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*** START OF THE PROJECT GUTENBERG EBOOK A SKETCH OF THE LIFE OF THE LATE
HENRY COOPER ***

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W. & H. S. Warr 63, High Holborn

A SKETCH OF THE LIFE
OF THE LATE
HENRY COOPER,
BARRISTER-AT-LAW, OF THE NORFOLK CIRCUIT;
AS ALSO,
OF HIS FATHER,

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BY HIS SON,
WILLIAM COOPER, Esq., B.A., Oxon.,
Of Lincoln's Inn, Barrister at Law;
AUTHOR OF THE DRAMAS OF
"THE STUDENT OF JENA," "MOKANNA,"
"ZOPYRUS," &c.
"MEMINISSE JUVAT."

LONDON:
PRINTED AND PUBLISHED BY W. & H. S. WARR,

DEDICATION.

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To MR. SERGEANT STORKS.

DEAR MR. SERGEANT,

To you I dedicate this sketch of the Life of my late brother, Henry Cooper; and, for three good reasons—the first, because, you were associated with my brother on circuit, knew him well, and were one of those, who being often opposed to him in court, were best able to appreciate his talents, eloquence, and the general powers of his mind;—my second, because, when young, I have listened often to your eloquence, and been made merry by your wit and humour;—my third, because, you have known all my family, and by one and all are much respected;—and my dear Mr. Sergeant, with kind regards to yourself, and best wishes to you and yours,

Believe me,
Yours very truly,
WILLIAM COOPER.

3, HARE COURT, TEMPLE,
December, 1856.

PREFACE.

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KIND READER,

In attempting the life of my late brother, who, after struggling for years at the bar in almost obscurity, had, on a sudden, his brilliancy noticed and his great talents acknowledged, and no sooner had he reached that eminence in his profession, when all was made easy before him, than unpitied Clotho stepped up, and cut his thread of life; I must ask your indulgence, for the reasons you will see, as you proceed in this my life of him, as also, from the very scanty materials I have been able to collect for it. How the first idea of this suggested itself to my mind, I will tell you; a few days ago, I was about to re-publish some Dramas, written by me in earlier years, and thinking one of them would scarcely make a volume by itself, the *thought struck me*, on looking over my treasures, and finding some verses of my brother Henry in his own hand writing, amidst many youthful rhymes of my own and of my family, *that* I would string them together, and so swell the work alluded to. To do this I thought it necessary to affix a short heading to each, to particularize the writer, and for this purpose wrote, to head my brother's, a short biographical sketch of him, consisting of about thirty lines, and quitting my house, left it on my way to chambers at my printers, returned home, the labours of the day over,—went to bed, but not to sleep, thought of my late brother, of that I had written of him, pondered over the past anecdotes of his life, that had been often told me, recalled his image to my memory, and amidst airy visions of the past, of my father, earlier days, and of youthful pleasures mixed with pain, fell asleep—*BUT*—with a determination. To carry it out,—on the morrow I began this sketch. You must judge how I have performed my self-imposed task, and wishing it may amuse you, and encourage young aspirants who shall chance to read it, not to give way under difficulties, but strenuously to persevere, seeing how much may be achieved by diligence and a determination not to yield, remembering ever the good advice and the useful maxim delivered of old:—

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"Tu ne cede malis sed contra
Audacior ito—"
"Possunt quia posse videntur."

I am, yours faithfully,
W. COOPER.

LIFE OF HENRY COOPER.

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The subject of the present memoir, Henry Cooper, was born at a house in Bethel Street, in the City of Norwich, now well-known as the late residence of Alderman Hawkes, and where resided for many years his father, Charles, now better known as Old Counsellor Cooper, a remarkable man, who, like the late William Cobbett, though of humble origin, possessed one of those minds that will and must, as they have ever done from the time of Deioces of Ecbatana (recorded by Herodotus) till now, elevate the possessor and compel the homage, whilst exciting the no small envy of inferior intellects. What education he received was at a small school kept by the Rev.

John Bruckner (a Lutheran Divine), who died in 1804, and was buried at Guist, in Norfolk, where French, Latin, and the common rudiments of an English education were taught; and where, too, the late William Taylor,—perhaps one of the most extraordinary men Norwich ever produced, the early and intimate friend of Southey, and who was the first, according to Lockhart's Life of Scott, to give that great writer a taste for poetry by his (Taylor's) spirited and inimitable translation of Bürger's well known ballad beginning,—

“At break of day from frightful dreams up started Eleanor,”

was his fellow pupil, and who has told me what a gentle, industrious, and amiable boy he remembered my father (truly, in this instance, the child was father of the man); there he acquired, no doubt, some knowledge, but it was far more to his own self-instruction that he was indebted for the large and varied knowledge he possessed, for, as his brother Samuel (his only and younger brother,—he had a sister but she died young) informed my mother that such was his early thirst for knowledge, that he not only repudiated all play, and the sports of boyhood, taught himself Greek, and greedily devoured the contents of every book that came within his reach, but would, with the pocket-money given him, purchase candles, and when the family had retired to rest, light one, and sit and read till the dawn of day, when he would creep into bed, and sleep till the hour of call, when he would rise to resume anew his mental exercise. So years past by, and the young and sickly looking boy grew into the youth, when his father, a man of strong intellect, with a great deal of sound common sense, perceiving the bent of his son's mind,—and being a man who had retired early in life from business with a small property, on which he lived in a house at Heigham (a hamlet within the city),—at once placed his son Charles with one of the most respectable attornies, in large business in Norwich, as an articled clerk to the law, where he very soon, by his persevering industry, his assiduity, and the great acuteness shown in every matter entrusted to his care and management, so conciliated the good opinion of his master, who discovered progressively, the evident marks of superior abilities [here, too, he indulged to an excess his insatiable thirst for reading, that he would sit up the greater part of the night for this purpose, to the neglect and injury of his health], that at the termination of his engagement, his conduct was so acceptable, and his services so manifest, and his influence, too, among the clients, was found to be so extensive, that on his obtaining his certificate to practise as an attorney, his principal was glad to offer him a share in the business, and receive him as a partner; the reputation he had already acquired became wide spread, and quickly raised the firm in the estimation of the public, and clients flocked to it, and all would see, if they could, and consult with Mr. Cooper on their affairs.

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Some years thus passed, when, from some cause or other, a dissolution took place in the partnership, and when, probably from the advice of friends stimulated by his wife's ambition (a Miss Yarrington, a woman as I have been given to understand, of masculine mind, vast energy, and indomitable spirit, whom her son Henry has been often said by those who knew her, to have resembled in more than features, for in face he resembled his mother), he was induced to enter himself at Lincoln's Inn, which he accordingly did in the year 1782, and is thus entered: “Charles Cooper, of the City of Norwich, eldest son of Charles Cooper of the same place, merchant, admitted 22nd of April, 1782.” Prior to this, a remarkable incident occurred in his life: he undertook the conduct of a cause of great intricacy and importance for a pauper, a labouring blacksmith. An extensive and valuable landed property, well-known as Oby Hall, with its extensive demesnes, had been for a long time in abeyance; the property was estimated at that period, at not less than £30,000; on failure of male issue, the descendants on the female side put in their claim, among whom the blacksmith stood foremost; he came, consulted with my father on his claim, who became after a time, convinced of the solidity of his title; and after examining it with indefatigable assiduity, he at length, after much entreaty, undertook to carry his cause through every court, were it necessary, upon certain conditions; the conditions were, that if my father succeeded in gaining the cause, in consideration of taking upon himself all the risk, expenses, and labour, he should enjoy the estate; whilst the claimant, having no relations but the most distant, if any, was to receive an annuity for life of £300. After almost insurmountable difficulties, great expense, and consumption of time and labour, the long anticipated time arrived when the trial was to decide the question of such grave moment to the parties concerned: Lord Erskine came down to Norwich specially retained for the claimant (the origin, I believe of his after intimacy with Henry), the case came on for trial,—was fought on both sides with all the ability and ingenuity such a cause demanded (I forget the name of the opposing counsel), the claimant's title was confirmed, and the estate gained. The claimant lived but a little more than a year or two after to receive his annuity, to him absolute wealth; and he died, I have heard, expressing to the last, his gratitude to (as he styled my father) his protector.

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Unfortunately, coming into the possession of the estate, my father must turn farmer, and like him, I have before compared him to, and I have often thought since reading the works of Cobbett, that there was a similarity in their thoughts on many subjects; he soon began to farm at a fearful loss (for to be a gainful farmer, so farmers hold, or rather they did then, a man should properly be trained to it from his youth), he was forced to trust to others to do what he should himself have done, and being still occupied in his professional pursuits at Norwich, his visits to the hall and the estate were but occasional, and the eye of the master was but too often absent; his family, however, resided there, consisting of his wife and his four children, Charles, Henry, Harriet, and Alfred, and there his affections were centred, so that it cannot be wondered at, that with a divided duty, and the course pursued, ere many years, but I am forestalling, the estate soon became involved, and eventually he was compelled to part with it at a loss, or rather with no gain, for at the time of its sale, which happened at a period during the long war, land fell all of a

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sudden greatly in value, and the seller was glad to experience the truth of the old saying—

“When house and land and all are spent,
Then learning is most excellent.”

This sale, however, did not occur till some years after the death of his first wife, and when he had married his second, a Miss Rose White, my mother, and by whom he had several children, seven only living to maturity, all of whom, I being the eldest, having survived him. His first family, with the exception of his daughter, who died a few years ago, having all died previous to the decease of their father. After having pursued his studies with his accustomed assiduity, in chambers he had taken in Stone Buildings, and eaten his terms, he was called to the bar on the 9th of June, in the year 1788. (For these several dates I am indebted to the kindness of Mr. Doyle, the greatly respected steward of Lincoln’s Inn.) When, having resided a few terms in London, he hastily left the metropolis—the true and only sphere for the full development of extensive legal knowledge and great abilities, such as his,—to reside and practise as a provincial barrister in his native city; where, from his previous reputation, not only as a lawyer well versed in common law, with great knowledge in the practical parts of it, but as a most skilful conveyancer, and great real property lawyer, with a deep knowledge of all its intricacies and moot points, he, at once, obtained considerable practice, and a fine income, which, I believe, by present provincial counsel would be regarded rather as a fiction than reality. He was, moreover, a fluent speaker, with diction pure, and most grammatical. I ought, here, perhaps, to mention what will seem strange to the present generation, that I have often heard my father say, that the first book he began to study law from was “Wood’s Institutes,” a book that “the Commentaries of Blackstone,” rendering the study of the law far more intelligible and easy to the student, has long completely superseded. In Norwich he continued to reside up to his death, where he was ever applied to by every attorney, without exception, far and near, if any very difficult point of law arose; and, till within some few years prior to his death, which happened on the 21st of July, 1836, when age as, is usual, though it kindly spared the vigour of his intellect, yet brought with it its physical weakness and ailments, he was employed as leading counsel in many important causes, where legal knowledge and acumen was required; and, in the courts, from the high reputation he had acquired, he ever commanded the ear of the judges, and the respect of his brethren at the bar. He had the joy, too, to live to see his son Henry rising fast to eminence in the same profession, though the after pang and anguish to sorrow for his death; and he grieved for him in heart, though not his youngest, as did Jacob at the imagined loss of his favourite, and, in my opinion, never did he quite get over it; he not only loved, but was proud of him.

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The latter years of him, whose life I have thus briefly sketched, were past at his small country residence, situated at Lakenham, where his second wife, who survived him, my mother, now seventy-four, still resides, a hamlet of and situate two miles from Norwich, where he spent the chief of his time, of that he could spare from the city where he practised, till up to the last twelve months of his life, when in his eighty-fourth year he expired, worn out with past exertion and years, and was, as chief Coroner and Magistrate of the Close and its precincts, under the jurisdiction of the Dean and Chapter, buried within the cloisters of the cathedral.

By his family, from his sweetness of disposition, kindness of heart, and amiability of temper, he was tenderly beloved and regretted, and still whenever recalled to memory in the quietude of the chamber the eye will ever be moistened by a tear, and the heart kindle at the recollection; and by many others he was and will be yet greatly missed; the poor and struggling literary man he would encourage not only with praise, but with his purse, and, THAT, the poor and needy had ever open to them, and his advice besides gratuitously, whenever required (and this might be confirmed by hundreds still living “in the ONCE ancient city,” as a certain wise Alderman of yore styled it), and to their affairs he would give as much attention as to the richest client; his private memoranda alone, after death, told his good deeds, for he strictly adhered to the beautiful doctrine laid down by the great Teacher, “But when thou doest alms, let not thy left hand know what thy right hand doeth,”—“*Quando ullum invenies parem?*”

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Of his first family, Charles, the eldest son, was intended for the bar, and was entered at Lincoln’s Inn, but from the natural sensitiveness of his disposition he never kept his terms, and soon gave up all thoughts of the profession; he lingered at home, a Westminster scholar, a man of extensive reading, and of great intelligence [as I have been informed, for I was much too young fully to appreciate him], till after many years, on Henry’s quitting Bermudas, he became the secretary to Sir James Cockburn, in which employment he continued some years, and only returned when Sir James ceased to be the governor. He then became a kind of superior clerk in the Marine office then held in Spring Gardens, and subsequently died at the age of about forty-five or forty-eight of consumption, a complaint of the mother’s family. Alfred went into the army as an ensign, was at the battle of Waterloo, was wounded there, was ordered and went subsequently to India with his regiment, the 14th Foot, where, years after, just as he had obtained a sick leave to return home, he was shot at Dinapoor, whilst reposing on his sofa, thinking probably, or dreaming of home and its affections, by a drunken Sepoy, mistaking him (in his mad excitement) for his servant, who had just previously refused him drink; the occurrence caused, necessarily, great excitement and much conversation at the time, the man was caught and hanged—a satisfaction to justice, but a wretched consolation to his family, by whom, as the youngest, and amiable as he was gentle, he was most fondly loved. His father and sister, I believe, were never made acquainted with the true cause of his death. A letter of Henry’s relating, though indistinctly, for evident reasons, to the sad occurrence, will be placed before the reader. Harriet, as I have said, the only sister (who married a Dr. Leath, a physician in the army, who resides still at Bayswater) died not very long

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ago, leaving no issue.

Having given a sketch, which I think and hope will have interested the reader of him, from whom He sprung, whose life I am about to delineate. I will now proceed to depict the life of the Son, with the simple remark that I have undertaken a task of no slight difficulty (and much such an one as that of the poor Jews, who, under their hard taskmasters in Egypt, were set to make bricks without straw), with very slight materials to describe the life of one who died when I was sixteen, and whom I loved from his unvaried kindness to me, of the life of one who, had he lived, would have had a far abler biographer. Henry, in early life, took a propensity to and entered the navy, and was a midshipman in the battle of the Nile, but soon after, disliking the service, quitted the profession.

His education, when he returned from sea, was, through indulgence, neglected: and he passed most of his time at Oby Hall, in Norfolk, the then residence of his father, and distant about eight miles from Yarmouth, in shooting, fishing, and driving a tandem-cart about the country, built of unusual height; and an anecdote is related of him, that, after driving it awhile, he went to Mr. Clements, the builder at Norwich, and said, "Well, Clements, you have built a machine to surprise all the world, and I am come to surprise you by paying you for it." And to show his early quick perception, ready reply, wilfulness, and precocity, I must here relate two well-attested anecdotes: the first, when quite a child, and at his lessons in the nursery, on his mother's running up to dispel the noise and disturbance he was making, she exclaimed in anger, after in some measure correcting him, "Why, sir, if you go on in this manner you'll turn the house out of the windows," the young gentleman, looking roguishly at his mother, responded, "How can I do that, Ma, for the house is bigger than the windows?" this of course dissipated all anger, and brought a smile to the mother's face; silence, however, was restored and study resumed. The other, when he was about eleven or twelve years of age, a poor soldier, who had been kind to him, assisting him in his fishing, boating, &c., and who was at that time cleaning harness for my brother in the stable, was arrested by an escort of soldiers, who suddenly came to apprehend and convey him, for some alleged offence, to the head quarters at Yarmouth; without saying a word or leaving a message behind him, young Henry started off with his friend and the soldiers, telling the captive, "Never to care, for he would be his advocate." He was, after some time had elapsed, missed; search was made for him in every direction till night came on, but no traces of his whereabouts could be discovered, and, with fearful anxiety, as I have heard my father often say, all, at last, worn out and weary with the fruitless search, retired to bed, but not to rest; care brooded over their pillows and dispelled sleep. Morning, at last, came, but with it no tidings of Henry; and, when alarm had reached its height, in ran the servant lad, in breathless haste, exclaiming, "Master Henry is found," and soon after he was seen, being borne in triumph on a soldier's back, with others following, coming up the lawn. All were delighted to see the lost one safe, and, to delight was added astonishment, on a soldier putting into his father's hand a letter, which was quickly opened and read, and which came from the commanding officer. I regret that letter is lost; it spoke, I have often heard my father and mother relate, in the highest terms of the youngster, and warmly congratulating the former on the possession of such a son, so noble in bearing, so bold, and so talented; adding, that he had pleaded the soldier's case so well, that he had, so young an advocate as he was, obtained the acquittal of his client. As he grew up in years he was the pride and terror of the little farmers of the neighbourhood,—the first from his ready wit, playful, and genial disposition, which he ever retained; the latter from the practical jokes he was constantly in the habit of playing on them, many of which are remembered and spoken of at, and around Oby, up to the present day: and he had the love of all, for, if they wanted game, or any kindness done them, they had only to ask and have. But midst this he read, and he lacked not mental food to feed on, as his father possessed a large and well-stocked library. Henry's reading, however, was necessarily desultory and discursive, but such the retention of his memory, that he forgot nothing he had once conned; as an instance of this I must relate an anecdote, often told of him by Mr. Jay, an attorney at Norwich, still living, and who was an excellent client, and a great admirer of my brother, that soon after large business flowed in upon him, and he went into court with a bag full of briefs; to his Mr. Jay's utter astonishment, after a case had been called on, in which he was the attorney, and the several witnesses had been called, examined, and the cause gained, my brother, who had led it, turned round, and said, "There Jay, I have won your cause, but I will be hanged if I know where your brief is; I read it, but somehow lost it." He, of course, used blank paper for his notes. His perception, too, was so acute, his imagination so vivid, and his memory so retentive, that he could at once, and readily apply the knowledge so widely gleaned to the subject under discussion, that they who were ignorant of his previous mental instruction, would have imagined that he had, in earlier years, been the lean and diligent student, who had wasted the midnight oil in meditation and deep research.

After an interval of years, he became a member of Lincoln's Inn, when in due course of time he was proposed by the late Mr. Justice, then James Allan Parke, Esquire, and called to the bar, May 25th, 1811. Soon after his call, he accompanied Sir James Cockburn, who had been just appointed governor of the Bermudas, as his secretary, and after a short period, on his arrival there, was made Attorney General, the duties of which office he for some years performed to the entire satisfaction of the governor. His letters thence, I have understood, contained beautiful and vivid descriptions of

"That happy island where huge lemons grow"

[he was an admirer of scenery and nature], and that the wit, graphic portraiture of the men in office on the island, the general chit chat, scandle and fun, intermixed with politics, occasional

rhymes, &c., put the reader [since dead] of a few of them, in mind of the letters of Lord Byron. After his return home, he took chambers in Fig Tree or Elm Court, in the Temple, read and awaited clients, and went the Norfolk circuit; but, alas! few profitable knocks came to his door, and the circuit yielded rather expense than profit; but on he went struggling and struggling, till at last his talents were acknowledged; and the four years preceding his death, he was an eminent leader, and engaged in almost every cause throughout his circuit, and rapidly gaining a reputation in London from "the very eloquent, bold, and honest style of his defence," for Mary Ann Carlile, who was prosecuted, by what was then styled the Constitutional Association, for publishing a libel upon the government, and the constitution of this country. The trial ended after a brilliant speech of the defendant's counsel, full of argument, eloquence, and ability, in the dismissal of the jury, after being locked up all night; the counsel for the prosecution, the late Mr. Baron Gurney, consenting to their discharge. The report of the trial, and Henry Cooper's speech in full, was printed and published by the notorious Richard Carlile, who then kept a shop in Fleet Street. At the early age of forty my brother died, and he was then looked on by the profession, as a man, who, had he lived, must have achieved the highest honours in it. He was an ardent admirer of, and some of his friends were pleased to say, a close imitator of the oratory of Lord Erskine, with whom, till he died, he was on terms of the greatest intimacy. In fact he was writing his life for publication, by the express desire of Erskine himself, when death staid the pen. Alas! but a few pages of it were written, and those in the rough, I will, however, lay them, ere I have done, before the reader.

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Henry, the last four years of his going circuit, and when his abilities were acknowledged, was sometimes opposed to his father, to the no small pleasure and amusement of the Norwich people, who as greatly respected the legal ability of the one, as they admired the eloquence of the other; and it was often a source of half suppressed laughter in that portion of the court set aside for the public to hear "my learned friend" banded from one to the other by the two Athlete—Father and Son—the one as powerful from his tact, energy, and fervid eloquence, as the other from his legal knowledge and great acumen, and who was often the victor, for that knowledge, deep and extensive gave the father a superiority on those points of a case, in which law and fact were intermingled, and which were apt from Henry's comparative previous little business and short practice as a leader to escape his attention, or when patent rendered him less capable effectually to grapple with the legal and knotty difficulty, for he had never had the advantage of a pleader's chambers; nor let it be thought in those days that there were no giants to contend with—Sergeants Blosset, Frere, and Storks, Messrs. Plumtre, Eagle, Robinson, Prime, and others of note, with Biggs Andrews, now Q.C., and George Raymond, author of the "Elliston Papers," as juniors were on the circuit, all of whom have long since been dead, with the exception of Mr. Sergeant Storks and the four last named.

