamented, as having fallen on that unhappy country. It is, that, under the dominion of a barbarous state necessity, every protection of law is abrogated and destroyed;—it is, that no man can say, under such a system of alarm and terror, that his life, his liberty, his reputation, or any one human blessing, is secure to him for a moment;—it is, that, if accused of federalism, or moderatism, or incivism, or of whatever else the changing fashions and factions of the day shall have lifted up into high treason against the state, he must see his friends, his family, and the light of heaven, no more—the accusation and the sentence being the same, following one another as the thunder pursues the flash. Such *has been* the state of England, such *is* the state of France; and how then, since they are introduced to you for application, ought they in reason and sobriety to be applied? If this prosecution has been commenced (as is asserted) to avert from Great Britain the calamities incident to civil confusion, leading in its issues to the deplorable condition of France, I call upon you, gentlemen, to avert such calamity from falling upon my client, and, through his side, upon yourselves and upon our country. Let not *him* suffer under vague expositions of tyrannical laws, more tyrannically executed. Let not *him* be hurried away to pre-doomed execution, from an honest enthusiasm for the public safety. I ask for him a trial by this applauded constitution of our country; I call upon you to administer the law to him, according to our own wholesome institutions, by its strict and rigid letter. However you may eventually disapprove of any part of his conduct, or viewing it through a false medium, may think it even wicked, I claim for him, as a subject of England, that the law shall decide upon its criminal denomination. I protest, in his name, against all appeals to speculations concerning consequences, when the law commands us to look only to INTENTIONS. If the state be threatened with evils, let Parliament administer a *prospective* remedy, but let the prisoner hold his life UNDER THE LAW.

Gentlemen, I ask this solemnly of the Court, whose justice I am persuaded will afford it to me; I ask it more emphatically of you, *the jury*, who are called upon your oaths to make a true deliverance of your countryman from this charge; but lastly, and chiefly, I implore it of Him in whose hands are all the issues of life whose humane and merciful eye expands itself over all the transactions of

mankind—at whose command nations rise, and fall, and are regenerated—without whom not a sparrow falleth to the ground;—I implore it of *God himself*, that He will fill your minds with the spirit of justice and of truth, so that you may be able to find your way through the labyrinth of matter laid before you, a labyrinth in which no man's life was ever before involved in the annals of British trial, nor indeed in the whole history of human justice or injustice.

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

The indictment charges that the prisoners did maliciously and traitorously conspire, compass, and imagine, to bring and put our lord the King to death; and that to fulfil, perfect, and bring to effect, their most evil and wicked purpose (*that is to say, of bringing and putting the King to death*), “they met, conspired, consulted, and agreed amongst themselves, and other false traitors unknown, to cause and procure a convention to be assembled within the kingdom, WITH INTENT”—(*I am reading the very words of the indictment, which I entreat you to follow in the notes you have been taking with such honest perseverance*)—“WITH INTENT AND IN ORDER that the persons so assembled at such convention, should and might traitorously, and in defiance of the authority, and against the will of Parliament, subvert and alter, and cause to be subverted and altered, the legislature, rule, and government of the country, and to depose the King from the royal state, title, power, and government thereof.” This is the first and great leading overt act in the indictment; and you observe that it is not charged as being treason SUBSTANTIVELY AND IN ITSELF, but only as it is committed in pursuance of the treason against the King's PERSON, antecedently imputed; for the charge is NOT, that the prisoners conspired to assemble a convention to DEPOSE the King, but that they conspired and compassed his DEATH; and that, in order to accomplish that wicked and detestable purpose, *i.e., in order to fulfil the traitorous intention of the mind against his LIFE*, they conspired to assemble a convention, with a view to depose him. The same observation applies alike to all the other counts or overt acts upon the record, which manifestly, indeed, lean upon the establishment of the first for their support: because they charge the publication of different writings, and the provision of arms, *not as distinct offences*, but as acts done to excite to the assembling of the same convention, and to maintain it when assembled: but above all, and which must never be forgotten, because they also uniformly charge these different acts as committed in fulfilment of the same traitorous purpose TO BRING THE KING TO DEATH. You will therefore have three distinct matters for consideration upon this trial: First, What share (if any) the prisoner had, in concert with others, in assembling *any* convention

or meeting of subjects within this kingdom; Secondly, What were the acts to be done by this convention when assembled; and Thirdly, What was the view, purpose, and intention of those who projected its existence. This third consideration, indeed, comprehends, or rather precedes and swallows up, the other two; because, before it can be material to decide upon the views of the convention, as pointed to the subversion of the rule and order of the King's political authority (even if such views could be ascribed to it, and brought home even personally to the prisoner), we shall have to examine whether that criminal conspiracy against the established order of the community was hatched and engendered by a wicked contemplation to destroy the *natural life and person* of the King; and whether the acts charged and established by the evidence were done *in pursuance and in fulfilment of the same traitorous purpose.*

Gentlemen, this view of the subject is not only correct but self-evident. The subversion of the King's political government, and all conspiracies to subvert it, are crimes of great magnitude and enormity, which the law is open to punish, *but neither of them are the crimes before you.* The prisoner is NOT charged with a conspiracy against the King's POLITICAL GOVERNMENT, but against his NATURAL LIFE. He is not accused of having merely taken steps to depose him from his authority, but with having done so *with the intention to bring him to death.* It is the act with the *specific intention*, and not the act alone, which constitutes the charge. The act of conspiring to depose the King may indeed be evidence, according to circumstances, of an intention to destroy his natural existence, but never as a proposition of law can constitute the intention itself. Where an act is done in pursuance of an intention, surely the intention must first exist; a man cannot do a thing in fulfilment of an intention, unless his mind first conceives that intention. The doing an act, or the pursuit of a system of conduct, which leads in probable consequences to the death of the King, may legally (if any such be before you) affect the consideration of the traitorous purpose charged by the record, and I am not afraid of trusting you with the evidence. How far any given act, or course of acting, independently of intention, may lead probably or inevitably to any natural or political consequence, is what we have no concern with: these may be curious questions of casuistry or politics; but it is wickedness and folly to declare that consequences unconnected even with intention or consciousness shall be synonymous in law with the traitorous mind, although the traitorous mind alone is arraigned as constituting the crime.

Gentlemen, the first question consequently for consideration, and to which I must therefore earnestly implore the attention of the Court, is this: **WHAT IS THE LAW UPON THIS MOMENTOUS SUBJECT?** And recollecting that I am invested with no authority, I shall not pre-

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

First, then, I maintain that that branch of the statute 25th of Edward the Third, which declares it to be high treason "when a man doth compass or imagine the death of the King, of his lady the Queen, or of his eldest son and heir," was intended to guard by a higher sanction than felony the NATURAL LIVES of the King, Queen, and Prince ; and that no act, therefore (either inchoate or consummate) of resistance to, or rebellion against, the King's regal capacity, amounts to high treason of compassing his death, unless where they can be charged upon the indictment, and proved to the satisfaction of the jury at the trial, as overt acts committed by the prisoner in fulfilment of a traitorous intention to destroy the King's NATURAL LIFE.

Secondly, That the compassing the King's death, or in other words, the traitorous intention to destroy his *natural existence*, is the treason, and not the overt acts, which are only laid as manifestations of the traitorous intention, or in other words, as EVIDENCE competent to be left to a jury to prove it ; and that no conspiracy to levy war against the King, nor any conspiracy against his *regal character or capacity*, is a good overt act of compassing his death, unless some force be exerted, or in contemplation, against THE KING'S PERSON ; and that such force so exerted or in contemplation is not substantively the treason of compassing, but only competent in point of law to establish it, if the jury by the verdict of guilty draw that conclusion of fact from the evidence of the overt act.

Thirdly, That the charge in the indictment of compassing the King's death is not laid as legal inducement or introduction, to follow as a legal inference from the establishment of the overt act, but is laid as an averment of A FACT ; and, as such, the very gist of the indictment, to be affirmed or negatived by the verdict of guilty or not guilty.

It will not, I am persuaded, be suspected by the Attorney-General, or by the Court, that I am about to support these doctrines by opposing my own judgment to the authoritative writings of the venerable and excellent Lord Hale, whose memory will live in this country, and throughout the enlightened world, as long as the administration of pure justice shall exist ; neither do I wish to oppose anything which is to be found in the other learned authorities principally relied upon by the Crown, because all my positions are perfectly consistent with a right interpretation of them ; and because, even were it otherwise, I could not expect successfully to oppose them by any reasonings of my own, which can have no weight but as they shall be found at once consistent with ac-

knowledgeable authorities, and with the established principles of the English law. I can do this with the greater security, because my respectable and learned friend, the Attorney-General, has not cited cases which have been the disgrace of this country in former times, nor asked you to sanction by your judgment those bloody murders which are recorded by them as acts of English justice; but, as might be expected of an honourable man, his expositions of the law, though I think them frequently erroneous, are drawn from the same sources which I look up to for doctrines so very different. I find, indeed, throughout the whole range of authorities (*I mean those which the Attorney-General has properly considered as deserving that name and character*), very little contradiction; for, as far as I can discover, much more entanglement has arisen from now and then a tripping in the expression than from any difference of sentiment amongst eminent and virtuous judges, who have either examined or sat in judgment upon this momentous subject.

Gentlemen, before I pursue the course I have prescribed to myself, I desire most distinctly to be understood, that, in my own judgment, the most successful argument that a conspiracy to depose the King does not necessarily establish the treason charged upon this record, IS TOTALLY BESIDE ANY POSSIBLE JUDGMENT THAT YOU CAN HAVE TO FORM UPON THE EVIDENCE BEFORE YOU; since throughout the whole volumes that have been read, I can trace nothing that even points to the imagination of such a conspiracy; and consequently the doctrines of Coke, Hale, and Forster, on the subject of high treason, might equally be detailed in any other trial that has ever been proceeded upon in this place. But, gentlemen, I stand in a fearful and delicate situation. As a supposed attack upon the King's civil authority has been transmuted, by construction, into a murderous conspiracy against his natural person, in the same manner, and by the same arguments, a conspiracy to overturn that civil authority by direct force has again been assimilated, *by further construction*, to a design to undermine monarchy, by changes wrought through public opinion, enlarging gradually into universal will; so that I can admit no false proposition, however wide I may think it of rational application. For as there is a CONSTRUCTIVE COMPASSING, so also there is a CONSTRUCTIVE DEPOSING; and I cannot, therefore, possibly know what either of them is separately, nor how the one may be argued to involve the other. There are, besides, many prisoners whose cases are behind, and whose lives may be involved in your present deliberation; their names have been already stigmatised, and their conduct arraigned, in the evidence you have heard, *as a part of the conspiracy*. It is these considerations which drive me into so large a field of argument, because, by sufficiently ascertaining the law in the outset, they who are yet looking up to it for protection may not be brought into peril.

Gentlemen, I now proceed to establish, that a compassing of the

death of the King, within the 25th of Edward the Third, *which is the charge against the prisoner*, consists in a traitorous intention against his NATURAL LIFE; and that nothing short of your firm belief of that detestable intention, from overt acts which you find him to have committed, can justify his conviction. That I may keep my word with you in building my argument upon nothing of my own, I hope my friend Mr Gibbe will have the goodness to call me back, if he finds me wandering from my engagement; that I may proceed step by step upon the most venerable and acknowledged authorities of the law.

In this process I shall begin with Lord Hale, who opens this important subject by stating the reason of passing the statute of the 25th of Edward the Third, on which the indictment is founded. Lord Hale says, in his Pleas of the Crown, vol. i., page 82, that "at common law there was a great latitude used in raising offences to the crime and punishment of treason, by way of interpretation and *arbitrary construction*, which brought in great uncertainty and confusion. Thus encroaching, *i.e.*, *encroaching on royal power*, was an usual charge of treason anciently, though a very uncertain charge; so that no man could tell what it was, or what defence to make to it." Lord Hale then goes on to state various instances of vexation and cruelty, and concludes with this striking observation: "By these and the like instances that might be given, it appears how *arbitrary and uncertain* the law of treason was before the statute of 25th of Edward the Third, whereby it came to pass that almost every offence that was, or seemed to be, a breach of the faith and allegiance due to the King, was by *construction, consequence, and interpretation*, raised into the offence of high treason." This is the lamentation of the great Hale upon the state of this country previous to the passing of the statute, which, he says, was passed as a REMEDIAL law, to put an end to them; and Lord Coke, considering it in the same light, says, in his third Institute, page 2, "The Parliament which passed this statute was called (as it well deserved) *Parliamentum Benedictum*; and the like honour was given to it by the different statutes which from time to time brought back treasons to its standard, all agreeing in magnifying and extolling this blessed Act." Now this statute, which has obtained the panegyric of these great men, whom the Chief-Justice in his charge looked up to for light and for example, and whom the Attorney-General takes also for his guide, would very little have deserved the high eulogium bestowed upon it, if, though avowedly passed to destroy uncertainty in criminal justice, and to beat down the arbitrary constructions of judges, lamented by Hale, as disfiguring and dishonouring the law, it had, nevertheless, been so worded as to give birth to new constructions and uncertainties, instead of destroying the old ones. It would but ill have entitled itself to the denomination of a blessed statute, if it

had not in its enacting letter, which professed to remove doubts and to ascertain the law, made use of expressions the best known and understood; and it will be found accordingly that it cautiously did so. It will be found that, in selecting the expression of COMPASSING THE DEATH, it employed a term of the most fixed and appropriate signification in the language of English law, which not only no judge or counsel, but which no attorney or attorney's clerk, could misunderstand; because in former ages, before the statute, compassing the death of ANY MAN had been a felony, and what had amounted to such compassing had been settled in a thousand instances. To establish this, and to show also, by no reasoning of mine, that the term "compassing the death" was intended by the statute, when applied to the King as high treason, to have the same signification as it had obtained in the law when applied to the subject as a felony, I shall refer to Mr Justice Forster, and even to a passage cited by the Attorney-General himself, which speaks so unequivocally and unanswerably for itself as to mock all commentary. "The ancient writers," says Forster, "in treating of felonious homicide, considered the felonious intention, manifested by plain facts, in the same light, in point of guilt, as homicide itself. The rule was, *voluntas reputatur pro facto*; and while this rule prevailed, the nature of the offence was expressed by the term *compassing the death*. This rule has been long laid aside as too rigorous in the case of common persons; but in the case of the King, Queen, and Prince, the statute of treasons has, with great propriety, retained it in its full extent and vigour; and in describing the offence, has likewise RETAINED the ancient mode of expression, when a man doth compass or imagine the death of our lord the King, &c., and thereof be, upon sufficient proof, provablement, attainted of open deed, by people of his condition: the words of the statute descriptive of the offence, must, therefore, be strictly pursued in every indictment for this species of treason. *It must charge that the defendant did traitorously compass and imagine the King's death; and then go on and charge the several acts made use of by the prisoner to effectuate his traitorous purpose; for the compassing the King's death is the treason, and the overt acts are charged as the means made use of to effectuate the intentions and imaginations of the heart; and therefore, in the case of the Regicides, the indictment charged that they did traitorously compass and imagine the death of the King, and the cutting off the head was laid as the overt act, and the person who was supposed to have given the mortal stroke was convicted on the same indictment.*"

This concluding instance, though at first view it may appear ridiculous, is well selected as an illustration; because, though in that case there could be no possible doubt of the intention, since the act of a deliberate execution involves, in common sense, the intention to destroy life, yet still the anomaly of the offence, which

exists wholly in the INTENTION, and not in the overt act, required the preservation of the form of the indictment. It is surely impossible to read this commentary of Forster without seeing the true purpose of the statute. The common law had anciently considered, even in the case of a fellow-subject, the malignant intention to destroy as equivalent to the act itself; but that noble spirit of humanity which pervades the whole system of our jurisprudence had, before the time of King Edward the Third, eat out and destroyed this rule, too rigorous in its *general* application; but, as Forster truly observes in the passage I have read—"This rule, too rigorous in the case of the subject, the statute of treasons RETAINED in the case of the King, and retained also the very expression used by the law when compassing the death of a subject was felony."

The statute, therefore, being expressly made to remove doubts, and accurately to define treason, adopted the ancient expression of the common law as applicable to felonious homicide, meaning that the life of the Sovereign should remain an exception, and that *voluntas pro facto*, the wicked intention for the deed itself (as it regarded his sacred life), should continue for the rule; and, therefore, says Forster, the statute meaning to RETAIN the law, which was before general, RETAINED also the expression. It appears to me, therefore, incontrovertible, not only by the words of the statute itself, but upon the authority of Forster, which I shall follow up by that of Lord Coke and Hale, contradicted by no syllable in their works, as I shall demonstrate, that the statute, as it regarded the security of the King's LIFE, did not mean to enact a new security never known to the common law in other cases, but meant to suffer a common law rule which formerly existed universally, which was precisely known, but which was too severe in common cases, to remain as an exception in favour of the King's security. I do therefore positively maintain, not as an advocate merely, but IN MY OWN PERSON, that, within the letter and meaning of the statute, nothing can be a compassing the death of the King that would not, in ancient times, have been a felony in the case of a subject; for otherwise Forster and Coke, as will be seen, are very incorrect when they say the statute RETAINED the old law, and the appropriate word to express it; for if it went BEYOND it, it would, on the contrary, have been a NEW rule unknown to the common law, enacted, for the first time, for the preservation of the King's life. Unquestionably the legislature might have made such a rule; but we are not inquiring what it *might* have enacted, but what it *has* enacted. But I ought to ask pardon for having relapsed into any argument of my own upon this subject, when the authorities are more express to the purpose than any language I can use; for Mr Justice Forster himself expressly says, Discourse First, of High Treason, p. 207: "All the words descriptive of the offence, viz., 'If a man doth compass or imagine, and thereof be attainted of open deed,' are

plainly borrowed from the common law, and therefore must bear the *same* construction they did at common law." Is this distinct? I will read it to you again: "All the words descriptive of the offence, viz., 'If a man doth compass or imagine, and thereof be attainted of open deed,' are plainly borrowed from the common law and therefore must bear the *same* construction they did at common law."

Gentlemen, Mr Justice Forster is by no means singular in this doctrine. Lord Coke, the oracle of the law, and the best oracle that one can consult, when standing for a prisoner charged with treason, as he was the highest prerogative lawyer that ever existed, maintains the same doctrine; even he, even Coke, the infamous prosecutor of Raleigh, whose character with posterity, as an Attorney-General, my worthy and honourable friend would disdain to hold, to be author of all his valuable works; yet even this very Lord Coke himself holds precisely the same language with Forster, for, in his commentary on this statute, in his third Institute, p. 5, when he comes to the words, "DOTH COMPASS," he says, "Let us see first what the compassing the death of a *subject* was before the making of this statute, when *voluntas reputabatur pro facto*." Now what is the plain English of this? The commentator says, I am going to instruct you, the student, who are to learn from me the law of England what is a compassing of the death of the KING; but that I cannot do but by first carrying you to look into what was the compassing of the death of a SUBJECT at the ancient common law; because the statute having made a compassing, as applied to the KING, the crime of high treason, which, at common law, was felony in the case of a SUBJECT, it is impossible to define the ONE without looking back to the records which illustrate the OTHER. This is so directly the train of Lord Coke's reasoning, that, in his own singularly precise style of commentating, he immediately lays before his reader a variety of instances from the ancient records and year-books, of compassing the SUBJECT'S DEATH; and what are they? Not arts wholly collateral to attacks upon life, dogmatically laid down by the law from speculations upon probable or possible consequences, but assaults WITH INTENT TO MURDER, conspiracies to waylay the person with the SAME INTENTION, and other MURDEROUS machinations. These were only compassings before the statute against the subject's life; and the extension of the expression was never heard of in the law till introduced by the craft of political judges, when it became applicable to crimes against THE STATE. Here again I desire to appeal to the highest authorities for this source of constructive treasons; for although the statute of Edward the Third had expressly directed that nothing should be declared to be treason but cases within its enacting letter, yet Lord Hale says, in his Pleas of the Crown, page 83, that "things were so carried by *parties* and *factions* in the succeeding reign of Richard the Second, that this statute was

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

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

"This," says Lord Hale, "was a great snare to the subject, inasmuch that the statute, 1st of Henry Fourth, which repealed it, recited that no man knew how he ought to behave himself, to do, speak, or say, for doubt of such pains of treason; and therefore wholly to remove the prejudice, which might come to the King's subjects, the statute, 1st of Henry Fourth, chap. 10, was made, which brought back treason to the standard of the 25th of Edward the Third."

Now if we look to this statute of Richard the Second, which produced such mischiefs, what are they? As far as it re-enacted the treason of compassing the King's death and levying war, it only re-enacted the statute of Edward the Third, but it went beyond it by the loose construction of compassing to depose the King, and raising the people, and riding to make war, or a compassing to depose him, TERMS NEW TO THE COMMON LAW. *The actual levying of force, to imprison, or depose the King, was already and properly high treason, within the second branch of the statute; but this statute of Richard the Second enlarged only the crime of compassing, making it extend to a compassing to imprison or depose, which are the great objects of an actual levying of war, and making a compassing to levy war on a footing with the actual levying it.* It seems, therefore, most astonishing that any Judge could be supposed to have decided, as an abstract rule of law, that a compassing to imprison or depose the King was high treason, SUBSTANTIVELY, WITHOUT PREVIOUS COMPASSING OF HIS DEATH: since it was made so by this statute, 21st of Richard the Second, and reprobated, stigmatised, and repealed by the statute 1st of Henry Fourth, chap. 10. "And so little effect," says Mr Justice Blackstone, "have over-violent laws to prevent any crime, that within two years after this new law of treason respecting imprisonment and deposing, this very prince was both deposed and murdered."

Gentlemen, this distinction, made by the humane statute of Edward the Third, between treason against the King's natural life and rebellion against his civil authority, and which the act of Richard the

Second for a season broke down, is founded in wise and sound policy. A successful attack may be made upon the King's person by the malignity of an individual, without the combination of extended conspiracy or the exertions of rebellious force; the law, therefore, justly stands upon the watch to crush the first overt manifestation of so evil and detestable a purpose. Considering the life of the chief magistrate as infinitely important to the public security, it does not wait for the possible consummation of a crime, which requires neither time, combination, nor force to accomplish, but considers the traitorous purpose as a consummated treason: but the wise and humane policy of our forefathers extended the severity of the rule, *voluntas pro facto*, no further than they were thus impelled and justified by the necessity; and therefore an intention to levy war and rebellion, not consummated, however manifested by the most overt acts of conspiracy, was not declared to be treason, and upon the plainest principle in the world; the King's REGAL capacity, guarded by all the force and authority of the state, could not, like his NATURAL existence, be overthrown or endangered in a moment by the first machinations of the traitorous mind of an individual, or even by the unarmed conspiracy of numbers; and therefore this humane and exalted institution, measuring the sanctions of criminal justice by the standard of civil necessity, thought it sufficient to scourge and dissipate unarmed conspirators by a less vindictive proceeding.

These new treasons were, however, at length all happily swept away on the accession of King Henry the Fourth, which brought the law back to the standard of Edward the Third; and, indeed, in reviewing the history of this highly-favoured island, it is most beautiful, and at the same time, highly encouraging to observe, by what an extraordinary concurrence of circumstances, under the superintendence of a benevolent Providence, the liberties of our country have been established. Amidst the convulsions, arising from the maddest ambition and injustice, and whilst the State was alternately departing from its poise, on one side, and, on the other, the great rights of mankind were still insensibly taking root and flourishing:—though sometimes monarchy threatened to lay them prostrate, though aristocracy occasionally undermined them, and democracy, in her turn, rashly trampled on them, yet they have ever come safely round at last.—This awful and sublime contemplation should teach us to bear with one another when our opinions do not quite coincide; extracting final harmony from the inevitable differences which ever did, and ever must, exist amongst men.

Gentlemen, the act of Henry the Fourth was scarcely made when it shared the same fate with the venerable law which it restored. Nobody regarded it. It was borne down by factions, and, in those days, there were no judges, as there are now, to hold firm the balance of justice amidst the storms of state;—men could

not then, as the prisoner can to-day, look up for protection to magistrates independent of the Crown, and awfully accountable in character to an enlightened world. As fast as arbitrary constructions were abolished by one statute, unprincipled judges began to build them up again, till they were beat down by another: to recount their strange treasons would be tiresome and disgusting; but their system of construction, in the teeth of positive law, may be well illustrated by two lines from Pope:

"Destroy his *lib* and sophistry in vain,
The creature's at his dirty work again."

This system, both judicial and parliamentary, became indeed so intolerable, in the interval between the reign of Henry the Fourth, and that of Philip and Mary, that it produced, in the first year of the latter reign, the most remarkable statute that ever passed in England, repealing not only all former statutes upon the subject, except that of Edward the Third, but also stigmatising, upon the records of Parliament, the arbitrary CONSTRUCTIONS of judges, and limiting them, in all times, to every LETTER of the statute. I will read to you Lord Coke's commentary upon the subject. In his third Institute, page 23, he says,—“ Before the act of the 25th of Edward the Third, so many treasons had been made and declared, and in such sort penned, as not only the ignorant and unlearned people, but also learned and expert men, were trapped and snared, . . . so as the mischief before Edward the Third, of the uncertainty of what was treason and what not, became so frequent and dangerous, as that the safest and surest remedy was by this excellent act of Mary to abrogate and repeal all, but only such as are specified and expressed in this statute of Edward the Third. By which law the safety of both the King and of the subject, and the preservation of the common weal, were wisely and sufficiently provided for, and in such certainty, that *nihil relictum est arbitrio judicis*.” The whole evil, indeed, to be remedied and avoided by the act of Queen Mary was, the *arbitrium judicis*, or judicial construction beyond the LETTER of the statute. The statute itself was perfect, and was restored in its full vigour; and to suppose, therefore, that when an act was expressly made, because judges had built treasons by constructions beyond the law, they were to be left, consistently with their duty, to go on building AGAIN, is to impute a folly to the legislature, which never yet was imputed to the framers of this admirable statute. But this absurd idea is expressly excluded, not merely by the statute, according to its plain interpretation, but according to the direct authority of Lord Coke himself, in his commentary upon it. For he goes on to say, “ Two things are to be observed, first, that the word *expressed*, in the statute of Mary, excludes all *implications or inferences whatsoever*: secondly, that no former attainder, judgment, precedent, resolution,

or opinion of judges, or justices, of high treason, other than such as are specified and expressed in the statute of Edward the Third, are to be followed or drawn into example. For the words be plain and direct: that from henceforth no act, deed, or offence shall be taken, had, deemed, or adjudged to be high treason, but only such as are declared and expressed in the said act of the 25th of Edward the Third, any Act of Parliament or statute after 25th of Edward the Third, or any other declaration or matter, to the contrary notwithstanding."

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

But, gentlemen, the most important part of Lord Coke's commentary on this statute is yet behind, which I shall presently read to you, and to which I implore your most earnest attention; because I will show you by it, that the unfortunate man, whose innocence I am defending, is arraigned before you of high treason, upon evidence not only wholly repugnant to this particular statute, but such as never yet was heard of in England upon any capital trial:—EVIDENCE which, even with all the attention you have given to it, I defy any one of you, at this moment, to say of what it consists;—EVIDENCE, which (since it must be called by that name) I tremble for my boldness in presuming to stand up for the life of a man, when I am conscious that I am incapable of understanding from it, even what acts are imputed to him; EVIDENCE, which has consumed four days in the reading;—not in reading the acts of the prisoner, but the unconnected writings of men, unknown to one another, upon a hundred different subjects;—EVIDENCE, the very listening to which has deprived me of the sleep which nature requires;—which has filled my mind with unremitting distress and agitation, and which, from its discordant unconnected nature, has suffered me to reap no advantage from the indulgence, which I began with thanking you for; but which, on the contrary, has almost set my brain on fire, with the vain endeavour of collecting my thoughts upon a subject never designed for any rational course of thinking.

Let us, therefore, see how the unexampled condition I am placed in falls in with Lord Coke upon this subject, whose authority is appealed to by the Crown itself; and let us go home and burn our

books if they are to blazon forth the law by eulogium, and accurately to define its protector, which yet the subject is to be totally cut off from, when even under the sanction of these very authors, he stands upon his trial for his existence. Lord Coke says, in the same commentary (page 12) that the statute had not only accurately defined the CHARGE, but the nature of the PROOF on which alone a man shall be attainted of any of the branches of high treason.—“It is to be observed,” says he, “that the word in the act of Edward the Third is *provablement*: i.e., Upon direct and manifest proof, not upon conjectural presumptions, or inferences, or strains of wit, but upon good and sufficient proof. And herein the adverb *provably* hath a great force, and signifieth a DIRECT PLAIN proof, which word the Lords and Commons in Parliament did use, for that the offence of treason was so heinous, and was so heavily and severely punished, as none other the like, and therefore the offender must be PROVABLY attainted, which words are as forcible as upon direct and manifest proof. Note, the word is not *probably*, for then *commune argumentum* might have served, but the word is *provably* be attainted.”

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

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

“Now although the crime of high treason is the greatest crime against faith, duty, and human society, and brings with it the greatest and most fatal dangers to the government, peace, and happiness of a kingdom, or state; and therefore is deservedly branded with the highest ignominy, and subjected to the greatest penalties that the laws can inflict: it appears, first, How necessary it was that there should be some *known, fixed, settled* boundary for this great crime of treason, and of what great importance the statute of 25th of Edward the Third was, in order to that end. Second, How dangerous it is to depart from the *letter* of that statute, and to multiply and enhance crimes into treason by ambiguous and general words, such as accroaching royal power, subverting fundamental laws, and the like. And third, How dangerous it is by construction, and ANALOGY, to make treasons where the *letter* of the law has not done it. For such a method admits of no limits, or bounds, but

runs as far and as wide as the wit and invention of accusers, and the detestation of persons accused, will carry men."

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

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

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

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

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

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

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

Gentlemen, an overt act of the high treason charged upon this record, I take, with great submission to the Court, to be plainly and simply this:—the high treason charged is the compassing or imagining (in other words, the intending or designing) the death of the King—I mean his NATURAL DEATH; which being a hidden operation of the mind, an overt act is anything which legally proves the existence of such traitorous design and intention—I say, that the design against the King's natural life is the high treason under the first branch of the statute; and whatever is evidence which may be legally laid before a jury to judge of the traitorous intention, is a legal overt act; because an overt act is nothing but legal evidence embodied upon the record.

The charge of compassing being a charge of *intention*, which, without a manifestation by *conduct*, no human tribunal could try; the statute requires by its very letter (but without which letter reason must have presumed) that the intention to cut off the Sovereign should be manifested by an open act; and as a prisoner

charged with an intention, could have no notice how to defend himself without the charge of actions from whence the intention was to be imputed to him, it was always the practice, according to the sound principles of English law, to state upon the face of the indictment the overt act, which the Crown charges as the means made use of by the prisoner to effect his traitorous purpose; and as this rule was too frequently departed from, the statute of the seventh of King William enacted, for the benefit of the prisoner, that no evidence should even be given of any overt act not charged in the indictment. The charge, therefore, of the overt acts in the indictment is the notice, enacted by statute to be given to the prisoner for his protection, of the means by which the Crown is to submit to the jury the existence of the traitorous purpose, which is the crime alleged against him, and in pursuance of which traitorous purpose the overt acts must also be charged to have been committed. Whatever, therefore, is relevant or competent evidence to be received in support of the traitorous intention, is a legal overt act, and what acts are competent to that purpose, is (as in all other cases) matter of law for the judges; but whether, after the overt acts are received upon the record as competent, and are established by proof upon the trial, they be sufficient or insufficient in the particular instance, to convince the jury of the traitorous compassing or intention, is a mere matter of FACT, which, from its very nature, can be reduced to no other standard than that which each man's own conscience and understanding erects in his mind, as the arbiter of his judgment. This doctrine is by no means new nor peculiar to high treason, but pervades the whole law, and may be well illustrated in a memorable case lately decided upon writ of error in the House of Lords, and which must be in the memory of all the judges now present, who took a part in its decision:—there the question was, whether, upon the establishment of a number of facts by legal evidence, the defendant had knowledge of a fact, the knowing of which would leave him defenceless. To draw that question from the jury to the judges, I demurred to the evidence, saying, that though each part of it was legally admitted, it was for the law, by the mouth of the judges, to pronounce whether this fact of knowledge could legally be inferred from it; but the Lords, with the assent of all the judges, decided, to my perfect satisfaction, that such a demurrer to the evidence was irregular and invalid; *that the province of the jury over the effect of evidence, ought not to be transferred to the judges, and converted into matter of law;—* that what was relevant evidence to come before a jury, was the province of the Court,—but that the *conclusion* to be drawn from admissible evidence, was the unalienable province of the country.

To apply that reasoning to the case before us:—The matter to be inquired of here is, the fact of the prisoner's intention, as in the case I have just cited it was the fact of the defendant's knowledge.

The charge of a conspiracy to depose the King is, therefore, laid before you to establish that intention; its competency to be laid before you for that purpose, is not disputed; I am only contending with all reason and authority on my side, that it is to be submitted to your consciences and understandings, whether, even if you believed the overt act, you believe also that it proceeded from a traitorous machination against the life of the King. I am only contending, that these two beliefs must coincide to establish a verdict of guilty. I am not contending that, under circumstances, a conspiracy to depose the King, and to annihilate his regal capacity, may not be strong and satisfactory evidence of the intention to destroy his LIFE; —but only that in this, as in every other instance, it is for you to collect or not to collect this treason against the King's life, according to the result of your conscientious belief and judgment, from the acts of the prisoner laid before you; and that the establishment of the overt act, even if it were established, does not establish the treason against the King's life, BY A CONSEQUENCE OF LAW; but on the contrary, the overt act, though punishable in another shape, as an independent crime, is a dead letter upon this record, unless you believe, *exercising your exclusive jurisdiction over the facts laid before you*, that it was committed in accomplishment of the treason against THE NATURAL LIFE OF THE KING.

Gentlemen, this particular crime of compassing the King's death, is so complete an anomaly, being wholly seated in unconsummated intention, that the law cannot depart from describing it according to its real essence, even when it is followed by his death:—a man cannot be indicted for killing the King, as was settled in the case of the regicides of Charles the First, after long consultation among all the judges:—it was held that the very words of the statute must be pursued, and that although the King was actually murdered, the prisoners who destroyed him could not be charged with the act itself, as high treason, but with the compassing of his death; the very act of the executioner in beheading him, being only laid as the overt act upon the record. There though the overt act was so connected with, as to be even inseparable from the traitorous intention, yet they were not confounded because of the effect of the precedent in dissimilar cases: and although the regicides came to be tried immediately on the restoration of the King, in the day-spring of his authority, and before high prerogative judges, and under circumstances when, in any country but England, their trial would have been a mockery, or their execution have been awarded without even the forms of trial; yet in England, that sacred liberty, which has for ever adorned the constitution, refused to sacrifice to zeal or enthusiasm, either the substance or the forms of justice. Hear what the Chief Baron pronounced upon that occasion: "These persons are to be proceeded with according to the laws of the land, and I shall speak nothing to you but what are the

words of the law. By the statute of Edward the Third, it is made high treason to compass and imagine the death of the King; in no case else imagination or compassing, without an actual effect, is punishable by law." He then speaks of the sacred life of the King, and speaking of the treason, says: "The treason consists in the wicked imagination which is not apparent; but when this poison swells out of the heart, and breaks forth into action, in that case it is high treason. *Then what is an overt act of an imagination, or compassing of the King's death? Truly, it is anything which shows what the imagination of the heart is.*"

Indeed, gentlemen, the proposition is so clear that one gets confounded in the argument from the very simplicity of it; but still I stand in a situation which I am determined at all events to fulfil to the utmost, and I shall therefore not leave the matter upon these authorities, but will bring it down to our own times, repeating my challenge to have produced one single authority in contradiction. Lord Coke, in his third Institute, page 11 and 12, says:—"The indictment must charge that the prisoner traitorously compassed and imagined the death and destruction of the King." He says too, "There must be a compassing or imagination; for an act without compassing, intent, or imagination, is not within the act, as appeareth by the express letter thereof. *Et actus non facit reum nisi mens sit rea.*" Nothing in language can more clearly illustrate my proposition. The indictment, like every other indictment, must charge distinctly and specifically the crime; that charge must therefore be in the very words of the statute which creates the crime, the crime created by the statute not being the perpetration of any act, but being, in the rigorous severity of the law, the very contemplation, intention, and contrivance of a purpose directed to an act; that contemplation, purpose, and contrivance, must be found to exist, without which, says Lord Coke, there can be no compassing, and as the intention of the mind cannot be investigated without the investigation of conduct, the overt act is required by the statute, and must be laid in the indictment and proved. It follows from this deduction, that upon the clear principles of the English law, every act may be laid as an overt act of compassing the King's death, which may be reasonably considered to be relevant and competent to manifest that intention; for were it otherwise, it would be shutting out from the view of the jury certain conduct of the prisoner which might, according to circumstances, lead to manifest the criminal intention of his mind; and as more than one overt act may be laid, and even overt acts of different kinds, though not in themselves substantively treason, the judges appear to be justified in law, when they ruled them to be overt acts of compassing the death of the King; because they are such acts as before the statute of King William, which required that the indictment should charge all overt acts, would have been held to be relevant proof; of which

relevancy of proof the judges are to judge as matter of law ; and therefore being relevant proof, must also be relevant matter of charge, because nothing can be relevantly charged which may not also be relevantly admitted to proof. These observations explain to the meanest capacity in what sense Lord Coke must be understood, when he says, in the very same page, that "A preparation to depose the King, and to take the King by force and strong hand, until he has yielded to certain demands, is a sufficient overt act to prove the compassing of the King's death." He does not say, AS A PROPOSITION OF LAW, that he who prepares to seize the King compasseth his death, but that a preparation to seize him is a sufficient overt act to prove the compassing ; and he directly gives the reason, "because of the strong tendency it has to that end." This latter sentence destroys all ambiguity. I agree perfectly with Lord Coke, and I think every judge would so decide, upon the general principles of law and evidence, without any resort to his authority for it ; and for this plain and obvious reason :—The judges who are by law to decide upon the relevancy or competency of the proof, in every matter criminal and civil, have immemorially sanctioned the indispensable necessity of charging the traitorous intention as the crime, before it was required by the statute of King William. As the crime is in its nature invisible and inscrutable, until manifested by such conduct as in the eye of reason is indicative of the intention which constitutes the crime, no overt act is therefore held to be sufficient to give jurisdiction, even to a jury, to draw the inference in fact of the traitorous purpose, but such acts from whence it may be reasonably inferred ; and therefore as the restraint and imprisonment of a prince has a greater tendency to his destruction than in the case of a private man, such conspiracies are admitted to be laid as overt acts, upon this principle. that if a man does an act from whence either an inevitable or a mainly probable consequence may be expected to follow, much more if he persists deliberately in a course of conduct, leading certainly or probably to any given consequence, it is reasonable to believe that he foresaw such consequence, and by pursuing his purpose with that foreknowledge, the intention to produce the consequence may be fairly imputed. *But then all this is matter of fact for the jury from the evidence, not matter of law for the Court ;* further than it is the privilege and duty of the Judge to direct the attention of the jury to the evidence, and to state the law as it may result from the different views the jury may entertain of the facts ; and if such acts could not be laid as overt acts, they could not be offered in evidence ; and if they could not be offered in evidence, the *mind* of the prisoner, which it was the object of the trial to lay open as a clue to his intention, would be shut up and concealed from the jury, whenever the death of the Sovereign was sought by circuitous but obvious means, instead of by a direct and murderous

machination. But when they are thus submitted, as matter of charge and evidence to prove the traitorous purpose which is the crime, the security of the King and of the subject is equally provided for ; all the matter which has a relevancy to the crime is chargeable and provable, not *substantively* to raise from their establishment a *legal* inference, but to raise a presumption in *fact*, capable of being weighed by the jury with all the circumstances of the transaction, as offered to the Crown and the prisoner ; their province being finally to say, not what was the possible or the probable consequence of the overt act laid in the indictment, but whether it has brought them to a safe and conscientious judgment of the guilt of the prisoner, i.e., of his guilt in compassing the death of the King, which is the treason charged in the indictment. Lord Hale is, if possible, more direct and explicit upon the subject ; he says, page 107, "The words 'compass or imagine' are of a great latitude ; they refer to the purpose or design of the *mind or will*, though the purpose or design takes not effect ; but compassing or imagining, singly of itself, is an *internal* act, and without something to *manifest* it, could not possibly fall under any judicial cognisance but of God alone, and therefore this statute requires such an *overt act* as may render the compassing or imagining capable of a trial and sentence by human judicatures." Now, can any man possibly derive from such a writing (proceeding too from an author of the character of Lord Hale), that an overt act of compassing might in his judgment be an act committed inadvertently without the intention ? Can any man gather from it that a man, by falling into bad company, can be drawn in to be guilty of this species of treason by rash conduct, while the love of his Sovereign was glowing in his bosom ? Can there be any particular acts which can entitle a Judge or counsel to pronounce as a *matter of law*, what another man intends ? or that what a man intends is *not* a matter of fact ? Is there any man that will meet the matter fairly, and advance and support that naked proposition ? At all events, it is certainly not a proposition to be dealt with publicly, because the man whose mind is capable even of conceiving it, should be treasured up in a museum, and exhibited there as a curiosity for money.

Gentlemen, all I am asking, however, from my argument—and I defy any power of reason upon earth to move me from it—is this : that the prisoner, being charged with *intending the King's death*, you are to find whether this charge be founded or unfounded ; and that, therefore, put upon the record what else you will, prove what you will, read these books over and over again, and let us stand here a year and a day in discoursing concerning them,—still the question must return at last to what YOU and YOU ONLY can resolve, *Is he guilty of that base, detestable intention to destroy the King ?* Nor whether you incline to *believe* that he is guilty ; nor whether

you *suspect*, nor whether it be *probable*; NOT whether he *may* be GUILTY; no, but that PROVABLY HE IS GUILTY. If you can say this upon the evidence, it is your duty to say so, and you may, with a tranquil conscience, return to your families, though by your judgment the unhappy object of it must return no more to his. Alas! gentlemen, what do I say? HE has no family to return to; the affectionate partner of his life has already fallen a victim to the surprise and horror which attended the scene now transacting. But let that melancholy reflection pass—it should not, perhaps, have been introduced—it certainly ought to have no effect upon you who are to judge upon your oaths. I do not stand here to desire you to commit perjury from compassion; but at the same time my earnestness may be forgiven, since it proceeds from a weakness common to us all. I claim no merit with the prisoner for my zeal; it proceeds from a selfish principle inherent in the human heart. I am counsel, gentlemen, for myself. In every word I utter I feel that I am pleading for the safety of my own life, for the lives of my children after me, for the happiness of my country, and for the universal condition of civil society throughout the world.

But let us return to the subject, and pursue the doctrine of Lord Hale upon the true interpretation of the term overt act, as applicable to this branch of treason. Lord Hale says, and I do beseech most earnestly the attention of the Court and jury to this passage, "If men conspire the death of the King, and thereupon provide weapons or send letters, this is an overt act within the statute." Take this to pieces, and what does it amount to?—"If men conspire the death of the King," *that* is the first thing, viz., the *intention*, "and thereupon," that is, in pursuance of that *wicked intention*, "provide weapons or send letters for the execution thereof," i.e., for the execution of that destruction of the King which they have meditated, "this is an overt act within the statute." Surely the meaning of all this is self-evident. If the intention be against the King's life, though the conspiracy does not immediately and directly point to his death, yet still the overt act will be sufficient if it be something which has so direct a tendency to that end as to be competent rational evidence of the intention to obtain it. But the instances given by Lord Hale himself furnish the best illustration: "If men conspire to imprison the King by *force and a strong hand* until he has yielded to certain demands, and *for that purpose gather company or write letters*, that is an overt act to *prove* the compassing the King's death, as it was held in Lord Cobham's case by all the judges." In this sentence Lord Hale does not depart from that precision which so eminently distinguishes all his writings; he does not say, that if men conspire to imprison the King until he yields to certain demands, and for that purpose to do so and so, *this is high treason*—no, nor even an overt act of high treason, though he might in legal language correctly have

said so; but to prevent the possibility of confounding the treason with matter which may be legally charged as relevant to *the proof of it*, he follows Lord Coke's expression in the third Institute, and says, This is an overt act *to prove* the compassing of the King's death; and as if by this mode of expression he had not done enough to keep the ideas asunder, and from abundant regard for the rights and liberties of the subject, he immediately adds, "But then there must be an overt act *to prove* that conspiracy; and then that overt act *to prove* such design, is an overt act *to prove* the compassing of the death of the King." The language of this sentence labours in the ear from the excessive caution of the writer; afraid that his reader should jump too fast to his conclusion upon a subject of such awful moment, he pulls him back after he has read that a conspiracy to imprison the King is an overt act to prove the compassing of his death, and says to him, But recollect that there must be an overt act to PROVE, in the first place, that conspiracy to imprison the King, and even then that intention to imprison him so manifested by the overt act, is but in its turn an overt act TO PROVE the compassing or intention to destroy the King. Nor does the great and benevolent Hale rest even here, but after this almost tedious perspicuity, he begins the next sentence with this fresh caution and limitation, "But then this must be intended of a conspiracy, *forcibly* to detain and imprison the King." What then is a conspiracy forcibly to imprison the King?—surely it can require no explanation: it can only be a *direct* machination to seize and detain his PERSON by rebellious force. Will this expression be satisfied by a conspiracy to seize speculatively upon his authority by the publication of pamphlets, which, by the inculcation of republican principles, may in the eventual circulation of a course of years, perhaps in a course of centuries, in this King's time, or in the time of a remote successor, debauch men's minds from the English constitution, and, by the destruction of monarchy, involve the life of the monarch? Will any man say that this is what the law means by a conspiracy against the King's government, supposing even that a conspiracy against his government were synonymous with a design upon his life? Can any case be produced where a person has been found guilty of high treason, under this branch of the statute, where no war has been actually levied, unless where the conspiracy has been a forcible invasion of the King's personal liberty or security? I do not mean to say that a conspiracy to levy war may not, in many instances, be laid as an overt act of compassing the King's death, because the war may be mediately or immediately pointed distinctly to his destruction or captivity; and as Lord Hale truly says, "Small is the distance between the prisons and graves of princes." But multiply the instances as you will, still the principle presents itself. The truth of this very maxim, built upon experience, renders an overt act of this descrip-

tion rational and competent evidence to be left to a jury of a design against the King's life; but it does not, therefore, change the nature of the crime, nor warrant any Court to declare the overt act to be legally and conclusively indicative of the traitorous intention; because, if this be once admitted to be law, and the jury are bound to find the treason upon their belief of the existence of the overt act, the trial by the country is at an end, and the judges are armed with an arbitrary uncontrollable dominion over the lives and liberties of the nation.

Gentlemen, I will now proceed to show you that the doctrines which I am insisting on have been held by all the great judges of this country, in even the worst of times, and that they are, besides, not at all peculiar to the case of high treason, but pervade the whole system of the criminal law. Mr Justice Forster, so justly celebrated for his writings, lays down the rule thus:—It may be laid down as a general rule, that “indictments founded upon penal statutes, ESPECIALLY THE MOST PENAL, must pursue the statute so as to bring the party within it.” And this general rule is so expressly allowed to have place in high treason, that it is admitted on all hands that an indictment would be radically and incurably bad, unless it charged the compassing of the King's death as the leading and fundamental averment, and unless it formally charged the overt act to be committed in order to effectuate the traitorous purpose. Nobody ever denied this proposition; and the present indictment is framed accordingly. Now it is needless to say that if the benignity of the general law requires this precision in the indictment, the proof must be correspondingly precise, for otherwise the subject would derive no benefit from the strictness of the indictment; the strictness of which can have no other meaning in law or common sense than the protection of the prisoner; for if, though the indictment must directly charge a breach of the very LETTER of the statute, the prisoner could nevertheless be convicted by evidence not amounting to a breach of the LETTER, then the strictness of the indictment would not only be no protection to the prisoner, but a direct violation of the first principles of justice, criminal and civil, which call universally for the proof of all material averments in every legal proceeding. But Mr Justice Forster expressly adverts to the necessary severity of proof as well as of charge; for he says, that “although a case is brought within the reason of a penal statute, and within the mischief to be prevented, yet, if it does not come within the unequivocal letter, “the benignity of the law interposeth.” If the law then be thus severe in the interpretation of every penal proceeding, even down to an action for the killing of a hare or a partridge, are its constructions only to be enlarged and extended as to the statute of high treason, although the single object of passing it was to guard against constructions?

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

In the beginning of his speech he admits that the evidence must be satisfactory and convincing as to the intention; but in the latter part, he seems, as it were, to take off the effect of that admission. I wish to give you the very words. I took them down at the time; and if I do not state them correctly I desire to be corrected. "I most distinctly disavow," said my honourable friend, "every case of construction. I most distinctly disavow any like case of treason not within the letter of the statute. I most distinctly disavow cumulative treason. I most distinctly disavow enhancing guilt by parity of reason. The question undoubtedly is, whether the proof be full and satisfactory to your reasons and consciences that the prisoner is guilty of the treason of compassing the King's death." Gentlemen, I hope that this will always with equal honour be admitted. Now let us see how the rest of the learned gentleman's speech falls in with this.—For he goes on to say, that it is by no means necessary that the distinct, specific intention should pre-exist the overt act. "If the overt act," says he, "be deliberately committed, it is a compassing." But how so, if the intention be admitted to be the treason? What benefit is obtained by the rigorous demand of the statute, that the compassing of the King's death shall be charged by the indictment as the crime, if a crime different, or short of it, can be substituted for it in the proof? And how can the statute of Richard the Second be said to be repealed, which made it high treason to compass to depose the King, independently of intention upon his life, if the law shall declare, notwithstanding the repeal, that they are synonymous terms, and that the one CONCLUSIVELY involves the other!

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

The first great state trial after the Revolution was the case of Sir John Freind, a conspirator in the assassination plot. Sir John Freind was indicted for compassing and imagining the death of King William; and the overt acts charged, and principally relied on, were, first, the sending Mr Charnock into France to King James, to desire him to persuade the French King to send forces over to Great Britain, to levy war against and to depose the King,

and that Mr Charnock was actually sent ; and, secondly, the preparing men to be levied to form a corps to assist in the restoration of the Pretender, and the expulsion of King William, of which Sir John Freind was to be colonel.—In this case, if the proofs were not to be wholly discredited, and the overt acts were consequently established, they went rationally to convince the mind of every man of the pre-existing intention to destroy the King. The conspiracy was not to do an act which, though it might lead eventually and speculatively to the King's death, might not be foreseen or designed by those who conspired together :—the conspiracy was not directed to an event probably leading to another and a different one, and from the happening of which second a third still different might be engendered, which third might again lead in its consequences to a fourth state of things, which might, in the revolution of events, bring on the death of the King, though never compassed or imagined :—Freind's conspiracy, on the contrary, had for its *direct and immediate* object the restoration of the Pretender to the throne, by the junction of foreign and rebellious force. In my opinion (and I am not more disposed than others to push things beyond their mark in the administration of criminal justice), Sir John Freind, if the evidence against him found credit with the Jury, could have no possible defence ; since the evidence went directly to prove the despatch of Charnock to France, under his direction, to invite the French King to bring over the Pretender into England, and to place him on the throne. The intention, therefore, of Sir John Freind to cut off King William, was a clear inference from the overt act in question ; not an inference of *law* for the Court, but of *fact* for the jury, under the guidance of plain common sense ; because the consequence of the Pretender's regaining the throne must have been the attainder of King William by Act of Parliament. Some gentlemen seem to look as if they thought not—but I should be glad to hear the position contradicted. I repeat, that if the Pretender had been restored as King of England, the legal consequence would have been that King William would have been a traitor and an usurper, and subject as such to be tried at the Old Bailey, or wherever else the King, who took his place, thought fit to bring him to judgment. From these premises, therefore, there could be no difficulty of inferring the intention ; and therefore if ever a case existed where, from the clearness of the inference, the province of the jury might have been overlooked, and the overt act confounded with the treason, it was in the instance of Freind ; but so far was this from being the case, that you will find, on the contrary, everything I have been saying to you since I began to address you, summed up and confirmed by that most eminent magistrate Lord Chief-Justice Holt, who presided upon that trial.

He begins thus :—“ Gentlemen of the Jury, look ye, the treason

that is mentioned in the indictment is conspiring, compassing, and imagining the death of the King. *To prove the conspiracy and design of the King's DEATH, two principal overt acts are insisted on.* He does not consider the overt act of conspiracy and consultation to be the treason, but evidence (as it undoubtedly was in that case) to prove the compassing the death. The Chief-Justice then states the two overt acts above-mentioned, and sums up the evidence for and against the prisoner, and leaves the intention to the jury *as matter of fact*. For it is not till afterwards that he comes to answer the prisoner's objection in point of law, as the Chief-Justice in terms puts it—"There is another thing," said Lord Chief-Justice Holt, "he did insist upon, *and that is matter of law*. The statute 25th Edward the Third was read, which is the great statute about treasons, and that does contain divers species of treason, and declares what shall be treason: one treason is the compassing and imagining the death of the King; another is the levying war. Now, says he" (*i.e.*, Freind), "here is no war actually levied; and a bare conspiracy to levy war does not come within the law against treason." To pause here a little: Freind's argument was this—Whatever my intentions might be—whatever my object of levying war might have been—whatever might have been my design to levy it—however the destruction of the King might have been effected by my conspiracy, if it had gone on—and however it might have been my intention that it should,—it is not treason within the 25th Edward the Third. To which Holt replied, a little incorrectly in language but right in substance—"Now for that I must tell you, if there be only a conspiracy to levy war, it is *not* treason:" *i.e.*, it is not a substantive treason: it is not a treason in the abstract. "But if the design and conspiracy be either to kill the King, or to depose him, or imprison him, or put any force or restraint upon him, *i.e.*, personal restraint by force, "and the way of effecting these purposes *is by levying a war*; there the conspiracy and consultation to levy war for that purpose is high treason, though no war be levied: for such consultation and conspiracy is *an overt act* PROVING the compassing the death of the King." But what sort of war is it the bare conspiracy to levy which is an overt act to prove a design against the King's life, though no war be actually levied? Gentlemen, Lord Holt himself illustrates this matter so clearly, that if I had anything at stake short of the honour and life of the prisoner, I might sit down as soon as I had read it:—for if one did not know it to be an extract from an ancient trial, one would say it was admirably and accurately written for the present purpose. It is a sort of prophetic bird's-eye view of what we are engaged in at this moment:—"There may be war levied (continues Lord Holt in Freind's case) without any design upon the King's person, which, if *actually levied*, is high treason, though purposing and designing such a levying of war is not so. As for

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

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

I do therefore maintain, upon the express authority of Lord Holt, that, to convict a prisoner, charged with this treason, it is absolutely necessary that you should be satisfied of his *intention against the King's life as charged in the indictment*, and that no design against the King's government will even be a legal overt act to be left to a Jury as the evidence of such an intention (much less the substantive

and consummate treason), unless the conspiracy be directly pointed against the person of the King. The case of Lord George Gordon is opposed to this as a high and modern decision ; and the Attorney-General descended indeed to a very humble and lowly authority, when he sought to maintain his argument by my own speech, as counsel for that unfortunate person. The passage of it alluded to lies at this moment before me ; and I shall repeat it, and re-maintain it to-day.—But let it first be recollected that Lord George Gordon was not indicted for compassing or imagining the King's death, under the first branch of the statute, but for levying war under the second. It never indeed entered into the conception of any man living, that such an indictment could have been maintained, or attempted against him : I appeal to one of your Lordships now present, for whose learning and capacity I have the greatest and highest respect, and who sat upon that trial, that it was not intimated from the Bar, much less adjudged by the Court, that the evidence had *any bearing upon the first branch of treason*. I know that I may safely appeal to Mr Justice Buller for the truth of this assertion ; and nothing surely in the passage from my address to the jury, has the remotest allusion to assimilate a conspiracy against the King's government (collateral to his person) with a treason against his life. My words were, "*To compass, or imagine the death of the King* ; such imagination or purpose of the mind, visible only to its great Author, being manifested by some open act ; an institution obviously directed, not only to the security of his natural person, but to the stability of the Government ; the life of the Prince being so interwoven with the constitution of the State, that an attempt to destroy the one, is justly held to be a rebellious conspiracy against the other." *

What is this but to say that the King's sacred life is guarded by higher sanctions than the ordinary laws, because of its more inseparable connexion with the public security, and that an attempt to destroy it is therefore made treason against the State ? But the Attorney General is, I am sure, too correct in his logic to say, that the converse of the proposition is therefore maintained, and that an attack upon the King's authority, without design upon his person, is affirmed by the same expression to be treason against his life. His correct and enlarged mind is incapable of such confusion of ideas.

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

* See the Speech for Lord George Gordon, vol. i. page 74.

Lord Mansfield, in delivering the law to the jury upon Lord George Gordon's trial (I appeal to the trial itself, and to Mr Justice Buller, now present, who agreed in the judgment), expressly distinguished between the safety provided for the King's *natural person*, by the first branch of the statute, and the security of his executive power under the second. That great Judge never had an idea that the *natural* person of the King, and the *majesty* of the King, were the same thing, nor that the treasons against them were synonymous: he knew, on the contrary, for he knew all that was to be known, that as *substantive* crimes they never had been blended. I will read his own words:—"There are two kinds of levying war:—one against the person of the King; to imprison, to dethrone, or to kill him; or to make him change measures, or remove counsellors:—the other, which is said to be levied against the majesty of the King, or in other words, against him in his regal capacity; as when a multitude rise and assemble to attain by force and violence any object of a general public nature; that is levying war against the majesty of the King; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government; and, by force of arms, to restrain the King from reigning according to law." But then observe, Gentlemen, *the war must be actually levied*; and here again I appeal to Mr Justice Buller, for the words of Lord Mansfield, expressly referring for what he said to the authority of Lord Holt, in Sir John Freind's case, already cited: "Lord Chief Justice Holt, in Sir John Freind's case, says:—If persons do assemble themselves and act with force, in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is a levying war and treason. In the present case it don't rest upon an implication that they hoped by opposition to a law to get it repealed; but the prosecution proceeds upon the direct ground, that the object was, by *force and violence*, to compel the legislature to repeal a law; and therefore, without any doubt, I tell you the joint opinion of us all, that, if this multitude assembled *with intent, by acts of force and violence*, to compel the Legislature to repeal a law, it is high treason." Let these words of Lord Mansfield be taken down, and then show me the man, let his rank and capacity be what they may, who can remove me from the foundation on which I stand, when I maintain that a conspiracy to levy war for the objects of reformation, is not only not the high treason charged by this indictment, when not directly pointed against the King's person, but that even the actual levying it would not amount to the constitution of the crime. But this is the least material part of Lord Mansfield's judgment, as applicable to the present question; for he expressly considers THE INTENTION of the prisoner, whatever be the act of treason alleged against him, to be all in all. So far from holding the probable or even inevitable con-

sequence of the thing done as constituting the quality of the act, he pronounces them to be nothing as separated from the *criminal design* to produce them. Lord George Gordon assembled an immense multitude around the House of Commons, a system so opposite to that of the persons accused before this commission, that it appears from the evidence they would not even allow a man to come amongst them, because he had been Lord George's Attorney. The Lords and Commons were absolutely blockaded in the chambers of Parliament; and if control was the intention of the prisoner, it must be wholly immaterial what were the deliberations that were to be controlled; whether it was the continuance of Roman Catholics under penal laws, the repeal of the Septennial Act, or a total change of the structure of the House of Commons, that was the object of violence;—the attack upon the legislature of the country would have been the same. That the multitude were actually assembled round the Houses, and brought there by the prisoner, it was impossible for me as his counsel even to think of denying, nor that their tumultuous proceedings were not in effect productive of great intimidation, and even danger, to the Lords and Commons, in the exercise of their authority:—neither did I venture to question the law, that the assembling the multitude *for that purpose*, was levying war within the statute. Upon these facts therefore, applied to the doctrines we have heard upon this trial, there would have been nothing in Lord George Gordon's case to try; he must have been instantly, without controversy, convicted. But Lord Mansfield did not say to the jury (according to the doctrines that have been broached here), that if they found the multitude assembled by the prisoner, were in fact palpably intimidating and controlling the Parliament in the exercise of their functions, he was guilty of high treason, *whatever his intentions might have been*. He did not tell them that the inevitable consequence of assembling a hundred thousand people round the legislature, being a control on their proceedings, was therefore a levying war; though collected from folly and rashness, without the *intention* of violence or control. If this had been the doctrine of Lord Mansfield, there would (as I said before) have been nothing to try; for I admitted in terms, that his conduct was the extremity of rashness, and totally inconsistent with his rank in the country, and his station as a member of the House of Commons. But the venerable magistrate never for a moment lost sight of the grand ruling principle of criminal justice, that crimes can have no seat but in the mind; and upon the prisoner's *intention*, and upon his *intention alone*, he expressly left the whole matter to the jury, with the following directions, which I shall read verbatim from the trial:—"Having premised these several propositions and principles, the subject matter for your consideration naturally resolves itself into two points:

First, Whether this multitude did assemble and commit acts of

violence, with intent to terrify and compel the legislature to repeal the act called Sir George Savile's. If upon this point your opinion should be in the negative, that makes an end of the whole, and the prisoner ought to be acquitted; but if your opinion should be, that *the intent of this multitude*, and the violence they committed, was to force a repeal, there arises a second point—

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

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

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

To show that a conspiracy to depose the King, independently of ulterior intention against his life, is high treason within the statute, the Attorney-General next supposes that traitors had conspired to depose King William, but still to preserve him as stadtholder in Holland, and asks whether that conspiracy would not be a compassing his death: to that question I answer, that it would not have been a compassing the death of King William, provided the conspirators could have convinced the jury that their firm and *bona fide* intention was to proceed no further, and that, under that belief and impression, the jury (as they lawfully might) had negatived by their finding the fact of the intention against the King's natural existence. I have no doubt at all that upon such a finding no judgment of treason could be pronounced: but the difficulty would be to meet with a jury who, upon the bare evidence of such a conspiracy, would find such a verdict. There might be possible circumstances to justify such a negative of the intention, but they must come from the prisoner. In such a case the Crown would rest upon the conspiracy to depose, which would be *prima facie* and cogent evidence of the compassing, and leave the hard task of rebutting it on the defendants—I say the hard task, because the case put is of a direct rebellious force, acting against the King; not only abrogating his authority, but imprisoning and expelling his person from the kingdom. I am not seeking to abuse the reasons and consciences of juries in the examination of facts, but am only resisting the confounding them with arbitrary propositions of law.

Gentlemen, I hope I have now a right to consider that the existence of the high treason charged against the unfortunate man before you is a matter of fact for your consideration upon the

evidence. To establish this point has been the scope of all that you have been listening to, with so much indulgence and patience. It was my intention to have further supported myself by a great many authorities which I have been laboriously extracting from the different books of the law; but I find I must pause here, lest I consume my strength in this preliminary part of the case, and leave the rest defective.

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

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

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

journal of their whole proceedings. Not a syllable have we heard read in the week's imprisonment we have suffered that we had not, all of us, read for months and months before the prosecution was heard of; and which, if we are not sufficiently satiated, we may read again upon the file of every coffee-house in the kingdom. It is admitted distinctly by the Crown that a reform in the House of Commons is the ostensible purpose of all the proceedings laid before you; and that the attainment of that object only is the grammatical sense of the great body of the written evidence. It rests, therefore, with the Crown to show by LEGAL PROOF that this OSTENSIBLE purpose, and the whole mass of correspondence upon the table, was only a cloak to conceal a hidden machination, to subvert by force the entire authorities of the kingdom, and to assume them to themselves. Whether a reform of Parliament be a wise or an unwise expedient; whether, if it were accomplished, it would ultimately be attended with benefits or dangers to the country, I will not undertake to investigate, and for this plain reason: because it is wholly foreign to the subject before us. But when we are trying the integrity of men's intentions, and are examining whether their complaints of defects in the representation of the House of Commons be *bona fide*, or only a mere stalking horse for treason and rebellion, it becomes a most essential inquiry whether they be the first who have uttered these complaints; whether they have taken up notions for the first time which never occurred to others; and whether in seeking to interfere practically in an alteration of the constitution, they have manifested, by the novelty of their conduct, a spirit inconsistent with affection for the Government, and subversive of its authority. Gentlemen, I confess for one (for I think the safest way of defending a person for his life before an enlightened tribunal is to defend him ingenuously), I confess for one, that if the defects in the constitution of Parliament, which are the subject of the writings, and the foundation of all the proceedings before you, had never occurred to other persons at other times, or if not new, they had only existed in the history of former conspiracies, I should be afraid you would suspect, at least, that the authors of them were plotters of mischief. In such a case I should naturally expect that you would ask yourselves this question—Why should it occur to the prisoner at the bar, and to a few others in the year 1794, immediately after an important revolution in another country, to find fault, on a sudden, with a constitution which had endured for ages without the imputation of defect, and which no good subject had ever thought of touching with the busy hand of reformation? I candidly admit that such a question would occur to the mind of every reasonable man, and could admit no favourable answer. But surely this admission entitles me, on the other hand, to the concession that if, in comparing their writings and examining their conduct with the writings and con-

duct of the best and most unsuspected persons in the best and most unsuspected times, we find them treading in the paths which have distinguished their highest superiors; if we find them only exposing the same defects, and pursuing the same or similar courses for their removal—it would be the height of wickedness and injustice to torture expressions, and pervert conduct, into treason and rebellion, which had recently lifted up others to the love of the nation, to the confidence of the sovereign, and to all the honours of the state. The natural justness of this reasoning is so obvious that we have only to examine the fact; and considering under what auspices the prisoners are brought before you, it may be fit that I should set out with reminding you that the great Earl of Chatham began and established the fame and glory of his life upon the very cause which my unfortunate clients were engaged in, and that he left it as an inheritance to the present Minister of the Crown, as the foundation of his fame and glory after him; and his fame and glory were accordingly raised upon it; and if the Crown's evidence had been carried as far back as it might have been (for the institution of only one of the two London Societies is before us), you would have found that the Constitutional Society owed its earliest credit with the country, if not its very birth, to the labour of the present Minister, and its professed principles to his Grace the Duke of Richmond, high also in his Majesty's present Councils, whose plan of reform has been clearly established by the whole body of the written evidence, and by every witness examined for the Crown, to have been the type and model of all the societies in the supposed conspiracy, and uniformly acted upon in form and in substance by the prisoner before you, up to the very period of his confinement.

Gentlemen, the Duke of Richmond's plan was universal suffrage and annual Parliaments; and urged too with a boldness, which, when the comparison comes to be made, will leave in the background the strongest figures in the writings on the table. I do not say this sarcastically; I mean to speak with the greatest respect of his Grace, both with regard to the wisdom and integrity of his conduct; for although I have always thought in politics with the illustrious person whose letter was read to you; although I think, with Mr Fox, that annual Parliaments and universal suffrage would be nothing like an improvement in the constitution; yet I confess that I find it easier to say so than to answer the Duke of Richmond's arguments on the subject; and I must say, besides, speaking of his Grace from a long personal knowledge, which began when I was counsel for his relation, Lord Keppel, that independently of his illustrious rank, which secures him against the imputation of trifling with its existence, he is a person of an enlarged understanding, of extensive reading, and of much reflection; and that his book cannot therefore be considered as the effusion of

rashness and folly, but as the well-weighed, though perhaps erroneous, conclusions drawn from the actual condition of our affairs—viz., that without a speedy and essential reform in Parliament (and there my opinion goes along with him), the very being of the country, as a great nation, would be lost. This plan of the Duke of Richmond was the grand mainspring of every proceeding we have to deal with. You have had a great number of loose conversations reported from societies, on which no reliance can be had; sometimes they have been garbled by spies, sometimes misrepresented by ignorance, and even, if correct, have frequently been the extravagances of unknown individuals, not even uttered in the presence of the prisoner, and totally unconnected with any design; for whenever their proceedings are appealed to, and their real object examined, by living members of them, brought before you by the Crown, to testify them under the most solemn obligations of truth, they appear to have been following, in form and in substance, the plans adopted within our memories, not only by the Duke of Richmond, but by hundreds of the most eminent men in the kingdom. The Duke of Richmond formerly published his plan of reform in the year 1780, in a letter to Lieutenant-Colonel Sharman, who was at that time practically employed upon the same object in Ireland; and this is a most material part of the case: because you are desired to believe that the terms *convention* and *delegates*, and the holding the one, and sending the other, were all collected from what had recently happened in France, and were meant as the formal introduction of her republican constitution. But they who desire you to believe all this, do not believe it themselves; because they know certainly, and it has indeed already been proved by their own witnesses, that conventions of reformers were held in Ireland, and delegates regularly sent to them, whilst France was under the dominion of her ancient government. They knew full well that Colonel Sharman, to whom the Duke's letter was addressed, was at that very moment supporting a convention in Ireland at the head of ten thousand men in arms for the defence of their country, without any commission from the King, any more than poor Franklow had, who is now in Newgate, for regimenting sixty. These volunteers asserted and saved the liberties of Ireland; and the King would, at this day, have had no more subjects in Ireland than he now has in America, if they had been treated as traitors to the Government. It was never imputed to Colonel Sharman and the volunteers that they were in rebellion, yet they had arms in their hands, which the prisoners never dreamed of having; whilst a grand general convention was actually sitting under their auspices at the Royal Exchange of Dublin, attended by regular delegates from all the counties in Ireland. And who were these delegates? I will presently tear off their names from this paper and hand it to you. They were the greatest, the best, and

proudest names in Ireland; men who had the wisdom to reflect (before it was too late for reflection), that greatness is not to be supported by tilting at inferiors, till, by the separation of the higher from the lower orders of mankind, every distinction is swept away in the tempest of revolution, but in the happy harmonisation of the whole community; by conferring upon the people their rights; sure of receiving the auspicious return of affection, and of insuring the stability of the Government which is erected upon that just and natural basis. Gentlemen, they who put this tortured construction on conventions and delegates, know also that repeated meetings of reforming societies, both in England and Scotland, had assumed about the same time the style of conventions, and had been attended by regular delegates long before the phrase had, or could have, any existence in France; and that upon the very model of these former associations a formal convention was actually sitting at Edinburgh, with the Lord Chief Baron of Scotland in the chair, for promoting a reform in Parliament, at the very moment the Scotch convention, following its example, assumed that title.

To return to this letter of the Duke of Richmond. It was written to Colonel Sharman, in answer to a letter to his Grace, desiring to know his plan of reform, which he accordingly communicated by the letter which is in evidence; and which plan was neither more nor less than that adopted by the prisoners of surrounding Parliament (unwilling to reform its own corruptions), NOT by armed men or by importunate multitudes, but by the still and universal voice of a whole people CLAIMING THEIR KNOWN AND UNALIENABLE RIGHTS. This is so precisely the plan of the Duke of Richmond, that I have almost borrowed his expressions. His Grace says, "The lesser reform has been attempted with every possible advantage in its favour; not only from the zealous support of the advocates for a more effectual one, but from the assistance of men of great weight, both in and out of power. But with all these temperaments and helps it has failed. Not one proselyte has been gained from corruption, nor has the least ray of hope been held out from any quarter, that the House of Commons was inclined to adopt any other mode of reform. The weight of corruption has crushed this more gentle, as it would have defeated any more efficacious, plan in the same circumstances. From that quarter, therefore, I have nothing to hope. IT IS FROM THE PEOPLE AT LARGE THAT I EXPECT ANY GOOD; and I am convinced that the only way to make them feel that they are really concerned in the business, is to contend for their *full, clear, and indisputable rights of universal representation.*" Now, how does this doctrine apply to the defence of the prisoner? I maintain that it has the most decisive application; because this book has been put into the hands of the Crown witnesses, who have, one and all of them,

reproduced it and declared it to have been *bras armé*, the plan which they pursued.

But are the Crown's witnesses worthy of credit? If they are not, let us return home, since there is no evidence at all, and the cause is over. All the guilt, if any there be, proceeds from their testimony. If they are not to be believed they have proved nothing, since the Crown cannot show upon you that part of the evidence which suits its purpose, and ask you to reject the other which does not. The witnesses are either entirely credible, or undeserving of all credit, and I have no interest in the alternative. This is precisely the state of the cause. For with regard to all the evidence that is written, let it never be forgotten that it is not upon me to defend my clients against it, but for the Crown to extract from it the materials of accusation. They do not contend that the treason is upon the surface of it, but in the latent intention; which intention must therefore be supported by extrinsic proof; but which is nevertheless directly negatived and beat down by every witness they have called, leaving them nothing but commentaries and criticisms against both fact and language, to which, for the present, I shall content myself with replying in the authoritative language of the Court in the earliest stage of their proceedings.

"If there be ground to consider the professed purpose of any of these associations, a *reform in Parliament*, as mere colour, and as a pretext held out in order to cover deeper designs—designs against the whole constitution and government of the country; the case of those embarked in such designs is that which I have already considered. Whether this be so or not, is mere matter of fact; as to which I shall only remind you that an inquiry into a charge of this nature, which undertakes to make out that the ostensible purpose is a mere veil, under which is concealed a traitorous conspiracy, requires cool and deliberate examination, and the most attentive consideration, and that the result should be perfectly clear and satisfactory. In the affairs of common life, no man is justified in imputing to another a meaning contrary to what he himself expresses, but upon the fullest evidence." To this (though it requires nothing to support it, either in reason or authority) I desire to add the direction of Lord Chief-Justice Holt to the jury, on the trial of Sir John Perkyne:—

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

In this assimilation of the writings of the societies to the writings of the Duke of Richmond and others, I do not forget that it has been truly said by the Lord Chief-Justice in the course of this very cause, that ten or twenty men's committing crimes, furnishes no defence for other men in committing them. Certainly it does not;

and I fly to no such sanctuary ; but in trying the prisoner's intentions, and the intentions of those with whom he associated and acted, if I can show them to be only insisting upon the same principles that have distinguished the most eminent men for wisdom and virtue in the country, it will not be very easy to declaim or argue them into the pains of death, whilst our bosoms are glowing with admiration at the works of those very persons who would condemn them.

Gentlemen, it has been too much the fashion of late to overlook the genuine source of all human authority, but more especially totally to forget the character of the British House of Commons as a representative of the people ;—whether this has arisen from that assembly's having itself forgotten it, would be indecent for me to inquire into or to insinuate ;—but I shall preface the authorities which I mean to collect in support of the prisoner, with the opinion on that subject of a truly celebrated writer, whom I wish to speak of with great respect : I should, indeed, be ashamed, particularly at this moment, to name him invidiously, whilst he is bending beneath the pressure of a domestic misfortune, which no man out of his own family laments more sincerely than I do.*—No difference of opinion can ever make me forget to acknowledge the sublimity of his genius, the vast reach of his understanding, and his universal acquaintance with the histories and constitutions of nations ; I also disavow the introduction of the writings, with the view of involving the author in any apparent inconsistencies, which would tend, indeed, to defeat rather than to advance my purpose.—I stand here to-day to claim at your hands, a fair and charitable interpretation of human conduct, and I shall not set out with giving an example of uncharitableness.—A man may have reason to change his opinions, or perhaps the defect may be in myself, who collect that they are changed ; I leave it to God to judge of the heart—my wish is, that Christian charity may prevail ;—that the public harmony, which has been lost, may be restored ;—that all England may re-unite in the bonds of love and affection ;—and that, when the Court is broken up by the acquittal of the prisoners, all heart-burnings and animosities may cease ;—that, whilst yet we work in the light, we may try how we can save our country by a common effort ; and that, instead of shamelessly setting one-half of society against the other by the force of armed associations, and the terrors of courts of justice, our spirits and our strength may be combined in the glorious cause of our country.—By this, I do not mean in the cause of the present war, which I protest against as unjust, calamitous, and destructive ; but this is not the place for such a subject, I only advert to it to prevent mistake or misrepresentation.

The history and character of the English House of Commons was formerly thus described by Mr Burke : " The House of Commons

* Mr Burke's son was then dying.

was supposed originally to be *no part of the standing government of this country*, but was considered as a *control issuing immediately from the people*, and speedily to be resolved into the mass from whence it arose : in this respect it was in the higher part of government what juries are in the lower. The capacity of a magistrate being transitory, and that of a citizen permanent, the latter capacity, it was hoped, would of course preponderate in all discussions, not only between the people and the standing authority of the Crown, but between the people and the fleeting authority of the House of Commons itself. It was hoped, that, being of a middle nature, between subject and government, they would feel with a more tender and a nearer interest, everything that concerned the people, than the other remoter and more permanent parts of legislature.

Whatever alterations time and the necessary accommodation of business may have introduced, this character can never be sustained, unless the House of Commons shall be made to bear some stamp of the actual disposition of the people at large : it would (among public misfortunes) be an evil more natural and tolerable, that the House of Commons should be infected with every epidemical frenzy of the people, as this would indicate some consanguinity, some sympathy of nature with their constituents, than that they should, in all cases, be wholly untouched by the opinions and feelings of the people out of doors. By this want of sympathy, they would cease to be a House of Commons.

The virtue, spirit, and essence of a House of Commons, consist in its being the express image of the feelings of the nation. It was not instituted to be a control *upon* the people, as of late it has been taught, by a doctrine of the most pernicious tendency, but as a control *for* the people."

He then goes on to say, that to give a technical shape, a colour, dress, and duration to popular opinion, is the true office of a House of Commons. Mr Burke is unquestionably correct :—the control upon the people is the King's Majesty, and the hereditary privileges of the Peers ;—the balance of the state is the control *for* the people upon both, in the existence of the House of Commons ;—but how can that control exist *for* the people, unless they have the actual election of the House of Commons, which, it is most notorious, they have not ?—I hold in my hand a state of the representation which, if the thing were not otherwise notorious, I would prove to have been lately offered in proof to the House of Commons, by an honourable friend of mine now present, whose motion I had the honour to second, where it appeared that 12,000 people return near a majority of the House of Commons, and those again, under the control of about 200. But though these facts were admitted, all redress and even discussion was refused.—What ought to be said of a House of Commons that so conducts itself, it is not for me to pronounce ; I will appeal, therefore, to Mr Burke, who says, "that a House of Commons, which in

all disputes between the people and administration presumes against the people, which punishes their disorders, but refuses even to inquire into their provocations, is an unnatural, monstrous state of things in the constitution."

But this is nothing: Mr Burke goes on afterwards to give a more full description of Parliament, and in stronger language (let the Solicitor-General take it down for his reply) than any that has been employed by those who are to be tried at present as conspirators against its existence. I read the passage, to warn you against considering hard words against the House of Commons as decisive evidence of treason against the King. The passage is in a well-known work, called, "Thoughts on the Causes of the PRESENT Discontents"; and such discontents will always be PRESENT whilst their causes continue. The word PRESENT will apply just as well *now*, and much better than to the times when the honourable gentleman wrote his book; for we are now in the heart and bowels of another war, and groaning under its additional burdens. I shall therefore leave it to the learned gentleman, who is to reply, to show us what has happened since our author wrote, which renders the Parliament less liable to the same observations now.

"It must be always the wish of an unconstitutional statesman, that a House of Commons, who are entirely dependent upon him, should have every right of the people entirely dependent upon their pleasure. For it was soon discovered that the forms of a free, and the ends of an arbitrary government, were things not altogether incompatible.

"The power of the Crown, almost dead and rotten as prerogative, has grown up anew, with much more strength and far less odium, under the name of influence. An influence which operated without noise and violence; which converted the very antagonist into the instrument of power; which contained in itself a perpetual principle of growth and renovation; and which the distresses and the prosperity of the country equally tended to augment, was an admirable substitute for a prerogative, that, being only the offspring of antiquated prejudices, had moulded in its original stamina irresistible principles of decay and dissolution."

What is this but saying that the House of Commons is a settled and scandalous abuse fastened *upon* the people, instead of being an antagonist power *for* their protection; an odious instrument of power in the hands of the Crown, instead of a popular balance *against* it? Did Mr Burke mean that the prerogative of the Crown, properly understood and exercised, was an antiquated prejudice? Certainly not; because his attachment to a properly-balanced monarchy is notorious. Why then is it to be fastened upon the prisoners, that they stigmatise monarchy, when they also exclaim *only against its corruptions*? In the same manner, when he speaks of the abuses of Parliament, would it be fair to Mr Burke to argue, from the

strict legal meaning of the expression, that he included, in the censure on Parliament, the King's person, or majesty, which is part of the Parliament? In examining the work of an author you must collect the sense of his expressions from the subject he is discussing; and if he is writing of the House of Commons as it affects the structure and efficacy of the Government, you ought to understand the word Parliament so as to meet the sense and obvious meaning of the writer. Why, then, is this common justice refused to others? Why is the word Parliament to be taken in its strictest and least obvious sense against a poor shoemaker, or any plain tradesman at a Sheffield club, while it is interpreted in its popular, though less correct acceptation, in the works of the most distinguished scholar of the age? Add to this, that the cases are not at all similar: for Mr Burke uses the word Parliament *throughout*, when he is speaking of the House of Commons; without any concomitant words which convey an explanation, but the sense of his subject; whereas Parliament is fastened upon the prisoner as meaning something beyond the House of Commons, when it can have no possible meaning beyond it; since, from the beginning to the end, it is joined with the words *representation of the people*—the representation of the people in Parliament!—Does not this most palpably mean the House of Commons, when we know that the people have no representation in either of the other branches of the Government?

A letter has been read in evidence from Mr Hardy to Mr Fox, where he says their object was universal representation. Did Mr Fox suppose, when he received this letter, that it was from a nest of republicans, clamouring publicly for an universal representative constitution like that of France? If he had, would he have sent the answer he did, and agreed to present their petition? They wrote also to the Society of the Friends of the People, and invited them to send delegates to the convention. The Attorney-General, who has made honourable and candid mention of that body, will not suppose that it would have contented itself with refusing the invitation in terms of cordiality and regard, if with all the knowledge they had of their transactions, they had conceived themselves to have been invited to the formation of a body which was to overrule and extinguish all the authorities of the State; yet, upon the perversion of these two terms, Parliament and Convention, against their natural interpretation, against a similar use of them by others, and against the solemn explanation of them by the Crown's own witnesses, this whole fabric of terror and accusation stands for its support. Letters, it seems, written to other people, are to be better understood by the gentlemen round this table, who never saw them till months after they were written, than by those to whom they were addressed and sent; and no right interpretation, forsooth, is to be expected from writings when pursued in their

regular series, but they are to be made distinct by binding them up in a large volume, alongside of others totally unconnected with them, and the very existence of whose authors was unknown to one another.

I will now, gentlemen, resume the reading of another part of Mr Burke, and a pretty account it is of this same Parliament: "They who will not conform their conduct to the public good, and cannot support it by the prerogative of the Crown, have adopted a new plan. They have totally abandoned the shattered and old-fashioned fortress of prerogative, and made a lodgment in the stronghold of Parliament itself. If they have any evil design to which there is no ordinary legal power commensurate, they bring it into Parliament. There the whole is executed from the beginning to the end; and the power of obtaining their object absolute; and the safety in the proceeding perfect; no rules to confine, nor after- reckonings to terrify. For Parliament cannot, with any great propriety, punish others for things in which they themselves have been accomplices. Thus its control upon the executory power is lost."

This is a proposition universal. It is not that the popular control was lost under this or that administration, but, GENERALLY, that the people have no control in the House of Commons. Let any man stand up and say that he disbelieves this to be the case; I believe he would find nobody to believe him. Mr Burke pursues the subject thus: "The distempers of monarchy were the great subjects of apprehension and redress in the *last* century—in this, the distempers of Parliament." Here the word Parliament, and the abuses belonging to it, are put in express opposition to the monarchy, and cannot therefore comprehend it; the distempers of Parliament, then, are objects of serious apprehension and redress. What distempers? Not of this or that year, but the habitual distempers of Parliament; and then follows the nature of the remedy, which shows that the prisoners are not singular in thinking that it is by THE VOICE OF THE PEOPLE ONLY that Parliament can be corrected. "It is not in Parliament alone," says Mr Burke, "that the remedy for parliamentary disorders can be completed, and hardly indeed can it begin there. Until a confidence in Government is re-established, the people ought to be excited to a more strict and detailed attention to the conduct of their representatives. Standards for judging more systematically upon their conduct ought to be settled in the meetings of counties and corporations, and frequent and correct lists of the voters in all important questions ought to be procured. By such means something may be done."

It was the same sense of the impossibility of a reform in Parliament, without a general expression of the wishes of the people, that dictated the Duke of Richmond's letter; all the petitions in 1780 had been rejected by Parliament; this made the Duke of

Richmond exclaim, that from that quarter no redress was to be expected, and that from the people alone he expected any good; and he therefore expressly invited them to claim and to assert an equal representation as their indubitable and unalienable birthright—how to assert their rights when Parliament had already refused them without even the hope, as the Duke expressed it, of listening to them any more? Could the people's rights, under such circumstances, be asserted without rebellion? Certainly they might; for rebellion is, when bands of men within a state oppose themselves, by violence, to the general will, as expressed or implied by the public authority; but the sense of a *whole people*, peaceably collected, and operating by its natural and certain effect upon the public councils, is not rebellion, but is paramount to, and the parent of, authority itself.

Gentlemen, I am neither vindicating nor speaking the language of inflammation or discontent. I shall speak nothing that can disturb the order of the state; I am full of devotion to its dignity and tranquillity, and would not for worlds let fall an expression in this or in any other place that could lead to disturbance or disorder; but for that very reason I speak with firmness of **THE RIGHTS OF THE PEOPLE**, and am anxious for the redress of their complaints, because I believe a system of attention to them to be a far better security and establishment of every part of the Government, than those that are employed to preserve them. The State and Government of a country rest for their support on the great body of the people, and I hope never to hear it repeated, in any court of justice, that peaceably to convene the people upon the subject of their own privileges can lead to the destruction of the King. They are the King's worst enemies who hold this language. It is a most dangerous principle that the Crown is in jeopardy if the people are acquainted with their rights, and that the collecting them together to consider of them, leads inevitably to the destruction of the sovereign. Do these gentlemen mean to say that the King sits upon his throne without the consent, and in defiance of the wishes, of the great body of his people, and that he is kept upon it by a few individuals who call themselves his friends, in exclusion of the rest of his subjects? Has the King's inheritance no deeper or wider roots than this? Yes, gentlemen, it has; it stands upon the love of the people, who consider their own inheritance to be supported by the King's constitutional authority. This is the true prop of the throne, and the love of every people upon earth will for ever uphold a Government founded as ours is upon reason and consent, as long as Government shall be itself attentive to the general interests which are the foundations and the ends of all human authority. Let us banish then these unworthy and impolitic fears of an unrestrained and an enlightened people; let us not tremble at the rights of man, but, by giving to men their rights, secure

their affections, and, through their affections, their obedience; let us not broach the dangerous doctrine, that the rights of kings and of men are incompatible. Our Government at the Revolution began upon their harmonious incorporation, and Mr Locke defended King William's title upon no other principle than the rights of man. It is from the revered-work of Mr Locke, and not from the Revolution in France, that one of the papers in the evidence, the most stigmatised, most obviously flawed; for it is proved that Mr Yorke held in his hand "Mr Locke upon Government," when he delivered his speech on the Castle Hill at Sheffield, and that he expatiated largely upon it. Well, indeed, might the witness say he expatiated largely, for there are many well-selected passages taken *verbatim* from the book; and here, in justice to Mr White, let me notice the fair and honourable manner in which, in the absence of the clerk, he read this extraordinary performance. He delivered it not merely with distinctness, but in a manner so impressive, that I believe every man in court was affected by it.

Gentlemen, I am not driven to defend every expression; some of them are improper undoubtedly, rash and inflammatory, but I see nothing in the whole taken together, even if it were connected with the prisoner, that goes at all to an evil purpose in the writer. But Mr Attorney-General has remarked upon this proceeding at Sheffield (and whatever falls from a person of his rank and just estimation deserves great attention), he has remarked that it is quite apparent they had resolved not to petition. They had certainly resolved not *at that season* to petition, and that seems the utmost which can be maintained from the evidence. But supposing they had negatived the measure altogether, is there no way by which the people may actively associate for the purposes of a reform in Parliament, but to consider of a petition to the House of Commons? Might they not legally assemble to consider the state of their liberties, and the conduct of their representatives? Might they not legally form conventions or meetings (for the name is just nothing), to adjust a plan of rational union for a wise choice of representatives when Parliament should be dissolved? May not the people meet to consider their interests preparatory to, and independently of, a petition for any specific object? My friend seems to consider the House of Commons as a substantive and permanent part of the constitution; he seems to forget that the Parliament dies a natural death; that the people then re-enter into their rights, and that the exercise of them is the most important duty that can belong to social man. How are such duties to be exercised with effect, on momentous occasions, but by concert and communion? May not the people assembled in their elective districts resolve to trust no longer those by whom they have been betrayed? May they not resolve to vote for no man who contri-

buted by his voice to this calamitous war, which has thrown such grievous and unnecessary burdens upon them? May they not say, "We will not vote for those who deny we are their constituents, nor for those who question our clear and natural right to be equally represented?" Since it is illegal to carry up petitions, and unwise to transact any public business attended by multitudes, because it tends to tumult and disorder, may they not, for that very reason, depute, as they have done, the most trusty of their societies to meet with one another to consider, without the specific object of petitions, how they may claim, by means which are constitutional, their imprescriptible rights? And here I must advert to an argument employed by the Attorney-General, that the views of the societies towards universal suffrage, carried in themselves (however sought to be effected) an implied force upon Parliament, for that, supposing by invading it with the vast pressure, not of the public arm, but of the public sentiment of the nation, the influence of which upon that assembly is admitted ought to be weighty, it could have prevailed upon the Commons to carry up a bill to the King for universal representation and annual Parliaments, his Majesty was bound to reject it; and could not, without a breach of his coronation oath, consent to pass it into an act;—I cannot conceive where my friend met with this law, or what he can possibly mean by asserting that the King cannot consistently with his coronation oath consent to any law that can be stated or imagined, presented to him as the act of the two Houses of Parliament:—he could not indeed consent to a bill sent up to him framed by a convention of delegates assuming legislative functions; and if my friend could have proved that the societies, sitting as a parliament, had sent up such a bill to his Majesty, I should have thought the prisoner, as a member of such a parliament, was at least in a different situation from that in which he stands at present: but as this is not one of the chimeras whose existence is contended for, I return back to ask upon what authority it is maintained that universal representations and annual Parliaments could not be consented to by the King, in conformity to the wishes of the other branches of the legislature. On the contrary, one of the greatest men that this country ever saw considered universal representation to be such an inherent part of the constitution, as that the King himself might grant it by his prerogative, even without the Lords and Commons; and I have never heard the position denied upon any other footing than the Union with Scotland. But, be that as it may, it is enough for my purpose that the maxim that the King might grant universal representation, as a right before inherent in the whole people to be represented, stands, upon the authority of Mr Locke, the man, next to Sir Isaac Newton of the greatest strength of understanding that England, perhaps, ever had; high, too, in the favour of King William, and enjoying one of the most exalted offices in the state.

Mr Locke says, book 2d, ch. 13, sect. 157, 158—"Things of this world are in so constant a flux that nothing remains long in the same state. Thus people, riches, trade, power, change their stations, flourishing mighty cities come to ruin, and prove in time neglected, desolate corners, whilst other unfrequented places grow into populous countries, filled with wealth and inhabitants. But things not always changing equally, and private interest often keeping up customs and privileges when the reasons of them are ceased, it often comes to pass that in governments where part of the legislative consists of *representatives* chosen by the people, that in course of time this *representation* becomes very *unequal* and disproportionate to the reasons it was at first established upon. To what gross absurdities the following of custom when reason has left it may lead, we may be satisfied when we see the bare name of a town, of which there remains not so much as the ruins, where scarce so much housing as a sheepcote, or more inhabitants than a shepherd, is to be found, sends *as many representatives* to the grand assembly of law-makers as a whole county, numerous in people and powerful in riches. This strangers stand amazed at, and every one must confess needs a remedy."

"*Salus populi suprema lex* is certainly so just and fundamental a rule, that he who sincerely follows it cannot dangerously err. If therefore, the executive, who has the power of convoking the legislative, observing rather the true proportion than fashion of *representation*, regulates, not by old custom but true reason, the *number of members* in all places that have a right to be distinctly represented, which no part of the people, however incorporated, can pretend to, but in proportion to the assistance which it affords to the public, it cannot be judged to have set up a new legislative, but to have restored the old and true one, and to have rectified the disorders which succession of time had insensibly as well as inevitably introduced; for it being the interest as well as intention of the people to have a fair and *equal representative*, whoever brings it nearest to that is an undoubted friend to, and establisher of the Government, and cannot miss the consent and approbation of the community; *prerogative* being nothing but a power in the hands of the prince to provide for the public good in such cases, which depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct; whatsoever shall be done manifestly for the good of the people, and the establishing of the Government upon its true foundations is, and always will be, just prerogative. Whatsoever cannot but be acknowledged to be of advantage to the society and people in general, upon just and lasting measures, will always when done justify itself; and whenever the people shall choose their *representatives upon* just and undeniably *equal measures*, suitable to the original frame of the Government, it cannot be doubted to be the will and act of the society,

whoever permitted or caused them so to do." But as the very idea of universal suffrage seems now to be considered not only to be dangerous to, but absolutely destructive of, monarchy, you certainly ought to be reminded that the book which I have been reading, and which my friend kindly gives me a note to remind you of, was written by its immortal author in defence of King William's title to the crown; and when Dr Sacheverel ventured to broach those doctrines of power and non-resistance which, under the same establishments, have now become so unaccountably popular, he was impeached by the people's representatives for denying their rights, which had been asserted and established at the glorious era of the Revolution.

Gentlemen, if I were to go through all the matter which I have collected upon this subject, or which obtrudes itself upon my mind, from common reading in a thousand directions, my strength would fail long before my duty was fulfilled; I had very little when I came into court, and I have abundantly less already; I must, therefore, manage what remains to the best advantage. I proceed, therefore, to take a view of such parts of the evidence as appear to me to be the most material for the proper understanding of the case. I have had no opportunity of considering it but in the interval which the indulgence of the Court, and your own, has afforded me, and that has been but for a very few hours this morning; but it occurred to me that the best use I could make of the time given to me was (if possible) to disembroil this chaos—to throw out of view everything irrelevant, which only tended to bring chaos back again—to take what remained in order of time—to select certain stages and resting-places—to review the effect of the transactions, as brought before us, and then to see how the written evidence is explained by the testimony of the witnesses who have been examined.

The origin of the Constitutional Society not having been laid in evidence before you, the first thing both in point of date, and as applying to show the objects of the different bodies, is the original address and resolution of the Corresponding Society on its first institution, and when it first began to correspond with the other, which had formerly ranked amongst its members so many illustrious persons; and before we look to the matter of this institution, let us recollect that the objects of it were given without reserve to the public, as containing the principles of the association; and I may begin with demanding whether the annals of this country, or indeed the universal history of mankind, afford an instance of a plot and conspiracy voluntarily given up in its very infancy to Government and the whole public, and of which, to avoid the very thing that has happened, the arraignment of conduct at a future period, and the imputation of secrecy where no secret was intended, a regular notice by letter was left with the Secretary of State, and a receipt taken at the public office as a proof of the publicity of

their proceeding, and the sense they entertained of their innocence. For the views and objects of the Society we must look to the institution itself, which you are, indeed, desired to look at by the Crown; for their intentions are not considered as deceptions in this instance, but as plainly revealed by the very writing itself.

Gentlemen, there was a sort of silence in the Court—I do not say an affected one, for I mean no possible offence to any one, but there seemed to be an effect expected from beginning, not with the address itself, but with the very bold motto to it, though in verse:

“Unblest by virtue, Government a league
Becomes, a circling junto of the great
To rob by law: Religion mild, a yoke
To tame the stooping soul, a trick of state
To mask their rapine, and to share the prey.
Without it, what are senates but a face
Of consultation deep and reason free,
While the determined voice and heart are sold?
What, boasted freedom, but a sounding name!
And what election, but a market vile
Of slaves self-bartered?”

I almost fancy I heard them say to me: What think you of that to set out with? Show me the parallel of that. Gentlemen, I am sorry, for the credit of the age we live in, to answer that it is difficult to find the parallel; because the age affords no such poet as he who wrote it:—these are the words of Thomson;—and it is under the banners of his proverbial benevolence that these men are supposed to be engaging in plans of anarchy and murder; under the banners of that great and good man, whose figure you may still see in the venerable shades of Hagley, placed there by the virtuous, accomplished, and public-spirited Lyttelton: the very poem, too, written under the auspices of his Majesty's royal father, when heir-apparent to the crown of Great Britain, nay, within the very walls of Carlton House, which afforded an asylum to matchless worth and genius in the person of this great poet: it was under the roof of A PRINCE OF WALES that the poem of “LIBERTY” was written;—and what better return could be given to a prince for his protection than to blazon in immortal numbers the only sure title to the crown he was to wear—THE FREEDOM OF THE PEOPLE OF GREAT BRITAIN? And it is to be assumed, forsooth, in the year 1794, that the unfortunate prisoner before you was plotting treason and rebellion, because, with a taste and feeling beyond his humble station, his first proceeding was ushered into view under the hallowed sanction of this admirable person, the friend and the defender of the British constitution; whose countrymen are preparing at this moment (may my name descend amongst them to the latest posterity!) to do honour to his immortal memory. Pardon me, gentlemen, for this desultory digression—I must express myself as the current of my mind will carry me.

