SPEECHES

OF

HENRY LORD BROUGHAM,

UPON QUESTIONS RELATING TO

PUBLIC RIGHTS, DUTIES, AND INTERESTS;

WITH

HISTORICAL INTRODUCTIONS,

AND

A CRITICAL DISSERTATION

UPON THE ELOQUENCE OF THE ANCIENTS.

IN FOUR VOLUMES.

VOL. II.

EDINBURGH:
ADAM AND CHARLES BLACK;
LONGMAN, ORME, BROWN, GREEN, AND LONGMANS;
RIDGWAY AND SONS; AND CHARLES KNIGHT AND CO. LONDON.

M.DCCC.XXXVIII.

CONTENTS.

SPEECHES

ON

THE SLAVE TRADE

AND

SLAVERY.

INTRODUCTION.

MR. WILBERFORCE—MR. GRANVILLE SHARP—
MR. CLARKSON.

THE history of the Slave Trade is too fresh in the recollections of men, to require any full details in this place. As soon as South America began to be explored by the Spaniards and Portuguese, it was found that the speculations of their insatiable avarice, which the plunder and torture of the natives had only for the moment appeased, could not be permanently carried on without a supply of hands to work the mines, and to cultivate in the islands, the rich produce of tropical climates. The Indians, a feeble race, unused to toil, were soon exceedingly reduced in numbers; and the practice was instituted of bringing over Negroes from the coast of Africa. The shortness of the distance between that continent and the Brazils first suggested this traffic to the Portuguese, who had set-

tlements on the African coast; but it was not followed to any great extent, or in a regular manner. The speculators of New Spain, however, soon felt the want of hands to work their mines and cultivate their lands; and Bartolomeo de las Casas, a friar of the Dominican order, who had charitably devoted his life to the protection of the unhappy Indians, treated like cattle, only that they were more inhumanly used by their cruel and profligate taskmasters, now joined in the scheme, if he did not first suggest it, of supplying their place with African Negroes. He never reflected, says the historian, "upon the iniquity of reducing one race of men to slavery, while consulting about the means of granting liberty to another; but, with the inconsistency natural to men who hurry with headlong impetuosity towards a favourite point, in the warmth of his zeal to save the Americans from the yoke, pronounced it lawful and expedient to impose one much heavier upon the Africans." * Charles V. granted a patent for introducing four thousand Negroes yearly into Spanish America, and thus was begun that horrible traffic which immediately began to ravage Africa, and ended in exposing the American continent to the utmost peril, while it brought eternal disgrace upon the Christian profession and the European name.

After this scourge had been suffered to desolate Africa, and to disgrace mankind for two centuries and a half, the attention of men was at length directed to it by some eminent philanthropists of this country. Among these, a high place must be assigned to Granville Sharp, than whom a purer spirit never resided in

* Robertson's America.

the human form. With a perseverance which is only not unexampled because it set an example afterwards followed by other labourers in the same cause; with a benevolence which was quite universal, and made the aspect of human suffering so painful to him, that he would suffer any privation to lessen it; with a piety which, though it rose to an enthusiasm that oftentimes warped his otherwise clear and sound judgment, was yet wholly unattended with any the least vestige of harshness or intolerance; he pursued, in privacy and seclusion, the paths of charity which lead to no fame among men, which conduct to that peace the world cannot give, and which would have enabled him to hide a multitude of transgressions, if Granville Sharp had had any transgressions to hide. But he was not a mere tolerant follower of religion, and anxious dispenser of secret benevolence, high and rare as these attributes are. He was one of the most learned men of his time, and could maintain the parts of lettered controversy, classical and theological, with the most accomplished scholars in the Church. The wholesale violation of all human rights, and flagrant wreck of all Christian duties, with which the Slave Trade and West Indian Slavery had so long outraged and insulted the world, early attracted his regard; and he persevered in trying the legal question, at first held to be desperate,—How far a slave coming to this country under the power of his master, continues subject to that authority, or gains his personal liberty in common with the other subjects of the realm. Although not bred to the legal profession, he devoted himself to the study of the law, for the purpose of prosecuting this contention; he enlightened lawyers with the result of his researches; he over-

powered opposition by the force and the closeness of his reasonings; he disarmed all personal opposition by the unruffled serenity of his temper, the unequalled suavity of his simple yet frank and honest manners; he gave his fortune, as well as his toil, to the cause; and he ceased not until he obtained the celebrated judgment of the King's Bench, so honourable to the law and constitution of this country, that a slave cannot touch our soil, but immediately his chains fall away. This is that famous case of Somerset the Negro, which has for ever fixed the great principle of personal liberty, by promoting which Granville Sharp did more than had ever before been done towards bringing Slavery into an odious conflict with the spirit of British jurisprudence. He stopped not here, however, but continued a zealous and useful coadjutor through the long period of his after life, in all that related to the extinction of the African traffic, and the Slavery of the Colonies.

He was soon after followed in his bright course by Thomas Clarkson, of whom it has been justly said, nor can higher praise be earned by man, that to the great and good qualities of Las Casas,—his benevolence,—his unwearied perseverance,—his inflexible determination of purpose,—piety which would honour a saint,—courage which would accomplish a martyr,—he added the sound judgment and strict sense of justice which were wanting in the otherwise perfect character of the Spanish philanthropist. While pursuing his studies at Cambridge, he made the Slave Trade the subject of an Essay, which gained one of the university prizes, and this accident having called his especial attention to the iniquity of that execrable commerce, he devoted his life to waging an implacable hostility with it. The evidence

which he collected and brought before a committee formed to obtain its abolition, drew the attention of Mr. Wilberforce, and secured at once the services of that great man as the leader in the cause.

Few persons have ever either reached a higher and more enviable place in the esteem of their fellow creatures, or have better deserved the place they had gained, than William Wilberforce. He was naturally a person of great quickness and even subtilty of mind, with a lively imagination, approaching to playfulness of fancy; and hence he had wit in an unmeasured abundance, and in all its varieties; for he was endowed with an exquisite sense of the ludicrous in character, the foundation of humour, as well as the perception of remote resemblances, the essence of wit. These qualities, however, he had so far disciplined his faculties as to keep in habitual restraint, lest he should ever offend against strict decorum, by introducing light matter into serious discussion, or be betrayed into personal remarks too poignant for the feelings of individuals. For his nature was mild and amiable beyond that of most men; fearful of giving the least pain in any quarter, even while heated with the zeal of controversy on questions that roused all his passions; and more anxious, if it were possible, to gain over rather than to overpower an adversary; disarming him by kindness, or the force of reason, or awakening appeals to his feelings, rather than defeating him by hostile attack. His natural talents were cultivated, and his taste refined by all the resources of a complete Cambridge education, in which, while the classics were sedulously studied, the mathematics were not neglected; and he enjoyed in the society of his intimate friends, Mr.

Pitt and Dean Milner, the additional benefit of foreign travel, having passed nearly a year in France, after the dissolution of Lord Shelburn's administration had removed Mr. Pitt from office. Having entered Parliament as member for Hull, where his family were the principal commercial men of the place, he soon afterwards, upon the ill-fated coalition destroying all confidence in the Whig party, succeeded Mr. Foljambe as member for Yorkshire, which he continued to represent as long as his health permitted him, having only retired to a less laborious seat in the year 1812. Although generally attached to the Pitt ministry, he pursued his course wholly unfettered by party connection, steadily refused all office through his whole life, nor would he lay himself under any obligations by accepting a share of patronage; and he differed with his illustrious friend upon the two most critical emergencies of his life, the question of peace with France in 1795 and the impeachment of Lord Melville ten years later.

His eloquence was of the highest order. It was persuasive and pathetic in an eminent degree; but it was occasionally bold and impassioned, animated with the inspiration which deep feeling alone can breathe into spoken thought, chastened by a pure taste, varied by extensive information, enriched by classical allusion, sometimes elevated by the more sublime topics of holy writ—the thoughts

"That wrapt Isaiah's hallowed soul in fire."

Few passages can be cited in the oratory of modern times of a more electrical effect than the singularly felicitous and striking allusion to Mr. Pitt's resisting

the torrent of Jacobin principles:—"He stood between the living and the dead, and the plague was staid." The singular kindness, the extreme gentleness of his disposition, wholly free from gall, from vanity, or any selfish feeling, kept him from indulging in any of the vituperative branches of rhetoric; but a memorable instance showed that it was any thing rather than the want of force which held him off from the use of the weapons so often in almost all other men's hands. When a well known popular member thought fit to designate him repeatedly, and very irregularly, as the "*Honourable and religious gentleman*," not because he was ashamed of the cross he gloried in, but because he felt indignant at any one in the British senate deeming piety a matter of imputation, he poured out a strain of sarcasm which none who heard it can ever forget. A common friend of the parties having remarked to Sir Samuel Romilly beside whom he sat, that this greatly outmatched Pitt himself, the great master of sarcasm, the reply of that great man, and just observer, was worthy to be remarked,—"Yes," said he, "it is the most striking thing I almost ever heard; but I look upon it as a more singular proof of Wilberforce's virtue than of his genius, for who but he ever was possessed of such a formidable weapon, and never used it?" Against all these accomplishments of a finished orator there was little to set on the other side. A feeble constitution, which made him say, all his life, that he never was either well or ill; a voice sweetly musical beyond that of most men, and of great compass also, but sometimes degenerating into a whine; a figure exceedingly undignified and ungraceful, though the features of the face

were singularly expressive; and a want of condensation, in the latter years of his life especially, lapsing into digression, and ill calculated for a very business-like audience like the House of Commons; may be noted as the only draw-backs which kept him out of the very first place among the first speakers of his age, whom, in pathos, and also in graceful and easy and perfectly elegant diction, as well as harmonious periods, he unquestionably excelled. The influence which the member for Yorkshire always commanded in the old Parliament—the great weight which the head, indeed, the founder, of a powerful religious sect, possessed in the country—would have given extraordinary authority in the senate to one of far inferior personal endowments. But when these partly accidental circumstances were added to his powers, and when the whole were used and applied with the habits of industry which naturally belonged to one of his extreme temperance in every respect, it is difficult to imagine any one bringing a greater force to any cause which he might espouse.

Wherefore, when he stood forward as the leader of the abolition, vowed implacable war against Slavery and the Slave Trade, and consecrated his life to the accomplishment of its destruction, there was every advantage conferred upon this great cause, and the rather that he held himself aloof from party connection. A few personal friends, united with him by similarity of religious opinions, might be said to form a small party, and they generally acted in concert, especially in all matters relating to the Slave question. Of these, Henry Thornton was the most eminent in every respect. He was a man of strong understanding, great

powers of reasoning and of investigation, an accurate and a curious observer, but who neither had cultivated oratory at all, nor had received a refined education, nor had extended his reading beyond the subjects connected with moral, political, and theological learning. The trade of a banker, which he followed, engrossed much of his time; and his exertions, both in Parliament and through the press, were chiefly confined to the celebrated controversy upon the currency, in which his well known work led the way, and to a bill for restricting the Slave Trade to part of the African coast, which he introduced when the abolitionists were wearied out with their repeated failures, and had well-nigh abandoned all hopes of carrying the great measure itself. That measure was fated to undergo much vexatious delay, nor is there any great question of justice and policy, the history of which is less creditable to the British Parliament, or, indeed, to some of the statesmen of this country, although, upon it mainly rests the fame of others.

When Mr. Wilberforce, following in Mr. Clarkson's track, had, with matchless powers of eloquence, sustained by a body of the clearest evidence, unveiled all the horrors of a traffic, which, had it been attended with neither fraud nor cruelty of any kind, was, confessedly, from beginning to end, not a commerce, but a crime, he was defeated by large majorities, year after year. When at length, for the first time, in 1804, he carried the Abolition Bill through the Commons, the Lords immediately threw it out; and the next year it was again lost in the Commons. All this happened while the opinion of the country was, with the single exception of persons having West India connec-

tions, unanimous in favour of the measure. At different times there was the strongest and most general expression of public feeling upon the subject, and it was a question upon which no two men endowed with reason, could possibly differ, because, admitting whatever could be alleged about the profits of the traffic, it was not denied that their gain proceeded from pillage or murder. Add to all this, that the enormous evil continued to disgrace the country and its legislature for twenty years, although the voice of every statesman of any eminence, Mr. Windham alone excepted, was strenuously lifted against it,—although, upon this very question, Pitt, Fox, and Burke, heartily agreed,—although by far the finest of all Mr. Pitt's speeches were those which he pronounced against it, —and although every press and every pulpit in the island habitually cried it down. How are we, then, to account for the extreme tenacity of life which the hateful reptile showed? How to explain the fact that all those powerful hands fell paralized, and could not bring it to death? If little honour redounds to the Parliament from this passage in our history, and if it is thus plainly shown that the unreformed House of Commons but ill represented the country; it must also be confessed that Mr. Pitt's conduct gains as little glory from the retrospect. How could he who never suffered any of his coadjutors, much less his underlings in office, to thwart his will even in trivial matters—he who would have cleared any of the departments of half their occupants, had they presumed to have an opinion of their own upon a single item of any budget, or an article in the year's estimates —how could he, after shaking the walls of the Senate

with the thunders of his majestic eloquence, exerted with a zeal which set at defiance all suspicions of his entire sincerity, quietly suffer, that the object, just before declared the dearest to his heart, should be ravished from him when within his sight, nay, within his reach, by the votes of the secretaries and undersecretaries, the puisne lords and the other fry of mere placemen,—the pawns of his boards? It is a question often anxiously put by the friends of the abolition, never satisfactorily answered by those of the minister; and if any additional comment were wanting on the darkest passage of his life, it is supplied by the ease with which he cut off the Slave traffic of the conquered colonies, an importation of thirty thousand yearly, which he had so long suffered to exist, though an order in Council could any day have extinguished it. This he never thought of till 1805, and then, of course, the instant he chose, he destroyed it for ever with a stroke of his pen. Again, when the Whigs were in power, they found the total abolition of the traffic so easy, that the measure in pursuing which Mr. Pitt had for so many long years allowed himself to be baffled, was carried by them with only sixteen dissentient voices in a house of 250 members. There can then, unhappily, be but one answer to the question regarding Mr. Pitt's conduct on this great measure. He was, no doubt, quite sincere, but he was not so zealous as to risk any thing, to sacrifice any thing, or even to give himself any extraordinary trouble for the accomplishment of his purpose. The Court was decidedly against abolition; George III. always regarded the question with abhorrence, as savouring of innovation,—and innovation in a part of his empire, connected with his earliest and most rooted

prejudices,—the colonies. The courtiers took, as is their wont, the colour of their sentiments from him. The Peers were of the same opinion. Mr. Pitt had not the enthusiasm for right and justice, to risk in their behalf the friendship of the mammon of unrighteousness, and he left to his rivals, when they became his successors, the glory of that sacred triumph in the cause of humanity, which should have illustrated his name, who, in its defence, had raised all the strains of his eloquence to their very highest pitch.

Notwithstanding the act of 1807 had made the Slave Trade illegal after the 1st of January 1808, by whomsoever carried on in the British dominions, and by British subjects wheresoever carried on; yet, as forfeitures and penalties of a pecuniary kind were the only consequences of violating the law, the temptations of high profit induced many, both capitalists and adventurers, to defy the prohibitions of the statute, and the clearest proofs were soon furnished of British subjects being employed in the Slave Trade under the most flimsy disguises. It became necessary at length to treat this traffic as a crime, and no longer to deal with the criminals as smugglers only, who have broken some provisions of the revenue law. Mr. Brougham taking this view of the subject, broached it in the House of Commons on 14th June 1810, in the following Speech; and following up the resolution and address, then adopted unanimously by the Commons, he next session brought in and carried without a dissenting voice, through both Houses of Parliament, the bill declaring Slave-trading a Felony, and punishing it with fourteen years transportation or imprisonment for five years. In 1824, this punishment was deemed insufficient; the offence was made

capital, and so continued until the acts for mitigating the rigour of the criminal law in 1837, made Slave-trading punishable with transportation for life. There is every reason to think that no British subjects are now or have for many years been directly engaged in this execrable traffic, with the exception of those belonging to the Mauritius. In that island it is certain, that with the connivance, if not under the direct encouragement of the higher authorities of the colony, Slave-trading to an enormous extent, was for some years openly carried on. A Colonial Secretary of State admitted that above 25,000 Negroes had been brought over from the African Coast, in other words, 25,000 capital felonies committed under the eye, if not with the encouragement, of the government. It is an unenviable reflection which is left to us, that for all those human beings, illegally held in bondage, and in not one of whom could there by law be any kind of property claimed, full compensation, at the rate of £53 each, has been allowed by the Commissioners, and paid by the people of this country—and that besides this sum of at least a million and a half being so squandered upon the vile and sordid wrongdoers, those felons and accomplices of felons are still suffered to claim the labour of the Africans, under the name of Indentured Apprentices. With the flagrant exception of the Mauritius, there is no reason to believe that any British subjects have, since the Felony act of 1811 came into operation, been directly concerned in the traffic; but there is too much reason to suspect that British capital has pretty freely found its way into that corrupt channel.

SPEECH

ON

THE SLAVE TRADE.

JUNE 14, 1810.

SPEECH.

SIR,—I rise, pursuant to notice, to call the attention of the House to the state of the Slave Trade, a subject of the first importance; and, although it is neither a personal question, nor a party one; although its discussion involves neither the pursuit nor the defence of place; although, indeed, it touches matters of no higher concernment than the honour of the House and the country, and the interests of humanity at large; I trust that it will, nevertheless, receive the same favourable consideration which it has so often experienced upon former occasions. The question I purpose to submit to the House is, Whether any, and what measures can be adopted, in order to watch over the execution of the sentence of condemnation which Parliament has, with a singular unanimity, pronounced upon the African Slave Trade? It is now four years since Mr. Fox made his last motion in this House, and, I believe, his last speech here, in favour of the Abolition. He then proposed a Resolution, pledging the House to the Abolition of the traffic, and moved an Address to the crown, beseeching his Majesty to use all his endeavours for obtaining the concurrence of other powers in the pursuit of this great object. An Address to the same effect was voted by the other House,

with equal unanimity ; and, early in the next year, two noble friends of mine,* who were second only to my honourable friend,† prevented by indisposition from attending this day, in their services to the cause, and will yield not even to him in their zeal for its success, gave the Parliament an opportunity of redeeming its pledge, by introducing the Abolition Bills in the two Houses. That measure, which had formerly met so many obstacles, whether, as some are willing to believe, from the slowness with which truth works its way, or, as others were prone to suspect, from the want of zeal in its official supporters, now experienced none of the impediments that had hitherto retarded its progress. Far from encountering any formidable difficulties, it passed through Parliament almost without opposition; and one of the greatest and most disputed of measures, was at length carried by larger majorities, perhaps, than were ever known to divide upon any contested question. The friends of the Abolition, however, never expected that any legislative measure would at once destroy the Slave Trade : they were aware how obstinately such a trade would cling to the soil where it had taken root ; they anticipated the difficulties of extirpating a traffic which had entwined itself with so many interests, prejudices, and passions. But I must admit, that although they had foreseen, they had considerably underrated, those difficulties. They had not made sufficient allowance for the resistance which the real interests of those directly engaged in the trade, and the supposed interests of the colonists, would oppose to the execution of the acts : they had underrated the wickedness of the Slave Trader, and the infatuation of the planter. While on the one hand it ap-

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* Lords Grenville and Grey. † Mr. Wilberforce.

pears, from the documents I formerly moved for, that nothing has been done to circumscribe the foreign Slave Trade, it is now found, that this abominable commerce has not completely ceased, even in this country! I hope the House will favour me with its attention, while, from the papers on the table, and from such other information as I have been enabled to obtain, I lay before it a statement, which will, in some measure, enable it to appreciate the extent of the evil, and to apply the proper remedies.

I shall now proceed to call the attention of the House to the state of the Slave Trade in foreign countries. In these it exists variously. In America it is contraband, as in England, having been prohibited by law, but it is still carried on, illegally, for the supply of the American as well as of foreign plantations: while, in the colonies of Portugal and Spain, it is still sanctioned by the laws, and even receives peculiar encouragement from the government. The extent of the Spanish Slave Trade I cannot state very accurately; but, from returns at the custom-house at Cadiz, to which I have had access, and from the well-known increase of the sugar culture in Cuba, the importation of Negroes appears to be very great. The average annual importation into that island, during thirteen years, from 1789 to 1803, was 5840; and it is evidently upon the increase, for the average of the last four years of the period was 8600: the total number imported during the period exceeded 76,000 slaves. This statement, among other things, proves how much the American flag is used in covering the foreign Slave Trade; for, after the commencement of hostilities between Spain and this country, the trade could only have been carried on to a very limited extent in Spanish bottoms; and yet, instead of being checked by the war, it has greatly increased since 1795. The

culture of sugar has likewise increased at Porto Rico, and on the Main, and with it, of course, the importation of slaves. The precise amount of this I cannot speak to; but I have every reason to suppose it very inconsiderable, when compared with the traffic in Cuba. The annual importation of Mexico does not exceed 100 Negroes, and that of the settlements on the South Sea is only 500. The other colonies obtain their supplies principally through the Brazils.

With regard to the Portuguese Slave Trade, I cannot speak with more precision. During my residence at Lisbon, in the King's service, I had official communication with the Portuguese minister, and also with a person of high rank, who had been governor of the northern provinces of Brazil, and was then going out as governor of Angola and Benguela, upon the African coast. It appeared, from the returns of a Capitation-tax on Negroes exported from Africa, (which gentlemen will perceive must give the lowest amount of the exportation), that there were annually sent to the Brazils, from that part of Africa alone, above 15,000 Negroes; and this was reckoned only one-half of the total number exported from all parts of the Portuguese settlements. From another quarter, of high authority, I learned that this, if estimated at 30,000, would not be overrated. But the branch of the trade which it is the most important to attend to at present, is that carried on by American vessels, in open violation of the laws of the United States. I firmly believe, as I have before stated when the matter was questioned by the right honourable gentleman opposite,* that the American government has all along acted in regard to the Slave Trade, with the most perfect sin-

* Mr. Canning.

cerity and good faith. They had, indeed, set us the example of abolishing it. All the States, except two, Georgia and South Carolina, had early abolished it by acts of their separate legislatures, before the period arrived when the Constitution gave Congress a right to pass such a law for the whole Union; and, as soon as that period arrived, viz. at the beginning of the year 1808, the traffic was finally prohibited by an act of Congress. But it is one thing to pass a law, and another to carry it into execution, as we have ourselves found on this side of the water, I am sorry to think; and, although the American legislature and the Government have done all that lies in their power, it requires much greater naval means than they possess to suppress effectually their contraband Slave Trade. They may, in a great measure, by their police, prevent the importation of Negroes into the United States; and this they have done: but the bulk of their contraband Slave Trade is carried on between Africa and the islands, or Africa and South America; and, to check this, a very different navy is wanted from any that the Americans (happily for this country, in every point of view, except the one now in question), are likely, for a long series of years, to possess. By such a contraband trade, the Spanish and Portuguese colonies, and not only they, but our own settlements, are supplied with slaves; and in this manner it is that the foreign Slave Trade interferes with our own Abolition.

What I intend to propose is, that the executive government shall be exhorted to take such further steps as may be conducive to the object of the joint Address of both branches of the legislature. Unless the American flag can, by some means or other, be excluded from its large share in this abominable commerce; and unless the Spanish and Portuguese govern-

ments can be brought to some concurrent arrangement; the trade must still be carried on to an enormous extent; and it is in vain to talk even of abolishing it entirely in our own colonies. Our largest island is within a day's, I should rather say, a night's sail, of the largest slave colony of Spain. Our other old colonies lie in the very track both of the Spanish and American slave-ships. When the vast plantations of Trinidad and Guiana are in such want of Negroes to clear their waste lands, and are situated almost within sight of the Spanish slave market, where the law still sanctions that infernal traffic, how can it be expected that the British abolition should be effectual? A gentleman of the profession to which I have the honour of belonging, having lately returned from Berbice, informs me of the manner in which our planters carry on this contraband intercourse. The Oroonoko falls into the sea between Trinidad and Guiana. The Spanish slave-ships take their station near its mouth, and our planters send large boats along the coast to the station of the ships, from whence they are supplied with cargoes of sixty or seventy Negroes by trans-shipment at sea, and these cargoes they land on their return, in the various creeks of the settlements, so as to elude the utmost vigilance of the colonial officers. Does not this single fact evince the necessity of forming some arrangement with the Spanish government, while the friendly relations between the two governments subsist? The great obstacle which I always find opposed to such a proposition is, What can we do? Those nations, it is pretended, are wedded to their own prejudices; they have views of their own, and we cannot interfere. Of this argument, I entertain very great suspicion, and for one plain reason, that it is on the single subject of the Abolition that I ever hear it used; it is here alone that any want of activity

is ever observed in our Government, or that we ever hear of our want of influence in the councils of our neighbours. On all other measures, some of suspicious, some of doubtful policy—in matters indifferent, or repugnant to humanity—we are ready enough to intrigue, to fight, to pay. It is only when the interests of humanity are concerned, and ends the most justifiable, as well as expedient, are in view, that we not only all at once lose our activity and influence, but become quite forward in protesting that we have no power to interfere. From one end of Europe to the other our weight is felt, and in general it is no very popular thing to call it in question. At all times we are ready enough to use it, as well as to magnify it; but on this one occasion we become both weak and diffident, and while we refuse to act, must needs make a boast of our impotency. Why, we never failed at all when the object was to obtain new colonies, and extend the Slave Trade! Then we could both conquer and treat; we had force enough to seize whole provinces where the Slave Trade might be planted, and skill enough to retain them by negotiation, in order to retain with them the additional commerce in slaves, which their cultivation required. It is natural, therefore, for me to view with some suspicion our uniform failure, when the object is to abolish or limit this same Slave Trade. I suspect it may arise from there being some similarity between our exertions in the cause and those of some of its official advocates in this House; that we have been very sincere, no doubt, but rather cold—without a particle of ill-will towards the Abolition, but without one spark of zeal in its favour.

I shall now answer the question of, "What can we do to stop the foreign Slave Trade?" by putting another question; and I would ask, "How have we

contrived to promote the Slave Trade when that was our object?" I would only desire one tenth part of the influence to be exerted in favour of the Abolition, which we have with such fatal success exerted in augmenting the Slave traffic; when, by our campaigns and our treaties, we acquired the dominion of boundless and desert regions, and then laid waste the villages and the fields of Africa, that our new forests might be cleared.

But if I be asked to what objects our influence should be directed, I have no hesitation in pointing them out: And, first, I should say, the Spanish and Portuguese governments. Happily, in those quarters where most is to be attempted, our influence is the greatest at the present moment; for both countries we have done much, and having lavished our blood and our treasure in defending them from cruelty, injustice, and every form of ordinary oppression, it is certainly not asking too much to require that they should give over a course of iniquity towards nations as innocent as they, and infinitely more injured by them. Every thing favours some arrangement with Spain on this point. The only Spanish colonies where the sugar cane is extensively cultivated are the islands, and of these principally Cuba. To that settlement the bulk of the Slave Trade is confined. On the main land there is little demand for slaves; about 1400 are annually sent to Buenos Ayres, 500 to Peru and Chili, and only 100 to Mexico, while Cuba receives 8,600 a-year. This then is the only Spanish colony which can suffer materially; and it is reasonable to expect that the Spanish Government would not refuse this inconsiderable sacrifice. At any rate, some arrangement might be made both with Portugal and Spain, to prevent their flags from being used for the purposes of the foreign Slave Trade.

Adverting next to the means which we have of inducing the American government to make some arrangement, I admit that our influence in that quarter is not so powerful; but I would throw out one or two remarks for the consideration of Ministers. First, an attempt ought to be made to supply the deficiency of naval resources in America, by lending the assistance of our own; and I should suggest the necessity of the two Governments coming to some understanding, that the cruisers of each may capture the contraband slave ships of the other country. From communications which I have held with persons of high rank in the service of the United States, I have reason to think, that such an arrangement would not be greatly objected to in America. An opening for a proposal of this nature is certainly afforded by the correspondence which has taken place between Mr. Erskine and the American Government relative to the orders in Council, and Non-Intercourse laws; for an assurance is there given, that if a British cruiser capture an American found acting contrary to the American municipal law, the Government of the United States will never notice the capture; and though there is an objection to recognising by treaty the right of capture on the ground of the Non-Intercourse law, it by no means follows, that a similar recognition could not be obtained in the present instance. The right thus given must no doubt be mutual, but so is every right which this country claims under the law of nations; and it should be remembered, that the two parties are very differently affected by it; for while the Americans could scarcely search or detain half a dozen of our slave vessels in a year, we should be enabled to stop hundreds of theirs. The advantage of such an arrangement to our own planters would also be great: for if rival foreigners carry on the Slave

Trade, while it is prohibited in our settlements, our planters are, for a certain time at least, liable to be undersold in the sugar market, and subjected to a temporary pressure. Another circumstance with regard to American ships, I throw out for the consideration of merchants and cruisers. It appears to me, that even without any such arrangement between the two Governments, the experiment of capturing American slave ships might safely be made. I have every reason to believe, that no reclamation whatever would be made by the American Government if such vessels were detained, however great their numbers might be. A claim might no doubt be entered by individual owners, when the vessels were brought in for condemnation, and the courts of prize have been in the practice of saying, that they cannot take notice of the municipal laws of other countries. But, beside the great risk to which American owners expose themselves by making such claims, (the risk of the penalties which they thereby prove themselves to have incurred under the Abolition Acts of America), it is to be observed, that the courts require a proof of property in the claimants ; and I wish to see whether courts sitting and judging by the law of nations are prepared to admit of a property in human flesh.* I

* This opinion has since been fully confirmed by the decision of the Lords of Prize Appeal in the case of the Amédie, as appears by the following Report of the Judgment of the Lords Commissioners of Prize Appeals, at the Privy Council, Saturday, July 28, 1810.

Case of the Amédie ; James Johnson, master.—This was a vessel under American colours, with slaves from Africa, captured in December, 1807, in the West Indies, and carried into Tortola. The claimant pretended that she was bound to Charlestown, South Carolina, where the importation of slaves continued to be lawful to the end of that year ; but that, having been detained on the coast, and there being no prospect of reaching Charlestown before the 1st of January

wish to know in what part of that law any such principle is recognised. I desire to be informed where the decision or where the dictum is, which allows a person to bring forward a claim in a court of

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1808, the period appointed for the cessation of the Slave Trade in every part of the United States, by a law of the general Congress, the Master of necessity bore away for the island of Cuba, there to wait directions from his owners. It was contended, on the other hand, by the captor, that this statement was a mere pretence, and that, in truth, the original plan of the voyage was a destination to Cuba, which was unlawful under the American laws, long previous to their general abolition of the Slave Trade. Admitting, however, the case to be so, it was strenuously contended for the claimant, that a British court of prize had no right to take any cognizance of American municipal law, and that, as no belligerent right of this country had been violated, the property ought to be restored to the neutral owner. A series of precedents seemed to support this doctrine. The ship was condemned at Tortola, and the enslaved Africans were, according to the Abolition Act, restored to their freedom; but the claimant appealed, and the liberty of the Africans, as well as the property of the ship, depended on the issue of this appeal. The case was solemnly argued in March last, and as, in the opinion of the court, it turned on the new question of the effect of the American and British Abolition Acts on this species of contraband commerce, when brought before a court of prize, the case, on account of its importance, has since stood over for judgment. Several other cases of American slave ships have also stood over, as depending on the same general question.—The judgment of the court was delivered by Sir William Grant, the Master of the Rolls, nearly in the following terms:—" This ship must be considered as being employed, at the time of capture, in carrying slaves from the coast of Africa to a Spanish colony. We think that this was evidently the original plan and purpose of the voyage, notwithstanding the pretence set up to veil the true intention. The claimant, however, who is an American, complains of the capture, and demands from us the restitution of property, of which he alleges that he has been unjustly dispossessed. In all the former cases of this kind, which have come before this court, the Slave Trade was liable to considerations very different from those which belong to it now. It had at that time been prohibited (as far as respected carrying slaves to the colonies of foreign

the law of nations, for the bodies of human beings forcibly and fraudulently obtained, or at all events carried away from their homes against their will, and by violence confined, and compelled to labour and suffer? What I am anxious to see is, how such a claim can be stated with common decency in such courts: I have no great fears as to the reception it would meet with: it is repugnant to the whole law of nature, and any knowledge of the law of nations which I possess affords me no authority for it. I earnestly hope some persons connected with privateers and cruisers may soon try the question. They could

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nations) by America, but by our own laws it was still allowed. It appeared to us, therefore, difficult to consider the prohibitory law of America in any other light than as one of those municipal regulations of a foreign state, of which this court could not take any cognizance. But by the alteration which has since taken place the question stands on different grounds, and is open to the application of very different principles. The Slave Trade has since been totally abolished in this country, and our legislature has pronounced it to be contrary to the principles of justice and humanity. Whatever we might think as individuals before, we could not, sitting as judges in a British court of justice, regard the trade in that light, while our own laws permitted it. But we can now assert, that this trade cannot, abstractedly speaking, have a legitimate existence. When I say abstractedly speaking, I mean this country has no right to control any foreign legislature that may think fit to dissent from this doctrine, and to permit to its own subjects the prosecution of this trade; but we have now a right, to affirm, that *prima facie* the trade is illegal, and thus to throw on claimants the burden of proof that in respect of them, by the authority of their own laws, it is otherwise. As the case now stands, we think we are entitled to say, that a claimant can have no right, upon principles of universal law, to claim the restitution in a prize court, of human beings carried as his slaves. He must show some right that has been violated by the capture, some property of which he has been dispossessed, and to which he ought to be restored. In this case, the laws of the claimant's country allow of no right of property of such as he claims. There can therefore be no right to restitution. The consequence is, that the judgment must be affirmed."

run no risk, I venture to assert on my own authority, and still more confidently on that of professional friends who frequent the prize courts, that no risk whatever of being condemned in costs could possibly be incurred, even if the vessels were restored. Without running any risk, much good may thus be done; and I should feel satisfied that I have more than announced the ends I had in view when I began this discussion, if I could persuade myself that what I now say may lead any one to make this important trial.

Having hitherto only spoken of the foreign Slave Trade, it is with great mortification that I now feel myself obliged to call the attention of the House to the evasions of the Abolition Acts in this country. For accomplishing this detestable purpose, all the various expedients have been adopted which the perverse ingenuity of unprincipled avarice can suggest. Vessels are fitted out at Liverpool, as if for innocent commerce with Africa. The ships, and even the cargoes, are, for the most part, the same as those used in the trade of gold-dust, grains, and ivory. The goods peculiarly used in the Slave Trade are carefully concealed, so as to elude the reach of the port officers. The platforms and bulk-heads which distinguish slave ships are not fitted and fixed until the vessel gets to sea, and clears the channel, when the carpenters set to work and adapt her for the reception of slaves. For better concealment, some of the sailors, and not unfrequently the Master himself, are Portuguese. But it is remarkable, that, lurking in some dark corner of the ship, is almost always to be found a hoary slave trader—an experienced captain, who, having been trained up in the slave business from his early years, now accompanies the vessel as a kind of supercargo, and helps her, by his wiles, both to escape detection and to push her iniquitous adventures. This is not a fanciful description.

I hold in my hand the record of a court of justice, which throws so much light on the subject, that I moved, on a former night, to have it laid on the table. It appears from thence, that, but a few months ago, in the very river which washes the walls of this house, not two miles from the spot where we now sit, persons daring to call themselves English merchants have been detected in the act of fitting out a vessel of great bulk for the purpose of tearing seven or eight hundred wretched beings from Africa, and carrying them through the unspeakable horrors of the middle passage to endless bondage and misery, and toil which knows no limits, nor is broken by any rest, in the sands and swamps of Brazil. This detection has been made by the zeal and knowledge of a much loved and respected friend of mine,* who was only enabled to pursue so difficult an investigation by that perfect acquaintance with the subject, which he has acquired by his residence in Africa as governor of Sierra Leone, and by having even submitted to the pain of a slave voyage for the purpose of better learning the nature of the traffic.

I shall here read several extracts from the record of condemnation of the *Comercio de Rio*, in the Court of Exchequer last Hilary term. It appears, that besides an enormous stock of provisions, water-casks, mess-kits, &c. there were found on board fifty-five dozen of padlocks, ninety-three pair of hand-cuffs, a hundred and ninety-seven iron shackles for the feet, thirteen hundred-weight three quarters of iron chains, one box of religious implements, and, that the bodily as well as the spiritual health of this human cargo might not be neglected, the slave merchants, out of their rare humanity—which one must really have

* Mr. Z. Macaulay.

known a good deal of the sort of character, easily to believe—allowed, for the medical wants of eight hundred negroes, of all ages, crammed into a loathsome cage, and carried through new and perilous climates during a voyage of weeks, or even months—one little medicine chest, value £5. This is not the only instance of the kind, nor even the latest one, I grieve to say, recent though it be. I mentioned on a former night, that at one port of this country, six vessels have only just been fitted out, by a similar course of base fraud, for the same trade, or rather let me call it, the same series of detestable crimes.

It is now three years since that abominable traffic has ceased to be sanctioned by the law of the land; and, I thank God, I may therefore now indulge in expressing feelings towards it, which delicacy rather to the law than the traffic, might, before that period, have rendered it proper to suppress. After a long and most unaccountable silence of the law on this head, which seemed to protect, by permitting, or at least by not prohibiting the traffic, it has now spoken out, and the veil which it has appeared to interpose being now withdrawn, it is fit to let our indignation fall on those who still dare to trade in human flesh,—not merely for the frauds of common smugglers, but for engaging in crimes of the deepest dye; in crimes always most iniquitous, even when not illegal; but which now are as contrary to law as they have ever been to honesty and justice. I must protest loudly against the abuse of language, which allows such men to call themselves traders or merchants. It is not commerce, but crime, that they are driving. I too well know, and too highly respect, that most honourable and useful pursuit, that commerce whose province it is to humanize and pacify the world—so alien in its nature to violence and fraud—so formed to flourish in peace and in

honesty—so inseparably connected with freedom, and good will, and fair dealing,—I deem too highly of it to endure that its name should, by a strange perversion, be prostituted to the use of men who live by treachery, rapine, torture, and murder, and are habitually practising the worst of crimes for the basest of purposes. When I say murder, I speak literally and advisedly. I mean to use no figurative phrase; and I know I am guilty of no exaggeration. I am speaking of the worst form of that crime. For ordinary murders there may even be some excuse. Revenge may have arisen from the excess of feelings honourable in themselves. A murder of hatred, or cruelty, or mere bloodthirstiness, can only be imputed to a deprivation of reason. But here we have to do with cool, deliberate, mercenary murder, nay, worse than this; for the ruffians who go on the highway, or the pirates who infest the seas, at least expose their persons, and, by their courage, throw a kind of false glare over their crimes. But these wretches dare not do this. They employ others as base as themselves, only that they are less cowardly; they set on men to rob and kill, in whose spoils they are willing to share, though not in their dangers. Traders, or merchants, do they presume to call themselves! and in cities like London and Liverpool, the very creations of honest trade? I will give them the right name, at length, and call them cowardly suborners of piracy and mercenary murder! Seeing this determination, on the part of these infamous persons, to elude the Abolition Act, it is natural for me to ask, before I conclude, whether any means can be devised for its more effectual execution. I would suggest the propriety of obtaining from the Portuguese government, either in perpetuity, or for a term of years, the island of Bissao, situated on the African coast, and the only foreign settlement in

that quarter where our commerce chiefly lies. This cession would leave us a coast of five hundred miles' extent, wholly uninterrupted, and greatly facilitating the destruction of the Slave Traffic in that part of Africa. I would next remark, that the number of cruisers employed on the African coast is too scanty. It is thither, and not to America, that vessels intended to detect slave traders should be sent; because a slave-ship must remain for some weeks on the coast to get in her cargo, whereas she could run into her port of destination in the West Indies in a night, and thus escape detection; yet, to watch a coast so extensive as the African, we had never above two, and now have only one cruiser. I would recommend, that the ships thus employed should be of a light construction and small draught of water, that they may cross the bars of the harbours, in order to follow the slave-ships into the shallows and creeks, and up the mouths of rivers, and also that they should be well manned, and provided with boats, for the same purpose. It would be impossible to employ six or seven light ships better than on such a service. It is even more economical to employ a sufficient number; the occasion for them would, by this means, speedily cease. Once root out the trade, and there is little fear of its again springing up. The industry and capital required by it will find out other vents. The labour and ingenuity of the persons engaged in it will seek the different channels which will continue open. Some of them will naturally go on the highway, while others will betake themselves to piracy, and the law might, in due time, dispose of them.

But I should not do justice either to my own sentiments, or to the great cause which I am maintaining, were I to stop here. All the measures I have mentioned are mere expedients—mere makeshifts and

palliatives, compared with the real and effectual remedy for this grand evil, which I have no hesitation in saying it is now full time to apply. I should, indeed, have been inclined to call the idea of stopping such a traffic by pecuniary penalties, an absurdity and inconsistency, had it not been adopted by Parliament, and were I not also persuaded, that in such cases it is necessary to go on by steps, and often to do what we can, rather than attempt what we wish. Nevertheless, I must say, after the trial that has been given to the Abolition law, I am now prepared to go much further, and to declare that the Slave trade should at once be made felony. When I consider how easily laws are passed, declaring those acts even capital offences, which have heretofore been either permitted, or slightly punished; when scarce a Session ends without some such extension of the criminal code; when even capital offences are among the most numerous progenies of our legislative labours; when I see the difficulty experienced by an honourable and learned friend of mine,* in doing away the capital part of the offence of stealing five shillings: when it is remembered that Lord Ellenborough, by one act created somewhere about a dozen capital felonies; when, in short, so many comparatively trivial offences are so severely visited; can one, who knows what Slave Trading means, hesitate in admitting that it ought at length to be punished as a crime? Adverting, again, to the record before mentioned, I find that the vessel, ready fitted out for the slave coast, has sold for about £11,000, including guns, tackle, cargo, and all; but making allowance for seamen's wages, wear, and tear, &c. I calculate

* Sir Samuel Romilly.

the whole expense of carrying 800 slaves over to America, at £20,000, and as they will sell for £100 a-head, the net profits would be near £60,000. Is this to be stopped by a pecuniary penalty? If one such speculation, in four or five, succeed, they are safe: there is even a temptation to engage in many speculations, because the adventurer thus insures against the risk of capture, and becomes his own underwriter against the chance of detection, which he could in no other way insure against. If an inhuman being of this class fit out ten or twelve such ships, and escape with three or four, his vile profits are enormous; but it should be recollected, that all his vessels, those which escape as well as those which are taken, spread devastation over the African continent; and even a single cargo is the utter ruin of whole villages. To this case, more than to any other that can be fancied, pecuniary checks are peculiarly inapplicable.—While you levy your pence, the wholesale dealers in blood and torture pocket their pounds, and laugh at your twopenny penalty.

I shall next advert to the 10th of Geo. II. for regulating watermen between Gravesend and Chelsea. If a person of this description carry above a certain number of persons, although no accident happen, he forfeits the use of the river; and if by accident any one be drowned, the boatman who so overloads is transported for seven years as a felon. How do we treat those who overload their vessels with miserable negroes, so as knowingly and wilfully to ensure the death of many, and the torments of all? Why, the Slave carrying bill, which is somewhat similar to the statute of George II. in its object, does not even deprive such offenders of the use of the sea, which they have so perverted and polluted by their crimes; far less does it transport for seven years, even where

the deaths of hundreds on board of such vessels happen not by accident, but as a necessary consequence of the overloading. I make no reflection on the statute of George II. but its provisions appear somewhat more applicable to the slave-trader, than to the boatman. What has the Divine Legislator said on this subject? There is a most false and unfounded notion, that the sacred writings are silent upon it; I shall prove the contrary. "Whosoever," (says the Scripture) "stealeth a man, and selleth him, or in whose hands he shall be found, shall surely be put to death." And what is our gloss or application of this divine text? "Whosoever," (says the English law) "stealeth a man, and tortureth him, and killeth him, or selleth him into slavery for all the days of his life, shall surely—pay twenty pounds!" I trust that this grievous incongruity will at length be done away, and I now pledge myself to bring in a bill to that effect early in the ensuing session; but I earnestly hope, that in the meantime the House will leave nothing unattempted which may tend to diminish the great evils complained of, and give effect to one of the most holy of our laws.

I move, "That an humble Address be presented to his Majesty, representing to his Majesty, that this House has taken into its serious consideration the papers which his Majesty was graciously pleased to cause to be laid before this House upon the subject of the African Slave Trade.—That while this House acknowledges with gratitude the endeavours which his Majesty has been pleased to use, in compliance with the wishes of Parliament, to induce foreign nations to concur in relinquishing that disgraceful commerce, this House has to express its deep regret that those efforts have been attended with so little success.—That this House does most earnestly beseech his

Majesty to persevere in those measures which may tend to induce his allies, and such other foreign states as he may be able to negotiate with, to co-operate with this country in a general Abolition of the Slave Trade, and to concur in the adoption of such measures as may assist in the effectual execution of the laws already passed for that purpose.—That this House has learnt with the greatest surprise and indignation, that certain persons in this country have not scrupled to continue in a clandestine and fraudulent manner the detestable traffic in slaves.—And that this House does most humbly pray his Majesty that he will be graciously pleased to cause to be given to the commanders of his Majesty's ships and vessels of war, the officers of his Majesty's customs, and the other persons in his Majesty's service, whose situation enables them to detect and suppress these abuses, such orders as may effectually check practices equally contemptuous to the authority of parliament, and derogatory to the interests and the honour of the country."

CASE

OF THE

REV. JOHN SMITH,

MISSIONARY IN DEMERARA.

INTRODUCTION.

OPPRESSION OF THE MISSIONARIES—MOTION OF CENSURE ON THE DEMERARA GOVERNMENT—EFFECT OF THE DISCUSSION UPON PUBLIC OPINION.

THERE never has been any case of Colonial oppression attended with such important consequences, and seldom any that excited so lively an interest as that of the Missionary Smith, in 1823. This venerable person belonged to the sect of Independents,—a class of men famous in all ages for their tolerant principles, as well as for their love of liberty, and to whom this country owes a lasting debt of gratitude, for their strenuous exertions in the troubles of the seventeenth century, those troubles in which the cradle of English liberty was rocked. He had been sent to Demerara by the London Missionary Society, and its worthy head the truly respectable Mr. Alers Hankey. An insurrection of the Negroes having broken out, in the fever of alarm which generally attends such events, among

a set of men justly conscious like the planters, both of the Negro's continued wrongs, and of their own imminent dangers, it was fancied that Mr. Smith had in some way contributed to the movement. That such a rumour once propagated should have gained ground among the multitude, was perhaps not to be wondered at. But, that the constituted authorities should have been so far moved by it as to put the party on his trial, without the most careful previous investigation of all the circumstances, seems hardly credible, when we reflect on the extreme delicacy of the questions thus certain to be raised, and upon the religious feeling, still stronger than the political, sure to be excited. There were, however, stranger things yet to be witnessed in the progress of this important affair. The popular agitation (if we may so call the excitement among the handful of Whites thinly scattered among the real bulk of the people) extended itself to the court, before whom the Missionary was tried; and the judges, partaking of the violence which inspired the planters and other slave-dealers, committed a series of errors so gross as to mock belief, and of oppressions which are unexampled in the dispensation of English justice. Among these acts, whether of matchless ignorance or of gross injustice, the most striking but not the only ones, were, the constant admission of manifestly illegal evidence, and the condemning to death a person only accused of misprision, a crime plainly not capital. The Missionary was cast into a small and loathsome dungeon, in a state of health which made any imprisonment dangerous. There, after some weeks of the most severe suffering, he yielded up his pious spirit, expiating with his guiltless blood the sin of which there is

no remission in the West Indies,—the sin of having taught the slaves the religion of peace, and consoled them for the cruel lot inflicted by the crimes of this world, with the hopes of mercy in another.

The arrival of this intelligence in England, speedily produced all the feelings which might well have been expected. Pity for the victim; sympathy with his unhappy widow; fellow feeling for his bereaved flock; alarm at the sight of religious persecution; contempt for the ignorance of the legal, and the pusillanimity of the political authorities; indignation at the injustice of the Courts—were the sentiments that strove for mastery among the great body of the British people; and all were finally concentrated in one single, universal, and implacable feeling of revenge against that execrable system, which, contrary to the law of God, pretends to vest in man a property in his fellow-creatures, as fatal to the character of the oppressor as to the happiness of his victim.

After maturely deliberating upon the course most fit to be taken, both with a view to attain the ends of justice, and to make the blow most effectual, which this question enabled him to level at Negro Slavery and colonial misgovernment, Mr. Brougham, on the 1st of June, brought forward his motion of censure upon the Demerara Government, and the Court, its instrument and accomplice in oppression. A debate of surpassing interest ensued. The most distinguished speakers for the motion were Mr. Williams,* Mr. Denman,† and Dr. Lushington. On the other side, the

* Now a judge in the Court of Queen's Bench.

† Now Lord Chief Justice, who has recently shown his habitual love of liberty by declaring Slavery to be unlawful.

majority inclined at first to resist the motion, and the Colonial Under Secretary,* met it with a direct negative; but finding they were in peril of a defeat, Mr. Canning, who did not very creditably distinguish himself on this occasion, concluded by moving the previous question, upon which the division was taken. Mr. Tindal,† made on this occasion his first parliamentary speech, with distinguished ability; and Mr. Scarlett,‡ ably argued on the same side; Lord Palmerston and Messrs. Lamb and Grant,§ voted in the ministerial majority, thus giving to the country an early pledge of those principles so hostile to Colonial liberty, on which they have since acted. The motion was lost by 146 to 193 votes, after an adjourned debate.

But the effect produced by this great discussion was extreme and powerful. The minds of men were turned to the real state of Negro bondage; the abuses and oppressions committed in the Colonies were fully examined; the impossibility of carrying the acts now every where loudly complained of, unless by destroying so unnatural a system, was generally recognised. "The Missionary Smith's Case" became a watch-word and a rallying cry with all the friends of religious liberty, as well as the enemies of West Indian Slavery. The votes of those who had sided with the Government in resisting the motion were carefully recorded, for the purpose of preventing them from ever again being returned to Parliament. The measures of the abolitionists all over the country became more bold and decided, as their principles commanded a more general and warmer

* Mr. W. Horton. † Now Chief Justice of the Common Pleas.
‡ Now Chief Baron of the Exchequer. § Now Lords Melbourne and Glenelg.

concurrence; and all men now saw that the warning given in the peroration of the latter of these two speeches, though sounded in vain across the Atlantic Ocean, was echoing with a loudness redoubled at each repetition through the British Isles, that it had rung the knell of the system, and that at the fetters of the slave a blow was at length struck which must, if followed up, make them fall off his limbs for ever. The cause of Negro Emancipation has owed more to this case of individual oppression, mixed with religious persecution, than to all the other enormities of which Slavery has ever been convicted.

SPEECH

IN THE CASE OF THE

REV. JOHN SMITH,

THE MISSIONARY.

DELIVERED IN THE HOUSE OF COMMONS,

JUNE 1, 1824.

SPEECH.

Mr. Speaker,—I confess, that in bringing before this House the question on which I now rise to address you, I feel not a little disheartened by the very intense interest excited in the country, and the contrast presented to those feelings by the coldness which prevails within these walls. I cannot conceal from myself, that, even in quarters where one would least have expected it, a considerable degree of disinclination exists to enter into the discussion, or candidly to examine the details of the subject. Many persons who have, upon all other occasions, been remarkable for their manly hostility to acts of official oppression, who have been alive to every violation of the rights of the subject, and who have uniformly and most honourably viewed with peculiar jealousy every infraction of the law, strange to say, on the question of Mr. Smith's treatment, evince a backwardness to discuss, or even listen to it. Nay, they would fain fasten upon any excuse to get rid of the subject. What signifies inquiring, say they, into a transaction which has occurred in a remote portion of the world? As if distance or climate made any difference in an outrage upon law or justice. One would rather have expected that the very idea of that distance—the circumstance of the event having

taken place beyond the immediate scope of our laws, and out of the view of the people of this country—in possessions where none of the inhabitants have representatives in this House, and the bulk of them have no representatives at all,—one might have thought, I say, that, in place of forming a ground of objection, their remote and unprotected situation would have strengthened the claims of the oppressed to the interposition of the British Legislature. Then, says another, too indolent to inquire, slow to hear, but prompt enough to decide, "It is true there have been a great number of petitions presented on the subject; but then every body knows how those petitions are procured, by what descriptions of persons they are signed, and what are the motives which influence a few misguided, enthusiastic men, in preparing them, and the great crowd in signing them. And, after all, it is merely about a poor missionary!" I have now to learn, for the first time, that the weakness of the sufferer—his unprotected situation—his being left single and alone to contend against power exercised with violence,—constitutes a reason for this House shutting its ears against all complaints of such proceedings, and refusing to investigate the treatment of the injured individual. But it is not enough that he was a missionary; to make the subject still more unpalatable, —for I will come to the point, and at once use the hateful word,—he must needs also be a Methodist. I hasten to this objection, with a view at once to dispose of it. Suppose Mr. Smith had been a Methodist —what then? Does his connection with that class of religious people, because, on some points essential in their conscientious belief, they are separated from the National Church, alter or lessen his claims to the protection of the law? Are British subjects to be treated more or less favourably in courts of law—are they to have

a larger or a smaller share in the security of life and limb, in the justice dealt out by the Government—according to the religious opinions which they may happen to hold? Had he belonged to the society of the Methodists, and been employed by the members of that communion, I should have thought no worse of him or his mission, and felt nothing the less strongly for his wrongs. But it does so happen, that neither the one nor the other of these assumptions is true; neither the Missionary Society, nor their servants, are of the Methodist persuasion. The Society is composed indifferently of Churchmen and Dissenters: Mr. Smith is, or, as I unhappily must now say, was, a minister—a faithful and pious minister—of the Independents,—that body much to be respected indeed for their numbers, but far more to be held in lasting veneration for the unshaken fortitude with which in all times, they have maintained their attachment to civil and religious liberty, and, holding fast by their own principles, have carried to its uttermost pitch the great doctrine of absolute toleration;—men to whose ancestors this country will ever acknowledge a boundless debt of gratitude, as long as freedom is prized among us: for they, I fearlessly proclaim it—*they*, with whatever ridicule some may visit their excesses, or with whatever blame others—*they*, with the zeal of martyrs, the purity of the early Christians, the skill and the courage of the most renowned warriors, gloriously suffered, and fought, and conquered for England the free constitution which she now enjoys! True to the generous principles in Church and State which won those immortal triumphs, their descendants still are seen clothed with the same amiable peculiarity of standing forward among all religious denominations, pre-eminent in toleration; so that although, in the progress of knowledge, other classes of Dissenters

may be approaching fast to overtake them, *they* still are foremost in this proud distinction. All, then, I ask of those who feel indisposed to this discussion is, that they will not allow their prepossessions, or I would rather say their indolence (for, disguise it as they will, indolence is at the bottom of this indisposition), to prevent them from entering calmly and fully into the discussion of the question. It is impossible that they can overlook the unexampled solicitude which it has excited in every class of the people out of doors. That consideration should naturally induce the House of Commons to lend its ear to the inquiry, which, however, is fully entitled, on its own merits, to command undivided attention.

It will be my duty to examine the charge preferred against the late Mr. Smith, and the whole of the proceedings founded on that charge. And in so doing, I have no hesitation in saying, that from the beginning of those proceedings to their fatal termination, there has been committed more of illegality, more of the violation of justice—violation of justice, in substance as well as form—than, in the whole history of modern times, I venture to assert, was ever before witnessed in any inquiry that could be called a judicial proceeding. I have tried the experiment upon every person with whom I have had an opportunity of conversing on the subject of these proceedings at Demerara, as well members of the profession to which I have the honour of belonging, as others acquainted with the state of affairs in our Colonies, and I have never met with one who did not declare to me, that the more the question was looked into, the greater attention was given to its details, the more fully the whole mass was sifted—the more complete was his assent to the conviction that there was never exhibited a greater breach of the law, a

more daring violation of justice, a more flagrant contempt of all those forms by which law and justice were wont to be administered, and under which the perpetrators of ordinary acts of judicial oppression are wont to hide the nakedness of their crimes.

It is now necessary to call the attention of the House to that unhappy state of things which existed in Demerara during the course of the past year. Certain Instructions had been forwarded from this country to those Slave Colonies which are more under the control of the Government than the other West-India Islands. Whether the Instructions were the best calculated to fulfil the intentions of those who issued them—whether the directions had not in some points gone too far, at least in prematurely introducing the object that they had most properly in view—and whether, in other points, they did not stop short of their purpose—whether, in a country where the symbol of authority was the constantly manifested lash of the driver, it was expedient at once to withdraw that dreadful title of ownership,—I shall not now stop to inquire. Suffice it to say, that those instructions arrived at Demerara on the 7th of last July, and great alarm and feverish anxiety appear to have been excited by them amongst the White part of the population. That the existence of this alarm so generally felt by the proprietors, and the arrival of some new and beneficial regulations, were marked and understood by the domestic Slaves, there cannot be a doubt. By them the intelligence was speedily communicated to the field Negroes. All this time there was no official communication of the Instructions from the Colonial Government. A meeting had been convened of the Court of Policy, but nothing had been made public in consequence of its assembling. A second meeting was held, and it was understood that

a difference of opinion prevailed among the members, after a discussion, which, though not fierce, was still animated. The only means which the circumstances of the case naturally suggested do not appear to have been adopted by those at the head of affairs in Demerara. I do not impute to them any intentional disregard of duty. It is very possible that the true remedy for the mischief may have escaped them in the moment of excited apprehension—in the prevalence of general alarm, rendered more intense by the inquisitive anxiety of the Slave population,—an alarm and anxiety continued by the state of ignorance in which the Slaves were kept as to the real purport of the Instructions from England. But most certainly, whatever was the cause, the authorities at Demerara overlooked that course of proceeding best calculated to allay at least the inquisitive anxiety of the Slaves; namely, promulgating in the colony what it really was that had been directed by the Instructions of the King's Ministers, even if they were not disposed at once to declare whether they would or would not carry those Instructions into execution. Unhappily they did not take that plain course. Week after week was suffered to elapse; and up to the period when the lamentable occurrence took place, which led to these proceedings, no authentic, or, at least authoritative communication, either of what had arrived from England, or of what was the intention of the authorities at Demerara, was made to the Slaves. This state of suspense occupied an interval of nearly seven weeks. The revolt broke out on the 18th of August. During the whole of that interval the agitation in the colony was considerable; it was of a two-fold character. There was on one side the alarm of the Planters, as to the consequences of the new Instructions received from his Majesty's Government; and on the other the naturally increasing anxiety of the

Negro as to the precise purport and extent of those Instructions. There existed the general impression, that some extension of grace and bounty had been made to the Slaves. In the ignorance which was so studiously maintained as to the nature of it, their hopes were proportionably excited; they knew that something had been done, and they were inquisitive to learn what it was. The general conversation amongst them was, "Has not our freedom come out? Is not the King of Great Britain our friend?" Various speculations occupied them; reports of particular circumstances agitated them. Each believed in the detail as his fancy or credulity led him; but to one point all their hopes pointed;—"Freedom! freedom!" was the sound unceasingly heard; and it continually raised the vision on which their fancy loved to repose.

And now, allow me to take the opportunity of reasserting the opinion which, with respect to that most important subject of Emancipation, I have uniformly maintained, not only since I have had the honour of a seat in this House, but long before, with no other difference, save, perhaps, in the manner of the expression, correcting that manner by the experience and knowledge which a more extended intercourse with human life must naturally have bestowed. My opinion ever has been, that it is alike necessary to the security of our White brethren, and just, and even merciful to the Negroes—those victims of a long-continued system of cruelty, impolicy, and injustice—to maintain firmly the legal authorities, and with that view, to avoid, in our relations with the Slaves, a wavering uncertain policy, or keep them in a condition of doubt and solicitude, calculated to work their own discomfort, and the disquiet of their masters. Justice to the Whites, mercy to the Blacks, command us to protect the first from the effect of such alarms,

and the last from the expectation, that, in the hapless condition in which they are placed, their emancipation can be obtained—meaning thereby their sudden, unprepared emancipation, by violent measures, or with an unjustifiable haste, and without previous instruction. The realization of such a hope, though carrying the name of a boon, would inflict the severest misery on these beings, whose condition is already too wretched to require, or indeed to bear, any increase of calamity. It is for the sake of the Blacks themselves, as subsidiary to their own improvement, that the present state of things must for a time be maintained. It is because to them, the bulk of our fellow-subjects in the Colonies, liberty, if suddenly given, and, still more, if violently obtained by men yet unprepared to receive it, would be a curse, and not a blessing; that emancipation must be the work of time, and, above all, must not be wrested forcibly from their masters. Reverting to the occurrences at Demerara, it is undeniable that a great and unnecessary delay took place. This inevitably, therefore, gave rise to those fatal proceedings, which all of us, however we may differ as to the causes from which they originated, must unfeignedly deplore.

It appears that Mr. Smith had officiated as a minister of religion in the colony of Demerara for seven years. He had maintained during his whole life a character of the most unimpeachable moral purity, which had not only won the love and veneration of his own immediate flock, but had procured him the respect and consideration of all who resided in his neighbourhood. Indeed, there is not a duty of his ministry that he had not discharged with fidelity and zeal. That this was his character is evident even from the papers laid upon the table of this House. These documents, however, disclose but a part of the truth on this point. Before

I sit down I shall have occasion to advert to other sources of information, which show that the character of Mr. Smith was such as I have described it; and that those who are best qualified to form an opinion, have borne the highest testimony to his virtuous and meritorious labours. Yet this Christian Minister, thus usefully employed, thus generally revered and beloved, was dragged from his house, three days after the revolt began, and when it had been substantially quelled, with an indecent haste that allowed not the accommodation even of those clothes which, in all climates, are necessary to human comfort, but which, in a tropical climate, are absolutely essential to health. He was dragged, too, from his home and his family at a time when his life was attacked by a disease which, in all probability, would in any circumstances have ended in his dissolution; but which the treatment he then received powerfully accelerated in its fatal progress. He was first imprisoned in that sultry climate, in an unwholesome fetid room, exposed to the heat of the tropical sun. This situation was afterwards changed, and he was conveyed to a place only suited to the purposes of torture—a kind of damp dungeon, where the crazy floor was laid loosely over stagnant water, visible through the wide crevices of its boards. When Mr. Smith was about to be seized, he was first approached with the hollow demand of the officer who apprehended him, commanding him to join the militia of the district. To this he pleaded his inability to serve in that capacity, as well as an exemption founded on the rights of his clerical character. Under the pretext of this refusal, his person was arrested, and his papers were demanded, and taken possession of. Amongst them was his private journal—a part of which was written with the intention of being communicated to his

employers alone, while the remaining part was intended for no human eye but his own. In this state of imprisonment he was detained, although the revolt was then entirely quelled. That it was so quelled, is ascertained from the dispatches of General Murray to Earl Bathurst, dated the 26th of August. At least the dispatch of that date admits that the public tranquillity was nearly restored; and, at all events, by subsequent dispatches, of the 30th and 31st, it appears that no further disturbance had taken place; nor was there from that time any insurrectionary movement whatever. At that period the colony was in the enjoyment of its accustomed tranquillity, barring always those chances of relapse, which, in such a state of public feeling, and in such a structure of society, must be supposed always to exist, and to make the recurrence of irritation and tumult more or less probable. Martial law, it will be recollected, was proclaimed on the 15th of August, and was continued to the 15th of January following — five calendar months—although there is the most unquestionable proof, that the revolt had subsided, and indeed that all appearance of insubordination had vanished.

In a prison such as I have described, Mr. Smith remained until the 14th day of October. Then, when every pretence of real and immediate danger was over; when every thing like apprehension, save from the state of colonial society, was removed; it was thought fit to bring to trial, by a military court-martial, this Minister of the Gospel! I shall now view the outside of that court-martial: it is fit that we look at its external appearance, examine the foundations on which it rests, and the structures connected with it, before we enter and survey the things perpetrated within its walls. I know that the general answer to all which has been hitherto alleged on this subject is, that mar-

tial law had been proclaimed in Demerara. But, Sir, I do not profess to understand, as a lawyer, martial law of such a description: it is entirely unknown to the law of England—I do not mean to say in the bad times of our history, but in that more recent period which is called Constitutional. It is very true, that formerly the Crown sometimes issued proclamations, by virtue of which civil offences were tried before military tribunals. The most remarkable instance of that description, and the nearest precedent to the case under our consideration, was the well known proclamation of that august, pious, and humane pair, Philip and Mary, of happy memory, stigmatizing as rebellion, and as an act which should subject the offender to be tried by a court-martial, the having heretical, that is so say, Protestant books in one's possession, and not giving them up without previously reading them. Similar proclamations, although not so extravagant in their character, were issued by Elizabeth, by James the First, and (of a less violent nature) by Charles the First; until at length the evil became so unbearable, that there arose from it the celebrated Petition of Right, one of the best legacies left to his country by that illustrious lawyer, Lord Coke, to whom every man that loves the Constitution owes a debt of gratitude which unceasing veneration for his memory can never pay. The Petition provides that all such proceedings shall thenceforward be put down: it declares, "that no man shall be fore-judged of life or limb against the form of the Great Charter;" "that no man ought to be adjudged to death but by the laws established in this realm, either by the custom of the realm, or by Acts of Parliament;" and "that the commissions for proceeding by martial law should be revoked and annulled, lest, by colour of them, any of his Majesty's subjects be

destroyed or put to death, contrary to the laws and franchise of the land." Since that time, no such thing as martial law has been recognised in this country; and courts founded on proclamations of martial law have been wholly unknown. And here I beg to observe, that the particular grievances at which the Petition of Right was levelled, were only the trials under martial law of military persons, or of individuals accompanying, or in some manner connected with, military persons. On the abolition of martial law, what was substituted? In those days, a standing army in time of peace was considered a solecism in the Constitution. Accordingly, the whole course of our legislation proceeded on the principle, that no such establishment was recognised. Afterwards came the annual Mutiny Acts, and Courts Martial which were held only under those acts. These courts were restricted to the trial of soldiers for military offences; and the extent of their powers was pointed out and limited by law. But I will not go further into the consideration of this delicate constitutional question; for the present case does not rest on any niceties—it depends not on any fine-spun decisions with respect to the law. If it should be said, that, in the conquered colonies, the law of the foreign state may be allowed to prevail over that of England; I reply, that the Crown has no right to conquer a colony, and then import into its constitution all manner of strange and monstrous usages. If the contrary were admitted, the Crown would only have to resort first to one coast of Africa and then to another, and afterwards to the shores of the Pacific, and import the various customs of the barbarous people whom it might subdue; torture from one; the scalping knife and tomahawk from another; from a third, the regal prerogative of paving the palace courts with the skulls of the subject. All the prodigious and unutterable

practices of the most savage nations might thus be naturalized by an act of the Crown, without the concurrence of Parliament, and to the detriment of all British subjects born, or resident, or settling for a season, in those new dominions. Nothing, however, is more clear, than that no practice inconsistent with the fundamental principles of the constitution—such, for instance, as the recourse to torture for the purpose of obtaining evidence—can ever be imported into a colony by any act of conquest. But all considerations of this nature are unnecessary on the present occasion: for this court was an English court-martial. The title by which it claimed to sit was the Mutiny Act, and the law of England. The members of the court are estopped from pleading the Dutch law, as that on which their proceedings were founded. They are estopped, because they relied for their right to sit on our own Mutiny Act, which they time after time refer to; and they cannot now pretend that they proceeded on any other ground.

Let us now look for a few moments at the operations which preceded the trial of this poor Missionary. He was, as I have just stated, tried by a court-martial; and we are told by General Murray, in his dispatch of October 21, that it was all the better for him,—for that, if he had been tried in any other manner, he might have found a more prejudiced tribunal. Now, Sir, I have no hesitation in saying, that if I had been the party accused, or of counsel for the party accused, I would at once have preferred a civil jurisdiction to the very anomalous proceeding that took place. First of all, I should have gained delay, which in most cases is a great advantage to the accused. In this particular case it must have proved of inestimable benefit to him, as the fever of party rage and personal hostility would have been suffered

gradually to subside. By proceeding under the civil jurisdiction, the addition of the Roman law to that of the common law necessarily occasioned great prolixity in the trial. Months must have elapsed during those proceedings, and at every step the accused would have had a chance of escape. All this would have been of incalculable value; and all this was lost to the accused, by his being summarily brought before a military tribunal. The evidence of Slaves was admitted by the court without doubt or contest;—a point, however, on which I do not much rely; for I understand that in Demerara the usage in this respect differs from the usage of some other colonies, and that the evidence of Negroes against Whites is considered admissible, although it is not frequently resorted to. Still, however, there is this difference as respects such evidence between a civil and a military court; in the latter, it is received at once, without hesitation; whereas, if the matter is brought before a civil jurisdiction, a preliminary proceeding must take place respecting the admissibility of each witness. His evidence is compared with the evidence of other witnesses, or parts of his evidence are compared with other parts, and on the occurrence of any considerable discrepancy the evidence of that witness is finally refused. There are also previous proceedings, had the subject been brought before a civil jurisdiction, which might have had this effect: a discussion takes place before the Chief Justice and two assistants, on the admissibility of witnesses, who are not admitted as evidence in the cause until after a preliminary examination; and I understand, that the circumstance of a witness being a Slave whose evidence is to be adduced against a White man, in cases of doubt, always weighs in the balance against his admissibility. But I pass all this over. I rest the case only on that which is clear, un-

deniable, unquestioned. By the course of the civil law, two witnesses are indispensably required to substantiate any charge against the accused. Let any one read the evidence on this trial, and say, how greatly the observance of such a rule would have improved the condition of the prisoner. Last of all, if the accused had been tried at common law, he would have had the advantage of a learned person presiding over the court, as the Chief Justice, who must have been individually and professionally responsible for his conduct; who would have acted in the face of the whole bar of the colony; who would also have acted in the face of that renowned English bar to which he once belonged, to which he might return, and whose judgment, therefore, even when removed from them by the breadth of the Atlantic, he would not have disregarded, while he retained the feelings of a man, and the character of an English advocate. He would have acted in the face of the whole world as an individual, doubtless not without assistance, but still with the assistance of laymen only, who could not have divided the responsibility with him. He would, in every essential particular, have stood forth single and supreme, in the eyes of the rest of mankind, as the Judge who tried the prisoner. In such circumstances, he must have conducted himself with an entire regard to his professional character, to his responsibility as a judge, to his credit as a lawyer.

Now, Sir, let us look at the constitution of the court before which Mr. Smith was actually tried. Upon a reference to the individuals of whom it was composed, I find, what certainly appears most strange, the president of the civil court taking upon himself the functions of a member of the court martial, under the name of an officer of the militia staff. It appears to be the fact, that this learned individual was invested with the rank

and degree of lieutenant-colonel of the militia, a few days before the assembling of the court martial, in order that he, a lawyer and a civil judge, might sit as a military judge and a soldier! Sir, he must have done this by compulsion. Martial law was established in the colony by the power to which he owed obedience. He could not resist the mandate of the Governor. He was bound, in compliance with that mandate, to hide his civic garb, to cover his forensic robe under martial armour. As the aid-de-camp of the Governor, he was compelled to act a mixed character —part lawyer, part soldier. He was the only lawyer in a court where a majority of the soldiery overwhelmed him. Having no responsibility, he abandoned—or was compelled to sit helpless and unresisting, and see others abandoning—principles and forms which he could not, which he would not, which he durst not, have abandoned, had he been sitting alone in his own court, in his ermined robe, administering the civil law. After this strange fact respecting the higher members of the court, it is not surprising that one as strange should appear with regard to its subordinate officers. The Judge-Advocate of a court martial, although certainly sometimes standing in the situation of a prosecutor, nevertheless, in all well regulated courts martial, never forgets that he also stands between the prisoner and the bench. He is rather, indeed, in the character of an assessor to the court. On this point, I might appeal to the highest authority present. By you, Sir, these important functions were long, and correctly, and constitutionally performed; and in a manner equally beneficial to the army and to the country. But I may appeal to another authority, from which no one will be inclined to dissent. A revered judge, Mr. Justice Bathurst, in the middle of the last century, laid it down as clear and indisputable, that the office

of a Judge-Advocate was to lay the proof on both sides before the court; and that whenever the evidence was at all doubtful, it was his duty to incline towards the prisoner. No such disposition, however, appears in this Judge-Advocate, I should rather say in these Judge-Advocates; for, one not being considered enough, two deputies were appointed to assist him. These individuals exercised all their address, their caution, and their subtlety, against the unfortunate prisoner, with a degree of zeal bordering upon acrimony. Indeed, the vehemence of the prosecution was unexampled. I never met with any thing equal to it; and I am persuaded, that if any such warmth had been exhibited before a civil judge by a prosecuting counsel, he would have frowned it down with sudden indignation.

In the first instance, the Judge-Advocate concealed the precise nature of the accusation. The charges were drawn up so artfully, as to give no notice to the prisoner of the specific accusation against him. They were drawn up shortly, vaguely, and obscurely; but short, vague, and obscure as they were, they were far from being as short, as vague, and as obscure as the opening speech of the prosecutor. That speech occupies about half a page in the minutes of the trial, which yet give it *verbatim*. But scarcely had the prisoner closed his defence, than a speech was pronounced, on the part of the prosecution, which eighteen pages of the minutes scarcely contain. In this reply the utmost subtlety is exhibited. Topic is urged after topic with the greatest art and contrivance. Every thing is twisted for the purpose of obtaining a conviction; and, which is the most monstrous thing of all, when the prisoner can no longer reply, new facts are detailed, new dates specified, and new persons introduced, which were never mentioned, or even hinted at, on any one of the

twenty-seven preceding days of the trial! Again, Sir, I say, that had I been the accused person, or his counsel, I would rather a thousand-fold have been tried by the ordinary course of the civil law, than by such a court. To return, however, to its composition—I rejoice to observe, that the President of the supreme civil judicature, although he was so unwise as to allow his name to be placed on the list of the members, or so unfortunate as to be compelled to do so, refused to preside over the deliberations of this court. Although he was the person of the highest rank next to the Governor, and although in a judicial inquiry he must naturally have been more skilful and experienced than any man in the colony, nevertheless there he is in the list among the ordinary members of the court; and as he must have been appointed to preside, but for his own repugnance to the office, I am entitled to conclude that he refused it with a firmness not to be overcome. Against the other members I have nothing whatever to say. The president of the court, however, was Lieutenant-Colonel Goodman. Now, that gallant officer, than whom I believe no man bears a higher character, unfortunately, beside bearing his Majesty's commission, holds an office in the colony of Demerara, which rendered him the last man in the world who ought to have been selected as President of such a judicature. Let the House, Sir, observe, that the reason assigned by Governor Murray for subjecting Mr. Smith to a trial before such a tribunal, was not only that he might have in reality a fair trial, but that he might not even appear to be the victim of local prejudice, which it seems would have been surmised, had his case been submitted to a jury, or a court, of planters. How is it, then, that with this feeling the Governor could name Lieutenant-Colonel Goodman to be president of the court? For that gallant officer does, in

point of fact, happen to hold the situation of Vendue-master in the colony of Demerara, without profit to whom not a single slave can be sold by any sale carried on under the authority of the courts of justice. Accordingly, it did so turn out, that a few days before the breaking out of the revolt, there were advertised great sales of Negroes by auction, which most naturally excited sorrow and discontent among many of the Slaves. There was one sale of fifty-six of those hapless beings, who were to be torn from the place of their birth and residence, and perhaps separated for ever from their nearest and dearest connections. I hold in my hand a Colonial Gazette, containing many advertisements of such sales, and to every one of them I find attached the signature "S. A. Goodman." One of the advertisements, that, I think, for the sale of fifty-six Negroes, states, that among the number there are many "valuable carpenters, boat-builders, &c., well worthy the attention of the public." Another speaks of "several prime single men." One party of slaves consists of a woman and her three children. Another advertisement offers a young female slave who is pregnant. Upon the whole, there appear to have been seventy or eighty slaves advertised to be sold by auction in this single gazette, in whose sale Lieutenant-Colonel Goodman, from the nature of his office, had a direct interest. I do not for a moment affirm that this circumstance was likely to warp his judgment. Probably, indeed, he was not personally aware of it at the time. But I repeat, that, if this proceeding were intended to be free from all suspicion, Lieutenant-Colonel Goodman was one of the last men to select as the President of the court. That, however, is nothing compared to the appointment of the Chief-Justice of the colony as one of its members. He, the civil judge of the colony, to be forced to sit as member

of a court martial, and under the disguise of a militia officer by way of a qualification! He to whom an appeal lay against any abuse of which that court martial might be guilty! From whom but from him could Mr. Smith have obtained redress for any violation of the law committed in his person? Yet, as if for the express purpose of shutting the door against the possibility of justice, he is taken by the Governor and compelled to be a member of the Court. That this tribunal might at once be clothed with the authority of the laws which it was about to break, and exempted from all risk of answering to those laws for breaking them, the only magistrate who could vindicate or enforce them is identified with the court, and at the same time so outnumbered by military associates, as to be incapable of controverting, or even influencing, its decision, while his presence gives them the semblance of lawful authority, and places them beyond the reach of legal revision.

Sir, one word more, before I advert to the proceedings of the court, on the nature of its jurisdiction. Suppose I were ready to admit, that on the pressure of a great emergency, such as invasion or rebellion, when there is no time for the slow and cumbrous proceedings of the civil law, a proclamation may justifiably be issued for excluding the ordinary tribunals, and directing that offences should be tried by a military court—such a proceeding might be justified by necessity; but it could rest on that alone. Created by necessity, necessity must limit its continuance. It would be the worst of all conceivable grievances—it would be a calamity unspeakable—if the whole law and constitution of England were suspended one hour longer than the most imperious necessity demanded. And yet martial law was continued in Demerara for five months. In the midst of tranquillity, that offence against the constitution was perpetrated for months,

which nothing but the most urgent necessity could warrant for an hour. An individual in civil life, a subject of his Majesty, a clergyman, was tried at a moment of perfect peace, as if rebellion raged in the country. He was tried as if he had been a soldier. I know that the proclamation of martial law renders every man liable to be treated as a soldier. But the instant the necessity ceases, that instant the state of soldiership ought to cease, and the rights, with the relations, of civil life to be restored. Only see the consequences which might have followed the course that was adopted. Only mark the dilemma in which the Governor might have found himself placed by his own acts. The only justification of the court martial was his proclamation. Had that court sat at the moment of danger, there would have been less ground for complaint against it. But it did not assemble until the emergency had ceased; and it then sat for eight-and-twenty days. Suppose a necessity had existed at the commencement of the trial, but that in the course of the eight-and-twenty days it had ceased;—suppose a necessity had existed in the first week, who could predict that it would not cease before the second? If it had ceased with the first week of the trial, what would have been the situation of the Governor? The sitting of the court martial at all, could be justified only by the proclamation of martial law; yet it became the duty of the Governor to revoke that proclamation. Either, therefore, the court martial must be continued without any warrant or colour of law, or the proclamation of martial law must be continued only to legalise the prolonged existence of the court martial. If, at any moment before its proceedings were brought to a close, the urgent pressure had ceased which alone justified their being instituted, according to the assumption I am making in favour of the court,

and for argument's sake; then to continue martial law an hour longer would have been the most grievous oppression, the plainest violation of all law; and to abrogate martial law would have been fatal to the continuance of the trial. But the truth is, that the court has no right even to this assumption, little beneficial as it proves; for long before the proceedings commenced, all the pressure, if it ever existed, was entirely at an end.

I now, Sir, beg the House will look with me, for a moment, at the course of proceeding which the Court, constituted in the manner and in the circumstances that I have described, thought fit to adopt. If I have shewn that they had no authority, and that they tried this clergyman illegally, not having any jurisdiction, I think I can prove as satisfactorily that their proceedings were not founded on any grounds of justice, or principles of law, as I have proved that the Court itself was without a proper jurisdiction. And here, I beg leave to observe, that the minutes of the proceedings on the table of the House are by no means full, although I do not say they are false. They do not perhaps misrepresent what occurred, but they are very far indeed, from telling all that did occur; and the omissions are of a material description. For instance, there is a class of questions which it is not usual to permit in courts of justice, called leading questions; the object of which is to put into the witness's mouth the answers which the examiner desires he should make. This is in itself objectionable; but the objection is doubled, if, in a report of the examination, the questions are omitted, and the answers are represented as flowing spontaneously from the witness, and as being the result of his own recollection of the fact, instead of the suggestions of another person. I will illustrate what I mean by an example. On the fifth day of the

trial, Bristol, one of the witnesses, has this question put to him: "You stated, that, after the service was over, you stayed near the chapel, and that Quamina was there: did you hear Quamina tell the people what they were to do?" To that the answer is, "No, Sir." The next question but one is, "Did you hear Quamina tell the other Negroes, that on the next Monday they were all to lay down their tools and not work?" To which the witness (notwithstanding his former negative) says, "Yes, I heard Quamina say so a week before the revolt broke out." Now, in the minutes of evidence laid on the table of the House, both the questions and the answer to the first are omitted, and the witness is described as saying without any previous prompting, "A week before this revolt broke out, I heard Quamina tell the Negroes that they were to lay down their tools and not work."

The next instance which I shall adduce, of the impropriety of the proceedings of the Court, is very remarkable, comprehending, as it does, almost all that I can conceive of gross unfairness and irregularity: I mean the way in which the Court attended to that which, for want of a better word, I shall call hearsay evidence; although it is so much worse in its nature than anything which, in the civil and even the military courts of this country we are accustomed to stigmatize and reject under this title, that I feel I am calumniating the latter by the assimilation. In the proceedings before this Court at Demerara, the hearsay is three or four deep. One witness is asked what he has heard another person say was imputed to a third. Such evidence as that is freely admitted by the Court in a *part* of its proceedings. But before I shew where the line was drawn in this respect, I must quote a specimen or two of what I have just been adverting to. In the same page from which I derived my last quota-

tion, the following questions and answers occur:—"How long was it that Quamina remained there?—Three days: *they said* some of the people had gone down to speak to Mr. Edmonstone; that Jack had gone with them." "Do you know what has become of him (Quamina)?—After I came here, *I heard* he was shot by the bucks, and gibbeted about Success middle path." And this, Sir, is the more material, as the whole charge against Mr. Smith rested on Quamina's being an insurgent, and Mr. Smith's knowing it. So that we are here not on the mere outworks, but in the very centre and heart of the case. And this charge, be it observed, was made against Mr. Smith after Quamina was shot. It would appear, indeed, that in these colonies it was sufficient evidence of a man's being a revolter that he was first shot and afterwards gibbeted. In one part of the examination, a witness is asked, "Do you know that Quamina was a revolter?" The witness answers in the affirmative. The next question is, "How do you know it?" Now, mark, the witness is asked, not as to any rumour, but as to his own knowledge; his answer is, "I know it, because I heard they took him up before the revolt began!" This evidence is to be found in pages twenty-four and twenty-five of the London Missionary Society's Report of the Proceedings. In page thirty-five of the same publication, I find the following questions and answers in the evidence of Mr. M'Turk:—Where were you on that day (the 18th of August)?—On plantation Felicity, until five o'clock in the afternoon." "Did anything particular occur on that day?—I was informed, (mark *informed*,) I was informed by a coloured man, about four o'clock, that the Negroes intended revolting that evening; and he gave me the names of two, said to be ringleaders, viz. Cato and Quamina, of plantation Success." Here, Sir, we have a specimen

of the nature of the evidence adduced upon this most extraordinary trial.—In pages 101 and 102 of the Missionary Society's Report, I find the following passage in the evidence of John Stewart, the manager of plantation Success; and be it in the recollection of the House, that the questions were put by the Court itself before which this unfortunate man was tried:—

"Did Quamina, Jack, Bethney, Britton, Dick, Frank, Hamilton, Jessamine, Quaco, Ralph, and Windsor, belong to plantation Success at the time of the revolt?—Yes.

"Did any of these attend the chapel?—The whole of these, except Ralph.

"Have the whole, or any of these, except Quamina, *been tried* by a court martial, *and proved* to have been actually engaged in the rebellion?—I have been present at the trial of Ralph and Jack; and I have seen Ralph, Jack, Jessamine, Bethney, and Dick, but *have heard only* of the others."

"Who," again asks the Court, "was the most active of the insurgents in the revolt on plantation Success?—Richard was the most desperate and resolute; Bethney and Jessamine were very active, and all those mentioned, *except Quamina* and Jack, whom I did not see do any harm; they were keeping the rest back, and preventing them doing any injury to me."

The Court goes on to ask, "Was not Quamina a *reputed* leader (I beg the House to mark the word *reputed*, and in a question put by the Court) in the revolt?—I *heard him to be such;* but I did not see him."

Here, then, we have hearsay evidence with a vengeance; reputation proved by rumour; what a man is reputed to be—which would be no evidence of his being so if you had it at first hand—proved by what another has heard unknown persons say,—which would be no evidence of his being reputed so, if reputation were

proof. There are here at least two stages distance from any thing like evidence; but there may be a great many more. The witness had *heard* that Quamina had been a *reputed* leader; but how many removes there were in this reputed charge we are unable to learn. I next come to the evidence of the Rev. William Austin; and I find, in page 112, that on the cross-examination by the Judge-Advocate, ample provision is made for letting in this evidence of reputation and hearsay. The Judge-Advocate says,—

"Did any of these Negroes ever insinuate that their misfortunes were occasioned by the prisoner's influence on them, or the doctrines he taught them? —I have been sitting for some time as a member of the Committee of Inquiry; the idea occurs to me that circumstances have been detailed there against the prisoner, but never to myself individually in my ministerial capacity."

This line of examination is too promising, too likely to be fruitful in irregularity, for the Court to pass over: they instantly take it up, and, very unnecessarily distrusting the zeal of the Judge-Advocate, pursue it themselves.

By the Court.—"*Can you take upon yourself to swear* that you do not recollect *any insinuations* of that sort at the Board of Evidence?"

The witness here objected to the question; because he did not conceive himself at liberty to divulge what had passed before the Board of Inquiry, but particularly to the form or wording of the question, which he considered highly injurious to him. The President insisted (for it was too much to expect that even the chaplain of the government should find favour before that tribunal) upon the Reverend witness's answering the question; observing, that the Court was the best judge of its propriety. The witness then respectfully

requested the opinion of the Court, and it was cleared. Upon re-entering, the Assistant Judge-Advocate said, "The Court is of opinion that you are bound to answer questions put by the Court, even though they relate to matters stated before the Board of Evidence." And, again, the opportunity is eagerly seized of letting in reputation and hearsay evidence. The Court itself asks—

"Did you *hear* before the Board of Evidence, *any Negro imputing the cause* of the revolt to the prisoner?" —Yes, I have."

I shall now state to the House some facts with which they are, perhaps, unacquainted, as it was not until late on Saturday that the papers were delivered. Among the many strange things which took place, not the least singular was, that the prisoner had no counsel allowed, until it was too late to protect him against the jurisdiction of the court. Most faithfully and most ably did that learned person perform his duty when he was appointed; but had he acted from the beginning, he, doubtless, would have objected at once to the power of the court, as I should have done, had I been the Missionary's defender. I should have protested against the manner in which the court was constituted; I should have objected, that the men who sat in judgment in that case had previously sat upon many other cases, where the same evidence, mixed with different matter not now produced, but all confounded together in their recollection, had been repeated over and over for the conviction of other persons. I ask this House whether it was probable that the persons who formed that court, should have come to the present inquiry with pure, unprejudiced, and impartial judgments, or even with their memories tolerably clear and distinct? I say it was impossible; and, therefore, that they ought not to have sat in judg-

ment upon this poor Missionary at all. But is this the only grievance? Have I not also to complain of the manner in which the Judge-Advocate and the Court allowed hearsay evidence to be offered to the third, the fourth, aye, even to the fifth degree? Look, Sir, to what was done with respect to the confession, as they called it, of the Negro Paris. I do not wish to trouble the House by reading that confession, as I have already trespassed at some length upon their attention. It will be sufficient to state, that finding his conviction certain, and perhaps judging but too truly from the spirit of the Court, that his best chance of safety lay in impeaching Mr. Smith, he at once avows his guilt, makes what is called a full confession, and throws himself upon the mercy of the court. This done, he goes on with one of—I will say not merely the falsest—but one of the wildest and most impossible tales that ever entered into the mind of man, or that could be put to the credulity even of this court of soldiers. And yet, upon the trial of Mr. Smith, the confession of this man was kept back by the prosecutors; that is to say, it was not allowed to be directly introduced, but was introduced by means of the questions I have last read, as matter of hearsay, which had reached different persons through various and indirect channels. In that confession, Paris falsely says, that Mr. Smith administered the sacrament to them (the form of which he describes) on the day preceding the revolt; and that he then exhorted them to be of good heart, and exert themselves to regain their freedom; for if they failed then, they would never succeed in obtaining it. He says, in another place, that Mr. Smith asked him whether, if the Negroes conquered the colony, they would do any harm to him? to which Paris replied in the negative. Now, Sir, only mark the inconsistency of this man's confes-

sion. In one place, Mr. Smith is represented as anxious for his personal safety, and yet, in almost the same breath, it is said that this very Mr. Smith was the ringleader of the revolt—the adviser and planner of the insurrection—the man who joined Mr. Hamilton in recommending that the Negroes should destroy the bridges, to prevent the Whites from bringing up cannon to attack them. This Negro is made to swear, "I heard Mr. Hamilton say, that the President's wife should be his in a few days; then Jack said the Governor's wife was to be his father's wife; and that if any young ladies were living with her, or she had a sister, he would take one for his wife." Mr. Smith is pointed out as the future emperor; Mr. Hamilton was to be a general, and several others were to hold high offices of different descriptions. Again; Mr. Smith is made to state, that, unless the Negroes fought for their liberty upon that occasion, their children's children would never attain it. Now, I ask, is this story probable? Is there any thing like the shadow of truth in it? I said just now, that there was no direct mention of Paris's evidence on the trial: it was found too gross a fabrication to be produced. There were several others who, before the Board of Evidence, had given testimony similar to this, though somewhat less glaringly improbable; but their testimony also was kept back; and they themselves were sent to speedy execution. The evidence of Sandy was not quite so strong; but he, as well as Paris, was suddenly put out of the way. The tales of these witnesses bear palpable and extravagant perjury upon the face of them; they were therefore not brought forward; but the prosecutors, or rather the Court, did that by insinuation and side-wind, which they dared not openly to attempt.

I say that the Court did this; the Court, well knowing

that no such witnesses as Paris and Sandy *could* be brought forward—men, the excesses of whose falsehoods utterly counteracted the effect of their statements—contrived to obtain the whole benefit of those statements, unexposed to the risk of detection, by the notable device of asking one who had heard them, a general question as to their substance; the prisoner against whom this evidence was given, having no knowledge of the particulars, and no means of showing the falsehood of what was told, by questioning upon the part which was suppressed, "Did you hear any Negro, before the Board of Evidence, impute the cause of the revolt to the prisoner?" When, compelled to answer this monstrous question, the witness could only say, Yes; he *had* heard Negroes impute the cause to the prisoner; but they were the Negroes Paris and Sandy (and those who put this unheard-of question knew it but he against whom the answer was levelled knew it not)—Paris and Sandy, whose whole tale was such a tissue of enormous falsehoods as only required to be heard to be rejected in an instant; and whose evidence for that reason had been carefully suppressed.