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And here I cannot do better than insert a paragraph signed J. S., which appeared in the *Times*, I think in or about the years 1831 or 1832; I copy from the paragraph cut out from the paper, and at the time pasted in an album, to which the date was omitted to be attached. The paragraph was headed, "The late Henry Cooper:"—

"To most of our legal readers, we feel convinced, that this week's sketch of the late Henry Cooper, the friend companion and intended biographer of the late Lord Erskine, will prove highly acceptable. The unexpected and melancholy event which deprived the bar of one of its most promising ornaments, and cast a shade over the gay and talented circle in which he moved, must be fresh within the memory of our readers. As yet no memoir, no frail tribute to stamp even a fleeting remembrance of his learning, professional fame, or liberal principles has appeared, and while worthless rank and heartlessness have been perpetuated by marble and the prostituted energies of literature, genius, talent, and honor, have been left to the obscurity of the grave; not one of those who shared his gay and mirthful hours, who listened enraptured to his eloquence and flashes of wit, which as Hamlet says 'were won't to set the table in a roar,' have endeavoured by giving to the world his literary labours, or even a sketch of his life, to preserve his memory from oblivion. Henry Cooper was the son of an eminent counsellor of Norwich, a gentleman of powerful mind, whose legal knowledge has rendered him one of the first consulting men of the day. Even at his present advanced age of near eighty, he may be seen early of a morning taking his accustomed walk, or if the weather be too severe for exercise, found in his library surrounded by his books and papers.

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Raised by his own perseverance, and in a great measure self-educated, it is not to be wondered at if from such a father, the subject of our sketch, acquired those habits of perseverance and industry which enabled him by system to attain knowledge and fame in his profession.

Upon being called to the bar his convivial powers and talent for conversation introduced him to Erskine, who found so much pleasure in his society, that they became not mere friends, but inseparable companions, and plunged together in the gay round of pleasure, which the world too temptingly presents to men whose minds enable them to watch its interests and guide the machine by which society is regulated. To all who knew him, and the thoughtless life he led, it was a matter of surprise how and when he found time to attend to the numerous cases of his clients, for his field of action soon became extended; yet we will venture to pronounce and feel confident of being borne out by those who knew him, that in no one instance did the cause of the party he

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advocated suffer.

In the Court he appeared as well acquainted with the words of his brief, as if it had been for months the object of his most serious attention; not a thread or a link of evidence escaped him, and so persuasive was his manner, so argumentive his style of language, that the jury frequently received the impressions he wished to convey, and their feelings generally, if not their judgment, went in favour of his client. He used, on some occasions, to plead in the Norfolk Courts, and we have frequently seen him opposed to his father as a special pleader. The old gentlemen, strong in the possession of his youthful intellect, which time even to the present hour has failed to rob him of, was perhaps less assailable by his pleasing manner and florid speech than any of his brothers of the bar, and his ejaculations not always of the most complimentary nature, were sometimes loud and frequent. We have seen the son on such occasions always the first to smile at his father's petulance, and the last to express any sense of the impropriety of the interruption. We have seen the old gentleman, in the midst of his son's argument, write to the opposing counsel suggesting authorities and giving references and precedents against him, all with the most perfect good humour on both sides; and the greatest triumph he could boast was to defeat his son upon a point of law: on such occasions he would put his hands behind his back, and moving round with a chuckle, exclaim, "Something to learn yet, Harry!" The father's delight and pride in his superior legal knowledge over his son, became at last a standing joke with the barristers of the Court. The death of Lord Erskine blighted Henry Cooper's hopes to a seat in Parliament, where his eloquence and sarcasm would have made him powerful as an ally, and feared as an antagonist; liberal in his opinions to the present exclusive system of the church, he was a decided enemy, and a thorough reformer in the state. His services at a crisis like the present, would have been of incalculable benefit to his country.

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From the period of the loss of his friend, till his own untimely end, he devoted himself more than he had ever before, to literary pursuits and the labours of his profession. A life of Lord Erskine was nearly arranged for the press at the time of his decease, and it is to be regretted that as yet his labours have not been given, imperfect as they are, to the world; no one could have had better opportunities or have been better calculated for the task; alike the counsellor in his difficulties, the companion of his mirthful hours, the springs of action, the feelings of his breast, must have appeared unveiled before him; Death, however, prevented the completion of his task and removed him too early from the world his talents ornamented."

I had forgotten to say, that on his return from Bermudas he became and continued very intimate with the Cockburn family, and often prophesied the future success of the late Attorney General, now Chief Justice of the Court of Common Pleas, then young Alexander Cockburn; and often has my brother said to me, then about sixteen, when speaking of the above family, "rely upon it, Billy, young Alexander, if he enter the profession, will do great things in it; he is a remarkably clever, energetic, and talented young man." Henry had much of the restlessness and irritability, the usual accompaniments of a high order of talent, with great earnestness in diction and action.

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Ere I proceed further; the reader will, perhaps, be pleased with a likeness of the man. I should say, in height, he was about five-feet eleven-inches; of spare and sinewy frame, with an elastic tread, that those who knew him, and seeing him in the distance, might truly say, as Ulysses of Diomedes in Shakspeare's play of "Troilus and Cressida,"

"'Tis he, I ken the manner of his gait;
That spirit of his in aspiration lifts him from the earth."

And often have I heard the late Mr. Alderson (the father of the present judge), who travelled with my father, circuit and sessions as a provincial barrister, more than thirty years, and who was resident at Norwich, say,—"that Henry always put him more in mind of a Spirit, than a man of flesh and blood;" his eye dark, like that of Edmund Kean's, the great actor, showed every emotion of the soul, now fiery with anger, now glazed with thought, and anon, melting into softness; his head small, and finely rounded, and covered with thick clustering curls of black crispy hair, was such as sculptors have ever loved to give the youthful Antinous; his forehead retreating was characteristic, as Lavater says, "of genius;" his nose was slightly arched in the centre and slightly fleshy near the nostrils; his face oval, with a well defined chin and a mouth plain, but full of energy and expression, and similar to Sterne's, the contour, of whose face I always thought my brother's much resembled. I have thus given, to please the lover of physiognomy, "a shadow portrait," not "a Myall's photograph," which I hope will not only satisfy the physiognomist, but which I think they, who but even slightly remember Henry Cooper, have but to place before the tablet of their memory and view the shade cast from it with their "mind's eye" to at once recall and recognize the original. I have thus sketched his likeness, as I regret to say, thus only can he be now known, or viewed by those who were unacquainted with him living, as no portrait of him is extant, he dying young, and for years previous struggling to succeed in a profession where the "battle is not always to the strong," though in the long run the best man often succeeds, as with few exceptions, perhaps, the long race, barring accidents, is usually won by the best horse. He left no writings behind him save a few letters, beautifully expressed, but mostly relating to family matters, and, therefore, uninteresting to the general reader, with the exception of five or six preserved by my mother, which I will give the reader ere I have ended this biographical sketch;

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and the few friends with whom he corresponded, and to whom, occasionally, he showed, and gave the productions of his pen, though they considered him a man of considerable talent, set such small value on his effusions, that, however, pleased at the time they might have been with them they were put aside forgotten and most probably destroyed, and what he himself chanced to write and was pleased with for the instant, was, from the natural carelessness of his disposition, hastily cast aside, and, no doubt, often burnt with the waste paper of his chambers; so that every endeavour I have made to possess even a shred of these scraps, has been futile. All I have been able to gather are the few letters alluded to, with a few poetical lines which will be given to the reader; and, as we often judge of character from trifles, he must, from the slight sketch I have given, and the small crumbs I have been able to collect, form a judgment of HIM I have endeavoured to describe. He had all but reached the height of his profession, when he was taken away, no doubt for a wise purpose, to the deep and lasting regret of those who not only fondly loved him, but who had begun to take, and no wonder, a warm pride in the object of their affections. p. 28

He died on September 19th, 1824, having been attacked some days previous by a severe attack of diarrhoea, which, by some fatal mischance, was mistaken by the surgeons who attended him, for brain fever; he was, consequently, bled, and drastic medicines were administered, which must have hastened if they did not cause his death, which happened at the house of a friend of his, by the name of Hill, at Chelsea, where he was buried, but his body was afterwards removed by his sister and deposited where it now lies, near his father's in the cloisters of Norwich Cathedral.

I will now lay before the reader the few letters I possess. By the letters of an ingenuous writer, it is said, you can gain a clearer insight into his character, disposition, and mental powers, than by long association or familiar discourse; these letters have been kindly given me by my mother, with whom Henry constantly corresponded, and whom he always treated with marked respect and affection, which was fully reciprocated. They were addressed to her at Norwich, where she with my father resided, and the first bears date, p. 29

London, 3rd Nov. 1815.

"My Dear Madam,

"And it came to pass that when they emptied their sacks, lo! ev'ry man's money was in the mouth of his sack." I have had the same measure from you which Joseph's liberality heaped on his brethren; and if you will but believe that my proposal to you, to be allowed to be a purchaser of half the preserved raspberry, was not a covert mode of begging it as a gift; I thank you without any regret, and am very much obliged to you. I thank you, too, very much for the pheasant which flew into the window of the mail coach, and startled me in St. Stephen's Street. George, who is a good lad, had put on his best legs, and soon overtaking the mail, threw it in '*sans ceremonie*.' It was a pleasant disturbance from no very pleasant reverie, which my mind set out on the moment the coach set out from the inn; and which would, but for this agreeable interruption, have lasted me at least as long as the first stage. For the rest of the good things which you gave me while I was in Norwich, and sent me laden away with, I must thank you *en masse*; for to thank you one by one for them, would force me to write a long letter, which I have not the least intention in the world of doing. I was outside the mail, and for a long way the only passenger. We learned at Newmarket, that the coachman, who drove the coach, which was overturned the preceding night, lay very much hurt. His viscera are bruised, and his only chance of life is in cool veins well emptied by the lancet. 'Tis right that he on whose care the safety of others depends should be most prominently exposed to the danger of ill conduct or neglect; I wish heartily that this liability could be transferred from those who sit on the coach box, to those who sit in the cabinet and hold the reins of the hard driven state! we should then have had more peace and less taxes. Ask Mr. Samuel Cooper [a great liberal and brother of my father] if we should not? p. 30

At Chesterford your friend, Mr. Smith, the representative for Norwich, took the mail; and after a nap, talked very unrestrainedly with me on the present state of France, on Buonaparte, the criminal law, and the wisdom of the Justices at sessions. I was determined—like Horace's whetstone, which can sharpen other things, though blunt itself, to put an edge on him—to say something deep and decisive on some of the subjects, but I got nothing from him but working-day talk. Perhaps (like the character with the Greek name in the *Rambler*, who tells his guest, showing him his fine things, that they were only brought into service when persons of consequence visited him) he disdained to pull out his best to me, yet I rather judge that he is only clever to the party at Norwich; and as Oberon, though but six inches high, is yet tall for a fairy, he is a great Apollo to the blue and whites [the colours of the liberal party at Norwich]. For corroboration of any opinion of theirs, I should always, like the Recorder of London, think it right to ask the cook.

There's my letter, a type of the miracle of the creation and the lie to the great Epicurean maxim, that 'Nothing can be made out of nothing;' for as one of those, that, as the song runs, 'None can love like,' would exclaim, 'by Jasus, I had not a word to say, and yet I have spoke three whole pages!' p. 31

My duty to my father, and if you please, my best regards to Mrs. Watson [my mother's

sister], on condition she has no more hysterics; and that is, as she pleases, more than perhaps she is aware of. She is not naturally melancholy, and may soon accustom her mind to like hope better than remembrance. My best love to Harriet [his sister], I should, as I promised her, have written to her if I had not written to you, but one letter will serve both; pray assure her how grateful I am to her for all her anxious care and attention to me; I will not even allow that Charles [his eldest brother, who was then the secretary to Sir James Cockburn at Bermudas] loves her more than I, or esteems her more, or will be more glad (as I told him in my letter) than I was to see that she was better in health than she had been for years; 'twill make him happy indeed, for the possibility of losing her is alarming to him, and if she were to die, he would be most inconsolable; yet his grief would not be more than mine, nor would he be more ready to exclaim,—

'I, nunc; et, numina non posse nega'

which, as you are a lady, I translate for you, 'go now and say, that angels cannot die.' But you must not read this to her, for she will absurdly say 'tis flattery, as if I could have any motive to flatter her.

My love to Will [meaning myself]. He is so much improved as to be an engaging boy, and I begin to like him very much.

I am, dear Madam,
Yours very faithfully,
HENRY COOPER.

P.S.—If Mr. Boardman [an old friend of his] should call, pray remember me most particularly to him. He has long behaved to me with the affection of a brother. He has even, in no few instances, preferred my interests to his own. I am most deeply obliged to him, and I like to tell people of it."

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The next letter bears date,—

London, 31st Dec. 1815.

To the same,—

"I send you the only coin I have, my very warm thanks for one of the finest and best turkeys that entered the metropolis to be devoured in celebration and honour of Christmas. A Christian of the utmost degree of faith, that is as great as you ladies place in physicians, who devoured with a devout and religious pique, could not have eaten more or with more pleasure than I, though I sat down with no other zeal than an hungry appetite, and little better than a mere heathen stomach. When I reflected that you good people at Norwich were rioting on just such a dinner (upon my honour), I could not help blushing for your preposterous consciences, that, could expect to enjoy so much pleasure in this world, and be saved in the next too. 'Tis well for me that no one offered to bet with me, that the pheasants did not come from you; but, I pray, do not think of returning me the thanks, which I paid for them. They are all due, and a vast sum more on the old account, though you, like a liberal creditor, may have no idea of urging the payment of the balance against me, and I beg they may be carried to it. I had almost forgotten to add Alfred's thanks to mine for the turkey [he was the youngest brother, who was an ensign in the 14th Foot, and had been wounded in the recent battle]. He was here in time, and made a dinner that contrasts rather vividly with his first meal after the battle of Waterloo, on a slice of old cow that they shot with their muskets, and tore to pieces, without giving themselves a moment's pause to reflect whether the Bramin's might not be the true religion. But I must not anticipate any part of his narrative to you, and Harriet, as to another Dido and Anna, of all he has seen, done, and suffered, throughout which he has been, like the French poets (Grissets) famous parrot, *quite as unfortunate* as Æneas, and a great deal more pious. In other respects, indeed, you'll not find him like that bird; he'll not give you his adventures with the gratuitous loquacity of poor Poll. In this he'd rather resemble the bullfinch; you must give out the tune to him, and chirrup with questions to him before he will pipe his strain to you; and when I consider the vast difficulty which the natural taciturnity of you ladies places you under of asking questions, I feel for your curiosity in its tight stays excessively. On this occasion, perhaps, where the motive is so strong, you will break through your native restraint; and, therefore, I advise you to have your interrogatories ready by the 8th of January, 1816, when Alfred, who means to accompany me, will be in Norwich. I am very grateful to you for your benevolent wishes of prosperity and happiness to me, but they fall on a heart dead to expectation. I have been so long in obscurity, that hope has quite left off visiting me; the best years of my life are gone; and what is my condition? Depressed spirits, and ill health; and the way as far as I can see before me, no better, nay worse than the lengths behind. What right have I to hope? The ring and the lamp of the Arabian tales must cease to be fiction, before I can have any chance of good fortune. But I do not call for pity. If I have not learned to be skilful in parrying and eluding the blows of Adversity, from experience, I am at heart somewhat hardened by long subjection, and habituation to them; and, if I have not the soothing of Hope, I am not altogether without the

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consolation of Philosophy. The happy must subtract from his happiness the frequent reflection, which comes like a cloud over him, that death will snatch him from all his blessings. The wretched finds relief in the certainty that death will end his misery; therefore, that state is not very enviable, nor this intolerable. Both will soon, very soon be past, and small, indeed, is the difference between past pleasure and past pain. Be assured, madam, that I, in return, as warmly wish you prosperity and happiness; I wish not only that the approaching, but many succeeding years, may have both hands full of plenty and delight for you; and I trust that it is not so unreasonable in you to believe, that future events may give a character of prophecy to my present wishes, as it would be in me to expect the fulfilment of yours.

Pray, have the goodness to tell my father, that the vol. of Pickering, from Priestleys, is procured, and that the copy of the Manuel Libraire, at Longman's is still to be sold at four guineas. Pray, make my thanks to him for letting me know the day of the sessions at Norwich; I shall be present to help to do the nothing there. I suppose he knows that the Corporation of Yarmouth have elected Mr. W---, to the stewardship. I hear him say 'How stupid of them to elect that fellow.' I beg his pardon; it shewed exquisite judgment; and yet, after all, there was somewhat of a felicity in it. They thought it would be deserting propriety to have a man in the lower office of steward of higher understanding than their Recorder. Now, under all the fleecy cloud of wigs that lowers in the court of King's Bench, they could not have found a second rate head to A---s, but that of W---d, and nothing but 'a lucky hit of nature' that mended her design when she was determined to make as thick a skull as she had ever yet turned out of her hands, could have given existence even to this instance of inferiority. He says he was quite ignorant of their intention of the honour that has been done him. If this be not affectation, I can imagine nothing with which to compare or illustrate his surprise, except that which must have come over the onion, when it discovered that the Egyptians had made a God of it. I am wrong; surprise is the effect of perception and he has none; his is like the genuine night, that admits no ray, and in his very stupidity he is involved from the least glimmering of consciousness of it. Pray, lessen the anxiety of Harriet, which an unmerited affection for me betrays her into, by telling her that I am getting better, and excuse the want of turn to the conclusion of my letter in the want of paper; and allow me abruptly to assure you that, I am, dear Madam,

Yours most faithfully,
HENRY COOPER."

The following letter, the reader must think very piquant and graphic, and it will, probably, tend to throw a new light upon his preconceived opinions and estimation of a certain great man. He must remember, too, whilst reading it, that Admiral Sir George Cockburn had the command of the ship which conveyed Napoleon and his suite to St. Helena.

This letter is dated,

London, 14 Oct. 1816.

To the same,—

"I am very much obliged to you for your excellent and most welcome present [it is below the dignity of the Epopée to say goose and sausages] which reached me on Sunday, and the note which you were so kind as to send with it, I can only repay you in this the old paper of unproductive thanks, but the sincerity of them will be held in some estimation by the mind actuated by the kindness that has excited them, and, therefore, flimsy as they are, I venture to beg your acceptance of them. I have nothing new, Madam, to send you for your entertainment from this great city. That the Regent is going to divorce the Princess of Wales, and excite the hope of the husbands and the fear of the wives—that under such an example, all the legal restraints to repudiation will be removed, and the practice become wide, and quite fashionable; you have, of course, heard long ago from the newspapers, they are eternally depriving us by anticipation of the power of writing agreeable and interesting letters to the Ladies in the country.

Sir James Cockburn arrived in town last Saturday from Bermudas. He is quite well, and neither seems nor believes himself an hour older for having been three years at Bermudas, since he was last in England. I have been much with him and his brother, the Admiral, lately. I have not (for your sex has not ALL the curiosity, though all of a peculiar kind) omitted to ply him with questions about Buonaparte. He is now admirably qualified to be Emperor in that country of which I have read, where they elect the fattest man in the state to the Empire. His legs are as bulky as my body, the ribs in proportion; and since this girth is all attained in little more than five-foot five-inches of length, he is not what Miss Cruso or Miss Godfrey [the head milliners of Norwich at the time] would call a very genteel figure. He eats with voraciousness of the most luxurious dishes; he has, in Cockburn's opinion, a very mean assemblage of features with something fearfully black and vicious about the brows and eyes. His manners are coarse and repulsive. Did you ever in a litter yard come suddenly on a lady in the straw that starts up on her fore legs and, dropping fourteen infant pigs from her teats, salutes you with a fierce jumble of barking, grunting, and hissing? In exactly

such a sound is this amiable man represented to me to have always replied to every address of Bertrand, Mouthoulon, and the others, who are his fools and followers to St. Helena. Sometimes he neglected all restraint on his nature, and gave the same ferocious and inarticulate answers to the English officers. He played chess so badly, that Bertrand and Mouthoulon, who had too much discretion to excel their patron, had, at times, great difficulty to lose the game to him; after trying for many nights he could not attain the rudiments of whist, and went back to vingt-un; but this is the man who has been described to us all as ALL-INTELLECT. The newspapers, too, said I remember, that at whist he left all instruction behind him, and soon played so well, that he had won very large sums of the Admiral by his superior play, even while he was only a Tyro. I can tell you no more now; but the Admiral has had the goodness to lend me a journal of his conversation with Buonaparte on the passage out, and when I have the pleasure of seeing you in the sessions week, I will give you some extracts from my memory. I am, I believe, a little better, but the disorder in the upper part of my stomach still continues and oppresses me. It is now inveterate, the complaint commenced last March, a twelvemonth past. If I cannot rid myself of it, it will kill me in time. My best duty to my father, love to William and 'aliis,'

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I am, dear Madam,
Yours very faithfully,
HENRY COOPER.