If we look at the whole of the institution itself, it exactly corre-

sponds with the plan of the Duke of Richmond, as expressed in the letters to Colonel Sharman, and to the High Sheriff of Sussex: this plan they propose to follow, in a public address to the nation, and all their resolutions are framed for its accomplishment; and I desire to know in what they have departed from either, and what they have done which has not been done before, without blame or censure, in the pursuance of the same object. I am not speaking of the libels they may have written, which the law is open to punish, but what part of their conduct has, as applicable to the subject in question, been unprecedented. I have, at this moment, in my eye, an honourable friend of mine, and a distinguished member of the House of Commons, who, in my own remembrance, I believe in 1780, sat publicly at Guildhall, with many others, some of them magistrates of the city, as a convention of delegates, for the same objects; and, what is still more in point, just before the convention began to meet at Edinburgh, whose proceedings have been so much relied on, there was a convention regularly assembled, attended by the delegates from all the counties of Scotland, for the express and avowed purpose of altering the constitution of Parliament; not by rebellion, but by the same means employed by the prisoner. The Lord Chief Baron of Scotland sat in the chair, and was assisted by some of the first men in that country, and, amongst others, by an honourable person to whom I am nearly allied, who is at the very head of the Bar in Scotland, and most avowedly attached to the law and the constitution.* These gentlemen, whose good intentions never fell into suspicion, had presented a petition for the alteration of election laws, which the House of Commons had rejected, and on the spur of that very rejection they met in a convention at Edinburgh in 1793; and the style of their first meeting was, "A convention of delegates, chosen from the counties of Scotland, for altering and amending the laws concerning elections"—not for considering how they might be best amended—not for petitioning Parliament to amend them; but for altering and amending the election laws. These meetings were regularly published, and I will prove, that their first resolution, as I have read it to you, was brought up to London, and delivered to the editor of the *Morning Chronicle* by Sir Thomas Dundas, lately created a peer of Great Britain, and paid for by him as a public advertisement. Now, suppose any man had imputed treason or sedition to these honourable persons, what would have been the consequence? They would have been considered as infamous libellers and traducers, and deservedly hooted out of civilised life. Why then are different constructions to be put upon similar transactions? Why is everything to be held up as *bona fide* when the example is set, and *mala fide* when it is

* The Hon. Henry Erskine, Mr Erskine's brother, then Dean of the Faculty of Advocates, at Edinburgh.

followed? Why have I not as good a claim to take credit for honest purpose in the poor man I am defending, against whom not a contumelious expression has been proved, as when we find the same expressions in the mouths of the Duke of Richmond or Mr Burke? I ask nothing more from this observation, than that a sober judgment may be pronounced from the quality of the acts which can be fairly established: each individual standing responsible only for his own conduct, instead of having our imaginations tainted with cant phrases, and a farrago of writings and speeches, for which the prisoner is not responsible, and for which the authors, if they be criminal, are liable to be brought to justice.

But it will be said, gentlemen, that all the constitutional privileges of the people are conceded; that their existence was never denied or invaded; and that their right to petition and to meet for the expression of their complaints, founded or unfounded, was never called in question; these, it will be said, are the rights of subjects; but that the rights of man are what alarms them: every man is considered as a traitor who talks about the rights of man; but this bugbear stands upon the same perversion with its fellows.

The rights of man are the foundation of all government, and to secure them is the only reason of men's submitting to be governed; it shall not be fastened upon the unfortunate prisoner at the bar, nor upon any other man, that because these natural rights were asserted in France, by the destruction of a Government which oppressed and subverted them, a process happily effected here by slow and imperceptible improvements, that therefore they can only be so asserted in England, where the Government, through a gradation of improvement, is well calculated to protect them. We are, fortunately, not driven in this country to the terrible alternatives which were the unhappy lot of France, because we have had a happier destiny in the forms of a free constitution: this indeed is the express language of many of the papers before you, that have been complained of; particularly in one alluded to by the Attorney-General, as having been written by a gentleman with whom I am particularly acquainted; and though in that spirited composition there are, perhaps, some expressions proceeding from warmth which he may not desire me critically to justify, yet I will venture to affirm, from my own personal knowledge, that there is not a man in court more honestly public-spirited and zealously devoted to the constitution of King, Lords, and Commons, than the honourable gentleman I allude to (Felix Vaughan, Esq, barrister-at-law). It is the phrase, therefore, and not the sentiment expressed by it, that can alone give justifiable offence;—it is, it seems, a *new* phrase commencing in revolutions, and never used before in discussing the rights of British subjects, and therefore can only be applied in the sense of those who framed it; but this is so far from

being the truth, that the very phrase sticks in my memory, from the memorable application of it to the rights of subjects, under this and every other establishment, by a gentleman whom you will not suspect of using it in any other sense. The rights of man were considered by Mr Burke, at the time that the great uproar was made upon a supposed invasion of the East India Company's charter, to be the foundation of, and paramount to all the laws and ordinances of a state: the Ministry, you may remember, were turned out for Mr Fox's India Bill, which their opponents termed an attack upon the chartered rights of man, or in other words, upon the abuses supported by a monopoly in trade. Hear the sentiments of Mr Burke, when the NATURAL and CHARTERED rights of men are brought into contest. Mr Burke, in his speech in the House of Commons, expressed himself thus: "The first objection is, that the bill is an attack on the chartered rights of men. As to this objection, I must observe that the phrase of 'the chartered rights of men,' is full of affectation; and very unusual in the discussion of privileges conferred by charters of the present description. But it is not difficult to discover what end that ambiguous mode of expression, so often reiterated, is meant to answer.

"The rights of *men*, that is to say, the *natural rights of mankind*, are indeed sacred things; and if any public measure is proved mischievously to affect them, the objection ought to be fatal to that measure, even if no charter at all could be set up against it. And if these natural rights are further affirmed and declared by express covenants, clearly defined and secured against chicane, power, and authority, by written instruments and positive engagements, they are in a still better condition; they then partake not only of the sanctity of the object so secured, but of that solemn public faith itself, which secures an object of such importance. Indeed, this formal recognition, by the sovereign power, of an original right in the subject, can never be subverted, but by rooting up the holding radical principles of government, and even of society itself."

The Duke of Richmond also, in his public letter to the High Sheriff of Sussex, rests the rights of the people of England upon the same horrible and damnable principle of the rights of man. Let gentlemen, therefore, take care they do not pull down the very authority which they come here to support; let them remember, that his Majesty's family was called to the throne upon the very principle that the ancient kings of this country had violated these sacred trusts; let them recollect too in what the violation was charged to exist; it was charged by the Bill of Rights to exist in cruel and infamous trials; in the packing of juries; and in disarming the people, whose arms are their unalienable refuge against oppression. But did the people of England assemble to make this declaration? No!—because it was unnecessary. The sense of the

people, against a corrupt and scandalous Government, dissolved it, by almost the ordinary forms by which the old Government itself was administered. King William sent his writs to those who had sat in the former Parliament: but will any man, therefore, tell me that that Parliament reorganised the Government without the will of the people? and that it was not their consent which entailed on King William a particular inheritance, to be enjoyed under the dominion of the law? Gentlemen, it was the denial of these principles, asserted at the Revolution in England, that brought forward the author of "The Rights of Man," and stirred up this controversy which has given such alarm to Government: but for this the literary labours of Mr Paine had closed. He asserts it himself in his book, and everybody knows it. It was not the French revolution, but Mr Burke's reflections upon it, followed up by another work on the same subject, *as it regarded things in England*, which brought forward Mr Paine, and which rendered his works so much the object of attention in this country. Mr Burke denied positively the very foundation upon which the Revolution of 1688 must stand for its support, viz, the right of the people to change their Government; and he asserted, in the teeth of his Majesty's title to the crown, that no such right in the people existed; this is the true history of the second part of "The Rights of Man." The first part had little more aspect to this country than to Japan; it asserted the right of the people of France to act as they had acted, but there was little which pointed to it as an example for England. There had been a despotic authority in France which the people had thrown down, and Mr Burke seemed to question their right to do so: Mr Paine maintained the contrary in his answer; and having imbibed the principles of republican government, during the American revolution, he mixed with the controversy many coarse and harsh remarks upon monarchy as established, even in England, or in any possible form. But this was collateral to the great object of his work, which was to maintain the right of the people to choose their Government; this was the right which was questioned, and the assertion of it was most interesting to many who were most strenuously attached to the English Government. For men may assert the right of every people to choose their Government without seeking to destroy their own. This accounts for many expressions imputed to the unfortunate prisoners, which I have often uttered myself, and shall continue to utter every day of my life, and call upon the spies of Government to record them. *I will say anywhere, without fear, nay, I will say here, where I stand, that an attempt to interfere, by despotic combination and violence, with any Government which a people choose to give to themselves, whether it be good or evil, is an oppression and subversion of the natural and unalienable rights of man; and though the Government of this country should countenance such a system, it*

would not only be still legal for me to express my detestation of it, as I here deliberately express it, but it would become my interest and my duty. For, if combinations of despotism can accomplish such a purpose, who shall tell me, what other nation shall not be the prey of their ambition? Upon the very principle of denying to a people the right of governing themselves, how are we to resist the French, should they attempt by violence to fasten their government upon us? Or what inducement would there be for resistance to preserve laws, which are not, it seems, our own, but which are unalterably imposed upon us? The very argument strikes, as with a palsy, the arm and vigour of the nation. I hold dear the privileges I am contending for, not as privileges hostile to the constitution, but as necessary for its preservation; and if the French were to intrude by force upon the Government of our own free choice, I should leave these papers, and return to a profession that, perhaps, I better understand.

The next evidence relied on, after the institution of the Corresponding Society, is a letter written to them from Norwich, dated the 11th of November 1792, with the answer, dated the 26th of the same month:—it is asserted, that this correspondence shows, they aimed at nothing less than the total destruction of the monarchy, and that they, therefore, veil their intention under covert and ambiguous language. I think, on the other hand, and I shall continue to think so as long as I am capable of thought, that it was impossible for words to convey more clearly the explicit avowal of their original plan for a constitutional reform in the House of Commons. This letter from Norwich, after congratulating the Corresponding Society on its institution, asks several questions arising out of the proceedings of other societies in different parts of the kingdom, which they profess not thoroughly to understand.

The Sheffield people (they observe) seemed at first determined to support the Duke of Richmond's plan only, but that they had afterwards observed a disposition in them to a more moderate plan of reform proposed by the Friends of the People in London; whilst the Manchester people, by addressing Mr Paine (whom the Norwich people had not addressed), seemed to be intent on republican principles only. They therefore put a question, not at all of distrust, or suspicion, but *bona fide*, if ever there was good faith between men, whether the Corresponding Society meant to be satisfied with the plan of the Duke of Richmond? or, whether it was their private design to rip up monarchy by the roots, and place democracy in its stead? Now hear the answer, from whence it is inferred that this last is their intention: they begin their answer with recapitulating the demand of their correspondent, as regularly as a tradesman who has had an order for goods recapitulates the order, that there may be no ambiguity in the reference or application of the reply,

and then they say, as to the objects they have in view they refer them to their addressees. "You will thereby see that they mean to disseminate political knowledge, and thereby engage the judicious part of the nation to demand the RECOVERY of their LOST rights in ANNUAL Parliaments; the members of these Parliaments owing their election to unbought suffrages." They then desire them to be careful to avoid all dispute, and say to them, Put monarchy, democracy, and even religion, quite aside; and "Let your endeavours go to increase the numbers of those who desire a full and equal representation of the people, and leave to a Parliament, so chosen, to reform all existing abuses; and if they don't answer, at the year's end, you may choose others in their stead." The Attorney-General says this is lamely expressed;—I, on the other hand, say that it is not only not lamely expressed, but anxiously worded to put an end to dangerous speculations. Leave all theories undiscussed; do not perplex yourselves with abstract questions of government; endeavour practically to get honest representatives,—and if they deceive you—then, what?—bring on a revolution? No! Choose others in their stead. They refer also to their address, which lay before their correspondent, which address expresses itself thus: "Laying aside all claim to originality, we claim no other merit than that of reconsidering and verifying what has already been urged in our common cause by the Duke of Richmond and Mr Pitt, and their then honest party."

When the language of the letter, which is branded as ambiguous, thus stares them in the face as an undeniable answer to the charge, they then have recourse to the old refuge of *mala fides*; all this they say is but a cover for hidden treason. But I ask you, gentlemen, in the name of God, and as fair and honest men, what reason upon earth there is to suppose that the writers of this letter did not mean what they expressed? Are you to presume in a court of justice, and upon a trial for life, that men write with duplicity in their most confidential correspondence, even to those with whom they are confederated? Let it be recollected also, that if this correspondence was calculated for deception, the deception must have been understood and agreed upon by all parties concerned; for otherwise you have a conspiracy amongst persons who are at cross purposes with one another: consequently the conspiracy, if this be a branch of it, is a conspiracy of thousands and ten thousands, from one end of the kingdom to the other, who are all guilty, if any of the prisoners are guilty:—upwards of forty thousand persons, upon the lowest calculation, must alike be liable to the pains and penalties of the law, and hold their lives as tenants at will of the Ministers of the Crown. In whatever aspect, therefore, this prosecution is regarded, new difficulties and new uncertainties and terrors surround it.

The next thing in order which we have to look at, is the conven-

tion at Edinburgh. It appears that a letter had been written by Mr Skirving, who was connected with reformers in Scotland proceeding avowedly upon the Duke of Richmond's plan, proposing that there should be a convention from the societies assembled at Edinburgh. Now you will recollect, in the opening, that the Attorney-General considered all the great original sin of this conspiracy and treason to have originated with the societies in London—that the country societies were only tools in their hands, and that the Edinburgh convention was the commencement of their projects; and yet it plainly appears that this convention originated from neither of the London societies, but had its beginning at Edinburgh, where, just before, a convention had been sitting for the reform in Parliament, attended by the principal persons in Scotland; and surely, without adverting to the nationality so peculiar to the people of that country, it is not at all suspicious, that since they were to hold a meeting for similar objects, they should make use of the same style for their association; and that their deputies should be called delegates, when delegates had attended the other convention from all the counties, and whom they were every day looking at in their streets, in the course of the very same year that Skirving wrote his letter on the subject. The views of the Corresponding Society, as they regarded this convention, and consequently the views of the prisoner, must be collected from the written instructions to the delegates, unless they can be falsified by matter which is collateral. If I constitute an agent, I am bound by what he does, but always with this limitation, for what he does *within the scope of his agency*. If I constitute an agent to buy horses for me, and he commits high treason, it will not, I hope, be argued that I am to be hanged. If I constitute an agent for any business that can be stated, and he goes beyond his instructions, he must answer for himself beyond their limits; for beyond them he is not my representative. The acts done, therefore, at the Scotch convention, whatever may be their quality, are evidence to show, that in point of fact, a certain number of people got together, and did anything you choose to call illegal; but as far as it concerns me, if I am not present, you are limited by my instructions, and have not advanced a single step upon your journey to convict me: the instructions to Skirving have been read, and speak for themselves; they are strictly legal, and pursue the avowed object of the society; and it will be for the Solicitor-General to point out, in his reply, any counter or secret instructions, or any collateral conduct, contradictory of the good faith with which they were written. The instructions are in these words—"The delegates are instructed, on the part of this Society, to assist in bringing forward and supporting any *constitutional* measure for procuring a real representation of the Commons of Great Britain." What do you say, gentlemen, to this language?—how are men to express themselves who

desire a constitutional reform? The object and the mode of effecting it were equally legal. This is most obvious from the conduct of the Parliament of Ireland, acting under directions from England: they passed the Convention Bill, and made it only a misdemeanour, knowing that, by the law as it stood, it was no misdemeanour at all. Whether this statement may meet with the approbation of others, I care not; I know the fact to be so, and I maintain that you cannot prove upon the convention which met at Edinburgh, and which is charged to-day with high treason, one thousandth part of what, at last, worked up government in Ireland to the pitch of voting it a misdemeanour.

Gentlemen, I am not vindicating anything that can promote disorder in the country, but I am maintaining that the worst possible disorder that can fall upon a country is, when subjects are deprived of the sanction of clear and unambiguous laws. If wrong is committed, let punishment follow according to the measure of that wrong: if men are turbulent, let them be visited by the laws according to the measure of their turbulency: if they write libels upon Government, let them be punished according to the quality of those libels; but you must not, and will not, because the stability of the monarchy is an important concern to the nation, confound the nature and distinctions of crimes, and pronounce that the life of the sovereign has been invaded, because the privileges of the people have been, perhaps, irregularly and hotly asserted. You will not, to give security to Government, repeal the most sacred laws instituted for our protection, and which are, indeed, the only consideration for our submitting at all to Government. If the plain letter of the statute of Edward the Third applies to the conduct of the prisoners, let it, in God's name, be applied; but let neither their conduct, nor the law that is to judge it, be tortured by construction; nor suffer the transaction, from whence you are to form a dispassionate conclusion of intention, to be magnified by scandalous epithets, nor overwhelmed in an undistinguishable mass of matter, in which you may be lost and bewildered, having missed the only parts which could have furnished a clue to a just or rational judgment.

Gentlemen, this religious regard for the liberty of the subject, against constructive treason, is well illustrated by Dr Johnson, the great author of our English Dictionary, a man remarkable for his love of order, and for high principles of government, but who had the wisdom to know that the great end of government, in all its forms, is the security of liberty and life under the law. This man, of masculine mind, though disgusted at the disorder which Lord George Gordon created, felt a triumph in his acquittal, and exclaimed, as we learn from Mr Boswell, "I hate Lord G. Gordon, but I am glad he was not convicted of this constructive treason; for, though I hate him, I love my country and myself." This

extraordinary man, no doubt, remembered, with Lord Hale, that, when the law is broken down, injustice knows no bounds, but runs as far as the wit and invention of accusers, or the detestation of persons accused, will carry it. You will pardon this almost perpetual recurrence to these considerations; but the present is a season when I have a right to call upon you by everything sacred in humanity and justice—by every principle which ought to influence the heart of man—to consider the situation in which I stand before you. I stand here for a poor unknown, unprotected individual, charged with a design to subvert the Government of the country, and the dearest rights of its inhabitants; a charge which has collected against him a force sufficient to crush to pieces any private man. The whole weight of the Crown presses upon him; Parliament has been sitting upon *ex parte* evidence for months together; and rank and property is associated, from one end of the kingdom to the other, to avert the supposed consequences of the treason. I am making no complaint of this; but surely it is an awful summons to impartial attention; surely it excuses me for so often calling upon your integrity and firmness to do equal justice between the Crown, so supported, and an unhappy prisoner, so unprotected.

Gentlemen, I declare that I am utterly astonished, on looking at the clock, to find how long I have been speaking, and that, agitated and distressed as I am, I have yet strength enough remaining for the remainder of my duty. At every peril of my health it shall be exerted: for although, if this cause should miscarry, I know I shall have justice done me for the honesty of my intentions; yet what is that to the public and posterity? What is it to them, when, if upon this evidence there can stand a conviction for high treason, it is plain that no man can be said to have a life which is his own? For how can he possibly know by what engines it may be snared, or from what unknown sources it may be attacked and overpowered? Such a monstrous precedent would be as ruinous to the King as to his subjects. We are in a crisis of our affairs, which, putting justice out of the question, calls in sound policy for the greatest prudence and moderation. At a time when other nations are disposed to subvert *their* establishments, let it be our wisdom to make the subject feel the practical benefits of *our own*: let us seek to bring good out of evil. The distracted inhabitants of the world will fly to us for sanctuary, driven out of their countries from the dreadful consequences of not attending to seasonable reforms in government—victims to the folly of suffering corruptions to continue till the whole fabric of society is dissolved and tumbles into ruin. Landing upon our shores, they will feel the blessing of security, and they will discover in what it consists: they will read this trial, and their hearts will palpitate at your decision: they will say to one another, and their voices will reach to the ends of the

earth, May the constitution of England endure for ever!—the sacred and yet remaining sanctuary for the oppressed. Here, and here only, the lot of man is cast in security: what though authority, established for the ends of justice, may lift itself up against it; what though the House of Commons itself should make an *ex parte* declaration of guilt; what though every species of art should be employed to entangle the opinions of the people, which in other countries would be inevitable destruction; yet in England, in enlightened England, all this will not pluck a hair from the head of innocence; the jury will still look steadfastly to the law, as the great polar star to direct them in their course. As prudent men they will set no example of disorder, nor pronounce a verdict of censure on authority, or of approbation or disapprobation, beyond their judicial province; but, on the other hand, they will make no political sacrifice, but deliver a plain, honest man, from the toils of injustice. When your verdict is pronounced, this will be the judgment of the world; and if any amongst ourselves are alienated in their affections to Government, nothing will be so likely to reclaim them: they will say, Whatever we have lost of our control in Parliament, we have yet a sheet-anchor remaining to hold the vessel of the state amidst contending storms; we have still, thank God, a sound administration of justice secured to us, in the independence of the judges, in the rights of enlightened juries, and in the integrity of the Bar,—ready at all times, and upon every possible occasion, whatever may be the consequences to themselves, to stand forward in defence of the meanest man in England, when brought for judgment before the laws of the country.

To return to this Scotch convention. Their papers were all seized by Government. What their proceedings were they best know: we can only see what parts they choose to show us; but, from what we have seen, does any man seriously believe that this meeting at Edinburgh meant to assume and to maintain by force all the functions and authorities of the State? Is the thing within the compass of human belief? If a man were offered a dukedom, and twenty thousand pounds a year, for trying to believe it, he might say he believed it, as what will not man say for gold and honours? but he never in fact could believe that this Edinburgh meeting was a Parliament for Great Britain. How indeed could he, from the proceedings of a few peaceable, unarmed men, discussing, in a constitutional manner, the means of obtaining a reform in Parliament, and who, to maintain the club, or whatever you choose to call it, collected a little money from people who were well disposed to the cause; a few shillings one day, and perhaps as many pence another? I think, as far as I could reckon it up, when the report, from this great committee of supply, was read to you, I counted that there had been raised, in the first session of this Parliament, fifteen pounds, from which indeed you must deduct two bad shil-

lings, which are literally noticed in the account. Is it to be endured, gentlemen, that men should gravely say that this body assumed to itself the offices of Parliament?—that a few harmless people, who sat, as they profess, to obtain a full representation of the people, were themselves, even in their own imaginations, the complete representation which they sought for? Why should they sit from day to day to consider how they might obtain what they had already got? If their object was an universal representation of the whole people, how is it credible they could suppose that universal representation to exist in themselves—in the representatives of a few societies instituted to obtain it for the country at large? If they were themselves the nation, why should the language of every resolution be, that reason ought to be their grand engine for the accomplishment of their object, and should be directed to convince the nation to speak to Parliament in a voice that must be heard? The proposition, therefore, is too gross to cram down the throats of the English people, and this is the prisoner's security. Here again he feels the advantage of our free administration of justice: this proposition, on which so much depends, is not to be reasoned upon on parchment, to be delivered privately to magistrates for private judgment. No, he has the privilege of appealing aloud, as he now appeals by me, to an enlightened assembly, full of eyes, and ears, and intelligence, where speaking to a jury is, in a manner, speaking to a nation at large, and flying for sanctuary to its universal justice.

Gentlemen, the very work of Mr Paine, under the banners of which this supposed rebellion was set on foot, refutes the charge it is brought forward to support; for Mr Paine, in his preface, and throughout his whole book, reprobates the use of force against the most evil governments; the contrary was never imputed to him. If his book had been written in pursuance of the design of force and rebellion, with which it is now sought to be connected, he would, like the prisoners, have been charged with an overt act of high treason; but such a proceeding was never thought of. Mr Paine was indicted for a misdemeanour, and the misdemeanour was argued to consist not in the falsehood that a nation has no right to choose or alter its government, but in seditiously exciting the nation, without cause, to exercise that right. A learned Lord (Lord Chief-Baron Macdonald), now on this Bench, addressed the jury as Attorney-General upon this principle; his language was this: The question is not what the people have a right to do, for the people are undoubtedly the foundation and origin of all government, but the charge is, for seditiously calling upon the people, without cause or reason, to exercise a right which would be sedition, supposing the right to be in them; for though the people might have a right to do the thing suggested, and though they are not excited to the doing it by force and rebellion, yet, as the sug-

gestion goes to unsettle the state, the propagation of such doctrines is seditious. There is no other way undoubtedly of describing that charge. I am not here entering into the application of it to Mr Paine, whose counsel I was, and who has been tried already. To say that the people have a right to change their Government, is indeed a truism; everybody knows it, and they exercised the right, otherwise the King could not have had his establishment amongst us. If therefore, I stir up individuals to oppose by force the general will, seated in the Government, it may be treason; but to induce changes in a Government, by exposing to a whole nation its errors and imperfections, can have no bearing upon such an offence: the utmost which can be made of it is a misdemeanour, and that too depending wholly upon the judgment which the jury may form of the intention of the writer. The courts for a long time indeed assumed to themselves the province of deciding upon this intention, as a matter of law, conclusively inferring it from the act of publication: I say the courts *assumed* it, though it was not the doctrine of Lord Mansfield, but handed down to him from the precedents of judges before his time. But even in that case, though the publication was the crime, not, as in this case, the intention, and though the quality of the thing charged, when not rebutted by evidence for the defendant, had so long been considered to be a legal inference, yet the legislature, to support the province of the jury, and in tenderness for liberty, has lately altered the law upon this important subject. If, therefore, we were not assembled, as we are, to consider of the existence of high treason against the King's life, but only of a misdemeanour for seditiously disturbing his title and establishment, by the proceedings for a reform in Parliament, I should think the Crown, upon the very principle which, under the libel law, must now govern such a trial, quite as distant from its mark; because in my opinion, there is no way by which his Majesty's title can more firmly be secured, or by which (above all, in our times) its permanency can be better established, than by promoting a more full and equal representation of the people by peaceable means; and by what other means has it been sought, in this instance, to be promoted?

Gentlemen, when the members of this convention were seized, did they attempt resistance? Did they insist upon their privileges as subjects under the laws, or as a Parliament enacting laws for others? If they had said or done anything to give colour to such an idea, there needed no spies to convict them: the Crown could have given ample indemnity for evidence from amongst themselves. The societies consisted of thousands and thousands of persons, some of whom, upon any calculation of human nature, might have been produced: the delegates who attended the meetings could not be supposed to have met with a different intention from those who sent them; and if the answer to that is, that the constituents are

involved in the guilt of their representatives, we get back to the monstrous position which I observed you before to shrink back from with visible horror when I stated it—namely, the involving in the fate and consequence of this single trial every man who corresponded with these societies, or who as a member of societies in any part of the kingdom, consented to the meeting which was assembled, or which was in prospect; but, I thank God, I have nothing to fear from such hydras, when I see before me such just and honourable men to hold the balance of justice.

Gentlemen, the dissolution of this parliament speaks as strong a language as its conduct when sitting. How was it dissolved? When the magistrates entered, Mr Skirving was in the chair, which he refused to leave; he considered and asserted his conduct to be legal, and therefore informed the magistrate he must exercise his authority, that the dispersion might appear to be involuntary, and that the subject, disturbed in his rights, might be entitled to his remedy. The magistrate on this took Mr Skirving by the shoulder, who immediately obeyed; the chair was quitted in a moment, and this great parliament broke up. What was the effect of all this proceeding at the time, when whatever belonged to it must have been best understood? Were any of the parties indicted for high treason? Were they indicted even for a breach of the peace in holding the convention? None of these things. The law of Scotland, arbitrary as it is, was to be disturbed to find a name for their offence, and the rules of trial to be violated to convict them; they were denied their challenges to their jurors, and other irregularities were introduced, so as to be the subject of complaint in the House of Commons. Gentlemen, in what I am saying, I am not standing up to vindicate all that they published during these proceedings, more especially those which were written in consequence of the trials I have just alluded to; but allowance must be made for a state of heat and irritation. They saw men whom they believed to be persecuted for what they believed to be innocent; they saw them the victims of sentences which many would consider as equivalent to, if not worse than, judgment of treason,—sentences which, at all events, had never existed before, and such as, I believe, never will again with impunity. But since I am on the subject of *intention*, I shall conduct myself with the same moderation which I have been prescribing; I will cast no aspersions, but shall content myself with lamenting that these judgments were productive of consequences which rarely follow from authority discreetly exercised. How easy is it then to dispose of as much of the evidence as consumed half a day in the anathemas against the Scotch judges! It appears that they came to various resolutions concerning them; some good, some bad, and all of them irregular. Amongst others they compare them to Jefferies, and wish that they who imitate his example

may meet his fate. What then? Irreverent expressions against judges are not acts of high treason! If they had assembled round the Courts of Justiciary, and hanged them in the execution of their offices, it would not have been treason within the statute. I am no advocate for disrespect of judges, and think that it is dangerous to the public order; but, putting aside the insult upon the judges now in authority, the reprobation of Jefferies is no libel, but an awful and useful memento to wicked men. Lord Chief-Justice Jefferies denied the privilege of English law to an innocent man. He refused it to Sir Thomas Armstrong, who in vain pleaded, in bar of his outlawry, that he was out of the realm when he was exacted — (an objection so clear, that it was lately taken for granted, in the case of Mr Purefoy). The daughter of this unfortunate person, a lady of honour and quality, came publicly into court to supplicate for her father; and what were the effects of her supplications and of the law in the mouth of the prisoner? "Sir Thomas Armstrong," said Jefferies, "you may amuse yourself as much as you please with the idea of your innocence, but you are to be hanged next Friday," and, upon the natural exclamation of a daughter at this horrible outrage against her parent, he said, "Take that woman out of court," which she answered by a prayer that God Almighty's judgments might light upon him. Gentlemen, they did light upon him; and when after his death, which speedily followed this transaction, the matter was brought before the House of Commons, under that glorious revolution which is asserted throughout the proceedings before you, the judgment against Sir Thomas Armstrong was declared to be a murder under colour of justice! Sir Robert Sawyer, the Attorney-General, was expelled the House of Commons for his misdemeanour in refusing the writ of error, and the executors of Jefferies were commanded to make compensation to the widow and the daughter of the deceased. These are great monuments of justice; and although I by no means approve of harsh expressions against authority, which tend to weaken the holdings of society, yet let us not go beyond the mark in our restraints, nor suppose that men are dangerously disaffected to the Government, because they feel a sort of pride and exultation in events which constitute the dignity and glory of their country.

Gentlemen, this resentment against the proceedings of the Courts in Scotland was not confined to those who were the objects of them — it was not confined even to the friends of a reform in Parliament. A benevolent public, in both parts of the island, joined them in the complaint, and a gentleman of great moderation, and a most inveterate enemy to parliamentary reform, as thinking it not an improvement of the Government, but nevertheless a lover of his country and its insulted justice, made the convictions of the delegates the subject of a public inquiry. I speak of my friend, Mr William Adam, who brought these judgments of the Scotch judges

before the House of Commons—arraigned them as contrary to law, and proposed to reverse them by the authority of Parliament. Let it not, then, be matter of wonder that these poor men who were the immediate victims of this injustice, and who saw their brethren expelled from their country by an unprecedented and questionable judgment, should feel like men on the subject, and express themselves as they felt.

Gentlemen, amidst the various distresses and embarrassments which attend my present situation, it is a great consolation that I have marked from the beginning your vigilant attention and your capacity to understand; it is, therefore, with the utmost confidence that I ask you a few plain questions, arising out of the whole of these Scotch proceedings. In the first place then, do you believe it to be possible that, if these men had really projected the convention as a traitorous usurpation of the authorities of Parliament, they would have invited the Friends of the People, in Frith Street, to assist them, when they knew that this society was determined not to seek the reform of the constitution but by means that were constitutional, and from whom they could neither hope for support nor concealment of evil purposes? I ask you next, if their objects had been traitorous, would they have given them, without disguise or colour, to the public and to the Government, in every common newspaper? And yet it is so far from being a charge against them, that they concealed their objects by hypocrisy or guarded conduct, that I have been driven to admit the justice of the complaint against them for unnecessary inflammation and exaggeration. I ask you further, whether, if the proceedings thus published and exaggerated, had appeared to Government, who knew everything belonging to them, in the light they represent them to you *to-day*, they could possibly have slept over them with such complete indifference and silence? For it is notorious that after this convention had been held at Edinburgh, after, in short, everything had been said, written, and transacted, on which I am now commenting, and after Mr Paine's book had been for above a year in universal circulation,—aye, up to the very day when Mr Grey gave notice in the House of Commons of the intention of the Friends of the People for a reform in Parliament, there was not even a single indictment on the file for a misdemeanour; but from that moment, when it was seen that the cause was not beat down nor abandoned, the proclamation made its appearance, and all the proceedings that followed had their birth. I ask you lastly, gentlemen, whether it be in human nature that a few unprotected men, conscious in their own minds that they had been engaged and detected in a detestable rebellion to cut off the King, to destroy the administration of justice, and to subvert the whole fabric of the Government, should turn round upon their country whose ruin they had projected, and whose most obvious justice attached on them, complaining, forsooth, that their

delegates, taken by magistrates in the very act of high treason, had been harshly and illegally interrupted in a meritorious proceeding? The history of mankind never furnished an instance, nor ever will, of such extravagant, preposterous, and unnatural conduct! No, no, gentlemen; all their hot blood was owing to their firm persuasion, dictated by conscious innocence, that the conduct of their delegates had been legal, and might be vindicated against the magistrates who obstructed them. In that they might be mistaken. I am not arguing that point at present; if they are hereafter indicted for a misdemeanour, and I am counsel in that cause, I will then tell you what I think of it: sufficient for the day is the good or evil of it,—it is sufficient for the present one that the legality or illegality of the business has no relation to the crime that is imputed to the prisoner.

The next matter that is alleged against the authors of the Scotch convention and the societies which supported it, is their having sent addresses of friendship to the convention of France. These addresses are considered to be a decisive proof of republican combination, verging closely in themselves upon an overt act of treason. Gentlemen, if the dates of these addresses are attended to, which come no lower down than November 1792, we have only to lament that they are but the acts of private subjects, and that they were not sanctioned by the state itself. The French nation, about that period, under their new constitution, or under their new anarchy, call it which you will, were nevertheless most anxiously desirous of maintaining peace with this country. But the King was advised to withdraw his ambassador from France, upon the approaching catastrophe of its most unfortunate prince; an event which, however to be deplored, was no justifiable cause of offence to Great Britain. France desired nothing but the regeneration of her own government; and if she mistook the road to her prosperity, what was that to us? But it was alleged against her in Parliament that she had introduced spies amongst us, and held correspondence with disaffected persons for the destruction of our constitution. This was the charge of our Minister, and it was, therefore, held to be just and necessary for the safety of the country to hold France at arm's length, and to avoid the very contagion of contact with her at the risk of war. But, gentlemen, this charge against France was thought by many to be supported by no better proofs than those against the prisoner. In the public correspondence of the ambassador from the French King, and upon his death, as Minister from the convention, with his Majesty's Secretary of State, documents which lie upon the table of the House of Commons, and which may be made evidence in the cause, the executive council repelled with indignation all the imputations, which to this very hour are held out as the vindications of quarrel. "If there be such persons in England," says Monsieur Chauvelin, "has not

England laws to punish them? France disavows them—such men are not Frenchmen." The same correspondence conveys the most solemn assurances of friendship down to the very end of the year 1792, a period subsequent to all the correspondence and addresses complained of. Whether these assurances were faithful or otherwise, whether it would have been prudent to have depended on them or otherwise, whether the war was advisable or unadvisable, are questions over which we have no jurisdiction. I only desire to bring to your recollection that a man may be a friend to the rights of humanity, and to the imprescriptible rights of social man, which is now a term of derision and contempt—that he may feel to the very soul for a nation beset by the sword of despots, and yet be a lover of his own country and its constitution.

Gentlemen, the same celebrated person of whom I have had occasion to speak so frequently, is the best and brightest illustration of this truth. Mr Burke, indeed, went a great deal further than requires to be pressed into the present argument; for he maintained the cause of justice and of truth against all the perverted authority and rash violence of his country, and expressed the feelings of a Christian and a patriot in the very heat of the American war, boldly holding forth our victories as defeats, and our successes as calamities and disgraces. "It is not instantly," said Mr Burke, "that I can be brought to rejoice, when I hear of the slaughter and captivity of long lists of those names which have been familiar to my ears from my infancy, and to rejoice that they have fallen under the sword of strangers, whose barbarous appellations I scarcely know how to pronounce. The glory acquired at the *White Plains* by Colonel *Baillie* has no charms for me; and I fairly acknowledge that I have not yet learned to delight in finding *Fort Kniphausen* in the heart of the British dominions." If this had been said or written by Mr Yorke at Sheffield, or by any other member of these societies, heated with wine at the *Globe Tavern*, it would have been trumpeted forth as decisive evidence of a rebellious spirit rejoicing in the downfall of his country; yet the great author whose writings I have borrowed from, approved himself to be the friend of this nation at that calamitous crisis, and had it pleased God to open the understandings of our rulers, his wisdom might have averted the storms that are now thickening around us. We must not, therefore, be too severe in our strictures upon the opinions and feelings of men as they regard such mighty public questions. The interests of a nation may often be one thing, and the interests of its Government another; but the interests of those who hold government for the hour is at all times different from either. At the time many of the papers before you were circulated on the subject of the war with France, many of the best and wisest men in this kingdom began to be driven by our situation to these melancholy reflections, and thousands of persons, the most firmly

attached to the principles of our constitution, and who never were members of any of these societies, considered, and still consider, Great Britain as the aggressor against France; they considered, and still consider, that she had a right to choose a Government for herself, and that it was contrary to the first principles of justice, and if possible, still more repugnant to the genius of our own free constitution, to combine with despots for her destruction; and who knows but that the external pressure upon France may have been the cause of that unheard-of state of society which we complain of? Who knows but that driven as she has been to exertions beyond the ordinary vigour of a nation, it has not been the parent of that unnatural and giant strength which threatens the authors of it with perdition? These are melancholy considerations, but they may reasonably, and at all events, be lawfully entertained. We owe obedience to Government in our *actions*, but surely our *opinions* are free.

Gentlemen, pursuing the order of time, we are arrived at length at the proposition to hold *another convention, which, with the support of it by force, are the only overt acts of high treason charged upon this record.* For strange as it may appear, there is no charge whatever before you of any one of those acts or writings, the evidence of which consumed so many days in reading, and which has already nearly consumed my strength in only passing them in review before you. If every line and letter of all the writings I have been commenting upon were admitted to be traitorous machinations, and if the convention in Scotland was an open rebellion, it is conceded to be foreign to the present purpose, unless as such criminality in them might show the views and objects of the persons engaged in them. On that principle only the court has over and over again decided the evidence of them to be admissible; and on the same principle I have illustrated them in their order as they happened, that I might lead the prisoner in your view up to the very point and moment when the treason is supposed to have burst forth into the overt act for which he is arraigned before you.

The transaction respecting this second convention, which constitutes the principal, or more properly the only overt act in the indictment, lies in the narrowest compass, and is clouded with no ambiguity. I admit freely every act which is imputed to the prisoner, and listen, not so much with fear as with curiosity and wonder, to the treason sought to be connected with it.

You will recollect that the first motion towards the holding of a second convention originated in a letter to the prisoner from a country correspondent, in which the legality of the former was vindicated, and its dispersion lamented. This letter was answered on the 27th of March, 1794, and was read to you in the Crown's evidence in these words:—

"CITIZEN,—

March 27, 1794.

"I am directed by the London Corresponding Society to transmit the following resolutions to the Society for Constitutional Information, and to request the sentiments of that society respecting the important measures which the present juncture of affairs seems to require.

"The London Corresponding Society conceives that the moment is arrived when a full and explicit declaration is necessary from all the friends of freedom—whether the late *illegal and unheard-of prosecutions and sentences* shall determine us to abandon our cause, or shall excite us to pursue a radical reform with an ardour proportioned to the magnitude of the object, and with a zeal as *distinguished on our parts as the treachery of others in the same glorious cause is notorious*. The Society for Constitutional Information is therefore required to determine whether or no they will be ready when called upon to act in conjunction with *this and other societies to obtain a fair representation of the PEOPLE—whether they concur with us in seeing the necessity of a speedy convention for the purpose of obtaining, in a constitutional and legal method, a redress of those grievances under which we at present labour, and which can only be effectually removed by a full and fair representation of the people of Great Britain*. The London Corresponding Society cannot but remind their friends that the present crisis demands all the prudence, unanimity, and vigour that may or can be exerted by MEN and Britons; nor do they doubt but that manly firmness and consistency will finally, and they believe shortly, terminate in the full accomplishment of all their wishes.

"I am, Fellow-citizen

" (In my humble measure)

" A friend to the Rights of Man,

" (Signed) T. HARDY, Secretary."

They then resolve that there is no security for the continuance of any right but in equality of *laws*—not in equality of *property*, the ridiculous bugbear by which you are to be frightened into injustice. On the contrary, throughout every part of the proceedings, and most emphatically in Mr Yorke's speech, so much relied on, the beneficial subordinations of society, the security of property, and the prosperity of the landed and commercial interests, are held forth as the very objects to be attained by the reform in the representation which they sought for.

In examining this first moving towards a second convention, the first thing to be considered is what reason there is, from the letter I have just read to you, or from anything that appears to have led to it, to suppose that a *different sort* of convention was projected from that which had been before assembled and dispersed. The letter says *another* British convention; and it describes the same objects as the first—compare all the papers for the calling this

second convention with those for assembling the first, and you will find no difference, except that they mixed with them extraneous and libellous matter, arising obviously from the irritation produced by the sailing of the transports with their brethren condemned to exile. These papers have already been considered, and separated, as they ought to be, from the charge.

I will now lay before you all the remaining operations of this formidable conspiracy up to the prisoner's imprisonment in the Tower. Mr Hardy having received the letter just adverted to, regarding a second convention, the Corresponding Society wrote the letter of the 27th of March, and which was found in his handwriting, and is published in the first report, page 11. This letter, enclosing the resolutions they had come to upon the subject, was considered by the Constitutional Society on the next day, the 28th of March, the ordinary day for their meeting, when they sent an answer to the Corresponding Society, informing them that they had received their communication, that they heartily concurred with them in the objects they had in view, and invited them to send a delegation of their members to confer with them on the subject.

Now, what were the objects they concurred in, and what was to be the subject of conference between the societies by their delegates? Look at the letter, which distinctly expresses its objects, and the means by which they sought to effect them. Had these poor men (too numerous to meet all together, and therefore renewing the cause of parliamentary reform by delegation from the societies) any reason to suppose that they were involving themselves in the pains of treason, and that they were compassing the King's death, when they were redeeming (as they thought) his authority from probable downfall and ruin? Had treason been imputed to the delegates before? Had the imagining the death of the King ever been suspected by anybody? Or when they were prosecuted for misdemeanours, was the prosecution considered as an indulgence conferred upon men whose lives had been forfeited? And is it to be endured then in this free land, made free too by the virtue of our forefathers, who placed the King upon his throne to maintain this freedom, that forty or fifty thousand people in the different parts of the kingdom, assembling in their little societies to spread useful knowledge, and to diffuse the principles of liberty—which the more widely they are spread the surer is the condition of our free Government,—are in a moment, without warning, without any law or principle to warrant it, and without precedent or example to be branded as traitors, and to be decimated as victims for punishment! The Constitutional Society having answered the letter of the 27th of March in the manner I stated to you, committees from each of the two societies were appointed to confer together. The Constitutional Society appointed Mr Joyce, Mr King, Mr Wardle, and Mr Holcroft, all indicted; and Mr Sharpe,

the celebrated engraver, not indicted, but examined as a witness by the Crown. Five were appointed by the Corresponding Society to meet these gentlemen, viz., Mr Baxter, Mr Moore, Mr Thelwall, and Mr Hodgson, all indicted, and Mr Lovatt, against whom the bill was thrown out. These gentlemen met at the house of Mr Thelwall on the 11th of April, and there published the resolutions already commented on in conformity with the general objects of the two societies, expressed in the letter of the 27th of March, and agreed to continue to meet on Mondays and Thursdays for further conference on the subject. The first Monday was the 14th of April, of which we have heard so much, and no meeting was held on that day; the first Thursday was the 17th of April, but there was no meeting; the 21st of April was the second Monday, but there was still no meeting; the 24th of April was the second Thursday, when the five of the Corresponding Society attended, but nobody coming to meet them from the other, nothing of course was transacted. On Monday, the 28th of April, three weeks after their first appointment, this bloody and impatient band of conspirators, seeing that a Convention Bill was in projection, and that Hessians were landing on our coasts, at last assembled themselves. And now we come to the point of action. Gentlemen, they met; they shook hands with each other; they talked over the news and the pleasures of the day; they wished one another a good evening, and retired to their homes:—it is in vain to hide it, they certainly did all these things. The same *alarming* scene was repeated on the three following days of meeting, and on Monday, May the 12th, would, but for the vigilance of Government, have probably again taken place; but on that day Mr Hardy was arrested, his papers seized, and the conspiracy which pervaded this devoted country was dragged into the face of day. To be serious, gentlemen, you have LITERALLY the whole of it before you in the meetings I have just stated; in which you find ten gentlemen, appointed by two peaceable societies, conversing upon the subject of a constitutional reform in Parliament, publishing the result of their deliberations, without any other arms than one supper-knife; which, when I come to the subject of arms, I will, in form, lay before you. Yet for this, and for this alone, you are asked to devote the prisoner before you and his unfortunate associates to the pains and penalties of death, and not to death alone, but to the eternal stigma and infamy of having conceived the detestable and horrible design of dissolving the Government of their country, and of striking at the life of their Sovereign, who had never given offence to them, nor to any of his subjects.

Gentlemen, as a conspiracy of this formidable extension, which had no less for its object than the sudden annihilation of all the existing authorities of the country, and of everything that supported them, could not be even gravely stated to have an existence, without contemplation of force to give it effect; it was absolutely

necessary to impress upon the public mind, and to establish, by formal evidence, upon the present occasion, that such a force was actually in preparation. This most important and indispensable part of the cause was attended with insurmountable difficulties, not only from its being unfounded in fact, but because it had been expressly negatived by the whole conduct of Government: for although the motions of all these societies had been watched for two years together; though their spies had regularly attended, and collected regular journals of their proceedings; yet, when the first report was finished, and the Habeas Corpus Act suspended upon the foundation of the facts contained in it, there was not to be found from one end of it to the other even the insinuation of arms. I believe that this circumstance made a great impression upon all the thinking, dispassionate part of the public, and that the materials of the first report were thought to furnish but a slender argument to support such a total eclipse of liberty. No wonder then, that the discovery of a pike in the interval between the two reports, should have been highly estimated. I mean no reflections upon Government, and only state the matter, as a man of great wit very publicly reported it; he said that the discoverer, when he first beheld the long-looked-for pike, was transported beyond himself with enthusiasm and delight, and that he hung over the rusty instrument with all the raptures of a fond mother, who embraces her first-born infant, "and thanks her God for all her travail past."

In consequence of this discovery, whoever might have the merit of it, and whatever the discoverer might have felt upon it, persons were sent by Government (and properly sent) into all corners of the kingdom to investigate the extent of the mischief. The fruit of this inquiry has been laid before you, and I pledge myself to sum up the evidence which you have had upon the subject, not by parts, or by general observations, but in the same manner as the Court itself must sum it up to you, when it lays the whole body of the proof with fidelity before you. Notwithstanding all the declamations upon French anarchy, I think I may safely assert, that it has been distinctly proved, by the evidence, that the Sheffield people were for universal representation in a British House of Commons. This appears to have been the general sentiment, with the exception of one witness, whose testimony makes the truth and *bona fides* of the sentiments far more striking; the witness I allude to (George Widdison), whose evidence I shall state in its place, seems to be a plain, blunt, honest man, and by the bye, which must never be forgotten of any of them, the Crown's witness. I am not interested in the veracity of any of them, for (as I have frequently adverted to) the Crown must take them for better for worse—it must support each witness, and the whole body of its evidence throughout. If you do not believe the whole of what is proved by a witness, what confidence can you have in part of it, or what part can you

select to confide in? If you are deceived in part, who shall measure the boundaries of the deception? This man says he was at first for universal suffrage; Mr Yorke had persuaded him, from all the books, that it was the best; but that he afterwards saw reason to think otherwise, and was not for going the length of the Duke of Richmond; but that all the other Sheffield people were for the Duke's plan; a fact confirmed by the cross-examination of every one of the witnesses. You have, therefore, positively and distinctly, upon the universal authority of the evidence of the Crown, the people of Sheffield, who are charged as at the head of a republican conspiracy, proved to be associated on the very principles which, at different times, have distinguished the most eminent persons in this kingdom; and the charge made upon them, with regard to arms, is cleared up by the same universal testimony.

You recollect that, at a meeting held upon the Castle Hill, there were two parties in the country, and it is material to attend to what these two parties were. In consequence of the King's proclamation, a great number of honourable, zealous persons, who had been led by a thousand artifices to believe that there was a just cause of alarm in the country, took very extraordinary steps for support of the magistracy. The publicans were directed not to entertain persons who were friendly to a reform of Parliament; and alarms of change and revolution pervaded the country, which became greater and greater, as our ears were hourly assailed with the successive calamities of France. Others saw things in an opposite light, and considered that these calamities were made the pretext for extinguishing British liberty. Heart-burnings arose between the two parties; and some, I am afraid a great many, wickedly or ignorantly interposed in a quarrel which zeal had begun. The societies were disturbed in their meetings, and even the private dwellings of many of their members were illegally violated. It appears by the very evidence for the Crown, by which the cause must stand or fall, that many of the friends of reform were daily insulted,—their houses threatened to be pulled down, and their peaceable meetings beset by pretended magistrates, without the process of the law. These proceedings naturally suggested the propriety of having arms for self-defence, the first and most unquestionable privilege of man, in or out of society, and expressly provided for by the very letter of English law. It was ingeniously put by the learned counsel, in the examination of a witness, that it was complained of amongst them, that very little was sufficient to obtain a warrant from some magistrates, and that therefore it was as well to be provided for those who might have warrants as for those who had none. Gentlemen, I am too much exhausted to pursue or argue such a difference, even if it existed upon the evidence, because if the societies in question (however mistakenly) considered their meetings to be legal, and the warrants to disturb them to be beyond the

authority of the magistrate to grant, they had a right, at the peril of the legal consequences, to stand upon their defence; and it is no transgression of the law, much less high treason against the King, to resist his officers when they pass the bounds of their authority. So much for the general evidence of arms; and the first and last time that even the name of the prisoner is connected with the subject, is by a letter he received from a person of the name of Davison. I am anxious that this part of the case should be distinctly understood, and I will, therefore, bring back this letter to your attention. The letter is as follows:—

“ FELLOW-CITIZEN,

“ The barefaced aristocracy of the present Administration has made it necessary that we should be prepared to act on the defensive against any attack they may command their newly-armed minions to make upon us. A plan has been hit upon, and if encouraged sufficiently, will no doubt have the effect of furnishing a quantity of pikes to the patriots, great enough to make them formidable. The blades are made of steel, tempered and polished after an approved form. They may be fixed into any shafts (but *fir* ones are recommended) of the girth of the accompanying hoops at the top end, and about an inch more at the bottom.

“ The blades and hoops (more than which cannot properly be sent to any great distance) will be charged one shilling. Money to be sent with the orders.

“ As the institution is in its infancy, immediate encouragement is necessary.

“ *Orders may be sent to the secretary of the Sheffield Constitutional Society.* [Struck out.]

“ RICHARD DAVISON.

“ *Sheffield, April 24, 1794.*”

Gentlemen, you must recollect (for, if it should escape you, it might make a great difference) that Davison directs the answer to this letter to be sent to Robert Moody at Sheffield, to prevent post-office suspicion; and that he also encloses in it a similar one which Mr Hardy was to forward to Norwich, in order that the society at that place might provide pikes for themselves, in the same manner that Davison was recommending, through Hardy, to the people of London. Now, what followed upon the prisoner's receiving this letter? It is in evidence by this very Moody, to whom the answer was to be sent, and who was examined as a witness by the Crown, that he never received any answer to the letter; and although there was an universal seizure of papers, no such letter, nor any other, appeared to have been written; and what is more the letter to Norwich from Davison, enclosed in his letter to Hardy, was never forwarded, but was found in his custody when he was arrested, three weeks afterwards, folded up in the other, and

unopened as he received it. Good God! what is become of the humane sanctuary of English justice—where is the sense and meaning of the term *provably* in the statute of King Edward—if such evidence can be received against an English subject on a trial for his life? If a man writes a letter to me about pikes or about anything else, can I help it? And is it evidence (except to acquit me of suspicion) when it appears that nothing is done upon it? Mr Hardy never before corresponded with Davison—he never desired him to write to him. How indeed could he desire him, when his very existence was unknown to him? He never returned an answer; he never forwarded the enclosed to Norwich; he never even communicated the letter itself to his own society, although he was its secretary, which showed he considered it as the unauthorised, officious correspondence of a private man; he never acted upon it at all, nor appears to have regarded it as dangerous or important, since he neither destroyed nor concealed it. Gentlemen, I declare I hardly know in what language to express my astonishment that the Crown can ask you to shed the blood of the man at the bar upon such foundations. Yet, this is the whole of the written evidence concerning arms; for the remainder of the plot rests, for its foundation, upon the parole evidence, the whole of which I shall pursue with precision, and not suffer a link of the chain to pass unexamined.

William Camage was the first witness: he swore that the Sheffield societies were frequently insulted and threatened to be dispersed, so that the people in general thought it necessary to defend themselves against illegal attacks; that the justices having officiously intruded themselves into their peaceable and legal meetings, they thought they had a right to be armed; but they did not claim this right under the law of nature or by theories of government, but as ENGLISH SUBJECTS under the Government of ENGLAND; for they say in their paper, which has been read by the Crown that would condemn them, that they were entitled by the BILL OF RIGHTS to be armed. Gentlemen, they state their title truly. The preamble of that statute enumerates the offences of King James the Second, amongst the chief of which was his causing his subjects to be disarmed, and then our ancestors claim this violated right as their indefeasible inheritance. Let us, therefore, be cautious how we rush to the conclusion that men are plotting treason against the King because they are asserting a right, the violation of which has been adjudged against a king to be treason against the people. And let us not suppose that English subjects are a banditti for preparing to defend their legal liberties with pikes, because pikes may have been accidentally employed in another country to destroy both liberty and law. Camage says he was spoken to by this Davison about three dozen of pikes. What then? He is THE CROWN'S WITNESS, WHOM THEY OFFER TO YOU AS THE

WITNESS OF TRUTH, and he started with horror at the idea of violence, and spoke with visible reverence for the King, saying, God forbid that he should touch him ; but he, nevertheless, had a pike for himself. Indeed, the manliness with which he avowed it gave an additional strength to his evidence. "No doubt," says he, "I had a pike, but I would not have remained an hour a member of the society if I had heard a syllable that it was in the contemplation of anybody to employ pikes or any other arms against the King or the Government. We meant to petition Parliament through the means of the convention of Edinburgh, thinking that the House of Commons would listen to this expression of the general sentiments of the people ; for it had been thrown out, he said, in Parliament, that the people did not desire it themselves."

Mr Broomhead, whose evidence I have already commented upon, a sedate, plain, sensible man, spoke also of his affection to the Government, and of the insults and threats which had been offered to the people of Sheffield. He says, "I heard of arms on the Castle Hill, but it is fit this should be distinctly explained : a wicked handbill to provoke and terrify the multitude had been thrown about the town in the night, which caused agitation in the minds of the people, and it was then spoken of as being the right of every individual to have arms for defence ; but there was no idea ever started of *resisting*, much less of *attacking*, the Government. I never heard of such a thing. I fear God," said the witness, "and honour the King, and would not have consented to send a delegate to Edinburgh but for peaceable and legal purposes."

The next evidence, upon the subject of arms, is what is proved by Widdison, to which I beg your particular attention, because, if there be any reliance upon his testimony, it puts an end to every criminal imputation upon Davison, through whom, in the strange manner already observed upon, Hardy could alone be criminated.

This man, Widdison, who was both a turner and hairdresser, and who dressed Davison's hair, and was his most intimate acquaintance, gives you an account of their most confidential conversations upon the subject of the pikes, when it is impossible that they could be imposing upon one another ; and he declares, upon his solemn oath, that Davison, without even the knowledge or authority of the Sheffield society, thinking that the same insults might be offered to the London societies, wrote the letter to Hardy, *of his own head, as the witness expressed it*, and that he, Widdison, made the pike shafts to the number of a dozen and a half. Davison, he said, was his customer. He told him that people began to think themselves in danger, and he therefore made the handles of the pikes for sale to the number of a dozen and a half, and one, likewise, for himself, without conceiving that he offended against any law. "I love the King," said Widdison, "as much as any man, and all the people I associated with did the same. I

would not have stayed with them if they had not. Mr Yorke often told me privately that he was for universal representation, and so were we all: THE DUKE OF RICHMOND'S PLAN WAS OUR ONLY OBJECT." This was the witness who was shown the Duke's letter, and spoke to it as being circulated, and as the very creed of the societies. This evidence shows, beyond all doubt, the genuine sentiments of these people, because it consists of their most confidential communications with one another; and the only answer, therefore, that can possibly be given to it is, that the witnesses who deliver it are imposing upon the Court. But this (as I have wearied you with reiterating) the Crown cannot say; for, in that case, their whole proof falls to the ground together, since it is only from the same witnesses that the very existence of these pikes and their handles comes before us; and, if you suspect their evidence *in part*, for the reasons already given, it must be *in toto* rejected. My friend is so good as to furnish me with this further observation: that Widdison said he had often heard those who called themselves aristocrats say, that if an invasion of the country should take place, they would begin with destroying their enemies at home, that they might be unanimous in the defence of their country.

John Hill was next called: he is a cutler, and was employed by Davison to make the blades for the pikes. He saw the letter which was sent to Hardy, and knew that it was sent lest there should be the same call for defence in London against illegal attacks upon the societies, for that at Sheffield they were daily insulted, and that the opposite party came to his own house, fired muskets under the door, and threatened to pull it down. He swears that they were, to a man, faithful to the King, and that the reform proposed was in the Commons' House of Parliament.

John Edwards was called further to connect the prisoner with this combination of force; but so far from establishing it, he swore, upon his cross-examination, that his only reason for going to Hardy's was that he wanted a pike for his own defence, without connexion with Davison or with Sheffield, and without concert or correspondence with anybody. He had heard, he said, of the violences at Sheffield, and of the pikes that had been made there for defence; that Hardy, on his application, showed him the letter which, as has appeared, he never showed to any other person. This is the whole sum and substance of the evidence which applies to the charge of pikes, after the closest investigation, under the sanction and by the aid of Parliament itself; evidence which, so far from establishing the fact, would have been a satisfactory answer to almost any testimony by which such a fact could have been supported; for in this unparalleled proceeding the prisoner's counsel is driven by his duty to dwell upon the detail of the Crown's proofs, because the whole body of it is the completest answer to the indictment which even a free choice itself could have selected. It

is further worthy of your attention, that, as far as the evidence proceeds from these plain natural sources, which the Crown was driven to for the necessary foundation of the proceedings before you, it has been simple, uniform, natural, and consistent; and that, whenever a different complexion was to be given to it, it was only through the medium of spies and informers, and of men, independently of their infamous trade, of the most abandoned and profligate characters.

Before I advert to what has been sworn by this description of persons, I will give you a wholesome caution concerning them, and having no eloquence of my own to enforce it, I will give it to you in the language of the same gentleman whose works are always reasonable, when moral or political lessons are to be rendered delightful. Look, then, at the picture of society as Mr Burke has drawn it, under the dominion of spies and informers—I say under their *dominion*, for a resort to spies may on occasions be justifiable, and their evidence, when confirmed, may deserve implicit credit; but I say under the *dominion* of spies and informers, because the case of the Crown must stand alone upon their evidence, and upon their evidence, not only unconfirmed, but in *direct contradiction to every witness not an informer or a spy*, and in a case too where the truth, whatever it is, lies within the knowledge of forty or fifty thousand people. Mr Burke says—I believe I can remember it without reference to the book:—

“A mercenary informer knows no distinction. Under such a system the obnoxious people are slaves, not only to the Government, but they live at the mercy of every individual; they are at once the slaves of the whole community and of every part of it, and the worst and most unmerciful men are those on whose goodness they most depend.

“In this situation men not only shrink from the frowns of a stern magistrate, but are obliged to fly from their very species. The seeds of destruction are sown in civil intercourse and in social habitudes. The blood of wholesome kindred is infected. The tables and beds are surrounded with snares. All the means given by Providence to make life safe and comfortable are perverted into instruments of terror and torment. This species of universal subserviency, that makes the very servant who waits behind your chair the arbiter of your life and fortune, has such a tendency to degrade and abase mankind, and to deprive them of that assured and liberal state of mind which alone can make us what we ought to be, that I vow to God I would sooner bring myself to put a man to immediate death for opinions I disliked, and so to get rid of the man and his opinions at once, than to fret him with a feverish being, tainted with the jail distemper of a contagious servitude, to keep him above ground an animated mass of putrefaction, corrupted himself, and corrupting all about him.”

Gentlemen, let me bring to your recollection the department of the first of this tribe, Mr Alexander, who could not in half an hour even tell where he had lived, or why he had left his master. Does any man believe that he had forgotten these most recent transactions of his life? Certainly not; but his history would have undone his credit, and must therefore be concealed. He had lived with a linendraper, whose address we could scarcely get from him, and they had parted because they had words. What were the words? We were not to be told that. He then went to a Mr Killerby's, who agreed with him at twenty-five guineas a year. Why did he not stay there? He was obliged it seems to give up this lucrative agreement because he was obliged to attend here as a witness. Gentlemen, Mr Killerby lives only in Holborn, and was he obliged to give up a permanent engagement with a tradesman in Holborn because he was obliged to be absent at the Old Bailey for five minutes in one single day? I asked him if he had told Mr White, the Solicitor for the Treasury, who would not have been so cruel as to deprive a man of his bread by keeping him upon attendance which might have been avoided by a particular notice. The thing spoke for itself. He had never told Mr White; but had he ever told Mr Killerby? For how else could he know that his place was inconsistent with his engagement upon this trial? No, he had never told him! How then did he collect that his place was inconsistent with his duty here? This question never received any answer. You saw how he dealt with it, and how he stood stammering, not daring to lift up his countenance in any direction—confused, disconcerted, and confounded.

Driven from the accusation upon the subject of pikes, and even from the very colour of accusation, and knowing that nothing was to be done without the proof of arms, we have got this miserable, solitary knife, held up to us as the engine which was to destroy the constitution of this country; and Mr Groves, an Old Bailey solicitor, employed as a spy upon the occasion, has been selected to give probability to this monstrous absurdity by his *respectable* evidence. I understand that this same gentleman has carried his system of spying to such a pitch as to practise it since this unfortunate man has been standing a prisoner before you, professing himself as a friend to the committee preparing his defence, that he might discover to the Crown the materials by which he meant to defend his life. I state this only from report, and I hope in God I am mistaken; for human nature starts back appalled from such atrocity, and shrinks and trembles at the very statement of it. But as to the perjury of this miscreant, it will appear palpable beyond all question, and he shall answer for it in due season. He tells you he attended at Chalk Farm; and that there, forsooth, amongst about seven or eight thousand people, he saw two or three persons with knives. He might, I should think, have seen many more, as hardly

any man goes without a knife of some sort in his pocket. He asked, however, it seems, where they got these knives, and was directed to Green, a hairdresser, who deals besides in cutlery; and accordingly this notable Mr Groves went (as he told us) to Green's, and asked to purchase a knife, when Green, in answer to him, said, "Speak low, for my wife is a damned aristocrat." This answer was sworn to by the wretch, to give you the idea that Green, who had the knives to sell, was conscious that he kept them for an illegal and wicked purpose, and that they were not to be sold in public. The door, he says, being ajar, the man desired him to speak low, from whence he would have you understand that it was because this aristocratic wife was within hearing. This, gentlemen, is the testimony of Groves; and Green himself is called as the next witness, and called by whom? Not by me—I know nothing of him; he is the Crown's own witness. He is called to confirm Groves's evidence; but *not being a spy*, he declared solemnly upon his oath, and I can confirm his evidence by several respectable people, that the knives in question lie constantly, and lay then, in his open shop-window, in what is called the show-glass, where cutlers, like other tradesmen, expose their ware to public view; and that the knives differ in nothing from others publicly sold in the Strand and every other street in London; that he bespoke them from a rider, who came round for orders in the usual way; that he sold only fourteen in all, and that they were made up in little packets, one of which Mr Hardy had, who was to choose one for himself, but four more were found in his possession, because he was arrested before Green had an opportunity of sending for them.

Gentlemen, I think the pikes and knives are now completely disposed of; but something was said also about guns. Let us, therefore, see what that amounts to. It appears that Mr Hardy was applied to by Samuel Williams, a gun-engraver, who was not even a member of any society, and who asked him if he knew anybody who wanted a gun. Hardy said he did not; and undoubtedly, upon the Crown's own showing, it must be taken for granted that if at that time he had been acquainted with any plan of arming, he would have given a different answer, and would have jumped at the offer. About a fortnight afterwards, however (Hardy in the interval having become acquainted with Franklow), Williams called to buy a pair of shoes, and then Hardy, recollecting his former application, referred him to Franklow, who had in the most public manner raised the forty men who were called the Loyal Lambeth Association: so that, in order to give this transaction any bearing upon the charge, it became necessary to consider Franklow's association as an armed conspiracy against the Government, though the forty people who composed it were collected by public advertisement, though they were enrolled under public articles, and though

Franklow himself, as appears from the evidence, attended publicly at the Globe Tavern in his uniform, whilst the cartouch-boxes and the other accoutrements of these secret conspirators lay openly upon his shop-board, exposed to the open view of all his customers and neighbours. This story, therefore, is not less contemptible than that which you must have all heard concerning Mr Walker, whom I went to defend at Lancaster, where that respectable gentleman was brought to trial upon such a trumped-up charge, supported by the solitary evidence of one Dunn, a most infamous witness. But what was the end of that prosecution? I recollect it to the honour of my friend, Mr Law, who conducted it for the Crown, who, knowing that there were persons whose passions were agitated upon these subjects at that moment, and that many persons had enrolled themselves in societies to resist conspiracies against the Government, behaved in a most manful and honourable manner—in a manner, indeed, which the public ought to know, and which I hope it never will forget: he would not even put me upon my challenges to such persons, but withdrew them from the pannel; and when he saw the complexion of the affair, from the contradiction of the infamous witness whose testimony supported it, he honourably gave up the cause.

Gentlemen, the evidence of Lynam does not require the same contradiction which fell upon Mr Groves, because it destroys itself by its own intrinsic inconsistency. I could not, indeed, if it were to save my life, undertake to state it to you. It lasted, I think, about six or seven hours, but I have marked under different parts of it passages so grossly contradictory, matter so impossible, so inconsistent with any course of conduct, that it will be sufficient to bring these parts to your view to destroy all the rest. But let us first examine in what manner this matter, such as it is, was recorded. He professed to speak from notes, yet I observed him frequently looking up to the ceiling whilst he was speaking. When I said to him, "Are you now speaking from a note? Have you got any note of what you are now saying?" he answered, "Oh no, this is from recollection." Good God Almighty! recollection mixing itself with notes in a case of high treason! He did not even take down the words—nay, to do the man justice, he did not even affect to have taken the words, but only the substance, as he himself expressed it. OH, EXCELLENT EVIDENCE! THE SUBSTANCE OF WORDS TAKEN DOWN BY A SPY, AND SUPPLIED, WHEN DEFECTIVE, BY HIS MEMORY. But I must not call him a spy, for it seems he took them *bonâ fide* as a delegate, and yet *bonâ fide* as an informer. What a happy combination of fidelity!—faithful to serve, and faithful to betray!—correct to record for the business of the society, and correct to dissolve and to punish it! What, after all, do the notes amount to? I will advert to the parts I alluded to. They were, it seems, to go to Frith Street to sign the declaration of the Friends of the Liberty of the Press, which lay there already signed by

between twenty and thirty members of the House of Commons, and many other respectable and opulent men, and then they were to begin civil confusion, and the King's head and Mr Pitt's were to be placed on Temple Bar. Immediately after which we find them resolving unanimously to thank Mr Wharton for his speech to support the glorious Revolution of 1688, which supports the very throne that was to be destroyed! which same speech they were to circulate in thousands for the use of the societies throughout the kingdom. Such incoherent, impossible matter, proceeding from such a source, is unworthy of all further concern.

Thus driven out of everything which relates to arms, and from every other matter which can possibly attach upon life, they have recourse to an expedient which, I declare, fills my mind with horror and terror. It is this: The Corresponding Society had (you recollect), two years before, sent delegates to Scotland, with specific instructions peaceably to pursue a parliamentary reform. When the convention which they were sent to was dispersed, they sent no others, for they were arrested when only considering of the propriety of another convention. It happened that Mr Hardy was the secretary during the period of these Scotch proceedings, and the letters consequently written by him during that period were all official letters from a large body, circulated by him in point of form. When the proposition took place for calling a second convention, Mr Hardy continued to be secretary, and, in that character, signed the circular letter read in the course of the evidence, which appears to have found its way, in the course of circulation, into SCOTLAND. This single circumstance has been admitted as the foundation of receiving in evidence against the prisoner a long transaction imputed to one Watt at Edinburgh, whose very existence was unknown to Hardy. This Watt had been employed by Government as a spy, but at last caught a Tartar in his spyship; for, in endeavouring to urge innocent men to a project which never entered into their imaginations, he was obliged to show himself ready to do what he recommended to others; and the tables being turned upon him, he was hanged by his employers. This man Watt read from a paper designs to be accomplished, but which he never intended to attempt, and the success of which he knew to be visionary. To suppose that Great Britain could have been destroyed by such a rebel as Watt, would be, as Dr Johnson says, to expect that a great city might be drowned by the overflowing of its kennels. But whatever might be the peril of Watt's conspiracy, what had Hardy to do with it? The people with Watt were five or six persons, wholly unknown to Hardy, and not members of any society of which Mr Hardy was a member. I vow to God, therefore, that I cannot express what I feel, when I am obliged to state the evidence by which he is sought to be affected. A letter—viz., the circular letter signed by Hardy for calling another convention—is shown to

George Ross, who says he received it from one Stock, who belonged to a society which met in Nicolson Street, in Edinburgh, and that he sent it to Perth, Strathaven, and Paisley, and other places in Scotland; and the single unconnected evidence of this public letter finding its way into Scotland, is made the foundation of letting in the whole evidence which hanged Watt against Hardy, who never knew him. Government hanged its own spy in Scotland upon that evidence, and it may be sufficient evidence for that purpose. I will not argue the case of a dead man, and, above all, of such a man; but I will say, that too much money was spent upon this performance, as I think it cost Government about fifty thousand pounds. Mr Ewen says, that Watt read from a paper to a committee of six or seven people, of which he, the witness, was a member, that gentlemen residing in the country were not to leave their habitations under pain of death; that an attack was to be made in the manner you remember, and that the Lord Justice-Clerk and the Judges were to be cut off by these men in buckram; and then an address was to be sent to the King, desiring him to dismiss his Ministers and to put an end to the war, or that he might expect bad consequences. WHAT IS ALL THIS TO MR HARDY? How is it possible to affect HIM with any part of this? Hear the sequel, and then judge for yourselves. Mr Watt said (*i.e.*, the man who is hanged, said), after reading the paper, that he, Watt, wished to correspond with Mr Hardy in a safe manner; so that, because a ruffian and a scoundrel, whom I never saw or heard of, chooses, at the distance of four hundred miles, to say that he *wishes to correspond with me*, I am to be involved in the guilt of his actions! It is not proved, or insinuated, that Mr Hardy ever saw, or heard of, or knew, that such men were in being as Watt or Downie; nor is it proved or asserted that any letter was, in fact, written by either of them to Hardy, or to any other person. No such letter has been found in his possession, nor a trace of any connexion between them and any member of any English society. The truth I believe is, that nothing was intended by Watt but to entrap others to obtain a reward for himself, *and he has been amply and justly rewarded*. Gentlemen, I desire to be understood to be making no attacks upon Government. I have wished, throughout the whole cause, that good intentions may be imputed to it; but I really confess that it requires some ingenuity for Government to account for the original existence of all this history, and its subsequent application to the present trial. They went down to Scotland, after the arrest of the prisoners, in order, I suppose, that we might be taught the law of high treason by the Lord Justice-Clerk of Edinburgh, and that there should be a sort of rehearsal to teach the people of England to administer English laws; for, after all this expense and preparation, no man was put upon his trial, nor even arraigned under the special commission in Scotland, but these two men—one for read-

ing this paper, and the other for not dissenting from it when it was read; and, with regard to this last unfortunate person, the Crown thought it indecent, as it would indeed have been indecent and scandalous, to execute the law upon him. As a gentleman upon his jury said, he would die rather than convict Downie without a recommendation of mercy, and he was only brought over to join in the verdict, under the idea that he would not be executed, and accordingly he has not suffered execution. If Downie then was an object of mercy, or rather of justice, though he was in the very room with Watt, and heard distinctly the proposition, upon what possible ground can they demand the life of the prisoner at the bar, on account of a connexion with the very same individual, *though he never corresponded with him, nor saw him, nor heard of him—to whose very being he was an utter stranger?*

Gentlemen, it is impossible for me to know what impression this observation makes upon you or upon the Court; but I declare I am deeply impressed with the application of it. How is a man to defend himself against such implications of guilt? Which of us all would be safe, standing at the bar of God or man, if he were even to answer for all his *own* expressions, without taking upon him the crimes or rashnesses of *others*? This poor man has, indeed, none of his own to answer for; yet how can he stand safely in judgment before you, if, in a season of alarm and agitation, with the whole pressure of Government upon him, your minds are to be distracted with criminating materials brought from so many quarters, and of an extent which mocks all power of discrimination? I am conscious that I have not adverted to the thousandth part of them; yet I am sinking under fatigue and weakness—I am at this moment scarcely able to stand up whilst I am speaking to you, deprived as I have been, for nights together, of everything that deserves the name of rest, repose, or comfort. I therefore hasten, whilst yet I may be able, to remind you once again of the great principle into which all I have been saying resolves itself.

Gentlemen, my whole argument, then, amounts to no more than this, that before the crime of compassing THE KING'S DEATH can be found *by you, the jury*, whose province it is to judge of its existence, it must be *believed by you* to have existed in point of fact. Before you can adjudge A FACT, you *must believe it*—not suspect it, or imagine it, or fancy it—**BUT BELIEVE IT**; and it is impossible to impress the human mind with such a reasonable and certain belief, as is necessary to be impressed, before a Christian man can adjudge his neighbour to the smallest penalty, much less to the pains of death, without having such evidence as a reasonable mind will accept of as the infallible test of truth. And what is that evidence? Neither more nor less than that which the constitution has established in the courts for the general administration of justice—namely, that the evidence convinces the jury, beyond all

reasonable doubt, that the criminal *intention*, constituting the crime, existed in the mind of the man upon trial, and was the mainspring of his conduct. The rules of evidence, as they are settled by law, and adopted in its general administration, are not to be overruled or tampered with. They are founded in the charities of religion—in the philosophy of nature—in the truths of history, and in the experience of common life; and whoever ventures rashly to depart from them, let him remember that it will be meted to him in the same measure, and that both God and man will judge him accordingly. These are arguments addressed to your reasons and consciences, not to be shaken in upright minds by any precedent, for no precedents can sanctify injustice; if they could, every human right would long ago have been extinct upon the earth. If the state trials in bad times are to be searched for precedents, what murders may you not commit; what law of humanity may you not trample upon; what rule of justice may you not violate; and what maxim of wise policy may you not abrogate and confound? If precedents in bad times are to be implicitly followed, why should we have heard any evidence at all? You might have convicted without any evidence, for many have been so convicted, and in this manner murdered, even by Acts of Parliament. If precedents in bad times are to be followed, why should the Lords and Commons have investigated these charges, and the Crown have put them into this course of judicial trial?—since, without such a trial, and even after an acquittal upon one, they might have attainted all the prisoners by Act of Parliament: they did so in the case of Lord Strafford. There are precedents, therefore, for all such things; but such precedents as could not for a moment survive the times of madness and distraction which gave them birth, but which, as soon as the spurs of the occasions were blunted, were repealed and execrated even by Parliaments which (little as I may think of the present) ought not to be compared with it: Parliaments sitting in the darkness of former times,—in the night of freedom,—before the principles of government were developed, and before the constitution became fixed. The last of these precedents, and all the proceedings upon it, were ordered to be taken off the file and burnt, to the intent that the same might no longer be visible in after ages; an order dictated, no doubt, by a pious tenderness for national honour, and meant as a charitable covering for the crimes of our fathers. But it was a sin against posterity—it was a treason against society; for, instead of commanding them to be burnt, they should rather have directed them to be blazoned in large letters upon the walls of our courts of justice, that, like the characters deciphered by the prophet of God to the eastern tyrant, they might enlarge and blacken in your sights, to terrify you from acts of injustice.

In times, when the whole habitable earth is in a state of change

and fluctuation,—when deserts are starting up into civilised empires around you,—and when men, no longer slaves to the prejudices of particular countries, much less to the abuses of particular governments, enlist themselves, like the citizens of an enlightened world, into whatever communities their civil liberties may be best protected; it never can be for the advantage of this country to prove that the strict, unextended letter of her laws is no security to its inhabitants. On the contrary, when so dangerous a lure is everywhere holding out to emigration, it will be found to be the wisest policy of Great Britain to set up her happy constitution,—the strict letter of her guardian laws, and the proud condition of equal freedom, which her highest and her lowest subjects ought equally to enjoy; it will be her wisest policy to set up these first of human blessings against those charms of change and novelty which the varying condition of the world is hourly displaying, and which may deeply affect the population and prosperity of our country. In times when the subordination to authority is said to be everywhere but too little felt, it will be found to be the wisest policy of Great Britain to instil into the governed an almost superstitious reverence for the strict security of the laws; which, from their equality of principle, beget no jealousies or discontent; which, from their equal administration, can seldom work injustice; and which, from the reverence growing out of their mildness and antiquity, acquire a stability in the habits and affections of men far beyond the force of civil obligation: whereas severe penalties, and arbitrary constructions of laws intended for security, lay the foundations of alienation from every human government, and have been the cause of all the calamities that have come, and are coming upon the earth.

Gentlemen, what we read of in books makes but a faint impression upon us, compared to what we see passing under our eyes in the living world. I remember the people of another country, in like manner, contending for a renovation of their constitution, sometimes illegally and turbulently, but still devoted to an honest end. I myself saw the people of Brabant so contending for the ancient constitution of the good Duke of Burgundy. How was this people dealt by? All, who were only contending for their own rights and privileges, were supposed to be of course disaffected to the Emperor: they were handed over to courts constituted for the emergency, as this is, and the Emperor marched his army through the country till all was peace; but such peace as there is in Vesuvius or Ætna the very moment before they vomit forth their lava, and roll their conflagrations over the devoted habitations of mankind. When the French approached, the fatal effects were suddenly seen of a Government of constraint and terror; the well-affected were dispirited, and the disaffected inflamed into fury. At that moment the Archduchess fled from Brussels, and the Duke of

Saxe-Teschen was sent express to offer the *joyeuse entrée* so long petitioned for in vain. But the season of concession was past; the storm blew from every quarter, and the throne of Brabant departed for ever from the House of Burgundy. Gentlemen, I venture to affirm, that, with other councils, this fatal prelude to the last revolution in that country might have been averted: if the Emperor had been advised to make the concessions of justice and affection to his people, they would have risen in a mass to maintain their prince's authority, interwoven with their own liberties; and the French, the giants of modern times, would, like the giants of antiquity, have been trampled in the mire of their own ambition. In the same manner a far more splendid and important crown passed away from his Majesty's illustrious brows: **THE IMPERIAL CROWN OF AMERICA.** The people of that country too, for a long season, contended as subjects, and often with irregularity and turbulence, for what they felt to be their rights: and Oh, gentlemen! that the inspiring and immortal eloquence of that man, whose name I have so often mentioned, had then been heard with effect! What was his language to this country when she sought to lay burdens on America,—not to support the dignity of the Crown, or for the increase of national revenue, but to raise a fund for the purpose of corruption; a fund for maintaining those tribes of hireling skipjacks, which Mr Tooke so well contrasted with the hereditary nobility of England! Though America would not bear this imposition, she would have borne any useful or constitutional burden to support the parent state. "For that service, for all service," said Mr Burke, "whether of revenue, trade, or empire, my trust is in her interest in the British constitution. My hold of the colonies is in the close affection which grows from common names, from kindred blood, from similar privileges, and equal protection. These are ties which, though light as air, are as strong as links of iron. Let the colonies always keep the idea of their civil rights associated with your Governments, they will cling and grapple to you, and no force under heaven will be of power to tear them from their allegiance. But let it be once understood that your Government may be one thing, and their privileges another; that these two things may exist without any mutual relation; the cement is gone, the cohesion is loosened, and everything hastens to decay and dissolution. As long as you have the wisdom to keep the sovereign authority of this country as the sanctuary of liberty, the sacred temple consecrated to our common faith, wherever the chosen race and sons of England worship freedom, they will turn their faces toward you. The more they multiply, the more friends you will have; the more ardently they love liberty the more perfect will be their obedience. Slavery they can have anywhere. It is a weed that grows in every soil. They may have it from Spain, they may have it from Prussia. But until you be

come lost to all feeling of your true interest and your natural dignity, freedom they can have from none but you. This is the commodity of price of which you have the monopoly. This is the true act of navigation, which binds to you the commerce of the colonies, and through them secures to you the wealth of the world. Is it not the same virtue which does everything for us here in England? Do you imagine then, that it is the land-tax which raises your revenue? that it is the annual vote in the Committee of Supply which gives you your army? or that it is the Mutiny Bill which inspires it with bravery and discipline? No! surely no! It is the love of the people; it is their attachment to their Government, from the sense of the deep stake they have in such a glorious institution, which gives you your army and your navy, and infuses into both that liberal obedience, without which your army would be a base rabble, and your navy nothing but rotten timber.*

Gentlemen, to conclude, my fervent wish is, that we may not conjure up a spirit to destroy ourselves, nor set the example here of what, in another country, we deplore. Let us cherish the old and venerable laws of our forefathers. Let our judicial administration be strict and pure; and let the jury of the land preserve the life of a fellow-subject who only asks it from them upon the same terms under which they hold their own lives and all that is dear to them and their posterity for ever. Let me repeat the wish with which I began my address to you, and which proceeds from the very bottom of my heart: May it please God, who is the Author of all mercies to mankind, whose providence, I am persuaded, guides and superintends the transactions of the world, and whose guardian spirit has for ever hovered over this prosperous island, to direct and fortify your judgments. I am aware I have not acquitted myself to the unfortunate man who has put his trust in me in the manner I could have wished; yet I am unable to proceed any further: exhausted in spirit and in strength, but confident in the expectation of justice. There is one thing more, however, that (if I can) I must state to you—namely, that I will show, by as many witnesses as it may be found necessary or convenient for you to hear upon the subject, that the views of the societies were what I have alleged them to be; that whatever irregularities or indiscretions they might have committed, their purposes were honest; and that Mr Hardy's, above all other men, can be established to have been so. I have indeed an honourable gentleman (Mr Francis*) in my eye at this moment, to be called hereafter as a witness, who, being desirous in his place, as a member of Parliament, to promote an inquiry into the seditious practices complained of, Mr Hardy offered himself voluntarily to come forward, proffered a sight of all the papers which were afterwards seized in his custody, and tendered every possible assistance to give satisfaction to the laws

* Now Sir Philip Francis, K.B.

of his country if found to be offended. I will show, likewise, his character to be religious, temperate, humane, and moderate, and his uniform conduct all that can belong to a good subject and an honest man. When you have heard this evidence, it will, beyond all doubt, confirm you in coming to the conclusion, which, at such great length (for which I entreat your pardon), I have been endeavouring to support.

So strongly prepossessed were the multitude in favour of the innocence of the prisoner, that when Mr Erskine had finished his speech, an irresistible acclamation pervaded the court and to an immense distance around. The streets were seemingly filled with the whole of the inhabitants of London, and the passages were so thronged that it was impossible for the Judges to get to their carriages. Mr Erskine went out and addressed the multitude, desiring them to confide in the justice of the country; reminding them that the only security of Englishmen was under the inestimable laws of England, and that any attempt to overawe or hinder them, would not only be an affront to public justice, but would endanger the lives of the accused. He then besought them to retire, and in a few minutes there was scarcely a person to be seen near the court. No spectacle could be more interesting and affecting. We cannot help being of opinion that it is the wisest policy upon all occasions to cultivate and encourage this enthusiasm of Englishmen for the protection of the law: it binds them to the state and Government of their country, and is a greater security against revolution than any restraints that the wisdom of man can impose.

The result of this memorable trial is well known. After hearing the evidence for the prisoner, which was summed up in a most able and eloquent speech by Sir Vicary Gibbs; and after a reply of great force and ability by the present Lord Redesdale, then Solicitor-General, and the charge of Lord Chief-Justice Eyre, who presided in this special commission, the jury returned a verdict of **NOT GUILTY.**

*SPEECH for the Hon. RICHARD BINGHAM, after
Earl of Lucan.*

THE following speech was delivered by Mr Erskine in the Court of King's Bench, on Monday, February 24, 1794, as counsel for the Hon. Richard Bingham, afterwards Lord Lucan, in an action brought against him by Bernard Edward Howard, Esq., presumptive heir of the Duke of Norfolk, for adultery with his wife. The circumstances under which the damages were sought to be mitigated, in opposition to the severe principle regarding them insisted upon in the speech for Mr Markham, appear fully in the speech itself.

The jury found only £500 damages.

THE SPEECH.

GENTLEMEN OF THE JURY,—My learned friend, as counsel for the plaintiff, has bespoke an address from me, as counsel for the defendant, which you must not, I assure you, expect to hear. He has thought it right (partly in courtesy to me, as I am willing to believe, and in part for the purposes of his cause) that you should suppose you are to be addressed with eloquence which I never possessed, and which, if I did, I should be incapable at this moment of exerting, because the most eloquent man, in order to exert his eloquence, must have his mind free from embarrassment on the occasion on which he is to speak. I am not in that condition. My learned friend has expressed himself as the friend of the plaintiff's family. He does not regard that family more than I do; and I stand in the same predicament towards my own honourable client and his relations: I know him and them, and because I know them, I regard them also. My embarrassment, however, only arises at being obliged to discuss this question in a public court of justice, because, could it have been the subject of private reference, I should have felt none at all in being called upon to settle it.

Gentlemen, my embarrassment is abundantly increased, when I see present a noble person, high, very high in rank in this kingdom, but not higher in rank than he is in my estimation. I speak of the noble Duke of Norfolk, who most undoubtedly must feel not a little at being obliged to come here as a witness for the defendant, in the cause of a plaintiff so nearly allied to himself. I am persuaded no man can have so little sensibility as not to feel that a person in my situation must be greatly embarrassed in discussing a question of this nature before such an audience, and between such parties as I have described.

Gentlemen, my learned friend desired you would take care not to suffer argument, or observation, or eloquence, to be called into the field, to detach your attention from the evidence in the cause, upon which alone you ought to decide. I wish my learned friend, at the moment he gave you that caution, had not *himself* given testimony of a fact to which he stood the solitary witness. I wish he had not introduced *his own evidence*, without the ordinary ceremony of being sworn. I will not follow his example. I will not tell you what I know from the conversation of my client, nor give evidence of what I know myself. My learned friend tells you that nothing can exceed the agony of mind his client has suffered, and that no words can describe his adoration of the lady he has lost. These most material points of the cause rest, however, altogether on the *single, unsupported, unsworn evidence of the COUNSEL* for the plaintiff. No RELATION has been called upon to confirm them, though we are told that the whole house of Fauconberg, Bellasyse, and Norfolk are in the avenues of the court, ready, it seems, to be called at my discretion. And yet my learned friend is himself the only witness, though the facts (and most material facts, indeed, they would have been) might have been proved by so many illustrious persons.

Now, to show you how little disposed I am to work upon you by anything but by proof—to convince you how little desirous I am to practise the arts of speech as my only artillery in this cause, I will begin with a few plain dates, and, as you have pens in your hands, I will thank you to write them down.

I shall begin with stating to you what my cause is, and shall then prove it, not by myself, but by witnesses.

The parties were married on the 24th of April 1789. The child that has been spoken of, and in terms which gave me great satisfaction, as the admitted son of the plaintiff, blessed with the affection of his parent, and whom the noble person to whom he may become heir can look upon without any unpleasant reflection—that child was born on the 12th of August 1791. Take that date, and my *learned friend's admission* that this child must have been the child of Mr Howard; an admission which could not have been rationally or consistently made, but upon the implied admission that no illicit connexion had *existed previously*, by which its existence might have been referred to the defendant. On this subject, therefore, the plaintiff must be silent,—he cannot say the parental mind has been wrung,—he cannot say hereafter, “No son of MINE SUCCEEDING,”—he can say none of these things. This child was born on the 12th of August 1791, and as Mr Howard is *admitted* to be the author of its existence (which he must have been, if at all, in 1790), I have a right to say, that, during all that interval, this gentleman could not have had the least reasonable cause of complaint against Mr Bingham; his jealousy must, of course, have begun *after* that period; for, had there been grounds

for it *before*, there could be no sense in the admission of his counsel, nor any foundation for that parental consolation which was brought forward in the very front of the cause.

The next dry date is, therefore, the 24th of July 1793; and I put it to his Lordship, that there is no manner of evidence which can be pressed into this cause *previous* to that time. Let me next disembarass the cause from another assertion of my learned friend—namely, that a divorce cannot take place before the birth of this child; and that, if the child happens to be a son, which is *one* contingency; and if the child so born does not die, which is *another* contingency; and if the noble Duke dies without issue, which is a *third* contingency, *then* this child might inherit the honours of the house of Norfolk. That I deny. My recent experience tells me the contrary. In a case where Mr Stewart, a gentleman in Ireland, stood in a similar predicament, the Lords and Commons of England not only passed an act of divorce between him and his lady, but, on finding there was no access on the part of the husband, and that the child was not his, they bastardized the issue.

What then remains in this cause? Gentlemen, there remains only this: In what manner, when you have heard my evidence (for this is a cause which, like all others, must stand upon evidence), the plaintiff shall be able to prove what I have the noble Judge's authority for saying he *must* prove—viz., *the loss of the comfort and society of his wife, by the seduction of the defendant*. THAT is the very gist of the action. The loss of her affection and of domestic happiness are the only legal foundations of his complaint.

Now, before anything can be *lost*, it must have *existed*; before anything can be taken away from a man, he must have had it; before the seduction of a woman's affections from her husband can take place, he must have possessed her affections.

Gentlemen, my friend Mr Mingay acknowledges this to be the law, and he shapes his case accordingly. He represents his client, a branch of a most illustrious house, as casting the eyes of affection upon a *disengaged* woman, and of rank equal to, or at least, suitable to his own. He states a marriage of mutual affection, and endeavours to show that this young couple, with all the ardour of love, flew into each other's embraces. He shows a child, the fruit of that affection; and finishes with introducing the seductive adulterer coming to disturb all this happiness, and to destroy the blessing which he describes. He exhibits the defendant coming with all the rashness and impetuosity of youth, careless of the consequences, and thinking of nothing but how he could indulge his own lustful appetite at the expense of another man's honour; while the unhappy husband is represented as watching with anxiety over his beloved wife, anxious to secure her affections, and on his guard to preserve her virtue. Gentlemen, if such a case, or anything resem-

bling it, is established, I shall leave the defendant to whatever measure of damages you choose in your resentment to inflict.

In order, therefore, to examine this matter (and I shall support every syllable that I utter with the most precise and uncontrovertible proofs), I will begin with drawing up the curtains of this blessed marriage-bed, whose joys are supposed to have been nipped in the bud by the defendant's adulterous seduction.

Nothing, certainly, is more delightful to the human fancy than the possession of a beautiful woman in the prime of health and youthful passion; it is, beyond all doubt, the highest enjoyment which God, in his benevolence, and for the wisest purposes, has bestowed upon his own image. I reverence, as I ought, that mysterious union of mind and body, which, while it continues our species, is the source of all our affections; which builds up and dignifies the condition of human life; which binds the husband to the wife by ties more indissoluble than laws can possibly create; and which, by the reciprocal endearments arising from a mutual passion, a mutual interest, and a mutual honour, lays the foundation of that parental affection which dies in the brutes with the necessities of nature, but which reflects back again upon the human parents the unspeakable sympathies of their offspring, and all the sweet, delightful relations of social existence. While the curtains, therefore, are yet closed upon this bridal scene, your imaginations will naturally represent to you this charming woman endeavouring to conceal sensations which modesty forbids the sex, however enamoured, too openly to reveal; wishing, beyond adequate expression, what she must not even attempt to express, and seemingly resisting what she burns to enjoy.

Alas! gentlemen, you must now prepare to see, in the room of this, a scene of horror and of sorrow! You must prepare to see a noble lady, whose birth surely required no further illustration; who had been courted to marriage before she ever heard even her husband's name; and whose affections were irretrievably bestowed upon, and pledged to, my honourable and unfortunate client. You must behold her given up to the plaintiff by the infatuation of parents, and stretched upon this bridal bed as upon a rack,—torn from the arms of a beloved and impassioned youth, himself of noble birth, only to secure the honours of a higher title,—a legal victim on the altar of heraldry.

Gentlemen, this is no high colouring for the purpose of a cause; no words of an advocate can go beyond the plain, unadorned effect of the evidence. I will prove to you that, when she prepared to retire to her chamber, she threw her desponding arms around the neck of her confidential attendant, and wept upon her, as a criminal preparing for execution. I will prove to you that she met her bridegroom with sighs and tears,—the sighs and tears of afflicted love for Mr Bingham, and of rooted aversion to her husband. I

think I almost hear her addressing him in the language of the poet:—

“ I tell thee, Howard,
Such hearts as ours were never pair'd above ;
Ill-suited to each other; join'd, not match'd ;
Some sullen influence, a foe to both,
Has wrought this fatal marriage to undo us.
Mark but the frame and temper of our minds,
How very much we differ. Ev'n this day,
That fills thee with such ecstasy and transport,
To me brings nothing that should make me bless it,
To think it better than the day before,
Or any other in the course of time,
That duly took its turn, and was forgotten.”

Gentlemen, this was not the sudden burst of youthful disappointment, but the fixed and settled habit of a mind deserving of a happier fate. I shall prove that she frequently spent her nights upon a couch, in her own apartments, dissolved in tears; that she frequently declared to her woman that she would rather go to Newgate than to Mr Howard's bed; and it will appear, by his own confession, that for months subsequent to the marriage she obstinately refused him the privileges of a husband.

To all this it will be said by the plaintiff's counsel (as it has indeed been hinted already), that disgust and alienation from her husband could not but be expected; but that it arose from her affection for Mr Bingham. Be it so, gentlemen. I readily admit, that if Mr Bingham's acquaintance with the lady had commenced *subsequent to the marriage*, the argument would be irresistible, and the criminal conclusion against him unanswerable. But has Mr Howard a right to instruct his counsel to charge my honourable client with seduction when *he himself* was the SEDUCER? My learned friend deprecates the power of what he terms my pathetic eloquence. Alas! gentlemen, if I possessed it, the occasion forbids its exertion, because Mr Bingham has only to defend *himself*, and cannot demand damages from Mr Howard for depriving him of what was *his* by a title superior to any law which man has a moral right to make. Mr Howard was NEVER MARRIED. God and nature forbid the banns of such a marriage. If, therefore, Mr Bingham this day could have, by me, addressed to you his wrongs in the character of a plaintiff demanding reparation, what damages might I not have asked for him? and, without the aid of this imputed eloquence, what damages might I not have expected?

I would have brought before you a noble youth who had fixed his affections upon one of the most beautiful of her sex, and who enjoyed hers in return—I would have shown you their suitable condition—I would have painted the expectation of an honourable union—and would have concluded by showing her to you in the arms of another, by the legal prostitution of parental choice in the teeth of affection, with child by a rival, and only reclaimed at last,

after so cruel and so afflicting a divorce, with her freshest charms despoiled, and her very morals in a manner impeached, by asserting the purity and virtue of her original and spotless choice. Good God! imagine my client to be PLAINTIFF, and what damages are you not prepared to give him? and yet he is here as DEFENDANT, and damages are demanded against HIM! Oh, monstrous conclusion!

Gentleman, considering my client as perfectly safe under these circumstances, I may spare a moment to render this cause beneficial to the public.

It involves in it an awful lesson; and more instructive lessons are taught in courts of justice than the Church is able to inculcate. Morals come in the cold abstract from pulpits; but men smart under them practically when we lawyers are the preachers.

Let the aristocracy of England, which trembles so much for itself, take heed to its own security; let the nobles of England, if they mean to preserve that pre-eminence which, in some shape or other, must exist in every social community, take care to support it by aiming at that which is creative, and alone creative, of real superiority. Instead of matching themselves to supply wealth, to be again idly squandered in debauching excesses, or to round the quarters of a family shield; instead of continuing their names and honours in cold and alienated embraces, amidst the encervating rounds of shallow dissipation, let them live as their fathers of old lived before them; let them marry as affection and prudence lead the way, and, in the ardours of mutual love, and in the simplicities of rural life, let them lay the foundation of a vigorous race of men, firm in their bodies, and moral from early habits; and instead of wasting their fortunes and their strength in the tasteless circles of debauchery, let them light up their magnificent and hospital halls to the gentry and peasantry of the country, extending the consolations of wealth and influence to the poor. Let them but do this,—and instead of those dangerous and distracted divisions between the different ranks of life, and those jealousies of the multitude so often blindly painted as big with destruction, we should see our country as one large and harmonious family, which can never be accomplished amidst vice and corruption, by wars or treaties, by informations *ex officio* for libels, or by any of the tricks and artifices of the State. Would to God this system had been followed in the instance before us! Surely the noble house of Fauconberg needed no further illustration, nor the still nobler house of Howard, with blood enough to have inoculated half the kingdom. I desire to be understood to make these observations as general moral reflections, and not personally to the families in question; least of all to the noble house of Norfolk, the head of which is now present, since no man, in my opinion, has more at heart the liberty of the subject and the honour of our country.

Having shown the feeble expectation of happiness from this marriage, the next point to be considered is this—Did Mr Bingham take advantage of that circumstance to increase the disunion? I answer, No. I will prove to you that he conducted himself with a moderation and restraint, and with a command over his passions which I confess I did not expect to find, and which in young men is not to be expected. I shall prove to you by Mr Greville, that on this marriage taking place with the betrothed object of his affections, he went away a desponding man; his health declined; he retired into the country to restore it; and it will appear that for months afterwards he never saw this lady until by mere accident he met her, and then, so far was he from endeavouring to renew his connexion with her, that she came home in tears, and said he frowned at her as she passed. This I shall prove to you by the evidence in the cause.