Having said so much with respect to the nature of the evidence offered against the prisoner, and having had occasion to speak of the confessions, I shall now call the attention of the House to a letter which has been received from a gentleman of the highest respectability, and entitled to the most implicit credit, but whose name I omit to mention because he is still resident in the colony. If, however, any doubt should attach to his statement, I shall at once remove it, by mentioning the name of a gentleman to whom reference can be made on the subject—I mean the Rev. Mr. Austin. He is a man who had no prejudices or prepossessions on the subject: he is a clergyman of the Church of England, chaplain of the colony,

and I believe the curate of the only English Established Church to which 77,000 Slaves can have recourse for religious instruction. I mention this in passing, only for the purpose of shewing, that if the Slaves are to receive instruction at all, they must receive it in a great degree from members of the Missionary Society. [Mr. Brougham here read a letter, in which it was stated that the Rev. Mr. Austin had received the last confession of Paris, who stated that Mr. Smith was innocent, and he (Paris) prayed that God would forgive him the lies that Mr. —— had prevailed upon him to tell.] I shall not mention the name of the person alluded to by Paris as having put the lies into his mouth: it is sufficient at present to say, that he took a most active part in getting up the prosecution against this poor Missionary. The letter goes on to state, that similar confessions had been made by Jack and Sandy. The latter had been arrested and sent along the coast to be executed, without Mr. Austin's knowledge (as it appeared, from a wish to prevent him from receiving the confession); but that gentleman, hearing of the circumstance, proceeded with all speed to the spot, and received his confession to the above effect. He also went to see Jack, who informed him that Mr. Smith was innocent, and that he (Jack) had said nothing against him but what he had been told by others. Now I beg the House to attend to what Jack, at his trial, said against Mr. Smith; giving a statement which had been put into his mouth by persons who wished to injure Mr. Smith, and bring the character of Missionaries generally into disrepute. This poor wretch said that he had lived thirty years on Success estate, and that he would not have acted as he had done, if he had not been told that the Negroes were entitled to their freedom, but that their masters kept it from them. He

went on to say, that not only the deacons belonging to Bethel Chapel, but even Mr. Smith himself, had affirmed this, and were acquainted with the fact of the intended revolt; and this he stated as if, instead of being on his own trial, he was a witness against Mr. Smith. He also threw himself on the mercy of the Court. Now what did the Court do? They immediately examined a Mr. Herbert, and another gentleman, as to this confession. The former stated, that he took the substance of the confession down in the Negro's own language to a certain point; the rest was taken down by a gentleman whom I refrain from naming, but who, I am bound to say, deserves no great credit for the part which he acted in this unhappy scene. Jack, in this defence, thus prepared and thus anxiously certified, says, or is made to say,—"I am satisfied I have had a fair trial. I have seen the anxiety with which every member of this court martial has attended to the evidence, and the patience with which they have listened to my cross-examination of the witnesses. From the hour I was made prisoner by Captain M'Turk up to this time, I have received the most humane treatment from all the Whites; nor have I had a single insulting expression from a White man, either in prison or anywhere else. Before this Court, I solemnly avow that many of the lessons and discourses taught, and the parts of Scripture selected for us in Chapel, tended to make us dissatisfied with our situation as Slaves; and, had there been no Methodists on the east coast, there would have been no revolt, as you must have discovered by the evidence before you: the deepest concerned in the revolt were the Negroes most in Parson Smith's confidence. The half sort of instruction we received I now see was highly improper: it put those who could read on examining the Bible, and selecting passages

applicable to our situation as Slaves; and the promises held out therein were, as we imagined, fit to be applied to our situation, and served to make us dissatisfied and irritated against our owners, as we were not always able to make out the real meaning of these passages: for this I refer to my brother-in-law, Bristol, if I am speaking the truth or not. I would not have avowed this to you now, were I not sensible that I ought to make every atonement for my past conduct, and put you on your guard in future." Wonderful indeed are the effects of prison discipline within the tropics! I would my Honourable Friend, the Member for Shrewsbury, were here to witness them. Little indeed does he dream of the sudden change which a few weeks of a West-Indian dungeon can effect upon a poor, rude, untutored African! How swiftly it transmutes him into a reasoning, speculating creature; calmly philosophizing upon the evils of half education, and expressing himself in all but the words of our poet, upon the dangers of a little learning; yet evincing by his own example, contrary to the poet's maxim, how wholesome a shallow draught may prove when followed by the repose of the gaol! Sir, I defy the most simple of mankind to be for an instant deceived by this mean and clumsy fabrication. Every line of it speaks its origin, and demonstrates the base artifices to which the Missionary's enemies had recourse, by putting charges against him into the mouth of another prisoner, trembling upon his own trial, and crouching beneath their remorseless power.

I have stated that, up to a certain point, the court received hearsay evidence, and with unrestricted liberality. But the time was soon to come when a new light should break in—the eyes of those just judges be opened to the strict rules of evidence,—and every thing like hearsay be rejected. In page 116 I

find, that, when the prisoner was questioning Mr. Elliott as to what another person, Mr. Hopkinson, had said, an objection was taken, the court was cleared, and, on its being re-opened, the Assistant Judge-Advocate thus addressed Mr. Smith:—"The Court has ordered me to say, that you must confine yourself to the strict rules of evidence; and that hearsay evidence will not IN FUTURE be received." Will not IN FUTURE be received!!! UP TO THAT PERIOD IT HAD BEEN RECEIVED; nay, the judges themselves had put the very worst questions of that description. I say, that great as had been the blame due to the Judge-Advocate upon this occasion; violent, partial, unjust, and cruel as had been his conduct towards the prisoner; much as he had exceeded the limits of his duty; flagrantly as he had throughout wronged the prisoner in the discharge—I was about to say in the breach—of his official duty; and grievously culpable as were some other persons to whom I have alluded,—their conduct was decorous in itself, and harmless in its consequences, compared with the irregularity, the gross injustice, of the judges who presided. Well, then, when the prosecutor's case was closed, and sufficient matter was supposed to have been obtained by the most unblushing contempt of all rules, from the cross-examination of the prisoner's witnesses, those same judges suddenly clothed themselves with the utmost respect for those same rules, in order to hamper the prisoner in his defence, which they had systematically violated in order to assist his prosecution. After admitting all hearsay, however remote,—after labouring to overwhelm him with rumour, and reputation, and reports of reputation, and insinuation at second hand,—they strictly prohibited every thing like hearsay where it might avail him for his defence. Nay, in their eagerness to adopt the new course of proceed-

ing, and strain the strict rules of law to the uttermost against him, they actually excluded, under the name of hearsay, that which was legitimate evidence. The very next question put by Mr. Smith went to show that he had not concealed the movements of the Slaves from the manager of the estate; the principal charge against him being concealment from "the owners, managers, and other authorities." Did any conversation pass on that occasion between Mr. Stewart, yourself, and the prisoner, relative to Negroes; and if so, will you relate it?"—Rejected. "Did the prisoner tell Mr. Stewart, that several of the Negroes had been to inquire concerning their freedom, which they found had come out for them?"—Rejected. These questions, and several others, which referred to the very essence of the charge against him, were rejected. How then can any effrontery make men say that this poor Missionary had an impartial trial? To crown so glaring an act of injustice can any thing be wanting? But if it were, we have it here. The Court resolved that its worst acts should not appear on the minutes: it suppressed those questions; and expunged also the decision, forbidding hearsay evidence FOR THE FUTURE! But the rule having, to crush the prisoner, been laid down, we might at least have expected that it would be adhered to. No such thing. The moment that an occasion presents itself, when the rule would hamper the prosecutor and the judges, they abandon it, and recur to their favourite hearsay. In the very next page, we find this question put by the Court,—"Previous to your going to chapel, *were you told* that plenty of people were there on that day?" If hearsay evidence was thus received or rejected as best suited the purpose of compassing the prisoner's destruction, other violations of law, almost as flagrant, were resorted to, with the same view. Conversations

with Mrs. Smith, in her husband's absence, were allowed to be detailed: the sentences passed upon five other persons, previously tried, were put in, and I should suppose privately read by the Court, as I find no allusion to them in the prisoner's most able and minute defence, which touches on every other particular of the case; and all mention of those sentences is suppressed in the minutes transmitted by the Court. For the manifest purpose of blackening him in the eyes of the people, and with no earthly reference to the charges against him, a long examination is permitted into the supposed profits he made by a sale of Bibles, Prayer and Psalm-books, and Catechisms; and into the donations he received from his Negro flock, and the contributions he levied upon them for church dues: every one tittle of which is satisfactorily answered and explained by the evidence, but every one tittle of which was wholly beside the question.

I find, Sir, that many material circumstances which occurred on the trial are altogether omitted in the House copy. I find that the evidence is garbled in many places, and that passages of the prisoner's defence are omitted; some because they were stated to be offensive to the Government,—others because they were said to be of a dangerous tendency,—others, again, because the Court entertained a different opinion on certain points from the prisoner, or because they might seem to reflect upon the Court itself. Mr. Smith was charged with corrupting the minds of the Slaves, and enticing them to a breach of their duty, and of the law of the land, because he recommended to them not to violate the Sabbath. It was objected against him also by some, that he selected passages from the Old Testament; and by others, that he did not, as he ought, confine himself to certain parts of

the New Testament: others, again, found fault with him for teaching the Negroes to read the Bible. And when, in answer to these charges, he cited passages from the Bible in his defence, he was told that he must not quote Scripture, as it was supposed that every member of the Court was perfectly acquainted with the Sacred Writings—a supposition which certainly does not occur to one on reading their proceedings. By others, again, this poor man was held up as an enthusiast, who performed his functions in a wild and irregular manner. It was said that his doctrines were of a nature to be highly injurious in any situation, but peculiarly so amongst a Slave population. In proof of this assertion, it was stated, that the day before the revolt he preached from Luke xix. 41, 42—"And when He was come near, He beheld the city, and wept over it; saying, If thou hadst known, even thou, in this thy day, the things which belong unto thy peace! but now they are hid from thine eyes." Thus was this passage, which has been truly described by the Rev. Mr. Austin as a text of singular beauty, turned into matter of accusation and reproach against this unfortunate missionary. But if this text was held to be so dangerous—so productive of insubordination and rebellion—what would be said of the clergy of the Established Church, of whose doctrines no fear was entertained? The text chosen by Mr. Smith on this occasion appeared, to the heated imagination of his judges, to be one which endangered the peace of a Slave community. Very different was the opinion of Mr. Austin, the colonial chaplain, who could not be considered as inflamed with any daring, enthusiastic, and perilous zeal. But what, I ask, might not the same alarmists have said of Mr. Austin, who, on that very day, the 17th of August, had to read, as indeed he was by the rubric bound to do, perhaps in the pre-

sence of a large body of black, white, and coloured persons, such passages as the following, which occur in one of the lessons of that day, the 14th chapter of Ezekiel. "When the land sinneth against me by trespassing grievously, then I will stretch out mine hand upon it, and will break the staff of the bread thereof, and will send famine upon it, and will cut off man and beast from it." "Though these three men" (who might easily be supposed to be typical of Mr. Austin Mr. Smith, and Mr. Elliott), "were in it, they shall deliver neither sons nor daughters: they only shall be delivered, but the land shall be desolate. Or if I bring a sword upon that land, and say, Sword, go through the land, so that I cut off man and beast from it; Though these three men were in it, as I live, saith the Lord God, they shall deliver neither sons or daughters; but they only shall be delivered themselves." Let me ask any impartial man if this is not a text much more likely to be mistaken than the other? And yet every clergyman of the Established Church was bound to read it on that day in that colony.

The charges against Mr. Smith are four. The first states, that, long before the 18th of August, he had promoted discontent and dissatisfaction amongst the slaves against their lawful masters. This charge was clearly beyond the jurisdiction of the court; for it refers to matters before martial law was proclaimed, and consequently before Mr. Smith could be amenable to that law. Supposing that, as a court martial, they had a right to try a clergyman for a civil offence, which I utterly deny, it could only be on the principle of martial law having been proclaimed that they were entitled to do so. The proclamation might place him, and every other man in the colony, in the situation of a soldier; but if he was to be considered as a soldier, it could only be after the 19th of August. Admitting,

then, that the Rev. John Smith was a soldier, under the proclamation, he was not such on the 18th, on the 17th, nor at any time before the transactions which are called the revolt of Demerara; and yet it was upon such a charge that the court martial thought proper to try him, and upon which alone it could try him, if it tried him at all. But they had no more right, I contend, to try him for things done before the 19th, in the character of a soldier liable to martial law, than they would have to try a man, who had enlisted to-day, for acts which he had committed the day before yesterday, according to the same code of military justice. The same reasoning applies to three of the four charges. There is only one charge, that of communicating with Quamina touching the revolt, which is in the least entitled to consideration; yet this very communication might have been to discourage, and not to excite or advise the revolt. In fact, it was clearly proved to have been undertaken for that purpose, notwithstanding the promises of the Judge-Advocate to prove the contrary. There are three things necessary to be established before the guilt of this unfortunate man can be maintained on this charge; first, that Quamina was a revolter; secondly, that Mr. Smith knew him to be a revolter; and thirdly, that he had advised and encouraged him in the revolt;—for the misprision, the mere concealment, must be abandoned by those who support the sentence, inasmuch as misprision is not a capital offence. But all the evidence shews that Quamina did not appear in such a character—that Mr. Smith was ignorant of it even if he did—and that his communication was directed to discourage, and not to advise any rash step into which the sufferings of the slaves might lead them. As to his not having seized on Quamina, which is also made a charge, the answer which the poor man himself gave was a sufficient reply

to any imputation of guilt that might be founded on this omission. "Look," said he, "on these limbs, feeble with disease, and say how was it possible for me to seize a powerful robust man, like Quamina, inflamed with the desire of liberty, as that slave must have been if he were a revolter, even if I had been aware that he was about to head a revolt." But, in truth, there is not a tittle of evidence that Mr. Smith knew of the revolt; while there is abundant proof that he took especial measures and watchful care to tell all he did know to the proper authorities, the managers of the estate. If, again, the defenders of the court martial retreat from this to the lower ground of mere concealment, and thus admit the illegality of the sentence in order to shew something like matter of blame in the conduct of the accused, I meet them here as fearlessly upon the fact, as I have already done upon the law of their case; and I affirm, that he went the full length of stating to Mr. Stewart, the manager of the estate, his apprehensions with respect to the impending danger; that "the lawful owners, proprietors, and managers" *were* put upon their guard by him, and were indebted to his intelligence, instead of having a right to complain of his remissness or disaffection; that he told all he knew, all he was entitled to consider as information (and no man is bound to tell mere vague suspicions, which cross his mind, and find no abiding place in it;) and that he only knew any thing precise respecting the intentions of the insurgents from the letter delivered to him half an hour before the Negroes were up in arms, and long after the movement was known to every manager in the neighbourhood. The Court, then, having no jurisdiction to sit at all in judgment upon this preacher of the Gospel—their own existence as a court of justice being wholly without the colour of lawful authority—tried him for things which, had

they ever so lawful a title to try him, were wholly beyond their commission; and of those things no evidence was produced upon which any man could even suspect his guilt, if the jurisdiction had been ever so unquestionable, and the accused had been undeniably within its range. But in spite of all the facts—in spite of his well-known character and upright conduct—it was necessary that he should be made an example for certain purposes; it was necessary that the missionaries should be taught in what an undertaking they had embarked; that they should be warned that it was at their peril they preached the Gospel; that they should know it was at the hazard of their lives that they opened the Bible to their flocks; and therefore it was that the court-martial deemed it expedient to convict Mr. Smith, and to sentence him to be hanged by the neck until he was dead!

But the Negroes, it seems, had grumbled at the reports which went abroad respecting their liberation by an act of his Majesty, and the opposition said to be given to it by their proprietors. Who propagated those reports? Certainly not Mr. Smith. It is clear that they originated, in one instance, from a servant who attended at the Governor's table, and who professed to have heard them in the conversations which took place between the Governor and his guests. Another account was, that a kept woman had disclosed the secret, having learnt it from her keeper, Mr. Hamilton. The Negroes naturally flocked together to inquire whether the reports were true or not; and Mr. Smith immediately communicated to their masters his apprehensions of what he had always supposed possible, seeing the oppression under which the slaves laboured, and knowing that they were men. But it is said, that at six o'clock on the Monday evening, one half hour before the rebellion broke out, he did not

disclose what he could not have known before,—namely, that a revolt was actually about to commence. Now, taking this fact, for the sake of argument, to be proved to its fullest extent, I say that a man convicted of misprision cannot by the law be hanged. The utmost possible vengeance of the law, according to the wildest dream of the highest prerogative lawyer, could not amount to any thing like a sanction of this. Such I assert the law to be. I defy any man to contradict my assertion, that up to the present hour, no English lawyer ever heard of misprision of treason being treated as a capital offence; and that it would be just as legal to hang a man for a common assault. But if it be said that the punishment of death was awarded for having aided the revolt, I say the Court did not, could not, believe this; and I produce the conduct of the judges themselves to confirm what I assert. They were bold enough in trying, and convicting, and condemning the victim whom they had lawlessly seized upon; but they trembled to execute a sentence so prodigiously illegal and unjust; and having declared that, in their consciences and on their oaths, they deemed him guilty of the worst of crimes, they all in one voice add, that they also deem him deserving of mercy in respect of his guilt! Is it possible to draw any other inference from this marvellous recommendation, than that they distrusted the sentence to which it was attached? When I see them affrighted by their own proceedings—starting back at the sight of what they had not scrupled to do—can I give them credit for any fear of doing injustice; they who from the beginning to the end of their course had done nothing else? Can I believe that they paused upon the consummation of their work from any motive but a dread of its consequences to themselves; a recollection tardy, indeed, but appalling, that "Whoso shed-

deth man's blood, by man shall his blood be shed?" And not without reason, not without irrefragable reason did they take the alarm; for verily if they HAD perpetrated the last act—if they had DARED to take this innocent man's life (one hair of whose head they durst not touch), they must THEMSELVES have died the death of the murderer! Monstrous as the whole proceedings were, and horrid as the sentence that closed them, there is nothing in the trial from first to last so astounding as this recommendation to mercy, coming from persons who affected to believe him guilty of such enormous crimes. If he was proved to have committed the offence of exciting the slaves to acts of bloodshed—if his judges believed him to have done what their sentence alleged against him—how unspeakably aggravated was his guilt, compared with that of the poor untutored slaves, whom he had misled from their duty under the pretext of teaching them religion! How justly might all the blood that was shed be laid upon his head! How fitly, if mercy was to prevail, might his deluded instruments be pardoned, and himself alone singled out for vengeance, as the author of their crimes! Yet they are cut off in hundreds by the hand of justice, and he is deemed an object of compassion!

How many victims were sacrificed we know not with precision. Such of them as underwent a trial before being put to death, were judged by this court-martial. Let us hope that they had a fair and impartial trial, more fair and more impartial than the violence of political party and the zeal of religious animosity granted to their ill-fated pastor. But without nicely ascertaining how many fell in the field, or by the hands of the executioner, I fear we must admit that far more blood was thus spilt than a wise and a just policy required. Making

every allowance for the alarms of the planters, and the necessity of strong measures to quell a revolt, it must be admitted, that no more examples should have been made than were absolutely necessary for this purpose. Yet, making every allowance for the agitation of men's minds at the moment of danger, and admitting (which is more difficult) that it extended to the colonial government, and did not subside when tranquillity was restored, no man can avoid suspecting, that the measure of punishment inflicted considerably surpassed the exigencies of the occasion. By the Negroes, indeed, little blood had been shed at any period of the revolt, and in its commencement none at all: altogether only one person was killed by them. In this remarkable circumstance, the insurrection stands distinguished from every other movement of this description in the history of colonial society. The slaves, inflamed by false hopes of freedom, agitated by rumours, and irritated by the suspense and ignorance in which they were kept, exasperated by ancient as well as more recent wrongs (for a sale of fifty or sixty of them had just been announced, and they were about to be violently separated and dispersed), were satisfied with combining not to work; and thus making their managers repair to the town, and ascertain the precise nature of the boon reported to have arrived from England. The calumniated minister had so far humanized his poor flock—his dangerous preaching had so enlightened them—the lessons of himself and his hated brethren had sunk so deep in their minds, that, by the testimony of the clergyman, and even of the overseers, the maxims of the Gospel of peace were upon their lips in the midst of rebellion, and restrained their hands when no other force was present to resist them. "We will take no life," said they; "for our Pastors have

taught us not to take that which we cannot give;"— a memorable peculiarity, to be found in no other passage of Negro warfare within the West-Indian seas, and which drew from the truly pious minister of the Established Church the exclamation, that "He shuddered to write that they were seeking the life of the man whose teaching had saved theirs!" But it was deemed fitting to make tremendous examples of those unhappy creatures. Considerably above a hundred fell in the field, where *they* did not succeed in putting one soldier to death. A number of the prisoners also, it is said, were hastily drawn out, at the close of the affray, and instantly shot. How many, in the whole, have since perished by sentences of the Court, does not appear; but up to a day in September, as I learn by the Gazette which I hold in my hand, forty-seven had been executed. A more horrid tale of blood yet remains to be told. Within the short space of a week, as appears by the same document, ten had been torn in pieces by the lash: some of these had been condemned to six or seven hundred lashes; five to one thousand each; of which inhuman torture one had received the whole, and two almost the whole at once. In deploring this ill-judged severity, I speak far more out of regard to the masters than the slaves. Yielding thus unreservedly to the influence of alarm, they have not only covered themselves with disgrace, but they may, if cooler heads and steadier hands control them not, place in jeopardy the life of every White man in the Antilles. Look now to the incredible inconsistency of the authorities by whom such retribution was dealt out, while they recommend *him* to mercy, whom in the same breath they pronounced a thousand times more guilty than the Slaves. Can any man doubt for an instant that they knew him to be innocent, but were minded to condemn, stigmatise,

and degrade him, because they durst not take his life, and yet were resolved to make an example of him as a preacher?

The whole proceedings demonstrate the hatred of his persecutors to be levelled at his calling and his ministry. He is denounced for reading the Old Testament; charged with dwelling upon parts of the New; accused of selling religious tracts; blamed for collecting his hearers to the sacrament and catechism; all under various pretences, as that the texts were ill chosen—the books sold too dear—the communicants made to pay high dues. Nay, for teaching obedience to the law which commands to keep holy the Sabbath, he is directly, and without any disguise, branded as the sower of sedition. Upon this overt act of rebellion against all law, human and divine, a large portion of the prosecutor's invectives and of his evidence is bestowed. What though the Reverend Defendant shewed clearly, out of the mouths of his adversary's witnesses, that he had uniformly taught the Negroes to obey their masters, even if ordered by them to break the rest of the Sabbath; that he had expressly inculcated the maxim, Nothing is wrong in you which your master commands; and nothing amiss in him which necessity prescribes? What though he reminded the Court, that the seventh day, which he was charged with taking from the slaves, was not his to give or to withhold; that it had been hallowed by the Divine Lawgiver to his own use, and exempted in terms from the work of slave as well as master—of beast as well as man? He is arraigned as a promoter of discontent, because he, the religious instructor of the Negroes, enjoins them to keep the Sabbath holy, when their owners allow them no other day for working; because he, a Minister of the Gospel, preaches a duty prescribed by the laws of religion and by the

laws of the land, while the planters live in the contempt of it. In short, no man can cast his eye upon this trial, without perceiving that it was intended to bring on an issue between the System of the Slave-law and the Instruction of the Negroes. The exemplar which these misguided men seem to have set before them is that of their French brethren in St. Domingo: one of whom, exulting in the expulsion of the Jesuits, enumerates the mischiefs occasioned by their labours. "They preached," says he, "they assembled the Negroes, made the masters relax in their exactions, catechised the Slaves, sung psalms, and confessed them." "Since their banishment," he adds, "marriages are rare; the Negroes no longer make houses for themselves apart: it is no longer allowable for two Slaves to separate for ever their interest and safety from that of the gang" (a curious circumlocutory form of speech to express the married state.) "No more public worship!" he triumphantly exclaims, "no more meetings in congregation! no psalm-singing, nor sermons for them!" "But they are still catechised; and may, on paying for it, have themselves baptized three or four times" (upon the principle, I suppose, that, like inoculation, it is safer to repeat it.) In the self-same spirit the Demerara public meeting of the 24th of February 1824, resolved forthwith to petition the Court of Policy "to expel all missionaries from the colony, and to pass a law prohibiting their admission for the future." Nor let it be said, that this determination arose out of hatred towards sectaries, or was engendered by the late occurrences. In 1808, the Royal Gazette promulgated this doctrine, worthy of all attention: "He that chooses to make Slaves Christians, let him give them their liberty. What will be the consequence when to that class of men is given the title of BELOVED BRETHREN as actually is done?

Assembling Negroes in places of worship gives a momentary feeling of independence both of thinking and acting, and by frequent meetings of this kind a spirit of remark is generated; neither of which are sensations at all proper to be excited in the minds of Slaves." Again, in 1823, says the Government paper, "To address a promiscuous audience of black or coloured people, bond and free, by the endearing appellation of 'My brethren and sisters,' is what can no where be heard except in Providence Chapel;"—a proof how regularly this adversary of sectarian usages had attended the service of the Church. And, in February last, the same judicious authority, in discussing the causes of the discontents, and the remedy to be applied, thus proceeds:—"It is most unfortunate for the cause of the planters, that they did not speak out in time. They did not say, as they *ought* to have said, to the first advocates of missions and *education*, We shall not tolerate your plans till you prove to us that they are safe and necessary; we shall not suffer you to enlighten our Slaves, *who are by law our property*, till you can demonstrate that when they are made religious and knowing they will still continue to be our Slaves."—"In what a perplexing predicament do the colonial proprietors now stand! Can the march of events be possibly arrested! Shall they be allowed to shut up the chapels, and *banish the preachers and schoolmasters*, and keep the Slaves in ignorance? This would, indeed, be an effectual remedy; *but there is no hope of its being applied!!!*"—"The obvious conclusion is this,—*Slavery must exist as it now is, or it will not exist at all.*" "If we expect to create a community of *reading, moral, church-going* Slaves, we are woefully mistaken."—Ignorant! oh, profoundly ignorant, of the things that belong to their PEACE! may we truly say, in the words of the missionary's beautiful text,—to

that peace, the disturbance of which they deem the last of evils. Were there not dangers enough besetting them on every side without this? The frame of West Indian society, that monstrous birth of the accursed Slave trade, is so feeble in itself, and, at the same time, surrounded with such perils from without, that barely to support it demands the most temperate judgment, the steadiest and the most skilful hand; and, with all our discretion, and firmness, and dexterity, its continued existence seems little less than a miracle. The necessary hazards, to which, by its very constitution, it is hourly exposed, are sufficient, one should think, to satiate the most greedy appetite for difficulties—to quench the most chivalrous passion for dangers. Enough that a handful of Slave-owners are scattered among myriads of Slaves—enough, that in their nearest neighbourhood a commonwealth of those Slaves is now seated triumphant upon the ruined tyranny of their slaughtered masters—enough, that, exposed to this frightful enemy from within and without, the planters are cut off from all help by the ocean. But to odds so fearful, these deluded men must needs add new perils absolutely overwhelming! By a bond, which nature has drawn with her own hand, and both hemispheres have witnessed, they find leagued against them every shade of the African race, every description of those swarthy hordes, from the peaceful Eboe to the fiery Koromantyn. And they must now combine in the same hatred the Christians of the Old world with the Pagans of the New! Barely able to restrain the natural love of freedom, they must mingle it with the enthusiasm of religion,—vainly imagining that spiritual thraldom will make personal subjection more bearable;—wildly hoping to bridle the strongest of the human passions, in union and in excess,—the desire of liberty irritated by despair, and the fervour

of religious zeal by persecution exasperated to frenzy. But I call upon Parliament to rescue the West Indies from the horrors of such a policy; to deliver those misguided men from their own hands. I call upon you to interpose while it is yet time to save the West Indies; first of all, the Negroes, the most numerous class of our fellow-subjects, and entitled beyond every other to our care by a claim which honourable minds will most readily admit,—their countless wrongs, borne with such forbearance, such meekness, while the most dreadful retaliation was within their grasp; next, their masters, whose short-sighted violence is, indeed, hurtful to their slaves, but to themselves is fraught with fearful and speedy destruction, if you do not at once make your voice heard and your authority felt, where both have been so long despised.

I move you "That an Humble Address be presented to his Majesty, setting forth, that the House, having taken into their most serious consideration the proceedings which had taken place on the trial of the Reverend John Smith, at Demerara, contemplated with the most serious alarm the violation of Law and Justice which had there been committed; and they did earnestly pray, that His Majesty would be most graciously pleased to give orders for such an impartial and humane administration of the law in that Colony as may secure the rights not only of the Negroes, but of the Planters themselves."

SPEECH,

IN REPLY,

IN THE CASE OF THE

REV. JOHN SMITH,

THE MISSIONARY.

DELIVERED IN THE HOUSE OF COMMONS,

JUNE 11, 1824.

REPLY

IN THE MISSIONARY'S CASE.

I do assure the House, that I feel great regret at having to address them again so late in the night; but, considering the importance of the case, I cannot be satisfied to let it rest where it is, without trespassing upon their patience for a short time—and it shall be for as short a time as possible: indeed, that I rise at all is chiefly in consequence of the somewhat new shape into which the proposition of the right honourable gentleman opposite * has thrown the question. For, Sir, as to the question itself, on the merits of which I before presumed at such length on the indulgence of the House, not only have I heard nothing to shake the opinion which I originally expressed, or to meet the arguments which I feebly endeavoured to advance in its support, but I am seconded by the admissions of those who would resist the motion: for, beside the powerful assistance I have had the happiness of receiving from my honourable and learned friends on the benches around me, and who, one after another, have distinguished themselves in a manner never to be forgotten in this House, or by

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* Mr. Canning.

their country*—men of all classes, and of all parties, without regard to difference of political sentiments or of religious persuasion, will hold them in lasting remembrance, and pronounce their honoured names with unceasing gratitude, for the invaluable service which their brilliant talents and honest zeal have rendered to the cause of truth and justice.—Beside this, what have I on the other side? Great ability, no doubt, displayed—much learning exhibited—men of known expertness and high official authority put in requisition—others for the first time brought forward in debate—an honourable and learned friend of mine, for whom I have the most sincere esteem, and the best grounded, because it rests on a long and intimate knowledge of his worth, and of those talents and accomplishments of which I did not for the first time to-night witness the exhibition, although they have now first met the universal admiration of this House;† —yet with all those talents, and all that research from him and from others who followed him, instead of an answer, instead of any thing to controvert the positions I set out with, I find support. I have an admission—for it amounts to nothing less than an admission—a confession—a plea of guilty, with a recommendation to mercy.

We have an argument in mitigation of the punishment of this Court Martial, and of the government who put their proceedings in motion—nothing against Mr. Smith, nothing on the merits or in favour of those proceedings. An attempt, no doubt, was made, by my honourable and learned friend the Attorney General,‡ to go a little further than any other gentle-

* Mr. (now Lord Chief Justice) Denman; Mr. (now Mr. Justice) Williams; Sir James Mackintosh and Dr. Lushington. The speeches of the two former have already been mentioned. Dr. Lushington's was of the very highest merit. Sir J. Mackintosh's was excellent also.

† Mr. (now Lord Chief Justice) Tindal, who then first spoke in Parliament.

‡ Sir J. Copley, now Lord Lyndhurst, who spoke with his accustomed ability.

man who has addressed the House. He would fain have stept beyond the argument which alone has been urged from all other quarters against this poor missionary, and would have attempted to show that there was some foundation for the charge which makes him an accomplice, as well as guilty of misprision: all others, as well of the legal profession as laymen, and particularly the Secretary of State,* who spoke last but one, have at once abandoned, as utterly desperate, each and every of the charges against Mr. Smith, except that of misprision; and even this they do not venture very stoutly to assert. "It is something like a misprision, says the right honourable Secretary;—for the House will observe, that he would not take upon himself to say that the party *had* been guilty of misprision of treason, strictly so called. He would not attempt to say there was any treason in existence, of which a guilty concealment could take place; still less would he undertake to affirm (which is, however, necessary, in order to make it misprision at all) that Mr. Smith had known a treason to exist in a specific and tangible shape, and that after this knowledge was conveyed to him, he had sunk it in his own breast instead of divulging it to the proper authorities.

All the charge was this—in this it began, in this it centered, in this it ended: "I cannot help thinking," said the right honourable gentleman, "when I take every thing into consideration, whatever may be the facts as to the rest of the case—I cannot get out of my mind the *impression*, that, somehow or other, he must have known that all was not right; must have suspected that there might be *something wrong;* and knowing, or suspecting, there was *something wrong*, he did not communicate that *something* to the lawful

* Mr. Canning, who moved the previous question after Mr. (now Sir R.) Wilmot Horton had met the motion with a negative.

authorities!" My honourable and learned friend,* indeed, went a little further: he felt, as a lawyer, that this was not enough, and particularly when we are talking, not merely of a crime, but of a capital crime — not merely of a charge of guilty, and of "*something wrong*," and of having a misgiving in your mind that that "*something wrong*" was known to him, and, being known to him, was concealed by him;—but that on this *something* was to be founded, not barely an accusation of wrong doing, but a charge of criminality; and not merely a charge, but a conviction; and not merely a conviction of guilt, but a conviction of the highest guilt known to the law of this or of any country; and a sentence of death following that capital conviction; and that ignominious sentence standing unrepealed, though unexecuted; sanctioned, nay adopted, by the Government of this country, because suffered to remain unrescinded; and carried into effect, as far as its authors durst themselves give it operation, by treating its object as a criminal, and making *him* owe his escape to mercy, who was entitled to absolute acquittal. Accordingly, what says my honourable friend,† in order to shew that there was some foundation for those proceedings? He feels that English law will not do; that is quite out of the question; so does the Attorney General. Therefore forth comes their Dutch code; and upon it they are fain, at least for a season, to rely. They say, "True it is, all this would have been too monstrous to be for one instant endured in any court in England;—true, there is nothing like a capital crime committed here;—certain it is, if treason had been committed by some men conspiring the death of the king; if an overt act had been proved; if the very bond of the conspirators had been produced, with

* The Attorney General. † Mr. Tindal.

their seals, in court, to convict them of this treason; and if another man, namely, Smith, had been proved to have known it, to have seen the bond with the seals and the names of the conspirators upon it, had been the confidential depositary of their secret treasons, and had done all but make himself their accomplice, he might have known it, he might have seen its details in black and white, he might have had it communicated to him by word or by writing, he might have had as accurate knowledge of it as any man has of his own household, and he might have buried the secret in his own breast, so that no one should learn it until the design, well matured, was at length carried openly into execution; and yet that knowledge and concealment, that misprision of treason, could not by possibility have subjected him to capital punishment in any English court of justice!"

This they know, and this they admit; and the question being, What shall we do, and how shall we express our opinion on the conduct of a Court Martial, which, having no jurisdiction with respect to the offence, even if the person of the prisoner had been under their authority, chose to try him over whom they had no jurisdiction of whatever offence he might be accused;—and, moreover, to try him capitally for an offence for which no capital sentence could be passed, even if the party had been amenable to their jurisdiction, and if, when put upon his trial, he had at once pleaded guilty, and confessed that he had committed all he was accused of a hundred times over—this being the question before the House,—my honourable and learned friends being called upon to say how we shall deal with those who first arrogate to themselves an authority utterly unlawful, and then sentence a man, whom they had no pretence for trying, to be hanged for that which he never did, but which, had he done it, is not a capital crime:—such being the question,

the gentlemen on the other side, feeling the pinch of it, and aware that there is no warrant for such a sentence in the English law, betake themselves to the Dutch, contending that it punishes misprision with death!

But here my honourable friend* gets into a difficulty, which all his acuteness only enables him to see the more clearly that there is no struggling against, and from which the whole resources of his learning have no power to extricate him. Nay—I speak it with the most sincere respect for him—I was not the only person who felt, as he was going on, that in this part of his progress he seemed oppressed with the nature of his task, and, far from getting over the ground with as easy a pace and as firm a footstep as usual, he hesitated and even stumbled; as if unaware beforehand of the slipperiness of the path, and only sensible of the kind of work he had undertaken when already in the midst of it. The difficulty, the insurmountable difficulty, is this: You must choose between jurisdiction to try at all, and power to punish misprision capitally; both you cannot have by the same law. If the Dutch law make the crime capital, which the English does not, the Dutch law gives you no right to try by a military tribunal. The English law it was that alone could make the Court Martial legal; so, at least, the court and the prosecutor say. "Necessity," they assert, "has no law—proclaim martial law, every man is a soldier, and amenable to a military court." They may be right in this position, or they may be wrong; but it is their only defence of the jurisdiction which they assumed. By the law of England, then, not of Holland, was the court assembled. According to English forms it sate; to English law-principles it affected to square its modes of proceeding; to authorities of English law it con-

* Mr. Tindal.

stantly appealed. Here indeed, this night, we have heard Dutch jurists cited in ample profusion; the erudite Van Schooten, the weighty Voetius, the luminous Huber, ornaments of the Batavian school—and Dommât, who is neither Dutch nor English, but merely French, and therefore has as much to do with the question, in any conceivable view, as if he were a Mogul doctor; yet his name too is brandished before us, as if to shew the exuberance and variety of the stores at the command of my honourable and learned friends.

But was any whisper of all this Hollandish learning ever heard in the court itself? Was it o n those worthies that the parties themselves relied, for whom the fertile and lettered invention of the gentlemen opposite is now so nimbly forging excuses? No such thing. They appealed to the Institutes of that far-famed counsellor of justice, Blackstone; the edict of the States-General, commonly called the "Mutiny Act;" the Crown Law of that elaborate commentator of Rotterdam, Hawkins; and the more modern tractate upon Evidence of my excellent friend, the very learned professor Phillips of Leyden. It is to these authorities that the Judge Advocate, or rather the many Judge Advocates who were let loose upon the prisoner, constantly make their appeal; with quotations from these laws and these text-writers that they garnish their arguments; and Voet, and Van Schooten, and Huber, are no more mentioned than if they had never existed, or Guiana had never been a colony of the Dutch. Thus, then, in order to get jurisdiction, without which you cannot proceed one step, because the whole is wrong from the beginning if you have it not, you must abandon your Dutch authors, leave your foreign codes, and be content with that rude, old-fashioned system, part written, part traditional, the half-Norman half-Saxon code, which we are wont (and no man more than

my honourable and learned friend, himself one of its choicest expounders) to respect, under the name of the old every-day law of England. Without that you cannot stir one step. Having gotten your foot on that, you have something like a jurisdiction, or at least a claim to a jurisdiction, for the Court Martial. But, then, what becomes of your capital punishment? Where is your power of putting to death for misprision? Because, the instant you abandon the Dutch law, away goes capital punishment for misprison; and if you acquit this Court Martial of the monstrous solecism (I purposely avoid giving it a worse name) of having pronounced sentence of death for a clergyable offence, you can only do so by having recourse to the Dutch law, and then away goes the jurisdiction:—so that the one law takes from you the jurisdiction—the authority to try at all; —and the other takes away the right to punish as you have punished. Between the horns of this dilemma I leave my honourable and learned friend, as I must of necessity leave him where he has chosen to plant himself; suspended in such a fashion that he can never, by any possibility, quit the one point, without instantly being transfixed upon the other.

Now, this is no immaterial part of the argument; on the contrary, it lies at the foundation of the whole; and I cannot help thinking, that the practised understanding of my other learned friend* perceived its great importance, and had some misgivings that it must prove decisive of the question; for he applied himself to strengthen the weak part, to find some way by which he might steer out of the dilemma—some middle course, which might enable him to obtain the jurisdiction from one law, and the capital punishment from the other. Thus, according to him, you must neither proceed

* The Attorney-General.

entirely by the Dutch, nor yet entirely by the English law, but just take from each what suits your immediate purpose, pursuing it no further than the necessities of your case require, and the flaws in that case render safe. The English law gives you jurisdiction: use it then to open the doors: but, having them thus flung open, allow not to enter the gracious figure of English justice, with those forms, the handmaids that attend her. Make way for the body of Dutch jurisprudence, and enthrone her, surrounded with her ministers, the Hubers, and Voets, and Van Schootens. Now this mode of treating a difficulty is one of the most ordinary, and among the least excusable, of all sophisms; it is that by which, in order to get rid of an absurdity inherent in any proposition, we arbitrarily and gratuitously alter its terms, as soon as we perceive the contradictory results to which it necessarily leads; carving and moulding our data at pleasure; not before the argument begins, but after the consequences are perceived. The alteration suddenly made arises, not out of the argument, or the facts, or the nature of things; but is made violently, and because there is no doing without it; and it is never thought of till this necessity is discovered. Thus, no one ever dreamt of calling in the Dutch code, till better lawyers than the Court Martial found that the English law condemned half their proceedings; and then the English was abandoned, until it was perceived that the other half stood condemned by the Dutch. Therefore a third expedient is resorted to, that of a party-coloured code; the law under which they claim their justification is to be part Dutch, when that will suit; part English, when they can't get on without it; something compounded of both, and very little like either;—showing to demonstration that they acted without any law, or only set about discovering by what law they acted

after their conduct was impeached; and then were forced to fabricate a new law to suit their proceedings, instead of having squared those proceedings to any known rule of any existing law on the face of the earth.

To put all such arbitrary assumptions at once to flight, I need only remind the House how the jurists of Demerara treated the Dutch law. Admitting, for argument's sake, that the doors of the court were opened by the English law giving them jurisdiction, then that by violence the Dutch law was forced through the door, and made to preside, of course we shall find all appeal to English statutes, and forms, and common law, cease from the instant that they have served their purpose of giving jurisdiction, and every thing will be conducted upon Dutch principles. Was it so? Was any mention made, from beginning to end, of Dutch rules or Dutch forms? Was there a word quoted of those works now so glibly referred to? Was there a single name pronounced of those authorities, for the first time cited in this House to-night? Nothing of the kind. All was English, from first to last: all the laws appealed to on either side, all the writers quoted, all the principles laid down, without a single exception, were the same that would have been resorted to in any court sitting in this country; and the Court Martial were content to rest their proceedings upon our own law, and to be an English judicature, or to be nothing at all.

Sir, I rejoice (well knowing that a legal argument, whether Dutch or English, or, like the doctrine I have been combating, made up of both, is at all times very little of a favourite with this House, and less than ever at the hour of the morning to which we are now approaching,) I rejoice greatly that what I have said, coupled with the far more luminous and cogent reasons which have been urged

by my honourable and learned friends around me, may suffice to settle the point of law, and relieve me from the necessity of detaining you longer upon so dry a part of the question. My only excuse for having gone so far into it, is its intimate connexion with the defence of the court martial, of whose case it indeed forms the very corner-stone. And now, in passing to the merits of the inquiry, before that court, I have to wish that my honourable and learned friend, the member for Peterborough* was here in his place; that, after the example of others who have gone before me, I too might in my turn have taken the opportunity of paying my respects to him. But, if he has gone himself, he has left a worthy representative in the honourable Under Secretary for Colonial Affairs,† by whom, in the quality for which his very remarkable speech the other night shone conspicuous—I mean, an entire ignorance of the facts of the case—he is, I will not say out-done, because that may safely be pronounced to be beyond the power of any man, but almost, if not altogether, equalled. There was, however, this difference between the two, that the honourable Under Secretary, with a gravity quite imposing, described the great pains he had taken to master the details of the subject, whereas my honourable friend avowed that he considered it as a matter which any one might take up at an odd moment during the debate; that, accordingly, he had come down to the house perfectly ignorant of the whole question, and been content to pick up what he could, while the discussion went on, partly by listening, partly by reading. I would most readily have taken his word for this, as I would for any thing else he chose to assert; but if that had not been sufficient,

* Mr. Scarlett.

† Mr. (now Sir R.) Wilmot Horton.

his speech would have proved it to demonstration. If, as he says, he came down in a state of entire ignorance, assuredly he had not mended his condition by the sort of attention he might have given to the question in his place,—unless a man can be said to change his ignorance for the better, by gaining a kind of half-blind, left-handed knowledge, which is worse than ignorance, as it is safer to be uninformed than misinformed.

In this respect, too, the right honourable Secretary of State* is his worthy successor; for the pains which he has taken to inform himself, seem but to have led him the more widely astray. I protest I never in my life witnessed such an elaborate neglect of the evidence as pervaded the latter part of his speech, which affected to discuss it. He appeared to have got as far wrong, without the same bias, as my honourable and learned friend was led by the jaundiced eye with which he naturally enough views such questions, from his West Indian connections, and the recollections associated with the place of his birth and the scene of his earliest years. Without any such excuse from nature, the right honourable Secretary labours to be in the wrong, and is eminently successful. His argument against Mr. Smith rests upon the assumption that he had an accurate knowledge of a plot, which the right honourable Secretary by another assumption supposes to have been proved; and he assumes that Mr. Smith had this knowledge twenty-four hours before he could possibly have known any thing of the matter. Every thing turns upon this; and whoever has read the evidence with attention, is perfectly aware that this is the fact. Tell me not of Jacky Reed's letter, which was communicated to him on Monday evening at six o'clock, or later! Talk not to

* Mr. Canning.

me of going to the constituted authorities as soon as he knew of a revolt! If he had known it the night before; if he had been aware of the design before the insurrection broke out—then, indeed, there might have been some ground for speaking about concealment. If he had obtained any previous intelligence, though nothing had been confided to him, by a figure of speech we might have talked of concealment—hardly of misprision. But when did the note reach him? The only discrepancy in the evidence is, that one witness says it was delivered at six o'clock, and he was the bearer of it; while another, ascertaining the time by circumstances, which are much less likely to deceive than the vague recollection of an hour, fixes the moment, by saying that it was at night-fall, half an hour later. But take it at the earliest period, and let it be six o'clock. When did the revolt break out? I hear it said, at half-past six. No such thing: it broke out at half-past three: aye, and earlier. Look at the fifteenth page of the evidence, and you will find one witness speaking to what happened at half-past three, and another at half-past four. A most important step had then been taken. Quamina and Jack, the two alleged ringleaders—one of them, Jack, unquestionably was the contriver of the whole movement, or resolution to strike work, or call it what you will; and Quamina was suspected—and I believe the suspicion to have been utterly groundless; nor have I yet heard, throughout the whole proceedings, a word to confirm it—but both these men, the real and the supposed ringleader, had been actually in custody for the revolt, nay, had been both arrested for the revolt and rescued by the revolters, two or three hours before the letter came into Mr. Smith's hands! It is for not disclosing this, which all the world knew better than himself—for not telling them at night what they knew in the afternoon—that he is to be blamed! Why go and com-

municate to a man that the sun is shining at twelve o'clock in the day? Why tell this House that these candles are burning; that we are sitting in a great crowd, in no very pleasant atmosphere, and listening to a tedious speech? Why state things which were as plain as the day-light, and which every one knew better and earlier than Mr. Smith himself? He was walking with his wife under his arm, say the witnesses: he should have walked away with her, or hired a horse and rode to Georgetown, says the right honourable Secretary. Why, this would have been, at the least, only doing what was manifestly superfluous, and, because superfluous, ridiculous. But in the feeling which then prevailed; in the irritation of men's minds; in the exasperation towards himself, which, I am sorry to say, had been too plainly manifested; I believe such a folly would not have been considered as superfluous only: he would have been asked, 'Why are you meddling? what are you interfering about? keep you quiet at your own house: if you are indeed a peaceable missionary, don't enter into quarrels you have no concern in, or busy yourself with other people's matters." Answers of that kind he had received before: rebuffs had been given him of a kind which might induce him to take an opposite course: not a fortnight previous to that very night he had been so treated. I, for one, am not the man to marvel that he kept himself still at his house, instead of going forth to tell tales which all the world knew, and to give information, extremely unlike that which the evidence would have communicated to the honourable Under Secretary, if he had read it correctly; and to the Member for Peterborough, if he had read it at all. It would have informed no one, because all knew it.

But, says the right honourable gentleman,* why

* Mr. Canning.

did not this missionary, if he would not fly to the destruction of his friends upon some vague surmise—if he would not make haste to denounce his flock upon rumour or suspicion—if he would not tell that which he did not know—if he would not communicate a treason which probably had no existence, which certainly did not to his knowledge exist—if he would not disclose secrets which no man had entrusted to him—if he would not betray a confidence which no mortal had ever reposed in him—(for that is the state of the case up to the delivery of Jacky Reed's letter; that is the precise state of the case at the time of receiving the letter);—if he did not please to do all these impossibilities, there was one possibility, it seems, and that mentioned for the first time to-night (I know not when it was discovered), which he might do: Why did he not go forth into the field, when the Negroes were all there, rebellious and in arms—some arrested and rescued, others taken by the insurgents and carried back into the woods—why did he not proceed where he could not take a step, according to the same authority that suggests such an operation, without seeing multitudes of martial slaves—why not, in this favourable state of things, at this very opportune moment, at a crisis so auspicious for the exertions of a peaceful missionary among his enraged flock—why not greedily seize such a moment, to reason with them, to open his Bible to them, to exhort them, and instruct them, and catechise them, and, in fine, take all those steps for having pursued which, in a season of profound tranquillity, he was brought into peril of his life!—wherefore not now renew that teaching and preaching to them, for which, and for nothing else, he was condemned to death, his exhausted frame subjected to lingering torture, and his memory blighted with the name of traitor and felon! Why, he was wise in not doing this!

If he had made any such unseasonable and wild attempts, we might now think it only folly, and might be disposed to laugh at the ridiculous project; but at that moment of excitement, when the exasperation of his enemies had waxed to such a height as he knew it to have reached against him, and men's minds were in a state of feverish alarm that made each one deem every other he met his foe, and all who were in any manner of way connected with plantations fancied they saw the very head and ringleader of their common enemy in whatever bore the shape of a Christian pastor—(this Mr. Smith knew, independent of his personal experience, independent of experience the most recent—experience within the last fortnight from the time when such courses are pointed out as rational, nay, obvious and necessary);—but if, with only his own general knowledge of the state of society, the recollection of what had happened to him in former times, and the impression which every page of his journal proves to have been the genuine result of all he saw daily passing before his eyes—if, in such a crisis, and with this knowledge, he had fared forth upon the hopeless errand of preaching peace, when the cutlasses of the insurgents were gleaming in his eyes, I say he would not merely have exposed himself to the just imputation of insanity from the candid and reflecting, but have encountered, and for that reason encountered the persecutions of those who now, with monstrous inconsistency, blame him for not employing his pastoral authority to restrain a rebellious multitude, and who pursued him to the death for teaching his flock the lessons of forbearance and peace!

Sir, I am told that it is unjust to censure the Court Martial so vehemently as I propose doing in the motion before you: and really to hear gentlemen talk of it, one would imagine that it charged enormous

crimes in direct terms. Some have argued as if murder were plainly imputed to the Court: They have confounded together the different parts of the argument urged in support of the motion, and then imported into the motion itself that confusion, the work of their own brains. But even if the accusations of which they complain had been preferred in the speeches that introduced or supported the proposition, could anything be conceived more grossly absurd than to decide as if you were called upon to adopt or reject the speeches, and not the motion, which alone is the subject of the vote? Truly this would be a mode of reasoning surpassing anything the most unfair and illogical that I have ever heard attempted even in this place, where I have certainly heard at times reasonings not to be met with elsewhere. The motion conveys a censure, I admit; but in my humble opinion, a temperate and a mitigated censure. The law has been broken; justice has been outraged. Whoso believes not in this, let him not vote for the motion. But whosoever believes that a gross breach of the law has been committed; that a flagrant violation of justice has been perpetrated; is it asking too much at the hands of that man, to demand that he honestly speak his mind, and record his sentiments by his vote? In former times, be it remembered, this House of Parliament has not scrupled to express, in words far more stringent than any you are now required to adopt, its sense of proceedings displaying the triumph of oppression over the law. When there came before the legislature a case remarkable in itself; for its consequences yet more momentous; resembling the present in many points; to the very letter in some things resembling it—I mean, the trial of Sydney—did our illustrious predecessors within these walls shrink back from the honest and manly declaration of their opinion in words suited to the occasion, and screen themselves

behind such tender phrases as are to-night resorted to, —"Don't be too violent—pray be civil—do be gentle —there has only been a man murdered, nothing more —a total breach of all law to be sure; an utter contempt, no doubt, of justice, and everything like it, in form as well as in substance; but that's all; surely, then, you will be meek, and patient, and forbearing, as were the Demerara judges to this poor missionary; against whom, if somewhat was done, a great deal more was meditated than they durst openly perpetrate; but who, being condemned to die in despite of law and evidence, was only put to death by slow and wanton severity!"—In those days no such language was holden. On that memorable occasion, plain terms were not deemed too strong when severe truth was to be recorded. The word "*murder*" was used, because the deed of blood had been done. The word "*murder*" was not reckoned too uncourtly in a place where decorum is studied somewhat more scrupulously than even here: on the journals of the other House stands the appointment of Lords Committees, "to inquire of the advisers and prosecutors of the *murder* of Lord Russell and Colonel Sydney:" and their Lordships make a report, upon which the statute is passed to reverse those execrable attainders. I will not enter into any detailed comparison of the two cases, which might be thought fanciful; but I would remind the House, that no legal evidence was given of Mr. Smith's handwriting in his journal, any more than of Sydney's in his manuscript Discourse on Government. Every lawyer, who reads the trial, must at once perceive this. The witness who swears to Mr. Smith's hand, cannot say that he ever saw him write; and when asked how he knows, the court say "that question is unnecessary, because he has said he knows the hand!" although all the ground of knowledge he had stated

was having received letters from him, without a syllable of having afterwards seen him to ascertain that they were his, or having written in answer to them, or otherwise acted upon them. Now, in Sydney's case there was an endorsement on bills of exchange produced, and those bills had been paid; nevertheless, Parliament pronounced his conviction murder, for this, among other reasons, that such evidence had been received. The outrageous contempt of the most established rules of evidence, to which I am alluding, was indeed committed by a court of fourteen military officers, ignorant of the law; but, that their own deficiences might be supplied, they had joined with them the first legal authority of the colony. Why then did they not avail themselves of Mr President Wray's knowledge and experience? Why did they over-rule by their numbers what he MUST have laid down to them as the law? I agree entirely with my honourable and learned friend* that the President must have protested strenuously against such proceedings. I take for granted, as a matter of course, that he resisted them, to the utmost of his power. My honourable friend and I have too good an opinion of that learned judge, and are too well persuaded of his skill in our common profession, to have a doubt in our minds of his being as much astonished at those strange things as any man who now hears of them; and far more shocked, because they were done before his eyes; and, though really in spite of his efforts to prevent them, yet clothed in outward appearance with the sanction of his authority.

In Sydney's case, another ground of objection at the trial and of reprobation ever afterwards, was the seizure and production of his private manuscript, which

* Mr. Scarlett.

he described, in eloquent and touching terms, as containing "sacred truths and hints that came into his mind, and were designed for the cultivation of his understanding, nor intended to be as yet made public." Recollect the seizure and production of the missionary's journal; to which the same objection and the same reprobation is applicable; with this only difference, that Sydney avowed the intention of eventually publishing his Discourse, while Mr. Smith's papers were prepared to meet no mortal eye but his own.—In how many other particulars do these two memorable trials agree! The Preamble of the Act rescinding the attainder seems almost framed to describe the proceedings of the court at Demerara. Admission of hearsay evidence; allowing matters to be law for one party, and refusing to the other the benefit of the same law; wresting the evidence against the prisoner; permitting proof by comparison of hands—all these enormities are to be found in both causes.

But, Sir, the demeanour of the judges after the close of the proceedings, I grieve to say it, completes the parallel. The Chief Justice who presided, and whom a profligate government made the instrument of Sydney's destruction, it is stated in our most common books—Collins, and I believe also Rapin—"when he allowed the account of the trial to be published, carefully made such alterations and suppressions as might shew his own conduct in a more favourable light." That judge was Jeffries, of immortal memory! who will be known to all ages as the chief—not certainly of ignorant and inexperienced men, for he was an accomplished lawyer, and of undoubted capacity—but as the chief and head of unjust, and cruel, and corrupt judges! There, in that place, shall Jeffries stand hateful to all posterity, while England stands; but there he would not have stood, and his name might have come down to us with far other and less appropriate distinction, if our fore-

fathers, who sat in this House, had consented to fritter away the expression of their honest indignation, to mitigate the severity of that record which should carry their hatred of injustice to their children's children —if, instead of deeming it their most sacred duty, their highest glory, to speak the truth of privileged oppressors, careless whom it might strike, or whom offend, they had only studied how to give the least annoyance, to choose the most courtly language, to hold the kindest and most conciliating tone towards men who showed not a gleam of kindness, conciliation, courtesy, no, nor bare justice, nor any semblance or form of justice, when they had their victim under their dominion. Therefore it is that I cannot agree to this previous question. Rather let me be met by a direct negative: it is the manlier course. I could have wished that the Government had still "screwed up their courage to the sticking-place," where for a moment it perched the first night of the debate, when by the honourable gentleman from the Colonial Department we were told that he could not consent to meet this motion in any way but the most triumphant—a decided negative.

Mr. Wilmot Horton.—"No!"

Mr. Brougham.—I beg the honourable Member's pardon. I was not present at the time, but took my account of what passed from others, and from the usual channels of intelligence. I understood that he had given the motion a direct negative.

Mr. Wilmot Horton.—"I said no such thing; I said I should give my dissent to the motion without any qualification."

Mr. Brougham.—Sir, I was not bred up in the Dutch schools, nor have practised in the Courts of Demerara; and I confess my inability to draw the nice distinction, so acutely taken by the honourable gentleman, between a direct negative and a dissent

without any qualification. In my plain judgment, unqualified dissent is that frame of mind which begets a direct negative. Well, then, call it which you will, I prefer, as more intelligible and more consistent, the direct negative, or unqualified dissent. What is the meaning of this "previous question," which the right honourable Secretary* has to-night substituted for it? Plainly this: there is much to blame on both sides; and, for fear of withholding justice from either party, we must do injustice to both. That is exactly the predicament in which the right honourable gentleman's proposition would place the Government and the House, with respect to West-Indian interests.

But what *can* be the reason of all this extraordinary tenderness towards the good men of Demerara? Let us only pause for a moment, and consider what it can mean. How striking a contrast does this treatment of those adversaries of his Majesty's Ministers afford to the reception which *we* oftentimes meet with from them here! I have seen, in my short experience, many motions opposed by the gentlemen opposite, and rejected by the House, merely because they were accompanied by speeches unpalatable to them and their majorities. I have seen measures of the greatest importance, and to which no other objection whatever was made, flung out, only because propounded by Opposition men, and recommended by what were called factious arguments. I remember myself once moving certain resolutions upon the commercial policy of the country, all of which have, I think, either been since adopted by the Ministers (and I thank them for it,) or are in the course of being incorporated with the law of the state. At the time, there was no objection urged to the propositions themselves—indeed, the Chancellor of the Exchequer professed his

* Mr. Canning.

entire concurrence with my doctrines—and as I then said I had much rather see his good works than hear his profession of faith, I am now happy that he has appealed to this test of his sincerity, and given me what I asked,—the best proof that the Government entirely approved of the measures I recommended. But, upon what grounds were they resisted at the time? Why, nine parts in ten of the arguments I was met by, consisted of complaints that I had introduced them with a factious speech, intermixed them with party topics, and combined with the commercial part of the subject a censure upon the foreign policy of the Government, which has since been, I think, also well-nigh given up by themselves. Now, then, how have the Demerara men entitled themselves to the especial protection and favour of those same Ministers? Have they shewn any signal friendship, or courtesy, or decent respect, towards his Majesty's Government? Far enough from it. I believe the gentlemen opposite have very seldom had to bear such violence of attack from this side of the House, bad though we be, as from their Guiana friends. I suspect they have not in any quarter had to encounter so much bitterness of opposition as from their new favourites, whom they are so fearful of displeasing. Little tenderness, or indeed forbearance, have *they* shown towards the Government which anxiously cherishes them. They have held public meetings to threaten all but separation; they have passed a vote of censure upon one Minister by name; and, that none might escape, another upon the whole Administration in a mass: and the latest accounts of their proceedings left them contriving plans in the most factious spirit, in the very teeth of the often-avowed policy of the Government, for the purpose of prohibiting all missions and expelling all missionaries from the settlement. Sir, missions and missionaries may

divide the opinions of men in any other part of our dominions except the slave colonies, and the most opposite sentiments may honestly and conscientiously be entertained upon their expediency; but in those countries it is not the question, whether you will have missionary teachers or no, but, whether you will have teachers at all or no. The question is not, shall the Negroes be taught by missionaries, but, shall they be taught at all? For it is the unvarying result of all men's experience in those parts, members of the Establishment as well as Dissenters—nay, the most absolute opinions on record, and the most strongly expressed, have come from Churchmen—that there is but this one way practicable of attempting the conversion of these poor heathens. With what jealousy, then, ought we to regard any efforts, but especially by the constituted authorities who bore a part in those proceedings, to frustrate the positive orders for the instruction of the slaves, not only given by his Majesty's Government, but recommended by this House,—a far higher authority as it is, higher still as it might be, if it but dared now and then to have a will of its own, and, upon questions of paramount importance, to exercise fearlessly an unbiassed judgment? To obtain the interposition of this authority for the protection of those who alone will, or can, teach the Negroes, is one object of the motion upon which I shall now take the sense of the House. The rest of it relates to the case of the individual who has been persecuted. The right honourable gentleman seems much disposed to quarrel with the title of martyr, which has been given him. For my own part, I have no fault to find with it; because I deem that man to deserve the name, as in former times he would have reaped the honours of martyrdom, who willingly suffers for conscience. Whether I agree with him or not in his tenets, I respect his sincerity, I admire his

zeal; and when, through that zeal, a Christian minister has been brought to die the death, I would have his name honoured and holden in everlasting remembrance. His blood cries from the ground—but not for vengeance! He expired, not imprecating curses upon his enemies, but praying for those who had brought him to an untimely grave. It cries aloud for justice to his memory, and for protection to those who shall tread in his footsteps, and—tempering their enthusiasm by discretion; uniting with their zeal knowledge; forbearance with firmness; patience to avoid giving offence, with courage to meet oppression, and to resist when the powers of endurance are exhausted—shall prove themselves worthy to follow him, and worthy of the cause for which he suffered. If theirs is a holy duty, it is ours to shield them, in discharging it, from that injustice which has persecuted the living, and has sought to blast the memory of the dead.

Sir, it behoves this House to give a memorable lesson to the men who have so demeaned themselves. Speeches in a debate will be of little avail. Arguments on either side neutralize each other. Plain speaking on the one part, met by ambiguous expressions—half censure, half acquittal, betraying the wish to give up, but with an attempt at an equivocal defence—will carry out to the West Indies a motley aspect; conveying no definite or intelligible expression, incapable of commanding respect, and leaving it extremely doubtful whether those things, which all men are agreed in reprobating, have actually been disapproved of or not. Upon this occasion, most eminently, a discussion is nothing, unless followed up by a vote to promulgate with authority what is admitted to be universally felt. That vote is called for, in tenderness to the West Indians themselves—in fairness to those other colonies which have not shared the guilt of Demerara. Out of a just regard to the interests of the West Indian body, who, I

rejoice to say, have kept aloof from this question, as if desirous to escape the shame when they bore no part in the crime, this lesson must now be taught by the voice of Parliament,—that the mother country will at length make her authority respected; that the rights of property are sacred, but the rules of justice paramount and inviolable; that the claims of the Slave owner are admitted, but the dominion of Parliament indisputable; that we are sovereign alike over the White and the Black; and though we may for a season, and out of regard for the interests of both, suffer men to hold property in their fellow-creatures, we never, for even an instant of time, forget that they are men, and the fellow-subjects of their masters; that, if those masters shall still hold the same perverse course—if, taught by no experience, warned by no auguries, scared by no menaces from Parliament, or from the Crown administering those powers which Parliament invoked it to put forth—but, blind alike to the duties, the interests, and the perils of their situation, they rush headlong through infamy to destruction; breaking promise after promise made to delude us; leaving pledge after pledge unredeemed, extorted by the pressure of the passing occasion; or only, by laws passed to be a dead letter, for ever giving such an elusory performance as adds mockery to breach of faith; yet a little delay; yet a little longer of this unbearable trifling with the commands of the parent state, and she will stretch out her arm, in mercy, not in anger, to those deluded men themselves; exert at last her undeniable authority; vindicate the just rights, and restore the tarnished honour of the English name!*

* It was in this memorable debate that Mr. Wilberforce spoke in Parliament for the last time. His journals shew how intensely he felt on the subject. The motion was lost, and the previous question carried by 193 to 146.

SPEECH

ON

NEGRO SLAVERY.

DELIVERED IN THE HOUSE OF COMMONS,

JULY 13, 1830.

The following Speech was delivered on the 13th of July 1830. It is believed to have mainly contributed towards Mr. Brougham's election as Member for the County of York, which took place a few weeks after.

SPEECH.

Sir,—In rising to bring before the House a subject more momentous, in the eyes both of this country and of the world, than any that has occupied our attention during the whole of a long protracted Session, I am aware that I owe some apology for entering upon it at so late a day. I know, too, that I am blamed in many quarters, for not postponing it till another season. But the apology which I am about to offer is, not for bringing it forward to-day, but for having delayed it so long; and I feel that I should be indeed without excuse, that I should stand convicted of a signal breach of public duty, to the character and the honour of the House, to the feelings and principles of the people, nay, to the universal feelings of mankind at large, by whatever names they may be called, into whatever families distributed, if I had not an ample defence to urge for having so long put off the agitation of this great question. The occurrences which happened at the commencement of the Session, and the matters of pressing interest which have just attended its close, must plead my justification.

Early in the year I had hoped that the Government would redeem the pledges which they gave me last Session, and which then stayed my steps. I had expected to

have the satisfaction of seconding a measure propounded by the Ministers of the Crown for improving the administration of justice in the Colonies, and especially for amending the law which excludes the testimony of slaves. That those expectations have been frustrated, that those pledges remain unredeemed, I may lament; but in fairness I am bound to say I cannot charge this as matter of severe blame on the Government, because I know the obstacles of a financial nature, which have stood in the way of intentions sincerely entertained, to provide a pure and efficient system of judicature for the West-India Islands. Until I saw that no such reforms could be looked for in that high quarter, I was precluded from undertaking the subject, lest my efforts might mar the work in hands far more able to execute it.

This is my defence for now addressing you at the end of the parliamentary year. But to imagine that I can hold my peace a moment longer, that I can suffer the Parliament to be prorogued, and above all to be dissolved, and the country to be assembled for the choice of new Representatives, without calling on the House for a solemn pledge, which may bind its successors to do their duty by the most defenceless and wretched portion of their fellow subjects, is so manifestly out of the question, that I make no apology for the lateness of the day, and disregard even the necessary absence of many fast friends of the cause, and a general slackness of attendance, incident to the season, as attested by the state of these benches, which might well dissuade me from going on. And now, after the question of Colonial Slavery has for so many years been familiar to the House, and I fear still more familiar to the country, I would fain hope that I may dispense with the irksome task of dragging you through its details, from their multiplicity so over-

whelming, from their miserable nature so afflicting. But I am aware that in the threshold of the scene, and to scare me from entering upon it, there stands the phantom of colonial independence, resisting parliamentary interference, fatiguing the ear with the thrice-told tale of their ignorance who see from afar off, and pointing to the fatal issue of the American war. There needs but one steady glance to brush all such spectres away. That the colonial legislatures have rights—that their privileges are to be respected—that their province is not to be lightly invaded—that the Parliament of the mother country is not, without necessity, to trench on their independence—no man more than myself is willing to allow. But when those local assemblies utterly neglect their first duties—when we see them, from the circumstances of their situation, prevented from acting—struggling in these trammels for an independent existence—exhausted in the effort to stand alone, and to move one step wholly unable—when at any rate we wait for years, and perceive that they advance not by a hair's breadth, either because they cannot, or because they dare not, or because they will not—then to contend that we should not interfere—that we should fail in our duty because they do not do theirs—nay, that we have no right to act, because they have no power or no inclination to obey us—would be, not an argument, but an abomination, a gross insult to Parliament, a mockery of our privileges—for I trust that we too have some left—a shameful abandonment of our duty, and a portentous novelty in the history of the Parliament, the Plantations, and the Country.

Talk not of the American contest, and the triumph of the colonists. Who that has read the sad history of that event (and I believe among the patriarchs of this cause whom I now address there are some who

can remember that disgrace of our councils and our arms) will say, that either the Americans triumphed or we quailed on one inch of the ground upon which the present controversy stands? Ignorance the most gross, or inattention the most heedless, can alone explain, but cannot at all justify, the use of such a topic. Be it remembered—and to set at rest the point of right, I shall say no more—let it not once be forgotten, that the supremacy of the mother country never for an instant was surrendered at any period of that calamitous struggle. Nay, in the whole course of it, a question of her supremacy never once was raised; the whole dispute was rigorously confined to the power of taxing. All that we gave up, as we said voluntarily, as the Americans more truly said, by compulsion, was the power to tax; and by the very act which surrendered this power, we solemnly, deliberately, and unequivocally reasserted the right of the Parliament to give laws to the plantations in all other respects whatever. Thus speaks the record of history and the record of our Statute-book. But were both history and the laws silent, there is a fact so plain and striking, that it would of itself be quite sufficient to establish the doctrine of parliamentary supremacy.

I believe it may safely be affirmed, that on neither side of the water was there a man more distinguished for steady devotion to the cause of colonial independence, or who made his name more renowned by firm resistance to the claims of the mother country, than Mr. Burke. He was, in truth, throughout that memorable struggle, the great leader in Parliament against the infatuated ministry, whose counsels ended in severing the empire; and far from abating in his opposition as the contest advanced, he sacrificed to those principles the favour of his constituents, and was in consequence obliged to withdraw from the repre-

sentation of Bristol, which, till then he had held. His speech on the occasion of his retirement re-affirms the doctrines of American independence. But neither then, nor at any other time, did he ever think of denying the general legislative supremacy of Parliament; he only questioned the right of taxing the unrepresented colonies. But another fact must at once carry conviction to every mind. During the heat of the controversy, he employed himself in framing a code for the government of our sugar colonies. It was a bill to be passed into a law by the Legislature of the mother country; and it has fortunately been preserved among his invaluable papers. There is no minute detail into which its provisions do not enter. The rights of the slave—the duties of the master—the obligation to feed and clothe—the restriction of the power of coercion and punishment—all that concerns marriage and education and religious instruction—all that relates to the hours of labour and rest—every thing is minutely provided for, with an abundance of regulation which might well be deemed excessive, were not the subject that unnatural state of things which subjects man to the dominion of his fellow-creatures, and which can only be rendered tolerable by the most profuse enactment of checks and controls. This measure of most ample interference was devised by the most illustrious champion of colonial rights, the most jealous watchman of English encroachments. With his own hand he sketched the bold outline; with his own hand he filled up its details; with his own hand, long after the American contest had terminated, after the controversy on negro freedom had begun, and when his own principles, touching the Slave Trade and Slavery, had bent before certain West India prejudices, communicated by the party of the planters in Paris with whom he made common cause on French revolutionary

politics,—even then, instead of rejecting all idea of interference with the rights of the colonial assemblies, he delivered over his plan of a slave code to Mr. Dundas, the Secretary for the Colonies, for the patronage and adoption of Mr. Pitt and himself. I offer this fact as a striking proof that it is worse than a jest, it is an unpardonable delusion, to fancy that there ever has existed a doubt of the right of Parliament to give the colonies laws.

But I am told, that, granting the right to be ours, we ought to shrink from the exercise of it, when it would lead to an encroachment upon the sacred rights of property. I desire the House to mark the short and plain issue to which I am willing to bring this matter. I believe there is no man, either in or out of the profession to which I have the honour of belonging, and which, above all others, inculcates upon its members an habitual veneration for civil rights, less disposed than I am, lightly to value those rights, or rashly to inculcate a disregard of them. But that renowned profession has taught me another lesson also; it has imprinted on my mind the doctrine which all men, the learned and the unlearned, feel to be congenial with the human mind, and to gather strength with its growth—that by a law above and prior to all the laws of human lawgivers, for it is the law of God—there are some things which cannot be holden in property, and above everything else, that man can have no property in his fellow-creature.

But I willingly avoid those heights of moral argument, where, if we go in search of first principles, we see eternal fogs reign, and "find no end, in wandering mazes lost." I had rather seek the humbler regions, and approach the level plain, where all men see clear, where their judgments agree, and common feelings knit their hearts together; and standing on that general

level, I ask, what is the right which one man claims over the person of another, as if he were a chattel, and one of the beasts that perish? Is this that kind of property which claims universal respect, and is clothed in the hearts of all with a sanctity that makes it inviolable? I resist the claim; I deny the title; as a lawyer I demur to the declaration of the right; as a man I set up a law superior in point of antiquity, higher in point of authority, than any which men have framed —the law of nature; and, if you appeal from that, I set up the law of the Christian dispensation, which holds all men equal, and commands that you treat every man as a brother! Talk to me not of such monstrous pretensions being decreed by Acts of Parliament, and recognised by treaties! Go back a quarter of a century to a kindred contest, when a long and painful struggle ended in an immortal triumph. The self-same arguments were urged in defence of the Slave-trade. Its vindication was rested upon the rights of property, as established by laws and treaties; the right to trade in men was held to be as clear then, as the right to hold men in property is held to be clear now. For twenty-five years, I am ashamed to repeat, for twenty-five years, to the lasting disgrace of the Parliament, the African slave traffic was thus defended; and that which it was then maintained every one had a right to do, is now denounced by our laws as piracy, and whoso doeth it shall surely die the death of a felon.

But I am next told, that, be the right as it may, the facts are against me; that the theory may be with those who object to slavery, but the practice is in favour of the system. The negroes are well off, it seems; they are inured to the state in which they have been born and grown up; they are happy and contented, and we shall only hurt them by changing

their condition, which the peasantry of England are desired to regard with envy. I will not stoop to answer such outrageous assertions by facts or by reasons. I will not insult your understanding, by proving, that no slave can taste happiness or comfort; that where a man is at the nod of another, he can know nothing of real peace or repose. But I will at once appeal to two tests; to these I shall confine myself, satisfied that if they fail to decide the question, I may resort in vain to any argument which philosophers can admit, or political economists entertain, or men of ordinary common sense handle. The two tests or criteria of happiness among any people, which I will now resort to, are the progress of population, and the amount of crime. These, but the first especially, are, of all others, the most safely to be relied on. Every one who has studied the philosophy of human nature, and every one who has cultivated statesman-like wisdom, which indeed is only that philosophy reduced to practice, must admit, that the principle implanted in our nature, which ensures the continuance of the species, is so powerful that nothing can check its operation but some calamitous state of suffering, which reverses the natural order of things. Wherever, then, we see the numbers of men stationary, much more when we perceive them decreasing, we may rest assured that there is some fatal malady, some fundamental vice in the community, which makes head against the most irresistible of all the impulses of our physical constitution. Now, look to the history of the black population, both free and slave in the Antilles. In the British islands, including Barbadoes, on a population of 670,000 slaves, there was a decrease of 31,500 in the six years which elapsed between 1818 and 1824; in Jamaica alone, upon the number of 330,000, a decrease of be-

tween 8,000, and 9,000. But not so with the free coloured men; although placed in circumstances exceedingly unfavourable to increase of numbers, yet such is the natural fruitfulness of the negro race that they rapidly multiplied. The Maroons doubled between 1749 and 1782; and when great part of them were removed after the rebellion of 1796, those who remained increased in six years, from 1810 to 1816, no less than eighteen per cent.; and in five years, from 1816 to 1821, fourteen per cent. In North America, where they are better fed, the negroes have increased in thirty years no less than 130 per cent. Look next to Trinidad: in four years, from 1825 to 1829, the slaves have fallen off from 23,117 to 22,436, notwithstanding a considerable importation under an order in council, being a decrease of at least a thirty-fourth, but probably of a twentieth. But what has happened to the same race, and circumstanced alike as to climate, soil, food—in short, everything save liberty? Nature has with them upheld her rights; her first great law has been obeyed; the passions and the vigour of man have had their course unrestrained; and the increase of his numbers has attested his freedom. They have risen in the same four years from 13,995 to 16,412, or at a rate which would double their numbers in twenty years; the greatest rate at which population is, in any circumstances, known to increase. There cannot be a more appalling picture presented to the reflecting mind than that of a people decreasing in numbers. To him who can look beyond the abstract numbers, whose eye is not confined to the mere tables and returns of population, but ranges over the miseries of which such a diminution is the infallible symptom; it offers a view of all the forms of wretchedness, suffering in every shape, privations in unlimited measure—whatever is most contrary to the

nature of human beings, most alien to their habits, most adverse to their happiness and comfort—all beginning in slavery, the state most unnatural to man; consummated through various channels in his degradation, and leading to one common end, the grave. Show me but the simple fact, that the people in any country are regularly decreasing, so as in half a century to be extinct; and I want no other evidence that their lot is that of the bitterest wretchedness: nor will any other facts convince me that their general condition can be favourable or mild. The second general test to which I would resort for the purpose of trying the state of any community, without the risk of those deceptions to which particular facts are liable, is the number of crimes committed. In Trinidad, I find that the slaves belonging to plantations, in number 16,580, appear, by the records printed, to have been punished in two years for 11,131 offences, that is to say, deducting the number of infants incapable of committing crimes, every slave had committed some offence in the course of those two years. It is true that the bulk of those offences, 7644, were connected with their condition of bondage—refusing to work, absconding from the estate, insolence to the owner or overseer, all incidental to their sad condition, but all visited with punishment betokening its accompanying debasement. Nevertheless, other crimes were not wanting: 713 were punished for theft, or above 350 in a year, on a number of about 12,000, deducting persons incapacitated by infancy, age, or sickness, from being the subjects of punishment. Let any one consider what this proportion would give in England: it would amount to 350,000 persons punished in one year for larceny. In Berbice, on a population of 21,000 plantation slaves, there were 9000 punishments; no record being kept of those in plantations of six slaves

or under: and in Demerara, of 61,000, there were 20,567 punished, of whom 8461 were women.

I cannot here withhold from the House the testimony of the Protector of Slaves to the happiness of their condition. "I cannot," says that judicious officer, "refrain from remarking on the contented appearance of the negroes; and, from the opportunities of judging which I have, I think that generally they have every reason to be so." I would not have this Protector placed in the condition of the very happiest of this contented tribe, whose numbers are hourly lessening, and whose lives are spent in committing crime and in receiving punishments. No, not for a day would I punish his error in judgment, by condemning him to taste the comforts which he describes, as they are enjoyed by the very luckiest of those placed under his protection. But such testimony is not peculiar to this officer. Long before his protectorate commenced, before he even came into this world of slavery and bliss, of bondage and contentment, the like opinion had been pronounced in favour of West Indian felicity. I hold in my hand the evidence of Lord Rodney, who swore before the Privy Council that he never saw an instance of cruel treatment, that in all the islands, "and," said his Lordship, "I know them all," the negroes were better off in clothing, lodging, and food, than the poor at home, and were never in any case at all overworked. Admiral Barrington, rising in ardour of expression as he advanced in knowledge, declares that he has often wished himself in the condition of the slaves. Neither would I take the gallant Admiral at his rash word, sanctioned though it be by an oath. I would not punish his temerity so severely as to consign him to a station, compared with which he would in four-and-twenty hours have become reconciled to the hardest fare in the most crazy bark that ever

rocked on the most perilous wave; or even to the lot which our English seamen are the least inured to—the most disastrous combat that ever lowered his flag in discomfiture and disgrace. But these officers confined not their testimony to the condition of slavery; they cast its panoply around the Slave-trade itself. They were just as liberal in behalf of the Guineaman, as of those whom his toils were destined to enrich. They gave just as Arcadian a picture of the slaver's deck and hold, as of the enviable fields whither she was fraught with a cargo of happy creatures, designed by their felicitous destiny to become what are called the cultivators of those romantic regions. "The slaves on board are comfortably lodged," says one gallant officer, "in rooms fitted up for them." "They are amused with instruments of music: when tired of music, they then go to games of chance." Let the inhabitants or the frequenters of our club-houses hear this and envy—those "famous wits," to whom St. James's purlieus are "native or hospitable:" let them cast a longing look on the superior felicity of their sable brethren on the middle passage. They toil not, neither do they spin, yet have they found for them all earthly indulgences; food and raiment for nothing; music to charm the sense; and when, sated with such enjoyment, the mind seeks a change, games of chance are kindly provided by boon traffic to stimulate the lazy appetite. "The slaves," adds the Admiral, "are indulged in all their little humours." Whether one of these caprices might be to have themselves tied up from time to time, and lacerated with a scourge, he has omitted to mention. "He had frequently," he says, "seen them, and as happy as any of the crew, it being the interest of the officers and men to make them so." But it is Admiral Evans who puts the finishing stroke to this fairy picture. "The arrival of a Gui-

neaman," he says, " is known in the West Indies by the dancing and singing of the negroes on board."

It is thus that these cargoes of merry, happy creatures, torn from their families, their native fields, and their cottages, celebrate their reaching the land of promise, and that their coming is distinguished from the dismal landing of free English seamen, out of West India traders, or other receptacles of cruelty and wretchedness. But if all the deductions of philosophy, and all the general indications of fact, loudly prove the unalterable wretchedness of colonial slavery, where, may it be asked, are the particular instances of its existence? Alas! there is no want of these: but I will only cull out a few, dealing purposely with the mass rather by sample than by breaking its foul bulk. I shall illustrate, by a few examples, the effects of slavery in communities to the exertions of which we are bid to look for the mitigation and final extinction of that horrid condition.

A certain Reverend Thomas Wilson Bridges was charged with an offence of the deepest dye. A slave girl had been ordered to dress a turkey for dinner, and the order having been disobeyed, he struck her a violent blow, which caused her nose and mouth to flow with blood, applying to her at the same time an oath, and a peculiarly coarse epithet, highly unbecoming in a clergyman, and indeed in any man, as it is the name most offensive to all womankind. He then commanded two men to cut bamboo rods and point them for her punishment. She was stripped of every article of dress, and flogged till the back part of her, from the shoulders to the calves of the legs, was one mass of lacerated flesh. She made her escape, and went to a Magistrate. The matter was brought before what is called a Council of Protection, where, by a majority of fourteen to four, it was resolved that

no further proceedings should take place. The Secretary of State for the Colonies, however, thought otherwise, and in a dispatch, with no part of which have I any fault to find, directed the evidence to be laid before the Attorney General. I understand that the reverend gentleman has not been put on his trial. I hope I may have been misinformed: I shall rejoice to find it so. I shall also be glad to find that there is no ground for the charge; although the man's servants, when examined, all admitted the severity of the flogging; and himself allowed he had seen it, though he alleged he was not near, but could not deny he had heard the screams of the victim. This reverend Mr. Bridges I happened to know by his other works,—by those labours of slander which have diversified the life of this minister of peace and truth. For publishing one of these, a respectable bookseller has been convicted by a jury of his country; others have been passed over with contempt by their illustrious object —that venerable person, the great patriarch of our cause, whose days are to be numbered by acts of benevolence and of piety, whose whole life,—and long may it be extended for his own glory and the good of his fellow-creatures!—has been devoted to the highest interests of religion and of charity, who might have hoped to pass on his holy path undisturbed by any one calling himself a Christian pastor, even in a West Indian community. The man, however, has so far succeeded, whether by the treatment of his slaves, or the defamation of Mr. Wilberforce, in recommending himself to his fellow-citizens in Jamaica, that a great majority in the Protecting Council forbade his conduct being inquired into. So vain is it to expect from the owners of slaves any active execution of the laws against slavery! And will you then trust those slave owners with the making of such laws! Recollect the

memorable warning of Mr. Canning, given thirty years ago, and proved true by every day's experience since. "Have a care how you leave to the owners of Slaves the task of making laws against Slavery. While human nature remains the same, they never can be trusted with it."

It is now six years since I called the attention of Parliament to one of the most grievous outrages that ever was committed since the Caribbean Archipelago was peopled with negro slaves—the persecution unto death of a Christian minister, for no other offence than preaching the gospel of his Master. I was then told, that no such wrong would ever be done again. It was a single case, which never could recur: at all events, the discussion in this House, and the universal reprobation called forth, even from those who had not sufficient independence to give their voices for doing justice upon the guilty, would, I was told, effectually secure the freedom of religious worship in future. I was silenced by the majority of votes, but not convinced by such reasons as these. And I now hold in my hand the proof that I was right. It is a statement promulgated by a numerous and respectable body of sincere Christians, with whom I differ both in religious and political opinions, but in whose conduct, if there be any thing which I peculiarly blame, it is their disinclination to deviate from a bad habit of passive obedience—of taking all that is done by men in authority to be right. They seem, however, now to be convinced that they have carried this habit too far, and that the time is come when they can no longer do their duty and hold their peace. The narrative which they have given, confirmed by the conduct of the Government itself, is such as would have filled me with indignation had I read it six years ago; but, after the warning voice so loudly raised in the debates upon

the Missionary Smith's murder, I gaze upon it astonished and incredulous. The simple and affecting story is told by Mr. Orton, a blameless and pious minister of the Gospel in Jamaica. He first alludes to the "daring attack made on the mission premises, at St. Ann's Bay, on Christmas-day, 1826," (the festival chosen by these friends of the Established Church for celebrating their brotherly love towards another sect.) "The attack," says he, "was made by a party of white persons, of the light company of militia, who were stationed at St. Ann's Bay as the Christmas guards. The plan appeared to have been premeditated, and there remains but little doubt that the design was murderous. A great number of balls were fired into the chapel and house, fourteen of which I assisted to extract from various parts of the building; and upon noticing particularly the direction, and measuring the distance from which some of the shots must have been fired, it appeared that Mr. and Mrs. Ratcliffe and their child most narrowly escaped the fatal consequences which were no doubt designed." All attempt to bring these criminals to justice failed, it seems, for want of evidence—a somewhat extraordinary incident in a community calling itself civilized, that so many persons as must have been concerned in it should all have escaped. In the course of the next summer, Mr. Grimsdall, another clergyman of the same persuasion, was arrested twice; the second time for having preached at a small place called Ocho Rios, in an unlicensed house, although a license had been applied for and refused, contrary to the judgment of the Custos and another Magistrate. He was flung into a noisome dungeon, "such," says the narrative, "as no person in Great Britain can have any conception of. His constitution, naturally strong, could not sustain the attack —he sunk under the oppression of these persecutors,

and the deleterious effects of confinement in a noxious prison; and this devoted servant of God, after a painful sickness of sixteen days, was delivered by death from the further sufferings projected by his unfeeling persecutors. He died the 15th day of December 1827." Mr. Whitehouse, too, was a preacher of the Gospel, and consequently an object of persecution. In the summer of 1828, he was seized and carried before a Magistrate, accused of having preached without a license; that is, of having a license in one parish and preaching in another. He besought the Magistrates as a favour, to be bound in irons in the market-place, instead of being confined in the cell where his predecessor had been deprived of life. They treated his remonstrances with indifference, said they were resolved to do their duty, professed not to regard what the public might say of them, and added, that "whoever might come should be treated in the same manner." He was accordingly flung into the dungeon where Mr. Grimsdall had perished. "I found it," says he "occupied by an insane black woman. She was removed, but the cell was exceedingly filthy, and the stench unbearable. It was now eight o'clock in the evening, and the gaoler said he "must lock up." I desired that the cell floor might, at least, be swept, which a few friends immediately attended to. There was no bed provided for me, not even one of straw; and it was not until I had made several requests to the gaoler, that a few benches from the chapel were allowed to be brought in, on which to make a bed. A large quantity of vinegar, and one of strong camphorated rum, was thrown upon the floor and walls, for the purpose of counteracting the very disagreeable effluvia which proceeded from the filth with which the place abounded; but this produced very little effect. The sea-breeze had subsided, and the only window from

which I could obtain the least air, was just above the place in which all the filth of the premises is deposited." Mr. Orton received the intelligence of his persecuted brother's affliction, with a request that he would perform his pastoral duty to his congregation. He did so, and was forthwith committed to the same gaol. "Of the horrid state of the place," he says, "an idea can scarcely be formed from any representation which can here be made, as common decency forbids the mention of its filthy condition, and the many unseemly practices which were constantly presented to our notice. The hospital, gaol, and workhouse, are united: the two former are under one roof, occupying an area of about twenty-five feet by thirty-five. On the ground-floor were three apartments. In the condemned cell were two unfortunate creatures awaiting their doom. In an adjoining cell were many Negroes, confined for petty offences; and in another apartment on the same floor, forty were crammed together, who had been taken in execution, and were waiting to be driven and sold in the market. This building, small and confined, was, especially during the night, literally stowed with persons, so that, from the number of the prisoners, and the extreme filth of the Negroes, it was almost unbearable." Let us but reflect on the sufferings of imprisonment even in the best gaol of our own temperate climate; and let us then add to those the torments of tropical heats! Think of being enclosed with crowds beyond what the air will supply with the needful nourishment of the lungs, while a fiery sun wheels round the clear sky from morning to night, without the veil of a single cloud to throw a shade between; where all matter passes instantly from life to putrescence, and water itself, under the pestilent ray, becomes the source of every frightful malady! Add the unnatural condition of the inmates, not there

for debts or for offences of their own, but seized for their owner's default, and awaiting, not the judgment of the law, or their liberation under an Insolvent Act, but till the market opens, when, like brute beasts, they are to be driven and sold to the highest bidder! In such a dungeon was it that Mr. Orton and his brethren were immured; and when their strength began to sink, and it seemed plain that they must speedily follow their friend to the grave, they were taken before the Chief Justice, who instantly declared the warrant illegal, and their seventeen days' confinement to have been without the shadow of pretence.

Who then was in the right, six years ago, in the memorable debate upon the persecution of the Missionary Smith? You, who said enough had been done in broaching the subject, and that religion and her ministers would thenceforward be secure;—or I, who warned you, that if my Resolutions were rejected, he would not, by many a one, be the last victim? I would to God that the facts did not so plainly prove me to have foretold the truth.

I may seem to have said enough; but it is painful to me that I cannot stop here,—that I must try faintly to paint excesses unheard of in Christian times —which to match we must go back to heathen ages, to the days and to the stations, wherein absolute power made men, but Pagan men, prodigies of cruelty exaggerated by caprice,—that I must drag before you persons moving in the higher walks of life, and exerting proportionable influence over the society they belong to:—an English gentleman, and an English gentlewoman accused, guilty, convicted of the most infernal barbarity; and an English community, so far from visiting the enormity with contempt, or indignant execration, that they make the savage perpetrators the endeared objects of esteem, respect, and affec-

tion! I read the recital from the despatch of the late Secretary for the Colonies,* a document never to be sufficiently praised for its statesman-like firmness, for the manly tone of feeling and of determination united, which marks it throughout. "The slave girl was accused of theft," he says; "but some disobedience in refusing to mend the clothes was the more immediate cause of her punishment. On the 22d of July 1826, she was confined in the stocks, and she was not released till the 8th of August following, being a period of seventeen days. The stocks were so constructed, that she could not sit up and lie down at pleasure, and she remained in them night and day. During this period she was flogged repeatedly,—one of the overseers thinks about six times,—and red pepper was rubbed upon her eyes to prevent her sleeping. Tasks were given her, which in the opinion of the same overseer, she was incapable of performing; sometimes because they were beyond her powers; at other times because she could not see to do them on account of the pepper having been rubbed on her eyes; and she was flogged for failing to accomplish these tasks. A violent distemper had been prevalent on the plantation during the summer. It is in evidence, that on one of the days of her confinement she complained of fever, and that one of the floggings which she received was the day after she had made this complaint. When she was taken out of the stocks she appeared to be cramped, and was then again flogged. The very day of her release she was sent to field-labour, (though heretofore a house-servant,) and on the evening of the third day ensuing was brought before her owners as being ill and refusing to work, and she then again complained of having had fever. They were of opi-

* Mr. Huskisson.

nion that she had none then, but gave directions to the driver, if she should be ill, to bring her to them for medicines in the morning. The driver took her to the negro-house, and again flogged her, though this time apparently without orders from her owners to do so. In the morning, at seven o'clock, she was taken to work in the field, where she died at noon." Mark the refinement of their wickedness! I nowise doubt, that to screen themselves from the punishment of death due to their crimes, these wretches will now say,—they did indeed say on their trial, that their hapless victim died of disease. When their own lives were in jeopardy, they found that she had caught the fever, and died by the visitation of God; but when the question was, shall she be flogged again? shall she, who has for twelve days been fixed in the stocks under the fiery beams of a tropical sun, who has been torn with the scourge from the nape of the neck to the plants of her feet, who has had pepper rubbed in her eyes to ward off the sleep that might have stolen over her senses, and for a moment withdrawn her spirit from the fangs of her tormentors,—shall she be subjected by those accursed fiends to the seventh scourging? Oh! then she had no sign of fever! she had caught no disease! she was all hale, and sound, and fit for the lash! At seven she was flogged—at noon she died! and those execrable and impious murderers soon found out that she had caught the malady, and perished by the "visitation of God!" No, no! I am used to examine circumstances, to weigh evidence, and I do firmly believe that she died by the murderous hand of man! that she was killed and murdered! It was wisely said by Mr. Fox, that when some grievous crime is perpetrated in a civilized community, we are consoled by finding in all breasts a sympathy with the victim, and an approval of the punishment

by which the wrong-doer expiates his offence. But in the West Indies there is no such solace to the mind—there all the feelings flow in a wrong course—perverse, preposterous, unnatural—the hatred is for the victim, the sympathy for the tormentor! I hold in my hand the proof of it in this dreadful case. The Mosses were condemned by an iniquitous sentence; for it was only to a small fine and five months' imprisonment. The public indignation followed the transaction; but it was indignation against the punishment, not the crime; and against the severity, not the lenity of the infliction. The Governor, a British officer—and I will name him to rescue others from the blame—General Grant—tells us in his despatch, that "he had been applied to by the most respectable inhabitants to remit the sentence;" that "he loses no time in applying to Lord Bathurst to authorize the remission." He speaks of "the unfortunate Henry and Helen Moss;" says, "they are rather to be pitied for the untoward melancholy occurrence," (as if he were talking of some great naval victory over the Turk, instead of a savage murder), and that "he hastens to prevent the impression, which the mention of the case might make on his Lordship's mind." In a second despatch, he earnestly renews the application; describes "the respectability of Mr. and Mrs. Moss, their general kindness to their Slaves, the high estimation in which they are held by all who have partaken of their hospitality;" tells us that "they have always been favourably spoken of in every respect, including that of Slave management;" states his own anxiety that "persons of their respectability should be spared from imprisonment;" and that at any rate "the mulct should be relinquished, lest they should be thought cruel and oppressive beyond others, and also in order to remove in some degree the impression

of their being habitually and studiously cruel;" and he adds a fact, which speaks volumes, and may well shut all mouths that now cry aloud for leaving such things to the assemblies of the islands—"notwithstanding their being in gaol, they are visited by the most respectable persons in the place, and by all who knew them before." The Governor who thus thinks and thus writes, has been removed from that settlement; but only, I say it with grief, to be made the ruler of a far more important colony. From the Bahamas he has been promoted to Trinidad—that great island, which Mr. Canning described as about to be made the model, by the Crown, for all Slave colonies. Over such a colony was he sent to preside, who, having tasted of the hospitality of the Mosses, could discern in their treatment of their slaves, nothing out of the fair, ordinary course of humane management.