P.S.—I write in a great hurry for I am making up my parcel for Bermudas. I should not write to you at all, but I do not like so long to delay my due thanks to your kindness."

This letter is dated,

*2, Lamb's Buildings,
27th January, 1817.*

To the same,—

I am scarcely warm in my place in London before I have to thank you for your present to me; you hardly give me time, in the short intervals of these marks of your kindness to me, to frame my thanks to you for each. I have exhausted all my common-place forms and am forced to rack my invention (so very often have you come forward with these welcome claims on me) to give anything like a turn to the expression in which to convey my thanks. Mr. Pope (in those rhymes for the nursery which he has entitled the Universal Prayer) calls enjoyment obedience: now if enjoyment be thankfulness, too, then never was a being more completely thanked than yourself; for the ducks were devoured with the most devout gust and appetite; they were the most superb fowls that ever suffered martyrdom of their lives to delight the palate and appease the hunger of the Lords of the creation. You should have sent them to some imitator of the Dutch school, who could have painted them before he ate them; the hare, too, is as good as it can be, and you are agreeably thanked for it by an equal portion of enjoyment.

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I must beg you to excuse a very short, dull, and hasty letter, from me. If I were not impatient at the thought of letting any longer time elapse without expressing my lively sense of your frequent mark of kind consideration of me, I should not write at all to day. I have something to do at my chambers, and in ten minutes I must run down to Westminster Hall; and whilst I am thus engaged, I am as much disqualified for writing, by a dark fit of low spirits, as prevented by want of leisure. I resist as much as I can these attacks of the night-mare by day, but I cannot wholly succeed against them; my circumstances may possibly change, and, if not, such gloominess is unreasonable; if Fortune is never weary of persecuting me, I shall at last be past the sense of her persecutions. In the meantime, whatever is the colour of my life, I shall, if I can, continue to hope the future cannot be the worse, and the present will be the more tolerable for it. I shall, therefore, cling to her while I live, and to apply a beautiful thought of Tibullus—

'Dying, clasp her with my failing hand.'

In endeavouring to recollect me of the many fine things that have been said of hope to crown my declaration of attachment to that first place of our lives, I remember Cowley has observed 'that it is as much destroyed by the possession of its object as by exclusion from it.' This is very ingenious and very true, and though not to the purpose for which I was seeking it yet will very well serve another. I wish my dear Madam, very sincerely, that the former mode of destruction may speedily befall all your present hopes, and that in future you will be surrounded by so many blessings as will leave you no room for the exercise of any hope but their continuance, My duty to my father, and my love to William, I trust that he improves in Latin; pray tell him that I was vexed not to find him so good a scholar in that language as I expected; when I next see him I hope my expectations will be exceeded.

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I am, my dear Madam,
Yours very truly,
HENRY COOPER."

The following letter I have previously made reference to. It is written, evidently, in despondency, and heartfelt sorrow, under the shock of the frightful calamity. It relates to the disastrous death of poor Alfred, his youngest brother. It is dated from, and bears date

2, Elm Court, Temple,
25th June, 1822.

To the same,—

I received your letter yesterday, but I was so ill (that important as the occasion is) I could not answer it. To-day, nothing less than the urgency of the subject could prevail upon me to make the smallest exertion, for I am scarcely able to drag one limb up to the other. I have a violent catarrh, the glands of my throat are further inflamed and ulcerated, and I am burning with fever.

With regard to divulging to Harriet the disastrous event, for which, when once known to her, she can never be consoled; I am in a very unfit state to give advice. I am as I have always been of opinion, that it should be concealed from her as long as it can. It is a more generous cause of grief than the loss of a lover; and as Harriet's mind is built, I think more likely to shock and destroy her. You state only one reason for breaking the secrecy which has hitherto been observed—that it appears strange, the event public, that you are not in mourning for it. I cannot but think that if any good can reasonably be expected from withholding the knowledge of this dreadful incident, it would be wrong and trifling to forego it, for the senseless custom of putting yourself in black for a few months. I have no crape about me. If any one were to ask the cause of my disregard of a paltry decorum, I should either turn on my heel from him, or explain to him that I did not put on the mockery of sorrow, lest it should get to my sister's ear; that I was in outward mourning, and she had to be discovering for whom.

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It is, surely, easy for you to say that you do not put on black for the same reason, to all who may enquire, or to all those to whom you wish to appear decorous. [He then writes on family matters, but, after a few lines, again recurs to the painful subject of his letter.] It is known to several with whom I am acquainted in London; but, it is easy, as Harriet restricts herself to a very narrow intercourse, to keep it still from her knowledge, till she has recovered strength of body to contend anew with severe and heavy affliction. How much I have suffered from the intelligence I shall not attempt to describe to you. I had but little interest in life before; it is now heavy and sickening to me. I feel as if I never should smile again; every circumstance of aggravation attends it. To perish on the verge of the shore, when he was just about to embark, after six years in the climate, when we thought the danger past. With letters from him full of felicitation of himself, and rapture at the hope of soon meeting us again, and when we were expecting him every moment in our embrace, to be struck cold to the heart with the news that we should never see him again. I owe little to man—I shall soon owe nothing to any other being. I hate the cant of the doctrine of Providence 'your brother may be snatched by a merciful power from impending evil.' Bah! why not the merciful being continue life to my brother, and destroy the impending evil? Well, I shall soon be as he is, and though there is no consolation in that feeling, it is some assuagement of grief, because sorrow will then be at an end. My duty to my father. I write in great pain.

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I am, dear Madam,
Yours very truly,
HENRY COOPER."

The following makes the last of the letters I possess, and is written six months previous to his death; and in answer to a letter, of my mother to him, respecting the appointment of a paid chairman, and he, a barrister of some standing, to preside at Quarter Sessions, and to have besides (if my recollection be correct) some civil power. This was then in the contemplation of the Ministry; and as the poet says "coming events cast their shadows before" evidently the shadow of the present county courts. The letter is dated from and bears date,

5, Hare Court, Temple.
6th March, 1824.

To the same,—

"I did not return to Town till Sunday morning, when I found your letter at my chambers. I hope you will accept, as a sufficient excuse, the extreme fatigue and languor which I felt all yesterday for not answering it immediately.

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I lament exceedingly, that my father should not have been early enough in his application to the Lieutenant of the County, in whose gift, by the frame of the bill, the appointment is placed, and in whose hand, I fear, by the act itself it will remain.

I cannot conjecture to whom it has been promised by Col. Wodehouse. To Alderson is not at all probable, from the part he has taken against the Wodehouse's, who are the most bigoted and relentless Tories in existence. To Preston [another provincial barrister in Norwich, and the late Jermy, who was shot by Rush], ought not to be

probable, because he is not competent either in law or common sense to fill the office; and the favour to him would be an injury to the public. My father has every claim to it, and I think that it would have been no more than what was due from Col. Wodehouse, both to the county and my father, to offer it to him before he promised it to another.

I wish you might be right in your surmise, that the patronage will be placed in another quarter; but, of that there is the faintest chance, I should advise you to press my father to exert himself to procure the appointment, as it will be an office of the most agreeable kind, affording considerable profit at very little trouble. I, myself, know not a soul in the world who could influence any one of the present government: and any enquiries or attempt by me would have, in all probability, an adverse operation. I am of no importance whatever to any party, but my opinions, humble and insignificant as they are, have been noticed and recorded; and I am down in the black book for persecution, rather than in the red for favour. Of little note and importance as I am, such is the consciousness, in their own infirmity, in those who rule us, that the very lowest who have denounced their system, are objects of their hatred, for they are the objects of their fear; and those who have put them to the pain of apprehension, are marks for their revenge. I should think that the best course that my father could take would be to apply to Mr. John Harvey, to induce his brother, Onley Harvey, Esq. (a brother barrister of my father too), to ask it of the Home Department; if he asked it (supposing the gift to be there), I think, without doubt it would be given. [The rest of the letter relates to family matters, and concludes my love to William. He attributes too much honour to me by looking to me with any admiration.] My duty to my father.

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I am, dear Madam,
Yours very truly,
HENRY COOPER."

My task is all but accomplished. I have but now to lay before the reader the promised verses; those on Buonaparte are characteristic of the writer, who, with his high intellectual powers, possessed to the last, a noble and independent spirit, which despised even the appearance of servility. I shall then add the notices that appeared in the *Morning Chronicle*, and *Gentleman's Magazine*, soon after his decease, which clearly show that He, whose death they record, was no common person; as, also, the high estimation he was held in by the profession, to which he was an honour; and by the public who admired him for his eloquence, and prized him for his independence of character. In the sketches I have given of the two lives, which were, of necessity intermingled,—it is true, I have given but a rough outline of each, and my hope is they will portray the lineaments and character as effectually as a more lengthened biography; as I have seen, and often the character of a friend's face better given in a few mere outlines, than in the finished likeness. In looking at a small duodecimo edition I possess of Plutarch's lives, I perceive that the lives of his greatest heroes and statesmen, are comprised within a hundred pages, and yet how clearly does he portray their lives to the reader. He gives a few anecdotes of their youth, a few salient points of their character in manhood, and then concludes with their actions and their deaths; and leaves the rest to the imagination and "the mind's eye;" and who, after, reading them, does not see clearly before him the man whose life has been so ably delineated? I mean not, by this, to compare myself for an instant, with that great writer; but, having, as I said before, such slender materials to deal with, I have, as far as I was able, and after re-perusing the writer referred to, done my best, with my small abilities to follow his example, and pursue his arrangement; I can only hope I may have in part succeeded.

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After the notices referred to, I shall end by laying before the reader the verses written on my brother, after his death, by my mother and Mr. Wing; and in the appendix I shall refer the reader to the life of Erskine before alluded to; as, also, to the trial of Mary Ann Carlile, which will show, and clearly, the style of the eloquence of her advocate on the occasion, combined as it is with powerful argument, and that clearness and lucid order which were his forte. And now, reader, to use the words of Cicero, in concluding one of his epistles to a friend, "vale et valeas."

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"IN BONAMPARTEM."

He ne'er shall be extoll'd by me,
Whom wealth and fortune raise to power;
But he, alone who will be free
From sordid shame, or live no more.
Let him with wreaths of song be crown'd,
Who life, deflower'd of glory, spurn'd,
And breaking from his kindred round,
To Carthage and to death return'd.

With him, who when his righteous hand,
In vain the splendid blow had given,
The tyrant, only chang'd, disdain'd
The light of unregarded Heaven.
And Cato—thou, who tyranny
All earth besides enslaved, withstood;
And failing to high liberty,
Pour'd fierce libation of thy blood.

Oh, Godlike men! you leave no praise
 For him who to the king could bend,
 To add a few unonor'd days
 To life, at latest—soon to end.
 Nor him self-raised to Gallia's throne,
 Who, rushing with his martial hordes,
 Cast Europe's ancient sceptres down,
 And made his slaves her sov'reign lords.

For his was not the heart that dar'd
 When with the battle all was lost,
 Plunge in the whirlpool of the war,
 And share the slaughter of his host;
 Nor his, the indignant soul with brave
 And Roman arm, his life to shed;
 But still he sought by flight to save
 His outlaw'd and unlaurell'd head.

With face to earth his vet'rans' lay
 In ruins all who bore his name;
 His mighty Empire past away,
 And blasted, as a Chief, his fame.
 Yet—yet—(so let him live) content
 The sentence of his foes he bore,
 Like a vile felon to be sent
 An exile to a wretched shore.

FROM THE PORTUGUESE.

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Where silver hairs no reverence meet,
 Where to the weary stranger's feet
 To cross the threshold 'tis denied.
 And at the genial board, her place
 No kerchief'd matron takes to grace
 Her savage husband's haughty side;
 Where Niger hides, or on the shore
 Of dark and stormy Labrador.
 O Castres,—I with thee would rove,
 And, blest, thus wand'ring, if my mind
 Could leave her galling bonds behind;
 The bonds of an unworthy love.
 Not like a Gambian slave that fled
 (Of the pale Creole's lash in dread)
 From Rio, strives in fearful haste
 The mountain's woody side to gain;
 But with him drags the clinking chain,
 Lock'd at his waist or ancle fast.

THE WOES OF THE RIVERS.

"To each his suff'rings."
 Heaps of dead Trojans were Scamander's bane,
 Dead dogs, dead cats, and dung-boats shame the Seine,
 Ten thousand shores and jakes the Thames defile,
 And gradual mud is working woe to Nile;
 Yet harder Duddon's fate, her hapless stream
 Of fifty strains by Wordsworth is the theme.

* * * * *

The following *jeu d'esprit* was written on a certain nobleman, who, leaving the Whig party, of which up to that time he had been a strong adherent, and for the sake, it was supposed, of gaining the Regent's favour, not only voted, but took a strong part against the Queen.

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TO LORD L---

What caused you L--, to rush in,
 Through thick and thin, to give your Queen a splashing
 For this your party, to the devil gave you,
 And yet the rav'nous Tories will not have you.
 So in that country (where with hopes you fool
 Your second infancy, you yet shall rule)
 A sect of devotees there is who tell ye
 The way to heaven is through a fish's belly;
 And in the surges, on a certain day,

They give themselves to rav'nous sharks a prey.
 Among the rest, an ancient beldame went,—
 Weak, wither'd, wrinkled, tawny, tough, and bent
 (Your very self in breeches she would be,
 Put on her petticoats, and you were she);
 She waded in the water to her haunches,
 Hoping the sharks would pass her through their paunches;
 But out of fifty, not a shark would have her,
 Tho' she implored them, as a special favour;
 They came and smelt, and did not like her savour,
 She threw their stomachs into such commotion,
 They would not even bear her in the ocean.
 But down they pushed her—roll'd her o'er and o'er,
 And shovel'd with their snouts again to shore;
 Alike your fate: to be by sharks abhorr'd
 Was her's, and your's by Minister's old *Lord*.

* * * * *

In the *Chronicle* of September 27th, 1824, appeared the following notice of my brother's death, headed:—"Death of Henry Cooper.—We regret to have to announce the death of a gentleman warmly beloved by all who knew him, Mr. Henry Cooper the barrister. He died on Sunday the 19th, at the cottage of his friend, Mr. Hill, of Chelsea, after a short illness which brought on an inflammation in his bowels that proved fatal; he was interred on Friday last.

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"Mr. Cooper had overcome the difficulties of his profession, and was rising fast into eminence. He was already leader on the Norfolk circuit, and with his readiness, his powerful memory, and his forcible and fluent delivery, the most distinguished success was universally anticipated for him: his vein of pleasantry was particularly rich, as an instance we may refer to a case on the very last circuit in which a hairdresser of Newmarket was one of the parties, and which he made irresistibly amusing. We appeal confidently to those of our readers who have attentively considered the signs of the times, if there was not much distrust of the bar about the period when Mr. Henry Cooper came into notice, and if he did not by his exertions contribute greatly to remove it.

"He had been sometime employed procuring materials for a life of Lord Erskine, with whom he was particularly intimate, which he had undertaken to write; we suspect he had not made much progress in the work when death erminated all his labour."

The next notice of his death is taken from the *Gentleman's Magazine*, from July to December, 1824; vol. 94, part 2.—"On the 19th of September, 1824, at Chelsea, Henry Cooper, barrister-at-law, in the vigour of life and with every prospect of reaching the highest honors in his profession. The death of this rising barrister has been recorded in page 381 [as above]. He died of inflammation of the bowels, at the house of his friend, Mr. Hill, at Chelsea. His age was about thirty-eight or thirty-nine, and he had been about twelve years at the bar. He was the son of a counsel of eminence residing at Norwich. He went to sea with Lord Nelson, and was present at the battle of the Nile, but he early quitted the naval profession for that of the law, though he retained much of the frankness and gaiety of manner which distinguish seamen, and the activity and strength of frame which a seaman's habits create. He was afterwards Attorney General of the Bermudas, at the time when one of the Cockburn's was governor. On the appointment of the late Mr. Serjeant Blossett to the Chief Justiceship of Bengal, Mr. Cooper, who was then rapidly rising on his circuit (the Norfolk) became one of the leaders; and at the two last assizes, was in every cause.

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"He possessed great activity and versatility of mind; no one, according to the testimony of those who saw most of him, combined with a fluent and powerful eloquence, a better judgment and nicer skill in conducting a cause. But his best and highest forensic quality, and that which, combined with his talents, make the loss a national one, was his great moral and professional courage, his unshaken attachment to what he considered a good cause. No consideration ever warped him from his duty. He was proof not merely against those speculations on the best probable means of personal advancement which many men reject as well as he did, but against that desire of standing well with the judges, of getting the ear of the judge, of obtaining the sympathy of men of professional standing, which it requires much more firmness to resist; there was no one on whom a defendant exposed to the enmity of government, or to the judges, or to any prejudices, could rely with greater certainty; that he would not be compromised or betrayed by his advocate. In a word, there was no man less of a sycophant. He had a confidence that he could make himself a name by his own merits, and he would have it.

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"But the fair guerdon when we hope to find,
 Comes the blind Fury with the abhorred shears
 And slits the thin spun life."

The following verses, soon after my brother's death, headed, "On the death of Henry Cooper, Esq.," appeared in the provincial papers; they were composed by my mother, and had not only the tacit consent of all, but the universal praise, and that openly expressed, for their spirit and truthfulness which all felt, for all then knew and admired him they mourned.

The pride of the Circuit is gone,
The eloquent tongue is at rest;
The spirit so active is flown,
And still lies the quick heaving breast.

The mind so gigantic and strong,
Is vanish'd like vapour or breath;
And the fire that shone in his eye,
Is quenched by the cold hand of death.

Yet a balm to his friends shall arise,
That so soon he acquired a name;
For he dropp'd like a star from the skies,
Untarnished in lustre or fame.

The following verses also, on the death of my brother, appeared in the provincial papers, and were written by Frederic Wing, Esq., attorney-at-law, residing at Bury St. Edmunds, Suffolk, and headed, "On the death of the late Henry Cooper."

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"Ye friends of talent, genius, hither come,
And bend with fond regret o'er Cooper's tomb;
Closed are those lips, and pow'rless that tongue,
On whose swift accents you've delighted hung.
Cold is that heart,—unthinking now, the brain,
But late the seat of thought's mysterious train,
For by the stern, relentless hand of death,
Is stopt the inspiring, animating breath:
And he whose powers of rhetoric all could charm,
Fail'd to arrest the Tyrant's conquering arm.

Cooper,—Farewell!—
Transient, yet splendid, was thy short career,
Unfading laurels twine thy early bier.
To mourn thy exit, how can we refrain,
For seldom shall we see thy like again!
Who, to deep learning, and the soundest sense,
Join'd the rare gift of matchless eloquence.
Thy wit most keen, thy penetration clear,
Thy satire poignant, made corruption fear.
And such thy knowledge of the human heart,
So prompt to see, and to unmask each art.
Oppression shrunk abash'd, while innocence
Call'd thee her champion—her sure defence.
Once more, farewell, long shall thy name be dear,
And oft shall Independence drop a tear
Of grateful memory o'er departed worth,
And selfish, wish thee back again to earth.
To abide the important issue of that cause,
Fix'd not by mortal, but celestial laws,
Thou'rt summon'd hence, may'st thou not plead in vain,
But from our Heavenly Judge acceptance gain,
And sure admittance to those courts on high,
Where term and time are lost in blest eternity.

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APPENDIX.

THE LIFE OF LORD ERSKINE.

AS COMMENCED BY MY BROTHER

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Thomas Erskine, the only advocate, and, almost, the only orator, whose speeches are likely to survive the interest of the occasion that gave them birth in a country, where forensic litigation abounds, and political institutions render the study and exercise of eloquence important and necessary, was born on the in --- the year 175, at ---, in Scotland; he was the third son of the Earl of Buchan, by ---. This family is ancient, and connects, with its pedigree, the sovereigns, both of Scotland and England, related to the former. The marriage of the daughter of James the First with the Palatine, mixed his line with the descendants, and, consequently, united him with the family that now reigns in England. He thus brought with him to the profession of the bar, the advantage of all the prejudice in favour of illustrious descents, and found easier way yielded to his powerful talents by the diminution of envy which attended it.