Gentlemen, that is not all. It will appear that when he returned to town he took no manner of notice of her, and that her unhappiness was beyond all power of expression. How, indeed, could it be otherwise after the account I have given you of the marriage? I shall prove, besides, by a gentleman who married one of the daughters of a person to whom this country is deeply indebted for his eminent and meritorious service (Marquis Cornwallis), that from her utter reluctance to her husband, although in every respect honourable and correct in his manners and behaviour, he was not allowed *even the privileges of a husband* for months after the marriage. This I mentioned to you before, and only now repeat it in the statement of the proofs. Nothing better, indeed, could be expected. Who can control the will of a mis-matched, disappointed woman? Who can restrain or direct her passions? I beg leave to assure Mr Howard (and I hope he will believe me when I say it) that I think his conduct towards this lady was just such as might have been expected from a husband who saw himself to be the object of disgust to the woman he had chosen for his wife; and it is with this view only that I shall call a gentleman to say how Mr Howard spoke of this supposed, but, in my mind, impossible, object of his adoration. How, indeed, is it possible to adore a woman when you know her affections are riveted to another? It is unnatural! A man may have that *appetite* which is common to the brutes, and too indelicate to be described; but he can never retain an *affection* which is returned with detestation. Lady Elizabeth, I understand, was at one time going in a phaeton. "There she goes," said Mr Howard, "God damn her! I wish she may break her neck—I should take care how I got another." This may seem unfeeling behaviour; but in Mr Howard's situation, gentlemen, it was the most natural thing in the world, for they cordially hated one another. At last, however, the period arrived when this scene of discord became insupportable, and nothing could exceed the gene-

rosity and manly feeling of the noble person (the Duke of Norfolk whose name I have been obliged to use in the course of this cause, in his interference to effect that separation which is falsely imputed to Mr Bingham. He felt so much commiseration for this unhappy lady, that he wrote to her in the most affecting style. I believe I have got a letter from his Grace to Lady Elizabeth, dated Scuttrland, July the 27th—that is, three days after their separation, but before he knew it had actually taken place. It was written in consequence of one received from Mr Howard upon the subject. Among other things he says, “*I sincerely feel for you.*” Now, if the Duke had not known at that time that Mr Bingham had the earliest and legitimate affections, she could not have been an object of that pity which she received. She was indeed an object of the sincerest pity; and the sum and substance of this mighty sensation will turn out to be no more than this—that she was affectionately received by Mr Bingham after the final period of voluntary separation. At four o’clock this miserable couple had parted *by contract* and the chaise was not ordered till she might be considered as a single woman by the abandonment of her husband. Had the separation been *legal and formal*, I should have applied to his Lordship, upon the most unquestionable authorities, to nonsuit the plaintiff; for this action, being founded upon the loss of the wass society, it must necessarily fall to the ground if it appears that the society, though not the marriage union, was interrupted by a previous act of his own. In that hour of separation I am persuaded he never considered Mr Bingham as an object of resentment or reproach. He was the author of his own misfortunes, and I can conceive him to have exclaimed, in the language of the poet, as they parted—

“—— Elizabeth never loved me.
 Let no man, after me, a woman wed
 Whose heart he knows he has not; though she brings
 A mine of gold, a kingdom for her dowry.
 For let her seem, like the night’s shadowy queen,
 Cold and contemplative—he cannot trust her:
 She may, she will, bring shame and sorrow on him—
 The worst of sorrows, and the worst of shames!”

You have, therefore, before you, gentlemen, two young men of fashion, both of noble families, and in the flower of youth. The proceedings, though not collusive, cannot possibly be vindictive, they are indispensably preliminary to the dissolution of an inauspicious marriage which never should have existed. Mr Howard may then profit by a useful, though an unpleasant experience, and be happier with a woman whose mind he may find disengaged, whilst the parents of the rising generation, taking warning from the lesson which the business of the day so forcibly teaches, may avert from their families and the public that bitterness of dis-

union which, while human nature continues to be itself, will ever be produced to the end of time from similar conjectures.

Gentlemen, I have endeavoured so to conduct this cause as to offend no man—I have guarded against every expression which could inflict unnecessary pain; and in doing so, I know that I have not only served my client's interests, but truly represented his honourable and manly disposition. As the case before you cannot be considered by any reasonable man as an occasion for damages, I might here properly conclude; yet, that I may omit nothing which might apply to any possible view of the subject, I will conclude with reminding you that my client is a member of a numerous family; that though Mr Bingham's fortune is considerable, his rank calls for a corresponding equipage and expense: he has other children—one already married to an illustrious nobleman, and another yet to be married to some man who must be happy indeed if he shall know her value. Mr Bingham, therefore, is a man of no fortune, but the heir only of, I trust, a very distant expectation. Under all these circumstances, it is but fair to believe that Mr Howard comes here for the reasons I have assigned, and not to take money out of the pocket of Mr Bingham to put into his own. You will therefore consider, gentlemen, whether it would be creditable for you to offer what it would be disgraceful for Mr Howard to receive.

*SPEECH for JOHN HORNE TOOKE, Esq., as delivered by Mr
ERSKINE in the Sessions House at the Old Bailey, on the 19th of
November 1794.*

THE SUBJECT.

THE following speech for Mr Tooke requires no other introduction or preface than an attentive reference to the case of Thomas Hardy in this volume ;—the charges being the same, and the evidence not materially different. It is indeed not easy to conceive upon what grounds the Crown could have expected to convict Mr Tooke after Mr Hardy had been acquitted, since the jury upon the first trial (some of whom were also sworn as jurors upon the second) must be supposed, by the verdict which had just been delivered, to have negatived the main fact alleged by both indictments, viz., that any convention had been held within the kingdom with intent to subvert, by rebellious force, the constitution of the kingdom. Nevertheless, the same propositions, both of law and fact, which, by reference to the former trial, appear to have been urged so unsuccessfully, were repeated, and again insisted upon, even after the following speech had been delivered. For it appears from Mr Gurney's report (by whose license the Editor has published many of the speeches in this collection), that on Mr Tooke's addressing the Court (after Mr Erskine had spoken) as to the necessity of going into the whole of the evidence, the Attorney-General answered as follows :—

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

“ MR ERSKINE. Then we will go into the whole case.”— See *Gurney's Trial of Tooke*, vol. i., p. 453.

This took place on Thursday, the 20th of November 1794, and the trial accordingly continued till Saturday the 22d.

After the acquittal of Mr Tooke, even a third trial was proceeded upon, viz., that against Mr Thelwall, after which all the other prisoners were discharged. We do not state these facts as presuming to censure the advisers of the Crown on these great state trials ; on the contrary, we departed, as has been seen in the case of Hardy, from the original plan of the publication, from an anxiety to give the most faithful representation of the proceedings, without the publication of the entire trials, as published by Mr Gurney ; which at the time were extensively circulated, and are, no doubt, still preserved in many libraries.

By comparing the introduction of the following speech with that for Thomas Hardy, it will be seen what high ground the advocate felt he occupied in consequence of the former acquittal.

THE SPEECH.

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

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

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

Gentlemen, I am too much used to public life to be at all disconcerted by any of these little accidents; and, indeed, I am rather glad that any interruption gives me the opportunity of repeating a sentiment so very dear to me:—I stood up here, not alone, but ably and manfully supported by this excellent friend, who now sits by me; yet, under circumstances of distress and agitation, which no assistance could remove, and which I even now tremble to look back upon. I appeared in this place as the representative of a poor, silly, and obscure mechanic, known only, of course, to persons in that obscurity with himself; yet, in his name and person, had to stand up against a pressure which no advocate in England ever before had to contend with, for the most favoured or powerful subject. I had to contend, in the first place, against the vast and oppressive, but, after the verdict which has been given, I will not say the *crushing*, influence of the Crown. I had to struggle, from the very nature of the case, with that deep and solid interest which every good subject takes, and ought to take, in the life of the chief magistrate appointed to execute the laws, and whose safety is so inseparably connected with the general happiness, and the stability of the Government. I had further to contend with an interest more powerful and energetic—with that generous and benevolent interest, founded upon affection for the King's person, which has so long been, and, I trust, ever will remain, the characteristic of Englishmen. These prepossessions, just in themselves, but connected with generous partialities, would, *at any time*, have been sufficiently formidable. but at what season had I to contend with them? I had to contend with them when a cloud of prejudices covered every man whose name could be mentioned or thought of in the course of my defence—prejudices not only propagated by honest, though mistaken zeal, but fomented in other quarters by wickedness beyond the power of language to express—and all directed against the

* Mr Gibbs, afterwards Sir Vicary Gibbs, the Attorney-General.

societies of which the prisoners were members; *only because they had presumed to do what those who prosecuted them had done before them in other times; and from the doing of which they had raised their fortunes, and acquired the very power to prosecute and to oppress.*

I had to contend, too, with all this in a most fearful season; when the light and humanity even of an English public was with no certainty to be reckoned on—when the face of the earth was drawn into convulsions—when bad men were trembling for what ought to follow, and good men for what ought not—and when all the principles of our free constitution, under the dominion of a delusive or wickedly infused terror, seemed to be trampled under foot. Gentlemen, when we reflect, however, upon the sound principles of the law of England, and the exalted history of its justice, I might, under other circumstances, have looked even those dangers in the face. There would have still remained that which is paramount to the ordinary law, and the corrector of its abuses;—there would still have remained that great tribunal, raised by the wisdom of our ancestors, for the support of the people's rights—that tribunal which has made the law itself, and which has given me *you* to look at—that tribunal which, from age to age, has been the champion of public liberty, and which has so long and so often been planted before it as a shield in the day of trouble. But looking to that quarter,—instead of this friendly shield of the subject, I found a sharp and destroying sword in the hand of an enemy: **THE PROTECTING COMMONS WAS ITSELF THE ACCUSER OF MY CLIENT, AND ACTED AS A SOLICITOR TO PREPARE THE VERY BRIEFS FOR THE PROSECUTION.** I am not making complaints, but stating the facts as they existed. The very briefs, I say, without which my learned friends (as they themselves agree) could not have travelled through the cause, were prepared by the Commons of Great Britain!—came before the jury stamped with all its influence and authority, preceded by proclamations and the publication of authoritative reports in every part of the kingdom, that the influence of the pre-judgment might be co-extensive with the island.

I had, therefore, to contend with an impeachment, without the justice belonging to such a proceeding. When a subject is impeached by the Commons of Great Britain, he is not tried by a jury of his country. Why? Because the benevolent institutions of our wise forefathers forbade it. They considered that, when the Commons were the accusers, the jury were the accusers also. They considered the Commons in Parliament, and the Commons at large, to be one and the same thing; though one would think, from the proceedings we are now engaged in, and everything connected with them, that they had no connexion with one another; but that, on the contrary, the House of Commons was holding out a siege against its constituents, and supporting its authority against the privileges of the people, whose representatives they are and

ought to be. Upon an impeachment, besides, the Lords in Parliament, upon the same principle, form a criminal court of justice for all the subjects of England. A common man is not *forced* before that high assembly, but *flies to it for refuge*; because, as Mr Justice Blackstone well expresses it, all the rest of the nation is supposed, by the law, to be engaged in the prosecution of their representatives. But did the Lords in Parliament stand in that situation in the case of the prisoners at this bar? Though not formally arraigned before the great men of the realm, could they look up to them for countenance and support? Gentlemen, the Lords united themselves with the Commons in the accusation, and, like the Commons, prejudged the cause by the publication of reports, which contain the whole mass of the criminating evidence.

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

I had, lastly, to contend with all that array of ability and learning which is now before me, though with this consolation, that the contention was with honourable men. It is the glory of the English Bar, that the integrity and independence of its members is no mean security of the subject.

When, in spite of all this mighty and seemingly insuperable pressure, I recollect that an humble and obscure individual was not merely acquitted, but delivered with triumph from the dangers which surrounded him; when I call to mind that his deliverance was sealed by a verdict, not obtained by cabal or legal artifice, but supported by principles which every man who has a heart in his bosom must approve, and which accordingly has obtained the most marked and public approbation; when I consider all this, it raises up a whirlwind of emotions in my mind, which none but He who rides upon the whirlwind could give utterance to express. In that season of danger, when I thought a combination of circumstances existed which no innocence could overcome, and having no strength of my own to rely on, I could only desire to place the jury

under the protection of that benevolent Providence which has so long peculiarly watched over the fortunes of this favoured island. Sincerely, and from the bottom of my heart, I wished that a verdict should be given, such as a jury might look up to God, as well as around them to man, when they pronounced it. Gentlemen, that verdict is given, it is recorded; and the honour and justice of the men who, as the instruments of Providence, pronounced it, are recorded, I trust, for ever along with it.

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

Gentlemen, we now come to the *merits* of the cause itself; and though, if I were myself at the bar, instead of the honourable gentleman who is arraigned before you, I should be disposed to trouble you very little in my own defence, yet I mean to pursue no such course as the advocate of OTHERS. I say the advocate of OTHERS, for my client must forgive me if I almost lose sight of *him* in the determination of my duties. Indeed, I can hardly find him out in the mass of matter which has been read to you. One is obliged to search for him through the proceedings, and with difficulty can find his name; whilst others, to whom I owe a similar attention, and who stand behind for trial, are undoubtedly implicated in part of that which has been fruitlessly read against HIM. It is this alone which obliges me at all to consider the quality of the transactions before you, and to apply them to the law, lest assumed facts and erroneous doctrines should meet me at *another* time, and in *another* character, touching in their consequences the safety of the other prisoners, and of the whole people of this land.

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

Let us see, therefore, what the charge is.

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

Gentleman, the charge is this:—

The indictment states, "That all the prisoners" (whose names I shall hereafter enumerate when I come to remark upon the evidence), "intending to excite insurrection, rebellion, and war against the King, and to subvert the rule and government of the kingdom, and to depose the King from his royal state and government of the kingdom, and to bring and put the King to death, maliciously and traitorously, and with force, did, among themselves, and together with other false traitors, conspire, compass, and imagine, to excite insurrection, rebellion, and war, against the King, and to subvert the legislature, rule, and government of the kingdom, and to depose the King from the royal state and government of the kingdom, AND TO BRING AND PUT OUR SAID LORD THE KING TO DEATH." This is the whole charge. But as it is an offence which has its seat in the heart, the treason being complete by the unconsummated intention, it is enacted by positive statute, and was, indeed, the ancient practice upon the general principles of English law, that he who is accused of this crime, which consists in the invisible operations of the mind, should have it distinctly disclosed to him upon the same records, what acts the Crown intends to establish upon the trial as indicative of the treason; which acts do not constitute the crime, but are charged upon the record as the means employed by the prisoner to accomplish the intention against the King's life, which is the treason under the first branch of the statute.

The record, therefore, goes on to charge, that, "in order to fulfil,

perfect, and bring to effect their most evil and treasonable compassings and imaginations" (that is to say, the compassings and imaginations antecedently averred, viz., to bring and put the King to death), "they met, consulted, conspired, and agreed among themselves, and others to the jurors unknown, to cause and procure a convention and meeting of divers subjects of the realm, to be held and assembled within this kingdom." Now, in order to elucidate the true essence of this anomalous crime, and to prevent the possibility of confounding the treason with the OVERT ACT, which is only charged as the manifestation of it, let us pause here a little and see what would have been the consequence if the charge had finished here, without further connecting the OVERT ACT with the TREASON, by directly charging the convention to have been assembled FOR THE PURPOSE OF BRINGING THE KING TO DEATH. I shall not be put to argue that no proceedings could have been had upon such a defective indictment, since common sense must inform the most unlettered mind, that merely to hold a convention of the people, which might be for VARIOUS PURPOSES, without alleging for WHAT PURPOSE it was assembled, would not only not amount to high treason, but to NO CRIME WHATSOEVER. The indictment, therefore, of necessity, proceeds to aver that "they conspired to hold this convention WITH INTENT, and in order that the persons so to be assembled at such convention and meeting should and might, wickedly and traitorously, without and in defiance of the authority, and against the will, of the Parliament of this kingdom, subvert and alter, and cause to be subverted and altered, the legislature, rule, and government of the kingdom." What, then, is the charge in this first count of the indictment when its members are connected together and taken as one whole? It is, that the prisoner conspired and confederated with others to subvert the rule and government of the kingdom, and to depose the King, and to BRING AND PUT HIM TO DEATH, which last of the three is the only essential charge; for I shall not be put to argue that the indictment would have been equally complete without the two former, and wholly and radically defective without the latter, since it has been, and will again be conceded to me, THAT THE COMPASSING THE KING'S DEATH IS THE GIST OF THE INDICTMENT, WHICH NOTHING CAN ADD TO, AND THE OMISSION OF WHICH NOTHING CAN SUPPLY. The indictment, therefore, having charged the traitorous compassing, proceeds, in conformity to the statute, to state the act charged to have been committed in fulfilment of it, which, you observe, is not an armed assembly to seize and destroy at once the person of the King, but a conspiracy to effect the same purpose through the medium of a convention. The indictment, therefore, charges their design to assemble this convention, not as a meeting to petition for the reform of Parliament, or to deliberate upon the grievances of the country, but with the fixed and rooted *intent in the mind*, that

this convention, when got together, whatever might be its external pretext, should depose the King, AND PUT HIM TO DEATH. It is impossible, therefore, to separate the members of this charge without destroying its whole existence, because the charge of the compassing would be utterly void without the overt act which the statute requires to be charged as the means employed by the prisoner to accomplish it, because no other acts can be resorted to for its establishment, and because the overt act would be equally nugatory if separated from the compassing; SINCE THE OVERT ACT DOES NOT SUBSTANTIVELY CONSTITUTE THE TREASON WHEN SEPARATED FROM THE TRAITOROUS PURPOSE OF THE MIND WHICH PRODUCED IT, BUT IS ONLY THE VISIBLE MANIFESTATION OF THE TRAITOROUS INTENTION, WHICH IS ADMITTED ON ALL HANDS TO BE THE CRIME. Your office, therefore, gentleman—(*I defy the wit, or wisdom, or artifice of man to remove me from the position*)—your office is to try whether the record, inseparable as I have shown it to be in its members, BE TRUE OR FALSE, or to sum up its contents in a word, *whether the prisoner conspired, with others, to hold a convention or meeting, with the design that, under the mask of reform of Parliament, it should depose the King from his royal office, and DESTROY HIS LIFE.*

There are several other overt acts charged in the indictment, to which however you will see at a glance that the same principle will uniformly apply. Since the compassing the death of the King is alike the charge in all of them, the overt acts only differing from one another as the indictment charges different acts connected with the assembling of this convention; such as *how* it was to be held, *who* were to form committees for projecting its meeting, and so on, which I do not particularise just now, because I shall have occasion to consider them distinctly when I come to the particulars of the evidence. There is one of the counts, however, that has been so strongly relied on in argument, and to which so large a portion of the evidence has been thought to apply, that it is necessary, in this place, to attend to its structure. I mean the count which charges the circulation of papers. We have heard a great many of them read, and they will be a lesson to me never again to destroy old newspapers as useless wrappings, but to treasure them up as precious *manuscripts* for the discovery of plots and secrets of conspirators; for, with a very few exceptions, the whole of the written evidence—by which so deep-laid and detestable a conspiracy is supposed to have been developed by the seizure of the persons and correspondences of traitors—has been to be found, for two years past, upon the public file of every common newspaper, and retailed over and over again in every town and country magazine in the kingdom; and that too with the implied consent of his Majesty's Attorney-General, who could not help seeing them, yet who never thought of prosecuting any man for

their publication. Yet these said old newspapers have been on a sudden collected together, and their circulation charged as an overt act of high treason against the honourable gentleman before you, although, with a very few and perfectly harmless exceptions, it has not been shown that he either *wrote* them, or *published* them, or *read* them, or even *knew* of their existence.

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

The indictment states, that "further to fulfil their traitorous intention as aforesaid" (referring to the antecedent charge of *compassing in the former count*), "they maliciously and traitorously did compose and write, and caused to be composed and written, divers books, pamphlets, letters, and instructions, purporting, and containing therein, amongst other things, encouragements and exhortations to move, induce, and persuade the subjects of our said lord the King, to choose, depute, and send, and cause to be chosen, deputed, and sent, persons as delegates to compose and constitute such convention as aforesaid, with the traitorous purposes aforesaid, which is agreed to be a reference to the traitorous purposes enumerated in the antecedent part of the indictment. Here, therefore, let us pause again, to review the substance of this accusation.

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

There is another overt act, in which the publication of the same papers is charged, which I only read to you to show the uniform application of the principle which obviously pervades every branch and member of the indictment. It states, that "the prisoners in further fulfilment of the treason aforesaid" (i.e., by reference, the treason of PUTTING THE KING TO DEATH), "and in order the more readily and effectually to assemble such convention and meeting as aforesaid, for the traitorous purposes aforesaid" (i.e., by reference, the traitorous purpose against the life of the King), "they composed, and caused to be composed, divers books, pamph-

lets, &c., purporting and containing, amongst other things, incitements, encouragements, and exhortations to move, induce, and persuade the subjects of our said lord the King to choose, depute, and send, and cause to be chosen, deputed, and sent, persons as delegates to compose such convention and meeting as aforesaid, to aid and assist in carrying into effect such traitorous, subversive alteration and deposition as last aforesaid." So that *this* charge differs in nothing from the *former*. For it is not that criminal pamphlets were published, but that they who published them, having wickedly and maliciously conceived in their minds and set on foot a conspiracy wholly to overthrow and subvert the Government, to depose and *to put to death the King*, published them for the express purpose of exciting others to join them in the accomplishment of their treason. It does not charge the publication of libellous matter, which, peradventure, or even in all probability, might excite others to *originate* such a conspiracy, but directly charges the criminal purpose of exciting others to assist in the accomplishment of one already hatched in the mind and intention of the prisoner.

Gentlemen, I should not further enlarge upon matter which appears to be so self-evident, more especially as I perceive that I have the assent of the Court to the meaning and construction of the indictment as I have stated it, were it not that on the former trial it was directly questioned by the Solicitor-General, in an argument which I cannot possibly reconcile with any one principle or precedent of English law. I am persuaded that he will not consider this observation as a personal attack upon his integrity, or any depreciation of his professional learning, for both of which I have always had a great respect. The truth is, when the mind has long been engaged upon a particular subject, and has happened to look at it in a particular point of view, it is its natural infirmity to draw into the vortex of its own ideas whatever it can lay hold of, however unsuited to their support. I cannot account upon any other principle for the doctrine maintained by so very learned a person, in his late reply in this place—a doctrine so extraordinary that I would not venture to quote it from my own memory, and which I shall, therefore, read to you from the note I have been furnished with by my learned friend who sits near me*—a doctrine which I am persuaded the Solicitor-General would not, upon reflection, re-maintain to be the law; and which, if it were the law, I would not live in the country longer than to finish my address to you. He says roundly, that the law upon this subject is perfectly clear—namely, that any act done (attend, I beseech you, to the expression), "that any act done which *may* endanger the life of the King is, in the judgment of the law, an act done in pursuance of an intent to compass his

* Mr Gurney.

death ; that the act is, in point of law, demonstrative of the purpose, and constitutes the crime of high treason ; that the imagination of personal harm to the King forms no part of it ; and that it is not material whether the person charged had in contemplation the consequences that might follow from what he did, it being sufficient, independently of all intention, if the death of the King was a *probable consequence* of what he was about to do."

Gentlemen, one hardly knows where one is after reading so strange and confounding a proposition. The argument, in short, is neither more nor less than this :—That if I do an act, though with the most innocent mind, and without contemplating that any danger can possibly touch the King ; nay more, if from a mistaken zeal I do an act from which the jury are convinced that I honestly conceived his person would be safer and his reign more secure and illustrious ; yet, *if not in the event*, but only in the *opinion of lawyers*, my conduct led to the direct contrary consequence, I am to be adjudged in law a compasser of the King's death—I am to be found, in point of law, *to have intended what I never thought of*, and a jury, whose province is to declare the fact, is to be bound in conscience to find me guilty of designing the King's death, though their consciences inform them, from the whole evidence, that I sought nothing but the health of his person and the honour of his crown. Gentlemen, this is such a monstrous, horrible proposition, that I would rather, at the end of all these causes, when I had finished my duty to their unfortunate objects, die upon my knees, thanking God that, for the protection of innocence, and the safety of my country, I had been made the instrument of denying and reprobating it, than live to the age of Methusalem for letting it pass unexposed and unrebuked.

It may be curious to examine to what conclusions this doctrine of a lawyer's speculation upon probable consequences, shutting out the examination of actual intention, might lead. It is part of the evidence before you against the honourable gentleman at your bar, that a proposition was made to and adopted by the Constitutional Society to send a delegate to the convention at Edinburgh ; and you have been desired, from this measure, and others of a similar bearing, to find an intention to destroy the King, from the probable consequence of such proceedings. Let us try the validity of this logic. The Society of the Friends of the People (some of whose proceedings are in evidence) had a similar proposition made to them to send a delegate to this same convention, and the measure was only rejected after a considerable degree of debate. Suppose, then, on the contrary, they had agreed to send one, and that I, who am now speaking to you, had been of the number who consented, I should then have been in a worse predicament than my client, who appears to have opposed it. I

should have been found to have consented to an act, which, according to some legal casuists, had a tendency to destroy the King; and although my life was laboriously devoted to the duties of my profession, which cut me off from attending to the particular conduct of reformers, though approving of their general and avowed object, Mr Yorke's speech at Sheffield, and all the matter besides which has consumed our time and patience for three days past, would have been read to establish my conspiracy with people whom I never saw or heard of in the course of my existence. It is, besides, equally high treason to compass and imagine the death of the heir-apparent as the death of the King; and if the nature of the conspiracy was to reach the King's life, by subverting the Government, its subversion would lead us directly, in its consequence, to the destruction of his successor, and consequently would, upon the acknowledged principles of law, be a compassing of the death of the Prince of Wales. See then to what monstrous conclusions it would lead, if an act could be considered as legally conclusive of an intention, instead of examining it with the eye of reason, and as a fact, from the circumstances attending it. It so happened that at this very time, and though a member of this society of reformers, I was Attorney-General to the Prince, sworn of his Privy Council, high in his personal confidence, and full of that affection for him which I yet retain. Would it have been said, gentlemen (I am not seeking credit with you for my integrity), but would it have been said without ridicule, that a man, placed as I was in a high situation about the heir-apparent of the Crown, who had at once the will and the privilege to reward my services that I, who was serving him at the very moment in terms of confidence and regard, was to be taken conclusively, *as a judgment of abstract law*, to be plotting his political destruction, and his natural death?

This doctrine, so absurd and irrational, does not appear to me to be supported by anything like legal authority.

In the first place, let it be recollected that this is an indictment on a statute, and not upon the common law, which has the precedents made by judges for its foundation. The rule of action here depends upon a WRITTEN, UNALTERABLE record, enacted by the legislature of the kingdom for the protection of the subject's life, and which the judges upon the bench have no right to transgress or alter a letter of, because other judges may have done so before them. As far as the law stands upon tradition, it is made by the precedents of judges, and there is no other evidence of its existence; but a STATUTE is ever present to speak for itself, in all courts, and in all ages. And I say with certainty—speaking in my own name and person, and desiring to stand or fall as a professional man by what I utter—that the law is as I maintained it upon the trial of Thomas Hardy, and as I maintain it

now. I admit that a statute, like the common law, must receive a judicial interpretation; and that, wherever the letter of an Act of Parliament is ambiguous, the constructions which have been first put upon it, if rational, ought to continue to be the rule. But where a statute is expressed in such plain, unambiguous terms, that but one grammatical or rational construction can be put upon it; when the first departure from that only construction does not appear to have taken its rise from any supposed ambiguity of its expression in the minds of those who first departed from it—which is the general history of constructive departures from written laws—but comes down tainted with the most degraded profligacy of judges notoriously devoted to arbitrary and corrupt governments; when the very writers and judges whose writings and decisions first supported such original misconstructions, honestly admit them to be misconstructions, and lament and reprobate their introduction; when the same lamentation and reprobation of them is handed down from commentator to commentator, and from court to court, through the whole series of constructive judgments; and lastly, when Parliament itself, in different ages, as the evil became intolerable, has swept them all away; when, to avoid the introduction of new difficulties, it has cautiously left the old letter of the statute standing to speak for itself, without any other commentary than the destruction of every one that ever had been made upon it, and the reversal of every judgment which ever had departed from its letter, concluding with the positive prohibition, in all future time, of the one and of the other;—in such a case, I do maintain, and, as an English lawyer, feel myself bound for the public safety to declare, in opposition to whatever authorities may be found to the contrary, that if the statute of Edward the Third can be departed from by construction, or can be judged otherwise THAN IF IT HAD PASSED YESTERDAY, there is, properly speaking, no such thing as written law in England.

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

The words of the statute of the 25th of Edward the Third are these:—

“Whereas divers opinions have been before this time, in what case treason shall be said, and what not—the King, at the request of the Lords and Commons, has made a declaration as hereinafter followeth:—

“When a man doth compass or imagine the death of our Lord the King, or of our Lady his Queen, or of their eldest son and heir; or if a man do levy war against the King in his realm, or be adherent to the King’s enemies in his realm, giving them aid

and comfort, and thereof be provably attainted of open deed by people of their condition."

The reason of passing it, as expressed by the act itself, and by Lord Hale and Lord Coke in their Commentaries, demonstrates the illegality of any departure from its *letter*; because it was passed to give *certainty* to a crime which, by *judicial constructions*, had before become *uncertain*. Lord Hale says, "That at common law there was a great latitude used in raising offences to the crime and punishment of treason, by way of interpretation and arbitrary construction, which brought in great uncertainty and confusion. Thus, accroaching of royal power was a usual charge of treason anciently, though a very uncertain charge; so that no man could tell what it was, or what defence to make to it." He then proceeds to state various instances of cruelty and vexation, and concludes with this observation:—

"By these, and the like instances that might be given, it appears how arbitrary and uncertain the law of treason was BEFORE THE STATUTE of the 25th of Edward the Third, whereby it came to pass that almost every offence that was, or seemed to be, a breach of faith or allegiance, was, by *construction*, and *consequence*, and *interpretation*, raised into the offence of high treason."

To put an end to these evils, therefore, and to give to the harassed subjects of England security and peace, this sacred law was made; but for a season with very little effect, because wicked judges still broke in upon its protecting letter by arbitrary constructions, insomuch that Lord Hale observes, that although the statute of Edward the Third had expressly directed that nothing should be declared to be treason but cases within its enacting letter—"yet that things were so carried by parties and factions in the succeeding reign of Richard the Second that it was little observed; but as this or that party got the better, so the crime of high treason was in a manner arbitrarily imposed and adjudged, which by various vicissitudes and revolutions mischiefed all parties, first or last, and left a great inquietude and unsettledness in the minds of the people, and was one of the occasions of the unhappiness of that King."

All these mischiefs, he further observes, arose from breaking the great boundary of treason by a departure from the *LETTER* of the statute, which was so great a snare to the subject that after many temporary Acts of Parliament passed and repealed, and many vexations and illegal judgments clashing with, and contradicting one another, the statute of Queen Mary was at last enacted, which swept them all away: and, as Lord Coke observes in his Commentary upon it, in the Second Institute, not only set up again the very letter of the statute of the 25th of Edward the Third, but repealed all judicial interpretations past, and prohibited all recurrence to them in future.

I will give it you in his own words:—"In this statute of Mary

two things are to be observed: First, That the word expressed in the statute of Mary excludes all implications or inferences whatsoever; Secondly, That no former attainder, *judgment, precedes resolution, or opinion of judges or justices, of high treason, other than such as are specified and expressed in the statute of Edward the Third, are to be followed or drawn into example.* For THE WORDS BE PLAIN AND DIRECT—'That from henceforth no act, deed or offence, shall be taken, had, deemed, or adjudged to be high treason, but only such as are declared and expressed in the said Act of the 25th of Edward the Third, any Act of Parliament or statute after the 25th of Edward the Third, or any other declaration or matter to the contrary notwithstanding.'

I do, therefore, maintain that the statute of King Edward the Third, plain in itself, and rendered still more so by the Parliamentary exposition of the Act of Queen Mary, is a PEREMPTORY BILL and that no appeal can be had upon the subject to any writer's decisions, whatever may be the reputation of the one of the authority of the other.

I find nothing, however, in any writer of character, or in any decision, which deserves the name of authority, to which such an appeal could successfully be made. Lord Hale nowhere says that a conspiracy to subvert the *Government*, or any rebellion pointed merely at the King's *royal authority*, is high treason within the branch of the statute. He uniformly considers the crime as a design against the King's NATURAL LIFE; and treats nothing even as an overt act of it that is not so pointed against the King's PERSON as to be legal evidence of a conspiracy against his EXISTENCE. "If men," says Hale, "conspire the DEATH of the King, and thereupon provide weapons, or send letters in the execution of it, this is an overt act within this statute." Undoubtedly it is—but mark the principle, and attend to Lord Hale's language, which is plainly this—If men conspire the DEATH of the King, and do these things in the execution of the conspiracy, the things so done are *legal evidence* of the treason; but the treason, which is the intention of the men against the King's life, must first exist before any step could be taken in pursuance of it.

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

"If men conspire to imprison the King BY FORCE AND A STRONG HAND until he has yielded to certain demands, and for that purpose gather company, or write letters, that is an overt act to prove the compassing the King's death; for it is in effect to depose him of his kingly government, and was so adjudged by all the judges in Lord Cobham's case."

Here you observe that the conspiracy, even to imprison the King, is not stated as a substantive act of treason, independently of a

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

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

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

Gentlemen, I am sure I have done justice to the Crown in my statement of its proposition; and I will be equally just in my answer to it. For I admit that if the Attorney-General satisfies you *upon the fact* that this proposition is true, he gives you evidence from whence it ought to be left for your very serious judgment whether those who were engaged in a conspiracy to usurp the King's authority might not be reasonably supposed to have also

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

— But that this is the law of England, and the law immediately applicable to the present question, fortunately does not depend upon any argument of mine, nor upon any appeals I have made to the authoritative writings of the sages of the profession. I have a much better security for my purpose—the security that what his Lordship, who is to assist you in your deliberations, has said upon one occasion, he will say upon another. I have the express and direct authority of Lord Chief-Justice Eyre, in that part of his charge to the grand jury, where he laid before them the very matter we are now engaged in for their consideration. “If,” says his Lordship, “there be ground to consider the professed purpose of any of these associations, a reform in Parliament, as mere colour, and as a pretext held out in order to cover deeper designs, designs against the whole constitution and government of the country, the case of those embarked in such designs is that which I have already considered. Whether this be so or not, is MERE MATTER OF FACT; as to which I shall only remind you, that an inquiry into a charge of this nature, which undertakes to make out that the ostensible purpose is a mere veil, under which is concealed a traitorous conspiracy, requires cool and deliberate examination, and the most attentive consideration; and that the result should be perfectly clear and satisfactory. In the affairs of common life, no man is justified in imputing to another a meaning contrary to what he himself expresses, but upon the fullest evidence.” This the learned Judge lays down with the greatest propriety as a general rule of evidence, applicable to all cases, and therefore most emphatically applicable to high treason, where the prisoner is not to be criminated by conjectures, and inferences, or strains of wit, but provably attainted, according to the language of the statute. It must be remembered, too, that this sound and salutary doctrine was not delivered by the Court as an abstract proposition, but the application of it was directly pointed to the occasion, and given to the grand jury as a standard to direct their judgments in the very matter before us. The cause therefor

is brought beyond the power of evasion or controversy, to one short point, disentangled from all ambiguity or legal distinction; since, upon the express authority of the Court which sits to try the prisoner, independently of all other authorities, it is a mere naked question of *fact* which you are to examine: there is nothing which can affect him *legally*, or which, it is even contended, can affect him, unless you are prepared to say, upon your oaths, in the presence of God and your country, that you have materials in evidence before you, from whence you feel yourselves bound in conscience to pronounce that the parties who engaged in the proposition of holding a convention did not engage in it according to their professions to collect the public opinion upon the subject of national abuses, and for the consideration of constitutional redress, but for the direct, though concealed purpose, of resisting, BY FORCE, the authority of Parliament. I repeat the expression—of resisting, BY FORCE, the authority of Parliament, and assuming to themselves the control and dominion of the nation. THIS IS THE FACT TO BE MADE OUT, AND THE BURDEN OF THE PROOF IS UPON THE CROWN. I do not stand here to disprove, but to examine what has been proved; and I confess myself, therefore, to be utterly at a loss how to pursue my discourse—for you have heard nothing upon which you would pull a feather out of a sparrow's wing. There is not only no evidence upon which reasonable men might deliberate between a verdict of Guilty or Not Guilty, but literally, NO EVIDENCE AT ALL; nothing that I could address myself to, but through the medium of ridicule, which, much as it would apply to the occasion in other respects, it would be indecent to indulge in upon a great state trial, so deeply concerning the dignity of the country, and so seriously affecting the unfortunate persons whom I shall be called upon to defend hereafter.

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

The Attorney-General contends that he has made out PROVABLY—*i. e.*, without the possibility of a reasonable doubt—that this convention was projected for the detestable purpose charged by the indictment: and that their avowed objects were nothing but a surface of colour and deceit. He says, that two societies were set on foot in this town for these traitorous objects; that one of them (the Constitutional Society) was instituted by Mr Tooke, and that he organised and superintended the others; that he prepared their resolutions, that he superintended their correspondence with similar societies, which were established at Sheffield, Manchester, Birmingham, Edinburgh, Perth, and most of the populous towns in both parts of Great Britain; and that the whole body of their communications with one another manifested their design against the very being of the Government. This is the proposition: but has he proved it, or any part of it? I answer, He has not. In the first

place, did Mr Tooke set on foot the Constitutional Society? I answer again, He did not. It was instituted by a most worthy and honourable person, who will be called before you as a witness, if you shall not think your time misspent in hearing evidence where nothing has been proved: it was instituted by Major Cartwright, a man as much attached to the constitution of his country, and as enlightened to understand it, as any one who hears me, whatever may be his station. This assertion is not made from the instructions of a brief; I speak from my own knowledge of the man. Major Cartwright, who began that institution, continued to be a member of it during the progress of its proceedings arraigned before you: he is a member of it now; and he will tell you that he shall continue to be one, notwithstanding this prosecution, until its objects are accomplished.

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

As the avowed objects of the society were thus originated and countenanced by persons of the highest station, let us see whether it was instituted for the perversion of these principles by obscure and necessitous men. Gentlemen, the contrary is most notorious; and it may be established by referring to the names of the original members. The Duke of Richmond was one of the earliest; and he pushed the principle and the practice of reformation very much farther than Mr Tooke has ever been disposed to follow him—a fact which I promise to establish by the uniform tenor of his life. Mr Tooke considered the disposition of the popular franchise of election as matter of expediency in Government, and to be moulded by Parliament in its discretion for the attainment of constitutional

Freedom; the Duke, on the other hand, considered universal suffrage to be an inherent privilege of the people, to be CLAIMED by men AS OF RIGHT, and not yielded to them as an indulgence. It is not to be wondered at, therefore, that his Grace's doctrines should acquire the ascendancy; since independently of his illustrious patronage, they were more flattering, and better calculated for a rapid progress. I agree with the Duke of Richmond that there exists in the people of England, as in every people, an inherent right to be governed according to the universal assent of the community; but I think that the people would judge weakly for themselves by desiring their representatives to carry forward to the Crown, for its ratification, the system of UNIVERSAL suffrage. Yet, while I say this, as Mr Tooke's sentiments, and as my own, I confess, at the same time, that the arguments by which the Duke of Richmond supported his system, and which has been uniformly followed by all the other prisoners, were not calculated to impose upon the ignorant, but are well worthy of attention and consideration from the wise. The Duke's argument was of this sort (I do not profess to adopt the very phrase): "When it is conceded," says his Grace, "that *some* reform of Parliament is indispensably necessary for the safety of the country, *who* is to insure a reform that will give general satisfaction, and produce obedience and stability? If you go to a given extent, founded upon principles of expediency, others, upon the same principles, will seek to push it to an extent still further, and others to an extent beyond that; so that reformation, however pure the design of its author, instead of giving firmness and vigour to Government, would only be the parent of discontent." This was the difficulty which occurred to the Duke; and out of it he saw no road, as he himself expresses it, but a reform upon principle, which grants nothing from expediency or favour, "BUT WHICH GIVES TO EVERY MAN HIS OWN." These were his Grace's doctrines, as I shall read them presently from the work which he acknowledged in the course of his former evidence, and which appears, throughout the whole cause, to have been THE VERY SCRIPTURE OF ALL THESE SOCIETIES. These, I doubt not, are his Grace's opinions still; for though a man may change his sentiments in matters which depend upon policy and expediency—though he may think it prudent to grant at one time that which further reflection may suggest to be unwise to be granted, yet no honest man can change his mind as to the propriety of giving to every man what he believes and acknowledges to be his own. But the Duke of Richmond's opinions are not the question: it is sufficient for me, that when these opinions were published, and for a long time insisted on by this intelligent and illustrious person, no man living thought of imputing, or can now reasonably impute, to him a design to overturn the constitution, or to enervate its functions. Yet you are now called upon to devote to infamy and death the gentleman whom I am defending, not

death; that the act is, in point of law, demonstrative of the purpose, and constitutes the crime of high treason; that the imagination of personal harm to the King forms no part of it, and that it is not material whether the person charged had in contemplation the consequences that might follow from what he did, it being sufficient, independently of all intention, if the death of the King was a *probable consequence* of what he was about to do.

Gentlemen, one hardly knows where one is after reading so strange and confounding a proposition. The argument, in short, is neither more nor less than this:—That if I do an act, though with the most innocent mind, and without contemplating that any danger can possibly touch the King; nay more, if from a mistaken zeal I do an act from which the jury are convinced that I honestly conceived his person would be safer and his reign more secure and illustrious; yet, *if not in the event*, but only in the *opinion of lawyers*, my conduct led to the direct contrary consequence, I am to be adjudged in law a compasser of the King's death—I am to be found, in point of law, to have *intended what I never thought of*, and a jury, whose province is to declare the *FACT* is to be bound in conscience to find me guilty of designing the King's death, though their consciences inform them, from the whole evidence, that I sought nothing but the health of his person and the honour of his crown. Gentlemen, this is such a monstrous, horrible proposition, that I would rather, at the end of all these causes, when I had finished my duty to their unfortunate objects, die upon my knees, thanking God that, for the protection of innocence, and the safety of my country, I had been made the instrument of denying and reprobating it, than live to the age of Methusalem for letting it pass unexposed and unrebuked.

It may be curious to examine to what conclusions this doctrine of a lawyer's speculation upon probable consequences, shutting out the examination of actual intention, might lead. It is part of the evidence before you against the honourable gentleman at your bar, that a proposition was made to and adopted by the Constitutional Society to send a delegate to the convention at Edinburgh: and you have been desired, from this measure, and others of a similar bearing, to find an intention to destroy the King, and the probable consequence of such proceedings. Let us try the validity of this logic. The Society of the Friends of the Hope (some of whose proceedings are in evidence) had a similar proposition made to them to send a delegate to this same convention, and the measure was only rejected after a considerable degree of debate. Suppose, then, on the contrary, they had agreed to send one, and that I, who am now speaking to you, had been of the number who consented, I should then have been in a worse predicament than my client, who appears to have opposed it. I

ould have been found to have consented to an act, which, according to some legal casuists, had a tendency to destroy the King : and although my life was laboriously devoted to the duties of my profession, which cut me off from attending to the particular conduct of reformers, though approving of their general and avowed object, Mr Yorke's speech at Sheffield, and all the matter besides which has consumed our time and patience for three days past, would have been read to establish my conspiracy with some people whom I never saw or heard of in the course of my existence. It is, besides, equally high treason to compass and imagine the death of the heir-apparent as the death of the King ; and the nature of the conspiracy was to reach the King's life, or subverting the Government, its subversion would lead as directly, in its consequence, to the destruction of his successor, and consequently would, upon the acknowledged principles of law, be a compassing of the death of the Prince of Wales. See then to what monstrous conclusions it would lead, if an act could be considered as legally conclusive of an intention, instead of examining it with the eye of reason, and as a fact, from the circumstances attending it. It so happened that at this very time, and though a member of this society of reformers, I was Attorney-General to the Prince, sworn of his Privy Council, high in his personal confidence, and full of that affection for him which I still retain. Would it have been said, gentlemen (I am not asking credit with you for my integrity), but would it have been said without ridicule, that a man, placed as I was in a high station about the heir-apparent of the Crown, who had at once the will and the privilege to reward my services that I, who was serving him at the very moment in terms of confidence and regard, was to be taken conclusively, as a judgment of abstract law, for plotting his political destruction, and his natural death ? This doctrine, so absurd and irrational, does not appear to me to be supported by anything like legal authority.

In the first place, let it be recollected that this is an indictment by a statute, and not upon the common law, which has the precedents made by judges for its foundation. The rule of action depends upon a WRITTEN, UNALTERABLE record, enacted by the legislature of the kingdom for the protection of the subject's life, and which the judges upon the bench have no right to transgress or alter a letter of, because other judges may have done so before them. As far as the law stands upon tradition, it is made by the precedents of judges, and there is no other evidence of its existence ; but a STATUTE is ever present to speak for itself, in all courts, and in all ages. And I say with certainty—speaking in my own name and person, and desiring to stand or fall as a professional man by what I utter—that the law is as I maintain it upon the trial of Thomas Hardy, and as I maintain it

now. I admit that a statute, like the common law, must receive a judicial interpretation; and that, wherever the letter of an Act of Parliament is ambiguous, the constructions which have been first put upon it, if rational, ought to continue to be the rule. But where a statute is expressed in such plain, unambiguous terms, that but one grammatical or rational construction can be put upon it; when the first departure from that only construction does not appear to have taken its rise from any supposed ambiguity of its expression in the minds of those who first departed from it—which is the general history of constructive departures from written laws—but comes down tainted with the most degraded profligacy of judges notoriously devoted to arbitrary and corrupt governments; when the very writers and judges whose writings and decisions first supported such original misconstructions, honestly admit them to be misconstructions, and lament and reprobate their introduction; when the same lamentation and reprobation of them is handed down from commentator to commentator, and from court to court, through the whole series of constructive judgments; and lastly, when Parliament itself, in different ages, as the evil became intolerable, has swept them all away; when, to avoid the introduction of new difficulties, it has cautiously left the old letter of the statute standing to speak for itself, without any other commentary than the destruction of every one that ever had been made upon it, and the reversal of every judgment which ever had departed from its letter, concluding with the positive prohibition, in all future time, of the one and of the other;—in such a case, I do maintain, and, as an English lawyer, feel myself bound for the public safety to declare, in opposition to whatever authorities may be found to the contrary, that if the statute of Edward the Third can be departed from by construction, or can be judged otherwise THAN IF IT HAD PASSED YESTERDAY, there is, properly speaking, no such thing as written law in England.

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

The words of the statute of the 25th of Edward the Third are these:—

“Whereas divers opinions have been before this time, in what case treason shall be said, and what not—the King, at the request of the Lords and Commons, has made a declaration as hereinafter followeth:—

“When a man doth compass or imagine the death of our Lord the King, or of our Lady his Queen, or of their eldest son and heir; or if a man do levy war against the King in his realm, or be adherent to the King’s enemies in his realm, giving them aid

and comfort, and thereof be provably attainted of open deed by people of their condition."

The reason of passing it, as expressed by the act itself, and by Lord Hale and Lord Coke in their Commentaries, demonstrates the illegality of any departure from its *letter*; because it was passed to give *certainly* to a crime which, by *judicial constructions*, had before become *uncertain*. Lord Hale says, "That at common law there was a great latitude used in raising offences to the crime and punishment of treason, by way of interpretation and arbitrary construction, which brought in great uncertainty and confusion. Thus, encroaching of royal power was a usual charge of treason anciently, though a very uncertain charge; so that no man could tell what it was, or what defence to make to it." He then proceeds to state various instances of cruelty and oppression, and concludes with this observation:—

"By these, and the like instances that might be given, it appears how arbitrary and uncertain the law of treason was BEFORE THE STATUTE of the 25th of Edward the Third, whereby it came to pass that almost every offence that was, or seemed to be, a breach of faith or allegiance, was, by *construction*, and *consequence*, and *interpretation*, raised into the offence of high treason."

To put an end to these evils, therefore, and to give to the harassed subjects of England security and peace, this sacred law was made; but for a season with very little effect, because wicked judges still broke in upon its protecting letter by arbitrary constructions, insomuch that Lord Hale observes, that although the statute of Edward the Third had expressly directed that nothing could be declared to be treason but cases within its enacting letter; yet that things were so carried by parties and factions in the succeeding reign of Richard the Second that it was little observed; it as this or that party got the better, so the crime of high treason was in a manner arbitrarily imposed and adjudged, which by various dissitudes and revolutions mischiefed all parties, first or last, and it a great inquietude and unsettledness in the minds of the people, and was one of the occasions of the unhappiness of that King."

All these mischiefs, he further observes, arose from breaking the antient boundary of treason by a departure from the *LETTER* of the statute, which was so great a snare to the subject that after many temporary Acts of Parliament passed and repealed, and many vexatious and illegal judgments clashing with, and contradicting one another, the statute of Queen Mary was at last enacted, which swept them all away; and, as Lord Coke observes in his Commentary upon it, in the Second Institute, not only set up again the very letter of the statute of the 25th of Edward the Third, but repealed all judicial interpretations past, and prohibited all recurrence to them in future.

I will give it you in his own words:—"In this statute of Mary

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

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

Gentlemen, the charge, therefore, which the Crown seeks to bring home to us—not only as it is to be collected from the indictment, but as it is explicitly pointed by the argument—is this: That a design was formed to call a convention of the nation, and that the prisoner at the bar was engaged in it; that he consulted with others for the appointment of committees of co-operation and conference, consisting of the persons now in prison, who were deputed by the two great London societies at the head of the conspiracy: and that the convention which was to be assembled as the result of this confederacy was to destroy by force the legal government of the country, and to form itself into a legislature for the nation: thereby superseding not only the functions of the three branches of Parliament, but the executive authority of the Crown—*at this, and this alone, was the secret object of all these societies, though covered with popular pretexts of restoring the constitution, till their machinations should be sufficiently ripe to throw off the veil, to avow their principles, and to establish them by force: it this, therefore, amounted to a conspiracy to depose the King, which was an overt act of high treason for compassing his death.* Gentlemen, I am sure I have done justice to the Crown in my treatment of its proposition; and I will be equally just in my answer to it. For I admit that if the Attorney-General satisfies you upon the fact that this proposition is true, he gives you evidence from whence it ought to be left for your very serious judgment whether those who were engaged in a conspiracy to usurp the King's authority might not be reasonably supposed to have also

contemplated his destruction, which was so likely to follow from the annihilation of his office. I desire it may be remembered that I have never denied, either now or upon the former trial that the destruction of the King's natural life was not a probable consequence of a forcible coercion of his person for the extinction of his authority; nor that an act done with deliberation, leading to a mainly probable consequence, is not good EVIDENCE *of the intention to produce that consequence.* My whole argument has only been and still is, *that the intention against the King's life is the crime, and its existence is matter of fact, and not matter of law; and that it must, therefore, be collected by you, the jury, instead of being made the abstract result of a legal proposition, from any fact which does not directly embrace and comprehend the intention which constitutes the treason.*

But that this is the law of England, and the law immediately applicable to the present question, fortunately does not depend upon any argument of mine, nor upon any appeals I have made to the authoritative writings of the sages of the profession. I have a much better security for my purpose—the security that what his Lordship, who is to assist you in your deliberations, has said upon one occasion, he will say upon another. I have the express and direct authority of Lord Chief-Justice Eyre, in that part of his charge to the grand jury, where he laid before them the very matter we are now engaged in for their consideration. “If,” says his Lordship, “there be ground to consider the professed purpose of any of these associations, a reform in Parliament, as mere colour, and as a pretext held out in order to cover deeper designs, designs against the whole constitution and government of the country, the case of those embarked in such designs is that which I have already considered. Whether this be so or not, is MERE MATTER OF FACT; as to which I shall only remind you, that an inquiry into a charge of this nature, which undertakes to make out that the ostensible purpose is a mere veil, under which is concealed a traitorous conspiracy, requires cool and deliberate examination, and the most attentive consideration, and that the result should be *perfectly clear and satisfactory.* In the affairs of common life, no man is justified in imputing to another a meaning contrary to what he himself expresses, but upon the fullest evidence.” This the learned Judge lays down with the greatest propriety as a general rule of evidence, applicable to all cases, and therefore most emphatically applicable to high treason, where the prisoner is not to be criminated by conjectures, and inferences, or strains of wit, but provably attainted, according to the language of the statute. It must be remembered, too, that this sound and salutary doctrine was not delivered by the Court as an *abstract proposition*, but the application of it was *directly pointed to the occasion*, and given to the grand jury as a standard to direct their judgments *in the very matter before us.* The cause therefore

is brought beyond the power of evasion or controversy, to one short point, disentangled from all ambiguity or legal distinction; since, upon the express authority of the Court which sits to try the prisoner, independently of all other authorities, it is a mere naked question of *fact* which you are to examine: there is nothing which can affect him *legally*, or which, it is even contended, can affect him, unless *you* are prepared to say, upon your oaths, in the presence of God and your country, that you have materials in evidence before you, from whence you feel yourselves bound in conscience to pronounce that the parties who engaged in the proposition of holding a convention did not engage in it according to their professions to collect the public opinion upon the subject of national abuses, and for the consideration of constitutional redress, but for the direct, though concealed purpose, of resisting, BY FORCE, the authority of Parliament. (repeat the expression—of resisting, BY FORCE, the authority of Parliament, and assuming to themselves the control and dominion of the nation. THIS IS THE FACT TO BE MADE OUT, AND THE BURDEN OF THE PROOF IS UPON THE CROWN. I do not stand here to disprove, not to examine what has been proved; and I confess myself, therefore, to be utterly at a loss how to pursue my discourse for you have heard nothing upon which you would pull a feather out of a parrow's wing. There is not only no evidence upon which reasonable men might deliberate between a verdict of Guilty or Not Guilty, not literally, NO EVIDENCE AT ALL; nothing that I could address myself to, but through the medium of ridicule, which, much as it could apply to the occasion in other respects, it would be indecent to indulge in upon a great state trial, so deeply concerning the dignity of the country, and so seriously affecting the unfortunate persons whom I shall be called upon to defend hereafter.

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

The Attorney-General contends that he has made out PROVABLY - - - , without the possibility of a reasonable doubt—that this convention was projected for the detestable purpose charged by the indictment; and that their avowed objects were nothing but a surface of guile and deceit. He says, that two societies were set on foot in this town for these traitorous objects; that one of them (the Constitutional Society) was instituted by Mr Tooke, and that he presided and superintended the others; that he prepared their resolutions, that he superintended their correspondence with similar societies, which were established at Sheffield, Manchester, Birmingham, Edinburgh, Perth, and most of the populous towns in both Kingdoms of Great Britain; and that the whole body of their communications with one another manifested their design against the very essence of the Government. This is the proposition: but has he proved it, or any part of it? I answer, He has not. In the first

from all the Courts as well as the Universities, and a considerable number of the nobility, who will be called upon very soon to ratify the new Constitution. The new Constitution is a subject of the highest importance, and it is necessary that the public mind should be fully informed of the principles on which it is founded. The new Constitution is a subject of the highest importance, and it is necessary that the public mind should be fully informed of the principles on which it is founded. The new Constitution is a subject of the highest importance, and it is necessary that the public mind should be fully informed of the principles on which it is founded.

The Constitutional Society was instituted by the professor of the subject which it has uniformly pursued and pursued, and which I pursued in common with some of the greatest talents and which has been the basis of its success. It was instituted to promote, if possible, by the progress of education, and to secure a reform in the Government of Parliament, and to secure a reform in the Government of Parliament, and to secure a reform in the Government of Parliament. The new Constitution is a subject of the highest importance, and it is necessary that the public mind should be fully informed of the principles on which it is founded. The new Constitution is a subject of the highest importance, and it is necessary that the public mind should be fully informed of the principles on which it is founded. The new Constitution is a subject of the highest importance, and it is necessary that the public mind should be fully informed of the principles on which it is founded.

As the avowed objects of the society were thus originated and countenanced by persons of the highest station let us see whether it was instituted for the perversion of these principles by obscure and mercenary men. Gentlemen, the contrary is most notorious, and it may be established by referring to the names of the original members. The Duke of Richmond was one of the earliest, and he pushed the principle and the practice of reformation very much farther than Mr Tooke has ever been disposed to follow him—a fact which I promise to establish by the uniform tenor of his life. Mr Tooke considered the disposition of the popular franchise of election as a matter of expediency in Government, and to be moulded by Parliament in its discretion for the attainment of constitutional

freedom; the Duke, on the other hand, considered universal suffrage to be an inherent privilege of the people, to be CLAIMED by men AS OF RIGHT, and not yielded to them as an indulgence. It is not to be wondered at, therefore, that his Grace's doctrines should acquire the ascendancy; since independently of his illustrious patronage, they were more flattering, and better calculated for a rapid progress. I agree with the Duke of Richmond that there exists in the people of England, as in every people, an inherent right to be governed according to the universal assent of the community; but I think that the people would judge weakly for themselves by desiring their representatives to carry forward to the Crown, for its ratification, the system of UNIVERSAL suffrage. Yet, while I say this, as Mr Tooke's sentiments, and as my own, I confess, at the same time, that the arguments by which the Duke of Richmond supported his system, and which has been uniformly followed by all the other prisoners, were not calculated to impose upon the ignorant, but are well worthy of attention and consideration from the wise. The Duke's argument was of this sort (I do not profess to adopt the very phrase): "When it is conceded," says his Grace, "that *some* reform of Parliament is indispensably necessary for the safety of the country, *who* is to insure a reform that will give general satisfaction, and produce obedience and stability? If you go to a given extent, founded upon principles of expediency, others, upon the same principles, will seek to push it to an extent still further, and others to an extent beyond that; so that reformation, however pure the design of its author, instead of giving firmness and vigour to Government, would only be the parent of discontent." This was the difficulty which occurred to the Duke; and out of it he saw no end, as he himself expresses it, but a reform upon principle, which grants nothing from expediency or favour, "BUT WHICH GIVES TO EVERY MAN HIS OWN." These were his Grace's doctrines, as I shall read them presently from the work which he acknowledged in the course of his former evidence, and which appears, throughout the whole cause, to have been THE VERY SCRIPTURE OF ALL THESE SOCIETIES. These, I doubt not, are his Grace's opinions still; for though a man may change his sentiments in matters which depend upon policy and expediency—though he may think it prudent to rant at one time that which further reflection may suggest to be unwise to be granted, yet no honest man can change his mind as to the propriety of giving to every man what he believes and acknowledges to be his own. But the Duke of Richmond's opinions are not the question: it is sufficient for me, that when these opinions are published, and for a long time insisted on by this intelligent and illustrious person, no man living thought of imputing, or can now reasonably impute, to him a design to overturn the constitution, to enervate its functions. Yet you are now called upon to devote infamy and death the gentleman whom I am defending, not

indeed for treading in the Duke of Richmond's steps—not indeed for adopting the plan of universal suffrage, or for following it up by the same means which the Duke has recommended,—but for shrinking to a plan far more restrained and moderate, and declining even to effect that system of moderation by the procedure which the Duke both inculcated AND PRACTISED.

But it seems all these doctrines and proceedings are but *colour and deceit*, manifested by the discipline and regularity of their siege against the character and authority of Government. The conspirators sat, it seems, by *delegated authority*, from multitudes too large for consultation. They did so, certainly; still pursuing the example, in form as well as in substance, of the highest men in the kingdom, among whom, by the bye, are to be found many of the members of that Government which has levied this prosecution. I will prove to you (for I have now in court some of the first and most honourable men in the kingdom to prove it), that in the year 1780 the very same plan of delegation from large bodies was adopted, and for the identical object of correcting, by the formidable engine of public discountenance and censure, the improvident expenditure of public money, wrung from the people by corrupt influence in the House of Commons. I will prove that, for the express and avowed purpose of reforming the Government of the kingdom, these honourable persons, who were never accused or suspected of treason, sat in convention in the Guildhall of the city of London; delegates for different districts were appointed, some of whom are now in my eye; and you will find in short that no one step, in form or in substance, has been taken by the unfortunate persons who are now the subjects of this prosecution, that were not taken, and in my opinion legally and constitutionally taken, by their superiors, whose examples they have followed. Let my expressions be properly understood. I stand upon a great theatre, and should be sorry to say anything which I can have occasion to recall. Let it be recollected that I am not defending *all the papers* which have been read. Some of them are rash and absurd in the extreme; many of them are indecent; many of them clash with one another, which is not surprising, since they were written by persons of various descriptions, who had no communication with one another. But that is not the question. The question is, *What were the objects of these societies, from the result of the whole evidence?* These papers are not prosecuted as libels, but are charged to have been written *with the intention* to promote a convention to supersede and assume the Government. But will any honest man say that he can collect from these writings, *taken in a mass*, and as indicative of the pursuits of their authors, any such intention or system? On the contrary, it is impossible to listen to them with common candour and attention, without observing that the needle is not truer to the pole, though, when it is disturbed

and agitated, it oscillates round the point of its attraction, than these poor people were to the promotion of reform IN THE COMMONS' HOUSE OF PARLIAMENT, by collecting the sense of the people on the subject; conscious that, though Parliament, as the Duke of Richmond expresses it, would not *spontaneously* yield what those who sway it have a corrupt interest in refusing, yet that it might be obtained by that which must, and will in the end, obtain everything from any Government, however constituted—the slow, gradual, and progressive effect of public opinion. This was their object; and I do maintain here, in my own person, that it is the privilege of Englishmen so to collect the opinion of the country, and that it is the duty of Parliament, nay, its very use and office in the state, to attend to and to give effect to the opinions so collected. An eminent person, whose writings I have often had occasion to cite, expresses this sentiment with admirable justness and force.—“The virtue, spirit, and essence of the House of Commons consists in its being the express image of the feelings of the nation. It was not instituted to be a control upon the people, as of late has been taught by a doctrine of the most pernicious tendency, but was designed as a control for the people. It was supposed originally to be *no part of the standing Government of this country*; but was considered as a control upon it, issuing *immediately* from the great body of the people, and speedily to be resolved into the mass from whence it arose.”

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

The House of Commons is perpetually talked of as if it were a self-existing body, independent of the people; whereas it is their mere agent, the organ by which they speak and act, and which betrays and abdicates its trust the moment that it assumes a language of its own, which the people do not auspicate and approve. Take away *such* a House of Commons from the British Government, remove the control which the people have in it upon the executive

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

Gentlemen, this is no vague assertion of mine. I am reading the precise state of it, as it was offered by a regular motion in Parliament, which I had myself the honour to second. We offered to establish, that one hundred and sixty-two persons did actually return three hundred and six out of five hundred and fifty-eight, which is a majority of the House. So that everything that is to bind and ascertain your rights or mine; every measure that is to promote the glory, or to bring on the destruction of the country; every act or system of government, which is either to give us the continued prosperity of peace, or to afflict us with wasting and calamitous wars; every event that may render this mighty nation flourishing and happy to the latest posterity, or bend it down to the ignominious yoke of foreign or domestic enemies; all these heartstrings of a people, instead of depending upon a House of Commons, proceeding from themselves, are to be pulled and torn asunder as the caprice or interest of one hundred and sixty-two individuals, who choose representatives for the whole kingdom, may suffer or direct. Yet we are told that it is the pride and glory of the English Government that by law we are equal, living under the same sanction, and enjoying similar privileges.

Gentlemen, all this was made manifest to the House of Commons by the honourable gentleman who made the motion I allude to, and who held a language which the meanest man in England can understand. His language was this—"I assert this to be the condition of England; if you say it is *not*, do justice to yourselves by calling upon us for the proof, and expose your calumniators to reproach; but if it *be* the condition of England, shall it *not* be redressed?" Gentlemen, the proof was not received, and the grievance continues. This is the clue to the whole evidence.

I do not mean, therefore, to say (and let it be understood that I have not said), that my clients would not be equally guilty, and

equally subject to capital punishment, if under the irritation of this or any other grievance, they had said, "Let us supersede this unrepresentative Parliament, and hold a convention to assume its functions." When I asserted that the people in this, and in every country, had a right to change their Government, I never meant—what must have been supposed by the Court, from the indulgent interruption I received—I never meant that each individual, choosing for himself, might rise in arms to overturn by force an established constitution. Far from it, gentlemen; I meant to say—what the people of England will be the last to misunderstand, as they were the first to practise—that all governments stand upon the public will, and ought to endure only for the public benefit; and that when this sacred maxim is forgotten, or trampled upon, a nation without the conspiracy of individuals which criminal law can act upon will, sooner or later, *do itself justice*. I meant further to say, that when I observe men referring to these great and original principles of society; when I see them recurring, in argument, to the deeds of freedom which their ancestors have achieved; when I see Englishmen particularly referring to the glorious era of the Revolution, when their fathers drove from the inheritance of the Crown a race of kings which had reigned over them almost time beyond memory, and sent for a private man (*to them at least*) to govern in their stead; when I contemplate this disposition I am so far from considering it to be an attack on the King's authority, that, in my mind, it is a fresh confirmation of, and exaltation in his title. His Majesty is the King of the people, upon the principle alone that the people can change their kings; and it is the most glorious title which any prince can enjoy. THESE ARE MY SENTIMENTS: I love the King, but I can have no other respect or affection for him than that which grows from the common relation of prince and subject; but speaking of *him* who by the course of nature is to succeed him, and feeling much more than a common interest in *his* prosperity and glory, I hold the same language, and have ever, publicly and privately, held it. If he is not to inherit and to fill the throne upon that best and most honourable title, his inheritance is not worth having, and is not long to be had. They who act upon any other principle betray the King, and endanger his establishment. Say to the people of England, "This is your constitution; it is not fastened upon you as a weight to crush you, but has descended to you from your wise forefathers for your protection and happiness; it is *their* institution, the work of their wisdom and their heroic valour, as they made it for themselves and their posterity, so *you* may change it for you and for yours. BUT WILL YOU WANTONLY DESTROY YOUR INHERITANCE?" Say this to them, and, to use the expression of a celebrated speaker, in the case of America, "They will cling and grapple to their constitution, and no force under heaven will tear them from

their allegiance to it." Let those then who govern the country, beware how they propagate the fashionable doctrines of corrupt power. Let them recollect that the English people are generous and enlightened, and know the value of their own institutions. Treat them with liberality, confidence, and justice, and nothing is to be feared. But if, on the other hand, a system of constraint and terror is to be pursued, and one part of the nation frightened or corrupted to defame the other, I tremble to think of—I dare not give utterance in this place to—the consequences.

This was foreseen by the Duke of Richmond, and was the avowed and wise reason for his earnestness in the cause of reform; and he so expresses it in his publication, which the whole proof has demonstrated to have been the cause and the model of all the proceedings before you. Why then are *their* motives assumed or argued, against the whole evidence, to be different? I will read the passage:—

"The lesser reform has been attempted with every possible advantage in its favour; not only from the zealous support of the advocates for a more effectual one, but from the assistance of men of great weight, both in and out of power. But with all these temperaments and helps it has failed. Not one proselyte has been gained from corruption; nor has the least ray of hope been held out from any quarter, that the House of Commons was inclined to adopt any other mode of reform. The weight of corruption has crushed this more gentle, as it would have defeated any more efficacious plan, in the same circumstances. From that quarter, therefore, I have nothing to hope." *From what quarter was there nothing to hope? From the House of Commons, which had been tried, in which not one proselyte had been gained from corruption. What then was his resource? I shall give it to you in his own words: "It is from the people at large that I expect any good; and I am convinced that the only way to make them feel that they are really concerned in the business, is to contend for their full, clear, and indisputable rights of universal representation."* Rights that are repugnant and contradictory cannot exist. If there be a right in the people to universal suffrage, it is the Government which conspires against the people, and not the people against Government. But my client offers no such argument—he *dijfers totally from the Duke of Richmond*; and therefore, when his Grace comes here to give evidence, he ought not, upon the only principle which can justify these proceedings, to be permitted to retire; since he has written and done ten times more than can be imputed to the unhappy, miserable men who are now languishing in prison for following much less than his example. His Grace, in the same paper, expresses himself further, in these remarkable words: "When the people are fairly and equally represented in Parliament, when they have annual opportunities of changing their

deputies, and, through them, of controlling every abuse of Government in a safe, easy, and legal way, there can be no longer any reason for recurring to those ever dangerous, *though sometimes necessary, expedients of an armed force, which nothing but a bad Government can justify.* Such a magnanimous end to your proceedings, when, after having restored liberty, commerce, and free government to your country, you shall voluntarily retire to the noble character of private citizens, peaceably enjoying the blessings you have procured, will crown your labours with everlasting glory, and is worthy the genuine patriotic spirit which animates the Irish volunteers." Let it not be forgotten, that this letter was addressed to Colonel Sharman, commanding a large armed force in Ireland, without commission from the Crown.

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

But it seems that their objects were different—for that it is plain they had abandoned the constitutional mode of petition, which was alone recommended in this letter. I maintain that this imputation is directly in the teeth of the whole body of the evidence. All the witnesses, both now and upon the former trial, and the witnesses too for the Crown, prove the very reverse: they all say that they looked to success through the slow operation of reason; that they knew the House of Commons would disregard, as it had often disregarded, the scattered petitions of *small numbers*; but that if they could collect the *universal sense of the people* upon the subject, the success of their object would be insured, and insured through the regular organs of Government. How else were the questions on the slave trade carried? Parliament had treated the measure, in its origin, with contempt; and I must say, that the arguments against its sudden or speedy abolition were so weighty, in my mind, that I could not give my assent to it; because I knew, from an acquaintance with the islands, that part of the evidence was erroneous and exaggerated, and because I thought the white population totally inadequate and insufficient to maintain the settlements established under the faith of the nation; but when at last the great voice of the people of England came to be collected together—when Parliament was surrounded, not with arms, but by petitions—I recollected that I was a representative of the people, and that my opinion ought to be controlled by the judgment of the nation. Many others, I believe, conducted themselves upon the same principle. The constituents of any given member have no

right to control his judgment, *but the voice of the people of England, upon any subject, ought to be a rule to the House of Commons.* These very petitions, upon the subject of the slave trade, were collected too in the very manner which now gives such mighty offence: they were managed by delegation and committees of conference and co-operation in every part of the kingdom.

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

Let every man, therefore, be responsible for his own acts, and not for the writings and opinions of others, and more especially of others whom he never saw or heard of. When men co-operate for some PUBLIC object, which in common they agree in, it can never happen that they shall agree in *everything* belonging to it; nor is a man's opinions ever to be taken, even by the result of the resolutions of those with whom he associates for an avowed object. I shall exhibit to you a proof of this in one of the most enlightened men that England ever bred, and to whom she owes unparalleled obligations. I mean to call Mr Fox, who will tell you that he was a delegate for Westminster, in the year 1780, when a convention was held to consider of the best means for obtaining a reform in Parliament. His opinions were always adverse to universal suffrage, yet, nevertheless, his name appears to the petition which asked it of the House of Commons, being signed to it as chairman of the body, governed by its majority, and bound to give effect to its proceedings. In the same manner vicious men may mix themselves among the honest, with the ulterior design of establishing evil upon the basis of what is good: it ever must be so in all the transactions of the world; and parts of the evidence may lead to a suspicion, that it might be so in the present instance; but for that

very reason a jury ought to be the more abundantly cautious of the effect of foreign and irrelevant matter; and should examine into each man's guilt or innocence, by his own individual conduct.

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

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

It is charged with the introduction of dangerous novelties—yet on the very front of it where they set out with describing their objects, they say—“Laying aside all pretensions to *originality*, we claim no other merit than that of *reconsidering* what has already been urged in our common cause, by the Duke of Richmond, Mr Pitt, *and their then honest party*, years back, and persevere in supporting with candour and zeal the banners of truth already displayed by them.” Now I ask any person, who will only consent to exercise the common candour of a gentleman (to say nothing of the scrupulous reserve of criminal justice), whether it was possible for a society, whose object was to persevere in the cause which Mr Pitt and the Duke of Richmond had originated and deserted—better or more distinctly to express it. The language is most precise and unambiguous—but it seems that it is all *colour and deceit*: it may be so—but they who assert that a man's meaning is the very reverse of his expressions, must prove that variance as a matter of **FACT**, by comparing his conduct with his declarations. Has any such proof been given in the instance before us? So far from it, that we are now upon the second trial, after the acquittal of Mr Hardy, who stood before a jury to answer for **THIS VERY PAPER**, of which he was the **AUTHOR**, and to which his **NAME** was signed. The whole object of that trial was to show this variance between the conduct of the society, and this its original and public profession; with what success the late verdict has recorded. Not a

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

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

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

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

The next accusation against the Corresponding Society is so manifestly and so glaringly unjust that I feel I have a right to complain of its introduction—though not of its introduction by my learned friends, who were bound to lay before the jury all the materials which the two Houses of Parliament, representing the nation, had adopted upon the subject. The Attorney-General was undoubtedly bound in justice to the prisoner, as well as in deference to Parliament, not to garble the proceedings, but to submit *the whole of them* to your consideration. I have no complaint against *him*, or against *any of the honourable men who assist him*. So far from it, I have nothing more at heart at this moment than that the impression of my observations should reach beyond the Court, and affect THE ATTORNEY-GENERAL HIMSELF, whose candour and integrity I know will be open to receive them. It was impossible he could know what he has learned from the evidence in the last cause, or what he is yet to learn from it in this. And as I foresee that the most beneficial consequences may arise to others hereafter from the subject being seen by my learned friend in its true and genuine colours, I shall, whatever may be the labour to myself, proceed in the detection of the fallacies which have been heaped on one another, though many of them have little or no application to the defence I am now engaged in. My client, indeed, generously imposes this burden: as he looked only to the general happiness in the conduct which brings him a prisoner before you, without any possible view of advantage to himself, so he now looks anxiously round him with the same generous and independent spirit, and enfeebles, by expansion, the argument of his own innocence, that it may extend to protect the innocence of others, and to vindicate the freedom of his country.

Gentlemen, the accusation which the House of Commons made part of its report, and the injustice of which I complain, is, that the Corresponding Society had no sooner been established, than a Society at Norwich wrote to them to know the object of their institution; and that so conscious were they that their designs were different from their public professions, that, instead of at once appealing to their printed institution to speak for itself upon the occasion, they wrote a dark, guarded, enigmatical letter, in order to conceal a purpose which could not with prudence or safety be revealed. I confess I never in my life was so much surprised as at the impudence and falsehood of this assertion, for I maintain that it is not possible for language to furnish an answer more explicit, nor one that in more direct terms *did* appeal to their public declarations for their designs. I will read to you the very words of the correspondence. The Norwich Society say, "Our principal design in writing, is, that we may have an opportunity of knowing more exactly what may be thought the most eligible steps to be taken in carrying on this great business of our associated brethren, and to have an opportunity to ask such sort of questions as may be thought very reasonable among the brethren, especially when we think that publications are covered with a sort of obscurity in it, as the Sheffield people's declaration, which seemed determined to support the Duke of Richmond's plan only; but since we find, in a printed letter received from them in a book, that they mean to abide by some moderate reform, as may hereafter be brought forward by the Friends of the People, which method is uncertain to us. Again, we find that the Friends of the People and the Society for Constitutional Information do not exactly agree—we could be glad to know the reason. It seems to me as though the difference was this—The Friends of the People mean only a partial reform, because they leave out the words expressing the Duke of Richmond's plan and talk only of a reform, while the Manchester people seem to intimate, by addressing *Mr Paine*, as though they were *intent upon republican principles only*. Now, to come closer to the main question, it is only desired to know whether the generality of the societies mean to rest satisfied with the Duke of Richmond's plan only, OR WHETHER IT IS THEIR PRIVATE DESIGN TO RIP UP MONARCHY BY THE ROOTS, AND PLACE DEMOCRACY IN ITS STEAD."

This is the letter, the language of which has been so mightily relied upon, and which is printed in italics and capitals in the reports of both Houses of Parliament. But what, in the first place, have the Corresponding Society to do with the language of this letter; and how, in common decency or common sense, can it affect THEM? Is it to be endured that treason shall be fastened upon ME, because I am absurdly or impertinently asked whether my intentions be traitorous, unless my previous conduct or declarations have excited a reasonable suspicion, or unless the evidence of

bad intention can be collected from MY ANSWER? If my *answer*, indeed, furnishes conclusions against me, that is quite another thing. Let us, therefore, examine *that*; for the QUESTION is no evidence at all but as it is introductory of the reply. Yet—would you believe it?—the *answer* is not even printed that I can find in the reports. It is wholly suppressed, and is only introduced by the candour of the Crown in the conduct of the prosecution. The answer, which bears date the 26th of November 1792. begins, as was natural, with recapitulating the questions put to them, nearly in the language of the letter itself, and then they say: “And as to the object we have in view, we refer you to our addresses. You will therein see we mean to disseminate political knowledge, and thereby engage the judicious part of the nation to demand a *restoration* of their rights in ANNUAL PARLIAMENTS; the members of those Parliaments OWING *their election to the unbought, and even unbiassed suffrage of every citizen in possession of his reason, and not incapacitated by crimes.*” This is the answer of the Corresponding Society. And having set myself to rights with my learned friends at the bar, but meaning to extend my courtesy no further, because justice confines it to *them*, surely I have a right to ask whether it be consistent with the dignity or character of a great and august tribunal to accuse persons capitally arrested, and before the season of their trial, of having shrunk from questions put to them for an exposition of their motives, *although they were possessed of the answer I have just read to you, which refers the questions positively and unambiguously to their original address*; which repeats the same legal objects, if possible, with additional precision, and which tells them, that from these objects *so a second time delineated and expressed, they mean neither to deviate to the right or left, but to pursue them by all means consistent with the law and constitution of the kingdom.*

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

The charge, you observe, is for conspiring to hold a convention in England in the year 1794, to usurp the Government, and to depose and destroy the King—all the papers and letters which have been read, with earlier dates, having been only produced to convince you that the convention was projected for that detestable purpose. To establish this from their own compositions, Mr Solicitor-General says (he will give me leave to remind him of his expression), “Look to the language in which they themselves speak of the proceedings in agitation—Let us agree to hold ANOTHER British convention. What could this mean?” says my learned friend, *laying a strong emphasis upon the word ANOTHER.* “What could it possibly mean, but a resolution to hold *another convention similar to that which had been held in North Britain,*

consisting of delegates from the different societies, and which had been before dispersed by the authority of the law?" I TAKE HIM AT HIS WORD—IT COULD HAVE NO OTHER MEANING. They most unquestionably intended a convention similar in all respects to the one at Edinburgh, which had been suddenly dissolved; and consequently, upon his own principles, to make out a case of treason against the prisoners who projected this ENGLISH convention, he must show that the assembling the convention at *Edinburgh* was an act of high treason in all who were engaged in it. To establish, upon his own principle of their designs being similar, that the English convention was projected with the view of assuming and exercising all the functions of Parliament, he is inevitably bound to show that the convention at Edinburgh, of which it was a type, did actually assume and exercise them. Has he established either of these proofs? Has he shown by evidence that the hundred and eighty persons who, as delegates from the different societies in Scotland, assembled at Edinburgh under the name of a convention, *did in fact* assemble to supersede the Parliament of the kingdom, and were guilty of the crime of high treason? Has he shown (which to maintain his argument he is bound to do) that all those who sent them for that purpose were implicated in the same guilt? If he has, he has struck at the lives of thousands and ten thousands of his Majesty's most affectionate subjects in North Britain, who were members of those societies. Has he proved distinctly that this Edinburgh convention *did actually assume to itself all or any of the functions of Government*, which he says would have been assumed here by the meeting in agitation had it not been nipped in the bud by the arrest of the prisoners, the seizure of their papers, and the institution of this solemn proceeding?

The Solicitor-General having himself made this the question, as indeed he could not avoid it, let us examine what has been proved upon the subject. And in entering upon this duty, it really fills me with horror to think that the lives of men—what do I say?—OF MEN!—that the lives of ENGLISHMEN should depend upon the successful resolution of such a chaos of matter as is spread before me, in which every faculty of the mind is bewildered and confounded; that they should not only have *their own* writings to explain, and *their own* transactions to answer for, but that there should be heaped upon their heads everything that has been said, written, or transacted for years together, in every corner of the kingdom, by persons with whom they not only never acted, but whose names or existences they never heard of. If the criminal law of England countenances such a proceeding, how is the subject to contend with any prosecution which the Crown chooses to institute? Where is the man capable of assisting him upon such a trial? What purse is equal to the expense of witnesses? and

where is the tribunal equal, in body and in mind, to its decision?

In the first place, however, and before I proceed to explore the proceedings of the Edinburgh convention, in the best way I can, through the maze of materials before us, let me ask, as a preliminary question, *what the honourable gentleman, whom I represent, had to do with them?—Supposing all its transactions had been treason, how is he affected by them?* It has been assumed that Mr Tooke was an active promoter of the Scotch convention, because his name stands entered in the books of the Constitutional Society as present when the sending of a delegate to Edinburgh was under deliberation. Good God! gentlemen, how gross is this conclusion, and how pernicious is the principle which concludes it! This entry would not be evidence in an action for ten pounds; yet what would not do upon such an occasion, or upon a charge for killing a hare or a partridge, is to be used as evidence to destroy the life of an English subject, and with it the law and constitution of the kingdom. The society has been considered as a corporation; its books have been laid upon the table as authoritative acts, binding upon all its members; and the pen of the secretary of a club is to conclude upon a fact which is to affect life. The real truth is (*and it ought to be a solemn warning to courts of justice not to depart from the strict rules of evidence*), Mr Tooke was NOT PRESENT when the proposition for sending a delegate to Edinburgh was made; neither did the proposition, when made on that day, receive the concurrence or approbation of the society, but, on the contrary, was objected to by the majority; not because they thought it criminal, but because they believed it to be useless. The further discussion of the subject was, therefore, postponed from the 25th to the 28th of October, when a special extraordinary meeting was appointed, and Mr John Williams, the mover of the proposition, was sent to Wimbledon to request Mr Tooke to attend and support it; but it appears by Mr Adams's evidence that he absolutely refused to come, and treated the proposal as frivolous and impertinent, insomuch that he was considered as a man bribed and pensioned to betray the cause of parliamentary reform, by withholding his support to a legal and well-meant proposition in favour of the proceedings in Scotland. Yet this gentleman, greatly advanced in years, and declining in his health, who was shut up *at this time, and long before*, within the compass of his house and garden at Wimbledon, where he used to wish an Act of Parliament might confine him for life—who was painfully bestowing a greater portion of his time to the advancement of learning, than the rudest health could with safety bring to it—who was intensely devoted to researches which will hereafter astonish, and will not be soon forgotten by the world—who was, *at that very moment*, engaged in a work such as the labour of man never before undertook, nor perhaps his ingenuity ever accomplished

—who had laid out near an hundred pounds only in packs of cards to elude by artifice and contrivance the frailty of memory and the shortness of life, otherwise insufficient for the magnitude of his pursuit—who never saw the Constitutional Society but in the courtesy of a few short moments, after dining with some of its most respectable members, and who *positively objected* to the very measure which is the whole foundation of the prosecution—is, nevertheless, gravely considered to be the master-string, which was continually pulling and directing all the inferior movements of a conspiracy as extensive as the island, the planner of a revolution in the Government, and the active head of an armed rebellion against its authority. Gentlemen, is this a proposition to be submitted to the judgment of honest and enlightened men upon a trial of life and death? Why, there is nothing in the Arabian Nights' Entertainments, or in the Tales of the Fairies, which is not dull matter of fact compared with it. But the truth is, as it stands already upon Mr Adams's evidence, that so little was the energy of the society upon the subject, that, at the general, adjourned, and *extraordinary* meeting, which was to decide upon this great question—which Mr Tooke thought so small a one, but upon which the fate of Great Britain is considered here as having depended—only seven people gave their attendance; and although Mr Yorke was chosen delegate to give countenance to the cause, and to former resolutions, yet there were obstacles to the completion of his mission, because the *ways and means* could not be provided for his support.

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

that is not enough ; when the lives of others, and the privileges of my country, are embarked in the controversy. I call upon you, therefore, Mr Erskine, to maintain, *that there is no criminality*—I desire that the acts of others, through whose sides I am vainly sought to be wounded, in order that the reverberating stroke may pierce *them* the deeper, may be vindicated and explained." In obedience to the task-master, then, let us see what this convention did.

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

" Resolved, That this convention, considering the calamitous consequences of any act of the legislature"—ACT OF THE LEGISLATURE !—Why, according to these gentlemen, they were THEMSELVES THE LEGISLATURE, for the legislature was gone, if their argument be founded, the moment the convention sat. " Resolved, That this convention, considering the calamitous consequences of any act of the legislature, which may tend to deprive the whole, or any part of the people, of their undoubted right to meet by themselves, or their delegates, to discuss any matter relative to their rights, whether of a public or private nature, and holding the same to be totally inconsistent with the first principles and safety of society, and also subversive OF THE KNOWN AND ACKNOWLEDGED CONSTITUTIONAL LIBERTIES OF ENGLISHMEN." Gentlemen, I must pause here, though in the very middle of a sentence, because every limb and member of it furnishes a decisive refutation of the charge. Here are men accused of having assumed the supreme authority, and as the subverters of English law, who are yet peaceably claiming *under the banners of the law*, the indisputable privileges of subjects to discuss the rights which *that law* bestows. They then say, and here it seems lies the treason—" We do therefore declare, before God and our country, that we shall pay no regard to any act which shall militate against THE CONSTITUTION OF OUR COUNTRY." But, according to the other side of the table, the constitution of the country was at an end, and all its powers assumed by this convention, although, in the very proceeding which they thus most unaccountably select for commentary, they bow obedience to all acts *consistent with the constitution*, and only refuse it to such as, in their minds, militated against the first principles of the English Government, which they were determined to support, instead of being banded to overturn. But, in what manner, and to what extent, did they project a resistance to acts militating against their rights? Did they meditate, by force, the destruction of Parliament which infringed them? Listen to the conclusion of this declaration, upon which so much has been said, and then tell me whether this body can, with common decency or justice, be charged as in a state of rebellion. " *We will continue to assemble to consider*

the best means by which we can accomplish a real representation of the people, and annual Parliaments, until compelled to desist by superior force." What is this but saying that they will, for an honest end, abide the penalties of an unjust law, rather than escape from them by its observance? Mr Justice Blackstone truly says, that there is nothing even immoral in such disobedience—for that, if there were, prohibitory and penal regulations would be snares to the conscience of the subject. The fact is, there never had been a law in England, nor was there any then in existence, to prohibit the measures they were engaged in. An act which had just been passed in Ireland had, for the first time, declared such proceedings to be a misdemeanour, though without an act we are now treating them as high treason; and the introduction of a similar bill into the English Parliament being the common report, they resolved not to sanction its unconstitutional principle, much less before the law existed, by a *voluntary* obedience, but to wait its regular enforcement by the magistrates. This is not only the obvious meaning of the resolution itself, but it is established beyond a doubt, by their subsequent conduct, as it appears by the letter of Margarot, the delegate of the Corresponding Society, who, giving an account of their dispersion by the magistrates, as I shall presently read it to you, expresses himself to this effect: "If," says he, "we had desisted without the exertion of superior force, it would have been surrendering our rights, and the privileges of others; but, when called upon by superior force—i.e., by the authority of the magistrate—the submission could not be considered as an acknowledgment of transgression on our parts." The dissolution of this *Parliament* (as it is gravely styled) is described, by Margarot's letter, to have been effected thus:—"Two messengers came again into our room with Gerald; they left a summons to appear at ten o'clock: with Margarot they left nothing but a request to accompany Gerald to the office; yet, when arrived there, he found that a warrant was issued against him for the purpose of detaining him a prisoner. On Thursday the whole convention were equally ill-used; the provost went, and after pulling Matthew Campbell Brown, of Sheffield, out of the chair, ordered the convention to disperse, and told them, he would allow no such meetings in future. The next day, the convention having agreed to meet at another place out of the jurisdiction of the provost, we had not long been assembled, before the sheriff appeared amongst us, and having asked whether the meeting was the British convention, and being answered in the affirmative, ordered us to depart. He asked who was president—upon which Margarot, having openly asked and obtained leave from the convention, placed himself in the chair, and told the sheriff he would not break up the meeting, *unless unconstitutionally forced thereto, by the sheriff's pulling him out of the chair*; which the latter, after some hesitation, complied with. The ex-president,

Gerald, was then put into the chair in order to be pulled out by the sheriff also, which being done, the meeting was then closed with prayer, and the company departed peaceably." Now, does the whole history of human folly furnish anything so extravagantly absurd and ridiculous, as to consider this as the suppression of an extensive and armed rebellion, and as a sort of counter-revolution in Great Britain?

Upon the trial of a solemn and important cause, upon which not only the lives of innocent men are depending, but the existence of the laws themselves under which we live, I am afraid to run into observations which are ludicrous; but such is the preposterous nature of this whole business, that it is impossible to avoid it. In reading the minutes of this convention, as the regular proceedings of a Parliament, holding at once the sword and purse of the kingdom, we have frequently encountered with matter which, whether we would or no, has convulsed us with laughter in the midst of the awful duty we are engaged in. In the minutes of the fifth day, the 21st of November 1793, we find the deputy-secretary informing the convention that he had last night received fifteen shillings from six visitors, which was ordered to be paid to Mr Skirving, with three shillings more already collected; and, on the day following, we have Mr Margarot moving (I suppose in the Committee of Ways and Means), that a general collection should be made, which being consented to, and Mr Callendar and Mr Scott being appointed collectors, these gentlemen made their report instanter:

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

To which a person of the name of Moore added a shilling. Yet this assembly of poor unarmed people, collecting sixpences to pay for their room and their advertisements, who were dispersed by a common Justice of the Peace, with less bustle than a watchman puts an end to a brawling in the corner of a street every night throughout the year, are now considered as having intended to assume to themselves, and indeed, for a season, to have exercised all the functions of this great country—protected as it is by a vast standing army, by a national militia, consisting of all the gentlemen of England whose lauded interests depend upon the stability of the Government, and by the great body of opulent merchants and monied men, whose fortunes are vested in the public funds, and thereby their possessions and the hopes of their families entwined with the very bowels of the State.

There is another point of view, from whence, if we examine this proceeding, it must appear, if possible, still more extraordinary. I admit that, in consequence of the dispersion which they cou-

sidered to be illegal, a great many inflammatory papers were written; and that it was thought advisable, upon the whole, to subject the principal persons engaged in this convention to a legal prosecution. But how were they prosecuted? and by that very Government which has instituted the present proceedings. Were they prosecuted for high treason? No. Was the charge of treason ever thought of, or connected with their names? I ANSWER, NEVER. Although they were not met together, like Mr Hardy and the other unfortunate prisoners, to consider how they *should in future* hold a convention, but were taken, *flagrante delicto*, in the very act of holding one, and of holding precisely such a one as the prisoners are charged with having only projected, THEY WERE ONLY ACCUSED OF A MISDEMEANOUR. I repeat the expression, they were only prosecuted for a misdemeanour, *although taken in the act of holding precisely such a convention as the prisoners only projected*. For I again refer to the Solicitor-General, whether he did not *twice* assert, and his learned coadjutor *more than twice*, that the conspiracy charged upon the record was to hold a convention *similar to that which had been held and put down in Scotland*.

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

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

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

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

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

LORD CHIEF-JUSTICE EYRE. It should not be stated here that they were illegal.

MR ERSKINE. I did not say they were illegal. I said, *that IN MY OPINION they were so, and that they were questioned in Parliament as such.* It is not my purpose to give offence to his lordship, who has given us an indulgent and attentive hearing through the whole course of this cause; but it is material to state, because it accounts for some of the writings in evidence, that the opinion and conduct of the Scotch judges *were questionable*; that they were actually questioned in Parliament (AS THEY MAY YET HERE-AFTER BE QUESTIONED); and were pronounced, by the greatest men in both Houses of Parliament, to have been harsh, unconstitutional, and illegal. Smarting, therefore, under the lash of these sentences, which they considered to be unjust, and believing that their colleagues had done nothing more than the law authorised and their consciences suggested, they came to an intemperate resolution concerning the Scotch judges, which, though so strongly relied on, can certainly have no sort of application to the cause, since if they had knocked on the head the Lord Justice-Clerk and all his brethren, while presiding in their court, instead of contenting themselves with libelling them, it would not have been high treason within the statute of Edward the Third. This mighty bugbear of a resolution is in these words. I am not afraid to meet it:—

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

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

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

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

Gentlemen, if the application of this maxim was meant to be made to the recent proceedings of the Scotch judges, it may be a libel upon *their* persons and authority for anything I know or care. I see nothing that is either criminal or indecent. In my mind, on the contrary, the promulgation of such awful and useful reflections should not be left to the irregular, and often misapplied, promulgation of private men, but should be promulgated at solemn festivals by the authority of the State itself. There ought, in my opinion, to be public anniversaries of the detestable, as well as of the illustrious actions of mankind, in order that, by the influence of negative, as well as of positive example, the greatest possible hold may be taken of the grand ruling passion of our nature, and

the surest indication of its immortality—the passion of living in the minds of others beyond the period of our frail and transitory existence. By such an institution, public men would every moment be impelled forward in the path of their duty by the prospective immortal rewards of an approving posterity; and what is still more important, and far more applicable to my present purpose, wicked men, clothed with human authority over their fellow-creatures, would be deterred by the same means from the abuse of them; because, in the very moment when they were about to barter away the life of innocence, or the public justice of their country, for some miserable advance of ambition in the decline of a transitory life, they might, perhaps, start back from the temptation, appalled by the awful view of future ages rising up before the imagination, sitting in judgment upon their characters, and proclaiming them with indignation to the universe.

But how after all do these resolutions (whatever praise or blame may belong to them) apply to the matter in hand? For Mr Tooke positively refused to sanction them. Though chairman of the meeting, he would not remain in the chair when they were passed; and I will call, if you think it material, the very person who took his place while they were passing. Yet nevertheless they are brought forward against him, and insisted upon with the same arguments as if he had been their author. Gentlemen, this is intolerable. The whole history of human injustice can produce nothing like it. *The principle seems to be, that all the libels written by any man in the world who at any time has supported a reform in Parliament, whatever may be the subject of them, and however clashing with one another in design or opinion, may be drawn into the vortex, and pointed to convict of high treason Mr John Horne Tooke.* By reading these contradictory performances as the evidence of his designs, they make him one day a reformer of the House of Commons, the next a rank republican, the third well affected to our mixed constitution, and the fourth relapsing into a republican again. In this manner, by reading just what they please, and insisting upon their own construction of what they read, the honourable gentleman is made to oscillate like a pendulum, from side to side, in the vibrations of opinion, without pursuing any fixed or rational course; although I will show you that, of all men in the world, he has been the most uniform, firm, and inflexible in his political course.

The next paper which they read is hardly, I think, at all connected with the important subject of the trial, being a mere squib upon the present just and necessary war. It is a resolution of the Constitutional Society of the 24th of January, to which Mr Tooke was privy, in which it was resolved—“That an excellent address of the Corresponding Society should be inserted in their books; and that the King’s speech to his Parliament be inserted under it,

order that they may both be always ready for the perpetual remembrance of the members of this society during the continuance of the present unfortunate war, and that, *in perpetuam rei memoriam*, they may be printed in one sheet at the happy conclusion of it—which happy conclusion, according to the present prosperous appearances, we hope and believe not to be many months distant.”

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

But it is the *conclusion* of this resolution, I believe, which gives offence, where upon motion the words “faithful and honourable,” which stood applied to the Parliament, were expunged, and the words “his, and his only,” inserted in their stead. What is this? This is no denial of the fidelity of the King to his Parliament, but is an insinuation, on the contrary, that the Parliament is unfaithful to the King. If it can be considered therefore in a serious light of a libel upon *any* authority, it is a defamation of the *House of Commons*. But we are not brought here to answer a libel upon that assembly. We are accused of a conspiracy to cut off the King, and in order to prove it, they give in evidence an idle squib against the House of Commons for not faithfully serving him; so that if the paper were deserving of any consideration one way or the other, it makes quite against the purpose for which it is used, unless it is meant to be contended that the King and the House of Commons are one and the same thing.

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

Although Mr Tooke not only never sent him as delegate, but strenuously objected to his delegation—though he so uniformly opposed the whole measure which led to his conviction and punishment, as to lead to the question of his own sincerity in the minds of some who supported it—although the consequence of the sentence could not have pulled a hair out of his head, but led, on the contrary, to confirm the prudence and propriety of his conduct; yet, in the hour of Mr Sinclair's distress, he was the first man to step forward to support him, and to take upon himself the public odium of protecting him, though he had privately discountenanced every act which could give the sufferer any claim to his countenance or support. I am perfectly sure that my worthy friend the Attorney-General is too honourable a man to make a single observation on this genuine act of disinterested benevolence. But I am not the less obliged to Mr Gibbs for not suffering me to omit in its place a matter which redounds so highly to the honour of the gentleman we are defending.

It is the same spirit that dictated the other part of the letter which regards Mr Pitt. Filled with indignation that an innocent man should be devoted to a prison for treading in the very steps which had conducted that minister to his present situation, he says (I have mislaid the letter, but can nearly remember the expression), "That if ever that man should be brought to his trial for *his* desertion of the cause of parliamentary reform, for which Mr Sinclair was to suffer, he hoped the country would not consent to send *him* to Botany Bay."

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

Gentlemen, we come at last to the very point of the charge—viz. the conspiracy to hold the convention in England, and the means employed for that purpose; and it is a most striking circumstance, a circumstance in my mind absolutely conclusive of the present trial (unless you mean to reverse the former verdict, which none of you will, and which *all of you* certainly cannot), that Mr Hardy, who has already been acquitted, was the very *first and single* mover of the proposition to hold this convention; and that all the subsequent steps taken in the accomplishment of it, down to the day when the prisoners were sent to the Tower, were taken *not only with his privity, but through his direct agency*; and that every letter and paper which has been read upon the subject bears

the signature of his name, many of them being also of his own composition. If the convention therefore was originated for the detestable purpose charged by this indictment, Mr Hardy, who has been acquitted, was the original and the principal traitor; whatever was known, HE certainly knew; whatever was done upon it, HE not only did, but actually led the way to the doing of by *others*. If there was a conspiracy, HE was manifestly the principal conspirator.