From contemplating the horrors of slavery in the West Indies, it is impossible that we can avoid the transition to that infernal traffic, alike the scourge of Africa and America, the disgrace of the old world and the curse of the new, from which so much wretchedness has flowed. It is most shocking to reflect that its ravages are still abroad, desolating the earth. I do not rate the importation into the Brazils too high, when I put it at 100,000 during the last twelve months. Gracious God! When we recollect that the number of seventy-three capital punishments, among which are but two or three for murder, in a population of twelve millions, excites our just horror in England, what shall we say of 100,000 capital crimes, committed by a handful of desperate men, every one of which involves and implies rapine, fraud, murder, torture, in frightful abundance? And yet we must stand by and see such enormities perpetrated without making any remonstrance, or even urging any

representation! By the Treaty with Portugal, it is true, no such crimes can henceforth be repeated, for this year the traffic is to cease, and the mutual right of search is given to the vessels of both nations, the only possible security for the abolition being effectual. But there is another country nearer to us in position, and in habits of intercourse more familiar, one of far more importance for the authority of its example, in which the Slave Trade still flourishes in most portentous vigour, although denounced by the law, and visited with infamous punishment: the dominions of the Monarch who calls himself "Most Christian," and refuses the only measure that can put such wholesale iniquity down. There it must thrive as long as groundless national jealousies prevent the right of search from being mutually conceded. Let us hope that so foul a stain on the character of so great a nation will soon be wiped away; that the people who now take the lead of all others in the march of liberty, will cast far from their camp this unclean thing,—by all lovers of freedom most abhorred. I have heard with amazement some thoughtless men say, that the French cannot enjoy liberty, because they are unused to it. I protest before God I could point to no nation more worthy of freedom, or which knows better how to use it, how to gain it, how to defend it. I turn with a grateful heart to contemplate the glorious spectacle now exhibited in France of patriotism, of undaunted devotion to liberty, of firm yet temperate resistance to arbitrary power. It is animating to every beholder; it is encouraging to all freemen in every part of the world. I earnestly hope that it may not be lost on the Bourbon Monarch and his Councillors; for the sake of France and of England, for the sake of peace, for the sake of the Bourbon Princes themselves, I pray that they may be wise in time, and

yield to the wish, the determination of their people; I pray, that, bending before the coming breeze, the gathering storm may not sweep them away! But of one thing I would warn that devoted race; let them not flatter themselves that by trampling upon liberty in France, they can escape either the abhorrence of man or the Divine wrath for the execrable traffic in Slaves, carried on under their flag, and flourishing under their sway in America. I will tell their ghostly councillors, in the language of a book with which they ought to be familiar—"Behold, obedience is better than sacrifice, and to hearken than the fat of rams." To what should they lend an ear? To the commands of a God who loves mercy, and will punish injustice, and abhors blood, and will surely avenge it upon their heads; nothing the less because their patronage of Slavery in distant climes is matched by their hatred of liberty at home. Sir, I have done. I trust that at length the time is come when Parliament will no longer bear to be told, that Slave-owners are the best law-givers on slavery; no longer allow an appeal from the British public, to such communities as those in which the Smiths and the Grimsdalls are persecuted to death, for teaching the Gospel to the Negroes; and the Mosses holden in affectionate respect for torture and murder: no longer suffer our voice to roll across the Atlantic in empty warnings, and fruitless orders. Tell me not of rights—talk not of the property of the Planter in his Slaves. I deny the right—I acknowledge not the property. The principles, the feelings of our common nature, rise in rebellion against it. Be the appeal made to the understanding or to the heart, the sentence is the same that rejects it. In vain you tell me of laws that sanction such a claim! There is a law above all the enactments of human codes—the same throughout the world, the same in all times—

—such as it was before the daring genius of Columbus pierced the night of ages, and opened to one world the sources of power, wealth, and knowledge; to another, all unutterable woes;—such it is at this day: it is the law written by the finger of God on the heart of man; and by that law, unchangeable and eternal, while men despise fraud, and loathe rapine, and abhor blood, they will reject with indignation the wild and guilty phantasy, that man can hold property in man! In vain you appeal to treaties, to covenants between nations: the covenants of the Almighty, whether the Old covenant or the New, denounce such unholy pretensions. To those laws did they of old refer who maintained the African trade. Such treaties did they cite, and not untruly; for by one shameful compact you bartered the glories of Blenheim for the traffic in blood. Yet, in despite of law and of treaty, that infernal traffic is now destroyed, and its votaries put to death like other pirates. How came this change to pass? Not, assuredly, by Parliament leading the way; but the country at length awoke; the indignation of the people was kindled; it descended in thunder, and smote the traffic, and scattered its guilty profits to the winds. Now, then, let the Planters beware—let their Assemblies beware—let the Government at home beware—let the Parliament beware! The same country is once more awake,—awake to the condition of Negro Slavery; the same indignation kindles in the bosom of the same people; the same cloud is gathering that annihilated the Slave Trade; and, if it shall descend again, they, on whom its crash may fall, will not be destroyed before I have warned them: but I pray that their destruction may turn away from us the more terrible judgments of God! I therefore move you, "That this House do resolve, at the earliest practicable period of the next Session, to take into its serious

consideration the state of the Slaves in the Colonies of Great Britain, in order to the mitigation and final abolition of their Slavery, and more especially in order to the amendment of the administration of justice within the same"

SPEECH

ON

THE SLAVE TRADE.

DELIVERED IN THE HOUSE OF LORDS,

JANUARY 29, 1838.

DEDICATION.

TO

RICHARD MARQUESS WELLESLEY, K.G.

ETC. ETC. ETC.

In compliance with the wishes of the friends of the Abolition, I have revised the report of this speech, in order that the facts which I yesterday brought before Parliament, and which all admitted to be truly stated, nay, to have been rather understated than exaggerated, may be made known through the country. I believe these pages contain, as nearly as it is possible, what I spoke in my place.

To your Lordship they are inscribed with peculiar propriety, because you are one of the oldest and most staunch friends of this great question, and because your animated descriptions of the Parliamentary struggles in its behalf, at which you have assisted, and of the eloquence of other times which it called forth, have formed one of the most interesting of the many

conversations we have had upon the scenes of your earlier life. My own recollections do not reach so far back; but I have now been a zealous, though humble labourer, in the same cause upwards of six and thirty years; and it is truly melancholy to reflect that the Slave Trade still desolates Africa, while it disgraces the civilized world, hardly covering with less shame those who suffer, than those who perpetrate the enormous crime.—May we hope that at length the object of our wishes is about to be attained!

This Dedication is offered without your permission having been asked. It gives me an opportunity of faintly expressing that admiration of your truly statesman-like genius which all your countrymen feel who have marked your illustrious career in Europe as well as Asia; and that gratitude for your past services which in the public mind never can exceed the affection of your private friends.

But I will confess that another motive contributes to this intrusion upon your retirement. During the years that the controversy has lasted, I have written and published many volumes upon it; this is the first page to which I have set my name; and I naturally feel desirous that it should have the advantage of appearing in company with one so incomparably more eminent.

BROUGHAM.

January 30, 1838.

SPEECH.

My Lords,—I hold in my hand a petition from a numerous and most respectable body of your fellow citizens—the inhabitants of Leeds. Between 16 and 17,000 of them have signed it, and on the part of the other inhabitants of that great and flourishing community, as well as of the country at large in which it is situated, I can affirm with confidence that their statements and their prayer are those of the whole province whose people I am proud to call my friends, as it was once the pride of my life to represent them in Parliament. They remind your Lordships that between 18 and 19 millions have been already paid, and the residue of the 20 millions is in a course of payment to the holders of Slaves for some loss which it was supposed their property would sustain by the Emancipation Act; whereas, instead of a loss they have received a positive gain; their yearly revenues are increased, and the value of their estates has risen in the market. Have not these petitioners—have not the people of England a right to state, that but for the firm belief into which a generous Parliament and a confiding country were drawn, that the Bill of 1833 would occasion a loss to the Planter, not one million, or one pound, or one penny of this enormous sum would ever

have been granted to the owners of the slaves? When it is found that all this money has been paid for nothing, have we not an equal right to require that whatever can be done on the part of the planters to further a measure which has already been so gainful to them, shall be performed without delay? Have we not an undeniable right to expect for the sake, not more of humanity towards the Negroes, than of strict justice to those whose money was so paid for nothing, under a mere error in fact, that we, we who paid the money, shall obtain some compensation? And as all we ask is, not a return of it, not to have the sums paid under mistake refunded, but only the bargain carried into full effect, when the Colonial Legislatures refuse to perform their part, are we not well entitled to compel them? In a word, have not the people of England a right to demand that the Slavery which still exists under the name of Indentured Apprenticeship, shall forthwith cease, all pretext for continuing it, from the alleged risk of the sudden change or the Negro's incapacity of voluntary labour, having been triumphantly destroyed by the universal and notorious fact of the experiment of total emancipation having succeeded wherever it has been tried, and of the Negro working cheerfully and profitably where he has been continued an apprentice? In presenting this petition from Yorkshire, and these thirteen others from various parts of the country, I have the honour of giving notice, that as soon as the unfortunate and pressing question of Canada shall have been disposed of by the passing or the rejection of the Bill expected from the Commons, that is, in about a week or ten days, I shall submit a motion to your Lordships with the view of enabling you to comply with the earnest prayer of your countrymen, by fixing the period of complete emancipation on the first of August in this year, instead of 1840.

But, my Lords, while I thus express my entire concurrence in the sentiments of these Petitions, and of the various others which I have presented upon this subject, I cannot conceal from myself that there is a very material difference between the subject of their complaint and of the complaint which I made at our last meeting respecting the continuance not of Slavery but the Slave Trade, which I cannot delay for a single hour bringing before Parliament. The grievance set forth in the Petitions, is, that the Emancipation Act according to some did not go far enough and fast enough to its purpose—that while some hold it to have stopped short, in not at once and effectually wiping out the foul stain of slavery, others complain of our expectations having been frustrated in the working of the measure by the planters and the local authorities—that enough has not been done, nor with sufficient celerity to relieve the unhappy Slave of his burden—nevertheless all admit that whatever has been effected has been done in the right direction. The objections made are upon the degree, not upon the nature of the proceedings. It is that too little relief has been given to the Slave—that too late a day has been assigned for his final liberation—that he still suffers more than he ought: it is not that we have made Slavery more universal, more burthensome, or more bitter. But what would have been said by the English people—in what accents would they have appealed to this House—if instead of finding that the goal we aimed at was not reached—that the chains we had hoped to see loosened still galled the limbs—that the burthen we had desired to lighten still pressed the Slave to the earth—it had been found that the curse and the crime of human bondage had extended to regions which it never before had blighted—that the burthen was become heavier and more unbearable

—that the fetters galled the victim's limbs more cruelly than ever—what I ask, would then have been the language of your petitioners? What the sensation spread through the country? What the cry of rage, echoing from every corner of its extent, to charge us with mingled hypocrisy and cruelty, should we allow an hour to pass without rooting out the monstrous evil? I will venture to assert that there would have burst universally from the whole people an indignant outcry to sweep away in a moment every vestige of slavery, under whatever name it might lurk, and whatever disguise it might assume; and the Negro at once would have been a free man. Now this is the very charge which I am here to make, and prepared to support with proof, against the course pursued with a view to extinguish the Slave Trade. That accursed traffic, long since condemned by the unanimous voice of all the rational world, flourishes under the very expedients adopted to crush it; and increases in consequence of those very measures resorted to for its extinction. Yes, my Lords, it is my painful duty to shew what, without suffering severely, it is not possible to contemplate, far less to recite, but what I cannot lay my head once more on my pillow without denouncing, that at this hour, from the very nature of the means used to extirpate it, this infernal traffic becomes armed with new horrors, and continues to tear out, year after year, the very bowels of the great African Continent—that scene of the greatest sufferings which have ever scourged humanity—the worst of all the crimes ever perpetrated by man!

When the act for abolishing the British Slave Trade passed in 1807, and when the Americans performed the same act of justice by abolishing their traffic in 1806, the earliest moment, it must to their honour be observed, that the Federal Constitution allowed this

step to be taken; and when, at a later period, treaties were made, with a view to extinguish the traffic carried on by France, Spain, and Portugal, the plan was in an evil hour adopted which up to the present time has been in operation. The right of search and seizure was confined to certain vessels in the service of the State, and there was held out as an inducement to quicken the activity of their officers and crews, a promise of head-money,—that is, of so much to be paid for each slave on board the captured ship, over and above the proceeds of its sale upon condemnation. The prize was to be brought in and proceeded against; the slaves were to be liberated; the ship, with her tackle and cargo, to be sold, and the price distributed; but beside this, the sum of five pounds for each slave taken on board was to be distributed among the captors. It must be admitted that the intention was excellent; it must further be allowed, that at first sight the inducement held out seemed likely to work well, by exciting the zeal and rousing the courage of the crews against those desperate miscreants who defiled and desecrated the great high-way of nations with their complicated occupation of piracy and murder. I grant it is far easier to judge after the event. Nevertheless, a little reflection might have sufficed to show that there was a vice essentially inherent in the scheme, and that by allotting the chief part of the premium for the capture of Slaves, and not of Slave-ships, an inducement was held out, not to prevent the principal part of the crime, the shipping of the Negroes, from being committed, but rather to suffer this in order that the head-money might be gained when the vessel should be captured with that on board which we must still insult all lawful commerce by calling the cargo—that is, the wretched victims of avarice and cruelty, who had been torn from their country, and carried to the

loathsome hold. The tendency of this is quite undeniable; and equally so is its complete inconsistency with the whole purpose in view, and indeed the grounds upon which the plan itself is formed; for it assumes that the head-money will prove an inducement to the cruisers, and quicken their activity; it assumes therefore, that they will act so as to obtain the premium: and yet the object in view is to prevent any slaves from being embarked, and consequently any thing being done which can entitle the cruiser to any head-money at all. The cruiser is told to put down the Slave Trade, and the reward held out is proportioned to the height which that trade is suffered to reach before it is put down. The plan assumes that he requires this stimulus to make him prevent the offence; and the stimulus is applied only after the offence has been in great part committed. The tendency, then, of this most preposterous arrangement cannot be questioned for a moment; but now see how it really works.

The Slave vessel is fitted out and sails from her port, with all the accommodations that distinguish such criminal adventures, and with the accustomed equipment of chains and fetters, to torture and restrain the Slaves—the investment of trinkets wherewith civilized men decoy savages to make war on one another, and to sell those nearest to them in blood—with the stock of muskets too, prepared by Christians for the trade, and sold at sixteen pence a-piece, but not made to fire above once or twice without bursting in the hand of the poor Negro, whom they have tempted to plunder his neighbour or to sell his child. If taken on her way to the African coast, she bears internal evidence, amply sufficient, to convict her of a Slave trading destination. I will not say that the cruisers having visited and inspected her, would suffer her to pass

onward. I will not impute to gallant and honourable men a breach of duty, by asserting, that knowing a ship to have a guilty purpose, and aware that they had the power of proving this, they would voluntarily permit her to accomplish it. I will not even suggest that vessels are less closely watched on their route towards the coast than on their return from it. But I may at least affirm, without any fear of being contradicted, that the policy which holds out a reward, not to the cruiser who stops such a ship and interrupts her on the way to the scene of her crimes, but to the cruiser who seizes her on her way back when full of Slaves, gives and professes to give the cruiser an interest in letting her reach Africa, take in her cargo of Slaves, and sail for America. Moreover, I may also affirm with perfect safety, that this policy is grounded upon the assumption that the cruiser will be influenced by the hope of the reward, in performing the service, else of what earthly use can it be to offer it? and consequently I am entitled to conclude, that the offering this reward, assumes that the cruiser cares for the reward, and will let the Slaver pass on unless she is laden with Slaves. If this does not always happen, it is very certainly no fault of the policy which is framed upon such a preposterous principle. But I am not about to argue that any such consequences actually take place. It may or it may not be so in the result; but the tendency of the system is plain. The fact I stop not to examine. I have other facts to state about which no doubt exists at all. The statements of my excellent friend, Mr. Laird, who, with his worthy coadjutor, Mr. Oldfield, has recently returned from Africa, are before the world, and there has been no attempt made to contradict them. Those gallant men are the survivors of an expedition full of hardships and perils, to which, among many others,

the learned and amiable Dr. Briggs, of Liverpool, unhappily fell a sacrifice—an irreparable loss to humanity as well as science.

It appears that the course pursued on the coast is this,—The cruiser stationed there to prevent the Slave trade, carefully avoids going near the harbour or the creek where the Slavers are lying. If she comes within sight, the Slaver would not venture to put his cargo on board and sail. Therefore she stands out, just so far as to command a view of the port from the masthead, but herself quite out of sight. The Slaver believes the coast is clear; accomplishes his crime of shipping the cargo, and attempts to cross the Atlantic. Now, whether he succeeds in gaining the opposite shore, or is taken and condemned, let us see what the effect of the system is first of all, in the vessel's construction and accommodation—that is, in the comforts, if such a word can be used in connection with the hull of a Slave-ship—or the torments rather prepared for her unhappy inmates. Let us see how the unavoidable miseries of the middle passage are exasperated by the contraband nature of the adventure—how the unavoidable mischief is needlessly aggravated by the very means taken to extirpate it. The great object being to escape our cruisers, every other consideration is sacrificed to swiftness of sailing in the construction of the Slave-ships. I am not saying that humanity is sacrificed. I should of course be laughed to scorn by all who are implicated in the African traffic, were I to use such a word in any connexion with it. But all other considerations respecting the vessel herself are sacrificed to swiftness, and she is built so narrow as to put her safety in peril, being made just broad enough on the beam to keep the sea. What is the result to the wretched slaves? Before the trade was put down by us in 1807, they had the benefit of what

was termed the Slave Carrying Act. During the twenty years that we spent in examining the details of the question—in ascertaining whether our crimes were so profitable as not to warrant us in leaving them off—in debating whether robbery, piracy, and murder should be prohibited by law, or receive protection and encouragement from the State—we, at least, were considerate enough to regulate the perpetration of them; and while those curious and very creditable discussions were going on, Sir William Dolben's Bill gave the unhappy victims of our cruelty and iniquity the benefit of a certain space between decks, in which they might breathe the tainted air more freely, and a certain supply of provisions and of water to sustain their wretched existence. But now there is nothing of the kind; and the Slave is in the same situation in which our first debates found him above half a century ago, when the venerable Thomas Clarkson awakened the attention of the world to his sufferings. The scantiest portion which will support life is alone provided; and the wretched Africans are compressed and stowed into every nook and cranny of the ship, as if they were dead goods concealed on board smuggling vessels. I may be thought to have said enough; but I may not stop here. Far more remains to tell; and I approach the darker part of the subject with a feeling of horror and disgust, which I cannot describe, and which three or four days gazing at the picture has not been able to subdue. But I go through the painful duty in the hope of inducing your Lordships at once to pronounce the doom of that system which fosters all that you are about to contemplate.

Let me first remind you of the analogy which this head-money system bears to what was nearer home, called blood-money. That it produces all the effects of the latter, I am certainly not prepared to affirm;

for the giving a reward to informers on capital conviction had the effect of engendering conspiracies to prosecute innocent men, as well as to prevent the guilty from being stopt in their career, until their crimes had ripened into capital offences; and I have no conception that any attempts can be made to capture vessels not engaged in the trade—nor indeed could the head-money, from the nature of the thing, be obtained by any such means. But in the other part of the case the two things are precisely parallel, have the self-same tendency, and produce the same effects; for they both appeal to the same feelings and motives, putting in motion the same springs of human action. Under the old bounty system no policeman had an interest in detecting and checking guilt until it reached a certain pitch of depravity, until the offences became capital, and their prosecutor could earn forty pounds, they were not worth attending to. The cant expression, but the significant one is well known. "He (the criminal) is not yet weight enough—he does not weigh his forty pounds"—was the saying of those who cruised for head-money at the Old Bailey. And thus lesser crimes were connived at by some---encouraged, nurtured, fostered in their growth by others---that they might attain the maturity which the law had in its justice and wisdom said they must reach before it should be worth any one's while to stop the course of guilt. Left to itself wickedness could scarcely fail to shoot up and ripen. As soon as he saw that time come, the policeman pounced upon his appointed prey, made his victim pay the penalty of the crime he had suffered, if not encouraged him to commit, and himself obtained the reward provided by the State for the patrons of capital felony. Such within the tropics is the tendency, and such are the effects of our head-money system. The Slave-ship gains the African shores; she

there remains unmolested by the land authorities, and unvisited by the sea; the human cargo is prepared for her; the ties that knit relatives together are forcibly severed; all the resources of force and of fraud, of sordid avarice and of savage intemperance, are exhausted to fill the human market; to prevent all this, nothing, or next to nothing is attempted; the penalty has not as yet attached; the Slaves are not on board, and head-money is not due; the vessel, to use the technical phrase, does not yet weigh enough; let her ride at anchor till she reach her due standard of five pounds a Slave, and then she will be pursued! Accordingly, the lading is completed; the cruiser keeps out of sight; and the pirate puts to sea. And now begin those horrors—those greater horrors, of which I am to speak, and which are the necessary consequences of the whole proceeding, considering with what kind of miscreants our cruisers have to deal.

On being discovered, perceiving that the cruiser is giving chase, the Slaver has to determine whether he will endeavour to regain the port, escaping for the moment, and waiting for a more favourable opportunity, or will fare across the Atlantic, and so perfect his adventure, and consummate his crime, reaching the American shores with a part at least of his lading. How many unutterable horrors are embraced in the word that has slipt my tongue? A part of the lading! Yes—yes—For no sooner does the miscreant find that the cruiser is gaining upon him, than he bethinks him of lightening his ship, and he chooses the heaviest of his goods, with the same regard for them as if they were all inanimate lumber. He casts overboard, men and women and children! Does he first knock off their fetters? No! Why? Because those irons by which they have been held together in couples, for safety—but not more to

secure the pirate crew against revolt, than the cargo against suicide—to prevent the Africans from seeking in a watery grave an escape from their sufferings—those irons are not screwed together and padlocked, so as to be removed in case of danger from tempest or from fire—but they are rivetted—welded together by the blacksmith in his forge—never to be removed, nor loosened, until after the horrors of the middle passage, the children of misery shall be landed to bondage in the civilized world, and become the subjects of Christian kings! The irons, too, serve the purpose of weights; and, if time be allowed in the hurry of the flight, more weights are added, to the end that the wretches may be entangled, to prevent their swimming. Why? Because the Negro, with that herculean strength which he is endowed withal, and those powers of living in the water which almost give him an amphibious nature, might survive to be taken up by the cruiser, and become a witness against the murderer. The escape of the malefactor is thus provided, both by lightening the vessel which bears him away, and by destroying the evidence of his crimes. Nor is this all. Instances have been recorded of other precautions used with the same purpose. Water-casks have been filled with human beings, and one vessel threw twelve overboard thus laden. In another chase, two Slave-ships endeavoured, but in vain, to make their escape, and, my blood curdles when I recite, that, in the attempt, they flung into the sea five hundred human beings, of all ages, and of either sex! These are things related—not by enthusiasts, of heated imagination—not by men who consult only the feelings of humanity, and are inspired to speak by the great horror and unextinguishable indignation that fill their breasts—but by officers on duty, men engaged professionally in the Queen's

service. It is not a creation of fancy to add, as these have done, to the hideous tale, that the ravenous animals of the deep are aware of their prey; when the Slave-ship makes sail, the shark follows in her wake, and her course is literally to be tracked through the ocean by the blood of the murdered, with which her enormous crimes stain its waters. I have read of worse than even this! But it will not be believed! I have examined the particulars of scenes yet more hideous, while transfixed with horror, and ashamed of the human form that I wore—scenes so dreadful as it was not deemed fit to lay bare before the public eye! scenes never surpassed in all that history has recorded of human guilt to stain her pages, in all that poets have conceived to harrow up the soul! scenes, compared with which the blood-stained annals of Spain —cruel and sordid Spain—have registered only ordinary tales of avarice and suffering—though these have won for her an unenvied pre-eminence of infamy! scenes not exceeded in horror by the forms with which the great Tuscan poet peopled the hell of his fancy, nor by the dismal tints of his illustrious countryman's pencil, breathing its horrors over the vaults of the Sistine chapel! *Mortua quin etiam jungebat corpora vivis!* On the deck and in the loathsome hold are to be seen the living chained to the dead—the putrid carcase remaining to mock the survivor with a spectacle that to him presents no terrors—to mock him with the spectacle of a release which he envies! Nay, women have been known to bring forth the miserable fruit of the womb surrounded by the dying and the dead—the decayed corpses of their fellow victims.

Am I asked how these enormities shall be prevented? First ask me, to what I ascribe them? and then my answer is ready. I charge them upon the system of head-money which I have described, and of whose

tendency no man can pretend to doubt. Reward men for preventing the Slaver's voyage, not for interrupting it—for saving the Africans from the Slave-ship, not for seizing the ship after it has received them; and then the inducement will be applied to the right place, and the motive will be suited to the act you desire to have performed.

But I have hitherto been speaking of the intolerable aggravation which we superadd to the traffic. Its amount is another thing. Do all our efforts materially check it? Are our cruisers always successful? Are all flags and all the slavers under any flag subject to search and liable to capture? I find that the bulk of this infernal traffic is still undiminished; that though many Slave-ships may be seized, many more escape and reach the New World; and that the numbers still carried thither are as great as ever. Of this sad truth the evidence is but too abundant and too conclusive. The premium of insurance at the Havannah is no higher than 12½ per cent. to cover all hazards. Of this 4½ per cent. is allowed for sea risk and underwriter's profits, leaving but 8 for the chance of capture. But in Rio it is as low as 11 per cent. leaving but 6½ for risk of capture. In the year 1835, 80 Slave-ships sailed from the Havannah alone; and I have a list of the numbers which six of those brought back, giving an average of about 360; so that above 28,000 were brought to that port in a year. In the month of December of that year, between 4000 and 5000 were safely landed in the port of Rio, the capital of our good friend and ally, the Emperor of Brazil. It is frightful to think of the numbers carried over by some of these ships. One transported 570, and another no less than 700 wretched beings. I give the names of these execrable vessels—the Felicidad and the Socorro. Of all Slave-traders, the greatest—of all the criminals

engaged in these guilty crimes, the worst—are the Brazilians, the Spaniards, and the Portuguese—the three nations with whom our commerce is the closest, and over whom our influence is the most commanding. These are the nations with whom we (and I mean France as well as ourselves) go on in lingering negotiation—in quibbling discussion—to obtain some explanation of some article in a feeble inefficient treaty, or some extension of an ineffectual right of search,—while their crimes lay all Africa waste, and deluge the seas with the blood of her inhabitants. Yet if a common and less guilty pirate dared pollute the sea, or wave his black flag over its waves, let him be of what nation he pleased to libel by assuming its name, he would in an instant be made to pay the forfeit of his crimes. It was not always so. We did not in all times, nor in every cause, so shrink from our duty through delicacy or through fear. When the thrones of ancient Europe were to be upheld, or their royal occupants to be restored, or the threatened privileges of the aristocracy wanted champions, we could full swiftly advance to the encounter, throw ourselves into the breach, and confront alone the giant arm of republics and of emperors wielding the colossal power of France. But now when the millions of Africa look up to us for help—when humanity and justice are our only clients—I am far from saying that we do not wish them well: I can believe that if a word could give them success—if a wave of the hand sufficed to end the fray—the word would be pronounced—the gesture would not be withholden; but if more be wanted,—if some exertion is required—if some risk must be run in the cause of mercy—then our tongue cleaves to the roof of our mouth; our hand falls paralysed; we pause and falter, and blanch and quail before the ancient and consecrated monarchy

of Brazil, the awful might of Portugal, the compact, consolidated, overwhelming power of Spain! My lords, I trust—I expect—we shall pause and falter, and blanch and quail no more! Let it be the earliest, and it will be the most enduring glory of the new reign, to extirpate at length this execrable traffic! I would not surround our young Queen's throne with fortresses and troops, or establish it upon the triumphs of arms and the trophies of war—no, not I!

Οὐ γὰρ λίθοις ἐτειχίσα τὴν πόλιν οὐδὲ πλίνθοις ἐγώ, οὐδ' ἐπὶ τούτοις μέγιστον τῶν ἐμαυτοῦ φρονῶ· ἀλλ' ἐὰν τὸν ἐμὸν τειχισμὸν, κ. τ. λ.*

I would build her renown neither upon military nor yet upon naval greatness; but upon rights secured, upon liberties extended, humanity diffused, justice universally promulged. In alliance with such virtues as these I would have her name descend to after ages. I would have it commemorated for ever, that in the first year of her reign, her throne was fortified, and her crown embellished, by the proudest triumph over the worst of crimes—the greatest triumph mortal ever won, over the worst crime man ever committed!

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* ΔΗΜ. Περὶ Στέφ.

SPEECH

ON THE

IMMEDIATE EMANCIPATION

OF THE

NEGRO APPRENTICES.

DELIVERED IN THE HOUSE OF LORDS,

FEBRUARY 20, 1838.

DEDICATION.

TO

THE MARQUESS OF SLIGO, K.P.

ETC. ETC. ETC.

LATE GOVERNOR AND CAPTAIN-GENERAL OF JAMAICA.

THIS Speech is inscribed with peculiar propriety to the humane and virtuous Viceroy, who, himself a Master of Slaves, gained by his just and beneficent Government of the greatest Slave colony in the world, the truly enviable title of the Poor Negro's Friend. The only other publication upon the subject to which I ever affixed my name, was dedicated to an illustrious Statesman, whose life has been devoted to his country's service, and whose noble ambition has always connected itself with the improvement of mankind, by that natural sympathy which unites brilliant genius with public virtue. But the fame with which your Administration has surrounded your character makes it not unfit to name you even after a Wellesley.

The anxiety expressed from all parts of the country

to obtain an authentic report of this Speech, and the acceptance with which my countrymen have honoured the humble though zealous efforts of their fellow-labourer in this mighty work, I regard as by far the highest gratification of a long public life. The present occasion also affords me an opportunity of contradicting the studied misrepresentations of some injudicious supporters of the Government, who have not scrupled to assert that my principal object in proposing the measures of yesterday, was not the abolition of Negro Apprenticeship, but only the regulation of the Master's conduct. Nothing can be more wide of the fact than such a statement.

I appeal to your Lordship, and to all who heard me, whether my whole contention was not in behalf of Instant and Complete Emancipation, as the only effectual remedy, and whether I wasted more than a single sentence upon any mere palliatives. To regulate the master's conduct, while the abominable system is suffered to continue, was the purpose of the first five resolutions—but my whole forces, such as they are, were brought to bear upon the only position to take which I was very anxious, and, to force an immediate, unconditional surrender of the master's rights—an immediate, unconditional liberation of the slave.

I think I have some right to complain of these misstatements. It was surely enough that I should be resisted by the whole strength of the Government, and that, in consequence of their resistance, my great object of obtaining the Negro's freedom should be defeated, as well as all hopes of effectually destroying the Slave Trade itself disappointed by the rejection of my other

propositions. There is a refinement of subtle injustice in those men propagating a belief through the country, that the conduct of the Ministry, by which my motion was defeated, and by which I verily think their official existence is endangered, did not altogether thwart the intentions of the parties by whom that motion was brought forward and supported. The reader of this speech will be at no loss to perceive how entirely its object was the Immediate Destruction of Slavery, and how invariably every word of it was inspired by hostility to the existing system, inextinguishable and uncompromising.

BROUGHAM.

February 21, 1838.

SPEECH.

I DO not think, my lords, that ever but once before, in the whole course of my public life, I have risen to address either House of Parliament with the anxiety under which I labour at this moment. The occasion to which alone I can liken the present, was, when I stood up in the Commons to expose the treatment of that persecuted Missionary whose case gave birth to the memorable debate upon the condition of our Negro brethren in the Colonies—a debate happily so fruitful of results to the whole of this great cause. But there is this difference between the two occasions to sustain my spirits now, that whereas, at the former period, the horizon was all wrapt in gloom, through which not a ray of light pierced to cheer us, we have now emerged into a comparatively bright atmosphere, and are pursuing our journey full of hope. For this we have mainly to thank that important discussion, and those eminent men who bore in it so conspicuous a part. And now I feel a further gratification in being the means of enabling your lordships, by sharing in this great and glorious work—nay, by leading the way towards its final accomplishment, to increase the esteem in which you are held by your fellow-citizens; or if, by any differences of opinion on recent measures, you may

unhappily have lost any portion of the public favour, I know of no path more short, more sure, or more smooth, by which you may regain it. But I will not rest my right to your co-operation upon any such grounds as these. I claim your help by a higher title. I rely upon the justice of my cause—I rely upon the power of your consciences—I rely upon your duty to God and to man—I rely upon your consistency with yourselves—and, appealing to your own measure of 1833, if you be the same men in 1838, I call upon you to finish your own work, and give at length a full effect to the wise and Christian principles which then guided your steps.

I rush at once into the midst of this great argument. I drag before you, once more, but I trust for the last time, the African Slave Trade, which I lately denounced here, and have so often denounced elsewhere. On this we are all agreed. Whatever difference of opinion may exist on the question of Slavery, on the Slave traffic there can be none. I am now furnished with a precedent which may serve for an example to guide us. On Slavery we have always held that the Colonial legislatures could not be trusted; that, to use Mr. Canning's expression, you must beware of allowing the masters of Slaves to make laws upon Slavery. But upon the detestable traffic in Slaves, I can show you the proceeding of a Colonial Assembly, which we should ourselves do well to adopt after their example. These masters of Slaves, not to be trusted on that subject, have acted well and wisely on this. I hold in my hand a document, which I bless heaven that I have lived to see. The legislature of Jamaica, owners of Slaves, and representing all other Slave owners, feel that they also represent the poor Negroes themselves: and they approach the throne, expressing themselves thankful—tardily thankful, no doubt—that the traffic has been now for thirty

years put down in our own Colonies, and beseeching the Sovereign to consummate the great work by the only effectual means—of having it declared piracy by the law of nations, as it is robbery, and piracy, and murder by the law of God. This address is precisely that which I desire your lordships now to present to the same gracious Sovereign. After showing how heavily the Foreign Slave Trade presses upon their interests, they take higher ground in this remarkable passage:—"Nor can we forego the higher position, as a question of humanity; representing all classes of the island, we consider ourselves entitled to offer to your Majesty our respectful remonstrance against the continuance of this condemned traffic in human beings. As a community, composed of the descendants of Africa as well as Britain, we are anxious to advance the character of the country; and we, therefore, entreat your Majesty to exert your interest with foreign powers to cause this trade at once to be declared piracy, as the only effectual means of putting it down, and thereby to grace the commencement of your auspicious reign."

My lords, I will not stop to remind the lawgivers of Jamaica why it is that the Slave traffic is a crime of so black a dye. I will not remind them that if Slavery were no more, the trade in Slaves must cease; that if the West Indies were like England, peopled with free men, and cultivated only by free hands, where no man can hold his fellow-creature in bondage, and the labourer cannot be tormented by his masters; if the cart-whip having happily been destroyed, the doors of the prison-house were also flung open, and chains, and bolts, and collars were unknown, and no toil endured but by the workmen's consent, nor any effort extorted by dread of punishment; the traffic which we justly call not a trade but a crime, would no longer inflict

the miseries with which it now loads its victims, who, instead of being conveyed to a place of torture and misery, would be carried into a land of liberty and enjoyment. Nor will I now pause to consider the wishes of some colonies, in part, I am grieved to say, granted by the Government, that the means should be afforded them of bringing over what they call labourers from other parts of the globe, to share in the sufferings of Slavery, hardly mitigated under the name of apprenticeship. That you should ever join your voices with them on this matter, is a thing so out of the question that I will not detain you with one other remark upon it. But so neither have I any occasion to go at present into the subject of the Slave trade altogether, after the statements which I lately made in this place upon the pernicious effects of our head-money, the frightful extent of the Negro traffic, and the horrible atrocities which mark its course still more awfully now than before. In order to support my call upon your lordships for the measures which alone can extirpate such enormities, I need but refer you to those statements. Since I presented them here, they have been made public, indeed promulgated all over the kingdom, and they have met with no contradiction, nor excited the least complaint in any quarter, except that many have said the case was understated; and that in one place, and only in one, I have been charged with exaggeration. I have read with astonishment, and I repel with scorn, the insinuation, that I had acted the part of an advocate, and that some of my statements were coloured to serve a cause. How dares any man so to accuse me? How dares any one, skulking under a fictitious name, to launch his slanderous imputations from his covert? I come forward in my own person. I make the charge in the face of day. I drag the criminal to trial. I openly call down justice on his

head. I defy his attacks. I defy his defenders. I challenge investigation. How dares any concealed adversary to charge me as an advocate speaking from a brief, and misrepresenting the facts to serve a purpose? But the absurdity of this charge even outstrips its malice. I stated that the Negroes were thrown overboard in pairs during a chase to lighten the ship and enable her to escape; thrown overboard in fetters, that they might sink, and not be witnesses against the murderers. The answer is, that this man, if man he be, had been on board Slave ships, and never seen such cruelties. I stated that the fetters were not locked, but rivetted in the forge. The answer is, that the writer had been on board of Slave vessels, and seen fetters which were locked, and not rivetted. How dares any man deny a statement made upon authority referred to by name, on such a trumpery story as this? As well might he argue that a murder sworn to by fifty or a hundred credible witnesses, had never been committed, because some one came forward and said he had not seen it done. Did I not give the particulars? Did I not avouch my authority? Did I not name the gallant officer from whose official report, printed and published, my account was taken? Did I not give the respected name of Commodore Hayes, one of the best esteemed officers in her Majesty's service? I, indeed, understated the case in many particulars. But, my lords, if I have not been chargeable with exaggeration—if all who took part in the former debate, whether in or out of office, agreed in acquitting me of that—so neither shall I be charged for the future with understating the atrocities of the case. What I then withheld, I will now tell—and not keeping back my authority now any more than I did before, I appeal to my noble friend near me* for the truth of

* Lord Sligo.

the appalling story, himself a planter, and an owner of Slaves. I ask him if he did not know a vessel brought in with a cargo of a hundred and eighty or two hundred wretched beings jammed into a space three feet and a half in height.

Lord Sligo.—Two and a half.

Lord Brougham.—There, my lords, I am understating again. Into that space of two feet and a half between the decks, that number of miserable creatures were jammed, like inanimate lumber, certainly in a way in which no Christian man would crowd dumb animals. My Noble friend will say whether or not that vessel, whose slaves had never been released, or even washed, or in any way cleansed, since it left the African coast, presented an intolerable nuisance to all the senses—a nuisance unfit for any description. Nor is this all. I will be chargeable with understatement no more! The ophthalmia had broken out among the poor creatures thus kept in unspeakable torment; and as often as any one was seized, instead of affording him any medical or other assistance, he was instantly cast overboard, and sunk in his chains, with the view of stopping the infection. I will understate things no more! I said before that as many as 700 slaves were carried across the sea in one ship; there I stopped, for to those who know what a slave ship is, this sufficed to harrow up every feeling of the soul. But another vessel brought away, first and last, in one voyage, 980 miserable, unoffending, simple beings; and of this number, without any chase, or accident, or violence, or any acts of wholesale murder, such as those we have been contemplating, six hundred perished in the voyage, through the hardships and sufferings inseparably connected with this execrable traffic. Of 23 or 2400 carried away by four other ships, no less than 1500 perished in like manner, having fallen a sacrifice to

the pestilential hold. How this enormous crime of these Foreign nations is to be rooted out I know full well. You must no longer treat it as a mere contraband trade—no longer call murder smuggling, or treat pirates as offenders against the revenue laws. As long as our Slave Traders were so dealt with, they made this calculation—"If we escape three times in four, our profits are so large that the seizure and confiscation can be well afforded; nay, if we are taken as often as we escape, the ships netting 20, 30, even as much as 50 and 60,000 pounds a voyage, we can well afford to lose 1500 or 2000 pounds when the adventure fails." So they ran the risk, and on a calculation of profit and loss were fully justified. But I had in 1811 the singular happiness of laying the axe to the root of this detestable system. I stopt all those calculations by making the trade felony and punishing it as such; for well I know that they who would run the risk of capture when all they could suffer by it was a diminution of their profits, would be slow to put their heads in the noose of the halter which their crimes so richly deserved. The measure passed through all its stages in both Houses without one dissenting voice; and I will venture to assert that ever since, although English capital, I have too much reason to think, finds its way into the Foreign Slave Trade, no Englishman is concerned directly with it in any part of the world. Trust me, the like course must be taken if we would put an end to the same crimes in other countries. Piracy and murder must be called by their right names, and visited with their appropriate penalties. That the Spanish and Portuguese traders now make the same calculations which I have been describing, is a certain fact. I will name one—Captain Inza, of the ship Socorro, who, on being captured, had the effrontery to boast that he had made fourteen Slave voyages, and

that this was the first time he had been taken. Well might he resolve to run so slight a risk for such vast gains; but had the fate of a felon-pirate awaited him, not all the gains which might tempt his sordid nature would have prevailed upon him to encounter that hazard.

I formerly recounted instances of murder done by wholesale in the course of the chase of our cruisers. I might have told a more piteous tale; and I will no longer be accused of understating this part of the case either. Two vessels were pursued. One after another, Negroes were seen to be thrown overboard to the number of a hundred and fifty, of all ages—the elder and stronger ones loaded with their fetters, to prevent them from swimming or floating—the weaker were left unchained to sink or expire; and this horrible spectacle was presented to the eyes of our cruisers' men—they saw, unable to lend any help, the water covered with those hapless creatures, the men sinking in their chains—the women, and—piteous sight!—the infants and children struggling out their little strength in the water till they too were swallowed up and disappeared!

I now approach a subject, not, indeed, more full of horrors, or of greater moment, but on which the attention of the people has for some time past been fixed with an almost universal anxiety, and for your decision upon which they are now looking with the most intense interest, let me add, with the liveliest hopes. I need not add that I mean the great question of the condition into which the Slaves of our Colonies were transferred as preparatory to their complete liberation—a subject upon which your table has been loaded with so many petitions from millions of your fellow-countrymen. It is right that I should first remind your lordships of the anxious apprehensions

which were entertained in 1833, when the Act was passed, because a comparison of those fears with the results of the measure, will form a most important ingredient of the argument which I am about to urge for the immediate liberation of the apprentices. I well remember how uneasy all were in looking forward to the first of August, 1834, when the state of slavery was to cease, and I myself shared in those feelings of alarm when I contemplated the possible event of the vast but yet untried experiment. My fears proceeded first from the character of the masters. I knew the nature of man, fond of power, jealous of any interference with its exercise, uneasy at its being questioned, offended at its being regulated and constrained, averse above all to have it wrested from his hands, especially after it has been long enjoyed, and its possession can hardly be severed from his nature. But I also am aware of another and a worser part of human nature. I know that whoso has abused power, clings to it with a yet more convulsive grasp. I dreaded the nature of man prone to hate whom he has injured—because I knew that law of human weakness which makes the oppressor hate his victim, makes him who has injured never forgive, fills the wrong doer with vengeance against those whose right it is to vindicate those injuries on his own head. I knew that this abominable law of our evil nature was not confined to different races, contrasted hues and strange features, but prevailed also between white man and white—for I never yet knew any one hate me, but those whom I had served, and those who had done me some grievous injustice. Why then should I expect other feelings to burn within the planter's bosom, and govern his conduct towards the unhappy beings who had suffered so much and so long at his hands? But, on the part of the Slaves, I was not without some anxiety, when I

considered the corrupting effects of that degrading system under which they had for ages groaned, and recognised the truth of the saying in the first and the earliest of profane poets, that "the day which makes a man a Slave robs him of half his value." I might well think that the West India Slave offered no exception to this maxim; that the habit of compulsory labour might have incapacitated him from voluntary exertion; that over much toil might have made all work his aversion; that never having been accustomed to provide for his own wants, while all his supplies were furnished by others, he might prove unwilling or unfit to work for himself, the ordinary inducements to industry never having operated on his mind. In a word, it seemed unlikely that long disuse of freedom, might have rendered him too familiar with his chains to set a right value on liberty; or that, if he panted to be free, the sudden transition from the one state to the other, the instantaneous enjoyment of the object of his desires, might prove too strong for his uncultured understanding, might overset his principles, and render him dangerous to the public peace. Hence it it was that I entertained some apprehensions of the event, and yielded reluctantly to the plan proposed of preparing the Negroes for the enjoyment of perfect freedom by passing them through the intermediate state of Indentured Apprenticeship. Let us now see the results of their sudden though partial liberation, and how far those fears have been realised; for upon this must entirely depend the solution of the present question—Whether or not it is safe now to complete the emancipation, which, if it only be safe, we have not the shadow of right any longer to withhold.—Well, then, let us see.

The First of August came, the object of so much anxiety and so many predictions—that day so joyously

expected by the poor Slaves, so sorely dreaded by their hard taskmasters; and surely if ever there was a picture interesting, even fascinating to look upon—if ever there was a passage in a people's history that redounded to their eternal honour—if ever triumphant answer was given to all the scandalous calumnies for ages heaped upon an oppressed race, as if to justify the wrongs done them—that picture, and that passage, and that answer were exhibited in the uniform history of that auspicious day all over the Islands of the Western sea. Instead of the horizon being lit up with the lurid fires of rebellion, kindled by a sense of natural though lawless revenge, and the just resistance to intolerable oppression—the whole of that widespread scene was mildly illuminated with joy, contentment, peace, and goodwill towards men. No civilized nation, no people of the most refined character, could have displayed after gaining a sudden and signal victory, more forbearance, more delicacy, in the enjoyment of their triumph, than these poor untutored Slaves did upon the great consummation of all their wishes which they had just attained. Not a gesture or a look was seen to scare the eye—not a sound or a breath from the Negro's lips was heard to grate on the ear of the Planter. All was joy, congratulation, and hope. Everywhere were to be seen groups of these harmless folks assembled to talk over their good fortunes; to communicate their mutual feelings of happiness; to speculate on their future prospects. Finding that they were now free in name, they hoped soon to taste the reality of liberty. Feeling their fetters loosened, they looked forward to the day which should see them fall off, and the degrading marks which they left be effaced from their limbs. But all this was accompanied with not a whisper that could give offence to the Master by reminding him of the change.

This delicate, calm, tranquil joy, was alone to be marked on that day over all the chain of the Antilles. —Amusements there were none to be seen on that day—not even their simple pastimes by which they had been wont to beguile the hard hours of bondage, and which reminded that innocent people of the happy land of their forefathers, whence they had been torn by the hands of Christian and civilized men. The day was kept sacred as the festival of their liberation; for the Negroes are an eminently pious race. They enjoy the advantages of much religious instruction, and partake in a large measure of spiritual consolation. These blessings they derive not from the ministrations of the Established Church—not that the aid of its priests is withheld from them, but the services of others, of zealous Missionaries, are found more acceptable and more effectual, because they are more suited to the capacity of the people. The meek and humble pastor, although perhaps more deficient in secular accomplishments, is far more abounding in zeal for the work of the vineyard, and being less raised above his flock, is better fitted to guide them in the path of religious duty. Not made too fine for his work by pride of science, nor kept apart by any peculiar refinement of taste, but inspired with a fervent devotion to the interests of his flock, the Missionary pastor lives but for them; their companion on the week-day, as their instructor on the Sabbath; their friend and counsellor in temporal matters, as their guide in spiritual concerns. These are the causes of the influence he enjoys—this the source from whence the good he does them flows. Nor can I pass by this part of the West Indian picture without rendering the tribute of heartfelt admiration which I am proud to pay, when I contemplate the pious zeal, the indefatigable labours of these holy

and disinterested men; and I know full well that if I make my appeal to my Noble friend* he will repeat the testimony he elsewhere bore to the same high merits, when he promulgated his honest opinion, that "for the origin of all religious feeling among the Negroes, it is among the missionaries, and not the clergy, we must look." Therefore it was that fourteen years ago, I felt all the deep anxiety to which I this night began by referring, when it was my lot to drag before the Commons of England the persecutors of one among the most useful, most devoted, and most godly of that most estimable class of men, who for his piety and his self-devotion had been hunted down by wicked men, conspiring with unjust Judges, and made to die the death for teaching to the poor Negroes the gospel of peace. I am unspeakably proud of the part I then took; I glory mightily in reflecting that I then struck, aided and comforted by far abler men,† the first of those blows, of which we are now aiming the last, at the chains that bind the harmless race of our Colonial peasantry. The First of August came—and the day was kept a sacred holiday, as it will ever be kept to the end of time throughout all the West Indies. Every church was crowded from early dawn, with devout and earnest worshippers. Five or six times in the course of that memorable Friday were all those churches filled and emptied in succession by multitudes who came, not coldly to comply with a formal ceremonial, not to give mouth worship or eye worship, but to render humble and hearty thanks to

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* Lord Sligo.

† The great exertions on that memorable occasion of Lord Chief Justice Denman, Dr. Lushington, and others, are well known; and the report of the interesting debate does them justice. But no one from merely reading it can form an adequate idea of Mr. Justice Williams's admirable speech, distinguished alike for closeness of argument and for the severity of Attic taste.

God for their freedom at length bestowed. In countries where the bounty of nature provokes the passions, where the fuel of intemperance is scattered with a profuse hand, I speak the fact when I tell that not one Negro was seen in a state of intoxication. Three hundred and forty thousand Slaves in Jamaica were at once set free on that day, and the peaceful festivity of these simple men was disturbed only on a single estate, in one parish, by the irregular conduct of three or four persons, who were immediately kept in order, and tranquillity in one hour restored.

But the termination of Slavery was to be the end of all labour; no man would work unless compelled —much less would any one work for hire. The cart-whip was to resound no more, and no more could exertion be obtained from the indolent African. I set the fact against these predictions. I never have been in the West Indies; I was one of those whom, under the name of reasoners, and theorists, and visionaries, all planters pitied for incurable ignorance of Colonial affairs; one of those who were forbidden to meddle with matters of which they could only judge who had the practical knowledge of experienced men on the spot obtained. Therefore I now appeal to the fact—and I also appeal to one who has been in the West Indies, is himself a planter, and was an eye-witness of the things upon which I call for his confirmatory testimony. It is to my noble friend* that I appeal. He knows, for he saw, that ever since Slavery ceased, there has been no want of inclination to work in any part of Jamaica, and that labour for hire is now to be had without the least difficulty by all who can afford to pay wages—the apprentices cheerfully working for those who will pay them, during the hours not

* Lord Sligo.

appropriated to their masters. My noble friend made an inquisition as to the state of this important matter in a large part of his government; and I have his authority for stating, that, in nine estates out of ten, labourers for hire were to be had without the least difficulty. Yet this was the people of whom we were told with a confidence that set all contradiction at defiance, with an insulting pity for the ignorance of us who had no local experience, that without the lash there would be no work done, and that when it ceased to vex him the African would sink into sleep. The prediction is found to have been ridiculously false; the Negro peasantry is as industrious as our own; and wages furnish more effectual stimulus than the scourge. O but, said the men of Colonial experience —the true practical men—this may do for some kinds of produce. Cotton may be planted—coffee may be picked—indigo may be manufactured—all these kinds of work the Negro may probably be got to do; but at least the cane will cease to grow—the cane-piece can no more be hoed, nor the plant be hewn down, nor the juice boiled, and sugar will utterly cease out of the land. Now, let the man of experience stand forward—the practical man, the inhabitant of the Colonies—I require that he now come forth with his prediction, and I meet him with the fact. Let him but appear, and I answer for him, we shall hear him prophecy no more. Put to silence by the fact, which even these confident men have not the courage to deny, they will at length abandon this untenable ground. Twice as much sugar by the hour was found, on my noble friend's* inquiry, to be made since the Apprenticeship as under the Slave system, and of a far better quality; and one planter on a vast scale has

* Lord Sligo.

said, that, with twenty free labourers, he could do the work of a hundred Slaves. But linger not on the islands where the gift of freedom has been but half bestowed—look to Antigua and Bermuda, where the wisdom and the virtue has been displayed, of at once giving complete emancipation. To Montserrat the same appeal might have been made, but for the folly of the Upper House, which threw out the bill passed in the Assembly by the representatives of the planters. But in Antigua and Bermuda, where, for the last three years and a half, there has not even been an Apprentice—where all have been at once made as free as the peasantry of this country—the produce has increased, not diminished, and increased notwithstanding the accidents of bad seasons, droughts, and fires.

But then we were told by those whose experience was reckoned worth so much more than our reasoning, that even if by some miracle industry should be found compatible with liberty, of which indeed we in our profound ignorance of human nature had been wont to regard it as the legitimate offspring; at all events, the existence of order and tranquillity was altogether hopeless. After so long being inured to the abject state of Slavery, its sudden cessation, the instant transition from bondage to freedom, must produce convulsions all over the Colonies, and the reign of rebellion and anarchy must begin. Not content with reasoning, the practical men condescended to tax their luxuriant imagination for tropes to dazzle and delude whom their arguments might fail to convince. The child could not walk alone if his leading-strings were cut away—the full-grown tree could not be transplanted—the limbs cramped by the chain could not freely move—the maniac might not safely be freed from the keeper's control;—and Mr. Wyndham used to bring the play of his own lively fancy upon the

question, and say, that if it was a cruel thing to throw men out of the window, he saw no great kindness in making up for the injury you had done by throwing them back again into the house. Alas! for all those prophecies, and reasonings, and theories, and figures of speech. The dawn of the First of August chased away the phantoms, and instead of revolt and conspiracy, ushered in order and peace. But the fanciful men of experience, the real practical visionaries of the West Indies, though baffled, were not defeated. Only wait, they said, till Christmas—all who know the Negro character then dread rebellion—all experience of Negro habits shows that to be the true season of revolt. We did wait till Christmas—and what happened? I will go to Antigua, because there the emancipation began suddenly, without any preparatory state of apprenticeship—with no gradual transition, but the chains knocked off at once, and the Slave in an instant set free. Let then the men of practical experience hear the fact. For the first time these thirty years on that day, Christmas 1834, martial law was not proclaimed in Antigua. You call for facts; here is a fact—a fact that speaks volumes. You appeal to experience—here is our experience, your own experience; and now let the man who scoffed at reasoning—who laughed us to scorn as visionaries, deriding our theories as wild fancies, our plans of liberty as frantic schemes which never could be carried into effect, whose only fruit must be wide spreading rebellion, and which must entail the loss of all other colonies—let him come forward now; I dare him to deny one of the statements I have made. Let those who thought the phrases "Jamaica Planter"—"Colonial interest"—" West Indian residence"—flung into the scale of oppression, could make that of mercy and freedom kick the beam—let them now hear the fact,

and hold their peace; the fact, that neither on the first day of emancipation, nor on the Christmas following the Negro festival, was there any breach of the peace committed over all the West Indian world. Then, after these predictions had all failed—these phantasies been all dispelled—the charges against the Negro race been thoroughly disproved—surely we might have looked for a submission to the test of experience itself, from the men of experience, and an acquittal of those so unjustly accused, after the case against them had been so signally defeated. No such thing. The accusers, though a second time discomfited, were not subdued; and there was heard a third appeal to a future day—an appeal which had I not read it in print, and heard of it in speeches, I could not have believed possible. Only wait, said these planters, till the anniversary of the first of August, and then you will witness the effects of your rash counsels! Monstrous effort of incurable prejudice—almost judicial blindness! As if they whom the event of liberation itself could not excite to commit the least disorderly act, would be hurried into rebellion by the return next year of the day on which it had happened; and having withstood all temptation to irregular conduct in the hour of triumph, would plunge into excess in celebrating its anniversary! I will not insult the understandings of your Lordships by adding that this prediction shared the fate of all the rest. And are we then now to set at nought all the lessons of real and long continued and widely extended experience? Are we never to profit by that of which we are for ever to prate? I ask you not to take advantage of other men's experience, by making its fruits your own—to observe what they have done or have suffered, and, wise by the example, to follow or to avoid. That indeed is the part of wisdom, and reflect-

ing men pride themselves upon pursuing such a course. But I ask nothing of the kind—my desires are more humble—my demand is more moderate far. I only ask you to be guided by the results of your own experience, to make some gain by that for which you have paid so costly a price. Only do not reject the lesson which is said, in the Book you all revere, to teach even the most foolish of our foolish kind; only show yourselves as ready to benefit by experience as the fool whom it proverbially is able to teach—and all I desire is gained.

But now, my lords, my task is accomplished, my work is done. I have proved my case, and may now call for judgment. I have demonstrated every part of the proposition which alone it is necessary that I should maintain, to prove the title of the apprentice to instant freedom from his task-masters, because I have demonstrated that the liberation of the Slave has been absolutely, universally safe—attended with not even inconvenience—nay, productive of ample benefits to his master. I have shown that the apprentice works without compulsion, and that the reward of wages is a better incentive than the punishment of the lash. I have proved that labour for hire may anywhere be obtained as it is wanted and can be purchased—all the apprentices working extra hours for hire, and all the free Negroes, wherever their emancipation has been complete, working harder by much for the masters who have wherewithal to pay them, than the Slave can toil for his owner or the Apprentice for his master. Whether we look to the noble minded Colonies which have at once freed their Slaves, or to those who still retain them in a middle and half-free condition, I have shown that the industry of the Negro is undeniable, and that it is constant and productive in proportion as he is the director of its application and the master of

its recompense. But I have gone a great deal further —I have demonstrated by a reference to the same experience—the same unquestioned facts—that a more quiet, peaceful, inoffensive, innocent race, is not to be found on the face of this earth, than the Africans—not while dwelling in their own happy country, and enjoying freedom in a natural state, under their own palm trees, and by their native streams—but after they have been torn away from it, enslaved, and their nature perverted in your Christian land, barbarised by the policy of civilized states—their whole character disfigured, if it were possible to disfigure it—all their feelings corrupted, if you could have corrupted them. Every effort has been made to spoil the poor African —every resource of wicked ingenuity exhausted to deprave his nature—all the incentives to misconduct placed around him by the fiend-like artifice of Christian, civilized men—and his excellent nature has triumphed over all your arts—your unnatural culture has failed to make it bear the poisonous fruit that might well have been expected from such abominable husbandry—though enslaved and tormented, degraded and debased, as far as human industry could effect its purpose of making him blood-thirsty and savage, his gentle spirit has prevailed, and preserved, in spite of all your prophecies, aye, and of all your efforts, unbroken tranquillity over the whole Caribbean chain! Have I not then proved my case? I shew you that the whole grounds of the arrangement of 1833, the very pretext for withholding complete emancipation, alleged incapacity for labour, and risk of insurrection, utterly fail. I rely on your own records; I refer to that record which cannot be averred against; I plead the record of your own statute. On what ground does its preamble rest the necessity of the intermediate, or apprentice state—all admitting that nothing

but necessity could justify it? "Whereas it is expedient that provision should be made for promoting the industry, and securing the good conduct of the manumitted Slaves." These are the avowed reasons for the measure—these its only defence. All men confessed, that, were it not for the apprehension of liberated Slaves not working voluntarily, and not behaving peaceably—of Slavery being found to have unfitted them for industry, and of a sudden transition to complete freedom being fraught with danger to the peace of society—you had no right to make them indented apprentices, and must at once set them wholly free. But the fear prevailed, which, by the event, I have now a right to call a delusion; and the apprenticeship was reluctantly agreed to. The delusion went further. The planter succeeded in persuading us that he would be a vast loser by the change, and we gave him twenty millions sterling money to indemnify him for the supposed loss. The fear is found to be utterly baseless—the loss is a phantom of the brain—a shape conjured up by the interested parties to frighten our weak minds—and the only reality in this mockery is the payment of that enormous sum to the crafty and fortunate magician for his incantations. The spell is dissolved—the charm is over;—the unsubstantial fabric of calculating alarm, reared by the colonial body with our help, has been crushed to atoms, and its fragments scattered to the wind. And now, I ask, suppose it had been ascertained in 1833, when you made the apprenticeship law, that these alarms were absolutely groundless—the mere phantom of a sick brain, or contrivance of a sordid ingenuity—would a single voice have been raised in favour of the intermediate state? Would the words Indentured Apprenticeship ever have been pronounced? Would the man have been found endued with the courage to call for keeping

the Negro in chains one hour after he had been acknowledged entitled to his freedom?

I freely admit that formerly, and before the event, when the measure was passed, the proof was upon us, who maintained that the experiment of emancipation was safe. We did not pretend to deny all risk; we allowed the possibility of a loss being sustained by the planters; nay, we did more; we took for granted there would be a loss, and a loss to the amount of twenty millions, and that vast sum we cheerfully paid to indemnify them. Then we had not the facts with us; all experience was said to be the other way; and because we could only offer argument against the opinions of practical men of local knowledge, we were fain to let them take every thing their own way, and receive our money by way of securing them against the possibility of damage. But now the case is reversed; the facts are all with us; experience has pronounced in our favour, and the burthen of the proof is thrown on the planter, or whoever would maintain, contrary to the result of the trial already made, that there is any risk whatever in absolute emancipation. The case lies in a narrow compass; the sudden transition from absolute slavery to apprenticeship—from the condition of chattels to that of men—has been made without the least danger whatever, though made without the least preparation. It is for those who, in spite of this undoubted fact, maintain that the lesser step of substituting freedom for apprenticeship will be dangerous, though made after a preparation of three years, to prove their position. Therefore I am not bound to maintain the opposite proposition, by any one argument or by a single fact. Nevertheless, I do prove the negative, against those upon whom it lies to prove the affirmative; I gratuitously demonstrate, both by argument and by fact, that the transition to freedom

from apprenticeship may be safely made. I appeal to the history of Antigua and Bermuda, where the whole process took place at once—where both steps were taken in one—and where, notwithstanding, there was more tranquillity than had ever before been enjoyed under the death-like silence of Slavery. Nay, I prove even more than the safety of the step in question; for in those Colonies the transition being so made at once, it follows, *a fortiori*, that the making the half transition, which alone remains to be made in the rest, is doubly free from all possible risk of any kind, either as to voluntary labour or orderly demeanour.

But this is not all—let us look at the subject from another point. The twenty millions have been paid in advance, on the supposition of a loss being incurred. No loss, but a great gain has accrued to the planter. Then he has received our money for nothing; it is money paid under a mistake in fact, to propagate which he himself contributed. If such a transaction had happened between private parties, I know not that the payer of the money might not have claimed it back as paid under mistake; or if deception had been practised, that he was not equitably entitled to recover it. But without going so far, of this I am certain, that all men of honourable minds would in such circumstances have felt it hard to keep the party to his bargain. Again, view the matter from a different point, for I am desirous to have it narrowly examined on all sides. Suppose it is still maintained that the second step we require to be taken will be attended with risk—how much is the loss likely to be? Six years apprenticeship and the emancipation were reckoned at twenty millions. No loss has as yet accrued, and four years have elapsed. Then what right have you to estimate the loss of the two years that remain at more than the whole sum? But unless

it exceeds that sum, the planter, by giving up these two years, manifestly loses nothing at all; for he has his compensation, even supposing the total loss to happen in two years, for which the money was given, on the supposition of a six years' diminished income. But suppose I make a present of this concession likewise, and admit that there may be a loss in the next two years as there has been a gain in the former four, have not I a right to set off that gain against any loss, and then unless twice as much shall be lost yearly in future as has been gained in past years, the planter is on the whole a gainer, even without taking the twenty millions into the account, and although there should be that double rate of loss, contrary to all probability: even without these twenty millions, he will on the whole have lost nothing. But I will not consent to leave that vast sum out of the account. It shall go in diminution of the loss, if any has been suffered. It shall be reckoned as received by the planters, and unless they lose, during the next two years, more than twenty millions over and above the gains they have made during the last four, I insist upon it that they be deemed to have suffered no loss at all, even if, contrary to all experience and all reason, they lose by the change. What is the consequence of all this? That at the very least we have a right to make the planters bring their twenty millions to account, and give us credit for that sum—so that until their losses exceed it, they shall have no right whatever to complain. Take, now, a new view of the subject, in order that we may have left no stone unturned, no part of the whole subject unexplored—have we not at the very least a title to call upon the planters to consign the money into a third party's hands, to pay it, as it were, into Court, until it shall be ascertained whether they sustain any loss at all, and, if any, to what

amount? I defy all the quibblers in the world to shew what right the planters can have, if they insist upon retaining our money, now given for nothing, to keep the Negroes out of their liberty, that money having been paid to compensate a supposed loss, and experience having demonstrated that instead of loss, the present change has already been to them a gain. My proposal is this, and if the planters be of good faith it must at once settle the question, at least it must bring their sincerity to the test. They say they are afraid of a loss by the apprenticeship ceasing—then let them either pay the money into Court, or keep an account of their losses, and if they, at the end of the two years, after emancipating the apprentices, shall be found to have incurred any loss, let them be repaid out of the money. I agree that they should be further compensated should their losses exceed the twenty millions, provided they will consent to repay all the money that exceeds the losses actually sustained. This is my proposal—and I am as certain of its being fair as I am convinced it will be rejected with universal horror by the planters.

Once more I call upon your Lordships to look at Antigua and Bermuda. There is no getting over that—no answering it—no repelling the force with which our reason is assailed by the example of thirty thousand Negroes liberated in one night—liberated without a single instance of disturbance ensuing, and with the immediate substitution of voluntary work for hire in the stead of compulsory labour under the whip. There is no getting over that—no answering it—no repelling the force with which it assails the ordinary reason of ordinary men. But it is said that those islands differ from Jamaica and Barbadoes, because they contain no tracts of waste or woody ground to which Negroes may flee away from their

masters, conceal themselves, and subsist in a Maroon state. I meet the objection as one in front, and I pledge myself to annihilate it in one minute by the clock. Why should free Negroes run away and seek refuge in the woods, if Slaves, or half Slaves, like apprentices, never think of escaping? That the Slave should run away—that the apprentice should fly—is intelligible; but if they don't, why should a bettering of their condition increase their inclination to fly? They who do not flee from bondage and the lash, why should they from freedom, wages, independence, and comfort? But this is not all. If you dread their escape and Marooning now, what the better will you be in 1840? Why are they to be less disposed then than now to fly from you? Is there any thing in the training of the present system to make two years more of it disarm all dislike of white severity, all inclination for the life of the Maroon? The minute is not yet out, and I think I have disposed of the objection.

Surely, surely, we are here upon ground often trodden before by the advocates of human improvement, the friends of extended rights. This is the kind of topic we have so often been fated to meet on other questions of deep and exciting interest. The argument is like that against the repeal of the penal laws respecting Catholics—if it proves any thing, it proves far too much—if there be any substance in it, the conclusion is, that we have gone too far already, and must retrace our steps—either complete the emancipation of the Catholics, or re-enact the penal code. The enemies of freedom, be it civil or religious—be it political or personal—are all of the same sect, and deal in the same kind of logic. If this argument, drawn from the danger of Negroes eloping in 1838, should we emancipate the apprentices, is worth any thing at all, it is a reason for not emancipating them in 1840,

and, consequently, for repealing altogether the law of 1833. But I shall not live to hear any one man in any one circle of any one part of the globe, either in the Eastern hemisphere or in the Western, venture to breathe one whisper in favour of so monstrous a course. But I will not stop here. Lives there, my lords, a man so ignorant of West Indian society, so blind to all that is passing in those regions, as to suppose that the continuance of the apprenticeship can either better the Negro's condition, or win him over to more love for his master? I am prepared to grapple with this part also of the argument. I undertake to demonstrate that the state of the Negro is in but a very few instances better, and in many beyond all comparison worse, than ever it was in the time of Slavery itself.

I begin by freely admitting that an immense benefit has been conferred by the cart-whip being utterly abolished. Even if the lash were ever so harshly or unsparingly or indiscriminately applied in execution of sentences pronounced by the magistrate, still the difference between using it in obedience to judicial command, and using it as the stimulus to labour, is very great. The Negro is no longer treated as a brute, because the motive to his exertions is no longer placed without himself, and in the driver's hand. This is, I admit, a very considerable change for the better in his condition, and it is the only one upon which he has to congratulate himself since the Act of Emancipation was passed. In no one other respect whatever is his condition improved—in many it is very much worse. I shall run over a few of these particulars, because the view of them bears most materially upon this whole question, and I cannot better prove the absolute necessity of putting an immediate end to the state of apprenticeship, than by showing what the victims of it are daily fated to endure.

First of all, as to the important article of food, to secure a supply of which in sufficient abundance the Slave-regulating acts of all the islands have always been so anxiously directed—I will compare the prison allowance of Jamaica with the apprentice allowance in Barbadoes, and other colonies, from which we have the returns, there being none in this particular from Jamaica itself. The allowance to prisoners is fourteen pints weekly of Indian corn, and different quantities of other grain, but comparing one will be sufficient for our purpose. In Barbadoes the allowance to apprentices is only ten pints, while in the Leeward Islands and Dominica it is no more than eight pints; for the Crown colonies, the Slave allowance, before 1834, was twenty-one pints; in the same colonies the apprentice receives but ten; so that in the material article of food there is the very reverse of an improvement effected upon the Negro's condition. Next as to time—it is certain that he should have half a day in the week, the Friday, to work his own provision-ground, beside Saturday to attend the market, and the Sabbath for rest and religious instruction. The Emancipation Act specifies forty-five hours as the number which he shall work weekly for his master. But these are now so distributed as to occupy the whole of Friday, and even in some cases to trench upon Saturday too. The planter also counts those hours invariably from the time when the Negro, having arrived at the place of work, begins his labour. But as it constantly happens that some at least of the Negroes on an estate have several miles to walk from their cottages, all the time thus consumed in going and returning is wholly lost to the Negro. Nay, it is lost to the master as well as the apprentice, and so long as he is not compelled to reckon it in the statutory allowance, it will continue a loss to both parties. For as no reason whatever can

be assigned why the Negro huts should be on the frontier of the plantation, only make the time, frequently as much at present as three or four hours a day, consumed in going and returning, count for part of the forty-five hours a week, and I'll answer for it, all the Negroes will be provided with cottages near the place of their toil.

I come now to the great point of the Justice administered to the people of colour. And here let me remind your Lordships how little that deserves the name of justice, which is administered wholly by one class, and that the dominant class, in a society composed of two races wholly distinct in origin and descent, whom the recollection of wrongs and sufferings has kept still more widely apart, and taught scarcely to regard each other as brethren of the same species. All judicial offices are filled by those whose feelings, passions, and interests are constantly giving them a bias towards one, and from the other, of the parties directly appearing before the judgment-seat. If to a great extent this is an unavoidable evil, surely you are bound, by every means possible, to prevent its receiving any unnecessary aggravation. Yet we do aggravate it by appointing to the place of Puisne Judge natives of the colonies, and proprietors of estates. From the same privileged class are taken all who compose the juries, both in criminal and in civil cases, to assess damages for injuries done by whites to blacks —to find bills of indictment for crimes committed upon the latter class—to try those whom the Grand Jury presents—to try Negroes charged with offences by their masters. Nay, all magistrates, goalers, turnkeys—all concerned in working every part of the apparatus of jurisprudence, executive as well as administrative, are of one tribe alone. What is the consequence? It is proverbial that no bills are found for

maltreatment, how gross soever, of the Negroes. Six were preferred by a humane individual at one assize, and all flung out. Some were for manslaughter, others for murder. Assize after assize presents the same result. A wager was on one occasion offered, that not a single bill would be found that assize, and nobody was found to take it; prudent was the refusal proved by the result: for all the bills were ignored, without any exception. Now, your Lordships will observe that in no one case could any evidence have been examined by those Grand Juries, except against the prisoner. In cases of murder sworn to, as plainly as the shining of the sun at noon-day tide, by witness after witness—still they said, "No Bill." Nay, they sometimes said so when only part of the witnesses for the prosecution had been heard, and refused to examine the others that were tendered.

The punishments inflicted are of monstrous severity. The law is wickedly harsh; its execution is committed to hands that exasperate that cruelty. For the vague, undefined, undefinable offence of insolence, thirty-nine lashes; the same number for carrying a knife in the pocket; for cutting the shoot of a cane-plant, fifty lashes, or three months imprisonment in that most loathsome of all dungeons a West Indian gaol. There seems to have prevailed at all times among the law-givers of the Slave Colonies a feeling, of which—I grieve to say, those of the mother country have partaken; that there is something in the nature of a Slave—something in the disposition of the African race—something in the habits of those hapless victims of our crimes, our cruelties and frauds—which requires a peculiar harshness of treatment from their rulers, and makes what in other men's cases we call justice and mercy, cruelty to society and injustice to the law in theirs—inducing us to visit with the extremity of

rigour in the African what if done by our own tribes would be slightly visited or not at all, as though there were in the Negro nature something so obdurate that no punishment with which they can be punished would be too severe. Prodigious, portentous injustice! As if we had a right to blame any but ourselves for whatever there may be of harsh or cunning in our Slaves—as if we were entitled to visit upon them that disposition, were it obdurate, those habits, were they insubordinate, those propensities, were they dishonest, (all of which I deny them to be, and every day's experience justifies my denial), but were these charges as true as they are foully slanderous and absolutely false —is it for us to treat our victims harshly for failings or for faults with which our treatment of them has corrupted and perverted their nature, instead of taking to ourselves the blame—punishing ourselves at least with self-abasement, and atoning with deepest shame for having implanted vice in a pure soil? If some capricious despot were, in the career of ordinary tyranny, to tax his pampered fancy to produce something more monstrous, more unnatural than himself; were he to graft the thorn upon the vine, or place the dove among vultures to be reared—much as we might marvel at this freak of a perverted appetite, we should marvel still more if we saw tyranny exceed even its own measure of proverbial unreasonableness, and complain because the grape was not gathered from the thorn, or because the dove so trained had a thirst for blood. Yet this is the unnatural caprice—this the injustice—the gross, the foul, the outrageous, the monstrous, the incredible injustice of which we are daily and hourly guilty towards the whole of the ill-fated African race!

My lords, we fill up the measure of this injustice by executing laws wickedly conceived, in a yet more

atrocious spirit of cruelty. Our whole punishments smell of blood. Let the treadmill stop, from the weary limbs and exhausted frame of the sufferers no longer having the power to press it down the requisite number of turns in a minute — the lash instantly resounds through the mansion of woe! Let the stone spread out to be broken, not crumble fast enough beneath the arms already scarred, flayed, and wealed by the whip—again the scourge tears afresh the half-healed flesh! Within the last hour before I entered this House, I heard from an eye-witness of the fact as disgusting as it was appalling, that a leper among the prisoners was cut to pieces by stripes with the rest. And in passing, let me here note the universal but cruel practice of placing the patients stricken with infectious diseases in hospitals, and in prisons among others, upon almost all private estates; and the no less unjust and exclusively West Indian practice of cruelly and stingily compelling the prisoners to go out daily and find their own food, instead of the master supplying them in the gaol—a refinement of harshness and meanness not, I venture to assert, ever reached by the tyrant master of the Siberian mines. But I was speaking of the public prison, and there as the leper had been scourged, so when a miserable wretch, whose legs were one mass of ulcerated flesh from former inflictions, gave some offence to his task-masters, he was on those limbs mangled anew by the merciless application of the lash. I have told you how the bills for murdering Negroes were systematically thrown out by the Grand Juries. But you are not to imagine that bills are never found by those just men, even bills against Whites. A person of this cast had, unable to bridle his indignation, roused by the hideous spectacle I have described (so disgusting, but that all other feelings are lost in pity for the

victim, and rage against his oppressor), repaired to the Governor, and informed him of what he had witnessed. Immediately the Grand Jury, instead of acknowledging his humane, and, in a Slave colony, his gallant conduct, found a bill against him, and presented him as a nuisance!

My lords, I have had my attention directed within the last two hours to the new mass of papers laid on our table from the West Indies. The bulk I am averse to break; but a sample I have culled of its hateful contents. Eleven females were punished by severe flogging—and then put on the treadmill, where they were compelled to ply until exhausted nature could endure no more. When faint, and about to fall off, they were suspended by the arms in a manner that has been described to me by a most respectable eye-witness of similar scenes, but not so suspended as that the mechanism could revolve clear of their persons; for the wheels at each turn bruised and galled their legs, till their sufferings had reached the pitch when life can no longer even glimmer in the socket of the weary frame. In the course of a few days these wretched beings languished, to use the language of our law—that law which is thus so constantly and systematically violated—and "languishing, died." Ask you if crimes like these, murderous in their legal nature as well as frightful in their aspect, passed unnoticed—if inquiry was neglected to be made respecting these deaths in a prison? No such thing! The forms of justice were on this head peremptory, even in the West Indies—and those forms, the handmaids of Justice, were present, though their sacred Mistress was far away. The coroner duly attended—his jury were regularly impannelled—eleven inquisitions were made in order—and eleven verdicts returned. Murder! manslaughter! misdemeanour! misconduct! No

—but "Died by the visitation of God!"—Died by the visitation of God! A lie!—a perjury!—a blasphemy! The visitation of God! Yes, for it is among the most awful of those visitations by which the inscrutable purposes of his will are mysteriously accomplished, that he sometimes arms the wicked with power to oppress the guiltless; and if there be any visitation more dreadful than another—any which more tries the faith and vexes the reason of erring mortals, it is when Heaven showers down upon the earth the plague—not of scorpions, or pestilence, or famine, or war—but of Unjust Judges and perjured Jurors—wretches who pervert the law to wreak their personal vengeance or compass their sordid ends, forswearing themselves on the Gospels of God, to the end that injustice may prevail, and the innocent be destroyed!

Sed nos immensum spatiis confecimus æquor,
Et jam tempus equûm fumantia solvere colla.

I hasten to a close. There remains little to add. It is, my lords, with a view to prevent such enormities as I have feebly pictured before you, to correct the administration of justice, to secure the comforts of the Negroes, to restrain the cruelty of the tormentors, to amend the discipline of the prisons, to arm the Governors with local authority over the police; it is with these views that I have formed the first five of the resolutions now upon your table, intending they should take effect during the very short interval of a few months which must elapse before the sixth shall give complete liberty to the slave. I entirely concur in the observation of Mr. Burke, repeated and more happily expressed by Mr. Canning, that the masters of Slaves are not to be trusted with making laws upon Slavery; that nothing they do is ever found effectual; and that if by some miracle they ever chance to enact a wholesome regulation, it is always found to

want what Mr. Burke calls "the executory principle;" it fails to execute itself. But experience has shewn that when the lawgivers of the Colonies find you are firmly determined to do your duty, they anticipate you by doing theirs. Thus, when you announced the bill for amending the Emancipation Act, they outstript you in Jamaica, and passed theirs before yours could reach them. Let then your resolutions only show you to be in good earnest now, and I have no doubt a corresponding disposition will be evinced on the other side of the Atlantic. These improvements are, however, only to be regarded as temporary expedients—as mere palliatives of an enormous mischief, for which the only effectual remedy is that Complete Emancipation which I have demonstrated by the unerring and incontrovertible evidence of facts, as well as the clearest deductions of reason, to be safe and practicable, and therefore proved to be our imperative duty at once to proclaim.

From the instant that glad sound is wafted across the ocean, what a blessed change begins; what an enchanting prospect unfolds itself! The African, placed on the same footing with other men, becomes in reality our fellow-citizen—to our feelings, as well as in his own nature our equal, our brother. No difference of origin or of colour can now prevail to keep the two castes apart. The Negro, master of his own labour, only induced to lend his assistance if you make it his interest to help you, yet that aid being absolutely necessary to preserve your existence, becomes an essential portion of the community, nay, the very portion upon which the whole must lean for support. This ensures him all his rights; this makes it not only no longer possible to keep him in thraldom, but places him in a complete and intimate union with the whole mass of Colonial society. Where the driver and the

goaler once bore sway, the lash resounds no more; nor does the clank of the chain any more fall upon the troubled ear; the fetter has ceased to gall the vexed limb, and the very mark disappears which for a while it had left. All races and colours run together the same glorious race of improvement. Peace unbroken, harmony uninterrupted, calm unruffled, reigns in mansion and in field—in the busy street, and the the fertile valley, where nature, with the lavish hand she extends under the tropical sun, pours forth all her bounty profusely, because received in the lap of cheerful industry, not extorted by hands cramped with bonds. Delightful picture of general prosperity and social progress in all the arts of civility and refinement! But another form is near!—and I may not shut my eyes to that less auspicious vision. I do not deny that danger exists—I admit it not to be far distant from our path. I descry it, but not in the quarter to which West Indian eyes for ever turn. The planter, as usual, looks in the wrong direction. Averting his eyes from the real risk, he is ready to pay the price of his blindness, and rush upon his ruin. His interest tells him he is in jeopardy, but it is a false interest, and misleads him as to the nature of the risk he runs. They, who always dreaded Emancipation—who were alarmed at the prospect of Negro indolence—who stood aghast at the vision of Negro rebellion should the chains cease to rattle, or the lash to resound through the air—gathering no wisdom from the past, still persist in affrighting themselves and scaring you, with imaginary apprehensions from the transition to entire freedom out of the present intermediate state. But that intermediate state is the very source of all their real danger; and I disguise not its magnitude from myself. You have gone too far if you stop here and go no further; you

are in imminent hazard if, having loosened the fetters, you do not strike them off—if, leaving them ineffectual to restrain, you let them remain to gall, and to irritate, and to goad. Beware of that state, yet more unnatural than slavery itself—liberty bestowed by halves—the power of resistance given—the inducement to submission withheld.—You have let the Slave taste of the cup of freedom; while intoxicated with the draught, beware how you dash the cup away from his lips. You have produced the progeny of liberty—see the prodigious hazard of swathing the limbs of the gigantic infant—you know not the might that may animate it. Have a care, I beseech you have a care, how you rouse the strength that slumbers in the sable peasant's arm! The children of Africa, under the tropical sun of the West, with the prospect of a free Negro Republic in sight, will not suffer themselves to be tormented when they no longer can be controlled. The fire in St. Domingo is raging to windward, its sparks are borne on the breeze, and all the Caribbean sea is studded with the materials of explosion. Every tribe, every shade of the Negro race will combine from the fiery Koromantin to the peaceful Eboe, and the ghastly shape of Colonial destruction meets the astonished eye—

> "If shape it may be called that shape has none
> Distinguishable in member, joint, or limb;
> Or substance may be called that shadow seems,
> For each seems either; black it stood as night,
> Fierce as ten furies, terrible as hell!"

I turn away from the horrid vision that my eye may rest once more on the prospect of enduring empire, and peace founded upon freedom. I regard the freedom of the Negro as accomplished and sure. Why? because it is his right—because he has shown himself fit for it—because a pretext, or a shadow of a pretext, can no longer be devised for withholding that right

from its possessor. I know that all men at this day take a part in the question, and they will no longer bear to be imposed upon, now they are well informed. My reliance is firm and unflinching upon the great change which I have witnessed—the education of the people, unfettered by party or by sect—witnessed from the beginning of its progress, I may say from the hour of its birth. Yes! It was not for a humble man like me to assist at Royal births with the illustrious Prince who condescended to grace the pageant of this opening session, or the Great Captain and Statesman in whose presence I am now proud to speak. But with that illustrious Prince, and with the father of the Queen, I assisted at that other birth, more conspicuous still. With them, and with the Head of the House of Russell, incomparably more illustrious in my eyes, I watched over its cradle—I marked its growth—I rejoiced in its strength—I witnessed its maturity—I have been spared to see it ascend the very height of supreme power; directing the councils of State; accelerating every great improvement; uniting itself with every good work; propping all useful institutions; extirpating abuses in all our institutions; passing the bounds of our European dominion, and in the New World, as in the Old, proclaiming that freedom is the birthright of man—that distinction of colour gives no title to oppression—that the chains now loosened must be struck off, and even the marks they have left effaced—proclaiming this by the same eternal law of our nature which makes nations the masters of their own destiny, and which in Europe has caused every tyrant's throne to quake! But they need feel no alarm at the progress of light who defend a limited monarchy and support popular institutions—who place their chiefest pride not in ruling over slaves, be they white or be

they black, not in protecting the oppressor, but in wearing a constitutional crown, in holding the sword of justice with the hand of mercy, in being the first citizen of a country whose air is too pure for Slavery to breathe, and on whose shores, if the captive's foot but touch, his fetters of themselves fall off. To the resistless progress of this great principle I look with a confidence which nothing can shake; it makes all improvement certain; it makes all change safe which it produces; for none can be brought about unless all has been prepared in a cautious and salutary spirit. So now the fulness of time is come for at length discharging our duty to the African captive. I have demonstrated to you that every thing is ordered—every previous step taken—all safe, by experience shewn to be safe, for the long-desired consummation. The time has come, the trial has been made, the hour is striking: you have no longer a pretext for hesitation, or faultering, or delay. The Slave has shown, by four years' blameless behaviour, and devotion to the pursuits of peaceful industry, that he is as fit for his freedom as any English peasant, aye or any Lord whom I now address. I demand his rights; I demand his liberty without stint. In the name of justice and of law—in the name of reason—in the name of God, who has given you no right to work injustice—I demand that your brother be no longer trampled upon as your slave! I make my appeal to the Commons, who represent the free people of England; and I require at their hands the performance of that condition for which they paid so enormous a price—that condition which all their constituents are in breathless anxiety to see fulfilled! I appeal to this House. Hereditary judges of the first tribunal in the world—to you I appeal for justice! Patrons of all the arts that humanize mankind—under your protection I place

humanity herself! To the merciful Sovereign of a free people I call aloud for mercy to the hundreds of thousands for whom half a million of her Christian sisters have cried aloud—I ask that their cry may not have risen in vain. But first I turn my eye to the throne of all justice, and devoutly humbling myself before Him who is of purer eyes than to behold such vast iniquities, I implore that the curse hovering over the head of the unjust and the oppressor be averted from us—that your hearts may be turned to mercy—and that over all the earth His will may at length be done!

SPEECH

UPON THE

EASTERN SLAVE TRADE.

DELIVERED IN THE HOUSE OF LORDS,

MARCH 6, 1838.

DEDICATION.

TO

ARTHUR DUKE OF WELLINGTON, K.G.

ETC. ETC. ETC.

THE uniform candour which guides your public conduct, and so often makes you sacrifice what ordinary men would reckon fair party advantages, induces me to hope that you will listen to the earnest entreaty which I now make, that you would peruse the arguments and the statements of this speech, with the attention certainly due to the subject, though not to the speaker. If you do, I feel very confident that you will be disposed to admit that your moving the Previous Question upon my Resolutions last night, was ill-considered; and even if you should not arrive at this conclusion, I still entertain the most sanguine hope that a further attention to the subject will incline you to support the next proposition which may be brought forward upon the same matter.

There is but one meaning of a Previous Question. It never can with propriety be moved unless when the

original motion was held to be irresistible on its own merits. Consequently, no Ministry ever before, within my knowledge, would consent to accept of an escape from a vote of censure by a proceeding which admits their guilt or their error, and only professes an unwillingness to condemn them. Unless the truth of the Resolutions was undeniable, the Previous Question last night could have no meaning, and my motion should have been met with a direct negative.

The eagerness with which the Ministers caught at your offer of letting them escape, censured in substance though without a formal sentence pronounced against them, provided they would adopt and enact your plan themselves, was very remarkable. But this made no difference in their former conduct. Nay, all the regulations which they can make must leave the worst parts of their whole error untouched; because they cannot make laws for the coast of Africa or the settlements of foreign Crowns.

But if it is certain, nay, if it is admitted by yourself and others, that this Order should not have been issued, at all events without guards and precautions, surely it was not expecting too much to look for an expression of disapproval from Parliament when a measure for ENCOURAGING THE SLAVE TRADE was brought before it. The character of the country and its success in all negotiations on the foreign traffic seemed imperatively to require that step.

I have in this address to your Grace employed not the language of panegyric, which you of all men would the most despise, but the language of truth which you know well how to value. "The treachery which deceives is as criminal as that which would dethrone

you"—was the memorable saying of the great French orator to a Sovereign* who loved the treason of pleasing flattery more than the loyalty of unpalatable truth.

It is a thing of the utmost importance to the honour and interest of the country, that one who stands in your pre-eminent position should upon such a question as the Slave trade have his eyes opened, in order that he may be found to side with all the other great statesmen of his age.

BROUGHAM.

March 7th, 1838.

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* Massillon—"La perfidie qui vous trompe est aussi criminelle que celle qui vous detroneroit."

SPEECH.

If, my lords, of all the subjects that ever engaged the attention of this country, and of its Parliament, the one which I am about to broach before your lordships has been found to possess at all times the most commanding attractions; and if, after struggling in the public mind and in the chambers of the legislature through a long course of years, it at length ended in the most brilliant victory ever gained by truth for humanity and justice; I will venture to affirm that now, when we had been fain to hope the battle was won, the doom of the Slave Trade pronounced by the universal voice of mankind, and the state of Slavery itself condemned—the only question being as to the precise moment for executing the sentence—the question of the traffic will be found to have lost nothing of its pristine and enduring interest, but that the attention of the world will be arrested, and the feelings of mankind be aroused in greater excess than ever, by the new ingredient mingled in the cup of bitter disappointment at finding our hopes still so far from realized and marking the efforts once more making to revive that execrable traffic which all men had believed to have been for ever destroyed. For when I look at this Order in Council, and compare its frame, its professed object, its inevitable consequences,

with everything that the history of the past has taught us of the Slave Trade, I am compelled to express the bitterness of the anguish which fills my bosom on reflecting that towards the middle of the nineteenth century, full fifty years after that monstrous iniquity was dragged into the light of public discussion, and thirty years after we believed it extirpated from the British world, I am actually standing here to grapple with a measure which all but professes to plant it anew, and of necessity must have the effect of extending its range to coasts which hitherto it had spared.

But in thus coming forward, no man can accuse me of proposing a censure against the Government without giving ample warning, and affording abundant opportunity for escape or amendment. It is upwards of six weeks since I dragged to light this reluctant Act of Council—I say reluctant—because though passed in July last, not the least intimation of its existence was ever given, by publication in the *Gazette*, the ordinary repertory of much less important proceedings of State. I am told, indeed, that it is the practice not to publish such Orders—but I am sure it is a course "more honoured in the breach than in the observance." For when we consider that such Orders, framed in private by the Minister, make the law of the Crown Colonies as absolutely as the law of England is made by the enactments, the open and public enactments, of King, Lords, and Commons, surely it is not too much to desire that those resolutions of the Executive Government, thus private in their adoption, and, it may be, little considered before made, should not be consigned at once to the Council books, where they can only be accessible to the clerks, but should be promulged to the whole people whose interests they concern, whose conduct they govern. When I denounced this Order, I stated

shortly but distinctly my reasons for condemning it; I showed in some detail how it must work; I referred to the former history of Slave trading to illustrate my meaning; and believing, or willing to believe, that it had been issued through inattention, or negligence, or indolence, or ignorance of the subject, I said, "Let it only be withdrawn, and I shall never again advert to the subject in any way—nor comment upon the issuing it—nor in any manner make it the subject of observation." I have waited since then, anxiously looking for its recall; but I find my not unfriendly suggestion was thrown away, and that the measure is persisted in, maintained, defended, by its authors. No man, then, can accuse me of having stood by while mischief was brewing, and only spoken out after it was done. No man can, without the most indecent disregard of truth, charge me here with crying, "I warned you," when the event is o'er. And yet I have seen, what on no other evidence than the testimony of my own senses I could have believed, this charge made against me when it was just as false as it would be now. I have been vilely, impudently, most falsely aspersed for standing by and saying nothing on the great Canada question —charged in the records of the Government press, with being like

> Juggling friends, who never spoke before,
> But cry, "I warn'd you,"—when the event is o'er.