Of his very early years, I am unable to supply the public with any information, and I regret it,—not that any very important lesson of utility can be derived from the anecdotes of childhood, but they are amusing, and amusing without harm; and I agree with Dr. West that he has a very

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imperfect knowledge of human nature who is not convinced, that in a state of refined society, it is impossible to amuse innocently. All that I have been able to learn distinctly, is, that the most playful vivacity, and the same good humour, which ever after accompanied him even in the keenest rivalry of the bar, displayed itself in his words and actions, and made him the delight of all, but those who morose and splenetic, from their own disgust of existence, conceive offence at others for that enjoyment of the present, which can only subsist upon ignorance, and the hope of the future that MUST BE disappointed. To this vivacity, he, perhaps, owed as much as to those endowments, which are deemed more solid qualifications for the bar. It imparted itself to his eye, his mouth, his tone, and his action, and held his hearers engaged, when his periods were such as pronounced by an ordinary speaker, would not have preserved the audience from that listlessness, which is instantly seen and felt by the speaker, and soon adds embarrassment and confusion to feebleness. In private society, to the last months of his existence, it gave him rather the air of a youth inexperienced in the realities of life, and entering it under the ardour of hope, than of a man who had almost reached the limits of human existence, in the exercise of a profession, which lays the human breast naked to inspection. It was said of Pope, from his primitive habits of reflection and gravity, that he was never young; and, on the contrary, it may be said with equal justice, from the playfulness and vivacity of Erskine, that he was never old. At the age of he entered the navy as a midshipman, and served in the ---, commanded by Captain ---, in America. While in this station he was employed in making a survey under one of the

lieutenants of the ship, off the coast of Florida. He had some acquaintance with geometry; and, as he tells us himself in his "Armata," always retained a fondness for that science. Whether this fondness grew in acquiring the knowledge of navigation, indispensable to his profession, or subsequently at the university in which it forms so much the greater part of education, I am ignorant; but that he was versed to a degree both in geometry and astronomy, is evident, from the work I have named, and some pieces of his poetry, which I have had access to. The cause that led him to leave the navy and enter the army is unknown; it is most likely to have been disgust and impatience of the subordination, which in our fleets is rigid in the extreme, and never softened by that alternation of social intercourse, at a common table at which in the army, all the officers of the regiment meet daily, and from which they rise with a feeling, not only that insulting and overbearing command upon duty would be a violation of an implied pledge of kindness, but injury to themselves, as diminishing in the gloom that would spread over their next meeting, the common stock of enjoyment. The condition of our naval service is, in some respects, improved since Erskine was a member of it; but then all knowledge beyond that of the conduct of a ship, was deemed unnecessary, impertinent, and even adverse to the attainment of nautical skill. The intercourse of the officers even on the shore, was confined almost entirely to one another, for not to speak of the uncouthness of their habits, which made them as incapable of mingling in society on land, as the beings of their element on which their avocation lay, are of living in the air, their language was technical to a degree that rendered it to all, except themselves, almost unintelligible. With such persons for companions, and to use Terence's expression, quotidian and tedious sameness of a life at sea, we need look no further for Erskine's desire to change his profession. When we consider the great capacity which he possessed for observation, and his extraordinary power of combining the knowledge that he so acquired, the period which he gave to the naval service must have been, to a spirit so active, a period of painful constraints. I remember that in a conversation upon Lord Erskine, with Mr. Capel Loft, after enumerating the many great causes in which the great advocate had been engaged, he exclaimed, "what an infinite multitude of ideas must have passed through that man's mind." The remark is not an empty one; I doubt whether there ever was a man who exercised the faculty of reasoning more, who drew a greater number of distinct conclusions, or whose materials of thought were more the collection and property of his own observation. Cicero, in his speech for Archias, appeals to the judges whether he could possibly supply the demands upon him for daily exertions of eloquence, unless he assiduously refreshed his mind with studies, in which he was assisted by Archias and other rhetoricians, and that he read copiously is manifested in all his works. The accomplished academician, the able balancer of the different schools of philosophy and morals, and the studied Rhetor is obtruded upon us. He was, in every sense of the term, learned; Erskine, on the contrary, cannot be discovered by any of his speeches, or writings, to have read much, and most probably had read very little. He was in no sense of the word learned. He has, indeed by acuteness of observation, vigour of combination, and the ready power of deduction that he possessed, been able to produce and leave behind him what will become the learning of others, but he was not learned himself. His qualities, from his earliest years were quickness and acuteness, unchecked and insatiable curiosity, retentive memory, and busy reflection; his mind was never still. In the coffee-room he conversed and indulged in humour with all round him. However important or heavy the causes which were to occupy him in court, they never oppressed his mind with a load of anxiety; his was not like ordinary minds under great affairs, so absorbed that he could perceive nothing round him; his, till the hour of solemn exertion arrived, was disengaged and indulged in pleasantry; after the toil of the day, the passion of eloquence and the intensity of technical argument, he was full of spirits and waggery at dinner and in the evening. And light as his topics sometimes were, his thoughts were always distinct, and his expressions full; you never from him heard any imperfect thoughts expressed, that (like tadpoles, before they are complete, must go through other processes of animation) required the exertion of your own conceptions to attain their sense and spirit. The activity of his mind was like that of the swallow, which either in sport or pursuit is upon the wing for ever. With this character it may readily be believed that young Erskine received his discharge with feelings like those that attend the cessation of a long and painful disease from a state which called for no exercise of his great talents, and, neither yielded scope for the communication of his own attainments nor opportunity to increase them from the communications of others.

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He became an ensign of the Royals and married not long after. He was sent with his corps to the Mediterranean, and stationed either with his regiment or a detachment of his regiment, at Minorca; there, under the influence of an ardent feeling of religion, which he owed to the anxious inculcations of his mother, from whom he received the rudiments of education, he is said in the absence of the chaplain, to have composed more than one sermon, and to have delivered them to the assembled officers and privates of his regiment. It never occurred to me to ask him whether there was truth in this report; but he has frequently talked to me of anecdotes which were circulated of him, some of which he confirmed while he contradicted others, and never spoke of this as unfounded; from my knowledge of his character it is highly probable, and I believe it is true. About three years ago he was at Tunbridge Wells with Mr. Coutts, and while there, pointed out to a friend of mine a building, and said, "There, when it was a public room, I preached a sermon of my own composition to the company;" this was for a wager. He returned to England in 17-- with his regiment, the father of three children. The anxiety of his mother, whose affections and care for her family rendered her most estimable, and have endeared her memory to her descendants, was excited by Thomas, who had nothing but his pay for the support of his wife and his children, likely soon to become more numerous. Her prudence suggested to her another profession for him by the gains of which he might avoid the destitution which she saw hanging over his head. With this design, she sent for Mr. Adam, the barrister (now the Commissioner of the Scotch jury courts), that she might receive the assistance of his experience and advice. On his arrival she said, "My son Tom has been thoughtless enough to marry a woman without fortune, and she has brought him a family which he cannot support himself, nor I for him,—what is to be done? And I have been thinking that he must sell his commission, go to the bar, and be Lord Chancellor." It is interesting to reflect, that while this excellent woman was endeavouring to conceal the bitterness of an affectionate mother's anguish for her son's imprudence, she was unconsciously pronouncing a prophecy. Nor will it be less to see how trifling an event would have prevented its accomplishment; Mr. Adam told her that there were a great many steps from the entrance of the profession and the very high rank which she purposed, many of which he should be happy to congratulate her son on attaining. The conference proceeded, the obstacles to success at the bar were weighed against the certainty of domestic calamities if he remained in his present profession, and they parted, both of opinion, that in the direction of the bar, Thomas Erskine was most likely to leave behind his present embarrassment and reach prosperity. It remained, however, to procure the consent of her son; that was not easy: he had no predilection for the bar, and was attached to the army, and his regiment, to the officers of which his sprightly and amiable manners had endeared him, and in which he was soliciting promotion and expecting it. At last, however, his conditional consent was drawn from him. He agreed to let his mother dispose of him as she wished, if he should be unsuccessful in his application for the vacant captaincy in the Royals. This was far from satisfying his mother, but he was peremptory, and she could not induce him to more positive terms; thus, if Erskine could have gained the rank of captain in the Royals, the destination of which was, then, an American colony, by which he might have gained the privilege of being scalped by the savages, or perishing in the swamps or forests of North America, the country would never have known that splendid eloquence, which is its boast and its pride; Tooke, Thelwall, Hardy, and the rest of those unfortunate men who were held so long under the terror of death, would probably have been hanged, and the country oppressed by a gloomy precedent of constructive treason, under which no man who has raised himself in opposition to a corrupt and sinister government could have been safe; one is inclined to shudder, like a man whom a shot has missed only by the breadth of a hair, in contemplating how near so much danger was incurred, and so much benefit lost. But it is not on the magnitude, but continuity of the chain, that great results depend; on examining the past, we shall find that as small a link struck out at one point or other of succession, would have disappointed the most important events of history. Happily for Erskine and his country, his claims from the merit of his services were eluded, and though he was more urgent in his applications, since the alternative was to be the bar, he was refused promotion. There was a singular coincidence in the fortune of the late Lord Chatham and Erskine: the former was sent into parliament and driven into violent opposition to Sir Robert Walpole, because that minister had deprived him of a company of horse, and dismissed him the service, an act of which the minister had reason to repent. He was like the emblem of envy with the recoiled dart in his own bosom; except Charles I., who stopped Hampden and Cromwell from embarking upon the Thames to follow liberty into the wilderness of America, no man had ever so much reason to curse himself for his own acts. In the same manner a slight of Erskine's claims to promotion sent him to display an eloquence that had never yet been heard at the English bar. His fame as an advocate, drew the notice of the Whig party on him; he was enlisted in their ranks and added an importance to the opposition, which not unfrequently increased the embarrassment of the minister. While he was held in suspense by those who had the disposal of commissions, he was quartered at Maidstone, and entering the court during the assizes there, was placed in his military uniform upon the bench, beside the great Lord Mansfield, to whom he was distantly related, and who at intervals of business, conversed with him on the proposed change of arms for the gown. This was another of the accidents which, by minds of a certain frame would be regarded as an omen. After relating this anecdote, he added, "Only four years from that time, I was at the place in the lead of that very circuit." All his hopes of promotion at an end, the commission so unequal to the demands for subsistence upon it, was disposed of, and he was at once entered a student of the Law Society of Lincoln's Inn, and a Commoner at --- College, Cambridge

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A few days before he was called to the bar, a friend came and invited him to accompany him to

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dine at the villa of a wine merchant, a few miles from London. The allurements were a good dinner, and wine not to be procured but by a dealer, who could cull his own stock from thousands of pipes, and they were not to be resisted by a young man fond of pleasure, to whom such luxuries must come gratuitously, if they come at all. Economy, which was important to Erskine, was not quite beneath the regard of his friend, and after many proposals of several modes of conveyance, which were all rejected, either for their expense, or their humbleness, they agreed to walk; I have heard playful exertions of the mind or body attributed to what was denominated an excessive flow of animal spirits, a phrase that sounds significantly in the ear, but gives no information to the understanding. Those who use it, mean, I suppose, to express that when the body has received more nutriment than is necessary to promote its growth, or maintain it the redundancy is thrown off in almost involuntary exertions of the limbs or of mind. If this physiology be just, Erskine had an extraordinary surplus of supply,—that regular discharge like the back water of a mill, and it found vent in various gambols and effusions of humour on the way to the wine merchant's. While Erskine, buoyed by high health and ardent hope, scarcely felt the ground that he trod, the sight of a ditch by the side of the road, tempted him to exercise his agility. The impulse, and obedience to the impulse, were the same. He made the attempt, but the ditch was too wide for his spring, and he leaped a little short of the opposite bank. His dress above was splashed with foul water, and his legs booted in mud. Nothing was to be done on his part but to return, and his companion with a kindness that does him honour, would have returned with him, but this, Erskine was too generous to allow; and while his friend continued his journey to the wine merchant's house and sumptuous dinner, Erskine solitary and in pain (for he had severely sprained his leg) returned to town; on reaching his lodgings Mrs. Erskine proposed a change of dress, and urged him yet to go to dinner at the wine merchant's. He objected his lameness from the sprain, which she answered by proposing a coach and the expense, which he hinted, was not to be weighed against the benefit he might derive from the friends which his manners and spirits were likely to make him in the mixed and numerous company he would meet there. This was a consideration so important to a young man on the verge of the bar, that Erskine's disinclination was overcome by these reasonings of his wife. A coach was procured, and he again set out, but he did not arrive till dinner was half over, and found himself placed by this accident by the side of Captain Bailey, of Greenwich Hospital. With the modesty which is always united with true genius, Lord Erskine always spoke of this event as the greatest instance of good fortune which ever befel him. But for this, he said to me, "I might have waited years for an opportunity to show that I had any talent for the bar; and when it occurred I should not have pleaded with such effect, depressed and mortified as I might have been by long expectation, and its attendant evils, instead of seizing it with all the energy and confidence of youth elated with hope." I record this to show how little he was actuated by arrogance or presumption; I by no means assent to his opinion, on the contrary, I think he would have waited a very short time for occasion to exert his prominent talents. He slipt from high ground into the profession. His rank would have drawn notice upon him, and he had friends full of eagerness, and not altogether without power. No more is the partiality which, it is said, was manifestly shown him by Lord Mansfield, to be deemed a main cause of his success. On the contrary I am so little inclined to attribute such an effect to it, that I believe even the hostility of the bench could not have kept Erskine from rising. His mind was not of the ordinary mould,—he was excited by obstacles. Such was his temperament, that the damp slight of discouragement which would have quenched common spirits, by the ardour of his mind would have been converted into fuel, and have increased the splendour with which he burst forth at once at the English bar. How was the delay of opportunity, or the frown of the judge to suppress the eloquence whose first essay excelled, both in matter and delivery, the latest efforts of the most experienced speakers in our courts? when he rose Dunning, Bearcroft, Wallace and others, were in the height of their reputation as speakers in Westminster Hall. They were even eloquent, according to the judgment of the day gazed at as the luminaries of the profession; but, brilliant as they were, they were combust in the splendour of Erskine, on his first appearance as an orator. This considered, it is in vain to pretend, that, but for favourable conjunctions which have happened to him and not to others, the prosperous and devious career on which he immediately entered, could have been prevented or even long delayed.—[Alas, no more!]

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BRIDGE STREET BANDITTI, V. THE PRESS.

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REPORT OF THE TRIAL
OF
MARY-ANNE CARLILE,
FOR PUBLISHING A NEW YEAR'S ADDRESS
TO THE
REFORMERS OF GREAT BRITAIN;
WRITTEN BY
RICHARD CARLILE;
AT THE INSTANCE OF THE CONSTITUTIONAL ASSOCIATION:
BEFORE
MR. JUSTICE BEST, AND A SPECIAL JURY,
AT THE
Court of King's Bench, Guildhall, London, July 24, 1821.
WITH THE NOBLE AND EFFECTUAL SPEECH OF
MR. COOPER,
IN DEFENCE, AT LARGE.

DEDICATION.

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TO
HENRY COOPER, Esq.,
BARRISTER AT LAW;

For the noble stand and more noble attitude which he took on this trial—for the very eloquent, very bold, and very honest style of his defence—and, above all, for the manly resistance which he made to, and the contempt which he showed for, the menacing frowns of those persons who conducted, advocated, and supported this prosecution: and to those HONEST JURYMEN who resisted their fellows in the attempt to throw the defendant into the hands of her enemies, and the enemies of their country; and who, by their honesty and independence, have given a death blow to those corrupt, wicked, and malignant *would-be*-censors of the Press, calling themselves a Constitutional Association; this report of the proceedings is gratefully dedicated by, and the sincere and heartfelt thanks is hereby offered to them, of

MARY-ANNE and RICHARD CARLILE.

**REPORT,
&c., &c.**

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This was an indictment at the prosecution of "The Constitutional Association," and their first attempt to obtain a verdict. The defendant pleaded Not Guilty.

The following are the names of the Jurors:—

SPECIAL.

John Stracey, of Smithfield Bars, Merchant,
Philip Jacob, of the Crescent, Cripplegate, ditto,
James Byrne, of Dyer's Court, ditto,
Charles Wright, of the Old Jury, ditto, (foreman)
Henry Houghton, of King's Arms Yard, ditto,
John Webb, of Coleman-street, ditto.

TALESMEN.

Joseph Blackburn, Russia Mat Dealer,
John Davis, Painter,
John Williams, Cheesemonger,
Bryan Mills, Packer,
Michael Williams, Agent,
Frederick Bennet, Smith.

Mr. Justice BEST, at the request of the defendant, enquired if either of the Jurors was a member of the Constitutional Association. The answer was in the negative.

Mr. TINDALL opened the pleadings.

Mr. GURNEY appeared to conduct the prosecution, and Mr. COOPER was for the defendant.

Mr. GURNEY.—May it please your lordship; gentlemen of the Jury; my friend, Mr. Tindall, has told you the nature of this action, and it is now my duty to lay this case before you. The indictment has been found by a grand jury, upon the prosecution of the Constitutional Association; and it charges the defendant, Mary Ann Carlile, with publishing a libel upon the government and the constitution of this country; and, gentlemen, after a not very limited experience in these cases, I will say, that a more criminal and atrocious libel never met my observation. It purports to be written by Richard Carlile; it is dated from Dorchester Gaol, and it has been published by the defendant, the sister of that man who is now suffering imprisonment for his own criminal conduct. It is entitled, "A New Year's Address to the Reformers of Great Britain;" and, among other objectionable passages not charged as libelous, it contains the following; "As far as the barrack system will admit"—

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Mr. Justice BEST.—I do not think that you are entitled to read that passage, Mr. Gurney.

Mr. COOPER.—I think not, my lord; I was just rising to interrupt Mr. Gurney.

Mr. GURNEY.—I have no objection, my lord, to abstain from reading the passage to which I was about to call your attention. I shall read the passage which is charged as libelous, and if the learned counsel for the defendant can find throughout a single passage to qualify its malignity, do you, gentleman, give the defendant the benefit of it. The passage is this:—"To talk about the British Constitution, is, in my opinion, a sure proof of dishonesty; Britain has no constitution. If we speak of the Spanish constitution, we have something tangible; there is a substance and meaning as well as sound. In Britain there is nothing constituted but corruption in the system of

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government; our very laws are corrupt and partial, both in themselves and in their administration; in fact, corruption as notorious as the sun at noon-day, is an avowed part of our system, and is denominated the necessary oil for the wheels of the government; it is a most pernicious oil to the interests of the people." And in another passage the following words were contained:—"Reform will be obtained when the existing authorities have no longer the power to withhold it, and not before. We shall gain it as early without petitioning as with it, and I would again put forward my opinion, that something more than a petitioning attitude is necessary. At this moment I would not say a word about insurrection, but I would strongly recommend union, activity, and co-operation. Be ready and steady to meet any concurrent circumstances." Now, gentleman, these are the passages charged as libelous, and I defy even the ingenuity of my learned friend to show that they are not most odious libels. What! are the people of this free and independent country to be told that they have no constitution? It is an assertion, the malignity of which is only equalled by its falsehood. We have a free and glorious constitution. It has descended to us from our brave and free ancestors, and I trust that we, too, shall have virtue and magnanimity enough to transmit it unimpaired to our posterity. We have laws, too, equal in their administration. We have a constitution where no lowness of birth—no meanness of origin—operate as an obstacle to preferment; in which the chief situations are open to competition, and for which the only qualifications are integrity and information. Our laws are here stigmatized as partial and corrupt. If they were not impartial, this man would never have dared to vilify them. The very accusation proves that the charge is false; for if it were true, this libeler must have suddenly suffered for this assertion. It is because that they are administered in a spirit of mercy unknown to the laws of any other country—it is because they are administered in tenderness, that this man has had the power to promulgate his vile and odious falsehood. He thought it meet and right, and most becoming too, to tell the world that this was not the precise time for insurrection. He plainly indicates, that he has no objection to it; but he would not say a word about it at present, the time was not come; but he tells his fellow reformers to be "ready and steady to meet any concurrent circumstances." Gentlemen, it would be an idle and impertinent waste of time to make any further observations upon the pernicious tendency of this libel. But what is the defence which is to be set up by my learned friend? Are we to be told that the prosecution of this libel is an invasion of the liberty of the press? I will not yield to my learned friend, nor to any man in existence, in a just regard for the freedom of the press. But who, I would ask, is invading its liberty? He who brings to justice the offenders, or he who under the sacred form of liberty promulgates such language as I have just read to you? I do not think that on this subject you can entertain a doubt. I feel the most perfect confidence in committing this case to your good sense. If you believe that the defendant is guilty of publishing this libel with the intention charged, you will pronounce your verdict of guilty. If, on the other hand, you think that the passages which I have read to you contain nothing libelous, or that the defendant is not the publisher, I shall sincerely rejoice in your conscientious acquittal.

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James Rignall deposed, that he had purchased the pamphlet in question of the defendant, at her shop in Fleet Street, on Friday evening, the 9th of March. There were several other copies lying about on the counter.

Cross-examined by Mr. COOPER.—Who are you?—I am an agent to the Society for the Suppression of Vice.

But you are also employed by these constitutional people, as they call themselves?—Only in this one instance.

Were you employed to purchase the pamphlet in question?—I purchased that and others.

You were employed by the Constitutional Society to purchase them?—Yes, I was.

Who sent you?—Mr. Murray.

The Attorney?—Yes.

And he directed you to purchase this pamphlet, eh?—He did not particularize any.

Did he state his object in the purchase?—No.

What wages are you to have?—I have no wages.

Then you perform this agreeable duty gratuitously?—No, I do not say that.

Then how are you paid?—I made a charge for my time.

Perhaps you belong to the society?—No, indeed I do not (with vehemence).

Well, I do not wonder that you should be anxious to separate yourself from the society (a laugh amongst the auditory).

Mr. GURNEY.—I desire that no such remarks may be made.

Mr. COOPER.—What have you had for this particular job?—I have made a charge for several other little things I did (a laugh).

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Mr. GURNEY (to the spectators),—I shall certainly move his Lordship to take notice of some particular persons that I see misconducting themselves.

Cross-examination resumed.—What other jobs did you for the association?—I did several jobs;

that I will not deny.

How much have you had for these little jobs?—I declare upon my oath, I cannot state particularly how much I had for these little jobs. I made a charge. I don't recollect exactly what my charge was.