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

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

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

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

The Corresponding Society, upon Mr Hardy's proposition, having, on the 27th of March 1794, adopted a resolution which they transmitted to the Constitutional Society for approbation, that Society met the next day, the 28th of March, to consider it. The resolution was sent in the form of a letter from Mr Hardy himself, in these words:—

"I am directed by the London Corresponding Society to transmit the following resolutions to the Society for Constitutional Information, and to request the sentiments of that Society respecting the important measures which the present juncture of affairs seems to require. The London Corresponding Society conceives that the moment is arrived when a full and explicit declaration is necessary from all the friends of freedom, whether the late **ILLEGAL** and unheard-of prosecutions and sentences shall determine us to abandon **OUR CAUSE.**"

To pause here a little. Does not this incontestably show that their **CAUSE** (with whatever irregularity it might have been pursued) was no other than the cause of parliamentary reform? Is it not demonstration that they considered the persons convicted in Scotland as wrongfully convicted? It is not in human nature, it is beyond the flight of human impudence or folly, that men under a government of law should publicly declaim against prosecutions as illegal, tyrannical, and unheard-of, if they had either themselves considered them, or if they had been held by others to have been the regular proceedings against traitors arrested in rebellion against their country. Construing, therefore, this part of the letter as common charity and common sense must concur in the construction, and as the former jury construed it, it is no more than this,—They say to the Constitutional Society, "As we are in the progress of an honest cause—as we are pursuing a legal purpose by legal means, which others have adopted before us—shall we abandon it, terrified by the unrighteous judgments of another country? or shall we unite and persevere in its support, confiding that whatever may be the condition of *Scotland*, there is no law here in **ENGLAND** which can condemn us, nor any judges who can be interested in its perversion? Let us concur, therefore, in the necessity of another convention as the only legal and constitutional means of redressing the grievances which oppress us, and which can only be effectually redressed by a full and free representation of the people of Great Britain."

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

This is the whole that can be charged upon this society, for

there is no evidence whatever, even of any of its members being acquainted with the design of considering of a convention, until it came to them in the shape of a letter from Mr Hardy, who has been acquitted; all the antecedent part being ABSOLUTELY AND ENTIRELY HIS OWN. This proposition, indeed, was so far from coming to the Constitutional Society as the members of a secret conspiracy, that it was made in the most public manner to other societies with whom they notoriously were not connected; it was made to the Society of the Friends of the People, of which I have the honour to be a member, whose principles and conduct have been spoken of with respect throughout these proceedings. When we received their proposal we were as well acquainted with all the antecedent proceedings of the societies as the evidence makes us acquainted with them now; and we still flatter ourselves that we were as capable of understanding the meaning of what was addressed to ourselves, as those who since then have assumed to themselves the office of decipherers; yet, with all this knowledge, we returned an affectionate answer to these BLOODY CONSPIRATORS; we wrote to them, that we heartily concurred with them in the objects they had in view, but differed from them in the expediency and prudence of the means by which they had proposed to give them effect. WE, therefore, understood their object in the same light with the Constitutional Society—viz., the reform in the House of Commons only; and the difference between us is reduced to a difference in judgment, as to the *means* for producing an end which in common was approved.

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

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

Now, I appeal to you, gentlemen, whether there ever was a proposition so utterly out of the whole course of human affairs, as that six men of one very numerous society, and five out of another equally numerous, unanimously appointed to confer upon any given object, no matter what, should be taken without a shadow of evidence, to have in an instant departed from the trust reposed in them, and to have set on foot a secret plan which they durst not communicate even to their principals and co-conspirators, and which, with or without communication, was wholly visionary and impracticable.

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

It is, therefore, impossible to impute guilt to the prisoners selected for punishment, without extending it to a compass to

which no man will be hardy enough to say it shall or can be extended. How many persons upon such a scale would be principals in treason, or guilty of a misprison of it? *Every man who attended the various societies throughout the kingdom, or who knew, by belonging to them, that a convention was on foot.* To say nothing of the extravagance of such a wide imputation of disloyalty and rebellion, what can be more dangerous impolicy than to invite foreign nations to believe, whilst attempts are making from abroad to destroy our constitution, that the people of England are already ripe for a revolt?

But there are inconsistencies, if possible still more glaring, to be encountered with in maintaining the charge against the prisoners selected for trial, than even in this wide extension of it to others; for if any of the few persons (*being only twelve in number*) be guilty of this treason, they must ALL be guilty; it is quite in vain to think of distinguishing or separating them; yet *some* of them are not even accused, and *others* are judicially separated from accusation. Mr Sharpe, the engraver, though one of the committee, was examined for the Crown, but not examined as an accomplice; and the bill was thrown out by the grand jury against Mr Lovett, another of them, whom I am, therefore, entitled to consider as an innocent man, who ought not even to have been accused, and who will tell you upon his oath (for I shall call him as a witness), that there was not a syllable passed at these meetings which the King upon his throne might not have heard; that neither his name nor office were mentioned with irreverence; and Lovett, speaking for himself and for his own motives, will further solemnly tell you, that in his honest conscience he believed, that from the consequences of a timely reform in the House of Commons, *to which all their deliberations were singly directed*, the King's title would be more firm, his person more secure, his crown more illustrious, and its inheritance in his line more certain, than by seeking their support from the continuation of abuses which had so recently overturned a throne, that, propped as it was by armies and the bigotry of the people, seemed destined to endure for many generations, but which, nevertheless, undermined by its own corruptions, suddenly crumbled into dust, and shook, or, more properly, shakes at this moment the whole habitable world with its fall.

That Mr Richter, another of the committee, and now in Newgate, meant nothing more than the reform in the House of Commons, I will prove to you by Mr Reus, one of the most respectable men in our profession, and whose honour and veracity are above all question. He will tell you, that he saw him after the Friends of the People had refused to concur in sending delegates to the proposed convention, when Richter assured him, that in the plan they had adopted they had acted for the best, but that they were

desirous to act cordially with the Friends of the People in whatever they thought the most conducive to promote the constitutional object they were engaged in. I believe, indeed, that the mass of these societies thought with many others—of which class I profess myself to be one, though I differ with them in the means—that nothing can so certainly tend to support the throne as a reform in the Commons' House of Parliament. Whether you think with them or with me on this subject is of no consequence, it is enough if you believe that *they thought so, and honestly acted upon their opinions*; opinions which at all events were entertained and acted upon by many illustrious persons now present, some of whom I will call as the willing, and others as the unwilling witnesses to the fact.

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

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

“Resolved, That it appears to this committee very desirable that a general meeting or convention of the friends of liberty should be called.” For what? To depose the King? to subvert the Government? No. But, in the concluding words of the resolution, “For the purpose of taking into consideration *the proper means of obtaining a full and fair representation of the people in Parliament.*” This resolution, *after some objection to the word convention*, was adopted. Now, I desire distinctly to know why this resolution is to be perverted from its ordinary meaning any more than many similar resolutions in other times? The Lord Chief-Justice in the former trial said, in so many words, that it must be conceded to these societies, and to the prisoner Hardy, *that they set out originally upon the Duke of Richmond's plan.* If this be so, it is for the Crown to establish *at what period and by whom* this system was abandoned, and what is the evidence of the abandonment. Does the Attorney-General mean to say that it is high treason for a number of persons collected together to make a delegation to a smaller number from among themselves for any purposes, legal or illegal? He will certainly not say that. So that, in whatever view the matter for deliberation is examined, the question still returns, and must for ever return, to its only legal centre—viz., **THE OBJECT THEY HAD IN VIEW** in this delegation; and that examination cannot rationally take place but either by looking at the acts themselves, and judging of them *as they present themselves to view*, or else by showing, from *extrinsic* evidence, that they are *not* what they appear upon the surface, but are directed to concealed and wicked objects.

With regard to the first, it has been conceded from the beginning, even by the Court (as I have just observed in its charge to the grand jury), that their **AVOWED** object was a constitutional

reform; and as to the last, I call aloud upon those who ask you to pronounce that a forcible subversion of the Government was intended, to confess that the very idea of such a charge was disavowed and reprobated even by the very witnesses they brought forward to establish it. Upon the first trial they called a great number, who, without a single exception, one after another, positively swore that hostility to the Government, or an attack upon it by force, never entered into their contemplation; and Mr Gibbs, as I am informed, in my absence to-day, established the same truth by cross-examination of the Sheffield witnesses, who, with one assent, as I see from a note now before me, all declared they had been insulted and abused, which was the origin of the few pikes manufactured for their defence; and the Attorney-General appears to have been so well satisfied that the whole evidence concerning arms was "a beggarly account of empty boxes," unfit for a second introduction in so momentous a cause, that he gave up the whole of it, and we have heard not a syllable of that which assumed so grave an aspect when Hardy lately stood in judgment before you; nor has even Franklow himself, and the Loyal Lambeth Association, made their appearance. In my opinion, it was sound discretion to abandon that parole evidence. To have called people who literally knew nothing of the societies, would have been to expose weakness; to have again called honest witnesses, who knew anything, would have been to prove too much, because the falsehood of the imputation would again have been manifested; and to have attempted it a second time by spies and informers, would only have been uselessly bringing up their ragamuffins to be peppered: a conduct which sinks a cause in the opinion even of Jefferies himself; who, when Sergeant Jefferies, upon the trial of Lord Russel, said to the jury—"*Remember, we bring no ignominious persons here; we have not raked the goals for evidence; we have brought before you no scandalous SPIES AND INFORMERS, but men worthy of credit.*"

To say the truth, gentlemen, their parole testimony being thus subtracted, there has been brought forward in this cause no evidence, either creditable or scandalous: for, with the exception of a few papers not worth a farthing, I will undertake to collect from the coffee-houses of London a complete fac-simile of the report of both Houses of Parliament, which has consumed so many days in reading, and for no part of which, as I have noticed formerly, any author, printer, or publisher, has been ever called to account.

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

When the 14th of April came, which should have been their

first meeting, there was no meeting at all, but a great multitude of people, of different descriptions, assembled at Chalk Farm. My learned friends, I see, are taking notes on this subject; but let them recollect that Lovett, whose case has been before the accusing jury, and who stands wholly discharged from guilt or suspicion, was chairman of this meeting, and, at the same time, a member of the committees of conference and co-operation; yet now, when the leader himself is exculpated, and not exposed even to the hazard and inconvenience of a trial, he is to be hung to-day round the neck of the gentleman at your bar, who never was at Chalk Farm in his life; who never heard of the meeting, nor of the existence of the place it was held at, till he read it in the newspapers, as we all did, and who never saw Mr Lovett till he met him in the Tower, when he was pointed out to him as one of the persons with whom he had long been engaged in a conspiracy. Thank God, these experiments are not only harmless, but useful:—they serve as a clue when the contrivance is more plausible.

The next Thursday after the meeting at Chalk Farm was the 17th of April. Now attend to the proceedings of these conspirators, pressed to a moment in point of time, and whose schemes were ripe for execution. Not one of them came. The 24th of April was the third Thursday, when the committee from the Corresponding Society attended, but, not being met by the other, there was, of course, no conference. On the 28th of April, full three weeks after their original appointment, they at last assembled; and, after having conferred concerning the news of the day, and co-operated in taking snuff out of one another's boxes, they retired to their homes without uttering a syllable concerning the King or his Parliament. These important transactions were repeated on the 5th of May; and on Monday, May the 12th, although no *other* meeting had then been held, and though these proceedings, as I have stated them to you, had been fully investigated before the Privy Council; though the societies were constituted for purposes perfectly notorious, and long unopposed; though all their meetings had been publicly advertised, and their correspondence as open as the day, Mr Hardy was suddenly arrested—dragged out of his bed in the night—torn from the arms of an affectionate wife, who fell a sacrifice to terror and affright, although he can *now* tell you, upon an oath accredited by his full and honourable acquittal, that he had not a conception in his mind, even after he was in the custody of the law, that high treason, or any other crime which verged towards disloyalty or rebellion, was to be imputed to him.

Gentlemen, the alarm which seized upon Government at this period seems to have invested the most frivolous circumstances with mystery and design against the State, of which we have had a notable instance, in a letter written by Mr Joyce to Mr Tooke, on the day Hardy was arrested, which, being intercepted, was packed

up into the green box there, and reserved as evidence of a plot. The letter runs thus: "Hardy and Adams were taken up this morning by a King's messenger, and all their books and papers seized;" and then, following a long dash, "CAN YOU BE READY BY THURSDAY?" This letter, gentlemen, is another lesson of caution against vague suspicions; the Red Book was not a list of persons to be saved, in opposition to the Black Book, of those to be sacrificed; but Mr Tooke having undertaken to collect, from the "Court Calendar," a list of the titles, offices, and pensions bestowed by Mr PITT UPON MR PITT, HIS RELATIONS, FRIENDS, AND DEPENDENTS, and being too correct to come out with a work, of that magnitude and extent, upon a short notice, had fixed no time for it, which induced Mr Joyce, who was impatient for its publication, to ask if he could be ready with it by Thursday. Another curious circumstance, of similar importance, occurred about the same time, which I marvel has not appeared in evidence before you. I will tell you the story, which is so stamped with the wit which distinguishes my client, that it will speak for itself without proof. A spy came one night into the society to see what he could collect, when there happened to be present a Mr Gay, a man of large fortune, and a great traveller (the gentleman I speak of is a member of the Friends of the People, introduced by my friend Mr Tierney, now in my eye). This Mr Gay, in the course of his travels, had found a stone inscribed by Mr Stuart, another great traveller, as the end of the world; but resolving to push on farther, and to show his contempt of the bounded views of former discoveries, wrote upon it, "This is the *beginning* of the world,"—treating it as the ground from which he meant to start upon his tour. The plan being introduced for consideration while Mr Gay was present, Mr Tooke said, "Look ye, gentlemen, there is a person in the room disposed to go to GREATER LENGTHS than any of us would choose to follow him." This allusion to the intrepid traveller was picked up by the spy as evidence of the plot; and if I had the rummaging of the green boxes, I would undertake to find the information among the papers.

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

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

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

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

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

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

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

"Where has this species of guilt lain so long concealed?" said Strafford, in conclusion; "where has this fire been so long buried, during so many centuries, that no smoke should appear till it burst out at once to consume me and my children? Better it were to live under no law at all, and, by the maxims of cautious prudence, to conform ourselves, the best we can, to the arbitrary will of a master, than fancy we have a law on which we can rely, and find at last that this law shall inflict a punishment precedent to the promulgation, and try us by maxims unheard-of till the very moment of the prosecution. If I sail on the Thames and split my vessel on an anchor, in case there be no buoy to give warning, the party shall pay me damages; but if the anchor be marked out, then is the striking on it at my own peril. Where is the mark set

upon this crime? where the token by which I should discover it? It has lain concealed under water; and no human prudence, no human innocence, could save me from the destruction with which I am at present threatened.

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

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

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

Proud as I am of being a subject of this country, my duty compels me to remind you, that all this splendour of truth and eloquence was unavailing before an abandoned tribunal, which had superseded all the rules of law and the sober restraints of justice, and which could listen unmoved to even these concluding words: "My Lords, I have troubled your Lordships a great deal longer than I should have done. Were it not for the interest of these pledges which a saint in heaven left me, I should be loath"—"Here," says the historian, "he pointed to his children, and his weeping stopped him"—And if I were to attempt to proceed farther in this melancholy page, *my tears would stop me also.*

But let us look to what followed from these proceedings: they were condemned and reversed, and stand recorded as a beacon to future generations. The act recites, "That the turbulent party,

seeing no hopes to effect their unjust designs by ordinary way or method of proceedings, did at last resolve to attempt the destruction and attainder of the said Earl by an Act of Parliament to be therefore purposely made to condemn him upon accumulative treason—none of the pretended crimes being treason apart, and so could not be IN THE WHOLE, if they had been proved, as they were not. Therefore it is enacted, that all records and proceedings relating to the said attainder be wholly cancelled, and taken off the file, to the intent that the same may not be visible in after-ages, or brought into example, to the prejudice of any person whatsoever."

A similar fate attended the attainders of Lord Russell and Sidney, and will, sooner or later, attend every flagrantly unjust judgment, whilst England preserves her free constitution; and, therefore, notwithstanding the ridiculous figure too frequently made by modern prophets, whose prophetic writings remain unfulfilled after the period of their fulfilment, I will hazard this public prediction—That long, long before one-half of the audience which fills these benches shall, by the course of nature, be called from the world, these very judgments in Scotland, which, more than anything else, have produced the present trial, will be stigmatised, repealed, and with indignation reversed; not by violence or in irregular convention, but in the ordinary legal forms of a British Parliament.

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

The collateral facts, as my memory serves me to recollect them, and from whence the traitorous intention is to be inferred, are, that Mr Tooke contributed to the circulation of the works of Thomas Paine, containing gross matter against the monarchy of the country; that he consented to send a congratulatory address to the Convention of France; that he was privy to the approbation of Mr Joel Barlow, who had delivered this congratulation at Paris; and lastly, that he had himself written a letter to the president of the convention, offering to subscribe 4000 livres towards carrying on the war then existing between the states of Europe and France, even though part of it, in the event, should happen to be applied when this country should be involved in the same contest.

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

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

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

Gentlemen, these reflections were not merely the silent, but the avowed expressions of some of the first persons in England, on the first burst of the French Revolution, and, I verily believe, the same sensations diffused themselves widely throughout the kingdom; but, very unfortunately for France, for England, for Europe, and for humanity, this sensation, the natural result of freedom and independence, was not universally felt. Very unfortunately the powers of Europe would not yield to an independent nation the common

right of judging for itself in its own concerns, nor in prudence leave to it the good and evil of its own government. All Europe combined against France, and levied war against her infant constitution. The despots of the earth, with whom the King of Great Britain had no common interest, trembling for their own rotten institutions, and looking to the wrongs and sufferings of their subjects, drew the sword (as was natural for despotism to draw it) to dispute the right of a people to change their ancient institutions. This very combination naturally assimilated with the patriotism of France the public spirit of England, since our own revolution was supported upon no other foundation than the principle which was not only denied, but was by violence to be exterminated; and many persons, therefore, notoriously attached to the British Government, expressed their reprobation of this conspiracy against the freedom of the world. This honest and harmless enthusiasm, however, met with a very sudden, and, in its consequences, an unfortunate check. A gentleman, of the first talents for writing in the world, composed a book, I am bound to believe with an honourable mind, but a book which produced a more universal and more mischievous effect than any which perhaps our own or any other times have produced. When Mr Burke's book upon the French Revolution was first published, at which period our Government had taken no active part against it, no man assimilated the changes of France to the condition of our country; no man talked of, or figured in his imagination, a revolution in England, which had already had her revolution, and had obtained the freedom which France was then struggling to obtain. Did it follow, because men rejoiced that France had asserted her liberty, that they thought liberty could exist in no other form than that which France had chosen? Did it follow, because men living under the Government of this free country, condemned and reprobated the dangerous precedent of suffering the liberty of any nation to be overborne by foreign force; did it follow from thence that they were resolved to change for the accidental and untried condition of France, the ancient and tried constitution of our own country? I feel within myself that I can rejoice, as I do rejoice, in the liberty of France, without meaning to surrender my own, which, though protected by other forms, and growing out of far more fortunate conjunctures, stands upon the same basis, of the right of a people to change their government and be free. Can any man in England deny this? Yes, gentlemen, Mr Burke has denied it; and that denial was the origin of Mr Paine's book. Mr Burke denied, POSITIVELY AND IN TERMS, that France had any right to change her own government, and even took up the cudgels for all the despots of Europe, who at the very time were levying a barbarous, scandalous, and oppressive war, to maintain the same proposition by the sword.

This work brought forward again, after a long silence. Mr THOMAS PAINE, who was indeed a republican beyond all question, but who had become so in consequence of the same corrupt and scandalous attempt to beat down by force the liberties of a nation; he became a republican in consequence of the similar and lamentable contest between Great Britain and America, and it is rather a curious circumstance that THIS VERY MR BURKE, who considers Mr Paine as a man not to be reasoned with, but only to be answered by criminal justice, and who condemns as a traitor every man who attempts to name him,—HIMSELF expressed his approbation of the very same doctrines published by Mr Paine, when Mr Burke himself was pleading the cause of a nation determined to be free; not the cause of a *foreign* nation which had always been *independent*, but the cause of colonial America, in open war and rebellion against the Crown and Parliament of Great Britain. Mr Paine, during the same crisis, wrote his book called "Common Sense," addressed to the Americans in arms against England, exciting them to throw off the yoke of the mother-country, and to declare their independence. Gentlemen, from having defended Mr Paine upon his trial for writing his later work, which Mr Tooke is accused of having approved; I am of course intimately acquainted with its contents, and with those of his former writings; and I take upon me to say, that every offensive topic against monarchy, and all the principles of the rights of man, now regarded with such horror, are substantially, and in many instances almost *verbatim*, to be found in the former publication. When Mr Paine wrote his "Common Sense," Acts of Parliament had declared America to be in a state of rebellion, and England was exerting every nerve to subdue her; yet at that moment Mr Burke, not in his place in Parliament, where his words are not to be questioned, but in a pamphlet publicly circulated, speaks of this book, "Common Sense," by name, notices the powerful effect it had upon the mind of America in bringing them up to emancipation, and acknowledges that, if the facts assumed by the author were true, his reasonings were unanswerable. In the same pamphlet, several parts of which I stated to the former jury, he declared that he felt every victory obtained by the King's arms against America as a blow upon his heart; he disclaimed all triumph in the slaughter and captivity of names which had been familiar to him from his infancy, and, with all the splendour of his eloquence, expressed his horror that they had fallen under the hands of strangers, whose barbarous appellations he scarcely knew how to pronounce. Gentlemen, I am not censuring Mr Burke for these things; so far from it, that they sanctify his character with me, and ever prevent me from approaching him but with respect. But let us, at least, have equal justice. While these writings continue the object of admiration, and their author is held forth as the champion of our

constitution, let not Mr Tooke stand a prisoner at the bar of the Old Bailey for having, in time of profound peace with France, and when every speech from the British throne breathed nothing but its continuance, expressed only the same detestation of the exertions of foreign despotism against freedom, which the other did not scruple, in a similar cause, and in the time of open war, to extend to the exertions of his country.

To expose further the extreme absurdity of this accusation, if it be possible further to expose it, let me suppose that we were again at peace with France, while the other nations who are now our allies should continue to prosecute the war:—would it *then* be criminal to congratulate France upon her successes against them? When that time arrives, might I not honestly wish the triumph of the French arms? and might I not lawfully express that wish? I know, certainly, that I might, and I know, also, that I would. I observe that this sentiment seems a bold one; but who is prepared to tell me that I shall not? I WILL assert the freedom of an Englishman; I WILL maintain the dignity of man; I WILL vindicate and glory in the principles which raised this country to her pre-eminence among the nations of the earth; and as she shone the bright star of the morning, to shed the light of liberty upon nations which now enjoy it, so may she continue in *her radiant splure*, to revive the ancient privileges of the world, which have been lost, and still to bring them forward to tongues and people who have never yet known them in the mysterious progression of things!

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

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

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

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

It was upon this occasion that Mr Tooke interfered. Mr Paine was not in circumstances to support the expense of his trial, and Mr Tooke became a subscriber to his defence, though he differed from him, as I have told you, in the application of his principles to the British Government, and had both publicly and privately

* When Paine was brought to trial, Lord Erskine (then Mr Erskine) was Attorney General to the Prince of Wales, and was removed; but his Royal Highness afterwards appointed him his Chancellor, which office he held till he received the Great Seal from the King.

expressed that difference. That Mr Tooke's approbation of Mr Paine's work, and of the French Revolution, were founded upon no disgust to our own constitution, was manifested in the most public manner at the very same period. A meeting was held at the Crown and Anchor, not called by Mr Tooke, but at which he was present, to celebrate the first anniversary of the French Revolution, where a noble Lord (Earl Stanhope) was in the chair, and a motion was made, "That this meeting does most cordially rejoice in the establishment and confirmation of liberty in France, and that it beholds, with peculiar satisfaction, the sentiments of amity and good-will which appear to pervade the people of that country towards this, especially at a time when it is the manifest interest" (*as God knows it is*) "of both states, that nothing should interrupt the harmony between them, which is so essential to the freedom and happiness, not only of both nations, but of all mankind." Mr Horne Tooke—and I do not think, after I have read this, that I shall be suffered to go on making any more remarks on this part of the subject, because it is a key of the whole—Mr Horne Tooke begged that the honourable gentleman, who was the mover, would add to his motion some qualifying clause, to guard against misunderstanding and misrepresentation; that there was a very wide difference between England and France; that the state-vessel of France had been not only tempest-beaten and shattered, but absolutely bulged; whereas, in England, we had a noble, stately, and sound vessel, sailing prosperously upon the bosom of the ocean; that it was true, after so long a course, she might, upon examination, appear somewhat foul at the bottom, and require some necessary repairs, but that her main timbers were all sound. He therefore regretted that there should be an addition to the motion, but that, if that addition was not made, he should move it himself—accordingly, he did move in public, "that this meeting feel equal satisfaction, that the people of England, by the virtuous exertions of their ancestors, have not so hard a task to perform as the French are engaged in, but have only to maintain and improve the constitution which their ancestors have transmitted to them." When Mr Tooke moved this amendment, he did it in THE FACE OF THE WHOLE COUNTRY, and published, of course, to all mankind, those opinions, which I will prove to have been uniformly his—if indeed it is necessary to prove them, when the Attorney-General has been so liberally wasting his strength in proving them, for the last three days. Mr Tooke, when he proposed this motion, was acting upon the ordinary principle of his life, which, for his own satisfaction, rather than for yours, I shall prove from year to year. I will take him up in the year 1780, and bring him down to the very time when he comes to your bar, and show that he has ever been steadfast in favour of the pure, uncorrupted constitution of Great Britain, *but a mortal enemy to its abuses.*

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

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

LORD CHIEF-JUSTICE EYRE. What is it?

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

LORD CHIEF-JUSTICE EYRE. If you wish to refresh yourself, sit down; we will wait patiently, but we should know what it is.

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

[Mr GIBBS here read the following extract.]

“ By the vote of the House of Commons on Tuesday last, Parliament, it seems, do not yet think it necessary to take into consideration the state of representation in this country. However, my Lord, notwithstanding that vote, I am still sanguine enough to believe that we are at the eve of a peaceful revolution, more important than any which has happened since the settlement of our Saxon ancestors in this country, and which will convey down to endless posterity all the blessings of which political society is capable.

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

"One gentleman says, 'He cannot see any good purpose the motion would answer, for it would not assist Government with a ship, a man, or a guinea, towards carrying on the war with vigour or towards establishing that much-wished-for object, peace.'

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

"Another gentleman apprehends that '*nothing less than giving every man in the kingdom a vote would give universal satisfaction.*'

"My Lord, I trust that there are very few persons in the kingdom who desire so improper and impracticable a measure. But, if there were many, the wisdom of Parliament would correct their plan, and the corrected would be well pleased at the correction.

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

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

"Now, my Lord, I conceive the error to lie *chiefly* in the conclusion. For there is a very great difference between having an *equal right to a share*, and a *right to an equal share*. An estate may be devised by will amongst many persons in different proportions; to one five pounds, to another five hundred, &c.: each person will have an equal right to his share, but not a right to an equal share.

"This principle is farther attempted to be enforced by an assertion, that 'the all of one man is as dear to him as the all of another man is to that other.' But, my Lord, this maxim will not hold by any means; for a small all is not, for very good reasons, so dear as a great all. A small all may be lost, and easily regained; it may very often, and with great wisdom, be risked

for the chance of a greater; it may be so small as to be little or not at all worth defending or caring for. *Ibit eo qui zonam perdidit. But a large all can never be recovered; it has been amassing and accumulating, perhaps from father to son for many generations, or it has been the product of a long life of industry and talents, or the consequence of some circumstance which will never return.* But I am sure I need not dwell upon this, without placing the extremes of fortune in array against each other. Every man whose all has varied at different periods of his life, can speak for himself, and say whether the dearthness in which he held these different alls was equal. The lowest order of men consume their all daily, as fast as they acquire it.

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

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

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

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

I have been placed here, as you know, in a most arduous and anxious situation for many days during the late trial. I have had no opportunity of rest in the interval, but have been called incessantly to the other labours of my profession, and am now brought back again to the stake without the refreshment which nature requires, for it must be a dishonest mind which could feel

the tranquillity necessary for its reception. I came into court this morning perfectly subdued with fatigue and agitation, and although I know the disposition of my honourable and learned friends to have left me at home till the season arrived for the defence of the prisoner, yet amid the chaos of matter which the fulfilment of their duty obliged them to lay before you, it was impossible for them to know, within even hours, the time I should be wanted. I hope, however, that amidst all these pressures I have been able to lay before you sufficient information for the discharge of your duty to the prisoner and to the public. The matter for your consideration being a mere matter of fact—*Has the prisoner at the bar conspired, with others, to depose the King, and to subvert by force the Government of the kingdom?*

The sentiments of Mr Tooke upon the subject of our excellent Government, which my learned friend, Mr Gibbs, has just read to you, would in themselves be sufficient to expose the falsehood of the charge. The publication cannot be considered as a pretext, because they have ever been uniformly supported by his conduct. One of the most honourable men in this country, now present, will prove to you that he acted upon these principles at the time he published them, and offered all his influence and exertions to promote Mr Pitt's plan, which was then in agitation; and I will lead him on in your view, day by day, from that period till within a fortnight of his apprehension for this supposed treason. Mr Francis, a most honourable member of the House of Commons, and one of the society called the Friends of the People, having suggested a plan for the reform of Parliament, which appeared to him to be moderate and reasonable, applied to Mr Tooke, who was then supposed to be plotting the destruction of his country, to give him his assistance upon it. Mr Tooke's answer was this—"One-fifth or one-tenth, nay one-twentieth part, of what you are asking will be a solid benefit, and I will give it my support." Mr Francis will tell you this upon his oath, and he will add, what he has told me repeatedly in private, that he grew in his esteem from the candid and explicit manner in which he made this declaration. Mr Sharp has also proved, that at the very time when all this scene of guilt is imputed, Mr Tooke was uniformly maintaining the same sentiments in the most unreserved confidence of private friendship. I could go on, indeed, calling witness after witness throughout the wide-extended circle of all who have ever known him, that a firm and zealous attachment to the British Government, in its uncorrupted state, has been the uniform and zealous tenor of his opinions and conduct; yet in the teeth of this evidence of a whole life, you are called upon, on your oaths, to shed his blood, by the verdict you are to give in this place.

Gentlemen, I cannot conclude without observing that the conduct of this abused and unfortunate gentlemen throughout the

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

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

CASE of the BISHOP OF BANGOR and others, indicted for a riot and an assault. Tried at Shrewsbury Assizes on the 26th of July 1796.

THE SUBJECT.

THE exemplary morals and decorum which have so long, to the honour of this country, distinguished the high dignitaries of her national church, bestowed upon the trial of the right reverend prelate, who was the principal object of it, an extraordinary degree of curiosity and interest. Indeed, from a perusal of the whole proceedings we cannot help thinking that the prosecutor might, perhaps, have been influenced by the expectation that any compromise would have been preferred by the defendant and his friends to even a public discussion of such an extraordinary accusation as that of a riot and assault by an English bishop, assisted by other clergymen of his diocese, within the very precincts of his own cathedral. The reverend prelate, however, was not to be intimidated. He pleaded Not Guilty to the indictment, and received the clear acquittal of a jury of his countrymen.

The indictment was preferred against the Lord Bishop of Bangor, the Rev. Dr Owen, the Rev. John Roberts, the Rev. John Williams, and Thomas Jones, gent. ; and was prosecuted by Samuel Grindley, the deputy-registrar of the Bishop's Consistorial Court.

The indictment charged that Samuel Grindley, the prosecutor, was deputy-registrar of the Consistorial Court of the bishopric of Bangor, and that being such, he had of right the occupation of the registrar's office adjoining to the cathedral ; that the bishop and the other defendants, intending to disturb the prosecutor in the execution of his office, and to trouble the peace of the King, unlawfully entered into the office, and stayed there for an hour, against the will of the prosecutor ; and it further charged that they made a disturbance there against the King's peace, and assaulted Grindley, so being registrar, with intent to expel him from the office.

The indictment was originally preferred in the Court of Great Sessions, in Wales, where the offence was charged to have been committed, but for a more impartial hearing was removed into the Court of King's Bench, and sent down for trial in the next adjoining county, before a special jury at Shrewsbury, where Mr Adam and Mr Erskine attended on special retainers ; the former as counsel for the prosecution, and the latter for the bishop and the other defendants.

In the pursuit of our plan, to preserve some remarkable speeches of Lord Erskine, when at the bar, we felt that we could not, upon this singular occasion, have recourse to a better or more impartial preface than to introduce, at length, the speech of Mr Adam, who conducted the prosecutor's case with the greatest zeal, ability, and eloquence ; his address to the

jury, containing all the facts intended to be proved and relied on; and as the speech of Mr Erskine for the bishop comprehends also the whole body of the evidence, as it remained after the examination and cross-examination of the witnesses, and on which, therefore, he rested his client's claim to acquittal, having called no witnesses on the part of the defendants, the whole matter for judgment appears most distinctly, from the two speeches, without the introduction of the proofs; more especially, as we have also printed the summing-up of the evidence by the judge. *

Mr Ellis opened the pleadings—Mr Adam for the prosecution.

MAY IT PLEASE YOUR LORDSHIP, AND GENTLEMEN OF THE JURY, —You have heard from my learned friend who has opened the pleadings to you that Samuel Grindley is the prosecutor, and that he is deputy-registrar of the diocese of Bangor. You have heard, likewise, that the defendants are the Bishop of Bangor, three clergymen, and a gentleman who is agent for the bishop.

In the outset of this cause I have already learned enough from the manner in which my learned friends have received the opening of the pleadings to show me that they seem to have an inclination, as it were, to make that a jest which, I can assure you, is a matter of extreme seriousness. Gentlemen, I introduce it to you with all the anxiety which belongs to a person who is unaccustomed to address you. I introduce it with the anxiety which belongs to a person who is to maintain a conflict with abilities that are seldom unsuccessful; but I open it to you, I do assure you, in the pure spirit of moderation and of candour, and, if I might say so in a question of this sort, in the pure spirit of the true principles of Christianity—that is, of wishing that all mankind should do unto others as they wish to see done unto themselves.

Gentlemen, I wish to call your attention to it seriously, and will just take the liberty of stating why *you* are called upon to judge in this cause. The question to be tried did not happen within your ordinary jurisdiction: it was not in this county that the offence which is complained of took place: but an application has been made to remove it here; and it is possible that such an application might produce some prejudice in your minds, as if there had been something in the conduct of the party for whom I have the honour to appear which has made it improper to permit the question to be tried where it arose. The application to remove the cause from Wales to the nearest English county was made upon an affidavit which I have not seen, and was granted by Lord Chief-Justice Kenyon, who undoubtedly exercised his discretion wisely and justly,

* They who may wish to refer to the proofs themselves will find them in the printed report of the trial, as taken in shorthand by Mr Gurney, from which these speeches are taken, and which was published at the time, by Mr Stockdale of Piccadilly.

as he does upon all occasions. He thought that, under the circumstances stated by those concerned for the Bishop of Bangor, and upon the affidavit made by those who are prosecuted, without any opposition or interference of any sort or kind whatever by the person who appears here as the prosecutor, that it was fit to remove it. When he did so, I know he removed it to a tribunal of uprightness, of virtue, and honour. I know he removed it to a situation where, I am confident, intelligence and integrity will alike prevail; and I am by no means afraid of the mere circumstance of its being removed having any influence upon minds like yours.

Gentlemen, there may have arisen prejudices in this, as there do arise prejudices in many causes. Undoubtedly, this is not the first time that the matter has been the subject of conversation and discourse; probably it is not the first time that even you who are impanelled to try the cause may have heard of it. It is my duty to my client, it is my duty to the public likewise, if there should have been any such conversation about this prosecution, to remove all those prejudices, to remove all the impressions that may have been received, not only from your minds, were it possible you could have received them, but from all those that stand around. I say it is important to my client, and it is important to the cause of public justice, that I should endeavour to remove them.

Gentlemen, I beg leave to state to you, in the temperate spirit which I have professed, that this is not a question in which the general religious establishment of the country is at all involved: it is a question, I can assure you, which is confined to the individuals who appear upon this record. It reaches no further than *their* conduct on the *particular* occasion. It is a question which cannot, I am sure, have the least effect to the prejudice of that doctrine, or to the prejudice of that rank and situation in the State which is so important to the well-being of society, and so essential to bind together and to sustain those principles which tend, not only to our happiness hereafter, but to the good government of the world in which we now live. I pledge myself, then, that when you come to hear this case, you will find that the facts I shall prove are confined singly and solely to the parties named in this indictment.

Gentlemen, there is another circumstance to which I could wish to call your attention before I enter into the merits of the case—namely, that although a church dignitary stands in the front of those indicted, *that* is no reason whatever why this indictment should not have been preferred; for if the facts which I have to state to you, and which I shall afterwards prove—if the principles of law which, under his Lordship's direction, I shall have the honour to lay down to you, are correct, you will find that the public justice *must* be satisfied by a verdict of guilty, notwithstanding the rank and situation of the first individual who is indicted.

It is a painful thing to me, not only on account of his rank and his situation, as a bishop of the Church and as a peer of Parlia-

ment, to address you upon a subject of this sort; but it is more so when I consider that, in the intercourse of my professional life, I have had frequent occasion to see that person discharging duties in another place in a judicial and legislative capacity. I have often had the honour, and I will say too the satisfaction, to address him in that station. Gentlemen, I can assure you that I speak with no personal feelings against the bishop; they are all naturally on the other side. But what is more, I can assure you that my instructions are, to conduct the cause in a pure spirit of temper and moderation, such as I have already described to you.

Gentlemen, this is not the only time that dignitaries of the Church have been indicted, and found guilty. You have but to look back to the bead-roll of the State trials, and you will find many instances of the sort. You have but to reflect a few years back, when a person, upon an indictment, removed in the same manner, though not a bishop, yet a dignitary in the Church, was brought into this court, for reasons similar to those which bring you now here to try this indictment. They who heard my learned friend* upon that occasion, they who have read the history of that period, cannot forget the uninterrupted stream of splendid eloquence and of powerful ability, which has been rolling on, with increasing force, from that period to the present moment, and which, then almost in its infancy, was exerted in a question similar to that in which I have now the honour to address you, which marks that there was, within our own memory, in this very place, a prosecution of a church dignitary for a misdemeanour, as there is upon the present occasion.

Gentlemen, I will state plainly why this question is tried, and why you are called to deliver a verdict upon it. It is, in the first place, upon principles of public justice, in order that the justice of the country may be satisfied. The prosecution is likewise proceeded in on another principle, which I am sure I am warranted by the law of the land to state as a sound one; it is founded in an honest, fair, justifiable attempt, upon the part of this prosecutor, to vindicate his own character through the medium of this prosecution; I say, when I assert that to you, I state a legitimate ground of prosecution, and one that is consistent with the laws of the country: for it is in the power of any individual to use the name of his Majesty for the purposes of public justice; aye, and for the purpose of vindicating his own character and reputation. It is done every day in the case of libel, and may equally be done in the case of assault or riot.

The situation of this prosecutor was, and is, that of a person who, by industry in his profession, and in the different situations which he held in the part of the country where this offence was committed, gained to himself a livelihood. He found himself at once in the eye of that public where he lives, in the circle of that community

* Mr Erskine, as counsel for the Dean of St Asaph.

and society to which he belongs (if he did not take some method of bringing this matter forward to the public observation of the country, and of bringing these defendants forward to receive the public justice of the country), in the risk of being in all probability deprived of the honest earnings of his industry, and of the situations which he held for the benefit of himself and the support of his family. These are the principles upon which this prosecution is brought forward; these are the principles which do not at all involve anything of a vindictive spirit; they are principles upon which every honest man daily acts—they are principles upon which every honest man may legally act. Who could have blamed Mr Grindley if he had brought an action of damages against the bishop for the injury he has suffered? What is the situation in which he stands here, not bringing an action for damages indeed, but preferring an indictment? I will venture to say that under the circumstances of this crime, and agreeably to the matter charged in this *indictment*, a prosecution leaves the defendants more ample means and a better mode of defending themselves than if an *action* had been brought, and they had been put to plead a justification to that action. These are the points to which I wish to call your attention, in order that your minds may come coolly, deliberately, and without prejudice, to the trial of this cause.

Gentlemen, the indictment, as you have heard, states that the parties upon this record were guilty of a riot, by entering into, and doing certain acts in the office which belonged to the prosecutor, as deputy-registrar of the diocese of Bangor. It states nothing but a riot. There is no count in this indictment singly for a common assault, although it is the common mode, in drawing indictments of this sort, to conclude with the charge of a common assault, with a view of securing a verdict, in case the facts should not come up to the proof of a riot. I wish to call your attention particularly to this, because it shows there was no spirit to catch by a hair these parties for conduct which, if it does not amount to a riot, is not the subject of which this prosecutor means to complain.

It is necessary for me (and I shall do it very shortly indeed, before I enter into the state of facts which I must lay before you) to explain the law upon the subject of riot. There are various offences which people commit, congregated together, which receive different denominations in law, from the simple offence of an affray up to that of a riot, which it may be well for you to know, in order that you may be able to apply the evidence when you come to hear it. The case of an affray is a matter which arises accidentally, without any premeditation or intent. The next in order is an unlawful assembly; that offence consists in persons assembling together to do some act respecting private property (not concerning the affairs of the public), and separating without doing any act whatever. There is another case, commonly denominated a rout,

which is advancing towards the act without arriving at it. The highest in order is a riot, in which there must be these ingredients: In the first place, there must be three or more persons engaged in it; in the next place, there must be an intent and purpose in the parties to commit a riot; and, in the third place it is essential that it should have for its object some matter of private concern. When you come to hear the evidence, you will always bear this definition in your mind; which, I am satisfied, my learned friend will not contradict, and I am equally satisfied my Lord will support me in when he comes to address you.

I pledge myself, then, to prove that the Bishop of Bangor, and the other defendants upon this record, were guilty of that which I have last described; that there were three or more of them; that they committed a riot in a matter respecting private property; and that they had an original intent and purpose in the act which they did. With regard to the intent and purpose you will always observe this, that intent and purpose may either arise from the facts and circumstances that exist at the time of the transaction, which, by inference, establish a necessary presumption of an original intent, or it may be made still more palpable to you by showing a line and tissue of conduct which necessarily involves that intent and purpose, and therefore renders presumption unnecessary, by giving you clear, demonstrative, decided proof, arising from the acts and transactions of the parties establishing a premeditated design, intent, and purpose, in the acts which they did. You will find that this last observation will apply, most materially and forcibly, to the evidence I am about to lay before you, and the circumstances I am about to recite.

I profess, gentlemen, again and again, that I have no object in view but making you understand this case; and if, in the course of my address to you, I either elevate my voice, or give into a manner of action that is contrary to the utmost moderation, I trust you will attribute it to habit, and not to intention. I have no wish, but coolly, deliberately, and calmly, to make you masters of the facts, the circumstances, and principles upon which this important cause must be decided.

Gentlemen, I have already stated to you that the prosecutor of this cause was deputy-registrar of the Consistorial Court of the diocese of Bangor. It is essentially necessary that I should make you acquainted with the nature of that office; and not only that you should become acquainted with the nature of the offices of registrar and deputy-registrar generally, but that you should likewise be made acquainted with the particular circumstances and local situation of the prosecutor and his office.

The deputy-registrar is appointed by the principal registrar. The general nature of the office of registrar is, that he has the custody of all the archives and muniments that relate to the spiritual court of the diocese—that is, he is to register all the acts

of a juridical nature, and he is, besides *that*, the registrar of all the wills and testaments of the persons who die within the diocese. So that you observe it is an office of great importance, and extending to the interest and property of a vast portion of the community; that it is an office where the safe custody of the different archives and muniments is of the utmost consequence. Certainly, according to the law of the land—according to decided cases to which if it is necessary I can refer his Lordship, it is competent to appoint a minor to the situation of registrar; and, accordingly, the present Bishop of Bangor, upon the resignation of the former principal registrar, did appoint a nephew of his, a minor, to be principal registrar. As it is competent to the bishop to appoint a minor to be principal registrar, so it is equally competent that that minor should by some mode appoint a deputy.

The reason why a minor can in this case deviate from the general rule of law, and do an act appointing a deputy, is because it follows from necessity that the business of the office of registrar *must* be discharged. If the minor could not appoint, of course the duties of the office could not be discharged, and therefore, *ex necessitate rei*, from the necessity of the case, the minor is at liberty to appoint a deputy. But the power of the minor goes no further—there the law stops. The general rule of law is, that a minor can do no act, that he has no will, because he is not supposed to have understanding to act for himself. The exception in this particular case is, that the minor does an act for the purpose of appointing his deputy; but the necessity goes no further. I have it in my power to state to you, from a very recent decision, as well as from the very nature of the thing itself, that this registrar cannot remove his deputy; for in this very case an application was made to the Court of King's Bench (and though this may be tedious, it is an important part of this business), an application was made to the Court of King's Bench for a mandamus, calling upon the present prosecutor, Mr Grindley, to deliver over to a person of the name of Roberts all the muniments within his power, and to deliver up to him likewise the keys of his office, and thereby give him possession of the place where the business is conducted, and where the muniments are preserved. The result of that application for the order of the Court to compel this to be done was, that it was denied by the Court; and I have the authority to say, from those who heard it, that the ground upon which it was denied was this: Lord Kenyon was of opinion that it was essentially necessary to apply to the Court of Chancery to appoint a proper guardian for the minor, that there might be sufficient authority to appoint another deputy-registrar in the stead of Mr Grindley; but that being in possession of this office, and Mr Roberts not showing a right to the possession of the office, it was impossible for the Court to grant the order applied for.

I have, then, established clearly, in the first place, that Mr Grindley was in possession of the office; and, in the next place, that there was no legal power to remove him. Consequently, although from necessity the minor may appoint in the first instance, yet, if the office of deputy-registrar is properly discharged, that necessity not existing for the removal, the deputy-registrar must remain until the principal arrives at the years of majority, or until he has such a guardian appointed by the Court of Chancery as is capable of acting in such a subject matter.

Gentlemen, there is one other circumstance I wish to state respecting the law upon this subject—namely, that where a registrar is appointed by the bishop, and a deputy appointed by the registrar, and the principal registrar is a person not in a situation to act, there is no power and authority on the part of the bishop to remove the deputy-registrar. The bishop, by law, has no power or authority whatever to remove the registrar or deputy-registrar, except in the following manner:—If the registrar or his deputy does any act or acts which are in their nature contrary to law; if they do not act consistently with the duties of their office, then, in that case undoubtedly, the bishop may suspend, but his suspension is confined to “a year or more;” and it has been decided that the words, “or more,” do not extend indefinitely to any period, but must be confined to a reasonable period subsequent to the year. Gentlemen, I beg you will bear this position of law in your mind, because you will find throughout the whole of this cause that the bishop has had no fault whatever to find with Mr Grindley in the discharge of the duties of his office, for he has never thought him amenable to his jurisdiction for the purposes of suspension; that he must have conceived, therefore, that in the discharge of the duties of his office, he has acted like an honest, faithful guardian of his public trust. If he had not done so, would not this bishop—who, as I shall prove hereafter, attempted first by art and afterwards by force to remove him from that situation—would he not have made use of his suspending power? Would he not, near the period of the minor registrar coming of age—which would have been in less than a year from these transactions—would he not, I say, have suspended him for a year or more in order that the trust might not have been discharged improperly? by which means the minor, when he arrived at that age of twenty-one, when he would have the free exercise of his own will, might according to law have exercised the power of a motion over his deputy at his pleasure, without assigning any cause whatever for the removal.

Gentlemen, it is material in the discussion of this cause, and most material to your understanding the evidence, that you should know the particular situation of the office—I mean *the local situation of the place* in which the muniments and records are kept. It is, as I understand, built adjoining to and upon the cathedral church of

Bangor ; there is a flight of steps rising to it, and you go through a porch on which there is an outer door. Having got within the porch there is an inner door opens to the registrar-office ; the office is directly opposite to the bishop's palace, there is nothing but a court-yard between them, and it is so near that every voice perhaps may be heard from the one place to the other ; of that, however, I am by no means certain, but it certainly is within sight of the bishop's palace, adjoining to and built upon the cathedral.

I have stated the duties of this office—I have shown you that they are grave and serious duties : I have stated the responsibilities of this office—I have shown they are grave and serious responsibilities : I have stated the nature of the muniments kept in this office, and the place in which they are kept ; and I contend, I think, without the hazard of contradiction by my learned friends, that the person who was thus appointed deputy-registrar was irremovable, except by the mode of suspension by the bishop in the manner I have mentioned. He was not removable by the minor, but through the medium of a guardian, which guardian must be appointed by the Court of Chancery. The deputy-registrar thus invested with this office, so charged with those duties and these responsibilities, had as good a right and title to possess that office—to possess the house or place which I have described, to maintain it, to take it again if it was taken from him, and to defend himself in it, as any Englishman has to defend his house, which is emphatically denominated his castle. It is impossible to compare it more accurately. All the circumstances that belong to the sanctuary of a house belong to the sanctuary of this office. The sanctuary of our house is for our repose, quiet, and security—it is, that we may protect our families. The sanctuary of this office is not that the family of an individual may be protected, but is for the protection of the interests of an extensive community—it is, that all the devices of personal estates, that all the records in the office of a legal and a judicial nature, that all the interests of a large and important diocese, may be protected. Then all the arguments for a man's maintaining and defending the possession of his house apply infinitely stronger to an office charged with such responsibilities. It is impossible that he can secure, it is impossible that he can maintain, that which is essential for him to justify his conduct towards the public, without maintaining possession of the building where these things are preserved ; and every person who attempts to trespass upon it is a trespasser in the eye of the law—every person who makes a riot in it is amenable to the justice of his country.

I have described the situation of this office—it is built adjoining to the cathedral, the wall of it runs into the wall of the cathedral : I have described the nature of it—it is a spiritual office. Is it possible that anything can amount more nearly to the description which the

great Roman orator gave as the definition of a house : "*Quid enim sanctius, quid omni religione munitius, quam domus uniuscujusque civis?*" What can be more holy, what can be more protected by every principle of religion? This is a spiritual office—it is a spiritual office carried on in a building annexed in local situation to the cathedral church. Thus annexed by duty, and annexed by situation, it falls in precisely with the comparison I have made, and shows you that this gentleman, Mr Grindley, was bound for his own sake, for the sake of the public, with whose interests he was intrusted, for the sake of the community of the diocese to which he belonged—by the sacred situation of the place of office, to possess, and protect his possession in it, that the muniments and the archives might be preserved.

Gentlemen, I am sorry I have detained you so long in the preliminary part of this case; I hope, however, I have not wandered, but have confined myself accurately to the question before you. I think I have done no more than laid that ground which is necessary for your understanding the facts, and I now come to state to you, precisely and accurately, what the nature of those facts is. I told you originally that I aim only at distinctness. If I have that quality I have everything I can wish. In order to be distinct, and in order to show you with what mind and intent this riot was committed, I anxiously entreat your attention to the commencement of the connexion between Mr Grindley and the Bishop of Bangor.

Early in the year 1792, Mr Grindley was appointed agent for the Bishop of Bangor. In the month of February of that year, the bishop appointed his nephew, a minor, to the situation of registrar of the Consistorial Court of the diocese. In the month of March 1792, Mr Grindley was appointed deputy-registrar. He continued to act in the situation of deputy-registrar down to the year 1794, when, for the first time, he saw the minor, who confirmed the appointment, and who treated him as his deputy-registrar. The bargain was, that Mr Grindley was to pay his principal seventy pounds a year. He discharged the regular payments. He continued to act in his office, without any offence to the bishop, and that he had committed no offence in his office, is clear, otherwise he, the bishop, must have suspended him. He continued, I say, to act in the discharge of the duties of his office down to the autumn of 1795. Here then begins the history which gives origin to this prosecution.

The approach of the general election led the Bishop of Bangor to think, that he might, perhaps, be serviceable to some of his friends; and he thought those immediately under him were likely to be influenced by him. He applied to Mr Grindley for his interest in the county of Caernarvon. His application did not meet with the reception, or with the answer, he expected. Mr

Grindley thought, as I hope every Englishman thinks, that he had a right to the free exercise of his franchise, and the free exercise of his influence; but although he thought so, I can assure you that he behaved with great temper and moderation. Mr Grindley now found, that his connexion with the bishop became a connexion that was not so comfortable, if they were not to agree in their election interests; he thought it right, therefore, to resign the office of agent to the bishop; and he accordingly resigned his place of agent in the month of January. At the time he did so, he signified expressly, that, on the 22d of February, he would resign the office of deputy-registrar. Now, could anything be more moderate? You may, perhaps, ask, why he did not resign the office of deputy-registrar at the time he resigned the situation of agent? The reason he assigned was this, and it is a valid and substantial reason—that his year of appointment as registrar ended upon the 22d of February 1796; that, by retaining the office till that time, he should be enabled to make up his accounts, to settle all his business, and then he would quietly take his departure from it. Could anything be more moderate, could anything more be wished for by the bishop? If this registrar had become obnoxious to him, because he did not obey him in matters with which the bishop, I must say, ought to have had no interference, either as a bishop or as a lord of Parliament; if he wished to get rid of Mr Grindley, might he not have had that patience which ought peculiarly to belong to the character of those who appear as defendants upon this indictment? Might he not have had patience for but a little month, till the deputy-registrar voluntarily resigned his office? There is something in this conduct of the bishop which it is almost impossible to account for, unless one were to dive into those speculations, which have led one to know what the motives and what the feelings of men are in different situations of life, and in different characters in society.

I recollect a very profound and a very wise saying, equally true as wise, with respect to the clergy. It was said of them, "That they had found, what Archimedes only wanted, another world, on which to fix their fulcrum, by which they moved this world at their pleasure." That saying will go far to expound this conduct. In all spiritual matters, it is a wise, a just, a true maxim, calculated to show the true principles upon which the clergy possess, and truly and justly, and eminently and beneficially to the society in which we live, possess that influence upon mankind, which ought to belong to their character and situation in all spiritual affairs; but when they travel from spiritual to temporal concerns—when they quit the affairs of the other, and look only to the concerns of this world; when they interfere in politics above, or in elections below, then that character, which directs their influence in the clerical function, unfortunately follows them into their temporal

concerns. If they are disappointed, they cannot brook it. They have been taught to regard mankind as persons whom they are to govern at their pleasure—they are incapable of smoothing the matter over, as men more accustomed to the ordinary concerns of life are; and their spiritual power uniformly follows them into temporal concerns, if they are imprudent enough to mix in them. This is vouched by the history of the world, in all ages; it is vouched peculiarly by the history of this country. Who ever heard of Sherlock or Lowth interfering in such matters? No! They were enabled to move this world at their pleasure, because their lives were spiritual and holy. Who has not heard that Wolsey and Laud were of a different character and description? The *Ego et Rex meus* of Wolsey, and the violence of Laud, against the privileges of the people of England, are equally to be collected from that witty, wise, and just maxim to which I have alluded. Such is the situation of the persons concerned. Gentlemen, it does not signify whether the scene is in the world at large, or in the county of Caernarvon; whether it is transacted in the palace of Whitehall, or in the churchyard of Bangor; the same causes, in the hand of the Supreme Being, directing this world to its good, will always produce the same effects; and I cannot account for the bishop not having accepted of this moderate, of this attentive, of this happy proposition (I might almost say, if it had been accepted) of the deputy-registrar, but that he had deviated from what he does not, I am sure, often deviate from,—from spiritual to temporal concerns,—that he had forgot the concerns of that pure and humble religion, of which he is an eminent pastor, and that he had been drawn aside by the peculiar interests of friendship, by the strong ties of connexion, or by something else, in order to act in the manner which I have described to you.

In fact, the resignation has not been made at all; and the transactions, which I am about to relate, will show the reasons why it has not been made, and will prove that it was not possible to have been made with safety. Mr Grindley found the bishop had become hostile to him; he found he was no longer safe in resigning it into hands that could not legally accept the resignation; he found he could not have that confidence, which would have taken place, if it had been left to his own freedom and choice; and that, after he had resigned into the hands of a minor, he would, in point of law, have retained all the responsibilities of the office, without being, in fact, in the office, to discharge the duties: therefore it is, he has not resigned the office. But the transaction which I am about to state to you, and I am now come to the real question in the cause (though I humbly think, under his Lordship's direction, that nothing I have said is irrelevant)—the transaction I am about to state to you will unfold the whole.

Between the 4th and the 8th of January 1796, which you

see was a month previous to the term of the proposed resignation, these transactions took place. First of all, the bishop, in the absence of Mr Grindley, the deputy-registrar, sent for the seals; and he obtained one seal. I think the other seal Mr Grindley's clerk had not in his possession, and it was not delivered. This was intimated to Mr Grindley; and Mr Grindley, imagining that the bishop, having obtained one seal, might possibly attempt to obtain the keys, he, therefore, being at that time in Anglesey, wrote to his clerk to beware not to give the bishop the key of the office if he asked for it. The bishop did ask for it; and was refused. Upon the 7th of January Mr Grindley returned and found that his office had been broken into. He ascertained, as I shall prove from the bishop's own mouth, that the bishop had given directions to break open the window of the office, to take the locks off the door, and put on other locks. In this situation Mr Grindley found himself, respecting an office for the duties of which he was legally responsible; for he is, both in law and in fact, deputy-registrar, and has been so from the year 1792 down to the present time, without any attempt to cast a slur on his character in the discharge of his duties.

Gentlemen, I come now to the principal facts; and I can assure you I will act in the spirit which I professed at the outset. I wish to state everything candidly to you; I have nothing to hold back. I do not mean to say that, upon every occasion, it is possible to justify persons in their transactions for moderation and for prudence; and yet I think, when you examine the transactions of Mr Grindley, you will see, under all the circumstances, that they were neither immoderate nor imprudent. Mr Grindley's offer of resignation had been scoffed at and rejected. He had been treated in such a way as to make it natural to suppose that he would be exposed as a culprit, in the discharge of his duty, to the whole community to which that duty appertains. He found that it was essentially necessary for him to know in what state the muniments and archives were, which he alone had a right to the possession of. He found the means of entrance debarred, and, therefore, determined to get admission to the office; and, having got admission, he determined to maintain himself in the possession of it, as he had a full right to do.

In the morning of the 8th of January, Mr Grindley went to the office, with the means of getting admittance into it. You will observe, that the first attempt to get possession of the office had been on the part of the bishop. You will always recollect, that the bishop has no earthly right to the possession of the muniments of that office, as long as the registrar properly discharges the duty of the office. He has no right to keep the registrar out of his office, but the registrar has a right to keep all mankind out of it, except those who come upon business, and except the bishop when

he comes in the discharge of his duty as *Bishop of Bangor*. Mr Grindley imagined, from the violence that had taken place before—that is to say, from the violent breaking into the office originally, and from the offer of compromise on his part, and even of resignation, being wholly rejected—he imagined, and it was natural so to imagine, that force would be opposed to force, when he once got possession of his office; and therefore, undoubtedly, Mr Grindley went provided, so as to secure himself against the possibility of that force depriving him of his office. Gentlemen, I insist that when he was in possession of his office, he had a right so to do. All this will be proved—I say it will be proved, because I know Mr Grindley, who is the first witness, is a person beyond the suspicion of not acting agreeable to his oath. The oath is, “that he shall speak the truth, the whole truth, and nothing but the truth.” It has been uniformly expounded, that a person, who does not speak the whole truth in a court of justice, is as criminal as he who speaks a direct falsehood. I feel myself bound in duty and in conscience, as an advocate, to state to you the whole truth; and Mr Grindley is a man of that conscience, that he will speak the whole truth in the manner in which the thing happened. It will then be for you to judge, under all the circumstances; and I think that, whatever opinion you may form with regard to Mr Grindley's rashness in his manner of getting possession of the office, and his determination to maintain possession of it, you will be convinced, that the bishop and those indicted, were in fact guilty of a riot, for endeavouring to get possession of it, and coming and interrupting him in the manner I shall describe and prove.

Mr Grindley went with pistols in his pocket; but it will be proved, *these pistols were unloaded*. Now, I can assure my friends (whatever gestures they may make), that I am not in the least afraid of this fact. I say his going with *unloaded* pistols, proves that he had, in regard to getting possession of the office, no intent of offence whatever. He took powder and shot, with which, when he got possession, he loaded his pistols—which proves that he was determined, being in peaceable possession of his office, to maintain that possession; and I contend, that the deputy-registrar of the diocese, under the circumstances I state, had a right so to do. I say, that every argument, every fact which applies to the case of a man's own house being his castle, applies to this case. Mr Grindley, after he had opened the outer door in the porch, in order to prevent any riot, and for the purpose of intimidation, threatened one of the persons who came from the bishop's house to interrupt him, with an unloaded pistol; for it will be proved, that the pistols were loaded at a *subsequent time*. After this first attempt to disturb him, there was a considerable interval; and during this interval Mr Grindley got into the inner door. Mr Grindley being thus in the office, the bishop and various of his servants arrived. The

bishop hallooed with a voice so loud (as will be proved to you) that Mr Grindley did not know it; his passion was so vehement, that it was absolutely impossible to distinguish his voice. The moment Mr Grindley knew it was the bishop, he said he had no objection to the bishop's being let in, and he desired his servants quietly and peaceably to retire to a further corner of the room. Mr Grindley then came forward, and said, that whatever business was to be done he was ready to do it; that he considered himself as the legal officer, and he was then in the quiet possession of his office; that, with regard to his Lordship, he was perfectly willing he should come into the office, but he begged that his Lordship's boisterous and tumultuous conduct might cease. I really wish, rather that the witnesses should describe what passed afterwards, than that I should. But instead of that tumultuous conduct ceasing, the bishop approached first to Mr Grindley, afterwards to his servants, with threatening gestures, and with threatening words, laying his hands upon them, and he was assisted by the four other persons indicted, who afterwards came into the office, whose actions and words were precisely of the same kind and description.

Gentlemen, one of the grounds of a riot which you have to try, is this—That here was a person, legally entitled to the possession of his office, illegally forced from that office; he had taken possession of this office, and remained in the quiet possession of it. Now, whether he did so in a manner that a perfectly calm and unconcerned spectator may approve of, as an abstract case, I do not know; but I am addressing myself to persons who have human passions; I am addressing myself to gentlemen, who know what human nature is; and I am sure, that in an outrage of this sort, committed after a voluntary offer of resignation, such as I have stated—after a conduct so peaceable and quiet—even a worm if trod upon would have turned again. Mr Grindley had got quietly into the possession of his office, and then, after a lapse of time, this office was again attacked in the riotous, tumultuous, and extraordinary manner which the witnesses will state, but which I forbear detailing; because, in the first place, it is unnecessary for your understanding the cause, and in the next place, it is painful for me to state it. This disturbance went on a considerable time, and at last it ended only by persons, whose sex and character I have too great a respect for to introduce them into the cause, more than just to say, that by the intervention of Mrs Warren and two ladies, the bishop was at last quieted from his passion, and withdrawn from the riot. There the business ended. Gentlemen, this is the case which you have to try; and I think I can venture to say, that if the facts are proved in the manner I have described, and I take upon me to say I have stated them most correctly, it is impossible for you not to find a verdict for the prosecutor.

Gentlemen, it would be in vain, and an absurd thing in me, to detain you with any particular address to yourselves. I have not the

honour of knowing hardly any of you personally, although among the jury there are some gentlemen whom I have had an opportunity of seeing in another scene in life. I know your characters, and I know that however you may feel yourselves bound to protect the ministers of our church, though I think this prosecution can have no effect upon any but the particular churchmen engaged in this transaction, that you will yet guard yourselves against deviating from those principles according to which you are bound to act, and that you will find according to the evidence.

Gentlemen, there is no principle implanted in the human mind, stronger than the sympathy which we feel for the situation and sufferings of persons of high rank and condition; it is one of those principles that bind society together; and is most admirably infused into our nature, for the purposes of good government and the well-being of civil order. But whatever the rank may be, that rank can never stand between a defendant and the proof of the fact, with a jury of Englishmen. They know their duty too well; neither compassion, sympathy, nor any other principle, can possibly affect their minds. Consider what is the peculiar situation of these defendants; reflect, that they are set apart by the laws of the land, and the regulations of the Christian religion, for the purpose of preaching the doctrines of Christ. Our law has been so peculiarly cautious with respect to their character, that even when it empowers the civil magistrate to quell a riot by calling to his assistance every other member of the community, it peculiarly excepts women and children, and the clergy. I have brought before you persons of that description, who, instead of claiming an exemption from being called upon, have themselves been guilty of a riot; for which they are justly amenable to the laws of their country.

[After the examination of the witnesses, and the close of the prosecutor's case, Mr ERSKINE spoke as follows:—]

GENTLEMEN OF THE JURY.—My learned friend, in opening the case on the part of the prosecution, has, from personal kindness to me, adverted to some successful exertions in the duties of my profession, and particularly in this place. It is true, that I have been in the practice of the law for very many years, and more than once, upon memorable occasions, in this court; yet, with all the experience which, in that long lapse of time, the most inattentive man may be supposed to have collected, I feel myself wholly at a loss in what manner to address you. I speak unaffectedly when I say, that I never felt myself in so complete a state of embarrassment in the course of my professional life; indeed, I hardly know how to collect my faculties at all, or in what fashion to deal with this most extraordinary subject. When my learned friend, Mr Adam, spoke from *himself*, and from the emanations of as honourable a mind as

ever was bestowed upon any of the human species, I know that he spoke the truth when he declared his wish to conduct the cause with all charity, and in the true spirit of Christianity. But his duties were scarcely compatible with his intentions; and we shall, therefore, have, in the sequel, to examine how much of his speech was *his own* candid address, proceeding from *himself*; and what part of it may be considered as arrows from the quiver of his CLIENT. The cause of the Bishop of Bangor can suffer nothing from this tribute, which is equally due to friendship and to justice. On the contrary, I should have thought it material, at any rate, to advert to the advantage which Mr Grindley might otherwise derive from being so represented. I should have thought it right to guard you against blending the client with the counsel. It would have been my duty to warn you, not to confound the one with the other, lest, when you hear a liberal and ingenuous man, dealing, as he does, in humane and conciliating expressions, and observe him with an aspect of gentleness and moderation, you might be led by sympathy to imagine that such were the feelings, and that such had been the conduct, of the man whom he represents.* On the contrary, I have no difficulty in asserting, and I shall call upon his Lordship to pronounce the law upon the subject. That you have before you a prosecution, set on foot without the smallest colour or foundation—a prosecution, hatched in mischief and in malice, by a man, who is, by his own confession, a disturber of the public peace; supported throughout by persons who, upon their own testimony, have been his accomplices, and who are now leagued with him in a conspiracy to turn the tables of justice upon those who came to remonstrate against their violence, who honestly, but vainly, endeavoured to recall them to a sense of their duty, whose only object was to preserve the public peace, and to secure even the sanctuaries of religion from the violation of disorder and tumult.

What, then, is the cause of my embarrassment? It is this. In the extraordinary times in which we live; amidst the vast and portentous changes which have shaken, and are shaking the world; I cannot help imagining, in standing up for a defendant against such prosecutors, that the religion and order, under which this country has existed for ages, had been subverted; that anarchy had set up her standard; that misrule had usurped the seat of justice, and that the workers of this confusion and uproar had obtained the power to question their superiors, and to subject them to ignominy and reproach, for venturing only to remonstrate against their violence, and for endeavouring to preserve tranquillity, by

* No observation can be more just than this. It is the most consummate art of an advocate, when he knows that an attack is likely to be made upon his client for turbulence and malice, to make the jury think, by his whole speech and demeanour, that mildness and justice were his characteristics; and Mr Adam appears, with great ability, to have fulfilled this duty.

means not only hitherto accounted legal, but which the law has immemorially exacted as an **INDISPENSABLE DUTY** from all the subjects of this realm. Hence, it really is, that my embarrassment arises; and, however this may be considered as a strong figure in speaking, and introduced rather to captivate your imaginations than gravely to solicit your judgments, yet let me ask you, Whether it is not the most natural train of ideas that can occur to any man, who has been eighteen years in the profession of the English law?

In the first place, gentlemen, who are the parties prosecuted and prosecuting? What are the relations they stand in to each other? What are the transactions, as they have been proved by themselves? What is the law upon the subject? And, what is the spirit and temper, the design and purpose of this nefarious prosecution?

The parties prosecuted are the right reverend prelate, whose name stands first upon the indictment, and three ministers and members of his church, together with another, who is added (I know not why) as a defendant. The person prosecuting is—(how shall I describe him?)—for surely my learned friend could not be serious when he stated the relation between this person and the Bishop of Bangor. He told you, most truly—which renders it less necessary for me to take up your time upon the subject—that the bishop is invested with a very large and important jurisdiction; that, by the ancient laws of this kingdom, it extends to many of the most material objects in civil life—that is, has the custody and recording of wills, the granting of administrations, and a jurisdiction over many other rights of the deepest moment to the personal property of the King's subjects. He told you, also, that all these complicated authorities, subject only to the appellate jurisdiction of the metropolitan, are vested in the bishop: to which he might have added (*and would, no doubt, if his cause would have admitted the addition*), that **THE BISHOP HIMSELF**, and not his temporary clerk, has, in the eye of the law, the custody of the records of his church, and that he also is the person whom the law looks to for the due administration of everything committed to his care; his subordinate officers being, of course, responsible to *him* for the execution of what the law requires at *his* hands.

As the King himself, who is the fountain of all jurisdictions, cannot exercise them himself, but only by substitutes, judicial and ministerial, to whom, in the various subordinations of magistracy, his executive authority is delegated; so in the descending scale of ecclesiastical authority, the bishop also has *his* subordinates to assist him judicially, and who have again *their* subordinate officers and servants for the performance of those duties committed by law to the bishop himself; but which he exercises through the various deputations which the law sanctions and confirms.

The Consistory Court, of which this man is the deputy-registrar,

is the Bishop's Court. For the fulfilment of its duties the law has allowed him his chancellor and superior judges, who have under them, in the different ecclesiastical divisions, their surrogates, who have, again, their various subordinates; the *lowest*, and *last*, and *least* of whom is the prosecutor of this indictment; who, nevertheless, considers the Cathedral Church of Bangor and the Court of the Bishop's see, as his own CASTLE; and who, under that idea, asserts the possession of it, *even to the exclusion of the bishop himself*, by violence and armed resistance! Do you wonder now, gentlemen, that I found it difficult to handle this preposterous proceeding? The registrar himself (putting deputation out of the question) is the very lowest, last, and least of the creatures of the bishop's jurisdiction; without a shadow of jurisdiction himself, either judicial or ministerial. He sits, indeed, amongst the records, because he is to register the acts which are there recorded; but he sits there as *an officer of the bishop*, and the office is held under the chapter part of the cathedral, and within its consecrated precincts, where the bishop has a jurisdiction, independent of all those which my friend has stated to you—a jurisdiction given to him by many ancient statutes, not merely for preserving that tranquillity which civil order demands everywhere, but to enforce that reverence and solemnity which religion enjoins within its sanctuaries throughout the whole Christian world.

Much has been said of the registrar's freehold in his office, but the term which he has in it—viz., for life—arose originally from an indulgence to the bishop who conferred it; and it is an indulgence which still remains, notwithstanding the restraining statute of Elizabeth. The bishop's appointment of a registrar is therefore binding upon his successor. But, how binding? Is it binding to exclude the future bishop from his own cathedral? Is it true, as this man preposterously supposes, that, because he chooses to put private papers of his own where no private papers ought to be; because he thinks fit to remove them from his own house and put them into the office appointed only for the records of the public; because he mixes his own particular accounts with the archives of the diocese, that therefore, forsooth, he has a right to oust the bishop from the offices of his own court, and, with pistols, to resist his entrance if he comes even to enjoin quiet and decency in his church? Surely Bedlam is the proper forum to settle the rights of such a claimant.

The bishop's authority, on the contrary, is so universal throughout his diocese, that it is laid down by Lord Coke, and followed by all the ecclesiastical writers down to the present time, that though the freehold in every church is in the parson, yet *that* freehold cannot oust the jurisdiction of the ordinary, who has a right, not merely to be present to visit the conduct of the incumbent, but to see that the church is fit for the service of religion; and so absolute

and paramount is his jurisdiction, that no man, except by prescription, can even set up or take down a monument without his license—the consent of the parson, though the freehold is in him, being held not to be sufficient. The right, therefore, conferred by the bishop on the registrar, and binding (as I admit it to be) upon himself and his successor, is the right to perform the functions of the office, and to receive the legal emoluments. The registrar may also appoint his deputy, but not in the manner my learned friend has affirmed; for the registrar can appoint no deputy without the bishop's consent and approbation. My learned friend has been also totally misinstructed with regard to the late judgment of the Court of King's Bench on the subject. He was not concerned in the motion, and has only his report of it from his client. Mr Grindley was represented in that motion by a learned counsel, who now assists me in this cause, to whom I desire to appeal. The Court never pronounced a syllable which touched upon the controversy of to-day; on the contrary, its judgment was wholly destructive of Mr Grindley's title to be deputy, for it held that the infant, and not his *natural* guardian, had with the bishop's approbation the appointment of his deputy; whereas Mr Grindley was appointed by his *father only*, and not by the infant at all, which my friend well knew, and, therefore, gave parole evidence of his possession of the office, instead of producing his appointment, which would have been fatal to his title: and the reason why the Court refused the mandamus, was because Mr Roberts, who applied for it, was not a legal deputy. It did not decide that the prosecutor *was* the legal officer, but only that Mr Roberts *was not*; and it decided that he *was not*, because he had only the appointment of the infant's father, which was, by the bye, the only title which the prosecutor had himself; and although the infant was a lunatic, and could no longer act in that respect for himself, yet the Court determined that his authority did not devolve to the father, but to the Court of Chancery, which has by law the custody of all lunatics.

This judgment was perfectly correct, and supports my proposition, that the prosecutor was a mere tenant at will of the bishop. The infant can indeed appoint his deputy, but not *ex necessitate rei*, as my friend supposes; on the contrary, he will find the reason given by the Court of King's Bench, as far back as the reign of Charles the First, as it is reported by that great magistrate, Mr Justice Croke. It is there said, that an infant can appoint a deputy, *because the act requires no discretion, the approbation, which is tantamount to the choice, being in the bishop.* The continuance must, therefore, in common sense, be in the bishop also; for otherwise, the infant having no discretion, a proper person might be removed indiscreetly, or an improper person might never be removed at all. I maintain, therefore, on

the authority of the ancient law, confirmed by the late decision of the Court of King's Bench, in *this very case*, that the prosecutor, who is so forward to maintain a privilege, which he could not have maintained even if he had been Judge of the Court and chancellor of the diocese, he had in fact no more title to the office than I have. He tells you, himself, that he never had any appointment from the infant, but from the father only, with the infant's and the bishop's approbation; in other words, he was the deputy *de facto*; but as such I assert he was a mere tenant-at-will; and, consequently became, to all intents and purposes, a private man from the moment the bishop signified his determination to put an end to his office; and that the bishop had signified his determination before the transaction in question, Mr Grindley has distinctly admitted also. I thought, indeed, I should be more likely to get that truth from him by concealing from him the drift of my examination; and he, therefore, swore most eagerly that the bishop did not offer him the key at the palace; but that, on the contrary, he had told him distinctly that he was no longer in the office. He says besides that the bishop expressed the same determination by a letter; in answer to which he had declared his resolution to hold it till the year expired. I say, therefore, that the prosecutor, at the time in question, was not deputy-registrar, and that, the infant being a lunatic, the bishop had a right to give charge of the office till another was duly appointed. This point of law I will put on the record, if my friend desires it.

But why should I exhaust myself with this collateral matter, since, in *my* view of the subject, it signifies nothing to the question we have to consider. It signifies not a farthing to the principles on which I presently mean to rest my defence, whether he was an usurper, or the legal deputy, or the infant himself, with his patent in his hand.

Let us now, therefore, attend to what this man did, whatever character belonged to him. This is principally to be collected from the prosecutor's own testimony, which is open to several observations. My learned friend, who stated to you in his absence the evidence he expected from him, explained with great distinctness the nature and obligation of an oath; and, speaking from *his own* honest sensations, and anticipating the evidence of his client from the manner *HE* would, as a witness, have delivered his own, he told you that you would hear from him a plain, unvarnished statement; that he would keep back from you no circumstance, nor wish to give a colour to any part of the transaction. What induced my friend to assure us, with so much solicitude, that his witness would adhere so uniformly to the truth, I cannot imagine, unless he thought that his evidence stood in need of some recommendation. All I can say is, that he did not in the least deserve

the panegyric which was made upon him, for he did not give an *unvarnished* statement of the very beginning of the transaction which produced all that followed. I asked him whether, in refusing the key, he did not mean to keep an exclusive possession of the office, and to prevent the bishop even from coming there? But, observe how the gentleman fenced with this plain question. "*I did not,*" he said, "*refuse him the key, but only lest he should take possession.*" I asked him again, "If he did not positively refuse the key?" and desired the answer to be taken down. At that moment my friend, Mr Manly, very seasonably interposed, as such a witness required to be dry-nursed; and at last he said, "*Oh, the key was included.*"

The bishop, therefore, was actually and wilfully excluded wholly from the office. For, notwithstanding Mr Grindley's hesitation, Mr Sharpe, who followed him, and who had not heard his evidence, *from the witnesses being kept apart*, swore DISTINCTLY AND AT ONCE, that the key was taken from Dodd, because Grindley thought he would let the bishop have it; and the witness said further—(*I pledge myself to his words*)—"IT WAS, THEREFORE, DELIVERED INTO MY CUSTODY, AND I REFUSED IT TO THE BISHOP. I DID SO BY MR GRINDLEY'S DIRECTION, UNDOUBTEDLY."

The very beginning of the transaction, then, is *the total exclusion of the bishop from his own court, by a person appointed only to act as deputy, by his own consent, and during his own will; WHICH WILL he had absolutely determined before the time in question.* I am, therefore, all amazement, when it shoots across my mind that I am exhausting my strength in defending the bishop; because, most undoubtedly, I should have been counsel for *him* as a *prosecutor*, in bringing his opponents to justice. According to this new system, I would have THE JUDGES take care how they conduct themselves. The office-keepers of the records of the Courts at Westminster are held by patent; even the usher's place of the Court of King's Bench is for life; HE too is allowed to appoint his deputy, who is the man that puts wafers into our boxes, and papers into our drawers, and who hands us our letters in the cleft of a stick. But, nevertheless, I would have their lordships take care how they go into the Court of King's Bench, which, it seems, is this man's CASTLE. If Mr Hewit were to make a noise and disturb the Court, and Lord Kenyon were to order him to be pushed out, I suppose we should have his Lordship at the next assizes for a riot. Suppose any of the judges wished to inspect a record in the Treasury Chamber, and the clerk should not only refuse the key, but maintain his possession with pistols; would any man in his senses argue that it was either indictable or indecent to thrust him out into the street? Yet, where is the difference between the attendants on a court civil and a court ecclesiastical? Where is the difference between the keeper of the Records of the Court of

King's Bench, or Common Pleas, and the registrar of the Consistory of Bangor?

To all this I know it may be answered, That these observations (supposing them to be well founded) only establish the bishop's right of entry into his office, and the illegal act of the prosecutor in taking an exclusive possession; but that they do not vindicate the bishop for having first taken off the lock in his absence, nor for afterwards disturbing him in the possession which he had peaceably regained; that the law was open to him, and that his personal interference was illegal.

To settle this point, we must first have recourse to facts, and then examine how the law applies to them.

It stands admitted, that though Mr Grindley knew that the bishop had determined his will, and had insisted on his surrender of his situation, which he never held but by the bishop's sufferance, he absolutely refused the key, with the design to exclude him from the office. It was not till *then*, that the bishop, having no other means of access, ordered the lock to be taken off, and a new key to be made. Now, whether this act of the bishop's was legal or illegal, is wholly beside the question—his Lordship is not charged with any force or illegality on *that* account; he is not accused even in the counsel's speech, with any impropriety in this proceeding, except an intrusion into this imaginary castle of Mr Grindley. It is admitted, in short, that the bishop took a possession *altogether peaceable*.

His Lordship, then, having removed the deputy-registrar, without due authority, if you please, and being (if you will, for anything which interests my argument) in possession, contrary to law, let us see what follows. And in examining this part of the evidence, upon which, indeed, the whole case depends, I am not driven to the common address of a counsel for a defendant in a criminal prosecution; I am not obliged to entreat you to suspend your judgments till you hear the other side; I am not anxious to caution you to withhold implicit credit from the evidence till the whole of it is before you. No, gentlemen, I am so far from being in that painful predicament, that though I know above half of what you have heard is not true; although I know that the transaction is distorted, perverted, and exaggerated in every limb and member; yet I desire that you will take it as it is, and find your verdict upon the foundation of its truth. Neither do I desire to seduce your judgments, by reminding you of the delicacy of the case. My friend declares he does not know you personally, but that he supposes you must have a natural sympathy in protecting a person in the bishop's situation against an imputation so extremely inconsistent with the character and dignity of his order. It is natural, as decent men, that you should; and I, therefore, willingly second my learned friend in that part of his address. I solemnly conjure

you also to give an impartial judgment; I call upon you to convict or acquit, according to right and justice. God forbid that you should not! I ask no favour for my client because he is a prelate, but I claim for him the right of an English subject, to vindicate his conduct under the law of the land.

The bishop, then, being in peaceable possession, what is the conduct of the prosecutor, even upon his own confession? He sends for three men; two of whom he calls domestics; one of them is his *domestic blacksmith*. He comes with them, and others, to the office, with PISTOLS, and provided with POWDER AND SHOT. Now, *quo animo*, did they come? I was really so diverted with the nice distinction of Mr Grindley, in his answer to this question, that I could scarcely preserve my gravity. He said, "I came, it is true, with pistols, and with powder and shot, to take possession; but—mark—I did not *load* my pistols in order to *take* possession—I did not load them till *after* I had it, and then only to *keep* the possession I had peaceably taken." This would be an admirable defence at the Old Bailey. A man breaks into my house in the day, to rob me of my plate*—(this is but too apt a quotation, for so I lost the whole of it); but this felon is a prudent man, and says to himself, I will not *load* my fire-arms till I have got into the house and taken the plate, and then *I will load them*, to defend myself against the owner, if I am discovered. This is Mr Grindley's law; and, therefore, the moment he had forced the office, he loaded his pistols, and called aloud repeatedly, that he would blow out the brains of the first man that entered. A pistol had before been held to the breast of one of the bishop's servants; and things were in *this* posture when the bishop came to the spot, and was admitted into the office. The lock which he had affixed he found taken off, the doors forced open, and the apartment occupied by armed men, threatening violence to all who should oppose them.

THIS IS MR GRINDLEY'S OWN ACCOUNT. He admits, that he had loaded his pistol *before the bishop came*; that he had determined to stand, *vi et armis*, to maintain possession by violence, and by death if necessary; and that he had made that open declaration in the hearing of the bishop of the diocese. Perhaps Mr Grindley may wish, hereafter, that he had not made this declaration so public; for, whatever may be the *bishop's* forbearance, yet the criminal law may yet interpose by other instruments, and by other means. Indeed, I am truly sorry to be discussing this matter for a *defendant in July*, which ought to have been the accusation of a *prosecutor six months ago*, if the public peace of the realm had been duly vindicated.

The bishop, then, being at the door, and hearing his office was taken possession of by force, and by the very man whom he had

* It seems Lord Erskine's house, in Sergeant's Inn, had been recently broken open, and his plate all stolen.

displaced, the question is, Did he do *more* than the law warranted in that conjuncture? I maintain, that, from overbearance, he did *much less*. If in this scene of disorder the records of the diocese had been lost, mutilated, or even displaced, the bishop, if not legally, would at the least have been morally responsible. It was his duty, besides, to command decency within the precincts of his church, and to remove at a distance from it all disturbers of the peace. And what after all did the bishop do? He walked up and down, remonstrating with the rioters, and desiring them to go out, having before sent for a magistrate to act according to his discretion. It is true, Mr Grindley worked himself up to say, that the bishop held up his fist so (*describing it*); but, with all his zeal, he will not venture to swear he did so with a *declaration*, or even with an *appearance*, of an intention to strike him. The whole that he can screw up his conscience to is, to put the bishop in an attitude, which is contradicted by every one of his own witnesses—who all say, that the bishop seemed much surprised, and walked to and fro, saying, “This is fine work!” and moving his hands backwards and forwards, thus (*describing it*). Does this account at all correspond with Mr Grindley’s? or does it prove an attitude of force, or even an expression of passion? On the contrary, it appears to me the most natural conduct in the world. They may fancy, perhaps, that they expose the bishop when they impute to him the common feelings, or, if you please, the indignation of a MAN, when all order is insulted in his presence, and a shameless outrage committed in the very sanctuary which he is called upon, by the duty of his office, and the dignity of his station, to protect. But is it required of any man, either by human nature, or by human laws (whatever may be the sanctity of his character), to look at such a proceeding unmoved? Would it have been wrong, or indecent, if he had even FORCIBLY removed them? I SAY, IT WAS HIS DUTY TO HAVE DONE SO, WHOEVER WERE THE OFFENDERS—whether the deputy-registrar, the registrar himself, or the highest man in the kingdom.

To come at once to the point. I maintain, that at the time the bishop came to the door, at which very moment Grindley was threatening to shoot the first person that entered, which made somebody say, “Will you shoot the bishop?”—I maintain, at that very moment THREE indictable offences were committing, which put every man upon the level of a magistrate, with regard to authority, and even prescribed a duty to every man to suppress them. In the first, there was AN AFFRAY; which my friend did not define to you, but which I will. Mr Serjeant Hawkins, transcribing from the ancient authorities, and whose definition is confirmed by every day’s practice, defines an affray thus: “It is an affray, though there is neither actual violence nor threat of violence, where a man arms himself with dangerous weapons in such a

manner as will naturally cause terror." And this was always an offence at common law, and prohibited by many statutes.

Let us measure Mr Grindley's conduct, upon his own account of it, by the standard of this law, and examine whether he was guilty of an affray. He certainly threatened violence; but I will throw him *in* that, as I shall examine his threatening when I present him to you in the character of a rioter. I will suppose, then, that he threatened no violence; yet he was armed with dangerous weapons in such a manner as would naturally create terror. He tells you, with an air of triumph, that he brought the arms for that express purpose, and that he dispersed those who came to disturb him in his CASTLE. He was, therefore, clearly guilty of an affray.

Let us next see what the law is, as it regards all the king's subjects, when an affray is committed. The same authorities say—(I read from Mr Sergeant Hawkins, who collects the result of them), "That any private man may stop and resist all persons engaged in an affray, and remove them; that if he receive a hurt in thus preserving the peace, he may maintain an action for damages; and that, if he unavoidably hurt any of the parties offending in doing that which the law both allows and commends, he may well justify it, for he is no ways in fault." Setting aside, therefore, the office and authority of the bishop, and the place where it was committed, and considering him only as a private subject, with no power of magistracy, he had a right to do—not that which he did (*for in fact he did nothing*)—he had a right to remove them by main force, and to call others to assist in removing and securing them. The bishop, however, did neither of these things; he took a more regular course—he sent for a magistrate to preserve the peace—he had, indeed, sent for him before he came himself; yet, they would have you believe, that he went there for an illegal purpose—as if any man who intended violence, would send for a magistrate to witness the commission of it. When the magistrate came, Mr Grindley thought fit to behave a little more decently; and so far was the bishop from acting with passion or resentment, that when those about him were desirous of interfering, and offered their services to turn them out, he said to them: "No! let the law take its course in due season." His lordship, by this answer, showed a greater regard for peace than recollection of the law; for the course of the law *did* warrant their forcible removal; instead of which, he left the prosecutor, with arms in his hands, in a possession, taken originally by force, and forcibly maintained.

Let us next examine if the prosecutor and his witnesses were engaged in a riot. My learned friend will forgive me if I remind him, that there is one part of the legal definition of a riot which he omitted. I will, therefore, supply the omission from the same authorities. "A riot is, where three persons, or more, assemble together with an intent, mutually, to assist one another against any

who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually execute the same in a turbulent manner, to the terror of the people, whether the act intended be legal or illegal." But the same authorities add very properly—"It is clearly agreed, that in every riot there must be some such circumstances, either of actual force and violence, or of an apparent tending to strike terror into the people, because a riot must always be laid in *terroram populi*." This most important part of the definition of a riot, which my friend prudently omitted, points, directly and conclusively, upon the conduct of *his own* client, and completely excludes *mine*. The prosecutor, and his witnesses, *did* assemble mutually to support one another, and executed their purpose *with arms in their hands and with threats and terror*; which conclusively constitutes a riot, whether he was registrar or not, and whatever might be his right of possession. The bishop, on the other hand, though he might have no right to remove the prosecutor, nor any right to possession, could not possibly be a rioter, for he came *without violence or terror, or the means of either*, and, if he had employed them, might lawfully have used them against those who were employing both.

Let us now further examine, whether I was right in maintaining that there was an aggravation, from the *place* where the offence was committed, and which invested the bishop with a distinct character and authority.

By the statute of Edward the Sixth, if persons come tumultuously within the consecrated precincts of the church, the ordinary has not only a right to repress them, but he may excommunicate the offenders; who are, besides, liable to a severe and ignominious temporal punishment, after a conviction on indictment, even for an indecent brawling within the precincts of the church, without any act at all, which would amount to a riot or an affray.

Let us, then, for a moment, reflect, how these solemn authorities, and any possible offence in the reverend prelate, can possibly be reconciled; and let us contemplate, also, the condition of England, if it be established as a precedent upon the fact before you, that he is amenable to criminal jurisdiction upon this record. A riot may arise in the street, the moment after your verdict is pronounced, by persons determined to take and to maintain some possession by force. I may see or hear armed men threatening death to all who shall oppose them; yet I should not venture to interpose to restore the peace, because I cannot try their titles, nor examine to which of the contending parties the matter in controversy may belong. If this new doctrine is to be established, ask yourselves this question, Who will in future interfere to maintain that tranquillity, which the magistrate may come too late to preserve, if the rein is given to disorder in the beginning? Although dangerous violence may be committing, though public order may be trampled down within his

view, a wise man will keep hereafter within the walls of his own house. Though fearless of danger to his *person*, he may yet justly fear for his *reputation*, since, if he only asks what is the matter, and interposes his authority or counsel, he may be put by the rioters into an attitude of defiance, and may be subjected to the expense and degradation of a prosecution! The delicate situation of the bishop, at this moment criminally accused before you, is admitted; but it is hardly more, gentlemen, than would attach upon persons of many other descriptions. The same situation would not be much less distressing to a judge, to a member of Parliament, or to any of you, gentlemen, whom I am addressing. What would be the condition of the public, or your own, if you might be thus dragged to the assizes as rioters, by the very rioters which your duty had driven you to offend? I assert, that society could not exist for an hour, if its laws were thus calculated to encourage its destroyers, and to punish its protectors.

Gentlemen, there is no man loves freedom better than I do; there is no man, I hope, who would more strenuously oppose himself to proud and insolent domination in men of authority, whether proceeding from ministers of the church, or magistrates of the State. There is no man, who would feel less disposed to step beyond my absolutely imposed duty as an advocate, to support oppression, or to argue away the privileges of an Englishman. I admit, that an Englishman's house is his castle; and I recollect and recognise all the liberties he ought to enjoy. My friend and I are not likely to differ as to what an Englishman's freedom consists in. The freedom that HE and I love and contend for, is THE SAME. It is a freedom that grows out of, and stands firm upon THE LAW—it is a freedom which rests upon the ancient institutions of our wise forefathers—it is a freedom which is not only consistent with, but which cannot exist without public order and peace—and, above all, it is a freedom, cemented by morals, and still more exalted by a reverence for religion, which is the parent of that charity, humanity, and mild character, which has formed, for ages, the glory of this country.

Gentlemen, my learned friend takes notice, that this cause has been removed from its primitive tribunal, in order to be tried before you at Shrewsbury. He tells you, he never saw the affidavit that was the foundation of its removal: which, however, he with great propriety supposes contained matter which made it appear to Lord Kenyon to be his duty to withdraw the trial from its proper forum in Wales. But, he is instructed by Mr Grindley to deny that anything was done, either by himself, or any other person connected with him, to prejudice that tribunal, or the country which was to supply it. I, on the other hand, assert that, upon the prosecutor's *own evidence*, greater injustice and malice never marked any judicial proceeding. I have in my hand a book no

matter by whom written), circulated industriously through all Wales, to prejudice the public mind upon the very question before you. But Mr Grindley, it seems, is not responsible for the acts of this anonymous libeller. How far he is responsible, it is for you to judge. It is for you to settle, how it happened that the author of this book should have it in his power, minutely to narrate every circumstance which Mr Grindley has himself been swearing to; and that he should happen, besides, to paint them in the very *same* colours, and to swell them with the *same* exaggerations, with which they have been this morning accompanied. It will be for you to calculate the *chances* that should bring into the same book, under inverted commas, a long correspondence between the Bishop of Bangor and this very person. Gentlemen, he admits, upon his oath, "that he furnished the materials from whence that part of the work, at least, might have reached the author;" and from thence it will be for you to guess what share he had in the remainder. All I know is, that from that time forward the bishop's character has been torn to pieces, not from this pamphlet alone, but by a pestilential blast of libels, following one another; so that it has been impossible to read a newspaper, without having announced to us this miserable cause, and the inquiries forsooth to be instituted in Parliament, which were to follow the decision. Gentlemen, the same spirit pursues the cause even into THIS PLACE, —proceeding from the same tainted source. My friend tempers his discourse with that decorum and respect for religion, which is inseparable from the lips of so good a man. He tells you, that it has been wittily said of the clergy, and his client desires him to add, "truly too"—that the clergy have found what Archimedes wished for in vain—"a fulcrum, from whence to move the world;" he tells you, "that it is recorded of that great philosopher, that he desired but to have a fulcrum for his engine, to enable him to accomplish it." "Churchmen," says Mr Grindley, by the mouth of Mr Adam, who cannot abandon him, and who, as a sort of set-off against *his own* honour and moderation, is obliged to inhale the spirit of his client, "The Church," says Mr Grindley, "has found this fulcrum in the other world, and it is by playing off *that* world, they enthral the world we live in." He admits, indeed, that when they employ their authority to enforce the true purposes of religion, they have a right to that awful fulcrum upon which their engine is placed, and then their office will inspire reverence and submission; but when they make use of it for the lowest and most violent purposes, for ends destructive alike to religion and civil society (*of course the purposes in question*), THEN it seems it is, that disgrace not only falls upon its individuals, but destruction overtakes the order.

My learned friend, by his client's instruction, then immediately applies this general reflection, and says, "that he can discover no other reason why the bishop would no longer permit Mr Grindley

to hold the office than that he had deviated from his celestial course—had looked to the vile and sordid affairs of the world, and prostituted the sacred dignity of his character to purposes which would degrade men in the lowest situations." My friend said, across the court, that he had never seen the pamphlet. Good God! I believe it. But *I* have seen it; and I have no doubt that one-half of it is copied into his brief: it is written in this very spirit—it brings before the bishop the events of France—it warns him of the fate of his brethren in that country, as an awful lesson to ecclesiastics of all ranks and denominations, and *reminds* him that 18 archbishops, 118 bishops, 11,850 canons, 3000 superiors of convents, and a revenue of £15,000,000 sterling, were on a sudden swept away. [*Mr Erskine here read an extract from the pamphlet, and then continued:*]

Gentlemen, all this is mighty well; but he must be but little acquainted with the calamities of France who believes that this was the source of them. It was from *no such causes* that those horrors and calamities arose, which have disfigured and dishonoured her revolution, and which have clouded and obscured the otherwise majestic course of freedom;—horrors and calamities which have inspired an alarm into many good men, and furnished a pretext for many wicked ones in our own country. It was the profligacy and corruption of the French STATE, and not the imminality of her CLERGY, which produced that sudden and extraordinary crisis, in the vortex of which the Church, and almost religion itself, were swallowed up. The clergy of France was pulled down *in the very manner of this pamphlet*. A trumpet was blown against their order—the Massacre of St Bartholomew was acted upon the stage, and the Cardinal of Lorraine introduced upon it, exciting to murder, in the robes of his sacred order. It was asked by a most eloquent writer* (with whom I do not agree in many things as I do in this), whether this horrid spectacle was introduced to inspire the French people with a just horror of blood and persecution?—and he answers the question himself, by saying that it was to excite the indignation of the French nation against RELIGION AND ITS OFFICES; and that it had its effect: "That by such means the Archbishop of Paris, a man only known to his flock by his prayers and benedictions, and the extent of whose vast revenues could be best ascertained by his unexampled charity to the unhappy, was to be hunted down like a wild beast, merely because the Cardinal of Lorraine, in the sixteenth century, had been a rebel and a murderer."

In the same manner, this pamphlet, through the medium of abuse upon the *Bishop of Bangor*, is obviously calculated to abuse the minds of the lower orders of the people against the CHURCH; and to destroy the best consolation of human life, by bringing the sanctions of religion into doubt and disrepute. I am, myself, no

* Mr Burke.

member of the Church of England, nor do I know that my friend is—we were both born in another part of the island, and educated in other forms of worship; but we respect the offices of religion, in whatever hands they are placed by the laws of our country; and certainly the English clergy never stood higher than they do to-day, when Mr Adam, so thoroughly acquainted with the history of his country, as far as it is ancient, and who, from his personal and professional connexions, is so perfectly acquainted with all that passes in the world of our own day, is drawn back to the times of Laud and Wolsey, to search for English prelates, who have been a reproach to the order; and when he would represent tyranny and oppression in churchmen, is forced back upon an unreformed Church, and to ages of darkness and superstition, because it would have been in vain to look for them under the shadow of that mild religion which has promoted such a spirit of humanity, and stamped such a character upon our country, that if it should ever please God to permit her to be agitated like neighbouring nations, the happy difference would be seen between men who reverence religion, and those who set out with destroying it. The BISHOPS, besides (to do them common justice), are certainly the *last* of the clergy that should be attacked. The indulgent spirit of reformed Christianity, recollecting that, though invested with a divine office, they are men with human passions and affections, permits them to mix in all the customary indulgences, which, without corrupting our morals, constitute much of the comfort and happiness of our lives; yet, they in a manner separate themselves from their own families; and whilst the other orders of the clergy, even the most dignified, enjoy (without being condemned for it) the amusements which taste and refinement spread before us, no bishop is found within these haunts of dissipation. So far from subjecting themselves to be brought to the assizes for riot and disorder, they thus *refuse many of the harmless gratifications*, which, perhaps, rather give a grace and ornament to virtue, than disfigure the character of a Christian; and I am sure, the reverend prelate, whom I represent, has never overstepped those limits, which a decorum, perhaps overstrained, has by custom imposed upon the whole order. The bishop's individual character, like every other man's, must be gathered from his life, which, I have always understood, has been eminently useful and virtuous. I know he is connected with those whose lives are both; and who must be suffering distress at this moment from these proceedings. He is nearly allied to one,* whose extraordinary knowledge enables him to fulfil the duties of a warm benevolence, in restoring health to the sick, and in bringing back hope and consolation along with it, to families in the bitterness of affliction and distress. I have more than once received that blessing at his hands, which has added not a little to the anxiety which I now feel.