—Incredible—but true! I have often heard it disputed among critics which of all quotations was the most appropriate—the most closely applicable to the subject-matter illustrated; and the palm is generally awarded to that which applied to Dr. Franklin the line in Claudian,

> "Eripuit fulmen coelo, mox sceptra tyrannis,"

yet still there is a difference of opinion, and even

that citation, admirably close as it is, has rivals. But who has hit upon the most inapplicable quotation, no critic will hereafter presume to doubt. The Government scribe must be allowed by universal consent to bear away the palm of inaptness and falsehood from all his rivals in the art of false quoting as of fabrication. So far from standing by till after the event, I addressed your Lordships and the Government as long ago as March last, and afterwards warned them, with full reasons, and in much detail, both in my place and in an elaborate protest, which yet stands on your journals to record the warning my voice had given. So far from waiting till the event justified my warning, and then crying, "I warned you," I never even said so—never once, that I can recollect, taunted them with having neglected my warning voice after the rebellion broke out of which I had bidden them to beware. If, then, I now say that I do not expect any one will have the effrontery to bring a similar charge on this occasion, it is not because as great effrontery has not been displayed before, but because such audacity can hardly be repeated a second time by any one at so short an interval after a former exposure to the indignation and scorn of the world, under which, unless all feeling be extinct, its author must now be writhing.

I must now begin by shortly restating what I six weeks ago said of the nature and import of this Order in Council.—An order of March 1837 had sanctioned the Ordinance made by the Court of Policy in Guiana, with the intention of confining the period of apprenticeship to three years. In July, representations were made by some Planters, that if this term were not extended to five years, no man could possibly bring any labourers into the Colony. No cargoes of human beings could be imported to share the lot of the half-

freed slaves, by becoming indentured apprentices, if they could only be bound for three years. The papers on your table give both the memorials of the Planters, and the statement of the Colonial department, that with the request of the memorialists they had complied, and for the reasons assigned in the memorial. My Noble Friend* says, in so many words, when announcing to the Governor of Guiana the change made in the former Ordinance, that it was made because without it the importer of such cargoes of apprentices would not find it worth his while to carry on the traffic, and that no apprentices could be brought from the East. It was therefore avowedly for the express purpose, and with the deliberate intention of facilitating, of encouraging, of stimulating this traffic, that the law was thus changed. It was with the view of enabling those to carry on the traffic who otherwise could not do so, that the Order was framed and issued, being, I think, about the first after the Queen's accession. This is the account given by the Ministers themselves of their own conduct and of its motives. With their eyes open, in league with the Planters, and to give every facility for the importation of apprentices into Guiana, they adopted this measure. It is easy indeed for them and their West Indian confederates to speak in soft language of bringing over free men—of introducing labourers—of increasing the number of hands employed—of enabling the owners of estates to find workmen as they wanted them. But I will tear away all these flimsy disguises—I will shew you what it is that lurks under these fair words—I will demonstrate to you, and by facts rather than by mere arguments, what is distinctly felt and loudly proclaimed by every one of those whose acquaintance with the Slave Trade

* Lord Glenelg.

is the most enlarged and the most minute, who have for half a century and more been occupied in tracing it through all its forms, and pursuing it in each disguise which it unceasingly assumes—that nothing but Slave trading is, and that nothing but Slave trading can be, the meaning and the result of all that is thus doing.

And for this purpose I must first desire your Lordships to accompany me while I cast a retrospective glance over the sad history of that dreadful commerce, and to mark with me its origin and its progress in various parts of the globe. The task I know is painful; for we are going to contemplate by far the blackest page in the annals of our race. When the great satirist of England described our species, reduced by his sarcastic fancy to a diminutive stature, as the most vile, cunning, cruel, and detestable vermin that nature had suffered to crawl on and to infest the face of the earth—he was held to have presented an exaggerated picture of human vices, by those who remembered that he only professed to draw it from the court and the camp—the perfidies of politicians and the cruelties of soldiers. But if he had thrown into the canvass the crimes of sordid avarice, combining in one all the frauds that distinguish the one class with all the heartless cruelty ascribed to the other; if he had darkened his picture with that worst of all the monstrous births which that execrable vice has ever engendered—if his page had not only been disfigured with the details of the wholesale cunning, and heartless ingratitude, and mean trickery, that shine in the Statesman's life, and the reckless and desperate feats that mark the course of the warrior with blood, but been tinged with the far deeper dye, of the African Slave Trade, combining within itself all the most infernal lineaments of human

guilt—no tongue ever could have complained of the exaggerated terms which Swift has employed, and all would have confessed that the fidelity of truth had been the guide, and not the gall of misanthropy the distillment of his pen.

It seems strange that a traffic of all others the most unnatural and the most revolting to our feelings should nevertheless be found in every age and nation a practice among men, as if a propensity to it were inherent in the human constitution. Whether it be from the innate thirst of gain, or the irrepressible love of dominion, or the deep-rooted selfishness of our nature, anxious to save our own toil at another's expense —certain it is that a traffic in the persons, liberties, labours, and lives of our fellow-men, is to be found in one age or another of society wherever men have existed. In the most savage state the fruit of war is slavery, and captives become the property of the conquerors, to be used and to be transferred and dealt in at his pleasure. In the islands discovered by our illustrious navigator, and unvisited before by the foot of civilized man, Slavery was found in various forms, sometimes in the state of absolute bondage, sometimes of qualified vassalage, resembling our indentured apprenticeship; and for a limited period of time as well as for life. Slavery, and a constant traffic in Slaves polluted the most refined states of antiquity; and in the days when this Island formed but a remote and barbarous member of the Roman world, our coasts were ravaged by the heathen Slave Trade, as those of Africa are laid waste by the Christian commerce. Bristol, by a singular coincidence, since the great emporium of the African trade, and a principal wrong-doer in the modern enormity, was in ancient times a great emporium of the Roman Slave traffic, and a victim of the crimes she afterwards imitated in the days of

her civility and refinement. The feudal times in the western world were familiar with Slavery and Slave dealing in all its forms. Every kind of bondage was then known. There was the *villein in gross*, liable to be possessed and to be dealt in as a beast or any other chattel—the *villein regardant, native*, or *ascriptus glebæ*, who could not be removed from the place of his birth, but belonged to the land and to its owner. The Slave under a contract affixing terms and time, was also the growth of the same system which made so little of human rights and feelings, and gave to mere force so much dominion. The state of hired Slavery and of Apprenticeship, or a mitigated Slavery, arising out of contract and for a consideration, whether of hire or of being taught some trade, was a genuine produce of feudality and its servile tenures and oppressive practices.

In the East the history of our race presents the same features, excepting that the mild influence of Christianity was there wanting, and the perpetration of similar crimes was less inexcusable. To supply those countries with Slaves, the centre of Africa was traversed by caravans, which carried her children into the more wealthy and civilized regions of Asia. But the life of domestic Slaves mitigated the lot of those captives—living in the houses of their masters, and sharing in their comforts—little exposed to extremes of climate—hardly ever doomed to severe toil—often admitted to confidential stations—not unfrequently rising to even high employment—they tasted as little of the bitterness of Slavery as is compatible with the mildest form of that always bitter cup. But an event now happened which gave to Slavery an aspect far more hideous than it had ever before worn even in the most barbarous regions, and in the darkest times.

For then succeeded things the record of which

tinges with its deepest shades the darkest page in the history of man; and yet that page was next to the most brilliant by far of the eventful volume. As if to bring down Spain from the summit of glory to which her fame had been elevated by the daring genius of Columbus, she plunged into an abyss of crimes, and mingling all perfidy with all cruelty, the sordid thirst of gold with the inhuman appetite for blood, enacted such scenes as have called down upon the Spanish name the reprobation of the world, and as the just execration of centuries has left still inadequately condemned. The simple, unoffending Indians were seized upon, distributed in lots like cattle, like cattle worked, but not spared like cattle; for they were worked to death by their hard task-masters exacting far more than their feeble frames could sustain. Nor was it till the total extirpation of their race approached, and there seemed reason to fear that the field could no longer be tilled nor the mine explored to allay the fierceness of Spanish avarice, that a thought was given to their sufferings, or the means sought for their relief. The substitution of African for Indian labourers was the expedient resorted to by an unnatural union between short-sighted philanthropy and clear-sighted interest; and out of this union was engendered, and under this appellation was cloaked, the monster which we have since learned to loathe and detest as the African Slave Trade. The course taken then, at the beginning of the sixteenth century, was the same with that which in this country was pursued last year. Memorials were presented to the Colonial-office in the Downing-street of Madrid; representations were made that the decrease of the Indians had begotten apprehensions of the hands no longer sufficing for the work of the West Indian estates; the necessity was urged of

introducing into the West labourers from the East, (as the process was termed in either case) and the facilities were asked, which Government alone could give, to favour this important operation, on which it was alleged the fortunes of the Planters, and the fate of the Colonial empire depended. I might easily, from these papers before you, cull out the very expressions used in the correspondence between the parties at Madrid. In neither the sixteenth century nor the nineteenth, were the terms of Slave-trading, or any thing equivalent, employed: but in both instances it was the supply of hands, the introduction of labourers, the encouragement of emigrants, the obtaining of workmen—phrases which dance through these dispatches in various collocation, and in apparently innocent array. To this scheme a man lent himself whose name will descend to the latest ages as a pattern of persevering and disinterested benevolence, and a monument of its uselessness, nay, its mischiefs, if the good will only exist, and is not under the control of sound reason; a lasting proof, that, to serve mankind, the act must keep pace with the intention. Bartholomew de Las Casas was that ill-judging and well-meaning philanthropist, who, having devoted his blameless life to mitigating the sufferings of the Indian, could see nothing but charity and kindness in relieving him, by substituting the hardier African in his stead; and he joined with the Planters in the application to the Colonial Secretary of the day, for so the Prime Minister of Spain may well be called, as American affairs formed the bulk of his administration. But in Cardinal Ximenes they found a statesman of equal humanity and wisdom; he agreed with the benevolent "Protector of the Indians," in desiring to relieve that injured race, but he said that he understood not the left-handed, one-eyed philan-

thropy which would take the burthen from the shoulders of one people to lay it still more heavily on those of another; and that the speculation in African labourers should receive no aid from him. This sagacious Statesman, however, was now in the extremity of old age; on his death the young Emperor took the helm of government into his own hands; ignorant of Colonial affairs, and surrounded by Flemish counsellors, who knew no better, he listened to the plans of the speculators; he granted a patent for the yearly introduction of 4000 Negroes, and thus laid the foundation of that regular Slave traffic which had before only occasionally and on a very trifling scale been driven by a few Portuguese settled in the Brazils. Thus was established that infernal policy which for above three centuries has been the scourge of Africa. After it had desolated that unhappy continent for many ages, by the blackest crimes ever committed systematically by men, there happily arose in this our country a man, who, to the pure benevolence, the pious zeal, the inextinguishable love of his fellow-creatures, the indomitable perseverance of Las Casas, united the only merit which was wanting in his character, a strict love of justice and a sound judgment, the guide of his principles and his conduct. Need I name him whose venerable form already stands before you even in my feeble picture? Thomas Clarkson yet lives, till lately happy in the reflection that he first brought to light the horrors of the African traffic, but now tasting, with all the surviving friends of the Abolition, the bitter mortification of finding that their labours are to begin again, since the Government has become the patron of a new Slave Trade; and there is, I tell you plainly, but one opinion and one feeling pervading every place where an Abolitionist is to be found, and that is the opinion and the

feeling which all have urged me to lose not a moment in expressing to your lordships. With Thomas Clarkson, and with his early associate, the learned, pious, and truly humane Granville Sharpe, was joined soon after another and their most powerful fellow-labourer, Mr. Wilberforce, whose name will be revered as long as wisdom and eloquence attract the admiration, or virtue and piety command the love of mankind. He it was who brought the Slave Trade before Parliament for trial. And now let us attend for a moment to the way in which the traffic was defended, because we shall find the self-same topics adduced, nay, and the same language used, as are now employed to defend the present measure.

The Slave trader took high ground. He was not to be cowed by the big words of the philanthropists; he would not be put down by senseless clamour, or silenced by the cry of mistaken humanity. The threats of the Abolitionists should not drive him from his honest occupation, nor the calumnies of his adversaries destroy an important branch of trade which (and here I blush to say he did speak the truth,) the Legislature had sanctioned, and even encouraged. He would show that the African was happier by far in the West Indies than at home; that he was not stolen and carried over by force, but rescued from murder, or, if not, from a more cruel Slavery in Africa; and that this great branch of commerce, this importation of labourers, as it was called both in 1788 and 1838, proved no less beneficial to the continent they were drawn from, than to the islands they were brought to cultivate. Thus General Tarleton asserted that the Africans themselves had no objection to the Slave Trade—complained that people were led away by a mistaken humanity—affirmed that the greatest misrepresentations were abroad—denied

the miseries of the middle passage, in which he said only five in five hundred died, while ten and a half per cent. perished of our regiments on board of West Indian transports; and cited, in proof of the happiness and comfort of the Negro Slave exceeding that of the English peasant, the authority of a governor, two admirals, one captain, and a commodore—all naval officers being, through the whole controversy, friendly to the Slave Trade, and willing witnesses to the blessings of Negro Slavery in the West Indies; as military men, who saw far more of those blessings, were generally observed to take the opposite side of the question. The report of General Tarleton's speech I take from the Parliamentary History for 1791; but Sir William Young's, which follows, bears internal evidence of having proceeded from his own pen, for I am very sure no reporter in modern times ever used the words "hath" and "doth," as this account of the worthy Baronet's speech does throughout. "Far be it from me," says he, "to defend a traffic in human beings." But then he did not regard the African commerce at all in that light. He denied that a system of kidnapping supplied the Slaves. They were captives in war, or they sold themselves into bondage, or were men who must perish in a famine, or be murdered by wholesale at the funeral of their chiefs, but for the tender mercies of the Liverpool trader, who rescued them from hunger or the sword. Then to cultivate the Colonies without this trade, was wholly impossible; the decrease was 2 or $2\frac{1}{2}$ per cent. a year in the Slave population, the same proportion as I find now given in the papers before us; but in one Colony especially, this necessity is so strongly represented, says Sir William, that he who runs may read. And what Colony, think your Lordships, is that whose cry for more hands—new workmen—a supply of labourers

from the East—went up so loudly half a century ago? Why the very Colony of Guiana, upon whose demand and for whose use the present Order in Council is framed! But there is this difference, that in 1791 Africa alone was required to supply the wants of Guiana; whereas we are now extending the drain to all the territories within the East India Company's charter. General Phipps and others contended that all Africans were Slaves; that the traffic was supplied in almost every instance voluntarily, not by kidnapping; and that the Negro was far better off in our islands than in his own country. It never struck these advocates of crime that the poor African, who had never seen the ocean, could by no possibility form an idea of the suffering he was about to endure, or the scenes into which he was to be conveyed; and that to give him any such notions would have been as difficult as to make him comprehend the transactions of another planet. Memorable were the words of Mr. Pitt;—memorable the sudden reply with which he swept all those sophistries away! Would that his awful voice could now sound them in his successor's ears! Would to God that he were still among us to make these walls echo the language of his indignation, and chase away at once and for ever the miserable pretences, the shadows of an excuse urged for these abominable proceedings! "Alas! alas!" said that great man, "you make human beings the subjects of your commerce, as if they were merchandise, and you refuse them the benefit of the great law which governs all commercial dealings—that the supply must ever adapt itself to the demand." But on the Slave traders all appeals to reason or to feeling were thrown away. The very next time that the subject was brought before Parliament, we find them reiterating their assertions, that no wars and no kidnappings were caused

by the trade, and their contrasts of West Indian happiness with African distress. Alderman Brook Watson, representing the great city of London, was heard to avow, that were humanity concerned in the abolition, he should at once support the measure, but it was all the other way—the Negro being removed from a worse to a better state. Your Lordships will give me credit for not adverting to a topic urged, hardly to an expression used in these memorable debates for the support of the Slave Trade, to which a match may not be found in the papers before you upon the proposed Guiana importation. The worthy Magistrate's comparison is paralleled by a similar contrast in the papers, between the state of the Coolies in Asia, and after their removal to the Mauritius.

The Alderman, too, like my Noble Friend* and his West Indian allies, had no kind of objection to regulate the trade. No one who defended it ever had. From 1788 to the period of its extinction, I never yet found one, either of those engaged in it, or of those who defended it, make the least objection to put it under as many regulations as the wit of man could devise. And why? Because these men knew, what we too know as to the new traffic sanctioned by Government, that all regulations must of necessity fail and go for nothing—that all efforts to prevent the abuses with which it is inseparably connected, of cruelty and fraud, both in procuring, and in conveying, and in employing the Slaves or apprentices, must infallibly fail, if the regulations were devised by the wisdom of an angel. But again, they said in 1791, as they say now—"You need not be disturbed as to treatment on the voyage; trust to men's interests if you won't confide in their honesty and humanity"—and surely,

* Lord Glenelg.

said Lord Penryn, then member for Liverpool, it is the trader's interest to carry over as many Negroes in a healthy state as possible. Such was the reasoning by which we were argued out of a belief even in the horrors of the middle passage; such the grounds on which were denied all the atrocities—the torments—the murders of which the Slave-ship is universally the scene—and on which those men expected to make the world reject the frightful history of those prodigious crimes, as the fabrications of calumny, or the creatures of a distempered imagination. I shall presently show you that already the new traffic encouraged by our Government, and incapable of being driven at all without its help, has led to scenes of nearly the same description, which before long will almost equal the horrors of the middle passage itself.

The same advocates of the traffic have recorded their defence of Slavery and Slave trading in their works. I have this morning refreshed my recollection of Sir William Young's writings, by reading his West Indian Tour, undertaken immediately after the debate of which I have given you an abstract. In St. Vincent's, he says to a friend, the day of his landing, that far from the Slaves being an oppressed race, the proudest human being he ever beheld was a Negro woman. After passing the winter months there, he exclaims, "All you know in England of jolly Christmas falls very far short of the Negro's three days' Christmas in this Island." He visits a Slave-ship just arrived, and vows he can see nothing unpleasant belonging to it. The Slaves laughed and joked with him, he says, like a Davus of Terence. Indeed he is fond of adorning the West Indies with classical allusions, having himself written a very poor history of Athens. The squares and streets remind him of the Forum and great ways of old Rome, with groups of

Slaves here and there. He goes to Antigua, and there the Slaves dance with more spirit and grace than the most fashionable circles in England. In Tobago it is still the same happy scene. "The Negroes seem treated like the Planter's favourite children." I dare to say in one respect the love of the parent was conspicuous enough—I mean in not sparing the rod.

Such were the pictures of Slavery comforts, of Negro happiness, with which the patience of the country was worn out, and the reason of Parliament beguiled for many a long year; and such the arguments by which men were persuaded that there was something wholly unreasonable in the objections we were always urging against wholesale robbery and cruelty and murder. Nevertheless, our strange and paradoxical opinions daily gained ground. The carrying over 70 or 80,000 human beings from their own country to labour in America, of whom above 15,000 were brought to our settlements, began to be universally reprobated. Men came to feel that such a traffic could no longer be suffered, whether the objects of it were termed labourers or apprentices, or more fairly and honestly Slaves. We were no longer described as visionaries and theorists. Our statements were no more regarded as fictions or calumnies; and at length, in spite of every attempt to ward off the blow, the doom of the traffic was pronounced—to the immortal honour of the Cabinet of 1806, with which it may seem unaccountable, but is yet true, that some of the present Government were closely connected. Lord Grey, in concert with Mr. Wilberforce, brought in the Abolition Bill—and thus performed what I really think, and I believe my Noble and most valued Friend himself considers, the most glorious act of his long, useful, and brilliant public life. It was passed by the

greatest majority ever known on a great measure long the subject of controversy. The Commons, by sixteen to one, sealed the fate of the Slave Trade.

The predictions of the planters that the Negroes must decrease continued to haunt them for some years, and various schemes were proposed for keeping up the numbers of labourers. This led Mr. Barham in 1811 to propose the introduction of free labourers from Asia, and his motion forms the next event of importance in this history. He was one of the very best masters and most successful planters in Antigua; and his proposal was rested wholly upon motives of kindness towards the Slaves. These being, as he thought, reduced in numbers while there was the same work to perform, in consequence of the embarrassments of West Indian property not permitting the produce to be diminished which went to satisfy creditors, there seemed reason to apprehend the effects of the Negro labour being so much increased. The reception of this plan in Parliament was very remarkable. Mr. Anthony Browne, then and now the respectable agent for Antigua, cautioned the House against being led astray by its feelings in behalf of the Slaves, to sanction an impracticable and visionary scheme. But Mr. Stephen gave it his decided opposition upon higher grounds. Now, than Mr. Stephen's, there can no higher authority be cited on Slavery and Slave trading, and every thing connected with these subjects. He had long made them his study; he had been at all times the zealous co-operator with his friend and brother-in-law, Mr. Wilberforce, in the Abolition Committee; he had passed the best years of his life in a Slave colony, St. Kitts; and since his return to Europe, he had never ceased to watch over every branch of the great questions connected with West Indian affairs. His resistance to the proposition

of introducing free labourers into the colonies, as it was called then and is called now, was grounded upon the injuries thus certain to be inflicted upon the people whom it was proposed to transport from Asia; and Mr. Huskisson adopting the same views, opposed the project upon the same grounds. An accident prevented Mr. Canning from attending this debate, as absence from town upon the circuit kept me also away from it. I felt exceedingly anxious when the subject was announced, and when I saw that eminent person after the Committee had been appointed, I found he viewed the subject in the same light with Mr. Stephen and myself. No, no, said he—it is enough to have desolated Africa, without introducing this pest into Asia too.

The next circumstance to which we must look in pursuing this historical retrospect, is the traffic which for some years has been going on between India and the Mauritius; for it is to the alleged success of this experiment that we are desired to look by the patrons of the new scheme—the Government and the Guiana planters. I own that I regard whatever relates to the Mauritius with extreme jealousy in all Slave questions. There is no quarter of the globe where more gross abuses have been practised—nay, more flagrant violations of the law, from the eager appetite for new hands which the fertile land excites in the uncleared districts of that island. It was in 1811 that I had the happiness of passing the act through Parliament, declaring Slave trading to be a felony, and awarding to it the punishment of transportation. Some years afterwards it was made capital. Yet in spite of this penal sanction, the Mauritius planters were audacious enough to introduce, by Slave traffic, so many Africans, that Sir George Murray, when Secretary for the Colonies some time back, admitted twenty-

five thousand at least to have been thus brought thither from the coasts of Africa. No less than twenty-five thousand capital felonies had thus been perpetrated in the course of a few years by those sordid and greedy speculators. The position of the island is singularly adapted for carrying on this detested commerce. Near the continent, and near that part of it where we have no settlement, and keep hardly ever any cruisers, no effective check upon such operations can ever be maintained, if the authorities in the island itself do not exercise the most vigilant attention; and there is but too much reason to suspect, from what came out in Mr. Buxton's Committee, that instead of watching, they connived at one time, while some high in office encouraged the offenders, and even partook in the fruits of their crimes. Doubtless, if the Guiana Order in Council is suffered to subsist, a like privilege will be extended to this island. But in either case the African coast is under the operation of this new traffic. That Order comprehends it in terms the most distinct. Nor does it only open the trade to

> "—— them that sail
> Beyond the Cape of Hope, and now are past
> Mosambique"——

It stretches along Sofala, and to Guardafui and Arabia—comprising all the Asian Islands—

> "Ceylon and Timor, Ternate and Cadore."

It then includes the whole coast of India, and all the regions of that vast domain, stretching

> "O'er hills where flocks do feed, beyond the springs
> Of Ganges and Hydaspes, Indian streams."

All those plains and mountains—all those ports, and bays, and creeks—long lines of sea-beach without a

fort, or a witness, a magistrate to control, or an eye to see what is done—from Madagascar to the Red Sea—from the Arabian Gulf along Malabar, to Travancore, thence from Comorin to the mouths of the Ganges, and of all the unknown and unnamed streams that water the peninsula and flow into the Indian Ocean. It is in such vast and such desolate regions that we are to be told this Order will never be abused, and none be taken by force, nor any circumvented by fraud. When in the heart of Europe, with all men's eyes to watch him and his agents, the King of Prussia could drive his trade of a crimp, and fill his army with recruits spirited away from the banks of the Rhine—populous, civilized countries, enjoying the blessings of regular government, the protection of a vigilant police, and entertaining ambassadors at the Court of Berlin—when that monarch could, in such countries, and in the face of day, carry off the priest at the altar, and the professor at his desk, from the countries on the Rhine, the Moselle, and the Oder, and these reverend and learned recruits were, for months afterwards, found carrying his firelocks, and serving in his ranks—how can the folly be sufficiently derided which represents it as difficult to abuse this abominable regulation, and make it the cover of common Slave trading, in the remote desolate countries watered by the Niger, and the yet more deserted shores of Eastern Africa, through which nameless rivers flow into the sea? The Order was passed without a single regulation being subjoined, either here or in the East Indies, to prevent such abuses, or to limit their amount. But to speak of regulations in such circumstances, is too absurd. What regulations can the wit of man devise which can have any effect at all? Nay, in the very places where the abuse is most likely to occur, you

have not the shadow of authority to make rules. How can you legislate for the Slave-dealers on the eastern coast, north of the Cape? Yet there the worst branches of the old Slave Trade at this moment exist. I saw only yesterday a person who had been present at the capture of a Portuguese Slave-ship, which had sailed from the coast of Zanguebar with eight hundred Negroes on board, and lost above two hundred before she reached her port of destination in the Brazils. Let it not then be said that regulations may be devised for preventing abuse. But none have been attempted or thought of. The wretched beings, apprentices you call them, are to be carried without a word said specifying the tonnage —regulating the space for accommodation between the decks—fixing the proportion of water to drink, or provision to sustain life—ordering medical attendance —directing the course of the voyage—or limiting its duration. The Order was issued here in July, before it could possibly be known that any law had been promulgated in Bengal—for the date of the Bengal regulation was May 1, and it was sent over on the 7th of June. That regulation, too, was and still is, confined to the Presidency of Fort William. Nay more, it is altogether silent on every one of the important particulars which I have mentioned, and merely prescribes in vague and general terms that the parties interested in disobeying it, and on whose conduct it sets no kind of watch, shall attend to the comforts of the crew and cargo.

Contrast now this legislation of the Crown with the enactments of the Parliament when giving laws, I will not say *in pari materiâ*, but on things incomparably less demanding legislative care, because hardly liable to any of the like abuses.—A band of emigrants are about to leave their native country, and seek their fortunes

in the western world. They are civilized men—well acquainted with all that regards their voyage and destination—generally well informed—nay, compared with the Coolies of Bengal, or the Negroes of the Mozambique coast, I have a right to say accomplished persons. In the Thames, or the Mersey, or the Severn, the gallant ship that is to convey them forth is ready—her crew on board—her stores taken in—her anchor a-peak—her sails unfurled. Every passenger is there, and as the favouring breeze sounds through the cordage, all are more anxious to go than the captain of the vessel to make sail. Shall she go? The fore-top-sail dangles from the mast in token of her readiness to drop down the river, if she only may. Shall she go? No. The Act of Parliament interposes. The Act of Parliament says, No. The Act of Parliament commands, under penalties which may not be risked, that she shall stay and be examined. "Come ashore thou Captain," says the Law of the Land, "and shew thyself worthy to take charge of so many British subjects on the ocean. Come ashore you crew, and muster, that the equipment be seen sufficient. Come ashore thou Surgeon, and prove, by the testimonials of Surgeon's Hall, the requisite fitness to be entrusted with the health of this emigrant people!" But at least those emigrants may remain on board. They are of mature age—fully aware of their own intentions —well fitted to look after their own interests, and guard themselves against all fraud. They may keep in the berths where they are counting every minute an hour that is lost of the propitious wind which shall waft them to the wished-for region of all their hopes. They surely may remain in the ship. Again, the Act of Parliament says, No. Still it calls aloud, "Come on shore, you emigrants, that you may be mustered, and the King's officer who marshals you examining

into each man's case, may ascertain that none are carried forth against their will, and that no fraud, nor circumvention, nor delusive misrepresentation has been practised upon any." And whence all this jealousy, this excessive care, which seems even to protect men from the consequences of their own imprudence, and almost interferes with their personal liberty in order to make their maltreatment impossible? It is because the law was framed by wise and provident men, who had well weighed the importance of throwing every obstacle in the way of sordid cunning, and had maturely calculated the hazards of deception being practised, and abuses of every kind creeping into a traffic so little in the ordinary course of human affairs as the removing masses of the people from one hemisphere to another. It is because the laws so jealously guard the safety of the subject, that they will take every elaborate precaution to exclude even the possibility of a single person being entrapped, or inveigled, or spirited away, lost among a crowd of emigrants, whose general information about all they are doing—whose general design to go—and of their own free will to go—and with their eyes open to go —no man who ever made these laws ever doubted for an instant. Therefore are all these regulations prescribed, with the additional penalty of no less than £500 for any passenger taken on board in any place where no Custom-house stands, and no officers are ready to perform the examination—lest peradventure a single Englishman may by some improbable combination of accidents be kidnapped and carried, innocently or ignorantly, into a foreign land. And then comes my Noble Friend,* with his Order in Council —his crown—made law—to encourage the shipment—

* Lord Glenelg.

not of enlightened Englishmen, but simple Hindoos and savage Africans, in distant, desert coasts, in remote creeks and bays of the sea, laid down in no charts, bearing no name, at the mouth of rivers which drain unknown regions far inland, and carry down their streams the barbarous natives to an ocean which they had never beheld. Knowing the watchful care, the scrupulous and suspicious jealousy of the English law made by Parliament on all that relates to the emigration of our own civilized people—knowing that the shipper would be ruined who should suffer an Englishman to embark of his own free will, and more desirous to go than he to take him, where there was no Custom-house officer to watch the operation—my Noble Friend makes his Colonial Law with the avowed purpose of enabling thousands and thousands of simple, ignorant, uncivilized men to be taken in any speculating trader's vessel, in obscure, nameless places, where, instead of revenue establishments and public offices being stationed, the footstep of no European, save the Slave-trader and the crimp, ever was known to have trodden since the creation. The Law made by Parliament suspects all engaged in the trade of emigration, even from the City of London; and the lawgivers have framed its enactments on the assumption that abuse and offence must come. The Law of the Colonial Office suspects no one, even of those who navigate the Indian seas, and sweep the coasts of Southern Africa —it proceeds upon the assumption that neither abuse nor offence can ever come where the temptation is the strongest, and the difficulty of prevention the most insurmountable. The Parliament adds regulation to regulation for securing safety, where all men's eyes are directed and nothing can be done unseen. The Colonial Office despises all regulations, and trusts the Slave Trader and the crimp, where no eye but

his own can see, and no hand is uplifted to restrain his arm.

But let us turn towards the place of destination, and see what the consequences will be of this scheme, even if nothing illegal shall be done—if the most strictly correct course of conduct be pursued by every one engaged in the new traffic—if nothing whatever is done but introducing a number of apprenticed labourers into the West Indies, all of whom go there knowingly and willingly. Let us see the consequences to the Negroes who are already there, who are now apprentices working partly for wages, and whose complete emancipation is approaching. On the first of August, 1840, as the law now stands—on the first of August, 1838, as I fervently hope—the whole of these poor people will have the command of their own time, and the right to derive from their own labour its just reward. Then see how you are treating them! Just at the moment when their voluntary industry should begin to benefit them, and the profits of their toil no longer belong to their masters—just as they are about to earn a pittance by the sweat of their brow, wherewithal to support themselves and their families—just at that instant comes your Order in Council to prepare for them a competition, with crowds of labourers brought over by wholesale from the East, and able by their habits to work for little and live upon nothing. You let in upon them a supply of hands sufficient to sluice the labour-market and reduce its gains to the merest trifle, by this forced and unnatural emigration thither of men habituated all their lives to subsist upon a handful of rice and a pinch of pepper. Can any thing be conceived more cruel and unjust? This is the avowed object of the whole proceeding. It is stated in express terms by the planters, whose representations obtained the

Order in Council—" The emancipated Slaves," say they (p. 25,) " are very likely to form combinations for the purpose of restricting the ordinary and necessary periods of labour, as well as to compel the Planters to pay them wages at rates much above their means and ability to comply with."

Do, I beseech you, my lords, let us make the case our own. Suppose such an experiment were tried for lowering the wages in Kent, or Essex, or Sussex, by the planters there, who are always complaining of their high rents and low profits. Suppose in that county, happy under the mild government of my noble friend,* the rumour should spread of 3000 or 4000 Coolies being expected there, men who could work for two-pence and three-pence a day, and be better off than in their own country—that the Colonial Office were petitioned by the Sussex farmers to give such facilities as were necessary to make this importation practicable—that the farmers were persuading the Secretary of State and his Under Secretaries, of the benefit this help must prove to the over-worked day labourers of the county—and that the measures required by the speculators were about to be adopted so as to make the operation feasible—I won't say that the Sussex peasantry would instantly meet and mob and riot and threaten the Castle of my noble friend, and the Office in Downing-street; but I venture to assert that my noble friend, with a train of all his deputy Lieutenants, and Magistrates, and Squires, and Clergy, would speedily darken the doors of that department, and that to issue the dreaded order would become an absolute impossibility. Nothing could ever make its issuing possible but its being secretly agreed upon and passed without any publication in

* The Duke of Richmond.

the Gazette; and as soon as its existence became known, its recall would be matter of perfect certainty. Surely, surely, the unhappy African has been treated at all times as never race under the sun was suffered by Providence to be treated. All men and all things conspire to oppress him. After enduring for ages the most bitter miseries of Slavery, privations unexampled, hardships intolerable, unrequited toil, he is at last relieved from his heavy burthen, and becomes a free labourer, ready to work for wages on his own account. Straightway he is met by myriads of other labourers not naturally belonging to the soil or climate, and habituated to the lowest hire and the scantiest and the worst sustenance; and after having been so long kept out of the hire he earned by the bondage of his condition, he is now defrauded of it by the craft of his former master, in revenge for his tyranny being at an end.

But this is the very least part of the evil inflicted by the measure; this is taking the argument on the lowest ground. Look to the inevitable consequences of the system upon the Eastern coast of Africa, and all our Indian dominions. The language used by its patrons and their abettors in Downing Street, is just what used to be heard in the days of open Slave trading. "We wish to bring over a number of labour-people from Asia," says one Planter—"We contemplate drawing a supply of labourers for our estates," say others—respectable men, whom I personally know. It is "the engaging of labourers," according to the President of the Board of Control, under whose protection India is placed; while the Colonial Secretary, under whose care all our other settlements repose, speaks of the "Emigration from India" and "East India Emigrants." The voyage which brings these poor creatures from the indolence of their native

plains to the hard and unwholesome toils of Guiana, can hardly yet be described as proving an agreeable passage, for time has not yet been allowed to carry any over. But the experiment already made in the Mauritius furnishes the means of commendation, and that passage has been distinctly termed by the schemers one of no suffering, but of sufficient ease and comfort to the cargoes. So they have described the change of the Coolie's situation as beneficial to him. "They are represented," it is said (p. 23,) "to be much pleased with their new situation, it being considered by them as more desirable and beneficial than that from which they have been removed"—in the very language, your Lordships observe, of the Slave traders and their defenders fifty years ago. The experience of the Mauritius Planters is in these papers cited at large, and paraded through many a long page, to shew how happy is the lot of the transported labourer in the bondage of that blissful land. The queries sent to various proprietors are given at length, with the answers returned by them. The fourth question, as to the comforts and happiness of the imported apprentices, is answered alike by all but one, from whom the truth escapes. The others say, the men are quite contented and happy, exactly as Sir William Young found the African Slaves in the Leeward Islands. They represent, too, the Mauritius Negroes as quite pleased with their new helpmates; and in short, never was such a picture of felicity in that island, since those halcyon days when 25,000 capital felonies were perpetrated by the importation of as many labourers—days which it was feared had been gone never to return, but which this Order in Council fills the Mauritian bosom with hopes of once more living to see restored. That one Planter, however, gives a somewhat different account of the matter. "Has any

feeling of uneasiness and discontent been observable among the Indian labourers on your estate as arising out of separation from their families, or from any other similar cause?" The answer is signed Bickagee; and this name seems to indicate a Malabar origin; so that probably the reason why the account is so different from that of other proprietors may be, that Bickagee could converse with the poor Indians in their own language, as another witness who gives a similar account certainly could. The answer is "Yes; and for these reasons—In their country they live happy and comfortable with their wives and families, on three or four rupees a month. They engage to leave their native country on a small increase of salary, say five rupees and rations, in the hope of receiving the same comfort here, but experience has proved the reverse. Uneasiness and discontent arise from these privations, besides their being deprived of the holidays their religion entitles them to." (p. 83.) So Mr. Scott, a gentleman resident in Bengal, and acquainted with the people, their language, and habits, plainly says, that "with very rare exceptions, he doubts if there are any who congratulate themselves on the bargain they have made." (125.) He makes an observation of much wisdom upon the inefficacy of all regulations respecting treatment, and of all conditions in contracts for apprenticeship. "The main result of my enquiry," says he, "leads me to the conclusion, that the condition of the labourer practically depends on the individual character of his employer, and that the terms of the agreements are trifling compared with the spirit in which they are interpreted."

But let us look to the far more pressing consideration of the way in which these poor people are brought over from their own country; for upon that, two very important matters arise out of these papers, and espe-

cially Mr. Scott's report. I must, however, first turn aside for a moment to show your lordships that the abuses of the measure had not been unforeseen. My noble friend himself at one time was awake to this important consideration. He could see it in the measures of others, but in his own, all such suspicions are lulled asleep. When he first received the ordinance made by the Court of Policy in Demerara, he at once warned them against letting it become the cover for Slave dealing, describing it as essential that no apprentice from Africa should be brought over. His words are remarkable, and I apply them distinctly to the measure of my noble friend himself, now under your consideration. "If, (said he, in a despatch dated October 3, 1836, p. 11,) labourers should be recruited on any part of the African coast, the consequence would inevitably be direct encouragement to the Slave trade in the interior, and a plausible, if not a just, reproach against this country of insincerity in our professions on that subject." A plausible, if not a just reproach! Truly the reproach is still more just than it is plausible; and so my noble friend's colleague,* under whom the foreign concerns of this country flourish as much as our colonial affairs do under himself, will find in the first attempt which he may make to treat for the abolition of the foreign Slave traffic. I can tell him that far less ingenuity than falls to the lot of Spanish, and above all Portuguese negotiators, will be required to shut his mouth with this Order in Council, as soon as he tries to open it against the Portuguese or Spanish enormities which all England, and both Houses of its Parliament, are vociferously urging him to put down. They will hold, and truly, that they have a just right to tax us

* Lord Palmerston.

with insincerity, and with fraud and dishonesty, if, while we affect to reprobate Slave trading in them under its own name, we continue to carry it on ourselves, under false pretences, and by a false and borrowed title. As long as Africans are brought over under the vile Order by the name of apprenticed labourers, it is still more just than it is plausible to accuse us of that insincerity and those frauds; and how does my noble friend* escape the charge? By a regulation which he adds to the ordinance, and which I pledge myself instantly to demonstrate does nothing whatever to prevent the very thing here denounced. Nothing of the kind, absolutely nothing has been done by the additional provision of my noble friend. For what is that provision? You will find it in page twenty-one, and it only makes indentures of apprenticeship void if executed in Africa, or the adjacent islands inhabited wholly or in part by the Negro race. Why, what signifies that? Who is prevented by such a flimsy folly as that article, from carrying over as many Africans as he pleases, and in whatever way he likes? To escape this most ridiculous check, the Slave trader (my noble friend himself calls him by this name) has only to take the Negroes on board of the Slave-ships, and there execute their indentures, or to Brazil, or to Cuba, or to Monte Video, or, indeed, to Guiana itself; and then he complies with the conditions of this inconceivable restriction, and imports as many Negroes as he pleases, and can afford to buy. To be sure, there is added another provision of the same notable kind, requiring that all contracts be made and witnessed before two justices, or, it is added, magistrates. What then? The Slave trader has only to carry his prey, his human victims, to the Mauritius, where he will

* Lord Glenelg.

find two, aye, twenty, magistrates full ready to help him, and to do any thing for the encouragement of the business there most popular, the Slave trade; or if it be the western coast of Africa which he has been desolating with his traffic, under the encouragement of this Order in Council, he has only to touch at the Brazils, where all Slave traders are at home; or at Monte Video, where the governor took a bribe of £10,000 to allow, in the teeth of the Spanish law, two thousand Slaves, which he termed, in the language of these papers, and this Order in Council, labourers, to be introduced; or at Cuba, where the governor does not suffer the sailing of Slave ships to be announced in the newspapers, for fear of our cruisers being thereby warned and stopping them. In all these Slave trading ports, justices, and magistrates, and governors too, will ever be ready to witness indentures for Guiana, and make this most ludicrous provision utterly void and of no effect.

But the despatches of my noble friend are not the only documents which show that the abuses of this intercourse have been alluded to before now—though no precautions whatever have been adopted to prevent them. Some few years ago, a Mr. Letord propounded to the governor of the Mauritius a plan for importing twenty thousand African labourers, as he called them, in the phraseology of the Order in Council so familiar to all Slave traders. He was to obtain them by negotiation with the chiefs of the country, and to apprentice them for a limited time. His plan was circumstantially and elaborately framed, and reminds me of what a learned friend of mine, now Advocate-general in Bengal,* used to say at Guildhall, on such estimates, that with a little pen and ink he would under-

* Mr. Pearson.

take by figures to pay the national debt in half an hour. The ingenious projector, (who I understand was one of those most deeply concerned in the Mauritian Slave-trading some time ago, and therefore well versed in the subject,) gave his plan the name of "Projet d'Emancipation Africane"—for he was of course to liberate all the Slaves he bought of the chiefs, or kidnapped on his own account, and to convert them, as the plan of our government proposes, into Indentured Apprentices. Your lordships smile at the plan and its title, because you see through the trick at once—so did the worthy Governor General Nicolay—whose answer was short—whose refusal was flat and unqualified—just such as the Government at home should have given to the Letords of Guiana. He said he had read the details of the plan "with much interest, and felt bound to give it his unqualified refusal, considering it, however speciously coloured, as neither more nor less than a renewal of the Slave trade, and therefore entirely inadmissible," p. 24. And so to be sure it was. Your lordships saw through the cunning trick and its flimsy disguise at once, and you smiled when I stated it. But I now ask if there is one single tittle of the plan thus instantly seen through, which differs from the present project for Guiana? I defy the most ingenious, subtle, and astute person who now hears me to show any one thing that could have been done under Letord's plan, denounced by Sir W. Nicolay, as common Slave-trading—in other words felony—which may not be done exactly in the same manner if this Order in Council is suffered to continue in operation. My noble friend will answer me and defend or explain his measure. I call upon him to point out, if he can, one single particular in which the project rejected as felonious by Governor Nicolay, with the entire approval of the Government

at home, differs from the project aided and sanctioned by that same Government, and under their auspices inflicted upon Africa and Asia too, for the benefit of the Guiana planters and their Slave trading captains. My noble friend is now challenged to this comparison, and having given him ample notice, and in very distinct terms, I expect—I am entitled to expect—that he shall point out wherein the two schemes differ, and what act of Slave-trading—that is of felony—can be perpetrated under the one, which may not, with the most perfect ease and safety, be perpetrated under the other.

Here, my lords, I might rest, and safely rest, my case. For if I have shown to demonstration not only that abuse is inevitable—that no regulation can prevent it, but also that none have ever been attempted—if I have further shown, out of my noble friend's own mouth, and that of the Mauritius government, whose proceedings he wholly approved and adopted, that without precautions, which never have been taken or thought of, the project is one of disguised, and but thinly disguised, Slave-trading: surely I am not bound to go further, and prove that already, and while in its infancy, the results proved to be inevitable have actually flowed from it;—that kidnapping has filled our vessels,—and that waste of life, and misery has been endured on the middle passage. Nevertheless, I am prepared to prove this likewise, superfluous though it be; and thus to remove the very last vestige of doubt, to preclude every opening through which a cavil can enter into the discussion.

I here again revert, in the first place, to the report of the only persons, or one of the only two persons, who were capable of giving information on the subject, by their knowledge of the language in which alone these poor Hindoos can converse. Mr. Scott

gives this truly remarkable statement; his words are few, but the single sentence speaks volumes. "They all stated (says he, page 125) that they left Calcutta under the impression that they were going to the Company Rabustie (Company's Village), the name by which the Mauritius is designated"—but by whom? In the vernacular tongue of India? By all men in common parlance? Oh no, nothing of the kind! But "by the agents in India!"—by the Slave trader's agents; by his crimps, his inveiglers, his kidnappers. Mr. Scott adds, "How far the term was complimentary or compulsory I cannot say;"—so that he has his suspicions of these poor ignorant people being made to believe that they might be compelled to go to the Mauritius as a part of the Company's territory. He adds this remarkable observation: "While I make no charge of misrepresentation, I am bound to acknowledge the difficulty of correctly and intelligibly describing an island in the Indian Ocean to a person who had never seen the sea, or knew what an island was." Some there may doubtless be who will say, that this representation of the Mauritius, where the powers of Leadenhall-street have not one servant, and possess not one yard of ground, being a village of the Company, was plausibly rather than justly made. For my part I hold it to have been wickedly, deceitfully, fraudulently, crimpingly, kidnappingly done, and with the purpose of inveigling, and cheating, and carrying away the natives of Asia, after the most approved practices of Slave trading, in their nefarious proceedings on the African coast. My noble friend must have turned his attention to this subject as well as Mr. Scott. He long presided at the India Board, —he had under his protection the natives of the country, to whom he and his respected family have long been the friends;—he had studied their temper

and their habits from his youth;—he had an acquaintance possessed by few, an hereditary acquaintance with all that belongs to this subject;—and, before he issued an order for the emigration of these poor creatures, he must have well weighed all its consequences, having regard to their nature, and their knowledge. This matter is not one that arises indirectly, or unexpectedly, or by any unforeseen accident, out of the scheme. On the front of that scheme it is graven in legible letters; it is A Plan for enabling planters in the West to import natives of the East into their Colonies. Then my noble friend must have often asked himself the natural and indeed unavoidable question which I now ask him, as Mr. Scott has suggested it from a knowledge of Indian affairs far less extensive than his own—What hopes can we entertain of ever being able to make a Hindoo, a Coolie from the inland territory of the Company, a poor native who has never seen the ocean, or any sheet of water larger than the tank of his village, or the stream in which he bathes—comprehend the nature of a ship and a voyage, the discomforts of a crowded hold, the sufferings of four months at sea, the labours of a sugar plantation, the toils of hoeing, and cutting, and sugar boiling under a tropical sun—toils under which even the hardy Negro is known to pine, and which must lay the feeble and effeminate Asiatic prostrate in the scorched dust? But will my noble friend really take upon him to say that one single Hindoo is embarked for Guiana, who can form the idea of what the voyage alone must expose him to? We are here not left without proof. Experience has already pronounced upon the voyage from Hindostan to the Mauritius; these papers paint it as a worthy companion for the middle passage. I hold in my hand the despatch from the Mauritius Government of

April last, in which three vessels are said to have carried over, one of them two hundred and twenty-four, the other, two hundred, and the third, seventy-two labourers, as you are pleased to term, what I plainly name Slaves. Each had a full cargo of rice besides—so that the despatch says, they could not have proper accommodation for the Indians, nor protection from the weather,—nor had any one of the three a medical officer. The William Wilson, out of two hundred and twenty-four, lost thirty-one on the voyage—a sacrifice to the pestilential hold in which they were compelled to breathe. The Adelaide, still worse, lost twenty-six out of seventy-two—between a third and a half in five or six weeks. The statements I have given from the Slave-trader's arguments in 1788 and 1791 were absurd enough when they represented the mortality of the middle passage as one in the hundred. But never did I hear it put higher than this, of thirty or forty per cent. Only see once more how the record of your own Statute Book rises up in judgment against your own conduct! While you not merely allow, but encourage and stimulate the carrying away of untutored Indians and savage Africans from the desolate shores of Malabar and Ceylon and Mosambique, giving free scope to all the practices of fraud and treachery, which the arts of wicked ingenuity can devise to entrap them, and bear them into bondage, that the sordid desires of a few grasping planters may be gratified,—read the wise and humane words on the front of the British statute—read them and blush for shame! "Whereas in various parts"—Of Hindostan! Of the Indian Archipelago! Of the Mosambique and Sofala coasts? No—but "of the United Kingdom of Great Britain and Ireland, persons have been seduced to leave their native country under false representations, and have suffered great

hardships for want of provisions and proper accommodation, and no security whatever being afforded that they shall be carried to the ports for which they have agreed—be it *therefore* enacted." Has the faintest attempt been made to afford such security to the Indian and the African, as this statute anxiously provides for the free and enlightened native of our own island?—any precaution against his being trepanned, and seduced on board, under representations that he is only going to another village of his own country, where he will enjoy his own ease, work in his own way, and worship according to his own religion? — any precautions against being hurried away by force, while others are decoyed by fraud?—any precautions against being scantily provided and pestilentially lodged? — any precaution against his being carried to one destination, after bargaining for another? Nothing whatever of the kind. But indeed such precautions, though practicable where they are little wanted—on the coasts of this country, studded with custom-house establishments, and round which a cordon of revenue officers is drawn by day and by night, must prove wholly ineffectual where they are most wanted—on the desert strands of the Eastern Ocean. And you see the results in the documents I have just read;—where the frauds and the force of the embarkation, and the dreadful mortality of the voyage, are recorded in imperishable proofs of the crimes you have dared to encourage.

Therefore it is, my lords, that I have deemed it my indispensable duty to drag before you this iniquitous measure; therefore it is that I have yielded to the sacred obligation of going through a subject as painful to handle as it was necessary to be examined; therefore it is that I have waded, at extreme suffering to myself, through the agonizing detail of the Slave

traffic; and therefore it is that I have, with unspeakable anxiety—but an anxiety occasioned far more by the importance of the question than by its difficulty or any disinclination to grapple with it—laid bare the enormities of this proceeding, and set forth its glaring inconsistency with the great Act of Abolition, from the principles of which, I had fondly hoped, no English statesman would ever be found daring enough to swerve. My lords, I have for more than a quarter of a century been the supporter in Parliament of that great measure of justice. But at every period of my life since I reached man's estate, I have been its active, zealous, eager, though, God knows, feeble supporter, wherever I could hope to lend it assistance. For this holy cause I have been a fellow-labourer with the greatest men this country ever produced, whether in the Senate, in the Courts, or at the Bar—elevated to the ermine, or still practising in the forum. With them I have humbly though fervently fought this good fight, and worked at this pious work—with them who are gone from hence, as with those who yet remain. And we had indeed well hoped—they who are no more, and they who still survive to venerate the names of the forerunners, and tread if it be possible in their footsteps—that we had succeeded in putting down for ever the monstrous traffic in human flesh. Could I then see this attempt to revive it, and hold my peace? I could not have rested on my couch and suffered this execrable work to be done—uninterrupted to be done. I required not to be visited by those surviving friends of whom I just now spake—required not to be roused by the agitation of public meetings—required not the countless applications of those whose disinterested patriotism, whose pure benevolence, whose pious philanthropy, endearing them to my heart, have won for them the universal confidence of mankind. No! my

lords; I could not slumber without seeing before me in visions of the night the great and good men who have passed away, seeming as if they could not taste their own repose, while they forbade me the aid of rest, until I should lend my feeble help, and stretch forth this hand to chase away the monster Slave-trade from the light he once more outrages, back to the den where he had been chained up by their mightier arms. Justly famous of other times! If it be not given us to emulate their genius, to tread the bright path of their glory, to share in the transcendent virtue which formed their chief renown—let us at least taste that joy which they valued above all others—for that enjoyment we too can command—to bask in the inward sunshine of an approving conscience, athwart which no action of their illustrious lives ever cast a shade!

I move you to resolve that the Order in Council of the 12th July—

"1. That the Order in Council of the 12th of July, 1837, was passed for the purpose of enabling the proprietors of Guiana to import into that Colony, as apprenticed labourers, the natives of countries within the limits of the East India Company's Charter, before it was known that any law had been enacted in India for their protection, and has been suffered to remain in force after it was known that the law enacted in India on the 1st of May, 1837, and transmitted by a despatch of the 7th of June, is wholly insufficient to afford them such protection as is required, and to prevent the evils to which such traffic is exposed, while there are no means of preventing the greatest abuses from being practised, both in Asia and in Africa, under colour of the traffic, which it is the professed object of the Order in Council to facilitate and encourage:

"2. That the said Order in Council of the 12th of

July, 1837, was improperly issued and ought to be recalled."

THE REPLY.

The masterly speech which has just been delivered by my noble friend,* while it calls for my cordial thanks, relieves your Lordships from hearing many points, which he has handled, discussed far less effectively by me, in availing myself of the right of reply, which your courtesy bestows. But a few words of explanation are required by one or two things which have fallen from the noble Duke,† for whom I entertain the most unqualified respect, and whose authority, as a practical Statesman, I place in the foremost rank.

First, however, I must express my unbounded astonishment at the Speech of my noble friend.‡ Not only has he left wholly unnoticed my distinct and formal challenge, to show wherein this measure differs from the scheme of Letord, which all the authorities, both in the Mauritius and at home, stigmatised as a mere blind for a Slave trading adventure; but he has argued the whole question as if there were no Madras on the map of Asia—no Bombay—no Ceylon, for which no rules are made—no Pondicherry belonging to France, for which we cannot make any rule—no Goa in the hands of Slave trading Portugal—no African Coast within the Company's limits—and for which there exists not an authority on earth that can make a single rule, or watch a mile of the sea board. The whole reliance has been placed on the law made at Calcutta by my noble kinsman, the Governor General in Council§—a law of no kind of value, had it comprehended all Asia and Africa too—a law in which my noble relation attempted little and effected

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* Lord Ellenborough.
† The Duke of Wellington.
‡ Lord Glenelg.
§ Lord Auckland.

less—pretending to prevent hardly anything, and really preventing nothing at all—feeble in its provisions—impotent in its enactments—insignificant in its rubric—a blank in its body—when every one knows, and I had expressly so argued it, that no law made by the Governor in Council (if in Council the potentate who made such a thing can be said to sit) has any force or effect whatever, were it as omnipotent as it is inefficient, beyond the presidency of Fort William, and never could affect a single atom of the traffic which most of all this measure is intended to encourage, and which most requires regulation and control. But in overturning the whole speech of my noble friend, I have also disposed of the noble Duke's. For his only reason for resisting the motion and offering the Government an escape through the Previous Question is their acceptance of his offer to pass certain regulations. Suppose the noble Duke's system were adopted to-morrow—and I think I am using sufficiently complimentary language when I call it a system, for assuredly I do not profess to admire it as much as I have hitherto been wont to admire all its author's productions, whether as a soldier or as a statesman—Suppose my noble kinsman* had enacted every tittle of it in Council, instead of his own puny regulation of the first of July—still it would have been confined to Bengal.

The Duke of Wellington.—All are included.

Lord Brougham.—No—not Pondicherry, for there you cannot legislate—not Goa, for that is Portuguese—not any part of the African Coast, over the whole of which this measure of July sweeps, enveloping all in the Slave trade. That measure, our Order in Council, is now given up—it cannot for an instant

* Lord Auckland.

stand—for every argument urged in its defence assumes that it must be accompanied or followed by other regulations, some of which have not been, others of which never can be made. The noble Duke admits this as distinctly as my noble friend. Then I shew you places without number, where no regulations whatever can be made by all the powers and authorities existing in the empire, and that is decisive against the Order in Council. I have waited, and in vain, for any answer to this main branch of the argument from the noble Secretary of State—I put it to him in every form, and he makes no sign. Therefore that Order stands convicted—namely, by confession it stands convicted—of leaving the door ajar to the African Slave trader, under the fairer name of encouraging the trade in apprentices—for I call it as bad as leaving the door ajar, to affect shutting the main gate while you leave half a yard to the one side, a door wide open, through which the whole body of it may enter, and which there exists no power within your reach, nay, no power on this earth, that can shut it.

Much was said by the noble Duke of the value of Colonial possessions, the necessity of more hands to cultivate our plantations, and the tendency of these Resolutions to prevent their importation. But here it is that the noble Duke has entirely mistaken both the tenor of my opinions, and the scope of the Resolutions. I am not one of those who object to Colonial establishments. Many men for whom I have a great and just respect do go this length. My opinion differs from their's. I lately stated how I draw the line. I make a great distinction between such Colonies as those on the main land of North America, where men settle without the plan of returning home, where the property is in the hands of personal residents, and

which are extensive enough to defend themselves. When these are able to stand alone, when it is no longer of mutual benefit that the colonial relation should continue, the separation is advantageous to both parent state and settlement. But as I lately stated in the argument I held with my noble friend,* now absent, unfortunately, from a domestic affliction, the Slave Colonies are differently circumstanced; and no one can doubt the mutual benefits of their continued dependance upon the mother country. They are important to our commerce, and still more to our income and wealth—we are of use towards their defence—and in a military point of view the connexion may be exceedingly material. I have not therefore a word to say against the noble Duke's high value which he sets upon such possessions. How far their cultivation, after the Emancipation Act comes into full play, will require an importation of labourers from the East, is quite another question. But then it is one on which these Resolutions pronounce no opinion whatever. I defy any man to point out one line of either Resolution which even looks in that direction. Why do I thus confidently say so? Because I purposely framed them so as to keep quite clear of a subject on which I knew men might differ widely, while they all agreed in the main object of censuring the Order in Council. But says the noble Viscount,† following the noble Duke, whose unwillingness to remove him from the office holden at his Grace's pleasure seems to have excited a just feeling of thankfulness, a great experiment is about to be made. We cannot tell, he says, what may happen in 1840—I hope and trust that will be all known two years earlier —therefore, he adds, let us be on our guard. Why

* Lord Ashburton..

† Lord Melbourne.

not? Certainly let us be on our guard—but do you say a single word to shew that this Order in Council for importing more Apprentices puts us more on our guard? What will betide us, says the noble Duke, should the emancipated Negroes refuse to work for hire? How will your estates then be cultivated? and how can you tell that they will pass from the state of Slavery to that of industrious workmen? How can I tell? Why, by looking at what they are already doing—in Jamaica and Barbadoes, where they work every spare hour voluntarily for wages—in Antigua and Bermuda, where they have been as free as the peasantry of Hampshire for near three years, and have worked as hard and behaved themselves as well. On this head, then, I have not the shadow of a doubt, nor am I entitled to have—if experience can be trusted as a safe guide. But furthermore—suppose me quite wrong—suppose the whole experience of the past belied by the future, and that all the Negroes refuse to work the moment the hour of their liberation strikes—here are eight hundred thousand idle and dissolute, and restless and rebellious Negroes (for there can be no middle state between peace with industry, and idleness with revolt)—and the noble Duke would keep all quiet, and reclaim all from idleness, by sprinkling over this vast mass three or four thousand Coolies from Asia. The supposition is that all the West Indies are in a state of inaction first—presently after of insurrection and confusion—no work done but that of mischief—no labour, no quiet, no subordination—all is a mass of confusion, and every portion of the vast population is in a ferment—when sprinkling over the boiling mass a few peaceful and indolent natives of Hindostan will at once restore universal quiet, and all will suddenly sink down to rest!

Hi motus animorum, atque hæc certamina tanta
Pulveris exigui jactû compressa quiescent!

But I have said, my lords, that these resolutions pronounce no judgment whatever upon the policy of importing new hands. All my opinions on this subject may be as erroneous as you please—the noble Duke's and the Government's under his protection, as well grounded as possible—whatever may be my private opinion, you are to vote on the Resolutions, and not on the speech that introduces and defends them; and he who holds as high, as the noble Duke, the necessity of introducing new labourers, may most correctly and earnestly join with him who has no opinion of the kind, in supporting resolutions which leave the question wholly untouched. Nay, the more I was of the noble Duke's opinion—the higher I valued the importation as a resource—the more should I vote for these Resolutions—because they go only to condemn a most erroneous mode of trying this experiment—a mode which its authors shrink from defending, and which the noble Duke and every one else join in condemning, as not giving the experiment fair play. Can any thing indeed be more unfair towards that experiment than trying it in such a clumsy, bungling manner, as to bring upon it the odium of being a new Slave trade?

While, however, this is the clear and undeniable posture of the question in debate, I cannot at all abandon the jealousy and indeed the aversion with which I regard all plans whatever of wholesale shifting of population. Nor am I in the least degree won over to such plans by hearing their defence clothed in language drawn from the science of political economy. My noble friend calls it "a free circulation of labour," and professes his reluctance to abandon on this subject his tenets as an Economist. I have heard the terms and the doctrines of political economy turned to many

uses in my time. They have been used to defend state lotteries—insurances in the lottery—stock jobbing—time-bargains in the funds. Why, it is said, should there be any interference with the free use of capital, or of skill and of labour in these departments of industry? On the Continent it has been applied to even baser uses—and made to defend the establishment of public stews, under due regulations for the benefit of the subject. But I own I have never yet heard those principles applied where they were more out of place and season than to the subject of the Slave trade. Can any man in his sober senses think of calling the wholesale embarking of Hindoos, and then transporting them to the antipodes, to work in ways wholly unknown to them and foreign to their nature and habits, and pretend that giving it facilities —encouragement—stimulants—is furthering the free circulation of labour? The argument against all this plan is, that there is mere Slave trading in every part of it—that a felony lurks under each of its arrangements. Then do the political economists and my noble friend, who is so vigorous a stickler for their doctrines, hold that the circulation of labour is interrupted by preventing the Slave trade? If they do—nor can they stop a hair's-breadth short of this—then I am for abiding by the law of God and the law of the land, let their laws of political economy fare how they may.

The noble Duke has proposed certain terms to the Government, as the price of his support—"Promise me you will adopt my code of regulations," says he, "and you shall not be condemned by a vote of censure this time." The hook so baited was sure to take—the Ministers bit immediately—but they were not caught. "Oh yes—by all means"—"Any thing you please," says the noble Viscount—"we agree at

once"—to what? Not to the proposal made; but only to consider of it—"We will take it into our best consideration." I don't much think this kind of acceptance will catch the noble Duke. He saw the noble Viscount swallow the bait—but he had not caught his fish—away it ran with the line in its mouth, down the stream, and buried itself in "serious consideration." Why, I defy the noble Duke to propose any one thing on any one subject, which the Government, and all the House, and the country too, will not, as a matter of course, take into serious and respectful consideration. The noble Viscount will consider of it;—so shall I;—but very possibly he may end by thinking as little of it as I do. Considering of it proves no assent—*Le Roi s'avisera*, is the form of rejecting bills—the Sovereign has only once or twice taken any measure into consideration since the Revolution, though he has assented to some thousands; and the Minister, too, may consider and reject. The nature of the noble Viscount's answer, then, was, to use the phraseology of a witness on a memorable occasion at that Bar, More no than yes. So, as the noble Duke failed to catch the noble Viscount, the noble Viscount must not expect to catch the noble Duke—anxious as he is to be taken upon the present occasion.

I hear it said by my noble friend,* that there is a wide difference between his plan and Mr. Barham's in 1811, inasmuch as Slavery then existed, and the Chinese were to be brought over as free labourers —whereas, Apprenticeship is now the law, and the Hindoos are to come into a colony of apprenticed labourers. That is precisely my argument to show how much worse this plan is than that; and yet that

* Lord Glenelg.

was not endured by any one who knew the subject ever so imperfectly. No one would have listened to Mr. Barham's proposition, but that he was to make all the labourers he brought over free at once; they were to be free from every shackle imposed upon the Negroes. Here the Hindoos are to be subject to every restraint which the Negroes endure—nay, this plan is to continue for years after the Negroes are set free.

But a new argument is raised by the noble Viscount.* "Take care," says he, "how you set men's interests against their duty, and raise their strongest prejudices against Negro freedom. The Slavery of the ancient world was only extinguished by it becoming men's interest to prefer free labour to Slave labour; therefore, if you make free labour so scarce in the West Indies as to make it dear, Slavery never can cease." I am not sensible of ever in my life having heard a piece of reasoning more absurd in all its parts—one in which the incorrectness of the facts assumed, more strove for the mastery with the thoughtlessness of the inferences drawn from them. What! Slavery in Europe extinguished by the high price of Slave labour, or any other calculation of profit and loss! Why, I had always believed that it was the mild spirit of the Gospel of Christ which worked by slow degrees this happy change. I state the sentiments I have always heard accounted just, and not out of deference to the Right Reverend Prelates in whose presence I speak, and who, to their immortal honour, have never once refused their support to any one proposition adverse to the Slave Trade. But never before did I hear it doubted that first the spirit of Christianity, hostile to all cruelty

* Lord Melbourne.

and oppression; and afterwards the efforts of zealous priests, even refusing the rites of the Church to men unless they would free their bondsmen, gradually wrought the happy change which the noble Lord ascribes to a calculation of interest. But grant him his facts; how do they prove the emancipation to be in any danger from a rise in the wages of labour? He talks as if the Act had never passed, and we were trusting to men's interests for setting their Slaves free. Happily, longer than August 1840 they cannot be retained in any form of servitude. Does he dread that high wages will bring back the chain and the cart-whip? I have no share in his chimerical apprehensions. I defy all the combinations which cruelty can effect with avarice to restore that hideous state of society of which the knell sounded over the Atlantic in 1833. No, no! I will trust the Negro people for that. They will keep what they have got. Trust me they will set at defiance all the noble Lord's calculations, and all the wishes of their former masters, and never more consent to work one spell of work, but for their own behoof—be the terms of their employment ever so distasteful to their white neighbours—be their desire for a restoration of the yoke, and the chain, and the cartwhip ever so intense. The renewal of the Slave Trade is a very different thing. On that my fears are indeed grave and perplexing—for I know the Indian crimp and the African trader—the inexhaustible perfidies of the dealers in men, and the scope which those frauds have among hordes of uncivilized men, many of them in their own country Slaves—the comfort and aid which those wretches may reckon upon receiving from accomplices ready made, such as the bribed governor on the Spanish Main, and the friendly authorities of Cuba.

But I am told to be of good courage, and not to

despond—there is no fear of abuse—no prospect of the horrible traffic so much condemned ever taking root in our islands. I am bid to look at the influence of public opinion—the watchfulness of the Press—the unceasing efforts of all the societies—the jealous vigilance of Parliament. Am I then to stand by and suffer the traffic to be revived, in the hope that we shall again be able to work its extirpation? Trust, say the friends of this abominable measure, trust to the force which gained the former triumph. Expect some Clarkson to arise, mighty in the powers of persevering philanthropy, with the piety of a saint and the courage of a martyr—hope for some second Wilberforce who shall cast away all ambition but that of doing good, scorn all power but that of relieving his fellow-creatures, and reserving for mankind what others give up to party, know no vocation but that blessed work of furthering justice and freeing the Slave—reckon upon once more seeing a Government like that of 1806—alas, how different from any we now witness!—formed of men who deemed no work of humanity below their care or alien to their nature, and resolved to fulfil their high destiny, beard the Court, confront the Peers, contemn the Planters—and in despite of Planter, and Peer, and Prince, crush the foreign traffic with one hand, while they gave up the staff of power with the other, rather than be patrons of intolerance at home! These are the views with which it is sought to console us and gain us over to the ill-starred measure before you.

I make for answer—If it please you—No—by no means—nothing of all this. The monster is down, and I prefer keeping him down to relying upon all our resources for gaining a second triumph. I will not suffer the Upas tree to be transplanted, on the chance of its not thriving in an ungenial soil, and in

the hope that, after it shall be found to blight with death all beneath its shade, my arm may be found strong enough to wield the axe which shall lay it low. I thank you for the patience with which you have listened to me, and on which I have unwillingly trespassed so long. My bounden duty could not otherwise have been performed; and I had no choice but to act now as I have acted ever through the whole of my life—maintaining to the end the implacable enmity with which I have at all times pursued this Infernal Trade.

LAW REFORM.

INTRODUCTION.

LAW REFORM—MR. BENTHAM—MR. DUMONT—MR. MILL—SIR JAMES MACKINTOSH.

THE age of Law Reform and the age of Jeremy Bentham are one and the same. He is the father of the most important of all the branches of Reform, the leading and ruling department of human improvement. No one before him had ever seriously thought of exposing the defects in our English system of Jurisprudence. All former students had confined themselves to learn its principles,—to make themselves masters of its eminently technical and artificial rules; and all former writers had but expounded the doctrines handed down from age to age. Men, by common consent, had agreed in bending before the authority of former times as decisive upon every point; and confounding the question of, what is the law, which that authority alone could determine, with the question, what ought

to be the law, which the wisdom of an early and an unenlightened age was manifestly unfit to solve, they had taken it for granted that the system was perfect, because it was established, and had bestowed upon the produce of ignorance and inexperience their admiration in proportion as it was defective. He it was who first made the mighty step of trying the whole provisions of our jurisprudence by the test of expediency, fearlessly examining how far each part was connected with the rest; and with a yet more undaunted courage, inquiring how far even its most consistent and symmetrical arrangements were framed according to the principle which should pervade a Code of Laws—their adaptation to the circumstances of society, to the wants of men, and to the promotion of human happiness.

Not only was he thus eminently original among the lawyers and the legal philosophers of his own country; he might be said to be the first legal philosopher that had appeared in the world. For Justinian, when he undertook his great work of abridging and digesting the Roman law, in truth only methodised existing laws, and brought into a compendious and manageable form those rules which lay scattered over so many volumes, that they were said to be "*the load of many camels.*" Whatever he found, or rather whatever Tribonian and his coadjutors employed by the Emperor found, in the edicts of Prætors,* the laws of the popular assemblies,† the rescripts of former Emperors,‡ or the opinions and other writings of lawyers,§ was deemed to be fixed

* Edicta Prætorum.
† Leges et Plebiscita.
‡ Rescripta Principum.
§ Responsa Prudentum.

law; and accordingly the Pandects, (or Digest,) any more than the Code and the Novels, contain nothing which is not specially avouched by the authority upon which it is given as law, and the Institutes, a work of matchless beauty as an abstract or summary of principles, is wholly drawn from the same sources. The like may be said of the modern Codes, of which the Frederician or Prussian is the most important that had been compiled before Mr. Bentham's time; and although that of Napoleon, the most perfect of them all, from being the growth of an age that had already profited largely by Mr. Bentham's labours, contains very considerable changes and improvements upon the former laws; yet these bear but a very insignificant proportion to the whole mass, which is in the main a digest of existing jurisprudence, and derives its principal claim to the public gratitude from its abolishing the local differences of the provincial systems, and giving one law to the whole empire. Mr. Bentham, professing to regard no existing law as of any value unless it was one which ought to have been made, wholly unfetters himself from any deference to authority—bringing the fundamental principles, as well as the details of each legislative rule, to the test of reason alone—trying all by the criterion of their tendency to promote the happiness and improve the condition of mankind—not only shewed in detail the glaring inconsistencies and the radical imperfections of the English system, but carrying his bold and sagacious views to their amplest extent, investigated the principles upon which all human laws should be constructed, and showed how their provisions should be framed for the better accomplishment of their great

purpose—the well-being of civil society, both as regards the enjoyment of civil rights, the prevention of crimes, and the encouragement of virtue. The adaptation of these principles to the particular circumstances of any given state, can only be ascertained by a careful examination of those circumstances, and, above all, by an accurate attention to the laws already existing in the country, and which, how ill soever contrived in many respects, have always, more or less, arisen out of those very circumstances. This is the business of Codification, which consists in not only reducing to a system and method the existing laws, but in so amending them as to make them capable of accomplishing their cardinal object—the happiness of the community.

In thus assigning to Mr. Bentham, not merely the first place among Legal Philosophers, but the glory of having founded the Sect, and been the first who deserved the name, it cannot be intended to deny that other writers preceded him, who wisely and fearlessly exposed the defects of existing systems. Voltaire, for example, great and original in whatever pursuit, whether of letters or of science, whether of gay or of grave composition, was enlightened by his extraordinary genius, had, with his characteristic vigour and sagacity, attacked many false principles that prevailed in the judicial systems of all nations. Filangieri, who of all writers before Bentham comes nearest to the character of a Legal Philosopher, had exposed, with the happiest effect, the folly as well as cruelty of severe penal inflictions; Montesquieu, whose capacity as well as his learning, is unquestionable, notwithstanding his puerile love of epigram, and his determination to strain and force all facts within the scope of a fantas-

tical theory, had discussed with success many important principles of general jurisprudence; and Mr. Locke, a far more illustrious name, had treated with his wonted profoundness and accurate reflection, many of the principles which bear upon the political branches of legislation. But none of those great men, nor any of the others through whose writings important and useful discussions of legislative principles are scattered, ever embraced the subject in its wider range, nor attempted to reduce the whole of jurisprudence under the dominion of fixed and general rules. None ever before Mr. Bentham took in the whole departments of legislation. None before him can be said to have treated it as a science, and by so treating, made it one. This is his pre-eminent distinction; to this praise he is most justly entitled; and it is as proud a title to fame as any philosopher ever possessed.

To the performance of the magnificent task which he had set before him, this great man brought a capacity, of which it is saying every thing to affirm, that it was not inadequate to so mighty a labour. Acute, sagacious, reflecting, suspicious to a fault of all outward appearances, nor ever to be satisfied without the most close, sifting, unsparing scrutiny, he had an industry which no excess of toil could weary, and applied himself with as unremitting perseverance to master every minute portion of each subject, as if he had not possessed a quickness of apprehension which could at a glance become acquainted with all its general features. In him were blended, to a degree perhaps unequalled in any other philosopher, the love and appreciation of general principles, with the avidity for minute details; the power of embracing and following out general

views, with the capacity for pursuing each one of numberless particular facts. His learning was various, extensive, and accurate. History, and of all nations and all ages, was familiar to him, generally in the languages in which it was recorded. With the poets and the orators of all times he was equally well acquainted, though he undervalued the productions of both. The writings of the philosophers of every country, and of every age, were thoroughly known to him, and had deeply occupied his attention. It was only the walks of the exacter sciences that he had not frequented; and he regarded them, very erroneously, as unworthy of being explored, or valued them only for the inventions useful to common life which flowed from them, altogether neglecting the pleasures of scientific contemplation which form their main object and chief attraction. In the laws of his own country he was perfectly well versed, having been educated as a lawyer, and called to the English Bar, at which his success would have been certain, had he not preferred the life of a sage. Nor did he rest satisfied with the original foundations of legal knowledge which he had laid while studying the system; he continually read whatever appeared on the subject, whether the decisions of our courts or the speculations of juridical writers; so as to continue conversant with the latest state of the law in its actual and practical administration. Though living retired from society, he was a watchful and accurate observer of every occurrence, whether political, or forensic, or social, of the day; and no man who lived so much to himself, and devoted so large a portion of his time to solitary study, could have been supposed

to know so perfectly, even in its more minute details, the state of the world around him, in which he hardly seemed to live, and did not at all move.

But of all his qualities, the one that chiefly distinguished Mr. Bentham, and was the most fruitful in its results, was the boldness with which he pursued his inquiries. Whatever obstacle opposed his course, be it little or be it mighty—from what quarter soever the resistance proceeded—with what feelings soever it was allied, be they of a kind that leave men's judgment calm and undisturbed, or of a nature to suspend the reasoning faculty altogether, and overwhelm opposition with a storm of unthinking passion—all signified nothing to one who, weighing principles and arguments in golden scales, held the utmost weight of prejudice, the whole influence of a host of popular feelings, as mere dust in the balance, when any the least reason loaded the other end of the beam. And if this was at once the distinguishing quality of his mind, and the great cause of his success, so was it also the source of nearly all his errors, and the principal obstacle to the progress of his philosophy. For it often, especially in the latter part of his life, prevented him from seeing real difficulties and solid objections to his proposals; it made him too regardless of the quarter from which opposition might proceed; it gave an appearance of impracticability to many of his plans; and, what was far more fatal, it rendered many of his theories wholly inapplicable to any existing, and almost to any possible state of human affairs, by making him too generally forget that all laws must both be executed by, and operate upon, men—men whose passions and feelings are made to the lawgiver's hand, and cannot all at

once be moulded to his will. The same undaunted boldness of speculation led to another and a kindred error. He pushed every argument to the uttermost; he strained each principle till it cracked; he loaded all the foundations on which his system was built, as if, like arches, they were strengthened by the pressure, until he made them bend and give way beneath the superincumbent weight. A provision, whether of political or of ordinary law, had no merit in his eyes, if it admitted of any exception, or betokened any bending of principles to practical facilities. He seemed oftentimes to resemble the mechanician who should form his calculations and fashion his machinery upon the abstract consideration of the mechanical powers, and make no allowance for friction, or the resistance of the air, or the strength of the materials. Among the many instances that might be given of this defect, it may be sufficient to single out one from his juridical, and one from his political speculations. Perceiving the great benefits of individual responsibility in a Judge, he peremptorily rejected all but what he termed Single-seated Justice, and would allow no merit whatever to any tribunal composed of more, either for weighing conflicting evidence, assessing the amount of compensation, or reversing the judgments of a single inferior judge. Holding also the doctrine of Universal Suffrage, he would have no exception whatever, and argued not only that women, but that persons of unsound mind, should be admitted to vote in the choice of representatives.

The greater qualities of Mr. Bentham's understanding have been described; but he also excelled in the light works of fancy. An habitual despiser of eloquence,

he was one of the most eloquent of men when it pleased him to write naturally, and before he had adopted that harsh style, full of involved periods and new made words, which, how accurately soever it conveyed his ideas, was almost as hard to learn as a foreign language. Thus his earlier writings are models of force as well as of precision; but some of them are also highly rhetorical; nor are the justly celebrated "*Defence of Usury*" and "*Protest against Law Taxes*," more finished models of moral demonstration, than the Address to the French National Assembly on Colonial Emancipation is of an eloquence at once declamatory and argumentative. The peculiar manner of scrutinizing every subject, into which he latterly fell, which, indeed, he adopted during the greater portion of his life, and which has been happily enough termed the "*exhaustive mode*," was little adapted to combine with eloquence, or with any kind of discussion calculated to produce a great popular effect; for it consisted in a careful examination of every circumstance which could by any possibility affect either side of a given question, and it gave the same expansion to all considerations, however varying in point of importance; whereas, to convince or to strike an audience, or a cursory reader, nothing can be more essentially necessary than the selection of the more important objects, and making them stand boldly out in relief above the rest. Another consequence of his addiction to this method was, that it impaired his strength both of memory and of reasoning. He investigated with a pen in his hand, trusted to his eye as much as to his recollection, and enfeebled his powers of abstract attention pretty much as analysts are apt to become less powerful reasoners and inves-

tigators than geometricians. It thus happened that although he disliked conversation in which more than one joined, confining himself to a *tête-a-tête*, or what he termed "*single-handed conversation*," he exceedingly disrelished, at least for the last thirty years of his life, anything like argument, preferring anecdote, or remark, or pleasantry, in which last he was, though sometimes happy, yet often unsuccessful. But, as not unfrequently happens, he felt far more jealous of any disrespect shown to the jokes with which his later writings were filled, than of any dissent from his reasonings, although the former were for the most part overlaboured, far-fetched, and lumbering.

It was a result of similar prejudices that made him undervalue not only eloquence, but poetry; and he was wont to express his thankfulness that we should never see any more Epic poems. That he might greatly prefer other exertions of original genius to those which have produced the wonders of song, is easily understood. But that he should deny the existence of the pleasure derived from works of imagination, or question the reality of the desire, or refuse it gratification, seems wholly incomprehensible, and only the more so, because his whole theory of motives proceeds upon the assumption, that man's constitution leads him to take delight in certain enjoyments; and no one surely can doubt the fact of the fine arts giving pleasure—pleasure, too, of a refined, not of a gross description. Nor could the devotion of some men's talents to poetry be rationally grudged, when it was considered how few those are whom such pursuits can ever withdraw from severer studies, and how often they are persons in whom such studies would find ungenial dispositions.

The moral character of this eminent person was, in the most important particulars, perfect and unblemished. His honesty was unimpeachable, and his word might, upon any subject, be taken as absolutely conclusive, whatever motives he might have for distorting or exaggerating the truth. But he was, especially of late years, of a somewhat jealous disposition—betrayed impatience if to another was ascribed any part whatever of the improvements in jurisprudence, which all originated in his own labours, but to effect which different kinds of men were required—and even showed some disinclination to see any one interfere, although as a coadjutor, and for the furtherance of his own designs. It is said that he suffered a severe mortification in not being brought early in life into Parliament; although he must have felt that a worse service never could have been rendered to the cause he had most at heart, than to remove him from his own peculiar sphere to one in which, even if he had excelled, he yet never could have been nearly so useful to mankind. It is certain that he shewed, upon many occasions, a harshness as well as coldness of disposition towards individuals to whose unremitting friendship he owed great obligations; and his impatience to see the splendid reforms which his genius had projected, accomplished before his death, increasing as the time of his departure drew nigh, made him latterly regard even his most familiar friends only as instruments of reformation, and gave a very unamiable and indeed a revolting aspect of callousness to his feelings towards them. For the sudden and mournful death of one old and truly illustrious friend, he felt, as he expressed, no pain at all; towards the person of a more recent friend

he never concealed his disrespect, because he disappointed some extravagant hopes which he had formed that the bulk of a large fortune, acquired by honest industry, would be expended in promoting Parliamentary influence to be used in furthering great political changes. Into all these unamiable features of his character, every furrow of which was deepened, and every shade darkened by increasing years, there entered nothing base or hypocritical. If he felt little for a friend, he pretended to no more than he felt. If his sentiments were tinged with asperity and edged with spite, he was the first himself to declare it; and no one formed a less favourable or a more just judgment of his weaknesses than he himself did, nor did any one pronounce such judgments with a severity that exceeded the confessions of his own candour. Upon the whole then, while, in his public capacity, he presented an object of admiration and of gratitude, in his private character he was formed rather to be respected and studied, than beloved.

Among those who have been described as coadjutors to whom he and his system owed much, and who were not requited by him according to their deserts, M. Dumont clearly occupied the foremost place. He was one of those active-minded, acute, and amiable men, so well calculated to serve the cause of science, and whom Geneva not unfrequently produces to her great illustration—men, who, endowed with faculties that fit them for original speculation, yet devote themselves, from sincere love of some important subject, to act as disseminators of the truths discovered by others—aiding them in their researches—diffusing knowledge which would otherwise lie hid, even after it

was once brought to light—making it bear new and often unexpected fruit, by their own culture—and thus acting rather the part of coadjutors and allies, than of mere pioneers to the march of discovery. Among this class, M. Dumont may well be reckoned the first; and he possessed all that didactic power by which it is so eminently distinguished. Of extraordinary industry, of great acuteness, enthusiastically devoted to the object of his elucidations, gifted with a rare power of illustration, no less able to methodise than to abridge—he not only thoroughly mastered all the views and all the details connected with his subject, but could at once perceive all its more remote connections, and all the capabilities which it possessed of leading to results often new to the original investigator. Whoever should suppose that the process by which Mr. Bentham's greatest works were given to the world in their present state, consisted merely in his manuscripts being entrusted to M. Dumont, and their contents by him abstracted or drawn out into the form of printed treatises, would commit a very great mistake. It was much more that the latter learnt the subject from the notes of the former, and composed the treatises as he would have done had he been the discoverer of the matter, or as Mr. Bentham would have done had he possessed the same talent for explaining the results of his inquiries as for pursuing those investigations. It is perhaps more accurate to say that Mr. Bentham had abandoned, than that he never possessed this power of explaining; for his earliest works plainly show that he had the gift when he thought fit to cultivate it. Of late years, however, he never could stoop to make his speculations level to

the capacity of ordinary readers, independently of the repulsive style which he had acquired, which must have been even of laborious acquisition, and which grew into an inveterate habit of writing. It may, however, well be doubted, if, at any time of his life, he could have produced so finished a specimen of the didactic art as M. Dumont gave in his principal work, the "*Traité de Législation.*" The most celebrated of his other writings are the "*Théorie de Peines et de Récompenses,*" and the "*Tactique des Assemblées Publiques.*"

M. Dumont's eloquence as an author, the singular clearness of his statements, and the felicity of his illustrations, at once carried the system of Mr. Bentham into all the literary, and, after a short interval, into all the political circles also, of the Continent. The accidental circumstance of the language in which he wrote being that of France, served to render the subject more familiar abroad, than it was, for many years in the country adorned by the illustrious philosopher's nativity and residence. But for the last thirty years of his life, his speculations had become quite familiar to his own fellow-citizens; his doctrines found numerous followers; his general system was adopted by political as well as legal reformers, who received the fundamental principles, while they often refused to admit the practical consequences, or to adopt some of the details; and, long before his death, Mr. Bentham was the acknowledged head of a large and powerful sect. The light which its labours have thrown upon all subjects of jurisprudence, practical as well as speculative, is of incalculable value. The tone which has been given to

the public mind has been sound and wholesome. The influence exerted upon the minds of statesmen has been most perceptible. The prejudice against all departure from established arrangements, which the optimism of even the most liberal of former inquirers had rooted in men's habits of thinking, has been destroyed. The reign of reason has dethroned the usurped power of mere authority; and the advocate of an existing law, found inconvenient or detrimental, has cast upon him the task of defending it by argument, as much as he who would propound a new one. All the great improvements in our system of jurisprudence which have been made during the last twenty years (for it is within this period that even the Taxes on Law Proceedings have been abolished,) may easily be traced to the long, and unwearied, and enlightened labours of Mr. Bentham and his school.

It has been already remarked that this great Reformer by no means confined his attention to those subjects, paramount as their importance is. He was a strenuous advocate of all political reform, and devoted much of his time to the discussion of it. But, though whatever he did was sure to be marked by his characteristic boldness and sagacity, it must be allowed that his purely political speculations are of a very inferior kind, when compared with those which formed the principal subjects of his labours; and those which among his political speculations gave the least satisfaction, were his inquiries concerning ecclesiastical polity. They displayed his wonted acuteness, extraordinary ingenuity, great fertility of illustration; but they were not marked by the same depth of reflection which distinguished his other

writings. Their prolixity was also matter of just complaint; and yet such is the power of genius, even when most misapplied, that his huge volume upon the Liturgy and Catechism of the Church of England, though abounding in bitterness unsuited to the subject, and deformed by such absurdities as could scarcely be believed, is, nevertheless, found by all who have had the courage to undertake the perusal of it, one of the most entertaining works in the world.* These, and other writings upon subjects still less connected with the ordinary course of his studies, were the fruits of a weakness into which he was apt to fall during the latter period of his life. After labouring at a subject for a length of time, he became tired of it, and to this lassitude succeeded a disgust which made it hardly possible for him to resume it. He then sought relief and relaxation in the variety of some very different inquiry, and would often be led away to pursue it beyond all reasonable bounds. Thus his friends were at one time apprehensive that the Law of Evidence (his most important work next to the General Treatise,) would have been wholly abandoned when half finished, and the rest of his life given up to Parliamentary and Church Reform. Nay, a trifling incident, as the publication in 1813 of the questions put to the witnesses on the secret inquiry respecting the Princess of Wales in 1806, so engrossed the attention of one who

* As a specimen of the absurdities alluded to above, may be given the proposal to substitute feet-washing for the Sacrament of the Supper, from one of the charities in our Saviour's history, and to have divine service read by charity school boys as being cheaper than ministers.

never could do things by halves, that for a considerable time he was absorbed in the discussion of that examination, and the principles that should have governed it. The refusal of the House of Commons to receive printed petitions, some years afterwards, turned him aside from all other pursuits, and produced a copious treatise upon a very trivial subject, in which, too, it may be observed, that he entirely misconceived the the real gist of the question. It was when he had become weary, and, as it were, sick of some truly important inquiry, and could not be got to resume it, that the kindly influence of such firm and attached friends as Romilly and Dumont was most wanted and most beneficially exerted; and the latter being always ready to lend his useful assistance, as well as to apply the stimulus of his entreaties and councils, was probably the means of preventing many an important inquiry from coming to an untimely end.

M. Dumont was as amiable in private life as he was ever justly admired in his writings, and had originally been for his singular eloquence as a preacher. His manners were as gentle as they were polished and refined. His conversation was a model of excellence; it was truly delightful. Abounding in the most agreeable and harmless wit—fully instinct with various knowledge — diversified with anecdotes of rare interest—enriched with all the stores of modern literature—seasoned with an arch and racy humour, and occasionally a spice of mimicry, or rather of acting, but subdued, as to be palatable it must always be, and giving rather the portraiture of classes than of individuals—marked by the purest taste—enlivened by a gaiety of disposition still unclouded—sweetened

by a temper that nothing could ruffle—presenting, especially, perhaps the single instance of one distinguished for colloquial powers never occupying above a few moments at a time of his company's attention, and never ceasing to speak that all his hearers did not wish him to go on—it may fairly be said that his conversation was the highest enjoyment which the more refined society of London and of Paris afforded. No man, accordingly, was more courted by all classes; no loss was ever felt more severely than his decease; and no place in the most choice circles of literary and political commerce is so likely long to remain vacant.

The school of Mr. Bentham has numbered among its disciples, apostles of his doctrine, others of eminent merit, of whom unhappily death, by removing one of the chief, enables us to speak, however difficult it may be to speak of him as his great merits deserve. When the system of legal polity was to be taught, and the cause of Law Reform to be supported in this country, no one could be found more fitted for this service than Mr. Mill; and to him more than to any other person has been owing the diffusion of those important principles and their rapid progress in England. He was a man of extensive and profound learning; thoroughly embued with the doctrines of metaphysical and ethical science; conversant above most men with the writings of the ancient philosophers, whose language he familiarly knew; and gifted with an extraordinary power of application, which had made entirely natural to him a life of severe and unremitting study. His literary pursuits had originally directed him chiefly to subjects connected with moral and political philosophy;

but his attention being drawn, somewhere about thirty years* ago, to the writings of Mr. Bentham, he speedily devoted to their study the greater part of his time; and, becoming acquainted with their celebrated author, was soon received into his entire confidence, and co-operated with him until his decease in the propagation of his philosophy.† It is in the valuable dissertations which Mr. Mill contributed to the Encyclopædia Britannica that the fruits of his labours in this field are stored for public use; and no one can rise from the perusal of them without being convinced that a more clear and logical understanding was never brought to bear upon an important subject, than he lent to the diffusion of his master's doctrines. His admirable works on the Principles of Political Economy, and of Moral Philosophy, entitle him perhaps to a higher place among the writers of his age; but neither these nor his History of British India, the greatest monument of his learning and industry, can vie with his discourses on Jurisprudence in usefulness to the cause of general improvement, which first awakened the ardour of his vigorous mind, and on which its latest efforts reposed. His style was better adapted to didactic works, and works of abstract science, than to history; for he had no powers of narrative, and was not successful in any kind of ornamental composition. He was slenderly furnished with fancy, and far more capable of following a train

* 1808 or 1809.

† To his son, Mr. John Mill, we owe the preparation of Mr. Bentham's second work, the Rationale of Evidence, which is admirably executed.

of reasoning, expounding the theories of others, and pursuing them to their legitimate consequences, than of striking out new paths, and creating new objects, or even adorning the creations of other men's genius. With the single exception that he had something of the dogmatism of the school, he was a person of most praiseworthy candour in controversy, always of such self-denial that he sunk every selfish consideration in his anxiety for the success of any cause which he espoused, and ever ready to the utmost extent of his faculties, and often beyond the force of his constitution, to lend his help for its furtherance. In all the relations of private life he was irreproachable; and he afforded a rare example of one born in humble circumstances, and struggling, during the greater part of his laborious life, with the inconveniences of restricted means, nobly maintaining an independence as absolute in all respects as that of the first subject in the land —an independence, indeed, which but few of the pampered children of rank and wealth are ever seen to enjoy. For he could at all times restrain his wishes within the limits of his resources; was firmly resolved that his own hands alone should ever minister to his wants; and would, at every period of his useful and virtuous life, have treated with indignation any project that should trammel his opinions or his conduct with the restraints which external influence, of whatever kind, could impose.