Come, come, the round sum?—I can tell you pretty nearly the round sum, if that will satisfy you. I think it was above seven pounds and under seven guineas. I was sent on other business beside this.

I wish to know what that other business was?—Is it necessary to answer that question?

I think it necessary.—Then I will take the sense of the Court upon it. I have no objection to answer that or any other question, if my Lord thinks I ought.

Mr. Justice BEST (smiling).—It tends to nothing; but it is as well to answer it.

Then I purchased some other different things for the association, but it was not in consequence of any general or particular orders I received: I went to purchase these publications which I myself thought libels; I cannot state exactly now what they were.

Then you did that, I suppose, without any hope of reward?—I don't state without any hope of reward; I expected to be paid for my time.

Oh, then, it was not altogether out of virtue and patriotic feeling?—Those were two of my motives, most certainly, but not the only ones (general laughing).

Has this been the usual way of getting your living?—It has for a year and a half past; I have had no other feasible occupation during that time.

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I suppose you received a considerable sum in the course of this honourable employment?—I have told you the sum total was about £7.

Mr. Justice BEST.—Do you think that material, Mr. Cooper?

Mr. COOPER.—I do think it material, to show the sort of agents that this honourable society employs. (To witness.) And what did you do before you suppressed vice and libels?—I got my living honourably as an officer in his Majesty's customs.

And are you still an honourable officer, &c.?—No; I have lost my situation.

Retired upon a pension?—No.

How old are you?—Fifty-four.

No pension, eh?—None.

Re-examined by Mr. GURNEY.—I have been in the employment of the Society for the Suppression of Vice for a year and a half; I have been paid by them for my services. In this instance, and in several others, I have made some purchases for the Constitutional Association.

Horatio Orton was then called. A general murmur ran through the Court, which was crowded to excess; and all persons most deferentially gave the witness way.

Examined by Mr. GURNEY.—I was a witness before the Grand Jury. On the 10th of March I purchased another copy of the pamphlet in question from Mary Anne Carlile; I had it from her own hand.

Cross-examined by Mr. COOPER.—How came you to purchase this on the 10th of March?—I was directed by Mr. Murray, the solicitor, to purchase it.

This is the gentleman? (pointing to Mr. Murray, in court)—Yes.

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He is the Honorary Secretary to the Association, and the disinterested attorney for this prosecution?—Yes, I was sent by him for the express purpose of purchasing this pamphlet; I should not have gone if I had not been directed by him.

What is your situation in the society?—My situation to the Association is as clerk.

Clerk to Mr. Murray?—No; I am not in Mr. Murray's office.

In the Society's office, separate from the attorney's office?—Yes.

In what situation were you before?—I used to assist my brother in his correspondence with country newspapers.

Not for the town papers?—No, for himself; he takes the reports of the House of Lords' proceedings, and transmits them to the editors of the country papers; I used to assist him in the copying, and he paid me for my trouble.

What is your salary in your present honourable situation?—It is not fixed.

It depends upon your exertions?—Yes.

Then you work at present by the piece?—No, I do not; the committee have not yet come to a determination about my salary; I have not made any demand for salary; I have not proposed any

sum; I mean to swear that; not any sum has been proposed to me; I don't say that I would work for the Society gratuitously; if I want five or ten pounds I know where to go for it; not of the Association; I can have it of my brother; I expect to receive something of the Association.

In your modesty, what may be the extent of your expectations?

Mr. GURNEY submitted that this was not a proper mode of cross-examination.

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Mr. COOPER.—I think it is, and I shall persist in it until I am told by my Lord that it is irregular.

Mr. Justice BEST.—I don't think any part of the cross-examination is approaching to anything like regularity.

Mr. COOPER.—If your Lordship says I am not to be allowed the same latitude which is allowed to counsel on other occasions, I shall not persevere.

Mr. Justice BEST.—I have no objection to your taking your own course, but I think this course of examination ought to have been stopped long ago. I think every fair and reasonable indulgence ought to be allowed to counsel in such a case, but if this was a mere civil case I should have stopped you long ago.

Mr. COOPER.—Then I shall proceed in my own way, with your Lordship's permission. (To witness.) Is this the first job you have been employed in?—I don't recollect any other of this kind.

Are you sure you have been employed upon no other job of this kind?—I cannot bring to my recollection whether I have not been employed on any other. I may have been, but I am not aware of any.

Do you know a man named King?—Yes, perfectly.

Do you recollect doing a job in which he was concerned?—I don't recollect doing a job of this kind against King. I might if I saw the paper before me with my mark upon it. There are so many of them that I cannot recollect any in particular.

Have you not made an affidavit in the job against King?—Yes; but that is since this. I cannot recollect whether I have done any other jobs. I have been in the employment of the Association about six months. I commenced on the 8th of January. Since the 10th of March, I don't recollect how many jobs I have been engaged in; they are so numerous I can't recollect. The orders which Mr. Murray gave me, were to go and purchase the Reformers' Address at the defendant's shop. I had not any general directions to buy at this or that shop—not from Mr. Murray. I had from other persons, general directions to make purchase of works; one of those persons was Mr. Sharpe.

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He is the Honorary Assistant Secretary?—Yes.

(All the preceding questions excited considerable sensations amongst the audience, and produced a chorus of humourous tittering).

Mr. Justice BEST.—The effect of these questions, Mr. Cooper, you must feel. You cannot wish, I am sure, to excite the sort of response which comes from below the bar. You must see that it is done on purpose. You cannot wish, I am sure, to produce that effect.

Mr. COOPER.—My Lord, I am the last man in the world to do any thing inconsistent with the gravity and decorum of a Court of Justice. I disclaim any such intention; and I must disdain the insinuation of Mr. Gurney, that I have taken up this cause for the purpose of adding to the public odium in which the honourable Association is held.

Mr. GURNEY said his learned friend, Mr. Cooper, was mistaken; he had never insinuated anything of the kind.

Mr. Justice BEST.—I am sure no gentlemen at the bar would wish to produce the effect which all the questions put by you have had below the bar.

Mr. COOPER said he could not control the feelings of the auditory. He was only anxious to do his duty to the best of his humble ability, and nothing should deter him from discharging that duty freely and undauntedly.

Cross-examination resumed.—What is the office of the Honorary Assistant Secretary?—It is to do every thing at the office.

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To superintend the business of the office?—I consider him as the acting manager.

Then the Honorary Secretary has a sinecure?—What does the word honorary mean but a sinecure?

Mr. COOPER.—“May it please your Lordship; gentlemen of the jury; I am exceedingly sorry that some more able counsel has not to address you on this most important and momentous occasion. I should have been unequal to the task, under any circumstances.”

Mr. GURNEY.—“Stop a minute.” (The learned counsel for the prosecution here intimated, that he had something to add to his case; but, after a pause, he intimated to Mr. Cooper, that he might proceed.)

Mr. COOPER.—Gentlemen, under any circumstances, this would be a task, for which, I fear, I am very ill qualified; but under those, in which I stand to address you on this question, I feel my incapacity doubled and trebled. I appear before you without notice, and almost wholly without preparation. I was, indeed, applied to by the defendant, some months ago, and negotiated with (if I may use the phrase) to undertake her defence. But, after this, many days and even weeks passed, during which I heard nothing of the case; and I began to suppose that the defendant had determined to employ some other counsel, or trust herself to her own address to the jury against this charge. At the end of a month, however, I was again applied to; and, again, weeks having elapsed, without my hearing any more of this prosecution, I dismissed it entirely, not only from my mind, but from my memory; nor was it, till last night, that, that I was once more informed that I was to be employed as the defendant's counsel; and my brief at last put into my hands. I was then unfortunately engaged in other important business: and the time, I have taken to collect my own thoughts upon this question, and huddle together a few extract's from writers of authority, I have been obliged to borrow from sleep; and have, therefore, in a great measure counteracted myself; for I have lost in strength, what I have gained in information, and appear before you ill able, indeed, to do justice to this cause. But, whilst I make this statement to excuse my own deficiency, I am bound to acquit the defendant of any reproachable negligence of her own interests. I understand, that the cause of her late application to me, is, that having had, as a mere matter of grace, three weeks' notice of trial from another society, by which she has been prosecuted, she mistook it for her right; and expected the same notice from her present prosecutors. As she had not received any such notice (and indeed she was not in law entitled to it), she supposed, that either she was not to be brought to trial at these sittings, or that the charge was abandoned; as I wish it had been, and as it ought to have been; for I am convinced, that this prosecution cannot be sustained by either law or reason; and that it must be from the weakness of the counsel alone, that you, gentlemen, can be betrayed to pronounce a verdict of Guilty against the defendant.

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Gentlemen, it is my duty to clear this case of every possible prejudice that may hang about it in your minds before I enter into the merits of my defence. I do not know how you are affected, but I well know, that with many persons, I should have a host of prejudices to contend against, in the very name alone of Carlele. Many either believe, or affect to believe, that the very sound is an omen and an execration, and that either he cannot be sincere and honest in the opinions which he professes, or if he be, that those opinions are incompatible with the existence or practice of any moral or social virtue. But, whatever his opinions may be, and whatever your sentiments upon them, I have at least a right to ask of you not to allow any prejudice against the relation, against the brother, to warp your judgment on the trial of the defendant: for, what can possibly be more remote from justice, than, instead of judging a person fairly for his own conduct, to condemn him by our opinion of the sentiments and character of another? I hope and trust that you have entertained no such prejudices: but if you have, I feel assured, that you brought them no further than the threshold of the court:—at that door they fell from you, like the burthen from the pilgrim (in the beautiful allegory) on his reaching the cross; and you stand there with your minds unbiassed, free and pure, to decide between the crown and the defendant in this cause. But it is not only my duty, gentlemen, to clear the defendant, but to extricate the counsel from every unfavourable suspicion, lest it should, possibly, by any confusion of the client with the advocate, operate to the disadvantage of the defendant.

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Whatever, therefore, may be thought of the pamphlet which is before you, as a libel, or of the writer or publisher, I most solemnly affirm, that there is no one who more warmly admires the English constitution, as it stands in theory and ought to exist in practice, than myself, nor is there any one who would more willingly shed his blood if it were necessary, or even lose his life in its support. It is needless then to say, that a more irreconcilable enemy would not be found than myself to the man (if any such there be) who could attempt to overturn our mingled and limited forms of government: and substitute a wild democracy in their place. I think, indeed, that a democratic form of government, however specious in argument, is by no means so capable of raising a state to that eminence of civilization and prosperity, which this country has reached; a condition, for which it is indebted to better times, while the practice concurred with the theory of our government; but which, unless the practice is brought back to the theory, I venture to predict, has not much longer to continue. I, gentlemen, appear here only in the discharge of my duty; and to redeem that pledge to defend the accused, which every man, upon assuming this gown, gives to the public of England. I would, however, have it distinctly understood, that it is only to guard against prejudice to the defendant, and not from any apprehensions for myself, that I trouble you with this explanation. For myself, I am extremely careless, what may be thought of me for having come forward to defend this unfortunate woman. I do not expect to escape obloquy in the present overheated disposition of the country, How can I expect it? when even the present Lord Erskine, whose talents and independence should have rendered his character sacred, as soon as it was known that he was to be counsel for Paine was overwhelmed with abuse, and threatened with the loss of his situation, as attorney general to the Prince, if he did not decline the defence. But he knew his duty and discharged it. And for which will he be most honoured by posterity? By which most ennobled? for having in spite of threats, and all the seductions of self-interest, persevered in his duty? or for having been exalted to the peerage of England and adorned with the national order of Scotch knighthood? But, if even my humble situation, should not exempt me from the attacks of the malicious and furious, I can tell them that their malignity will be disappointed. Instead of regret and mortification it will be a source of pride and happiness to me. Small as my chance may be of credit for the assertion, I declare, that I propose to myself no reward so high for my exertions, as the consciousness of having, in spite of

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all hopes on one side, or fears on the other, honestly discharged my duty.

If ever in my course in the profession, I should find myself wounded either in fortune or reputation, instead of regretting and deploring it, I will rejoice and exult at it, and, at those hours, when in full confidence of his companions, it is neither indecent nor unsafe in a man to speak of his own actions, I will boast of it, I will shew it, as an honourable scar.

Gentlemen, with these preliminary observations, I will proceed to introduce my case to you. My learned friend, Mr. Gurney, has opened this prosecution with all that pomp of eloquence, and solemnity of declamation, which he possesses in so ample a manner, and which make him so accomplished an advocate. But what has he done? All, indeed, that he or any one else could have done: yet, nothing more than repeat those arguments, which are trite, and worn like a turnpike, and have been topics for counsel after counsel, through a thousand of these prosecutions; while he has left all the great subjects of consideration that present themselves to the mind on these questions, wholly untouched. He has declared, indeed, but without showing you why, that the words, charged in the indictment are an atrocious libel; in which, as it appears to me, he has been rather premature, for a libel they are not, and cannot be, unless your verdict should so declare them. I assert, gentlemen, I am sure his Lordship will not assent to me while I assert it, that you are the only judges of the law of libel in this case; and this paper, for which the defendant stands before you, is either a libel or not a libel, as you may in your consciences think it, and on your oaths pronounce it.

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The statute, indeed, which declares this the law, has given, or rather left with his Lordship, the right of stating his opinion on that question to you; but I am sure he will not think that I exceed my duty, as an advocate, when I say, that though it is your duty to receive his opinion with respect, and give it the most attentive consideration, yet it still leaves you free to your own judgments, and if after weighing his opinion, you find yours unaltered, you have not only a right, but it is your duty to reject his opinion and to act on your own.

Gentlemen, I submit that it is within your province to take into consideration the nature and operation of those writings, which are called in prosecutions of this kind libels. You are sitting there to try this charge as an offence by the common law of the land. The defendant is accused of having committed an act in the nature of a nuisance; and you are to judge whether that act could operate as a nuisance or not. You are not bound, because pamphlets have been prosecuted as libels time out of mind, or even because they have been declared libels by the verdicts of preceding juries to tread in no other path than their steps; and to find similar, or even the same matter, libels, if you should not think them criminal or dangerous. If you should be convinced by argument, not only that the pamphlet before you is not a libel, but that almost all those political writings, which it has been the habit of certain people, taking up the cry from their leaders, to call libels, are not merely not dangerous but beneficial to political society; is it possible to conceive, that you can be induced to pronounce a verdict of guilty against the defendant! How can you come to such a conclusion; as that there should be punishment where there has been no mischief, and where there could have been none, and if there not only has been no mischief, but could have been none,—nay, if even there must have been benefit, how can you lay your hands on your hearts, and say there has been crime? Suppose a man was indicted for a nuisance in doing that for which a number of persons had in succession been indicted and convicted, would that oblige a jury to find a verdict against a person at this day indicted for the same act, if he should prove to them by evidence, which their minds could not resist, that what had been complained of as hurtful to public health and morals was noxious to neither, but salutary to both? Would you, in such a case, though a thousand preceding juries had, in their ignorance, pronounced verdicts of guilty, follow their example, against your full knowledge and internal conscience? To illustrate by a familiar instance, when hops were first introduced into this country they were very generally believed to be pernicious. Several persons were I believe prosecuted and convicted for using them; yet now they are known not only to be not pernicious, but nutritious; they form a principal ingredient in the daily beverage of our tables, and are even employed largely in medicine. Let us now imagine a man prosecuted for the use of hops or any other drugs upon the ground that they injured health, and that upon his trial he should fill the box with men of science as witnesses, and shew you to moral demonstration, that so far from being injurious, they were highly salutary, would you, because other juries had convicted in a state of ignorance, imitate their blindness, and convict the defendant? Certainly not. Then to apply this to writings, prosecuted as libels, though there may have been hundreds, and thousands, nay tens of thousands of convictions upon them, yet, if you should be convinced, that what are usually called libels (and this among them) cannot be injurious, but so far from it, that they are innocent and even salutary to the state, in which they are published, would you hand over the publisher to punishment by a verdict of guilty? But I am anticipating, I fear, my defence, and introducing too early observations, which will better be urged in a subsequent part of my address to you. I will, therefore, pass at once to the paper charged as a libel in the indictment, and examine, under what circumstances it has come before you. And in the first place, as to the publication, without which (whatever the nature of the writing may be, there can be no crime) who are morally the publishers of this pamphlet? Have you any evidence, whatever, that any one of these pamphlets was in circulation, or ever would have been circulated, but for the impertinent, obtrusive, sordid, and base part of the ministers of the Constitutional Association? How otherwise is this pamphlet here? Let us turn back to the evidence of the first witness. He was the worthy servant of the Association in this and a few other recent instances, but for the most part, within a year and a half, the servant of the Society for the Suppression of Vice: a Society very different, indeed, from that with which we have had to deal to-day;—not that I have any affection even for that association: I would

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neither praise nor even be suspected of approving it, but I will not be so unjust and scandalous as to compare it with the Constitutional Association. Before this witness was employed by that society, he was a Custom-house officer. Are you, I asked him, now a Custom-house officer? No. How comes that? I lost my place. How old are you? Fifty-four. Have you any pension? No. Now, gentlemen, I beg to observe, that it is not the habit of the Custom-house to turn away officers, who have grown grey in their service, without a pension; unless they have richly deserved to be so discarded and abandoned. Such, gentlemen, are the instruments employed as spies by the acting members of this Association! This fellow is sent out with instructions from the honorary secretary, Mr. Murray, who is the attorney for the prosecution, to purchase, not this pamphlet alone, but any political pamphlet, which in his judgment might be libelous. Good God! to what a condition are we reduced, when, under the auspices of this blessed Association, discarded tide-waiters, and broken gaugers, are made judges of what is libelous, and leagued with an attorney, are to determine what may, and what may not, without the terror of a prosecution, issue from a free press. Such was the course pursued: and can you conscientiously say, that, but for this hiring of a spy to make a purchase of this pamphlet for the sole purpose of founding this prosecution upon that very instance of sale, the public would ever have heard of it? Gentlemen, it is a great happiness, and much security arises from it, that every person who stands forward as a prosecutor exposes his own conduct, as it is connected with the prosecution, to scrutiny and animadversion. I have a right to assume that freedom which is the privilege of the bar. I remember that in the case of the King and the Dean of St. Asaph, in which the present Marshal of the King's Bench Prison, without any apparent connection with the subject of the prosecution, was the prosecutor, the counsel for the defendant exercised this right, and the Marshal was successively the object of his ridicule and indignation.

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Mr. Justice BEST.—Mr. Cooper do you think it acting fairly to make this sort of attack on a gentleman who is not present? Is this the practice of the bar?

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Mr. COOPER.—My Lord, I make no attack on the Marshal. I only state that—

Mr. Justice BEST.—These observations being made on one who is not anyway connected with this case, who is not present to answer for himself, and who would not be permitted if he was, what are we to suppose? Can any gentleman at the bar consider this as fair?

Mr. COOPER.—My Lord, I have no design to attack the Marshal either in his absence or presence. I mentioned him but incidentally. What earthly purpose could it answer to this case to attack him? He *was* the prosecutor in *that* case, and I rather incautiously, perhaps, mentioned who the prosecutor was, by name; when I ought only to have said the prosecutor. If I have done him any injustice, I beg his pardon as publicly for it, and thus, I give a remedy as wide as the wound. I say then, gentlemen, that the prosecutor in that case, was alternately the object of the keenest indignation, and the most jeering ridicule, and I have a right to be equally as free, as the counsel in that case, with the prosecutors in this: but I shall by no means follow the example. On the contrary, I think, we are deeply indebted to the Constitutional Association. Consider how we were circumstanced when they first arose amongst us. There was the state, with a standing army of only a hundred thousand men, and nothing besides, except the whole civil force of the realm, a revenue of no more than seventy millions; and the feeble assistance of the established law officers of the crown to prosecute public offenders, when this Constitutional Association in the pure spirit of chivalry, steps forward to help the weakness of Government, and succour its distress. Now, whatever men may talk of justice, who can say that disinterestedness has altogether abandoned the earth? Who can say that generosity has forsaken us and flown to heaven? Let it be considered too, that but for their active vigilance Carlile's shop would not have been known. No productions from it had ever been the subject of prosecution, and but for the keen scent of the Association, the rank and huge sedition contained in the New Year's Address might have lain in its covert undetected and undisturbed. But to drop this irony and be serious, the law officers of the crown are fully adequate to their duties, and Carlile's shop was as well known to the Attorney General as St. Paul's to you. For years he has not had his eyes off it. I will engage that every publication, that has issued from it, and this very pamphlet among the rest, has passed through his hands, and under his review. Yet the law officers of the crown do not appear here to prosecute it as a libel against the state; and I entreat you to mark this, for I have a right to urge it, as a strong negative proof, that they do not so consider it; and how can that require your condemnation which they (with a judgment surely very much superior to that of the Committee of the Constitutional Association) have not thought worthy of prosecution or notice? Yes, you are actually called upon by this Association to deliver over to punishment the publisher of this paper, whilst the law officers of the crown (who neglect their duty, if they do not prosecute offences against the state) have thought it of a nature not at all requiring their interference. What can be so preposterous? So monstrous? And in taking leave of this view of the case, let me once more ask you who have been actually the publishers of this paper? Have you a single iota of evidence, which ought to satisfy your minds, that, but for the insidious conduct of the Association, and its spies, this pamphlet would ever have been before you or the public? Is there a shadow of proof that one copy was ever sold, except those bought by the creatures employed by the honorary secretary (who is also the feed attorney in this prosecution) for the sole object of entangling the defendant in this indictment? None, whatever. None. They conspired you see to procure and seduce (the word is neither too broad nor too long for their conduct) the publication for the very purpose of this prosecution. How then having thus suborned the offence of which they complain, can they dare to stand forward as prosecutors, when they themselves are the criminals, and ought to be the defendants.