* The celebrated Dr Richard Warren.

Gentlemen, I am instructed, and indeed pressed, by the anxiety of the bishop's friends, to call many witnesses, to show, that he was by no means disturbed with passion, as has been represented, and that, so far from it, he even repressed those, whose zeal for order and whose affection for his person, prompted them to interfere, saying to them, "The law will interpose in due season." I have witnesses, to a great number, whom I am pressed to call before you, who would contradict Mr Grindley in the most material parts of his testimony; but then I feel the advantage he would derive from this unnecessary course; he would have an opportunity, from it, to deprive the reverend prelate of the testimony and protection of your approbation. He would say, no doubt, "Oh, I made out the case which vindicated my prosecution, though it was afterwards overturned by the testimony of persons in the bishop's suite, and implicitly devoted to his service; I laid facts before the jury, from which a conviction must have followed, and I am not responsible for the false glosses by which *his witnesses have perverted them.*" This would be the language of the prosecutor; and I am, therefore, extremely anxious that your verdict should proceed *upon the facts as they now stand before the Court*, and that you should repel, with indignation, a charge which is defeated by the very evidence that has been given to support it. I cannot, besides, endure the humiliation of fighting with a shadow, and the imprudence of giving importance to what I hold to be *nothing*, by putting *anything* in the scale against it; a conduct, which would amount to a confession that *something* had been proved which demanded an answer. How far those from whom my instructions come may think me warranted in pursuing this course, I do not know; but the decision of that question will not rest with either of us, if your good sense and consciences should, as I am persuaded they will, give an immediate and seasonable sanction to this conclusion of the trial.

Mr ERSKINE, after consulting a few minutes with Mr Plumer, Mr Leycester, and Mr Milles, informed the Court he should give no evidence.

Mr JUSTICE HEATH then summed up as follows; which we insert, as the learned Judge stated the substance of all the evidence given on the trial:—

GENTLEMEN OF THE JURY,—This is an indictment against the Bishop of Bangor, Hugh Owen, John Roberts, John Williams, and Thomas Jones. The indictment states, "That Samuel Grindley (who, it seems, is the prosecutor of this indictment, on the 8th of January last, was deputy-registrar of the Episcopal and Consistorial Court of the Bishop of Bangor, and that, in right of his office, he had the use of a room adjoining to the cathedral church of Bangor, called the registrar's office, for

transacting the business of his office; that the defendants, intending to disturb the prosecutor in the execution of his office of deputy-registrar, on the 8th of January last, riotously assembled and unlawfully broke the registrar's office, and remained there for an hour, and continued making a great disturbance, and assaulted the prosecutor, and stirred up a riot."

This, gentlemen, is the substance of the indictment. The definition of a riot has been truly stated to you; it may be collected, indeed, from the indictment itself, and is, when two or more persons assemble together with an intent mutually to assist each other, and to resist all those who should oppose them, and with a further intent to break the peace; and it is likewise for a private purpose.

Now, before I sum up the evidence, I shall state those things particularly to which you should direct your attention, and you will consider how the evidence applies in support of the indictment. It must be proved to your satisfaction that the prosecutor is deputy-registrar of this Consistorial Court of the Bishop of Bangor; that, in right of that office, he had the use of this room to transact his business there; that the defendants, intending to disturb him in his office, riotously assembled to disturb the peace, and broke and entered the office-room, and continued there, making a great disturbance, asserting that he had assumed an office which did not belong to him, and making a riot there. These things must be proved to your satisfaction, I will comment upon the evidence as I shall state it to you.

Samuel Grindley, the prosecutor, tells you that in February, 1792, he was appointed agent to the Bishop of Bangor, and that he afterwards held the office of deputy-registrar under Mr Gunning, who, it seems, was a minor; that he saw Mr Gunning, the registrar, in October 1794; that he paid seventy pounds a year to the bishop on account of Mr Gunning, his principal; that the bishop was the person who made the bargain between him and his principal; that he entered on his office as deputy. He says that he was invited by the bishop, and that the bishop introduced him (the prosecutor) to Mr Gunning as the principal registrar, and introduced the principal registrar to the witness as his deputy. He says that there was no complaint that he had not discharged the duties of his office, and that he continued to discharge the duties of his office till the 22d of February last. He says that there is an apartment belonging to this office, which, it seems, is under the chapter-house adjoining to the cathedral; that there is a flight of steps going up to it; that he employs his clerks in the office, and he has a resident clerk there. He says he told the bishop that he would resign on the 22d of February last; that on the 4th of January he was absent from Bangor, and returned on the 7th, having received information that his office

had been broken open; that the bishop afterwards acknowledged to him that it had been broken open by his (the bishop's) servants under his direction. He says that some panes of glass had been taken down, the leads had been removed, and fresh locks had been put upon the doors. All this the bishop acknowledged: and then he gives you an account of his coming there, of his breaking open the door, and his entering again.

Let us consider, so far as this, how it applies. In the first place, it certainly does not lie in the mouth of the bishop to say that this man was not properly appointed to his office; he was in the exercise of his office; he had made an agreement with his principal, and he paid him seventy pounds a year—the bishop was the person who negotiated the business; and he gave the bishop notice that he meant to give up his office on the 22d of February; but you see, between the 4th and the 7th of January, before the time the prosecutor had appointed for resigning his office, the bishop thought proper to go to the office and break open the lock, and then, it is contended on the part of the defendants, that the bishop was in peaceable possession; it is contended too, that, as bishop, he had a jurisdiction in this cathedral—that, because the deputy-registrar must be confirmed by the bishop, the prosecutor is only tenant at will to the bishop; that he never had a legal appointment, and, therefore, the bishop had a power of dismissing him.

Now, in the first place, supposing it to be proved that the bishop had a power of dismissing him (which does not appear one way or the other), it does not follow from thence, that he ought to do it by force or violence—he ought to do it by process of law. It happens in this country, that the Lord Chief-Justices of the Courts of King's Bench and Common Pleas have a right of appointing officers; the judges attending the Court at the Old Bailey have a right of appointing the officers there; and questions have frequently arisen concerning this power of appointment, whether rightfully or wrongfully exercised. What is the mode of deciding it? Each party appoints his officer, and then one brings his action, and it is determined by due course of law. If the bishop had a right of dispossessing this man, which does not appear to me, because, though the appointment of a deputy might not be good without the approbation of the bishop, it does not follow from thence, that the bishop had a right to withdraw that approbation and that confirmation after it was given. Whether he can, or cannot, is a question I am not prepared to decide, and it is immaterial to the present question; it is enough to say, that if the bishop had that right and that power, it behoved him to have caused Mr Gunning to have appointed another deputy, and then that deputy ought to have tried the right. The question then is, was the bishop in peaceable possession? *No man is in peaceable possession of any place which he comes to by force and violence; the bishop exercised*

force and violence in *this* respect, in breaking the lock, and in putting on a new lock ; therefore, the force and violence was on the part of the bishop ; he was never in peaceable possession of this place, nor could he have a right to come and put this lock upon the door.

Let us pursue this matter by steps. The prosecutor said, he came armed with pistols ; that was, I think, improper ; he ought not to have armed himself with pistols in that fashion. He broke open the lock, and he entered ; *that* was not improper ; he being in possession of this office, it was lawful for him to do so. Then it seems a Mr Rasbrook came, who is a person exercising some office under the bishop, his house-steward, I think ; he came, and the prosecutor presented a pistol to him—that was highly improper. A man has a right to arm himself, and to assemble his friends in defence of his house ; but the law allows no *more* ; because the house is his sanctuary, he is not to arm himself, and assemble his friends in defence of his close ; but ought to have recourse to legal means, if he is injured ; and, therefore, the prosecutor certainly acted with a greater degree of force and violence, in that respect, than he ought to have done. But then that was no legal excuse for the bishop's coming afterwards in the manner he did. The prosecutor's presenting a pistol to Rasbrook, could be no inducement to the bishop, and the other defendants, because they were not present, and their passions were not provoked by it.

The bishop, in this case, gentlemen, seems to have laboured certainly under two very great errors. First of all, that he had a right to remove the prosecutor ; and, secondly, that he had a right to remove him by *force and violence*. Then these persons were removed out of the office ; the outer door was secured, by some means, by the prosecutor, and the several persons with him. It is said that they were guilty of a riot. I think, certainly, they were guilty of no riot *at this time* ; they were guilty of a misdemeanour in arming themselves, but they stood merely upon the defensive. No person, as I told you before, is justified in arming himself and his servants to defend his close, but if he does arm himself and his servants to defend his close, and opposes no person without the close, then he is guilty of no riot whatever.

The question is, whether or no they are guilty of such a breach of the peace—of an act of so much force and violence, as to constitute a riot. When there was a knocking at the door, the prosecutor said he would shoot any one who should enter ; which, I said before, he was not warranted in doing. Being told the bishop was there, he said he would treat him with all possible respect, and he opened the door, and admitted him and his followers ; and then, he says, he loaded another pistol. He tells you, the bishop entered in a great rage. Whether there was any rage or passion, or no, is only material to show whether or no the rest of the story is probable ; because, his being in a rage, does not prove him guilty of a breach

of the peace. The question is, whether he has committed any acts in breach of the peace? First of all, the prosecutor tells you, that he told the bishop he should behave with proper respect to him, but he should not leave the office—he swears that the bishop took hold of him; and afterwards he went to William Roberts, an husbandman belonging to the witness—he then went to another servant, Robert Davis, and attempted to pull him out: that the bishop returned to William Roberts, collared him, and drew him towards the door; that the bishop went with his hands clenched towards the witness; and the witness describes the manner in which he (the bishop) went towards him. Now his taking hold of the witness is AN ASSAULT. He says, he attempted to pull him out; his seizing hold of him is AN ASSAULT; his returning to William Roberts, and collaring him, and pushing him towards the door, is ANOTHER ASSAULT; his going with his hands clenched towards him in a menacing way, if he were near enough to strike him, would be an assault; if not near enough to strike him, it would not be an assault; and then he called to his servants to come and pull him out—that is a breach of the peace, coming and removing them all by force and violence.

Then there is that which passes in respect to Mr Roberts. The prosecutor and the other witnesses tell you, that Roberts was in a great rage; he cannot say whether he entered before or after the orders given by the bishop; that he clenched his fist, and said, "If nobody will turn him (meaning the prosecutor) out, I will do it." The bishop said, the prosecutor had pistols; upon which Roberts said, in an outrageous manner, "Do not shoot the bishop, shoot me;" and said, that if nobody else would turn the prosecutor out, he would. He asked the prosecutor to go on one side with him, into the churchyard, and said, he was not afraid of him in any place. The witness said, he had something else to attend to; and another of the witnesses said, he promised to meet him at some other time and place. This is, you see, a challenge by Roberts to fight the prosecutor: why, that is a breach of the peace. The bishop is present; he is the person who tells Roberts that the prosecutor had pistols; then the bishop hears this challenge. They all came upon one design. When several persons come upon an illegal design or purpose, the act of one, especially if in the presence of all, is the act of all.

This, gentlemen, is the sum of the evidence on the *one side*; and there is *no* evidence on the *other*.

The bishop, no doubt, is a man of an excellent character; but at this moment he gave way to his temper. He ought to have followed the process of the law, and not so to have done. Thus much I have said affects the bishop and affects Roberts. As to Owen, the prosecutor says that Owen came into the office; he made a noise; he talked very loud. The witness told him, if he

had any business, he was there ready to transact it, otherwise he begged they would go about their business. He only speaks to his making a noise. John Williams, he says, was less noisy than the rest. The witness asked what business he had there, and told him to go about his business. He says he stayed there against his will; he stayed after the rest went away.

Upon this it is necessary for me to state, as I did before, that the other defendants coming with the bishop upon the same design, by force and violence, to dispossess the prosecutor, undoubtedly they came with an unlawful intent and purpose; *and, if you believe these witnesses, they were guilty of the several breaches of the peace which I have stated, in assaulting the prosecutor, in assaulting David Roberts, in assaulting William Roberts, and in the defendant Roberts challenging the prosecutor; if you believe these witnesses, it seems to me that the defendants are guilty of the riot with which they stand charged. As for the force and violence which the prosecutor made use of, all that may be urged in another place in mitigation of the punishment; it is only for you to determine whether they, or each of them, are guilty of this riot.*

Mr ERSKINE. The two last witnesses stated a direct contradiction.

Mr JUSTICE HEATH. The law is clear and plain; you will apply the law to the facts as I have stated them. You will banish all prejudices that you may have from all publication. It is, indeed, unnecessary to admonish gentlemen of your enlightened understandings; but, at the same time, considering that individuals are to be tried by the law of the land if they are guilty, notwithstanding the high character they may deservedly have down to this time, it is your duty to find them guilty. *If you have any reasonable doubt whether they are guilty, in that case you will acquit the defendants.*

In about five minutes the jury acquitted all the defendants.

SPEECH for MR CUTHELL on an indictment for publishing a libel.

THE SUBJECT.

THE following speech of Lord Erskine, in the Court of King's Bench, at Westminster, on the 21st of February 1799, for Mr Cuthell, the bookseller, in Holborn, becomes peculiarly interesting at the present moment, from the verdict of a special jury very lately at Guildhall, London, in the case of Mr White, the proprietor of the *Independent Whig*, as the doctrine upon which that verdict appears to have proceeded was strongly insisted upon by Lord Erskine in Mr Cuthell's case, and every possible argument employed to support it; but the doctrine was then overruled by Lord Kenyon at Westminster, as it was lately by Lord Ellenborough at Guildhall; and, indeed, Lord Erskine appears to have been so sensible of the current of authorities against him, which would, at all events, be binding on a single Judge proceeding on such a trial, whatever he might think of the propriety of former decisions on the subject, that he appears to have pressed the jury to bring in a special verdict in Mr Cuthell's case, finding the publication, or even a negligent publication, but negating the criminal intention charged by the indictment, so as to bring the question before all the judges, and even before the House of Lords, in the dernier resort, whether such a verdict would support a judgment on the record. The case of Mr Cuthell was shortly this: The Bishop of Landaff, in the year 1798, had published a pamphlet inculcating the duty of the people of this country to exert themselves to the utmost in the critical exigency of its affairs, in consequence of the French Revolution and the danger of an invasion from France, and inculcating the propriety of submitting to a regular system of high taxation within the year for supplying every necessity of the State. To this pamphlet the Rev. Mr Gilbert Wakefield, well known and remembered as an eminent scholar, published a reply, on the appearance of which in the shops of London, the late Mr Johnson, of St Paul's Churchyard, and another bookseller who had sold it, were prosecuted by the Attorney General, and convicted; Lord Kenyon and the two special juries who tried the causes at Guildhall having considered Mr Wakefield's pamphlet to be a seditious libel, and the booksellers responsible as publishers.

After these convictions, the Attorney-General indicted Mr Wakefield himself as the author, and Mr Cuthell, the bookseller of Holborn, who had sold it in his shop. Mr Cuthell's case was a very particular one. He was not a publisher of books or pamphlets on political or other transitory subjects, but dealt almost entirely in books of classical learning, and as such a bookseller had been selected by Mr Wakefield to publish many of

his learned works, *but never any other*—nor had, indeed, Mr Wakefield written any other; nor did it appear that Mr Cuthell had any reason to suspect that Mr Wakefield had become a writer upon any political topics, as the Bishop of Landaff, to whom he was publishing a reply, had written largely upon theological subjects.

The reply to the Bishop of Landaff was not printed by Mr Cuthell, but by a Mr Hamilton, a printer employed by Mr Wakefield himself, who directed some copies to be sent for sale to Mr Cuthell's shop, as he had always been the publisher and seller of his many classical works. Mr Cuthell began to sell them without due examination, but instantly stopped the sale upon the first intimation of the nature and character of the work.

The indictment against Mr Wakefield, the author, and against Mr Cuthell, the bookseller, were appointed on the same day, the 21st of February 1799, for trial; and Mr Cuthell being to be tried *first*, and *Mr Wakefield* being to make *his own defence* as the author, Lord Erskine appears to have taken his stand for Mr Cuthell upon his *particular situation*, contending that, having always been the publisher of Mr Wakefield's works upon subjects of ancient learning only, and that this pamphlet being brought to him by Mr Wakefield himself, without any notice of so great a change of subject, he had suffered it to be sold *upon the faith of Mr Wakefield's character, and the abstract nature of all his other works, without suspecting that the subject was political, much less seditious*; the shopman, who was called as a witness, having sworn that it would not otherwise, under his general instructions and the nature of Mr Cuthell's business, have found any entrance into the shop. To confirm this defence, Mr Wakefield, the author, was called by Mr Cuthell, but declined answering, as it might criminate himself. How the exculpation of Mr Cuthell could have criminated Mr Wakefield, beyond the writing of the book, of which the Crown was known to have had full proof, and which was not afterwards denied by Mr Wakefield in his own defence, it is not easy to understand; but Mr Wakefield had a most unquestionable right to refuse the aid of his testimony to Mr Cuthell, whose case, however, suffered considerably from the want of it.

As the law stands at present, from a current of authorities, it is undoubtedly *not* competent to any Judge trying an information or indictment for a libel, to give any other direction to a jury than that a publication, though proved to have been sold by a servant, *without knowledge of the master*, involves the master in all the criminal consequences of the publication, and subjects him to an information or indictment as a treasonable, seditious, or malignant publisher, as the case may be; and Lord Ellenborough, therefore, upon a late trial, could give no other opinion to the jury at Guildhall than that which was delivered by his Lordship. But surely it may well deserve the consideration of Parliament whether the case of printing or publishing a libel should be left, as it is, such an anomaly in the law, and that juries should be called upon to pronounce on their oaths that a defendant published treasonably, seditiously, or malignantly, who was, from accident, or, if you will, even from negligence, unconscious of the existence of the publication which constitutes his crime.

It is true that this case of mere negligence without evil intention is difficult of proof. Yet it occurs frequently, and should be distinguished from a criminal publication; and the distinction would be most easy, consistently with all the rules of criminal law.

If the negligent publication of a libel, *though without criminal intention*, ought to continue to be an anomaly, and to subject the *negligent* publisher to an information or indictment, as well as to an action for damages, why ought not the law to be so declared or enacted, or even without declaration or enactment, such informations and indictments be drawn with distinct counts or charges, *one* charging the *criminal* intention, so as to identify the criminal publisher with the author, and *another* charging a *negligent* publication, by which the crimes which are extremely different, and the punishments which ought to be equally so, would be distinguished from each other; whereas, according to the present course of proceeding, a mere *negligent* publisher must be found guilty of the indictment charging a criminal publication only; and, after conviction, stands before the Court (as the case may be) as a treasonable, seditious, or malignant publisher, and cannot be received to mitigate his sentence as having been *negligent only*, being estopped by the record of the conviction; although the judges, from humanity and justice, are every day obliged, *in the teeth of the record*, to mitigate, by a side-wind, the judgments of the law, upon principles which the law does not openly sanction. It is this anomaly which so often entangles the consciences of juries, and will continue to do so till the case is duly considered by the legislature, and the question, one way or the other, set at rest. From the same anomaly the Rev. Mr Bate Dudley was acquitted as not being a criminal publisher many years ago, Lord Erskine and Mr Pitt, then at the bar, being his counsel. But the acquittal was against the opinion of Lord Mansfield, who wholly overruled Lord Erskine's argument, and directed the jury to convict.

All that Lord Erskine *then*, and in the following case of Mr Cuthell, appears to have contended for is, that if a negligent publication be an indictable offence, the party should be *so charged*, and ought not to be convicted on a count which charges a CRIMINAL intention, which *he is* in a condition to negative by satisfactory proof.

A further evil, indeed, and no small one, attends the practice of not distinguishing the *criminal* from the *negligent* publication by distinct charges in the indictment. Judges and juries will occasionally differ totally from each other. If the juries, finding verdicts of acquittal in such cases against the opinion of the Judge, are considered by the public, or any part of it, to have acted improperly, the trial by jury suffers in proportion; and if, on the other hand, such juries are considered to have properly resisted the opinion of the Judge (although the Judge had no jurisdiction to give a contrary opinion), the judicial authority then suffers in public estimation; whereas the constitution of the country actually depends upon the utmost reverence for, and confidence in, the administration of justice in all its parts, which never existed in any country in the world in such purity as in our own.

THE SPEECH.

I RISE to address you, gentlemen of the jury, with as much anxiety as I have ever felt in the course of my professional life. The duty I have to perform is difficult and delicate. I am counsel for Mr Cuthell *only*, who is charged merely as publisher of a writing, for which the reverend gentleman now in court (*and who is to plead his own cause*) is immediately afterwards to be tried, on another indictment, as the *author*. The rules of law would entitle Mr Cuthell to a *double* defence; he might maintain the innocence of the *book*, because *his* crime as *publisher* can have no existence unless the matter be criminal which he has published; and supposing it to be criminal, he might separate himself by evidence from the criminal purpose charged upon him by the record. The first of these offices he must not be supposed to shrink from because of its difficulty, or from the force of the verdicts which the Attorney-General has adverted to as having been given in the city of London; Mr Johnson, who was *there* convicted, stood in the ordinary situation of a bookseller selling a book in the course of his trade. On that occasion I thought myself bound to make the defence of *the book*; but the defence of a *book* may be one thing, and that of its publisher another. There can be no proceedings *in rem* by an attorney-general against a *book* as against tea or brandy in the Exchequer. The *intention of the author and of each publisher* involves another consideration, and it is impossible to pronounce what opinion the jury of London might have held concerning the book, if its author had been to lay before them his own motives, and the circumstances under which it was written. Even after Mr Cuthell shall be convicted from my failing in his defence (a supposition I only put as the wisest tribunals are fallible in their judgments), the verdict ought not, in the remotest degree, to affect the reverend gentleman who is afterwards to defend himself. *His* motives and intentions will be an entirely new cause, to be judged of as if no trial had ever been had upon the subject; and so far from being prejudged by other decisions, I think that, for many reasons, he will be entitled to the most impartial and the most indulgent attention. These considerations have determined me upon the course I shall pursue. As *Mr Cuthell's* exculpation is by disconnecting himself wholly from the work as a CRIMINAL publisher, from his total ignorance of its contents, and, indeed, almost of its existence, I shall leave the province of its defence to Mr Wakefield himself, who can best explain to his own jury the genuine sentiments which produced it, and whose very deportment and manner in pleading his own cause may strikingly enforce upon their consciences and understanding the truth and integrity of his defence. Observations from *me* might only coldly anticipate, and, perhaps,

clash with the arguments which the author has a just, natural, and a most interesting right to insist upon for himself.

There is another consideration which further induces me to pursue this course. The cause, so conducted, will involve a most important question, as it regards the liberty of the press, because, though the principles of criminal and civil justice are distinguished by as clear a boundary as that which separates the hemispheres of light and darkness, and though they are carried into daily practice throughout the whole circle of the law, yet they have been too long confounded and blended together when a *libel* is the crime to be judged. This confusion, gentlemen, has not proceeded from any difficulty which has involved the subject, because of all the parts of our complicated system of law it is the simplest and clearest; but because POLITICAL JUDGES, FOLLOWING ONE ANOTHER IN CLOSE ORDER and endeavouring to abridge the rights and privileges of juries, have perverted and distorted the clearest maxims of universal jurisprudence, and the most uniform precedents of English law. Nothing can establish this so decisively as the concurrence with which all judges have agreed in the principles of *civil* actions for libels or slander, concerning which there never has been a controversy, nor is there to be found throughout the numerous reports of our courts of justice a discordant case on the subject; but in *indictments* for *libels*, or, more properly, in *indictments* for *political* libels, the confusion began and ended.

In the case of a *civil* action, throughout the whole range of civil injuries the master is always *civiliter* answerable for the act of his servant or agent; and accident or neglect can therefore be no answer to a plaintiff complaining of a consequential wrong. If the driver of a public carriage maliciously overturns another upon the road, whilst the proprietor is asleep in his bed at a hundred miles distance, the party injuring must unquestionably pay the damages to a farthing; but though such malicious servant might also be indicted, and suffer an infamous judgment, *could the master also become the object of such a prosecution?* CERTAINLY NOT. In the same manner, partners in trade are *civilly* answerable for bills drawn by one another, or by their agents, drawing them by procuration, though fraudulently, and in abuse of their trusts; but if one partner commits a fraud by forgery or fictitious indorsements, so as to subject *himself* to death, or other punishment by indictment, could the *other partners* be indicted? To answer such a question here would be folly; because it not only answers itself in the *negative*, but exposes to scorn every argument which would confound indictments with civil actions. WHY then is *printing and publishing* to be an exception to every other human act? WHY is a man to be answerable *criminaliter* for the crime of his servant in this instance more than in all other cases? Why is a man who happens to have published a libel under circumstances of

mere accident, or, if you will, from actual carelessness or negligence, but *without criminal purpose*, to be subjected to an *infamous punishment*, and harangued from a British bench as if he were the malignant author of that which it was confessed before the Court delivering the sentence *that he never had seen or heard of!* As far, indeed, as damages go, the principle is intelligible and universal; but as it establishes a *crime*, and inflicts a punishment which affects character and imposes disgrace, it is shocking to humanity and insulting to common sense. The Court of King's Bench, since I have been at the bar (very long, I admit, before the noble lord presided in it, but under the administration of a truly great Judge), pronounced the infamous judgment of the pillory on a most respectable proprietor of a newspaper for a libel on the Russian Ambassador, copied, too, out of another paper, but which *I myself* showed to the Court by the affidavit of his physician, appeared in the *first* as well as in the *second* paper, *whilst the defendant was on his sick bed in the country, delirious in a fever.* I believe that affidavit is still on the files of the Court. I have thought of it often—I have dreamed of it, and started from my sleep—sunk back to sleep, and started from it again. The painful recollection of it I shall die with. How is this vindicated? From the *supposed* necessity of the case. An indictment for a LIBEL is, *therefore*, considered to be an anomaly in the law. *It was held so undoubtedly;* but the exposition of that *error* lies before me; the Libel Act lies before me, which *expressly and in terms* directs that the trial of a libel shall be conducted *like every other trial for any other crime;* and that the jury shall decide *not* upon the mere fact of *printing or publishing*, but *upon the whole matter put in issue*—i.e., *the publication of the libel WITH THE INTENTIONS CHARGED BY THE INDICTMENT.* This is the rule by the Libel Act; and *you*, the jury, as well as the Court, are bound by it. What, then, does the present indictment charge? Does it charge merely that Mr Cuthell *published, or negligently published*, the "Reply to the Bishop of Landaff?" No. It charges: "*that the defendant, being a wicked and seditious person, and malignantly and traitorously intending to secure the invasion of Great Britain by the French, and to induce the people not to defend the country, had published, &c., SETTING FORTH THE BOOK.*" This is the charge, and *you* must believe the *whole complex proposition* before the defendant can be legally convicted. No man can stand up to deny this in the teeth of the Libel Act, which reduces the question wholly to the intention, which ought to be a foundation for their verdict. Is your belief of negligence sufficient to condemn Mr Cuthell upon this indictment, though you may discredit the criminal motive which is averred? The best way of trying that question is to find the negligence by a special verdict, and *negative* the motives *as alleged by the indictment.* Do that, and I am satisfied.

I am not contending that it may not be wise that the law should punish printers and publishers even by way of indictment for *gross negligence* (*crassa negligentia*), because of the great danger of adopting a contrary rule. Let it, for argument's sake, be taken that such an indictment may, even as the law stands, be properly maintained; but if this be so why should not the indictment, in conformity with the universal rules of pleading, charge such negligence by a distinct count? Upon what principle is a man who is guilty of *one* crime to be convicted without a shadow of evidence, or in the teeth of all evidence, of *another* crime, greatly more heinous, and totally *different*?

If upon a count charging a *negligent* publication a publisher were convicted, he could only appear upon the record to be guilty *from negligence*; but according to the present practice the Judge tells the jury that though a defendant has only been *negligent*, he is guilty upon the whole record, which charges a treasonable, seditious, or malignant intention; and after such a conviction, when he appears in court to receive judgment, and reminds the judge who inveighs against his traitorous, seditious, or malignant conduct that the evidence established his *negligence* ONLY, he is instantly silenced, and told that he is estopped by the record, which charges a publication with these mischievous intentions, and of which entire charge the jury have found him guilty. I appeal, boldly, to the truly excellent and learned Chief-Justice whether this be conformable to the precision of the English law in any of its other branches, or to the *justice* of any law throughout the world.

But it has been said, and truly, How is the intention to be proved but by the act? I of course admit that the intentions of men are inferences of reason from their actions, *where the action can flow but from ONE motive, and be the reasonable result but of ONE INTENTION*. Proof of *such* an action is undoubtedly most convincing proof of the only intention which could produce it, but there are few such actions, nor, indeed, scarcely any human conduct which may not by circumstances be qualified from its original *prima facie* character or appearance. This qualification is the foundation of all defence against imputed crimes. A mortal wound or blow without adequate provocation visible to a grand jury, is a just foundation for an indictment of murder; but the accused may repel that inference, and reduce the crime from murder to manslaughter, or to excusable, and even to justifiable homicide. Mr Cuthell asks no more. He admits that on the evidence *now* before you he ought to be convicted if the book is in your judgment a libel, because he stands before you as a publisher, and may be therefore taken to have been secretly connected with the author, or even to be the author himself; but he claims the right of repelling those presumptions *by proof*, and the only difference between the Crown and me will be, not as to the existence of the facts on which I rest

my defence, *but whether the proof may be received as relevant, and be acted upon if believed by you the jury.* I am sorry to say, gentlemen, that it is now become a commonplace position that printers and booksellers are answerable for simple negligence; yet no Judge in my hearing has ever stated that *naked proposition* from the bench. It has been imputed as the doctrine of the noble and learned Judge, *when and where* he delivered it I am ignorant; he has, on the contrary, tried indictments on the principles of the Libel Bill, before the Libel Bill existed, and on these principles Stockdale was tried before him and acquitted. Where a printer, indeed, has printed, or a bookseller has sold a book, written by an unknown or unproduced author, and cannot bring any evidence in his defence, he must, to be sure, in common sense and upon every principle of law, be criminally responsible if the thing published be a libel, *but not for negligence only, but as criminal in the full extent of the indictment.* A publisher indeed, though separated in *original intention* from the criminal motives of the author, may be found to be responsible in law for the publication, upon the legal presumption that he had *adopted the criminal sentiments of the author, and criminally circulated them by printing or publication.* But such a conviction does by no means establish the proposition that *innocent* printers or publishers, *where they can show their innocence,* are criminally responsible *for negligence only.* On the contrary, it proceeds upon the criminality being *prima facie* established by the act of publishing in cases where the printer or publisher cannot show the negligence or accident which had led to the publication; *but where such mere negligence or accident can be established to the satisfaction of a jury, which not very often can be the case,* the criminal inference is then repelled, and the defendant ought to be entitled to an acquittal. The numerous convictions, therefore, of publishers, *upon the mere act of publication,* establish no such proposition as that which the Attorney-General has contended for; because such publishers were convicted of the criminal intentions charged in the indictment, *not upon the principle of criminal responsibility for an act of neglect only, but because it could not be established in these cases that the act of publishing arose from negligence only.* By the act of publishing matter from whence a criminal intention results, as an inference of reason, and therefore as an inference of law, the criminal mind is *prima facie* fairly imputable, and in the absence therefore of satisfactory evidence on the part of the defendant to repel the criminal conclusion, the guilt is duly established. But, then, this is not doctrine applicable singly to libels—it applies equally to *all crimes* where the most innocent man may be convicted, if from unfortunate circumstances he cannot repel the presumptions arising from *criminating proof.* But the doctrine which I shall ever oppose as destructive of every human security, and repugnant to the first

elements of criminal justice, is this, *that though the defendant, taking upon himself the difficult, and frequently impossible proof of accident or oversight, should be able to convince the jury that he never saw the matter charged to be a libel—that it was imposed upon him as a work of a different quality—or that he was absent when a servant sold it, and to which servant he had not given a general licence to sell everything which was brought to him—and who, moreover, could fortify the proof of his innocence by his general deportment and character; yet, that such a publisher must nevertheless be found guilty as a malignant publisher, by virtue of an abstract legal proposition—this I deny, and have throughout my whole professional life uniformly denied. It never has been adjudged in such a shape as to be fairly grappled with. I positively deny such a doctrine, and I am sure that no Judge ever risked his character with the public by delivering it as law from the bench. The judges may have been bound at *nisi prius*, as I admit they are, to decide according to the current of decisions. I will meet my learned friend the Attorney-General in the Lords' House of Parliament on that question, if you the jury will assist me with the fact to raise it by finding as a special verdict—“That the book, if you please, was a libel—that Mr Cuthell, the defendant, published it, but that he published it from negligence and inadvertency, WITHOUT THE MOTIVES CHARGED BY THE INDICTMENT.”*

If you, gentlemen of the jury, will find such a verdict, I will consent never to re-enter Westminster Hall again if one Judge out of the twelve will, upon a writ of error, pronounce judgment for the Crown. The thing is IMPOSSIBLE, and the Libel Act was made for no other purpose than to suppress doctrines which had long been branded as pernicious and destructive to public freedom and security. The Libel Bill was passed to prevent trials of libels from being treated as an *anomaly in the law*, and to put them on a footing with all other crimes; and no crime can possibly exist *when the intention which constitutes its essence can be separated from the act—“Actus not facit reum, nisi mens sit rea.”* If a man, without knowing the King, were to give him a blow which might even endanger his life, could he be convicted of compassing and imagining the death of the King under the statute of Edward III.? Undoubtedly not—because the compassing or intention was the crime, and the blow was only the overt act from whence the compassing was to be a legal inference, unless the prisoner repelled it by showing the circumstances of the *accident* and *ignorance* under which he assaulted the King. I of course admit that it is not necessary to prove that a publisher had seen the book he published, for if he authorises his servants to publish *everything without examination*, it would be sufficient proof in the judgment of a jury, according to circumstances, that he was the wilful and criminal publisher or author himself, or secretly connected with

the author, and criminally implicated in his guilt. But the present question is, whether, *if he can convince you, the jury, of his innocence, you are still bound to convict him under an imperative rule of law, though you believed his mind to have been unconscious of the crime imputed by the indictment.*

If a man were to go upon the roof of a house in the Strand or Fleet Street, and throw down large stones upon the passengers below, it would undoubtedly be murder, though a stranger only were killed, against whom no particular malice could possibly be suspected—*i.e.*, it would be murder if these facts were returned to the judges by special verdict. But would a jury be bound to convict him, even though they were convinced *by the clearest evidence* that he had mistaken the side of the house, and from inadvertence had thrown the stones *into the street instead of on the other side, which led to an unfrequented spot?* This proof might be *difficult*; but if the *proof existed*, and the jury *believed it*, WOULD IT BE MURDER? Common law, common sense, and common humanity, revolt alike at the idea.

The Attorney-General has admitted the true principle of the liberty of the press, as it regards the quality of a publication. He has admitted it, greatly to his honour, because he is the first Attorney-General who ever, to my knowledge, has so *distinctly* admitted it. He has, indeed, admitted the true principle in the very way I have always understood it in most of the criminal prosecutions which, in my time, have been the subject of trial. The questions have always arisen on the application of the *principle to particular cases*, and that is the sole question to-day. He has admitted that every subject has a clear right freely to discuss the principles and forms of the Government, to argue upon their imperfections, and to propose remedies; to arraign, with decency and fair argument, the responsible ministers and magistrates of the country, though not to hold them up to general, indiscriminating execration and contempt; and he has admitted also, that it is the office of the jury to say within which of the two descriptions any political writing was to be classed. This admission comes strongly in support of *publishers*. For if an author could not write legally upon any such subjects, publishers ought then to reject the book altogether upon the very view of the subject, as collected from the title-page, without adverting to the contents. But if writings respecting our Government, and its due administration, be unquestionably legal, a general bookseller has no such reserve imposed upon him from the *general subject of the work*, and must read his whole library in a perpetual state of imprisonment *in his shop*, to guard him from perpetual imprisonment *in a gaol*. If he published, for instance, the Encyclopædia of Paris or London—and in the examination of all science and of all art in such a stupendous work, there should be found, even in a single page or para-

graph, a gross attack on religion, on morals, or on Government, he must be presumed to be malignantly guilty, and (according to the argument) *not prima facie merely*, but *conclusively*, to be the criminal promulgator of mischief, with mischievous intentions. Surely this can never be even stated in a court of justice. To talk of arguing it is ridiculous. Such a person might, indeed, be *prima facie* liable; and I admit that he is so; but, surely, a Court and jury are invested with the jurisdiction of considering all the circumstances, and have the right of judging according to the just and rational inferences arising from the whole case, whether he was intentionally mischievous. This is all I contend for Mr Cuthell; and it is a principle I never will abandon—it is a principle which does not require the support of the Libel Act, because it never has at any time been denied. When Lord Mansfield directed the jury to convict Mr Almon, as the criminal publisher of Junius, he told them that if Junius was a libel, the guilt of publishing was an inference of law from the act of publication, *if a defendant called no witnesses to repel it, and that no witnesses had been examined by Mr Almon*. But he admitted, *in express and positive words*, as reported by Sir James Barrow, in the fifth vol. of his Reports, "That the publication of a libel might, by circumstances, be justified as legal, or excused as innocent, by circumstances to be established by the defendant's proof." But according to the arguments of to-day no such defence is admissible. I admit, indeed, that it is rarely within the power of a printer or publisher to make out such a case by adequate evidence; insomuch, that I have never yet been able to bring before a jury such a case as I have for Mr Cuthell. But the rareness of the application renders it more unjust to distort the principle by the rejection of it, when it justly applies.

Having now laid down the only principle upon which Mr Cuthell can be defended, *if the passages in the book, selected by the indictment, are libellous*, I will now bring before you Mr Cuthell's situation, the course of his trade and business, and his connexion, if it can be called one, with the work in question.

Mr Cuthell, gentlemen, is not at all in the situation of many equally respectable booksellers; the course of whose trade, at the other quarters of the town, in the transitory publications of the day on all subjects, exposes them to the hourly risk of prosecutions on the most solid principles of law, without almost the possibility of such a defence as Mr Cuthell has to lay before you. They who wish to mix in the slander, the fashion, and the politics of the day, resort for newspapers and pamphlets, to those gay repositories, filled with the active, bustling, and ambitious men of the world. In those places nothing is read or talked of but what is happening at the very moment—a day generally consigning to oblivion domestic events, however singular or afflicting; even the revolu-

tions of empires giving place in a week to a newer topic—even to the favoured pantomime of the day. The bookseller who stands behind such a counter, collecting and exposing to view whatever may be thrown upon it, without perusal or examination—who can have no other possible reason for supposing that he sells no libels, except the absurd supposition that no libels are written—such a man is undoubtedly *prima facie* criminally responsible; a responsibility *very rarely to be successfully repelled*. Sale of a libel by the master of such a shop, however pure in his morals, *without the most demonstrative evidence on his part to repel the presumption arising from the act*, is unquestionably evidence of publishing the book in the criminal acceptance of publication, because, *in the absence of such evidence*, he is justly taken to be the author himself, or acting in concert with him in giving currency and circulation to his work. I pray you, gentlemen, to recollect that neither *now, nor at any former period*, have I ever disputed a proposition built upon reason and matured by decisions into law. But Mr Cuthell's shop is of a directly opposite description, and gives support to the evidence, by which I mean to repel the criminal presumption arising, *prima facie*, from the act of publication.

He resides in a gloomy avenue of Holborn. No coloured lamps or transparent shop-glasses dazzle the eye of vagrant curiosity, as in the places I have alluded to. As in the shops of fashion nothing scarcely is sold which the sun has gone down upon, so in *his house* nothing almost is to be seen that is not sacred to learning and consecrated by time. There is not a greater difference between Lapland and Paris, than between the shops I have adverted to and that of Mr Cuthell. There you find the hunter after old editions—the scholar, who is engaged in some controversy, *not* concerning modern nations, but people and tongues which have for centuries passed away, and which continue to live only in the memory of the antiquary. Whilst crowds in the circles of gaiety or commerce are engaged at other libraries in the bitterness of political controversy, the pale student sits soberly discussing at Mr Cuthell's the points of the Hebrews or the accents of the Greeks. Mr Cuthell, gentlemen, takes no personal merit from this distinction from other booksellers. It is not from superior taste or virtue, or from prudent caution, that he pursues this course, but because he finds his profit in adhering to a particular and well-known branch of bookselling, as every man will always find the surest profit in sticking to his own line of business. We lawyers find our profit, for the very same reason, in practising in one court instead of scouring Westminster Hall; because men are supposed, by their steadiness to one object, to know what they are about.

When I shall have made out this situation of Mr Cuthell, and have shown his only connexion with the work in question from his literary connexion with its learned author, I shall have made out a

case which will clearly amount to a legal defence as an innocent publisher.

I proceed to this defence with the greater satisfaction, as it is not only without possible injury to the defendant, but in every possible event must contribute to his safety. If I succeed, I am at no man's mercy; if I fail, even the very unsuccessful approach to a legal justification will present a case for mitigation, which the candour and justice of my learned friend will undoubtedly respect.

Mr Cuthell had been applied to by Mr Wakefield near a year before this little sudden performance had an existence, to sell *all his works*, which had been sold before by a most respectable bookseller who had just retired from trade. It is but justice at once to Mr Wakefield and to Mr Cuthell, to say that the works of the former, which were numerous, were exemplary for their piety and learning, and that the character of the author fully corresponded with the inferences to be collected from his publications. He was a most retired and domesticated scholar, marked and distinguished by a warm and glowing zeal for the Christian religion; and what removed him from every possible suspicion in the mind of Mr Cuthell, or of any man living, as being engaged in schemes for the introduction of anarchy and irreligion, his most recent publications, which had been committed to Mr Cuthell for sale, were his answers to Mr Paine's attack upon the doctrines of Christianity, which Mr Wakefield had not merely refuted by argument, *but stigmatised in terms of the justest indignation*. This scorn and resentment at the works I have alluded to was surely a full earnest of opinions which characterised a friend to religion, to harmony, peace, and good-will to men; and Mr Cuthell knew at the same time when the selling of this reply to the Bishop of Landaff was first proposed to him, that Mr Wakefield had before written to him on subjects of religious controversy, and that that excellent prelate held his general character in respect. There is nothing, therefore, upon earth which amounts even to incaution in the little which follows to complete the statement of his case.

Mr Wakefield having printed the pamphlet by Mr Hamilton, his own printer, without the smallest previous communication with Mr Cuthell, he brought him the form of the advertisement when it was ready for sale, and desired him to send it for insertion in the newspapers marked in the margin of it; and, at the same time, desired Hamilton, his printer, to send the books, *already printed, to his shop*. This was over-night on the 31st of January. Some of the books were accordingly sent over-night, and the rest next day.

The advertisements having appeared in the morning papers, Mr Cuthell was, of course, applied to for them by booksellers and others, and sold them accordingly, *not* because he sold *everything*, much less works on *political subjects*, and, least of all, by unknown authors;

but because his mind was fully prepossessed that the work he was selling was an *added publication to the long catalogue of Mr Wakefield's other writings*, the character of all which, for learning and morals, had been universally acknowledged, and whose character for both had ever been undisputed. The book having become offensive, Mr Cuthell was put in process by the Crown, and the service of it on his person was the *first* intimation or suspicion he had that the book was different from the many others which he had long been in the course of selling without offence or question. It is scarce necessary to add, that he then discontinued the sale, and sent back the copies to the author.

This, gentlemen, is the case as it will be established by proof. I shall not recapitulate the principle of the defence which you are already in possession of, much less the application of the evidence to the principle, which appears to me to be self-evident, if the principle can be supported; and if it be denied or disputed, I only desire to remark, that no person in my station who has ever made a point, desiring the law to be reserved to him, has ever been refused by the noble and learned Judge—I mean the right of having the facts found by special verdict, that the law may be settled by the ultimate jurisdiction of the country, because judges *at nisi prius* must follow the current of authorities, however erroneous the sources of them may be. *If you, the jury*, therefore, shall, from the evidence, believe that Mr Cuthell was innocent in intention, you may find *the publication*, and *negative the intention* charged by the record; by doing which, if the defendant be legally guilty, the Crown, notwithstanding that negative, will be entitled to judgment; whereas, if you find a general verdict of guilty, the term guilty, in the general finding, will comprehend your opinion of the criminal intention charged, though it was not your intention to find it; and Mr Cuthell will not be allowed to controvert that finding as a fact, although you, the jury, actually rejected it, his guilt being part of your verdict, and conclusive of the intention which you disbelieved.

With regard to the book itself, though I leave its defence to its eminently learned author, yet there are some passages which I cannot help noticing. (*Here Lord Erskine commented upon several of them, and then concluded as follows.*) I was particularly struck, indeed, that the following passage should have made any part of the indictment:—"We, sons of peace, see, or think we see, a gleam of glory through the mist which now envelopes our horizon. Great revolutions are accomplishing; a general fermentation is working for the purpose of general refinement through the universe."

It does not follow from this opinion or prepossession of the author, that he therefore looks to the consummation of revolutions in the misery or destruction of his own country. The sentiment

is the very reverse: it is, that amidst this continued scene of horror which confounds and overwhelms the human imagination, he reposes a pious confidence, that events, which appear evil on the surface, are, in the contemplation of the wise and benevolent Author of all things, leading on in their consequences to good, the prospect of which Mr Wakefield considers "*as a gleam of glory through the mist which now envelopes our horizon.*" I confess for one, that, amidst all the crimes and horrors which I certainly feel mankind have to commiserate at this moment, perhaps beyond the example of any former period—crimes and horrors which, I trust, *my* humanity revolts at as much as any other man's—I see nothing to fear for our country or its Government, not only from what I anticipate as their future consequences, but from what they have produced already. I see nothing to fear for England from the destruction of the monarchy and priesthood of France; and I see much to be thankful for in the destruction of papal tyranny and superstition. There has been a dreadful scene of misfortune and of crime, but good has, through all times, been brought out of evil. I think I see something that is rapidly advancing the world to a higher state of civilisation and happiness, by the destruction of systems which retarded both. The means have been, and will be, terrible, but they have been, and will continue to be, in the hand of God. I think I see the awful arm of Providence, not stopping short here, but stretched out to the destruction of the Mohammedan tyranny and superstition also. I think I see the freedom of the whole world maturing through it; and so far from the evils anticipated by many men, acting for the best, but groping in the dark, and running against one another, I think I see future peace and happiness arising out of the disorder and confusion that now exists, as the sun emerges from the clouds; nor can I possibly conceive how all this ruin, falling upon tyrannous and blasphemous establishments, has the remotest bearing against the noble and enlightened system of our beloved country. On the contrary, she has been the day-star of the world, purifying herself from age to age, as the earliest light of heaven shone in upon her; and spreading with her triumphant sails the influence of a reformed religion and a well-balanced liberty throughout the world. If England, then, is only true to the principles of her own excellent constitution, the revolt of other nations against their own systems cannot disturb her Government. But what, after all, is my opinion, or the judgment of the Court, or the collective judgment of all human beings upon the scenes now before us? We are like a swarm of ants upon an ant-hill, looking only at the surface we stand on; yet affecting to dispose of the universe, and to prescribe its course, when we cannot see an inch beyond the little compass of our transient existence. I cannot, therefore, bring myself to compre-

hend how the author's opinion, that Providence will bring, in the end, all the evils which afflict surrounding nations to a happy and glorious consummation, can be tortured into a wish to subvert the Government of his country.

The Attorney-General has admitted—I notice it to his honour, because all attorney-generals have not been so manly and liberal—the Attorney-General has admitted that he cannot seek, in this land of liberty, to deny the right of every subject to discuss, with freedom, the principles of our constitution—to examine its component parts, and to reason upon its imperfections, if, in his opinion, imperfections are to be found in it. Now this just admission cannot be qualified by a harsh and rigorous scrutiny into the language employed in the exercise of this high and useful privilege. It never can be said that you may tickle corruption with a straw, but that you must not shake it at its root. The true criterion, therefore, comes round again, at last, to *the MIND and INTENTION*, which, by taking the whole work together, and the character of its author, into consideration, it is *your* office to determine; and the concluding sentence of this publication, in which Mr Wakefield must candidly be supposed to have summed up the purpose and application of his work, is quite decisive of its spirit and purpose—viz., that instead of looking to new sources of taxation to support the continuance of *war*, the safety of our country would better be consulted in making an effort towards *peace*, which, if defeated by the fraud or ambition of our enemy, would unite every heart and hand in our defence. Hear his own concluding words:—“RESTORE the spirit of your constitution, correct your abuses, and calm your temper; THEN (and surely they who have been successful in their predictions through all this conflict have more reason to expect attention to their opinions than those who have been invariably wrong), THEN, I say, solicit peace; and, take my word for it, the French Republic, so far from insisting on any concessions of humiliation and disgrace, will come forward to embrace you, will eagerly accept your friendship, and be proud of a connexion WITH THE FIRST PEOPLE IN THE UNIVERSE. Should I be mistaken in this event, and have formed a wrong judgment of their temper and designs, *still the good effect of this advice will be an inestimable acquisition*—a vigorous and generous UNANIMITY among ourselves.”

In the defence I have made, there are but few passages I have noticed. Respecting those, I am entitled to the protection of your candour; but you are not to conclude that the others are indefensible because I do not defend them—the defence of the book (as I before observed to you) being placed in other hands more fit to manage it; and it would have been out of my province, in Mr Cuthell's case, to have entered more at large into the subject.

*THE PROCEEDINGS against SACKVILLE, EARL OF THANET,
AND OTHERS, for a Misdemeanour. Tried at the Bar of the Court
of King's Bench, on the 25th of April 1799.*

THE SUBJECT.

THE following proceedings against the Earl of Thanet and others, as taken in shorthand by Mr William Ramsay, an eminent shorthand writer, and published after the trial by Robert Fergusson, Esq., one of the defendants, requires no preface. Lord Erskine's speech for that nobleman, and for Mr Fergusson and Mr O'Brien, would have lost all its force and interest if any part of the trial had been abridged, because it is entirely a speech upon *visâ voce* evidence, and upon a subject, too, which was a constant appeal to a variety of facts and minute circumstances related by a great number of witnesses; a species of forensic eloquence, as was most justly observed in the brilliant and interesting criticism of the former volumes in the *Edinburgh Review*, of which we have no examples in the ancient world, but of which every day, or rather every hour, in the British courts of justice, might furnish instances worthy of preservation and admiration.

To relieve the reader from attending to the precise form of the indictment, which is prefixed to the proceedings, we cannot better or more correctly state the substance of it than in Lord Erskine's own words in the prefatory part of his address to the jury.

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

This trial was at the time a great subject of political animosity; but, faithful to the plan of this work, we refrain from all observations. We present the proceedings to the public, leaving the result to every man's own opinion, assisted, as we have already said in our original preface, by the public voice and judgment.

THE INFORMATION.

The information was opened by Mr Abbott, and is as follows:—

Kent, to wit.—Be it remembered that Sir John Scott, Knight, Attorney-General of our present sovereign lord the King, who for our said lord the King in this behalf prosecuteth, in his proper person cometh here into the court of our said lord the King, before the King himself at Westminster, on Wednesday next, after three weeks of the Holy Trinity in this same term; and for our said lord the King giveth the Court here to understand and be informed, that heretofore, to wit, on Monday the twenty-first day of May, in the thirty-eighth year of the reign of our sovereign lord, George the Third, now King of Great Britain, and so forth, a special session of oyer and terminer and gaol delivery was holden by adjournment in and for the county of Kent, at Maidstone, in the said county, before Sir Francis Buller, Baronet, one of the Justices of our said lord the King of his Court of Common Pleas, John Heath, Esq., one other of the Justices of our said lord the King of his Court of Common Pleas, Sir Soulden Lawrence, Knight, one of the Justices of our said lord the King assigned to hold pleas before the King himself, Samuel Shepherd, Esquire, one of the Serjeants of our said lord the King, learned in the law, and others their fellows, Justices and Commissioners of our said lord the King, assigned, by letters-patent of our said lord the King under the great seal of Great Britain, to inquire, by the oath of good and lawful men of the said county of Kent, of all high treasons, and misprisions of high treason, other than such as relate to the coin of our said lord the King, within the county aforesaid done, committed, or perpetrated; and the said treasons, and misprisions of treason, according to the laws and customs of England, for that time to hear and determine; and also assigned and constituted, by the letters-patent of our said lord the King, under the great seal of Great Britain, to deliver the gaol of our said lord the King of the said county of Kent of the prisoners therein being and detained on the nineteenth day of March, in the thirty-eighth year aforesaid, or who should be therein detained before the tenth day of April in the same year, for or on account of any high treasons, or misprisions of high treason, other than such as relate to the coin of our said lord the King. At which said session so then and there holden as aforesaid before the Justices and Commissioners above named, and others their fellows aforesaid, came Arthur O'Connor, Esquire, in the custody of John Plumptre, Esquire, Sheriff of the said county of Kent, and which said Arthur O'Connor was, and had been, detained in the gaol of our said lord the King of the said county of Kent before the tenth day of April in the year aforesaid, to wit, on the seventh day of April in the same year, for and on account

of high treason, to wit, at Maidstone aforesaid: and the said Arthur O'Connor being then and there, to wit, at the said session so holden as aforesaid, brought to the bar in his own proper person, was then and there committed by the Justices and Commissioners above named, and others their fellows aforesaid, to the custody of the same Sheriff; and so being in the custody of the said Sheriff, was then and there, at the same session so holden as aforesaid, tried by the jurors of a certain jury of the county of Kent in that behalf duly impannelled and returned, and chosen, tried, and sworn, for and upon certain high treasons not relating to the coin of our said lord the King, specified and charged upon him in and by a certain indictment heretofore, to wit, at a previous holding of the same session before the said Sir Francis Buller and John Heath, and others their fellows, Justices and Commissioners assigned as aforesaid, duly found, returned, and presented against him by the jurors of a certain other jury of the said county of Kent duly sworn and charged to inquire for our said lord the King for the body of the same county, and to which said indictment he had theretofore pleaded that he was not guilty of the premises therein specified and charged upon him: and the said Arthur O'Connor then being in the custody of the said Sheriff as aforesaid, was then and there, at the same session, by the jurors by whom he was so tried as aforesaid, found not guilty of the premises in and by the said indictment specified and charged upon him, as by the record and proceedings thereof more fully appears. And the said Attorney-General for our said lord the King further giveth the Court here to understand and be informed, that the Right Hon. Sackville, Earl of Thannet, late of Maidstone, in the county of Kent; Robert Fergusson, late of the same place, barrister-at-law; Thomas Gunter Browne, late of the same place, Esquire; Dennis O'Brien, late of the same place, Esquire; and Thomas Thompson, late of the same place, Esquire, well knowing the premises aforesaid, but unlawfully and maliciously devising and intending to impede the course of public justice, and to break the peace of our said lord the King, and to interrupt and disturb the Justices and Commissioners of our said lord the King above named, and others their fellows aforesaid, in the execution of their said office, and to prevent and hinder the due and peaceable holding of the same session, did, together with divers other riotous and ill-disposed persons, whose names are to the said Attorney-General as yet unknown, in open court, at the same session so then and there holden, and at which the said trial was so had as aforesaid, to wit, at Maidstone aforesaid, in the presence of the Justices and Commissioners of our said lord the King above named, and others their fellows aforesaid, and before any order or direction had been made or given by the same Justices and Commissioners above named, and others their fellows aforesaid, or any or either of

them, for the discharge of the said Arthur O'Connor from the custody of the said Sheriff, and before the said Arthur O'Connor was discharged from the custody of the said Sheriff, to wit, on the twenty-first day of May, in the thirty eighth year aforesaid, at Maidstone aforesaid, in the county of Kent, with force and arms make and cause to be made a very great riot, rout, tumult, and disturbance, and with force and arms riotously, routously, and tumultuously attempt and endeavour to rescue the said Arthur O'Connor from and out of the custody of the said Sheriff, so that he, the said Arthur O'Connor, might go at large whithersoever he would, and also aid and assist the said Arthur O'Connor in an attempt by him then and there made to rescue himself, and escape and go at large from and out of the custody of the said Sheriff; and the better to effect such rescue and escape, did then and there, at the same session so holden, and at which the said trial was so had as aforesaid, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the open Court aforesaid, and in the presence aforesaid, with force and arms, and with sticks, staves, and fists, unlawfully, riotously, routously, and tumultuously make an assault in and upon one John Rivett, one Edward Fugion, and one Thomas Adams, in the peace of God and of our said lord the King then and there being, and them the said John Rivett, Edward Fugion, and Thomas Adams, did then and there beat, bruise, wound, and ill-treat, and thereby then and there, with force and arms, did unlawfully, riotously, routously, and tumultuously impede and obstruct the Justices and Commissioners of our lord the King above named, and others their fellows aforesaid, in the due and lawful holding of the same session, and the execution of their office, for a long space of time, to wit, the space of one hour, to the damage of the said John Rivett, Edward Fugion, and Thomas Adams; to the great contempt, disturbance, and interruption of the Justices and Commissioners above named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said lord the King there being, in contempt of our said lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the King, his crown and dignity.

And the said Attorney-General of our said lord the King, for our said lord the King, further giveth the Court here to understand and be informed, that the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, well knowing all the premises aforesaid, but unlawfully and maliciously devising and intending to impede the course of public justice, and to rescue and cause to be rescued the said Arthur O'Connor, so being in the custody of the said Sheriff as aforesaid, from the custody of the said Sheriff, so that he the said Arthur O'Connor might go at large whithersoever he would,

did afterwards, to wit, at the same session so then and there holden, and at which the said trial was so had as aforesaid, and before any order or direction had been made or given by the Justices and Commissioners of our said lord the King above named, and others their fellows aforesaid, or any or either of them, for the discharge of the said Arthur O'Connor from the custody of the said sheriff, and also before the said Arthur O'Connor was discharged from the custody of the said sheriff, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone, in the county of Kent, with force and arms aid and assist the said Arthur O'Connor in a certain other attempt by him then and there made to rescue himself, and escape and go at large from and out of the custody of the said Sheriff; and the better to effect such rescue and escape as last aforesaid, did then and there, with force and arms, and with sticks, staves, and fists, unlawfully make a certain other assault in and upon the said Thomas Adams, in the peace of God and of our said lord the King then and there being, and in the aid of the said Sheriff then and there also being, and him the said Thomas Adams did then and there again beat, bruise, wound, and ill-treat to the great damage of the said Thomas Adams, to the great contempt, disturbance, and interruption of the Justices and Commissioners above named, and others their fellows aforesaid, in contempt of our said lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the King, his crown and dignity.

And the said Attorney-General for our said lord the King further giveth the Court here to understand and be informed, that at the said session so holden, and at which the said trial was so had as aforesaid, to wit, at Maidstone aforesaid, in the county aforesaid, the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, unlawfully and maliciously devising and intending to break the peace of our said lord the King, and to interrupt and disturb the Justices and Commissioners of our said lord the King above named, and others their fellows aforesaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the said session, did, together with divers other ill-disposed persons, whose names are to the said Attorney-General as yet unknown, at Maidstone aforesaid, in the open court aforesaid, and in the presence of the Justices and Commissioners above named, and others their fellows aforesaid, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, unlawfully, riotously, routously, and tumultuously assemble and gather themselves together to break the peace of our said lord the King, and to interrupt, disturb, and obstruct the Justices and Commissioners above named, and others their fellows aforesaid, in the execution of their office, and to prevent and hinder the due and peaceable holding of the said session.

and being so assembled and gathered together, did then and there, with force and arms, at the said session so then and there holden, and at which the said trial was so had as aforesaid, in the open court aforesaid, and in the presence aforesaid, with force and arms, unlawfully, riotously, routously, and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, tumult, riot, and disturbance, and thereby, for a long space of time, to wit, for the space of half an hour, interrupt, disturb, and obstruct the Justices and Commissioners above named, and others their fellows aforesaid, in the lawful and peaceable holding of the said session, and in and upon the said John Rivett, Edward Fugion, and Thomas Adams, in the peace of God and of our said lord the King then and there being, with force and arms, did then and there make another assault, and them the said John Rivett, Edward Fugion, and Thomas Adams, did again beat, bruise, wound, and greatly ill-treat, to the great damage of the said John Rivett, Edward Fugion, and Thomas Adams, to the great hindrance of public justice, to the manifest disturbance and violation of the peace of our said lord the King, to the great hindrance, obstruction, and contempt of the Justices and Commissioners above named, and others their fellows aforesaid, to the great terror of all the liege and peaceable subjects of our said lord the King there being, in contempt of our said lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the King, his crown and dignity.

And the said Attorney-General of our said lord the King, for our said lord the King, further giveth the Court here to understand and be informed, that at a certain other special session of oyer and terminer and gaol delivery, holden by adjournment in and for the county of Kent, at Maidstone, in the said county, on Monday, the twenty-first day of May, in the thirty-eighth year aforesaid, before Sir Francis Buller, Baronet, one of the Justices of our said lord the King of his Court of Common Pleas, John Heath, Esquire, one other of the Justices of our said lord the King of his Court of Common Pleas, Sir Soulden Lawrence, Knight, one of the Justices of our said lord the King assigned to hold pleas before the King himself, Samuel Shepherd, Esquire, one of the Serjeants of our said lord the King learned in the law, and others their fellows, Justices and Commissioners of our said lord the King, by our said lord the King duly assigned and constituted to hold the same session, the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, unlawfully and maliciously devising and intending to break the peace of our said lord the King, and to prevent and hinder the due and peaceable holding of the said last-mentioned session, did, together with divers other ill-disposed persons, whose names are to the said Attorney-General as yet unknown, in open court, at and

during the continuance of the said last-mentioned session, and in the presence of the Justices and Commissioners last above named, and others their fellows aforesaid, to wit, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the said county of Kent, unlawfully, riotously, routously, and tumultuously assemble and gather themselves together to break the peace of our said lord the King, and to prevent and hinder the due and peaceable holding of the said last-mentioned session; and being so assembled and gathered together, did then and there, with force and arms, at the said last-mentioned session, in the open court last aforesaid, and in the presence last aforesaid, unlawfully, riotously, routously, and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, rout, tumult, riot, and disturbance, and thereby for a long space of time, to wit, the space of half an hour, interrupt, disturb, and obstruct the Justices and Commissioners last above named, and others their fellows last aforesaid, in the lawful and peaceable holding of the said last-mentioned session, to the great hindrance of public justice, to the contempt and interruption of the Justices and Commissioners last above named, and others their fellows aforesaid, to the manifest disturbance and violation of the peace of our said lord the King, to the great terror of all the liege and peaceable subjects of our said lord the King there being, in contempt of our said lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the King, his crown and dignity.

And the said Attorney-General of our said lord the King, for our said lord the King, further giveth the Court here to understand and be informed, that the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, unlawfully and maliciously devising and intending to break the peace of our said lord the King, did, together with divers other ill-disposed persons, whose names are to the said Attorney-General as yet unknown, on the twenty-first day of May, in the thirty-eighth year aforesaid, at Maidstone aforesaid, in the county of Kent, unlawfully, riotously, routously, and tumultuously assemble and gather themselves together to break the peace of our said lord the King; and being so assembled and gathered together, did then and there, with force and arms, unlawfully, riotously, routously and tumultuously make and raise, and cause and procure to be made and raised, another very great noise, rout, tumult, riot, and disturbance, to the manifest disturbance and violation of the peace of our said lord the King, to the great terror of all the liege and peaceable subjects of our said lord the King there inhabiting and being, in contempt of our said lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our said lord the King, his crown and dignity.

Whereupon the said Attorney-General of our said lord the King, who for our said lord the King in this behalf prosecuteth, for our said lord the King, prayeth the consideration of the Court here in the premises, and that due process of law may be awarded against them, the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, in this behalf, to make them answer to our said lord the King, touching and concerning the premises aforesaid.

Wherefore the Sheriff of the said county of Kent was commanded that he should not forbear, by reason of any liberty in his bailiwick, but that he should cause them to come to answer to our said lord the King touching and concerning the premises aforesaid.

And now, that is to say, on Wednesday next after the octave of Saint Hilary in this same term, before our said lord the King at Westminster, come the said Sackville, Earl of Thanet, Robert Fergusson, Thomas Gunter Browne, Dennis O'Brien, and Thomas Thompson, by Benjamin Burnett, their clerk in court; and having heard the said information read, they severally say that they are not guilty thereof, and hereupon they severally put themselves upon the country; and the said Sir John Scott, who for our said lord the King in this behalf prosecuteth, doth the like; therefore, &c.

THE ATTORNEY-GENERAL'S SPEECH.

MAY IT PLEASE YOUR LORDSHIPS AND GENTLEMEN OF THE JURY.—I can very unfeignedly assure you, that I should have felt infinite satisfaction, if, in any view that I could take of what my country required of me, I could have determined not to have instituted the present prosecution.

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

Gentlemen, in so viewing the subject, I hope I may be allowed, though I am the prosecutor of this nobleman and these gentlemen, to express my regret that I am to make such an imputation in a court of justice with respect to any of them; but, gentlemen, when I consider that the pure administration of law in this country is the great security upon which all the public blessings known to the country rest; when I recollect that it is absolutely necessary for the free and uncontrolled administration of that justice, that those who have duties relative to any part of it should act under the impression that they are perfectly secure in the administration of the justice of the country, it is quite impossible for me to act upon any

other principle but this—namely, that it must be known that the Attorney-General of the country is bound, where there is a probable cause to impute to individuals that they have grossly violated that principle which requires that the administration of justice should be safe, to put upon them at least the necessity of satisfying a jury of the country that they are innocent of that charge.

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

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

Gentlemen, I will endeavour now to open to you as much of this case as may enable you to understand as much of this evidence as is offered to you; not entering into the minutiae of the evidence, but endeavouring to assist you in the information you will presently receive from the witnesses, by stating so much of the case as may make it intelligible to you, without presuming to state more to you,

because, perhaps, in all cases where justice is to be administered, more particularly in criminal cases, it would be my wish that the jury should learn it from those who are to state it upon their oaths, rather than receive any impression from the person standing in the situation in which I have the honour to address you.

Gentlemen, the trial at Maidstone was, as I need not tell those to whom I have the honour to address myself, an extremely long one. The witnesses on both sides had been desired to withdraw from the court previous to the commencement of the trial. In the natural course of proceeding, the witnesses for the defendants were called after the witnesses for the prosecution; and the noblemen and gentlemen who gave evidence in favour of Mr O'Connor and the other defendants in that trial for high treason, after respectively giving their evidence, remained in court. It may be necessary for me here to state to you so much of the construction of the court as will enable you to understand what I am now representing to you; you will have plans of the court offered to you by and bye, in order to make the evidence more intelligible. Give me leave to represent His Majesty's Commissioners to sit in the place where the learned Judges now sit; you will consider the jury as sitting very nearly in the position, with respect to the Judges, as you now sit with relation to the Judges who now sit here. The counsel for the prosecution sat, I think, in that part of the court where that gentleman is now sitting with a yellow waistcoat; and above them was a place in which the several witnesses were examined.

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

Gentlemen, after the several witnesses had been examined for the prisoners, most of them, I believe, remained in court; and I should not make the observation, if it did not appear to me material with reference to the present case. Indeed I should not be justified in making the observation, if I did not find it to be material to the present case; for the circumstance of the witnesses having been removed out of court before the trial began was extremely favourable,—I do not mean to say otherwise than justly so,—to the prisoners, because, after the case had been proved, such as it was, on the part of the prosecution, one feels it a little difficult to believe, that if that evidence had been heard by the witnesses for the defendants, which had been given by the witnesses for the prosecution, the evidence that was given for the defendants could have been given; and this is material in this point of view, because, with respect to the noble lord who is one of the defendants upon this record, and with respect to some other defendants upon this record, although they had not heard the evidence in the course in which

it was offered to the attention of the jury, yet, before the circumstances happened which are charged in this information as circumstances of criminal guilt, no one of the defendants, as far as I know, I mean, could have been ignorant of the circumstances actually proved with respect to Mr O'Connor, as that evidence applied to his relation to England, or his relation to Ireland; and I will state presently the use I mean to make of that circumstance. Gentlemen, in the course of the afternoon which preceded the conclusion of the trial, I have reason to believe that Lord Thanes, and the other persons upon this record, very studiously and anxiously placed themselves in that part of the court in which they could act with effect with respect to the rescue of Mr O'Connor.

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

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

Now, gentlemen, before I proceed to state to you the circumstances to which I beg your serious attention, I will state to you

the motives with which I do it. When I state the circumstance of a warrant having been issued to apprehend Mr O'Connor, conceiving, as I do, that some persons either knew, or believed, or conjectured, that there might be some other demand of justice upon O'Connor, and that therefore they were determined he should not remain in court till he was regularly discharged, for the purpose of preventing that other demand of justice being made upon him—I say the offence, even in that way, is of so aggravated a nature, that I have no wish to charge it higher upon the record.

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

Gentlemen, one of the defendants in this case, I mean Mr Thompson, a member of Parliament, was bound, certainly, from his situation as a subject of this country, and bound from the high situation in which he stands in the country, not to be acting in the execution of such a purpose as this information imports: but you will find that he, together with Mr O'Brien, had taken great pains, in the course of the afternoon, to sift from certain persons who will be called to you as witnesses, one of whom, indeed, I cannot call, because the hand of God has removed him by death, but who would have spoken of important circumstances—I mean Fugion the officer; but I think you will find very satisfactory evidence independent of that; and I should not have mentioned his name, but his name will be introduced in a very striking manner by the witnesses;—you will find that Mr O'Brien and Mr Thompson were, in the course of the afternoon, extremely anxious to inquire, and to know with certainty, whether there was any demand of justice upon Mr O'Connor, supposing him to be acquitted of the present charge.

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

disembarrassed in the first instance, and, in the second, that I may do him justice.

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

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

Now, gentlemen, be so good, without my entering into a detail of that evidence, to attend to the circumstances as to the conduct of the different defendants, during the time the learned Judge was executing the painful duty of passing the sentence of death—giving your attention also to what was the conduct of the several defendants when this notice had been publicly given in court, the moment that that sentence was finished; and unless I am deceived, indeed, with respect to the effect of that evidence, you will have no difficulty in coming to this conclusion, that those defendants did mean to take Mr O'Connor out of the reach of the demands which it had been publicly declared justice had upon him.

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

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

Gentlemen, I presume we shall have evidence given, and it is very fit that it should be given, whether these acts were done intentionally, or under a misconception. It may admit of an explanation of that sort; with reference to which, I beg leave to call your attention to circumstances very material for that attention, when you are determining upon the character of the acts done by the defendants, and the view with which they did those acts. It will be, for instance, for Mr Fergusson to explain what could put into the hands of a professional man a stick, with which he attempted to strike at those who were executing their duty; it will be for him to explain what was the meaning of the expressions which he used. And with respect to the noble Lord Thanet, I shall prove to you, that when advice was given to him that it would be better for him, in the high and great situation which he held, to recommend a peaceable demeanour, to endeavour that the quiet of the court should be kept, that that noble lord expressed himself to this effect, "It is but fair that he should have a run for it;" and when you couple that expression, as it will be proved by respectable witnesses, with his acts, as they will be proved by respectable witnesses, I think you can have no doubt what was the character of the acts, and what the intention of that noble lord.

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

EVIDENCE FOR THE CROWN.

JOHN STAFFORD SWORN.

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

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

A. I am. (Produces a copy of the record of the conviction of O'Coigly, and of the acquittal of O'Connor and others.)

Q. Have you examined it?

A. I have. (It was read by Mr Barlow.)

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

Mr Serjeant SHEPHERD SWORN.—*Examined by Mr GARROW.*

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

A. I was.

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

A. I did.

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

A. I do.

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

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

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

A. I am.

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

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

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

A. I am.

Q. Are you acquainted with Mr Thompson?

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

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

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

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

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

Q. May I interrupt you to ask, whether the right hand side was the side upon which the jailor was placed?

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

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

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

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

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

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

A. I think something had been said before the jury brought in their verdict. When there was an expectation that they were coming, something had been said about the Bow Street officers being there. There was a sort of noise or buzz in court; and somebody said, I don't know who, that the Bow Street officers were making a noise. In consequence of that it was that I observed one of the officers, I think Rivett—it was either Fugion or Rivett; I am not quite sure that I recollect the person of one from the other—

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

A. I had, and I rather think it was Rivett who I observed stand-

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

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

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

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

A. Certainly. He set his foot upon the end of the form before which Lord Thanet stood, with certainly, I think, the interval of three or four persons.

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

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

Q. Did he produce a paper?

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

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

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

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

A. Yes. During the former part of it, my attention was directed to him. Towards the conclusion of the sentence, I think just as Mr Justice Buller came to that part of the sentence which pronounces the specific punishment, I observed Lord Thanet and Mr O'Brien standing in the same position as they had stood before, and I observed Mr O'Brien turn round and look up at Mr O'Connor. I wish, my lord, here only to state what I saw, and not what my conjecture or construction was upon it.

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

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

Q. That is, from the Bow Street officers?

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

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

A. Yes. Lord Thanet certainly stood in the position in which I had observed him. There was a great noise, of course, took place; that time, at the moment that Mr O'Connor was getting over the

bar ; and some people calling to stop him, there was a great noise certainly. Lord Thanet stood, in the way that I have described to your lordship, in the pass ; the officers were endeavouring to press by him ; and he stood till, I think, in a very short space of time, he held up his stick with both his hands over his head. There was then a great deal of confusion ; persons got upon the table ; and there was a press, in the narrow pass, of officers and persons from that side of the court, attempting to press towards the door to which O'Connor had rushed ; and other persons, whom I cannot say, appearing to me to push the other way, as if to prevent them from passing. I saw sticks raised and fists raised by individuals ; but who did so I cannot speak to. There became then a general confusion in that part of the court, so that I lost sight of particular individuals ; the candles were some of them thrown down ; they were upon the table ; and there was a general riot and confusion certainly in that part of the court, and in most other parts of the court ; at that time a great number of persons had got upon the table, and there was certainly a great deal of confusion. In a very short time, somebody called out, " O'Connor is stopped," and he was brought back again to the bar. I should state to your lordship, that just at the time that I lost sight of Lord Thanet, and of the particular individuals, a person had got upon the table, which drew off my attention from what was going on at the bar, and had drawn a sabre which was lying there.

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

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

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

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

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

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

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

A. No. I think I remember Mr Sheridan speaking to Mr Justice Buller, or Mr Justice Heath, or both ; and I remember Lord Thanet being upon the table after Mr O'Connor was brought back, apparently to me conversing with the learned Judge, Mr Justice Lawrence.

Q. What he said you did not hear ?

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

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

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

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

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

Cross-examined by Mr ERSKINE.

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

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

Q. Who those persons were you do not know ?

A. I do not.

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

A. Yes, certainly.

Q. With his back to the prisoner ?

A. Certainly so.

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

A. I think so.

Q. You have observed that Mr O'Brien looked round to Mr

O'Connor, and then looked down as you have described it; did Lord Thanet continue all that time in the same position?

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

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

A. Certainly he did.

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

A. Certainly. He had his back against the bar, and looking directly towards the Court.

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

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

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

A. I did not observe any change.

Q. But a stick over his head?

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

Rev. WILLIAM HUSSEY sworn.—Examined by Mr ADAM.

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

A. I am.

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

A. I was.

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

A. Part of the time.

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

A. I was.

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

A. I saw Lord Thanet in court.

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

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

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

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

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

A. With his back to the prisoners.

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

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

Q. Do you recollect the jury delivering their verdict?

A. I do.

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

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

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

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

Q. What was that circumstance?

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

LORD KENYON. What person?

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

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

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

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

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

Q. Go on, and state what you saw after this.

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

LORD ROMNEY SWORN.—*Examined by Mr Wood.*

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

A. Yes.

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

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

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

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

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

A. When the riot first began, I looked very much towards the prisoner O'Connor, and saw him get over the bar, and go towards the narrow street. I looked at the other part of the court, where there were individuals forcing a passage through, which were the Bow Street officers; I saw them forcing their way, and blows were struck. I paid particular attention to Mr O'Connor, and then, almost at the same moment, turned my eyes to a different part upon the table, where there was a sword brandishing about. I don't know whether it was drawn or not, for I could not see at that time; but I should imagine that it was drawn: upon which I thought things seemed to bear a very serious aspect, and I let myself down from the bench, where I was sitting, and crossed the table directly to where I saw the prisoner escaping from. I dipped my head under the broadsword that was brandishing about. I got immediately to the end of the table, near that part of the court where the prisoner escaped from; and as soon as I got there, I immediately saw the prisoner O'Connor brought back to that part of the table by several javelin-men and others. I then immediately said to the javelin-men, "Form yourselves round the prisoner, and let no one approach you," or, "Let no one come round you," or words to that effect; "for he is not yet." I meant to say, and imagine I did say, "discharged." I was told afterwards that I had said wrong—for I had said, he was not acquitted: upon which I answered, I might very possibly make use of the word *acquitted*; but, if I did, it was a mistake; I meant *discharged*.

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

A. I think it was Mr Fergusson. He said, "My lord, you are

mistaken: you said, 'He is not acquitted'—he is acquitted." I think it was Mr Fergusson. I have no doubt myself, as Mr Fergusson mentioned it, but that I did make use of the word *acquitted*, in the hurry; I have no doubt of it: it was not my intention to say he was not acquitted, but that he was not discharged. I meant to make use of the word that I heard Mr Justice Buller make use of from the bench.

Mr WOOD. Does your lordship recollect whether the Court said anything before that about his not being discharged?

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

Q. Publicly in court?

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

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

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

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

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

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

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

Cross-examined by Mr GIBBS.

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

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

Q. There was but one person that said that?

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

LORD KENYON. There can be no occasion to go into all that conversation.

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

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

Sir JOHN MITFORD sworn.—Examined by Mr FIELDING.

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

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

Q. If you please.

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

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

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

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

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

A. Towards Mr O'Connor.

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

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

LORD KENYON. With a view to pass the sentence?

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

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

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

Mr GARROW. Was that box the box where the witnesses had been examined.

A. Where the witnesses had been examined, and where persons who attended the trial through curiosity had been. They went to the spot where the riot was, and jumped among the rioters: all the lights, except those before the Judges, and the lights which hung in the middle of the court in a kind of branch or chandelier—I do not recollect exactly what sort of a thing it was; it gave a considerable light; but all the other lights were extinguished.

Mr GARROW. The chandelier that hung over the prisoners ?

A. In the middle of the court ; there were, I think, three patent lamps in it—it gave a great deal of light. Mr Fergusson, at the moment that Mr O'Connor jumped over the bar, turned himself round, and appeared to me to follow Mr O'Connor ; but I cannot positively say that he did so, because the persons who rushed from the other side of the court came between me and him ; but I recollect that when they were past I did not see him. I then attended to the prisoner O'Coigly, apprehensive that he might escape ; and that attracted my attention in some degree from what was passing in the riot. He was perfectly tranquil, and I was convinced from his behaviour that he did not mean to stir ; and therefore my attention was drawn back again to the riot. Mr Knapp's clerk, Mr Stafford, jumped upon the table, and drew Mr O'Connor's sword—a kind of broadsword, I think—which was lying upon the table ; and he flourished it over the heads of the persons who were engaged in the riot below. I got up to speak to him, to desire him to put up the sword, which, after some time, he did ; and soon after Mr O'Connor was brought back. Mr Stafford being between me and the rioters, prevented me from seeing what passed after the riot was over. I do not recollect anything material except Lord Thanet ; that is, a person whom I understood to be Lord Thanet. I did not know Lord Thanet's person ; that is, I did not recollect him ; I had seen him many years ago. I saw a person whom I understood to be Lord Thanet come across the table ; and I saw him in conversation with Mr Justice Lawrence ; that conversation was a little warm, but I did not hear the particulars of it. When my Lord Thanet left Mr Justice Lawrence, and went across the table again, I heard him say, "I thought it was fair he should have a run for it."

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

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

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

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

Cross-examined by Mr BEST.

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

A. He was.

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

A. Yes.

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

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

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

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

MR JUSTICE HEATHSWOOD.—*Examined by Mr ATTORNEY-GENERAL.*

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

A. I was.

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

A. I did ; and if you will give me leave I will state all that I observed. I was applied to in the course of the day by a messenger from the Secretary of State, who informed me that a warrant was issued for the apprehension of Mr O'Connor, in case he should be acquitted, and desiring to know if the Court would permit him to execute that warrant if he should be acquitted ; and we gave leave. After the verdict had been given, and, I believe, after sentence of death had passed, this messenger very unadvisedly went from that corner of the box where the prisoners were confined, to that corner which was near the door, and said aloud, " My lord, may I now execute my warrant ? " Presently after, I saw Mr O'Connor thrust one leg over the box, and then draw it back again : afterwards, in the space of a minute, I saw him leap over the box. I could not see any person between him and the door at that moment ; immediately a great scuffle and a riot ensued, and a great deal of fighting, such as I never saw before in a court of justice ; it appeared to me to be between the constables with their staves on one side, and those who favoured the escape of O'Connor on the other. I know not from whence the favourers of Mr O'Connor came ; it being dark, I could not see exactly the number of the combatants ; it was dark in that place where they were fighting ; but from the exertion of the constables in plying their staves, it seemed to me that there must have been ten or twenty, I suppose, all fighting together. I saw a man with a naked sabre, brandishing it over the heads of the combatants ; one of the officers of the court, I believe, came up to me with a brace of pistols, which, I believe, belonged to Mr O'Connor, and lay upon the counsel-table, saying, " I have secured these at last. " This combat, I suppose, might last five,

six, or seven minutes; I cannot exactly say how long; but, in the course of it, I saw Mr Fergusson standing upon the table, together with many others. He turned round towards the Commissioners, and said, I believe particularly addressing himself to me, "Mr lords, the constables are the persons that are the rioters; they are the occasion of it," or words to that effect. Before I could give him an answer, he turned round again towards the combatants; it was impossible, from the noise, for him to hear anything I could say to him. My attention was chiefly turned from him to the more interesting scene of the fight; but I must do him the justice to say, that, in the very short time I saw him, which was not above a minute or so, I did not observe him say or do anything to encourage the riot. I thought myself in great danger, and that we were all so. I could not guess at the view of the rioters, how far it extended, or whether they had any and what arms. Indeed we were more alarmed, because we had intelligence beforehand that there was a very disaffected party in the town. That is all I have to say.

CHARLES ABBOT, Esq., sworn.—*Examined by Mr LAW.*

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

A. I was.

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

A. I do recollect that Mr O'Connor made a motion with his body as if he would leave the bar. Mr Fergusson, almost at the same instant, said, "He is discharged." Mr Solicitor-General then called across the table, "No, stop him: he is not discharged." Just at the same instant one of the officers, either Rivett or Fugion, but I cannot say which, got upon the form and pressed forward towards Mr O'Connor, and at the same time said he had a warrant: there was then a little confusion for a short space of time, but not very long; the prisoners resumed their places, and Mr Justice Buller proceeded to pass the sentence upon Mr O'Coigly. During this time I had been sitting almost immediately under Mr Justice Buller, or very nearly so. At the very instant that Mr Justice Buller had closed the sentence, I observed Mr O'Connor leap over from the bar towards his left hand; a very great tumult and confusion immediately took place; and, shortly afterwards I saw a person, whom I soon learned to be Mr Stafford, draw a sabre, and went to that corner of the table where the confusion was. Mr Garrow cautioned him not to strike; and he did not appear to aim the sabre at anybody, but merely to keep it moving over their heads. When this second tumult began, I rose up and stood upon the form upon which I had been sitting, so that I was standing before Mr Justice Buller and Mr Justice Heath, with my back towards them. When the con-

fusion began to abate, I turned round and entered into some conversation with Mr Justice Buller; and soon after this, while I was in that situation, I saw my Lord Thanet standing on the table, nearly before Mr Justice Lawrence, which was towards my right hand. I heard Mr Justice Lawrence speak to Lord Thanet to this effect—"I think it would be an act of kindness in Mr O'Connor's friends to advise him to go quietly to the prison, lest some mischief should happen." I do not pretend to state the learned Judge's words, but the substance I believe I am correct in. Lord Thanet then turned abruptly round towards his right hand, which brought his back towards me; and I did not distinctly hear the first words that he uttered, but the concluding words were either "to have a run for it," or "fair to have a run for it." I will not be quite certain of the word "fair," but of the words "to have a run for it," I am quite certain. I have the more particular recollection of this, because, shortly afterwards, I observed Mr Sheridan at the same part of the table, and heard Mr Justice Lawrence speak to him to the same effect that he had before spoken to my Lord Thanet. Mr Sheridan answered with great civility, either that he had done so, or that he would do it. It was the different manner of Mr Sheridan to that of my Lord Thanet that made me recollect that.

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

A. Yes.

Mr ERSKINE. To whom?

A. To Mr Sheridan.

Q. In the presence of Lord Thanet?

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

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

A. I have not.

JOHN RIVETT sworn—*Examined by Mr GARROW.*

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

A. I did.

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

A. Yes, there was.

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

A. Yes, I did.

Q. Who went with you?

A. Fugion, my brother officer.

Q. He was another officer of the police?

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

Q. Is Fugion since dead?

A. He is.

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

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

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

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

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

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

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

A. Yes.

Q. State it to the Court.

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

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

A. We had.

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

A. He did.

Q. What then passed?

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

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

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

Q. Did Mr Thompson still continue standing by you?

A. Yes, he did.

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

A. While the jury were out considering their verdict.

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

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

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

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

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

A. I do not recollect.

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

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

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

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

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

A. Yes.

Q. Many gentlemen seated themselves there?

A. Yes.

Q. Did you know any of those persons?

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

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

A. Exactly so.

Q. You do not aver the act positively?

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

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

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

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

A. Only the gentlemen sitting there.

Q. With what view was that ?

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

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

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

LORD KENYON. Who was that addressed to ?

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

Q. Which of the judges was that ?

A. Judge Buller. Then the sentence was passed upon Mr O'Coigly. As soon as the Judge had so done, Mr O'Connor immediately jumped out of the bar. There was then a very great confusion in court; those gentlemen who had so placed themselves before me stood up. I called out, "Shut the door, shut the door," several times.

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

A. He took to the left.

Q. He took the direction going from you ?

A. Yes.

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

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

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

A. I was pulled down, or shoved down, twice or three times,

but by whom, I am not able to say. I then jumped forward as well as I was able, and was endeavouring to pursue Mr O'Connor; Mr Fergusson jumped upon the table, and with a stick flourished it in this way, to prevent my getting forward.

Q. Flourished it over your head?

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

Q. Was Mr Fergusson in his professional dress?

A. Yes, he was. I then sprung at him, and wrenched the stick out of his hand, and he returned back to his former situation.

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

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

Q. Describe what more took place.

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

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

A. Yes.

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

A. Yes.

Q. Should you know his person now?

A. I think I should.

Q. Look round the court, in all parts of it, and see if you see his lordship here—is that the person you struck who sits next Mr Gibbs?

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

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

A. I cannot positively say.

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

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

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

A. He was pointed out to me immediately after.

Q. Upon the spot?

A. Upon the spot.

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

A. No, I do not.

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

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

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

A. Yes.

LORD KENYON. Was it a conversation addressed by Mr O'Connor to you?

A. It was.

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

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

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

A. Yes.

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

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

Q. Are you acquainted with Mr Gunter Browne?

A. No, I am not.

Q. Do you remember anybody remarkable in his appearance or person obstructing Fugion or Wagstaffe?

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

Cross-examined by Mr ERSKINE.

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

A. Yes.

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

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

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

A. Surely so.

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

A. No doubt.

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

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

Q. The line that you was going in at that time was a place not very unlike where I am standing now, immediately before the prisoners?

A. Yes.

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

A. Just so.

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

A. Yes.

Q. That was the first obstruction you met with?

A. No; I was pulled by the leg.

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

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

Q. Had you struck anybody before that?

A. No.

Q. Had you shoved or pushed anybody?

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

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

A. To my knowledge I had not.

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

A. Yes, he is so.

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

A. No, I had not.

Q. And you had shoved against several others?

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

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

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

Q. After you saw Mr O'Connor jump over the bar, and when you was apprehending that you might be disappointed in arresting

him, you went forth with all the rapidity you could. Now, how came you to leave the course which directly led to him to go up to the table where Mr Fergusson stood?

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

Q. Towards the table where Mr Fergusson was?

A. Yea.

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

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

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

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

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

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

Q. Did he go towards Mr O'Connor?

A. No; he turned toward the Judges.

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

A. *Just so.*

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

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

Q. Where was it you met with Lord Thanet?

A. A very little distance from me.

Q. Was he in the counsels' seat or where?

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

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

A. I cannot say.

Q. *Had he a stick?*

A. *He had no stick that I recollect.*

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

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

Q. *And then you struck him?*

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

Q. *With what?*

A. *The stick that I took from Mr Fergusson?*

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

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

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

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

Q. Did you strike him after that?

A. Yes.

Q. Mr Fergusson was gone away?

A. Yea.

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

A. No.

Q. Did you strike anybody else but Lord Thanet?

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

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

A. Yes.

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

A. No, I did not.

Mr GABROW. Do you remember seeing Fugion strike anybody?

A. No.

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

A. No.

Q. Should you know him again now?

A. I should think that little gentleman is him.

Mr GIBBS. This gentleman? (putting his finger on Mr Thomp-
son).

A. No; the next gentleman.

Q. This gentleman? (putting his finger on Mr Bonney).

A. Yes; I think that is him.

Sir EDWARD KNATCHBULL sworn.—*Examined by Mr ADAM.*

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

A. I was.

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

A. I was.

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

A. Previous to the sentence being passed upon O'Coigly, I saw Rivett, the Bow Street officer, on the prisoner's right hand. He produced some paper, which I understood at the time to be a warrant from the Duke of Portland to secure the person of Mr

Arthur O'Connor; after that, there was some conversation passed between the Judge and Rivett, which I do not immediately recollect. I saw Lord Thanet seat himself under the prisoners at the bar, immediately at the conclusion of the sentence being passed upon O'Coigly. I saw Rivett, who appeared to me to be placed in a situation in order to prevent Mr O'Connor's escape. I saw Mr O'Connor put his right foot, I think it was, upon the bar, his left hand upon the railing, and his right hand either upon some person's shoulder that was sitting under, or else upon the rail, and jump into the crowd. I can only speak now as it struck me at the time. It appeared to me that Lord Thanet rose from his seat as soon as Mr O'Connor jumped into the crowd; he rose from his seat in order to prevent Mr Rivett from securing the person of Mr O'Connor. There was some person—who it was I cannot pretend to say; but it was some person rather with a bald head—a person whom I should not know again if I was to see him——

Q. Can you tell how he was dressed?

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

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

A. It did appear to me, but I can by no means speak positively to it, that when a person, whoever it was, was endeavouring to keep Rivett back; Rivett, if I may make the gesture, for I do not know how to describe it, Rivett, in this kind of way, struck Lord Thanet in the side, as it appeared to me, but I cannot say whether he struck Lord Thanet or not at that distance, nor did I see him make a blow at any person.

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

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

THOMAS WATSON sworn.—Examined by Mr WOOD.

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

A. I am.

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

A. Yes, I was.

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

A. Yes.

Q. When were these directions given?

A. Just before it ended.

- Q. Do you mean before the sentence of death was pronounced ?
- A. Yes ; I believe it was, to the best of my knowledge.
- Q. Before the sentence was finished, did you say anything to Mr O'Connor ?
- A. I did. I said, " Mr O'Connor, remember you are not to be discharged, though you may be acquitted." He said " Why ?" and I said, " Because I have no authority to discharge you, and therefore you must not go."
- Q. Was anything said after that to Mr O'Connor by anybody ?
- A. A person just below him, after sentence was passed, said to Mr O'Connor, " You are acquitted ; what do you stand there for ? why don't you jump over ?"
- Q. You don't know who that person was, I suppose ?
- A. No. Mr O'Connor said, " Mr Watson says I am not to go." The gentleman below said, " Pshaw ! you are acquitted ; what do you stay there for ? jump over." He instantly sprang, and I instantly caught hold of the skirt of his coat as he got over, and held him. I then cried out, " Stop him, stop him !" There were some of them shoving him behind to shove him through the wicket, and others shoving him back ; but he was so secured that they got him back into his place again.
- Q. Did you see Rivett ?
- A. I did.
- Q. Did you give any directions to Rivett ?
- A. I called to him, or his companion, and said, " I wish you would go out and get some constables and assistants"—for I suspected there would be something amiss by and by.

THOMAS ADAMS SWORN.—*Examined by Mr FIELDING.*

- Q. You were coachman to Mr Justice Buller at the time of the trial ?
- A. I was.
- Q. Tell my lord, and the gentlemen of the jury, what you observed in the court after Mr Justice Buller had passed sentence of death upon O'Coigly. First of all, where was your situation ?
- A. At the wicket-door that leads into the body of the court, and that part of the court that the spectators stand in.
- Q. By the jury-box ?
- A. Yes.
- Q. Now, when sentence of death was passed, what did you observe going forward in court ?
- A. Some person said, " Spring," but who, I know not. Immediately Mr O'Connor jumped over the bar into the body of the court.
- Q. Did you observe the person of the man from whom the voice came ?

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

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

A. He had. I caught him by the collar of the coat, and says, "I'll be damned if I let you go;" and immediately the wicket-door was opened. I took the wicket-door in my left hand, and pulled it to and bolted it, and the moment I had bolted it some person knocked me down.

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

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

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

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

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

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

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

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

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

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

Q. Did you see Lord Thanet do anything?

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

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

A. I did not.

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

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

Q. What did that person do?

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

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

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

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

A. I do not.

Q. Do you know the person of Lord Thanet?

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

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

A. I delivered him up to two officers.

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

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

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

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

Q. Do you know the person of Mr Fergusson?

A. I do not.

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

A. Yes.

Q. In what situation was he?

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

Q. What did you observe him do?

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

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

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

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

A. I cannot say.

Q. Had he a bald head?

A. I cannot say.

HENRY WILLIAM BROOKE sworn.—*Examined by Mr ABBOT.*

Q. I believe you have some situation in the Secretary of State's office?

A. Chief clerk in the Alien department.

Q. Was you at Maidstone at the trials?

A. Yes.

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

A. I do.

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

A. I do.

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

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

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

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

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

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

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

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

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

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

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

A. Yes.

LORD KENYON. It cannot be necessary to go into that.

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

Mr ABBOT. Did Mr O'Connor do anything ?

A. Mr O'Connor placed, as far as I recollect, his left hand upon the side of the bar where he stood, and leaped over

Q. Did you hear any voices crying out anything ?

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

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

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

Q. What did you see that person doing ?

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

Q. Of Rivett's coat ?

A. Yes.

Q. Did you afterwards learn who that person was ?

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

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

A. I cannot identify the person of the gentleman that endeavoured to make a complaint to the Court of ill-usage ; but there was some gentleman upon the table who complained, whether generally, or to the bench, I cannot say, " Am I to be ill-treated in this way ? " or to that effect.

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

A. I cannot say.

Q. Did you know Mr Fergusson the counsel?

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

Q. Did you see him do anything?

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

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

A. He was.

Cross-examined by Mr ERSKINE.

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

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

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

A. He appeared to me, as far as I can charge my recollection, to have been upon a bench; he appeared to be elevated from the ground.

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

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

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

A. It was at the time of the confusion.

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

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

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

Mr ERSKINE. Where did you sit at this time?

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

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

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

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

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

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

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

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

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

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

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

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

A. Certainly so.

Q. To stop the way for who?

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

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

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

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

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

Q. Was it at the same period of time when you saw the officers rush forward, and Mr Fergusson attempt to stop the way in the manner that you have described?

A. Yes; the whole transaction was of the shortest duration possible. *Mr Fergusson forced himself between Mr O'Connor and Mr Watson, the jailor; Mr Watson, the jailor, reached across; he sat on the other side from where Mr O'Connor, the prisoner, sat; he reached across behind Biuns, and seized the flap of O'Connor's coat*

as he was getting over the table; the coat was extended for a small distance between O'Connor and the bar, and Mr Fergusson forced himself in between the two, and Mr Watson let go his hold.

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

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

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

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

Q. You mentioned standing upon the table with this sabre in your hand—did you strike anybody, or create any confusion?

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

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

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

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

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

Cross-examined by Mr ERSKINE,

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

A. I did.

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

A. *Mr Fergusson did not attract my eye till I was upon the table. Seeing the act of O'Connor, I immediately sprung up.*

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

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

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

A. I got upon the table in consequence of seeing Mr O'Connor leap over.

Q. Then, when your attention was first attracted to Mr Fergusson it was in the midst of the confusion?

A. Yea.

Q. Several persons appeared to be pressing forward, and there seemed to be a scuffle?

A. Yea.

Q. You observed Lord Thanet very distinctly?

A. I had never seen Lord Thanet before that day. I saw him give his evidence. I saw him afterwards, I think, sitting between Mr Dallas and Mr Fergusson; and I think I cannot err when I say I am sure it was Lord Thanet.

Q. Did you not see distinctly the person you took to be Lord Thanet?

A. Most distinctly.

Q. How far was he from you?

A. I am sure, not more than two yards; for the space between the table and the bar is very small; and it was between the table and the bar that I saw Lord Thanet.

Q. Where the counsel sat?

A. Not in the seat where the counsel sat.

Q. At this time you were upon the table, and saw Mr Fergusson in the midst of the confusion; was he upon the table where you were, or in his place?

A. Neither upon the table nor in his place?

Q. Where, then?

A. Immediately behind where he had formerly sat. He had sat in the front of O'Connor, and he had got just behind the seat where he had sat before.