In Parliament the principles of Law Reform made at first a slower, but afterwards a rapid progress. Although Sir Samuel Romilly had at all times habitually applied his mind to the abuses in our system, had been all his life a student of general juris-

prudence, and had accordingly been always a Law Reformer, yet he never hesitated in admitting his deep obligations to Mr. Bentham, whose friendship he had so long and so intimately enjoyed; and he would have at once acknowledged himself to be of his school, although his speculations, independently of Mr. Bentham, had taken their natural course. With Mr. Dumont his habits of intercourse through life were still more constant and close; they might, in fact, be said to have passed the greater part of their lives together. When the world sustained the irreparable loss of Sir Samuel's untimely death, his labours in improving the criminal code were most happily continued by Sir James Mackintosh; and it becomes a matter of duty to pass no occasion which presents itself for rendering justice to the exertions strenuously and successfully made by this distinguished and excellent person. There are, however, prudential reasons which might seem to dissuade any one from attempting to sketch a character that has already been touched by the master-hands of those to whom the features of the original were so familiarly known.* Nor could anything excuse such temerity, but the consideration that the historical nature of the present work at once requires such an addition, and forbids its being made by resorting to writings more or less professedly panegyrical.

To the great subject of the Criminal Law, Sir James Mackintosh brought a mind well versed in the general principles of legal science; an acquaintance with ethical philosophy, indeed with every department of philosophy, perhaps unequalled among his contem-

* Lord Abinger, Lord Jeffrey, Mr. Sydney Smith.

poraries; and the singular advantage of having devoted the best years of his life to the administration of justice. His mind was, besides, stored with various knowledge, as well practical as scientific, and, although he had never cultivated the exacter sciences since his early years, yet his original profession of a physician made the doctrines of Natural Philosophy familiar to him; and if it has been said, and justly said, that no man can be thoroughly acquainted with any one branch of knowledge without having some skill in the others also, to no department of study is this remark so applicable as to that of jurisprudence, which pushes its roots into all the grounds of human science, and spreads its branches over every object that concerns mankind. He was the better prepared for successfully accomplishing the task which he undertook, by the singular absence of all personal virulence, and even factious vehemence, which had uniformly marked his course both in public and private life: it reconciled to him those from whom he most widely differed in his opinions, and tended greatly to disarm the opposition with which his efforts as a Reformer were sure to meet, especially among the members of his own profession. This quality, together with his long experience as a Criminal judge, more than compensated for his inferiority in weight as a legal authority, to his illustrious predecessor, who, although he stood so far at the head of the Bar as to have nothing like a competitor, had yet confined his practice chiefly to the Courts of Equity, and whose superior influence as a statesman and a debater, might suffer some diminution from the opposition his more severe demeanour was apt to raise.

On the opposite side of the account were to be set the weaknesses, most of them amiable or accidental in their origin, some of which enfeebled his character, while others crippled his exertions. His constitution, never robust, had suffered materially from his residence in India. He entered Parliament late in life, and, although always a most able and well-informed speaker, occasionally capable of astonishing his audience by displays of the most brilliant kind, he never showed any powers as a debater, and, being more of a rhetorician than an orator, was not even calculated to produce the impression which eloquence alone makes; while, as a practical man of business, in all that related to the details of measures, or the conducting them through Parliament, he was singularly helpless and inefficient. It must also be admitted that his mild deportment, his candid turn of mind, and the gentleness of his nature, while they might disarm the anger of some adversaries, were calculated to relax the zeal of many friends; and he was extremely deficient both in that political courage which inspires confidence in allies, while it bears down the resistance of enemies, and in that promptitude, the gift of natural quickness, combined with long practice, which never suffers an advantage to be lost, and turns even a disaster to account. His style of speaking, too, was rather of the *epideictic*, or exhibitory, than of the argumentative kind; and, as his habitual good nature led him not only to avoid vehement attacks, but to indulge in a somewhat lavish measure of commendation, offence was given to friends more than ever enemies were won over. Even his most celebrated performances were less remarkable for reasoning

than for dissertation; and the greatest speech he ever made—nor was there ever one more eminently striking and successful delivered in Parliament—the speech on the Foreign Enlistment Bill in 1819—although abounding in the most profound remarks, and the most enlarged views of policy and of general law, clothed in the happiest language, and enlightened by the most felicitous illustration, was exposed to the criticism of some judges of eloquence, as defective in the grand essential of argument, and of that rapid and vehement declamation which fixes the hearer's attention upon the subject, making the speaker be forgotten, and leaving his art concealed.

Against the purity of this eminent person's public conduct, no charge whatever was ever fairly brought. Few men, indeed, ever made greater sacrifices to his principles while his party was excluded from power, or were less rewarded for them when that party was admitted to office. He had early joined with those whose sanguine hopes led them to favour the French Revolution, and kept them blind for a season to the enormities of its authors. His "*Vindiciæ Gallicæ*," a work of consummate ability, was the offering which he then made on the altar of the divinity whom he worshipped. With most good men, he afterwards agreed in repudiating indignantly, and as if ashamed of his former friendship, all alliance with the Jacobin party; nor, although he perhaps went somewhat farther in his recantation than others who never had bowed at the same shrine, could he be said ever to have swerved from those liberal principles which were the passion of his early and the guide of his riper years. Upon his return from India, he at once refused

the most flattering offers of place from Lord Liverpool's government; and he persevered, with the Whig party, in a long and apparently hopeless opposition to the end of the war, and through fifteen years of the ensuing peace. At length the party for which he had sacrificed so much succeeded to power, and he, though among the very first of its most distinguished members, was almost entirely passed over, while men of little fame, others of hardly any merit at all, and not a few of Tory principles till the moment of the government being formed, were lifted over his head; and planted in the cabinet of the Whigs. In that cabinet, indeed, there must have been some who could not with a steady countenance look down upon him thus excluded, while they were admitted to unexpected power. His treatment, accordingly, has formed one of the greatest charges against the whole arrangements then made; but justice requires that Lord Grey should be acquitted of all blame in this respect; for he had never been in any habits either of personal or of party intercourse with Sir James, and might be supposed to share in the coldness towards him which some of the older Foxites unjustly and unaccountably felt. But even those members of the government, who lived with him in constant habits of friendship, have much more to urge in explanation of this dark passage in the history of the party than is commonly imagined; for the objectors do not sufficiently consider, that, while Sir James Mackintosh's health, and aversion to the habits of business required by certain offices, excluded him from these, others are, by invariable practice, given to high rank. The occasion of his being here mentioned, is the invaluable service which he rendered to the cause

of Law Reform; a service that must endear his memory to all enlightened statesmen, and all good men, independent of the other assistance for which the rapid progress of liberal principles has to thank him; a progress so beneficial to mankind, so profitable to the Whig party at large, so advantageous to a select few of the Tories, now mingled with that Whig party, but so utterly barren of all benefit whatever to Sir James Mackintosh himself.

After the defects in our legal system had been for many years fully exposed, and the principles upon which their correction should be undertaken had become familiar with the reflecting portion of the community, although some highly valuable improvements had been effected by Sir R. Peel, (perhaps as many as his position allowed, surrounded by those who held Reform cheap, and those who held it in abhorrence), these alterations had been chiefly confined to digesting the Criminal Code, and there seemed no prospect of the great work of general reformation being commenced, unless the attention of Parliament should be seriously directed towards it. The motion of Mr. Brougham for a Commission to investigate the whole subject originated in this conviction; and the following is the speech with which it was introduced. The view chiefly taken of the subject was intended for practical purposes, and the immediate correction of manifest defects. The evils, inconsistencies, and absurdities of the system of

civil procedure were therefore singled out as the principal object of attack, the rather because, in Mr. Bentham's writings, the other branches of the mighty subject had been more copiously handled, and because it seemed manifest that the radical improvement of the Remedies administered by the Courts of Law must lead to the universal reformation of our jurisprudence, while it afforded, in the meanwhile, substantial benefits to the community, and won over new converts to the great cause of Law Reform. The abuses in courts of equity had already attracted the attention of Parliament, under the truly able advocacy of Mr. Williams;* and a Commission issued in consequence of his exertions had led to a useful though hitherto a sterile report. The defects in our Criminal Law had, since the labours of Sir S. Romilly and Sir J. Mackintosh, ceased to find defenders in any quarter. The present motion produced the immediate appointment of the two great Commissions of Common Law inquiry, and inquiry into the Law of Real Property, from whose labours have proceeded all the important changes recently made in our legal system; and in the course of a very few years the Reform of the Criminal Law, and the general subject of Codification was committed to the jurisdiction of a third Commission, whose reports have led to all the Mitigations lately effected in the enactments of our Penal Code.

The Notes appended to the following speech will show how far the defects which it points out have

* Now Mr. Justice Williams.

already been remedied, and will consequently enable us to observe what admitted imperfections still remain to be removed. It appears that of about sixty capital defects pointed out, about fifty-five either have already been removed in whole, or in by much the greater part, by Act of Parliament, or are in the course of being removed by Bills now before Parliament, and which are quite certain to pass during the present Session.

The speech upon Local Courts which follows, was delivered on bringing in the Bill for 1830. That Bill was then read a first time; and, early in the next Session, Mr. Brougham having been removed to the Upper House, he introduced it there. The subject of Parliamentary Reform engrossing the whole attention of Parliament and the country during the two next Sessions, the Common Law Commissioners were directed to consider the subject, which they fully investigated, and illustrated by a valuable body of evidence, from both professional and mercantile men, adding the sanction of their own high authority to the measure. It was, accordingly, pressed upon the attention of the House of Lords, in the Session of 1833; and, having undergone full discussion on the second reading, and in the Committee, where its details were all settled, it was unfortunately thrown out by a majority of two, on the third reading.

The Common Law Commissioners were originally, Messrs. Bosanquet, Parke, Alderson, and Sergeant Stephen. Upon the three first being raised to the Bench, Messrs. F. Pollock, Starkie, Evans, and Wightman were added to the Commission.

The Real Property Commissioners are, Sir J. Campbell, Messrs. Tinney, Sanders, Duval, Hodgson, Duckworth, Brodie, and Tyrrell.

The Criminal Law Commissioners are, Messrs. Starkie, Austin, Ker, Amos, Jardine, and Wightman.

SPEECH

ON THE

PRESENT STATE OF THE LAW.

DELIVERED IN THE HOUSE OF COMMONS,

FEBRUARY 7, 1828.

SPEECH.

In rising to address the House upon one of the most important subjects that can possibly be submitted to the Legislature, I feel at the same time deeply impressed with the conviction, that it is also one of the most difficult, and certainly the largest, that could engage its attention. I am aware that I stand engaged to bring before you the whole state of the Common Law of this country (the Common Law, I call it, in contradistinction to Equity), with the view of pointing out those defects which may have existed in its original construction, or which time may have engendered, as well as of considering the remedies appropriate to correct them. Nothing, I do assure you, at all strengthens and bears me up under the pressure of this vast and overwhelming burthen, but a conviction of the paramount importance, nay, the absolute necessity, of no longer delaying the enquiry, or postponing the needful amendments; and the intimate persuasion I feel, that I shall be able so to deal with the subject (such is my deep veneration for all that is good in our judicial system, and my habitual respect for those in whose hands the administration of it is placed), as neither to offend the prejudices of one class, nor vex the personal feelings of another. But I feel a

confidence, also, which is unspeakable, resting on another ground. I come not here to raise cavils before men ignorant of the details and niceties of the profession I belong to, and who, in that unavoidable ignorance, would be unfit judges of their merits; I am determined to avail myself in no respect of their situation, or of the absence of the learned Body of the Profession, for the sake of a futile and pitiful triumph over what is most valuable in our jurisprudence. I am comforted and confirmed in my resolution, by the accidental circumstances that have joined me, in some sort, to the administration of the law in which I have had so considerable an experience. I have seen so much of its practical details, that it is, in my view, no speculative matter whether for blame or praise. I pledge myself, through the whole course of my statements, as long as the House may honour me with its attention, in no one instance to make any observation, to bring forward any grievance, or mark any defect, of which I am not myself competent to speak from personal knowledge. I do not merely say, from observation as a bystander; I limit myself still further, and confine myself to causes in which I have been counsel for one party or the other. By these considerations emboldened on the one hand, and on the other impressed with a becoming sense of the arduous duty I have undertaken in this weighty matter, I will, without further preface, go on, in the first place, to state the points which I intend to avoid.

I shall omit Equity in every branch, unless where I may be compelled to mention it incidentally, from its interference with the course of the common law; not that I think nothing should be done as to Equity, but because in some sort it has been already taken up by Parliament. A Commission sat and enquired into

the subject, and produced a Report, received though not yet acted upon. The Noble and Learned Lord who presides in the other House, has announced his intention of proposing a Bill, founded on that Report. I may also add, that the subject has, to his own great honour, and to the lasting benefit of the country, been for many years in the hands of my Honourable and learned Friend, the Member for Durham ;* it is still with him, and I trust his care of it will not cease.

For reasons of a like kind, I pass over the great head of Criminal Law. That enquiry, happily for the country, since the time when first Sir Samuel Romilly (a name never to be pronounced by any without veneration, nor ever by me without sorrow) devoted his talents and experience to it, has been carried forward by my honourable and learned friend the member for Knaresborough,† with various success, until at length he reaped the fruit of his labours, and prevailed upon this House, by a narrow majority, to bend its attention towards so great a subject. On a smaller scale, on one indeed of a very limited nature, these enquiries have been since followed up by the Right Honourable gentleman who is now again Secretary of State for the Home Department.‡ It is not so much for any thing he has actually done, that I feel disposed to thank him, as for the countenance he has given to the subject. He has power, from his situation, to effect reforms which others hardly dare propose. His connexions in the Church and State render his services in this department almost invaluable. They have tended to silence the clamours that would other-

* Mr M. A. Taylor. † Sir James Mackintosh. ‡ Sir Robert Peel.

wise have been raised against the reform of the law, and might possibly have proved fatal to it. If (which I do not believe) he intended to limit his efforts to what he has already accomplished; if he were disposed to say, "Thus far have I gone, and no further can I go with you," the gratitude of his country would still be due to him in an eminent degree, for having abashed the worst enemies of improvement by his countenance and support. But I trust he will again direct the energies of his mind to the great work of reformation, and bestow his exertions over a wider space.

Another reason for avoiding this part of the subject altogether, is to be found in the nature and objects of the Criminal Law. I do not think it right to unsettle the minds of those numerous and ignorant classes, on whom its sanctions are principally intended to operate. It might produce no good effects if they were all at once to learn, that the Criminal Law in the mass, as it were, had been sentenced to undergo a revision—that the whole Penal Code was unsettled and about to be remodelled.

I intend also to leave out of my view the Commercial Law. It lies within a narrow compass, and it is far purer and freer from defects than any other part of the system. This arises from its later origin, It has grown up within two centuries, or little more, and been formed by degrees, as the exigency of mercantile affairs required. It is accepted, too, in many of its main branches, by other states, forming a Code common to all trading nations, and which cannot easily be changed without their general consent. Accordingly, the provisions of the French Civil Code, unsparing as they were of the old municipal law, excepted the law merchant, generally speaking, from the changes which they introduced.

Lastly, sir, the law of Real Property forms no immediate subject of my present consideration; not that I shall not have much to propose intimately connected with it, and many illustrations to derive from it; but I am flattered with the hope that the Secretary for the Home Department intends himself, on this subject, to bring forward certain measures, by which the present system will eventually undergo salutary alterations: And I cannot help here saying, that whatever the Criminal Law owes to the persevering and enlightened exertions of the late Sir Samuel Romilly, and of his successor, the member for Knaresborough,* I am sure an almost equal debt of gratitude has been incurred on the part of the law of Real Property, to the honest, patient, and luminous discussion which it has received from one of the first conveyancers and lawyers this country could ever boast of. My honourable and learned friend (the Solicitor-General) † opposite, and those members of the House who are conversant with our profession, will easily understand that I can only allude to Mr Humphreys.

With these exceptions, which I have now stated as shortly as I was able, and for which I shall offer no apology, because it was absolutely necessary that I should begin by making the scope of my present purpose understood, I intend to bring all the Law as administered in our Courts of Justice under the review of the House; and to this ample task I at once proceed. But I shall not enlarge, after the manner of some, on the infinite importance and high interest which belong to the question, and the attention which it, of right, claims from us, whether

* Sir James Mackintosh.

† Sir N. Tindal (now Lord Chief-Justice of Common Pleas).

we be considered as a branch of the Government, or as the Representatives of the people, or as a part of the people ourselves. It would be wholly superfluous; for every one must at once admit, that if we view the whole establishments of the country—the Government by the King and the other Estates of the Realm,—the entire system of Administration, whether civil or military,—the vast establishments of land and of naval force by which the State is defended,—our foreign negotiations, intended to preserve peace with the world,—our domestic arrangements, necessary to make the Government respected by the people,—or our fiscal regulations, by which the expense of the whole is to be supported, —all shrink into nothing, when compared with the pure, and prompt, and cheap administration of justice throughout the community. I will indeed make no such comparison; I will not put in contrast things so inseparably connected; for all the establishments formed by our ancestors, and supported by their descendants, were invented and are chiefly maintained, in order that justice may be duly administered between man and man. And, in my mind, he was guilty of no error,—he was chargeable with no exaggeration,—he was betrayed by his fancy into no metaphor, who once said, that all we see about us, King, Lords, and Commons, the whole machinery of the State, all the apparatus of the system, and its varied workings, end in simply bringing twelve good men into a box. Such—the administration of justice—is the cause of the establishment of Government—such is the use of Government: it is this purpose which can alone justify restraints on natural liberty—it is this only which can excuse constant interference with the rights and the property of men.

I invite you then, Sir, to enter upon an unsparing examination of this mighty subject; I invite the House to proceed with me, first of all, into the different Courts—to mark what failures in practice are to be found in the system, as it was originally framed, as well as what errors time has engendered by occasioning a departure from that system; and afterward to consider whether we may not safely and usefully apply to those defects remedies of a seasonable and temperate nature, restoring what is decayed, if it be good—lopping off what experience has proved to be pernicious.

I. i. In the first place, let us proceed to the Courts in Westminster-hall, and observe the course pursued in them. The House is aware that, whatever may have been the original of our three great Common Law Courts, they now deal with nearly the same description of suits; and that, though the jurisdiction of each was at first separate and confined within very narrow limits, their functions are now nearly the same. The jurisdiction of the Court of King's Bench, for example, was originally confined to Pleas of the Crown, and then extended to actions where violence was used,—actions of trespass by force; but now all actions are admissible within its walls, through the medium of a legal fiction, adopted for the purpose of enlarging its authority, that every person sued is in the custody of the Marshal of the Court, and may, therefore, be proceeded against for any personal cause of action. Thus, by degrees, this Court has drawn over to itself actions which really belong to the great forum of ordinary actions between subject and subject, as its name implies, the Court of Common Pleas. The Court of Common Pleas, however, in its exertions for extending its

business, was not so fortunate as its rival; for, though it made a vigorous attempt, under Lord Chief Justice North, to enlarge its sphere, it never was able to obtain cognizance of the peculiar subject of King's Bench jurisdiction—Crown Pleas.

I hope, Sir, the House will allow me, for the sake of a little divertisement in the midst of so dry a matter, to state the nature of the contest between the two Courts, as described by Roger North in his biography of the Lord Keeper,—a work of amusement with which I am sure my learned Friend (the Solicitor-General) is as well acquainted as he is with the subtleties of his profession.

It appears from his account, that the Courts of King's Bench and Common Pleas had quarrelled as to their respective provinces; for he says, "The Court of Common Pleas had been outwitted by the King's Bench, till his Lordship came upon the cushion, and that by our artifice in process called *ac etiams*. His Lordship used the same artifice in the process of his Court, where it was as good law as above. But Hale exclaimed against it, and called it altering the process of law; which very same thing his own court had done, and continued to do every day."* In another place he tells how, "The two courts being upon terms of competition, the King's Bench outwitted the Common Pleas;" and how the latter "invented a shift" against the King's Bench. "There," says he, "the Common Pleas thought they had nicked them. But the King's Bench was not so sterile of invention as to want the means of being even with that device;" and he shows how—concluding with this remark—"The late Chief Justice,

* North's Lives of Lord Keeper Guilford, &c., vol. i., p. 130.

Sir Orlando Bridgman, and his officers of the Common Pleas, gave this way of proceeding by the King's Bench very ill language, calling it an arbitrary alteration of the form of legal process, and utterly against law. But the losers might speak ; they got nothing else ; and the *Triccum in lege* carried it for the King's Bench ; which Court, as I said, ran away with all the business.*"

The Exchequer has adopted a similar course ; for, though it was originally confined to the trial of Revenue cases, it has, by means of another fiction—the supposition that every body sued is a debtor to the Crown, and further that he cannot pay his debt because the other party will not pay him,—opened its doors to every suitor, and so drawn to itself the right of trying cases that were never intended to be placed within its jurisdiction.

The first state of the Courts being that of distinct jurisdiction, then of course this separation of provinces was praised ; afterwards, all distinction became obsolete, and then the conflict and competition were as much commended : and with far greater reason, if the competition were real ; but it is almost purely speculative. In the first place, the Court of Common Pleas shuts its door to many practitioners of the law, by requiring that a certain proportion of fees should be advanced at a much earlier stage in the cause than is customary in the other Courts.† For who is it that must advance this money ? Either the attorney himself, if it be his own cause, must pay the money out of his own pocket, or, if he is acting as agent for a country practitioner, he must begin by

* North's Lives of Lord Keeper Guilford, &c., vol. i., p. 203.

† This evil has since been remedied by the new Orders of the Judges under an Act of Parliament.

laying out the money long before he can draw upon his employer for reimbursement, and he is not, in all cases, sure of being repaid for those advances. In the second place, clients and their attornies are induced not to carry causes into the Common Pleas, by the strict monopoly that exists in the advocates of that Court.* I have every wish to speak with all respect of the learned persons who there engross the practice; but as, no doubt, solicitors will have their favourites, and as, possibly, their clients may also have their favourites, the practice not being open to all barristers, prevents many suitors from resorting to a court where no one can be employed for them, at least in term time, except he be a sergeant; and great as the learning of that body is known to be, well founded as their reputation is for skill and for zeal, as well as for legal knowledge, yet the exclusive right which they exercise operates to keep away business from the Court; and thus it has happened both that other advocates seldom practise there at Nisi Prius where the Court is open, and that much fewer suits are carried to the Common Pleas than to the King's Bench. The causes which thus operate to shut the doors of that Court must be removed, before it can hope to have its fair share of practice.

The Exchequer, in like manner, has its drawbacks, though they operate in another way. There is one reason why, as at present constituted, it cannot do much business, or have the high reputation which it ought to enjoy; I mean the mixture of various suits which are cognizable in it. It is in fact, a court of all sorts—of equity and of law—of revenue law and of ordinary law—of law between subject and subject,

* This monopoly was abolished in 1832, when the Common Pleas was thrown open.

as well as of law between the subject and the Crown. This makes suitors, seeing the business done in so many different ways, come to the conclusion that it is not well done in any. I do not by any means assert that this is a correct opinion, at the present time; because the Judges and the barristers employed in that court do not, I am convinced, yield to any body of professional men in their knowledge of equity and law. There are to be found on its bench highly distinguished equity and common lawyers; men of known legal talents, and the greatest experience both in Chancery practice, in Nisi Prius, and in Criminal law. In what, therefore, I have said, I refer merely to that species of public opinion, which, whether right or wrong, has been engendered by the constitution of the Court; I refer, also, to the natural tendency of a jurisdiction, thus open to such a variety of jurisprudence, to degenerate into inaccuracy, or want of effective skill in each department. But there is another and more obvious reason why this court does not obtain so much business as the others; I mean the limited number of attornies belonging to and allowed to practise in it.* If there is cause to complain, as I have been doing, of the monopoly among the advocates attached to the Common Pleas, there is much more cause for a similar complaint touching the attornies in the Exchequer. The practioners in that court are four attornies and sixteen clerks, and none others are allowed to practise there; if a country attorney wishes to take his cause thither, the only mode by which he can do so, is to employ one of the privileged attornies of the court, and divide with him the profits of the suit. It is needless to

* This monopoly has also been put an end to.

say that such a system has, of necessity, a tendency at once to shut the doors of the Court of Exchequer against suitors.

What, then, is the natural consequence of these restrictions which prevent suitors from approaching the Courts of Common Pleas and Exchequer? Why, it is this—wherever there is but little business done in any court, those in power are induced not to place the strongest Judge in that situation; then, the small portion of business to be done renders the Judge less fit for his office; and so, by action and reaction, while the little business makes the Bench and the Bar less able, the inferior ability of the Court still further reduces that little business. I am here speaking of past times, but with a view, however, to what may occur at a future period. We may not always have the Bench so well filled as it is at present. The time may come when, if a Judge were to be made, in consequence of political influence, who was known not to be capable of properly filling the office, it might be said by those who supported him, "Oh, it does not matter—send him to the Court of Exchequer—he will have nothing to do there." Thus the small portion of business transacted—the suspicion originating from the general mixture of suits carried on in different ways, that the business is not well done,—the monopoly of attornies, together with several other causes, occasions this Court to be the least frequented of any; indeed, it has now scarcely any thing to engage its attention. The Judges do not sit for more than half an hour some mornings, and there are hardly ever on the paper more than six or seven causes for trial after term; a dozen would be considered a large entry; * when I

* The entry of Exchequer causes is now fully equal to that of the

well remember Lord Ellenborough having 588 set down for trial in London only; and the present Lord Chief Justice lately had on his paper no less than 850 untried causes. I mention this to support my proposition, that there is not really a free competition between the different Courts. To say, in the circumstances which I have stated, that suitors have a free access to all the Courts equally, is a fiction—an assertion adapted to what ought to be, perhaps to what is intended, but certainly not founded on the fact.

Experiments have been tried to lighten the business of the Court of King's Bench; but I do not find that any of them have answered the purpose for which they were instituted. The first of these attempts was made in the year 1821, when it was arranged that the Chief Justice should sit in one court, and a Puisne Judge in another, at the same time; but never did any arrangement fail more completely. The Court in which the Puisne Judge sat remained almost idle, while the other Court was as constantly preferred, and nearly as much overloaded as before. Little else was effected but a great inconvenience both to practitioners and suitors, by the passing and repassing from Court to Court. In fact, it is not in the power of the Courts, even were all monopolies and other restrictions done away, to distribute business equally, as long as the suitors are left free to choose their tribunal. There will always be a favourite Court; and the circumstance of its being preferred tends to make it more deserving of preference; for if the favour towards it began in mere caprice, the great amount of business draws thither the best

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King's Bench. Lord Lyndhurst's talents greatly aided the Law Reform in producing this result.

practitioners, to say nothing of judges; and the better the Court, the greater will be its business. The same action and reaction will operate favourably, which I before showed in its unfavourable effects where a Court was declining—*Possunt quia posse videntur*. The experiment of 1821 having failed entirely, was not repeated.

Another attempt has subsequently been made to relieve the Court of King's Bench from the pressure of Term business, which must always bear a proportion to the Nisi Prius causes. This system is still going on under the bill brought into the House by the present Chancellor, and of which, though he was induced to patronise it officially when Solicitor-General, I have reason to believe he never much approved. As this arrangement is compulsory, the client having no choice, it cannot well fail; but I heartily wish that it had failed, for it has done much mischief, and is certainly one of the worst changes that has ever taken place. It is true, the great pressure of business requires that something should be done; but it is equally true that the right thing has not been adopted; for, where the King's Bench sits, with the Chief Justice presiding—where the suitors resort—where the Bar is mustered—where the public attend—where all the counsel and attornies appear—where the business is disposed of as it ought to be, gravely and deliberately, with the eyes of mankind, with the eyes of the Bar, as well as of the world at large, turned on the proceedings, would not every one point to that as the place in which all important legal questions ought to be decided? Would not any one, on the other hand, say, if another Court were constituted in a sort of back room, where three judges were sitting—where the

only persons present, besides the Judges, were the counsel and attorney employed on either side of the cause that was pending—where there was no audience, and the public eye was entirely directed, not *upon*, but *from* that to the other Court—would not any one, I ask, declare that a Court, so circumstanced, was the place in which the trifling business alone should be transacted? These, I think, would be but natural conclusions; and yet if the matter be stated exactly the other way, it will be far nearer the truth. Of the really important business, as regards both its difficulty and importance to the law, and indeed to the suitor, a very large proportion is done in that back room, and before those three Judges. It is done in a corner, and, I may say, disposed of behind people's backs, with only the attendance of the attorney and barrister on each side, or at most, with the presence of these and of the practitioners waiting for the next cause; and as the Court is not frequented by the public any more than the profession, the business may certainly be said to be transacted without due publicity and solemnity. Thus we see that by this arrangement, while the most interesting matter is overlooked, trifling business and points of no importance are brought forward with all possible observation;—a motion for judgment as against the casual ejector, which is a motion of course—a motion to refer a bill to the Master to compute principal and interest—for judgment, as in case of a nonsuit—and a thousand others, either of course or of the most trifling moment, are heard with the utmost publicity before the whole Court—before the whole Bar—before the whole body of attornies—before the whole public—all of which might be settled by the three Judges in a corner, or by

any one of their clerks. The consequence is, that much time is lost to the full Court, while the most important business—special arguments raising the greatest legal questions—new trials, involving both matters of law and fact affecting large interests; and the Crown-paper, comprehending all the questions from Sessions, are obliged to be heard in the private and unsatisfactory manner I have described. I wish this system to be remedied, because it is a great and growing evil.*

It may be said that the Judges have not time to do the business. I deny that: there is time. Six hours a-day, well employed, would be amply sufficient for all purposes. Let them come down to the Court at ten o'clock in the morning, and remain till four—a period of six hours—and the business may be done. But the system is at present extremely ill-arranged, and I will show how, without having any one to blame for it. The Judges do their utmost, but they cannot remedy the evil without your aid. Let us see how their time is employed. They are supposed to come to the Court at ten o'clock, and to remain there till four. Surely this time may safely be pronounced to be sufficient for the transaction of their business. Then why have they not these six hours? There are two reasons for it,—the one is, that bail must be taken by a Judge. Mr Justice Bayley, no longer ago than last Monday, was occupied the whole day in the Bail Court; and this morning Mr Justice Holroyd was not able to get away till twelve o'clock. I cite these instances of late occurrence, sir, that you may see how closely I

* This evil has since been remedied; the sittings of the three Puisne Judges being abolished.

desire to keep by the actually existing state of the facts; but every week furnishes examples as well as the present. Thus, then, we see that in one case a whole day was lost, as far as regards a full Court, and in another, two hours, merely for the purpose of attending to trifling business, which might just as well be transacted by a commissioner, say a barrister of ten years' standing. The other reason why the Judges' time is misspent, arises from Chamber business, which consists in the learned Judges, the profound lawyers, the great magistrates, whose names I have made free to mention, sitting at Sergeants' Inn to hear the squabbles of attornies, and the clerks of attornies among themselves—for barristers rarely attend. This takes them in rotation away from the Court at three o'clock; so that, in fact, while their nominal time is from ten to four, they are only, on the average, really present from eleven or twelve to three, by which means, instead of transacting business during six hours, the time is reduced to three, or at most four hours per day.* And what, Sir, is the inference from all this? Obvious enough, certainly; for though it may be fairly contended that the business of the Bail Court could be transacted by a commissioner, it may perhaps be doubted whether the Chamber practice does not require a Judge to perform it, considering the points to be disposed of, and the persons to be controlled. There may, therefore, be a sufficient excuse for the arrangement, as matters stand at present, and yet a remedy may be necessary, as it may certainly be found in changing the circumstances. For my own part, I frankly confess that I

* This also has been remedied; the Judges sitting in rotation, term about, at chambers the whole day, and no Judge leaving the Court.

am one of those who do not see the paramount excellence that some suppose to be vested in the number twelve; although Lord Coke has spoken of it with a degree of rapture like that of the algebraist, when he dwells upon the marvellous powers of three or of nine. Twelve appears to be the number, in his view, connected with all that is important and venerable, either sacred or profane, ancient or modern; but as I, unfortunately, do not possess the lights by which he was guided, I cannot help thinking that fourteen is a much better number than twelve, although it may not be so good for division; and although I cannot quote the fourteen Apostles, or the fourteen Tables, or the fourteen wise men. It will, indeed, divide by seven, which is more than can be said of twelve; but I rely not upon that superiority: it has another arithmetical quality of more importance. Though neither so divisible nor so beautiful, nor so classical as twelve, it contains two more units than twelve—beats it by two beyond all doubt or cavil; and that superiority recommends it for my present purpose. If twelve was beautiful in the days of Lord Coke, fourteen must now, I fear, on this account, take its place; for how any one can suppose that twelve men are able to do now what they were only enough to do centuries ago, is to me matter of astonishment; now, that they have seven or eight hundred causes to try, where they formerly had but thirty or forty, and when we know that in the time of Lord Mansfield, in the late reign, sixty was reckoned a fair entry.*

This, Sir, is one of the illustrations which I would give to expose the heedless folly of those who charge

* The number of Judges has been now increased to fifteen.

the Bench and the Bar with causing all the delays in legal proceedings. How can it be expected that twelve Judges can go through the increased and increasing business now, when the affairs of men are so extended and multiplied in every direction, the same twelve, and at one time fifteen, having been not much more than sufficient for the comparatively trifling number of causes tried two or three centuries ago? But there is a far more unthinking and more dangerous prejudice, to which the same topic is a complete refutation,—I mean the outcry against innovation, set up as often as any one proposes those reforms rendered necessary by the changes that time, the great innovator, is perpetually making,—*Tempus novator rerum*. Those who advise an increase of the Judges beyond their present number are not innovators. The innovators are, in truth, those who would stand still while the world is going forward,—who would only employ the same number of labourers while the harvest has increased tenfold,—who, adhering to the ancient system of having but twelve Judges, although the work for them to do has incalculably increased, refuse to maintain the original equality, the pristine fitness of the means to the end, the old efficiency and adequacy of the establishment; but they are not innovators who would apply additional power when the pressure exceeds all former bounds,—who, when the labour is changed, would alter the force of workmen employed, and thus preserve the proportions that originally existed in the judicial system,—who would most literally keep things as they were, or return them to their primitive state by restoring and perpetuating their former adaptation and harmony. The advantage of the addition I am recommending will become the more evident

when I have to consider the Welsh Judicature, which I believe to be the worst that was ever established. Why should not the two Judges be received amongst the others, and divide the Welsh Circuits with the old ones?* Not that I mean they should always take those Circuits, but each might take them in his turn, as each in his turn might sit in the Courts of King's Bench and Common Pleas, and at the Old Bailey, beside dividing with the chiefs the sittings at Nisi Prius.†

That the King's Bench paper is now far too heavy, there cannot be a doubt, and so it will always be. No one Judge can get through the mass of causes entered in the King's Bench, trying them patiently, and really hearing them to an end. Depend upon it, when more have been tried in the same time, they have been half heard, and forced to compromise or reference. Now, if you will have two Judges sitting at *Nisi Prius* at once, each of them taking a particular class of trials,—the one confining himself to the heavy business, and the other to bills of exchange, promissory-note cases, and undefended causes generally,—the whole business of the Court could be got through both thoroughly and with despatch;‡ but, as the law now stands, it is utterly impossible for any man, in days consisting of no more than twenty-four hours, and labouring for eleven months in the year, to dispose of the business before him. I

* This has now become the law.

† The three Puisne Judges thus sitting in Banc, the fourth would each term take Bail and Insolvents and Common motions in the morning, and Chamber business afterwards; he would also take the Sittings in Term, a serious inconvenience at present.*

‡ It is so now.

* It is so now.

say eleven months; for the Court, with the exception of a day or two of respite at Easter, and a week at Christmas, sat for above eleven months last year, taking the Circuits as part of the year's work.

Another obvious distribution might be made without having two Judges sitting together in one court. As all real actions have their domicile in the Common Pleas, actions which, in their nature, partake of real actions, as ejectments, trespass to try title, and so forth, might be carried there too. Other suits might be susceptible of a similar classification, as if actions respecting tithes, which are not frequent, bills of exchange, and promissory-notes, were carried into the Court of Exchequer. The Lord Chief Baron is allowed, by the 57th of Geo. III., to sit in Equity and to hear alone all causes and all motions in Equity; but he never, in fact, does hear motions, although certainly no lawyer ever sat in that Court more fitted to despatch any branch of Equity practice than is the present head of the Exchequer.* Were he confined to the Equity side, and were another Judge, a common lawyer, appointed to preside on the Law side of that Court, you would have two effective Courts, instead of one not very effective for either Law or Equity.† The Court of Chancery would be materially relieved by this arrangement; while the double good would be found, of the business being better done both on the Bench and at the Bar, from that expertness which ever attends the division of labour; and of seasonable relief being afforded to both the Judges and practitioners of the King's Bench, who would be restored to something of the leisure, at least the moderate professional em-

* Sir W. Alexander. † This reform has not been introduced.

ployment, so favourable to the liberal pursuits and that unfettered study of jurisprudence, which have always formed the most accomplished lawyers.

There are two observations, Sir, which I have to make relative to the Judges generally, and which I may as well state now I am upon that subject. I highly approve of paying those learned persons by salaries, and not by fees as a general principle; but so long as it is the practice not to promote the Judges, and which I deem essential to the independence of the Bench, and so long as the door is thus closed to all ambition, so long must we find a tendency in them, as in all men arrived at their resting place, to become less strenuous in their exertions than they would be if some little stimulus were applied to them. They have an irksome and an arduous duty to perform; and, if no motive be held out to them, the natural consequence must be, as long as men are men, that they will have a disposition growing with their years to do as little as possible. I, therefore, would hold out an inducement to them to labour vigorously, by allowing them a certain moderate amount of fees. I say a very moderate amount, a very small addition to their fixed salary would operate as an incentive; and if this were thought expedient, it ought to be so ordered that such fees should not be in proportion to the length of a suit, or the number of its stages, but that the amount should be fixed and defined once for all, in each piece of business finally disposed of. I am quite aware that this mode of payment is not likely to meet with general support, especially with the support of the reformers of the law; but I give the suggestion as the result of long reflection, which has produced a leaning in my mind towards some such plan. I throw out the matter for enquiry, as

the fruit of actual observation, and not from any fancy that I have in my own head; but I may also mention, that some friends of the highest rank and largest experience in the profession, agree with me in this point,—men who are among the soundest and most zealous supporters of reform in the Courts of Law.*

The other general observation that I have to make, with respect to the Judges, is of a nature entirely different from the last which I have submitted to the House. The great object of every Government, in selecting the Judges of the land, should be to obtain the most skilful and learned men in their profession, and, at the same time, the men whose character gives the best security for the pure and impartial administration of justice. I almost feel ashamed, Sir, to have troubled you with such a truism; but the House will presently see the application I am about to make of it. Sorry am I to say, that our system of judicial promotion sins in both these particulars. Government ought to fill the Bench with men taken from among the most learned lawyers and most accomplished advocates—men who have both knowledge of the depths of jurisprudence, and sagacity to apply it—men who, from experience as leading advocates, possess the power of taking large and enlightened views of questions, and of promptly seizing the bearings of a case. There cannot be a greater error than theirs who fancy that an able advocate makes a bad Judge; all experience is against it. The best Judges in my time, with the exception of the present Lord Chief Justice,† than whom no man can discharge his office more excellently and efficiently, have all of

* This has not yet been so arranged.

† Lord Tenterden.

them been previously distinguished in the profession as advocates. But not only should the choice be unconfined by the legal acquirements and professional habits of the practitioner; there ought not to be, in choosing Judges from the Bar, any exclusion or restriction. He alone ought to be selected, in whom talent, integrity, and experience most abound, and are best united. The office of Judge is of so important and reponsible a nature, that one should suppose the members of Government would naturally require that they should be at liberty to make their selection from the whole field of the profession—that they would themselves claim to have the whole field open to their choice. Who could believe that a Ministry would not eagerly seek to have all men before them, when their object must be to choose the most able and accomplished? But although this is obvious and undeniable, and although the extension of the Minister's search cannot fail to be attended with the highest public advantage, as well as the greatest relief to him in performing his trust, is it the case that any such general and uncontrolled choice is exercised? Is all the field really open? Are there no portions of the domain excluded from the selector's authority? True, no law prevents such a search for capacity and worth! True, the doors of Westminster Hall stand open to the Minister! He may enter those gates, and choose the ablest and the best man there. Be his talent what it may, be his character what it may, be his party what it may, no man to whom the offer is made will refuse to be a Judge. But there is a custom above the law—a custom, in my mind, "more honoured in the breach than the observance," that party, as well as merit, must be studied in these appointments. One half of the Bar

is thus excluded from the competition; for no man can be a Judge who is not of a particular party. Unless he be the known adherent of a certain system of Government,—unless he profess himself devoted to one scheme of policy,—unless his party happen to be the party connected with the Crown, or allied with the Ministry of the day, there is no chance for him; that man is surely excluded. Men must be on one side of the great political question to become Judges; and no one may hope to fill that dignified office, unless he belongs to the side on which courtly favour shines; his seat on the Bench must depend, generally speaking, on his supporting the leading principles of the existing Administration.*

But perhaps, Sir, I may be carrying this distinction too far, and it may be said, that the Ministers do not expect the opinions of a Judge should exactly coincide with theirs in political matters. Be it so; I stop not to cavil about trifles; but, at all events, it must be admitted that, if a man belongs to a party opposed to the views of Government; if, which the best and ablest of men, and the fittest for the Bench, may well be, he is known for opinions hostile to the Ministry, he can expect no promotion—rather let me say, the country has no chance of his elevation to the Bench, whatever be his talents, or how conspicuously soever he may shine in all the most important departments of his profession. No one, I think, will venture to deny this; or, if he do, I defy him to show me any instance in the course of the last hundred years, of a man, in party fetters, and opposed to the

* In 1831 this practice was broke through, and to the great benefit of the profession, a Chief Baron appointed from the ranks of the Opposition. So the new Bankrupt Court was constituted without any regard to party.

principles of Government, being raised to the Bench. No such thing has taken place that I know of. Never have I heard of such a thing, at least in England; though we have, perhaps, known instances of men who have changed their party, to arrive at the heights of their profession. But on this subject, desirous throughout of avoiding all offence, I will not press—well, I do not wish to say a word about it.

In Scotland, it is true, a more liberal policy has been adopted, and the right honourable gentleman opposite* has done himself great honour by recommending Mr Gillies, Mr Cranstoun (now Lords Gillies and Corehouse), and Mr Clerk (Lord Eldin), all as well known for party-men there as Lord Eldon is here,† though, unfortunately, their party has been what is now once more termed the wrong side, but all men of the very highest eminence among the professors of the law. Now, when I quote these instances in Scotland, I want to see examples of the same sort in England; for however great my respect for the law and the people of the north may be, I cannot help thinking that we of the south too, and our jurisprudence, are of some little importance, and that the administration of justice here may fairly call for some portion of attention. But, Sir, what is our system? If, at the present moment, the whole of Westminster Hall were to be called upon, in the event of any vacancy unfortunately occurring among the Chief Justices, to name the man best suited to fill it, to point out the individual whose talents and

* Sir R. Peel.

† Two other instances should be added,—the learned and venerable Lord Chief Commissioner, who has had the signal happiness of presiding over the introduction of Jury Trial into his native country, and Mr Cathcart, Lord Alloway.

integrity best deserved the situation—whose judicial exertions were the most likely to shed blessings on his country—can any one doubt for a moment whose name would be echoed on every side? No; there could be no question as to the individual to whom would point the common consent of those most competent to judge; but then he is known as a party man, and all his merits, were they even greater than they are, would be in vain extolled by his profession, and in vain desiderated by his country. I reprobate this mischievous system, by which the empire loses the services of some of the ablest, the most learned, and most honest men within its bounds.

And here let me not be supposed to blame one party more than another; I speak of the practice of all Governments in this country; and, I believe, when the Whigs were in office, in 1806, they did not promote to the Bench any of their political opponents; they had no vacancies in Westminster Hall to fill up, but in the Welsh judicature they pursued the accustomed course. Now what is the consequence of thus carrying party-principles into judicial appointments? The choice of Judges is fettered by being confined to half the profession; so that you have less chance of able men; and those you get are of necessity partisans, and therefore less honest and impartial. Why should the whole Bench be Ministerial or Tory? No man can desire it to be so, for the purposes of judging over a community, far very far, from being Ministerial or Tory. Yet it must be so, unless vacancies should occur during those visits of Whig Ministries, "few and far between," when once in a quarter of a century power alights upon that party, and then spreads its wings and flies from them in a few months. Does

not this arrangement instil into the minds, both of expectant Judges and of men already on the Bench, a feeling of party fatal to strict justice in political questions? I speak impartially but unhesitatingly on this point, for it is perfectly notorious that, nowadays, whenever a question comes before the Bench, whether it be upon a prosecution for libel, or upon any other matter connected with politics, the counsel at their meeting take for granted that they can tell pretty accurately the leaning of the Court, and predict exactly enough which way the consultation of the Judges will terminate, though they may not always discover the particular path which will lead to that termination. While the system I complain of continues, while you suffer it to continue, such a leaning is its necessary consequence. The Judges have this leaning, they must have it, they cannot help having it, you compel them to have it;—you choose them on account of their notoriously having it at the Bar; and you vainly hope that they will suddenly put it off, when they rise by its means to the Bench. On the contrary, they know they fill a certain situation, and they cannot forget by whom they were placed there, or for what reason.

There is no doubt that the present Judges will always discharge their functions with all the impartiality that any man can expect from them; but I speak without reference to individual habits or prejudices—I speak of impressions which it is natural to expect must exist, where circumstances all conspire to create them; I speak too, I must be allowed to say, quite disinterestedly. I cannot take the situation of a Judge—I cannot afford it. I speak not for myself, but for the country, because I feel it to be a matter of the deepest importance; and from

what I have seen of the Right Honourable Gentleman opposite,* I really do hope to see this matter much more maturely weighed than it has heretofore been.

ii. I am afraid that I have already tired the House with the length of these details; but I must now take my leave for a time of Westminster Hall, and beg of you to mark, in the next place, the manner in which the law is administered in Wales. Why should Wales, because it happens to be termed the Principality, have the rights of property, and the personal privileges of the inhabitants, dealt with by different Judges, and almost by a different system from that which is established in England? In England you have the first men—men of the highest education and experience—to sit in judgment on life and property. In Wales you have as Judges, I will not say inferior men, but certainly not the very first, nor in any respect such as sit upon what Roger North calls the "cushion in Westminster Hall." I shall here show three great defects requiring a remedy most imperatively. Oftentimes those persons have left the Bar and retired to the pursuits of country gentlemen. I do not say that they are for that reason unfit for the office of Judge, but still they cannot be so competent as men in the daily administration of the law, and forming part of our Supreme Courts. In some cases they continue in Westminster Hall—which is so much the worse,—because a man who is a Judge one half the year, and a barrister the other, is not likely to be either a good Judge or a good barrister. But a second and greater objection is, that the Welsh Judges never change their Circuits. One of them, for instance, goes the Carmarthen Circuit, another the Brecon Circuit, and a

* Sir Robert Peel.

third the Chester Circuit—but always the same Circuit. And what is the inevitable consequence? Why, they become acquainted with the gentry, the magistrates, almost with the tradesmen of each district, the very witnesses who come before them, and intimately with the practitioners, whether counsel or attornies. The names, the faces, the characters, the histories, of all those persons are familiar to them; and out of this too great knowledge grow likings and prejudices which never can by any possibility cast a shadow across the open, broad, and pure path of the Judges of Westminster Hall. Then, again, they have no retiring pensions; and the consequence is, they retain their salaries long after they have ceased to discharge properly the functions for which they receive them. Now mark the result of all this. On one of the Welsh circuits, at the last Spring Assizes, there were set down no more than forty-six causes for trial; and how many does the House think were disposed of? Only twenty; and of the twenty-six made *remanets*, are some that had stood over from the preceding Assizes. It is evident enough what should be done here. If any of the Judges of the Principality have become, from the extreme pressure of business, on the one hand, or from any physical cause, on the other, inadequate to the discharge of the business which comes before them, pension them off—if they be barristers yet remaining in Westminster Hall, and not fit to be raised to the Bench, pension them off too: sure I am that theirs will be the cheapest pension, nay, the most beneficial to the giver, "being twice blessed," which has ever been bestowed. I verily think that the Principality would itself cheerfully pay this first cost of a better system. At all events, add two Judges to your present number, and let them take, with the other

twelve, their turn and share in the business of the country. Let the Principality of Wales be divided into two Circuits, and then you will have the work well done, and quickly done, especially if you transfer the Equity jurisdiction to the two Courts of Westminster. In addition to this, from the accession to the present number of Judges, the existing difficulties arising from the Bail Court and the Chamber practice will be done away.*

And here, before passing to another head of judicature, the Times of the Circuits require a word or two. Not, perhaps, that this is of so much importance as the other defects I have already noticed, or shall presently touch upon; but it regards classes of great importance in themselves, Judges, barristers, and solicitors; and it touches also, in no little degree, the convenience of the community at large. I should be most glad to see that folly,—for really I cannot call it by any other name,—that absurd and vexatious folly of regulating Easter Term by means of the *moon*, done away with. It is said by many that this would be difficult to reform. I see no such difficulty in the matter. Let the Law Returns be made certain, and leave the moveable feast to the Church. I have no wish to interfere with the times and seasons of the Church; let those be regulated as you please; but let this inconvenience in the Law be remedied, by making, for Easter and Trinity terms, like those for Michaelmas and Hilary, the returns on some certain days. I remember that when the late Mr Erskine brought in a bill, in 1802, to fix Easter term, a learned Judge delivered himself in print against the dangerous innovation; and some

* This evil is now remedied, the Welsh Judicature being abolished.

persons, alarmed by him, exclaimed, "Only imagine the horror of attempting to change Easter Term, when all Christians throughout the world have at present the unspeakable comfort of knowing that they are keeping this great festival upon one and the same day." For my part, I have no wish to deprive them of this comfort, admitting it, as I do, to be unspeakable. The day upon which Good Friday falls may be determined as heretofore, that is, by the period of the full moon; by the same *certain varying* rule may Easter Sunday be fixed for all clerical purposes; but temporal business ought not to be sacrificed to these ideas of some undefined spiritual consolation. There is no inconvenience in Easter being moveable, but there is a very great inconvenience in making the law returns moveable. Why not, then, let the feasts of the Church remain changeable as heretofore, and the terms of the Courts, little enough connected with sacred things, fall at a stated period? Let it be counted, for example, from Lady-day, which is always on the 25th of March. But why, indeed, must we continue to count from Saints' days, now that we have happily a very Protestant country, more especially under the government of the present Commander-in-Chief?* Why preserve any Romish folly of this sort, or keep up a mere remnant of Popery? Let Easter Term always begin on the 10th of April, or on the 5th, and the inconvenience will cease. It is the foolishest of vulgar errors to suppose, that, by how much the more you vex and harass the professors of the law, by so much the more you benefit the country. The fact is quite the reverse: for by these means you make inferior men,

* Duke of York.

both in rank, in feelings, and in accomplishments, alone follow that profession out of which the Judges of the land must be appointed. I should rather say, that by how much the more you surround this renowned profession with difficulties and impediments, calculated only to make it eligible for persons of mere ordinary education, and mere habits of drudgery, who otherwise would find their way to employment in tradesmen's shops, or at best in merchants' counting-houses—by so much the more you close it upon men of talent and respectability, and prevent it from being the resort of genius and of liberal accomplishment. I apprehend, therefore, that the convenience of the Bar is a matter which the Legislature ought never to lose sight of, where it clashes not with the advantage of the suitor. The having the Terms which are moveable (Easter and Trinity), and the Circuit, and the Long Vacation, earlier by four or five weeks in one year, and later by four or five weeks in another, is a most serious inconvenience in itself, and quite unnecessary upon any principle. Only observe how hard the present system bears, for instance, upon those who, like myself, frequent the Northern Circuit. It happened to me that I did not get home till the 20th of September last year, having repaired to London on the 5th of October the year before; so that I was engaged in my profession for eleven months and a half, and had been gratified, out of the twelve months, by exactly one fortnight's vacation for needful repose. When I should have been obliged again to bend my steps towards Guildhall, appointed to open on the 9th of October, I naturally enough joined those who signed a requisition to my Lord Tenterden, entreating him to defer the sittings. His Lordship most

handsomely expressed his willingness to meet the wishes of the gentlemen of the Bar, kindly returning the affectionate respect which all who practise in his Court bear to his person. He stated his satisfaction at being able to accommodate us, by sitting on Tuesday the 16th, instead of Tuesday the 9th, so that we obtained a week, for which we were thankful. My Lord observed, that in the state of his paper he could grant us no more; indeed, such is his resolution manfully and honestly to despatch his business, that he seems to take as much interest in his work as others do in their relaxation.*

III. I now pass to the Civil Law Courts; and their constitution I touch with a tender, and, I may say, a trembling hand, knowing that, from my little experience of their practice, I am scarcely competent to discourse of them; for I profess to speak only from such knowledge as I have obtained incidentally by practising in the two Courts of Appeal, the High Court of Delegates, and the Cock-pit, where Common Lawyers are occasionally associated with Civilians. The observations I have to make on this part of the subject resolve themselves, entirely, into those which I would offer upon the manner in which their Judges are appointed and paid. In the first place, I would have them better paid than they are now, a reform to which I would fain hope there may be no serious objection on their part, averse, as I know them generally, to all change. I think they are underpaid in respect of the most important part of their functions. The Judge of the Court of Admiralty, who has the highest situation, or almost the highest,

* Easter and Trinity Terms have since been fixed, and sitting in October prohibited, as here recommended.

among the Judges of the land (for there is none of them who decides upon questions of greater delicacy and moment, in a national view, or involving a larger amount of property),—this great dignitary of the law has L.2,500 a-year salary only. The rest of his income is composed of fees, and these are little or nothing during peace. But, then, in time of war they amount to seven or eight thousand per annum. I profess not to like the notion of a functionary who has so many calls as the Judge of the Admiralty Court, for dealing with the most delicate neutral questions—for drawing up manifestoes and giving opinions on those questions, and advising the Crown in matters of public policy bearing on our relations with foreign states;—I like not, I say, the notion of such a personage being subject to the dreadful bias (and here again I am speaking on general principles only, and with no personal reference whatever) which he is likely to receive, from the circumstance of his having a salary of L.2,500 per annum only, if a state of peace continue, and between ten or eleven thousand a-year, if it be succeeded by war. I know very well, Sir, that no feeling of this kind could possibly influence the present Noble and Learned Judge of that Court;* but I hardly think it a decent thing to underpay him in time of peace, and still less decent is it, to overpay him at a period when the country is engaged in war. I conceive that it may not always be safe to make so large an increase to a Judge's salary dependent upon whether the horrors of war or the blessings of peace frown or smile upon his country—to bestow upon one, eminently mixed up with questions on which the continuance of tran-

* Lord Stowell, formerly Sir W. Scott.

quillity, or its restoration when interrupted, may hinge, a revenue, conditioned upon the coming on, and the endurance of hostilities.*

The other remark, which I have to offer on these Courts, I would strongly press upon the consideration of the House; it relates to the mode in which their Judges are appointed. Is it a fit thing, I ask, now when Popery is no longer cherished or even respected, indeed hardly tolerated, among us—that one of its worst practices should remain, the appointment of some of the most eminent Judges in the Civil Law Courts by Prelates of the Church? I except, indeed, the Judge of the High Court of Admiralty, because his commission proceeds from the Lord High Admiral; but I speak of all those who preside in the Consistorial Courts—who determine the most grave and delicate questions of spiritual law, marriage and divorce, and may decide on the disposition by will of all the personalty in the kingdom. Is it a fit thing that the Judges in these most important matters should be appointed, not by the Crown, not by removable and responsible officers of the Crown,—but by the Archbishop of Canterbury and Bishop of London, who are neither removable nor responsible,—who are not lawyers,—who are not statesmen,—who ought to be no politicians,—who are, indeed, priests of the highest order, but not, on that account, the most proper persons to appoint Judges of the highest order? So it is in the province of York, where the Judges are appointed by the Archbishop; so in all other Consistorial Courts, where the Judges are appointed by the Bishops of

* This reform is now determined upon, and has been so ever since Sir C. Robinson's death in 1832, the place being merely temporarily filled up.

the respective dioceses in which they are situated. From their Courts an appeal lies, it is true, to the Court of Delegates, in the last resort; but so far from this affording an adequate remedy, it is an additional evil; for I will venture to affirm, that the Delegates is one of the worst constituted Courts which was ever appointed, and that the course of its proceedings forms one of the greatest mockeries of appeal ever conceived by man. And I shall demonstrate this to you in a very few words. The Court is thus formed:—You take three Judges from the Common Law Courts, one from each: to these you add some half dozen civil lawyers, advocates from Doctors' Commons, who the day before may have been practising in those Courts, but who happen not to have been in the particular cause, in respect of which the appeal has been asserted. Now, only see what the consequence of this must be. The civilians, forming the majority of the Delegates, are, of necessity, men who have no practice, or the very youngest of the doctors. So that you absolutely appeal from the three great Judges of the Civil and Maritime Courts, from the sentences of Sir William Scott, Sir John Nicholl, and Sir Christopher Robinson—of those learned and experienced men, who are to us the great luminaries of the Civil law—the venerated oracles best fitted to guide our path through all the difficulties of that branch of the science, and open to us its dark passages—you appeal from them to Judges, the majority of whom must, of necessity, be the advocates the least employed in the Courts where those great authorities preside, the most recently admitted to those Courts, and the most unqualified to pronounce soundly on their proceedings, if it were decent that they should pronounce at all; for, out of

so small a Bar, the chances are, that the three or four eminent advocates have been employed in the case under appeal. Thus the absurdity is really much the same as if you were to appeal from a solemn and elaborate judgment, pronounced by my Lord Tenterden, Mr Justice Bayley, Mr Justice Holroyd, and Mr Justice Littledale, to the judgment of three young barristers, called but the day before, and three older ones, who never could obtain any practice.*

Sir, I have spoken of the Primate and his principal suffragan, and I hope I need not protest, especially while I have the pleasure of addressing you, that in what I have said of the privilege belonging to the highest dignitary in the Church, my observations were meant to be most remote indeed from every thing like personal disrespect. Towards no persons in their exalted station do I bear a more profound respect than to both the distinguished Prelates I have named, well knowing the liberality of their conduct in exercising the powers I am objecting to, as all the country knows the extent of learning and integrity of character which have made them the ornaments of our hierarchy. †

IV. I next come to speak of the Privy Council—a very important judicature, and of which the members discharge as momentous duties as any of the Judges of this country, having to determine not only upon questions of Colonial law in Plantation cases, but to sit also as Judges, in the last resort, of all Prize causes. The point, however, to which I more

* The Court of Delegates has since been abolished, and its judicature transferred to the new Court of Privy Council.

† Measures were taken in 1832 to abolish this absurd kind of Episcopal patronage.

immediately address myself on this head is, that they hear and decide upon all our Plantation appeals. They are thus made the supreme Judges in the last resort, over every one of your foreign settlements, whether situated in those immense territories which you possess in the East, where you and a trading Company together rule over not less than seventy millions of subjects—or established among those rich and populous islands which stud the Indian ocean, and form the great Eastern Archipelago—or have their stations in those lands, part lying within the Tropics, part stretching towards the Pole, peopled by various castes differing widely in habits, still more widely in privileges, great in numbers, abounding in wealth, extremely unsettled in their notions of right, and excessively litigious, as all the children of the New World are supposed to be, both from their physical and political constitution. All this immense jurisdiction over the rights of property and person, over rights political and legal, and over all the questions growing out of such a vast and varied province, is exercised by the Privy Council unaided and alone. It is obvious that, from the mere distance of those colonies, and the immense variety of matters arising in them, foreign to our habits and beyond the scope of our knowledge, any judicial tribunal in this country must of necessity be an extremely inadequate court of review. But what adds incredibly to the difficulty is, that hardly any two of the colonies can be named which have the same law; and in the greater number, the law is wholly unlike our own. In some settlements, it is the Dutch law, in others the Spanish, in others the French, in others the Danish. In our Eastern possessions these variations are, if possible, yet greater;—while one terri-

tory is swayed by the Mahommedan law, another is ruled by the native, or Hindoo law; and this again, in some of our possessions, is qualified or superseded by the law of Buddah, the English jurisprudence being confined to the handful of British settlers, and the inhabitants of the three Presidencies. All those laws must come in their turns in review, before the necessarily ignorant Privy Councillor, after the learned doctors in each have differed. The difficulty thus arising of necessity from our distance, an unavoidable incident to our Colonial empire, may almost be deemed an incapacity, for it involves both ignorance of the law and unfitness to judge of the facts. But so much the more anxious should we be to remove every unnecessary obstacle to right judgment, and to use all the correctives in our power. The Judges should be men of the largest legal and general information, accustomed to study other systems of law beside their own, and associated with lawyers who have practised or presided in the Colonial Courts. They should be assisted by a Bar limiting its practice, for the most part, to this Appeal Court; at any rate, making it their principal object. To counteract, in some degree, the delays necessarily arising from the distance of the Courts below, and give ample time for patient enquiry into so dark and difficult matters, the Court of Review should sit frequently and regularly at all seasons. Because all these precautions would still leave much to wish for, that is no kind of reason why you should not anxiously adopt them. On the contrary, it is your bounden duty, among those countless millions whom you desire to govern all over the globe, not to suffer a single unnecessary addition to the inevitable impediments which the remote position of the

seat of empire throws in the way of correct and speedy justice.

Widely different are our arrangements. The Privy Council, which ought to be held more regularly than any other Court, sits far less constantly than any, having neither a regular Bench nor a regular Bar. It only meets on certain extraordinary days—the 30th of January, the Feast of the Purification, some day in May, Midsummer-day, and a few others. I find that, on an average of twelve years, ending 1826, it sat in each year nine days, to dispose of all the appeals from all the British subjects in India; from our own Civil Courts, to the jurisdiction of which all our subjects are locally amenable, throughout the wide extent of the several Presidencies of Calcutta, Bombay, and Madras; to dispose of all the causes which come up to the three several native Courts of last resort, the Sudder Adawluts, from the inferior Courts of Zilla and Circuit, comprising all contested suits between the Hindoos, the half-caste people, and Mahommedan inhabitants. But in the same nine days are to be disposed of all the appeals from Ceylon, the Mauritius, the Cape, and New Holland; from our colonies in the West Indies and in North America; from our settlements in the Mediterranean, and from the islands in the Channel;—nine days' sittings are deemed sufficient for the decision of the whole. But nine days do not suffice, nor any thing like it, for this purpose; and the summary I have in my hand demonstrates it, both by what it contains and by what it does not. It appears that, in all those twelve years taken together, the appeals have amounted to but few in number. I marvel that they are so few—and yet I marvel not, for, in point of fact, you have no adequate tribunal to dispose of them; and the

want of such a tribunal is an absolute denial of justice to the subjects of the Crown in those colonies. The total number is only 467; but including about 50 which came from India, and appear not to have been regularly entered, though they are still undisposed of, there are 517. Of these, 243 only have been disposed of, but only 129 have been heard; for the others were either compromised, from hopelessness, owing to the delay which had intervened between the appeal and the sentence, or dismissed for want of prosecution. Consequently, the Privy Council must have heard ten or eleven appeals only by the year, or little more than one in the course of each day's sitting. Again, of the 129 which were heard and disposed of, no less than 56 were decided against the original sentences, which were altered, and, generally speaking, wholly reversed. Now, 56 out of 129 is a very large proportion, little less than one-half, and clearly shows that the limited number of appeals must have arisen, not from the want of cases where revision was required, but from the apprehension of finding no adequate court of review, or no convenient despatch of business. And that the sentences in the colonies should oftentimes be found ill-digested, or hasty, or ignorant, can be no matter of astonishment, when we find a bold Lieutenant-General Lord Chancellor in one Court, and an enterprising Captain President in another, and a worthy Major officiating as Judge-advocate in a third. In many of these cases, a gallant and unlearned Lord Chancellor has decided, in the Court below, points of the greatest legal nicety, and the Judges of Appeal, who are to set him right here, are chosen without much more regard to legal aptitude; for you are not to suppose that the business of these nine days

upon which they sit is all transacted before lawyers; one lawyer there may be, but the rest are laymen. Certainly a right honourable gentleman* whom I see opposite to me is there sometimes by chance, and his presence is sure to be attended with great advantage to us. Occasionally we see him or my learned friend, his predecessor,† but this good fortune is rare; the Master of the Rolls alone is always to be seen there, of the lawyers; for the rest, one meets sometimes in company with him, an elderly and most respectable gentleman, who has formerly been an ambassador, and was a governor with much credit to himself in difficult times; and now and then a junior Lord of the Admiralty, who has been neither ambassador nor lawyer, but would be exceedingly fit for both functions, only that he happened to be educated for neither. And such, Sir, is the constitution of that awful Privy Council which sits at Westminster, making up, for its distance from the suitors, by the regularity of its sittings, and for its ignorance of local laws and usages, by the extent and variety of its general law learning; this is the Court which determines, without appeal, and in a manner the most summary that can be conceived in this country, all those most important matters which come before it. For instance, I once saw property worth thirty thousand pounds sterling per annum, disposed of in a few minutes after the arguments at the bar ended, by the learned members of the Privy Council, who reversed a sentence pronounced by all the Judges in the Settlement, upon no less than nineteen days' most anxious discussion. Such a Court,

* Sir John Beckett, Judge-Advocate.

† Mr Abercromby (now Speaker of the House of Commons).

whose decisions are without appeal—irreversible, unless by act of Parliament—is the supreme tribunal which dispenses the law to eighty millions of people, and disposes of all their property.

I cannot pass from this subject without relating a fact which illustrates the consequences of the delays necessarily incident to such a jurisdiction. The Ranee, or Queen of Ramnad, having died, a question arose among the members of her family respecting the succession to the vacant Musnud (or throne), and to the personal property of the deceased sovereign, as well as the territorial revenue. The situation of the country, as well as its population and wealth, render it a province of some note. It reckons four hundred thousand inhabitants, and it lies in the direct road which the pilgrims from the south of India take to the sanctuary in the island of Remisseram, frequented by them as much as the Juggernaut is by those of the north. On the death of Her Highness in 1809, proceedings commenced in the Courts below upon the disputed succession. An appeal to the King in Council was lodged in 1814; it is still pending. And what has been the consequence of this delay of justice? Why, that the kingdom of Ramnad has been all this time in the keeping of sheriffs' officers, excepting the Honourable Company's peshcush, or share of the revenues, which, I have no manner of doubt, has been faithfully exacted to the last rupee. It is strictly in what amounts to the same thing as the custody of sheriffs' officers, having been taken, as I may say, in execution, or rather by a kind of mesne process, such as we have not in our law.

As the papers on the table, to which I have referred, show so much fewer appeals from the Plantations than might have been expected, it is fit now to re-

mind the House how equivocal a symptom this is of full justice being done. It is the worst of all follies, the most iniquitous, as well as the most mistaken kind of policy, to stop litigation, not by affording a cheap and expeditious remedy, but by an absolute denial of justice, in the difficulties which distance, ignorance, expense, and delay produce. The distance you cannot remove, if you would; the ignorance it is hardly more easy to get rid of: then, for God's sake, why not give to these your foreign subjects, what you have it in your power to bestow—a speedy and cheap administration of justice? This improvement in the Court of Appeal would create more business, indeed, but justice would no longer be taxed and delayed, and, in the cost and the delay, be denied. But if you would safely, and without working injustice, stop appeals from the colonies, carry your reforms thither also: I should say, for instance, that a reform of the judicatures of India would be matter most highly deserving the consideration of his Majesty's Government. I am at a loss to know, why there should be so rigorous an exclusion of jury trials from the native courts of India. I know, and every one must know, who has taken the trouble to enquire, that the natives are eminently capable of applying their minds to the evisceration of truth in judicial enquiries; that they possess powers of discrimination, ready ingenuity, and sagacity in a very high degree; and that, where they have been admitted so to exercise those powers, they have been found most useful and intelligent assistants in aiding the investigations of the Judge. But I know, also, that your present mode of administering justice to these native subjects is such as I can hardly speak of without shame. Look at your local

Judges—at their fitness for judicial functions. A young writer goes out to India; he is appointed a Judge, and he repairs to his station, to make money, by distributing justice, if he can, but, at all events, to make money. In total ignorance of the manners, the customs, the prejudices, possibly of the language, of those upon whose affairs and conduct he is to sit in judgment, and by whose testimony he is to pursue his enquiries, and very possibly equally uninformed of the laws he is to administer—he must needs be wholly dependent upon his Pundit, for direction both as to matter of fact and matter of law, and, most probably, becomes a blind passive tool in the hands of a designing Minister.

The House will not suppose that I mean to insinuate for a moment the possibility of suspicion as to the wilful misconduct of the Judge in this difficult position. I am very sure that the party who may happen to occupy that high office would rather cut off his right hand, if the alternative were offered him, than take the bribe of a paria to misdecide a cause that came before him. But I am by no means so secure of the Pundit upon whom the Judge must be necessarily dependent; and while he is both less trustworthy and wholly irresponsible, the purity of the responsible, but passive instrument in his hands is a thing of perfect insignificance. The experiment of trial by jury, by which this serious evil may, in part, be remedied, has been already tried. The efforts made by a learned Judge of Ceylon, Sir Alexander Johnson, to introduce into that Colony the British system of justice, manfully supported by the Government at home, have been attended with signal success. I am acquainted with a particular case, indeed, the details of which are too long to lay

before the House, but which showed the fitness of the natives to form part of a tribunal, notwithstanding the prevalence of strong prejudices in a particular instance among them, where the failure of the experiment might, therefore, have been apprehended. A Brahmin was put on his trial for murder, and a great feeling excited against him, possibly against his caste. Twelve of the jury were led away by this feeling, and by the very strong case which a subtle conspiracy had contrived against the prisoner, when a young Brahmin, the thirteenth juror, examined the evidence with a dexterity and judgment that excited the greatest admiration, and from his knowledge of the habits and manners of the witnesses, together with extraordinary natural sagacity, succeeded in exposing the plot and saving the innocent man. Other considerations there are, less immediately connected with the administration of justice, and which I might press upon the House, to evince the expediency of introducing our system of trial in the East. Nothing could be better calculated to conciliate the minds of the natives than allowing them to form part of the tribunals to which they are subject, and share in administering the laws under which they live. It would give them an understanding of the course of public justice, and of the law by which they are ruled; a fellow feeling with the Government which executes it; and an interest in supporting the system in whose powers they participate. The effect of such a proceeding would be, that in India, as in Ceylon, in the event of a rebellion, the great mass of the people, instead of joining the revolters, would give all their support to the Government. This valuable, but not costly fruit of the wise policy pursued in that Island, has already been gathered. In

1816, the same people which, twelve years before, had risen against your dynasty, were found marshalled on your side, and helping you to crush rebellion. So will it be in the Peninsula, if you give your subjects a share in administering your laws, and an interest and a pride in supporting you. Should the day ever come when disaffection may appeal to seventy millions, against a few thousand strangers, who have planted themselves upon the ruins of their ancient dynasties, you will find how much safer it is to have won their hearts, and universally cemented their attachment by a common interest in your system, than to rely upon a hundred and fifty thousand Seapoy swords, of excellent temper, but in doubtful hands.*

V. I now, Sir, come to the administration of law in the country, by Justices of Peace; and I approach this jurisdiction with fear and trembling, when I reflect on what Mr Windham was accustomed to say, that he dreaded to talk of the game laws in a House composed of sportsmen; and so too, I dread to talk of the quorum in an assembly of magistrates. Surrounded as I am both among my honourable friends, and among members on the other side, by gentlemen in the commission, I own that this is a ground on which I have some reluctance to tread. But I have to deal with the principle only, not with the individuals: my reflections are general, not personal. Nevertheless, considering the changes which have been effected in modern times, I cannot help thinking it worth enquiry, whether some amendment might not be made in our Justice-of-peace system.

* All these evils have now been remedied by the Judicial Committee Act, constituting a regular Court of four professional Judges in the Privy Council, and providing for the hearing of the East India causes.

The first doubt which strikes me is, if it be fit that they should be appointed as they are, merely by the Lords Lieutenant of counties, without the interference of the Crown's responsible Ministers. It is true that the Lord Chancellor issues the commission, but it is the Lord Lieutenant who designates the persons to be comprehended in it. Such a thing is hardly ever known as any interference with respect to those individuals on the part of the Lord Chancellor. He looks to the Lord Lieutenant, or rather to the 'Custos Rotulorum,' which the Lord Lieutenant most frequently is (indeed every where but in counties Palatine), for the names of proper persons. The Lord Lieutenant, therefore, as Custos Rotulorum, absolutely appoints all the Justices of the Peace in his county, at his sole will and pleasure. Now I cannot understand what quality is peculiar to a Keeper of the Records, that fits him, above all other men, to say who shall be the Judges of the district whose records he keeps. I think it would be about as convenient and natural to let the Master of the Rolls appoint the Judges of the land (indeed, more so, for he is a lawyer), or to give the appointment to the Keeper of the State Papers. The Custos Rotulorum may issue a new commission, too, and leave out names; I have known it done; but I have also known it prevented by the Great Seal; indeed, it was laid down as a rule by the late Lord Chancellor Eldon, from which no consideration, his Lordship was used to say, should induce him to depart, that however unfit a magistrate might be for his office, either from private misconduct or party feeling, he would never strike him off the list, until he had been convicted of some offence by the verdict of a Court of Record. Upon this principle he always acted.

No doubt his Lordship felt, that as the Magistrates gave their services gratis, they ought to be protected; but still it is a rule which opens the door to very serious mischief and injustice, and I myself could, if necessary, quote cases in which it has been most unfortunately persevered in. On looking, however, at the description of persons who are put into the commission, I am not at all satisfied that the choice is made with competent discretion; and upon this part of the question I may as well declare at once, that I have very great doubts as to the expediency of making Clergymen magistrates. This is a course which, whenever it can be done conveniently, I should certainly be glad to see changed, unless in counties where there are very few resident lay proprietors. My opinion is, that a clerical magistrate, in uniting two very excellent and useful characters, pretty generally spoils both; that the combination produces what the alchymists called a *tertium quid*, with very little, indeed, of the good qualities of either ingredient, and no little of the bad ones of both, together with new evils superinduced by their commixture. There is the activity of the magistrate in an excessive degree; over-activity is a very high magisterial offence, in my view; yet most of the magistrates distinguished for over-activity are Clergymen: joined to this are found the local hatings and likings, and, generally, somewhat narrow-minded opinions and prejudices, which are apt to attach to the character of the resident parish priest, one of the most valuable and respectable, if kept pure from political contamination. There are some Lords Lieutenant, I know, who make it a rule never to appoint a clergyman to the magistracy; and I entirely agree in the policy of that course, because the education and the habits

of such gentlemen are seldom of a worldly description, and therefore by no means qualify them to discharge the duties of such an office; but, generally speaking, as the House must be aware, through the country the practice is far otherwise. Again, some Lords Lieutenant appoint men for their political opinions; some for activity as partisans in local contests; some are so far influenced as to keep out all who take a decided part against themselves in matters where all men should be free to act as their opinions dictate; and in the exercise of this patronage no responsibility whatever substantially exists. Appointed, then, by irresponsible advisers, and irremovable without a conviction, let us now see what is the authority of men so chosen and so secure.*

In the first place, they have the privilege of granting or withholding Licenses. As we all know, it lies in the breast of two Justices of the Peace to give or to refuse this important privilege. It is in their absolute power to give a License to one of the most unfit persons possible; and it is in their power to refuse a License to one of the most fit persons possible. They may continue a License to some person who has had it but a twelvemonth, and who, during that twelvemonth, has made his house a nuisance to the whole neighbourhood; or they may take away a License from a house to which it has been attached for a century, and the enjoyment of which has not only been attended by no evil, but has been produc-

* The course since 1828, and especially since 1832, has been for the Great Seal to exercise a much more active interference in appointing Magistrates; and the Lord Lieutenant (or rather Custos Rotulorum) no longer is the person alone consulted. This is now the case with Durham also, where the Bishop is no longer Custos, that office being now held by the Lord Lieutenant.

tive of great public benefit. And all this, be it observed, they do without even the shadow of controul. There is no rule more certain than that a mandamus does not lie to compel Justices either to grant or withhold a License. I hardly ever remember moving for one; and I only once recollect a Rule being granted—it was on the motion of my Honourable and Learned friend, the Solicitor-General. But I know that great astonishment was expressed on the occasion; that every one asked what he could have stated to make the Court listen to the application; that all took for granted it would be discharged, as a matter of course; which it accordingly was, in less time than I have taken to relate the circumstance. What other controul is there over the conduct of the Licensing Magistrate? I shall be told that he may be proceeded against, either by a Criminal Information, or by Impeachment. As to the latter, no man of common sense would dream of impeaching a Magistrate, any more than he would think nowadays of impeaching a Minister. Then, as to proceeding by Criminal Information:—In the first place, it is necessary, in order even to obtain the Rule, to produce affidavits, that the Magistrate has been influenced by wilful and corrupt motives: not merely affidavits of belief in those who swear, but of facts proving him guilty of malversation in his office. Then, suppose, as not unfrequently happens, a rule obtained on this ex parte statement; the Magistrate answers the charges on oath; he swears last, and may touch many points never anticipated by the other party, consequently not answered; and unless the alleged facts remain, upon the discussion, undeniable, and the guilt to be inferred from them seems as clear as the light of day, the rule

is discharged with costs. The difficulty of proving corruption is rendered almost insuperable, because all the Magistrate has to do, in order to defend himself from the consequences of granting or withholding a License, is to adopt the short course of saying nothing at the time—of keeping his own counsel—of abstaining from any statement of his reasons. Let him only give no reason for his conduct, and no power on earth can touch him. He may grant a License to a common brothel, or he may refuse a License to one of the most respectable inns on the North road; let him withhold his reasons, and his conduct remains unquestionable; although the real motive by which he is actuated may be, that he is in the habit of using the one house, and that the landlord of the other will not suffer him to use it in the same way. Unless you can show that he has himself stated his motives, or that there are circumstances so strong against him as amount to conviction, you are prevented from even instituting an enquiry on the subject. Thus absolute is the authority of the Magistrate with regard to licensing. With the permission of the House, in order to illustrate the abuse of this extensive power, I will read a letter which I received some time ago on the subject of the Licensing system, from one of the most worthy and learned individuals in this country—a man of large fortune, and of most pure and estimable character, who long acted as a Magistrate in one of the neighbouring counties.

[Mr B. here read a letter, in which the tendency of Justices is stated to favour particular houses, and not take away their Licenses, though guilty of the grossest irregularities, on the pretence, become a maxim with many of them, that "the house being

brick and mortar cannot offend," whereas a haunt of bad company being established, it becomes the Magistrate's duty to break it up. It was also shown how the power of Licensing placed millions of property at the disposal of the Justices, a License easily adding L.500 to the value of a lease, and often much more, and the number of victuallers exceeding 40,000. It further showed the partiality of the Bench towards brewers and their houses, especially in Middlesex and the home counties.]

I have received a variety of other information upon this subject, all leading to the same result. That which I have described, the leaning of Justices towards brewers, whom, in licensing, they favour, as brother Magistrates, although the latter are not allowed by law to preside at a Brewster Sessions, is, perhaps, the most crying evil connected with the system; but who does not know (I am sure I do, in more parts of the kingdom than one or two) that Licenses are granted, and refused, from election motives? When, some time ago, I brought the Beer Bill into this House, I had, of course, an extensive correspondence on the subject; and I was assured by many highly respectable persons, that the evil of this system is by no means confined to the neighbourhood of London, of which they gave me numerous instances.*

Nor is the Licensing power of the Magistracy that in which alone great abuses exist. They prevail wheresoever their authority is exercised; in the commitments for offences against the Game Laws; in dealing with petty offences against property; in taking

* The alteration of the Law on Beer Licenses has deprived the Justices of this power.

cognizance of little assaults, especially on officers; in summary convictions for non-payment of tithes, and a number of other matters affecting the liberties and property of the subject; and, yet, for their conduct in all of these matters they are not amenable to any superior power, provided, as I have said before, they only keep their own counsel, and abstain from stating the reasons by which they have been actuated, should their motives be evil. There is not a worse constituted tribunal on the face of the earth, not even that of the Turkish Cadi, than that at which summary convictions on the Game Laws constantly take place; I mean a bench or a brace of sporting Justices. I am far from saying that, on such subjects, they are actuated by corrupt motives; but they are undoubtedly instigated by their abhorrence of that *caput lupinum*, that *hostis humani generis*, as an Honourable Friend of mine once called him in his place, that *fera naturæ*—a poacher.* From their decisions on those points, where their passions are the most likely to mislead them, no appeal in reality lies to a more calm and unprejudiced tribunal; for, unless they set out any matter illegal on the face of the conviction, you remove the record in vain. Equally supreme are they in cases where, sitting in a body at Quarter Sessions, they decide upon the most important rights of liberty and property. Let it be remembered that they can sentence to almost unlimited imprisonment, to whipping, to fine, nay, to transportation for seven and fourteen years. I have shuddered to see the way in which these extensive powers are sometimes exercised by a jurisdiction not

* The alteration of the Law as to the sale of Game has since greatly remedied these evils.

responsible for its acts. It is said that the Magistracy ought not to be responsible, because it is not paid; but we ought not to forget, that as gold itself may be bought too dear, so may economy; money may be saved at too high a price. Mark the difference of responsibility between the Quarter Sessions and one of the superior Courts of the kingdom. In the King's Bench, the name of the Judge who pronounces the judgment is known, and the venerable magistrate stands before the country in his own proper person, always placed at the bar of public opinion. Here it is Lord Tenterden—it is Mr Justice Bailey, by their names: in the other case, it is merely the Quarter Sessions, which, as Dean Swift says, is nobody's name. The individual Magistrates composing it are not thought of; their names are not even published. It is a fluctuating body. If the same individuals always sat in the Court, there might be some approach to responsibility. At present there is none; and where there is no responsibility, injustice will occasionally be committed, as long as men are men. It would be some correction of the evil, if the number of Magistrates was fixed; if their names were always known in connexion with their acts; and if they were more easily removable on proof of their misconduct. Then comes the question—Is it, after all, gratuitous service? We are told that we cannot visit the Magistrates severely, or even watch them very strictly, because they volunteer their duty, and receive no remuneration for their trouble. But although they have no money for it, they may have money's worth. Cheap justice, Sir, is a very good thing; but costly justice is much better than cheap injustice. If I saw clearly the means by which the Magistrates could be paid, and by which,

therefore, a more correct discharge of the magisterial duties might be insured, I would certainly prefer paying them in money to allowing them to receive money's worth by jobs, and other violations of their duty. Not only may the Magistrate himself receive compensation in money's worth; he may receive it in hard money by his servants. The fees of a Justice's clerk amount to a little income, often to many times a man's wages. I have heard of a reverend Justice in the country, having a clerk whose emoluments he wished to increase, and therefore he had him appointed Surveyor of weights and measures, with a salary of a guinea and a half a week. This person appointed a deputy, to whom he gave five shillings and sixpence, and who did all the duty. These circumstances came under the consideration of his brother Justices; when, after a strenuous opposition, and among others, on the part of the gentleman who communicates the occurrence in a letter now lying before me, it was decided, not only not to remove the first appointed person, who it was proved was doing nothing, but to swear in the other as his assistant! My friend is not entirely without suspicion that this functionary, having so small a remuneration as five shillings and sixpence a week, can only have undertaken the duty with a view of increasing it by some understanding with the people whose weights and measures it is his duty to superintend.

The operation of pecuniary motives in matters connected with the magistracy, is more extensive than may at first sight appear. There was a bill introduced by the right honourable gentleman opposite,* for extending the payment of expenses of wit-

* Sir Robert Peel.

nesses and prosecutors out of the county rates. It is not to be doubted that it has greatly increased the number of commitments, and has been the cause of many persons being brought to trial, who ought to have been discharged by the Magistrates. The habit of committing, from this and other causes, has grievously increased every where of late, and especially of boys. Eighteen hundred and odd, many of them mere children, have been committed in the Warwick district, during the last seven years. Nor is this a trifling evil. People do not come out of gaol as they went in. A boy may enter the prison gate merely as the robber of an orchard; he may come out of it "fit for"——I will not say "treasons"—but certainly "stratagems and spoils."* Many are the inducements, independent of any legislative encouragement, to these commitments. The Justice thinks he gains credit by them. He has the glory of being commemorated at the Assizes before the Lord Judge and the Sheriff, and the Grand Jury, and all who read the Crown Calendar. On that solemn occasion, he has the gratification of hearing it fly from mouth to mouth,—"He is a monstrous good magistrate; no man commits so many persons." Then there is the lesser glory acquired among neighbours, into whose pockets they are the means of putting money, by making them prosecutors and witnesses in petty criminal cases; and thus converting (as Sir Eardley Wilmot says) their journey of duty into a jaunt of pleasure to the Assizes. The reputation of activity is very seducing to a Magistrate; but I have known it curiously combined with things more solid than empty praise. In a certain town which I am

* There is still wanting much reform of the Criminal Law on this material subject.

well acquainted with, one suburb was peopled by Irishmen and Scots, who were wont to fight on every market-day a good deal, at fair tides a good deal more, but without any serious affray taking place. Beside these two classes of the King's subjects, there also dwelt in those parts two Justices of the King, assigned to keep the peace; for the better conserving of which, they repaired at the hour of fight to an ale-house conveniently situated, hard by the scene of action, and there took their seat with a punch-bowl full of warrants, ready to fill up. If the Irish happened to be victorious, the Scots came one after another and applied for commitments against those who had assaulted them. The despatch with which warrants, at least if not justice, were administered, was notable. Then came the other party, and swore to as many assaults upon them; and, justice being evenhanded, they too had their desire gratified, until the bowl was by degrees emptied of its paper investment, and a metallic currency, by like degrees, took its place.

Some of these details may be ludicrous; but the general subject is a most serious and a most important one, because these facts show the manner in which justice is administered to the people out of sight of the public, and out of reach of the higher Courts of Law. It is through the Magistracy, more than through any other agency—except, indeed, that of the tax-gatherer—that the people are brought directly into contact with the Government of the country; and this is the measure of justice with which, when they approach it, they are treated by functionaries irresponsible for their proceedings. A Justice of the Peace, whether in his own parlour or on the bench—whether employed in summary convic-

tions, or in enforcing what is called, after a very worthy friend of mine, Mr Nicholson Calvert's Act (one of the worst in the Statute-book, which I hope to see repealed,* and which I trust its excellent author will very long survive)—is never an ostensible individual, responsible in his own proper person to public opinion; hardly ever, unless he chooses by some indiscretion to make himself so, amenable to a higher and purer judicature. The Judges of the land, chosen from the professors of the law, after the labours of a life previously devoted to the acquirement of knowledge calculated to fit them for their office, and clothed with attributes of supreme power over petty Magistrates, are responsible for every word and act, and are subject to every species of revision and controul. They were selected with the most anxious caution for every qualification of high character and of profound knowledge; and yet they are incapable of pronouncing a single decision from which an appeal will not lie to some other tribunal immediately above them: while, from the decision of the country Justices—taken from the community at hazard, or recommended by the habits least calculated to make them just—subject to no personal responsibility, because beyond or below the superintendence of public opinion—and irremovable, unless by a verdict for some indictable offence—from their decision there is no appeal; from their decision, although they have to deal with some of the most important interests in the country, there is no appeal, unless their misdeeds shall have been set forth in a case, submitted by their own free will, with their expression, to the Court of King's Bench.

* This Act still exists, and continues liable to the same objections.

These are the principal points to which, in the first division of my subject, I desire to call the attention of the House, as deserving your deliberate consideration, and as the materials of solemn enquiry. I could have wished to accomplish my object more briefly, but I found it impossible, consistently with distinctness. I am not aware that I have made an unnecessary comment; and I must trust to the candour of honourable members in weighing the importance of these statements, to pardon the apparent prolixity unavoidably incident to the handling of a very extensive and varied argument.

II. I wish I could give the House any promise that my speech was approaching its termination; but that hope can hardly be entertained, when I state that I am now about to enter on the still more vast and momentous consideration of the Law as Administered in those tribunals, whose construction we have been surveying—the Distribution of Justice in those Courts in which it has been my fortune to practise during a pretty long professional life.

There is a consideration of a general nature, to which I would first of all advert; I mean the inconvenient differences in the Tenures by which property is held, and the rules by which it is Conveyed and Transmitted, in various districts of the country. Is it fitting or consistent with reason, or indeed with justice, that merely crossing the river, or travelling a distance of some miles in this neighbourhood, should make so great an alteration in the law of real property, as that, to the eastward of us, all the sons inherit equally; to the westward, the youngest alone; and here, the eldest? But these rules of the Common Law, of Gavelkind, and of Borough English, are better known, and operate within more defined limits. What shall be said of the Customary Te-

nures, in a thousand manors, all different from the Common Law that regulates freehold estates, most of them differing from each other?* Is it, I ask, fit that this multitude of Laws, this variety of Codes, the relics of a barbarous age, should be allowed to exist in a country subject to the same general bonds of government? I should trespass at greater length than I am willing to do, were I to detail the various customs which exist in the manors of this country; but to give the House an idea of their diversity, I must mention a few. In one manor, the Copyhold property is not allowed to pass by will; in another, it may be so conveyed. I admit that a great improvement has been made in this respect, by the act of an honourable friend of mine (Mr M. A. Taylor), to whom we owe several other important legislative measures, allowing it to be devised by will without surrender. This is the only material improvement which has been made, with respect to such property, within the last hundred years; but it only operates in facilitating the transmission, according to the custom of the manor of passing the copyhold by will. In one manor, a devise is not valid, if made longer than two years before the testator's decease; so that it is necessary for wills to be renewed every two years; in another, one year; in a third, three years are the period; while in many there are no such restrictions.† In some manors, the eldest daughter succeeds, to the exclusion of her sisters, as the eldest daughter (in default of male heirs) succeeds to the crown of England; in other manors, all the daugh-

* The Real Property Law Commission, issued after this motion, has fully investigated this subject, and made a very learned and satisfactory Report, on which Bills have been founded, but are not yet passed.

† This evil has been all removed by the Wills Act, prepared by the Real Property Commissioners, and passed with some changes.

ters succeed jointly, as co-partners, after the manner of the Common Law. In some manors a wife has her dower, one-third of the tenement, as in case of freehold. In others, she has, for her "*free bench*," one-half; and again, in some, she takes the whole for life, to the exclusion of the heir. The fines on death or alienation vary; the power and manner of entailing or cutting off entails, vary; the taking of heriots and lords' services varies. There are as many or more of these local laws than in France, in the *Pays de Coutúme*, of which I have seen four hundred enumerated, so as to make it the chief opprobrium of the old French law, that it differed in every village. Is it right that such varieties of custom should be allowed to have force in particular districts, contrary to the general law of the land? Is it right, I may also ask, that in London, Bristol, and some other places, the debts due to a man should be subject to execution for what he owes himself, while in all the rest of England there is no such recourse; although in Scotland, as in France, this most rational and equitable law is universal?*

All these local peculiarities augment the obstacles, both to the conveyance and to the improvement of landed estates. They prevent the circulation of property in a great degree; and they lessen the chance that an owner of such tenements would otherwise have of raising money, on their security, adequate to their value. The greater facility of conveyance is nothing set against the ignorance of local custom; and then copyhold property is not liable even for specialty debts, nor can it be extended by elegit; and thus, absurd and unjust as is the law

* This anomaly is remedied by the new Bill about to pass on the Law of Debtor and Creditor.

which prevents freehold property from being charged with simple contract debts,* it goes further in this instance, and exempts the copyhold from liability, even to those of the highest nature, a judgment itself not giving the creditor any right of execution against it. The obvious remedy to be adopted in this case is, to give all parts of the country the same rules touching property; and, therefore, I would propose an assimilation of the laws affecting real estates, all over England, to take place at a given period, say twenty or thirty years hence, so as to prevent interference with vested interests.