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Mr. Justice BEST.—You mean. Mr. Cooper, to offer some evidence of that, I suppose.

Mr. COOPER.—None, my lord, but the evidence already before the court and the jury, and the strong and necessary inference from the facts proved by the witnesses for the prosecution themselves.

Mr. GURNEY.—There were many others lying on the counter.

Mr. COOPER.—What of that, does it follow that they must, therefore, have been sold? In the absence of all other proof of any publication, I have a right, I am forced to consider the Association as the only publishers.

Mr. Justice BEST.—In the evidence there is nothing like it.

Mr. COOPER.—What, gentlemen, is it a necessary conclusion, that because the pamphlets were lying in the shop, they must have been sold to other persons? The defendant but for their intrusion, for the sole design of prosecution, might have sold no others. She might have changed her intention to sell. The pamphlets might have lain like bad verses untouched on the shop counter, till they were turned over for waste paper, and not a soul have ever known of their contents. The Association, therefore, by their insidious and plotted purchase for the sole object of prosecution, have provoked the act of publication, and they, who provoke crimes are the criminals, and ought to be the culprits; and those, who would punish the crimes that they have provoked, are devils, and not men; “the tempters ere the accusers.” When I contemplate such conduct—but I will not waste another word, or another moment of your time upon this miserable Association. If I had consulted my better judgment, I should have passed them in silence; thus much my indignation has wrung from my contempt.

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I shall now, gentlemen, proceed to the examination of the libel, or rather that which is charged as a libel itself; and I shall begin with the last part so charged in the indictment, instead (as my learned friend has done) with the first; and let me beg your regard to one remarkable fact, that at the very point of the paper, at which the motives, and design of the writer present themselves to the reader; at that very point this indictment stops. It has not, as you will presently see, the candour to proceed a single syllable farther. I will now read the passage, “Reform,” it says, “will be obtained when the existing authorities have no longer the power to withhold it, and not before, we shall gain it as early without petitioning as with it; and I would again put forward my opinion that something more than a petitioning attitude is necessary.” This it has been urged to you, with great emphasis, is an excitement to insurrection; and you are called upon to draw that inference, though the author immediately afterwards disavows, expressly disavows any such intention. But even, if the words stood alone, I deny that you are compelled to such a construction. Gentlemen, will any one venture to say, that I, standing in this place, and in the very exercise of my profession, mean any thing, but what is strictly legal, when I say myself, that supposing reform in Parliament be necessary, something more than mere petitioning is requisite to obtain it? But in saying this, do I mean any thing violent or illegal? Heaven forbid; No: but I would have societies formed, and meetings held for the purpose of discussing that momentous subject. If reform be necessary, and the desire of a great majority of the country, I would have that desire shown unambiguously to the legislature, by resolutions and declarations at such meetings. Who will deny such societies and meetings to be legal? Yet, such meetings would be more than mere petitioning, much more: and the author means nothing beyond this; for I say, that in the absence of all other criteria, the only means of judging of a writer’s intentions are his words. Look then at the words which immediately follow the assertion, that “something more than a petitioning attitude is necessary.” If those words had been included in the indictment, this prosecution must have been at an end upon merely reading the charge, and those words, therefore, the Association avoided, as cautiously as they would the poison of a viper. They felt, that though the indicted words standing alone might perhaps admit of a doubt for a moment, yet the context completely explained them, and gave an air of perfect innocence to the whole passage. But you shall judge for yourselves: I will read the passage,—“Something more than a petitioning attitude is necessary. At this moment I would not say a word about insurrection; but I would strongly recommend union, activity, and co-operation. Be ready and steady to meet any concurrent circumstance.” Now what kind of union, activity, and co-operation does he mean? Is it military association, marches, and attack? No. Hear the writer’s own words again:—“The Union Rooms at Manchester and Stockport are admirable models of co-operation, and are more calculated than any thing else to strengthen the body of reformers.” For what do the reformers assemble in these rooms? How do they co-operate there? Is it to consult how they shall arm and organize themselves, and seize with a violent hand the reform which they despair of gaining by petition? Nothing like it. The writer himself still tells you his meaning. “Here (that is at the Manchester and Stockport rooms) children are educated, and adults instruct each other. Here there is a continual and frequent communication between all the reformers in those towns.” This, then, and no other, is the co-operation which the author intended, and proposes. If any man, taking the paper in his hand and reading the whole paragraph, can say that any thing more is meant, to his reason I should cease to appeal. I should sit down in silent despair of making any impression on such an understanding; but you, gentlemen, I ask you, adding the words which I have read to the broken passage, which is insidiously separated and included in the indictment, can there be a doubt remaining in any rational and unprejudiced mind, that the union and co-operation called for by this Address from those who desire reform in Parliament, is nothing more than the establishment at other places, of rooms, on the model of those at Stockport and Manchester; where children and adults are instructed, and information disseminated on the subject of Parliamentary Reform. And if this is all that is meant, there is an end of this part of the

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indictment; for it cannot be libelous to recommend in a writing the people to do that, which it is perfectly legal to do.

With regard to reform itself, I cannot know, whether any of you are advocates for it or opposed to it, nor is it requisite that I should; I do not ask you to think or say with me, and others, that reform in Parliament is necessary, and that nothing but reform can save the country from ruin; all that I ask of you is to allow me and others credit for the conscientiousness of our opinions, and charitably admit, if yours are opposite, that though we may be mistaken in our judgments, we must not of necessity be criminal in our intentions. I leave you and every man to the free exercise of your thoughts, and the free enjoyment of the conclusions to which they lead you. Let this liberality be reciprocal, and concede the same freedom to others which you demand for yourselves. I have always thought that a difference in religious and political matters need not and ought not to create hostility of feeling, and sever those, who would otherwise be friends. I myself enjoy the friendship of several, who entertain very different opinions from mine upon those subjects; and yet that difference has not, and never shall, on my part, at least, disturb our friendship. In all questions in which you cannot have mathematical demonstration, there may be fair, honest, conscientious difference of opinion; and you cannot have geometrical proof in questions of religion, politics, and morals. The very nature of the subjects altogether excludes it. To expect it, as Bishop Sanderson says, would be as absurd as to expect to see with the ear and to hear with the eye. So various are our opinions upon these subjects, that we not only differ from one another upon them, but at different times we find we differ from ourselves; and, as another learned churchman, in more recent times, has said, what could be more unjust than to quarrel with other men for differing in opinion from him, when no two men ever differed more from one another than he at different times differed on the very same subject from himself. Under this state of uncertainty in human judgment, I call upon you, and I am sure I shall not call in vain, to be slow to condemn the opinions of others, because they are different from your own; and, therefore, if any of you should think reform in Parliament needless, or even dangerous, I still call upon you (though the writer of this paper should be a reformer, and even though he is called in reproach a radical reformer) not to condemn the defendant in this case through prejudice against the author's opinions; but solely to enquire (be those opinions ever so just or ever so absurd) whether he is sincere in entertaining them; for, if he be (as I shall show you presently from the highest authority) the law does not consider him criminal. Try him by this test, and this test, and this alone; and then, whatever may be your verdict, you will be free from reproach, and secure to yourselves quiet by day, and sound slumbers by night; for you will have discharged your duty to yourselves, to the defendant, and to the country.

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With regard, gentlemen, to the other part of the alleged libel, I must bespeak your patience; for I am afraid that I shall be drawn by my comments upon it into considerable length. (I am afraid, gentlemen, I weary you, and I am sorry for it. If I had had leisure, I would have condensed my observations; but, under the circumstances I have disclosed to you, I hope you will forgive me for occupying more of your attention than I would otherwise have done. I really have not had time to be short.) To return to the passage in the paper, which is first charged as a libel: it denies the existence of any constitution in Great Britain. Now whether there be anything malicious and criminal in this, depends entirely upon the meaning which the author attaches to the word constitution. I confess it is a word that gives me a very indistinct and uncertain idea; and I believe that if any of you were now suddenly to ask yourselves what you understood by it, you would find you were not very ready to give yourselves an answer; and if you could even satisfactorily answer yourselves, you would find if you were to go further and question your neighbour, that he would give you a very different definition from your own. In itself it means nothing more than simply a standing or placing together; and it really seems to me rather hard and venturous to indict a man for denying the existence of something (whatever it may be) expressed by the most indefinite term in our whole language. But, if we were agreed upon the ideas which should be attached to the word, let us examine whether, allowing for a certain freedom of expression and the earnest eagerness with which a man who is sincere in his doctrines enforces them in his composition, a writer may not, without being exposed to a charge of criminal intention, assert that there is no constitution in this country. And let us take with us to this examination, that a man is not to be too strictly tied to words, when under the impulse of warm and keen feelings, and when the thoughts flow, as it were, at once from the heart into the pen, he sits down to excite his countrymen to their good, or warn them of their danger. You must not think to bind him down with the shackles of verbal criticism, when he is too intent upon his theme exactly to measure his expressions. Now, that the writer of this paper is sincere in his opinions, whatever the quality of those opinions is, it is difficult not to believe. He published his opinions, though he exposed himself to punishment for them, and he perseveres in them while he is suffering a heavy punishment. You can have no more convincing proof of sincerity than this. But, what if a political writer has, in the warmth of composition, asserted that in England we have no constitution, who can misunderstand him? We cannot suppose he meant that there was a dissolution of all law and government; because we know and feel the contrary. Few would have occasion to ask him what he meant. If, however, he were asked, he should explain by telling you, that the constitution in theory is very much corrupted from the practice; and I and you, and every person must admit, that the practice has strayed wide from the theory; and, forced to admit this, I assert with a writer, who (whatever was thought of him once, and whilst those who were the objects of his reproach still lived) is now the pride and boast of the country, both for the supreme elegance and the principles of his political writings, that "wherever the practice deviates from the theory so far the practice is vicious and corrupt." Now, saying no more than this, and when it would have been the merest stupidity to understand him literally, how can the writer be

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convicted of a design to bring the Government into hatred and contempt, because he has expressed his meaning by saying figuratively "there is no Constitution." But he has previously said, that to talk about the British Constitution is, in his opinion, dishonesty. I know he has. I did not mean to pass it, I will not, gentlemen, shrink from any part of the passage, for I feel that it cannot bear with any heavy pressure against me. "To talk of the British Constitution is, in my opinion, a sure proof of dishonesty." Here it will be seen that the only exception that can be taken to this sentence is the mere mode of expression. If a man were to talk to me of the Constitution of England, and, by omitting all notice of its aberrations in practice from its theory, by which he would leave it free to me to suspect, that he would insinuate that the theory and the practice were the same, I should certainly say, that he was exhibiting want of candour. I might, perhaps, think dishonesty, rather too strong a term for such conduct; but I should not scruple to say, that he was disingenuous, and he *would* be guilty of a species of dishonesty; for all the disingenuousness is to a degree dishonest; and, since the meaning is the same, why should we quarrel at a mere difference of expression? The author proceeds to say, "If we speak of the Spanish Constitution, we have something tangible; there is a substance and meaning as well as sound." So that it is clear he was saying, that we had no Constitution in comparison with that just promulgated by the Spanish nation. The Spaniards we know have recently gained by their own glorious efforts, that political liberty to which they had been so long strangers; and their Legislature had just published a code of fundamental laws, few in number, but most comprehensive in securing freedom to the people, for whom they are framed. They are (comparatively with the laws of countries, in which the frame of government is old, and complicated) not numerous, but the mind may collect them almost at a glance, and possess itself of them with a single effort of the understanding. In this view of the subject, without doubt, the Constitution of Spain is tangible; and in this sense he is justified in asserting that our own Constitution is not tangible; for is it not notorious that our laws are spread through so many Acts of Parliament of doubtful and difficult construction, and so many books of reports, containing the common law of the land (and in which there are no few conflicting decisions) that the whole life of a man does not suffice to achieve a knowledge of them. So multifarious and infinite and perplexed is our code, that even amongst those whose profession is the law it is not possible to meet with an accomplished lawyer.

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The defendant here fainted, and was taken out of court. After the interruption which this circumstance occasioned had subsided, Mr. COOPER proceeded—

Gentlemen, I lament in common with many others that this evil has attended an extended degree of civilization and trade—that our laws have become too numerous and complicated for the capacity of the mind. That they are so, is not my opinion alone, but that of the Legislature itself. I believe that a committee of the Houses of Parliament has been sitting and still sits for the object of reducing our laws to some limit in their number and some order as to their design; without which our Constitution, to use the words of the writer, cannot be tangible; a tangible shape, at present it does not possess, for that cannot be tangible which spreads itself over a boundless extent, that eludes, and defies the grasp of the human intellect.

Having disposed of thus much of this paragraph, I come to the words, on which my learned friend, Mr. Gurney, laid such extreme stress in his address to you. "Our very laws, are corrupt and partial both in themselves, and in their administration. In fact corruption *as notorious as the sun at noon-day* is an avowed part of the system, and is denominated the necessary oil for the wheels of Government. It is a most pernicious oil to the interests of the people." This is strong language I admit, and would perhaps be censurable as imprudent, at least, if the very expressions themselves, which the writer uses, did not guide us directly to the facts to which he alludes, and explain the passage. He alludes most manifestly to the celebrated exclamation of a person at the time that he was in the seat of office, the first commoner of the realm, and who instead of being reproached for his words has retired from his office with the honours which he has merited for his services in it. It transpired in the House of Commons, that seats had been trafficked for as articles of sale and purchase for money.

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Mr. Justice BEST.—Is that a subject at all relating to the question which is now before the jury?

Mr. COOPER.—My Lord, I am going to use the declaration of the Speaker, as a matter of history, and to show, that the words charged as criminal were an allusion to it; and if so, were not criminally used. I do not wish, nay I would avoid the introduction of any improper or inflammatory topics. I would not attempt to serve my client by such means. When it was exposed, that there had been certain trafficking for seats in the House of Commons, the Speaker used these words (and it is to them, I would show the jury, the writer of the paper alludes), "practices are as notorious as the sun at noon-day at which our ancestors would have started with indignation," and that gentlemen—

Mr. Justice BEST.—Will you allow me to ask you Mr. Cooper, I want to know where you get that from.

Mr. COOPER.—My Lord, from all the reports of the speeches in the newspapers of the day which were never contradicted.

Mr. Justice BEST.—I beg to state, that, whatever passed in Parliament, cannot be questioned anywhere else. Whatever the Speaker said in Parliament, he was justified in saying. But I have no means of knowing, nor have you, whether he ever did say so or not.

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Mr. COOPER.—I am not questioning anything he said in the House of Commons—

Mr. Justice BEST.—If Mr. Abbot had said it any where else, it would have been a libel on the constitution; if he said it there, we cannot enquire about it; it would be a breach of privilege.

Mr. COOPER.—Your Lordship asked me, how I came to know that he said so. My Lord, I have seen it in all the recorded speeches of the House of Commons in the published debates in Parliament, and—

Mr. Justice BEST.—I say there are no recorded speeches of the House of Commons to which we can listen or attend.

Mr. COOPER.—Certainly, there are no records of speeches in the House of Commons in the sense in which the proceedings of courts of law are records, nor is there in that sense any recorded speech of Cicero or of Lord Chatham; but, my lord, will your lordship say, that I am not entitled in my address to the jury to use that which has been reported as part of a speech of Lord Chatham or of Cicero; because there are no records filed, as in the courts of law, of their speeches! I submit that they are matters of history; and that, as such, I am at liberty to use them.

Mr. Justice BEST.—I tell you, Mr. Cooper, what the distinction is. If you publish, that, which may be said to be a speech of Lord Chatham's, and it may be an accurate report of his speech, you may be guilty of publishing a libel, though the place, in which that speech was delivered gave a liberty to the speech. You know it has been so decided in my Lord Abington's case, who published his own speeches.

Mr. COOPER.—That, my Lord, was a libel upon a private individual. I say—

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Mr. Justice BEST.—I say you have no knowledge of anything which is said in the Houses of Parliament.

Mr. COOPER.—With great submission I re-urge it as a matter of history, and as such I would use it whether the fact is ten years old or ten thousand, I submit makes no difference.

Mr. Justice BEST.—Mr. Cooper, I have told you my opinion; if you don't choose to submit to it, the best way will be to go on, perhaps.

Mr. COOPER.—With the utmost deference to your Lordship—

Mr. Justice BEST.—The Court of King's Bench has decided this very point, within the last two terms, against what you are contending for. If your own opinion be the better one, proceed.

Mr. COOPER.—Gentlemen, I was going to say, when the Speaker of the House of Commons exclaimed (I will not repeat particularly upon what occasion) that our ancestors would have started with indignation at practices which were "as notorious as the sun at noon-day," can you have any doubt in your mind that the writer of this pamphlet alluded to that exclamation? Why look at the passage, see, he uses the same words. "Corruption is as notorious as the sun at noon-day" is his very expression. He is citing the Speaker's own words, and cannot but be supposed to be speaking of the very same facts. It was proposed, on that occasion, to impeach a nobleman, whom I will not name and need not, for those practices. This however was resisted by almost all, and even by some who were friendly to Parliamentary reform, and politically adverse to the noblemen, to whom I allude, not, indeed, upon any pretext of his innocence of the practices, charged against him; but on the sole ground that those practices were so general and notorious that they would condemn themselves in sentencing him; and among so many guilty, it would be unjust to single him alone for punishment. Yes; although they were practices, at which our ancestors would have started with indignation, they were the practices of numbers, and the practices were as notorious as the sun at noon-day; and, therefore, the proposition of impeachment was rejected, and rightly; for as it has been said by the first speaker of all antiquity, we cannot call men to a strict account for their actions, while we are infirm in our own conduct. If this is the state of one branch of our Legislature, and if it is avowed, and by those who would conceal it, if concealment were possible (but it would be as easy to conceal the sun). Good God! shall a man be prosecuted and pronounced guilty, and consigned to punishment for affirming that our laws are corrupt; that there is corruption in the system, and that corruption is an avowed part of that system? when in so affirming he only echoes the exclamation of the Speaker himself, that "practices, at which our ancestors would have started with indignation, were as notorious as the sun at noon-day?" Why, if as the Speaker declared, such practices exist, and affect the most important branch of the Legislature, I myself say, that there is corruption in the very vitals of the Constitution itself. In such a state of things, to talk of the Constitution, is mockery and insult; and I say there is no Constitution. What, then, has the writer of this pamphlet said more than has been avowed by the highest authority, and everybody knows? And now, can you lay your hands on your hearts, and by your verdict of Guilty send the defendant to

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Having thus concluded my observations on the passages selected from this paper for prosecution, I will, for I have a right to read it all if I please, direct your attention to another part of it. Let us examine whether other passages will not convince us, that (though he should be mistaken in some of his opinions) the whole was written with a single and honest intention. I myself never read a paper, which, on the whole, appeared to be written with more candour. There is an openness that does not even spare the writer himself. Indeed, with regard to his opinions, peculiar and mistaken as he may be, he seems himself, sincerely to believe in them. He is now suffering for those opinions, and suffering with a firmness, which to those who think him wrong, is stubbornness; and, thus, he affords another proof of the extreme impolicy of attempting to

impose silence by prosecutions, and extort from the mind the abjuration of opinions by external and physical force. It never succeeds; but, on the contrary, works the very opposite effect to that which is its object. As the author from whom I have just now cited says, with extreme force and equal beauty, "a kind of maternal feeling is excited in the mind that makes us love the cause for which we suffer." It is not for the mere point of expression that it has been said, the blood of the martyrs is the seed of the church. It is not theological doctrine alone, that thrives and nourishes under persecution. The principle of the aphorism applies equally to all opinions upon all subjects. There is widely spread through our nature an inclination to suspect that there is a secret value in that from which others attempt to drive us by force; and from this, joined to other powerful motives, the persecution of men for their tenets, whatever they may be, only draws their attachment closer, and rivets their affections to them. Every effort to make them abandon the obnoxious doctrine renders them more steadfast to it. The loppings, which are designed to destroy, serve but as prunings, from which it shoots with increased vigour, and strikes its root still deeper. Has it not always been seen, that persecution has bred in men that stubborn resolution, which present death has not been able to shake; and, what is more, an eagerness to disseminate amongst others those principles for which they have themselves been prosecuted and pursued. I therefore, from my very soul, deprecate every species of persecution on account of religious and political opinions, not only from its illiberality, but bad policy; and I am full of hope, that you will by your verdict to day show, that you have an equal aversion to it.