Q. You had a sword which you brandished for the purpose of keeping off any danger that might happen?

A. Yes.

Q. Do you mean to represent that Mr Fergusson was at that time in the solicitors' box?

A. I don't know whether I can call it the solicitors' box or not; *he sat at the extremity of the seat wherein the solicitors sat; he was certainly directly before me at the end of the trial.*

Q. At that time was not Mr Fergusson surrounded by a great number of people, who were pushing and shoving, and making a disturbance?

A. The persons behind him were certainly crowding upon him; but there was a small space before him that was vacant.

Q. Was there not a pressing upon him every way?

A. No, not from the table.

Q. Were there not persons in the place where the solicitors' box was, pushing and crowding at the time Mr Fergusson extended his arms?

A. Certainly; but I saw him only pressed on the side that I describe.

Q. Do you mean to swear that you saw Mr Fergusson shift his place where he had been, and go nearer to Mr O'Connor?

A. No, I did not see him shift it.

Mr GARROW. There was a low-backed seat for the counsel for the prisoners?

A. Yes.

Q. Behind that was a space and bench for the solicitors?

A. Yes.

Q. And if I understand you right, Mr Fergusson appeared to you to be over that low back to the counsel's seat?

A. Yes, certainly so.

Q. Between the back of the counsel's seat and the bar?

A. Yes; I had not immediately before this observed where Mr Fergusson was.

The Honourable ROBERT CLIFFORD sworn.—*Examined by*
Mr GARROW.

Q. I shall not trouble the Court to hear from you over again the detail of the circumstances. Did you hear Lord Thanet examined as a witness upon the trial of Mr O'Connor?

A. I did; it was a few minutes before five.

Q. Very soon after that, I believe, Mr Dallas summed up on the part of the prisoner?

A. He began to sum up, I believe, about five.

Q. Did you observe where Lord Thanet sat while Mr Dallas was speaking?

A. Mr Dallas left his place, which was exactly opposite Mr Justice Buller, and Lord Thanet came and sat in Mr Dallas's place.

Q. Mr Dallas had removed from the place where he had sat to a more convenient place for addressing the jury?

A. Yes; to the left hand of the counsel for the Crown. Lord Thanet sat opposite Mr Justice Buller. The attorneys' bench was between the prisoner and Lord Thanet.

Q. Did you at any time after that see Lord Thanet move from that place, Mr Dallas's seat, to any other?

A. He went over the back of the seat, and went into the attorneys' place.

Q. To that seat which was immediately under the bar?

A. Exactly: I do not know whether it was the first or second seat. There are two seats. One seat is directly against the wood, and then there is the thickness of a man. I do not know which of them he was upon.

Q. When the jury returned and had given their verdict, what observations did you make respecting either Lord Thanet, Mr Fergusson, Mr O'Brien, Mr Thompson, or Mr Browne?

A. When they had returned a verdict of guilty against O'Coigly, I observed Mr O'Connor put his left leg over the bar of the dock—I believe they call it—leaning upon his left hand. Lord Thanet rose up, and Mr O'Connor's hand was within this distance (six or seven inches) of Lord Thanet's left shoulder—it was below his head. I did not see it touch his shoulder, because Mr Fergusson rose up, and was exactly between Lord Thanet and myself.

MR ERSKINE. Where did you sit?

A. I sat as marshal under the jury-box.

MR GARROW. Be so good as describe that rising of Mr Fergusson's.

A. They ran off all together—they followed Mr O'Connor, as it appeared to me. I bent myself as far as I could to see, when so many people came jumping from the witness-box that I was almost overpowered.

Q. The witness-box was opposite the jury-box?

A. Yes; and they all went off to the left hand, behind the crier's box.

LORD KENTON. Do you mean that they all ran off together?

A. Mr Fergusson and the rest of them went off towards the narrow street of Maidstone.

MR GARROW. There you lost sight of them on account of the number of persons that came to intercept your view?

A. I was sitting here, and they all went there.

Q. Did you see anything more of the conduct of Lord Thanet?

A. I saw no more of them after that. I saw a gentleman that was almost bald come and complain that he had received a blow upon his head, and asked, "Whether there was no redress for the blow he had received?"

Q. Did you learn afterwards that that was Mr Gunter Browne?

A. I understood his name was Browne.

Q. Did you see him favouring the escape of O'Connor?

A. No.

Q. Did you see Mr O'Connor do anything?

A. I saw a person in a grey coat hanging his left arm over the

jury-box for some time, afterwards came down, and was seated on the right of Mr O'Connor, upon the bar that was there. Just before Mr O'Connor made his escape, that person disappeared from that place, and I saw no more of him.

THOMAS WAGSTAFFE SWORN.—*Examined by Mr ADAM.*

- Q. You are a King's messenger ?
 A. Yes.
 Q. You went to Maidstone in May last with a warrant to apprehend Mr O'Connor ?
 A. Yes.
 Q. Did you go into the court with Fugion and Rivett for that purpose ?
 A. No ; Fugion and Rivett were in the court before I went in, and I went in to them.
 Q. Do you remember any gentleman coming and asking you any questions about your warrant ?
 A. Yes ; a gentleman came and asked if I had a warrant or anything against Mr O'Connor. I told him, No.
 Q. Did any other gentleman come to you ?
 A. No.
 Q. Do you know who that gentleman was ?
 A. No ; I understood afterwards that it was Mr O'Brien.
 Q. Did anything further pass between you and Mr O'Brien at that time ?
 A. He offered to bet some money with Fugion and Rivett.
 Q. Did anything more pass ?
 A. No.
 Q. Had you your escutcheon as messenger on ?
 A. No.

WILLIAM CUTBUSH SWORN.—*Examined by Mr GARROW.*

- Q. I believe you are a clockmaker at Maidstone ?
 A. Yes.
 Q. Were you in court at Maidstone when sentence of death was passed upon a prisoner of the name of O'Coigly ?
 A. Yes, I was.
 Q. Upon that occasion, did you see Mr O'Connor do anything ?
 A. Yes ; I saw him get over the bar.
 Q. At that time, did you see Lord Thanet ? and if you did, what did you see him do ?
 A. After that, I saw a man with a sword in his hand beating over a gentleman's head.
 Q. The Court have been sitting many hours, and have heard the general detail of the transaction ; be so good as answer my questions. Did you see Lord Thanet ?

- A. I did.
- Q. Did you see his lordship do anything, and what ?
- A. I saw Rivett strike Lord Thanet over the back—I did not know it was Rivett at that time ; I knew Lord Thanet very well.
- Q. Where was Lord Thanet at the time that Rivett struck him ?
- A. Two or three yards from Mr O'Connor, or thereaway.
- Q. Was Lord Thanet nearer to the great street of Maidstone than he was to Mr O'Connor, or to the narrow street ?
- A. They were all on the left side.
- Q. You was on the side on which Mr O'Connor was endeavouring to get out ?
- A. Yes.
- Q. What was the first thing you saw ?
- A. I saw nothing till I saw the sword hit upon Lord Thanet's back.
- Q. That was not Rivett ?
- A. Yes ; it was he who hit Lord Thanet upon the back with a sword—I did not know it was Rivett till afterwards.
- Q. Were any of the lights put out ?
- A. One.
- Q. Did you hear any expression about putting out the lights ?
- A. Yes ; I heard some person say, " Put out the lights."

— OMBOD sworn.—*Examined by Mr ADAM.*

- Q. I have but one question to ask of you—Did you see anybody at the time of the pronouncing of the verdict at Maidstone, in the case of O'Coigly and O'Connor, lay hold of Rivett, or any of the officers ?
- A. Yes ; Rivett, Fugion, Wagstasse, and I, were standing together ; they wanted to cross the Court to where Mr O'Connor was.
- Q. What was done to Rivett ?
- A. Two gentlemen in black got up and opposed him very much. I said to one of them, " You must not obstruct this man ; he is an officer of justice."

ROBERT PARKER sworn.—*Examined by Mr GABROW.*

- Q. Was you in court at Maidstone when the jury returned into court with their verdict in the case of O'Connor and others ?
- A. Yes.
- Q. Were you near the under-sheriff ?
- A. I was very near—behind him.
- Q. Nearest the great street of Maidstone, and far from O'Connor ?
- A. Yes.
- Q. Did you see anything happen upon that verdict being brought in ?

A. Upon the verdict being brought in, he put his leg over the bar, feeling himself discharged—as he afterwards explained. A Bow Street officer then stepped up, and said, "There was a warrant to detain him." Mr O'Connor then put his leg back again, and said, "He thought he was discharged;" and one of the Judges said, "He was not to be discharged," or something of that sort; and he was quiet till sentence was over.

Q. Did you see Lord Thanet?

A. Yes; I saw him on a seat at the front of the bar; I am perfectly sure I saw Lord Thanet.

Q. After sentence had passed, did you see the Bow Street officers make any attempt to pass the bar where Mr O'Connor stood?

A. Mr O'Connor jumped over the bar, and then the Bow Street officers both advanced in order to stop Mr O'Connor; the jailor called out "My lord, am I to let him go?" or something to that effect, and there was a contention; several persons were assisting Mr O'Connor to get out at the opposite door, and the Bow Street officers were attempting to stop him.

Q. Did you at that time see Lord Thanet?

A. I did.

Q. In what situation? and what was he doing?

A. Lord Thanet evidently appeared to me to be obstructing the officers in their attempt to stop Mr O'Connor.

Q. Did you see any other person engaged in the same attempt?

A. Not any one whose person I then knew.

Q. Did you observe any person whose dress was remarkable?

A. I saw a gentleman in a bar gown and wig endeavouring to assist the escape of O'Connor; but at that time I did not know the person of the gentleman.

Q. Do you since know who that gentleman was?

A. I only know by report.

Q. Did you see any other person in a gown and wig acting as you have described?

A. No, I did not.

Q. Had you been in court during any considerable portion of the trial?

A. No, very little; I had been in, for five minutes at a time, perhaps three times during the trial.

Q. So that you had not an opportunity of observing that gentleman in the course of his professional duty?

A. No.

Cross-examined by Mr GIBBS.

Q. You say Lord Thanet appeared to you to be obstructing the officers; did you see him do anything?

A. I saw him resisting with his hands.

Q. Pray, when was this?—before or after the sentence?

A. It began immediately after the sentence; it began upon Mr O'Connor getting over the bar.

Q. What did he do with his hands?

A. The Bow Street officers pushed forward; and against one of them it was that he was making resistance.

Q. Pray, which of them?

A. I cannot tell—I do not know which—I did not know either of them.

Q. Did you see the warrant?

A. Yes; I saw it handed over to be read.

Q. Can you tell whether it was against either of those two men or against the messenger, that he was making that resistance?

A. I cannot.

Q. But you saw him put his hand against one man that was coming forward?

A. Yes, certainly.

Q. You said that you saw a gentleman in a bar-gown that appeared to assist O'Connor.

A. Yes.

Q. What did you see him do?

A. I recollect that gentleman was ranged with the counsel for the prisoners; and then he turned round with his face to the bar, and was in that manner contending to resist their advancing towards the prisoner.

Q. He was standing upon the ground and reaching over?

A. Yes.

Q. Standing, as I may be standing now, supposing this to be the bar?

A. Yes: supposing you wasturned round, it would be exactly so—he turned round towards the bar.

MR ERSKINE'S SPEECH.

GENTLEMEN OF THE JURY,—It now becomes my duty to address you—but for three of the defendants only; because, though nothing could possibly have separated their cases in argument, yet it was thought prudent not to embarrass the mind of any one advocate with so many facts and circumstances as the defence of all of them might eventually have involved. My learned friends who sit behind me were, therefore, to have defended the other two gentlemen; but as they have not been at all affected by any part of the evidence, it may, perhaps, be thought advisable by the Court, that they should now be acquitted, lest their testimony should become material hereafter for those who remain under trial.

Several observations were made by the Attorney-General, in his

short and dispassionate address to you, well worthy of your attention. He told you that he could not conceive a greater offence against the justice of any country, nor indeed against the very character of justice itself, than an attempt to confound and overbear its judges and ministers in the administration of law. I admit it freely. The undisturbed and unruffled course of justice is the universal source of human security. Statesmen have, in all ages, distracted governments by their ambition;—parties will always create animosities, and sometimes confusion, by their discordant interests;—tumults will occasionally arise out of the best of human passions, in the best-ordered States;—but where an enlightened and faithful administration of justice exists in any country, that country may be said to be secure.

It has pleased God to give us a long reign of that security in England. Indeed, if I were to be asked what it is which peculiarly distinguishes this nation from the other nations of the world, I should say that it is in HER COURTS she sits above them; that it is to her judicial system she owes the stability of all her other institutions: her inhabitants have for ages lived contented under her laws, because they have lived in safety.

Gentlemen, the Attorney-General had certainly no occasion to enter into any explanation of his own conduct in the course of this prosecution: it was never my purpose to impeach it. The question is not, whether he is justified in having arraigned the defendants? but, whether, upon the whole evidence, they are guilty or not guilty? I say, upon the *whole* evidence; because, to secure myself an impartial hearing, I think it my duty to tell you, in this early part of my address to you, that I mean to call witnesses in their defence. You have heard attentively the accusing testimony: **AUDI ALTERAM PARTEM.** It is not two days ago that, in a similar stage of an important trial, the noble Judge upon the bench took occasion to remark to a jury, that this was so sacred a maxim of justice, that we were frequently reminded of it by seeing it inscribed upon the very walls of our courts.

It has been also truly observed to you (as the observation applies to the first of the defendants upon the record, my noble friend and client, Sackville, Earl of Thanet), that the charge against *him* is of a most deep and serious complexion. I think so too. He is a man of illustrious rank—a hereditary judge and legislator of the kingdom; and a judgment, therefore, against *him*, is of far greater consequence than to a mere private man. It is a great impeachment of such a person that he infringes the constitution of his country, of which he is a dignified guardian; that he disturbs the execution of those laws of which he is a high magistrate; and that, forgetting the duty annexed to his exalted station, the duty of giving the example to the people of order and obedience, he excites them to tumult, and violates even the sanctuary of justice with misrule and

violence. Mr Fergusson, though inferior in rank to the noble Earl, stands eventually in a situation, perhaps, of still greater delicacy, and is involved in deeper consequences. The son of a late eminent lawyer in the other part of the island, who filled also a high situation in its magistracy;—himself bred to the English bar; not as a fashionable branch of education, or as a useful introduction into life: but engaged in it learnedly, honourably, and successfully, as a profession, and as a profession by which he must live. A young man so circumstanced has surely a most serious claim to your attention, and even to the most indulgent consideration. As to the other gentlemen, I need hardly speak of them; because, though their names have of course been reiterated in the questions put to the witnesses, nothing approaching to criminal conduct has been established against them. We are here, therefore, upon a mere question of fact. You cannot but have observed, that the Attorney-General and myself, instead of maintaining opposite doctrines, perfectly agree upon the principles which ought to govern your decision. The single object of inquiry is, the truth of this record. Is the charge proved to your satisfaction? or, rather, *will it be so proved when the whole cause has been heard?*

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

Before I proceed to address myself to you upon the evidence, I will do that which must make it manifest that it is not my wish to confound your understandings in the investigation of facts, for I will begin by relieving your attention from the consideration of all circumstances that are neither disputed, nor fairly disputable, either as they are the result of what you have heard already, or, as I think, they must remain when the whole case is before you. I admit, then, that Mr O'Connor, when he heard the verdict of the jury in his favour, was disposed to leave the court: the presumption, in-

deed, as it arises out of universal practice, as well as out of the law that warrants it, is, that he, as well as others, thought that the verdict of not guilty entitled him to do so. Neither can it be disputed that a warrant did in fact exist, and that its existence was known, since it appears that the officers stated in open court that they had one: and it is not material for me to dispute, nor is it, perhaps, disputable, that Mr O'Connor knew of their intention to arrest him; and, if he did know it, human nature is stronger than all the evidence in the world to convince every man of his disposition to escape from it: and I admit further, that a most honourable person, who gave his evidence with a candour which reflects high honour on his character, has added a circumstance which, though it could not be strictly received as proof, may be true, for anything that touches the merits of the case, viz., that there had been a communication to the Court that there were disaffected persons disposed to rescue the prisoner.

Having admitted these facts, I, in my turn, have a right to bring to your recollection, that it is an indisputable fact, resting upon the whole of the Crown's evidence, that the officers, strongly impressed with this idea, rushed suddenly and impetuously forward, on Mr O'Connor's stepping over the bar when the verdict of not guilty was delivered; and indeed Rivett, upon his cross-examination, distinctly admitted, that, owing to the apprehension of a rescue, he rushed into court with more precipitation than under other circumstances he could have justified; and that a great bustle and confusion existed before he approached any of the defendants, or even saw their persons. This *admitted* origin of the disturbance removes all difficulties from the consideration of the cause; and Mr Justice Heath declared, that there was a scene of confusion and violence in court, such as he had never seen, nor could possibly have expected to see, in a court of justice. The single question therefore, is, *what share the defendants had in it?* Did the disturbance arise from any original acts of theirs? or were they, on the contrary, first pressed upon by the officers and their assistants, who, though they might be engaged in what they mistakenly supposed to be their duty, from an expectation of resistance, necessarily created confusion by their forcible entry into a crowded court? Were the defendants engaged in any conspiracy or combination to deliver Mr O'Connor? That is the great, or rather the only question; because, if this does not appear from the evidence, all their acts, even if they were ultimately to remain as they appear at present, are perfectly consistent with the conduct of gentlemen suddenly and rudely trampled upon in a tumult, though without, perhaps, being the particular objects of violence by those who created it.

The natural course of considering which of these propositions ought to be adopted by reasonable men is to set out with

tracing a motive. There can be no offence without some corresponding inducement to commit it. It is not alleged that these gentlemen ignorantly or wantonly insulted the Court—an indiscretion which can only happen among the lowest orders of the people. The charge upon them is a *deliberate* and *pre-existing* combination to deliver Mr O'Connor, by confusion and force, from a warrant which they knew to be impending; and the acts attempted to be proved upon them can find no place in any reflecting mind, but as they are believed to be the result of such a conspiracy.

Now, I have always understood it to be the great office of a court of justice, when evidence is to be opposed to evidence, to consider the probabilities of the transaction; indeed, a judicial decision is nothing else but the bringing up facts to the standard of reason and experience. I have already described the situations of the only two defendants whose cases you can have occasion to consider—the one, as a high peer and magistrate of the kingdom, with the natural consciousness of the duties inseparable from exalted stations; the other, standing in a manner for his very existence upon the dignity and decency of his deportment in the courts, which habit, as well as principle, had taught him to reverence and respect. Yet the charge upon such persons is, that open undisguised acts of violence were committed by them, in a place which the Attorney-General has, with great propriety, assimilated to the place where we now sit, because nothing more forcibly assists the judgment than bringing the scene under the immediate notice of the senses; and I am, besides, speaking to gentlemen of the county of Kent, who must themselves know the place without the aid of this comparison, though you cannot know it better than I do. I have spent many laborious hours of my life in the court at Maidstone, though the labour was always rendered delightful by the reflection that I never had to plead in vain, before gentlemen of your description, in the cause of innocence or truth. The Attorney-General, then, has assimilated the court of Maidstone to this court. He says that the prisoner sat where my learned friends now sit behind me; that the bench of the solicitors, where the confusion began, cannot be better described than by the place occupied by the King's counsel now sitting around me. The seat of the counsel may be considered to be placed where these gentlemen are now sitting before me; and the vacancy in the middle, between the bench and me at this moment, must be supplied by the table of which we have heard so much; while the judges *there* must be considered to be placed as they are *here*, elevated in situation as in rank, and commanding the most distinct and immediate view of every part of the court. Under these circumstances, you are asked to believe that Lord Thanet and Mr Fergusson—the one possessed of a large heredi-

tary fortune in Kent, and who could not but know that his person was as well known to every man in Maidstone as St Paul's Church to the inhabitants of Ludgate Hill; the other, standing upon a table within six yards of the Judges, in the robes of his profession, close by a large chandelier, described at that time by all the witnesses to have been fully lighted. You are desired, I say, to believe that these two persons, without any motive upon earth brought home to them by any part of the evidence, engaged publicly in a scene of audacious riot and violence, in the public face of the most dignified Court, in the presence of all its numerous officers, of an acute and intelligent bar, of the Sheriff and all his train, of a jury composed of the principal gentlemen of the county, and of all that concourse of attendants upon an important State prosecution which either duty or curiosity had collected. I maintain that the history of the world does not furnish an example of such a total departure from every principle of human action, and from all common sense and prudence, in the commission of a crime. The interest of the parties to commit it appears to be nothing—the project utterly impracticable—detection absolutely certain—the reproach, to men of character, severe and inevitable—the legal punishment not less so; and all those consequences notorious to men of the meanest and most uncultivated understandings.

Gentlemen, the mind of man cannot avoid collecting and accumulating these absurdities; but they are too important to be thus run over. They must be viewed separately, to have their proper effect.

First, then, let us search for a motive strong enough to impel honourable men to encounter such desperate difficulties, in the pursuit of a dishonourable, useless, and impracticable purpose. Have you any evidence—have you the suggestion—have you even the insinuation of counsel, that the defendants ought to be classed amongst those evil-disposed persons, if any such existed, whom Mr Justice Heath took notice of, but upon report only, as attendant on the trial? The noble Earl came down, under the process of a subpoena, to give evidence for the prisoner, not even of any fact connected with his conduct, but merely to state what he knew of Mr O'Connor as an acquaintance, and what he had collected from others concerning his character in the common intercourse with the world. But why should I seek by observation to remove the imputation of a motive corresponding with the misconduct which is imputed, when it is but common justice to the Attorney-General to admit that he did not even attempt to insinuate anything of the sort? Yet my noble friend remains as a criminal before you, charged with the violation of that which is the most sacred in civil society, branded with the resistance of authorities the most dignified and important, in

order that a person supposed to be an object of high suspicion by the Government of the country, might be left at liberty to perpetrate the treasons which the Duke of Portland's warrant had for its object to defeat—treasons which, if successfully perpetrated, were, in their most direct and obvious consequences, to strip the noble Earl of all the splendid inheritance of rank and property descended to him from his ancestors through so many generations. Mr Fergusson will forgive me if I say, that the principal property which he can die possessed of must be the fruits of a profession which the same treasons were pointed to destroy; yet he, too, must be believed, without a shadow of evidence, or even the suggestion of his accusers, to have engaged in the desperate effort of affording shelter and opportunity for treasons which were to dissolve the courts in which he practises, to destroy that system of law which he has been bred to understand, and to set up, instead of it, a new order of things, by which he must descend from the eminence conferred by education and experience, and mix in the common ranks with ignorant and undisciplined competitors.

But, it seems, they were not indifferent to the deliverance of Mr O'Connor; for, upon his acquittal, they hastened to the bar, and congratulated him on the verdict. They certainly did so, in common with many others; and although the impulse of personal kindness which directed them was honourable, it may be set down, not so much to the individuals, as to the characteristic benevolence of Englishmen. The characteristics of nations depend more upon their histories and their governments, than upon the temperaments of men arising from natural causes. The English constitution was always, in *theory*, a constitution of freedom; but it only became so in *practice* by the numerous and finally successful struggles of our free and virtuous ancestors against oppressive abuses of authority. Many eminent persons to whom this country is indebted for her liberties, having stood upon their trials and having obtained deliverances from the tribunals of justice, has gradually produced a general sympathy in the minds of Englishmen, when men are standing for life or for death before their country. This is an almost universal and peculiarly characteristic feature of the inhabitants of Great Britain. It is not confined to the vulgar, as an ignorant and even an immoral prejudice, but pervades all the classes of society. It is compounded of a principle of humanity, of a spirit of national pride and dignity in the freedom of our institutions, and of a sense of security derived from them. No reasoning, therefore, can be more false than that, when men are accused, and even upon pregnant evidence, of conspiracies against the Government, they who seem to feel an interest in their deliverance are alienated in their affections to the State. Englishmen of all descriptions receive their sense of innocence from

their country's verdict, and they feel a sort of satisfaction which, I verily believe, exists in no other country. Irreligion and false liberty have been seen to delight in blood, to rejoice in revengeful sacrifices, to think it music to hear the agonising groans of expiring sufferers, and a spectacle of triumph to gaze upon their mutilated bodies; but the sense of liberty in a country long humanised by the influence of a free Government, shrinks back even from the consequences of the justest prosecutions, looks with an eye of tenderness upon the accused even before the conscience is convinced of innocence, and feels an invincible impulse of pleasure in the legal deliverance from guilt. Long, long, may this remain the characteristic feature of our country! When Mr O'Connor, therefore, was pronounced not guilty, was it any proof of a conspiracy to rescue him from other charges, that he was congratulated on his deliverance, which he was not only entitled to by the verdict of the jury, but which the evidence on the trial, and the Judges' remarks on it, had previously and distinctly anticipated? The question, therefore, again recurs—Were the defendants the active authors of the rescue, for the purpose charged in the indictment? The MOTIVE is gone already, not only as wholly unascrivable from the total absence of evidence, but because my learned friend who laid the case before you was too much a man of honour (as I have already done him the justice to acknowledge) to ascribe, or even to insinuate, a motive which he knew did not exist, and which he had neither evidence nor reasonable presumption to support.

If, however, a criminal act, though without the proof, or even the imputation, of a referable principle of action, may still be believed by a jury dispensing the mild and rational justice of this country; the next consideration, in weighing the probabilities, is, how this purpose, supposing it still to exist, without any corresponding interest, was possibly to be accomplished?—for men cannot be presumed to engage in the most perilous enterprises, not only without inducement, but without even a shadow of hope or prospect that their object is practicable. The situation of the court is not only present to your own recollections from your perfect acquaintance with it, but is brought before your eyes by its just comparison with this. Mr O'Connor stood at the bar where my learned friends now sit, surrounded by hundreds of persons not attempted to be implicated in any design to favour his escape; on the right, and on the left, and behind, were the public streets of Maidstone, from whence no passage without observation was to be expected; and before they could even be approached, an outlet must first have been made through groves of javelins in the hands of those numerous officers which the exemplary attention of the Sheriffs of Kent has always provided for the security and dignity of the Court. It was, therefore, not merely improbable, but *naturally impossible*, to deliver, or

even hope to deliver a prisoner from the public bar of such a court, in the view of all its Judges, its counsel, and attendants, without the support of great force and numbers, and without, likewise, a previous concert and combination to direct them with effect. The next consideration, therefore, which directly follows these immutable principles of judgment, is the fact as it applies to them—Was there either *force* exerted, or *numbers* collected, or *measures concerted*? The defendants cannot be made responsible for any act of violence which might be committed by any disorderly persons in the street. It is nothing to them that Mr Justice Buller's servant was knocked down in one of the avenues of the court, whilst they were admitted to have been in its centre. What act of disorder or violence do you find committed by Lord Thanet, by Mr Fergusson, by Mr O'Brien, or by Mr Gunter Browne, who has been made a defendant, only because, without any offence on his part, he appears to have had his head broken? for this gentleman is literally not identified by any part of the proof as having been even in court at all, except as he was seen complaining to the Judges of an assault committed on himself. Lord Thanet is a man of high spirit, and of a strong body; it must have been a warm interest, as I have repeatedly observed to you, that could have embarked him at all in such a business; and, when embarked in it, he must reasonably be supposed to have engaged with activity in the accomplishment of an object for which he risked so much; yet it has appeared already, by the testimony of one of the most respectable and the most correct of all the witnesses for the Crown, and it will be made manifest hereafter beyond all doubt or question, that, at the very moment (and it was but a moment) when the evidence has the remotest application to any of the defendants, he lay back inertly, holding his stick with both hands across his body, to defend himself from the assaults of only one man, not stronger than himself, and whose blows he neither attempted to return, nor invited the aid of others to repel; so far from it, that Mr Fergusson, who is supposed to have put his character and situation to so much hazard, though he stood close by, is not even charged with having exerted his strength on the occasion, but to have contented himself with flourishing a small stick in his hand without striking or aiming at anybody—a circumstance neither true, nor possibly consistent with the truth of the designs which are imputed to him; and no act of violence, or even gesture to incite it, is imputed to any other person near this supposed focus of confusion, at the only time when Lord Thanet and Mr Fergusson are affected even by the solitary evidence of Rivett. So much for the force exerted in the pursuit of a purpose which no force proceeding from a few persons could have accomplished; and as to any previous concert or combination amongst numbers which can possibly involve them, it is rendered absolutely incredible by the whole body of the evidence; for the Attorney-General has proved that there were

attendant on Court a great number of gentlemen known to profess the same principles and opinions with the defendants, and most intimately acquainted with Lord Thanet in private life—gentlemen who, I have no doubt, are here at this moment assembled by the just anxiety of friendship and affection; yet it is not imputed to any of those numbers I allude to, though all present in court, and within reach of whatever was transacted in it, that they took any part, directly or indirectly, by force, by speech, or by seeming encouragement, in the scene of disorder which took place. If Lord Thanet, then, is a conspirator, *with whom* did he conspire? since, with the exception of the four other defendants, three of whom must be acquitted for want of evidence, accusation itself does not even attempt to implicate one man of his numerous friends and acquaintance, who must naturally be supposed to have been impressed with similar feelings, nor indeed any one man, high or low, whom he can be proved to have ever spoken to, or seen, in the whole course of his existence; and if obscure and unknown persons are to be taken to have been instruments in this confusion, there must have been some evidence of direction or encouragement to others proceeding from the defendants, which is not attempted to be sworn by any of the witnesses. This most important part of the case shall not, however, be left upon the failure of evidence, or even upon the absence of accusation; for I will call many of those gentlemen, who will tell you that they were wholly ignorant of any design to rescue the prisoner—that they saw no confusion or riot, except that which the precipitate entry of the officers occasioned; and who, by tracing the defendants in their eyes through the whole of the period in question, will be able positively to contradict the most material parts of the evidence which personally affects them.

Gentlemen, the next question upon the score of probability is this. Supposing that, contrary to everything either proved or asserted, the defendants *had* felt an interest in the escape of Mr O'Connor, and *had* conceived it to be *practicable*, could they possibly have hoped to escape detection—more especially Lord Thanet and Mr Fergusson, whose persons were so notorious—the one, from his high rank and residence in the county whose principal inhabitants surrounded him; and the other, from being in his professional dress, in the place assigned to him as counsel on the trial, and, in the very midst of his companions, engaged in the business of the Court? Lord Thanet, therefore, and Mr Fergusson, upon the Attorney-General's own admission, who has justly assimilated the court at Maidstone to the one we are now assembled in, could no more have hoped to escape immediate detection and punishment for the riot they are supposed to have engaged in, than I could hope to escape from them, if, taking a strong interest, as I must be supposed to do, in the acquittal of my clients, and thinking there was no safety for them but by making such a confusion in court as to prevent

your hearing the evidence, or the Judge's observations on it, I should, when I had finished my address to you, and the Judge was beginning to sum up to you, publicly begin or join in a scene of noise and uproar, under the eyes of the Judges, as they now look at me—of the officers, now sitting before me—of you, the jury, to whom I am speaking—of my numerous friends at the bar, whose honour is connected with the dignity of the Court—and of the whole crowd of spectators, hundreds of whom I am known to personally, and all of whom are acquainted with my person.

Gentlemen, I can observe, from the absurdity and impossibility of the case I am putting, that I seem to be trifling with the subject; but that sensation, which I have no doubt is general, and which I cannot help even feeling myself, displays the irresistible force of the actual case before you; because I defy the wit, or wisdom, or imagination of man, to attempt even a shadow of a distinction between the case I have put to you and that of Mr Fergusson: for, why should *he* be supposed, any more than *myself*, who am the object of comparison, to have embarked in this impracticable project of disgrace, dishonour, and injustice—in the dress of counsel, as much as I am, on the trial which engaged the Court—and in a place, the exact similarity of which to the room that holds us is no assertion of mine, but a fact so unalterably established by the whole evidence as to be employed by both sides as an assistant to the mind in judging of the accuracy and consistency of the proof?

The next recourse to probability, if your judgments, as in all other cases, are to be governed by reason and experience, is, if possible, still more unanswerable and decisive.

Supposing the defendants, without interest or motive, and without the possibility of success, and without even a chance of escaping from detection and punishment, to have nevertheless publicly insulted and disturbed the Court by acts of disorder and violence, *who must have been the witnesses to such a scene?* Who, for instance, must have been the witnesses, if Mr Fergusson, as has been asserted, had stood upon the table of the court—the table round which the counsel are ranged, directly under the eyes of the Judges and the jury, and had flourished a stick round his head to favour the escape of the prisoner, by preventing the officers from approaching him—*who, I say again, must have been the witnesses to such a phenomenon?*—who, amongst the Judges, or counsel, or officers, or spectators, but must have seen it?—who, that had seen it, could possibly have forgotten it?—and who, that remembered it, could have hung back from the proof of such inexcusable misconduct? Yet the proof of this fact, to which the whole Court must have been, as it were, but one eye, and an eye of indignation, is not supported by any one person, either upon the bench or at the bar, or amongst the numerous officers of the court. On the contrary, we shall see, by and bye, the difference between the testi-

mony of a reverend Judge of England and that of a Bow Street officer, when I come to advert to the evidence of Mr Justice Heath, which is directly and positively inconsistent with Rivett's, on whose single and unsupported testimony this extravagant and incredible part of the case is alone supported.

But it seems they have given judgment against themselves by their demeanour and expressions upon the occasion. Lord Thanet, it seems, said to Mr Justice Lawrence, as Mr Abbot expressed it, who did not hear what the learned Judge had said, to which Lord Thanet's words were an answer, "that it was fair he should have a run for it"—words which cannot be tortured into any other meaning, more especially when addressed to one of the Judges of the court, than that, speaking in extenuation of Mr O'Connor's conduct, who had visibly made an effort to escape, he thought it fair that a person so circumstanced should have a run for it if he could; a sentiment which, by the bye, no man in his senses would have uttered, more especially in such a quarter, if he had felt himself at all implicated in a criminal endeavour to assist him. And if Lord Thanet did not speak at this moment with all that complacency which in general so much distinguishes him, nor offer, as Mr Sheridan did, his assistance to the Judges, it is not at all to be wondered at; for it must be recollected that he had just suffered in his person, not as you have it upon the evidence at present, but had been most roughly and severely assaulted. Mr Justice Buller is proved to have said, that Mr Sheridan conducted himself in a manner greatly to his satisfaction; but the very contrast which this evidence is introduced to furnish, instead of operating against Lord Thanet, is an additional argument in his favour. Lord Thanet and Mr Sheridan are as one man in everything which relates to public opinions, and friends in private life. Upon what principle, then, can it be made out that Mr Sheridan should be assisting the Judge, whilst Lord Thanet, who had no connexion with Mr O'Connor which did not equally belong to the other, should be behaving like a madman, unsupported by any of his friends or acquaintances, who were attending as witnesses upon the trial? But the time of this conversation, if I had before adverted to it, would have rendered all these observations wholly unnecessary; for it was *after* the riot (as it indeed must have been) that Mr Justice Lawrence conversed with Lord Thanet, saying to him, amongst other things, "that he hoped Mr O'Connor's friends would advise him to submit to his situation." Now, I may safely assert, that, high as Lord Thanet's rank is, that learned Judge would not have spoken to him as a person from whom he solicited and expected assistance, if he had himself observed him, or if he had known him to have been observed by others, disturbing the order of the Court. On the contrary, if there had been a reasonable ground for impeaching Lord Thanet's conduct, the learned Judge

would have executed the law upon him—he would have attached him for his contempt; and surely no person in court had a better opportunity of observing everything that passed in it. Mr Justice Lawrence was one of the youngest of the learned Judges who presided at the trial, with stronger health than belonged to all of them, which enabled him to keep up his attention, and to observe with acuteness. He was, besides, deeply interested in whatever concerned the honour of the Court; and the elevation of the bench on which he sat gave him a full view of every person within it. Indeed, Lord Thanet, at the time this misdemeanour is imputed to him, was directly before him, and under him, and not farther from him than Lord Kenyon at this moment is from me. I have, therefore, a right to say, that not only nothing is to be presumed against Lord Thanet from what he said, but that, on the contrary, a strong presumption arises in his favour when we hear the evidence from any other mouth than that of the learned Judge himself; since, if *he to whom the discourse was addressed*, and who was the best judge of the fair construction to be put upon it, had considered it in the light it has been represented and relied on, he might have been called as a witness. Mr Justice Heath and Mr Serjeant Shepherd, the Judges in the same commission, were examined to matters infinitely less material.

Gentlemen, let us now pause a little, to consider the effect which I feel myself entitled to derive from these observations. I consider myself to have advanced no farther in the argument than this:—

First, That there was no assigned nor assignable motive for the criminal purpose charged by the indictment.

Secondly, That it was a purpose palpably impracticable, and which, therefore, no reasonable men could possibly have engaged in with any prospect of success.

Thirdly, That whatever might have been the probable issue of such an enterprise, detection and punishment were certain.

Fourthly, That, admitting the evidence you have heard to be free from all errors, the defendants did not conduct themselves like men engaged in such a pursuit, nor appear to have been supported in a manner reasonably or even possibly consistent with the alleged conspiracy.

Fifthly, That although the witnesses against them, if the transaction had been justly represented, must probably have been the greater part of the Court, and certainly all that part of it elevated both by situation and authority above the rest; yet that there has been not only no such concurrence of testimony against the defendants, but, on the contrary, the most correct and respectable witnesses have concurred in destroying the remainder of the proof.

Sixthly, That the expressions imputed to Lord Thanet cannot possibly affect him, without supposing that he publicly gave evidence against himself, even to one of the Judges, who, upon the

evidence of his own senses, had authority to have punished him upon the spot.

Lastly, That it appears, by the whole body of the proof, that the confusion arose when the officers burst, with improper and indecent precipitation, into court; that it began and ended almost in the same breath; and that, during the short moment of its continuance, there was such a scene of tumult and confusion as to render it impossible for the most attentive observer to give any clear and distinct accounts of the transaction.

If these conclusions, gentlemen, be the unavoidable result of the Crown's evidence when brought to the common standard of man's reason and experience, it appears to me that you are bound to return a verdict for all the defendants, even if I should call no witnesses; because, to justify a verdict of *guilty*, it is not enough to collect from the evidence that the defendants *may* be guilty, or *probably* are guilty. *No*; their innocence must be quite incompatible with the fair result of the whole proof; for, if two different conclusions may be reasonably drawn from the same state of facts, you are bound in justice to adopt the one which is supported by the greater number of probabilities. Now, if this plain rule of judgment be not wholly departed from, and even trampled under foot, I take upon me to say positively and firmly, because I am making my appeal to men of understanding and liberal education, that the evidence for the Crown, without any at all on my part to oppose it, taking it all together, and considering the fair result of it, is not sufficient to convict any of the defendants. This proposition, however, cannot be supported by general observations, nor by that general appeal to the proof which I have been engaged in; it must be examined accurately in the detail. I shrink from no part of it. I will sum it up to you as if I spoke to you from the bench; and I pledge myself to make out, to the satisfaction of every unprejudiced mind, that all that I have hitherto said to you, though absolutely necessary by way of introduction, has suffered from its *generality*; and that the *particulars* of the proof will illustrate and confirm, beyond all question, every proposition of fact, and every principle of judgment, which I have already brought before you.

The first witness examined for the Crown is Mr Serjeant Shepherd, who was joined with the Judges in the Special Commission. This examination is highly important in every part of it; because, when it becomes necessary to compare the evidence of different witnesses, in order to arrive at a safe conclusion from the whole, nothing can be so satisfactory as to find some person on whose testimony the judgment may repose with safety. My learned friend (as all who know him must have anticipated) delivered his evidence with the greatest clearness and precision, and in a manner most dispassionate; and when you recollect, besides, that he is a man of singular ability, and that, from his elevated situation

in the court, he had the best opportunity of observing everything that passed, you cannot fail to pay greater attention to his testimony, and to that of Mr Justice Heath, who immediately followed him, than to any other witnesses, however respectable.

In bringing before you Mr Serjeant Shepherd's evidence, I will not trouble you with that part of it which went to facts which are now no longer disputed, but will take it up from the time when the jury returned into court. Mr Serjeant Shepherd says, "Lord Thanet was standing before the bar at which the prisoners stood, with his face turned towards the Court; he was rather to the right hand of Mr O'Connor, nearest to the great street of Maidstone, where the gaoler sat." Speaking of Mr O'Brien, he said, that "he stood in the same line, but rather to the left of Mr O'Connor; that something had been before said by the Bow Street officers, who were making a noise, and had been desired to be quiet. When the verdict of not guilty was delivered, some persons (but whom, I know not) said, 'Then they are discharged;' and somebody at the table replied, 'No, they are not discharged.'" And here I have no objection that what Mr Serjeant Shepherd omitted may be filled up by Mr Solicitor-General's evidence, and that the answer from the table was to Mr Fergusson, who, on hearing the verdict pronounced, had said the prisoner was discharged; he said it, however, before the Court had declared the law upon the subject. As counsel for the prisoners, it was natural he should be interested in their deliverance; and he is not indicted for having mistaken the effect of the law, but for having conspired to obstruct the Court in administering it. The Attorney-General said, very properly, "I bring the defendants before you, not for considering the prisoners discharged by the verdict, but for an attempt to rescue them by violence and tumult, after the Court had declared that they were in custody." "At this time," continued the learned Serjeant, "Mr Justice Buller said to the gaoler, 'Put the other prisoners back, and let O'Coigly stand forward;' when one of the Bow Street officers stood up on a form, and said he had a warrant against Mr O'Connor." This, you observe, was the first time there was any mention of a warrant in court; so that what had before fallen from Mr Fergusson was merely his sudden idea of the effect of the verdict of not guilty, at the moment it was pronounced, and which, at all events, must, in a few minutes afterwards, have delivered the prisoner; and there is no evidence whatever, that, at the time he said so, a fresh custody was a matter of apprehension or contemplation. "Whilst Mr Justice Buller was passing sentence, my attention," continued Mr Serjeant Shepherd, "was directed to O'Coigly; and when he had finished, I observed Mr O'Brien turn round and look at Mr O'Connor, and, immediately afterwards, look down with a very slight motion and inclination of his head." And here, gentlemen, it is impossible not to admire

that delicate sense of justice, which no man possesses more than my learned friend the Serjeant, and which dictated to him the remarkable reserve which accompanied this part of his evidence. He recollected that a witness is not to put himself in the place of a jury, by drawing *his own* conclusions from his own testimony; but accurately to state what he hears and sees, and to leave the conclusion to those whose province it is to decide. He therefore, with the utmost propriety, forbore from expressing what appeared to him to be Mr O'Brien's purpose; but said to you, "*I rather choose to describe his gesture;*" which he accordingly did. This fact, therefore, delivered with the restraint which the integrity and understanding of the witness so properly suggested, affords no evidence whatever of evil design in Mr O'Brien, much less of concert or combination with the other defendants; and, indeed, the proceedings of this very day have afforded an instance how dangerous it would be for the most sagacious persons to collect, from gestures only, what passes in the mind of another. When Lord Romney, not choosing to advance in his evidence beyond what his memory with certainty suggested, declined giving a further answer to a question put to him, the noble and learned Chief-Justice interposed, and put the question to him again. I admit that it was his duty to do so; but his lordship will forgive me if I say, and I appeal to his honour for the truth of it, that he was convinced at the moment, not only that I thought the *direct contrary*, but that I had publicly and rudely expressed a sensation of dissatisfaction; since, looking at me very significantly, his lordship told me that it was *his duty* to repeat the question. Nevertheless, I do declare upon my honour, and I appeal to Mr Gibbs, to whom I was speaking at the moment on quite a different subject, *that no such idea was passing in my mind as my gestures were supposed to have expressed*; yet no man is a more acute observer of human nature than his lordship, and nobody, certainly, was ever better acquainted with my countenance. So much for gestures. It is, indeed, strongly in Mr O'Brien's favour, that at the moment he looked down, as described by the witness, he could not be acting in concert with Lord Thanet; for Serjeant Shepherd saw Lord Thanet *at the very same moment*, and swore that he was standing with his face to the Court, and that he never changed his position. The Serjeant added, that "when the last word of the sentence was pronounced, Mr O'Connor jumped with his left foot upon the bar, and his left hand upon the shoulder of Mr O'Brien," but who does not appear to have held out his hand to assist him. Mr O'Brien, on the contrary, though he could not have but continued in view for some time longer, is charged with *no one act whatsoever*; and it would be strange, indeed, to convict a gentleman of a rescue, because, standing near a prisoner meditating an escape, he had laid his hand upon his shoulder. But this part of the case will be put quite at rest hereafter; because

Mr O'Brien is perfectly well known to several gentlemen of distinction, present in court at the time, and not at all implicated in the riot, who will all tell you that they saw him distinctly, and that he was not concerned in any violence or disturbance whatsoever. I am not, however, called upon to do this, because there is literally no proof to be answered.

The remainder of Serjeant Shepherd's evidence, as it applies to Lord Thanet, is so absolutely decisive, that you will be driven to pronounce by your verdict whether you give credit to this most respectable and observing witness, or to a Bow Street officer, who was himself the author of the confusion; for the Serjeant added, that "when Mr O'Connor had jumped over the bar, and he had lost sight of him, the officers rushed into court to arrest him, and a great noise ensued; and at this time"—(*Gentlemen, the time is most material and critical, because it can apply to no other than the precise time sworn to by Rivett*) "I saw Lord Thanet," said the Serjeant, "standing, as I have described him, with both his hands over his head,"—which he also described to you by putting himself in the same defensive posture, as far more expressive of his situation than any words could communicate. This, I say, is the single point of time to be looked at; for the remainder of the Serjeant's original evidence applying to a subsequent period, described a scene of great confusion, in which he said he could discover nothing distinctly; that many persons were upon the table, some asking questions, and others endeavouring to restore order. It is not, therefore, at *this* period that you are to look, since no part of the evidence at all applies to it, but at the moment when Lord Thanet is alone affected by Rivett's evidence the Serjeant's testimony has a direct and decisive application; for, upon his cross-examination, he said in so many words, "I never saw Lord Thanet look round, or change his position as I have before described it till the very instant the officers rushed into court; and *then* I saw him with his stick held as I before described it; but I am bound to say that he appeared to me to be acting on the *defensive wholly*." This concluding evidence is an exculpation of Lord Thanet, and must have been so intended. I did not even put the question to the witness. he himself conscientiously added that he was bound (bound, of course, in justice to Lord Thanet, who was accused of *active violence*) to say that he appeared to be only acting *in his own defence*. Now, gentlemen, there can be neither honour, nor advantage, nor security, bestowed upon the administration of government or justice, which this prosecution is avowedly instituted to support, if men can be punished, not merely upon doubtful evidence, but upon evidence which directly contradicts the charge. That a court of justice must not be insulted, or even disturbed, is a proposition which must be acceded to by every man acquainted with the first elements of civil life—that a charge of such a high misdemeanour

well justifies the solemnity of a trial in this place, is another proposition which cannot be disputed; but the heinousness of offences, and the necessity of suppressing them by punishment, does not alter the quality of the proofs by which they are to be established. On the contrary, it was pleasant to attend to the just reserve in that respect with which the Attorney-General laid the case before you—he stated his own evidence in general terms, but without commenting upon it, or enforcing it; reserving his observations till the evidence on both sides should be heard. But we are not even engaged at present in balancing contradictory evidence, but in showing that the accusing evidence is in itself defective, and even exculpatory.

Mr Serjeant Shepherd was properly selected as the first witness for the Crown. He sat, from his station as Judge, in an elevated position, where he had a better opportunity of observing than others; and he accordingly appears to have observed everything which passed. Yet, instead of fastening guilt on Lord Thanet, he sees him from the time the jury returned into court standing in one position; not looking round as if he was watching the motions of Mr O'Connor, or engaged with others in attending to them; not even looking towards the side of the court from whence the arrest was to proceed, but upwards to the Judges; not opposing his body as an obstacle in a narrow passage through which the officers were to pass; not presenting a front to them which a man of his strength, with the intentions imputed to him, must naturally have been expected to do; but standing, as any other person, attentive to the trial, till the officers, apprehending a rescue, rushed with violence into court, and pressed upon and assaulted him; for had he not been pressed upon and assaulted he could not have been seen by Serjeant Shepherd in a posture of defence; and if he was first active in obstructing and assaulting Rivett in the manner which he, and he only, has sworn to, why should not Serjeant Shepherd have seen it, since his eye was so constantly fixed upon Lord Thanet, from the time the jury returned with their verdict till the confusion became general, which is subsequent to the period of Rivett's evidence, as to enable him to tell you that he did not shift his position, nor make a gesture or motion, till the officers and others rushed in upon him; and *then*,—*i.e.*, immediately, at the same moment to which alone the evidence has any application—he sees Lord Thanet with a stick over his head, which he thinks himself bound to express, and even to *describe* to you as a passive posture of defence. This evidence, which so completely exculpates Lord Thanet, is not less applicable to Mr Fergusson; for, if he, who is placed by all the witnesses as standing close by him, had been an active conspirator, armed with a stick, which he was flourishing over the heads of the officers, can you possibly suppose that he would have withheld his assistance from Lord Thanet, who was

visibly overpowered; or that a man of Lord Thanet's strength, though assisted by Mr Fergusson, who is above six feet high, and a young man of great activity and strength, should be perfectly passive under the blows of Rivett, endeavouring only to save his person from violence, without retaliation, or even a motion to the accomplishment of his object?

The evidence of Rivett is farther exposed by his having denied that Lord Thanet had a stick—a fact established beyond all question; and by his swearing that he took the stick from Mr Fergusson, and struck him with it—when it will appear by and by that he took it from behind his own coat when he assaulted Lord Thanet. This last fact, however, I ought to have passed over at present, because it arises out of my own evidence, which I do not wish at all to mix with my observations on the case of the Crown.

Gentlemen, the other Judges, with the exception of Mr Justice Heath (whose testimony will also support the innocence of the defendants), have not been examined, though their positions in court were so highly favourable; neither has the bar been examined, who, if Lord Thanet had been in the situation which some of the witnesses have described, must have all seen it to a man; and their not having been called affords a strong inference that their evidence would not have been favourable.

Mr Hussey, who was next examined, said, "I saw Mr O'Connor attempt to get over the bar" (*a fact never disputed*); "and at that time Lord Thanet was standing with his back to the prisoners. I saw somebody pressing forward, who said he had a warrant; but I saw no paper. Lord Thanet *seemed* to press himself towards the bar, and *seemed to be desirous* to interrupt his progress." I dare say the Rev. Mr Hussey meant to tell you what he saw; but he has expressed nothing. What can be collected from such expressions? Can you convict any man upon evidence which imputes *no act*, but only a *seeming desirousness*? Lord Thanet *SEEMED* to press himself towards the bar, and *seemed* to be desirous of interrupting the officer's progress. Did the witness *SEE* him do the one or the other? If he had, he would of course have so expressed it; and if Lord Thanet had actually done so, why should not Mr Sergeant Shepherd have equally seen it, who observed him accurately *at the very same moment*? The same answer was given by the last witness, Mr Parker; and from which one might have been desired also to conclude that Lord Thanet was an active rioter. He *SEEMED* to be encouraging. But what did he do when he *SEEMED* to be encouraging? He put his hand *so*! What then? If I am not proved to be in combination or concert with any one, nor to have myself committed any act of violence, is riot or disorder to be imputed to me only because, in the midst of a scene of uproar, I appear to be irritated from a sense of danger, or from insults which I have received? If, indeed, a person could not account for his presence

in a scene of riot, the case might be different: the presumption might *then* supply the defect of actual proof. If people were engaged in the destruction of a house, or in the commission of any other violence, and I was seen bustling or making gestures in the midst of them, my very presence might be evidence against me. "How came you there, Mr Erskine?" might be the question, "at a distance from your own house, and in the middle of the night?" But these presumptions have here no application; for Lord Thanet was attending as a witness under the process of the Court, and is described by one of the learned Judges as standing originally in his proper place, and not changing his position. The whole of Mr Hussey's evidence, therefore, amounts only to this—that Lord Thanet SEEMED to press forward, and that, too, *at the very same moment* when Mr Serjeant Shepherd described him as unmoved and motionless, with his back to the prisoner, and his face, of course, towards the Court.

Gentlemen, I feel that it must be painful to you to be obliged to attend to these minute observations; but it is a solemn duty imposed upon me to point out every fact and circumstance of the proof, by which you are sworn to regulate your verdict. The sameness and repetition are nauseous; but that is the very strength of the defendant's case, because it shows the concurrence of the testimony which acquits them. How, indeed, can one expect variety in the discussion of a transaction which, all the witnesses say, was like a flash of lightning, beginning on a sudden, when, from the apprehension of a rescue, the officers rushed into court, and ending (as far as the evidence goes) in the confusion which almost immediately followed, leaving only for your decision whether, if, in such a crowd, it happens that I am rudely pressed upon, I am a criminal for defending myself? and whether, if, in the midst of such a scene of confusion, some of my postures or gestures are not understood by others who see me, and who may be unacquainted with what has happened to me, I am to be convicted of a crime which not only affects my property, but my personal liberty, and, what is still dearer to me, my personal honour and reputation?

Lord Romney is the next witness, whose evidence was just what might have been expected from a person in his situation. Highly interested in the honour of the county where he has great hereditary estates and honours, where he has important duties to perform, and where, owing a particular attention to the King's Court, he felt, no doubt, a corresponding anxiety that it should suffer no disgrace or interruption in its proceedings. He was placed, besides, in that part of the court where he was entitled by his rank to sit, from whence he had an opportunity of observing what was transacting. Thus circumstanced, he says:—"I saw the Bow Street officers forcing a passage, and striking blows.

Whom they struck I do not know ; there was a sword brandishing on the table. Thinking things bore a serious aspect, I crossed the table, and saw the prisoner escaping ; he was brought back by the javelin-men. I said to them, ' Form yourselves round the prisoner, for he is not yet discharged.' I was told afterwards I had said ' he was not acquitted.' I believe Mr Fergusson said so. I have no doubt I made the mistake." Gentlemen, undoubtedly Lord Romney meant only to say that Mr O'Connor was not discharged, though the answer was not made to him by Mr Fergusson, for I shall call the gentleman himself who answered him, not that it is in the least material, except that it proves that Mr Fergusson was noticed at that time by Lord Romney. And surely, gentlemen, if he had been acting like the fool and madman, and, I will add, like the knave, he has been represented to you—if in his professional dress, he had been publicly flourishing a stick upon the table, Lord Romney, who was close by him, must inevitably have observed him ; yet his lordship does not speak of him as out of his place, or as engaged in any act of disorder or violence. Another most important fact is established by Lord Romney's evidence ; for, though his lordship said that he should have been so much hurt if the county had been disgraced, that his attention was not directed to individuals, and that in the confusion he could not tell who had been struck in the passage by the officers, yet he added that *VERY MANY blows were struck, and MANY persons hurt.* Yet Rivett says that Fugion struck no blows, that Adams struck no blows, that the messenger struck none, nor he himself any but those which were struck at Lord Thanet. Rivett, therefore, according to his own account, was the only person engaged, and successfully engaged, against the rioters ; yet you are desired to believe that a large combination of strong and active conspirators were favouring an escape by violence. This is quite impossible ; and the blows therefore, which were observed by Lord Romney, were the blows which the *officers themselves* wantonly inflicted ; since it will appear hereafter, by witnesses whom the Court cannot but respect, and whose evidence cannot be reasonably rejected, that they rushed in like madmen, striking with violence the most harmless and inoffensive persons, which compelled others to put themselves into that passive posture of defence that Lord Thanet has been so frequently and so distinctly described in. There is nothing more that is material in Lord Romney's examination. Something was alluded to respecting a conversation with Mr Justice Lawrence ; but his lordship, with the greatest propriety, not choosing to advance beyond his most perfect recollection, did not particularise it ; nor could it be material, for, besides that it appears to be supplied by other evidence if it had been of any importance, Mr Justice Lawrence himself would no doubt have been called as a witness. For my own

part. I think it extremely likely that it has been already correctly represented. Lord Thanet, smarting under the blows he had received, did not probably exhibit the same courtesy with Mr Sheridan; but I have already observed to you, that this circumstance gives me another important witness—no other than Mr Sheridan himself, whose deportment was thus remarked and approved of; for, besides that it is impossible to ascribe a criminal motive, either from public opinion, or acquaintance with the prisoner, which did not apply as much to the one as to the other, Mr Sheridan will tell you, upon his solemn oath, that he observed all that passed; and he will be able most distinctly to exculpate both Mr Fergusson and Lord Thanet from every part of the charge.

Gentlemen, I will now state to you the Solicitor-General's evidence. He says, "I kept my eye fixed on Mr O'Connor. When the jury gave their verdict I observed him and Mr Fergusson. I particularly fixed my eyes upon them. I observed Mr Fergusson speaking to Mr O'Connor, and Mr O'Connor put his leg over the bar. I called out, 'Stop him!' Mr Fergusson said, 'He is discharged.' I answered, 'He is not discharged.' Mr Fergusson then said to Mr O'Connor, 'You are discharged.' I repeated, 'He is not discharged.' I observed the gaoler lean over, and lay hold of Mr O'Connor. Some person was at this time pressing forward, and Mr Fergusson complained to the Court. The officer was pressing into court in order to get round to Mr O'Connor." Now, gentlemen, it is fit just to pause here a little, to consider this part of the evidence. The time filled by it is not above two or three minutes, for it is only the interval occupied by the sentence upon O'Coigly; and if a combination had existed between Lord Thanet and Mr Fergusson, and other persons in the secret, is it probable that Mr Fergusson would have made himself the conspicuous figure which I am supposing the evidence truly to represent him to have done? His conduct, besides, appears quite different from Rivett's account of it. Did he enter into private resistance or altercation? No. He made a regular and public motion to the Court; the Judge yielded to the suggestion; the officers were directed to stand back for the present, and then the sentence was pronounced. This is not the natural deportment of a person engaged in a conspiracy. Nothing but the purity of Mr Fergusson's intentions, and the unconsciousness of offence, could have induced him to put himself so publicly forward by a regular motion to the Court; and such a conduct is surely very inconsistent with that of a person who was meditating at the moment to carry his point by violence, in the teeth of the Court which he addressed. The Solicitor-General further said, "Rivett, the officer, said he had a warrant against Mr O'Connor. Mr Justice Buller spoke to the officers, commanded silence, and pro-

ceeded to pass sentence. When the sentence was finished, I observed Mr Fergusson, and some other persons whom I did not know, *encouraging* Mr O'Connor to go over the bar." Here we must pause again. Mr Gibbs asked the witness, upon his cross-examination, "Did you hear him say anything? Did you see him do anything?" The Solicitor-General proved no one thing which Mr Fergusson said or did. I am sure I mean nothing in the least disrespectful to the learned gentleman; but it certainly did not occur to him at the moment, that it is not the office of a witness to pronounce by his own evidence that a man *encourages* or *supports*, but he is to depose what he heard him *say*, or saw him *do*, from whence the jury are to draw the inference which is fit. I really mean no sort of reflection. Perhaps it arose from the habits of the Court of Chancery, whose practice is different from ours, and where the depositions are of a very general nature. But suppose the Solicitor were to die whilst I am speaking to you, and that, though you should be satisfied as to all the rest of the evidence, you wished to have it explained *with precision* what was intended to be conveyed when it was said Mr Fergusson was *encouraging*, would you condemn Mr Fergusson upon that evidence, without knowing distinctly what act he had committed? Could you convict a fellow-subject upon the general evidence that he *encouraged* mischief, without knowing *what he did*? Certainly not. You must hear the *fact*; and it is then for *you, and for you only*, when you have heard it, to draw your own conclusion. The noble and learned lord, with whom we in a manner spend our lives in this place, is in the constant course of saying to witnesses, "Tell us what was *done*, and we will judge of its quality." By these observations I am not impeaching the evidence of the Solicitor-General. I am commenting as a lawyer upon the result of it; and I do say, as a lawyer, that it is giving no evidence at all to swear that a man encouraged, or *appeared* to be encouraging, without stating the *facts* on which that impression of his mind was founded. Mr Solicitor-General went on to say, "I did not see Mr O'Connor till he was brought back by the officers; for at the instant that Mr O'Connor jumped over the bar, three or four persons leaped from the witnesses' box upon the table, and mixed among the rioters; all the lights, except those before the Judges, and the chandeliers, were extinguished. Mr Fergusson, at the moment Mr O'Connor jumped over the bar, turned round, and *appeared* to follow Mr O'Connor; but *I will not positively swear it.*" I am very glad, gentlemen, that he did not, because it would have been unpleasant to swear that positively which will be positively contradicted, by those, too, who are of as good faith, and who had as good an opportunity of observing. It is a mere misapprehension; and I would say to the Solicitor General, if I were to see him at his own table, or at mine, *that he is mis-*

taken. Indeed, in a scene of confusion, no man can tell what he sees with any certainty or precision, and images are frequently confounded in the memory. The Solicitor-General then said, that Mr Stafford jumped upon the table, and drew a sword; and, speaking of Lord Thanet, he said, he went across the table, and that he saw him in conversation with Mr Justice Lawrence, the particulars of which he did not hear; but that, when he went across the table again, he said he thought it fair he should have a run for it. He said it rather in a tone of anger, in consequence of what had fallen from Mr Justice Lawrence. Gentlemen, this last part of the evidence applies to a point of time when the disturbance was at an end—after everything had passed in the presence and observation of the Court—after the disturbance had given manifest and just offence to the Judges, and after they had declared that their proceedings had been interrupted, and their authority insulted. You cannot, therefore, believe, that, under such circumstances, when Lord Thanet could not but know that high offence had been given to the justice of the county, he should come voluntarily forward, in the hearing of the King's Judges, and confess himself to be an accomplice in a high misdemeanour. These observations are not made to induce you to believe that Lord Thanet's expressions have been misrepresented to you, but to convince you that the making them at the time, and to the persons to whom they were made, arose from a consciousness that he had no share in assisting Mr O'Connor. Any other construction of the expression would amount to the confession of a crime, of the magnitude of which Lord Thanet could not, from his education and knowledge, be ignorant—a crime which is, perhaps, put by the Attorney-General in a very modest shape on this record; for, without meaning to moot the point of law, I am not quite sure that rescuing a person from a warrant for high treason, though impending and not actually executed, is not felony at the least. The right of Mr O'Connor to deliver himself from such a warrant, if he could escape before it was executed on his person, was an opinion which Lord Thanet might correctly or incorrectly entertain; but to enhance the confession of such an opinion into an admission of the crime *in himself*, is contrary to every human principle and feeling, and therefore not a reasonable conclusion of human judgment. Gentlemen, these are my observations upon the evidence of the Solicitor-General as it affects Lord Thanet; and, as it applies to Mr Fergusson, it is very important; for if Mr Fergusson had been flourishing a stick in the manner which has been falsely sworn against him, what should have induced the Solicitor-General to say, only in general terms, that he saw him *encouraging*? Will any of my learned friends maintain, that if the Solicitor-General could have proved in terms that Mr Fergusson had a stick in his hand till it was

wrested from him by the officers in repelling violence by violence, that he would not have *distinctly stated it*? It is not, indeed, asserted, that the Solicitor-General meant to convey that meaning by the term *encouraging* which he employed; nor is it possible that the Attorney-General should not have stated a fact so material in his opening, if he had known he could establish it from the mouth of a gentleman placed in so respectable a station in the world.

Gentlemen, Mr Justice Heath was next examined; and there is no part of the proof more important, particularly as it affects Mr Fergusson, than the evidence of that very learned, and I must add, that truly honourable witness, who was one of the Judges in the commission, and presiding at the trial. He said, that "a messenger from the Secretary of State had applied to the Court for liberty to execute a warrant upon Mr O'Connor; that permission had been accordingly granted." So that Mr O'Connor was not to be ultimately liberated, but was to remain amenable to the process in the hands of the officers. That "after the verdict had been given and the sentence pronounced, the messenger, *very unadvisedly*, went to the corner most removed from the door, and said aloud, 'My Lord, may I now execute my warrant?' Presently afterwards I saw Mr O'Connor put one leg over the bar, and draw it back again." I have already reminded you, gentlemen, that at this time there was a doubt in the minds of some as to the effect of the verdict to liberate the prisoner; and I admit that Mr O'Connor, when he put his leg over the bar, knew of the existence of the warrant, and intended to evade it. Mr Justice Heath then said, "A violent riot and fighting took place, such as I never before saw in a court of justice. It seemed to me to be between the constables on one hand, and those who favoured the escape of the prisoner on the other." This shows plainly that Rivett did not speak the truth when he said that the blows were all on the side of the rioters against the officers; whereas the fray, as described by Mr Justice Heath, arose at first from the activity, if not the violence, of the officers; which I will confirm hereafter by the most respectable testimony. "It being dark," continued the learned Judge, "I could not see the numbers of the combatants; but I think there must have been ten or twenty engaged in it. I saw Mr Stafford brandishing a sword over their heads. The combat might have lasted for five or six minutes. I saw Mr Fergusson, in his professional dress, standing upon the table with many others. He turned round, and said, 'My Lord, the constables are the persons to blame: it is they that are the occasion of the disturbance.' Before I could give him an answer, he turned round towards the combatants; and then my attention was drawn *from him* to the more interesting scene of the fight." Every part of this evidence is a decisive exculpation of Mr Fergusson. WHEN was it that Mr Justice Heath saw him upon

the table? I answer, at the very moment, nay, at the *only* moment when blame is attempted to be imputed to him. By whom was he thus observed? Not by a common person, unqualified to judge, or uninterested in the order of the Court, but by one of its highest and most intelligent magistrates. It appears further, that at the moment Mr Fergusson publicly, and in the proper quarter, imputed blame to the officers (I do not mean such blame as should subject them to punishment, because they might be acting in the supposed discharge of their duty, but blame as it occasioned the disturbance), he did not endeavour to conceal his person from the Judges at this only period of imputed disorder, but regularly addressed the Court in the dress of his profession, and openly complained of the authors of the confusion. It is therefore quite impossible, upon Mr Justice Heath's evidence, to mix Mr Fergusson with violence; for the learned Judge distinctly stated, that after having *seen* and *heard* him as he described him to you, he observed him *no longer*, his attention being drawn from him to "the more interesting scene of the fight." Is not this a most positive declaration of Mr Justice Heath, that the place where Mr Fergusson stood was *not* the scene of the fight, and that he was not personally engaged in it? for he turned his eyes *from* him to *the scene of the combat*, and of course to the persons of the combatants; whereas, if Mr Fergusson, with a person so remarkable, and in the dress of his profession, had been *himself* a rioter, the learned Judge must have pursued *him* with his eyes, instead of losing sight of him, and must have seen him more distinctly. But the truly honourable Judge does not leave the exculpation of Mr Fergusson to any reasoning of mine, having concluded his evidence with these remarkable words: "I must do him the justice to say, that in the short time I saw him, which was not above a minute or two, I did not see him do, or hear him say, anything to encourage the riot. I thought myself in great danger, and all of us also." This testimony, gentlemen, is **ABSOLUTELY CONCLUSIVE**. He saw, indeed, Mr Fergusson for but a minute or two; yet it is the only period to which the evidence against him has any reasonable application. It was not a riot of long duration, in which a man might be guilty at one part of it, though not at another; it was almost momentary, and the whole of the scene within the observation of any one spectator. When we consider, therefore, that this learned and reverend person stood in the same situation as the first witness who was examined for the Crown—that he had an opportunity, from his situation in court, of seeing everything which belonged to the scene of combat, as he termed it—and when he nevertheless so separated Mr Fergusson from it as to feel himself *compelled* to say what he did in the close of his testimony—we ought to give to *his* words a weight beyond the voice of a thousand witnesses. A judge can have no interest in such a subject; and you cannot justly appreciate such a testimony

without taking into your consideration his excellent character, his long experience in the world, and the deep regard which he cannot but feel for the faithful administration of justice.

Gentlemen, it is impossible for me to know how these observations affect you. Self-complacency (too common among mankind) frequently makes false estimates of the effects of argument upon others, by measuring them with the results of one's own understanding—an infirmity which frequently leads us to 'repose upon them as finished and conclusive when the most material parts belonging to them have been omitted. This perhaps may be my own case at this moment; but it does strike me. I confess (accustomed as I am to the proceedings of courts of justice), that I should be perfectly safe in *now* leaving in your hands the honours and characters of my clients, even if I had not a witness to bring before you in their defence: indeed, I have studiously avoided all consideration of my own evidence in my remarks upon the case of the Crown; in everything that I have said I have wished you to consider that I had none at all to offer; and when I reminded you, in the preface of my address, that I had witnesses to bring before you, it was rather addressed to the Court than to you, and rather directed to secure attention to my observations than arising from any resolution to trouble you with hearing them. Nothing that I have hitherto advanced has been built upon any new fact to be introduced by me; I have been dissolving the evidence of the Crown by its own weakness; I have been insisting that the respectable body of it is the strongest proof for the defendants, and that its only inconsistency is to be found where it affects them with guilt.

The next witness was Mr Abbot, a gentleman at the bar. "He saw Mr O'Connor make a motion to leave the court, and heard Mr Fergusson say he was discharged. Mr Solicitor-General answered that he was not discharged; and then either Rivett or Fugion said he had a warrant. There was then a little confusion; but the prisoners resumed their places, and Mr Justice Buller proceeded to pass sentence on O'Coigly. When that was finished, Mr O'Connor leaped over the bar towards his left hand; a great tumult and confusion took place." No part of all this, gentlemen, was ever disputed. "I saw Lord Thanet on the table nearly before Mr Justice Lawrence." This is also nothing. If Lord Thanet mixed in the riot, it could not be near Mr Justice Lawrence, but in the other part of the court, where the prisoners were placed. "The learned Judge spoke to Lord Thanet, and said it would be an act of kindness in Mr O'Connor's friends to advise him to go quietly to prison, lest some mischief should happen. Lord Thanet then turned round, and said—I did not distinctly hear the first words but the concluding words were, '*To have a run for it,*' or '*Fair to have a run for it.*'" Gentlemen, I will not weary you with a long repetition of the same observations. I have observed more than

once already, that if Mr Justice Lawrence had considered Lord Thanet as having done anything to promote the riot, he would have acted accordingly; and it would be, therefore, trifling with your time and patience to detain you further with Mr Abbott's testimony.

Gentlemen, we are now arrived at Mr Rivett; and, retaining in your minds the testimony of the Crown's most respectable witness, on which I have been so long observing, I shall leave you to judge for yourselves whether it be possible that what he says can be the truth, independently of the positive contradiction it will receive hereafter. Indeed, the evidence of this man administers a most important caution to juries not to place too implicit a confidence in what is sworn with positiveness, but to found their judgments upon the most probable result from the whole body of the proof.

Rivett says, "I saw a gentleman, whom I was told was Mr Thompson, and I have never seen him since. He asked me what business I had there, and if there was anything against Mr O'Connor;"—evidently meaning a warrant, as he afterwards explained it. I need not, however, pursue this part of his evidence, because he did not identify Mr Thompson, though he sat before him in court, but pointed to another person. I pass on, therefore, to that part where he described the state of the court: "Many gentlemen," he said, "were seated upon the solicitors' bench," which has been already described to you as immediately before the prisoners, and without the counsel's seat, in which Lord Thanet appears to have sat till he stepped into that of the solicitors', where he was heard to speak to Mr O'Connor, and congratulate him on his acquittal. It was in this place, and before and after this time, that Mr Serjeant Shepherd described him as standing unmoved, with his face to the Court and his back to the prisoners. Rivett went on to say, "When the jury were coming in, I endeavoured to go nigh to the gaoler, when I was pulled down by the leg; and as soon as I turned round, I saw Mr Thompson," who turns out not to have been Mr Thompson. "I thought Mr O'Connor looked as if he intended an escape. At that time there was a noise and violence; and Mr Fergusson said to the Court, 'What business has this fellow here, making a noise?'" Now, gentlemen, this cannot be a correct statement as it respects Mr Fergusson, since it has been sworn by all the Crown's most respectable witnesses that he made it a regular motion from the bar, and the officers were desired to stand back. "I told his lordship I had a warrant from the Duke of Portland to arrest Mr O'Connor; and the Judge said I should have him, and desired the gaoler to take care of the prisoners for the present. The sentence was then passed on O'Coigly; and as soon as it was finished, Mr O'Connor immediately jumped out from the bar. There was then a great confusion in court; the gentleman who sat before me got up; Mr O'Connor took to the left, and I called out

to shut the door. I endeavoured to get forward, but was prevented by those gentlemen who had placed themselves before me and the other officers. I was pulled and shoved down two or three times; but by whom I know not. I jumped forward as well as I was able, and was endeavouring to pursue Mr O'Connor, when Mr Fergusson jumped on the table, and with a stick flourished it in this way, to stop me. Mr Fergusson was in his gown. I sprang at him, and wrenched the stick out of his hand; and then he returned from the table, and went to his seat." I will not pause at this part of the evidence as it applies to Mr Fergusson, but pursue it as it goes on to Lord Thanet; because, if I can show you that its application to him is demonstratively false when compared with the rest of the Crown's evidence, on which it must lean for support, it will destroy all its credit as it implicates Mr Fergusson also. He says, "I was then knocked down by a person who pushed at me with both hands, and I immediately struck that person three or four blows" You will here be so good, gentlemen, as to consult your notes, as I wish to be correct in stating his evidence. Will your lordships have the goodness to see how you have got it?

[LORD KENYON and Mr JUSTICE LAWRENCE referred to their notes.]

LORD KENYON. I have it, "I struck him with my stick,"

Mr ERSKINE. Gentlemen, you will now see, by the observations I am about to make upon this part of the evidence, that I could have no interest in stating it incorrectly; because, whichever way you take it, it involves a direct and palpable contradiction; but there is nothing like the truth, and it is always the best course to appeal to the authority of the Court. His words were, "He shoved me with both hands;" and, in his cross-examination, he afterwards described it, "I struck that person three or four blows: he called out, 'Do not strike me any more;' I replied, 'I will; how dare you strike me?'" You observe that he describes Lord Thanet as having no stick, and as having struck him; whereas Mr Serjeant Shepherd saw Lord Thanet, at what must necessarily be the same point of time, standing with his face to the Judges, and his back to the prisoners, motionless, as I have repeatedly described him, till he must have received violence from some other person, since the Serjeant saw him leaning back, and DEFENDING himself with a stick which he held in both hands over his head—an account which, if any corroboration of such a witness could be necessary, I will establish by eight gentlemen who were present, and who will add, besides, in contradiction of Rivett, that Lord Thanet was himself beat severely, and never struck the officer with either fist or stick. That Lord Thanet *had a stick* is beyond all controversy; and, having one, is it likely that a man of his strength and activity, engaged in such an enterprise, would only push at his opponent with his *hands*, or that Mr Fergusson, who is charged as being an

accomplice, would have contented himself with flourishing a little stick over his head ?

Mr ATTORNEY-GENERAL. I do not find that Rivett has at all said that Lord Thanet had a stick.

Mr ERSKINE. I have been reading his original examination. I will state his cross-examination by and bye, and then set both of them against the truth. He says further, and to which I desire your most particular attention, "I saw Mr Fergusson flourishing a stick about the middle of the table. I went that way, to avoid the persons who had stopped up the passage. He endeavoured to prevent me ; but I wrenched it from him, and struck him. *I had not then seen Lord Thanet.*" Now, gentlemen, I have only to beg that you will have the goodness to make some mark upon the margin of your notes of this fact, which the witness has had the audacity and wickedness to swear to. I use these severe expressions, which I have applied to no other witness in the cause, because I never wantonly employ epithets that are unjust. He was in such a situation that he cannot be mistaken in what he swears ; neither does he qualify it with his belief ; but takes upon himself to marshal the proceedings in his memory, and to affirm POSITIVELY both as to persons and times. Yet I will prove Mr Fergusson to have been within the bar in his place when Rivett speaks of him as on the table, and CERTAINLY WITHOUT A STICK. I will prove this—not by Bow Street officers, but by gentlemen as honourable as any who have been examined. Mr Rivett told you, too, "that he came along from the great street where the Star Inn is, towards the prisoner, to arrest him ; but that he went to the table to avoid the gentlemen who interrupted him in his passage towards him." Lord Thanet is one whom he positively fixed on as having done so. Lord Thanet then interrupted him in his passage to the prisoner, which induced him to go to the table, where he had the conflict with Mr Fergusson ; and yet, according to his own deliberate declaration, he never saw Lord Thanet till *after* the stick had been flourished by Mr Fergusson over his head, and till after he had wrenched it out of his hand ; for *then it was*, and for the *first* time, that he swears to have seen Lord Thanet. This is totally inconsistent, not only with the whole course of the evidence, but even with his own. And I will prove, besides, by a gentleman who sat next his lordship—Mr George Smith, the son of a late chairman of the East India Company, a gentleman at the bar, and of independent fortune—that one of the first things Rivett did when he came into court, was to press rudely upon *him* ; and that Lord Thanet, without having struck a blow, or offered any resistance, was attacked by these men in a most furious manner, which accounts for the attitude of defence in which he has been so often described.

No embarrassment or confusion can possibly attend the consideration of time ; because, from the evidence of Mr Serjeant Shepherd,

there could be no interval. It was all in a moment. He saw Lord Thanet sitting down; he rose, and stood with his face to the Judges; and then the confusion began. But, at this time, I engage to prove most positively by many witnesses, that Mr Fergusson was in his place at the bar; that he was forced upon the table in consequence of the tumult *after Lord Thanet had been knocked down*, and that he had no stick. This, indeed, is incontestably established by the evidence of Mr Justice Heath, who saw him in that situation till he removed his eyes from him to the scene of confusion, which he could not possibly have done if the confusion had not become general whilst Mr Fergusson remained in his place; and so far was he from seeking to mix himself with the riot which the officers were occasioning, that when Sir Francis Burdett, a gentleman possessed both of strength and spirit (if a rescue had been the object), was coming hastily across the table, from seeing the situation Lord Thanet was placed in, Mr Fergusson, knowing that it would only tend to embroil instead of abating the confusion, took hold of him to prevent him, carried him bodily towards the Judges, desired the officers to be quiet, and, addressing the Court, said publicly, and in his place, "My lord, it is the officers who are making all this disturbance."

What, then, is to be said for this Mr Rivett, who swore that he never saw Lord Thanet till *after* his conflict with Mr Fergusson on the table, although Mr Fergusson will appear to have at this time been in his place? Mr Smith was as near Lord Thanet as I am now, when Rivett rushed by him, and attacked him, Mr Fergusson being still in his station at the bar.

Gentlemen, he said farther, in his cross-examination, that "he struck Lord Thanet several blows; that Lord Thanet desired him to desist, but that he had struck him once or twice afterwards." This was after Mr Fergusson had gone across towards the Judges; so that the scene he describes as relative to Lord Thanet is not immediately upon his first coming into court, but afterwards, when, having gone out of his course towards the prisoner from the resistance he had met with in the passage towards him, he was obstructed by Mr Fergusson at the table; whereas all the witnesses agree in placing Lord Thanet in the solicitors' box, the very passage which Rivett states himself to have left in consequence of resistance; and, therefore, he must have passed Lord Thanet, in the solicitors' box, *before* he could have approached Mr Fergusson at the table; and if he met with any blows or interruption from him at all, he must have met with them *immediately upon his entering the court*; for Mr Serjeant Shepherd's evidence establishes, that at that period violence must have been used on Lord Thanet, as he was in an attitude of *defence*. Rivett further said, that "Lord Thanet had nothing to defend himself against his blows," though Serjeant Shepherd saw and described him with a stick; and that "he saw no blows struck

by anybody but himself." What, then, is the case, as it stands upon Rivett's evidence? That no blows were struck but his own; though a learned Judge has sworn to have seen many struck, and upon many persons; that he received no blows from Mr Thompson—none from Mr O'Brien—none from Mr Fergusson—none from any of the defendants but Lord Thanet, nor from any other person in the court. It is for you to say, gentlemen, whether this statement be possibly consistent with a wide-spread conspiracy to rescue a prisoner by violence, of which the defendants were at the head.

Sir Edward Knatchbull saw no blow given to Rivett. He said, "I can by no means speak positively; but it appeared to me, that when somebody was endeavouring to keep Rivett back, HE struck Lord Thanet with his fist. I saw no blow given to Rivett." So that Sir Edward Knatchbull's evidence, instead of confirming Rivett's story, mainly and importantly contradicts it.

Mr Watson, the gaoler, was next examined. He remembers the directions given him not to discharge the prisoner, which I will not detain you with; and says, that "after sentence was passed, some person said to Mr O'Connor, 'You are acquitted. What do you stand there for? Why don't you jump over?' that Mr O'Connor answered, 'Mr Watson says I am not to go;' but that, immediately afterwards, he sprung over," &c. Thomas Adams, who was then Mr Justice Buller's coachman, "saw Lord Thanet with a stick in his hand, and saw it lifted up." We had got rid of that stick upon Rivett's evidence, and now it comes back upon us again when it is convenient to have it lifted up. He describes the stick as lifted up in this position (*imitating the witness*); whereas it could be in no such posture, as you must be convinced of from the observations I have already made to you. But this man's evidence is very material in this respect—viz., that in describing the assault of Rivett on Lord Thanet, he says, "I heard Lord Thanet say to him, 'What do you strike me for? I HAVE NOT STRUCK YOU:'" an expression of great importance in the mouth of such a person as Lord Thanet; and falling from him at the very moment when it could have proceeded from nothing but consciousness; and an expression that I will confirm his having used, by several of my own witnesses.

Mr Brooks, who was next called, says, he "saw Mr O'Connor when the jury returned. Mr Fergusson held a sword or stick over the heads of the people." A sword, or something else, given to us in this confused manner, adds no force to the evidence; more especially when, upon being asked if he can swear with positiveness, he admits that he cannot.

Mr Stafford was then examined, who says, "he sat under the jury-box, and could see Lord Thanet distinctly." I particularly asked him that question, and how far distant he was from him: he answered me, "Not above two yards from me—three times nearer

than I am to you." He saw Lord Thanet, then, distinctly, at two yards distance, and from the beginning to the end of the confusion; yet he swears "he did not observe him engaged in any obstruction." Afterwards, when the tumult became general, this witness has been described as brandishing a drawn sword—no doubt, from a sudden apprehension of danger, and to avert it from that quarter. Now, suppose Mr Stafford had come down, out of mere curiosity, to Maidstone, to hear the trial, and had been seen flourishing this drawn sword in the midst of the affray—what should have prevented Mr Rivett from considering this gentleman as the greatest rioter of them all? Why might he not the rather have represented him as brandishing it to favour the escape of the prisoner? One cannot, indeed, imagine a case of greater cruelty and injustice; but what could have been his protection, if Mr Fergusson can be convicted on the evidence you have heard? Was not his situation in court, as counsel at the bar, equally respectable as that of the Clerk of the Arraignment? and is not the presumption of an evil design against the dignity of the Court equally removed from both of them? Yet the one is only described as flourishing a small stick, whilst the other was so wielding his metallic tractor, that if he had not pleaded a flat bar to the assize in the manner he conducted this falchion, the issue must have been blood. Mr Garrow said to him at the moment, "Take care that you do no mischief," and undoubtedly Mr Stafford neither did nor intended any; but that makes the stronger for my argument, and shows how little is to be built upon appearances which grow out of a scene of tumult. The case for your consideration seems, therefore, to be reduced to this—Whether you will believe the two learned Judges, and the other respectable witnesses? or whether you will depend upon the single and unsupported evidence by which violence has been imputed? Mr Stafford, who was within two yards of Lord Thanet, has completely acquitted him; for had he been in the situation in which Rivett has placed him, what could possibly have prevented him from seeing it? It was also sworn by Rivett that Mr Fergusson had a stick; but upon appealing to Mr Stafford's evidence, who sat just opposite to him, we find that he had none; but that he extended his arms seemingly to prevent persons approaching that side of the court. Mr Stafford admits, that when he saw Mr Fergusson, it was in the midst of confusion; and it would be a harsh conclusion indeed, that Mr Fergusson is guilty of the conspiracy charged on this record, because, upon being forced out of his seat by the tumult which surrounded him, as I will show you he was by several witnesses, he had extended his arms in the manner you have heard. Mr Stafford added, that the gaoler had hold of Mr O'Connor's coat; that Mr Fergusson forced himself between them, and that the gaoler stretched his hand behind Benns to take hold of the prisoner. This must be a mistake; for Watson

sat as where my learned friend Mr Wood is at present (*pointing to him*), and Mr O'Connor stood as where Mr Raine is now sitting (*pointing to him*); and at no part of the time is it even asserted that Mr Fergusson was in the box of the solicitors, and consequently it was utterly impossible that he could have prevented the gaoler from keeping hold of the coat of the prisoner.

Mr Clifford says he sat near the marshal. I thought he had said that he sat there as marshal; and, not knowing the person of the honourable gentleman, I thought he had been the marshal of the court. There was no new fact introduced by this witness.

Next came Mr Cutbush. My learned friends appeared to be soon tired of his evidence; and it seemed to produce an emotion of surprise upon the bench, that a witness, in such a stage of the cause, should give such extraordinary testimony. He said, "I saw Lord Thanet; he was two or three yards from Mr O'Connor. I observed nothing particular till I saw Rivett striking Lord Thanet on the back with a sword." Now, as it is admitted on all hands that no such thing ever happened, it affords another instance of the difficulty with which juries can collect any evidence to be relied on in a scene of uproar and confusion.

The evidence of the last witness, Mr Parker, contains nothing which I need detain you with.

Gentlemen, I have now faithfully brought before you all that is material or relevant in the case of the Crown; and having accompanied this statement with the observations which appeared to me to apply to it, let me suppose that my task was finished; that I had nothing by which I could farther defend my clients; and that I were now to leave you to the Attorney-General's reply, and the assistance of the Court. Were this my situation, I should sit down confident that you could not pronounce a verdict against them, upon such equivocal evidence, either honourable to yourselves or beneficial to your country. I will not tire your patience by an extended recapitulation of arguments which you have heard already with so much patience and attention; but I feel it to be my duty just to point out the inadequacy of the testimony.

The charge against the defendants is a conspiracy to rescue Mr O'Connor from legal custody, by tumult and violence; all the other acts, as they are put upon the record, and brought before you by evidence, being no otherwise relevant nor credible than as the means employed to effectuate that criminal purpose. Your belief of that purpose can therefore be the only foundation of a righteous verdict. Yet not only no part of the proof applies to establish it, but the existence of it is negatived by every principle which can guide the human judgment. No motive, either built upon fact or flowing from reasonable presumption, has appeared; none has even been suggested. The object, thus pursued without an interest, was palpably useless and impracticable—detection

and punishment inevitable—the crime, if committed, committed before the whole Court, its Judges and officers; yet the evidence of it painfully and lamely extracted from a few, and that few overborne by the testimony of the most respectable witnesses, best situated to observe, and best qualified to judge of what was passing. I have, therefore, no more to ask of you, gentlemen, than a very short audience, while I bring before you the defendant's evidence. My case is this:—

It stands admitted that the confusion had not begun when the jury returned with their verdict; that there was only a motion towards it when the officers were directed by the Court to be silent, and to stand back. The period, therefore, to be attended to, is the conclusion of the sentence on O'Coigly, when the officers, from their own account of the transaction, believing that Mr O'Connor intended to escape from them, and giving them credit that such intention could not be frustrated without some violence and precipitation, rushed suddenly through the solicitors' box, where they met indeed with resistance, but a resistance which was the natural consequence of their own impetuosity, and not the result of any conspiracy to resist the execution of the warrant.

To establish this truth with positive certainty (if indeed it is not already manifest from the whole body of the proof), I shall produce, as my first witness, Mr George Smith, whom I before named to you, and who was one of the first persons in their way on their entering the court. He sat as near Lord Thanet as I now stand to where his lordship sits before you, and who, upon the principle of this prosecution, should, above all others, have been made a defendant; for he will admit freely, that he endeavoured to push them from him with his elbow, when they pressed upon him with great and sudden violence. He will tell you, that at this time Mr Fergusson was in his place at the bar; that Lord Thanet was in the place where Serjeant Shepherd described him; that he was violently struck, without having given the smallest provocation, without having made any motion, directly or indirectly, towards the rescue of the prisoner, or even looked round at that time to the quarter where he stood; that Lord Thanet, in order to escape from this unprovoked violence, so far from approaching Mr O'Connor, endeavoured to get nearer where the counsel sat, when Rivett, instead of advancing straight forward in pursuit of his object, which was to arrest the prisoner, levelled repeated blows at him, as he was obliged himself to admit, while Lord Thanet lay back in the manner which has been so often described to you, protecting his head from the blows he was receiving.

In the same seat was Mr Bainbridge, a gentleman educating for the bar, a near relation of the Duke of St Albans, and a pupil, I believe, of my honourable and learned friend, Mr Wood; a person who cannot reasonably be suspected of giving false testimony, to

encourage violence and outrage against the laws of his country. Mr Bainbridge will swear positively, that, when the officers came forward, Lord Thanet was in the solicitors' box, and Mr Fergusson in his place at the bar, where he remained till the witness saw him forced out of his place, and obliged to stand upon the table, *and that he had no stick*. What, then, becomes of Rivett's evidence, who swore he never saw Lord Thanet till *after* this period, although it is admitted that it must have been by the tumult, in which he falsely implicated his lordship, that Mr Fergusson was driven out of his place? This is absolutely decisive of the case; for it will appear farther, that Mr Fergusson continued in his place after the period when Lord Thanet was seen defending himself. It was rather insinuated than sworn to distinctly, that there were gentlemen coming from the other end of the court, as if to lend their assistance; but this operates directly in exculpation of Mr Fergusson, who prevented Sir Francis Burdett from approaching to that quarter of the court. Sir Francis was certainly not advancing for the purpose of riot, but to extricate Lord Thanet: yet Mr Fergusson, lest it should add to the confusion, publicly prevented him, under the eye of the whole Court.

The next witness I shall produce to you will be Mr Charles Warren, son of the late highly-celebrated physician—a most honourable young man, and who, I verily believe, will be as great an ornament to our profession as his father was to his. Mr Warren was placed at the table, attending in his gown as counsel, and had the most undeniable opportunity of seeing Mr Fergusson, who sat near him, in his gown also. What Mr Fergusson did cannot be matter of *judgment* or *opinion* in such a witness, but matter of *certainty*. The conduct imputed, if it really existed, could neither be unobserved nor forgotten; it was exactly the same as if I were at this moment to break out into madness, and insult the Court. In such a case, would any of you qualify your evidence of such a scene, passing before your eyes, with *I think*, or *I believe*? No: you would say at once, *I saw* that gentleman hold up his fist, and insult and threaten the Judges. Such extraordinary transactions address themselves directly to the *senses*, and are not open to qualifications of opinion or belief. For the same reason, Mr Smith and Mr Bainbridge must both be perjured if the evidence of Rivett be the truth; and Mr Warren (subject to the very same observation) will swear positively that he saw Lord Thanet severely assaulted, and **THAT HE DID NOT STRIKE**. Is this a mere negative in opposition to Rivett's affirmative oath? Certainly not; for there are some negatives which absolutely encounter the inconsistent affirmatives, and with equal force.

Let me suppose any man to say at this moment, "Mr Mackintosh" (who sits close by me) "struck Lord Thanet," who is just before me, whilst I was speaking to you, the jury, and I were to

answer that "he did not."—that would, no doubt, be in *form* a negative proposition; but it would comprehend a *counter-affirmative* if I had seen Mr Mackintosh in such a situation, relative to Lord Thanet, as that he was not near enough to strike him, or that, if he had struck him, I must inevitably have seen him. Upon this principle, which it is indeed pedantry to illustrate, because common sense obtrudes it upon the weakest, Mr Warren will tell you **POSITIVELY** that Lord Thanet did *not* strike Rivett; and that, at the time when this violence is imputed to him, Mr Fergusson, who is reported to have begun the affray, and who had, it seems, a stick wrenched from him, was in his place at the bar.

I will then call to you Mr Maxwell, a gentleman of rank and fortune in Scotland, who lately married a daughter of Mr Bouverie, member of Parliament for Northampton. He stood under the witness-box, which may be as in that corner (*pointing to a corner of the court*), commanding a full and near view of everything that could pass; and he will confirm, in every particular, the evidence of Mr Warren, Mr Bainbridge, and Mr Smith. I will also call Mr Whitbread, who attended the trial as a witness, who was near Mr Sheridan, and, like him, did everything in his power to preserve the peace. Mr Whitbread's situation I need hardly describe to you. He is a man of immense fortune, acquired most honourably by his father in trade, and who possesses almost incalculable advantages, which are inseparably connected with the prosperity and security of his country; yet, from the mouth of this most unexceptionable witness the most important parts of the evidence will receive the fullest confirmation. I shall also call Mr Sheridan, who showed his disposition upon the occasion by his conduct, which was noticed and approved of by the Judges. This will furnish the defence of Lord Thanet and Mr Fergusson.

As to Mr O'Brien, it is almost injurious to his interests to consider him as at all affected by any part of the proof: he does not appear to have been at all connected with Mr O'Connor. It has been said, indeed, that he proposed a bet to the officer on the existence of the warrant, and that he afterwards whispered Mr O'Connor; but at that period it could not relate to an escape. It has been said, farther, that he was on the spot, and that Mr O'Connor put his hand on his shoulder. But that was no act of Mr O'Brien's; he neither touched him, nor used any effort to assist him—no violence or obstruction is even imputed to him: even RIVETT HIMSELF has not attempted to say that, in his progress towards the prison, he was insulted by Mr O'Brien, or that he even saw him.

I am not counsel for Mr Thompson or Mr Browne; but I apprehend I have a right to call them as witnesses, and upon that I shall presently take the Court's opinion. Rivett was desired to look round to identify Mr Thompson, but pointed to another gentleman who sat next him, and who had no sort of resemblance to him in

person. Mr Thompson, therefore, is not touched by any part of the proof; and nobody has said a word concerning Mr Browne (as I before remarked to you), except that there was a gentleman, in a gray coat with a black collar, who had the misfortune to have his head broken, and of which he made a complaint to the Court.

Gentlemen, I am now, therefore, very near relieving you from the painful duty which this important cause has imposed upon you—a cause which, independently of the Attorney-General's privilege to choose the form of trial, was well worthy of the attention of this high tribunal. So far from complaining of a trial at bar as an oppression of the defendants, I acknowledge the advantages they have received from it, not only in the superior learning and discrimination of the Court, but in the privilege of being tried by a jury of gentlemen assembled at a distance from all local prejudices, which has enabled them impartially to listen to both sides with such equal and such patient attention. I have yet another advantage from a trial in this place, which it is fit I should advert to. It enables me to remind the noble and learned Chief-Justice of a course of practice from which he has never deviated, and from whence my clients will receive most abundant advantage.

Throughout the numerous criminal trials which it has fallen to my lot to see his lordship judicially engaged in, I have observed this uniform course. Where the decisions will not fit exactly the interest of the accused, and where counsel, as far as professional honour will warrant, are driven in argument to qualify them, and to divert their rigorous application, the noble lord summons up all the vigour of his mind, and fills up the full scope of his authority to prevent the violation of the law; because the law is an abstract and universal rule of action, the application of which can suffer no modification. But when the *law* is clear, and the question only is, whether persons accused of a breach of it are guilty or not guilty upon *evidence*—above all, upon evidence which is contradictory—where testimony is opposed to testimony, and witness to witness, in such confounding equality as that a jury cannot with clearness arrive at the truth, I have a right to bring it to his lordship's own recollection, and, for his honour, to the recollection of others, that it has been his uniform practice, not merely to lean towards acquittal by his directions to juries, but even to interpose his opinion with the prosecuting counsel. In a civil case, indeed, where one man asserts that to be his right or property which his opponent controverts, a jury *must* give a verdict for the one or for the other, though the scales may appear to be equal. In such cases a judge is frequently obliged to lament to juries that they have a task imposed upon them which neither the conscience nor understanding of man can fulfil with satisfaction. But I speak the language of his lordship, and of all judges, when I say, that *between the public and individuals* THERE CAN BE NO SUCH RACE FOR JUDGMENT. FAR

different is the character of English justice; and there occurs to my mind at this moment a recent and memorable example. While the attention of the House of Commons was attracted to the great cause of humanity, in its proceedings upon the abolition of the slave trade, a case was brought for the consideration of a jury, arising out of the ill-treatment of a negro in an African ship. The captain upon his oath denied the alleged cruelty, and a bill of indictment for perjury was found by a grand jury against him. I conducted that prosecution at Guildhall, and established the ill-treatment by several witnesses; and although not one man who was in the ship at the time was called to contradict them, yet on its only coming out, not from their admission, but upon the evidence for the defendant, that they had held a different language in an alehouse at Bristol, Lord Kenyon interposed on my rising to reply for the Crown. I had myself no doubt of the guilt of the defendant; but his lordship, though without even expressing that he himself entertained a different opinion, declared that the interests of the public never could be served by a conviction on such contradictory evidence. "We ought not," he said, "with such materials, to leap in the dark to the conclusion of guilt." I acquiesced, as it was my duty; and the defendant, without any appeal to the jury on the evidence, was acquitted. I should only weary you, gentlemen, by a repetition of similar instances which crowd into my memory at this moment. I am sure I could name above twenty, in this very place, upon proceedings for the obstruction of officers in the execution of their duty (proceedings most important to the public), where the evidence has been very contradictory, and where the noble and learned lord, not being able to detect perjury in the defence, has uniformly held this language to juries, and even to the counsel for prosecutions: "This is not a case for conviction, the defendant *may* be guilty, but there is not a sufficient preponderation in the evidence to pronounce a penal judgment."

These are the maxims, gentlemen, which have given to British courts of justice their value in the country and with mankind. These are the maxims which have placed a guard around them in the opinions and affections of the people, which, I admit, is at the same time the sting of this case, as it deeply enhances the guilt of him who would disturb the administration of such an admirable jurisprudence. But if the courts of England are, on this very account, so justly popular and estimable; if they have been, through ages after ages, the source of public glory and of private happiness, *why is this trial to furnish an exception?* For myself, I can only say that I wish to do my duty, and nothing beyond it. Govern us who will, I desire only to see my country prosperous, the laws faithfully administered, and the people happy and contented under them. Let England be secure, and I am sure no ambition of mine shall ever disturb her. I should rather say, if I

were once disengaged from the duties which bind me to my profession—

“ Oh ! for a lodge in some vast wilderness,
Some boundless contiguity of shade,
Where rumour of oppression and deceit,
Of unsuccessful or successful war,
Might never reach me more ! ”

To conclude: If you think my clients, or any of them, guilty, you are bound to convict them; but if there shall be ultimately before you such a case, upon evidence, as to justify the observations I have made upon the probabilities of the transaction, which probabilities are only the results of every man's experience in his passage through the world; if you should think that the appearances were so much against them as to have justified honourable persons in describing, as they have done, their impressions at that moment, yet that the scene of confusion was such that you cannot arrive at a clear and substantial conclusion—you will acquit all the defendants.