Having now, Sir, pointed out some of the varieties of our law in certain districts,—its inequalities in respect of place,—let us proceed to examine whether it is more uniform and more equal in respect of persons. And here we are met, at the very outset, with a most fearful exception to the maxim, which describes the law as no respecter of persons. It is commonly said that the Crown and the subject come into court on equal terms. Lawyers of the present day do not, I am aware, profess this; but that eminent dealer in panegyric, Mr Justice Blackstone, has spoken as if the King had no greater advantage in litigation than any of his people. It would have been well if he had stated that this was only a fiction; though he must have been puzzled to prove it, like other fictions, invented for the furtherance of justice. It is true that the law itself makes no such pretensions to impartiality; for of the two classes of manifest inequality which I am about to mention, one is avowedly such, by reason, as it is said, of the prerogative; although the other, just as substantial in

* This evil has since been removed.

reality, is not avowed to be so. I begin with the latter. It is said, that the Crown can no more take my estate than I can another man's; for if I have a claim against the Crown, I am told that I have a remedy, by the decent and respectful mode, as they term it, of a *petition de droit*, or, in case of a title by matter of record, a *monstrans de droit*. The same eloquent panegyrist, whom I have mentioned, describing the very name of the process to have arisen from the presumption of the law, that the King can do no wrong, adds, that, from the great excellence ascribed to the Crown, "to know of an injury and to redress it, are one and the same thing; therefore the subject has only to make his grievance known by his petition." From this is drawn the conclusion, that when a subject has a right, he can have the means of defending it with equal facility against the Crown as against any other party. Now, let us see how far this consequence is, in point of fact, realized. The Crown never moves by itself, but through the medium of the King's Attorney-General. No proceeding can be taken against the Crown without the *fiat* of the Attorney-General; and unless a party obtains that, all his trouble and expense in going to Whitehall, and asking the permission of the Secretary of State, are lost, because all such affairs are referred to the Crown lawyer; and if he should refuse leave, the only remedy left to the subject is the very convenient and practical one of impeaching that officer. It may be said that the Attorney-General would not refuse his *fiat*, because it is a mere proceeding in the first instance, like suing out an original writ, or a *latitat*, to bring a cause into the King's Bench; and the Attorney-General here is like the Chancellor or the sealers of the writs elsewhere, who issue writs

to any suitor as a matter of course. But I make answer that, although it ought to be so, it is not so. It is in the discretion of the Attorney-General, that is, of your adversary's counsel, to let you bring your action or not as he pleases. Why, I demand, should it be left in the breast of any man to refuse that which another may claim as a right, and as the lowest of all rights, to have his right enquired into by law? To show you how this discretionary power is used, I might say abused, I will mention a case; and, following the rule I prescribed to myself at setting out, it shall be one that has come within my own knowledge professionally. A considerable estate had, on a supposed default of heirs, been granted to a gentleman of great respectability, a friend of mine. After some time another individual set up a claim to it, on the ground of being the heir of the body of the original grantee, the first gift having been in tail male. The case was submitted to me, and to a learned friend of mine at the Chancery bar; and we advised that the party should proceed by Petition of Right. We examined all the cases upon the subject, and deeming this the only mode, we applied to the Attorney-General; and he refused his *fiat*, giving no better reason than that we ought to have proceeded by ejectment against the tenant in possession. We preferred our Writ of Right against the Crown, as all lawyers term the *petition de droit*. Had the question been with a subject, we might either have proceeded by ejectment to recover possession, or by writ to try the mere right as the higher remedy; and no officer could have shut us out at either door by which we chose to enter the Court. Now, I can state conscientiously my opinion, that the case of the indivi-

dual alluded to was a strong one in statement. It was one of pedigree, and certainly one of the clearest I had seen on paper. I do not mean to assert, —for I had no means of ascertaining it,—that it was unanswerable. There may have been some gap in the chain, some marriage or some birth not proved, or some other flaw in the claimant's title; but of that I can form no judgment, because that I was not allowed to try; and this is the hardship of the case,—the matter of which, I hold, my client had just reason to complain—he was not allowed to bring forward his proofs. Then, I ask, is it not a mere mockery in those panegyrists of things as they are, to say that the Crown and the subject stand on equal footing?*

But the cases in which the same disparity prevails between their rights, avowedly and by the declared sanction of the law, are much more numerous; they are of constant occurrence, too, in practice; and I will, therefore, mention them for the information of those who are not lawyers, and, I believe I may say, of some who are. In the first place, it is the general principle that a Demurrer is an admission of the facts in dispute; but this, it is said, does not extend to the Crown, and that, if defeated in this way, it can begin again, and is not concluded. Secondly, it has been decided lately in the Exchequer —I was not in the case, but so I have heard, from those who attend that Court,—that no such thing is allowed as an Exception for insufficiency to an answer filed by the Attorney-General on behalf of the Crown. But the subject notoriously enjoys no such privilege; his answer is open to all exceptions;

* This evil remains still without remedy.

were it not, you must, in suing him, take for an answer just what he chooses to tell you, and he escapes the equitable jurisdiction entirely. Next (and an instance occurred lately, which I argued in the Court of King's Bench, and which was decided against me, without hearing the other side), wherever a suit is commenced, whether it be in Cumberland, Middlesex, or Cornwall (and in Cornwall was the case I allude to), if the Crown has any title which may, however indirectly, come in question, although no party, the proceedings can at once be removed by a mere suggestion, not of record, but on the part of the Attorney-General, stating it from his place in Court, and a Trial must then be had at Bar before the four Judges. In this way all the preparations made by the parties are put an end to, and witnesses must be brought to town at an inordinate expense, and under every disadvantage. There is no doubt that an allowance would, in such cases, be made by the Crown to compensate for this additional cost; but still the party has to pay in the first instance, together with being taken away, as well as his witnesses, from that part of the country in which he and they are known, to the county of Middlesex, where the power of the Crown is more accurately known than the character of the other suitor. When this point was argued, the Court held the prerogative too clear to be discussed. There is a fourth advantage which the Crown possesses over any other party. No person can, after the jury is sworn, withdraw a record, but must be non-suited, to avoid a verdict. The Crown has, to my knowledge, withdrawn it, after counsel had been heard, and witnesses examined, and the jury been charged by the Judge; I have known the record withdrawn while

they were deliberating, and because they were deliberating, which indicated hesitation ; and this late retreat is made without the penalty to which any other party would be liable, who had fled before the cause was called on, namely, the costs of the day : for there is another unfairness to justify this course ; that as the Crown is supposed above receiving costs, so it is to be exempt also from paying them. But the reason of this I cannot possibly see. I cannot grant that the dignity of the Crown places it above taking costs, when I reflect that by the Crown is here meant the revenue raised from the people for the public service, and that, consequently, the non-payment of costs to the Crown is an increase of the people's burthens. But, even if I could admit the propriety of the Crown's receiving none, it would by no means follow that it should pay none to the subject, who is in a widely different predicament. All this, however, arises out of notions derived from the feudal times, when the Crown was in a situation the very reverse of that in which it stands at present, its income then arising almost entirely from a land revenue. There is now no reason why it should be exempt from paying, or disabled from receiving, in all cases where costs would be due between common persons. Indeed, there has been of late years an exception made in the Crown Law on this head, but so as to augment the inequality I complain of. In all Stamp prosecutions, the costs of the Crown are paid by the unsuccessful defendant ; so far does it stoop from its former dignity ; but not so low as to pay the defendant a farthing of his costs should he be acquitted.

The last and the worst part of the history remains; whenever a Special Jury is summoned in a Crown

case, and that all the twelve jurors do not attend, a Tales cannot be prayed to let the cause proceed, without a warrant from the Attorney-General: so that it is in the power of your adversary to refuse this at the time it may be most for his advantage so to do; while you have no option whatever in case it should be for his interest to proceed, and for yours to delay. I pray the House will mark attentively what I am now about to relate, although, indeed, I should apologize for thus appealing to them, after the singular patience with which I have been heard throughout, for the great length of time I have already occupied. There was a case in the Court of Exchequer, in which I acted as counsel for the defendant, and had to subject a Crown witness to a severe cross-examination; he exhibited strong indications of perjury, but the verdict went against me notwithstanding. My Learned friend, Mr Sergeant Jones (whose talent and professional skill entitle him to higher praise than any in my power to bestow), whether he profited by my experience, or was more dexterous in dealing with the case, did honour to himself by succeeding in the next trial, when the same witness was examined; for the suspicion of perjury entertained before was now turned into certainty, and the party acquitted. A prosecution for perjury was instituted against that man and others connected with him; eighteen indictments were found at the Sessions, and the Crown at once removed the whole by *certiorari* into the Court of King's Bench. There they were all to be tried, and a former Attorney-General conducted the prosecution. On the first, Meade, the witness I have mentioned, was clearly convicted. The other seventeen were then to have been tried, and Mr Sergeant Jones

called them on, but the Crown had made the whole eighteen Special Jury causes: a sufficient number of jurymen did not attend; my Learned Friend wanted to pray a Tales, and the Crown refused a warrant. Thus an expense of ten thousand pounds was incurred, and a hundred witnesses from Yorkshire were brought to London, all for nothing, except, after the vexation, trouble, and delay, he had endured, to work the ruin of the prosecutor, who had been first harassed upon the testimony of the perjured witnesses. These poor Yorkshire farmers, whom the villain had so vexed, had no more money to spend in law; all the other prosecutions dropped; Meade obtained a Rule for a new trial, but funds were wanting to meet him again, and he escaped. So that public justice was utterly frustrated, as well as the most grievous wrong inflicted upon individuals. Nor did it end here; the poor farmer was fated to lose his life by the transaction. Meade, the false witness, and Law, the farmer whom he had informed against, and who was become the witness against him upon the approaching trial, lived in the same village; and one evening, in consequence, as was alleged, of some song or madrigal sung by him in the street, this man Meade seized a gun, and shot Law from his house dead upon the spot. He was acquitted of murder, on the ground of something like provocation, but he was found guilty of manslaughter, and such was the impression of his guilt upon the mind of the Court, that he was sentenced to two years' imprisonment. A case of more complicated injustice—one fraught with more cruel injury to the parties, I never knew in this country, nor do I conceive that worse can be found in any other. We may talk of our excellent institutions, and excellent

they certainly are, though I could wish we were not given to so much Pharisaical praising of them; but if, while others, who do more and talk less, go on improving their laws, we stand still, and suffer all our worst abuses to continue, we shall soon cease to be respected by our neighbours, or to receive any praises save those we are so ready to lavish upon ourselves.*

i. And now, having thus far cleared the way for examining the proceedings in our Courts of Justice, the first enquiry that meets us is, by what means Unnecessary Litigation may be Prevented; in other words, suits unjustly and frivolously brought, and wrongfully defended, by oppressive or intemperate parties. I shall here, as under almost all the other heads of the subject, begin by laying down what I take to be the sound principles of legislation applicable to the point, and then comparing with these the provisions actually adopted by our jurisprudence. The first and most obvious step is, to remove the encouragement given to rich and litigious suitors, by lessening the expense of all legal proceedings; and I would put an end to all harassing and unjust defences, by encouraging expedition. Next, I would not allow of any action or proceeding which only profits the court and the practitioners, and the object of which is always granted as a mere matter of course; all things should be considered as done at once and for nothing, which may be now done on a simple application to the Court with some delay and expense. Thirdly, no party should be sent to two courts where one is able to afford him his whole remedy; nor to a dear and bad Court, when he can elsewhere have a cheaper and a

* These inequalities in the Crown law, between the Crown and the subject, still exist.

better remedy; nor should any one be obliged to come twice over to the same Court for different portions of his remedy, which he might have all in one proceeding. Fourthly, whenever a strong presumption of right appears on the part of a plaintiff, the burden of disputing his claim should be thrown on the defendant. This I would extend to such cases as bills of exchange, bonds, mortgages, and other such securities. In those cases I think the plaintiff should be allowed to have his judgment, upon due notice given, unless good cause be, in the first instance, shown to the contrary, and security given to prosecute a suit for setting the instrument aside.* This is a mode well known in the law of Scotland, and would put an end to all those undefended causes, which are now attended with such great and useless expense, as well as injurious delay to the parties and the public. Fifthly, I would suggest, that in all cases where future suits are to be apprehended, proceedings might be adopted immediately to raise the question, and quiet the title. The law on this head, also, is very different in the two parts of the island. In England, it is not possible to have the opinion of any court, until the parties are actually engaged in a lawsuit, opportunities for which may very frequently not occur until the witnesses to prove a case may be dead, or an infant, or a person living abroad and incapable of well defending his right, has come into possession. But the Scotch law furnishes a kind of action, the adoption of which may be productive of the greatest benefit, as I have once and again heard Lord Eldon hint in the House of Lords. I know very well that here we may file a Bill for perpetuat-

* This important improvement has since been made, but the declaratory action has not yet been introduced.

ing testimony, but there must be an actual vested right in the party instituting the suit; and the proceeding is, besides, so cumbrous, as rarely to be used. The Scotch law, on the contrary, permits a Declaratory Action to be instituted by the party in possession or expectancy, *quia timet*, and enables him to make all whose claims he dreads parties, so as to obtain a decision of the question immediately. This is, of course, and very properly, at the expense of him who brings forward the suit for his own interest, unless where a very obvious benefit arises to the other party; for in Scotland they have nothing like our statute of Gloucester, and costs are always in the discretion of the Court, as with us in equity. Sixthly, I would abolish all obsolete proceedings, which serve only as a trap to the unwary, or tools in the hands of litigious and dishonest parties, and lie hid or unheeded until, unexpectedly, they are brought forth to work injustice.* For an instance, I will name Wager of Law, a defence which may be set up in answer to an action of *detinue*, or of debt on simple contract. This is another of the remains of the old system. The defendant has only to swear that he does not owe the sum of money claimed by the plaintiff, and bring eleven others to swear that they believe him; and a defendant would certainly be badly off if he could not find out so many persons to do this kind office for him, as he needs only bring those who know him, but know nothing at all of the circumstances, for the less they know, the more ready will they be to swear they believe their friend. He has only to place them on opposite sides, at the end of the table (for the wisdom of past ages hath

* The new rules of pleading and practice have removed these evils.

carefully fixed the stations which the parties are to occupy pending this "solempnity"), get them to swear, and there is an end at once of the action. It is true that pleas of this kind are seldom pleaded, though it was done some time ago in the Common Pleas; and the oldest practitioners there, not being acquainted with the plea, were about demurring to it, when it was discovered to be a law wager well pleaded, and a complete good defence in law, though the practice was obsolete.

Now, these being the fundamental Principles that should guide us on this head, nothing can depart more widely from them than our Practice, and nothing can be more easy than making it conform to them. In the first place, without throwing away a thought upon the pain which I should necessarily inflict upon some of my learned friends much wedded to such lore, without caring a rush for the quantity of curious learning which would thus be thrown to waste, or dropping a tear over the musty records which must be swept away, I would abolish at once the whole doctrine and procedure of Fines and Recoveries.* I hope I may not offend the ears of my respected brethren the conveyancers; but I must say, that if ever there was an absurdity not to be tolerated, it is those fictitious suits, at any time, but, above all, in the present state of society.

I wish to make myself understood, for I see by the countenances of some gentlemen that they do not quite comprehend the whole absurdity of the law respecting Fines and Recoveries. I do not by any means wish to interfere with the power of making, or of barring entails; I consider the English law as

* These have now been entirely abolished.

hitting very happily the just medium between too great strictness and too great latitude, in the disposition of landed property; sufficient restraints upon perpetuities, upon endless settlements, are provided, to allow a free commerce in land, as far as that is consistent with the interests of agriculture, and the exigencies of our mixed constitution; while as much power is given of annexing estates to families, as may prevent a minute division of property, and preserve the aristocratic branch of the Government. With the substance of our law of entail, then, I have no wish to meddle; all I desire is, to abolish the ridiculous machinery by which fines are levied and recoveries suffered. Every gentleman knows that if he has an estate in fee he can sell it, or bestow it in any way he may please, but if he has an estate tail, to which he succeeds in the long vacation, he can go, on the first day of Michaelmas Term, and levy a fine, which destroys the expectant rights of the issue in tail; or he may, by means of a recovery, get rid of those rights and of all remainders over. He can thus, by going through certain mere forms, make himself absolute master of his estate, and do with it as he pleases. But this must be done through the Court of Common Pleas, at certain seasons of the year; and why should there exist a necessity for going there? Why not, if it be necessary, pay the fines which are due, without going there at all? I, the other day, asked this question of some learned friends,—Why force tenants in tail into court, for mere form's sake? They laughed at my simplicity, and said, "All this was asked a hundred years ago; there is no necessity for the proceeding, only to keep up the payment of the King's silver, alienation fines, and other duties." In case of bankruptcy, the necessity for those forms is

not felt. A trader who is tenant in tail commits an act of bankruptcy, and by the assignment under the commission not only the interest vested in him is conveyed, but all remainders expectant upon it are destroyed for the benefit of his creditors, and the estate passes to his asignees free from all restriction. The courts have held the conveyance in bankruptcy to be a statutory barring of the entail—an enlarger of the estate tail to a fee, as indeed the Bankrupt Laws evidently intended.* Now, I would do that for honest landowners which the law at present permits to be done for insolvent tradesmen and their creditors. So, too, a man and his wife cannot convey an estate of the wife without a fine or a recovery, neither can the wife be barred of her dower without a similar proceeding. The reason is, the influence her husband may possess over her mind; and, consequently, a judge takes the woman, in these cases, into a private room, to examine her, first, as to whether she acts from fear, and then, when that is out of the case, whether she is influenced by favour and affection; and he also examines her as to any temporary increase of affection from any passing cause; and then, when she has purged herself of all temporary increase of affection, of all fear, and all love, she is allowed to give her consent. I would propose, in place of all this enquiry, not always very delicate, nor ever very satisfactory, to let husband and wife join in a common conveyance, with the

* Of the bar to the issue in tail there can be no doubt; but there are decisions which lean against the operation of the Bankruptcy, to bar the remainders over, contrary to Blackstone's decided opinion (2 Com. 286, 361.) and, it should seem, to the plain intent of the Legislature. See Doe *v.* Clarke, 5 B. A. 458, and Jennings *v.* Tayleure, 3 B. A. 557, where it is considered that a base fee only passes in the remainder.

consent of a guardian to be appointed, or of the next male relative of the wife, who is not related to the husband, and not interested in either the succession or the conveyance.

Now, there is certainly nothing very real in a Fine; but as to Recoveries, I ask, do those persons who seem to hold by them, know at all what they avowedly proceed upon? They go upon the ground of compensation in value being made to the remainder-man, whose right they cut off, and who, but for this fictitious suit, would have a title to take the estate after the tenant-in-tail's decease. He is said to recover a compensation in value; and from whom does he get it? Why, the common vouchee, who is the Cryer of the Court of Common Pleas, and who, like the man at the Custom House obliged to take all the oaths other people do not like, lies groaning under the weight of all the liabilities he has incurred to every remainder-man, since he became cryer, and answerable for the millions of property, the rights to which, in remainder, have been barred, he not being worth a shilling. Locke says, that a madman is one who reasons rightly from wrong premises; so it is with the lawyers on recoveries, who argue very ingeniously, and even soundly and consistently, on the principle of the compensation, and whose conclusions could in no wise be impeached, if you once allowed the fact, that those in the remainder are compensated by the proceedings. Indeed, it happened to myself, not long ago, in a case where a very large estate was in question, to argue, and to prevail, respecting the effect of a recovery, on this very ground of compensation in value. I there had to contend that the claimant was barred by the recovery, in consequence of the compensation received from the vouchee,

though it was quite certain that, from the vouchee, there never was, nor ever could be, received a single shilling. My argument, on that occasion, did not excite a smile in the Court, because the principles of the law were known to be thus established, and the consequences were of serious import, be the premises ever so ludicrous. But, were I to use the same argument elsewhere, it would, if understood, be received with much less gravity. Put an end, then, to all such ridiculous forms, which have no earthly use but to raise a little money by way of fees; and which, beside creating expense and delay, and oftentimes preventing tenants in tail from passing their property by will, which they cannot if they die before suffering the recovery, give rise to a number of questions in law, often very puzzling, always dilatory and costly—not rarely to mistakes in fact; as where I knew an estate go to the tenant in tail in remainder, instead of the recoveree's heir-at-law or devisee, which he fully intended it should, merely because in suffering the recovery an omission was made of one parcel.

Sir, I also would put an end to those imaginary Trusts in settlements for the purpose of preserving Contingent Remainders. It has been said that some Members of this House, who, during the Commonwealth retired to the country and employed themselves in conveyancing, invented those refinements which characterise what are called Strict Settlements. I repeat, that my object is not to touch the principle of the law of entails, as it now exists in this country, believing that owners of estates should not be laid under greater restrictions than they now are in disposing of them by will after their death, or by settlement upon marriages in their families. But

let the purpose of the owner be accomplished more simply and more easily than can now be done. I would allow every man to settle or to devise his property to A. during his life, and after him to B. and C. in succession, making by plain words so many life estates, and giving a fee to the person who, by our present law, takes the first estate tail, not allowing the latter to have any power over the property until it became vested in possession, but requiring that, in order to affect it while in expectancy, he and the tenant for life should join in some simple conveyance, as a feoffment, whereby the settlement might, if the parties chose, be carried on. The property then would not be alienable an hour sooner than it now is, and it would be alienable without fine or recovery; and I would make the act, which the law now deems a discontinuance, as a feoffment in fee by tenant for life, absolutely void to all purposes, instead of making it a forfeiture of the particular estate of the feoffer, though void as a conveyance; so that I would get rid of the necessity of trustees being interposed to save the contingent uses from destruction.

Again, I would restore the Statute of Uses to what it was clearly intended to be. Our ancestors made that law, by which, if land were given to A. for the use of B., the latter was deemed the legal owner, the use being executed in him, just as if A. did not exist. It was justly observed by Lord Hardwicke, that all the pains taken by this famous law ended in the adding of three words to a conveyance. This has been said by conveyancers to be a severe remark,* but it is perfectly correct; for the Courts of Equity invented Second Uses or Trusts, by holding with the Courts

* Some have questioned its authenticity, as not to be found in a MS. note of Hopkins *v.* Hopkins; but the words are far too remarkable to

of Law that the statute did not apply to land given to A. to the use of B., in trust for C.; that it executed the use only in B., but not in C.; therefore the whole provision is evaded, by making the gift "to *the use of* B., in trust for C.;" and these three words send the whole matter into Chancery, contrary to the plain intent of the statute. It was also held that copyhold estates are not within the statute in any way; and there are other nice exceptions, but not much better grounded. Can there be any reason whatever for not making all such estates legal at once, and restoring them to the jurisdiction of the Common Law, by recognising, as the owner, the person to whom in reality the estate is given, and passing over him who is a mere nominal party?*

Another deviation from the principles I have laid down, and a great source of multiplicity of suits, is the law with respect to Agreements for sales, leases, and other conveyances. Thus, if I agree with a person to give him a lease, though he, under the agreement, becomes my tenant, he is my equitable tenant only, but not my legal tenant. He may be possessed of a written agreement, signed and sealed, for a lease of ten years, and may occupy under it, but he has no lease which a court of law can take notice of; and if an ejectment is brought, he must go out. He may go into a Court of Equity on his agreement, if that

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have been invented:—"By this means a Statute, made upon great consideration, introduced in a solemn and pompous manner, by this strict construction, has had no other effect than to add at most three words to a conveyance."—1 *Ath.* 591. The remark, nearly in the same words, is adopted by Blackstone, who cites Lord Hardwicke in support of it.—2 *Com.* 336.

* The late Wills-Act has introduced very great improvements into the Law respecting executing Devises, and put an end to by far the most fruitful source of vexatious litigation on this head.

is any comfort to him; he may apply for a decree against me to perform my agreement; but till then his claims are not recognised in a Court of Common Law. If an injunction be brought, the expenses are further multiplied. Why, I ask, should not the agreement, such as I have described, be as good as a lease; when, in substance, it is the very same thing, and only wants a word added or left out to make it the same in legal effect too? A case illustrative of this subject happened to come within my own observation. I was counsel in a case at York, where an agreement had been entered into and possession given; but because it did not contain words of present demise, it was no lease, and therefore the tenant could not stand a moment against the ejectment that was brought, but was driven into the Court of Chancery, where the other party could just as little stand against him. How much inconvenience, expense, and delay, then, might be saved, if such an agreement were pronounced equivalent to a lease; and, in general, every thing were supposed done in one Court which may be ordered as a matter of course to be done by another,—reserving, no doubt, all objections on the head of fraud, mistake, surprise, and the like, which may be raised by pleading at law, just as easily as in equity.

In like manner, I would allow a Legatee to sue an Executor or Administrator for his legacy,* and the Mortgager to sue for his rights. It is always said that in these and the like cases of active trusts, accounts must be taken; and so they must in every

* The Local Courts Bill, brought in according to the recommendation of the Common Law Commissioners appointed in consequence of this motion, provided for these defects, but it was thrown out by a bare majority in the Lords, 1833.

action where there is a matter of set-off against a demand. The old Action of Account might be greatly improved; and by its aid, and by reference to arbitration, where necessary, much that now goes to equity might be disposed of at law. The only reason why such cases as these, where the assets are to be marshalled and cross claims considered, now go into the Court of Chancery, is, not for any superior fitness of that Court itself, but because of its appendage, the Masters' office, without which it would be no better able than the King's Bench to manage even long trusts, *chronic cases*, as they have been termed, though every suit in Equity might be thus named. Let the Court of King's Bench have an equal number of Masters—let Arbitrators be publicly appointed, to whom parties may refer before any expense has been incurred, as they do now after all the bill has been run up—nay, to whom they may go without even consulting an attorney—and if this machinery be found not enough effectually and properly to despatch the business of the Court, let its machinery be increased, and sure I am it would be the cheapest and most powerful that ever was set up. It would do away with the ridiculous importance attached to a few words of conveyance;—it would oust the jurisdiction of the Court of Chancery in all the matters of which I have been speaking, and which it has from time to time drawn over from the Common Law, to which those matters originally belonged. Then the Courts of Equity would be left to execute their ordinary jurisdiction in matters of account requiring a long course of time, and minute and daily attention—cases calling not for decision, but superintendence—to the care of infants, idiots, and insolvent estates, and other matters which it

would be impossible for a Court of Common Law effectually to take charge of.

Again, on the same principle of avoiding multiplicity of suits, why, in Ejectments, should two processes be requisite to give the plaintiff his remedy? As things now stand, after a man has succeeded in one action, and established his title to the possession, he must have recourse to another, to recover that which he ought to have obtained by one and the same verdict that established his title—the mesne profits? Why could not the same jury settle the matter at once? Why is an individual driven to maintain two actions for the purpose of obtaining one and the same remedy? Or why should not the jury that tries the right, also assess the damages? Mr Tennyson's Bill, which was intended to remedy some part of this evil, is only permissive; it ought to have been compulsory. It is partial, and it is only recommendatory, and its recommendations are not always attended to, because the lawyers, having the choice, do not think fit to pursue that which is the least profitable; they choose the two actions, when one would suffice for the interests of justice—for the interests of the plaintiff and defendant—for all interests except those of the practitioners.*

ii. Having considered how the number of needless suits may be diminished, I now proceed to the next head of my enquiry—to ascertain how, after their number is reduced as low as possible, and those only brought into Court which ought to be tried, you may best Shorten the Suits brought, by disposing of them in the shortest time, and with the least expense. And

* This defect has since been supplied by Legislative enactment.

this topic leads me to examine the principles which ought to be adopted for encouraging the parties to come to an amicable settlement as speedily as possible. The law cites as its warrant for certain steps in every suit, the injunction of Scripture—" Agree with thy adversary quickly, whilst thou art in the way with him, lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison. Verily I say unto thee, thou shalt by no means come out thence till thou hast paid the uttermost farthing." The latter part of the text is applicable enough to the proceedings under the English law; and this scriptural advice to compromise ought to be constantly set before the eyes of suitors in all our Courts, with the penalty denounced. Our law, however, no sooner adopts the principle, by allowing a party to imparl, than it departs from the spirit of it; for it must be observed, that the delay of imparlance is admissible, not " in the way," but in the Court, after arrest, and when the effect is only to produce unnecessary loss of time, and fees equally unnecessary. Here, however, the sound principles are as obvious as before. Whatever brings the parties to their senses as soon as possible, especially by giving each a clear view of his chance of success or failure, and, above all things, making him well acquainted with his adversary's case at the earliest possible moment, will always be for the interests of justice, of the parties themselves, and indeed of all but the practitioners. It is the practitioners, generally, that determine how the matter shall proceed, and it may be imagined that their own interests are not the last attended to. The seeming interest of two parties disposed to be litigious, in many cases appears to be different from the interests of justice, although their

real interests, if strictly examined, will not unfrequently be found to be the same. Now, justice is embarrassed by the disingenuousness of conflicting parties; justice wants the cases of both to be fully and early stated; but both parties take care to inform each other as little as possible, and as late as possible, of the merits of their respective cases. One tells as much of his case as he thinks good for the furtherance of his claim, and the frustration of the enemy's—so does the other give only as much of his case in answer as may help him, without aiding his adversary; and the Judge is oftentimes left to guess at the truth in the trick and conflict of the two. The interest of the Court and of justice being to make both parties come out with the whole of their case as early as possible, the law should never lend itself to their concealments. This remark extends to the proof as well as the statement of the case. An intimation of what the evidence is, may often stop a cause at once. In Scotland, the law in this respect is better than ours; for no man can produce a written instrument on the trial without having previously shown it to his adversary. For want of this salutary rule, we have often seen the most useless litigation protracted for the sole benefit of the practitioners. I was myself lately engaged in a cause, the circumstances of which will give the House an idea of the mischief. I was instructed not to show a certain receipt to the opposite party, as my client, the defendant, meant to nonsuit his adversary in great style, as he would call it. Well, the plaintiff (an executor) stated his case, and called his witnesses to prove the debt. I did not take the trouble to cross-examine, which would have been quite unnecessary. Equally so was it to address the Jury. I acknowledged the truth of all that had been sworn on the other side, but added that it was

all useless, as I happened to have a receipt for the money, which had been paid to the testator. This, of course, put an end to the case. The sum sought to be recovered did not exceed twenty pounds, and the expenses could not have been less than a hundred. If that action had been brought in Scotland, it never could have come to trial, nor, indeed, been prosecuted beyond the mere demand: for, this receipt being shown, the claim would have been abandoned. Here some person or other, I will not say who, had an interest in the cause being suffered to proceed, and the law enabled him to accomplish his purpose. I think, sir, the adoption of some such rule as the Scotch might be desirable. At least, it would be well to enquire how it works in Scotland, and be guided by the result.*

Next, the greatest encouragement should be given to compromises in all cases. At present the law recognises the principle to a certain extent, and permits money to be paid into Court, in some instances, as cases of contract and quasi-contract, where the damages are certain. But nothing can be less judicious than restricting the power of paying money into Court to those classes of causes, and excluding actions upon contract with uncertain damages, and actions upon tort, which are far more likely to be brought hastily, or obstinately defended, because they are accompanied by irritated feelings.† The

* The late rules of the Judges, under the Act of 1833, have, to a great degree, provided this remedy.

† It has been held that money cannot be paid into Court in actions for breach of contract to deliver goods at a fixed price (3 B. and P. 14), for dilapidations (87 R. 47), on bond for money in a foreign currency depreciated (57 R. 87). Chambre J., in the first and the strongest of these cases, says—"It could not be done without violating every rule of practice." See *Com. Pleader*, C. 10.

earliest opportunity should be afforded in all cases to each party of getting rid of the suit on receiving or making compensation. I would, therefore, extend the right of paying into Court, or tendering amends, to all cases whatever. As the law now stands, it is only magistrates, officers, and other persons specially protected by the statutes of James I. and George II., who can thus proceed in actions for injury offered to the person or property.*

But the great means of shortening litigation are to be found in an enlargement of our Law of Arbitrament. I much fear that this, my next proposal, may seem strange, especially as coming from a professional man; for it goes directly to abridge the length and the expense of law proceedings in a great number of cases, and of preventing not a few from ever coming into Court. But it is calculated to secure justice effectually, without which no saving of expense or of time deserves the name of an improvement. Now I do not lay claim to any peculiar disinterestedness in broaching this matter. Few persons, it is true, have less interest in diminishing the amount of business in our Courts, because there are not many who gain more by it, and to whom, therefore, the abuses which I am describing, if such they be, are more profitable. But I really believe that lopping off needless litigation, by measures calculated to lessen the expense of procedure in all its branches, would greatly increase the number of lawsuits—real suits, which ought to be encouraged, as necessary to justice, but which at present are kept out of Court, by the double tax of cost and delay.

* This is now remedied.

The County Courts ought to be diligently reformed—their process extended to matters of a larger amount, and of greater variety—their officers rendered more able and effective.* This improvement of itself would greatly diminish the number of trifling suits brought into the higher judicatures; and how can I, or any one conversant with the practice of the law, adequately express the benefits of having a speedy and cheap redress for petty wrongs, when we daily witness the evils of the opposite system! How often have I been able to trace bankruptcies and insolvencies to some lawsuit about ten or fifteen pounds, the costs of which have mounted up to large sums, and been the beginning of embarrassment! Nay, how often have we seen men in the situation described by Dean Swift, who represents Gulliver's father as ruined by gaining a Chancery suit, with costs! The public generally are little aware of the number of petty actions forming the bulk of every cause paper at *Nisi Prius*. Professional men can tell how many now stand for trial concerning demands under twenty pounds; how few of these have been thus far ripened by the fostering care of the profession and the offices, under a hundred pounds expense. I made the Prothonotary, four years ago, at Lancaster, give me a list of fifty verdicts obtained at the Lent Assizes; the average was under fourteen pounds, including, however, two or three actions brought to try rights, where the damages were of course nominal. But if the money recovered amounted in all to less than nine hundred pounds, the costs incurred certainly exceeded five thousand

* The Act of 1833 has extended and improved this jurisdiction materially; but the Local Courts Bill would have done so far more effectually.

pounds; fifty pounds a-side being indeed a very low average of costs as between attorney and client. It is not too much to affirm that not above a tenth part of those fifty cases would ever have seen the Court at Lancaster, had a right system prevailed; that is, if the parties who were to bear the heavy charge, whether of losing or seeming to gain (for the loss, generally speaking, only differed in degree) had been early apprized of their real situation, and exercised their own judgment upon the question of going on or settling betimes. An extension and improvement of arbitration is one of the remedies I have ventured to suggest, at least for further discussion. If arbitrators were publicly appointed, before whom parties themselves might go in the first instance, state their grounds of contention, and hear the calm opinion of able and judicious men upon their own statements, their anger would often be cooled, and their confidence abated, so as to do each other justice without any expense or delay. Such a tribunal exists in France, under the name of *Cour de Conciliation;* in Denmark it exists; and for certain mercantile causes, in Holland also. If it be thought too great a change to introduce it here, in what I deem its best form, I think much good would arise from a modification of it—the appointment of Public Arbitrators, who might at all times sit and take references by consent, with process to compel the attendance of witnesses, and the execution of their awards. At least we should see all those cases taken before them at once, which are now brought at great cost into courts wholly unable to try them, and are uniformly greeted with the observation from both Bench and Bar—" Oh, an account and a set-off—a hundred items—so many issues—no judge or jury

can try it," after all the expense of trying it has been incurred.*

iii. The course of our inquiry has thus brought us, in the third place, to the Commencement of a Suit; and here the principles and rules which present themselves are as obvious as they are important. The first is to prevent the debtor's escape, and hinder him from delaying his creditor, by wilfully absenting himself. The second is to give the debtor due notice of the particular nature of the claim, so that he may defend himself if right, or yield if wrong, that is, if actually indebted. The third is, to give the debtor no unnecessary inconvenience, till found to be in the wrong (that is, indebted), as far as is consistent with due security to the plaintiff against a defendant likely to escape; taking care also to protect the defendant against a plaintiff likely to oppress him with costs, and leave him without remedy on dropping the suit.

Now, against all these, which I consider cardinal virtues in this important stage of procedure, our laws offend most grievously. For, in the first place, we assume the defendant to be in the wrong, and not only so, but to be meditating flight from his country and his home; we, therefore, arrest him immediately, and cast him into prison, or compel

* Out of the Statute of William, arbitration is no favourite of our law. An agreement or a covenant to refer is waste paper; no action can be maintained for a breach of either; † and equity will not enforce the performance. (6 Ves. 818). A great Judge said on this case, that he had, since a cause he mentioned, made it a rule never to recommend an arbitration. The Local Courts Bill established Courts of Conciliation, under the name of Courts of Reconcilement, with the fullest powers.

† The proceedings in arbitrations are very much improved by the late Act of 1833.

him to find bail. A Member of this Honourable House, if, by the acceptance of an office, he happens, for the space of a few days, to be out of Parliament, may thus be arrested, and put to the most serious inconvenience. It might have happened the other day to the member for Oxford. If he bought twenty pounds' worth of goods on a Saturday, went to his villa and returned on Monday, on knocking at his door he might be met with an arrest, and he must then accompany the sheriff's officer to a lock-up house till he procured bail. He would then do what I understand is usual in such cases, send for his butcher and his baker, and get bailed; but a gentleman could not, after that, complain so well of the meat, or the bread, or the bills during the next half year. Certainly he would not be in a situation, the week after, to criticise his tradesman's conduct with a good grace. I have known worse inconvenience happen from such use being made of the law, at elections; indeed, when candidates have carried their adversary's voters to Norway, instead of letting them reach Berwick, we may believe they would not scruple to use the writ for a similar purpose. But however malicious or spiteful may be the motives of any one in so employing the process of the law, there being a probable cause of detention, and the process not being abused, no action lies against the wrong doer. If he have no accomplices, so as to fall within the charge of conspiracy, he is safe. To the wealthy, however, all these inconveniences are trivial; but how does such a proceeding operate on a poor man, or a tradesman in moderate circumstances? He has no facilities for obtaining bail; if he does, he pays one way or another afterwards for the favour; and if he cannot procure it,

he must go to prison. Perhaps no man ever holds up his head, or is the same man again, after having once been in prison, unless for a political offence. But, I ask, why should a man ever be arrested on mesne process at all? The Honourable Member for Montrose has brought this subject before the House, and he has my hearty thanks for it. On what ground of common sense does our law in this matter rest? Why should it be supposed that a man, owing twenty pounds, will leave his house, his wife, his children, his country, his pursuits; and incur voluntarily the punishment awarded for great crimes, by banishing himself for life? Yet the law always proceeds on the supposition that a man will run away the moment he has notice given him of an action for the debt. Some men might possibly act thus, but their conduct forms the exception, not the rule; and do you legislate wisely—do you legislate like men of sense—do you legislate with common consistency—when you denounce a penalty against all men in order to meet a case not likely to occur once in a thousand times?

What would be the effect of altering the law in this respect? Could its reformation injure any one? Certainly not; on the contrary, it would benefit all classes of the community. The very first consequence of such an alteration would be to make tradesmen less easy in giving credit, by rendering them more cautious. At present they are induced to rely on the suddenness of personal arrest for compelling a payment of their demands, in preference to others, and thus to speculate upon the chance of payment from insolvent persons; so they enter into a competition—not an honest, praiseworthy competition, in the correctness of their dealings, or the goodness of their wares—but a competition in the

credit to give to needy and profligate, or suspected and extravagant men, unable to pay any thing like the whole amount of the debts which the rashness or cupidity of tradesmen may allow them to contract. And on whom does the loss thus incurred by the tradesman finally fall? Not unfrequently on those who can and do pay; they have to answer for those who do not; they pay a sort of *del credere* in proportion to the loss incurred through giving credit—a species of insurance on all bad debts. Even the more respectable customers would be all the more regular in their dealings and economical in their habits, were they never tempted by easy credits to buy what they have not money to pay for.*

My next objection to the present system, under this head, is, that no proceeding can take place in our courts unless there be an actual appearance. We outlaw a man to compel an appearance. Why do so? Why can we not proceed as in the case of ejectment, where a notice is left at the dwelling-house? Why can we not leave a writ at a man's house, stating what we sue him for; and only when we think him about to fly, call upon him to give surety? I repeat, why not send a writ to the known domicile or house of business of the debtor; a writ, too, which shall plainly describe the cause of action, instead of serving him with a writ that only tells him he is a prisoner for some reason or other, which in due time he will be informed of; and if he cannot be found, outlawing him after nine months' delay? This is done in Holland, a mercantile country, and in Scotland, a wary

* Upon the grounds here stated, the Common Law Commissioners recommended abolishing Imprisonment for Debt entirely, unless where fraud had been committed, or contumacy exerted, or escape meditated. The Bill now before Parliament will effect this.

country, where too great charity is not generally shown to the debtor; at least the Scotch have not the reputation of being unnecessarily merciful on such occasions; yet a writ to take the debtor's person is only obtainable there if he be *in meditatione fugæ*. Our process of outlawry is, in its nature, extremely foolish; its object being to compel an appearance, which, after all, is not necessary, provided the party wilfully absents himself after due notice. If a man chooses to keep away, why not proceed without him after such a delay, and so many services at his place of residence as shall insure him having a knowledge of the action? As for any scruple about proceeding against an absent man, without making perfectly sure of his having notice, the present law has no right to say a word on the subject; for its process of outlawry is neither more nor less than a mean by which you harass an absent man, without even pretending to give him notice. He may be in the Greek Islands, on the coast of Africa, or in the backwoods of America, and his creditor can outlaw him, and proceed to have his goods forfeited, without his being aware of the transaction, and without the proceeds of the forfeiture necessarily benefiting any one but the Crown. In Exchequer cases, it is true, the debt and costs, not exceeding L.50, are paid out of the fund which arises from selling the goods; in all other cases, a party must apply to the Lords of the Treasury. Why should this be? What have the Lords of the Treasury to do with the legal remedy of plaintiffs in suits? Why send any one to the executive power for the redress which the judicial authority alone ought to administer? *

iv. We are now to suppose the parties in Court,

* This clumsy and inconsistent process remains unaltered.

and called upon to state their cases, the claim of one, and defence of the other. Anciently this Pleading, as it is termed, was by word of mouth; but in more modern times it has been carried on in writing. Originally, too, Pleas were in French, afterwards in Latin, and for a century past, by a great, but most salutary innovation, doubtless much reviled and dreaded in its day, they have been conducted in English. I must own that I approach the subject of Special Pleading, in the presence of my most worthy friend and learned instructor in that art,* with some degree of awe. That excellent person's attainments in its mysteries are well known, and justly appreciated. He is intimately acquainted with the subject. The distrust of my own learning, therein, while addressing him, is not lessened by my recollection of the praises lavished upon the science by high authorities of past times. Lord Coke deemed it so delightful a science, that its very name was derived, according to him, from its pleasurable nature—"Quia bene placitare omnibus placet." Incapable of inventing a new pleasure, I would fain restore a lost one, by bringing back Pleading to somewhat of its pristine state, when it gave our ancestors such exquisite recreation. Certain it is that our deviation from the old rules in this branch of the law, has been attended with evil effects. Those rules, as Lord Mansfield once said, were founded in reason and good sense; accuracy and justice was their object, and in the details much of ingenuity and subtlety was displayed; but by degrees the good sense has disappeared, and the ingenuity and subtlety have increased beyond measure, and been oftentimes misdirected; nay, to such a pitch have the changes

* Sir N. C. Tindal.

proceeded, that at last subtlety has superseded sense; accuracy and justice are wellnigh lost sight of; and ingenuity is exhausted in devising pretexts for prolixity and means of stratagem. In these really hurtful innovations the Courts of Law have been the far too ready accomplices; and the Legislature has been a most willing instrument to increase the evil, by sanctioning, almost as a matter of course, in each new act, the power of pleading the general issue; so that to call the modern practice by the name of *special* pleading, is really an abuse of terms. It can only be restored to its ancient condition, and made deserving, if not of Lord Coke's panegyric, yet of the more measured commendations of Lord Mansfield, by reviewing the entire system as it at present stands. My wish is, as far as possible, to revive the accuracy of the old pleading, without its niceties and verbosity; while pains are taken to improve it, where this can safely be done, by adapting it to the advanced state of modern jurisprudence.

The precedents of the ancient pleaders, and the other rules recognised in their times, furnish the most valuable materials for this reform; and, indeed, it is chiefly from the science as they left it that the principles I am about to state are drawn. The first great rule of pleading should be, to induce and compel the litigant parties to disclose fully and distinctly the real nature of their respective contentions, whether claim or defence, as early as possible. The second is, that no needless impediment should be thrown in the way of either party, in any stage of the discussion within the Court, whether plea, replication, or rejoinder, whereby he may be hindered to propound his case in point of fact, or of law. In the third place, all needless repetitions, and generally all

prolixity should, as well as all mere reasoning, which neither simply affirms nor denies any proposition of fact or of law, be prevented; and all repugnant or inconsistent pleas should be disallowed, as well as all departure from ground once taken.*

1. That these were the principles on which the ancient pleaders bottomed their system entirely, I will not affirm; but upon them it was mainly built. And I regret to say, that the last century and a half has witnessed great and prejudicial alterations in the original plan; so that the record, in the great majority of cases, instead of exhibiting a plain view of what each party is prepared to prove, contains an endless multitude of words, from which, if the real matter in dispute can be gathered at all, it is only by guess work, or by communications out of the record relating to things of which it gives not even a hint. Let us look into this a little more narrowly. The Count of a Declaration should convey information as to the subject of the action; but it conveys no precise knowledge of the plaintiff's demand, or indeed of what the suit is about. Take the instance of the Common Counts, as they are justly termed, in Assumpsit, being those constantly resorted to; and take the most common of these, the count for money had and received. I will take no advantage of the audience I speak before being unacquainted with legal niceties, in order to make merry with the venerable formalities of the art. All lawyers know how easy it would be in this place to raise a smile, at the least, by recounting the little fooleries of our draftsmen; but I disdain it, and will treat the sub-

* The valuable improvements introduced with so bold a hand, but so judiciously, under the Act of 1833, are mainly founded upon these principles.

ject precisely as if I were addressing professional men. The plaintiff declares that the defendant, being indebted to him for so much money had and received to the use of the said plaintiff, to wit, one thousand pounds, undertook and faithfully promised to pay it, but broke his engagement; and the count is thus framed, the self-same terms being invariably used, whatever be the cause of action which can be brought into Court under this head. Now, observe how various the matters are which may be all described by the foregoing words. In the first place, such is the declaration for money paid by one individual to another, for the use and benefit of the plaintiff—this is what alone the words of the count imply, but to express this they are rarely, indeed, made use of. 2dly, The self-same terms are used on suing for money received on a consideration that fails, and used in the same way to describe all the endless variety of cases which can occur of such failure, as an estate sold with a bad title, and a deposit paid; a horse sold with a concealed unsoundness, and so forth. 3dly, The same words are used when it is wished to recover money paid under mistake of fact. 4thly, To recover money paid by one person to a stakeholder, in consideration of an illegal contract made with another person.* 5thly, Money paid to revenue-officers for releasing the goods illegally detained, of the person paying.† 6thly, To try the right to any office, instead of bringing an assize.‡ 7thly, To try the liability of the landlord for rates levied on his tenant. What information, then, does such a declaration give? It is impossible, on read-

* 1 B. and P. 3. Ib. 296. † 4 T. R. 485.
‡ Str. 747. Carth. 95. 1 T. R. 255.

ing this count, to say which of the seven causes of action has arisen; and it is not merely those seven, for each one of them has a vast number of varieties, which are declared on in the same words. In actions of Trover, the case is even worse. Suppose the case of a plaintiff suing for any chattel, as a gun, the declaration will be such as may apply equally to at least eight different heads, under each of which are many different causes of action. The words in all would be the very same—that the plaintiff was possessed of a gun, as of his own proper goods and chattels; that he accidentally lost it; that the defendant found it, and converted it to his use. Now this count describes only one case, that of a gun lost by its owner, and detained by the finder. But it is employed to mean, 2dly, That the gun has been taken by the defendant under pretence of some title, or in any way not felonious. 3dly, That it was deposited with the defendant, who refused to deliver it up. 4thly, That it was stopped in transitu, the price not having been paid. 5thly, That the plaintiff is the assignee of a bankrupt, and seeks to recover the gun, as having been sold after the bankruptcy of the vendor. 6thly, That the plaintiff has been improperly made a bankrupt, and sues the assignees to try the bankruptcy. 7thly, That his goods have been unlawfully taken, and he sues to try the validity of an execution, on any of the various grounds of fraud, &c., which impeach the validity of the process. 8thly, That the gun has been misdelivered, or detained, by a warehouseman or carrier. All those causes of action differ from each other as much as different things can differ, and yet they are all stated in the declaration the same way, and signified under the same form of words.

The pleadings in cases where it might be expected that the greatest particularity would be given to the statement, actions upon Torts to the Person, are somewhat, but for the most part, not remarkably more definite and precise in their description. The declarations on the seduction of a wife, servant, or daughter, assault, and false imprisonment, are drawn so that you can say, no doubt, what the action is about, which you hardly ever can in cases of Assumpsit or Trover; but the same form of words is used, whatever the particular shape of the cause may be. Of the circumstances peculiar to the transaction, the pleadings tell the defendant nothing—they tell the counsel nothing—they tell the judge nothing. It may be said that the defendant must know the cause of action himself; but that does not always follow, especially if (which may be presumed barely possible, though it seems never to be thought so) the allegations are groundless. There is, however, one person who must know the cause of action, and that is the plaintiff. He ought, for the satisfaction of all concerned, to state it distinctly. The same may be said of the counts in Trespass, for taking goods.* In Trespass *quare clausum fregit*, perhaps the description of the wrong done is more specific. But it happens that the circumstances here are of far less importance; damages are not in question; a shilling or so is to be recovered, the object of the action being almost always to try a right of property or an easement. In all other cases of trespass, where a knowledge of the wrong suffered is most material, the parties are left to fight, and the Court

* These defects are in a great measure remedied by the late changes.

to decide, in the dark; but in the case I have just alluded to, where a knowledge of the circumstances in which the trespass was committed is immaterial, every thing is told them of which it is wholly unimportant that they should be informed; in a cumbrous way, no doubt, and with much fanciful statement, but still it is told. Actions for Slander and Libel, for Malicious Prosecutions, and Malicious Arrest, or holding to bail, with others on the Case, are very particular, and form, certainly, an exception to the ordinary course of pleading; at least, as far as the declaration goes; no further, as we shall presently see—for I now proceed to the next stage of the pleadings, namely, to the Pleas which the defendant puts upon the record in answer to the plaintiff's complaints.

In this stage of the cause, we encounter the same evils, but in greater abundance; for they affect those Actions on the Case where the count is most precise. Generally speaking, it may be said, that if the plaintiff tells us nothing in his declaration, the defendant, in return, tells us as little in his plea; in that respect, at least, they are even. This is, perhaps, a consequence of the former evil; but be that as it may, it ought to be remedied. The plaintiff ought to tell the defendant the real nature of his complaint, and the defendant ought to make him equally acquainted with the nature of his answer. If this were always done, perjury would not so often be committed; every thing intended to be proved would be stated on each side; and the parties, knowing the evidence on which the respective statements must be established, would have an opportunity of examining into the character of the witnesses, and of procuring the best evidence to elucidate the

point. At present, the mystery of pleading leaves them in doubt; and the vague and indistinct statements on the record, unaccompanied by other information, open a door to the entrance of falsehood in the witnesses, far wider than any you could open, by enabling them to get up proofs in answer to those expected from the opposite side. Whenever the parties fight each other by trick, on the record in the first instance, fencing to evade telling their grounds of contention, they renew the fight afterwards by perjury in Court. I will now give the House some instances of the vagueness of this part of pleading.

In the *indebitatus assumpsit*, from which I took my first example, the general issue is *non assumpsit*. Now, under that plea no less than eight different defences may be set up; as, for instance, a denial of the contract, payment, usury, gaming, infancy, coverture, accord and satisfaction, release. All these defences are entirely different, and yet they are all stated in the self-same words. So, too, in the action of trover; take our former case of the gun: the defendant, under the plea of "not guilty," may set up as a defence, that he is a gamekeeper, and took it by virtue of the statute of Charles II.; * or that he had a lien upon it as a carrier for his general balance, and had, therefore, a right to detain it; or a particular lien for work done upon it; or that he had received it as a deposit, and was entitled to keep it; or that he took it for toll, † or detained it till passage-money due by its owner were paid; ‡ or the reward due for saving it from ship-

* St. 22, 23 Car. II.—Dawe and Walter in Bull. N. P. 48.
† Sir W. Jones, 240. ‡ 2 Camp. 631.

wreck were given.* Any one of these defences may be concealed under the plea of "not guilty," without the possibility of the plaintiff discovering which it is that his adversary means to set up; so that every body will, I think, agree with me, that if the count teaches the Court and opposite party little, the plea teaches them not a whit more.†

It is of these things that Mr Justice Blackstone must be speaking, when he thus eloquently closes his account of special pleading and actions (not otherwise remarkable for accuracy)‡ with a panegyric upon that perfection which it shares in his eyes with all the rest of our system.—"This *care and circumspection* in the law, in providing that no man's right shall be affected by any legal proceeding *without giving him previous notice*, and yet that the debtor shall not, by receiving such notice, take occasion to escape from justice; in requiring that *every complaint be accurately and precisely ascertained in writing*, and be *as pointedly and exactly answered*; in *clearly stating* the question either of law or of fact; in deliberately resolving the former after full argumentative discussion, and indisputably fixing the latter by a diligent and impartial trial; in correcting such errors as may have arisen in either of those modes of decision, from accident, mistake, or surprise; this *anxiety* to *maintain* and to *restore* to every individual the enjoyment of his civil rights, without entrenching upon those of any other individual in the nation—this

* Lord R. 393.

† The new rules remove these evils in a great measure.

‡ *e. g.* His giving as an example of Assumpsit, an undertaking without consideration.

parental solicitude, which *pervades* our *whole* legal constitution, is the genuine offspring of that spirit of equal liberty which is the singular felicity of Englishmen." *

2. The Inconsistency of many of our rules of pleading forms the next head of complaint to which I shall direct your attention; and it is just as manifest as the vagueness and indistinctness I have been pointing out. Why are infancy and coverture to be given in evidence under the general issue, while other defences of a similar description must be pleaded specially, as the statute of limitations always, and leave and license in trespass? If it is right that specific defences, of which your general plea gives your opponent no notice, should be couched under that plea, why should you be compelled to give notice of other averments before being suffered to prove them? Why do you, in one case, multiply pleas, which, in the other, your own practice declares to be unnecessary? One or other course, the vague or the definite, the prolix or the concise, may be fitting; both cannot be right. Nay, there is often an option given as to the same thing; infancy, coverture, release, accord and satisfaction, and others, may either be given under the general issue in Assumpsit, or pleaded. Why, this choice amounts to no rule at all! If a ground of defence is ever to be pleaded specially, why not always? †

3. Akin to this inconsistency of principle is the variety of Repugnant counts and pleas allowed in all cases whatever. Where there are ten different

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* 3 Com. 423.

† These evils are also remedied; and so of the evils described in the subsequent pages.

ways of stating a defence, and all of them are employed, it is hardly possible that any three of them can be true; at the same time their variety tends to prevent both the opposite party and the court from knowing the real question to be tried. Yet this practice is generally resorted to, because neither party knows accurately what course his opponent may take; each, therefore, throws his drag-net over the whole ground, in hopes to avail himself of every thing which cannot escape through its meshes. Take the case of Debt on bond. The first plea in such an action, almost as a matter of course, is the general issue, *non est factum*, whereby the defendant denies that it is his deed; the second as usually is, *solvit ad diem*—he paid it on the day mentioned in the bond, a circumstance not very likely to happen, if it be not his deed; the third is *solvit post diem*—he paid it after the day; a thing equally unlikely to happen, if it be not his bond, or if he paid it when due; and a fourth often is, a general release. What can the plaintiff learn from a statement in which the defendant first asserts that he never executed the deed, and next that he not only executed it, but has moreover paid it off? Where pleas are consistent with each other, it may be well to let them be pleaded in unlimited abundance: where they are not only not consistent, but absolutely destructive of each other, it would be a good rule to establish that such pleas should not be put together upon the record, at least without some previous discussion, and leave obtained. The grounds of action are often stated with almost as great inconsistency, almost always with greater multiplicity in the declaration. I recollect that at York, many years ago, it was my duty, as junior counsel, to open the pleadings in an action

brought upon a wager which had been laid upon the life of the Emperor Napoleon. I stated to the jury in the usual way, that the defendant, in consideration of one hundred guineas, agreed to pay the plaintiff a guinea a-day during the life of one Napoleon Buonaparte, and so forth, alleging the breach. Thus far all was well, and the audience were not disturbed; but there was not much gravity among them when I went on to state the second count, averring another wager on the life of "one other Napoleon Buonaparte;" and, indeed, though one, in those days, was quite enough for the rest of the world, two did not satisfy the pleader, who made mention of a third and a fourth Napoleon.

I know that it is frequently said these allegations deceive nobody, and their vagueness and repugnancy keep no one in the dark, for each party contrives to have a good guess of what his adversary means. That this is not the case in many instances I know; that it takes place more frequently than might be expected, I am ready to admit. But what vindication is this of the system? If any thing like precise information is obtained in such cases as I have described, it is most assuredly not from the record, but in spite of the record; it is by travelling out of it—by seeking elsewhere for what the record does not give, or for correcting the false impression which it conveys; consequently, this defence of pleading is the very humble one, that it is useless, and, were it not for the cost, would be harmless.

4. Before the statute of the 4th of Anne, no man was allowed to plead double; the plaintiff might have as many ways of stating his case as he pleased, but to each count the defendant could only give one answer. By that statute he may, with leave of the

Court, plead two or more distinct matters. Though that leave was formerly granted or refused at the discretion of the Court, it is now regularly given as a matter of course. There is, however, a fee to be paid to the office for it, and also a fee to counsel for signing the rule to obtain it, which, of course, implies a charge by the attorney also. I think every practitioner is fully aware of the consequences. Beside the expense, the utterly needless expense, the mischief of it is great and undeniable. I believe in my conscience, that many an attorney's clerk, who afterwards proceeds to still greater frauds, begins his career of crime by stopping this fee to counsel on its way. It is not necessary that the barrister should sign his name; and a knowledge of that fact among attornies' clerks and barristers' clerks, seduces into a course of petty embezzlement, which leads to larger peculations in the long run, and ends in all the dishonesty which marks the life of the disreputable practitioner. According to the principles before laid down, such rules as this, to plead double, and all others of the kind, ought at once to be abolished, and the parties allowed to do, without any application, or rather supposed application, to the Judge, and without any expense, what they thus obtain for the mere payment of money. But to proceed: though the defendant may plead, the plaintiff cannot reply many matters. For instance, in *indebitatus assumpsit*, if the defendant pleads, first, that he never made any promise, and next, that he was an infant when he made the promise, the plaintiff must either admit the infancy, and set up a subsequent promise, or deny the infancy altogether, and re-affirm the original promise; for he cannot both deny the infancy and set up a subsequent promise. Now, I

will ask the House, why, if the defendant may plead several matters, the plaintiff should not reply several matters? There must be some limit, I allow, set to the replication, otherwise, at each stage of the pleading, there would be a multiplication of issues, like the puzzle of the nails in a horse-shoe; but, surely, there can be no harm in allowing each separate ground of defence to be met both by a denial and an answer; giving the plaintiff a general replication to make the defendant prove his plea, and one special replication: I mean, as long as you allow the defendant to multiply, without restraint, his grounds of defence; for the power of pleading repugnant pleas being restricted, there will be the less prolixity occasioned by enlarging the power of replying.

5. The restriction upon Demurrer, or pleading to raise an issue in law, appears still less founded in principle. By demurring, a party is obliged to confess the facts to be true as stated by the opposite party, and confine himself to a denial that, by law, those facts warrant the inference against him to raise which they are stated. If I am alleged to have made a particular promise, I may deny that I made it, which would raise a direct issue on the fact: or I may say that, though I did make it, such a promise is not binding in law, which raises an issue on the law. These two denials, however, cannot both be given; I must take my choice, either to admit the law or the fact. How is this in common life? If I am charged with any thing wrong, as using certain blameable expressions, I may deny the words altogether, but may add, "Admit, for argument sake, I did utter them, they were wholly harmless—wholly free from the meaning affixed to them." In truth, men are demurring all day long, when they

are conflicting or disputing with one another, and no one ever dreamt of tying down his antagonist to the admission of the fact, because he had argued against the inference. If any thing can make the rule more objectionable, it is the gross inconsistency which it exhibits to the last rule I mentioned, the permission given to a defendant to raise as many repugnant issues of fact as he pleases. Why should a party be allowed to say, "In point of fact I deny the promise—but if I made it, six years have elapsed—or I made it under age," and be prohibited from saying—"In point of fact, I deny the promise; but, if I made it, there was nothing binding in point of law?" The two defences, as far as their duplicity goes, are precisely similar; and as it must be allowed that, before double pleading was introduced, the restriction upon demurring was consistent with the general principles of the system, so, if repugnant pleas were forbidden, the objection, in respect of consistency, to a demurrer admitting the facts pleaded, would be removed. On other grounds, however, it would still be quite wrong. I admit that part of the mischief occasioned by the rule may be remedied after verdict, the objection being on the record. But beside that this remedy cannot, in every case, be applied, there has been the delay and expense, to say nothing of the absurdity of a trial of facts, which, if proved, amount to nothing. Why should not the Court first determine the disputed law, and then, only if it becomes necessary, try the truth of the facts? In Equity pleading it is so. Why not in Law pleading too?

6. A very great amendment of the law would be, to permit all Formal Errors to be amended, even at the very last stage of the cause. No one should

be turned round on a mere variance; no one should be defeated on a mere verbal mistake, as it was my lot to be lately, in an indictment, the history of which will aptly enough introduce this head of remark. It was a prosecution for perjury: the jury was sworn, the case was opened, witnesses were examined, and documents read, when a variance was discovered between the affidavit, on which the perjury was assigned, and the copy of it which formed part of the record: in the one the word "grandmother" was used: in the record the syllable "grand" was omitted, and only the two last syllables "mother" were inserted. This was, of course, fatal to the indictment. There can be no doubt that the perjury, which consisted in the denial of a payment, was equally committed, whether that supposed payment was made to the mother or the grandmother; yet, owing to this utterly unimportant error, all the trouble of the Court, and all the expense of the prosecutor, were rendered perfectly useless, and the ends of public justice frustrated. In ninety-nine cases out of every hundred—indeed, I might say, in nine hundred and ninety-nine cases out of every thousand,—in which parties are turned round upon variances, the materiality is not greater than in that which I have just mentioned to the House. The improvement which I would suggest is to allow nobody to be turned round upon a variance, except at the discretion of the judge. Where it is clear that the record by its variance from the evidence has deceived the party, then the discrepancy ought to be fatal; but because this may happen once in a thousand times, ought we to legislate upon the exception, and introduce a general system of quirks and niceties upon sorry trifles—the great-

est opprobrium of the law? Furthermore, I would allow no failure of a case from the want of a sufficient stamp being affixed to any instrument used in evidence. In a case which occurred not long since, my Lord Dudley was turned round, because it was said there were a few words more in the instrument than we had counted, and the stamp was some half-crown below the amount required. At the trial of the cause, it was not disputed by us, that the words were more in number than the stamp covered; we took for granted that our adversary had reckoned right, and we did not require the process of addition to be gone through in Court; it was afterwards found out that the defendant had counted the words wrong, and that they fell short of the number mentioned in the Stamp Act. The plaintiff, in consequence, got a rule for a new trial, and soon after he had a verdict. But suppose we had been wrong and our adversary right, what difference would that have made in the justice of the cause, which was truly an undefended one? I would allow the judge to inflict a penalty of L.20, of L.50 if necessary, to protect the revenue, instead of L.10 for the want of a stamp; but I would not allow the party to be turned round, and to lose his trial, because he had got a wrong stamp, or no stamp at all, affixed to his agreement or deed.

Let not the House suppose that grievances such as I have been describing to flow naturally from the present system, are imaginary and theoretical; I can assure the House, from my own daily experience, that they are not: they produce constantly a cost or a delay, or both, amounting to the positive denial of justice. To give an illustration of some of the parts of the system in its workings, I shall read the

letter which I hold in my hand, from an eminent practitioner in the law. The widow of a Welsh clergyman was obliged to bring an action upon a mortgage-deed for the payment of the mortgage-money and interest, and for performance of the covenants in the deed. She might have foreclosed by a proceeding in equity; but preferring the delays of the King's Bench to those of the Chancery, she brought an action of debt of the simplest possible kind, both in its nature, and in the form of the proceedings; and the House shall now hear from her respectable solicitor himself, what was the progress and termination of that action:—"The defendant "was a Member of Parliament, and some delay, as "is usual with such defendants"—(I beg pardon, Sir—of course, I am not answerable for the terms of the letter)—"took place in enforcing an appear-"ance. When the declaration was delivered, the "defendant demanded oyer of the bond, and that "obtained, made as many applications as the judge "would allow for further time to plead. At the "expiration of this period, he pleaded—1st, *Non* "*est factum*—2d, *Solvit ad diem*—3d, *Solvit ante* "*diem**—4th, *Solvit post diem*—5th, Performances.

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* Had the plaintiff's pleader chose, the law enabled him to demur to this plea (but it would have increased the delay and served the defendant's purpose). The ground of the doctrine, that paying before the debt falls due is no answer to the action seems not very intelligible, but it is now settled law. The reason assigned (in Cass v. Tryon—though there are cases *contra*, see Cro. Eliz. 143, Dyer, 222. and also 14 Anne, c. 16, § 12) is, that if the verdict on that issue goes for the plaintiff, it by no means follows that he has a right to recover, for he may have been paid at or after the day. But so it may be said of a plea of infancy—or, indeed, of *solvit ad diem* itself—for though the verdict negative that plea, *non constat* that there may not have been duress or a release. The

" It is needless to add, all these pleas were pure " legal fictions. The plaintiffs, in their replication, " took issue on such pleas as concluded to the con- " trary, and assigned breaches of the condition, " according to the statute. The breaches assigned " were, non-payment of the principal—non-pay- " ment of the interest—and non-performance of the " covenants of the mortgage-deed. The defendant, " for the purpose of splitting the second into two " issues, and thereby creating the delay of an issue " in law, to be tried before the Court *in banco*, and " an issue in fact, to be afterwards tried at *Nisi* " *Prius* before a jury, demurred to the last assign- " ment of breaches—a sham demurrer for delay. " The plaintiffs joined in demurrer, and made up " and delivered the paper-book and demurrer-book. " The defendant, in order to entitle himself to bring " a writ of error for delay, without giving bail, then " suffered judgment to go by default, for not re- " turning the paper and demurrer-book. The con- " sequence of this was, that all the pleas, replica- " tions, rejoinders, and demurrer, became useless, " and were struck out of the record; and the plain- " tiffs had to execute a writ of enquiry before the " Chief Justice, under the statute of William III., " to assess damages on the breaches suggested. But " these proceedings had answered the purpose of " harassing the poor defendant with useless and ex- " pensive litigation, swelling the pleadings from five " folios to one hundred and eighteen; and they had

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true test of a plea (or an affirmative issue tendered at any stage of the pleadings) plainly is this—if its being found for him who pleads it decides the matter in his favour, no new fact being averred on the other side, it is good—if not, bad.

" already accomplished much delay, having occupied " four terms: the bill was filed in Trinity Term, " the pleas and replication in Michaelmas Term, the " demurrer and joinder in Hilary Term, and the " final judgment was obtained in Easter Term. " The defendant then brought a writ of error, with- " out the slightest pretence of actual error; and " that proceeding, of course, delayed the plaintiffs " four terms longer. All this was necessarily at- " tended with expense, grievous to a poor person, " as the party in this case was. The costs of the " judgment were taxed at £80, 4s., and the costs " in error at £19, 10s., making together £99, 14s. " for the costs, and two years for the delay in an " *undefended action*, in which the length of the de- " claration was five folios! Comment on such a " case would be a waste of words." It would indeed! But if it be wanted, Blackstone shall be the commentator. " So tender and circumspect," saith he, " is the law of England in providing that no man's right shall be affected by any legal proceeding; in requiring that every complaint be accurately and precisely ascertained in writing, and be as pointedly and exactly answered; in clearly stating the law and the fact; in deliberately resolving the former and indisputably fixing the latter by a diligent trial; in correcting such errors as may have arisen in either decision, and in finally enforcing the judgment, when nothing can be alleged to impeach it! So anxious it is to maintain and restore to every individual the enjoyment of his civil rights, without intrenching upon those of any other individual in the nation,—so parentally solicitous is our whole legal constitution to preserve that spirit of

equal liberty, which is the singular felicity of the British nation." *

I must now tell the House, that besides the £99, 14s. taxed costs, this poor widow had to pay £30 for extra costs, which she never received a shilling of from the defendant, and which she had to defray after he had handed his share of the costs over to the plaintiff's attorney. In prosecuting an undefended cause she paid this sum, and if it had so chanced that the defendant, instead of being merely a distressed man (for I happen to know the gentleman in question, and that though a distressed, he is not an oppressive man); if he had been such a character as was once known in the northern provinces, and as we have had represented on the scene,—pertinacious, litigious, grasping, oppressive, with a long purse to back him in defending acts of injustice and cruelty,—he would have resisted at every stage of the action by counsel and witnesses; he would have had the demurrer argued before the Court; he would have tried the issue at Nisi Prius; he would have carried his Writ of Error through the Exchequer Chamber into the House of Lords; and then the extra costs, instead of thirty pounds, would have amounted to I dare not say what sum, knowing that costs to the amount of hundreds have been incurred to recover a debt of twenty pounds. "So tender is the law of England in providing that no man's right should be affected by any legal proceeding—so parental its solicitude to maintain and restore to every individual the enjoyment of his civil rights, without intrenching upon those of any other person whatsoever!"

* See page 423, *supra*, where the same passage is cited.

Sir, after Mr Justice Blackstone had written his beautiful, and, in part, profound Commentaries, there occurred a case, which he published himself in his Reports, and which must, I conclude, have happened after the panegyrics were composed. I marvel much, however, that, when a subsequent edition of his Commentaries appeared, he did not correct the error into which he must then have been convinced that he had been betrayed, by his excessive admiration for the forms and technicalities of our Common Law. The case, as reported by himself, was, in substance, this:—A gentleman of the name of Robinson, in Yorkshire, was minded to try the resources of the law in an action of trespass against some poor men, who lived near him. In the course of it, reference was made to the Master, to report by whose fault the pleadings in the action had extended to a most enormous and unprecedented length. The Master reported, that in the declaration there were five counts; that twenty-seven several pleas of justification were pleaded by the defendants, which, with replications, traverses, new assignments, and other monuments of pleading, amounted at length to a paper book of near two thousand sheets. He was of opinion that the fault lay principally in the length and intricacy of the declaration, the action being only brought to try whether the freeholders and copyholders of the manor, whereof Robinson was lord, were entitled to common in a ground called the Inclosure. He likewise reported that the declaration was so catching, by ringing changes upon the several defendants, and the several names of the ground, that it was necessary for the defendants to guard every loophole; which made their pleas so various and so long, especially as Mr Robinson had

declared that he had drawn the declaration in this manner " on purpose to catch the defendants, and that he would scourge them with a rod of iron." The Court was very indignant at this abuse of the technicalities of the law, and the Book says that Mr Robinson appeared *in propria persona*, to show cause against this report, " no other counsel caring to be employed for him." The Court ordered Mr Sergeant Hewitt and Mr Winn to settle an issue, which they did in a quarter of an hour, and in the space of a quarter sheet of paper, instead of two thousand folios. Talk of scourging with a rod of iron! Why should he think of it? The lash of parchment, which is applied to all suitors in our courts of law—that flapper, which keeps them awake to the course of justice by the expense and anxiety it inflicts,—that truly parental corrector of human errors, manufactured in the engines of practice and pleading, which, pretending to enlighten, serve only to keep the Court and the suitors in the dark as to what they are conflicting about, and oftentimes teach them nothing certain, but that they are ruined, and cannot tell how: this parchment lash was a far more safe as well as powerful scourge for the rich and crafty lawyer, and a far more deadly one for his poor and simple antagonists, than any rod of iron which he could have had forged for his own use in all Colebrookdale!

v. The parties being now supposed at issue by the result of their pleadings, the facts in dispute are to be Tried by a Jury through the medium of Evidence, and the comments of the counsel and judge. Before I enter, therefore, on the head of Evidence or Proceedings, or Trial generally, the House will permit me to say a few words upon the subject of Juries,

the rather because this venerable institution has, I lament to say, been of late years attacked by some of the most distinguished legal reformers. Speaking from experience, and experience alone, as a practical lawyer, I must aver that I consider the method of juries a most wholesome, wise, and almost perfect invention, for the purposes of judicial inquiry. In the first place, it controls the Judge, who might, not only in political cases, have a prejudice against one party, or a leaning towards another, but might also, in cases not avowedly political, where some cord of political feeling is unexpectedly struck, if left supreme, show a bias respecting suitors, or, what is as detrimental to justice, their counsel or attornies. In the second place, it supplies that knowledge of the world, and that sympathy with its tastes and feelings, which Judges seldom possess, and which, from their habits and station in society, it is not decent that they should possess, in a large measure, upon all subjects. In the third place, what individual can so well weigh conflicting evidence, as twelve men indifferently chosen from the middle classes of the community, of various habits, characters, prejudices, and ability? The number and variety of the persons are eminently calculated to secure a sound conclusion upon the opposing evidence of witnesses or of circumstances. Lastly, what individual can so well assess the amount of damages which a plaintiff ought to recover for any injury he has received? How can a Judge decide half so well as an intelligent jury, whether he should recover as a compensation for an assault, fifty pounds, or a hundred, pounds damages?—or for the seduction of his wife or daughter, fifteen hundred, or two thousand, or five thousand pounds damages? The system is

above all praise—it looks well in theory, and works well in practice; it wants only one thing to render it perfect—namely, that it should be applied to those cases from which the practice in equity has excluded it; and that improvement would be best effected by drawing back to it the cases which the courts of equity have taken from the common law, and which they constantly evince their incapacity to deal with, by sending issues to be tried whenever any difficulty occurs.*

I shall not press this subject further, for I begin to feel that I shall be exhausted with the labour I have undertaken, and I fear that your patience may be exhausted with my strength. I will therefore proceed to the great subject of Evidence; and, first of all, we are met by the question,—Ought the testimony of the Parties to be excluded? The strong opinion expressed by some great authorities on this head requires that, before entering on the Law of Evidence, we should touch the fundamental rule which draws so broad a line between parties and witnesses. It is clear that the law on this head requires revising; it is not so clear that the reform will be best accomplished by receiving every one's testimony in his own cause. The friend of exclusion proceeds upon the supposition that the situation of a party differs wholly from that of another person; whereas it only differs in the degree of the bias arising out of interest, from the situation of many who are every

* It is fitting that we speak with reverence even of the unfounded doubts of so great a man and profound a Jurisconsult as Mr Bentham. He was, beyond all dispute, the first who taught men to examine the foundations of our Legal Institutions, and the abuses that have grown up with them. Sir S. Romilly was the first to question them in Parliament.

day allowed to depose. He also maintains that it is dangerous to receive the party's evidence, because of the temptation afforded to perjury. That there is much in this argument, I admit; but, speaking from my own observation, I should say that there is more risk of rash swearing, than of actual perjury—of the party becoming zealous and obstinate, and seeing things in false colours, or shutting his eyes to the truth, and recollecting imperfectly, or not at all, when his passions are roused by litigation. I shall not easily forget a case in which a gentleman of large fortune appeared before an able arbitrator, now filling an eminent judicial place, on some dispute of his own, arising out of an election. It was my lot to cross-examine him. I had got a great number of letters in a pile under my hand, but concealed from him by a desk. He was very eager to be heard in his own cause. I put the question to him,—"Did you never say so and so?" His answer was distinct and ready,—"Never." I repeated the question in various forms, and with more particularity, and he repeated his answer, till he had denied most pointedly all he had ever written on the matter in controversy. This passed before the rule of evidence laid down by the Judges in the Queen's case; consequently I could examine him without putting the letters into his hand. I then removed the desk, and said,—"Do you see what is now under my hand?" pointing to about fifty of his letters. "I advise you to pause before you repeat your answer to the general question, whether or not all you have sworn is correct." He rejected my advice, and not without indignation. Now, those letters of his contained matter in direct contradiction to all he had sworn. I do not say that he per-

jured himself—far from it. I do not believe that he intentionally swore what was false ; he only forgot what he had written some time before. Nevertheless, he had committed himself, and was in my client's power. I said,—" My advice is, that you pay the whole demand before to-morrow." This only increased his anger. He " scorned the offer and the imputation." Turning to his solicitor, I asked if he concurred in his client's view of my proposition ?—" Very far from it," was the answer. The meeting broke up, the arbitration terminated, and the money was paid the next morning. Now, had this trial occurred in an open court, the gentleman would have been ruined for ever ; he would have had no opportunity of explaining, nay, all explanation would have been useless ; if he had escaped prosecution, he would have been suspected of perjury ever after, when all that he was guilty of was too much eagerness, too much impetuosity, and a little wrong-headedness, arising from confidence in his own cause, and a desire to defeat his adversary. But this anecdote is fruitful in matter of reflection. On the one hand, we see the risks of admitting impure or uncertain evidence, and the probability of receiving wrong impressions respecting a witness's bias while undergoing the question ; on the other hand, we perceive that, to a certain degree, the same consequences flow from our present practice of allowing such evidence in some cases, and not in all. Our system is clearly inconsistent in this particular. At least we ought to be uniform in our practice. Why refuse to allow a party in a cause to be examined before a jury, when you allow him to swear in his own behalf in your Courts of Equity, in your Ecclesiastical Courts, and even in the mass of business decided by Common

Law Judges on affidavit? Why is the rule reversed on passing from one side of Westminster-hall to the other, as if the laws of our nature had been changed during the transit, so that no party being ever allowed before a Jury to utter a syllable in his own cause, in all cases before an Equity Judge, parties are fully sworn to the merits of their own cause? If it be said that there is no cross-examination here, I answer, that this is a very good argument to show the inefficacy of Equity proceedings for extracting truth from defendants, but no reason for following a different rule in the two jurisdictions. Indeed, the inconsistencies of our system in this respect almost pass comprehension. All pleas at law are pleaded without any restriction upon their falsehood; in Equity the defendant answers under the sanction of an oath. But Equity is as inconsistent with itself as it is different from Common Law; for the plaintiff may aver as freely as he pleases, without any oath or any risk at all. When an inquiry is instituted into these things, I do venture to hope that something will be done to diminish the number of matters decided on affidavit. This is, indeed, a fruitful parent of fraud and perjury, and not only a great departure from the principle which excludes the testimonies of parties, but an abuse of all principle; for he who would allow such testimony, under due restraints, may very naturally argue that suffering men to swear for themselves, without being exposed to cross-examination, must lead to endless equivocation, suppression of truth, and all the moral guilt, without the danger, of actual perjury. If it be right to exclude the parties from giving evidence in their own behalf in one case, it is not right to admit them to give evidence in others; and more especially it is absurd to admit

them where they have the power of deceiving with impunity, and exclude them where they would swear under checks and restraints.*

1. The first matter that presents itself to my attention, when I come to the subject of Evidence, is the great question (intimately connected with what I have been discussing), how far Interest should disqualify a witness. The ancient doctrine upon this point has, of late years, been so much restricted by our Courts of Law, so little is left of the principle on which this objection to competency rested, that, for my own part, I will confess I cannot see any adequate reason why all witnesses of good fame, that is, all not convicted of an infamous offence, should not be admitted, leaving the question of their credibility, and the weight of their testimony, to the consideration of the Jury. In the case of "Bent, *v.* Baker," an action against one underwriter of a policy, the Court held that another underwriter of the same policy was a competent witness for the defendant, because the verdict could not be evidence in an action against himself, although it was clear that the first action must, in fact, decide both claims. After that decision, it cannot be said that there is any rational ground for exclusion on account of interest in the event, any more than interest in the question. The rule thus established has ever since been followed; and now, in all cases, a person is competent, whatever bias he may have from interest, provided the verdict cannot be given for or against him in another cause; the bias under which he swears being only a circumstance that goes to his credit. After this it is in vain to exclude any evidence upon the

* This defect remains as before.

ground of interest in the event, and the principle should be extended to all interest, direct or indirect. For let the House look at the inconsistency of the present system. If I have the most distant interest, even the interest of a shilling, in reversion on an estate of £50,000 a-year, I am incompetent to give evidence on any point affecting that estate; but suppose I have a father ninety years of age, lunatic, bedridden, at the point of death, and quite incapable of doing any legal act whatever—that he is in possession of an estate in fee-simple—that I expect to be his heir—or that he had formerly made a valid will in my favour, so that nothing can prevent me from succeeding the moment he dies, I may be a witness to give him the estate; I am competent to swear into the possession of my father a property of £50,000 a-year, to which, in the common course of events, I must myself succeed in a few weeks. But pecuniary interest is not the only feeling that biasses the mind of a witness; and yet any one may swear for a parent, a brother, a sister, a child, on questions most nearly affecting the peace, and honour, and happiness of the whole family. I therefore think that a line ought to be drawn, not between one sort of interest and another, but between competency and credit; and that all should be admitted to give evidence, leaving it to the Jury to determine what dependence may be placed upon their testimony. This is rendered the more fit by the nature of the shifts resorted to for the purpose of restoring the competency of interested witnesses; I allude, of course, to that notable expedient, a release of all actions or causes of action. When a witness has an interest, if he is deprived of it by a release, there is no objection to his competency. Evidence is thus

often cooked up for the Court, nay, in the Court, while the witness is in the box, which, according to the existing rules, is not admissible, without such a process. Now, what is the real effect of the release on the mind of the witness? Just nothing—for if he be an honourable man, he gives it up the moment he leaves the box, and while swearing he knows that he is to do so; so that the operation which has been performed upon him adds a pound to the year's revenue, nothing to the credit of his testimony.*

2. With regard to written evidence, I must say that it appears to be no less capriciously required than dispensed with. I think as highly as any lawyer ever did of the Statute of Frauds; I would go the full length of the Learned Judge who said that every line in it was worthy a subsidy; and it is, therefore, that I could wish a few lines might be added, so as to increase the number of subsidies at which I may value it. First, I would extend the number of cases in which written evidence is exacted. The French law requires that all contracts for sums above 150 franks should be reduced into writing, and even authenticated by notarial forms. I would adopt some such extension of our statute; and as almost all men are able to write at the present day, I do not think this would occasion any inconvenience. But then the outlets should be stopped up, by which the exigency of the statute is escaped. I think, as far as I can discern from reading the French Code Civile, and the Conferences upon it (a wonderful monument of Napoleon's genius, as well as of the talents of his counsellors), that no part performance takes a case out of the French enactment. With us,

* This is still unaltered.

the things are so numerous which take transactions out of the Statute of Frauds, that the memorandum in writing is only in a small proportion of cases required. Hence, among other consequences, much subtlety of construction—often needlessly extended by jurisconsult exercitations, as the distinction between crops growing and severed, or a right and an easement, in determining what is an interest in land.* A judicious enactment, restoring the force of the Statute in these particulars, as well as extending it to other cases, would be highly beneficial in preventing fraud, perjury, and litigation; and could offer no impediment to commerce, further than the beneficial one of narrowing the credit given by small tradesmen.

3. The rule by which a man's Books are let in, or excluded, after his decease, is also, in my mind, extremely defective. They are evidence, if he has entered the receipt of sums by which he makes himself chargeable to any amount. If he only debits himself with the receipt of £5, which very likely he may have received, he makes his books evidence for his representatives, who may gain £500 to which he never was entitled. The ground on which they ought to be excluded is, the general probability of their having been made for the purpose of creating evidence; but that probability is never weighed at all in the particular instance. We had much discussion of this matter in the case of Barker *v.* Wray, before Lord Eldon, who appeared exceedingly to

* Thus a License for any number of years to stack coals on a close is not within the statute; such a complete occupation of every inch of the surface, and exclusive of all other use of it, even by way of easement, is not held to be an interest in land. There is a case to this effect in Sayer's Reports.

question the soundness of the received rule; this at least was certainly the impression of the Bar. Would it not be better to abolish the legal presumption, exceedingly ill-founded in fact, which lets in all such documents generally, and as generally excludes all others, and to substitute in its place the rule, that any deceased person's books or memorandums may be received, provided it appear that they were not prepared with a view of making evidence for his successors, but plainly *alio intuitu?* Observe, too, that in one case we admit, without any qualification, the books of a predecessor, in his successor's behalf. I mean entries made by a deceased rector or vicar of the receipt of tithes, which are always admitted as evidence for succeeding incumbents, because he is supposed to have had no interest in mis-stating the fact—as if the clergy were always entirely free from the influence of a corporation spirit.

4. Than the rules for the Examination of witnesses, I am of opinion that nothing can be better, generally speaking. Every facility is afforded to counsel for extracting the truth. Upon this important head, therefore, my remarks will be few. There is a want of uniformity in the practice of the judges towards counsel engaged in examination. Some will not allow them to cross-examine a witness they have called themselves, even though he is stated when produced to be a hostile one; and others will not allow them to put a leading question to an adversary's witness, in cross-examination, if he be really friendly to them. The sound rule seems to be that it depends on the connexions and demeanour of the witness, whether he shall be regarded as the witness of the party producing him or no.—Again, certain tests are excluded, by which the capacity

and the credit of a witness may best be tried. If I wish to put a witness's memory to the test, I am not allowed to examine him as to the contents of a letter or other paper which he has written. I must put the document into his hands before I ask him any questions upon it; though by so doing he at once becomes acquainted with its contents, and so defeats the object of my inquiry. That question was raised and decided in the Queen's case, after solemn argument, and I humbly venture to think, upon a wrong ground, namely, that the writing is the best evidence and ought to be produced, though it is plain that the object here is by no means to prove its contents. Neither am I, in like manner, allowed to apply the test to his veracity: and yet how can a better means be found of sifting a person's credit, supposing his memory to be good, than examining him to the contents of a letter, written by him, and which he believes to be lost?

There is a test, excluded in cases of libel, of which I shall say the less, that I brought in a Bill some years ago to remedy this defect. The main question in any prosecution for Libel being the innocence or guilt of the publication, is it not preposterous to keep the proof of its truth or falsehood from the view of the Court? Almost every thing else is admitted which can throw any light upon the motives of the party; but that is carefully shut out which is the best test by far of their nature, though certainly only an unilateral test, inasmuch as there must always be guilt, if there is falsehood, though truth does not of necessity prove innocence. Nay, the defendant cannot even be allowed to urge the truth in mitigation of punishment after conviction; as if there were the same criminality in publishing

that a man had been tried and sentenced to the gallies for forgery, who was sentenced, and that an innocent individual had been sent thither, who never had been tried or even suspected of the offence—a case which lately occurred within my own experience.

Another test, of a still more important kind, is excluded by a very injudicious refinement of our law, its repugnance to try Collateral Issues. A foul charge is brought against a man, of rape, or some yet more horrid offence, and the liberty of cross-examining the prosecutor or his witness, whom I may assume to be his fellow conspirator, is, in a most important particular, restrained. The defendant's counsel may address the witness thus—"Were you not examined on different occasions, at four or five several sessions, when you sought, by your testimony, to convict as many different individuals of an offence similar to that which you now accuse this prisoner of committing; and were not all those persons whom you so prosecuted acquitted? Did not the Court reprimand you for prevarication, nay, order a bill for perjury to be preferred against you?" True, the counsel is at liberty to put questions like these; but what, if the witness answers, as in all probability he will, be the fact how it may—"No?" The prisoner cannot give evidence in contradiction of the wretch's assertion, at least the practice goes the full length of this. But at any rate it is quite clear law that, if the witness is asked, "Have you not yourself been guilty, repeatedly, of this very crime which you now wish to fasten on the prisoner?" and he should reply, as doubtless he will, "No,"—the prisoner is not allowed to adduce evidence of the fact, because, forsooth, the Court cannot try

"collateral issues," unless the record of a conviction is produced. Nay, I have known judges, though on this they differ, who would not suffer the prosecutrix in a case of rape, to be asked if she had not led an unchaste life before, because a common whore may be ravished,—as if the probability of the event were the same in all cases, and were nothing to the question under consideration.

5. Furthermore, I ask, why should any class of persons be excluded from giving evidence in criminal cases on account of their Religious opinions, notwithstanding their testimony is admissible in cases of a civil nature? A Quaker is precluded by his religion from taking an oath; his affirmation is received in civil, but rejected in criminal cases. I was once employed, with two of my learned friends, to defend a man, prosecuted by the Attorney-General, for a misdemeanour. We had a very worthy and learned physician, by whose testimony we expected to rebut the charge; but it turned out, when he came to the witness-box, that he was a Quaker; of course he would not swear, and equally of course he could not affirm. Our client, also of course, was convicted. This is bad every way; it is bad, for that it suffers guilt to escape; it is bad, for that it suffers innocence to be destroyed. The Quakers, it is true, desire not to see a change, because, being averse to capital punishments, they do not wish their testimony to be used in capital cases; but they forget that their evidence may be the only means of saving an innocent person from the very punishment of death to which they object, and that, rather than help to hang the guilty, because they dislike the punishment, they are allowing the innocent to suffer by the self-same punishment. There is, in my opi-

nion, no reason for excluding any individual, be he of what religion, sect, or persuasion he may, from giving testimony in cases of every kind, provided he believes in the existence of a God, and a state of future rewards and punishments; and is not openly infamous by sentence of a court.*

6. I have already, in speaking of competence of evidence, said somewhat of Presumptions; but there is a class of presumptions which has found its way into the practice of all Courts, and ought, in my opinion, to be carefully excluded; I mean presumptions affecting the weight of evidence, tending to withdraw the attention of the Court from the facts of the particular case, and to produce a decision founded upon some kind of average taken from other cases, and because taken at a former period, of course excluding the case in hand. It has thus become almost a rule of law, that perjury can only be proved by two witnesses, or, perhaps, by one witness and the defendant's handwriting. Why may not other circumstances exist, quite as sufficient to cast the balance against the oath of the accused, and give credit to his accuser? This presumption goes in favour of the defendant; but there is another, by which he is often, I am convinced, improperly convicted; I mean the rule that an accomplice is entitled to credit in all particulars, provided he be confirmed in some. I once, many years ago, endeavoured to contend for a limitation of this rule, when the late Chief Baron Thompson presided in the Special Commission at York. I maintained that it was necessary to give the confirmation upon some fact

* This disability of Quakers and other sectaries has since been removed by statute.

which could not be true consistently with the defendant's guiltlessness. It is certain, however, that the law knows no such qualification, and the Judge whom I have named, than whom no greater criminal lawyer, or more humane and upright man ever existed, ruled, with his reverend brethren, against me; and seventeen men suffered death, some of whom were convicted on the testimony of accomplices. I do not exactly recollect, whether the confirmation was as slight as would barely satisfy the exigency of the rule; but I am very sure, that instances frequently occur in which the story of an accomplice leads to conviction, while all the witnesses of credit swear only to slight or wholly equivocal circumstances.

7. It is a somewhat similar anomaly in the rules of evidence, that the Court always takes upon itself to Construe Written instruments, of whatever kind, as if their sense must be matter of law, while the weight of all parole evidence is as invariably left to the Jury. Why should the assistance of the Jury be wholly rejected in this province? It is another and a kindred rule, that where, on the face of a writing, there is an apparent, or as the lawyers term it, a Patent Ambiguity, no other evidence can be allowed to explain it; where the Ambiguity is Latent, or raised by extrinsic evidence, there, other evidence may be adduced to remove it. This principle has been laid down by high legal authority; for it is first clearly stated by Lord Chancellor Bacon—but I am much disposed to question its correctness. Coupled with the other rule, which precludes the Jury from construing written evidence, it tends greatly to narrow and darken the path to correct decision.

This naturally leads us to examine a little how the Courts have exercised this, which they have thus claimed as their exclusive province; and we are thus conducted to a variety of other Presumptions respecting evidence, which have been received and acted upon, so as now to have become Rules of Interpretation, and parcel of the law of the land. With much unfeigned respect for the authority of the great names whose sanction this large branch of our jurisprudence has enjoyed, and with much admiration of the ingenuity and astuteness which it has called forth, I must be permitted to say, that, considering the paramount object of all law—its use as a rule of life for the people,—no part of our system is less entitled to praise.