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To recur, gentlemen, to the pamphlet; I submit to you that there is a general air of sincerity in the language of the writer throughout the composition, which obliges us to believe, that, however mistaken you may think him in his opinions, he is honest in his intentions. He says in another part of the address "Every government must derive its support from the body of the people; and it follows, as a matter of course, that the people must have a power to withhold their supplies." Which is very true: for, where there is a shadow of political liberty, a revenue can only be raised by taxes to which the people have consented: it being allowed that where there is taxation without representation tyranny begins. Now, if the writer really believes that there are corrupt practices in the Government, who can blame him, for proposing (by abstinence from those articles which are taxed and yield a revenue so large that it supports a system of misgovernment) to compel our rulers, by a diminution of their means of undue influence to a regard to economy and a just administration? I know, indeed, that this doctrine is considered offensive; nor am I prepared to say with confidence that under the wide construction which has been given to the law against conspiracy, persons who were to combine to force such a change by abstaining from all exciseable articles might not be indicted for it as a conspiracy. It may, for aught that I know, be even indictable to unite and desist from using tea, tobacco and snuff to coerce the government into reform by a reduction of the revenue raised from those articles; but you are not sitting there to try an indictment for a conspiracy; and, therefore, though this passage may not be pleasing, I read it, without hesitation, because it leads to others, which I think demand your consideration and attention. "We must deny ourselves, he proceeds to say, those little luxuries in which we have long indulged. Why not? Who gains, and who loses by this denial? We do not rob ourselves, we only check our passions; and, in doing this, we strengthen both our bodies and our purses. I would appeal to those, who, for the last year, have had the courage and the virtue to abstain from the use of malt and spirituous liquors, foreign tea and coffee, tobacco, snuff, &c., whether they do not feel satisfaction from the change of habit; and whether they are not better in health and pocket, without the use of these things." This, gentlemen, is a sermon on temperance, and I wish it were generally followed. I apprehend that this is not only innocent, but highly meritorious. For my own part I shall maintain the opinion (though ten thousand Mandevilles should write, and imagine they have proved private vices public benefits) that it is infinitely more important and beneficial that the mass of the people should be temperate and healthy, though poor, than that an immense revenue should be collected from their addiction to sensual pleasures and vicious luxuries. I say vicious, because all moral writers concur in calling those sensualities vices, as free indulgence in them leads to a state of total dissipation of mind under which scarcely any profligacy seems a crime. The writer continues: "There are a variety of other things which are heavily excised, the use of which might be prudently dropped; and which are not essential either to the health or comfort of mankind. Speaking for myself, I can say, I do not recommend more than I practise; and that my food for the last year has consisted chiefly of milk and bread and raw native fruits. I have been fatter and stronger than in any former year of my life; and I feel as if I had obtained a new system by the change. *My natural disposition is luxurious*, and under a better system of government, or when this rational warfare was not called for, I should at all times live up to my income." And here, gentlemen, I beg you to mark, that so unreserved, so much in earnest is the writer in his object, that he does not attempt even to conceal his own faults, and weakness. I ask, whether you have ever found men, who were acting and writing with duplicity and sinister intentions, reproach or expose themselves? But the writer of this paper practises no reserve; he conceals nothing, though the disclosure should be against himself, but

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Pours out all himself as plain,
As downright Shippen, or as old Montaigne.

He concludes this exhortation to temperance with this sentence, "Shrink not then you male and female reformers from this virtuous mode of warfare; for to conquer our injurious habits and our enemy at the same time is a double conquest, to obtain which both man and woman and child can very properly assist." I read this conclusion of the paragraph, gentlemen, and I beg your attention to it, because it makes it manifest that the change which the writer proposes to compass is a change by a moral operation through legal and peaceful means; and that he never

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dreamed of inculcating, as it is insinuated, any appeal to violence and arms.

I have now, gentlemen, concluded all the particular observations which I had to address you upon this paper; and having shown you that by the least liberal construction, no criminality of intention can be imputed to the author, how can I doubt of your acquittal? For it is your duty to construe the author's words so as to give them an innocent meaning if they will bear it, and not come to a conclusion of guilt from them unless you shall be convinced that they will not possibly admit of any other than a criminal sense. That he had no criminal design, is apparent enough, even from the indicted passages; and by reading the context is put beyond the possibility of a doubt. There are many other passages as well as that, which I have read, which tend equally to the inference of the sincerity with which the whole paper was written, but which I will not consume your time in reading, as you will have the whole before you when you deliberate on your verdict, and they must themselves strike your attention.

Now, gentlemen, I cannot tell, how you feel, but I have no opinion more deeply impressed on my mind than that the prosecution of such political papers as this before you, as state libels, is perfectly unnecessary; and, so far from doing good, is, if any mischief can be produced by such writings, mischievous. Prosecution excites the public regard, and a curiosity that will not rest till it is gratified, towards that which, under silent neglect, would hardly gain attention; if indeed, it did not drop quite dead-born from the press. But I deny wholly that any political writings, whatever their nature, have done or ever could do any harm to political society. Let those who advocate the contrary opinion show you a single instance of a state injured or destroyed by inflammatory political writings. The republic of Athens was not thrown down by libels: no—she perished for want of that widely diffused excitement to courage, and patriotism, and virtue, which a press perfectly free and unshackled can alone spread throughout a whole people. She was not ruined by anarchy into which she was thrown by seditious writings, but because, sunk in luxury and enervated by refinement, it was impossible to rouse the Athenians to the energy and ardour of facing and withstanding the enemy in the field. Rome too—as little was her gigantic power levelled with the dust by libels, but perished from the corruptions of the tyrannical government of the Emperors, which drained the nation of all its ancient virtue, and bred the slavery which produces an utter debasement of the mind (and which never could have been, if a free publication of political opinion had been suffered), and thus she fell an easy conquest and prey to the barbarians and Goths. Both these renowned states fell, because their governments and the people wanted the goad of a free press to excite them to that public spirit and virtue, without which no country is capable of political independence and liberty. How our ears have been dinned with the French revolution, and how often have we been gravely told, that it was caused by the writings of Voltaire, Rousseau, and Helvetius. Ridiculous! I have read the history of those times and have read it very differently. I am forced to understand that the inextricable and utter embarrassment of the French finances, the selfish and insolent luxury of the nobles, the desperate wretchedness of the lower orders of the people, and the profligate licentiousness of the Court, were the causes and the only causes of that great event. If the finances of that country had been in order, the nobles moderate, the poor unoppressed, and any public spirit in the Government, Voltaire, and Helvetius, and Rousseau, might have racked their brains for thought, and written themselves blind, before they would have raised a single arm, or even excited a single voice to exclaim for change. A perfect freedom of the press would, indeed, have prevented the causes which roused the people to assert themselves; but the causes once in existence, all the writers in the world could not one moment have either retarded the revolution or accelerated it. It is not the representations of a political writer that can alter the nature of things. Whose ingenuity, and wit, and eloquence, will persuade me that I am cold when I am warm; that I am hungry when I am full; a slave when I am free; and miserable, when I feel myself happy? While such is my state, what writings would drive me into insurrection? And if the contrary is my condition, what stimulus could I want to free myself from it? What persuasions could possibly even delay my utmost efforts for a change? It is not by the prosecution of political libels that the stability of a government and domestic peace is ever secured. No; let the Government pursue its only end, the public good, and let every man, or at least a large majority, have more or less an interest in the preservation of the State, and then all the writers in the country, from the highest down to the obscurest corners of Grub-Street, may wear their fingers to the roots of the nails with their pens, before they will work the slightest discontent in the public or change in the government. Nothing, gentlemen, is more common with writers and speakers, than to discourse of states by figures drawn from the government of a ship; and I will tell you what I once heard from a friend of mine who has served his country in our navy, and which at the time most forcibly struck my mind. "When I was stationed in the Mediterranean (he said, speaking of the occurrences of his professional experience) we made captures of the vessels of all countries except the Greeks, but we never captured them; for they were always vigilant, active, and brave. We never surprised them; if we chased them, they escaped us; and if we attempted to cut them from the shelter to which we had driven them, we were repulsed." What created this difference? By the rules of navigation amongst the Greek islands, every man, from the captain down to the lowest cabin-boy, has, more or less, a share in the vessel. They watched, therefore,—they laboured and fought for their own interest and property. Let those who sit at the helm and govern us imitate this policy. Let them extend the elective franchise; let them restore us to a condition in which industry and skill may find employment and be secure in their gain. Give men an interest and ownership in the state, and it shall never be upset by libels; not a seditious or mutinous voice shall be heard; and what foreign enemy shall dare to lift a hand against us? But keep the people excluded from their share in the representation, and pressed down by taxation, and millions of prosecutions against libels will not save the country from sinking in ruin.

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Let me now, gentlemen, call your attention back to the argument I used almost at setting out in my address to you, by which I attempted to maintain that you are not bound, whatever you may judge the intention of the writer to have been, to pronounce a publication a libel by your verdict, if you should be of opinion that such a publication cannot be mischievous, and that prosecution of it is unnecessary. If it can do no harm, it is no nuisance at common law to have written a paper, whatever its nature may be, and if it could be no nuisance, you are bound in duty to acquit the defendant, who is only the publisher. The doctrine for which I am contending with regard to this paper, has been acted upon by the government of one free country, with regard to all political writings, whatever their intention or nature. The Legislature of the State of Virginia has actually *legislated against* such prosecutions, and declared them totally unnecessary.

Mr. Justice BEST.—That is not the law of this country.

Mr. COOPER.—I only use it my Lord as part of my speech in argument.

Mr. Justice BEST.—I will tell you what I am bound to tell the jury. I shall tell them that we have nothing to do here with what may be expedient, we are not legislating here—the question is whether this is a proper prosecution?

Mr. COOPER.—I feel that it is exceedingly important to use as matter of argument, and as a part of my speech. If your Lordship stops me I know that it will be my duty to submit.

Mr. Justice BEST.—All this is only drawing them away from the question they are to consider. With the propriety of instituting the prosecution they have nothing to do; the only questions they have to determine, are—Is that paper a libel, and has the defendant published it? An Act of the Assembly of Virginia has no validity in this country.

Mr. COOPER.—My Lord, I do not cite it as a statute of this realm to which we are bound to pay legal attention—

Mr. Justice BEST.—We are bound to pay no attention to it.

Mr. COOPER.—My Lord, I only use it to show that other men have been of the opinion which I have expressed to your Lordship and the jury. If your Lordship insists on my not addressing myself to the jury upon it, I know too well the deference that is due from me to the Bench to persevere in attempting it.

Mr. Justice BEST.—No, I don't insist upon it. But, Mr. Cooper, can you deceive yourself so much as to think this has anything to do with the question? I shall tell the jury to pay no attention to it.

Mr. COOPER.—Your Lordship will make any observations your condescension may lead you to make, as well on this as on any other part of the defence. I believe the course which I wish to take was taken on a similar occasion by a man who united the soundest and correctest judgment with the brightest imagination—I mean Lord Erskine—he—

Mr. Justice BEST.—I knew him for thirty odd years at the bar, and I never in all my life knew him address himself to points such as these—that is all I can say. I know what is due to the liberty of the bar, and I shall cherish a love for its freedom to the latest hour of my life.

Mr. COOPER.—If your lordship refuses me—

Mr. Justice BEST.—No, I don't refuse you.

Mr. COOPER.—I think it necessary to my case. The preamble is—(gentlemen, I am sorry to detain you, but I have a most important duty to discharge. If in addressing you, I am taking a course which I ought not, I assure you it is an error of judgment and not of design. I declare most sincerely, that I am addressing to you arguments which I should attend to if they were addressed to myself in such a case. His Lordship will have a right to make what observations he pleases, and of course I offer this and every other argument to you liable to the honour he may confer upon me of condescending to notice anything I have said or may say. You, gentlemen, will, I know, regard my observations or arguments solely as you think them forcible or weak; if they are the former you will attend to them, if the latter reject them. And with this observation I shall now proceed to read to you the preamble to the Act of the Legislative Assembly of Virginia.)

“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, and 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.”

Thus, you see, by an Act of the Legislature of that country, passed by those who had all the knowledge of history before their eyes, and ample experience in their own times, I am fully supported in the position that prosecutions of this kind are not only useless but hurtful. By free argument and debate errors cease to be dangerous, if they are not exploded; but attempts to stifle even errors by power and punishment, provoke a stubborn adherence to them, and awake an eager spirit of propagation. If erroneous positions are published, meet them by argument, and refutation must ensue. If falsehood uses the press to promulge her doctrines, let truth oppose her with the same weapon. Let the press answer the press, and what is there to fear? Shall I be told that the propensity of human nature is so base and evil that it will listen to

falsehood and turn a deaf ear to truth? To assert so is not only scandalous to human nature, but impious towards the Creator. We are placed here imperfect indeed, and erring; but still with preponderance of virtue over vice. The Deity has sent us from his hands with qualities fitting us for civil society: it is our natural state; and we know that civil society is sapped by vice and supported by virtue: if, therefore, our disposition to good did not redound over the evil a state of society could not be maintained. It would indeed be an impiety little short of blasphemy to the great Being who has created us, to say, that mankind at large are eagerly inclined to what is vicious, but turn with aversion from what is moral and good. Yet this, whatever they may avow, must be the opinion of those who say that good doctrine from the press cannot be left with safety to oppose bad.

Now, gentlemen, not only am I not without the corroboration of this enactment of the Legislature of Virginia for my humble opinions, but the Act of Virginia is itself not without the very highest human sanction, as I shall show you by a passage which I am about to cite from the work of a man, with whom, in my mind, the writings of all other men are but as the ill-timed uninformed prattlings of children—a man from whom to differ in opinion is but another phrase to be wrong. Need I, after this, name him? for was there ever more than one man who could be identified with such a description? I mean Locke, the great champion of civil freedom. In this work on government he says—

“Perhaps it will be said, that the people being ignorant and always discontented, to lay the foundations of government in the unsteady opinion and uncertain humour of the people, is to expose it to certain ruin, and no government will be able long to subsist if the people may set up a new legislature whenever they take offence at the old. To this I answer, quite the contrary, people are not so easily got out of their old forms as some are apt to suggest; they are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to, and if there be any original defects or adventitious ones introduced by time or corruption, it is not an easy thing to be changed, even where all the world sees there is an opportunity for it. This slowness and aversion in the people to quit their old constitutions has in the many revolutions which have been seen in this kingdom still kept us to, or, after some intervals of fruitless attempts, still brought us back again to our old legislature of King, Lords and Commons.”

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Such is the opinion of this greatest of men, formed on the most consummate wisdom, enriched by observation, during times which afforded no small degree of experience. Upon his authority, then, that men are not to be excited to sudden discontent, and passion for hasty change, I assert, that there is no danger to be apprehended from the freest political discussions; and consequently no need of their condemnation by a jury's verdict of Guilty.

Milton, too, the greatest of poets, and hardly less a politician, was of the same sentiment as to the firmness of the people, and thought it might safely be left to them to read what they pleased, and to their reason and discretion, what to object and what to adopt, without any other interference. It is his *Areopagitica*, in which he contends for unlicensed printing—an oration addressed from his closet to the Parliament of England, and which has been cited by Lord Mansfield himself, on the bench. His words are—“Nor is it to the common people less than a reproach; for if we be so jealous of them that we cannot trust them with an English pamphlet, what do we but censure them for a giddy, vicious and ungrounded people? That this is care or love of them we cannot pretend.”

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Such are the sentiments of Milton, in that noble effort of united argument and eloquence, which I should not fear to hold up against the most splendid orations of antiquity.

Having thus, I submit, made good my position, that political papers, whatever their description, can produce no mischief, and that there is no need to prosecute them; I will now show you, that not only can publications, containing false opinions, do no mischief, but that they actually produce benefit, and that therefore not they, but the prosecutions, which would check, and stifle them are injurious. Is it meant to be contended that error is stronger than truth; folly more powerful than reason, and irreligion than religion? No man, in his senses, will maintain such propositions. On the contrary, error has always been dispersed before reason, and infidelity by religion. The appearance of error and falsehood has always roused Truth to rise to the work of refutation. Even the sublime truths of religion have never been so completely demonstrated, and conviction and faith have never been so firmly fixed in the minds of men as by those books of controversy which have been drawn forth by attacks upon Christianity; and which, but for the publications denying the authenticity of the religion, would never have been in existence; but, invaluable as they are, the world must have wanted them. As to political writings, is it not notorious, that the very best expositions of the nature of civil society and government, are solely to be ascribed to the conflicts of reason with the false and loathsome doctrines of passive obedience and divine indefeasible right, which found their way into the world by the freedom of publication? Even that great work, the treatise of Locke on Government, itself, which is justly regarded as the political Bible (I mean no irreverence) of Englishmen, would never have seen the light, but that it was written to refute the base and detestable tenets of Barclay and Filmer. Their political treatises were false and slavish, and even illegal; for they were the same for which Dr. Sacheverel was afterwards impeached by the Parliament; and which he would not have been if it had not been an offence to maintain and publish such opinions. Yet were not their falsehoods and errors useful and beneficial? Did they not provoke Locke to rise in all the majesty and

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strength of truth and cast down Filmer and his doctrines into the lowest abyss of contempt, never again to emerge? See, now, if the government of those days had prosecuted Barclay and Filmer, and suppressed their books by power instead of leaving them to be demolished by reasoning, what would have been the consequence? The mighty mind of Locke would not have been called into action, and the total refutation and utter explosion of Filmer would not have been effected. By criminal prosecutions the odious positions would only have been suppressed for a time, not as they now are, extinguished for ever; and the base and degrading doctrines of passive obedience and divine right, which are the stigma of the times in which they prevailed, might have been the disgrace and reproach of ours.

But supposing that prosecutions for political writings were in any respect politic, useful, or wise, will they prevent their publication? No more than your strong and violent revenue laws have been able to suppress the rise of illicit stills in Ireland and Scotland. Even if by dint of the terror of prosecutions the press in this city could be reduced to such awe and subjection, that everything that issued from it was as flat and unmeaning as the most arbitrary government could desire, its inhabitants would still gratify their thirst for political discussion and information. They would compose and print as they distil, in the depth of deserts and the solitude of mountains, and under the cover of darkness drop the pamphlets into the houses, or scatter them in the streets, and the obstacles to circulation will serve only to inflame the desire for possession. This would be the result of a determination to suppress everything in the shape of political discussion that did not please the humour of a set of men in authority, while by far the greater part if not all those publications which inspire so much apprehension, would if passed in silence either never be noticed, or read their hour and forgotten. It is these public trials that give them importance and notoriety. They would not draw an eye but for the glare thrown on them by these luminous prosecutions. These indictments (though I would not willingly be ludicrous on so serious an occasion) force into my mind the course once adopted with regard to houses of ill-fame, by the Society for the Suppression of Vice. They paid men who were fixed before the doors of such houses with huge paper lanterns, on which there was painted in large illuminated letters, "This is a house of bad fame." But, instead of causing a desertion of the houses, they operated as an advertisement and an allurements, and increased the numbers who resorted to them. Those who had before frequented them did not discontinue their visits, and those who were ignorant of such places and seeking them, on seeing the emblazonment by the doors, cried out—that is just what we wanted, and turned in. The society at last discovered their mistake. They found that they were encouraging what they wished to abolish, and discontinued the plan. My learned friend, who is counsel for the society, can confirm me when I assert that they do not now carry it into practice. Precisely the operation that these lanterns had with regard to houses of ill-fame, have these trials upon obnoxious writings. They are illuminated by the rays which are shed on them by these proceedings. They attract every eye, and are read in the light (as it were) of the notoriety which is thus thrown upon them by these prosecutions.

Gentlemen, it just occurs to my recollection, that I have omitted in its proper place something which I ought to have mentioned, and urged to you, and I beg your indulgence to supply the omission. You will remember that in one of the passages charged as libelous, the words "I will not, now, say a word about insurrection" are to be found, and my learned friend, Mr. Gurney, suggested to you that it was an excitement, at some future period, to insurrection. I, gentlemen, repeat that these words are not only no excitement to insurrection, but an express disavowal of it. If you infer that he means insurrection at any future time, you must also suppose that the insurrection he contemplates is conditional, and in speculation of conduct in the government that may justify it. Is there any extrinsic evidence to show that he means something beyond the words? None—and the words themselves are a literal disclaimer of any intention of insurrection. And it is by the words then that you will judge of his design, and not take it from the vague and partial declamation of the counsel for the prosecution, whose opinions ought no more than my own, to have any weight with you, except as they are supported by reason. If you can find any such meaning as an intention to excite insurrection in the words, so much the worse for the defendant; but, if you cannot, and I am sure you cannot, then you will not hesitate to adjudge the words innocent. What! may not I, or any man, say there is no occasion for insurrection at this moment, but there may be at a future time? Good God! are there no possible situations in which resistance to a government will be justifiable? There have been such situations, and may again. Surely there may be. Why, even the most vehement strugglers for indefeasible right and passive obedience have been forced (after involving themselves in the most foolish inconsistencies, and after the most ludicrous shuffling in attempting to deny it) to admit, that there may be such a conjuncture. They have tried to qualify the admission indeed—admitted, and then retracted—then admitted again, and then denied in the term, what they admitted in the phrase, till, as you shall see, nothing ever equalled the absurdity, and ridiculousness of the *rigmarole* into which they fell, in their unwillingness to confess, what they were unable to deny. Yes, gentlemen, there are situations in which insurrection against a government is not only legal, but a duty and a virtue. The period of our glorious revolution was such a situation. When the bigot, James, attempted to force an odious superstition on the people for their religion, and to violate the fundamental laws of the realm, Englishmen owed it to themselves, they owed it to millions of their fellow-creatures, not only in this country, but all over the world; they owed it to God who had made them man to rise against such a government; and cast ruin on the tyrant for the oppression and slavery which he meditated for them. Locke, in the work from which I have already cited to you, in the chapter entitled, "On Dissolution of Government," contends with Barclay, an advocate for divine right and passive obedience, and refutes him on this very question, and proves that subjects may use force against tyranny in governments. He cites

Barclay who wrote in Latin, but I read to you from the translation.