[The ATTORNEY-GENERAL retired from the court.]

MR ROUS. My lord, I am of counsel for Captain Browne.

LORD KENYON. When the Attorney-General comes in, I will put the question to him whether he thinks there is sufficient evidence against him or Mr Thompson?

[The ATTORNEY-GENERAL returned.]

MR GARROW. My lord, the Attorney-General has returned. If your lordship pleases, I will put that question to him.

MR ATTORNEY-GENERAL. I understand since I went out of court (and I beg pardon of your lordships for so doing), that something has been said relative to Mr Thompson and Mr Gunter Browne. With respect to the former of those gentlemen, undoubtedly, his person having been mistaken here in court, I should think it extremely improper that I should withhold from these defendants the benefit of his testimony. With respect to Mr Gunter Browne, I think there is some evidence against him, if I were struggling in this case in a way in which I am perfectly sure your lordship knows the Attorney-General never does struggle—for a conviction; but I am very ready fairly to say, I should act very improperly if I showed any inclination to convict at all; and, therefore, I give up the prosecution with respect to him also.

LORD KENYON. If you mean to avail yourself of their testimony, now is the time.

MR ROUS. Mr Gunter Browne is confined to a bed of sickness.

LORD KENYON. Gentlemen of the jury, as far as I can recollect

the evidence, there is not sufficient evidence to call upon these gentlemen for their defence. If you think so, you will acquit them.

Mr BROWNE, *not guilty.*
Mr THOMPSON, *not guilty.*

EVIDENCE FOR THE DEFENDANTS.

Mr GEORGE SMITH sworn.—*Examined by Mr GIBBS.*

Q. You were present at this trial?

A. I was.

Q. The row in which the solicitors sat represents that where we are now sitting, and the counsel before us?

A. It does.

Q. And the place in which the prisoners stand was behind?

A. Yes.

Q. In what part of the court were you?

A. Almost during the whole of the trial I sat in the solicitors seat.

Q. Are you at the bar?

A. I am.

Q. I believe the prisoners stood in the place allotted for them, three in the front, and two behind?

A. Exactly.

Q. Who were the three in front?

A. Mr O'Coigly, Mr Binns, and Mr O'Connor. Mr O'Connor was on the left as he looked at the Judges, and on the right as they looked at him, Mr Binns in the middle, and Mr O'Coigly next the gaoler. My seat was directly under the gaoler, at the end of the seat.

Q. Do you remember the time when the verdict was brought in?

A. Perfectly.

Q. Did you observe anything happen at that time?

A. I recollect that Mr O'Connor put his leg over the bar, and there was a press behind me, but a very trifling one, to get at him.

Q. This was before sentence was pronounced?

A. Before sentence was pronounced?

Q. Did that cease?

A. Yes: silence was called, and that disturbance ceased. The Judge then proceeded to pronounce sentence. I was at that time sitting, as I have described, at the end of the seat, directly under the gaoler; and I leaned against a projecting desk, looking up at O'Coigly during the whole of the sentence, so that my back was to

the Bow Street officers. That instant that the Judge concluded his sentence Mr O'Connor put his leg over the bar, and the gaoler caught hold of his coat.

Q. At this time did you observe where Lord Thanet sat?

A. At that particular moment I cannot say I saw my Lord Thanet, but I know that he and Mr Browne were both sitting on the solicitors' seat, within one of me.

Q. Where was Mr Fergusson at this time?

A. I do not know; I did not observe him at that time.

Q. You were proceeding to state what passed after the sentence was pronounced.

A. At the same moment that Mr O'Connor put his leg over the bar, before I had recovered myself from the leaning position in which I sat, one of the Bow Street officers, I am not sure whether it was Rivett or Fugion, *set his foot upon my back*. I immediately started up and drove the man off, and asked him what he meant.

Q. How did you drive him off?

A. With my elbow, and by starting up.

Q. What was his answer?

A. He *damned me*, and told me he had business, and would press on.

Q. Was there good room for him to get by? or was this a narrow place?

A. It was so narrow that it was impossible two people should pass without contrivance. A short struggle followed between the officers and myself, for there were several people who were pressing behind, and I could not get out of the seat where I was without making that resistance.

Q. How did you get out at last?

A. At last I struggled a great while with my elbows to make room for myself. I got up, stepped upon the division between the solicitors' and the counsels' seats, and from thence to the table. I then turned round immediately, and I then saw the same man pressing upon my Lord Thanet, in the same way in which he had been pressing upon me.

Q. You said Lord Thanet and Mr Gunter Browne were within one of you?

A. Yea.

Q. Did you observe this immediately upon your extricating yourself?

A. *The instant I extricated myself I turned round and saw a man pressing upon Lord Thanet*—with this difference, that when I resisted him I did not observe that he had any staff or stick, but when I saw him with Lord Thanet *he was striking Lord Thanet with a stick*, but what the stick was I cannot say. Lord Thanet stood with a short stick in both his hands, dodging with his stick, and receiving the blows of the Bow Street officer upon that stick.

- Q. Did you observe Mr Fergusson during this time?
A. Mr Fergusson sat directly before me.
Q. Did you observe Lord Thanet?
A. Lord Thanet sat on my right hand, close to me.
Q. So that you had a complete opportunity of observing them?
A. I had a complete opportunity till the fray began.
Q. Do you recollect the Bow Street officers coming in?
A. I remember observing the Bow Street officers standing on the right hand side of the dock.
Q. Do you remember seeing those Bow Street officers at the time the jury pronounced their verdict?
A. I did.
Q. What did you observe them doing at this time?
A. I observed two standing with their eyes fixed upon Mr O'Connor, as the impression struck me.
Q. Do you recollect them after the sentence was pronounced?
A. Yes, I do.
Q. What did you see them do at that time?
A. I observed one, whom I had from observation upon the trial known to be Rivett, put his knee upon the bench that came over into the solicitors' seat, and get over, and press directly forward.
Q. You say he pressed forward: in what direction?
A. He pressed directly on to the bench where the solicitors for the defendants had sat, and the counsel for the defendants had sat.
Q. Where was Lord Thanet at this time?
A. My Lord Thanet was on the right hand of me, and in the place where the solicitor for Mr O'Connor had sat, I believe, most part of the day.
Q. Where was Mr Fergusson then?
A. Directly before me, in his place.
Q. Was Mr Fergusson at that time in the solicitors' place, or the place appropriated for the counsel?
A. Mr Fergusson was in his own place, and the place which he had kept the whole day.
Q. Did you see the Bow Street officers attempt to pass Lord Thanet?
A. I saw the Bow Street officers attempt to pass Lord Thanet and Lord Thanet, upon being pressed upon, moved upwards, as if to prevent being overpowered or crushed, and got upon his legs.
Q. Did Lord Thanet do anything to obstruct this officer?
A. To my opinion, nothing in the world.
Q. I think you say, on the contrary, he moved up?
A. He endeavoured to get upon his legs; for the pressure of the people upon him was such that, if he had not got up, he must have been totally knocked under the bench.
Q. At this time did you see whether Lord Thanet struck this Bow Street officer, or not?

A. I never observed Lord Thanet strike the Bow Street officer, or anybody else.

Q. From the situation in which you were at this time, if he had struck him, do you think you must have seen him?

A. Certainly I must.

Q. If Lord Thanet, at this time, had been taking an active part in the riot, must you have seen that also?

A. I must have observed that too.

Q. Did Lord Thanet do anything to aid the escape of Mr O'Connor, or add to the tumult which then prevailed in court?

A. Nothing in the world, that I saw.

Q. Did you observe Mr Fergusson at this time?

A. I did.

Q. Now, I will ask you if Mr Fergusson struck anybody?

A. I never saw Mr Fergusson strike anybody; and, if he had struck anybody, I think I must have seen it.

Q. Did it appear to you that Mr Fergusson encouraged Mr O'Connor, or at all favoured him in his escape?

A. Not the least, quite the contrary.

Q. Did you observe whether Mr Fergusson had any stick?

A. I observed no stick whatever.

Q. If Mr Fergusson had at this time been brandishing a stick, do you think you must have seen it?

A. I must certainly have seen it, from the situation I was in.

Q. During this time did Mr Fergusson continue in the same situation in which he was?

A. He continued in his seat till he was pressed upon, and the whole was a scene of confusion.

Q. Did it then appear to you that Mr Fergusson only left his seat in consequence of the pressure upon him.

A. That was the only cause, as it struck me.

Q. Do you recollect seeing Rivett engaged with Lord Thanet?

A. I do; he appeared to me to be striking him, and trying to beat him down; in short, he was in the act of offence, with his hand uplifted, as it appeared to me.

Q. Do you recollect Mr Fergusson saying or doing anything at that time?

A. I remember Mr Fergusson asking him to desist, and asking him if he knew who he was striking.

Q. Did he give any answer to that?

A. He, I think, made use of words to this effect: "I neither know nor care." Upon which Mr Fergusson said, "That is Lord Thanet; I insist upon your not striking him."

Q. Do you recollect whether Rivett had a contest with Mr Fergusson before he got to Lord Thanet?

A. Not to my observation: I had seen none.

Q. From the situation in which Mr Fergusson was, could Rivett have got a stick out of Mr Fergusson's hand?

A. I think, if he had had a stick in his hand, he might. I observed no stick in his hand.

Q. Could he have struck him, and wrested the stick out of his hand, without your seeing it?

A. I think not.

Q. You was there during the whole of this tumult?

A. I was in court during the whole of the trial.

Q. Was Mr Fergusson any part of that time in the place allotted for the solicitors?

A. Never.

Q. Was he ever nearer to Mr O'Connor than the place for the counsel?

A. Never; I was between them.

Q. Where did he go, when he quitted that place?

A. Towards the Judges, and away from the tumult.

Q. During the whole of this time, did Mr Fergusson at all appear to encourage the tumult?

A. Quite the contrary, I think.

Cross-examined by Mr LAW.

Q. You have said that Mr Fergusson, so far from encouraging this tumult, acted quite the contrary?

A. Yes.

Q. Am I to understand you, that he endeavoured to dissuade them from riot?

A. I heard him say to Mr O'Connor, "Be quiet, and keep your place; nothing can hurt you."

Q. Was that after the acquittal?

A. It was after the verdict of acquittal had been given, and before the sentence was passed upon O'Coigly.

Q. But after the sentence was pronounced, did you observe Mr Fergusson doing anything that was quite the contrary?

A. He seemed to say, "Be quiet;" and, from Mr Fergusson desiring him to keep his place, and having complained to the Court of a person that wished to make a tumult, he appeared to me to be a person who wished to keep everything quiet and in order.

Q. You have told us, that, during the whole day, Mr Fergusson kept the same place?

A. As to the same place, I believe he might have moved to the right; he might have been, perhaps, to the right of Mr Plumer in the morning; but what I mean is, that he never moved out of the place where the counsel sat.

Q. Then he must have been under your own observation the whole of the day?

A. Yes.

Q. Did he never appear to be upon the table in the course of that day?

A. While the jury were retired, he went across the table, and, I believe, went to speak to somebody near the witnesses' box; but at that time people were conversing and walking about; but there was no idea of a riot then.

Q. Will you say, after the verdict was brought in, he was never upon the table?

A. He was never upon the table that I know of till he was pressed upon by the Bow Street officers.

Q. Did you, during the day, see a stick in his hand, or that he had not had a stick?

A. I will swear that I did not see a stick in his hand.

Q. And you had him so much under your observation, that you must have seen it?

A. As much as a person could do sitting in a court of justice; it was quite ridiculous to suppose he had a stick in his hand.

Q. Was you a witness, or concerned in that trial?

A. No; I went from mere curiosity.

Q. You did not go with Mr Fergusson?

A. No.

Q. And you will swear that he never had a stick in his hand?

A. I will swear I did not see a stick in his hand; and I think I must have seen it, if he had.

Q. If you had him constantly in view, you must?

A. It cannot be supposed that I had my eyes upon him for fourteen hours.

Q. Will you venture to swear that during the riot he had no stick?

A. I will.

JURY. Did Lord Thanet leave the court during the riot?

A. Lord Thanet moved, as Mr Fergusson did; upon being pressed upon, he got up upon the bench; and when he moved up Rivett was above him, and trying to strike him; and Mr Fergusson then said, "Who are you striking, sir?"

JURY. Whether he saw Lord Thanet, during any part of the period, near the wicket-gate that leads to the narrow street?

A. I saw Lord Thanet, I think, during the whole riot; and I think, instead of being there, he went, when he did move, quite the contrary way, and not at all towards the gate.

Mr JUSTICE LAWRENCE. From Mr Fergusson complaining of a tumult it seemed as if he wished to keep everything in order; who was the person that he complained of?

A. Rivett.

Q. That was before the sentence was passed?

A. Yea.

Q. How far was Rivett from Mr Fergusson at this time ?

A. I think he must have been about three yards.

Q. At that time was he not making use of this motion (*describing it*), and saying, "Keep back ; where are you going ?"

A. Yes ; and I think Mr Justice Buller then said, "What is the matter ?" Mr Fergusson then said, "Here is a person making a noise, and will force himself into the court." Mr Justice Buller then said, "What do you mean, sir ?" He then said, "My lord, I have a warrant against Mr O'Connor." He then told him to keep back.

MR WARREN SWORN—*Examined by Mr MACKINTOSH.*

Q. I believe you was present at the trials for high treason at Maidstone ?

A. I was.

Q. Was you present the second day of those trials ?

A. I was.

Q. Where did you sit during the evening of the second day ?

A. Just by the witness-box, opposite to the jury.

Q. After sentence was pronounced upon O'Coigly, tell us what you observed of the confusion that arose in the court.

A. After the sentence of death was pronounced upon O'Coigly, the first part of the affray that I recollect was this : Mr O'Connor endeavoured to get out of the dock ; he got almost out of the dock, on the left side ; the gaoler, who was on the other side of the dock, reached across the dock, and caught him by the coat ; he detained him for a very short space of time in that situation ; the coat tore, or slipped through his hands.

Q. At that time, when the gaoler had hold of Mr O'Connor's coat, did anybody reach or step backwards between them ?

A. Nobody.

Q. Then Mr Fergusson did not ?

A. Certainly he did not. Mr O'Connor got away, either from the coat being torn, or slipping through the gaoler's hands ; he got down upon the ground ; he soon mixed with the crowd, and I lost sight of him. As soon as he endeavoured at first to get away, two persons, who had before appeared to be officers from Bow Street, with several others, rushed forward to apprehend him. In their endeavour to apprehend him, the first person upon whom they appeared to rush with any great violence was Mr George Smith, who was sitting at the end of the seat of the solicitors for the prisoners ; he was forced from thence, and came to the place where I was sitting. The next person that I observed forced from his seat was Mr Dallas, one of the counsel for the prisoners ; he came likewise and sat near me ; the officers still rushed on towards the end of the counsels' seat, and of the solicitors' seat. At the

farther end of the counsels' seat, or near the end of it, Mr Fergusson was sitting, to the best of my recollection.

Q. Had he a stick in his hand ?

A. No stick that I saw.

Q. Had you your eye upon him ? and if he had, must you have seen him ?

A. He is an acquaintance of mine, and he was in his professional dress ; and if he had, I think I could not have mistaken it. Lord Thanet was sitting upon the solicitors' bench, almost immediately behind Mr Fergusson. By this time the confusion had become general, and a number of people had got upon the table from all parts of the court.

Q. If Mr Fergusson had brandished a stick, or presented it to Rivett, must you have seen it ?

A. I certainly must.

Q. I need not ask you if you did see it ?

A. I did not see it ; Mr Fergusson had risen up, and Lord Thanet had risen up.

Q. Supposing it possible that a stick had been in Mr Fergusson's hands, and it had escaped your eye, do you think it possible, from time and place, that Rivett could have wrenched it out of his hands before he attacked Lord Thanet ?

A. I do not think it possible he could have a stick of any sort.

Q. Was Lord Thanet nearer to Rivett than Mr Fergusson ?

A. I think he was rather. One of the officers, but I do not know which—I do not know their persons—pressed very rudely, as it appeared to me, upon Mr Fergusson : I believe that Mr Fergusson might shake his shoulder when he felt the man's hand upon it ; that is all the resistance I saw made on the part of Mr Fergusson.

Q. What did you see pass between these officers and Lord Thanet ?

A. The first thing I observed particularly of Lord Thanet was, that he was lying almost down upon his back upon the table, with a small stick or cane, which he held in both hands over his head or face, in this manner. One of the officers was striking him with a stick, and Lord Thanet endeavoured, with very little success, to defend himself by the use of this stick, which he held in both his hands.

Q. Now, before that period of which you last spoke, did you observe Lord Thanet give a blow, or any provocation, to this officer ?

A. I never saw him give a blow ; I never saw him give any provocation ; I never saw him in any other way than I have mentioned, till he left his seat. How he left his seat I cannot tell ; they had risen up upon their seats. When they were pressed upon, they rose towards the left-hand side of the prisoner, as the prisoner faced the Judges.

Q. Did they go out of sight ?

A. No.

Q. Did they go off that table?

A. They were not upon that table. Mr Fergusson was upon the table afterwards, but not on the table at any time that I have yet spoke to—Lord Thanet was then lying upon the table. I am not able to say how Lord Thanet got from that situation; I do not know that I took particular notice of what passed after with respect to Lord Thanet. Mr O'Connor was brought into court, and then the riot ceased.

Q. Did you take any particular notice of Mr Fergusson between the last time you have been speaking of, and the time of Mr O'Connor being brought into court?

A. No; I do not recollect anything more.

Q. I need not ask you if you saw Mr Fergusson brandish a sword?

A. No.

Q. Did you see Mr Fergusson, after the sentence of death was passed, go back to his old place?

A. I did not.

Q. Were your eyes fixed upon that part of the court?

A. They were, most particularly; I was placed in a situation in which I could very well see.

Q. So that it was impossible for Mr Fergusson to have gone backwards from his seat, without having struck your eye?

A. I think it was impossible.

Q. Did you see Mr Fergusson upon the table, before Lord Thanet was beaten by Rivett?

A. I did not.

Mr JUSTICE LAWRENCE. In what part of the court was you?

A. Under the witness-box; I rose from thence, and got upon the table, as other people did.

Mr MACKINTOSH. Did you see Lord Thanet or Mr Fergusson take any part in anything that had the appearance of disturbance or riot?

A. No; I did not. I saw Lord Thanet defend himself; and I have stated that I did not see Mr Fergusson do any act at all, except shaking that man's hand off his shoulder.

Q. Do you remember Mr Dallas quitting his place before he began to address the jury?

A. I do, perfectly.

Q. And Mr Plumer also, I believe?

A. I do not.

Q. Do you recollect Mr Fergusson leaving his own place, in consequence of that?

A. I am rather inclined to think it was so; but I cannot swear to that.

Q. I understand you to swear most positively that Mr Fergusson never interposed between the gaoler and Mr O'Connor?

A I do most positively swear I do not think he did, and if he had, I think I must have seen it.

Cross-examined by Mr GARROW.

Q. The dock or bar, by which the Bow Street officers were placed, could only occupy five or six persons?

A. No more.

Q. Only the gaoler and the prisoners?

A. It might be three yards long, perhaps.

Q. You stated that after the sentence of death had been passed, and Mr O'Connor had been left upon the floor, the officer pressed forward to apprehend him. What induced you to think these were officers rushing forwards for that purpose?

A. I took them to be the persons who had produced the warrant in court. When they had forced themselves up to the end of the solicitors' seat, Mr Fergusson said, I think, "Here are two men obstructing themselves between the prisoners and the jury." Mr Justice Buller said, "What are you about? sit down;" and one of them produced a paper, saying either that it was a warrant to take up Mr O'Connor, or a warrant upon a charge of high treason against Mr O'Connor, or something to that effect; and, therefore, I supposed them to be Bow Street officers, or officers of justice.

Q. I do not know whether you happened to be present in court when those two witnesses were examined as witnesses to prove the fact of apprehending Mr O'Connor at Margate?

A. I should suppose I was in court, but I am not certain.

Q. But before the judgment of death was passed, it is perfectly in your recollection that one of those persons had hinted in court that they had a warrant for the purpose of apprehending Mr O'Connor?

A. That was after the jury had returned their verdict, and before that verdict was pronounced.

Q. Do you know Mr O'Brien?

A. I saw him the other day for the first time in my life.

Q. You did not know him at Maidstone?

A. No; I did not.

Mr MAXWELL sworn—*Examined by Mr ERSKINE.*

Q. Was you in court, at Maidstone, during any part of the trial of Mr O'Connor and others?

A. I was frequently.

Q. Did you hear Mr Justice Buller pronounce sentence of death upon O'Coigly?

A. I did.

Q. In what part of the court was you at that time?

A. At that time I was immediately to the left of the witness-box, rather farther from the Judge than the witness-box.

Q. Was you elevated above the Court ?

A. I was elevated above the table where the counsel sat.

Q. Did that elevation and position give you a view of that part of the court where the Bow Street officers entered, and where the solicitors for the prisoner sat ?

A. That gave me a distinct view of that part of the court.

Q. Do you remember when Mr Justice Buller had finished pronouncing sentence upon Mr O'Coigly—do you remember any persons rushing forwards, as if to seize Mr O'Connor ?

A. I remember some of the Bow Street officers, among whom I knew Rivett and Fugion, rushed violently to that place where Mr O'Connor was.

Q. At the time that those two persons, Rivett and Fugion, rushed forwards in the direction you have described, did you observe where Lord Thanet was ?

A. I did ; my Lord Thanet sat at that time in the solicitors' place.

Q. Did you observe where Mr Fergusson was at the same time ?

A. Mr Fergusson sat in his own place, where he had been as counsel for some time, on the bench before the solicitors' bench.

Q. Which of them was nearer to that side of the court where the jury-box is, and where Mr O'Connor was ?

A. I think Lord Thanet was rather, perhaps, the nearest of the two ; but there was a very little difference.

Q. Did you see anything pass between Rivett, the officer, and Lord Thanet ?

A. I did.

Q. Describe to my lord and the jury what you saw.

A. After Rivett had forcibly overturned and driven from their places those who stood between him and Mr O'Connor, he got to Lord Thanet, who was one of the nearest. Lord Thanet, when he was pressed upon, got out of the place where he was, and went from the scene of tumult towards the table.

Q. Was that farther from the prisoners than he was before ?

A. Considerably farther from the prisoners than when he was first pressed upon.

Q. When Lord Thanet retired in that manner out of the solicitors' box, over towards the counsels' table, did Rivett pursue his course on towards the prisoners in the line of the solicitors' box, or how else ?

A. He followed Lord Thanet, and struck him repeatedly.

Q. Had Lord Thanet struck Rivett before he went over from the solicitors' seat towards the table ?

A. Lord Thanet never struck Rivett before nor after that.

Q. Had you such a view of the situation in which Lord Thanet was placed, and what he did, as to swear merely to your opinion and belief, or do you swear it positively ?

A. I had such a view, that I swear it positively; by that time I had quitted the place where I was, and got nearer to Lord Thanet and the other persons who were struck.

Q. Were any other persons struck besides Lord Thanet?

A. I saw several blows given, but I cannot say to whom, by the Bow Street officers and those who followed them.

Q. Do you know whether Rivett struck any person besides Lord Thanet?

A. I do not positively know whether he struck any person or not.

Q. But you swear positively Lord Thanet did not strike Rivett at all?

A. He did not; but merely put himself in a posture of defence and lying back upon the table.

Q. Had Lord Thanet a stick?

A. He had a small stick; which he held up over his head to defend himself; he was leaning back upon the table, an attitude in which it would have been difficult to have acted offensively.

Q. Did you see Lord Thanet subsequent to the time that he was in that situation?

A. I did.

Q. You say that the officers, and particularly Rivett, rushed into the court, and having passed one or two that were before Lord Thanet, attacked Lord Thanet. What length of time might elapse between Rivett first rushing in and the time he struck Lord Thanet?

A. A very short space of time indeed.

Q. Was it possible that before Rivett struck Lord Thanet he could have gone within the counsels' place, where you have described Mr Fergusson to be, and have wrested a stick out of his hand before he came to Lord Thanet?

A. Rivett did not go to take a stick out of his hand, for he had no stick in his hand; he did not go up to Mr Fergusson, but immediately went up to Lord Thanet and struck him.

Q. If Rivett should have said here, that he never saw Lord Thanet till after he had taken a stick from Mr Fergusson, from what you observed, is that true or false?

A. I should certainly say it was false, without any hesitation.

Q. During the time that you thus observed Lord Thanet in the attitude of defence, retreating from the scene of tumult, and pursued by Rivett, where was Mr Fergusson?

A. He was in his place, and remained in his place till he was pressed upon, and then he got out of the scene of tumult upon the table.

Q. Did you see him while he was in his seat, and did you see him move from his seat to the table by the pressure that was upon him?

A. I did.

Q. If, whilst Mr Fergusson was in his seat, or if while he was pressed upon when he rose from his seat, if in either of these situations he had not only had a stick, but had brandished and flourished that stick, I ask, must you have seen it or not?

A. I must have seen it; he was so directly before me, that it is quite impossible but I should have seen it. *I can swear that Mr Fergusson had nothing in his hand, but a roll of paper in his right hand.*

Q. And was in his professional dress?

A. He was.

Q. If Mr Fergusson had done any one act to encourage the tumult that was undoubtedly then existing, or done any one act inconsistent with his duty as counsel, or committed any one act of indecency or turbulence, must you have seen it?

A. I must.

Q. Then let me ask you, upon your solemn oath, did he do any such thing?

A. He did not; on the contrary, he endeavoured to keep quiet in the court, by admonishing the people in court to be quiet. Mr Fergusson said particularly to Rivett, when he was striking Lord Thanet, "Do you know who you are striking?" That is not a person likely to begin a riot.

Q. Did you see where Mr Fergusson went to after he was upon the table?

A. He got upon the table, and got farther from the scene of tumult; and I do not know whether he sat down upon the table or not; he went towards the Crown lawyers.

Q. Did you see Sir Francis Burdett?

A. I did. He at first stood by me in the witness-box, and when the confusion began, he got nearer to the place of confusion at the same time that I did. I saw Mr Fergusson remove Sir Francis Burdett from the scene of confusion, and put him farther from it.

Q. And you saw him also place himself at a distance from it?

A. Yes.

Q. Did you afterwards see him go upon the table towards the Judges?

A. I did; I saw him till all the violence was over.

Q. Then can you take upon you to swear positively that neither Mr Fergusson nor Lord Thanet, during the tumult, went towards Mr O'Connor?

A. They went in a directly opposite direction.

Q. Do you swear that from your own opinion and belief, or from certain knowledge?

A. I swear it positively from certain knowledge.

Cross-examined by Mr ADAM.

Q. You saw Rivett and Fugion pressing forward ?

A. I did.

Q. Did you know them before ?

A. I knew them from having seen them examined in court upon that trial.

Q. Only from that circumstance ?

A. Only from that circumstance.

Q. During this affray you shifted your situation to another part of the court ?

A. Yes ; I got upon the table.

Q. And you say you saw Sir Francis Burdett shift his place ?

A. He shifted his place at the same time.

Q. From what part of the court did he come ?

A. From the witness-box ; he stood on my right hand.

Q. To what part of the court did he go ?

A. He also went on to the table.

Q. Do you mean that he remained upon the table ?

A. I cannot say whether he remained upon the table, but he went there with me.

Q. Did he remain on the table any considerable time ?

A. The tumult was over very soon after that.

Q. The counsel for the Crown sat immediately under the witness-box ?

A. They sat on the same side.

Q. Round the angle ?

A. Yes.

Q. Therefore, it was necessary when you and Sir Francis Burdett shifted your places, that you should go over the heads of the counsel for the Crown, to get to the table ?

A. Exactly so ; we jumped from the neighbourhood of the witness-box.

Q. Do you remember when Sir Francis Burdett jumped from the neighbourhood of the witness-box to the table, did he not jump immediately from the table into the crowd ?

A. I cannot say whether he did or not ; but I saw him standing upon the side of the table, or sitting upon the side of the table, till Mr Fergusson removed him.

Q. But that was near the conclusion of the affray ?

A. It was.

Q. What circumstance was it that brought you to Maidstone ?

A. Merely to be present at the trials.

Mr ESKINE. You are a gentleman possessing an estate in Scotland ?

A. Yes.

Q. And I believe married a daughter of Mr Bouverie ?

A. Yes.

LORD KENYON. Did you see Mr O'Connor go out of the dock ?

A. Yes.

Q. How soon was he out of your sight ?

A. I do not know that he was out of my sight.

Q. Do you know the situation of the wicket ?

A. Yes.

Q. Where were Mr Fergusson and Lord Thanet during the time that elapsed between his leaving the bar and being brought back again ?

A. Upon the table.

Q. Did the crowd coming upon them prevent you from seeing them ?

A. No ; I was so situated that I saw them both distinctly ; I was a great deal higher than they.

SAMUEL WHITBREAD, Esq., sworn—*Examined by Mr GIBBS.*

Q. You were present, I believe, at the time of this trial ?

A. I was in court the latter part of it, after I had been examined as a witness.

Q. In what part of the court were you ?

A. After having been examined as a witness I retired out of the witness-box, behind, and came into the court again.

Q. Whereabouts was you when the verdict was brought in ?

A. Considerably behind the witness-box.

Q. Had you from thence a perfect view of the court ?

A. Of the lower part of the court.

Q. Had you a perfect view of the dock in which the prisoners were, the solicitors' seat, and the seat where the counsel sat ?

A. I had certainly a view of the whole of that part of the court.

Q. Between the verdict and the sentence we understand some Bow Street people came in, and spoke of a warrant ?

A. There was some tumult, and that subsided upon Mr Fergusson calling the attention of the Court to the cause of it. He waved his hand and spoke to them ; he then turned to the bench, and said, " My lord," or some such word, just to draw the attention of the Court : upon that, Rivett, whom I knew before, said he had a warrant against Mr O'Connor, and he thought he was going to escape. Mr Justice Buller then said, " Patience," or some such word ; and then sentence was pronounced.

Q. After sentence was pronounced, did you observe O'Connor ?

A. I observed him put his foot upon the front part of the dock, and get out of the dock. Having carried my eye after him some time, my eye returned to the bar, and there I saw Rivett violently attacking Lord Thanet. He had a stick in his hand. I did not see him strike a single blow ; I saw many blows struck at him, and he was endeavouring to ward them off.

Q. Did it appear to you that Lord Thanet made any attack upon Rivett to provoke this?

A. No; on the contrary, he was defending himself against a violent attack of Rivett's upon him.

Q. Where was Lord Thanet at the time that you observed this?

A. I think he was close to the table, leaning back upon the table in the act of defending himself, with his hands up, in which I think he had a stick.

Q. Did you see at this time where Mr Fergusson was?

A. I did not observe Mr Fergusson at that time. Before the tumult had quite subsided I observed Mr Fergusson upon the table, not far from the Judges.

Q. Had you your eyes upon Lord Thanet from the time you saw Rivett striking him in this way?

A. No, I had not, because there was a great deal of tumult behind, and of persons trying to get out at the door behind the bench, and the bailiffs resisting their attempts, which engaged my attention some time.

Q. Did you see Mr O'Brien during this time?

A. I do not recollect that I did.

Q. Did you know Mr O'Brien well?

A. I knew him perfectly by sight.

Q. If he had been acting in this scene, must you have noticed it?

A. In a scene of confusion many things must have escaped the observation of every person; but I think it is more than probable that I must have seen such a person as Mr O'Brien, if he had been active.

Cross-examined by Mr ATTORNEY-GENERAL.

Q. How long did you remain at Maidstone?

A. The next morning, I think, I passed you on the road to London.

Mr ATTORNEY-GENERAL. I beg your pardon, I did not recollect that circumstance.

Q. Previous to the officers approaching the place where Mr O'Connor was, had you heard that there was to be a rescue?

A. I had not.

RICHARD BRINSLEY SHERIDAN, Esq., sworn—*Examined by*
Mr ERSKINE.

Q. You were subpoenaed as a witness to attend the trials at Maidstone?

A. I was.

Q. Were you in court at the time when the jury retired to consider of their verdict, and also when they returned with it?

A. I was.

Q. And during the remaining part of the time till the tumult ceased?

A. During the whole of that time.

Q. In what part of the court were you when the jury brought in their verdict?

A. Sitting with Sir Francis Burdett in the witness-box. The box was raised very considerably above the table, so that I had a direct view of everything passing in the court.

Q. Had you then an opportunity of perfectly observing the place where the solicitors sat, and the dock where the prisoners were, and the place where the counsel were?

A. A most perfect opportunity, without being in the least annoyed or mixed with the tumult.

Q. Do you remember the gaoler laying hold of Mr O'Connor perhaps you did not see that.

A. The first that I observed of the tumult was prior to the sentence being passed upon O'Coigly. I did not see Mr O'Connor make an attempt to go; but I had observed to the High Sheriff that I fancied he would come out, for that I had observed at the Old Bailey, that they left the bar immediately upon the jury pronouncing them not guilty. The riot then commenced, and I observed some men pressing very violently towards the box where Mr O'Connor was; my attention was taken up with that. Mr Fergusson then appealed to the Court, and said, "Here are two riotous fellows, or something of that sort," disturbing the peace of the Court. Rivett then said, "I have a warrant to apprehend Mr O'Connor." Mr Justice Buller desired him to be quiet, and then put on his hat to pass sentence, and everything subsided.

Q. After that did you observe the Bow Street officers rushing in in the way that we have heard?

A. The first thing I saw was Mr O'Connor getting very close over the front of the dock, and going towards the narrow street, and these men rushing after him. Certainly the man who would have thrown himself most in the way of the men was Mr O'Brien, if he had chosen to do it.

Q. Are you acquainted with Mr O'Brien?

A. I know him intimately.

Q. Is he a strong man?

A. Certainly he is.

Q. If Mr O'Brien had been desirous of opposing himself to the officers, and to prevent them from going after him, might he?

A. He was precisely in the best situation to have done it.

Q. Had you an opportunity of seeing whether he did or not?

A. He did not, and I am sure he was not there in the subsequent part of the tumult.

Q. Can you take upon yourself to swear positively that he gave no manner of assistance?

A. Positively.

Q. And Mr O'Brien had an opportunity of affording the most essential means of escape to Mr O'Connor, if he had chosen?

A. I think the whole idea was folly and madness, and that no assistance could have effected it?

Q. But Mr O'Brien did the contrary?

A. Yes; he retired behind the box, and I did not see him afterwards. I was very attentive to the whole of it, and was making my observations with the High Sheriff, who more than once endeavoured to persuade me to leave the witness-box, and endeavour to quell it.

Q. Did you see Lord Thanet at the time the officers rushed in?

A. I did not see him till the time he was struck; I saw him struck.

Q. Did he return the blow, or show anything like activity, or a disposition to activity?

A. I saw him when he was first pressed upon. It was not a tumult merely near the dock, but the whole court was a scene of general tumult, and a scene of panic, and certainly with the least reason. There was a tumult behind us in the witness-box; there was a general calling-out not to open the doors, some calling out for soldiers and constables; and there did appear to me a sincere panic and apprehension that there was a planned rescue. I perceived plainly there was no such thing, and endeavoured all I could to persuade them so. The officers were beating down everybody, forcing their way and pressing upon everybody. Lord Thanet had a stick in his hand with which he was parrying the blows, which came amazingly quick; it seemed to me an incredible thing that he was not extremely hurt, and he never returned a blow, but retired from the scene of tumult farther into the court away from the prisoners. Sir Francis Burdett was with me; and by this time Mr O'Connor was stopped, and they were bringing him back again. He had attempted to go towards the gate with the wicket, and I observed everybody to put up their hands and stop him; he might as well have attempted to get through a stone wall: if there had been six or eight persons there who were so disposed, he might perhaps have got as far as the door, but he could not possibly have got farther. I then saw a person upon the table, brandishing Mr O'Connor's scimitar over the heads of the people; he seemed very much alarmed, and not knowing what he was about; I am sure it must have gone very near several persons' heads, it seemed quite miraculous that he did not do some mischief; in short, it was difficult to discover whether he meant to keep the peace or break the peace. Sir Francis Burdett saw that they had collared Mr O'Connor, was frightened, and said with great agitation to me, that they would kill O'Connor, and he jumped over the railing. He could not go from where we were

without jumping upon the table, and he ran forward. Mr Maxwell followed him, or went at the same time; they both went towards Mr O'Connor. I then saw very distinctly Mr Fergusson stop Sir Francis Burdett, and use some action, saying, "You had better keep away, and not come into the tumult at all." I could not hear what he said, but it appeared so to me.

Q. Did you see Mr Fergusson from the beginning of this scene, when sentence of death was pronouncing?

A. I saw him plainly in his place, after the Judge had passed sentence of death.

Q. Did you see the crowd press upon Mr Fergusson, and did you see him get upon the table?

A. I did not see him get upon the table; but as the crowd pressed upon him, he was forced upon the table.

Q. Did Rivett attack Lord Thanet before he could possibly have attacked Mr Fergusson, and wrenched a stick out of his hand?

A. He came immediately upon Lord Thanet, when the tumult began.

Q. He could have had no conflict with Mr Fergusson till after the conflict with Lord Thanet?

A. Certainly not.

Q. Do you know Mr Fergusson?

A. Perfectly.

Q. If he had been upon the table flourishing and waving a stick, in the manner that has been described, in his bar dress, must you not have seen it?

A. Yes; it must have been a most remarkable thing, indeed, for a counsel in his bar dress to have a stick flourishing in his hand—he had a roll of paper in his hand.

Q. Does that enable you to swear that Mr Fergusson was not in that situation?

A. Certainly.

Q. Do you think, if he had taken such a part in the riot, in the presence of the Judges, that you must have observed it?

A. I must have observed it.

Q. Did Lord Thanet or Mr Fergusson ever go nearer to Mr O'Connor after he had jumped out of the dock, or did not Lord Thanet and Mr Fergusson retire farther from the scene of tumult?

A. They certainly did. Upon some farther conversation, I got over this place myself, and went down, and the first thing I did was to speak to the man with the sword. I told him I thought he with his sword made half the riot himself; and he put it away. I passed Lord Thanet, who, so far from staying in the riot, went towards the Judges, as if he was going to make a complaint. I then went into the riot, and endeavoured to persuade them that there was no such thing as an attempt to rescue O'Connor; and a man that had hold of him, who knew me, said there was; and

added, "These fellows are come down from London; they are Corresponding Society people, and they are come down on purpose to rescue him." One person in particular called to them not to believe me, and I laid hold of him, and said he should go with me to Mr Justice Buller; I insisted upon his name and address, and he would not give it me. I then turned to the Judges, and he ran away. So far was Lord Thanet from going towards the wicket, that I passed him going up to the Judges; and Mr Fergusson remained with me, desiring them not to treat Mr O'Connor so, and generally endeavouring to quiet them. The only moment they were out of my eye was while I was getting over this place.

Cross-examined by Mr LAW.

Q. You saw Lord Thanet distinctly from the time he was struck?

A. I do not mean with the stick. I corrected that by saying, from the time he was assaulted and driven from the seat he was in at first.

Q. Can you take upon you to say whether he gave a blow before he was struck?

A. I said from the time he was pressed upon or assaulted.

Q. You say you saw Lord Thanet going towards the Judges, as if he was going to complain; did you hear him make any complaint to the Judges?

A. I did not hear him, certainly.

Q. I will ask you, whether you do or do not believe that Lord Thanet and Mr Fergusson meant to favour O'Connor's escape, upon your oath?

A. Am I to give an answer to a question which amounts merely to opinion?

Q. I ask, as an inference from their conduct, as it fell under your observation, whether you think Lord Thanet or Mr Fergusson, or either of them, meant to favour Mr O'Connor's escape, upon your solemn oath?

A. Upon my solemn oath, I saw them do nothing that could be at all auxiliary to an escape.

Q. That is not an answer to my question.

A. I do not wish to be understood to blink any question; and if I had been standing there, and been asked whether I should have pushed or stood aside, I should have had no objection to answer that question.

Q. My question is—Whether, from what you saw of the conduct of Lord Thanet and Mr Fergusson, they did not mean to favour the escape of O'Connor, upon your solemn oath?

A. The learned counsel need not remind me that I am upon my oath. I know as well as the learned counsel does that I am upon

my oath ; and I will say that I saw nothing that could be auxiliary to that escape ?

Q. After what has passed, I am warranted in reminding the honourable gentleman that he is upon his oath. My question is, Whether, from the conduct of Lord Thanet or Mr Fergusson, or either of them, as it fell under your observation, you believe that either of them meant to favour O'Connor's escape ?

A. I desire to know how far I am obliged to answer that question. I certainly will answer it in this way, that from what they did, being a mere observer of what passed, I should not think myself justified in saying that either of them did. Am I to say whether I think they would have been glad if he had escaped ? that is what you are pressing me for.

Q. No man can misunderstand me. I ask, Whether, from the conduct of Lord Thanet or Mr Fergusson, or either of them, as it fell under your observation, you believe upon your oath that they meant to favour the escape of O'Connor ?

A. I repeat it again, that from what either of them did, I should have had no right to conclude that they were persons assisting the escape of O'Connor.

Q. I ask you again whether you believe, from the conduct of Lord Thanet or Mr Fergusson, or either of them, upon your oath, that they did not mean to favour the escape of O'Connor ?

A. I have answered it already.

LORD KENYON. If you do not answer it, to be sure we must draw the natural inference.

Mr SHERIDAN. I have no doubt that they *wished* he might escape ; but from anything I saw them do, I have no right to conclude that they did.

Mr LAW. I will have an answer. I ask you again, whether from their conduct, as it fell under your observation, you do not believe they meant to favour the escape of O'Connor ?

A. If the learned gentleman thinks he can entrap me, he will find himself mistaken.

Mr ERSKINE. It is hardly a legal question.

LORD KENYON. I think it is not an illegal question.

Mr LAW. I will repeat the question, Whether, from their conduct, as it fell under your observation, you do not believe they meant to favour the escape of O'Connor ?

A. My belief is, that they *wished* him to escape ; but from anything I saw of their conduct upon that occasion, I am not justified in saying so.

Q. I will ask you whether it was not previously intended that he should escape, if possible ?

A. Certainly the contrary.

Q. Nor had you any intimation that it was intended to be attempted ?

A. Certainly the contrary. There was a loose rumour of another warrant, and that it was meant that he should be arrested again, which was afterwards contradicted. Then the question was mooted whether the writ could be issued before he was dismissed from custody? Certainly there was no idea of a rescue. There was no friend of Mr O'Connor's, I believe, but saw with regret any attempt on his part to leave the court.

Q. From whom did you learn that there was such a warrant?

A. It was a general rumour.

Q. From whom had you heard this rumour?

A. I believe from Sir Francis Burdett; but I cannot tell.

Q. At what time was that?

A. About four or five o'clock.

Q. Have you ever said that the defendants were very blameable: Lord Thanet, Mr Fergusson, or any of them?

A. Certainly not.

Q. At no time since?

A. Certainly never.

Mr ERSKINE. You were asked by Mr Law whether you believed that the defendants wished or meant to favour the escape of Mr O'Connor: I ask you, after what you have sworn, whether you believe these gentlemen did any act to rescue Mr O'Connor?

A. Certainly not; and I have stated upon my oath that every man in the narrow gateway endeavoured to stop him. I remarked it particularly; because, there being a common feeling amongst Englishmen, and he being acquitted, I thought they might form a plan to let him escape.

Q. You have stated that you saw no one act done or committed by any one of the defendants indicative of an intention to aid O'Connor's escape?

A. Certainly.

Q. I ask you, then, whether you believe they did take any part in rescuing Mr O'Connor?

A. *Certainly not.*

THE ATTORNEY-GENERAL'S REPLY.

GENTLEMEN OF THE JURY,—At this late hour of the day, I do not think that the duty which I owe the public can require me to detain you any considerable time in reply to the observations of my learned friend.

Gentlemen, my learned friend has addressed you with great ability; and unquestionably with great, but guarded zeal, on behalf

of his clients. This his duty called upon him to do ; for certainly the best exertion of his great abilities was due to them. On the other hand, your attention is now to be occupied by a person who must address you upon principles which forbid him to have any zeal upon the subject.

The Attorney-General of the country, as it appears to me, has a public duty to execute, in reference to which he ought to conceive that he has properly executed that duty, if he has brought a fit and proper accusation before a jury, and has proceeded to the length of honestly and fairly examining the several circumstances given in evidence in support of, and in answer to, that accusation ; always recollecting that the jury will finally hear, from that wisdom which cannot mislead them, the true inferences that will arise upon facts which have been given in evidence on both sides. They will hear it from a person unquestionably less prejudiced than I can be (though I have endeavoured as much as possible to guard myself against any prejudice), because it belongs to the mind of man to be influenced by circumstances which one's duty as a prosecutor obliges one to look at a little anxiously.

Gentlemen, having been charged with the duty of laying this important case before you, I have not the least doubt but you will discharge the duty which is now imposed upon you with a full and conscientious regard to justice ; and I dismiss here all the observations my learned friend has made upon the high rank and situation of Lord Thane, upon the respectable situation in his profession of Mr Fergusson, and of the situation of Mr O'Brien ; because it is quite enough for me, according to my sense of duty, to say this, that, as a jury sworn to make a true deliverance, you are not to convict any of them, whatever rank or situation belongs to them, unless you are conscientiously satisfied that they are guilty. You will deliver the same verdict that you would between the king and defendants of any other description.

Gentlemen, what has fallen from the last witness obliges me to take the character of the proceeding which gives rise to the cause, from his friend ; who, when he was addressing you in the course of this afternoon, said, and truly said, that such a proceeding in a court of justice, which the last witness represented as an idle panic, most loudly called for the interposition of the law. That witness may have represented those transactions, as I have no doubt he did, as it seemed just to him to represent them. Certainly I was not personally present ; but I was within hearing, and I can say that that gentleman is a man of stronger nerves than any other man in this country, if the representation he has given of this scene is a true one. By a true one I do not mean that it is not one that the gentleman believes to be true ; but the evidence of Mr Justice Heath gives it a character which I believe every man in the county

of Kent who was present would give it—namely, that it was a proceeding utterly inconsistent with the safe administration of justice; that it was attended with a degree of indecency and tumult that was never witnessed in a court of justice before, and I trust never will be witnessed in a court of justice again.

Gentlemen, having no anxiety about the fate of this or any other cause, except so far as it is fit for me to have an anxiety founded upon the public interests, whenever this cause comes to its conclusion, I think the noble peer, the defendant, who holds a situation high in this country, ought to join with all his fellow-subjects in thankfully acknowledging that the Attorney-General, having reasonable accusing evidence to lay before a jury (whether it is satisfactory to their minds, is another consideration), should show to the country that transactions of this sort shall not be carried on without being brought under the notice of a court of justice.

Gentlemen, accusations of all sorts are tried in this country with great propriety; but if you acquit a man of treason is a man to start up and say that the public are to be indignant because another warrant has been issued against him. I remember in this very court, in the last cause that was tried here at bar, my lord exerted himself with great vigour, by taking immediate notice of such an insult as was then offered to the court. My learned friend says, why did not the Judges, who were present, do their part, by taking notice of the fact at the moment? I will give the answer to that:—The Judges of the country are but men. Although they are placed in high, judicial, and honourable situations, yet they are placed in situations in which they are to see that their conduct is not only the best that they can pursue, but, when they proceed to acts of punishment, that their conduct is perfectly adapted to the subject with which they are dealing. If the five Judges upon the bench had seen this as an idle panic, perhaps those Judges would have treated it as an idle panic. But how does Mr Justice Heath, upon whom my learned friend relies so much—how does he mention the scene that was passing? He says that he never witnessed such a scene before. My learned friend says, I might have called another learned Judge as a witness; but when I call witnesses who are above all suspicion, men as honourable as any men in this country, to state to you all that that learned Judge would have had to state to you, I think I shall have acted neither unfitly for the public or the defendants. But with reference to that conversation (upon which I must farther observe by and bye) that has been stated by Mr Solicitor-General and by Mr Abbot to have passed between Mr Justice Lawrence and Lord Thanet, I should be glad to know what foundation there is for the reasoning of my learned friend, that Mr Justice Lawrence ought to have committed or attached Lord Thanet. I think I am entitled, under the circumstances of the evidence in this case, to represent him as perfectly

ignorant of those causes which occasioned so much confusion in the court.

Mr ERSKINE. I never meant to say so.

Mr ATTORNEY-GENERAL. My learned friend certainly did not state it exactly in these words ; but he will, I am sure, excuse me for putting him in mind of the expression he made use of, and I shall now endeavour to repeat the very words he used : " Mr Justice Lawrence, instead of asking Lord Thanet to do him a kindness, should have attached him."

My learned friend will not, I am sure, interrupt me again ; for when I take notice of anything that is said in so able a defence, I do not mean to lay it down that counsel are to be responsible for every expression that hastily falls from them ; but expressions may have an application which I feel it my duty to remove ; and I only wish to set right one of the most respectable, and indeed all those respectable characters who presided on the bench upon that day. I shall, therefore, say no more upon that subject.

Gentlemen, the question is now before you ; and I am happy to have the testimony of my learned friend that, taking this proceeding as a mere proceeding of accusation, it is a highly proper one, and when I state that, I mean to state merely the satisfaction I feel in the concurrence of his opinion with my own judgment.

Gentlemen, having said this much, give me leave to concur most fully in all that my learned friend says with respect to the beneficial effects of a lenient administration of the law, but not so lenient as to make the law ineffectual.

Gentlemen, it was hinted to me before my learned friend began his address to you, that, with respect to two of the defendants, it might be consistent with the interests of justice that the trial should end there ; and why did I consent to that ? There was evidence to go to the jury, as against Mr Thompson ; I admit, not evidence to convict him—not evidence, perhaps, with respect to his identity ; but with respect to Mr Gunter Browne there was much more considerable evidence to go to you, subject still to the question of identity. But I know this, that the great interests of public justice are better satisfied by not pressing for conviction, even when you *can*, perhaps, obtain it, if you think there are doubts whether or not you *ought* to obtain it.

Gentlemen, another circumstance is, that I thought it due particularly to one defendant, with respect to whom I think this the clearest case—Mr O'Brien. I wished to give him the benefit of Mr Browne's and Mr Thompson's evidence, if he thought proper to call them, with respect to some material circumstances.

Gentlemen, attend to what I am now stating. When Mr Sheridan is asked whether, from the circumstances that fell within his observation, he believes that Lord Thanet and Mr Fergusson meant to favour the escape of Mr O'Connor ? he says : From the

facts that fell within my observation, I answer it in the negative. So I say in this case, it is not merely (for the rules of evidence permit one so to state)—it is not merely from what *does* appear that a jury is to judge, but also from that which *does not* appear. Now *see* what is the case on the part of the Crown with respect to Mr O'Brien. In the first place, you have the evidence of a most honourable person, Mr Serjeant Shepherd. My learned friend says that you, gentlemen of the jury, are not to attend to general questions, such as "Did a person appear to do so and so?" but you are to have the facts as the grounds upon which that appearance is inferred. That proposition is to be carried this length, that, as far as the nature of the transaction will admit, instead of giving the impression of your mind, as collected from the circumstances, you shall give the circumstances which have created that impression. I am sure his Lordship will remember, that in the case of Kyd Wake, who was tried for that detestable riot with respect to the King's person, a question was put, "Did he appear to be active in the riot?" and the jury concluded that which they did conclude upon that circumstance; recollecting that the nature of the transaction was such, that they must be content with such an answer. And, indeed, my learned friends themselves put the question to Mr Smith and Mr Warren—respectable witnesses unquestionably—"Did they (the defendants) appear to encourage the riots?" But, permit me to say, it did not rest so with Mr Serjeant Shepherd; for he told you he wished to give you the evidence upon which he formed his opinion. Gentlemen, you will next observe that, giving Lord Thanet all the benefit that might arise upon this statute of 14 Geo. III. (upon which I shall say a word by and bye), can Mr O'Brien allege anything of that kind? Rivett has told you distinctly (and so it turns out from Mr Sheridan's evidence) that there was a rumour of a warrant, which created so much indignation; Mr Sheridan admits that there was that rumour, but Mr O'Brien did not choose to rely upon that; he wanted to know how the truth of the rumour was; and accordingly, in the presence of Mr Thompson, a member of Parliament, he did make inquiries of Rivett, and coming to him, as Rivett relates, he, Mr O'Brien, proposed a bet. He says that Mr O'Brien then went back again to where Mr O'Connor was; there was some conversation between them, and when the verdict is brought in Mr O'Connor attempts to escape. Now, I ask you, as honest jurymen, if this is not true, why is it not contradicted; and if it is true, is it possible to acquit Mr O'Brien?

Now, with respect to the case of my Lord Thanet and the case of Mr Fergusson, gentlemen, I declare to you most solemnly that I respect the high situation of the one, as I respect the professional situation of the other; but in this case, gentlemen, the question, and the only question, is, "Did they make a riot?" I desire that the question may be put upon its true merits. My learned friend

says, "It is a most extraordinary thing, that in such a case as this, stating that there was a general riot, we have not been able to fix the name of any other rioter with these five defendants." Has my learned friend denied that it was a general riot? Has my learned friend denied that this was a very serious riot, affecting a great variety of persons? Now, though he is bound to admit the existence of a riot, my learned friend is just as much at a loss to find the names of the other persons as I am; and why? Because the circumstances attending the transaction are such, that, if you will not attend to the conduct of the few individuals who have been pointed out, it is not in the nature of things, that you should bring any man to punishment in such a case. Then my learned friend says, "What motive could Lord Thanet have?" Mr O'Connor, who has been represented as an extremely judicious man upon some occasions, was certainly so foolish as to think such a project as this might have been practicable; but is it in fact imputed to these persons that they meant to turn Mr O'Connor loose, in order to subvert the constitution of this country? (for so my learned friend states it); and to do all this mischief which he is pleased to represent to you, must have been the consequence of Mr O'Connor's escape. He seems to have forgot, that all I meant to impute (for aught I know, there may be men in the country who know more of it than I do), that all I am charging upon these defendants is, that they meant to rescue Mr O'Connor from any farther demand that justice might have upon him. Whether Mr O'Connor was immediately to take himself out of this country, into a situation in which he could do no mischief, or whether he was to remain in this country to do mischief, is a question with which I have no business—I have no necessity either to impute to the noble lord or the learned gentleman any particular knowledge or intention upon that subject. Then my learned friend says, "Do you think persons in the situation in which these two defendants are (I mean Lord Thanet and Mr Fergusson), would further such a purpose as this?" Why, gentlemen, if I am to give an answer to this question, I am bound (for I would not have brought this prosecution, if I had not thought it a fit question for the decision of a jury) to speak out plainly upon the subject; and I say, fairly, that if any man had asked me before this trial was over, whether Mr Fergusson and Lord Thanet, having heard the particulars of the evidence, would not have removed to situations where they could not have been implicated in this charge, I should have thought the imprudence of doing otherwise so great, that it could not have happened. Mr Fergusson knew all the particulars of the evidence, and so did Lord Thanet, because he heard the evidence summed up, and I cannot help feeling here some degree of surprise, when the question was put to me, upon what was probable, or what was improbable, after hearing the evidence upon that trial.

Gentlemen, that there was a riot is clear beyond all doubt. Now let us see how it is occasioned. Mr O'Brien knew of this rumour, at the time the application was made to the Court, by Rivett and Fugion. He was aware, that Mr O'Connor was not discharged. He learned, and Lord Thanet learned, and I believe nobody doubts the fact, that everybody learned this circumstance, not only that he was not then to be discharged (with reference to which I am happy to find that my learned friend and I agree upon the point of law), not only that he was not then to be discharged, but it was publicly taught to everybody in court, what was the reason and what the cause for which his discharge was to be withheld from him. And here, without commenting upon that measure, which is supposed to have raised so much indignation, I take leave to say most confidently, that it does not belong to any person, of any rank or situation whatever, to interpose in the execution of a warrant, upon his notion whether the magistrate has acted right or wrong in granting it. It is granted, and must be acted upon. If the magistrate has acted improperly, the law of the country is not so feeble as not to be able to reach the misconduct of the magistrate. If every man is to judge in such a case, surely the country is in a situation most embarrassing, most difficult, and most awful (for, remember, if men will take the law into their own hands where there are verdicts of acquittal, they may where there are verdicts of guilty). Well, then, the parties having distinctly learned, that there was a warrant, and having been authoritatively told, that this warrant having issued, Mr O'Connor was not to be discharged, I shall call your attention to what I take to be the few circumstances that must decide this case. Gentlemen, if you please, I will put it so, not to give Rivett any credit, if, upon any other part of the case, he is contradicted; but I should do that with great reluctance, till I am satisfied that he is not worthy of credit. But I will say this, that you may reject the whole of the evidence of Rivett, with respect to Lord Thanet and Mr Fergusson, out of the case, and say, whether out of the negative evidence given on the other side, you can get rid of the facts sworn and deposed to by persons whose characters are out of the reach of the breath of suspicion.

In the first place, with respect to the evidence of somebody, whose name I forget, upon the trial at Maidstone, a witness was asked, whether Mr O'Connor wished to favour an invasion of Ireland? He said, "Quite the contrary." So here a witness when he was asked whether Mr Fergusson appeared to be favourable to this rescue, he said, "Quite the contrary." This was a much stronger negation than that of the Maidstone witness; but upon being asked what was the circumstance from which he inferred that Mr Fergusson's demeanour was quite the contrary? he says, he complained of the Bow Street officers' coming forward. Now, Mr Fergusson must have known them to be Bow Street officers, be-

cause he was present when they were examined; and being a gentleman who wears the robe that I wear, he could not but understand that they were not to be disturbed, *because* they were officers. The great proof of his demeanour then being quite the contrary, is, that he makes a complaint of these persons standing between the prisoner and the jury; whether the fact was so or not, I do not know. Mr Garrow says, he apprehends, from the state of the court, it could not be at that period of the trial. Then what is the answer to that? I will put it in plain intelligible words:—If Mr Fergusson had been misled, by reading the statute 14 Geo. III., which says, “that gaolers shall not detain prisoners for their fees, but that they shall be discharged;” if he had not found out the difference between a verdict of not guilty and that judgment which authorises a man to go without paying his fees; if it had not occurred to him, that, when this discharge is given, detainers may be lodged in civil suits, or for other felonies, I hope in God we are not so revolutionised as to contend that a man shall not be charged with two treasons, as well as with two felonies. Upon Mr Fergusson being told, that there was this warrant (the warrant being publicly exhibited), it is not for me to examine what it became Mr Fergusson to do, because of that he is himself the judge. But I say, if, after he was apprised of that, he took any part, not by positive actual conduct, but by encouragement, capable of being exhibited to the understandings, and impressed upon the minds of the jury, as such (however differently persons may tell their stories, with reference to certain facts, in which they do not agree, however strongly individuals may speak with respect to facts that they did not observe, however negatively they may say they did not see this or that, and they do not think it possible, and so forth); if there are positive circumstances sworn, which amount to acts of encouragement, which a jury can feel and act upon, they must look to that positive evidence; and if, in this case, gentlemen, you find that positive evidence existing, however unwilling you may be to find such a verdict, you are sworn, upon your oaths, to give a verdict according to law; and you must find a verdict, therefore, in support of this information.

Gentlemen, I will not go into a detail of the evidence, which you will hear from his lordship; but with reference to Lord Thanet and Mr Fergusson, I cannot part with the evidence given by Mr Solicitor-General; but I shall first make this observation upon the evidence of Mr Serjeant Shepherd, to whose credit, honour, and accuracy we all do justice, that where that evidence presses upon Mr O'Brien, he says, that “Mr O'Brien having turned round and looked up at Mr O'Connor, it made an impression upon his mind;” and also that, “as far as he observed, Lord Thanet was defending himself.” He judges, therefore, of appearances, both with reference to Lord Thanet and with reference to Mr O'Brien; and what he

says of the appearances with reference to Mr O'Brien certainly throws a great degree of credit upon his accuracy when he speaks with respect to Lord Thanet. The same credit is due, I take it, to Mr Solicitor-General; and you will have the goodness also to attend to the evidence of Mr Hussey; for if you believe what he states, that when the man was pressing forward to execute the warrant, Lord Thanet inclined towards the bar, and put his person in the way; if that fact is proved to your satisfaction, Lord Thanet is guilty upon this record. And if other facts are proved against Lord Thanet, and similar facts are proved against Mr Fergusson, you must decide upon all the evidence, and not from what other men did *not* see or observe; you are not to decide upon the eloquence of my learned friend, but upon the oaths of persons who depose positively to facts. Then my learned friend made an observation upon the evidence of Mr Solicitor-General, with reference to whom, as a moral character, I say nothing, because he is above all praise that I can bestow upon him. I have no doubt that it was an extremely painful thing for him to give his evidence this day; but his evidence is extremely material, because he speaks to the circumstance of Mr Fergusson crying out that Mr O'Connor was discharged. He tells you the pains he took with his brother in the profession to tell him that he was not discharged; and he speaks to the warrant being produced, and, therefore, there was a public notice, that there were further demands of justice upon Mr O'Connor. He states upon his oath, that he did most distinctly and cautiously attend to the conduct of Mr Fergusson and Mr O'Connor; and then he says this: "I fixed my eye upon O'Connor, and I observed Mr Fergusson, and other persons whom I did not know, encouraging Mr O'Connor to go over the bar." Encouraging is a general word undoubtedly; but it is a word which expresses the impression which facts falling under his eye had made upon his mind; and when he was asked what he meant by encouragement, he describes it to have been by his actions. But he not only gives his evidence in this way as to that particular fact, but he gives it also with a caution, which entitles it to the same degree of credit which Mr Serjeant Shepherd's evidence derives from its accuracy; for when he comes to speak of a circumstance, with reference to which he is not certain, he tells you, "Mr O'Connor jumped over the bar, and Mr Fergusson turned himself round and appeared to me to follow Mr O'Connor; but I cannot say that he did." He qualifies that apprehension in his mind, by telling you that he may be mistaken, and then he gives you the reason why he doubts whether that apprehension was or was not justly founded; and he finally states in his evidence a circumstance respecting Lord Thanet, which I think will deserve a great deal of your consideration. Gentlemen, a learned friend of mine behind me, Mr Abbott, has told you, that he heard Lord

Thanet express himself in the manner which he has described, and I trust I shall not be told that the manner of an expression is not evidence of the import of the mind of the man from whose mouth the expression flows. He states to you the circumstance of Mr Sheridan's conversation with the learned Judge, and he was struck with the extreme difference of the manner in which Mr Sheridan expressed himself to that learned Judge from the manner in which Lord Thanet expressed himself. Am I to be surprised that Lord Thanet could be engaged in such a project, if I can believe, that he, a peer of the realm, made use of such language to a Judge of the country, that "he thought it fair, that he, the prisoner, should have a run for it?"—a run, for what? Why, a run to elude justice!—a run to get out of the hands of a court of justice—a run to prevent being brought to justice; and this is the sentiment of a peer of the realm—"he thought it fair to have a run for it." And, considering it to be fair, he acted upon that apprehension as far as he had the power of acting. This is a circumstance requiring your anxious consideration. Whether this noble peer struck Rivett first, which I do not find Rivett say that he did, is of no importance. These men have a certain temper and degree of spirit about them, which might, perhaps, induce them to thrash a peer more than anybody else, if they felt themselves ill-treated; but Mr Rivett may take this advice of me—I hope, in future, he will not use such treatment if he can avoid it. But what presses upon my mind is, that if Lord Thanet, treated in the manner he was by Rivett, had no connexion with this project of rescue; if he had not, either from the circumstances that fell under Mr Sheridan's observation, or from other circumstances, manifested that he meant there should be a rescue, is it the conduct of a man of considerable situation—is it the conduct of a man of common sense, instead of making a serious complaint upon the subject, instead of stating, as he naturally would have done, "this project of rescuing a man from the hands of justice is that species of project which, in my situation, it must be known I must feel to be inconsistent with propriety, duty, and honour, to have embarked in?" On the contrary, he is perfectly neutral; no complaint is made upon the subject. It appears to me, that if I had been struck two or three times by that officer, the manner in which I would have acted upon that occasion would certainly not have been to have immediately stated that "it was fair the prisoner should have a run for it," but to have made some application to have those punished of whose conduct I had a right to complain. Now, this evidence of the Solicitor-General is also confirmed by Mr Abbott, and by Mr Serjeant Shepherd, who states to you what Lord Thanet did; and he states it to you, that he was not holding up his hands for the purpose of rescuing himself from the pressure of the mob, but was holding up his hands to defend himself against those per-

sons who were pursuing Mr O'Connor ; and he gives his evidence in such a way that you can have no doubt as to the personal conduct of Lord Thanet. Then, when you have heard this evidence on the part of the prosecution, I mean the evidence that goes to prove positive facts, it will be for you to decide whether they are not at all reconcilable with the negative evidence given on the part of the defendants. I have not gone into the whole of the evidence, because I feel that my lord has a painful and an anxious duty to perform, and whatever your verdict may be, I am confident and sure that this prosecution will have been very beneficial to the country. I hope and trust that I shall never see such another ; but whenever I see an occasion which calls for it, whilst I hold the situation which I have the honour to fill, I will not fail to institute it.

Gentlemen, having said thus much, and having endeavoured to discharge myself of my duty, you will be good enough to say what is due as between the public and the defendants.

LORD KENYON'S CHARGE TO THE JURY.

GENTLEMEN OF THE JURY,—If, consistently with my own sense of my duty, or consistently with the public expectations—consistently with the expectations of the bar on the one side, and the other, and with your expectations—I could relieve myself from going through, in detail, all the particulars of this case, after considerable bodily and mental exertions already, I should certainly save myself from a great deal of trouble. But I will not shrink from the discharge of my duty, though it may be attended with labour and pain.

This is a case of the first importance. I do not remember any case that ever happened in my time, in the shape of a misdemeanour, of more importance to the public ; and it has been conducted in the most solemn manner. It is brought before the whole Court, assisted by a jury of gentlemen from the county of Kent, taken from the highest orders of the people, and whose educations and stations in the world qualify them to decide causes of such importance. It is usual, in causes of this kind, where there is a number of defendants, and where the evidence does not extend sufficiently to them all, to submit to the jury, before the end of the cause, whether those upon whom the evidence does not attach, ought not to be acquitted, in order that the other defendants may avail themselves of their evidence, if they shall think proper. It was with a view to that very state of the question that I took the liberty to submit to you, that two of the defendants ought to be acquitted

before the other defendants produced their evidence ; and I did it with a view that the others might, if they thought fit, appeal to their evidence, to show, on the rest of the case, what the real state and justice of it was.

In dispensing the criminal justice of the country, we have sometimes an arduous task to perform. It is not a pleasant thing, most certainly, to condemn any one of our fellow-creatures to punishment ; but those who are intrusted with the administration of the criminal justice of a country must summon up their fortitude, and render justice to the public, as well as justice tempered with mercy to the individual. I have the authority of Lord Hale, one of the greatest and best men that ever lived, for saying, that juries are not to overlook the evidence—that they are not to forget the truth, and to give way to false mercy : but, without looking to the right hand or the left, they are to weigh the evidence on both sides, and then, according to the best of their judgment and understanding, to do justice to the public as well as to the defendants.

Before I proceed to sum-up the evidence, I shall only make one other observation, which was made by Mr Whitbread in giving his evidence, the tone of whose voice I never heard before. Having gone through his evidence, he gave us this *legacy*, as a clue to direct us in the decision of this case—“ that, in a scene of so much confusion, there are many things which must escape the observation of every individual.” Having stated thus much to you, I will now proceed to sum-up the evidence ; and when I have done that, I shall make some few observations on it.

[His lordship here summed-up the evidence on both sides, and then proceeded as follows:—]

I now proceed to make a few observations of my own. There is no occasion to give you my authority, or the authority of those who hear me, upon this point. There is no doubt that the prisoner was not entitled to be discharged ; for, when a verdict of acquittal is entered, a Judge may order a party to be detained, and compel him to answer other charges that may have been brought against him. On this point there is no difference of opinion ; it is not even disputed at the bar. The case is clear ; and there is no doubt upon earth that a prisoner, in many cases, though he may be acquitted, as in the case of an appeal of murder, cannot be discharged though he be acquitted of the murder.

I have stated the evidence on the one side and the other ; and although there is strong contradictory evidence, yet I think there is a great deal of evidence which goes in support of the charge. There were some observations made by the learned counsel for the defendants, which, perhaps, were not altogether warranted. Counsel are frequently induced, and they are justified in taking the most favourable view of their clients' case ; and it is not unfair to pass over any piece of evidence they find difficult to deal with, provided

they cite, fairly and correctly, those parts of the evidence they comment upon. The learned counsel for the defendants, in his remarks on the evidence, totally forgot the evidence of Mr Parker. If his evidence is to be believed, and I know no reason why it is not, he certainly gave important evidence in support of this charge—that the defendants evidently appeared to be attempting to stop the officers, and assisting the escape of Mr O'Connor. The learned counsel for the defendants did not choose to deal with this evidence, though he conducted the cause with all possible discretion, abilities, and eloquence. As I have before observed, there is apparently a great deal of contradiction in this cause. I must again state the observation of Mr Whitbread, and which was obvious if he had not made it, that "in such a scene of tumult and confusion, many things must pass which escape the observation of every individual." But there is no doubt of one thing—one thing is clear: if Rivett had not the scuffle which he swears he had with Mr Fergusson and my Lord Thanet, and if he did not wrench a stick out of Mr Fergusson's hand, he is palpably forsworn, and grossly perjured. For him there is no excuse in the world. What motive he might have I do not know: he has no interest; and in weighing the testimony of witnesses, I cannot consider the rank of a person, nor his station. It is clear, if he has not told the truth, he is guilty of perjury. In this scene of tumult men's minds must have been greatly distracted. It is for you to say what degree of credit you will give to all the witnesses. These are the observations I have to make; and I should retire from my duty if I had not made them to you.

It has been said, in the course of this cause, that it was against all probability. Was it probable that an attempt was meditated to effect the escape of a person such as Mr O'Connor, in a court of justice, in a large town, and in a public part of that town? Was it probable that this man himself should attempt that which, Mr Sheridan said, appeared to him to be an act of madness? Is it most likely that he should have attempted this with hopes of success, with or without assistance? This is matter for your consideration. It is very likely you have forestalled all the observations I have made; but still it was not less my duty to make them. The whole of this case is for your decision. It is a case in which the interests of the individuals, as well as of the public, are highly embarked.

At eleven o'clock at night the jury retired; and after being out about an hour, they returned with the following verdict:—

| | |
|-------------------------|----------------------|
| THE EARL OF THANET, | } Guilty. |
| ROBERT FERGUSSON, Esq., | |
| DENNIS O'BRIEN, Esq., | } <i>Not Guilty.</i> |

The reader being now possessed of the arguments of the counsel, the whole of the evidence, and the sentiments of the Court upon both, the editor refrains from any observations of his own upon the verdict : but he feels that he owes it to the Earl of Thanet and Mr Fergusson to add what was said by themselves in their own exculpation when brought up to receive judgment ; and, above all, their solemn oaths in support of their innocence. It was certainly a great indulgence in the Court to suffer their affidavits to be recorded, because strictly speaking, affidavits that cannot, by the practice of the Court, be received by the Judges in mitigation of punishment, as opposing the truth of the verdict, cannot be permitted to be filed. This was, however, permitted upon the present occasion.

On Friday, the 3d of May, Mr Attorney-General prayed the judgment of the Court.

LORD KENYON (to Mr Erskine).—Have you anything to say for the two persons convicted ?

MR ERSKINE. The cause having been tried at bar, your lordships are already apprised of everything I could have to offer. I believe Lord Thanet and Mr Fergusson wish to say something to your lordships.

LORD THANET.

MY LORDS,—Before the sentence is pronounced, I beg leave to address a few words to the Court—not for the purpose of impeaching the veracity of the witnesses for the prosecution, or of arraigning the propriety of the verdict : on those points I shall say nothing. What I mean to submit to the Court is, a short, distinct narrative of the facts, as far as I was concerned in them.

I attended the trial at Maidstone in consequence of a subpoena. When I had given my evidence, I retired from the court, without any intention of returning, until I was particularly requested to be present at the defence made by Mr Dallas, the prisoners' counsel. At that time I had never heard of the existence of a warrant against Mr O'Connor, nor of any design to secure his person, if he should be acquitted. The place I sat in was that which Mr Dallas had quitted, when he removed to one more convenient for addressing the jury. While sitting there, I heard for the first time, from Mr Plumer, that he had reason to believe there was a warrant to detain Mr O'Connor. When the verdict was pronounced, I went into the solicitors' box, to shake hands with Mr O'Connor, which I did without even speaking to him. Many others pressed forwards, apparently for the same purpose. Upon a call for silence and order from the bench, or from one of the officers of the Court, I immedi-

ately sat down on the seat under that part of the dock where Mr O'Connor stood. At that period some confusion arose, from several persons attempting to get towards him, one of whom said he had a warrant to apprehend him, for which he appeared to me to be reprimanded by Mr Justice Buller, in some few words, which I did not distinctly hear. The moment the Judge had passed sentence on O'Coigly, a most violent pushing began from the farther end of the seat on which I sat. From the situation I was in, I did not perceive that Mr O'Connor was attempting to escape. He was a good deal above me, and I sat with my back to him. I continued sitting in my place, until several persons on the same seat were struck, among whom I imagine Mr Gunter Browne was one, from the complaint he afterwards made of ill-treatment, but whom I never saw before or since to my knowledge. I then began to feel the danger I was in; but the tumult increased about me so rapidly, that I was unable to get over the railing before me. I stood up, however, and used all the efforts in my power to go towards the Judges, as to a place of safety; but at that moment, by some person or other, I was borne down on the table, where a man (I afterwards found was Rivett) struck at me several times with a stick, which I warded off, as well as I was able, with a small walking stick. Rivett, as he struck me, charged me with striking him first, which I denied, and called out to him, as loud as I could, that I had not struck him.

I have now detailed, as clearly as I am able, my situation and conduct during the disturbance; and I do most solemnly declare on my word of honour, which I have been always taught to consider as equally sacred with the obligation of an oath, and am ready to confirm by my oath if I am permitted to do so, that I never did any one act but what was strictly in defence of my person. It is not at all unlikely, that, in such a scene of confusion, I might have pushed others, who pressed against me, to save myself from being thrown down; but I most solemnly deny that I lifted my hand or stick offensively, or used any kind of violence to any person. I declare upon my word of honour, that I knew nothing of the existence of a warrant to detain Mr O'Connor, until I heard it from Mr Plumer; and that, even then, it never entered into my mind that it was to be served upon him in the court, until some person called out that he had a warrant. I declare upon my word of honour that the obstruction which the officers met with on the seat where I sat was perfectly unintentional on my part, and was solely owing to the situation I was in; that I did nothing offensively, but, on the contrary, was violently attacked and assaulted; and that I retired from the scene of confusion as soon as I was able. And, finally, I do most solemnly declare upon my word of honour, that I did not concert with any person the rescue of Mr O'Connor, by violence, or by any other means whatsoever; that I had no idea of doing it alone; and that I was not privy to any consultation of

other persons, either for the purpose of rescuing Mr O'Connor out of the custody of the Court, or of preventing the execution of the warrant.

As I hold myself bound to state fairly, not only what I did, but what I said, as far as it is in my power to recollect what passed, with the agitation of such a tumult on my mind, I acknowledge that some words may have escaped me, which I ought not to have spoken. I am charged with having said, "that I thought it fair that he should have a run for it." I will not dispute about the exact words. I confess they were extremely inconsiderate. Some allowance, however, I think, may be made for the instant feelings of a man so ill-treated as I had been.

My Lords, I am not sanguine enough to expect any immediate advantage from these declarations. I know they will not avail me against the verdict; but the truth of them will not be suspected by those who know me; and hereafter, when all the circumstances of this transaction shall be coolly reconsidered, I am confident they will have weight with the public.

My Lord, I have an affidavit prepared, if your Lordship will accept of it.

LORD KENYON. To the same effect?

LORD THANET. Yes, my lord.

LORD KENYON. We cannot here receive an affidavit against the verdict of a jury; but I believe it may be ordered to be filed. I believe there is no objection to that.

Mr ERSKINE. I believe there is not, my lord.

It was ordered to be filed.

AFFIDAVIT.

The defendant, the Earl of Thanet, maketh oath, and saith that he attended at the Special Commission held at Maidstone, in the county of Kent, for the trial of Arthur O'Connor, Esq., and others, for high treason, in consequence of a subpoena served upon him, to give evidence on behalf of the said Arthur O'Connor, and which was the sole cause of his attending at the said trial; and he saith, that after he had given his evidence, he retired from the court, and had no intention of returning thereto, till he was particularly pressed to be present to hear the defence of the counsel for the prisoners—merely as a matter of attention and countenance to the said Arthur O'Connor, who was his acquaintance; and he further saith, that at that time he had no knowledge whatever of the existence of any warrant against the said Arthur O'Connor, nor of any intention of securing his person, if he should be acquitted on the indictment. And this deponent further saith, that he sat in the place which Mr Dallas had left, when he went to a more convenient one, for the purpose of addressing the jury; and that,

whilst he was sitting there, he for the first time heard from Mr Plumer that he had reason to believe there was a warrant to detain Mr O'Connor ; and this deponent further saith, that on the verdicts being pronounced, he stepped into the solicitors' seat to shake hands with Mr O'Connor, which he did without even speaking to him, and without any other motive than that of congratulating him as a friend on his acquittal, at which time many others were coming to the same place where this deponent was ; that upon a call for order and silence from the bench, or from one of the officers of the Court, he immediately sat down on the seat under that part of the dock where Mr O'Connor stood, and at that period a slight confusion arose from several persons attempting to get towards Mr O'Connor, one of whom said he had a warrant to apprehend him, for which he appeared to be reprimanded by the Honourable Sir Francis Buller in a few words, which this deponent did not distinctly hear. And this deponent further saith, that at the moment the Judge had passed sentence of death on O'Coigly, the most violent pushing began on the seat on which he sat (this deponent not observing that Mr O'Connor was attempting to get away), and he continued sitting in his place till several persons on the same seat were struck, and amongst whom he believes was Mr Gunter Browne, whom he never before or since had seen, to his knowledge ; and from that moment this deponent began to feel the danger he was in, the tumult about him increasing so rapidly that he was unable to get over the railing before him ; that, however, he stood up, and used all the efforts in his power to go towards the Judges, as a place of safety ; but he was instantly pushed down on the table, when a man, whom he has since found was John Rivett, struck at him several times with a stick, which blows he warded off as well as he was able with a small walking-stick, the said Rivett charging this deponent, as he struck at him, with striking him first, which this deponent denied, calling out at the same time as loud as he could that he had not struck him. And this deponent further saith, that he never did, during the said disturbance, any one act but what was strictly in the defence of his person, though he admits that he might have pushed several persons that pushed against him, to prevent his being thrown down, but that he did not lift hand or stick, or use any violence whatsoever, to the said John Rivett, or any other person. And this deponent positively saith, that he was not privy to, or acquainted with, the existence of any warrant to detain the said Arthur O'Connor, until he heard of such warrant from Mr Plumer, as before set forth ; and that it never entered into his mind that it was to be served upon him in Court, until the person before mentioned called out that he had a warrant. And this deponent further saith, that the obstruction the officer met with on the seat on which this deponent sat was perfectly unintentional on his part, and solely owing to the unfortunate situation

in which he had accidentally placed himself, as the seat was so narrow that it was with great difficulty any person could pass that way. And this deponent further saith, that he did nothing with intention to offend the Court, or any other person; but, on the contrary, he was violently attacked and assaulted; and that he retired from the scene of confusion as soon as he was able. And this deponent further saith, that he doth most solemnly upon his oath declare, that he had not consulted, concerted, or advised with any other person or persons whomsoever, to favour the escape of the said Arthur O'Connor, either by violence, or any other means whatsoever; and that he had no idea of doing it alone; and that he was not privy to the consultation or agreement of any other person or persons, either for the purpose of rescuing the said Arthur O'Connor out of the custody he then was in, or preventing the execution of any other warrant upon him.

THANET.

Sworn in Court the 3d of *May* 1799.

By the Court.

MR FERGUSSON.

MY LORDS,—I have nothing to offer to your lordships, either with respect to the charge itself, the manner in which it was proved, or with respect to my own peculiar situation, upon which your lordships' judgment, whatever it may be, must make a deep and lasting impression. I cannot so soon have forgotten the manner in which these topics were urged in your lordships' presence, in the course of that defence which was made for me by the most zealous of friends, the most able and eloquent of men.

I gladly, however, avail myself of the privilege of addressing your lordships, because it enables me thus publicly to say, that whatever be the political opinions which some may choose to ascribe to me—whatever be those which I do in fact entertain,—opinions which I believe to be strictly consonant to the best principles of the law and constitution of my country; but whatever be these opinions—whatever, even, my lords, be the appearances against me, standing where I now do—still I can with truth and sincerity declare, that there is no man who hears me who is more deeply impressed with a sense of the respect which is due to the administration of justice, of the strict obedience which should be paid to the proceedings of its courts, and of the honour and reverence which should ever attend the persons of its Judges. Weak, indeed, must be the opinions, or wicked must be the views, of that man who wishes to degrade the authority of the law; for, without it, not one of the blessings of society can have security for one moment.

My Lords, I can safely acquit myself of this part of the charge, because my reason, as well as my conscience, tells me it is the last offence I am capable of committing.

I appear, however, before your lordships, to receive that judgment which your duty calls upon you to pronounce, in consequence of the verdict of a jury. That verdict I do not mean to arraign: it was given on contradictory evidence, the value and balance of which it was the peculiar province of the jury to weigh and to decide.

But if your lordships' long practice in courts of justice shall have shown you the fallibility of human testimony—if it shall have shown you still more the fallibility of human judgment founded upon human testimony, I hope I may meet with your indulgence, if I here make a solemn declaration of that with respect to which I alone *cannot* be mistaken.

My Lords, upon the occasion which has given rise to these proceedings, I was of counsel for one of the prisoners who was tried at Maidstone. I was seated in the place which was allotted for the counsel for the prisoners; and being wholly engaged in the discharge of my duty, I solemnly aver, that whatever might be the previous consultations or conversations of others with respect to the practicability or impracticability of a rescue, I never had even heard the rumour that a fresh warrant was in existence, until after the jury had retired to consider of their verdict. It was not till after they had so retired, and very shortly before they returned into court, that I learned that circumstance. I was in my place, seated where I had been during the greater part of the day, at the moment when the verdict was delivered; and I do most solemnly aver, that from that moment until I was pressed upon by the crowd, I did not stir from that seat. I do further declare, that when I was forced upon the table, I used no violence to any one; that the whole of my endeavours went to allay the ferment, and to remove those of my friends whom I loved and regarded, from the scene of disturbance, in order that they might not be implicated in any charge that might afterwards be brought against those who were the authors of it.

I can therefore say, in the presence of this Court, and under the eyes of my countrymen—that which, in the name of my God, I have already sworn—that I am innocent of this charge.

Here Mr Fergusson put in an affidavit, which he had previously sworn.

AFFIDAVIT.

Robert Fergusson, of Lincoln's Inn, Esquire, one of the said defendants, maketh oath, and saith, that he was of counsel assigned by the Court for John Allen, one of the prisoners indicted with

Arthur O'Connor for high treason, at a Special Session held at Maidstone in May last, and that as such counsel he was employed in court during the whole of the day, in the night of which the riot charged in the information took place; he saith, that he neither knew, or had heard, of any fresh warrant against the said Arthur O'Connor, until the jury had gone to consider of their verdict, and very shortly before they returned to deliver it. And this deponent further saith, that he was in the place allotted to him as counsel when the jury returned into court with their verdict, and that about that time he complained to the Court of the interruption which was given to its proceedings by the violence of a person who was pressing forward between the prisoners and the Court; and that upon the complaint of this deponent Mr Justice Buller ordered the said person to be quiet. And this deponent further saith, that from the time when the jury returned with their verdict until after sentence was pronounced, and the disturbance began, the said deponent remained in his place as counsel, and did not leave it until compelled by the violence of those who pressed upon him from the bench behind. And this deponent further saith, that when forced upon the table, he used no violence to any one, but used every means in his power to allay the ferment, and save the Earl of Thanet from the blows of John Rivett, without offering any violence to the said John Rivett. And this deponent further saith, that he had not, during any part of the disturbance, any stick, sword, or other weapon in his hand, and that he did not use or offer violence to any one. And this deponent further saith, that he neither attempted to rescue the said Arthur O'Connor, nor did he at any time agree with others to attempt such rescue, nor was he in any way aiding or assisting, nor did he at any time agree with others to aid or assist the said Arthur O'Connor, in any attempt to be made by him to escape.

ROBERT FERGUSSON

Sworn in Court the 3d day of May 1799.

By the Court.

On the 1st of June the Court gave judgment.

The Earl of Thanet was fined a thousand pounds, and imprisoned for a year in the Tower.

Mr Fergusson an hundred pounds, and imprisoned for the same period in the King's Bench Prison.

SPEECH for JAMES HADFIELD, in the Court of King's Bench, on a trial at Bar, 26th of April 1800, on a charge of High Treason, for shooting at the King.

THE SUBJECT.

THE occasion of the trial of James Hadfield for high treason, in shooting at the King, at Drury Lane playhouse, is too well remembered to require much preface. All the facts, besides, which led to the prosecution, and which ended in the acquittal of the defendant, on the ground of his having committed the act under the dominion of insanity, are fully detailed in the following defence by his counsel.

The successful issue of this trial, notwithstanding the warm and just interest which the whole nation took in the life of a prince who had reigned in their affections for so many years, must ever be considered as a most striking instance of that cool, deliberate, and impartial administration of justice, which, since the glorious Revolution (for we can go no higher), has distinguished this country. What renders this speech the more interesting and important is the few instances which have occurred in our courts where it has become necessary to consider, and with the utmost precision to determine, in what cases mental derangement ought to be held to emancipate such unhappy persons from responsibility to the laws for acts of great atrocity and violence. It is by no means every departure from sound reason and intellect—though sufficient to ground a commission of lunacy, and to deprive an individual of the management of his concerns—that would deliver him from an indictment of murder, or other criminal act of violence. The act itself must appear to have been committed under the full dominion of insanity; and Lord Erskine, therefore, took his stand upon the surest and safest ground as it related to the safety of the public, and, therefore, the surest and safest for the unhappy prisoner. Having, probably, a full security in bringing his case within his principle, as appeared by the result of the trial, he took his claim of impunity as low as possible, and properly maintained the privilege of indemnity for those distempered persons *only* who commit crimes under the dominion of *morbid delusions*, but by no means extending to those whose insanity, *without delusion*, is principally characterised by *violence and turbulent passion*. The principle is of the utmost importance, and the more so from the assent which it received from the Court of King's Bench on a solemn trial at the bar. Lord Kenyon appeared much against the prisoner, in the course of the evidence for the Crown; but after the disclosure of the principle on which his defence was grounded, and the statement of the evidence which would be given to support it, he became convinced, as it was proceeded on; and on its coming up to the principal facts detailed in the following speech, his lordship, with that justice and

feeling which eminently marked his character, delivered his opinion to the Attorney-General (as the opinion of the whole Court), that the trial should not be further proceeded in ; which being acquiesced in by the present Lord Redesdale, then Attorney-General, and the other counsel for the Crown, no reply was made to the prisoner's defence—and he was acquitted.

It was said at the time that the very learned counsel for the Crown were not entirely satisfied with the view taken of the case by the Court (but of the truth of which we have no means of information). Be that, however, as it may—it is one of the noblest features in the practice of our criminal law that, although counsel are by no means bound to acquiesce in an opinion by the Judges adverse to a prisoner upon a capital trial, yet when the opinion is in favour of life—above all—upon the view taken even by a single Judge, much more by a whole Court, *upon the evidence for the party accused*, it would not be considered consonant to the national characteristic of our laws for the ministers of the Crown to step beyond the Judges in the demand of criminal justice.

THE SPEECH.

GENTLEMEN OF THE JURY,—The scene which we are engaged in, and the duty which I am not merely *privileged*, but *appointed*, by the authority of the Court to perform, exhibits to the whole civilised world a perpetual monument of our national justice.

The transaction, indeed, in every part of it, as it stands recorded in the evidence already before us, places our country and its government, and its inhabitants, upon the highest pinnacle of human elevation. It appears that, upon the 15th day of May last, his Majesty, after a reign of forty years, not merely in sovereign *power*, but spontaneously in the very hearts of his people, was openly shot at (or to all appearance shot at,) in a public theatre in the centre of his capital, and amidst the loyal plaudits of his subjects, *yet not a hair of the head of the supposed assassin was touched*. In this unparalleled scene of calm forbearance, the King himself, though he stood first in personal interest and feeling, as well as in command, was a singular and fortunate example. The least appearance of emotion on the part of that august personage must unavoidably have produced a scene quite different, and far less honourable than the Court is now witnessing ; but his Majesty remained unmoved, and the person *apparently* offending was only secured, without injury or reproach, for the business of this day.

Gentlemen, I agree with the Attorney-General (indeed, there can be no possible doubt), that if the same pistol had been maliciously fired by the prisoner in the same theatre at the meanest man within its walls, he would have been brought to *immediate* trial, and, if guilty, to immediate execution. He would have heard the charge against him for the first time when the indictment was read upon his arraignment. He would have been a stranger to the names and even to the existence of those who were to sit in judgment upon

him, and of those who were to be the witnesses against him. But upon the charge of even this *murderous* attack upon the King himself, he is covered all over with the armour of the law. He has been provided with counsel by the King's own Judges, and not of *their* choice, but of *his own*. He has had a copy of the indictment ten days before this trial. He has had the names, descriptions, and abodes of all the jurors returned to the Court; and the highest privilege of peremptory challenges derived from, and safely directed by that indulgence. He has had the same description of every witness who could be received to accuse him. And there must at this hour be *twice* the testimony against him as would be legally competent to establish his guilt on a similar prosecution by the meanest and most helpless of mankind.

Gentlemen, when this melancholy catastrophe happened, and the prisoner was arraigned for trial, I remember to have said to some now present that it was, at first view, difficult to bring those indulgent exceptions to the general rules of trial within the principle which dictated them to our humane ancestors in cases of treasons against the political government or of *rebellious* conspiracy against the person of the king. In *these* cases, the passions and interests of great bodies of powerful men being engaged and agitated, a counterpoise became necessary to give composure and impartiality to criminal tribunals; but a *mere murderous* attack upon the King's person, not at all connected with his political character, seemed a case to be ranged and dealt with like a similar attack upon any private man.

But the wisdom of the law is greater than any man's wisdom—how much more, therefore, than mine! An attack upon the King is considered to be parricide against the State, and the jury and the witnesses, and even the Judges, are the children. It is fit, on that account, that there should be a solemn pause before we rush to judgment. And what can be a more sublime spectacle of justice than to see a statutable disqualification of a whole nation for a limited period, a fifteen days' quarantine before trial, lest the mind should be subject to the contagion of partial affections! *

From a prisoner so protected by the benevolence of our institutions, the utmost good faith would, on his part, be due to the public if he had consciousness and reason to reflect upon the obligation. The duty, therefore, devolves *on me*, and *upon my honour*, it shall be fulfilled. I will employ no artifices of speech. I claim only the strictest protection of the law for the unhappy man before you. I should, indeed, be ashamed if I were to say anything of the rule *in the abstract* by which he is to be judged, which I did not honestly feel: and I am sorry, therefore, that the subject is so difficult to handle with brevity and precision. Indeed, if it could be brought to a clear and simple criterion, which could admit of a dry admis-

* There must be fifteen days between arraignment and trial.

sion or contradiction, there might be very little difference, *perhaps none at all*, between the Attorney-General and myself, upon the principles which ought to govern your verdict; but this is not possible, and I am, therefore, under the necessity of submitting to you, and to the Judges, for their direction (and at greater length than I wish), how I understand this difficult and momentous subject.

The law, as it regards this most unfortunate infirmity of the human mind, like the law in all its branches, aims at the utmost degree of precision; but there are some subjects, as I have just observed to you, and the present is one of them, upon which it is extremely difficult to be precise. The general principle is clear, but the application is most difficult.

It is agreed by all jurists, and is established by the law of this and every other country, that it is the *reason of man* which makes him accountable for his actions; and that the deprivation of reason acquits him of crime. This principle is indisputable; yet so fearfully and wonderfully are we made, so infinitely subtle is the spiritual part of our being, so difficult is it to trace with accuracy the effect of diseased intellect upon human action, that I may appeal to all who hear me, whether there are any causes more difficult, or which, indeed, so often confound the learning of the Judges themselves, as when insanity, or the effects and consequences of insanity, become the subjects of legal consideration and judgment I shall pursue the subject as the Attorney-General has properly discussed it. I shall consider insanity, as it annuls a man's dominion over property; as it dissolves his contracts, and other acts, which otherwise would be binding; and as it takes away his responsibility for crimes. If I could draw the line in a moment between these two views of the subject, I am sure the Judges will do me the justice to believe, that I would fairly and candidly do so; but great difficulties press upon my mind, which oblige me to take a different course.

I agree with the Attorney-General, that the law, in neither civil nor criminal cases, will measure the degrees of men's understandings; and that a *weak* man, however much below the ordinary standard of human intellect, is not only responsible for crimes, but is bound by his contracts, and may exercise dominion over his property. Sir Joseph Jekyll, in the Duchess of Cleveland's case, took the clear legal distinction, when he said, "The law will not measure the sizes of men's capacities, so as they be *compos mentis*."

Lord Coke, in speaking of the expression *non compos mentis*, says, "Many times, as here, the Latin word expresses the true sense, and calleth him not *amens*, *demens*, *furiosus*, *lunaticus*, *fatuus*, *stultus*, or the like, for *non compos mentis* is the most sure and legal." He then says, "*Non compos mentis* is of four sorts; first, *ideota*, which, from his nativity, by a perpetual infirmity, is *non compos mentis*, secondly, he that by sickness, grief, or other accident, wholly loses

his memory and understanding; third, a lunatic that hath sometimes his understanding, and sometimes not; *aliquando gaudet lucidis intervallis*; and therefore he is called *non compos mentis* so long as he hath not understanding."

But notwithstanding the precision with which this great author points out the different kinds of this unhappy malady, the nature of his work, in this part of it, did not open to any illustration which it can now be useful to consider. In his fourth Institute he is more particular; but the admirable work of Lord Chief-Justice Hale, in which he refers to Lord Coke's Pleas of the Crown, renders all other authorities unnecessary.

Lord Hale says, "There is a partial insanity of mind, and a total insanity. The former is either in respect to things, *quoad hoc vel illud insanite*. Some persons, that have a competent use of reason in respect of some subjects, are yet under a particular dementia in respect of some particular discourses, subjects, or applications; or else it is partial in respect of degrees, and this is the condition of very many, especially melancholy persons, who for the most part discover their defect in excessive fears and griefs, and yet are not wholly destitute of the use of reason; and this partial insanity seems not to excuse them in the committing of any offence for its matter capital; for doubtless most persons, that are felons of themselves and others, are under a degree of partial insanity when they commit these offences. It is very difficult to define the invisible line that divides perfect and partial insanity; but it must rest upon circumstances duly to be weighed and considered both by Judge and jury, lest on the one side there be a kind of inhumanity towards the defects of human nature; or, on the other side, too great an indulgence given to great crimes."

Nothing, gentlemen, can be more accurately nor more humanely expressed; but the application of the rule is often most difficult. I am bound, besides, to admit that there is a wide distinction between civil and criminal cases. If, in the former, a man appears, upon the evidence, to be *non compos mentis*, the law avoids his act, though it cannot be traced or connected with the morbid imagination which constitutes his disease, and which may be extremely partial in its influence upon conduct; but to deliver a man from responsibility for crimes—above all, for crimes of great atrocity and wickedness—I am by no means prepared to apply this rule, however well established, when property only is concerned.

In the very recent instance of Mr Greenwood (which must be fresh in his lordship's recollection), the rule in civil cases was considered to be settled. That gentleman, whilst insane, took up an idea that a most affectionate brother had administered poison to him. Indeed, it was the prominent feature of his insanity. In a few months he recovered his senses. He returned to his profession as an advocate; was sound and eminent in his practice, and in all

respects a most intelligent and useful member of society ; but he could never dislodge from his mind the morbid delusion which disturbed it ; and under the pressure, no doubt, of that diseased prepossession, he disinherited his brother. The cause to avoid this will was tried here. We are not now upon the evidence, but upon the principle adopted as the law. The noble and learned Judge, who presides upon this trial, and who presided upon that, told the jury, that if they believed Mr Greenwood, when he made the will, to have been *insane*, the will could not be supported, whether it had disinherited his brother or not ; that the act, no doubt, strongly confirmed the existence of the false idea which, if believed by the jury to amount to *madness*, would equally have effected his testament, if the brother, instead of being disinherited, had been in his grave ; and that, on the other hand, if the unfounded notion did not amount to madness, its influence could not vacate the devise.* This principle of law appears to be sound and reasonable, as it applies to civil cases, from the extreme difficulty of tracing with precision the secret motions of a mind deprived by disease of its soundness and strength.

Whenever, therefore, a person may be considered *non compos mentis*, all his *civil* acts are void, whether they can be referred, or not, to the morbid impulse of his malady, or even though, to all *visible appearances*, totally separated from it ; but I agree with Mr Justice Tracey, that it is not every man of an idle, frantic appearance and behaviour, who is to be considered as a lunatic, either as it regards obligations or crimes ; but that he must appear to the jury to be *non compos mentis*, in the legal acceptance of the term ; and that, not at any *anterior period*, which can have no bearing upon any case whatsoever, but at the *moment* when the contract was entered into, or the crime committed.