It should seem that one obvious principle of construction would be to take words in their plain ordinary sense, and always to construe them alike, in whatever instrument they might be used. Only let lawyers consider what a mass of technical niceties and real difficulties this would get rid of; only let them reflect on the consequences that do result from following the very opposite course. Why should the same words be differently construed in a will and in a deed? Why do words, which in one species of instrument give an estate in fee, convey only a life-interest in the other? Why should the last words employed in a will overrule the earlier ones, and not in a deed, on the vain refinement that those express a man's latest intention—as if the whole taken together were not his latter will, as much as the whole, taken together, are his deed? But even in wills, where we affect most to follow the intent, so nice is the construction, so technical has it become through many decisions of the courts, and so imperfect consequently is the knowledge generally possessed by people

on the subject, that a man cannot well be more in the dark on the subject of the distribution of his property after his will has taken effect, by his being naturally dead, than he is at the very moment of making it. In fact, most men, while disposing, or fancying they dispose of their property, do not, in the least, know what they are doing. An unlearned individual thinks he is giving a life-estate when he is giving an estate in fee, or in tail, and *vice versa*. The testator, J. Williams, whose will gave rise to the case of *Perrin* v. *Blake*, where the rule in Shelley's case was extended, little dreamt that the first taker was to have the absolute control over the property, when he directed him to take an estate for his life and no longer. Observe, I am far from complaining of that any more than of Shelley's case. The refinement which unites the particular estate with the remainder, in the issue of the first taker, is little more than an application of the simplest rule in law, that an estate to a man and his heirs (or, which is the same thing, to a man for life, with remainder to his heirs) is a fee simple. But the law should prevent the niceties, occasioned by following out its principles, from misleading those who are ignorant of those principles. By freeing it from such technicalities you would, I think, rather elevate the study of jurisprudence and raise its professors; I am certain you would benefit all the rest of the King's subjects.*

It is hardly to be conceived how much, as matters at present stand, a man who makes his will is in the dark as to its final operation. Thus the creditor who appoints his debtor executor of his will, is con-

* Some remedy has been afforded for this evil by the Wills Act.

sidered as having granted a release of the debt: what ordinary person would think he had done so? The very same reasons that induced him to lend the money, and to count upon its faithful repayment, friendship, blood, confidence, naturally lead him to appoint the borrower his executor. I have known it happen in this way fifty times in the country; yet the debt is gone at law; and equity will only relieve by holding the executor a trustee, where there are other debts and no free fund to pay them, or some words showing an intention to revive the debt—words not very likely to be used by a person who never dreamt of its being extinguished. Then suppose a man has made two wills of the same date, and cancels one of them; it is held that, in certain circumstances, he cancels the other. If one of the wills is at his banker's, the law raises a strong presumption that by cancelling his own copy he intended to cancel that, when the probability is that he cancels because he is aware there is a duplicate, and does not wish to have the first lying about his house. When both copies are in his own possession, the law does not entertain so strong a suspicion of the intention to annul the will, by cancelling one; still, however, the presumption is raised. An individual may be thus held to have died intestate, who never entertained any intention of the kind; and his property may pass away from those near relatives or favoured friends to whom he destined it, and be given to his hundred and fiftieth cousin, or, for default of legitimate relatives, may be vested in the Crown. But it is not in this way only that a person may revoke his will without knowing it, and die intestate while he thinks he is disposing of his property. He may happen to do so by the very act he performed with

a view of confirming his testament and establishing his purpose. A recovery suffered, unless the will be republished, destroys it entirely, upon the nicety, quite consistent, I admit, with strict legal principle, that a new estate is taken back, different from that which was in the testator when he devised.* This happens frequently to frustrate the plain intent of parties. Lately in the Court of King's Bench, we had an instance of large property in this immediate neighbourhood, going any where rather than according to its owner's intention, because a recovery had been suffered; and a recovery, suffered for the express purpose of confirming the will, deprived Lord Erskine of a considerable estate in Derbyshire. So a conveyance, which divests an estate though but for an instant, to serve a use, with the intention of immediately taking back the former uses, which are accordingly taken back, totally revokes the will made before.† Nay, no less a judge than Lord Hardwicke has expressly laid it down, that where a man, supposing he had only an estate tail on which a devise could not operate, suffers a recovery for the express purpose of taking back a fee in order that his will may be good, it is thereby revoked.‡ The most notable part of these excessive refinements is, that they all proceed upon the act being evidence of a presumed intention, when no man can doubt that either there was no such intention, or one of the

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* These things are now altered by the Wills Act.

† Goodtitle *v.* Otway, 7 T. R. 399.

‡ Sparrow *v.* Hardcastle, ib. in *note*. Nor is it necessary to change the estate, in order to operate a revocation, *e. g.* a feoffment by tenant in fee to another to his use and that of his heirs, 3 Ves. 6, and an ineffectual recovery by tenant for life (reversion in fee, disposed of by will). 2 Ves. jun. 430.

very opposite description. Thus, if I devise lands to a person, and afterwards, for the same reason of favour towards him, by way of making him more secure, give him a lease in the same, to commence after my death, he being perhaps tenant for years under me at the time, the will is gone.* It thus happens that, in the very act of his life, in which it is most important that a man should see clearly what he is about, and most likely that he should have no professional assistance, he is often wholly in the dark as to the effect of what he is doing.

Were I in want of further illustration for this matter, I might go at once to the doctrine of Powers, and show how the thing intended to be permitted is often prevented, and *vice versa*, by the view which courts have taken of what is and what is not a good execution, and which renders it unsafe to give an opinion upon any Power, the very words of which have not received a judicial construction. I might go to the still greater niceties in the rules respecting the construction of contingent and executory Uses, a chapter of our law, signalized by the utmost learning and ingenuity of those who have treated it. I might, indeed, at once ask what foundation in reason, or even in analogy, there is for holding that a purpose should be accomplished, by way of executory devise, which cannot be effected by way of contingent remainder; as the mounting a fee upon a fee, or directing a contingent use to spring and enure without any particular estate to support it; if, indeed, I ought not rather to ask why there should be any necessity in either case for a freehold interest to support an after-taken contingent estate, and why

* Cro. Jac. 40. 5 Ves. jun. 650.

there should be any horror of mounting a fee upon a fee, an idea so familiar to the feodists in the sister kingdom, that their strict settlements (always made by deed, for they, having their niceties like ourselves, though of another sort, allow no devise of real property at all) consist of a succession of fees, under restraints specifically prescribed as to alienation and incumbrances. But I will satisfy myself with what has been said on this head, and suggest, as the obvious corollary, for remedy of the great bulk of the mischief I complain of, the laying down by the Legislature of certain Formulas, couched in plain language, and of an import recognised by written law. You give this help to Justices, to prevent convictions and orders being set aside for technical error. Why not give it to men often less learned than they, for disposing of their property necessarily without professional assistance? Why not say, that whoever would give a fee, should use these words;—an estate for life these;—that whoever would clothe the takers of that estate with certain powers, may do it thus—and so forth—not stating that such are the only words which shall effect the same purpose, but that, at any rate, those shall.*

By such a plan, and by retrenching some refinements which the fund is ample enough to spare, in rules of construction, I know that much curious learning will be brushed away; but I also know that the law will be rendered accessible to those whose rights it is to govern, and that the lay people will gain far more than the learned lose. Thus much for amending the rules of construction. But for the

* The Wills Act has removed some of the defects here stated. It is to be regretted that formulas were not added to it.

general establishment of sound rules of evidence, I should recommend, first of all, an introduction of one rule as to the manner of examining witnesses, instead of trying issues of fact in one court by written depositions, and in another by *viva voce* examination (whereby the same Will may be, and sometimes has been, supported in Doctors' Commons, upon personalty, which a Court of Nisi Prius afterwards set aside altogether),—in one court by affidavit, by sworn answers to unsworn bills, by yet more clumsy and ineffectual examination, on written interrogatories previously drawn; in another only by parole examination. I would have all matter of fact, wheresoever disputed, tried by a jury. For sifting the truth by such a trial, I would admit all records between the parties or their privies, and all instruments and writings of every kind of the parties against whom they are used; so much the law now permits; but I would let in whatever documents, written by persons deceased, appear plainly to have been made without any view to manufacturing evidence. In a word, excluding inferior evidence where better can be obtained, and, therefore, all hearsay absolutely, I would admit whatever could not be deemed to have been done with a view to the fabrication of proof, by the knowledge that such would be receivable. Allowing objections from interest in the event, as well as from interest in the question, to weigh only in estimating a witness's credit, I would make no man incompetent to give evidence in any cause, civil or criminal, who was not either an unbeliever in God and a future state, or convicted of some infamous offence. In examining the witnesses, I would suffer a person to be contradicted as to matters directly affecting his credit, and on

which he had been questioned;* and in the event of a witness turning out hostile to the party calling him, there can be no sound reason why, subject to the Judge's discretion, he should not be treated as adverse, and even contradicted, without which the latitude at present given by some Judges, only amounts to a power of putting leading questions. Of nonsuits for variance, and other technical defects, I have already spoken.

The law respecting Limitations comes as an appendix to the chapter of Evidence. No branch of our jurisprudence is more important, and hardly any more demands revision. Why should there be no statutory limitation of a bond or other specialty?† For want of it the Courts have adopted a sort of rule, founded upon presumption of payment, that where the instrument is twenty, or even eighteen years old, sometimes less (so accurate is the rule), and no interest has been paid, or other acknowledgment made of the subsistence of the debt, it may be assumed to be satisfied; that the instrument is cancelled they cannot presume, for there it is, seal and all, staring them in the face; but there being no receipt or discharge, and the bond being in the obligee's hand, is surely quite enough to rebut any presumption of payment—so that the courts have really made a law, though a bad and uncertain one, to meet the case. It would be far better to fix at once a period of ten years, after which no action should be maintainable upon specialties.

But even in cases where we have a statute of

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* This is really only a nominal relaxation of the rule in *Spencely* v. *de Willet*; the spirit of that rule is preserved, for the credit of the witness is not a collateral issue. 7 East, 108.

† This is now provided by the late Acts of 1833.

limitation, there is hardly any vestige left of the relief which it was intended to afford, owing to the labours of the Courts in finding means of evading its beneficial operation. It was plainly meant as an act of peace and quiet. My Noble Friend * who presides in the Court of Common Pleas of the sister kingdom, once said, with his usual felicity of expression, that Time is armed with his scythe to destroy the evidence on which titles rest, but the lawgiver makes him move with healing on his wings to stay the ravages of his weapon. To thwart the designs of the Legislature, the Courts have been setting up their rules of presumption. At one time they seemed really to hold that any thing, even the simplest expression, would take a debt out of the statute of limitations; for instance, if a defendant had said—"I have paid the debt," he was taken as admitting it, unless he could prove payment. Again, if he said—"I owe you nothing," the assertion was taken as an acknowledgment; and he was also required to prove an acquittance of the plaintiff's claim. The reply—"Six years have expired" was equally dangerous, though it was only saying out of Court what the statute itself allowed him to say in pleading. In fact, so deeply did Lord Erskine feel the difficulties which encompassed the defendant under these efforts of judicial acuteness, that he said the only safe course a defendant could take when his adversary sent a fishing witness, was to knock him down; for though he might be proceeded against for the assault, he retained the benefit of the statute, as regarded the debt. Although of late the current of decisions (as it is pleasantly termed) has set in more in an opposite direction,

* Lord Plunkett.

there is still abundant room for a provision to give this wholesome law effect. The means are obvious; let nothing but an acknowledgment in writing take any debt out of the statute. In a word, prop the main pillar of security against stale and unjust demands, the Statute of Limitations, by a beam from that other bulwark against perjury, the Statute of Frauds.*

The law of Limitation seems to require alteration, not additional enforcement, in the case of Real Actions. The period for a Writ of Right is thirty or sixty years, according as the demandant counts on his own or his ancestor's seisin. But in a Formedon, which is often termed, as in truth it is, the tenant in tail's writ of right, it is no more than twenty years. The difference surely is founded on no sound reason, and ought to be done away, by a law fixing thirty years as the period of limitation in all real actions, and removing the important difference in construction which Sir T. Plomer's late decision has raised from the different expressions used in the statute of Henry VIII. and James I., so as, in many cases of property under lease, to deprive the defendant of his remedy altogether.†

But in one case there is no limitation at all; I mean that of Church rights. Why should there not be? I admit that the same period ought not to be adopted respecting the Church as the *nullum tempus* act prescribes for the Crown; but I confess I do not see the necessity of leaving the law as it now

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* This salutary alteration was effected by Lord Tenterden's Act, passed in 1829.

† The whole law of Real Actions has been changed and simplified by the labours of the Real Property Commissioners, and the Acts of 1835; and the changes here proposed as to limitation of such actions have been introduced.

stands, and exempting ecclesiastical claims from all restriction whatever. What is the consequence? It was admirably pointed out by a most learned Judge,* in one of the ablest tracts ever written, no less distinguished by closeness of legal argument, than by that pure and concise diction peculiar to him. A composition real may have been made between a clergyman and his parishioners, at any time since the restraining statute of Elizabeth; for 200 years the land may have been possessed by the parson, and yet if the original agreement should have been lost, as it is almost sure to be amongst farmers, though no tithe has been taken during all that time, there would be no bar by limitation, in the event of the clergyman claiming the tithes; so that it could not be ascertained by whom the land had been given, and the land could not be restored for want of claimants; indeed there are cases in which the clergyman has thus retained the land originally given for the composition, and has his tithes paid to boot. I would say, then, with Mr Burke, take not away from the Church its power of being useful, but deprive her only of that which makes her odious. The reign of Richard I. is the period up to which all rights as against churchmen must be carried; nay even as against lay impropriators, to whose case none of the reasons for favouring ecclesiastical claims apply. Yet that period becomes daily more remote and more inapproachable by evidence. Does not every principle of justice require, that lay titles to tithes should be put on the footing of other property; and that for Church rights, properly so called, a period of limitation should be affixed, longer than for other rights, to

* Mr Baron Wood.

prevent collusion between incumbents and tithe payers, and combined, if necessary, with the number of two or three vacancies?*

vi. The course of my observations has now brought me to the Trial of the Issues, raised by the Pleadings, on the Process, and investigated by means of the Evidence. On this branch of the subject I have little to offer. The principles are plain which should guide us, and they are not so widely departed from in practice as to require any great change. Each party should be allowed fully to propound his case in the way most advantageous to himself. All new matter advanced by the one should receive an answer from the other; each should be encouraged and not hindered to bring forward whatever evidence may tend to throw light upon the matter in question. Our practice, at least in modern times, departs a good deal from these principles, but is very easily restored to them. We compel the plaintiff to explain his case, and comment upon it before his witnesses are examined: unless his adversary produces evidence, he has no means of observing, even upon his own case, after he has proved, or attempted to prove it. Hence his opening must be often very general, for fear of his evidence falling short; and hence he often labours under a prejudice from that cautious and imperfect opening, which a little explanation might remove. Counsel are every day obliged to state their cases in the dark; experience teaches us in some degree the difference between what is set down and what will be actually sworn; so that a young advocate will give a very different

* This important reform has also been made by Lord Tenterden's second Act of 1832.

statement on the same brief from a practised one,—no great compliment to our method of trying causes, in which as little as possible should depend on the forensic skill of practitioners; but even the most experienced are constantly deceived by their instructions; the cause may change its aspect, especially in the cross-examination of the witnesses; and they have no opportunity of correcting the error and preventing the result from turning on a matter wholly foreign to its merits,—the discretion of those who prepared the brief—unless the other party gives evidence. Now, for this very reason, and to gain by his adversary's failure (a failure not necessarily connected with merits,) he will avoid doing so; he will also avoid it generally, to prevent his own remarks from being answered. Hence much important evidence is every day shut out, by this play of counsel to avoid giving a reply, which the plaintiff should have, whether the defendant calls witnesses or no. Here, as in other things, the system is far from uniform: in Appeal cases, both before the House of Lords and the Privy Council, there is a reply, as of course; and in the Committees of this House, as well as in trials for High Treason, there is an opportunity given to each party of commenting on his case, after it has been presented in evidence, by a summing up. The practice is the same in the Ecclesiastical Courts, and the Delegates. I understand that a summing up, or speaking to evidence, as they call it, is allowed in Ireland; in Scotland both prosecutor and prisoner are heard on the evidence after it has been adduced, the want of an explanatory opening being in part supplied by the debate upon the relevancy of the indictment. I believe in civil cases they have adopted our modern

practice, instead of the older method to which the Irish adhere.

Before leaving this head I may be allowed to suggest an amendment of a minor kind, but of very considerable importance. It would be advantageous to have a Sworn Shorthand Writer in every Nisi Prius case. Those who attend our Courts of Nisi Prius are aware how sorely the Judge is hampered, and his attention diverted from more important considerations, by being obliged to take such full notes of the evidence. This practice is necessary, because the only record of the facts of the case is to be found in his notes. Now, the judge is often a slow writer, and, in this respect, men differ so much, that one judge will try three or four causes while another will dispose of only one, and one will impede a cross-examination so as to render it quite ineffectual, while another will never interrupt it at all. It happens likewise that a judge may be an incorrect taker of notes, which not unfrequently leads him to an incorrect decision, at least to an incorrect report of the case when a new trial is moved for. No judges ever write shorthand, and for no other reason, than that their notes may have to be read by another, if the record comes not out of their own court. My Honourable Friend, the member for Durham,* whose suggestions have ever been found most beneficial to judicial proceedings, introduced the great improvement of shorthand writers in our committees, and abridged the delay and expense of those inquiries incalculably. I would have them, if introduced into our courts, take full notes of the proceedings; at the same time I would not hold their notes as

* Mr Michael Angelo Taylor.

conclusive; they might be subject to the correction of the judge on any important matter misapprehended; for he, of course, would take his own note, but only of the principal and the more delicate things, likely to be misunderstood by one ignorant of law. He would soon find where he could trust the shorthand writer and where not; he would be relieved from much labour merely mechanical, and left free to regard all the bearings of the case, and to take a commanding view of it, so as to bring on a more speedy decision of its merits.

But, Sir, I cannot leave the subject of trial without saying somewhat of the general principles regulating Real Actions, sinning as they do against all sense and justice. In other cases the plaintiff begins the attack, and on him it rests to prove his case, to stand or fall by his proof; but, in a Writ of Right, the person in possession fifty-nine years and three-quarters must, according to the existing law, expose his title, pedigree, and all, to his opponent, who can lie by and pick holes to his own advantage, without being even asked on what ground he relies, until his adversary has proved his case;—a great benefit, whatever be his ground; for the Jury must give the property to somebody, and it is likely that the party in possession having failed, the claimant may get in. In Ejectment, though the plaintiff may have held possession for almost twenty years previous to the cause of action rising, yet, if he has been out of possession for one single day, it is incumbent on him to prove his title, and the defendant is not bound to budge if he fail. In this case, too, the plaintiff must pay costs if defeated, even though the person he attacks has been but a day in possession, and cannot have been in above twenty years.

In the real action, where the possession may have been near sixty years, the claimant pays not one shilling of costs, for making you prove your title, though he fail entirely in impeaching it.*

Nor let it be imagined that these evils never occur; I have seen them fully exemplified twice within the last eighteen months. We had a writ of right at York in the spring of 1826, to try the title to many thousands a-year. On the eve of the trial we, for the demandant, discovered a defect in the proof of taking the esplees, and were forced to withdraw the record. It came down for trial at the next assizes, when we were astonished to find the defect we had reckoned upon in the tenant's title removed, and on asking where the document produced had been discovered, we were told that it had come to light on searching the Bishop's chancery, at Salisbury, some weeks after the spring assizes, in which he would have been defeated had we gone to trial. Only see by what an accident the possession of this large estate was saved! Our client was defeated on the freehold, as not being the eldest son; he afterwards brought a plaint, in the nature of a real action, in the Court of Lambeth, as youngest son, for the copyhold, which was descendible by Borough English. He again failed; but, of course, he paid costs in neither suit.

vii. The Trial being had and the Judgment pronounced, there follows the Execution; and in this most important branch of the law, which may be emphatically called the law of Debtor and Creditor, I feel perfectly justified in declaring our system to be the very worst in Europe, departing the most

* All Real Actions, except *Quare Impedit*, are now abolished, by the Act of 1833.

widely from the principles which ought to regulate a creditor's recourse against his debtor. Those principles are abundantly plain. In proportion as, before the debt has been proved, the person and property of the party charged should be free from all process not necessary to prevent evasion; so, after judgment, ought the utmost latitude be given to obtain satisfaction from all the defendant's property whatever—land, goods, money, and debts—for to himself they no longer belong. To allow any distinction between one kind of property and another seems the height of injustice. No consistent reasoner can maintain the propriety of exempting land more than chattels; no honest debtor can claim the privilege which he waived when he contracted the debt. In the case of a person deceased, all kinds of debts and all creditors should come in equally upon an insolvent estate; and preference only be given to a mortgage or other lien. The chattel itself sued for should be returned, and damages only given where it has been lost. The person of the debtor should not be taken in execution, unless there is either a wilful concealment of property, or there has been criminal or grossly imprudent conduct in contracting the debt; for the two objects should be kept carefully distinct, of what is done to satisfy the creditor, and what is done to punish the debtor. Lastly, the former should obtain his satisfaction as speedily as may be, and as conveniently for the latter as is consistent with the creditor's security. How widely does our law depart from these obvious and natural principles, by dint of refinements, blunders, and openly-avowed injustice!*

* The new Bill proceeds wholly upon these principles, gives the creditor the full remedy, and only restrains or confines the debtor when

First of all, there are only two actions for recovery of chattels, in which we are expected to give the thing specifically sued for, Replevin and Detinue; yet in neither can the party compel a delivery in kind; and detinue is besides useless, because the defendant may wage his law. In all others the claim is avowedly for damages only. A horse is taken from me, and I sue for it; yet I only obtain damages for its detention: but suppose I want the horse, and not the money, the law will not aid me; nay, it will give me not a farthing in consideration of being thus compelled to part with it; I only receive what it would fetch in the market if I chose to sell it. Equity and common law differ widely here; the former always performs in specie; the latter looks to damages only, unless indeed where it is inconsistent with itself, as in the summary process to make parties perform awards, and attornies and other officers of the Courts deliver up deeds, and pay monies by means of attachment. But all these defects are comparatively trifling, and rather absurd in principle, than of extensive injury in practice. What is quite substantial, and of hourly occurrence, is the frustration of a creditor after he has obtained judgment, and taken out execution. His debtor has a landed estate; if it be copyhold, the creditor cannot touch it in any way whatever; if it be freehold, he may take half by elegit, and receive the rents and profits, but no more, in the lifetime of his debtor. The debt for which he has received judgment may be such that the rent of the land will not even keep down the interest; still he can take nothing more; he cannot turn the land

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he either refuses to do what is in his power, has been guilty of fraud, or is about to abscond.

into money;—so that, when a man sues for a thing detained unlawfully, you give him money which he does not ask; and when he asks for money by suing for a debt, you give him land which he does not want. But if his debtor dies before judgment can be obtained, unless the debt is on bond, he has no remedy at all against any kind of real property of any tenure; nay, though his money, borrowed on note or bill, has been laid out in buying land, the debtor's heir takes that land wholly discharged of the debt.

But not only is land thus sacred from all effectual process of creditors, unless the debtor be a trader; the great bulk of most men's personal property is equally beyond reach of the law. Stock in the public funds—debts due in any manner of way—nay, bank notes, and even money, are alike protected. I may owe a hundred thousand pounds in any way, and judgment may have passed against me over and over again; if I have privilege of Parliament, live in a furnished house or hotel, and use hired carriages and horses, I may have an income from stock or money lent, of twenty thousand a-year, and defy the utmost efforts of the law; or if I have not privilege, I may live abroad, or within the Rules, (as some actually do), and laugh at all the courts and all the creditors in the country. So absurd are our rules in this respect, that if I have borrowed a thousand pounds, and the creditor has obtained judgment, the Sheriff's-officer appointed to levy upon my personalty, may come into my room and take a table or a desk; but if he sees the identical thousand pounds lying there, he must leave it—he touches it at his peril:—"For this quaint reason," says Lord Mansfield, "because money cannot be sold, and you are

required by the writ to take your debt out of the produce of goods sold." It is true that great Judge, whose merits as a lawyer were never underrated, except by persons jealous of his superior fame, or ignorant of the law, (among whom was a writer much admired in his day, but of very questionable purity, and certainly no lawyer), leaned to a contrary construction of the creditor's powers, and might have somewhat irregularly introduced it. But Lord Ellenborough afterwards denounced such attempts as perilous innovations on the fundamental principles of our jurisprudence ; * and the law is now settled on this point. †

And here, Sir, let me step aside to ask who is the innovator—he who would adhere to such rules, in violation of the manifest intent and spirit of our old law, or he who would re-adjust them so as to give it effect? In ancient times there were none of those masses of property in existence, which are exempt from legal process. When the law, therefore, said—" Let a man's goods and chattels be answerable for his debts," it meant to include his whole personalty at the least. Things have now changed in the progress of society ; trade has grown up ; credit has followed in its train ; money, formerly used as counters, has become abundant ; paper currency and the funds have been created. Three-fourths of the debtor's personalty, perhaps nine-tenths, now consist of stock, money, and credit ; and the rule of law which leaves those out of all execution, no longer can mean as before—" Let *all* his personalty be liable"—but " Let a tenth-part of

* Knight *v.* Criddle, 9 East, 48.

† All these anomalies are removed.

it only be taken." Can there be a greater change made upon, or greater violence done to, the old law itself, than you thus do by affecting to preserve its letter? The great stream of time is perpetually flowing on; all things around us are in ceaseless motion; and we vainly imagine to preserve our relative position among them, by getting out of the current and standing stock still on the margin. The stately vessel we belong to glides down; our bark is attached to it; we might "pursue the triumph and partake the gale"; but, worse than the fool who stares expecting the current to flow down and run out, we exclaim—Stop the boat!—and would tear it away to strand it, for the sake of preserving its connexion with the vessel. All the changes that are hourly and gently going on in spite of us, and all those which we ought to make, that violent severances of settled relations may not be effected, far from exciting murmurs of discontent, ought to be gladly hailed as dispensations of a bountiful Providence, instead of filling us with a thoughtless and preposterous alarm.

But the imperfect recourse against the debtor's estate, although the grand opprobrium of our law, is by no means its only vice: the unequal distribution, in case of Insolvency, is scarcely a less notable defect. Only traders, or those who voluntarily take the benefit of the act, are compelled, when insolvent, to make an impartial division of their property. All others may easily, and with impunity, pay one creditor twenty shillings in the pound, and the others sixpence, or nothing. So when a man dies insolvent, his representatives may, by acknowledging judgments, secure one creditor his full payment at the expense of all the rest. Then, lax and impotent

as the law is against property, wide as are its loopholes for fraud and extravagance to escape by, utterly powerless as is its grasp to seize the great bulk of the debtor's possessions, against his useless person it is equally powerful and unrelenting. The argument used is, that the concealed property may thus be wrung from him : the principle, however, of the law, and on which all its provisions are built, is, that the seizure of the body works a satisfaction of the claim ; and this satisfaction is given alike in all cases—alike where there is innocent misfortune, culpable extravagance, and guilty embezzlement. Surely, for all these evils the remedy is easy ; it flows at once from the principles I set out with stating under this head. Let the whole of every man's property, real and personal—his real, of what kind soever, copyhold, leasehold, freehold ; his personal, of whatever nature, debts, money, stock, chattels—be taken for the payment of all his debts equally, and, in case of insolvency, let all be distributed rateably ; let all he possesses be sifted, bolted from him unsparingly, until all his creditors are satisfied by payment or composition; but let his person only be taken when he conceals his goods, or has merited punishment by extravagance or fraud. This line of distinction is already recognised by the practice of the Insolvent Courts ; but the privilege of the Rules is inconsistent with every principle, and ought at once to be abrogated as soon as arrest on mesne process is abolished.*

* This arrest, the end of which it is hoped fast approaches, was not generally given by the common law. *The capias ad respondendum* is given in Debt and Detinue by the Statute of West, v. 2 (13 *Ed.* I.) cap. 11 ; in Case only so late as 19 H. 7. c. 9. All this is remedied by the Bill.

viii. The last subject which presents itself to our notice, is the Appeal from judgments recovered. Here, as in every other branch of our jurisprudence, the Courts of Law and of Equity proceed on opposite principles, though dealing with the same matter. In the former, you can only appeal on matter of law appearing upon the face of the record, or added to it by bill of exceptions, and never in any case before final judgment. In the latter, you can appeal from any interlocutory order as well as from the final decree, and upon all matter of fact as well as of law. So it is in the Ecclesiastical Courts, where a Grievance (or complaint upon interlocutory matter) is as much the subject of appellative jurisdiction as the appeal from the final sentence; and the Court above sits on all the facts as well as on the law. But the Courts of Common Law are as much at variance with themselves; for it depends on the Court you sue in, and the process you sue by (Bill or Original) how many stages of review you have.

The principal evil of Courts of Error, is the stay of execution which they affect, thereby giving the losing party in possession an interest in prosecuting groundless appeals. The Bill of the Right Honourable Gentleman,* being a partial measure, while it intended to remedy this evil, has rather increased it; because another more costly mode of obtaining the same delay being left open, the parties by defending actions in themselves without defence, avail themselves of it, to the enormous multiplication of frivolous trials. The true remedy I take to be this. Let the party who obtains a judgment be so far presumed right as to get instant possession or execu-

* Sir Robert Peel.

tion, upon giving ample security for restitution should the sentence be reversed. This is the rule in the Cape and other of our Colonies; in the Cape, two sureties, each in double the amount, are required. It would also be an excellent modification of this principle, to vest in judges the discretion of ordering the execution to be levied by instalments, upon reasonable security being given. Hurried seizures, and sales for next to nothing, would thus be avoided; as would the destruction of many valuable concerns, to the ruin of the debtor, and the loss of the creditor also. The reasonable delay thus safely granted would further tend to prevent groundless appeals and frivolous defences, for mere dilatory purposes. The details of this measure would be easily arranged; I am sure that it well merits inquiry, if I shall obtain a Commission.*

I have now followed the proceedings in our Courts through their whole course; and it will be observed, that I have said little or nothing of Costs—an important subject; perhaps, taken in all its bearings, the most important of any; but which has so far been disposed of, in its principal relation, by the discussion of whatever tends to shorten litigation. A great, perhaps the greatest, evil of our system, as at present constituted, is the excess of the costs which a party succeeding is obliged to pay, over and above what he can recover from his antagonist. This is so certain and so considerable, that a man shall in vain expect me to recommend him either to bring forward a rightful claim, or to resist an unjust demand for any such sum as twenty, or even thirty

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* There has been material improvement since the late rules as to process in execution under the Act of 1833.

pounds—at least, upon a calculation of his interest, I should presently declare to him, he had much better say nothing in the one case, and pay the money a second time in the other, even if he had a stamped receipt in his pocket, provided his adversary were a rich and oppressive man, resolved to take all the advantages the law gives him. I have here before me some samples of taxed bills of costs, taken quite at random, and far from being peculiar cases in any one respect. There is one of £428, made out by a very respectable attorney, and from which the Master deducted £202; of this sum, £147 were taken off, which had been paid for bringing witnesses. In this other, amounting to £217, £76 were taxed off; and in a third of £63, there were nearly £15 disallowed; it was an undefended cause, to recover £50: had the defendant been obstinate and oppressively inclined, he would have made the extra costs a good deal more than the whole debt, although the suit was in the Exchequer, where the taxation is known to be more liberal. We had lately, in the King's Bench, a bill of above £100, to recover £19, and, probably, of that £100 not above £60 would be allowed. As things now stand, a part of this master evil is inevitable; for if practitioners were sure of receiving all their bills, they would run up a heavy charge wherever they knew the case to be a clear one. But as the fundamental principle for which I contend is, to alter no part of the law by itself, or without considering all the other parts, there can be no difficulty, consistently with this doctrine, to enlarge the allowance of costs as soon as other amendments have prevented the abuse of litigation by professional men.

Some erroneous rules of taxation may, even in a partial or insulated reform, be altered. Whatever

is fairly allowed as between attorney and client, should be allowed between party and party, except only such needless charges as have been ordered expressly by the client himself. There can surely be no reason for disallowing, as a general rule, all consultations, often absolutely necessary for the conduct of a cause, generally more beneficial than much that is allowed ; nor can it be right, that so little of the expense of bringing evidence should be given, and that the cost of preparing the case by inquiries, journeys, &c., should be refused altogether. The necessary consequence of not suffering an attorney to charge what he ought to receive for certain things, is that he is driven to do a number of needless things, which he knows are always allowed as a matter of course, and the expense is thus increased to the client far beyond the mere gain which the attorney derives from it. I have a great doubt whether benefit would not result from leaving the costs more in the discretion of the court which tries a cause than they now are : in equity, they are always so in the fullest extent ; at law, almost all is fixed by statute.

Sir, in casting an eye over the wide field which we have been surveying, I trust the House will perceive that, although I have for the most part arranged my observations under the different stages through which causes are carried in our superior courts, I have yet been enabled to discuss the greater and by much the more important parts of our municipal jurisprudence. Indeed, with the exception of Commercial law, I am not aware of having left any branch untouched that seemed to require amendment. I stated, in the outset, the reason why that formed no immediate part of my plan. A great portion of it is common to all trading countries, the

Law-merchant, and is extremely well adapted to its purpose, being of comparatively modern growth, and framed according to the exigencies of commerce. Some other parts, however, are exceedingly defective. It would be difficult to point out greater uncertainty, or more caprice, in any branch of the system, than are to be found in the law of Partnership.* A man can hardly tell whether he is a partner or not: being a partner, the extent of his liability is scarcely less difficult to ascertain; and he will often find it in vain to consult his lawyer on these important matters.† The distribution of estates under the Bankrupt law is likewise capable of very great improvement. After all that was lately done in arranging and simplifying this code, it remains full of contradictions, and the source of innumerable frauds and endless litigation. But into these things I abstain from entering. I must, however, once more press upon the attention of the House, the necessity of taking a general view of the whole system in whatever inquiries may be instituted. Partial legislation on such a subject is pregnant with mischief. Timid men, but still more blind than they are timid, recommend taking a single branch at a time, and imagine that they are consulting the

* Enquiries have lately been carried on by the Law Commissioners as to the Law of Partnership, and an able report drawn up by Mr B. Ker.

† The execution of judgments on partnership property is a remarkable example. The Sheriff must sell an undivided share, say a moiety of the whole; and the purchaser becomes tenant in common with the solvent partner, who may find the East India Company or Government his co-tenant, and be still liable to account to the other partner for his share of the profits; because the very effect of the execution which has let in so disagreeable a co-tenant of the stock, will naturally be, to save the necessity of going to prison (the only involuntary act of bankruptcy), and thus prevent a dissolution of the partnership.

safety of the mass. It is the very reverse of safe. In the body of the law, all the members are closely connected; you cannot touch one without affecting the rest; and if your eye is confined to the one you deal with, you cannot tell what others may be injured, and how. Even a manifest imperfection may not be removed without great risk, when it is not in some wholly insulated part; for it oftentimes happens that, by long use, a defect has given rise to some new arrangement extending far beyond itself, and not to be disturbed with impunity. The topical reformer, who confines his care to one flaw, may thus do as much injury as a surgeon who should set himself about violently reducing a luxation of long standing, where nature had partially remedied the evil by forming a false joint, or should cut away some visceral excrescence in which a new system of circulation and other action was going on. Depend upon it, the general reformation of such a mechanism as our law, is not only the most effectual, but the only safe course. This, in truth, alone deserves the name of either a rational or a temperate reform.*

Then, what ground can there be for taking alarm at the course I recommend of amendment, and proceeding by careful, but general inquiry? It is, indeed, nothing new, even of late years, in this country. We appointed a Commission to investigate the whole administration of justice in Scotland; and it ended in altering the constitution of the Courts, and introducing a new mode of trying causes. Yet Scotland, to say nothing of the treaty of Union, so often set up as a bulwark against all change,

* The labours of the Law Commissions upon Codification have been most important; their reports are of great value on this subject.

might urge some very powerful reasons for upholding her ancient system, which we in England should vainly seek to parallel. She might hold up her statute book in three small pocket volumes, the whole fruit of as many centuries of legislation, while your table bends beneath the laws of a single reign—and of your whole jurisprudence, it may be said, as of the Roman before Justinian, that it would overload many camels. But I do not merely cite, against alarms and scruples, that bold and wise and safe measure of Lord Grenville; older authorities, and in the Courts of Westminster, are with me. I will rely on Lord Hale, whose celebrated Treatise *Of the Amendment of the Law* (far less studied, I fear, by our jurisconsults, than that of Fortescue *) well exposes the folly of such fears, with their origin. "By long use and custom (says he), men, especially that are aged, and have been long educated to the profession and practice of the law, contract a kind of superstitious veneration of it beyond what is just and reasonable. They tenaciously and rigorously maintain these very forms and proceedings and practices, which, though possibly at first they were seasonable and useful, yet by the very change of matters they become not only useless and impertinent, but burthensome and inconvenient, and prejudicial to the common justice and the common good of mankind; not considering the forms and prescripts of laws were not introduced for their own sakes, but for the use of public justice; and therefore, when they became insipid, useless, impertinent, and possibly derogatory to the end, they may and must be removed." Such is the language of Sir M. Hale.

* De Laudibus Legum Angliæ.

After Lord Coke and Littleton himself, there is no higher authority in the law than Shepherd, the author of the *Touchstone*, who, in another of his works, called "England's Balm, or Proposals by way of Grievance and Remedy, &c., towards the Regulation of the Law and better Administration of Justice," reminds his legal brethren, that "taking away the abuse of the law will establish the use of the law—*stabilit usum qui tollit abusum*—and that rooting up the tares will not destroy the wheat."* If the House require further authorities upon this point, I can refer them to one of the most instructive books published of late years upon this matter, that of Mr. Parkes, a respectable solicitor in Warwickshire, who, in giving a history of the Court of Chancery, has collected most of the authorities upon the subject of Legal Reform.

But our predecessors, members of this House in the 17th century, an age fruitful of great improvements, most of which were retained in more quiet times, undertook the amendment of the Law systematically, and with a spirit and a wisdom every way worthy of so great a work. In 1654, a Commission was formed partly of the House, partly of learned strangers. At the head of the former, I find my honourable friend the Solicitor General's less learned and more martial predecessor, called in the Journals "Lord General Cromwell."† But in front of the latter stands "Mr. Mathew Hale," afterwards the great Chief Justice, whose name is ever cited amongst the most venerable

* There is certainly a notion of Mr. Justice Doddridge being the author of this excellent book, or at least standing in the same relation to it that C. B. Gilbert does to Bacon's Ab.; for the dates of some works cited in it make it impossible he should have written it all.

† O. Cromwell was member for Cambridge town; Mr. Tindal for the university.

supporters of our civil and our religious establishment. With them were joined all the great jurisconsults and statesmen of that illustrious age. They sat for five years, and proposed a number of the most important and general reforms. I will read the titles of a few Acts, the draughts of which the Commissioners prepared.

1. For taking away fines upon bills, declarations, and original writs.

2. For taking away common recoveries, and the unnecessary charges of fines, and to pass and charge lands entailed as lands in fee-simple.

3. For ascertaining of arbitrary fines upon descent and alienation of copyholds of inheritance.

4. For the more speedy recovery of Rents.

5. For the better regulating of Pleaders and their Fees.

6. For the more speedy and easy recovery of Debts and Damages not exceeding the sum of Four Pounds.

7. For the further declaration and prevention of Fraudulent Contracts and Conveyances.

8. Against the Sale of Offices.

9. For the recovery of Debts owing by Corporations.

10. To make Debts assignable.

11. To prevent solicitation of Judges, Bribery, Extortion, Charge of Motions, and for restriction of Pleaders.

12. An Act for all County Registers, Will, and Administrators; and for preventing Inconvenience, Delay, Charge, and Irregularity, in Chancery and Common Law, (as well in common pleas as criminal causes.)

13. Acts for settling County Judicatures, Guardians of Orphans, Courts of Appeal, County Treasurers, and Workhouses, with Tables of Fees and Short Forms of Declaration.

14. An Act to allow Witnesses to be Sworn for Prisoners.

The House is aware that, till much later in our history, by the great wisdom, justice, and humanity of our ancestors, it was provided that the witnesses for a defendant should not deliver their testimony upon oath; until the time of Queen Anne, the prosecutor only was allowed to prove his case by sworn evidence; and the communication of the same right to the defendant, may be looked upon by some as a rude invasion of the ancient system, and a cruel departure from the perfections of the olden time.

This is not the only measure prepared by that celebrated Commission which has been since adopted, as the House will see by the enumeration I have given.* But steps were taken immediately after the restoration, for prosecuting its plans more systematically. A Committee was appointed by this House to examine the state of the Law and its practice; Sergeant Maynard and other eminent lawyers were members of it. From their numbers, fifty-one, I presume they subdivided themselves for the convenience of inquiring separately into different branches of the subject. Upon their reports several Bills were brought in for the general Reform of the Law; but in tracing their progress through the House, the prorogation appears to have come before any of them was passed. After a long interval of various fortune, and filled with vast events, but marked from age to age by a steady course of improvement, we are again called to

* Sir S. Romilly's valuable MSS., as has been already stated, contain the exposition and discussion of many reforms in the law, written forty or fifty years ago. More than one-half of the measures there propounded, have, of late years, and most of them since his lamented decease, been adopted by the legislature; a strong presumption in favour of his plans generally.

the grand labour of surveying and amending our Laws. For this task it well becomes us to begird ourselves, as the honest representatives of the people. Dispatch and vigour are imperiously demanded; but that deliberation, too, must not be lost sight of which so mighty an enterprise requires. When we shall have done the work, we may fairly challenge the utmost approval of our constituents, for in none other have they so deep a stake.

In pursuing the course which I now invite you to enter upon, I avow that I look for the co-operation of the King's Government; and on what are my hopes founded? Men gather not grapes from thorns, nor figs from thistles. But that the vine should no longer yield its wonted fruit—that the fig-tree should refuse its natural increase—required a miracle to strike it with barrenness. There are those in the present Ministry, whose known liberal opinions have lately been proclaimed anew to the world, and pledges have been avouched for their influence upon the policy of the State. With them, others may not, upon all subjects, agree; upon this, I would fain hope there will be found little difference. But, be that as it may, whether I have the support of the Ministers or no—to the House I look with confident expectation, that it will control them, and assist me; if I go too far, checking my progress; if too fast, abating my speed; but heartily and honestly helping me in the best and greatest work which the hands of the lawgiver can undertake. The course is clear before us; the race is glorious to run. You have the power of sending your name down through all times, illustrated by deeds of higher fame, and more useful import, than ever were done within these walls. You saw the greatest warrior of the age—conqueror of Italy—humbler of Germany—terror of the North—saw him account all his

matchless victories poor, compared with the triumph you are now in a condition to win—saw him contemn the fickleness of Fortune, while, in despite of her, he could pronounce his memorable boast, "I shall go down to posterity with the Code in my hand!" You have vanquished him in the field; strive now to rival him in the sacred arts of peace! Outstrip him as a lawgiver, whom in arms you overcame! The lustre of the Regency will be eclipsed by the more solid and enduring splendour of the Reign. The praise which false courtiers feigned for our Edwards and Harrys, the Justinians of their day, will be the just tribute of the wise and the good to that Monarch under whose sway so mighty an undertaking shall be accomplished. Of a truth, the holders of sceptres are most chiefly to be envied for that they bestow the power of thus conquering, and ruling thus. It was the boast of Augustus—it formed part of the glare in which the perfidies of his earlier years were lost—that he found Rome of brick, and left it of marble; a praise not unworthy a great prince, and to which the present reign also has its claims. But how much nobler will be the Sovereign's boast, when he shall have it to say, that he found law dear, and left it cheap; found it a sealed book—left it a living letter; found it the patrimony of the rich—left it the inheritance of the poor; found it the two-edged sword of craft and oppression—left it the staff of honesty and the shield of innocence! To me much reflecting on these things, it has always seemed a worthier honour to be the instrument of making you bestir yourselves in this high matter, than to enjoy all that office can bestow—office, of which the patronage would be an irksome incumbrance, the emoluments superfluous to one content with the rest of his industrious fellow-citizens, that his own hands minister to his wants: And as for the power supposed

to follow it—I have lived near half a century, and I have learned that power and place may be severed. But one power I do prize; that of being the advocate of my countrymen here, and their fellow-labourer elsewhere, in those things which concern the best interests of mankind. That power, I know full well, no government can give—no change take away!

I move you, Sir, "That an humble Address be presented to his Majesty, praying that he will be graciously pleased to issue a Commission for inquiring into the defects, occasioned by time and otherwise, in the Laws of this realm, and into the measures necessary for removing the same."

[Upon the adjourned debate on Mr. Brougham's motion, on Friday, February 29, the following Resolution, substituted by him with the assent of the Government, was unanimously carried:—

"That an humble Address be presented to his Majesty, respectfully requesting that his Majesty may be pleased to take such measures as may seem most expedient for the purpose of causing due inquiry to be made into the origin, progress, and termination of actions in the superior Courts of Common Law in this country, and matters connected therewith; and into the state of the Law regarding the Transfer of Real Property."]

SPEECH

UPON

LOCAL COURTS.

DELIVERED IN THE HOUSE OF COMMONS,

APRIL 29, 1830.

SPEECH.

I RISE, Sir, to call the attention of the House to a subject which I had the honour, some two years and a half ago, to bring under its consideration; and, in the first place, I will state the reason which has prevented me from again bringing it forward at an earlier period. The motion which I formerly made led to the appointment of two Commissions, and both of them have reported on the subject matters submitted to them for inquiry. One report has been made on the Law of Real Property; and I am in great hopes that a second report will soon be made. The other Commission has drawn up two reports, with respect to proceedings at Common Law. Now if I had renewed the subject after the first report had been made, I must have introduced it at a very great disadvantage, because the Commissioners had disclosed their intention to follow up that report, with suggestions upon many of those questions to which I had turned my attention. I have, therefore, waited till the second report was before the House, that I might perfectly know what the Commissioners propose. Let it not, Sir, for one moment be supposed, that in again calling the attention of the House to this most important subject, I have any ground of complaint as to the manner

in which the Commissioners have conducted these inquiries; for, in every part of them, those learned persons seem to me to have proceeded with great zeal as well as discretion.

The Commissioners appear to have proceeded with the greatest possible caution,—with the utmost degree of deliberation. That evils exist in the system of our administration of the law is not attributable to them; and, although much remains to be performed, the portion of the subject which they have investigated is, unquestionably, of paramount importance. They have acted faithfully and meritoriously; and I do not complain of their powers either as being too limited or inadequately exercised. Their inquiries have been conducted in a proper spirit; they have held their course in a becoming and exact mean, between inconsiderate rashness and undue subserviency,—keeping a middle line, and neither setting at nought the long pondered decisions of authority, nor evincing that overstrained respect for existing institutions which too often degenerates into a veneration of existing abuses. The great learning and experience of the Commissioners, and the knowledge which, as practical men well acquainted with the law, they have brought to the consideration of the subject, are of the utmost importance, and every body admits the ability with which they have applied their resources to the subject matter of their investigations. The vast body of evidence of other practical men which they have collected,—their own suggestions and recommendations, which, more especially in the second report, contain matter worthy of the greatest attention,—a report that is full of profound thought, and, if I may be allowed so to speak, of most ingenious invention on the science and the practice of the law—all these merits entitled the Commissioners to receive, and no

doubt they have received, the unqualified approbation, not only of professional men, but of all persons interested in, and who are capable of understanding, the subject. I will venture to say, that within the last century and a half there has not been produced in this country any thing like the quantity of important matter which the Commissioners, partly in the fruit of their own suggestions, and partly in the evidence and facts adduced by others, have laid before the House on this subject.

Having said thus much, it cannot be supposed that I have brought forward the subject which I am about to open in a spirit of hostility or censure towards the Commissioners, with whom, on the contrary, I am prepared to go hand in hand to further the Reform of the Law: my object being simply to take up a part of the question which they have left untouched. If I saw any prospect of the Commissioners directing their labours to this part of the subject within any reasonable time, I should be disposed to leave it entirely untouched; or if I thought the matter intimately and inseparably connected with the residue of the subject —the matter of their present and unfinished inquiries —I should then think, that for the general convenience, and in order to avoid the necessity of a double discussion, it would be better to postpone my motion. But I find, after the best consideration, that neither is there a prospect, within a reasonable time, of the Commissioners being able to turn their attention to that part of the question which I have in view, nor is it so mixed up with what is already before them, that I ought to decline directing the attention of the House to the subject.

If, Sir, it were asserted by some traveller, that he had visited a country in which a man, to recover a debt of £6 or £7, must begin by expending £60 or £70,—

where, at the outset, to use a common expression, he had to run the risk of throwing so much good money after bad, and to pay almost as much even if he succeeded,—it would at once be said, that whatever other advantages that country enjoyed, at least it was not fortunate in its system of law. But if it were further related, that in addition to spending £60 or £70, a man must endure great difficulties, anxiety, and vexation, infinite bandying to and fro, and moving about from province to province, and from court to court, before he could obtain judgment,—then our envy of the country where such administration of the law and legal institutions existed, would be still further diminished. If to this information, it were added, that in the same country, after having spent £60 or £70, the adversary of the creditor had the power of keeping all his property out of his way, so that after all the suitor's expense, all his delay, and all his anxiety, it must still be doubtful whether he could obtain a single farthing of his debt; if, furthermore, it were stated, that in the same country, although the debtor were solvent and willing to pay what the law required at his hands, the creditor would receive, it is true, his original claim of £6 or £7, but not the whole £60 or £70 which he had expended in costs to recover it, by about £20,—so that on the balance he would be some £13 or £14 out of pocket by success, over and above the amount of the debt which he recovered, after being exposed to a variety of needless plagues, beside the unavoidable annoyance of these proceedings;—if we were told of such a case, would not the natural inquiry be, "Whether it was possible that such a country existed?" Sir, the individual to whom this strange information was given, if he supposed it possible that such a country existed, would at least pronounce it to be one of the most barbarous and un-

enlightened in the world. That it must be a poor country, he would think quite obvious—and equally obvious that it must be of no commercial power—of no extent of capital—of no density of population, because those circumstances most necessarily produce from hour to hour transactions involving important and valuable interests. Nevertheless, I need not remind the House,—for every man who hears me must be aware (many are aware to their cost) of the fact—that such a country, so unfortunately circumstanced is no other than that in which I now speak—England. Then arises the question, how is this admitted evil to be remedied? and in order to know how the remedy may be applied, the first point is to ascertain whence proceeds the evil? To give examples of the evil, and its origin, may be the best mode of proceeding.

I am thus entering at once into the middle of my subject, and I am persuaded that such is the most convenient and expedient course, because it enables me at once to see and grapple with the real difficulties of the inquiry, to which, far be it from me for one moment to shut my eyes. That part of the mischief which can be got rid of, I call upon you to remove. I formerly took the opportunity of stating a kind of experiment I made at one of the Lancaster assizes, when my honourable and learned friend,* was present. I requested the prothonotary to furnish me with a list of all the verdicts recorded: they were fifty in number, during that assize, and the average amount of those verdicts I found to be for sums under fourteen pounds—thirteen pounds odd shillings each. I do not mean to represent that there were not three or four actions in which the damages were nominal; some of them actions of ejectment, and other suits to decide rights; but the bulk of the verdicts were on actions of

* Sir James Scarlett.

debt, or in the nature of debt, and the average was less than the sum for which, by law, a creditor may hold his debtor to bail. I am far from saying that such is the general result of actions, either at the assizes or in London; but still it is not much out of the general course. Taking the average of the five years ending in 1827, the number of actions brought in all the Courts of Westminster was something under 80,000. I believe that the precise amount was 79,000. The number of these actions that were brought to trial amounted to little more than 7000, being one case brought to trial only out of eleven actions commenced. No doubt many of those actions were not proceeded, with on account of the heavy costs, delay, and vexation that must be incurred in doing so. But, passing by that topic for the present, (having stated the fact with a different view,) if we would form some estimate of the kind of sums for the recovery of which the generality of actions are brought, we are enabled by some documents that have been laid upon the table, to approximate to a conclusion on the subject. This I shall endeavour to do without going too minutely into details.

In 1827 there was a return of the number of affidavits of debt in the King's Bench and Common Pleas for two years and a-half. During that period the number of affidavits for sums above £10 was 93,000 odd hundreds, but in round numbers we will call it 93,000. Of them, of course, a great number were the foundations of the 79,000 actions before spoken of; for an affidavit of debt, as everybody knows, is the earliest proceeding in the commencement of an action. Let us see, then, in what proportion the affidavits were for small sums, moderate sums, and large sums:— 29,800 were for sums between £10 and £20, and no more; 34,200 were for sums between £20 and £50, making together 64,000 out of 93,000 for sums not

exceeding £50. For sums not exceeding £100, and of course including the 64,000, the number of actions was no less than 78,000 odd hundreds. Thus the House will observe, that of the whole number of 93,000 affidavits, there were no less than one-third for sums not exceeding £20; no less than two-thirds for sums not exceeding £50; and again, that that there were no less than five-sixths for sums not exceeding £100. The House will pardon me for not going more into details—what I have stated is the result of recollection, but I think I may pledge myself for its accuracy, and it will be perceived at once that it leads to a most important practical conclusion—that the vast bulk of the litigation of the country resolves itself, as far as actions of debt and in the nature of debt go, into actions where the sum in dispute is not more than £100.

I now beg to draw the notice of the house with greater particularity to the costs of these proceedings, and what a creditor is exposed to who undertakes to prosecute an action. I have hitherto dealt only in general descriptions of his expenses and sufferings. In their first report, towards the close of their Appendix, the Commissioners have inserted some valuable tables of costs, and to three or four of them, applicable to actions in the Court of King's Bench, I beg leave to request especial attention. First, I should state, that these are real bills of costs; and next, that they are reduced to the very lowest scale, the words of the Commissioners being, "they are framed on the lowest possible scale of expenditure." One of these bills is in an action that was tried in London by parties residing in the county of Lancaster. The particulars of the bill itself show, that not only was it framed on the lowest possible scale, but also that neither the length of the proceedings, nor any other incident, had tended

to increase the expense. There was nothing out of the ordinary course; in fact, the circumstances were the most favourable that could exist, under the present system, for cheap and expeditious justice. The costs, up to the verdict, amounted to £86, and, including some further proceedings (it being a special case) necessary to be had before the verdict could be rendered available, the expense was £110. Out of that is to be deducted for delay, only £10 odd shillings. There was the delay of a term in taking the argument in the second stage of the proceeding, and the delay of one sittings in bringing the cause to trial. On these accounts, from the sum of £86 costs, there is to be deducted £6; and £10 from the entire amount of £110. I will suppose the fact to be, however, that there was no delay in the administration of the law,—that all the recommendations of the Commissioners for preventing it had been carried into effect—that we had derived all the good from them which might be anticipated; I will assume that, under the new system of law, the expected saving of time and expense has been brought about; and what is the consequence as respects this case? Why, that we shall have to deduct £6 from the expense of the first stage, and £4 from the expense of the second, leaving £80 as the expense of the verdict, and £100 as the indispensable costs of the entire case. I admit that a considerable portion of the expense here was owing to the attendance of witnesses. I do not merely mean to say I admit, but I assert and maintain this; it is one of the principal grounds of the proposition which I intend to submit to the House. It is true, this cause was brought from the county of Lancaster to London to be tried; but if tried in Lancaster, there would have been the very same expense, according to all ordinary calculation of chances. The witnesses in this case

were, an architect, master carpenter, and labourers; and, in taxing costs, two guineas a-day are allowed for an architect, or surgeon, physician, or any person of skill and science. Fifteen shillings a-day are allowed for a master carpenter, and five shillings a-day for a labourer; to which are to be added an allowance for mileage, and the maintenance of the witnesses on the road, which, I perceive, is at the rate of eight pence per mile. Then, as to delay, let me remark, that the delay in trying a cause at the assizes is often much greater than in trying a cause in London; and there can be no manner of doubt that this very circumstance was one of the causes operating upon the plaintiff in inducing him to prefer London to the country, in this case. Either he got the cause tried early in London, or by making the case a special jury case, he had to keep his attorney and witnesses only one day, or at most, two days in town; while, at York or Lancaster, they might be detained for four, five, six—aye, and I have known it to fall out, for ten, twelve, or fourteen days, before the trial was brought on. Attorneys are allowed two guineas a-day, if they have only one cause at the assizes, and one guinea a-day for each case, if they have several: and a plaintiff is not answerable, if it should happen that his attorney has only one cause; all his witnesses are to be paid, not only going and returning, but while they are in the assize town, —at least at the rate already mentioned; and as long as the present system continues, I look upon this as essential to and inseparable from it—it may be as necessary a part of the expenditure as the retaining of counsel or the employment of an attorney; indeed, I am not sure if it be not even more necessary. Now, how much must be added to this, on account of the difference between the costs incurred and the costs taxed? This is to say, after obtaining the costs

recovered from an adversary as the consequence of the verdict, how much is a plaintiff out of pocket?

It may be remembered that I formerly produced to the House four bills of costs, all from the offices of most respectable attorneys; in one of £400, about £200 (or half) was deducted on taxation; so that the client who had obtained judgment was £200 out of pocket, unless the debt which he recovered was greater than that sum. Another was a bill from which one-third had been taxed off: £70 was deducted out of £210. In a third case, which was the lowest of the whole, because it was an undefended cause, £15 out of £60, or one-fourth, was taxed off. The successful suitor received £15 less than he had expended. This was a £50 cause; and if the plaintiff's adversary had had a long purse, and a litigious temper, he could, if he chose, have put his creditor to an expense of £80 before the latter got a verdict, or to £100 costs before final judgment. In point of fact, I might take it higher: the plaintiff might have had to pay £120 before he obtained a verdict, and £150 before judgment. He would be allowed out of this £150 only £100:— £50 being struck off for extra costs; of course he would also be allowed his debt of £50, making precisely the amount expended £150; and so the man is a gainer in money of not one farthing (saying nothing about his debt,) and has been exposed to all the delay, harassing vexation, embarrassment, and anxiety, of a year and a half or two years' legal proceedings, together with the risk of losing his suit, and having to pay £100 instead of receiving any thing. I say, Sir, in addition to that, he would have been exposed to all the vexation of delay, and to the distress of uncertainty; and if he be a man who, for the first time, has brought an action into a court of justice, it is most likely to be his last experiment of the kind. I am here taking an

instance most favourable to the other side of the question, and it is needless to say that it is anything rather than an average case; in general, those who succeed have to pay more than they receive, and are often considerably out of pocket. What is the practical result? Simply this—that any man acquainted with the proceedings of courts of justice, and exercising a sound discretion upon the mere pecuniary question, would never think of suing for a debt of less than £20 or £30. I should rather say, hardly for a sum under £40 or £50. Upon the same principle, a man would hardly think of resisting an unjust claim for such an amount, even if he had a receipt on a stamp in his pocket. He would pay the demand rather than enter a court of justice, and endure the annoyance and expense of a trial, with a certainty of being out of pocket if he gained the cause, and a chance of being still more out of pocket if he failed.

I had very lately occasion to speak with an attorney of extensive practice, residing only twenty-two miles from an assize-town, upon this point, and he said, that if he himself were a party in a cause, he should never think of going into court there for a less sum than £40 or £50. This was the solicitor's private opinion about the matter; but whether he recommended a similar course to his clients, I do not undertake to say. To be sure a man would, in many cases, be justified in bringing actions for small sums, or resisting flagrant and extortionate demands, on other grounds than those of mere pecuniary interest; but with reference to his pecuniary interest alone, and if he merely consulted that, there would be every inducement not to sue. I am well aware that it is not only always easier to point out defects than to apply remedies; but also, that he who propounds a cure for mischief of the widest extent, the most intolerable,

and recognised as such by the unanimous admission of all persons of all ranks, who have observed others suffering from its effects, or experienced it themselves, somewhat exposes himself, and gives an opponent a decided advantage; he is always more or less in the predicament of an inventor; he always seems to be a person who sets his wits above other men, and affects to be wiser than those who have gone before him; and I therefore unfeignedly avow, that I feel much distrust of myself, in bringing forward that which appears to me a remedy. In doing so, it is necessary to examine into the causes of the evil. Here I may say, I am perfectly sensible that something will be done when the recommendations of the Commissioners are carried into effect; I know, and I rejoice to know, that some of the great evils will be removed, as the result of their inquiries; but I am equally certain that still much will remain to be done, and I trust the kind of remedy I propose will be one which, while it carries further the design of the Commissioners themselves, will be found most accurately and nicely to chime in and harmonize with, instead of being repugnant to, their principles.

I have stated the principal causes of the evils we all see and suffer; and I shall by-and-by proceed to the remedy. The great evil arises out of the distance to which parties are necessarily dragged, in order to obtain a decision upon their rights. For many, many ages it has been the system of English jurisprudence, that justice should originate and be to a great extent administered in the centre of the kingdom, or what is politically, though not geographically, its centre. The metropolis has been made as it were the great mart of justice, from whence all processes issue, and to which all processes are returned. It has been fixed, that all litigants should more or less

resort to London, to derive from it the remedies which they seek at the hands of the law. This is not of itself the cause of the expense of legal proceedings, because the mere difference between sending to London from Lancashire or Yorkshire for a writ, and sending for it to Lancaster or York, is not alone worth being considered. But out of that arises another part of the system to which this observation does not apply. The Judges come from the metropolis, as well as the writs and legal processes which give rise to their jurisdiction, and the country litigant must wait till the Judge visits his county, which is once in each half year. You must wait, but that is not all. In order to have your cause tried, you must go perhaps to the remote corner of the county to the assize town; there you must consult your law advisers; thither you must send your agent and witnesses; they must be kept there perhaps during the whole assizes; and it is often a race between the respective agents as to who shall enter his cause latest, in order that he may have the longest bill. Respectable witnesses must be paid for loss of time and skill—witnesses of inferior condition must be better paid, and at a higher rate than their time is worth; common day-labourers receiving 5s. a-day. Then there is the expense of entertaining the witnesses, and in this respect there is frequently a good deal of competition between the agents of opposite parties, it being pretty well understood, that the party who pays witnesses shabbily is sure to pay for it, in the course of the assizes, by the conduct of some of them. All this is essential to, and inseparable from, the scheme of requiring parties to go twice a-year to the assize-town, and there have the causes tried. Then comes another stage of the proceeding equally attended with heavy costs; if any point be reserved on an appeal made from the decision, it must be dis-

cussed in London, and to London the agents must be sent with great delay, and a great and unnecessary expense. What is the obvious remedy? To that I shall come presently; but, in doing so, as I have before stated, I wish to steer clear, as far as possible, of the difficulties and objections to which the prescribing of remedies is liable.

In the propositions of the Law Commissioners some slight remedies may be found for the evil of which I complain. For instance, the proposed alterations in the mode of issuing processes will effect a diminution of expense: they will save a few shillings out of the £80. Another, which tended to lessen the arrears of the Court, would, of course, save time, and thus curtail the expense arising from delay; it would cut off £10 from the larger, and £6 from the smaller bill. Upon these follow many other excellent propositions for the despatch of business, for effecting improvements in the administration of justice, for removing uncertainty, and for the regulation of costs. I allude, in particular, to that proposition which regards the proof of written documents. There is not, however, a single document in the case to which I have alluded; and this proposition, therefore, does not bear upon my argument; so that, if it should prove in practice as successful as I unfeignedly hope and believe it will, still it would not cut off one farthing from the expense which I pointed out as being so great an evil. In like manner, the form and substance of pleadings will be materially improved by the propositions of the Commissioners. This part of the report contains some of the happiest thoughts, some of the most ingenious, and, allow me to call them also, some of the most profound suggestions for the improvement and advancement of the science of pleading, which are well worthy the attention of every man, and of every

lawyer, as well as of those whose skill and learning are chiefly employed upon subjects connected with that science. These propositions, however, important and valuable as they are, do not tend to remedy the abuse of which I complain, and which arises, first, from the distance of the places at which causes are tried; and next, from the fact of their being heard at London in the last resort.

I trust the House will pardon me if I remind them that they have now seen how the principal mischief and the chief cause of complaint relates to actions under a certain amount. I have shewn that it relates to actions which are confined to a moderate amount. If, however, the amount were large instead of small, that would be no reason why the complaint should not cease. The abuse would still call for remedy; but the crying evil of which I am now speaking attaches to actions for from £20 to £100. Now I would fain call the attention of the House to the old scheme of administering justice, which formerly prevailed in this country, with respect to such actions, and which was evidently intended to avoid expensive litigation. Let me not be misunderstood. I am too fully sensible of the great and manifest advantages which result from that arrangement which makes the capital the seat of justice, to attempt to alter it, even if I supposed I could succeed in the attempt. With this explanation, let me observe that, long antecedent to our jurisprudence assuming its present form, there existed a more convenient and less expensive mode of trial, in the County Courts. The origin of these Courts is lost in remote antiquity, and learned men have differed with respect to the constitution and jurisdiction of them; but all agree upon one point—namely, that in the time of the Saxons they were the great tribunals of the country, and that they possessed

a most extensive jurisdiction. My opinion—I know that in holding it I differ from many learned men—my very humble opinion is, that the County Court possessed originally a criminal as well as a civil jurisdiction. Be that, however, as it may, it is certain that, in the Saxon times, the County Court had jurisdiction in matters as well ecclesiastical as civil. We find a law in the time of Edgar or Canute,—Let the bishop and the earl meet the county, the one to state the law of God, and the other the law of the land; or, as the phrase is, the one to teach the people the law of God, the other the law of the land.

This practice continued down to the time of the Conquest; but soon after that event, the ecclesiastical part of the jurisdiction of the County Court was separated from the civil. Before that, however, the principle of the law was, that a man should in the first instance, seek justice at home; and that he should not seek it from the King, until his attempts to obtain it from the sheriff in the County Court had failed. Sir Harry Spelman, commenting upon this law, observes, that the reason of it was, that the suitors should not be obliged to go far off to obtain justice. In the sixth year after the Conquest, the sixth of William I., there was a celebrated cause tried in the county of Kent, in which the archbishop, three bishops, and the earl presided; Lanfranc was the archbishop, and one of the parties in the suit was Odo, half-brother to the King. This meeting of the county lasted somewhat longer than some recent meetings in the same place, for it lasted three days, and the court decided upon the claim to manors of very considerable value, which decision was afterwards confirmed in Parliament. In process of time the Sheriff's Court appears to have fallen into disrepute, and, perhaps, an institution well adapted to a simple state of society, was not found to answer

the purposes of a more improved state. As early as the sixth year of Edward I., it was provided by the Statute of Gloucester, that the County Court should have exclusive jurisdiction in pleas of debt and damages under the value of 40s. That Statute only provided that the jurisdiction of these courts should be exclusive in such pleas; it did not confine their jurisdiction to such pleas. Probably, however, in the course of a century after, 40s. became the *maximum*. Certainly this happened not very long afterwards.

Such, then, was, at that period, the constitution of the County Courts in England: and now, I would fain, with the permission of the House, call their attention to the constitution of the County Courts of the sister kingdom—Scotland; for when we are trying to apply a remedy, it is right, before we adopt any change, to see if, among many remedies, there is one which has been adopted elsewhere; and if so, to inquire how it has been found to work there. I need not remind, perhaps, any one, but certainly I need remind no lawyer—that however widely the general jurisprudence and practice of the two countries may at this moment differ, the early laws of the two were very much alike; so alike, indeed, that while in England it is contended that the book called *Regiam Majestatem* was copied from Glanvil's book on the laws of this country—so, on the other hand, it has been asserted in Scotland, that the *Regiam Majestatem* was the original of Glanvil's work. This dispute proves at least the remarkable similarity which subsisted between the early laws of the two countries. The same similarity existed also in the administration of justice; and, while no one can doubt that many most valuable improvements have been effected in this country, of which the benefits have not been shared by Scotland, still, with all my prejudices in favour of the English system, I cannot

help regretting that Scotland has retained some parts of the ancient system which was originally common to both, but which have been laid aside in England. In both countries the constitution of the County Court was originally the same; in both the jurisdiction was unlimited.

The original County Court was that at which the bishop and earl or alderman, with the viscount or sheriff, presided. In Scotland the Sheriff's Court took cognizance of the four pleas of the Crown, with the permission of the Justiciary, and in all civil suits, the County Court was of unlimited jurisdiction. The appointment to the office of Sheriff soon took a different turn; originally elective, it was made an appointment for years, and afterwards for life; it then came in Scotland to be conferred in fee. This led to what is called, in Scotland, "heritable jurisdiction,"—the earl became hereditary, and the viscount or sheriff a privileged individual, well known to the laws of that country. It was not very long ago that, at the abolition of these heritable jurisdictions, the County Court was put upon its present advantageous footing. The number of forfeitures in the rebellions of 1715 and 1745 vested many of those jurisdictions in the Crown. There are none of the hereditary jurisdictions not open to serious objection, except perhaps the hereditary jurisdiction vested in the Peers of this realm of England, to which no objections of that nature apply. In the year 1746, an Act was passed abolishing all the hereditary jurisdictions, giving compensation to some of the parties, and vesting all the shrievalties in the Crown; and the first step taken thereupon was to appoint sheriffs depute for life in all the counties. The persons appointed to that office are for the most part gentlemen of some professional standing at the Bar, and the courts over which they preside take cognizance of all matters, to which a

very extensive civil jurisdiction can be applied. Those officers are paid a moderate, reasonable salary, and their appointment is attended with the best effects to the administration of justice in Scotland. I should be happy to witness a still farther improvement; I should be glad to see a sheriff depute residing within his county, holding his court himself, and not leaving it to be held by his substitute; and I think the system, in its main principle, and thus improved, could be introduced into this country with the highest advantage. Those courts are found to have worked well in Scotland, and to afford cheap and convenient justice. The Sheriff's Court there is competent to entertain nearly all ordinary causes of actions—all actions of debt to any amount—actions of damages, for defamation, assault, false imprisonment, malicious prosecution, criminal conversation, trespass, trover, seduction, and almost all actions of *tort*. Now, let us look to the working of this system upon an average of three years—the years 1821, 1822, and 1823,—there were 22,000 some odd hundred causes tried in the Sheriffs' Courts in Scotland, in each year, for the amount of £5 and upwards—this was of course exclusive of such matters as were tried before Justices of the Peace. Take the proportion between England and Scotland, assuming that the law were the same here, and we might say that we should have six times as many in England—that is to say 130,000. That amounts to many more than the number of actions brought in England—to a vast many more than the number tried,—for I have shewn that not more than 7000 out of the 80,000 commenced, have been brought to trial. Of these 22,000 in Scotland, somewhere about 12,000 were disposed of in the absence of the defendant, being what we should call in England undefended causes; and somewhere about 10,000 were

disposed of *in foro contentioso.* From the decision of these courts there is an appeal to the Court of Session; but the number of appeals is small. It is one in 117 of the actions brought: one in 53 of the actions brought to trial. The House will see then, how much satisfaction this system has given in Scotland; and from that I think I may draw the conclusion, not a fanciful one, that the only cases in which the decisions of the County Courts are not allowed to be final, are actions of importance—actions in which difficult questions of law are raised, or actions in which there is involved sufficient interest to tempt the unsuccessful party to appeal. Taking the number of cases, and the value of the property involved in them, brought in the County Court of Lanark, which includes Glasgow, it will be found that £500,000 worth of property is adjudicated upon yearly by that court. Taking the same proportion for England, and multiplying it by six, we shall have an amount of £3,000,000 sterling, which would be disposed of yearly, if the same system prevailed here.

And now, have we not, let us ask, something to learn from this statement? May we not put to ourselves the question, "Can we not amend our own system?" I do not say, do this because it has been tried and found to answer in Scotland; I do not ask you to import the law of Scotland into England. No; I ask you only to revert to your own ancient laws—to those laws which were established in England before they became the laws of Scotland. If the Scotch continue those laws and find them to answer, all that I wish to argue from this fact is, not that for this reason the English should re-adopt them, but only that it might be advisable to consider whether to a mischief, which it is admitted does exist, this remedy is not the best we could apply.

And here, if the House will permit me, I should wish to state what is the expense of proceedings in the County Courts of Scotland. I have examined this matter, and found that, where the sum in question amounts to £12, and where there is no litigation,—where, as we should say, the cause was undefended,—the expense is 10s.; where the sum amounts to £25, the expense is 15s.; where the sum amounts to £50, the expense is 15s.; and where the sum is as high as £100, the expense is not more than 20s. This is in cases in which there is no litigation, and where decrees are pronounced in the absence of the defendant. Where the cause is defended and the matter litigated, if the sum in dispute amounts to £12, the expense is £5, and the party who is successful is only 5s. out of pocket. If the sum in dispute amounts to £25 or £50, the expense is greater; but still the successful party is only 10s. out of pocket; and where the sum amounts to £100, the costs would amount only to £13, and on taxation they would not be reduced below £12.

Now, I cannot help envying Scotland this cheap justice; for cheap I must call it, when a man can recover £100 for an outlay of £13 instead of £160, which would be the cost of proceedings in England; when, moreover, this man would pocket the whole of the £100 except 20s., instead of throwing away one half of the £100, as a man must here, even though he should obtain a verdict and a judgment in his favour. With all my partiality, and with all my prejudices in favour of the English system, I cannot help envying Scotland this part of her law. Is it, then, possible so to extend the jurisdiction, so to amend the constitution of the County Courts of England, as to make them capable of bestowing the same advantages? Is not this a question worthy of our most serious consideration? I feel that I

am taking up too much time of the House, and yet the importance of the subject leads me still further into detail. It is the greatest possible error to imagine that inferior suitors ought to have inferior Judges; that when questions are to be decided respecting persons of superior rank, wealth, and intelligence, men of superior intellect and station should be provided for that purpose; that when a matter of £100 or upwards is to be decided, a high and distinguished Judge should be employed for the purpose; but that in a matter only involving two, three, five, or six pounds, any one will do for a Judge, a Sheriff, or a Sheriff's Assessor, or whatever name he may bear—that any one will answer to preside in a court for the decision of such petty concerns, whether he be a man qualified or unqualified, a man of sense or a man of no sense; for the poor man, it seems to be the opinion, that it does not signify what sort of judicature he has to decide his causes. To my mind, no notions appear to be more crude than these. Forty shillings may be of more importance to the poor man than the sum for which the great man litigates; the poor man contests not only for the sake of the sum at issue, but that he may not be subject to wrong and oppression; and he feels that oppression the more grievous and intolerable, seeing that it is an evil reserved for the class to which he himself belongs. It is not always for the sum disputed that he goes to law; he proceeds in resistance of wrong and oppression, and he sues as readily for 2s. as for 40s. In this frame of mind, then, he goes away from court as much dissatisfied as the wealthier suitor who has lost £1000; and, give me leave to say, he has a right to be dissatisfied, and his is a dissatisfaction which will not be appeased otherwise than by a full supply of that for which he has gone before his judge—justice. I know these Judges

in the Courts of Requests do good—I say they do good by comparison—better something of justice than nothing—it may be slovenly justice, but so precious a thing is justice, that I should rather have even slovenly justice than the absolute, peremptory, and inflexible denial of all justice. It happens that tradesmen, who know nothing of law, and who may not have much occupation in their own business, preside in these Courts of Requests, and administer justice as well as might be expected. I say it is better to have these than to have none. There are 240 of those courts, with jurisdiction of from 40s. to £5; but that is not enough; the system of cheap justice ought to be more widely extended.

I shall now advert to a prevailing error—that opinion which goes to recommend the use of a local appellate jurisdiction. I think it open to this, among other objections—that it would lead to one system of law for one district, and a different system for another. I may here step aside to observe, that I wish the appellate jurisdiction received more attention in the quarter which ought to attend to it, than I find it does; and while upon this subject, I cannot help expressing a desire, with reference to Colonial appeals, that there should be upon the Privy Council some Judges, who, by their knowledge of, and residence in, the Colonies, may have acquired some acquaintance with their manners and habits, as well as their laws and regulations, instead of that body, as it now does, knowing nothing of the feelings of the people whence those appeals come. I have thrown out, in passing, these few observations on the nature of the appellate jurisdiction, and the evils which in it seem to me to require remedy, although that branch of the administration of justice is not immediately connected with the question

before me.* While, however, I am on that part of the subject, I may as well say a few words on the nature of the appellate jurisdiction, as it operates on our brethren of Scotland, who have, in my opinion, very great reason to complain of the practice which sends them, in all cases of the last resort, to the House of Lords in this country. I do think that the anomaly which this practice presents in the case of Scotland—an anomaly which has existed ever since the Union—affords them very reasonable ground of complaint; and the patience with which they have borne the evil, has always appeared to me quite unaccountable. Our neighbours seem to be well aware of the nature of their rights, and to be by no means unwilling to enter into litigation, as, indeed, all persons have a right, nay a duty, to do, who feel that they are wronged; and I confess, I can explain their patient endurance of the evil I have described, and which must be so great an obstacle to their attaining cheap and substantial justice, only by supposing it to have been owing to a concurrence of accidental circumstances. In the first place, there were not many appeals immediately after the Union; and in the next place, there happened soon after that time to be a succession of Lord Chancellors in this country, who, to the very highest fame as lawyers at the English Bar—who, to a reputation paramount above that of all their contemporaries, and which at once pointed them out as the most fit for being raised to such an eminence—added that other—it appears a most essential—qualification, a thorough knowledge of the nature and the practice of Scotch appeals, from having been, during many years of their lives, employed in them as advocates. First, there

* The Judicial Committee Act of 1833 has now introduced this reform.

was Lord Hardwicke, who, in addition to the amplest qualifications for the performance of the duties of Lord Chancellor as an English lawyer, possessed the reputation of being well acquainted with the law administered in Scotch appeals. Then there came Lord Mansfield, who, in addition to the greatest name as a lawyer, was himself a Scotchman, and long employed as an advocate in Scotch cases. Then there followed, after the interval of Lords Bathurst and Thurlow, Lord Loughborough, also an eminent Scotch lawyer. To these eminent men succeeded Lord Eldon —a man who, beside standing higher in reputation as an English lawyer than any Judge since the time of Lord Coke himself; who, beside, I say, being marvellously and supereminently skilled in every branch of English law, added to his extraordinary acquirements, that of being learned in every part of the law of Scotland, having been employed for full fifteen years of his life in almost every appeal which was heard before the House of Lords. It is to a succession of these great men in England, as Lord Chancellors, that we are doubtless to look, when called on to account for the patience with which our brethren of Scotland have hitherto borne the inconvenience of the system of appeals. But if the time should ever come when a person should fill the situation of Judge in the last resort, who, having but a moderate acquaintance with English law, gained his first knowledge of Scotch law from being called upon, by any arrangement that might be made, to decide on the merits of appeals from the decision of the Courts of Scotland, then the anomaly would be seen in its full force, though the means of accounting for it would be gone. I cannot, indeed, avoid—let it give offence where it may—expressing my opinion on this occasion, that the nature of the arrangements, with respect

to the disposal of Scotch appeals, is a subject extremely worthy of the best, the most serious, and the earliest consideration of His Majesty's Government.

I have been somewhat drawn aside from the question before me, by the observations I have felt it my duty to make on the nature of the appellate jurisdiction; but having said thus much, I shall now proceed to explain in what manner I propose carrying into execution the principles I have laid down, and to shew how a tribunal may be constituted, through which the people of this country may be able to obtain that most desirable object, Cheap Justice, in the speediest manner, in causes of a moderate amount. What I suggest then, is, that there be appointed in each county or district, as the case may be, a lawyer of a certain number of years' standing, who is to be the Judge in the last instance, in causes under a certain sum, and in the first instance, under certain regulations, in causes over that sum. In the first case, I would enable this Judge, in all cases where the sum in litigation is under £10, to call the parties before him—to examine the claimant as well as his adversary—to dispose of the claim—to give judgment —to award execution—and to specify the time when, and the amounts in which the instalments in furtherance of that execution are to be paid. Above the sum of £10, I would give any party power to go before the same Judge, who should be authorised to call on the adverse party to answer, both having power to employ professional assistance if they should deem it necessary, and to determine the matter in dispute, and examine witnesses if they should think fit. I would limit the jurisdiction of the officer, or Judge as I call him, in this instance, to the sum of £100 in point of value; but I would not limit him with respect to the nature of the causes to be tried—for I

would give him jurisdiction over all causes except those relating to freehold or copyhold property. I would give him jurisdiction in all matters of torts, as well as of debts; but I would make his decision in these cases open to appeal,—final in all matters under £10—open to review in all causes from £10 up to £100, and in all cases of tort.

I now proceed to shew in what way I think this appeal should be managed, and I cannot but think that it would be a great relief to the suitors if it should lie to the Judges on circuit, and not to the superior courts of Westminster-hall. There might, however, be good reasons in some cases for not bringing the appeal before a particular Judge going circuit, and I should therefore remedy that inconvenience by allowing the option of an appeal to Westminster-hall, with certain restrictions only as to costs. I would allow, therefore, an appeal either to Westminster-hall or to the Judges on circuit; but, if the party carried the cause to the more distant and expensive tribunal, I would allow the opposing party double, or, in some cases, perhaps, treble costs. It is hardly necessary to add—at least to those professional gentlemen who hear me—that by these appeals I mean motions for new trials in all cases where the Judge may have ruled a disputed point of law, or the jury be supposed to have decided contrary to the evidence. In these cases I would allow a motion to be made to the Judge going the ensuing circuit, for a new trial, notice being given to the other side that it is intended to make the motion, in order that he may be present at the assizes, and have counsel ready to argue the case if he thinks fit. I do not mean that this is to be according to the practice usual in the courts of common law, where the party, without notice to the other side, obtains a rule to shew cause, and the matter is afterwards heard

upon that rule being served on the other side; but I mean it to be according to the long-established practice of the equity courts, where the notice is served before the hearing, and the Judge has an opportunity of knowing the whole merits of the case by having both parties before him.

I am now giving an outline of the measure which I think necessary to accomplish my object; but I have not yet mentioned the necessity of having recourse to trial by jury. Far be it from me to say that there are not many cases in which the trial by jury might fairly be dispensed with; but when in connection with the question of trial by jury, the name of Mr. Jeremy Bentham is forced on my recollection,—a man, whose merit as a philosopher, and as a benefactor of mankind, is admitted by all—of that man who is both most distinguished as a lawyer, and foremost amongst the advocates of legal reform—whose name will go down to posterity with an honourable remembrance of which few, if any, are more deserving—when I mention that name, I think, after this humble but sincere tribute to his great and disinterested benevolence, I shall detract but little from it when I state that I do not agree with him in all the reforms which he proposes in our law. I differ from him upon some points, only in degree, Mr. Bentham going further than I should be disposed to follow; and on other points, I differ from him in kind, as when I am not prepared to concur with him in his view of trial by jury. But the necessity of that mode of trial in all cases, I deny with him. It is not from any indifference to the incalculable advantages of this most important institution that I now state my opinion—that in many of the actions which would probably be brought in the County Court, I think that mode of trial not applicable, and therefore that it may be dis-

pensed with to the great advantage of both parties. In cases, indeed, where there is conflicting testimony —in cases where it may be necessary to contrast documentary with oral evidence—in cases of that kind I would have a jury, for I know of no mode so perfect, where there is to be a decision on contradictory evidence, as that of assembling a number of men—I will not say twelve, for there is nothing in the particular number—of different feelings and habits of thinking, and let them, after an investigation of the whole case, pronounce upon it by their verdict; but I would not have that verdict the verdict of the majority, for, paradoxical as it may seem, I would have a forced unanimity among the jury. Were it otherwise, there would never be that patient investigation which is necessary to come at the truth. There would be cries of "Question," such as are sometimes heard in larger and less judicial assemblies. There is, in short, no more effectual way of coming at the truth than such a trial in such cases. In them, then, I would have the matter decided by the jury. I would also have juries in cases where damages are to be assessed,—in cases of tort, seduction, assault, and trespass, and even in attacks on property, as well as in personal wrongs; but there are many cases in which they might well be dispensed with. I repeat, that I state this not from under-valuing, in any degree, the advantages of that great institution; for I hope the time is not far distant when it will become general throughout every part of the empire. I am aware that it is difficult to classify those cases, in which the decision should be left to the Judge without the aid of the jury. And this difficulty presents itself, not from not having duly considered the subject,—for I have given it long and anxious consideration,—but the difficulty is not of a nature to prevent the adoption

of the plan. I would allow the Judge to decide in all cases not exceeding £10, whether or not it ought to be sent to a jury; and when those improvements shall have been made in pleading, which are recommended by the Common Law Commissioners,—when the story of the plaintiff and the answer of the defendant shall be laid before the court in such a manner, as that the Judge can at once comprehend the whole,—and when plaintiff and defendant respectively know what they have to prove and to answer,—it will not be difficult for the Judge to say to them, "I think this is a case which I may decide without the assistance of a jury;" but I would not allow the Judge to be the sole arbiter of the propriety of dispensing with that mode of trial. It should also be left to the consent of both parties to the suit; and if they agree, then the cause should be decided by the Judge alone. I have stated that I would give the Judge of this court jurisdiction in most kinds of civil actions; and when it is considered that the present state of the law, and the practice under it, entail an enormous but essential expense, for carrying into effect its administration from distant parts of the country, I contend that it is imperative on Parliament to give such relief as that which I have pointed out.

Now, with respect to the qualifications of the Judge who should be selected to preside in those County Courts, I think he ought to be of considerable learning and skill, and of some practice of the law; for without that, one great object of those courts, effectual administration of justice, would not be obtained. He ought also to be well paid; for if the public expects that his whole time should be devoted to his duties, they ought to pay him well for it. I would suggest that he should sit once a month for ten months of the year, and that six of those sittings should be in the chief town of the county, and that

the four other sittings should be in such towns in distant parts of the county as would bring the administration of justice home to every man; and thus, twice in the year at least, a suitor in any part of the county would have an opportunity of having his claim tried without being put to the trouble of going to any inconvenient distance from his home. The advantage of a court in many things similar to that which I propose to establish, has been long felt in Ireland, where a Judge, called "the Assistant Barrister," goes through the county at stated periods of the year, holding sessions for the trial of actions for small sums, but excluding all trials connected with the freehold. The Assistant Barrister has also the power of deciding certain cases without the aid of a jury; but in those cases where he thinks juries necessary, they are summoned, and the case disposed of with their assistance. This court was instituted in 1796, and has since been found of great convenience to the public in disposing of small causes, which would otherwise have to be sent, at much greater expense to the parties, for the decision of the superior courts.

I have said that there should be a power of moving for a New Trial, in certain cases which may have been tried before this new Court, and that the motion might be made before the Judge of Assize. It would, in that case, be necessary for the new Judge to attend the Assizes, and be named in the Commission. He should sit on the Bench, and, as occasion required, should read his notes of the case in which the New Trial was sought; but he should have no voice in the decision. The Judge of Assize alone should decide on the question. Reason and experience have shown to those who are conversant with the practice of our Courts, the very great inconvenience of allowing the Judge, from whose opinion an appeal is made,

to have a voice in the decision on that appeal. It often happens, that he gives a tone to the feeling of the Court in favour of the opinion which he has given in the Court below; and the result is, in some instances, where a Judge has fallen into an error,—for Judges may err as well as other men,—that the error is adopted by his brother Judges, and thus confirmed by the decision of the whole Court. I have seen this practice lead, in some instances, to decisions which I have no doubt on earth were erroneous; and I have not been the only person present, on such occasions, who have come to the same conclusion. This never would have happened had the appeal been made from the opinion of a Judge who was not a member of the Court. I, for these reasons, would not give to the Judges of the new County Courts any voice in the decision of the appeal which might be taken from them to the Court of Assize. By the adoption of this practice, with respect to them, there would be established a uniformity of practice in those Courts throughout the country, and we should not have one mode of administering the law in one county, and a different one in another.

It may, perhaps, be objected, that this establishment of so many Courts would entail a very considerable expense on the country; for that, beside the Judge in each Court, there must be a Registrar and Clerk, and one or two Ushers. No doubt the appointment of such officers would be necessary; for, if we are to have establishments, they should be complete, to answer the proposed end. But the expense of the whole on the country will be but trifling, when compared with the important advantages which must accrue to the public. I would suggest that the Judge should have a salary of £1500 a-year. I observe my honourable and learned friend, the Solicitor-General,

smiles at this, as if he considered it too much; but if the public are to have the whole of the time of a professional man of talent and experience, they ought not to expect it without giving an adequate remuneration. Taking the whole expenses of the Judges, registrars, clerks, and other officers, I estimate that it will not exceed from £120,000 to £130,000 a-year for the whole kingdom. Now, in judging of this, I would beg the attention of the House for a moment to what is the expense of the judicial administration in France. In that country, there are between 3000 and 4000 local magistrates scattered over the whole country, called *juges de paix*, who have jurisdiction in actions for small sums. The expense of these amounts to £121,000 a-year. There are next the Courts of First Instance for the several arrondissements, amounting to from 300 to 400, and having from 1600 to 1700 Judges; the annual expense of these amounts to £125,000. There are then the several Courts of Appeal, at an annual expense of £70,000; and, beside all these, and over them, is the Court of Cassation, in Paris, which is a Court of Appeal in the last resort, or rather, a Court of Error, which costs the country £25,000 annually;—making, in the whole, for the civil administration of justice, an annual expense of from £300,000 to £400,000: And if to this be added the expense of the administration of criminal justice, it will amount to about £525,000 a-year; or, taking it pound for pound, and considering the comparative value of money in that cheap country and in this dear one, it is equal to about £800,000 of our money. But why do I mention this? Merely to show that our neighbours do not think that any price is too high to pay for an effectual administration of justice; and most certainly it would be extremely difficult to convince me that the price ought for an instant to

be put into competition with the advantages which would result to the public from such a system. Let it be considered, that if the sum should amount to £150,000 a-year, it would be still less than three weeks' proportion of the extra expenditure to which the country was subjected in the last year of the war, beside the cost of the national debt, of the civil list, and all the ordinary expenditure of the year. I do not mean to say that the extra expense was no more than £50,000 per week; what I mean is, that three weeks' amount of the extra expenditure of that year would, if taken into the market, be sufficient to purchase an annuity of £150,000 for ever. I do not intend to inquire how far that expense was or was not necessary; but I contend that the sum I have named would purchase by far the greatest blessing that Parliament ever conferred upon the people—a cheap, speedy, and certain administration of justice.

I have said that the new Judges will not act merely as presiding Judges; they will also have to act as arbitrators, and in that way many cases will be settled without ever going to a public decision, and thus a great saving of time and expense will be made to the parties. This of itself is a most important consideration. What is so likely to give satisfaction, or to prevent law-suits from misdecision, as the enabling a person to decide cases as a Judge would decide them, but sitting in the character of an arbitrator?

Sir, there is a subject for which I have hardly left myself strength, and I am sure I have left the House no patience to go into it, but to which I shall very generally and cursorily refer—I mean the subject of Conciliation. In many foreign countries, Courts of Conciliation are established, with a view to the prevention of law-suits, by having the parties called before them—

by talking to them familiarly, kindly, and privately—by telling one that it is very foolish to go into court where the facts are so clear against him, and that he will lose his cause—by telling another that he ought not any longer to resist payment, as it is quite clear that he is wrong; in short, by giving the parties sound advice, to which they may attach the weight that does and will always belong to the disinterested counsel of a prudent and worthy man, and of one experienced in such disputes. It has been found in some countries—not, I confess, in all—that the best possible results have accrued from such a system. Where the reference has been compulsory, the experiment has entirely failed. In France, it has signally failed. I have the authority of not only many learned and excellent persons, but I have also the distinct admission of M. Levasseur, in his *Manuel*, in which he says—"That where the parties settle their differences before the Court of Conciliation without going farther, the principle of the measure is fulfilled —*le veu du legislateur est complet*;" but he adds, "these cases are infinitely rare." I have to make, also, exception of the Netherlands and Holland, for the result of the experiments of the Code, since it has been applied to those countries, has been so exactly the same, that they have resolved not to renew it. I understand that in Sweden the measure has been attended with better success. But in Denmark it has succeeded best of all; and if I am not misinformed, in that country the going before a Judge of Conciliation is entirely optional. I know that in Switzerland, at least in two parts of it—I mean Geneva and the Pays du Vaud—the experiment was tried, and was attended with success. The Code Napoleon failed, as there was in it compulsory reconcilement—that is, no person could go into a higher Court before he called his adversary to the Court of

Conciliation, and obtained a *procés verbal;* if the adversary did not appear, he paid a fine of ten francs, and the other got a certificate, and was allowed to go before a higher Court. In Denmark, where the thing is more optional, and where the Court does not call the parties before them, I find that on an average of three years, 1825, 1826, and 1827, one-fourth of the actions brought into those Courts were terminated by the withdrawal of proceedings, or by the parties being reconciled. The returns do not specify the exact numbers of each of those stopped by Conciliation, or by the parties withdrawing proceedings, being hopeless of success. In one instance, however, I have that return, and I find that the numbers are very nearly equal, that is to say, that between one-seventh and one-eighth of the cases not tried were settled by the process of Conciliation.