“Wherefore if the king shall be guilty of immense and intolerable cruelty not only against individuals but against the body of the state, that it is the whole people, or any large part of the people, in such a case indeed it is competent to the people to resist and defend themselves from injury, but only to defend themselves, not to attack the prince, and only to repair the injury they have received; not to depart, on account of the injury received from the reverence which they owe him. When the tyranny is intolerable (for we ought always to submit to a tyranny in a moderate degree) the subject may resist with reverence.”

In commenting on this passage, Mr. Locke, mixes with his reasonings the ridicule it deserves: —“‘He (that is Barclay) says, it must be with reverence.’ How to resist force without striking again, or how to strike with reverence, will need some skill to make intelligible. He that shall oppose an assault only with a shield to receive the blow, or in any more respectful posture without a sword in his hand, to abate the confidence and force of the assailant will quickly be at the end of his resistance, and will find such a defence serve only to draw on him the worse usage: this is as ridiculous a way of resisting, as Juvenal thought of fighting, ‘Ubi tu *pulsas*, ego *vapulo tantum*,’ and the result of the combat will be unavoidably the same as he there describes it.

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Libertas paupcris hæc est.
Pulsatus rogat, et *pugnis* concisus adorat,
Ut *liceat* paucis cum dentibus inde *reverti*.

“‘This is the liberty of the slave: when beaten and bruised with blows, he requests and implores as a favour to be allowed to depart with some few of his teeth.’ This will always be the event of such an imaginary resistance, when men may not strike again. He, therefore, who may resist must be allowed to strike. And then let our author, or anybody else, join a knock on the head, or a cut on the face, with as much reverence and respect as he thinks fit. He that can reconcile blows and reverence may, for aught I know, deserve for his pains, a civil respectful cudgeling whenever he can meet with it.”

So much, gentlemen, for the doctrine of non-resistance. Therefore the author of this paper in stating that there may be times when insurrection may be called for, has done no more than a hundred other writers, and among them Locke, have done before him.

Locke proceeding still with the discussion of the question, whether oppressive governments may be opposed by the people, and, having concluded in the affirmative, says, “But here the question may be made, who shall be judge whether the prince or legislature act contrary to their trust. This, perhaps, ill affected and factious men may spread among the people, when the prince only makes use of his just prerogative. To this, I reply, the people shall be judge; for who shall be judge whether the trustee or deputy acts with and according to the trust that is reposed in him, but he who deposes him, and must, by having deposed him, have still a power to discard him when he fails in his trust. If this be reasonable in particular cases of private men, why should it be otherwise in that of the greatest moment when the welfare of millions is concerned, and also when the evil if not prevented is greater, and the redress very dear, difficult, and dangerous.”

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Locke, therefore, most unambiguously concludes that insurrection may be justified and necessary. A greater and more important truth does not exist, and we owe its promulgation with such freedom and boldness to that most extraordinary and felicitous conjuncture at the revolution which called upon us to support a king against a king, and obliged us to explode (as has been done most completely) the divine right and passive obedience under which one king claimed, to maintain the legal title of the other.

Locke goes on further to say—

“This question, who shall be supreme judge? cannot mean that there is no judge at all. For where there is no judicature on earth to decide controversies among men, God in heaven is judge. But every man is to judge for himself, as in all other cases, so in this, whether another hath put himself in a state of war with him, and whether, as Jephtha did, he should appeal to the Supreme Judge.”

I beg that I may not be misinterpreted, I hope it will not be said I mean to insinuate that any circumstances at present exist to justify insurrection. I protest against any such inference. Nothing can be further from my thoughts, and I regret that such an extravagant mode of construing men’s words should be in fashion, as to render such a caution on my part needful. All I say is, that the writer of this paper spoke of insurrection conditionally, and prospectively only, and, in doing so, has done no more than Locke, in other terms had done before him.

Gentlemen, I have but a very few more arguments to address to you, and I am glad of it, for I assure you, you cannot be more exhausted in patience than I am in strength.

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I now, gentlemen, ask you even admitting that the *style* and manner, in which the opinions of the writer of this address are expressed, should verge upon intemperance and impropriety, would you venture, merely upon the ground of such a defect in style, to say the defendant is guilty; when the very same opinions in substance, expressed in a different style, would be innocent and legal, and unquestionable? Gentlemen, I have heard it asserted, with a surprise that I cannot express, that if persons will write in a moderate, delicate, temperate, and refined style they may

discuss questions which become exceptionable and forbidden if they are handled in a coarse and illiberal style. Now I should have thought, that the very reverse of this would have been the case; for by a refined and guarded style you may insinuate and persuade—by vulgar coarseness and intemperance you disgust and nauseate. To say that a political paper of the very same sentiments, and principles would be innocent, written in a calm and delicate style which would be criminal, written in an abrupt, vehement and passionate manner, is to remove guilt from the thought and conception and substance of a writing, and impute it to the medium only of the thought, the mere expression. So that upon such a rule and principle of decision, if I were to heap violent and gross abuse even on Abershaw, or any other highwayman, who was deservedly hanged a hundred years ago, I might actually be indicted for a libel. Such a course, gentlemen, would be to degrade your judgments from a decision upon the thought, and opinions (which, are alone important) of an author to a criticism and condemnation of his words, and would be waging war with the vocabulary and the dictionary, a degradation, to which I trust, your reason will never submit. A difference of style in political writings is much too refined and subtle to found a distinction upon between innocence and crime. Difference of style is so minute, and is a subject of such nice discrimination, that it would not only be difficult, but almost impossible, and most unsafe for any jury to attempt by it to draw a line between guilt and innocence; besides, what would be the effect upon the press? If I were told, when I sat down to write upon any topic, that I must treat it in a given style, and no other, or risk prosecution, I should be confounded, and throw down my pen without writing at all. At least I should either not write at all, or write in such a manner that I might as well not have written at all, for I should most certainly never be read. Good God! to leave a man the alternative of a particular style, or an indictment for a libel, when he sat down to compose, would be like placing a torpedo on his hand; for you cannot, as was most forcibly, and beautifully said by Lord Erskine, “expect men to communicate their free thoughts to one another under the terror of a lash hanging over their heads;” and again, on another occasion, “under such circumstances, no man could sit down to write a pamphlet, without an attorney at one elbow, and a counsel at the other.” Gentlemen, if you, sitting coolly and dispassionately to give a deliberate judgment upon the manner and style of an author’s composition would find it difficult to form a certain judgment, how great, how insuperable, must be the difficulty of the writer himself. How is he when he sits down intent on his subject and when vehement and ardent (as he must be, if he is in earnest, and that he may persuade others of that, which he feels himself) and his ideas are thronging and pressing upon him for expression—how is he to be select and cautious and measured in his words? Would you not by subjecting the freedom of political discussion to such a restriction run the hazard of destroying it altogether? Upon this question of the difficulty of distinguishing between propriety and impropriety in the style of writings I can not abstain from reading to you a passage from a speech of Lord Chesterfield, which was quoted by Lord Erskine, when he was at the bar, upon a trial for libel. On that occasion, indeed, Lord Kenyon told him, that he believed it flowed from the pen of Dr. Johnson, and *that* Lord Erskine took as a valuable concession; for from the frame of mind and bias of that learned man on political subjects, he was certainly not a friend to popular liberty, while Lord Chesterfield, I believe, acted without deviation upon Whig principles, and was a constant advocate for the freedom of the press. From Dr. Johnson, however, it was most important, as it had the effect of an unwilling admission, and if Lord Kenyon was correct in attributing the speech to Dr. Johnson, its excellence is to be inferred from the fact, that Lord Chesterfield never discountenanced the opinion that he was its author. The passage is this:—

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“One of the greatest blessings we enjoy, one of the greatest blessings a people, my Lords, can enjoy, is liberty; but every good in this life has its alloy of evil; licentiousness is the alloy of liberty; it is an ebullition, an excrescence—it is a speck upon the eye of the political body: but which I can never touch but with a gentle, with a trembling hand, lest I destroy the body, lest I injure the eye upon which it is apt to appear.

“There is such a connection between licentiousness and liberty, that it is not easy to correct the one, without dangerously wounding the other: it is extremely hard to distinguish the true limit between them: like a changeable silk, we can easily see there are two different colours, but we cannot easily discover where the one ends, or where the other begins.”

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Mr. GURNEY.—You should state, in fairness and candour, that that was an argument against licensing.

Mr. COOPER.—I know it was. The argument contends for the difficulty, next to impossibility, of distinguishing where that which is allowable ends, and that which is licentious begins. A licenser could not tell where to allow, and where to object, yet a licenser, gentlemen, would have had just the same means of judging that you possess; and if he could not tell with distinctness and certainty what to let pass and what to stop, how, with no greater power, and means of judgment, can you? With what justice, then, can it be objected to me, that I have shown any want of candour in not stating the precise question on which the argument was delivered, when in the principle there is not a shadow of difference? My application of the passage is therefore perfectly just.

Gentlemen, I have only one more quotation to trouble you with before I conclude. That is the opinion of Lord Loughborough, afterwards Chancellor of England. I do not know in what case, or on what occasion it was delivered, but I believe in a judgment on a case of libel. “Every man (says that judge) may publish at his discretion, his opinions concerning forms and systems of government. *If they be weak and absurd, they will be laughed at and forgotten; and, if they be*

This is the opinion of a great judge upon political publications, sitting under the authority of the king himself to administer the laws; and to apply this authority to the paper before you, what reason on earth have you to suppose, that the writer from the beginning to the end was not bonâ fide in his opinions; and then, however erroneous they may be, I say, under the sanction of Lord Loughborough himself, they are not criminal.

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Having, gentlemen, submitted these observations to you, I declare most unfeignedly that I have uttered them with the most conscientious belief, that they are founded in reason, justice, and truth. I have not advanced a proposition nor uttered a sentiment as an advocate, which I am not prepared to avow and maintain as a man. If I am wrong in my judgment, you will correct me. You will, however, consider my reasonings, and the passages which I have cited to you in support of them, and judge if I have not maintained the propositions, which I have submitted to you.

No argument can be drawn from any of the observations, which I have addressed to you for impunity to libelers and defamers of private character. No, they are justly called assassins; for they who destroy that without which life is worthless are as guilty as those who destroy life itself, and let them feel the heaviest vengeance of the law. Private persons may be attacked and have no power to defend themselves. They may not only be unable themselves to answer published calumnies against their character; but also unable to employ those who can. But such can never be the case with those who administer the affairs of the nation. All the wealth and power of the country is in their hands. They may hire a thousand writers to support their measures, and vindicate their characters, and they will not want volunteers; they can command the press; and, for their protection, it is sufficient, that the press should be opposed to the press. Private individuals cannot command the press; and, therefore, let slanderers of private character suffer the utmost punishment that the law can inflict.

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And now, gentlemen, I ask you to give me your verdict for the defendant. I make no attempt to move your compassion. I will not urge you to consider that the defendant is a woman, and unable, from the tenderness of her sex, to sustain hardship; nor call upon you to remember, that which you cannot but know, that she has already been convicted upon one prosecution, for which she will, without doubt, be the subject of severe punishment. I ask it on the higher ground of justice; though, I confess, that I hope and wish it with more anxiety, because I trust it will send these embodied prosecutors, this Constitutional Association, as (by the figure, I suppose, of *lucus a non lucendo*) they entitle themselves, into that obscurity to which they properly belong, or at least if they will obtrude further upon the impatience of the public, let them carry with them the ill omen of a failure in their first attempt to insinuate, either that the English Constitution is deficient in its establishment of responsible law officers of the crown, or that those officers are incapable of fulfilling the duties of their station. It is said, and I hope truly, that the country is gradually recovering from the distress, under which it has so long suffered, and that plenty and prosperity have again begun to flow in upon us. May it be so! but we shall never derive enjoyment from any improvement in our physical condition; unless it is accompanied with domestic tranquillity. To be happy we must be at peace amongst ourselves; and nothing will have the effect of allaying the heart-burnings of political animosity and uniting us, as it were, in bands of harmonious brotherhood, so much as a discouragement of these party prosecutions, which, while they kindle feelings of indignation, and hostility, and hatred in large numbers of the people, are of no general benefit to the state. Fling back this prosecution, then, in the faces of those who have instituted it; and, instead of sending this unfortunate woman to a prison, send her back by your verdict of acquittal to the children of her brother, who, deprived (in the manner you know) both of their father and mother, are as much orphans as they would be by their death; and who, sordid and neglected in her absence, are requiring her care. And, what is more, you will, by your verdict of Not Guilty, give security to the free expression of public opinion, compose our dissensions, and protect both yourselves and posterity; since in calling on you to acquit the defendant, I call on you to protect the freedom of the press, and with it the freedom of the country; for unless the press is preserved, and preserved inviolate, the political liberties of Englishmen are lost.

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Mr. Justice BEST.—It was his duty to call back the attention of the jury to the question which they were to try. A number of observations had been made relative to what had taken place in Virginia, but which had nothing to do with the verdict which they were to give. One observation had been made, in the propriety of which he perfectly agreed, which was that they would dismiss from their minds all prejudices. The learned counsel for the defendant seemed to think that the name of Carlile was sufficient to create prejudices. If that were the case, he hoped the jury would forget that the present defendant was of that name. They had nothing now to do but to exercise their judgment upon the facts before them. The jury were told, and truly told, that they were the judges as to whether this was a libel or not. The statute gave the jury the power of finding a general verdict; but they still were bound under the sanction of their oaths to find it according to law. He should give his opinion, and the jury were at liberty to differ with him; but he must beg in the most distinct terms to state that the jury or the court had nothing to do with the propriety or impropriety of these prosecutions, or with the association by which the prosecution had been instituted. For his own part he did not know by whom it had been instituted until he had been requested by the defendant to ask the jurors as they went into the box, whether or not they were members of that association. The two questions to be decided were, first, Was this pamphlet a libel? and secondly, Was the defendant the publisher? They must lay out of their consideration acts of parliament passed in Virginia. The principles laid

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down in the preamble of the act alluded to, might be a good principle for America, but he was bound to tell them that it was not law in England. In the book quoted from by the learned gentlemen, it was said "how wretched must be the state of society in a country where the laws were uncertain;" and that must be the case where the jury take into consideration the propriety or impropriety of laws. In his opinion this publication was libelous, and if the jury were not satisfied of the contrary, the safer course would be for the jury to agree in opinion with one who must be presumed to be acquainted with the law, and who gives that opinion upon his oath. No man could be a more ardent admirer than he of the press, to the freedom of which Europe was principally indebted for its happiness; and God forbid that he should do anything which would for a moment extinguish that liberty! The learned counsel for the defendant had said, that the libel upon a private individual was a species of moral assassination. It was odd that an individual could not be libeled with impunity, and yet that society might be set by the ears. The government were equally protected with all others against the malevolence and virulence of the press. He would again repeat, but he would say nothing as to what the law ought to be, but he stated what it was. What he conceived to be the true liberty of the press was this, that any man might, without permission, publish what he please, if he were responsible for what he might publish. It might be asked, then is a man answerable for every expression? To that he would answer, no; if a man's intention were to convince the people that the government was not acting right, he had a right to publish his opinions; and if some sparks should fly out beyond decorum when the real apparent object was to instruct, the expressions ought not to be visited with punishment. But men must not go farther than instruct: they must not say that the system of government is a system of tyranny; which meant nothing more than that the people ought to pull down such systems. The learned counsel had alluded to Athens and Rome, but it was well known that those States punished offences of this description with greater severity than the laws of England inflicted. Every man had a right to point out with firmness, but with respect, the errors of government. Every man has a right to appeal to the understanding, but not to the passions; and the man who wished to do so need not be afraid to write. The distinction between fair discussion and libel was this, that one was an appeal to the passions, and the other to the understanding. If the jury were of opinion that this pamphlet was an address to the people of the country, to induce them by legal and constitutional means to procure a redress of grievances, then they would acquit the defendant; but, if on the other hand, they should be of opinion that the intention was to appeal to prejudices and passions (as he thought) it was their bounden duty, whatever they might think of the propriety or impropriety of the prosecution, to return a verdict of guilty. He next felt it his duty to remark upon the passages in the record, and if the learned gentleman had gone through the pamphlet, he would have found in the next page, in which the writer said, that the making and administration of laws was corrupt, a sufficient explanation of what was intended by the sentence, "to talk of the British Constitution, &c." There was in the country a constitution not like the Spanish Constitution, created in a day; but matured by the sense of ages, altering and adapting it to times and circumstances until it became what was a practical and not theoretical system of liberty. The learned counsel had made some observations upon what had fallen from Lord Colchester in the House of Commons; such observations he thought irregular, but he permitted them sooner than it should be said that the defendant, to use a familiar expression, had not "fair play." He did not want the authority of Lord Colchester with respect to these corruptions, because he had evidence of it in a case in which he tried twenty-four persons for such practices. But was it the meaning of the passage, that there was corruption in the House of Commons? No, the expression was that the laws (which were corrupt enough to bring to punishment persons guilty of those practices) were corrupt. Was this true? If there were anything for which this country was more distinguished than another it was the equity of the laws, and it was for this that the laws of England were extolled by all foreigners. The writer could not mean the borough of Grampound, or any other borough, when he said that corruption was the oil of the system. When the writer said he did not "at that moment speak of insurrection," what was his meaning? Why that insurrection would not do then, but at some future time they might, when satisfied of their strength, take advantage of all circumstances. As far as he understood the nature of the Manchester and Stockport Rooms they were for instruction, and if the writer did not go farther, then indeed would the pamphlet be harmless. "Delay some time." "Have such meetings as those at Manchester and Stockport; be assured of your numbers, and you can overpower the Government." There could be no doubt that these passages were libelous. The next question was, whether the defendant had or had not published the libel? and it was in evidence that these copies were purchased at two different times. The jury were not to take into consideration the former conviction; and he could assure the jury that no greater severity would be used than was sufficient to restrain this licentiousness, which, if not restrained, would overturn this or any other Government. The revolution recommended by this pamphlet would not be an ordinary change of masters, but a transfer of property.

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At about four o'clock the jury retired; and, having returned at quarter before five,

Mr. Justice BEST said, he had received a communication that they were not likely to agree; and as they must agree at some time or other, he sent for them in order to give them any information in his power upon such points as they disagreed upon.

A Juror.—The Foreman was rather precipitate in writing to your Lordship; we have not wasted much time, and we are discussing it among ourselves.

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Mr. Justice BEST.—I am not in a hurry.

The Foreman said, there were four of the jurors obstinate, and he would wish his Lordship to

draw a juror.

Mr. Justice BEST.—I have not the power to do so.

A Juror.—I throw back the charge of obstinacy in the teeth of the Foreman—he is obstinate.

Another Juryman.—My Lord there is obstinacy.

Second Juryman.—This is invidious; I am not the only one who stands out; there are four of us.

The Foreman again expressed his opinion that they should not agree.

Mr. Justice BEST.—Gentlemen, you must see the impropriety of this public discussion; you had better retire, and endeavour to agree among yourselves.

The jury again retired, and at eight o'clock desired their families might be informed that it was not likely they would return home before the morning.

Wednesday, July 25th.

This morning the jury were still enclosed without the least chance of any agreement. A number of persons were in waiting to hear the verdict. At half-past nine o'clock, Mr. Justice HOLROYD appeared on the bench, and an intimation was conveyed to his Lordship that there was no probability that the jury would agree.

A conference took place between the counsel for the prosecution and defence who appeared to be both willing to enter a *Noli Prosequi* and discharge the jury without a verdict.

A gentleman in black (said to be Mr. Longueville Clarke, one of the Committee of the Constitutional Association, and one of the *State Locusts*) suddenly started up, and declared that he would not consent to such a course.

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Mr. COOPER (to the man in black).—Are you the attorney for the prosecution, sir?

Mr. LONGUEVILLE CLARKE.—No: I am a member of the Constitutional Committee; and *I will* have a verdict.

Mr. COOPER.—However potent, sir, your word might be in the committee-room, it has no power in this Court.

Mr. GURNEY, as counsel for the prosecution, in the absence of Mr. MURRAY, the attorney, would take upon himself the responsibility of consenting to discharge the jury.

Mr. COOPER, thinking it cruelty to confine the jury any longer would yield also to a consent for their discharge.

The jury were then sent for, and in their passage to the Court were loudly and rapturously cheered by the bystanders. Having answered to their names,

Mr. Justice HOLROYD addressed them.—Gentlemen of the jury, I am glad that it is in my power to relieve you from your present unpleasant situation. The learned counsel on both sides have consented to discharge you without your returning a verdict.

The jury then left the Court, and were again loudly cheered in their passage through the Hall.

Thus ended the first attempt of the Constitutional Association, or the Bridge-street Banditti, to get a verdict; particularly important to the country—particularly honourable to the counsel for the defendant, and the honest Jurors who made so noble a stand for the Liberty of the Press—and particularly disgraceful to all parties connected with the prosecution.

LONDON:

W. & H. S. WARR, Printers, 3, Red Lion Passage, & 63, High Holborn.

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*** END OF THE PROJECT GUTENBERG EBOOK A SKETCH OF THE LIFE OF THE LATE HENRY COOPER ***

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