The Attorney-General, standing undoubtedly upon the most revered authorities of the law, has laid it down, that to protect a man from *criminal responsibility*, there must be a *total deprivation of memory and understanding*. I admit that this is the very expression used, both by Lord Coke and by Lord Hale ; but the true interpretation of it deserves the utmost attention and consideration of the Court. If a *total deprivation of memory* was intended by these great lawyers to be taken in the *literal* sense of the words— if it was meant, that, to protect a man from punishment, he must be in such a state of prostrated intellect, as not to know his name nor his condition, nor his relation towards others—that if a husband, he should not know he was married ; or, if a father, could not remember that he had children, nor know the road to his house, nor his property in it—then no such madness ever existed in the world. It is *imocy* alone which places a man in this helpless condition ; where, from an *original* mal-organisation, there is the human frame

* *N. B.* The jury found for the will ; but, after a contrary verdict in the Common Pleas, a compromise took place.

alone without the human capacity ; and which, indeed, meets the very definition of Lord Hale himself, when, referring to Fitzherbert, he says : " Idiocy or fatuity *à nativitate, vel dementia naturalis*, is such a one as described by Fitzherbert, who knows not to tell twenty shillings, nor knows his own age, or who was his father." But in all the cases which have filled Westminster Hall with the most complicated considerations, the lunatics, and other insane persons who have been the subjects of them, have not only had memory, *in my sense of the expression*—they have not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have, in general, been remarkable for subtlety and acuteness. Defects in their reasonings have seldom been traceable—the disease consisting in the delusive sources of thought—all their deductions within the scope of the malady, being founded upon the *immovable* assumption of matters as *realities*, either without any foundation whatsoever, or so distorted and disfigured by fancy as to be almost nearly the same thing as their creation. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy. These unhappy sufferers, however, are not so much considered by physicians as maniacs, but to be in a state of delirium as from fever. There, indeed, all the ideas are overwhelmed—for reason is not merely disturbed, *but driven wholly from her seat*. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects ; or, at least, are wholly incapable of considering their relations. Such persons, *and such persons alone* (except idiots), *are wholly deprived of their UNDERSTANDINGS*, in the Attorney-General's seeming sense of that expression. But these cases are not only extremely rare, but never can become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases, reason is not driven from her seat, but distraction sits down upon it along with her—holds her, trembling, upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the place of realities, as not to be dislodged and shaken by the organs of perception and sense. In such cases the images frequently vary, but in the same subject are generally of the same terrific character. Here, too, no judicial difficulties can present themselves ; for who could balance upon the judgment to be pronounced in cases of such extreme disease ? Another class, branching out into almost infinite subdivisions, under which, indeed, the former, and every case of insanity, may be classed, is where the delusions are not of that frightful character, but infinitely various, and often extremely *circumscribed* ; yet where imagination (*within the bounds of the malady*) still holds the most uncontrollable dominion over reality

and fact. *And these are the cases which frequently mock the wisdom of the wisest in judicial trials*; because such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind; their conclusions are just, and frequently profound; but the *premises from which they reason, WHEN WITHIN THE RANGE OF THE MALADY, are uniformly false*—not false from any defect of knowledge or judgment, but because a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack.

Delusion, therefore, where there is no frenzy or raving madness, is the true character of insanity; and where it cannot be predicated of a man standing for life or death for a crime, he ought not, in my opinion, to be acquitted: and if courts of law were to be governed by any other principle, every departure from sober, rational conduct would be an emancipation from criminal justice. I shall place my claim to your verdict upon no such dangerous foundation. I must convince you, not only that the unhappy prisoner was a lunatic, within my own definition of lunacy, but that the act in question was the IMMEDIATE, UNQUALIFIED OFFSPRING OF THE DISEASE. In *civil* cases, as I have already said, the law avoids every act of the lunatic during the period of the lunacy; although the delusion may be extremely circumscribed; although the mind may be quite sound in all that is not within the shades of the very partial eclipse; and although the act to be avoided can in no way be connected with the influence of the insanity. But to deliver a lunatic from responsibility to *criminal* justice, above all, in a case of such atrocity as the present, the relation between the disease and the act should be apparent. Where the connexion is doubtful, the judgment should certainly be most indulgent, from the great difficulty of diving into the secret sources of a disordered mind; but still, I think, that, as a doctrine of law, the delusion and the act should be connected.

You perceive, therefore, gentlemen, that the prisoner, in naming me for his counsel, has not obtained the assistance of a person who is disposed to carry the doctrine of insanity in his defence so far as even the books would warrant me in carrying it. Some of the cases—that of Lord Ferrers, for instance—which I shall consider hereafter, distinguished from the present, would not, in my mind, bear the shadow of an argument as a defence against an indictment for murder. I cannot allow the protection of insanity to a man who only exhibits violent passions and malignant resentments, acting upon *real circumstances*; who is impelled to evil from no morbid delusions, but who proceeds upon the ordinary perceptions of the mind. I cannot consider such a man as falling within the protection which the law gives, and is bound to give, to those whom it has pleased God, for mysterious causes, to visit with this most afflicting calamity.

He alone can be so emancipated, whose disease (call it what you will) consists, not merely in seeing with a prejudiced eye, or with odd and absurd particularities, differing in many respects from the contemplations of sober sense, upon the actual existences of things; but, *he only* whose whole reasoning and corresponding conduct, though governed by the ordinary dictates of reason, proceed upon something which has no foundation or existence.

Gentlemen, it has pleased God so to visit the unhappy man before you; to shake his reason in its citadel; to cause him to build up as realities the most impossible phantoms of the mind, and to be impelled by them as motives *irresistible*; the whole fabric being nothing but the unhappy vision of his disease—existing nowhere else—having no foundation whatsoever in the very nature of things.

Gentlemen, it has been stated by the Attorney-General, and established by evidence, which I am in no condition to contradict, nor have, indeed, any interest in contradicting, that when the prisoner bought the pistol which he discharged at, or *towards* his Majesty, he was well acquainted with the nature and use of it; that, as a soldier, he could not but know that in his hands it was a sure instrument of death; that, when he bought the gunpowder, he knew it would prepare the pistol for its use; that, when he went to the playhouse, he knew he was going there, and everything connected with the scene as perfectly as any other person. I freely admit all this: I admit, also, that every person who listened to his conversation, and observed his deportment upon his apprehension, must have given precisely the evidence delivered by his Royal Highness the Duke of York; and that nothing like insanity appeared to those who examined him. But what then? I conceive, gentlemen, that I am more in the habit of examination than either that illustrious person, or the witnesses from whom you have heard this account; yet I well remember (indeed, I never can forget it), that since the noble and learned Judge has presided in this Court, I examined, for the greater part of a day, in this very place, an unfortunate gentleman who had indicted a most affectionate brother, together with the keeper of a mad-house at Hoxton, for having imprisoned him as a lunatic; whilst, according to his evidence, he was in his perfect senses. I was, unfortunately, not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact; but, not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe that I left no means unemploy'd which long experience dictated; but without the smallest effect. The day was wasted, and the prosecutor, by the most affecting history of unmerited suffering, appeared to the Judge and jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression. At last Dr Sims came into court—who had been prevented by business from an earlier attendance, and whose name, by the bye, I observe to-day

in the list of the witnesses for the Crown. From Dr Sims I soon learned that the very man whom I had been above an hour examining, and with every possible effort which counsel are so much in the habit of exerting, believed himself to be *the Lord and Saviour of mankind*; not merely at the time of his confinement—which was alone necessary for my defence—but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease. I then affected to lament the indecency of my ignorant examination, when he expressed his forgiveness, and said, with the utmost gravity and emphasis, in the face of the whole Court, "I AM THE CHRIST;" and so the cause ended. Gentlemen, this is not the only instance of the power of concealing this malady; I could consume the day if I were to enumerate them; but there is one so extremely remarkable, that I cannot help stating it.

Being engaged to attend the Assizes at Chester upon a question of lunacy, and having been told that there had been a memorable case tried before Lord Mansfield in this place, I was anxious to procure a report of it; and from that great man himself (who within these walls will ever be revered, being then retired in his extreme old age to his seat near London, in his own neighbourhood), I obtained the following account of it: "A man of the name of Wood," said Lord Mansfield, "had indicted Dr Munro for keeping him as a prisoner (I believe in the same mad-house at Hoxton), when he was sane. He underwent the most severe examination by the defendant's counsel without exposing his complaint; but Dr Battye, having come upon the bench by me, and having desired me to ask him what was become of the princess whom he had corresponded with in cherry-juice, he showed in a moment what he was. He answered that there was nothing at all in that, because, having been (as everybody knew), imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry-juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. There existed, of course, no tower, no imprisonment, no writing in cherry-juice, no river, no boat; but the whole the inveterate phantom of a morbid imagination. I immediately," continued Lord Mansfield, "directed Dr Munro to be acquitted; but this man Wood, being a merchant in Philpot Lane, and having been carried through the city in his way to the mad-house, he indicted Dr Munro over again for the trespass and imprisonment in London, knowing that he had lost his cause by speaking of the princess at Westminster; and such," said Lord Mansfield, "is the extraordinary subtlety and cunning of madmen, that when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the bar, and all the authority of the Court

could not make him say a single syllable upon that topic, which had put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but, conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back."*

Now, gentlemen, let us look to the application of these cases. I am not examining, *for the present*, whether either of these persons ought to have been acquitted, *if they had stood in the place of the prisoner now before you*; that is quite a distinct consideration, which we shall come to hereafter. The direct application of them is *only this*—that if I bring before you such evidence of the prisoner's insanity as, *if believed to have really existed*, shall in the opinion of the Court, as the rule for your verdict in point of law, be sufficient for his deliverance, then that you ought not to be shaken in giving full credit to such evidence, notwithstanding the report of those who were present at his apprehension, *who describe him as discovering no symptom whatever of mental incapacity or disorder*; because I have shown you that insane persons frequently appear in the utmost state of ability and composure, even in the highest paroxysms of insanity, except when frenzy is the characteristic of the disease. In this respect, the cases I have cited to you have the most *decided application*; because they apply to the overthrow of the whole of the evidence (admitting at the same time the truth of it), by which the prisoner's case can alone be encountered.

But it is said that, whatever delusions may overshadow the mind, every person ought to be responsible for crimes, *who has the knowledge of good and evil*. I think I can presently convince you that there is something too general in this mode of considering the subject; and you do not, therefore, find any such proposition in the language of the celebrated writer alluded to by the Attorney-General in his speech. Let me suppose that the character of an insane delusion consisted in the belief that some given person was any brute animal, or an inanimate being (and such cases have existed), and that, upon the trial of such a lunatic for murder, you firmly, upon your oaths, were convinced, upon the uncontradicted evidence of an hundred persons, that he believed the man he had destroyed to have been a potter's vessel; that it was quite impossible to doubt that fact, *although to all other intents and purposes he was sane*—conversing, reasoning, and acting as men not in any manner tainted with insanity, converse, and reason, and conduct themselves. Suppose further, that he believed the man whom he destroyed, but whom he destroyed as a potter's vessel, to be the property of another; and that he had malice against such supposed

* This evidence at Westminster was then proved against him by the short hand writer.

person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious, and that, in short, he had full knowledge of all the principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of his disease, he was ignorant of the relation he stood in to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being? I only put this case—and many others might be brought as examples—to illustrate that the knowledge of good and evil is too general a description.

I really think, however, that the Attorney-General and myself do not, in substance, very materially differ; because, from the whole of his most able speech, taken together, his meaning may, I think, be thus collected: that where the act which is criminal is done under the dominion of malicious mischief and wicked intention, although such insanity might exist in a corner of the mind, as might avoid the acts of the delinquent as a lunatic in a civil case, yet that he ought not to be protected if malicious mischief, and not insanity, had impelled him to the act for which he was criminally to answer; because, in such a case, the act might be justly ascribed to malignant motives, and not to the dominion of disease. I am not disposed to dispute such a proposition in a case which would apply to it, and I can well conceive such cases may exist. The question, therefore, which you will have to try is this: Whether, when this unhappy man discharged the pistol in a direction which convinced, and ought to convince every person that it was pointed at the person of the King, he meditated mischief and violence to his Majesty, or whether he came to the theatre (*which it is my purpose to establish*) under the dominion of the most melancholy insanity that ever degraded and overpowered the faculties of man. I admit that when he bought the pistol, and the gunpowder to load it, and when he loaded it, and came with it to the theatre, and lastly, when he discharged it, every one of these acts would be overt acts of compassing the King's death, if at all or *any* of these periods he was actuated by that *mind and intention* which would have constituted murder in the case of an individual, if the individual had been actually killed. I admit also that the mischievous, and, in this case, the traitorous intention, must be inferred from all these acts, unless *I can rebut the inferences by proof*. If I were to fire a pistol towards you, gentlemen, where you are now sitting, the act would undoubtedly infer the malice. *The whole proof, therefore, is undoubtedly cast upon me.*

In every case of treason or murder, which are precisely the same, except that the unconsummated intention in the case of the King is the same as the actual murder of a private man, the jury must impute to the person whom they condemn by their verdict *the motive* which constitutes the crime; and your province to-day will, therefore, be to decide whether the prisoner, when he did the act,

was under the uncontrollable dominion of insanity, and was impelled to it by a *morbid delusion* ; or whether it was the act of a man who, though occasionally mad, or even at the time not perfectly collected, was yet not actuated by the disease, but by the suggestion of a wicked and malignant disposition.

I admit therefore, freely, that if, after you have heard the evidence which I hasten to lay before you, of the state of the prisoner's mind, and close up to the very time of this catastrophe, you shall still not feel yourselves clearly justified in negating the wicked motives imputed by this indictment, I shall leave you in the hands of the learned Judges to declare to you the law of the land, and shall not seek to place society in a state of uncertainty by any appeal addressed only to your compassion. I am appointed by the Court to claim for the prisoner the full protection of the law, but not to misrepresent it in his protection.

Gentlemen, the facts of this melancholy case lie within a narrow compass.

The unfortunate person before you was a soldier. He became so, I believe, in the year 1793, and is now about twenty-nine years of age. He served in Flanders under the Duke of York, as appears by his Royal Highness's evidence, and being a most approved soldier, he was one of those singled out as an orderly man to attend upon the person of the Commander-in-Chief. You have been witnesses, gentlemen, to the calmness with which the prisoner has sitted in his place during the trial. There was but one exception to it. You saw the emotion which overpowered him when the illustrious person now in Court took his seat upon the bench. Can you then believe, from the evidence, for I do not ask you to judge as physiognomists, or to give the rein to compassionate fancy ; but can there be any doubt that it was the generous emotion of the mind on seeing the prince under whom he had served with so much bravery and honour ? Every man certainly must judge for himself. I am counsel, not a witness, in the cause ; but it is a most striking circumstance, when you find from the Crown's evidence, that when he was dragged through the orchestra under the stage, and charged with an act for which he considered his life as forfeited, he addressed the Duke of York with the same enthusiasm which has marked the demeanour I am adverting to. Mr Richardson, who showed no disposition in his evidence to help the prisoner, but who spoke with the calmness and circumspection of truth, and who had no idea that the person he was examining was a lunatic, has given you the account of the burst of affection on his first seeing the Duke of York, against whose father and sovereign he was supposed to have had the consciousness of treason. The king himself, whom he was supposed to have so malignantly attacked, never had a more gallant, loyal, or suffering soldier. His gallantry and loyalty will be proved, his sufferings speak for themselves.

About five miles from Lisle, upon the attack made on the British army, this unfortunate soldier was in the 15th Light Dragoons, in the thickest of the ranks, exposing his life for his prince, whom he is supposed to-day to have sought to murder. The first wound he received is most materially connected with the subject we are considering; you may see the effect of it now.* The point of a sword was impelled against him with all the force of a man urging his horse in battle. When the Court put the prisoner under my protection, I thought it my duty to bring Mr Cline to inspect him in Newgate, and it will appear by the evidence of that excellent and conscientious person, who is known to be one of the first anatomists in the world, that from this wound one of two things must have happened; either that, by the immediate operation of surgery, the displaced part of the skull must have been taken away, or been forced inward on the brain. The second stroke also speaks for itself, you may now see its effects. (Here Mr Erskine touched the head of the prisoner.) He was cut across all the nerves which give sensibility and animation to the body, and his head hung down almost dissevered, until by the act of surgery it was placed in the position you now see it. But thus almost destroyed he still recollected his duty, and continued to maintain the glory of his country when a sword divided the membrane of his neck where it terminates in the head, yet he still kept his place though his helmet had been thrown off by the blow which I secondly described, when by another sword he was cut into the very brain. You may now see its membrane uncovered. Mr Cline will tell you that he examined these wounds, and he can better describe them. I have myself seen them, but am no surgeon. From his evidence you will have to consider their consequences. It may be said that many soldiers receive grievous wounds without their producing insanity. So they may, undoubtedly, but we are here upon *the fact*. There was a discussion the other day, on whether a man, who had been seemingly hurt by a fall beyond remedy, could get up and walk; the people around said it was impossible, but he did get up and walk, and so there was an end to the impossibility. The effects of the prisoner's wounds were known by the *immediate* event of insanity, and Mr Cline will tell you that it would have been strange indeed if any other event had followed. We are not here upon a case of insanity arising from the spiritual part of man, as it may be affected by hereditary taint, by intemperance, or by violent passions, the operations of which are various and uncertain; but we have to deal with a species of insanity more resembling what has been described as idiocy, proceeding from original mal-organisation. *There* the disease is, from its very nature, *incurable*; and so where a man (like the prisoner) has become insane from *violence to the*

* Mr Erskine put his hand to the prisoner's head who stood by him at the bar of the Court.

brain, which permanently affects its structure, however such a man may appear occasionally to others, his disease is *immovable*; and if the prisoner, therefore, were to live a thousand years, he *never* could recover from the consequence of that day.

But this is not all. Another blow was still aimed at him, which he held up his arm to avoid, when his hand was cut into the bone. It is an afflicting subject, gentlemen, and better to be spoken of by those who understand it; and to end all further description, he was then thrust almost through and through the body with a bayonet, and left in a ditch amongst the slain.

He was afterwards carried to an hospital, where he was known by his tongue to one of his countrymen, who will be examined as a witness, who found him, not merely as a wounded soldier deprived of the powers of his body, but bereft of his senses for ever.

He was affected from the very beginning with that species of madness, which from violent agitation fills the mind with the most inconceivable imaginations, wholly unfitting it for all dealing with human affairs according to the sober estimate and standard of reason. He imagined that he had constant intercourse with the Almighty Author of all things; that the world was coming to a conclusion, and that, like our blessed Saviour, he was to sacrifice himself for its salvation; and so obstinately did this morbid image continue, that you will be convinced he went to the theatre to perform, as he imagined, that blessed sacrifice, and because he would not be guilty of suicide, though called upon by the imperious voice of Heaven, he wished that by the appearance of crime his life might be taken away from him by others. This bewildered extravagant species of madness appeared immediately after his wounds on his first entering the hospital, and on the very same account he was discharged from the army on his return to England, which the Attorney-General very honourably and candidly seemed to intimate.

To proceed with the proofs of his insanity *down to the very period of his supposed guilt*. This unfortunate man before you is the father of an infant of eight months, and I have no doubt that if the boy had been brought into Court (but this is a grave place for the consideration of justice, and not a theatre for stage effect)—I say, I have no doubt whatever, that if this poor infant had been brought into Court, you would have seen the unhappy father wrung with all the emotions of parental affection: yet, upon the Tuesday preceding the Thursday when he went to the play-house, you will find his disease still urging him forward, with the impression *that the time was come*, when he must be destroyed for the benefit of mankind; and in the confusion, or rather *delirium* of this wild conception, he came to the bed of the mother, who had this infant in her arms, and endeavoured to dash out its brains against the wall. The family was alarmed, and the neigh-

hours being called in, the child was with difficulty rescued from the unhappy parent, who in his madness would have destroyed it.

Now let me for a moment suppose that he had succeeded in the accomplishment of his insane purpose, and the question had been whether he was guilty of murder. Surely the affection for this infant up to the very moment of his distracted violence would have been conclusive in his favour, but not more so than his loyalty to the King, and his attachment to the Duke of York, as applicable to the case before us; yet at that very period, even of extreme distraction, he conversed as rationally on all other subjects, as he did to the Duke of York at the theatre. The prisoner knew perfectly that he was the husband of the woman, and the father of the child; the tears of affection ran down his face at the very moment that he was about to accomplish its destruction, but during the whole of this scene of horror, he was not at all deprived of memory, in the Attorney-General's sense of the expression. He could have communicated at that moment every circumstance of his past life, and everything connected with his present condition, *except only the quality of the act he was meditating*. In that, he was under the over-ruling dominion of a morbid imagination, and conceived that he was acting against the dictates of nature, in obedience to the superior commands of Heaven, which had told him that the moment he was dead, and the infant with him, all nature was to be changed, and all mankind were to be redeemed by his dissolution. There was not an idea in his mind, from the beginning to the end, of the destruction of the King; on the contrary, he always maintained his loyalty—lamented that he could not go again to fight his battles in the field—and it will be proved that only a few days before the period in question, being present when a song was sung indecent, as it regarded the person and condition of his Majesty, he left the room with loud expressions of indignation, and immediately sung, "God save the King," with all the enthusiasm of an old soldier who had bled in the service of his country.

I confess to you, gentlemen, that this last circumstance, which may to some appear insignificant, is, in my mind, most momentous testimony, because if this man had been in the habit of associating with persons inimical to the government of our country, so that mischief might have been fairly argued to have mixed itself with madness (which, by the bye, it frequently does), if it could in any way have been collected, that from his disorder, more easily inflamed and worked upon, he had been led away by dissatisfied persons to become the instrument of wickedness; if it could have been established that such had been his companions and his habits, I should have been ashamed to lift up my voice in his defence. I should have felt, that, however his mind might have been weak and disordered, yet if his understanding sufficiently existed, to be me-

thodically acted upon as an instrument of malice, I could not have asked for an acquittal; but you find, on the contrary, in the case before you, that notwithstanding the opportunity which the Crown has had, and which, upon all such occasions, it justly employs to detect treason, either against the person of the King, or against his Government, *not one witness* has been able to fix upon the prisoner before you, any one companion of even a doubtful description, or any one expression from which disloyalty could be inferred, whilst the whole history of his life repels the imputation. His courage in defence of the King and his dominions, and his affection for his son, in such unanswerable evidence, all speak aloud against the presumption that he went to the theatre with a mischievous intention.

To recur again to the evidence of Mr Richardson, who delivered most honourable and impartial testimony, I certainly am obliged to admit that what a prisoner says for himself when coupled at the very time with an overt act of wickedness, is no evidence whatever to alter the obvious quality of the act he has committed. If, for instance, I who am now addressing you had fired the same pistol towards the box of the King—and, having been dragged under the orchestra, and secured for criminal justice, I had said that I had no intention to kill the King, but was weary of my life, and meant to be condemned as guilty, would any man who was not himself insane consider that as a defence? Certainly not; because it would be without the whole foundation of the prisoner's previous condition—part of which it is even difficult to apply closely and directly by strict evidence, without taking his undoubted insanity into consideration; because it is his unquestionable insanity which alone stamps the effusions of his mind with sincerity and truth.

The idea which had impressed itself, but in most confused images, upon this unfortunate man was, *that he must be destroyed, but ought not to destroy himself*. He once had the idea of firing over the King's carriage in the street; but then he imagined he should be immediately killed, which was not the mode of propitiation for the world. And as our Saviour, before His passion, had gone into the garden to pray, this fallen and afflicted being, after he had taken the infant out of bed to destroy it, returned also to the garden, saying, as he afterwards said to the Duke of York, "that all was not over—that a great work was to be finished;" and there he remained in prayer, the victim of the same melancholy visitation.

Gentlemen, these are the facts, freed from even the possibility of artifice or disguise; because the testimony to support them will be beyond all doubt. And in contemplating the law of the country, and the precedents of its justice, to which they must be applied, I find nothing to challenge or question—I approve of them throughout—I subscribe to all that is written by Lord Hale—I agree with all the authorities cited by the Attorney-General, from Lord Coke; but, above all, I do most cordially agree in the instance of convic-

tions by which he illustrated them in his able address. I have now lying before me the case of Earl Ferrers. Unquestionably there could not be a shadow of doubt, and none appears to have been entertained, of his guilt. I wish, indeed, nothing more than to contrast the two cases; and so far am I from disputing either the principle of that condemnation, or the evidence that was the foundation of it, that I invite you to examine whether any two instances in the whole body of the criminal law are more diametrically opposite to each other than the case of Earl Ferrers and that now before you. Lord Ferrers was divorced from his wife by Act of Parliament; and a person of the name of Johnson, who had been his steward, had taken part with the lady in that proceeding, and had conducted the business in carrying the Act through the two Houses. Lord Ferrers, consequently, wished to turn him out of a farm which he occupied under him; but his estate being in trust, Johnson was supported by the trustees in his possession. There were also some differences respecting coal-mines; and in consequence of both transactions Lord Ferrers took up the most violent resentment against him. Let me here observe, gentlemen, that this was not a resentment founded upon any *illusion*—not a resentment forced upon a distempered mind by fallacious images, but depending upon *actual circumstances and real facts*; and, acting like any other man under the influence of malignant passions, he repeatedly declared that he would be revenged on Mr Johnson, particularly for the part he had taken in depriving him of a contract respecting the mines.

Now, suppose Lord Ferrers could have showed that no difference with Mr Johnson had ever existed regarding his wife at all; that Mr Johnson had never been his steward; and that he had only, from delusion, believed so, when his situation in life was quite different. Suppose, further, that an *illusive imagination* had alone suggested to him that he had been thwarted by Johnson in his contract for these coal-mines, there never having been any contract at all for coal-mines; in short, that the whole basis of his enmity was without any foundation in nature, and had been shown to have been a *morbid image* imperiously fastened upon his mind. Such a case as that would have exhibited a character of insanity in Lord Ferrers extremely different from that in which it was presented by the evidence to *his peers*. Before *them* he only appeared as a man of turbulent passions; whose mind was disturbed by no fallacious images of things without existence; whose quarrel with Johnson was founded upon *no illusions*, but upon existing facts, and whose resentment proceeded to the fatal consummation with all the ordinary indications of mischief and malice; and who conducted his own defence with the greatest dexterity and skill. *Who, then, could doubt that Lord Ferrers was a murderer?* When the act was done, he said, "I am glad I have done it. He was a villain, and I

am revenged." But when he afterwards saw that the wound was probably mortal, and that it involved consequences fatal to himself, he desired the surgeon to take all possible care of his patient, and, conscious of his crime, kept at bay the men who came with arms to arrest him; showing from the beginning to the end nothing that does not generally accompany the crime for which he was condemned. He was proved, to be sure, to be a man subject to unreasonable prejudices, addicted to absurd practices, and agitated by violent passions; but the act was not done under the dominion of uncontrollable disease; and whether the mischief and malice were substantive or marked in the mind of a man whose passions bordered upon, or even amounted to insanity, it did not convince the lords that, under all the circumstances of the case, he was not a fit object of criminal justice.

In the same manner Arnold, who shot at Lord Onslow, and who was tried at Kingston soon after the Black Act passed on the accession of George the First. Lord Onslow having been very vigilant as a magistrate in suppressing clubs which were supposed to have been set on foot to disturb the new Government, Arnold had frequently been heard to declare that Lord Onslow would ruin his country; and although he appeared from the evidence to be a man of most wild and turbulent manners, yet the people round Guildford, who knew him, did not in general consider him to be insane. His counsel could not show that any morbid *delusion* had ever overshadowed his understanding. They could not show, *as I shall*, that just before he shot at Lord Onslow he had endeavoured to destroy his own beloved child. It was a case of *human resentment*.

I might instance, also, the case of Oliver, who was indicted for the murder of Mr Wood, a potter, in Staffordshire. Mr Wood had refused his daughter to this man in marriage. My friend Mr Milles was counsel for him at the assizes. He had been employed as a surgeon and apothecary by the father, who forbid him his house, and desired him to bring in his bill for payment. When in the agony of disappointment, and brooding over the injury he had suffered, on his being admitted to Mr Wood to receive payment, he shot him upon the spot. The trial occupied great part of the day: yet, for my own part, I cannot conceive that there was anything in the case for a jury to deliberate on. He was a man acting upon *existing facts*, and upon *human resentments* connected with them. He was at the very time carrying on his business, which required learning and reflection, and, indeed, a reach of mind beyond the ordinary standard, being trusted by all who knew him as a practiser in medicine. Neither did he go to Mr Wood's under the influence of *illusion*; but he went to destroy the life of a man who was placed exactly in the circumstances which the mind of the criminal represented him. He went to execute vengeance on him for refusing his daughter. In such a case there might, no doubt, be passion

approaching to frenzy; but there wanted that characteristic of madness to emancipate him from criminal justice.

There was another instance of this description in the case of a most unhappy woman who was tried in Essex for the murder of Mr Errington, who had seduced and abandoned her and the children she had borne to him. It must be a consolation to those who prosecuted her that she was acquitted, as she is at this time in a most undoubted and deplorable state of insanity. But I confess if I had been upon the jury who tried her I should have entertained great doubts and difficulties; for although the unhappy woman had before exhibited strong marks of insanity arising from grief and disappointment; yet she acted upon *facts and circumstances* which had an *existence*, and which were calculated, upon the ordinary principles of human action, to produce the most violent resentment. Mr Errington having just cast her off, and married another woman, or taken her under his protection, her jealousy was excited to such a pitch as occasionally to overpower her understanding; but when she went to Mr Errington's house, where she shot him, she went with the express and deliberate purpose of shooting him. That fact was unquestionable. She went there with a resentment long rankling in her bosom, bottomed on an existing foundation: she did not act under a *delusion that he had deserted her* when he had not, but took revenge upon him for an actual desertion; but still the jury, in the humane consideration of her sufferings, pronounced the insanity to be predominant over resentment, and they acquitted her.

But let me suppose (which would liken it to the case before us), that she had never cohabited with Mr Errington; that she never had had children by him; and, consequently, that he neither had, nor could possibly have, deserted or injured her. Let me suppose, in short, that she had never seen him in her life, but that her resentment had been founded on the morbid delusion that Mr Errington, who had never seen her, had been the author of all her wrongs and sorrows; and that under that *diseased* impression she had shot him. If that had been the case, gentlemen, she would have been acquitted upon the opening, and no judge would have sat to try such a cause. The *act itself* would have been decisively characteristic of madness, because, being founded upon nothing existing, it could not have proceeded from malice, which the law requires to be charged and proved in every case of murder, as the foundation of a conviction.

Let us now recur to the cause we are engaged in, and examine it upon those principles by which I am ready to stand or fall in the judgment of the Court.

You have a man before you who will appear upon the evidence to have received those almost deadly wounds which I described to you, producing the immediate and immovable effects which the eminent surgeon whose name I have mentioned will prove that they

could not but have produced. It will appear that from that period he was visited with the severest paroxysms of madness, and was repeatedly confined with all the coercion which it is necessary to practise upon lunatics—yet, what is quite decisive against the imputation of treason against the person of the king, his loyalty never forsook him. Sane or insane, it was his very characteristic to love his sovereign and his country, although the delusions which distracted him were sometimes, *in other respects*, as contradictory as they were violent.

Of this inconsistency there was a most striking instance only on the Tuesday before the Thursday in question, when it will be proved that he went to see one Truelet, who had been committed by the Duke of Portland as a lunatic. This man had taken up an idea that our Saviour's second advent, and the dissolution of all human things, were at hand; and conversed in this strain of madness. This, mixing itself with the insane delusion of the prisoner, he immediately broke out upon the subject of his own propitiation and sacrifice for mankind, although only the day before he had exclaimed, that the Virgin Mary was a whore; that Christ was a bastard; that God was a thief; and that he and this Truelet were to live with him at White Conduit House, and there to be enthroned together. His mind, in short, was overpowered and overwhelmed with distraction.

The charge against the prisoner is the overt act of compassing the death of the King, in firing a pistol at his Majesty—an act which only differs from murder inasmuch as the bare compassing is equal to the accomplishment of the malignant purpose; and it will be *your* office, under the advice of the Judge, to decide by your verdict to which of the two impulses of the mind you refer the act in question; you will have to decide, whether you attribute it wholly to mischief and malice, or wholly to insanity, or to the one mixing itself with the other. If you find it attributable to mischief and malice *only*, LET THE MAN DIE. The law demands his death for the public safety. If you consider it as conscious malice and mischief mixing itself with insanity, I leave him in the hands of the Court, to say how he is to be dealt with; it is a question too difficult for me. I do not stand here to disturb the order of society, or to bring confusion upon my country; but, if you find that the act was committed wholly under the dominion of insanity; if you are satisfied that he went to the theatre contemplating his own destruction only; and that, when he fired the pistol, he did not *maliciously* aim at the person of the King—you will then be bound, even upon the principle which the Attorney-General himself humanely and honourably stated to you, to acquit this most unhappy prisoner.

If, in bringing these considerations hereafter to the standard of the evidence, any doubts should occur to you on the subject, the

question for your decision will then be, which of the two alternatives is the most probable—a duty which you will perform to the exercise of that reason of which, for wise purposes, it has pleased God to deprive the unfortunate man whom you are trying; for sound understandings will easily enable you to distinguish *firmities*, which are *misfortunes*, from *motives*, which are *crimes*. Before the day ends the evidence will be decisive upon this subject.

There is, however, another consideration which I ought distinctly to present to you, because I think that more turns upon it than any other view of the subject—namely, whether the prisoner's defence can be impeached for artifice or fraud; because I admit, that at the moment when he was apprehended, there can be fairly imputed to him any pretence or counterfeit of insanity, it would taint the whole case, and leave him without protection; but for such a suspicion there is not even a shadow of foundation. It is repelled by the whole history and character of his disease, as well as of his life, independent of it. If you were trying a man under the Black Act, for shooting at another, and there was a doubt upon the question of malice, would it not be important, or rather decisive evidence, that the prisoner had no resentment against the prosecutor, but that, on the contrary, he was a man whom he had always loved and served? Now the prisoner was maimed, cut down, and destroyed, in the service of the King.

Gentlemen, another reflection presses very strongly on my mind which I find it difficult to suppress, in every state there are political differences and parties, and individuals disaffected to the systematic government under which they live as subjects. There are so many such, I trust, in this country; but whether there are many or any of such persons, there is one circumstance which has peculiarly distinguished his Majesty's life and reign, and which sets itself as a host in the prisoner's defence:—since, amidst all the treasons and all the seditions which have been charged on reformers of government as conspiracies to disturb it, no hand or voice has been lifted up against the person of the King; there have, indeed, been unhappy lunatics who, from ideas too often mixing themselves with insanity, have intruded themselves into the palace—but no malicious attack has ever been made upon the King, to be settled by a trial: his Majesty's character and conduct have been a safer shield than guards or than laws. Gentlemen, I wish to continue to that sacred life that best of all securities; I seek to continue it under that protection where it has been so long protected. We are not to do evil that good may come of it; we are not to stretch the laws to hedge round the life of the King with a greater security than that which the Divine Providence has so happily realised.

Perhaps there is no principle of religion more strongly inculcated by the Sacred Scriptures than by that beautiful and encouraging lesson of our Saviour Himself upon confidence in the Divine

protection : " Take no heed for your life, what ye shall eat, or what ye shall drink, or wherewithal ye shall be clothed ; but seek ye first the kingdom of God, and all these things shall be added unto you." By which it is undoubtedly not intended that we are to disregard the conservation of life, or to neglect the means necessary for its sustentation ; nor that we are to be careless of whatever may contribute to our comfort and happiness—but that we should be contented to receive them as they are given to us, and not seek them in the violation of the rule and order appointed for the government of the world. On this principle nothing can more tend to the security of his Majesty and his Government, than the scene which this day exhibits in the calm, humane, and impartial administration of justice ; and if, in my part of this solemn duty, I have in any manner trespassed upon the just security provided for the public happiness, I wish to be corrected. I declare to you, solemnly, that my only aim has been to secure for the prisoner at the bar, whose life and death are in the balance, that he should be judged rigidly by the evidence and the law. I have made no appeal to your passions—you have no right to exercise them. This is not even a case in which, if the prisoner be found guilty, the royal mercy should be counselled to interfere : he is either an accountable being, or not accountable. If he was *unconscious* of the mischief he was engaged in, the law is a corollary, and he is not guilty ; but if, when the evidence closes, you think he was conscious, and maliciously meditated the treason he is charged with, it is impossible to conceive a crime more vile and detestable ; and I should consider the King's life to be ill attended to, indeed, if not protected by the full vigour of the laws, which are watchful over the security of the meanest of his subjects. It is a most important consideration, both as it regards the prisoner, and the community of which he is a member. Gentlemen, I leave it with you.

SPEECH for the Rev. GEORGE MARKHAM against JOHN FAWCETT, Esq., for criminal conversation with the Plaintiff's wife, before the Deputy Sheriff of Middlesex and a Special Jury, upon an inquisition of damages.

PREFACE

None of the pleadings of Lord Erskine when at the bar excited a greater interest, or were attended with greater success, than those (and they were most numerous) in cases of adultery. His assistance was so generally sought after, that, except in a very few instances, he was always secured by the retainers of complainants; so that, with the exception of the case of Howard against Bingham, now Earl of Lucan, in the present volume, the case of Eston against the late Duke of Hamilton, where the phrase of the "Loose Fish" made so conspicuous an appearance; and a cause of Baldwin and Oliver, in which he attended at York Assizes, and where the jury found a shilling damages, we do not recollect any of his speeches for adulterers in mitigation of damages. It was, perhaps, in consequence of that circumstance that it became the fashion to attribute to the period when Lord Kenyon was Chief-Justice of the King's Bench, and Lord Erskine was at the bar in that Court, a greater number of verdicts in cases of adultery, with severe damages, than could be altogether vindicated, either by precedent or by the mild spirit of our judicial proceedings; but, after the best attention we have been able to give to the subject, in considering of a fit preface for the only two correct speeches which we are at present possessed of on that subject, the observation appears to be without due foundation.

Adultery, when attended with all the circumstances of aggravation which mark the following case of the Rev. Mr Markham (and there were many others in Lord Erskine's time of a similar description), is unquestionably the greatest civil injury which man can commit against man; and the manner in which the subject is treated in the speech which follows, deserves the serious attention of every person who is not lost to all consideration of human comfort and happiness. With regard to the facts, no preface is necessary. They are all detailed in Mr Erskine's speech for the plaintiff; and no evidence was offered on the defendant's part, who had let judgment go by default. The inquisition was taken upon the 4th of May 1802, before the Sheriff of Middlesex and a Special Jury, at the King's Arms Tavern, in Palace Yard, Westminster, at six in the evening, after the business of the Courts at Westminster had finished.

The jury found a verdict with £7000 damages, which we have been informed were never levied, the defendant having left the kingdom.

MR ERSKINE'S SPEECH FOR THE PLAINTIFF.

Mr SHERIFF AND GENTLEMEN OF THE JURY,—In representing the unfortunate gentleman who has sustained the injury which has been stated to you by my learned friend Mr Holroyd, who opened the pleadings, I feel one great satisfaction—a satisfaction founded, as I conceive, on a sentiment perfectly constitutional. I am about to address myself to men whom I *personally know*; to men honourable in their lives, moral, judicious, and capable of correctly estimating the injuries they are called upon to condemn in their character of jurors. This, gentlemen, is the only country in the world where there is such a tribunal as the one before which I am now to speak; for, however in other countries such institutions as our own may have been set up of late, it is only by that maturity which it requires ages to give to governments, by that progressive wisdom which has slowly ripened the constitution of our country, that it is possible there can exist such a body of men as YOU are. It is the great privilege of the subjects of England that they judge one another. It is to be recollected that, although we are in this private room, all the sanctions of justice are present. It makes no manner of difference whether I address you in the presence of the Under-Sheriff, your respectable chairman, or with the assistance of the highest magistrate of the State.

The defendant has, on this occasion, suffered judgment by default; *other* adulterers have done so before him. Some have done so under the idea that, by suffering judgment against them, they had retired from the public eye—from the awful presence of the Judge; and that they came into a corner where there was not such an assembly of persons to witness their misconduct, and where it was to be canvassed before persons who might be less qualified to judge the case to be addressed to them.

It is not long, however, since such persons have had an opportunity of judging how much they were mistaken in this respect: the largest damages, in cases of adultery, have been given in this place. By this place I do not mean the particular room in which we are now assembled, but under inquisitions directed to the sheriff; and the instances to which I allude are of modern, and, indeed, recent date.

Gentlemen, after all the experience I have had, I feel myself, I confess, considerably embarrassed in what manner to address you. There are some subjects that harass and overwhelm the mind of man. There are some kinds of distresses one knows not how to deal with. It is impossible to contemplate the situation of the plaintiff without being disqualified, in some degree, to represent it to others with effect. It is no less impossible for you, gentlemen, to receive on a sudden the impressions which have been long in *my*

mind, without feeling overpowered with sensations, which, after all, had better be absent, when men are called upon, in the exercise of duty, to pronounce a legal judgment.

The plaintiff is the third son of his Grace the Archbishop of York, a clergyman of the Church of England; presented in the year 1791 to the living of Stokely, in Yorkshire; and now, by his Majesty's favour, Dean of the Cathedral of York. He married in the year 1789 Miss Sutton, the daughter of Sir Richard Sutton, Bart., of Norwood, in Yorkshire, a lady of great beauty and accomplishments, most virtuously educated, and who, but for the crime of the defendant which assembles you here, would, as she has expressed it herself, have been the happiest of womankind. This gentleman having been presented in 1791 by his father to this living, where I understand there had been no resident rector for forty years, set an example to the Church and to the public, which was peculiarly virtuous in a man circumstanced as he was; for, if there can be any person more likely than another to protect himself securely with privileges and indulgences, it might be supposed to be the son of the metropolitan of the province. This gentleman, however, did not avail himself of the advantage of his birth and station; for, although he was a very young man, he devoted himself entirely to the sacred duties of his profession. At a large expense he repaired the Rectory House for the reception of his family, as if it had been his own patrimony, whilst, in his extensive improvements, he adopted only those arrangements which were calculated to lay the foundation of an innocent and peaceful life. He had married this lady, and entertained no other thought than that of cheerfully devoting himself to all the duties, public and private, which his situation called upon him to perform.

About this time, or soon afterwards, the defendant became the purchaser of an estate in the neighbourhood of Stokely, and, by such purchase, an inhabitant of that part of the country, and the neighbour of this unfortunate gentleman. It is a most affecting circumstance, that the plaintiff and the defendant had been bred together at Westminster School; and in my mind it is still more affecting, when I reflect what it is which has given to that school so much rank, respect, and illustration. It has derived its highest advantages from the reverend father of the unfortunate gentleman whom I represent. It was the School of Westminster which gave birth to that learning which afterwards presided over it, and advanced its character. However some men may be disposed to speak or write concerning public schools, I take upon me to say, they are among the wisest of our institutions. Whoever looks at the national character of the English people, and compares it with that of all the other nations upon the earth, will be driven to impute it to that reciprocation of ideas and sentiments which fill and fructify the mind in the early period of youth, and to the affectionate

sympathies and friendships which rise up in the human heart before it is deadened or perverted by the interests and corruptions of the world. These youthful attachments are proverbial, and, indeed, few instances have occurred of any breaches of them; because a man, before he can depart from the obligations they impose, must have forsaken every principle of virtue and every sentiment of manly honour. When, therefore, the plaintiff found his old school-fellow and companion settled in his neighbourhood, he immediately considered him as his brother. Indeed, he might well consider him as a brother, since, after having been at Westminster, they were *again* thrown together in the same college at Oxford; so that the friendship they had formed in their youth became cemented and consolidated upon their first entrance into the world. It is no wonder, therefore, that when the defendant came down to settle in the neighbourhood of the plaintiff he should be attracted towards him by the impulse of his former attachment. He recommended him to the Lord-Lieutenant of the county, and, being himself a magistrate, he procured him a share in the magistracy. He introduced him to the respectable circle of his acquaintances; he invited him to his house, and cherished him there as a friend. It is *this* which renders the business of to-day most affecting as it regards the plaintiff, and wicked in the extreme as it relates to the defendant, because the confidences of friendship conferred the opportunities of seduction. The plaintiff had no pleasures or affections beyond the sphere of his domestic life; and except on his occasional residences at York, which were but for short periods, and at a very inconsiderable distance from his home, he constantly reposed in the bosom of his family. I believe it will be impossible for my learned friend to invade his character; on the contrary, he will be found to have been a pattern of conjugal and parental affection.

Mr Fawcett being thus settled in the neighbourhood, and thus received by Mr Markham as his friend and companion, it is needless to say he could harbour no suspicion that the defendant was meditating the seduction of his wife. There was nothing, indeed, in his conduct, or in the conduct of the unfortunate lady, that could administer any cause of jealousy to the most guarded or suspicious temper. Yet, dreadful to relate—and it is, indeed, the bitterest evil of which the plaintiff has to complain—a criminal intercourse for nearly five years before the discovery of the connexion had most probably taken place.

I will leave you to consider what must have been the feelings of such a husband, upon the fatal discovery that his wife, and such a wife, had conducted herself in a manner that not merely deprived him of her comfort and society, but placed him in a situation too horrible to be described. If a man without children is suddenly cut off by an adulterer from all the comforts and happiness of marriage, the discovery of *his* condition is happiness itself when

compared with that to which the plaintiff is reduced. When children, by a woman lost for ever to the husband by the arts of the adulterer, are begotten in the unsuspected days of virtue and happiness, there remains a consolation; mixed, indeed, with the most painful reflections, yet a consolation still. But what is the plaintiff's situation? He does not know at *what time* this heavy calamity fell upon him—he is tortured with the most afflicting of all human sensations. When he looks at the children, whom he is by law bound to protect and to provide for, and from whose existence he ought to receive the delightful return which the union of instinct and reason has provided for the continuation of the world, he knows not whether he is lavishing his fondness and affection upon his own children, or upon the seed of a villain sown in the bed of his honour and his delight. He starts back with horror, when, instead of seeing his own image reflected from their infant features, he thinks he sees the destroyer of his happiness—a midnight robber introduced into his house, under professions of friendship and brotherhood—a plunderer, not in the repositories of his treasure which may be supplied, or lived without,

“But there, where he had garnered up his hopes,
Where either he must live or bear no life.”

In this situation the plaintiff brings his case before you, and the defendant attempts no manner of defence: he admits his guilt,—he renders it unnecessary for me to go into any proof of it; and the only question, therefore, that remains, is for you to say what shall be the consequences of his crime, and what verdict you will pronounce against him. You are placed, therefore, in a situation most momentous to the public; you have a duty to discharge, the result of which, not only deeply affects the present generation, but which remotest posterity will contemplate to your honour or dishonour. On *your* verdict it depends whether persons of the description of the defendant, who have cast off all respect for religion, who laugh at morality when it is opposed to the gratification of their passions, and who are careless of the injuries they inflict upon others, shall continue their impious and destructive course with impunity. On *your* verdict it depends whether such men, looking to the proceedings of courts of justice, shall be able to say to themselves, that there are *certain limits* beyond which the damages of juries are not to pass. On *your* verdict it depends whether men of large fortunes shall be able to adopt this kind of reasoning to spur them on in the career of their lusts:—There are many chances that I may not be discovered at all: there are chances that, if I am discovered, I may not be the object of legal inquiry, and supposing I should, there are certain damages beyond which a jury cannot go; they may be large, but still within a certain compass; if I cannot pay them myself, there may be persons belonging to my family who will pity my situation—somehow or other the money may be raised, and I may

be delivered from the consequences of my crime. *I trust the verdict of this day will show men who reason thus that they are mistaken.*

The action for adultery, like every other action, is to be considered according to the extent of the injury, which the person complaining to a court of justice has received. If he has received an injury, or sustained a loss that can be estimated directly in money, there is then no other medium of redress, but in monies numbered according to the extent of the proof. I apprehend it will not be even stated by the counsel for the defendant, that if a person has sustained a loss, and can show it is to any given extent, he is not entitled to the *full measure* of it in damages. If a man destroys my house or furniture, or deprives me of a chattel, I have a right, *beyond all manner of doubt*, to recover their corresponding values in money; and it is no answer to me to say, that he who has deprived me of the advantage I before possessed, is in no situation to render me satisfaction. A verdict pronounced upon such a principle, in any of the cases I have alluded to, would be set aside by the Court, and a new trial awarded. It would be a direct breach of the oaths of jurors, if, impressed with a firm conviction that a plaintiff had received damages to a given amount, they retired from their duty, because they felt commiseration for a defendant, even in a case where he might be worthy of compassion from the injury being unpremeditated and inadvertent.

But there are other wrongs which cannot be estimated in money—

“You cannot minister to a *mind diseased*.”

You cannot redress a man who is wronged beyond the possibility of redress—the law has no means of restoring to him what he has lost. God himself, as He has constituted human nature, has no means of alleviating such an injury as the one I have brought before you. While the sensibilities, affections, and feelings He has given to man remain, it is impossible to heal a wound which strikes so deep into the soul. When you have given to a plaintiff, in damages, all that figures can number, it is as nothing; he goes away hanging down his head in sorrow, accompanied by his wretched family, dispirited and dejected. Nevertheless, the law has given a civil action for adultery, and, strange to say, it has given *nothing else*. The law commands that the injury shall be compensated (as far as it is practicable) IN MONEY, because courts of *civil* justice have no other means of compensation *than money*; and the only question, therefore, and which *you* upon your oaths are to decide, is this: Has the plaintiff sustained an injury up to the extent which he has complained of? Will twenty thousand pounds place him in the same condition of comfort and happiness that he enjoyed before the adultery, and which the adulterer has deprived him of? You know that it will not. Ask your own hearts the question, and you will receive the same answer. I should

be glad to know, then, upon what principle, as it regards the *private* justice, which the plaintiff has a right to, or upon what principle, as the example of that justice affects the public and the remotest generations of mankind, you can reduce this demand even in a single farthing.

This is a doctrine which has been frequently countenanced by the noble and learned lord who lately presided in the Court of King's Bench ; * but his lordship's reasoning on the subject has been much misunderstood, and frequently misrepresented. The noble lord is supposed to have said, that although a plaintiff may not have sustained an injury by adultery to a given amount, yet that large damages, for the sake of public example, should be given. He never said any such thing. He said that which law and morals dictated to him, and which will support his reputation as long as law and morals have a footing in the world. He said that every plaintiff had a right to recover damages *up to the extent of the injury he had received*, and that public example stood in the way of showing *favour* to an adulterer, by reducing the damages below the sum which the jury would otherwise consider as the lowest compensation for the wrong. If the plaintiff shows you that he was a most affectionate husband ; that his parental and conjugal affections were the solace of his life ; that for nothing the world could bestow in the shape of riches or honours, would he have bartered one moment's comfort in the bosom of his family, he shows you a wrong *that no money can compensate* ; nevertheless, if the injury is only measurable in money, and if you are sworn to make upon your oaths a pecuniary compensation, though I can conceive that the damages when given to the extent of the declaration, and you can give no more, may fall short of what your consciences would have dictated, yet I am utterly at a loss to comprehend upon what principle they can be *lessened*. But then comes the defendant's counsel, and says, " It is true that the injury cannot be compensated by the sum which the plaintiff has demanded ; but you will consider the miseries my client must suffer, if you make him the object of a severe verdict. You must, therefore, regard him with compassion ; though I am ready to admit the plaintiff is to be compensated for the injury he has received."

Here, then, Lord Kenyon's doctrine deserves consideration : " He who will mitigate damages below the fair estimate of the wrong which he has committed, must do it upon some principle which the policy of the law will support."

Let me, then, examine whether the defendant is in a situation which entitles him to have the damages against him *mitigated*, when private justice to the injured party calls upon you to give them to THE UTMOST FARTHING. The question will be—On what principle of mitigation he can stand before you ? I had occasion,

* Lord Kenyon.

not a great while ago, to remark to a jury, that the wholesome institutions of the civilised world came sensibly in aid of the dispensations of Providence for our well-being in the world. If I were to ask, what it is that prevents the prevalence of the crime of incest, by taking away those otherwise natural impulses, from the promiscuous gratification of which we should become like the beasts of the field, and lose all the intellectual endearments which are at once the pride and the happiness of man? What is it that renders our houses pure, and our families innocent? It is that, by the wise institutions of all civilised nations, there is placed a kind of guard against the human passions, in that sense of impropriety and dishonour, which the law has raised up, and impressed with almost the force of a second nature. This wise and politic restraint beats down, by the habits of the mind, even a propensity to incestuous commerce, and opposes those inclinations, which nature, for wise purposes, has implanted in our breasts at the approach of the other sex. It holds the mind in chains against the seductions of beauty. It is a moral feeling in perpetual opposition to human infirmity. It is like an angel from heaven placed to guard us against propensities which are evil. It is *that* warning voice, gentlemen, which enables you to embrace your daughter, however lovely, without feeling that you are of a different sex. It is *that* which enables you, in the same manner, to live familiarly with your nearest female relations, without those desires which are natural to man.

Next to the tie of blood (if not, indeed, before it), is the sacred and spontaneous relation of friendship. The man who comes under the roof of a married friend ought to be under the dominion of the same moral restraint; and, thank God, generally is so, from the operation of the causes which I have described. Though not insensible to the charms of female beauty, he receives its impressions under a habitual reserve, which honour imposes. Hope is the parent of desire, and honour tells him he must not hope. Loose thoughts may arise, but they are rebuked and dissipated—

“Evil into the mind of God or man
May come and go, so unapproved, and leave
No spot or blame behind.”

Gentlemen, I trouble you with these reflections, that you may be able properly to appreciate the guilt of the defendant; and to show you that you are not in a case where large allowances are to be made for the ordinary infirmities of our imperfect natures. When a man does wrong in the heat of *sudden* passion—as, for instance, when, upon receiving an affront, he rushes into immediate violence, even to the deprivation of life, the humanity of the law classes his offence amongst the lower degrees of homicide; it supposes the crime to have been committed before the mind had time to parley with itself. But is the criminal act of such a person, however dis-

astrous may be the consequence, to be compared with that of the defendant? Invited into the house of a friend—received with the open arms of affection, as if the same parents had given them birth and bred them; in this situation, this most monstrous and wicked defendant deliberately perpetrated his crime; and, shocking to relate, not only continued the appearances of friendship, after he had violated its most sacred obligations, but continued them as a cloak to the barbarous repetitions of his offence—writing letters of regard, whilst, perhaps, he was the father of the last child, whom his injured friend and companion was embracing and cherishing as his own. What protection can such conduct possibly receive from the humane consideration of the law for sudden and violent passions? A passion for a woman is progressive—it does not, like anger, gain an uncontrolled ascendancy in a moment, nor is a modest matron to be seduced in a day. Such a crime cannot, therefore, be committed under the resistless dominion of *sudden* infirmity: it must be *deliberately, wilfully, and wickedly* committed. The defendant could not possibly have incurred the guilt of this adultery without often passing through his mind (for he had the education and principles of a gentleman) the very topics I have been insisting upon before you for his condemnation. Instead of being impelled towards mischief, without leisure for such reflections, he had innumerable difficulties and obstacles to contend with. He could not but hear in the first refusals of this unhappy lady everything to awaken conscience, and even to excite horror. In the arguments he must have employed to seduce *her* from *her* duty, he could not but recollect, and wilfully trample upon *his own*. He was a year engaged in the pursuit—he resorted repeatedly to his shameful purpose, and advanced to it at such intervals of time and distance, as entitle me to say, that he determined in cold blood to enjoy a future and momentary gratification at the expense of every principle of honour which is held sacred amongst gentlemen, even where no laws interpose their obligations or restraints.

I call upon you, therefore, gentlemen of the jury, to consider well this case, for it is *your* office to keep human life in tone—*your* verdict must decide whether such a case can be indulgently considered, without tearing asunder the bonds which unite society together.

Gentlemen, I am not preaching a religion which men can scarcely practice. I am not affecting a severity of morals beyond the standard of those whom I am accustomed to respect, and with whom I associate in common life. I am not making a stalking-horse of adultery, to excite exaggerated sentiment. This is not the case of a gentleman meeting a handsome woman in a public street, or in a place of public amusement; where, finding the coast clear for his addresses, without interruption from those who should interrupt, he finds himself engaged (probably the successor of another) in a vain

and transitory intrigue. It is not the case of him who, night after night, falls in with the wife of another to whom he is a stranger, in the boxes of a theatre, or other resorts of pleasure, inviting admirers by indecent dress and deportment, unattended by anything which bespeaks the affectionate wife and mother of many children. Such connexions may be of evil example, but I am not here to reform public manners, but to demand private justice. It is impossible to assimilate the sort of cases I have alluded to, which ever will be occasionally occurring, with this atrocious invasion of household peace; this portentous disregard of everything held sacred amongst men good or evil. Nothing, indeed, can be more affecting than even to be called upon to state the evidence I must bring before you; I can scarcely pronounce to you that the victim of the defendant's lust was the mother of nine children, seven of them females and infants, unconscions of their unhappy condition, deprived of their natural guardian, separated from her for ever, and entering the world with a dark cloud hanging over them. But it is not in the descending line alone that the happiness of this worthy family is invaded. It hurts me to call before you the venerable progenitor of both the father and the children, who has risen by extraordinary learning and piety to his eminent rank in the Church, and who, instead of receiving, unmixed and undisturbed, the best consolation of age, in counting up the number of his descendants, carrying down the name and honour of his house to future times, may be forced to turn aside his face from *some of them*, that bring to his remembrance the wrongs which now oppress him, and which it is his duty to forget, because it is his, otherwise impossible, duty to forgive them.

Gentlemen, if I make out this case by evidence (and, if I do not, forget everything you have heard, and reproach me for having abused your honest feelings), I have established a claim for damages that has no parallel in the annals of fashionable adultery. It is rather like the entrance of sin and death into this lower world. The undone pair were living like our first parents in Paradise, till this demon saw and envied their happy condition. Like them, they were in a moment cast down from the pinnacle of human happiness into the very lowest abyss of sorrow and despair. In one point, indeed, the resemblance does not hold, which, while it aggravates the crime, redoubles the sense of suffering. It was not from an enemy, but from a friend, that this evil proceeded. I have just had put into my hand a quotation from the Psalms upon this subject, full of that unaffected simplicity which so strikingly characterises the sublime and sacred poet:—

“It is not an open enemy that hath done me this dishonour, for then I could have borne it.

“Neither was it mine adversary that did magnify himself against me; for then, peradventure, I would have hid myself from him.

“ But it was even *thou* my companion, my guide, mine own familiar friend.”

This is not the language of counsel, but the inspired language of truth. I ask you solemnly, upon your honours and your oaths, if you would exchange the plaintiff's former situation for his present, for an hundred times the compensation he requires at your hands. I am addressing myself to affectionate husbands and to the fathers of beloved children. Suppose I were to say to you, There is twenty thousand pounds for you—embrace your wife for the last time, and the child that leans upon her bosom and smiles upon you—remove from your house, and make way for the adulterer—wander about an object for the hand of scorn to point its slow and moving finger at—think no more of the happiness and tranquillity of your former state—I have destroyed them for ever; but never mind—do not make yourself uneasy—here is a draft upon my banker, it will be paid at sight—there is no better man in the city. I can see you think I am mocking you, gentlemen, and well you may: but let me say the very pith and marrow of this cause. It is impossible to put the argument in mitigation of damages in plain English, without talking such a language, as appears little better than an insult to your understandings, dress it up as you will.

But it may be asked—If no money can be an adequate, or indeed any compensation, why is Mr Markham a plaintiff in a civil action? Why does he come here for money? Thank God, gentlemen, it is NOT MY FAULT. I take honour to myself, that I was one of those who endeavoured to put an end to this species of action, by the adoption of a more salutary course of proceeding. I take honour to myself, that I was one of those who supported in Parliament, the adoption of a law to pursue such outrages with the terrors of criminal justice. I thought then, and I shall always think, that every act *malum in se* directly injurious to an individual, and most pernicious in its consequences to society, should be considered to be a misdemeanour. Indeed I know of no other denomination of the term; the legislature, however, thought otherwise, and I bow to its decision; but the business of this day may produce some changes of opinion on the subject. I never meant that every adultery was to be similarly considered. Undoubtedly there are cases where it is comparatively venial, and judges would not overlook the distinctions. I am not a pretender to any extraordinary purity. My severity is confined to cases in which there can be but one sentiment amongst men of honour, as to the offence, though they may differ in the mode and measure of its correction.

It is this difference of sentiment, gentlemen, that I am always afraid of; I fear you may think there is a sort of limitation in verdicts, and that you may look to precedents for the amount of damages, though you can find no precedents for the magnitude of the crime; but you might as well abolish the action altogether, as let

down a principle which limits the consequences of adultery to what it may be convenient for the adulterer to pay. By the adoption of such a principle, or by any mitigation of severity, arising even from an insufficient reprobation of it, you unbar the sanctuary of domestic happiness, and establish a sort of license for debauchery, to be sued out like other licenses, at its price. A man has only to put money into his pocket, according to his degree and fortune, and he may then debauch the wife or daughter of his best friend, at the expense he chooses to go to. He has only to say to himself what Iago says to Roderigo in the play—

“Put money in thy purse—go to—put money in thy purse.”

Persons of immense fortunes might, in this way, deprive the best men in the country of their domestic satisfactions, with what to them might be considered as impunity. The most abandoned profligate might say to himself, or to other profligates, “I have suffered judgment by default—let them send down their deputy-sheriff to the King’s Arms Tavern; I shall be concealed from the eye of the public—I have drawn upon my banker for the *utmost damages*, and I have as much more to spare to-morrow, if I can find another woman whom I would choose to enjoy at such a price.” In this manner I have seen a rich delinquent, too lightly fined by courts of criminal justice, throw down his bank-notes to the officers, and retire with a deportment, not of contrition, but contempt.

For these reasons, gentlemen, I expect from you to-day the full measure of damages demanded by the plaintiff. Having given such a verdict, you will retire with a monitor within, confirming that you have done right—you will retire in sight of an approving public, and an approving Heaven. Depend upon it, the world cannot be held together without morals; nor can morals maintain their station in the human heart without religion, which is the corner-stone of the fabric of human virtue.

We have lately had a most striking proof of this sublime and consoling truth, in *one result, at least*, of the revolution which has astonished and shaken the earth. Though a false philosophy was permitted *for a season* to raise up her vain fantastic front, and to trample down the Christian establishments and institutions, yet, on a sudden, God said, “Let there be light, and there was light.” The altars of religion were restored: not purged indeed of human errors and superstitions, not reformed in the just sense of reformation, yet the Christian religion is still re-established; leading on to further reformation; fulfilling the hope, that the doctrines and practice of Christianity shall overspread the face of the earth.

Gentlemen, as to us, we have nothing to wait for; we have long been in the centre of light—we have a true religion and a free government, AND YOU ARE THE PILLARS AND SUPPORTERS OF BOTH.

I have nothing further to add, except that, since the defendant

committed the injury complained of, he has sold his estate, and is preparing to remove into some other country. Be it so. Let him *remove*; but you will have to pronounce the penalty of his *return*. It is for you to declare whether such a person is worthy to be a member of our community. But if the feebleness of your jurisdiction, or a commiseration which destroys the exercise of it, shall shelter such a criminal from the consequences of his crimes, individual security is gone, and the rights of the public are unprotected. Whether this be our condition or not, I shall know by your verdict.

PROCEEDINGS OF THE FRIENDS OF THE LIBERTY OF THE
PRESS.

PERHAPS no period in the history of our country ever gave rise to a more distinct division of opinion as to the true policy of her State and Government, than was occasioned by the phenomenon of the French Revolution in its earlier stages, when the following declaration of the Friends of the Liberty of the Press was delivered and published. By many honest and enlightened persons, independently of the extensive influence of power and patronage, the late Mr Pitt was considered as the pilot who had weathered its storm—who, by raising a just and critical alarm against French principles, had, in a manner, enlisted the whole people of Great Britain in defence of her established constitution, and who, by a timely and vigorous domestic policy, had disarmed republican sedition through the terrors of criminal justice. By others not less enlightened, this severe system of domestic discipline, and, above all, the enactment of new and unprecedented laws to enforce it, was condemned as not only unnecessary, but destructive of the object sought to be attained by it. They considered the supposed alarming fascination of French principles to have been employed only as a pretext for beating down by force and terror the efforts of those who sought only a constitutional reform in the representation of the House of Commons, and who sought it as the safest antidote to republican principles, and the surest deliverance from the crisis of a revolution. They foretold that this unprincipled attempt (as they at least considered it) to subdue the human mind in a free country by penal proceedings, beyond the temper and spirit of our ancient laws—above all, when such a course was directed against the Press, and pursued under the sanction of the very House of Commons, the desired reformation of which was the grand feature of all the state indictments against the people—would only bring round the evil (if an evil it was) in a more formidable and unmanageable shape, until the House of Commons, for the support of its own dignity, and the safety of its authority, of itself reformed the very abuses which many were punished for intemperately pointing out as fit subjects of reformation. Which of these two opposite opinions was the soundest and best, the Editor disclaims altogether the province of deciding.

and he, therefore, refers the reader to the exordium of the speech for Mr John Horne Tooke, and also the following extract from the work of Mr Erskine on the "Causes and Consequences of the War with France," which he published in 1797, in which will be found, from page 11 to page 17, his opinion of the causes for issuing the King's proclamation of the 21st of May 1792, and of the real state of the public mind at that momentous period. Whether he was justified in those opinions, or in his consequent conduct, every reader, as throughout the whole of this publication, is left wholly at liberty to judge for himself.

Extract from a Pamphlet entitled, "A View of the Causes and Consequences of the War with France."

"For this purpose of alarm, the honest but irregular zeal of some societies, instituted for the reform of Parliament, furnished a seasonable, but a contemptible pretext; they had sent congratulations to the French Government when it had ceased to be monarchical, in their correspondences through the country, on the abuses and corruptions of the British Constitution; they had unfortunately mixed many ill-timed and extravagant encomiums upon the Revolution of France, whilst its practice, for the time, had broke loose from the principles which deserved them, and in their just indignation towards the confederacies then forming in Europe, they wrote many severe strictures against their monarchical establishments, from which the mixed principles of our own Government were not distinctly or prudently separated. They wrote besides, as an incitement to the reform of Parliament, many bitter observations upon the defective constitution, and the consequent corruptions of the House of Commons, some of which, according to the just theory of the law, were unquestionably libels.

"These irregularities and excesses were for a considerable length of time wholly overlooked by Government. Mr Paine's works had been extensively and industriously circulated throughout England and Scotland; the correspondences, which above a year afterwards became the subject of the State trials, had been printed in every newspaper, and sold without question or interruption in every shop in the kingdom, when a circumstance took place, not calculated, one would imagine, to have occasioned any additional alarm to the country, but which (mixed with the effects on the public from Mr Burke's first celebrated publication on the French Revolution) seems to have given rise to the king's proclamation, the first act of Government regarding France and her affairs.

"A few gentlemen, not above fifty in number, and consisting principally of persons of rank, talents, and character, formed themselves into a society under the name of the Friends of the People. They had observed with concern, as they professed in the published motives of their association, the grossly unequal representation of the people in the House of Commons, its effects upon the measures

of Government; but, above all, its apparent tendency to lower the dignity of Parliament, and to deprive it of the opinion of the people. Their avowed object was, therefore, to bring the very cause which Mr Pitt had so recently taken the lead in, fairly and respectfully before the House of Commons, in hopes, as they declared, to tranquillise the agitated part of the public, to restore affection and respect for the legislature, so necessary to secure submission to its authority, and by concentrating the views of all reformers to the preservation of our invaluable constitution, to prevent that fermentation of political opinion which the French Revolution had undoubtedly given rise to from taking a republican direction in Great Britain.* These were not only the professed objects of this association, but the truth and good faith of them received afterwards the sanction of judicial authority, when their proceedings were brought forward by Government in the course of the State trials.

"Nevertheless, on the very day that Mr Grey, † at the desire of this small society, gave notice of his intended motion in the House of Commons, there was an instantaneous movement amongst Ministers as if a great national conspiracy had been discovered. No act of Government appeared to have been in agitation before that period, although the correspondences before alluded to had for months been public and notorious, and there was scarcely an information, even for a libel, upon the file of the Court of King's Bench. Nevertheless, a council was almost immediately held, and his Majesty was advised to issue his royal proclamation of the 21st of May 1792, to rouse the vigilance and attention of the magistrates throughout the kingdom to the vigorous discharge of their duties.

"If this had been the only object of the proclamation, and if it had been followed up by no other proceedings than the suppression of libels, and a coercive respect for the authorities of Parliament, it would have been happy for England. Unfortunately it seemed to have other objects, which, if as a subject of the country I have no right to condemn, I may at least with the freedom of history be now allowed to lament.

"The proclamation had unquestionably for its object to spread the alarm against French principles, and to do it effectually, all principles were considered as French by his Majesty's Ministers which questioned the infallibility of their own Government, or which looked towards the least change in the representation of the people in Parliament.

"If it had issued, however, under the authority of the British Ministry only, it probably could not have produced its important and unfortunate effects. But the Minister, before he advised

* I declare, upon my honour, these were my reasons for becoming a member of that society.

† Now Earl Grey.

the measure, had taken care to secure the disunion of the Whig party which had hitherto firmly and uniformly opposed both the principles and practice of his administration. To this body I gloried to belong, as I still do to cling even to the weather-beaten pieces of the wreck which remains of it. Neither am I ashamed of the appellation of party, when the phrase is properly understood, for without parties cemented by the union of sound principles, evil men and evil principles cannot be successfully resisted. I flatter myself that the people of England will not hastily believe that I have ever been actuated in my public conduct by interest or ambition.

"The Whig party, as it has been called, was insignificant indeed from its numbers, and weak from the formidable influence of the Crown in the hands of its adversaries, but formidable nevertheless from illustrious rank, great property, and splendid talents; still more from an opinion of public integrity which formed a strong hold upon the minds of the country. I look back with the most heartfelt and dispiriting sorrow to the division of this little phalanx, whose union upon the principles which first bound them together might, in spite of differences of opinion in matters concerning which good men may fairly differ, have preserved the peace of the world, re-animating the forms of our own Constitution, and averting calamities the end of which I tremble to think of. Reflecting, however, as I do upon the frailties of human nature, advertent to the deceptions which may be practised upon it, and which men by insensible degrees unconsciously may practise upon themselves, compelled by candour to keep in view the unexampled crisis of the French Revolution, the horrors which disfigured it, the alarms inseparable from it, but above all the dexterous artifices which it furnished to inflame and to mislead, I wish to draw a veil over the stages which divided statesmen and friends at the very moment of all others when they ought to have drawn closer together, and when their union might have preserved their country. I shall, therefore, content myself with observing, that before the King's proclamation was issued, the support of the Duke of Portland had not only probably been secured to it, but the assent of some of the most distinguished persons in the opposition had been well understood to the whole of that system of measures which ended in the war with France.

"The proclamation thus supported was planted as the only genuine banner of loyalty throughout the kingdom, *voluntary bodies to strengthen the executive power by maintaining prosecutions were everywhere instituted. Society was rent asunder, and the harmony and freedom of English manners were for a season totally destroyed.*"

If, at the period in question, the Press had been visited by no other danger than the legal effects of the King's royal proclamation, the following

proceedings could certainly never have been promoted by men who understood and respected the Constitution. It is his Majesty's undoubted prerogative to superintend the whole executive magistracy, and to inculcate and command when he sees fit the utmost vigilance and exertion in the discharge of its various duties. The danger to the Press was of a very different kind. Voluntary Societies were formed in London, and were spreading by the contagion of example into the remotest parts of the kingdom. At the head of them all was the society for the Protection of Liberty and Property, against republicans and levellers, instituted, we have no doubt, or at least supported by well intentioned persons, zealous to support the Government, and giving credit for the occasion to the ministers of the Crown; but how soon it assumed a most dangerous partnership with the executive power, utterly repugnant to every principle of the British Government, and destructive of the happiness and security of the people, may be judged of by the following letter from one of its worthiest members, addressed to the chairman of the association. This letter, which, being printed and publicly circulated, brought to-day the extraordinary proceedings detailed in it, led almost immediately afterwards to the public meetings of the Friends of the Liberty of the Press, at the second of which Mr Erskine delivered what was afterwards adopted unanimately as a public declaration to be printed and circulated throughout the kingdom. That Mr Thomas Law, * the author of the letter, was a member of the society, reflects honour upon the institution; that he declined some of the duties which it cast upon him, reflects honour upon himself.

A LETTER to Mr REEVES, Chairman of the Association for preserving Liberty and Property. By THOMAS LAW, Esq., one of the Committee of that Society.

"GENTLEMEN,—I feel it incumbent upon me to assign to you the reasons which have influenced me to absent myself from the sub-committee of correspondence; and in explanation of my conduct I shall briefly recapitulate my motives for first uniting with your association, as well as my proceedings as a member of the enlarged committee.

"I had just obtained *security of property* to the natives of Bengal, Bahar, and Benares, by a fixation of land-tax, and an abolition of all internal impositions, or, to use the words of authority, 'A new constitution had been announced to many millions of the Asiatic subjects of Great Britain;' and I was rejoicing in this happy issue of my exertions when I perused your advertisement, wherein you avowed yourselves to be 'private men, unconnected with any party or description of persons at home, taking no concern in the struggles at this moment making abroad, but most seriously anxious to preserve the true liberty and unexampled prosperity we happily

* A son of the late Bishop of Carlisle, and brother to Lord Ellenborough, now residing in the United States of America, a man of great good sense, and of the purest and most honest mind and character.

enjoy in this kingdom.' My heart immediately informed me that I could zealously and firmly co-operate in such a cause, and with such independency, and I accordingly subscribed my name.

" Upon the first day that I became a member of the above-mentioned committee, when the suppression of inflammatory publications was introduced as our primary object, I recommended, as a previous measure, the counteraction of their effects by cheap pamphlets, and gave the purport of the following extract from an Act of the Assembly of Virginia to corroborate my argument:—' That it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order, and that *truth* is great, and will prevail if left to herself; that she is the proper and sufficient antagonist to *error*, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate—errors ceasing to be dangerous when it is permitted freely to contradict them.'

" The gentlemen of the committee approved of my conduct, and I had the pleasure to see mildness the feature of our deliberations *that day*; but shortly after this, perceiving with regret a deviation from your original profession ' to take no concern in the struggles abroad,' I felt myself compelled to deliver the following opinion in writing:—

" ' When I had the honour to receive a letter from the secretary of this society, I replied, That without adverting to the politics of other countries, I should be happy to co-operate for preserving liberty and property against republicans and levellers in my own.

" ' I conceived it to be the express intention of the enlarged committee to counteract, by cheap publications, the delusive doctrines of seditious libellers. I used the language of moderation the first day, and had the satisfaction to be elected, by strangers to me, for one of the sub-committee. But as we have lately introduced animadversions upon the French, I feel it incumbent upon me to dissent therefrom.

" ' *We are looked up to as the germ of other associations*; and it is not our duty, I trust, to revive national antipathies, which have so long distracted France and Great Britain. The situation of the old government of France bears no analogy to that of Great Britain. *We have not a Bastille to destroy—we have not a trial by jury to establish.* The people of Great Britain are, I hope, conscious of the blessings of a free government, and are aware *how very little they have to gain, and how very much to lose, by any revolution.*

" ' If any emissaries are attempting to alienate the attachment of his Majesty's subjects in this country, I will cordially unite in their detection and apprehension; but I cannot coincide with the gentlemen of this committee in censuring the conduct of any other gov-

ernment, let it be ever so erroneous, or in accusing it of trying to subvert our constitution, as it may complain to our Government of such attacks, and call upon us for proof.

“ I move, therefore, that all our reasonings, and that all our exertions, shall be directed against false doctrines, and against all seditious words, writings, and actions whatsoever, and by whomsoever, and that we do not introduce the French unless to show that their arguments and measures cannot be applied to us. (Signed) T. L.’

“ Upon this occasion I was gratified by seeing the committee erase those animadversions which they had previously resolved upon, because deliberation showed them to be unfounded.

“ The moderation of our measures for a few days afterwards afforded me the sincerest satisfaction; but I felt equal surprise and regret when the following proceedings took place upon the 11th instant:—

“ ‘ A Committee of Correspondence to be nominated, to consist of five members.

“ ‘ 1st. This committee may do immediately whatever is suggested by letters, or prepare for the General Committee.

“ ‘ 2dly. To apply to Government to direct the Solicitor of the Treasury to attend to the suggestions of this society. This to be done by the chairman with the Attorney-General.’

“ Having been present when anonymous letters were received, darkly accusing some of the first characters in this kingdom, and even his Majesty’s officers—which, when conveyed to Government, must necessarily excite alarm and distrust—and considering that individuals, however innocent, had no means of refuting clandestine calumnies, I proposed, ‘ That the Committee of Five be directed to burn all anonymous letters accusing individuals; ’ but this proposition was suppressed by carrying the previous question against it.

“ As I deemed myself responsible for my conduct to the association at large, I requested the president to record the above proceeding; but he refused. I next stated to the committee, that ‘ *since every motion and every voting formed part of our proceedings*, I hoped the foregoing would be entered; ’ but, being put to the vote, it was negatived.

“ In this predicament, I am necessitated to enumerate these particulars in this letter, that reference may be had to it should any one attribute inconsistency to me, or charge me with a dereliction of principle. I am sincerely attached to my Sovereign and the constitution of this Government, and I am ready to assist in bringing any traitor to punishment; but I should condemn myself as a false friend to all if I acted in any measure which tended in my opinion to frustrate the intention of its promoters, and to alienate public affection.

“ I have asked myself, ‘ Whether I should do unto others as I

would they should do unto me,' by admitting and perusing anonymous letters? Whether confidence, that band of harmony in society, must not be broken by such a measure? Whether suspicion has not caused horrid assassinations and convulsions? Whether any kind of inquisitorial body does not irritate to commotions? In short, my conscience has admonished me that my love of my country, and my desire of its tranquillity, all prohibit concealment.

"It will be urged that it is not necessary to act upon the information of nameless writers. Why then, I ask, shall we wound our minds with baleful impressions by perusing these letters? And why let men be sunk in estimation whom we might otherwise admire? The accused and the person receiving the accusation are *both* injured by an anonymous letter, if any impression is made by it. Every tribunal in this country requires the impeacher to confront the person arraigned, without which we could not boast that we lived '*rara*' *temporum felicitate, ubi licet sentire quod velis et dicere quod sentias.* But why do I expatiate on this head? I trust that you cannot but approve the principle which determines me to absent myself, however falsely delicate you may consider this determination.

"I will cheerfully attend the enlarged committee whenever summoned. And permit me to add that if any treasonable plots existed to my knowledge, which required *peculiar efforts*, I should never withdraw myself from any situation, however irksome, dangerous, or even opprobrious, wherein I could be of the least service to my country.—I remain, gentlemen, your most obedient, humble servant,

"Dec. 17,

THOMAS LAW.

"No. 16 WEYMOUTH STREET."

To resist and to counteract the effect of proceedings so novel, so extraordinary, and so dangerous, a great many gentlemen of distinction held two public meetings, at the first of which several resolutions were adopted; and, at the second, held on the 19th of January 1793, the following proceedings, now reprinted, took place.

They were originally printed by the Editor, by direction of the committee appointed by the meeting.

PROCEEDINGS OF THE FRIENDS OF THE LIBERTY OF THE PRESS.

January 19, 1793.

The Honourable THOMAS ERSKINE, M.P., *in the Chair.*

Mr Erskine said, that though he did not regard calumny and misrepresentation, as far as it affected himself personally, which he took it for granted was the case with every gentleman present, yet, as far as it affected the great object for which they were assembled,

it was of the highest importance to the public: that he should, therefore, to render misrepresentation utterly impossible, read what he had to say from a paper which he had written. He then read the following declaration:—

“The peculiar excellence of the English constitution, on which indeed the value of every Government may be summed up, is that it creates an equal rule of action for the whole nation, and an impartial administration of justice under it.

“From those master principles results that happy, unsuspecting, and unsuspected freedom which for ages has distinguished society in England, and which has united Englishmen in an enthusiasm for their country, and a reverence for their laws.

“To maintain this fearless tranquillity of human life, the prime blessing of social union, the power of accusation was not given to *uninjured* individuals, much less to *voluntary, undefined, unauthorized* associations of men, acting without responsibility, and open to irregular and private motives of action, but was conferred upon the supreme executive magistrate, as more likely to look down upon the mass of the community with an impassioned eye; and even that wisely-placed trust, guarded by the personal responsibility of those officers by which the Crown is obliged to exercise its authority, and in the higher order of crimes (which on principle should extend to all), guarded once again by the office of the grand jury, interposed as a shield between the people and the very laws enacted by themselves.

“Those admirable provisions appear to be founded in a deep acquaintance with the principles of society, and to be attended with the most important benefits to the public; because, tempered again, and finally with the trial by the country, they enable the English constitution to ratify the existence of a *strong, hereditary, executive* Government, consistently with the security of popular freedom.

“By this arrangement of the royal prerogative of accusation, so restrained and mitigated in its course, the Crown becomes an object of wholesome, but not dangerous jealousy; which, while it prevents it from overstepping its constitutional limits, endears the people to one another from a sense of the necessity of union amongst themselves, for the preservation of their privileges against a power dangerous to remove, but equally dangerous to exist, unobserved and unbalanced.

“Under this system, making allowance for the vices and errors inseparable from humanity, State accusations, *in modern times*, though sometimes erroneous, have not often been rash or malevolent; the criminal under the weight of the firm hand of justice has been supported by the indulgent fraternal tribunal of his country.

“But under the circumstances which assemble us together all these provisions appear to be endangered.

" A sudden alarm has been spread through the kingdom by the ministers of the Crown, of imminent danger to the constitution, and to all order and government. The nation has been represented to be fermenting into sedition and insurrection, through the dangerous associations and writings of disaffected and alienated subjects ; and under the pressure of this perilous conjuncture the Parliament has been suddenly assembled and the militia embodied.

" The existence or extent of those evils since they have been sanctioned, though not ascertained, by the authority of Parliament when assembled, we have not, upon the present occasion, assembled to debate ; but we may, without sedition, congratulate our fellow-subjects that our ministers have had the vigilance to detect those *numerous and bloody* insurrections which otherwise might have *secreted themselves*, and passed *unknown and undiscovered* ; and that, without the punishment of a single individual, for any overt act of treason, the people have recovered all that tranquillity and respect for the laws, which they appeared to us to have equally possessed at the time when the alarm burst forth.

" That large classes of the community should, nevertheless, give faith to the assertions and acts of a *responsible* Government, is neither to be wondered at nor disapproved. When the English constitution is authoritatively represented to be in danger, we rejoice in the enthusiasm of Englishmen to support it. When that danger is further represented to have been caused or increased by the circulation of treasonable and seditious writings, we acknowledge that it is the duty of every good subject, in his proper sphere, and by *proper means*, to discountenance them. Nothing is further from the intention of this meeting than to hold up to public disapprobation such individuals as, from honest motives, have joined associations, even though they may in their zeal have shot beyond that line of exertion which we (mistakenly, perhaps, but conscientiously) conceive to be the safe limitation of assistance to executive government by private men.

" We assemble neither to reprehend nor to dictate to others, but from a principle of public duty to enter our solemn protest against the propriety or justice of those associations which, by the contagion of example, are spreading fast over England, supported by the subscriptions of opulent men, for the avowed object of *suppressing and prosecuting* writings—more especially when accompanied with *REWARDS TO INFORMERS* ; and, *above all*, when those rewards are extended (of which there are instances) to question and to punish opinions delivered even in the private intercourses of domestic life ; unmixed with any act or manifested intention against the authority of the laws.

" We refrained, at our former meeting, from pronouncing these proceedings to be illegal and punishable, because we must receive the rule from our statutes and precedents of law, which are silent

on the subject ; but we consider them to be doubtful in law, and unconstitutional in principle, from the whole theory and all the analogies of English justice.

“ In the first place, we object to them as wholly unnecessary ; and we give this objection precedence, because there ought to be a visible necessity or expediency to vindicate every innovation in the mode of administering the laws. Supposing, then, the conjuncture to be what it is by authority represented, the Crown is possessed of the most ample powers for the administration of speedy and universal justice.

“ If the ordinary sittings of the courts are found at any time to be insufficient for the accomplishment of their jurisdictions, or if even a salutary terror is to be inspired for the general security, the King may appoint special commissions for the trial of offenders.

“ If the revenue devoted to the ordinary purposes of criminal justice should be found insufficient for an unusual expenditure, Parliament is ever at hand to supply the means ; and no Parliament can be supposed to refuse, or the people be suspected to murmur at, so necessary an expense.

“ If information also became necessary for the discovery and conviction of offenders, the Crown may at any time, by its authority, set even informers in motion.

“ But under all this awful process, public freedom would still be secured, while the public safety was maintained. The Crown, still acting by its officers, would continue to be responsible for the exercise of its authority ; and the community, still bound together by a common interest, and cemented by the undisturbed affections and confidences of private life, would be sound and pure for the administration of justice.

“ This we maintain and publish to be the genius of the British constitution, as it regards the criminal law.

“ But when, without any State necessity, or requisition from the Crown, or Parliament of the Kingdom, bodies of men voluntarily intrude themselves into a sort of partnership of authority with the executive power ; and when, from the universal and admitted interest of the whole nation, in the object or *pretex*ts of such associations the people (if they continue to spread as they have done) may be said to be in a manner represented by them, where is the accused to find justice among his peers, when arraigned by such combinations ? Where is the boasted trial by the country, if the country is thus to become informer and accuser ? Where is the cautious distrust of accusation, if the grand jury may themselves (or some of them) have informed against the object of it, brought in the very bill which they are to find, and subscribed for the prosecution of it ? Where in the end is the mild, complacent, relenting countenance of the jury for trial—that last consolation which the humanity of England never denied, even to men taken in arms

against her laws—if the panel is to come reeking from the vestry-rooms, where they have been listening to harangues concerning the absolute necessity of extinguishing the very crimes and the criminals which they are to decide upon in judgment, and to condemn or acquit by their verdicts?

“ But if these proceedings must thus evidently taint the administration of justice, even in the superior courts, where the Judges, from their independence, their superior learning, and their further removal from common life, may be argued to be likely to assist juries in the due discharge of their office—what must be the condition of the courts of Quarter Sessions, whose jurisdictions over these offences are co-ordinate—where the Judges are the very gentlemen who lead those associations in every county and city in the kingdom, and where the jurors are either tenants and dependants, or their neighbours in the country, justly looking up to them with confidence and affection, as their friends and protectors in the direction of their affairs? IS THIS A TRIAL BY AN ENGLISH COURT AND JURY? It would be infinitely more manly, and less injurious to the accused, to condemn him at once without a hearing, than to mock him with the empty forms of the British constitution, when the substance and effect of it are destroyed.

“ By these observations we mean no disrespect to the magistracies of our country. But the best men may inadvertently place themselves in situations absolutely incompatible with their duties. Our natures are human, and we err when we consider them as divine.

“ These incongruities arising from this rage of popular accusation, or even of declared popular support to accusations proceeding from the Crown, are not our original observations. We are led to them by the analogies and institutions of the law itself.

“ On this principle, criminals impeached, not by the people heated with a sense of individual danger, and personally mixing themselves with the charge and the evidence, but, impeached by the House of Commons representing them, are tried, from the necessity of the case, by the Lords, and not by the country. This anomaly of justice arose from the humanity and wisdom of our ancestors. They thought that, when the complaint proceeded not from the Crown, whose acts the people are accustomed to watch with jealousy, but from the popular branch of the Government, which they lean towards with favour, it was more substantial justice to the meanest man in England to send him for trial before the Lords, though connected with him by no common interest, but, on the contrary, divided by a separate one, than to trust him to a jury of his equals, when the *people* from which it must be taken was even in *theory* connected with the prosecution, though totally unacquainted, in fact, with its cause, or with its object.

“ We appeal with confidence to the reason of the public whether these principles do not apply, by the closest analogy, to the pro-

ceedings which we assemble to disapprove. Criminal jurisdictions are local; the offence must be tried in the county, and frequently in the very town, where it is charged to be committed; and thus the accused must not only stand before a court infected by a *general prejudice*, but in a manner disqualified by a *pointed and particular passion and interest*.

"We have further to remark, that these objections to popular associations, or the prosecution of crimes, apply with double force when directed against THE PRESS, than against any *other* objects of criminal justice which can be described or imagined.

"Associations to prosecute offences against the Game Laws, or frauds against tradesmen (which we select as familiar instances), though we do not vindicate them, nevertheless distinctly describe their objects, and, in suppressing illegal conduct, have no immediate tendency to deter from the exercise of rights which are legal, and in which the public have a deep and important interest.

"No unqualified person can shoot or sell a hare, or a partridge, as long as a monopoly in game is suffered to continue, without *knowing* that he transgresses the law; and there can be no difference of judgment upon the existence, extent, or consequence of the offence. The trial is of a mere *fact*. By such associations, therefore, the public cannot be stated to suffer further than it always suffers by an oppressive system of penal law, and by every departure from the due course of administering it.

"In the same manner, when a swindler obtains goods on false pretences, he cannot have done so from error—the act is decisive of the intention; the law defines the crime with positive precision; and the trial is in this case, therefore, only the investigation of a fact; and in holding out terrors to swindlers, honest men are in no danger, nor does the public suffer further than we have above adverted to.

"These associations, besides, from their very natures, cannot be so *universal*, as to disqualify the *country at large* by prejudice or interest from the office of trial; they are bottomed besides, particularly the last (which is a most material distinction), upon crimes the perpetration of which is injurious to individuals *as such*, and which each individual in his own personal right might legally prosecute, whereas we assemble to object to the popular prosecution of those *public* offences, which the Crown, if they exist, is bound in duty to prosecute by the Attorney-General, where no individual can count upon a personal injury, and where the personal interest of the subject is only as a member of that public, which is committed to the care of the executive authority of the country.

"The press, therefore, as it is to be affected by associations of individuals to fetter its general freedom, *wholly unconnected with any attack upon private character*, is a very different consideration, for if THE NATION is to be combined to suppress writings without

further describing what those writings are, than by the general denomination, *writings*; and if the exertions of these combinations are not even to be confined to suppress and punish the circulation of books, *already condemned by the judgments of courts*, but are to extend to whatever does not happen to fall in with *their* private judgments: if every writing is to be prosecuted which *they* may not have the sense to understand, or the virtue to practise; if no man is to write but upon *their* principles, nor can read with safety except what *they* have written, lest he should accidentally talk of what he has read—no man will venture either to write or to speak upon the topics of Government or its administration, a freedom which has ever been acknowledged by our greatest statesmen and lawyers to be the principal safeguard of that constitution which liberty of thought originally created, and which a FREE PRESS for its circulation gradually brought to maturity.

“ We *will*, therefore, *maintain* and *assert* by all legal means this sacred and essential privilege, the parent and guardian of every other. We *will maintain* and *assert* the right of instructing our fellow-subjects by every sincere and conscientious communication which may promote the public happiness; and while we render obedience to Government and to law, we *will* remember at the same time that, as they exist by the people's consent, and for the people's benefit, they have a right to examine their principles, to watch over their due execution, and to preserve the beautiful structure of their political system by pointing out, as they arise, those defects and corruptions which the hand of time never fails to spread over the wisest of human institutions.

“ If in the legal and peaceable assertion of this freedom we shall be calumniated and persecuted, we must be contented to suffer in the cause of freedom, as our fathers before us have suffered; but we will, like our fathers, also persevere until we prevail.

“ Let us, however, recollect with satisfaction, that the law as it stands at this very moment (thanks to our illustrious patriot, Mr Fox, who brought forward the Libel Bill), is amply sufficient for the protection of the press, if the country will be but true to itself. The extent of the genuine liberty of the press on *general* subjects, and the boundaries which separate them from licentiousness, the English law has wisely not attempted to define; they are, indeed, in their nature undefinable, and it is the office of the jury alone, taken from the county in each particular instance, to ascertain them, and the trust of the Crown, where no individual is slandered, to select the instances for trial by its ministers responsible to Parliament.

“ This system appears to us amply to secure the Government, while it equally protects the subject; but if this selection is to be transferred to self-constituted assemblies of men, agitated by a zeal, however honest, the press must be broken up, and individuals must purchase their safety by ignorance and silence.

" In such a state we admit that the other liberties which we enjoy under the laws might nevertheless continue as long as government might happen to be justly administered, but should corruption or ambition ever direct their efforts against them the nation would be surprised and enslaved—surprised by the loss of their wakeful sentinels whom they had shot for only being at their posts, and enslaved from the loss of their armour, which their adversary, under the pretence of a treaty, had cajoled them to lay away.

" But these evils become not only greater but absolutely intolerable when extended to the stimulation of spies to stab domestic peace—to watch for the innocent in the hours devoted to domestic happiness, and to disturb the sweet repose of private life upon the bosom of friendship and truth.

" It is justly observed by the celebrated Judge Foster that words are transitory and fleeting, easily forgotten, and subject to mistaken interpretations. Shall their very existence then at their criminality, as depending upon context, or sequel or cause—shall all rest on the oaths of hired informers? Is this, in the end of the eighteenth century, to be the condition of our dear country? Are these to be our chains? And are we, after we have broken them on the heads of tyrants in former ages, bent down to forge them again for ourselves, and to fasten them on another?

" Our last and not the least objection to popular accusation is the love we bear to the Government of England, and our wish that its functions may be perpetual; it being our opinion, as expressed in our seventh resolution at our former meeting—

" That a system of jealousy and arbitrary coercion of the people has been at all times dangerous to the stability of the English Government. For the truth of which we appeal to human nature in general, to the characteristic of Englishmen in particular, and to the history of the country.

" In the career of such a system of combination we foresee nothing but oppression; and, when its force is extinguished nothing but discontent, disobedience, and misrule. If Government permits or countenances this distribution of its executive powers, how is it to resume them should opinions change and run the other way? From the artifices and ambition of designing men, the best Governments may, for a season, be unpopular, as we know from experience that the very worst may triumph for a while by imposture. Should such a change of opinion arrive, as in the nature of things it must, the administration of Government and justice will be distracted and weakened. It will be in vain to inculcate that subjects may persecute one another by combination, but that they must not combine for their common defence; and as, in this unnatural tide of flood, no man

may expect to be acquitted, however he may love his country, so, in the ebb of the same tide, equally unnatural, it may be difficult to bring to conviction even those who may be plotting its destruction. Against both these departures from the even and usual course of justice and all their consequences, we *equally*, and with an *impartial* spirit, protest.

“When we consider the great proportion of the community that has already *hastily* sanctioned the proceedings which we dissent from, the great authority that countenances them, the powerful influence which supports them, and the mighty revenue raised upon the people—which through various channels rewards many of those who lead the rest—we are aware of the difficulties which this address has to encounter; and judging of man from his nature and his history, we expect no *immediate* success from our interposition. But we believe that the season of reflection is not far distant, when this humble effort for the public will be remembered, and its authors be vindicated by the people of Great Britain.”

Mr Sheridan said, that the very able and eloquent paper which they now had the happiness to hear read by the author himself, contained political opinions so strongly enforced, and displayed the truth in so irresistible a form, that the whole society had but one sentiment as to its merits. He agreed with his honourable friend in every syllable he had advanced. It was an admirable protest, and might serve to convey to the world the principles of the society. He therefore recommended it to be adopted by the meeting as their DECLARATION. The learned gentleman now appeared in a new and honourable character, and while he gave a proof of his manly firmness, he acted with peculiar delicacy and moderation. When these sentiments were announced, the world would be convinced that the friends of real freedom were not to be subdued or overawed by the wretched artifice of Government. The present meeting had been treated by administration not with levity but alarm. They would, however, be soon fully persuaded that this juggling plan of policy could no longer be concealed; that their appeal to the rabble would not avail, and that the people could not dread thunder while the sky was clear; in short, that their deceptions would soon be exploded, and that the good sense of Englishmen would revolt at violated rights and expiring liberty. With regard to the author of the excellent paper he begged leave to say a few words. The new character which he now acted must afford the most lively sensations. If private individuals rejoiced when Mr Erskine stood forward as their advocate, how much more must that pleasure be increased when he now appeared as the advocate of the nation at large, retained by the honourable impulse of his heart, and rewarded by the affections of the people. He volunteered his transcendent talents in the most disinterested way. Scorning a brief or fee, he

courted no other reward than the applause of his fellow-citizens, he had no other object in view than the good of mankind. This pursuit was the noblest gratification of a great and a good mind. Convinced of the truths contained in the inestimable paper, he moved that it should be adopted as the creed or declaration of the society; that it should be published to the world at large as their protest against the associations; and that the members of those clubs be permitted to answer it, if they could. Mr Sheridan then moved, "That the paper then read be adopted as the DECLARATION OF THE FRIENDS OF THE FREEDOM OF THE PRESS," which motion was immediately carried without a dissenting voice, and in a short time the declaration received above five hundred most-respectable signatures.

To appreciate the merit or propriety of the foregoing composition is foreign to the Editor's design, who has not, in any one instance presumed to introduce criticism of praise or blame, or to deliver any opinion of his own regarding the subjects of the publication; but he cannot forbear observing, without departing from this rule, that the declaration above mentioned is in perfect conformity with the principles which characterise all Lord Erskine's pleadings which the Editor has here collected. As a politician, he may have been mistaken in thinking that the country was in no danger from domestic enemies at the period of this declaration, but still its great object would remain untouched—the support of the regular, unaided, undisturbed dominion of the law. This appears to have been not only the author's characteristic, but his ruling passion; and we cannot, therefore, better conclude this collection than by the concluding sentence of the eloquent criticism upon the two first volumes in the *Edinburgh Review* :—

"While the administration of the law flows in such pure channels—while the Judges are incorruptible, and are watched by the scrutinising eyes of an enlightened bar, as well as by the jealous attention of the country—while juries continue to know, and to exercise their high functions, and a single advocate of honesty and talent remains—thank God, happen what will in other places, our personal safety is beyond the reach of a corrupt ministry and their venal adherents. Justice will hold her even balance in the midst of hosts armed with gold or with steel; the law will be administered steadily, while the principles of right and wrong—the evidence of the senses themselves—the very axioms of arithmetic—may seem elsewhere to be mixed in one giddy and inextricable confusion; and, after every other plank of the British constitution shall have sunk below the weight of the Crown, or been stove in by the violence of popular commotions, that one will remain to which we are ever fondest of clinging, and by which we can always most securely be saved."