Now, I propose adding to the power of the Judge the right of calling the parties, if they please, before him; that is, if one is desirous of it, and the other has no objection. I propose that they should go before him; that it should be compulsory to receive his opinion; that he should act as Judge of Conciliation, and endeavour to reconcile their differences. I will explain in one moment why I regard this measure as desirable, and by no means impracticable; and I can assure the House, that the suggestions which I have offered are founded strictly on practical experience. When a Court is resorted to, in many cases, no person is more likely to be led into error as to the probable termination of the cause than the party interested. In almost all instances he is more or less misled by the advice he receives. I do not say that gentlemen of the Bar give opinions that the action is maintainable, when they know that it is not. God forbid! I believe that there is no set of men less apt to do so; I believe

they are more apt to dissuade—to throw cold water upon law,—to give doubtful opinions, and offer discouraging advice. I say this is the common course of the profession. I say that in ninety-nine cases out of a hundred it is so. I need hardly say it happens to all respectable men: I need hardly say when it happens not, a man is scarcely respectable. But, great as my feeling is for the profession—strongly prepossessed as I am with the belief of its high honour, of its great integrity—of all those qualities which entitle it to respect—and much as I hope that the exceptions are rare—yet I will not say that there are no exceptions, even in that profession to which I have the honour to belong. I will not take upon myself to say, that it is an impossibility to find a man at the Bar who will give an opinion to encourage, when he ought to discourage,—still less will I take upon myself to deny that there are always to be found men, in the other branches of the profession, who will go to that man to get his opinion, and who, if they cannot get such an opinion, will substitute their own for it, and tell their client that he is sure to gain that which they ought to know there is every probability he will lose. But this I do know, that we have men every day come before counsel, previous to going into court; that a consultation is holden, and those present lift up their hands and throw up their eyes, and say, who could have advised such an action? and that upon other occasions, on the part of the defendant, it is said—how could you go on so long with it? The reason is neither more nor less than this—that no sooner have they read the case, than, without any further consultation together, each man comes into the consulting-room, with his mind made up, that they have not the shadow of a case, and thus the poor client is allowed to go into a Court only to be ruined. This happens every day, and it happens

often enough to make one wish that it never happened at all. There are cases where the advice of the counsel is kept back from the client; other cases, where the favourable opinion is obtained on false statement of facts; and in all these cases, the man most ignorant of the chance of success, or failure, is the unfortunate client thus dragged into a court of Justice. I ought not to say he is always dragged—he is sometimes coaxed; they who ought to put him on his guard, mislead and urge him on; and he finds, too late, that he has been deceived to his ruin. The men who do so ignorantly,—and they are not a few,—are not of course so culpable as they who do so knowingly and willingly. Even my respect for that branch of the profession to which I allude—I mean solicitors and attorneys—will not allow me to deny that I have frequently seen instances, in both classes, of such cases, produced more frequently by the ignorance of the attorney, than by a knowledge that his client must lose. In these cases, if you could separate the client from the attorney and the counsel, and get him aside, and tell him that if he goes on with his suit he must be disappointed and defeated; I am sanguine enough to expect that the ruin which now often happens would be saved to the unfortunate and ill-advised clients.

This system which I have submitted in the House, I trust respectfully, founded as it is upon experience, would produce the best results. I have hopes, and I think they are not visionary hopes, that great benefit would accrue to parties from having conversation with an individual of knowledge and of undoubted respectability. Whether, not merely that part of the subject which relates to Conciliation and Arbitration, by publicly appointed arbitrators, but the whole subject of affording the means of obtaining cheap justice,

will be approved of by the Legislature, I know not; but this I know, that those who reject it are imperatively called upon by the state of the case to point out another remedy. I care not for the name. If you reform the County Courts, it will only hamper you with certain forms, with obsolete rules, and with many inconveniences, which had much better be got rid of; for nothing is so useless as preserving the shadow when the substance is gone—it only disappoints, and harasses, and vexes. But call it by what name you will, the substance of this measure is imperatively required. The exigencies of suitors will no longer allow us to withhold it from them. Of this I am as much persuaded as I am of my existence, or that I am standing here addressing this House. The people have a right to justice —they are crying out for it—they distrust the Government for want of it—they distrust all plans of reform, whether legal or political reform, because of it; and so long as they feel this want will they continue to cry out and to distrust.

I have heard it said, that when one lifts up his voice against things that are, and wishes for a change, he is raising clamour against existing institutions, a clamour against our venerable establishments, a clamour against the law of the land; but this is no clamour against the one or the other—it is a clamour against the abuse of them all. It is a clamour raised against the grievances that are felt. Mr. Burke, who was no friend to popular excitement, who was no ready tool of agitation, no hot-headed enemy of existing establishments, no under-valuer of the wisdom of our ancestors, no scoffer against institutions as they are, has said, and it deserves to be fixed in letters of gold over the hall of every assembly which calls itself a legislative body, "Where there is abuse there ought to be clamour, because it is better to have our slumbers broken by the fire-bell, than to perish amidst the flames in our bed."

I have been told by some who have little objection to the clamour, that I am a timid and a mock reformer, and by others, if I go on firmly and steadily, and do not allow myself to be drawn aside by either one outcry or another, and care for neither, that it is a rash and dangerous innovation, which I propound, and that I am taking for the subject of my reckless experiments things which are the objects of all men's veneration. I disregard the one as much as I disregard the other of these charges. I know the path of the reformer is not easy: honourable it may be—it may lead to honour; but it is obstructed by the secret workings of coadjutors; and, above all, it is beset by the base slanders of those who, I venture to say—some of them at least—know better than others the falsehood of the charges which they bring against me. But I have not proceeded in this course rapidly, hastily, or rashly; for I have actually lived to see myself charged with being in name a Reformer, but in truth in league with the enemies of reform; in secret and corrupt league with those who batten on the abuses which I denounce.

It has been asserted that I have so acted in order to obtain high professional advancement,—I, who have refused the highest judicial functions,—I, who, at the very time those slanders were propagated, was in the act of preventing such a proposition from being made to me—upon political principle—upon public principle—upon party principle—as well as upon personal feelings. Did I regard the slander? Was I stung with such false opprobrium? Did I change my colour, or faulter in my course, or did I quicken that course? Not I, indeed—

> False honour charms and lying slander scares
> Whom, but the false and faulty?*

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* Falsus honor juvat et mendax infamia terret
Quem, nisi mendosum et mendacem?

It has been the lot of all men, in all ages, who have aspired at the honour of guiding, instructing, or mending mankind, to have their paths beset by every persecution from adversaries—by every misconstruction from friends: No quarter from the one—no charitable construction from the other. To be misconstrued, misrepresented, borne down, till it was in vain to bear down any longer, has been their fate. But truth will survive, and calumny has its day. I say, that if this be the fate of the Reformer—if he be the object of misrepresentation,—may not an inference be drawn favourable to myself? Taunted by the enemies of Reform, as being too rash; by the overzealous friends of Reform, as being too slow or too cold; there is every reason for presuming that I have chosen the right course. A Reformer must proceed steadily in his career; not misled on the one hand by panegyric, nor discouraged by slander on the other. He wants no praise. I would rather say—"Wo to him when all men speak well of him." I shall go on in the course which I have laid down for myself; pursuing the footsteps of those who have gone before us—who have left us their instructions and success—their instructions to guide our walk, and their success to cheer our spirits.

I move, Sir, for leave to bring in a Bill for the Establishment of Local Judicatures in certain cases in England.

PARLIAMENTARY REFORM.

INTRODUCTION.

PRINCIPLES OF PARLIAMENTARY REFORM—MR. CANNING—LORD DUDLEY—MR. HUSKISSON—MR. WYVILL—MAJOR CARTWRIGHT.

As no subject has ever, in modern times, been brought into discussion, of importance at all equal to that which opened the whole question of our Parliamentary Constitution, so none ever excited so general and so lasting an interest among all classes of the people.

By the lapse of time great changes had been effected in the original structure of the representation, and changes far greater in the structure of the community represented. That which had originally been regarded as a burden from which all were anxious to escape, had become a benefit and an honour which every one was solicitous to obtain. The classes who had at first monopolized the representation of the property and population of the country, no longer

alone retained this distinction, other classes, formerly scarcely existing, having grown up to influence and power. The kind of property which alone, in the early period of our history, had any existence, the land, and which alone could in those days be represented, either by conferring the right to vote, or by giving the title to sit, was now rivalled in importance by masses of other kinds of wealth formerly unknown, and justly claiming equal regard. The corporate cities and towns, which anciently were governed by the voices of their citizens at large, had become new-modelled by usurpation, which the courts of law sanctioned under the apprehension that popular election must be attended with danger to the public peace; and the whole administration of their municipal affairs being now entrusted to small bodies, generally self-elected, these too engrossed the right of returning to Parliament their representatives, who had originally been chosen by the people at large. But the greatest changes of all were in the electoral bodies. Towns formerly of importance had, in the course of time, decayed into insignificance; nay, some populous and wealthy places had become desolate and uninhabited, while all alike retained the privilege of being represented in Parliament. So that instead of the people of those places being represented, the remains of ruined houses alone sent members to the legislature to consult "*circa ardua regni.*" At the same time, mere hamlets had grown into towns of vast importance; and on land once desert, or the site of a few straggling huts, cities had grown up of prodigious extent, numbering thousands and tens of thousands of inhabitants, and containing within their bounds half the opulence and

industry of the country. Yet all these continued unrepresented in Parliament, as if they were still desolate regions, while the right to vote was continued to those other places which had become the scenes of solitude and decay. Finally, there had taken place a general improvement in the knowledge and capacity of the people, by the progress of refinement; and all classes of the community had become both capable of exercising political rights and desirous of enjoying them, instead of being, for the most part, so little solicitous upon the subject of public affairs, that they were as well pleased to have their representatives named for them by those who better understood such matters, as to interfere in the choice themselves.

It thus was manifest, that, though the constitution of Parliament was nominally the same as it always had been, in reality nothing could be more different in every essential particular. To try this we need only change the language used to describe the structure of the Commons' House, and make it more general. The constitution intended that members should be chosen by real bodies of electors, and that the really existing cities and large towns of the realm should be represented. Was that intention worked out by places which have no inhabitants returning members, while the most populous cities of the empire were unrepresented altogether? It was the original constitution of Parliament, that while the counties were represented by knights of the shire, the cities should be represented by citizens, and the burghs by burgesses. Could that constitution be said to remain, when no members were chosen by the most important cities and burghs? (for it is a mere quibble to pretend that Birmingham and Manchester

are not cities or burghs in a Parliamentary view, because they are not legally so, not being bishops' sees, or incorporated by charter.) Or, to try it by another test—who will pretend to doubt, that had Birmingham, Manchester, and Sheffield, existed in the time of the Plantagenets, writs would have been issued to them? Or who will maintain that any king ever would have issued his writ to the ruins of Old Sarum, and the mouldering foundations of Sarum and Blechingley, which cannot be traced by the eye? No more needs be urged to show how mere a play upon words it is to hold, that the Parliamentary constitution of 1780 was the ancient and original constitution of the country, or that, in extending the elective franchise so as to give large towns representatives, which they want, and take from decayed places a right of voting, no longer of any use, or even of any intelligible meaning in their case, any departure whatever was made from the principles, or any violation at all offered to the spirit of our old Parliamentary law. On the contrary, the reformers might with far more reason have contended, that they were the restorers of the original constitution, and that their adversaries were its enemies, because they sought to make perpetual the departure from it which time and accident had introduced, and to clothe with the authority of law those deviations from the law, which had unintentionally been introduced, and which had only passed without opposition, because they had been made so gradually as to escape observation.

The Reformers, however, had a right to occupy much higher ground. They were entitled to hold, that, even if the plans which they propounded were a departure from the original frame of our mixed

government, and a mere innovation upon its principles, they would not, on that account alone, be liable to insuperable objection; on the contrary, if new lights of experience, and the altered state of society, required a new adjustment of the political system, or even the adoption into it of novel principles, such a course might be not only justifiable, but requisite. This was the view generally taken by the more zealous and unsparing Reformers, to whom the precedents of ancient times were so far from affording any authority, that they rather disinclined them to their use and application in the present age; and who, instead of regarding it as any argument against a proposed improvement, that it was an innovation upon the institutions of earlier times, considered the fact of any thing having existed in those rude ages, as a presumption against its being fitted for the present day.

To these two great classes of Reformers upon principle may be added a third, composed of mere practical men, who regarded the existing abuses in the representation as furnishing sufficient reason for altering and amending it. The power which it conferred on individuals of obstructing a good government in order to further some selfish designs; the undue influence over the Commons which it gave the Aristocracy; the facilities which it held out to the executive branch of the government of corrupting the popular branch, and ruling in spite of the popular voice; in a word, the scope which it afforded for all the engines of intrigue, corruption, and oppression, to play upon the interests of the state, furnished ample reasons of the most practical kind for a reform—reasons, the result of which Mr. Pitt embodied in a sen-

tence, when he said that the present system both prevented the country from ever having honest ministers, and honest ministers from continuing such, or doing their duty.

But how powerful soever all these arguments had been, and how general soever their acceptance with the reflecting portion of the community, they made but little progress until the public misfortunes during the American war; and the support given to that inauspicious contest by the self-named representatives of the people, long after the people had pronounced their opinion very decidedly against the policy of the Government, set men upon reflecting how their affairs were conducted, and how they who were intrusted with their management happened to pursue the course they took, against the will of their nominal constituents. This inquiry directed the attention of the country at large to the structure of the representation. Great public meetings were held to consider it. Associations of most respectable persons were formed to procure its reform. Men of the highest station in the country, and men who enjoyed its confidence in an extraordinary degree, joined with others less known, but of the greatest promise as statesmen and patriots, in demanding the needful change; and from that time, notwithstanding the untoward occurrences of after years, the question of Parliamentary Reform has always occupied a foremost place in the minds of the people, and in the deliberations of the Legislature.

After it had made such progress as almost ensured a speedy success, at least to a considerable extent of Reform, the alarm excited by the excesses of the

French Revolution, and increased by the general sympathy expressed among almost all British Reformers with the earlier leaders of the movement in France, for some years checked the progress of the cause in this country. Reform was artfully confounded with Revolution by its adversaries; and to be a Reformer, became synonymous with being a friend of anarchy, and hostile to the established order of things, ecclesiastical and civil. That these fears were wholly fictitious, it would be altogether absurd to assert; as it would be most thoughtless to deny that there existed quite danger enough of the Reformers pushing too fast and too far their favourite theories, to make the greatest circumspection necessary for restraining their impetuosity, and preventing its mischievous consequences among a people for the first time vehemently excited to action by the contagious influence of the mighty popular movement which was convulsing the whole frame of society in France. But it is at the least equally certain, that nothing but gross misrepresentation acting upon ignorance and panic, could have succeeded in making every attempt to improve our institutions, be regarded as another name for indiscriminate enmity to our whole system of government; and every friend of Reform, as an enemy of his country and her peace. The cause of order, and the stability of all our institutions, may safely be said to have suffered much more than they could gain, by the consequences of this delusion so skilfully and so successfully practised; and had Mr. Pitt, instead of abandoning the cause of Reform, of which he had been the powerful champion in his earlier days, and joining in the persecution of his former fellow-

labourers, the Reformers, placed himself at the head of the more rational and respectable portion of them, whom temperate and gradual measures of amendment would have satisfied, he would have done more to strengthen and consolidate the system of our government, and to check the progress of a perilous thirst for mere change, than ever could be expected from coercive laws, even had they succeeded far better than they did, in stifling discussion upon the defects of our constitution, and repressing the exertions for removing them.

At length came the tranquillity of France under the government of Napoleon, and with it the cessation of the Revolutionary war. A calm ensued among the parties which split this country. A moderate administration of government succeeded to the times when haughty, unbending, almost persecuting power, on the one side, demanded entire submission from the other, but only provoked hatred and resistance. The fear of revolution at home gave place to the apprehensions of invasion from abroad; and although men's minds were too much occupied with the question of peace and war, and expense and retrenchment, to renew their care about the constitution of Parliament, it seemed evident that, as soon as any accidental turn of affairs should once more direct their attention to this question, all the zeal of 1782 and 1790 would be again awakened, and no opposition to its progress could any more be offered by the real or the pretended alarms of its adversaries, grounded upon an allegation of revolutionary designs. Nor was the occasion very long wanting. The gross misconduct of affairs which led to the Walcheren expedition, and the shameful

vote of approval expressed upon it by the House of Commons, following in less than twelve months after the scandalous disclosures of traffic in places and in seats, and the other iniquities brought to light in 1809, again roused the energies of the Reformers, and the structure of Parliament—that structure which led to the selection of such representatives as had done the deeds of 1809 and 1810—once more occupied the undivided attention of all political reasoners, and of many who in no other political question were wont to interest themselves, or to move at all.

Since that time the subject has been making a steady and an irresistible advance, scarcely ever interrupted by other subjects of more immediate and lively, though temporary, attraction; or, if interrupted for the moment, only to gain fresh accession of strength by new arguments derived from those discussions of more passing interest. While, however, Reform was thus acquiring great and extended support, it had also raised up a new body of formidable antagonists. The friends of Mr. Pitt were no longer found ranged on its side—they all joined the ranks of its enemies; and the Anti-reform party, which had formerly been composed only of the old courtiers, the friends of Lord North, and Mr. Burke with his supporters, were now reinforced by the brilliant talents and great debating powers of Mr. Canning, the extensive knowledge and truly business-like capacity of Mr. Huskisson, the acuteness, the fancy, and the learning of Mr. Ward,* in conjunction with some of the leading members of the present administration. A steady and uncompro-

* Afterwards Lord Dudley.

mising resistance to all reform, was the leading principle of this party, more powerful from the abilities than formidable from the numbers of its members; and it formed indeed their principal hold over the Tory party at large, whose jealousy of them was, generally speaking, more than a match for its prudence in securing the aid it stood so much in need of.

It is difficult to over-rate the effects of this resistance in obstructing the progress of reform. Mr. Canning and Lord Dudley especially, the men of the greatest talents in the party, were truly formidable antagonists. Possessing in an equal degree all the resources of accurate and extensive information, all the powers of acute reasoning and lively fancy, and all the accomplishments of the most finished classical education, they differed rather in the degrees to which habit and accident had fitted them for actual business, and in the strength of their understandings as influenced by their inclinations, than in the genius or the acquirements which might inspire or had trained their oratory. Mr. Canning was the more powerful declaimer—Lord Dudley had the more original fancy and the sharper wit; although in every kind of wit and humour Mr. Canning, too, greatly excelled most other men. Lord Dudley could follow an argument with more sustained acuteness, while Mr. Canning possessed a skill in statement which frequently disposed of the matter in dispute before his adversary was aware that his flank had been, as it were, turned, and thus spared himself the labour of an elaborate attack by argumentation. Both prepared for their greater exhibitions with extreme care, and wrote more than almost any other modern orators; but

Mr. Canning had powers of *extempore* debating which Lord Dudley had either never acquired, or hardly ever ventured to exert, and he used those powers with the practised dexterity which long and constant exercise can alone bestow, sometimes in pronouncing the whole of a speech, and at other times, in the far more difficult task, the last attainment of rhetorical art, of weaving the extemporary up with the prepared passages, and delivering the whole so as to make the transition from the previous composition to the inspiration of the moment, wholly imperceptible, even to the most experienced eye. In habits of business, and the faculties which these whet, or train, or possibly bestow, Mr. Canning had, of course, all the advantage which could be derived from a long life in office acting upon abilities of so high an order. But that Lord Dudley only wanted such training to equal him in these respects, was apparent from the masterly performance of his official duties, which marked his short administration of the Foreign department in 1827.

Here, however, all parallel between these eminent individuals ends. In strength of mind, in that firmness of purpose which makes both a man and a statesman, there was, indeed, little comparison between them. Both were of a peculiarly sensitive and even irritable temperament; and this, while it affected their manner, and followed them into debate, quitted them not in the closet or the Cabinet. But in Mr. Canning the weakness had limits which were not traced in the nervous temperament of Lord Dudley. He suffered all his life under what afterwards proved to be a diseased state of the system, and, after making the misery of part of his existence, and shading the happiness even of its

brightest portions, it ended in drawing a dark and dismal curtain over his whole faculties towards the close of his life. The result of the same morbid temperament was a want of fixed inclination—a wavering that affected his judgment as well as his feelings—an incapacity to form, or after forming, to abide by any fixed resolution—so that a man more amply endowed with the gifts both of nature and fortune than any other in any age, although he rose to great station, enjoyed an enviable share of renown, and never appeared in any capacity without raising an admiration great in proportion to the discernment of the beholders, passed through life with less effect upon the fate of his fellow-creatures than hundreds of the most ordinary men on whom, as he was well entitled, he daily looked down. The article in which his power has been the most felt, was certainly that of Parliamentary Reform, of which he was, with all his party, the constant and uncompromising adversary, and on which the last and perhaps greatest efforts of his genius were made.

With these men was joined Mr. Huskisson, than whom few have ever attained as great influence in this country, with so few of the advantages which are apt to captivate Senates or to win popular applause, and, at the same time, with so few of the extrinsic qualities which in the noble and the wealthy can always make up for such natural deficiencies. He was not fluent of speech naturally, nor had much practice rendered him a ready speaker; he had none of the graces of diction, whether he prepared himself, (if he ever did so) or trusted to the moment. His manner was peculiarly ungainly. His statements were calculated

rather to excite distrust than to win confidence. Yet, with all this, he attained a station in the House of Commons, which made him as much listened to as the most consummate debaters; and upon the questions to which he, generally speaking, confined himself, the great matters of commerce and finance, he delivered himself with almost oracular certainty of effect. This success he owed to the thorough knowledge which he possessed of his subjects; the perfect clearness of his understanding; the keenness with which he could apply his information to the purpose of the debate; the acuteness with which he could unravel the argument, and expose an adversary's weakness, or expound his own doctrines. In respect of his political purity he did not stand very high with any party. He had the same intense love of office which was and is the vice of his whole party, and to which they have made such sacrifices, reducing indeed into a principle, what was only a most pernicious error, the source of all unworthy compliances, the cloak for every evil proceeding, that no one can effectually serve the state in a private station. One immediate result of this heresy was, to make Mr. Huskisson, like his leader, mistake place for power, and cling to the possession of mere office when the authority to carry those measures which alone make office desirable to a patriot, was either withheld or removed for preferment's sake. Yet whoever has known either of these three great men, and casts his eye on those followers whom they have left behind, may be justified in heaving a sigh as he exclaims, "*Eheu! quam multo minus est cum reliquis versari, quam meminisse tui!*"

Such were the adversaries whom the Parliamentary Reformer had to contend with during the long struggle that began at the Walcheren vote, and only ended, if it indeed be yet ended, with the Bill of 1831–2. For although Mr. Canning's hostility to reform had been the most often signalized, yet his death in Autumn 1827, in no degree relaxed the opposition of his surviving followers, all of whom remained united upon this point. They no doubt departed widely from his course, in other respects: and they so far deserted the ground which he had latterly taken, as even to join those with whom his hostility had become the most personal, evincing their habitual love of place by holding office with the Duke of Wellington and Mr. Peel, after their new Whig allies had been somewhat cavalierly ejected from office by the Court. Nor was it till the following Summer that they received the reward due to such place-loving propensities, by being ejected as unceremoniously as the Whigs had been before. Lord Dudley and Mr. Huskisson, with the lesser members of the party, Lords Palmerston, Melbourne, and Glenelg, were once more in opposition, and gradually resumed the Whig connexion; but their hostility to reform remained unabated. Nor is it one of the least remarkable events in their history, that to a reform question they owed the last misfortune of losing their places in 1828. They had taken the long-headed, not to say crafty, view of their new leader, Mr. Huskisson, that giving members to Birmingham on the disfranchisement of Retford for corruption, would tend more to prevent further mischief—that is, as he explained it—really effectual reform, than merely opening the franchise to the adjoining hundreds. On

this the Duke and Sir Robert Peel differed with them, possibly deeming it a poor stratagem, and conceiving it better to oppose reform altogether in a fair and manly way, than by means of a trick. On this the parties quarrelled; and when the general question of Parliamentary Reform was debated in 1830, the remains of the Canning party gave it their unmitigated opposition, as they continued to do until, being in office with Lord Grey and other Reformers, they all at once became root-and-branch adversaries of the existing system, and wholesale proselytes to the reforming creed.

Having noticed the chief adversaries of reform, it is fit that its most strenuous supporters should be mentioned. At the head of these stood Mr. Wyvill and Major Cartwright. The former was a clergyman, but possessed of an ample private fortune, and he had been one of the earliest coadjutors of Sir George Saville and Mr. Pitt. He was a man of sound and extensive constitutional information, of steady perseverance in whatever he undertook, a most ardent friend of civil and religious liberty, and one who made universal and unlimited toleration the fundamental article of his faith. For the rest, his views were somewhat confined, like all those of the earlier Reformers, who, like their predecessors in the Church, satisfied themselves with making the first step of throwing off Antichrist, and were regardless of the exact limits within which lesser abuses of practice or errors in faith might be confined. As the Reformers of the sixteenth century at first left the real presence in their creed, so did the Savilles and Wyvills allow rotten burghs to deform their system, and instead of giving represen-

tatives to the great towns, extended the number of county members.

Major Cartwright was a politician of another school. But it was as a restorer, not an innovator, that he came forward. Conceiving that the original constitution of the Gothic Parliament was that of annual elections, in which he was undoubtedly right, and also that previous to the statute of Henry VI. limiting the freehold franchise to forty shillings, all men had a right to vote, in which he was as clearly wrong,—for the freeholders and burgesses only possessed the franchise —he insisted upon bringing back the system to that standard, and had as great a horror of triennial as of septennial elections. He was a man of unwearied perseverance and indomitable courage; of very moderate information, even on constitutional subjects;* of extreme devotion to one subject, and indeed one branch of that subject, and consequently, like all "men of a single idea," extremely apt to make gross mistakes in pursuing it. He was also extremely obstinate in his own opinions, and would neither reason nor listen to reason, but contented himself with repeating a set of phrases embodying dogmas, the acceptance or rejection of which he somewhat intolerantly and very blindly made the test of all men's honesty or dishonesty. When he had hit upon a view or an argument, he held it to be decisive; and even

* A ludicrous instance of this was afforded by his arguing, in a pamphlet, from the title of Mr. Prynne's work, that *short Parliaments* were the old law of the land; for so he translated *Brevia Parliamentaria*, (Parliamentary writs), the title of the book being *Brevia Parliamentaria Rediviva*.

went so far as to offer Sir Samuel Romilly and Mr. Brougham (in 1812) the representation of Middlesex, which he supposed he could influence as he chose, provided they would take a test—viz. that Parliaments must be annual, and for this single reason, that otherwise every person who becomes of age during a Parliament is deprived of his right to vote for so many years, —to which both these gentlemen made answer, that this proved also the justice of monthly, or even weekly elections. His views were also somewhat tinged with pedantry; witness the horror of men becoming candidates, which he always professed, and which only led himself to a very unworthy mockery, when anxiously intent upon being elected for Westminster; namely, that of addressing a letter in the newspapers to a gentleman who lived next door to him, expressing how useful to reform his election would prove, reiterating the statement of his reform principles, but adding an avowal that nothing should induce him to become a candidate. He failed on this occasion, and still more signally a few years afterwards, when, still refusing to be called a candidate, he daily appeared on the hustings, to receive few or no votes, and had committees in vain canvassing all Westminster in his behalf.

But with all these weaknesses, and with the yet worse principle to govern his political creed, that all reform must be confined to restoring the constitution of the Gothic ages, a principle which made him ever speak with veneration of Magna Charta and the times of baronial tyranny and general servitude, of which it was the licence under seal; the Major was, nevertheless, a most invaluable advocate of reform, from the undaunted front which he steadily opposed to all its adversaries,

the uncompromising boldness with which he stood by its friends, and the singleness of purpose with which it appeared that his whole existence was devoted to this one object. Among all the wavering of some, the backslidings of others, and the desertions of not a few, he kept his hopes unabated, and seemed even most sanguine when the prospect of success was the least cheering. No coldness of the people upon a subject in which their interest was the greatest, ever damped the ardour of his zeal; no diversion of other questions, which would, from time to time, attract the whole attention of the country, leaving none alive to the cause of reform, could ever draw him off for an hour from his great subject. Standing alone at times, he would continue to address a hard-hearted generation with the sounds which no ears were open to receive. Ever ready to rally them when the least opening presented itself—never for an instant despairing of the good old cause—at seasons when the very mention of reform seemed to have ceased out of the land, and its name was a strange and uncouth sound to every ear, he would declare that he plainly descried the coming triumph of the constitution, and that he seemed to see "the days of Runnymede dawn once more." They alone who have experienced how much less easy it is to find unflinching supporters, than highly accomplished ones, for the people's cause, so often betrayed by the people's fickleness, can duly estimate the vast importance of such an advocate, and be fully aware how much more is to be hoped, in the conduct of great affairs, from dauntless courage and unwearied steadiness, than from the most brilliant gifts which nature can bestow, or culture improve.

In Parliament, the exertions of Mr. Grey,* and afterwards of Mr. Whitbread, Mr. Brand,† Sir Francis Burdett, Lord John Russell, Lord Archibald Hamilton, and Mr. Lambton,‡ ought ever to be enumerated with distinguished praise. After Lord Grey's removal to the Upper House, Sir Francis Burdett became the most unwearied and powerful champion of reform, and the extensive influence which his station and abilities gave him with the people, had an incalculable effect in keeping alive their zeal for the question at times when extraordinary efforts were required to prevent its total extinction. Mr. Lambton's motion in 1821, though his plan was exposed to many serious objections, was of very great service to the question, supported as it was by the influence out of doors, as well as in debate, which his talents, his spirit, and his fortune, gave to whatever cause he chose to espouse But no one did more real and lasting service to the question than Lord John Russell, whose repeated motions, backed by the progress of the subject out of doors, had the effect of increasing the minority in its favour, insomuch that, when he last brought it forward in 1826, Mr. Canning, finding he could only defeat it by a comparatively small majority, pronounced the question substantially carried. It was probably from this time that his party perceived the prudence of staying a change which they could not prevent, and of defeating the efficient reform which they so much dreaded, by substituting a paltry and elusory measure, of mere mock reformation. How

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* Now Earl Grey. † Now Lord Dacre. ‡ Now Lord Durham.

long such a policy could have succeeded, had others of the Tory party agreed to attempt it, we have now no means of guessing. Happily the experiment was never tried.

On the proposal of the great plan of 1831, the whole country at once awoke from its slumber, and would, from that moment, listen to no terms short of unqualified and unconditional surrender of the ancient corrupt system. The history of that measure is fresh in the recollection of all. The following speech was delivered in support of the bill, when it was before the House of Lords, in October 1831, and was then, by a majority of forty-one votes, rejected. Next summer it was carried by means not likely soon to be forgotten; and since that time a sufficient period has elapsed to show what have been the defects of the measure, and how far the system of our representation requires further amendment.

It is doubtful if the great feature of the Reform, and that which chiefly recommended it to the country, has not been carried too far. In November 1830, when Mr. Brougham, then member for Yorkshire, in redemption of the pledge given to his constituents, gave notice of a motion for Parliamentary Reform, which was to have come on the day that the Tory ministry resigned, he announced to a meeting of members held in Lord Althorp's chambers, that he should propose to cut off, at the least, one member from every close borough, and to abolish some of those boroughs altogether; but that he greatly questioned the expediency of wholly abolishing this class of seats, regard being had to certain practical uses which they served. Their total extinction by the Bill

may have been right; but then, provision has not been made for those practical uses thus lost. A public servant, as an Attorney-General, for instituting a necessary, though unpopular prosecution, or a Chancellor of the Exchequer, for maintaining a requisite but odious tax, may lose their seats, and thus hamper an administration—nay, even occasion its dissolution. Since the bill passed, it has actually happened that, the Attorney-General being excluded from Parliament during a whole session, all the measures for reforming the law were stopt for a year. It is pretty certain that some changes in the distribution of office, which are now much called for, cannot be attempted, on account of the determination, probably a temporary determination, of some populous places, not to return the official persons who now represent them. To remedy this great defect, the giving seats without votes to certain members of the Government has often been proposed, and the subject was broached in the House of Lords, when the bill was under discussion. To enable a person to change his office without vacating his seat, would be a less violent change, and would answer some at least of the same purposes.

The number of small constituencies created by the bill is a yet greater defect. There are now above a hundred members chosen by towns which have not above two hundred voters. The evils of this are enormous. Each such burgh is as bad as the worst class of the old burghs, and by far the most corrupt of all, with the single but great exception of non-resident voters being no longer empowered to vote—an exception which limits the expense of the elections, without at all limiting the bribery practised in the seve-

ral places. To remedy this glaring defect, it is certain that all householders whatever should vote, which was the plan about to be proposed by Mr. Brougham in November 1830. The restriction to ten pound householders is in every respect objectionable; and in none more than this, that it is a perfectly different qualification in different places—that sum answering to a large house and a good income, in remote country towns, while in the capital and neighbouring burghs, no house, even the meanest and occupied by the poorest person, is rated under double the amount.

But the gross inequality of the distribution is still more to be reprobated. A million of persons and an enormous wealth, in one or two counties, have no greater weight in the scale of Parliamentary influence than a few hundred poor persons in some obscure town. It is plain that while this inequality continues, little confidence can be given to the resolutions of the Commons as an indication of the public opinion.

The duration of Parliament is clearly far too long. Members chosen while the state of the Sovereign's life presents the prospect of a six or seven years' seat, never think of their constituents any more than if they had none. The most striking examples of this have been afforded during the past Session. No Minister could have obtained the very discreditable votes which the enemies of Negro emancipation, friends of the planters, have obtained, had a general election been nigh at hand. But when five or six years must elapse before the day of reckoning arrives, men of feeble principles, and greedy of promotion, or eager to share in the dispensation of public patronage, disregard the distant and uncertain displeasure of their consti-

tuents, and only seek to escape the more swift wrath of the Minister. Triennial Parliaments ought most certainly to be substituted for septennial.

The necessity of securing the electors by the plan of secret voting, seems at length to have forced itself on the minds of those formerly most reluctant to entertain the subject of the Ballot. To tenants this would assuredly afford no protection; it seems, however, clear that it would be some shelter to tradesmen; and the scenes at the last general election appear to show that some such protection is necessary, if town elections are to be other than a farce.

But a large extension of the suffrage is the one thing needful; nor can any consistent Reformer feel very clearly in favour of the Ballot, while so few classes have the right to vote at all. The mere household qualification will clearly not suffice. That comprehends many of the least enlightened and least independent classes in society—persons always looking up to rank and fortune, and ever ready to square their conduct to the wishes of those who possess them; while it wholly excludes the better informed, more virtuous, and incomparably more independent, and less time serving class of workmen who have struggled to educate themselves, and are less beholden to their employers than these are to them. No one, however, can desire to let in any ignorant and profligate person merely because he is twenty-one years of age, and not insane or convicted of a crime. Therefore an education qualification seems on every account to be the fittest. Lord Brougham's Education Bill provides for this in all votes respecting school affairs, nor can there

be conceived a reason why it should not be extended to Parliamentary elections.

How far all or any of these salutary and even necessary improvements may be introduced into our new Parliamentary constitution within a few years, there are no means of conjecturing. The existing Government have declared against all further change. Arrogating to the authors of the Bill an infallibility never before ascribed to any men, and a power of foreseeing future events which no human being can be gifted with, they have decided that the unerring and prophetic wisdom of 1831 cannot be appealed from; and that all we now complain of must be endured, rather than alter a final measure, and charge its authors with the proneness to err, which had heretofore been imagined to be the lot of man. This delusion will continue as long as Members of Parliament shall regard their own personal interest in promotion and patronage as of more value to them than the favour of their constituents and the good will of the people at large. But, in the meantime, the confidence of the country is wholly alienated from its Government, and the representative body enjoys fully less of the public esteem and respect than those whom a few years ago, men of big professions and puny performance used to taunt with holding their power of making laws by an hereditary title. It would be well if their own election had bestowed a better spirit of conduct with a title supposed to be so much more valid.

SPEECH

ON

PARLIAMENTARY REFORM,

DELIVERED IN THE HOUSE OF LORDS,

OCTOBER 7, 1831.

SPEECH.

MY LORDS,—I feel that I owe some apology to your lordships for standing in the way of any noble lords* who wish to address you: but after much deliberation, and after consulting with several of my noble friends on both sides of the House, it did appear to us, as I am sure it will to your lordships, desirable, on many grounds, that the debate should be brought to a close this night; and I thought I could not better contribute to that end than by taking the present opportunity of addressing you. Indeed, I had scarcely any choice. I am urged on by the anxiety I feel on this mighty subject, which is so great, that I should hardly have been able to delay the expression of my opinion much longer; if I had, I feel assured that I must have lost the power to address you. This solicitude is not, I can assure your lordships, diminished by my recollection of the great talents and brilliant exertions of those by whom I have been preceded in the discussion, and the consciousness of the difficulties with which I have to contend in following such men. It is a deep sense of these difficulties that induces me to call for your patient indulgence. For although not unused to meet

* The Marquess of Cleveland and several others had risen and given way.

public bodies, nay, constantly in the habit, during many years, of presenting myself before great assemblies of various kinds, yet I do solemnly assure you, that I never, until this moment, felt what deep responsibility may rest on a member of the Legislature in addressing either of its Houses. And if I, now standing with your lordships on the brink of the most momentous decision that ever human assembly came to, at any period of the world, and seeking to arrest you, whilst it is yet time, in that position, could, by any divination of the future, have foreseen in my earliest years, that I should live to appear here, and to act as your adviser, on a question of such awful importance, not only to yourselves, but to your remotest posterity, I should have devoted every day and every hour of that life to preparing myself for the task which I now almost sink under,—gathering from the monuments of ancient experience the lessons of wisdom which might guide our course at the present hour,—looking abroad on our own times, and these not uneventful, to check, by practice, the application of those lessons,—chastening myself, and sinking within me every infirmity of temper, every wayward-ness of disposition, which might by possibility impede the discharge of this most solemn duty;—but, above all, eradicating from my mind every thing that, by any accident, could interrupt the most perfect candour and impartiality of judgment. I advance thus anxious and thus humbled to the task before me; but cheered, on the other hand, with the intimate and absolute persuasion that I have no personal interest to serve,—no sinister views to resist,—that there is nothing, in my nature, or in my situation, which can cast even the shadow of a shade across the broad path, I will not say of legislative, but of judicial duty, in which I am now to accompany your lordships.

I have listened, my Lords, with the most profound attention to the debate on this question, which has lasted during the five past days; and having heard a vast variety of objections brought against this measure, and having also attended to the arguments which have been urged to repel those objections, I, careless whether I give offence in any quarter or no, must, in common fairness, say, on the one hand, that I am so far moved by some of the things which I have heard urged, as to be inclined towards the reconsideration of several matters on which I had conceived my mind to be fully made up; and, on the other, that in the great majority of the objections which have been ingeniously raised against this Bill, I can by no means concur; but viewing them as calmly and dispassionately as ever man listened to the arguments advanced for and against any measure, I am bound by a sense of duty to say, that those objections have left my mind entirely unchanged as to the bulk of the principles upon which the Bill is framed. If I presumed to go through those objections, or even through the majority of them, in detail, I should be entering upon a tedious, and also a superfluous, work: so many of them have been removed by the admirable speeches which you have already heard, that I should only be wasting your time were I once more to refute them; I should only be doing worse what my precursors have already done far better. I will begin, however, with what fell from a noble Earl,* with whose display I was far less struck than others, because I was more accustomed to it—who, viewing this Bill from a remote eminence, and not coming close, or even approaching near, made a *reconnoissance* of it too far off to see

* Earl Dudley.

even its outworks—who, indulging in a vein of playful and elegant pleasantry, to which no man listens in private with more delight than myself, knowing how well it becomes the leisure hours and familiar moments of my noble friend, delivered with the utmost purity of diction, and the most felicitous aptness of allusion—I was going to say a discourse—but it was an exercise, or essay—of the highest merit, which had only this fault—that it was an essay, or exercitation, on some other thesis, and not on this Bill. It was as if some one had set to my noble friend, whose accomplishments I know—whose varied talents I admire, but in whom I certainly desiderate soundness of judgment and closeness of argument, a theme *de rebuspublicis*, or *de motû civium*, or *de novarum rerum cupiditate*,—on change, on democracies, on republicanism, on anarchy; and on these interesting but somewhat trite and even threadbare subjects, my noble friend made one of the most lucid, most terse, most classical, and, as far as such efforts will admit of eloquence, most eloquent exercitations, that ever proceeded from mortal pen. My noble friend proceeded altogether on a false assumption; it was on a fiction of his own brain—on a device of his own imagination, that he spoke throughout. He first assumed that the Bill meant change and revolution, and on change and revolution he prelected voluminously and successfully. So much for the critical merits of his performance; but, practically viewed—regarded as an argument on the question before us—it is to be wholly left out of view; it was quite beside the matter. If this Bill be change, and be revolution, there is no resisting the conclusions of my noble friend. But on that point I am at issue with him; and he begins by taking the thing in dispute for granted. I deny that this Bill is change in the

bad sense of the word; nor does it lead to, nor has it any connexion with, revolution, except so far as it has a direct tendency to prevent revolution.

My noble friend, in the course of his essay, talked to you of this Administration as one prone to change; he told you that its whole system was a system of changes; and he selected as the first change on which he would ring a loud peal, that which he said we had made in our system of finance. If he is so averse to our making alterations in our scheme of finance the very first year we have been in office, what does he think, I ask, of Mr. Pitt's budgets, of which never one passed without undergoing changes in almost every one tax, beside those altogether abandoned? If our budget had been carried as it was originally brought in, with a remission of the timber duty, and the candle duty, and the coal duty, it would have been distinguished beyond all others only as having given substantial relief to the people on those very trivial and unnecessary articles, I suppose, of human life—fire, and light, and lodging. Then, our law reform is another change which my noble friend charged the Government with being madly bent on effecting. Scarcely had the Lord President of the Council risen to answer the objection raised against us on this score, than up started my noble friend to assert that he had not pressed any such objection into his service. My lords, I am not in the habit of taking a note of what falls from any noble lord in debate—it is not my practice—but by some fatality it did so happen that, whilst my noble friend was speaking, I took a note of his observations, of which I will take the liberty of reading you the very first line. "Change and revolution; all is change; among the first—law." I took that note, because I was somewhat surprised at the observation, knowing, as I did, that this Law Reform

had met with the approbation of my noble friend himself; and, what was yet more satisfactory to my mind, it had received the sanction of your lordships, and had been passed through all its stages without even a division. My noble friend then told us, still reconnoitering our position at a distance, or, at most, partaking in an occasional skirmish, but holding himself aloof from the main battle,—he told us that this Bill came recommended neither by the weight of ancient authority, nor by the spirit of modern refinement; that this attack on our present system was not supported by the experience of the past, nor sanctioned by any appearance of the great mind of the master genius of our precursors in later times. As to the weight of ancient authority, skilled as my noble friend is in every branch of literary history, I am obliged to tell him he is inaccurate; and, because it may afford him some consolation in this his day of discomfiture and anguish, I will supply the defect which exists in his historical recollections; for an author, the first of satirists in any age—Dean Swift, with whom my noble friend must have some sympathy, since he closely imitates him in this respect, that as the Dean satirized, under the name of man, a being who had no existence save in his own imagination, so my noble friend attacks, under the name of the Bill, a fancy of his own, a creature of his fertile brain, and which has no earthly connexion with the real ink and parchment Bill before you—Dean Swift, who was never yet represented as a man prone to change, who was not a Radical, who was not a Jacobin, (for, indeed, those terms were in his day unknown;) Dean Swift, who was not even a Whig, but, in the language of the times, a regular, staunch, thick-and-thin Tory,—while enumerating the absurdities in our system, which required an adequate and efficient remedy, says:—"It is absurd that the

boroughs, which are decayed, and destitute both of trade and population, are not extinguished;" (or, as we should say, in the language of the Bill, which was as unknown to Dean Swift as it is now to my noble friend, put into schedule A.), "because," adds the Dean, "they return members who represent nobody at all;" so here he adopts the first branch of the measure; and next he approves of the other great limb; for the second grand absurdity which he remarks is, "that several large towns are not represented, though they are filled with those who increase mightily the trade of the realm." Then as to shortening the duration of Parliaments, on which we have not introduced a single provision into the Bill—if we had, what a cry should we have heard about the statesmen in Queen Anne's day, the great men who lived in the days of Blenheim, and during the period sung of by my noble friend, from Blenheim to Waterloo; how we should have been taunted with the Somerses and Godolphins, and their contemporaries, the Swifts and the Addisons! What would *they* have said of such a change? Yet what did the same Dean Swift, the contemporary of Somers and Godolphin, the friend of Addison, who sang the glories of Blenheim, the origin of my noble friend's period,—what did the Dean, inspired by all the wisdom of ancient times, say to shortening the duration of Parliaments? "I have a strong love for the good old fashion of Gothic Parliaments, which were only of one year's duration." Such is the ground, such the vouchers, upon the authority of which my noble friend, in good set phrase, sets the weight of ancient wisdom against the errors of the Reformers, and triumphs in the round denial that we have any thing in our favour like the sanction of authority; and it turns out, after all, that the wise men of the olden time promulgated their opinions on

the subject in such clear, and decisive, and vigorous terms, that if they were living in our days, and giving utterance to the same sentiments, they would be set down rather for determined Radicals than for enemies of Reform.

Then my noble friend, advancing from former times to our own, asked who and what they are that form the Cabinet of the day? To such questions it would be unbecoming in me to hazard a reply. I do not find fault with my noble friend for asking them; I admit that it is fair to ask who are they that propound any measure, especially when it comes in the shape of a great change. The noble Earl then complained of our poverty of genius—absence of commanding talents—want of master minds—and even our destitution of eloquence, a topic probably suggested by my noble friend's* display, who opened the debate, and whose efforts in that kind are certainly very different from those which the noble Earl seems to admire. But if it be a wise rule to ask by whom a measure is propounded before you give it implicit confidence, it certainly cannot be an unwise rule to ask, on the other hand, who and what be they by whom that measure is resisted, before you finally reject it on their bare authority. Nor can I agree with a noble friend of mine,† who spoke last night, and who laid down one doctrine on this subject, at which I marvelled greatly. It was one of his many allegories—for they were not metaphors, nor yet similies—some of them, indeed, were endless, especially when my noble friend took to the water, and embarked us on board of his ship,—for want of steam, I thought we should never have got to the end of our voyage. When we reply to their arguments against

* Lord Grey. † Lord Caernarvon.

our measure, by asking what Reform they have got of their own to offer, he compares us to some host, who, having placed before his friends an uneatable dinner, which they naturally found fault with, should say, "Gentlemen, you are very hard to please: I have set a number of dishes before you, which you cannot eat —now, what dishes can you dress yourselves?" My noble friend says, that such an answer would be very unreasonable—for he asks, ingeniously enough, how *can* the guests dress a dinner, especially when they have not possession of the kitchen? But did it never strike him that the present is not the case of guests called upon to eat a dinner,—it is one of rival cooks who want to get into our kitchen, We are here all on every side cooks,—a synod of cooks, (to use Dr. Johnson's phrase,) and nothing but cooks; for it is the very condition of our being—the bond of our employment, under a common master—that none of us shall ever taste the dishes we are dressing. The Commons House may taste it; but can the Lords? —we have nothing to do but prepare the viands. It is therefore of primary importance, when the authority of the two classes of rival artists is the main question, to inquire what are our feats severally in our common calling. I ought perhaps to ask your lordships' pardon for pursuing my noble friend's allegory; but I saw that it produced an impression by the cheers it excited, and I was desirous to show that it was in a most extraordinary degree inapplicable to the question, to illustrate which it was fetched from afar off. I therefore must think myself entitled to ask who and what be they that oppose us, and what dish they are likely to cook for us, when once again they get possession of the kitchen? I appeal to any candid man who now hears me, and I ask him whether, it being fair to consider who are the authors of the Bill, it is

not equally fair to consider from whom the objections come? I therefore trust that any impartial man, unconnected with either class of statesmen, when called upon to consider our claims to confidence, before he adopts our measures, should, before he repudiates us in favour of our adversaries, inquire—Are they likely to cure the evils, and remedy the defects, of which they admit the existence in our system?—and are their motives such as ought to win the confidence of judicious and calmly-reflecting men?

One noble Lord* there is whose judgment we are called upon implicitly to trust, and who expressed himself with much indignation, and yet with entire honesty of purpose, against this measure. No man is, in my opinion, more single-hearted; no man more incorruptible. But in his present enmity to this Bill, which he describes as pregnant with much mischief to the constitution, he gives me reason to doubt the soundness of the resolution which would take him as a guide, from the fact of his having been not more than five or six months ago most friendly to its provisions, and expressed the most unbounded confidence in the Government which proposed it. Ought not this to make us pause before we place our consciences in his keeping,—before we surrender up our judgment to his prudence,—before we believe in his cry that the Bill is revolution, and the destruction of the empire,—when we find the same man delivered diametrically opposite opinions only six months ago?

The Earl of WINCHELSEA here shouted out "No."

The LORD CHANCELLOR—Then I have been practised upon, if it is not so: and the noble Earl's assertion should be of itself sufficient to convince me that I have been practised on. But I can assure the noble

* Lord Winchelsea.

Earl, that this has been handed to me as an extract from a speech which he made to a meeting of the county of Kent, held at Maidstone, on the 24th of last March:—"They have not got Reform yet; but when the measure does come, as I am persuaded it will come, into the law of the land—" (a loud cry of "No," from the Opposition Lords).—Then if noble Lords will not let me proceed quietly, I must begin again, and this time I will go further back. The speech represents the noble Earl to have said, "His Majesty's Government is entitled to the thanks of the country. Earl Grey, with his distinguished talents, unites a political honesty not to be surpassed, and leaves behind him, at an immeasurable distance, those who have abandoned their principles and deceived their friends. The noble Lord is entitled to the eternal gratitude of his country, for the manner in which he has brought forward this question. I maintain, that he deserves the support of the country at large." And, my Lords, the way in which I was practised on to believe that all this praise was not referable to the Timber duties, but to Reform, I shall now explain. It is in the next passage of the same speech:—"They have not got Reform yet; but when the measure does come, as I am persuaded it will come, into the law of the land, it will consolidate, establish, and strengthen our glorious constitution; and not only operate for the general welfare and happiness of the country, but will also render an act of justice to the great and influential body of the people. The measure has not yet been introduced to that House of which I am a member." (Lord Winchelsea and his friends here cheered loudly.) Aye, but it had been debated in the House of Commons for near a month, —it had been published in all books, pamphlets, and newspapers,—it had been discussed in all companies

and societies,—and I will undertake to assert, that there was not one single man in the whole county of Kent, who did not know that Lord John Russell's Bill was a Bill for Parliamentary Reform. The speech thus concludes:—"When the Bill is brought forward in that House of which I am a member, I shall be at my post, ready to give it my most hearty and cordial"—opposition?—no,—"support." But why do I allude to this speech at all? Merely to show, that if those who oppose the Bill say to us, "Who are you that propound it?" and make our previous conduct a ground for rejecting it, through distrust of its authors, we have a right to reply to them with another question, and to ask, "Who are you that resist it, and what were your previous opinions regarding it?"

Another noble Lord* has argued this question with great ability and show of learning; and if we are to take him as our guide, we must also look at the panacea which he provides for us in case of rejection. That noble Lord, looking around him on all sides—surveying what had occurred in the last forty or fifty years,—glancing above him and below him, around him and behind him,—watching every circumstance of the past,—anticipating every circumstance of the future,—scanning every sign of the times,—taking into his account all the considerations upon which a lawgiver ought to reckon,—regarding also the wishes, the vehement desires, not to say absolute demands, of the whole country for some immediate Reform,—concentrates all his wisdom in this proposition,—the result, the *practical result* of all his deliberations, and all his lookings about, and all his scannings of circumstances—the whole produce of his thoughts, by the value of which you are to try the safety of his counsels

* Lord Mansfield.

—namely, that you should suspend all your operations on this Bill for two years, and, I suppose, two days, to give the people—what? breathing time. The noble Lord takes a leaf out of the book of the noble Duke near him,—a leaf, which I believe the noble Duke himself would now wish cancelled. The noble Duke shortly before he proposed the great measure of Catholic Emancipation, had said,—"Before I can support that measure, I should wish that the whole question might sink into oblivion." But the proposition of the noble Earl, though based on the same idea, goes still further. "Bury," says he, "this measure of Reform in oblivion for two years and two days, and then see, good people, what I will do for you." And then what will the noble Lord do for the good people?—Why, Nothing—neither more nor less than Nothing. We, innocents that we were, fancied that the noble Lord must, after all his promises, really mean to do something; and thought he had said somewhat of bribery,—of doing a little about bribery,—which was his expression; but when we mentioned our supposition, that he really meant to go as far as to support a Bill for the more effectual prevention of bribery at elections, the noble Lord told us he would do no such thing.

The Earl of Mansfield.—I gave no opinion on the point.

The Lord Chancellor.—Exactly so. The noble Lord reserves his opinion as to whether he would put down bribery for two years and two days; and when they are expired, he, peradventure, may inform us whether he will give us leave to bring in a Bill to prevent bribery; not all kinds of bribery—that would be radical work—but as far as the giving away of ribands goes, leaving beer untouched, and agreeably to the venerable practice of the olden time.

Another noble Lord, a friend of mine, whose honesty and frankness stamp all he says with still greater value than it derives from mere talent,* would have you believe that all the Petitions, under which your table now groans, are indeed for Reform, but not for this Bill, which he actually says the people dislike. Now is not this a droll way for the people to act, if we are to take my noble friend's statement as true? First of all, it is an odd time they have taken to petition for Reform, if they do not like this Bill. I should say that if they petition for Reform, whilst this particular measure is passing through the House, it is a proof that the Bill contains the Reform they want. Surely, when I see the good men of this country—the intelligent and industrious classes of the community —now coming forward, not by thousands but by hundreds of thousands, I can infer nothing from their conduct, but that this is the Bill, and the only Bill, for which they petition? But if they really want some Reform other than the Bill proposes, is it not still more unaccountable that they should one and all petition, not for that other Reform, but for this very measure? The proposition of my noble friend is, that they love Reform in general, but hate this particular plan; and the proof of it is this, that their petitions all pray earnestly for this particular plan, and say not a word of general Reform. Highly as I prize the integrity of my noble friend,—much as I admire his good sense on other occasions,—I must say, that on this occasion I descry not his better judgment, and I estimate how far he is a safe guide either as a witness to facts, or as a judge of measures, by his success in the present instance; in either capacity, I cannot hesitate in recommending your Lordships not to fol-

* Lord Wharncliffe.

low him. As a witness to facts, never was failure more complete. The Bill, said he, has no friends anywhere; and he mentioned Bond-street as one of his walks, where he could not enter a shop without finding its enemies abound. No sooner had Bond-street escaped his lips than up comes a petition to your Lordships from nearly all its shopkeepers, affirming that their sentiments have been misrepresented, for they are all champions of the Bill. My noble friend then says, "Oh, I did not mean the shopkeepers of Bond-street in particular; I might have said any other street, as St. James's equally." No sooner does that unfortunate declaration get abroad, than the shopkeepers of St. James's-street are up in arms, and forth comes a petition similar to that from Bond-street. My noble friend is descried moving through Regent-street, and away scamper all the inhabitants, fancying that he is in quest of Anti-Reformers—sign a requisition to the churchwardens—and the householders, one and all, declare themselves friendly to the Bill. Whither shall he go—what street shall he enter, in what alley shall he take refuge—since the inhabitants of every street, and lane, and alley, feel it necessary, in self-defence, to become signers and petitioners, as soon as he makes his appearance among them? If harassed by Reformers on land, my noble friend goes down to the water, the thousand Reformers greet him, whose petition* I this day presented to your Lordships. If he were to get into a hackney-coach, the very coachmen and their attendants would feel it their duty to assemble and petition. Wherever there is a street, an alley, a passage, nay, a river, a wherry, or a hackney coach, these, because inhabited, become forbidden and *tabooed* to my noble

* Lambeth.

friend. I may meet him not on "the accustomed hill," for Hay-hill, though short, has some houses on its slope, but on the south side of Berkeley-square, wandering "remote, unfriended, melancholy, slow,"—for there he finds a street without a single inhabitant, and therefore without a single friend of the Bill. If, in despair, he shall flee from the town to seek the solitude of the country, still will he be pursued by cries of "Petition, petition! The Bill, the Bill!" His flight will be through villages placarded with "The Bill"—his repose at inns holden by landlords who will present him with the Bill—he will be served by Reformers in the guise of waiters—pay tribute at gates where petitions lie for signing—and plunge into his own domains to be overwhelmed with the Sheffield petition, signed by 10,400 friends of the Bill.

> "Me miserable! which way shall I fly
> Infinite wrath and infinite despair?
> Which way I fly, Reform—myself Reform!"

for this is the most serious part of the whole,—my noble friend is himself, after all, a Reformer. I mention this to show that he is not more a safe guide on matters of opinion than on matters of fact. He is a Reformer—he is not even a bit-by-bit Reformer—not even a gradual Reformer—but that which at any other time than the present would be called a wholesale, and even a Radical Reformer. He deems that no shadowy unsubstantial Reform,—that nothing but an effectual remedy of acknowledged abuses, will satisfy the people of England and Scotland; and this is a fact to which I entreat the earnest and unremitting attention of every man who wishes to know what guides are safe to follow on this subject. Many now follow men who say that Reform is necessary, and yet object to this Bill as being too large; that is, too efficient. This may be very incorrect; but it is worse;

it is mixed up with a gross delusion, which can never deceive the country; for I will now say, once for all, that every one argument which has been urged by those leaders is as good against moderate Reform as it is against this Bill. Not a single reason they give, not a topic they handle, not an illustration they resort to, not a figure of speech they use, not even a flower they fling about, that does not prove or illustrate the position of "*No Reform.*" All their speeches, from beginning to end, are railing against the smallest as against the greatest change, and yet all the while they call themselves Reformers! Are they then safe guides for any man who is prepared to allow any Reform, however moderate, of any abuse, however glaring?

Of another noble Earl,* whose arguments, well selected and ably put, were yet received with such exaggerated admiration by his friends as plainly showed how pressing were their demands for a tolerable defender, we have heard it said, again and again, that no answer whatever has been given to his speech. I am sure I mean no disrespect to that noble Earl, when I venture to remark the infinite superiority in all things, but especially in argument, of such speeches as those of the noble Marquis† and the noble Viscount.‡ The former, in his most masterly answer, left but little of the speech for any other antagonist to destroy. The latter, while he charmed us with the fine eloquence that pervaded his discourse, and fixed our thoughts by the wisdom and depth of reflection that informed it, won all hearers by his candour and sincerity. Little, indeed, have they left for me to demolish; yet if any thing remain, it may be as well we should take it to pieces. But I am first considering the noble Earl in the light of one professing to be a

* Lord Harrowby. † Marquis Lansdowne. ‡ Viscount Melbourne.

a safe guide for your Lordships. What then are his claims to the praise of calmness and impartiality? For the constant cry against the Government is, "You are hasty, rash, intemperate men. You know not what you do; your adversaries are the true State physicians; look at their considerate deportment; imitate their solemn caution." This is the sort of thing we hear in private as well as public. "See such an one,—*he* is a man of prudence, and a discreet (the olden times called such a *sad*) man; he is not averse to all innovation, but dislikes precipitancy; he is calm; just to all sides alike; never gives a hasty opinion; a safe one to follow; look how *he* votes." I have done this on the present occasion; and, understanding the noble Earl might be the sort of personage intended, I have watched him. Common consistency was of course to be at all events expected in this safe model—some connexion between the premises and conclusion, the speech and the vote. I listened to the speech, and also, with many others, expected that an avowal of all, or nearly all, the principles of the Bill would have ended in a vote for the second reading, which might suffer the Committee to discuss its details, the only subject of controversy with the noble Earl. But no such thing; he is a Reformer, and approves the principle, objecting to the details, and, therefore, he votes against it in the lump, details, principle and all. But soon after his own speech closed he interrupted another, that of my noble and learned friend,* to give us a marvellous sample of calm and impartial judgment. What do you think of the cool head—the unruffled temper—the unbiassed mind of that man—most candid and most acute as he is, when not under the domination

* Lord Plunkett.

of alarm—who could listen without even a gesture of disapprobation to the speech of one noble Lord,* professedly not extemporaneous, for he, with becoming though unnecessary modesty, disclaims the faculty of speaking off-hand, but elaborately prepared, in answer to a member of the other House, and in further answer to a quarto volume, published by him—silent and unmoved, could hear another speech, made up of extracts from the House of Commons' debates—could listen and make no sign when a noble Marquis† referred to the House of Commons' speeches of my noble friend by his House of Commons' name, again and again calling him Charles Grey, without even the prefix of Mr.; nay, could *himself* repeatedly comment upon those very speeches of the other House—what will your Lordships say of the fatal effects of present fear, in warping and distorting a naturally just mind, when you find this same noble Earl interrupt the Chancellor of Ireland, because he most regularly, most orderly, referred to the public conduct of a Right Honourable Baronet,‡ exhibited in a former Parliament, and now become a matter of history? Surely, surely, nothing more is wanted to show that all the rashness—all the heedlessness—all the unreflecting precipitancy, is not to be found upon the right hand of the woolsack; and that they who have hurried across the sea, in breathless impatience, to throw out the Bill, might probably, had they been at home, and allowed themselves time for sober reflection, have been found among the friends of a measure which they now so acrimoniously oppose! So much for the qualifications of the noble Lords, to act safely as our guides, according to the general view of the question as one of mere authority, taken by my noble friend.§

* Lord Mansfield. † Marquis Londonderry. ‡ Sir R. Peel. § Lord Dudley.

But I am quite willing to rest the subject upon a higher ground, and to take it upon reason, and not upon authority. I will therefore follow the noble Earl* somewhat more closely through his argument, the boast of our antagonists.

He began with historical matter, and gave a very fair and manly explanation of his family's connexion with the Borough of Tiverton. This, he said, would set him *rectus in curiâ*, as he phrased it. If by this he meant that he should thence appear to have no interest in opposing the Bill, I cannot agree with him; but certainly his narrative, coupled with a few additions by way of reference, which may be made to it, throws considerable light upon the system of rotten boroughs. The influence by which his family have so long returned the two members, is, it seems, personal, and in no way connected with property. This may be very true; for certainly the noble Lord has no property within a hundred miles of the place; yet, if it is true, what becomes of the cry, raised by his Lordship, about property? But let that pass—the influence then is personal—aye, but it may be personal, and yet be *official* also. The family of the noble Earl has for a long series of years been in high office, ever since the time when its founder also laid the foundations of the borough connexion, as Solicitor-General. By some accident or other, they have always been connected with the Government, as well as the borough. I venture to suspect that the matter of patronage may have had some share in cementing the attachment of the men of Tiverton to the house of Ryder. I take leave to suggest the bare possibility of many such men having always held local and other places—of the voters and their families having always

* Lord Harrowby.

got on in the world through that patronage. If it should turn out that I am right, there may be no very peculiar blame imputable to the noble Earl and his Tiverton supporters; but it adds one to the numberless proofs that the borough system affords endless temptations to barter political patronage for Parliamentary power—to use official influence for the purpose of obtaining seats in the Commons, and, by means of those seats, to retain that influence.

The noble Earl complained that the Reform Bill shut the doors of Parliament against the eldest sons of Peers, and thus deprived our successors of the best kind of political education. My Lords, I freely admit the justice of his panegyric upon this constitutional training, by far the most useful which a statesman can receive; but I deny that the measure proposed will affect it—will obstruct the passage to the House of Commons; it will rather clear and widen it to all, who, like your Lordships' sons, ought there to come. My noble friend,* who so admirably answered the noble Earl, in a speech distinguished by the most attractive eloquence, and which went home to every heart from the honest warmth of feeling, so characteristic of his nature, that breathed through it—has already destroyed this topic by referring to the most notorious facts, by simply enumerating the open counties represented by Peers' eldest sons. But I had rather take one instance for illustration, because an individual case always strikes into the imagination, and rivets itself deep in the memory. I have the happiness of knowing a young nobleman—whom to know is highly to esteem—a more virtuous, a more accomplished I do not know—nor have any of your lordships, rich as you are in such blessings, any arrow

* Lord Goderich.

in all your quivers of which you have more reason to be proud. He sat for a nomination borough; formed his own opinion; decided for the Bill; differed with his family—they excluded him from Parliament, closing against him, at least that avenue to a statesman's best education, and an heir-apparent's most valued preparation for discharging the duties of the Peerage. How did this worthy scion of a noble stock seek to re-open the door thus closed, and resume his political schooling, thus interrupted by the borough patrons? Did he resort to another close borough, to find an avenue like that which he had lost under the present system, and long before the wicked Bill had prevented young lords from duly finishing their Parliamentary studies? No such thing. He threw himself upon a large community—canvassed a populous city—and started as a candidate for the suffrages of thousands, on the only ground which was open to such solicitation—he avowed himself a friend of the Bill. *Mutato nomine de te.* The borough that rejected him was Tiverton—the young nobleman was the heir of the house of Ryder—the patron was the noble Earl, and the place to which the ejected member resorted for the means of completing his political education in one house, that he might one day be the ornament of the other, was no small, rotten, nomination borough, but the great town of Liverpool.

Lord Harrowby begged to set the noble and learned Lord right. He was himself abroad at the time, fifteen hundred miles off; and his family had nothing to do with the transaction. His son was not returned, because he did not offer himself. [*Cries of Hear!*]

The Lord Chancellor continued.—I hope the noble Lords will themselves follow the course their cries seem to recommend, and endeavour to *hear*.

Excess of noise may possibly deter some speakers from performing their duty; but my political education (of which we are now speaking) has been in the House of Commons; my habits were formed there; and no noise will stop me. I say so in tenderness to the noble persons who are so clamorous; and that, thus warned, they may spare their own lungs those exertions which can have no effect except on my ears, and perhaps to make me more tedious. As to the noble Earl's statement, by way of setting me right, it is wholly unnecessary, for I knew he was abroad—I had represented him as being abroad, and I had never charged him with turning out his son. The family, however, must have done it. (Lord Harrowby said, *No.*) Then so much the better for my argument against the system, for then the borough itself had flung him out, and prevented him from having access to the political school. I believe the statement that the family had nothing to do with it, because the noble Earl makes it; but it would take a great deal of statement to make me believe that neither the patron nor the electors had any thing to do with the exclusion, and that the Member had voluntarily given up his seat, and indeed his office with his seat, beside abandoning his political studies, when he could have continued them as representative of his father's borough.

But the next argument of the noble Earl I am, above all, anxious to grapple with, because it brings me at once to a direct issue with him, upon the great principle of the measure. The grand charge iterated by him, and re-echoed by his friends, is, that population, not property, is assumed, by the Bill, as the basis of representation. Now, this is a mere fallacy, and a gross fallacy. I will not call it a wilful misstatement; but I will demonstrate that two perfectly

different things are, in different parts of this short proposition, carefully confounded, and described under the same equivocal name. If, by basis of representation is meant the ground upon which it was deemed right, by the framers of the Bill, that some places should send Members to Parliament, and others not, then I admit that there is some foundation for the assertion; but then it only applies to the new towns, and also it has no bearing whatever upon the question. For the objection—and I think the sound objection—to taking mere population as a criterion in giving the elective franchise, is, that such a criterion gives you electors without a qualification, and is, in fact, universal suffrage. And herein, my lords, consists the grievous unfairness of the statement I am sifting; it purposely mixes together different matters, and clothes them with an ambiguous covering, in order, by means of the confusion and the disguise, to insinuate that universal suffrage is at the root of the Bill. Let us strip off this false garb. Is there in the Bill any thing resembling universal suffrage? Is it not framed upon the very opposite principles? In the counties, the existing qualification by freehold is retained in its fullest extent; but the franchise is extended to the other kinds of property, copyhold and leasehold. It is true that tenants at will are also to enjoy it, and their estate is so feeble, in contemplation of law, that one can scarce call it property. But whose fault is that? Not the authors of the Bill, for they deemed that terms of years alone should give a vote; but they were opposed and defeated in this by the son of my noble friend* near me, and his fellow labourers against the measure. Let us now look to the borough qualification. (*Some noise from conversation here took*

* The Duke of Buckingham.

place.) Noble lords must be aware that the Chancellor, in addressing your Lordships, stands in a peculiar situation. He alone speaks among his adversaries. Other peers are at least secure against being interrupted by the conversation of those in their immediate neighbourhood. And for myself, I had far rather confront any distant cheers, however hostile, than be harassed by the talk of those close by. No practice in the House of Commons can ever accustom a person to this mode of annoyance, and I expect it, in fairness, to cease.

To resume the subject where I was forced to break off.—I utterly deny that population is the test, and property disregarded, in arranging the borough representation. The franchise is conferred upon householders only. Is not this a restriction? Even if the right of voting had been given to all householders, still the suffrage would not have been universal; it would have depended on property, not on numbers; and it would have been a gross misrepresentation to call population the basis of the Bill. But its framers restricted that generality, and determined that property, to a certain considerable amount, should alone entitle to elect. It is true they did not take freehold tenure of land, as that qualification is inconsistent with town rights—nor did they take a certain amount of capital as the test—for that, beside its manifest inconvenience, would be a far more startling novelty than any the measure can be charged with. But the renting a £10 house is plainly a criterion both of property and respectability. It is said, indeed, that we have pitched this qualification too low—but are we not now debating on the principle of the Bill? And is not the Committee the place for discussing whether that principle should be carried into effect by a qualification of £10, or a higher? I have no objection,

however, to consider this mere matter of detail here; and if I can satisfy the noble Earl, that all over England, except in London and a few other great towns, £10 is not too low, I may expect his vote after all. Now, in small towns—I speak in the hearing of noble Lords who are well acquainted with the inhabitants of them,—persons living in £10 houses are in easy circumstances. This is undeniably the general case. In fact, the adoption of that sum was not a matter of choice. We had originally preferred £20, but when we came to inquire, it appeared that very large places had a most inconsiderable number of such houses. One town, for instance, with 17,000 or 18,000 inhabitants, had not twenty who rented houses rated at £20 a-year. Were we to destroy one set of close boroughs, the Old Sarums and Gattons, which had at least possession to plead for their title, in order to create another new set of boroughs just as close, though better peopled? In the large town I have alluded to, there were not three hundred persons rated at £10. Occupiers of such houses, in some country towns, fill the station of inferior shopkeepers—in some, of the better kind of tradesmen—here they are foremen of workshops—there, artisans earning good wages—sometimes, but seldom, labourers in full work: generally speaking, they are a class above want, having comfortable houses over their heads, and families and homes to which they are attached. An opinion has been broached, that the qualification might be varied in different places, raised in the larger towns, and lowered in the smaller. To this I myself, at one time, leant very strongly; I deemed it a great improvement of the measure. If I have since yielded to the objections which were urged, and the authorities brought to bear against me, this I can very confidently affirm, that if any one shall propound it in the Committee, he

will find in me, I will not say a supporter, but certainly an ample security, that the doctrine, which I deem important, shall undergo a full and candid and scrutinizing discussion. I speak for myself only—I will not even for myself say, that were the Committee so to modify the Bill, I would accept it thus changed. Candour prevents me from holding out any such prospect; but I do not feel called upon to give any decisive opinion now upon this branch of the details, not deeply affecting the principle; only, I repeat emphatically, that I shall favour its abundant consideration in the proper place—the Committee.

My Lords, I have admitted that there is some truth in the assertion of population being made the criterion of title in towns to send representatives, though it has no application to the present controversy. Some criterion we were forced to take; for nobody holds that each place should choose members severally. A line must be drawn somewhere, and how could we find a better guide than the population? That is the general test of wealth, extent, importance; and therefore substantially, though not in name, it is really the test of property. Thus, after all, by taking population as the criterion of what towns shall send members, we get at property by almost the only possible road, and property becomes substantially the basis of the title to send representatives; as it confessedly is, in name as well as in substance, the only title to concur in the election of them. The whole foundation of the measure, therefore, and on which all its parts rest, is property alone, and not at all population.

But then, says the noble Earl, the population of a town containing 4000 souls, may, for any provision to the contrary in the Bill, be all paupers! Good God! Did ever man tax his ingenuity so hard to find an absurdly extreme case? What! a town of 4000

paupers! 4000 inhabitants, and all quartered on the rates! Then who is to pay the rates? But if extreme cases are to be put on the one side, why may not I put one on the other? What say you to close boroughs coming, by barter or sale, into the hands of Jew jobbers, gambling loan-contractors, and scheming attorneys, for the materials of extreme cases? What security do these afford against the machinations of aliens —aye, and of alien enemies? What against a Nabob of Arcot's parliamentary and financial speculations? What against that truly British potentate naming eighteen or twenty of his tools members of the British House of Commons? But is this an extreme case, one that stands on the outermost verge of possibility, and beyond all reach of probable calculation? Why, it once happened; the Nabob Wallajah Cawn Bahauder had actually his eighteen or twenty members bought with a price, and sent to look after his pecuniary interests, as honest and independent Members of Parliament. Talk now of the principle of property —the natural influence of great families—the sacred rights of the aristocracy—the endearing ties of neighbourhood—the paramount claims of the landed interest! Talk of British duties to discharge—British trusts to hold—British rights to exercise! Behold the sovereign of the Carnatic, who regards nor land nor rank, nor connexion, nor open county, nor populous city; but his eye fastens on the time-honoured relics of departed greatness and extinct population— the walls of Sarum and Gatton; he arms his right hand with their venerable parchments, and, pointing with his left to a heap of star pagodas too massive to be carried along, lays siege to the citadel of the constitution, the Commons House of Parliament, and its gates fly open to receive his well disciplined band. Am I right in the assertion, that a foreign prince

obtaining votes in Parliament, under the present system, is no extreme case? Am I wrong in treating with scorn the noble Earl's violent supposition of a town with 4000 souls, and all receiving parish relief?

But who are they that object to the Bill its disregard of property? Is a care for property that which peculiarly distinguishes the system *they* uphold? Surely the conduct of those who contend that property alone ought to be considered in fixing the rights of election, and yet will not give up one freeman of a corporation to be disfranchised, presents to our view a miracle of inconsistency. The right of voting, in freemen, is wholly unconnected with any property of any kind whatever; the being a freeman, is no test of being worth one shilling. Freemen may be, and very often are, common day-labourers, spending every week their whole weekly gains—menial servants, having the right by birth—men living in alms-houses—parish paupers. All who have been at contested elections for corporate towns know that the question constantly raised is upon the right to vote of freemen receiving parish relief. The voters in boroughs, under the present system, are such freemen, non-resident as well as resident (a great abuse, because the source of a most grievous expense to candidates), inhabitants paying scot and lot, which is only an imperfect form of the qualification intended by the Bill to be made universal, under wholesome restrictions — and burgage tenants. I have disposed of the two first classes; there remains the last. Burgages, then, are said to be property, and, no doubt, they resemble it a good deal more than the rights of freemen do. In one sense, property they certainly are. But whose? The Lord's who happens to have them on his estate. Are they the property of the voter, who, to qualify him for the

purposes of election, receives his title by a mock conveyance at two o'clock in the afternoon, that he may vote at three for the nominee of the real owner, and at four, returns it to the Solicitor of that owner, to be ready for the like use at the next election? This is your present right of voting by burgage, and this you call a qualification by virtue of property. It is a gross abuse of terms. But it is worse: it is a gross abuse of the Constitution—a scandal and an outrage no longer to be endured. That a Peer, or a speculating Attorney, or a jobbing Jew, or a gambler from the Stock Exchange, by vesting in his own person the old walls of Sarum, a few pigsties at Bletchingly, or a summer-house at Gatton, and making fictitious and collusive and momentary transfers of them to an agent or two, for the purpose of enabling them to vote as if they had the property, of which they all the while know they have not the very shadow, is in itself a monstrous abuse, in the form of a gross and barefaced cheat; and becomes the most disgusting hypocrisy, when it is seriously treated as a franchise by virtue of property. I will tell those Peers, Attorneys, Jobbers, Loan-contractors, and the Nabob's agents, if such there still be among us, that the time is come when these things can no longer be borne—and an end *must* at length be put to the abuse which suffers the most precious rights of Government to be made the subject of common barter—the high office of making laws to be conveyed by traffic, pass by assignment under a commission of bankrupt, or the powers of an insolvent act, or be made over for a gaming debt. If any one can be found to say that the abuses which enable a man to put his livery servants in the House of Commons as lawgivers, are essential parts of the British Constitution, he must have read its history with better eyes than mine; and if such person be

right, I certainly am wrong—but if I am, then also are all those other persons far more in the wrong, who have so lavishly, in all times and countries, sung the praises of that Constitution. I well remember, when I argued at that Bar the great case of my Noble friend claiming a barony by tenure*—it was again and again pressed upon me by the noble and learned Earl,† as a consequence of the argument absurd enough to refute it entirely, that a seat in this House might become vested, as he said, in a tailor, as the assignee of an insolvent's estate and effects. I could only meet this by humbly suggesting, that the anomaly, the grossness of which I was forced to admit, already existed in every day's practice; and I reminded your Lordships of the manner in which seats in the other House of the Legislature are bought and sold. A tailor may by purchase, or by assignment under a bankruptcy, obtain the right of sending Members to Parliament, and he may nominate himself—and the case has actually happened. A waiter at a gambling house did sit for years in that House, holding his borough property, for aught I can tell, in security of a gambling debt. By means of that property, and right of voting, he advanced himself to the honours of the baronetcy. Fine writing has been defined to be right words in right places; so may fine acting be said to consist of right votes in right places, that is, on pinching questions; and in the discharge of my professional duty on the occasion of which I am speaking, I humbly ventured to approach a more awful subject, and to suggest the possibility of the worthy baronet rising still higher in the state; and, by persisting in his course of fine acting and judicious voting, obtaining, at length, a seat among your lord-

* Lord Segrave. † Earl of Eldon.

ships—which he would then have owed to a gambling debt. Certain it is, that the honours of the Peerage have been bestowed before now upon right voters in right places. While I am on this subject, I cannot but advert to the remarks of my noble and learned friend* who was elevated from the bench to this House, and who greatly censured the Ministers for creating some peers who happened to agree with them in politics. The coronation was, as all men know, forced upon us; nothing could be more against our will; but the Opposition absolutely insisted on having one, to show their loyalty; a creation of Peers was the necessary consequence, and the self-same number were made as at the last coronation, ten years ago. But we did not make our adversaries peers—we did not bring in a dozen men to oppose us—that is my noble friend's complaint; and we did not choose our peers for such merits as alone, according to his view, have always caused men to be ennobled. Merit, no doubt, has opened to many the doors of this House. To have bled for their country—to have administered the highest offices of the State—to have dispensed justice on the Bench—to have improved mankind by arts invented, or enlightened them by science extended—to have adorned the world by letters, or won the more imperishable renown of virtue—these, no doubt, are the highest and the purest claims to public honours; and from some of these sources are derived the titles of some among us—to others, the purest of all, none can trace their nobility—and upon not any one of them can one single Peer in a score rest the foundation of his seat in this place. Service without a scar in the political campaign—constant presence in the field of battle at St. Stephen's chapel—absence from all other fights,

* Lord Wynford.

from "Blenheim down to Waterloo"—but above all, steady discipline—right votes in right places—these are the precious, but happily not rare qualities, which have generally raised men to the Peerage. For these qualities, the gratitude of Mr. Pitt showered down his Baronies by the score, and I do not suppose he ever once so much as dreamt of ennobling a man who had ever been known to give one vote against him.

My Lords, I have been speaking of the manner in which owners of boroughs traffic, and exercise the right of sending Members to Parliament. I have dwelt on no extreme cases; I have adverted to what passes every day before our eyes. See now the fruits of the system, also by every day's experience. The Crown is stript of its just weight in the Government of the country, by the masters of rotten boroughs; —they may combine; they do combine, and their union enables them to dictate their own terms. The people are stript of their most precious rights, by the masters of rotten boroughs—for they have usurped the elective franchise, and thus gained an influence in Parliament which enables them to prevent its restoration. The best interests of the country are sacrificed by the masters of rotten boroughs—for their nominees must vote according to the interest not of the nation at large, whom they affect to represent, but of a few individuals, whom alone they represent in reality. But so perverted have men's minds become, by the gross abuse to which they have been long habituated, that the grand topic of the noble Earl,* and other debaters —the master-key which instantly unlocked all the sluices of indignation in this quarter of the House against the measure—which never failed, how often soever used, to let loose the wildest cheers, has been

* Lord Harrowby.

—that our Reform will open the right of voting to vast numbers, and interfere with the monopoly of the few; while we invade, as it is pleasantly called, the property of the Peers and other borough-holders. Why, say they, it absolutely amounts to representation! And wherefore should it not, I say? and what else ought it to be? Are we not upon the question of representation and none other? Are we not dealing with the subject of a representative body for the people? The question is, how we may best make the people's House of Parliament represent the people; and, in answer to the plan proposed, we hear nothing but the exclamations—"Why, this scheme of yours is rank representation! It is downright election! It is neither more nor less than giving the people a voice in the choice of their own representatives! It is absolutely that most strange—unheard-of—unimagined—and most abominable—intolerable—incredibly-inconsistent and utterly pernicious novelty, that the members chosen should have electors, and that the constituents should have something to do with returning the members!"

But we are asked, at what time of our history any such system as we propose to establish was ever known in England, and this appeal, always confidently made, was never more pointedly addressed than by my noble and learned friend* to me. Now, I need not remind your Lordships, that the present distribution of the right to send Members, is anything rather than very ancient; still less has it been unchanged. Henry VIII. created twenty boroughs—Edward VI. made twelve—good Queen Elizabeth created one hundred and twenty, revived forty-eight; and in all there were created and revived two hundred

* Lord Wynford.

down to the Restoration. I need only read the words of Mr. Prynne upon the remote antiquity of our Borough System. He enumerates sixty-four boroughs—fourteen in Cornwall alone—as all new; and, he adds, "for the most part, the Universities excepted, very mean, poor, inconsiderable boroughs, set up by the late returns, practices of sheriffs, or ambitious gentlemen desiring to serve them, courting, bribing, feasting them for their voices, not by prescription or charter (some few excepted), since the reign of Edward IV., before whose reign they never elected or returned members to any English Parliament, as now they do."

Such then is the old and venerable distribution of representation time out of mind, had and enjoyed in Cornwall and in England at large. Falmouth and Bossiney, Lostwithiel and Grampound, may, it seems, be enfranchised, and welcome, by the mere power of the Crown. But let it be proposed to give Birmingham and Manchester, Leeds and Sheffield, Members by an act of the Legislature, and the air resounds with cries of revolution!

But I am challenged to prove that the present system, as regards the elective franchise, is not the ancient Parliamentary Constitution of the country—upon pain, says my noble and learned friend, of judgment going against me if I remain silent. My Lords, I will not keep silence, neither will I answer in my own person, but I will refer you to a higher authority, the highest known in the law, and in its best days, when the greatest lawyers were the greatest patriots. Here is the memorable report of the committee of the Commons, in 1623-4, of which committee Mr. Sergeant Glanville was the chairman, of which report he was the author. Among its members were the most celebrated names in the law—Coke, and

Selden, and Finch, and Noy, afterwards Attorney-General, and of known monarchical principles. The first Resolution is this:—

"There being no certain custom, nor prescription, who should be electors, and who not, we must have recourse to common right, which, to this purpose, was held to be, that more than the freeholders only ought to have voices in the election; namely, all men inhabitants, householders, resiants within the borough."

What then becomes of the doctrine that our Bill is a mere innovation—that by the old law of England, inhabitants householders had no right to vote—that owners of burgage tenements, and freemen of corporations, have in all times exclusively had the franchise? Burgage tenants, it is true, of old had the right, but in the way I have already described—not as now, the nominal and fictitious holders for an hour merely for election purposes, but the owners of each—the real and actual proprietors of the tenement. Freemen never had it at all, till they usurped upon the inhabitants and thrust them out. But every householder voted in the towns without regard to value, as before the 8th of Henry VI. every freeholder voted without regard to value in the counties—not merely £10 householders, as we propose to restrict the right, but the holder of a house worth a shilling, as much as he whose house was worth a thousand pounds. But I have been appealed to; and I will take upon me to affirm, that if the Crown were to issue a writ to the Sheriff, commanding him to send his precept to Birmingham or Manchester, requiring those towns to send burgesses to Parliament, the votes of *all* inhabitant householders must needs be taken, according to the exigency of the writ and precept—the right of voting at common law, and independent of any usurpation upon it, belonging to every resident

householder. Are, then, the King's Ministers innovators—revolutionists—wild projectors—idle dreamers of dreams and feigners of fancies, when they restore the ancient common law right, but not in its ancient common law extent, for they limit, fix, and contract it? They add a qualification of £10 to restrain it, as our forefathers, in the fifteenth century, restrained the county franchise by the freehold qualification.

But then we hear much against the qualification adopted—that is, the particular sum fixed upon—and the noble Earl* thinks it will only give us a set of constituents busied in gaining their daily bread, and having no time to study, and instruct themselves on state affairs. My noble friend too†, who lives near Birmingham, and may therefore be supposed to know his own neighbours better than we can, sneers at the statesmen of Birmingham and at the philosophers of Manchester. He will live—I tell him he will live to learn a lesson of practical wisdom from the statesmen of Birmingham, and a lesson of forbearance from the philosophers of Manchester. My noble friend was ill-advised, when he thought of displaying his talent for sarcasm upon 120,000 people in the one place, and 180,000 in the other. He did little, by such exhibitions, towards gaining a stock of credit for the order he belongs to—little towards conciliating for the aristocracy which he adorns, by pointing his little epigrams against such mighty masses of the people. Instead of meeting their exemplary moderation, their respectful demeanour, their affectionate attachment, their humble confidence, evinced in every one of the petitions, wherewithal they have in myriads approached the House, with a return of kindness—of courtesy—even of common civility;—he has thought it be-

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* Lord Harrowby. † Lord Dudley.

coming and discreet to draw himself up in the pride of hexameter and pentameter verse,—skill in classic authors,—the knack of turning fine sentences,—and to look down with derision upon the knowledge of his unrepresented fellow-countrymen in the weightier matters of practical legislation. For myself, I too know where they are defective; I have no desire ever to hear them read a Latin line, or hit off in the mother tongue any epigram, whether in prose or in numerous verse. In these qualities they and I freely yield the palm to others. I, as their representative, yield it.—I once stood as such elsewhere, because they had none of their own; and though a noble Earl* thinks they suffer nothing by the want, I can tell him they did severely suffer in the greatest mercantile question of the day, the Orders in Council, when they were fain to have a professional advocate for their representative, and were only thus allowed to make known their complaints to Parliament. Again representing them here, for them I bow to my noble friend's immeasurable superiority in all things, classical or critical. In book lore—in purity of diction—in correct prosody—even in elegance of personal demeanour, I and they, in his presence, hide, as well we may, our diminished heads. But to say that I will take my noble friend's judgment on any grave practical subject,—on any thing touching the great interests of our commercial country,—or any of those manly questions which engage the statesman, the philosopher in practice;—to say that I could ever dream of putting the noble Earl's opinions, aye, or his knowledge, in any comparison with the bold, rational, judicious, reflecting, natural, and, because natural, the trustworthy opinions of those honest men, who always give their strong natural

* Lord Harrowby.

sense fair play, having no affectations to warp their judgment—to dream of any such comparison as this, would be, on my part, a flattery far too gross for any courtesy—or a blindness which no habits of friendship could excuse!

When I hear so much said of the manufacturers and artisans being an inferior race in the political world, I, who well know the reverse to be the fact, had rather not reason with their contemners, nor give my own partial testimony in their favour; but I will read a letter which I happen to have received within the three last days, and since the Derby meeting. "Some very good speeches were delivered," says the writer, "and you will perhaps be surprised when I tell you that much the best was delivered by a common mechanic. He exposed, with great force of reasoning, the benefits which the lower classes would derive from the Reform Bill, and the interest they had in being well governed. Not a single observation escaped him, during a long speech, in the slightest degree disrespectful to the House of Lords, and he showed as much good taste and good feeling as he could have done had he been a Member of St. Stephen's. He is of course a man of talent; but there are many others also to be found, not far behind him. The feeling in general is, that their capacity to judge of political measures is only despised by those who do not know them." These men were far from imputing to any of your Lordships, at that time, a contempt for their capacities. They had not heard the speech of the noble Earl, and they did not suspect any man in this House of an inclination to despise them. They did, however, ascribe some such contemptuous feelings —*horresco referens*—to a far more amiable portion of the aristocracy. "They think," pursues the writer, "they are only treated with contempt by a few

women (I suppress the epithets employed), who, because they set the tone of fashion in London, think they can do so here too."

The noble Earl behind* addressed one observation to your Lordships, which I must in fairness confess I do not think is so easily answered as those I have been dealing with. To the Crown, he says, belongs the undoubted right, by the Constitution, of appointing its Ministers and the other public servants; and it ought to have a free choice, among the whole community, of the men fittest to perform the varied offices of the executive government. But, he adds, it may so happen, that the choice having fallen on the most worthy, his constituents, when he vacates his seat, may not re-elect him, or he may not be in Parliament at the time of his promotion; in either case he is excluded till a general election; and even at a general election, a discharge of unpopular, but necessary duties, may exclude him from a seat through an unjust and passing, and, possibly, a local disfavour with the electors. I have frankly acknowledged that I feel the difficulty of meeting this inconvenience with an apt and safe remedy, without a great innovation upon the elective principle. In the Committee, others may be able to discover some safe means of supplying the defect. The matter deserves fuller consideration, and I shall be most ready to receive any suggestion upon it. But one thing I have no difficulty in stating, Even should the evil be found remedyless, and that I have only the choice between taking the Reform with this inconvenience, or perpetuating that most corrupt portion of our system, condemned from the time of Swift down to this day, and which even the most moderate and bit-by-bit Reformers have now aban-

* Lord Harrowby.

doned to its fate—my mind is made up, and I cheerfully prefer the Reform.

The noble Earl* has told my noble friend at the head of the Government,† that he might have occupied a most enviable position, had he only abstained from meddling with Parliamentary Reform. He might have secured the support, and met the wishes, of all parties. "He stood," says the noble Earl, "between the living and the dead."‡ All the benefit of this influence, and this following, it seems, my noble friend has forfeited by the measure of Reform. My Lords, I implicitly believe the noble Lord's assertion, as far as regards himself. I know him to be sincere in these expressions, not only because he tells me so, which is enough, but because facts are within my knowledge, thoroughly confirming the statement. His support, and that of one or two respectable persons around him, we should certainly have had. Believe me, my Lords, we fully appreciated the value of the sacrifice we made; it was not without a bitter pang that we made up our minds to forego this advantage. But I cannot so far flatter those Noble persons, as to say that their support would have made the Government sufficiently strong in the last Parliament. Honest, and useful, and creditable as it would have been, it never could have enabled us to go on for a night without the support of the people. I do not mean the populace—the mob: I never have bowed to them, though I never have testified any unbecoming contempt of them. Where is the man who has yielded less to their demands than he who now addresses you? Have

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* Lord Harrowby. † Lord Grey.

‡ This is a misapplication, apparently, of the noble allusion of one of our greatest orators (Mr. Wilberforce), who said of Mr. Pitt and Revolution—"*He stood between the living and the dead, and the plague was stayed.*"

I not opposed their wishes again and again? Have I not disengaged myself from them on their most favourite subject, and pronounced a demonstration, as I deemed it, of the absurdity and delusion of the Ballot? Even in the most troublous times of party, who has gone less out of his course to pay them court, or less submitted his judgment to theirs? But if there is the mob, there is the people also. I speak now of the middle classes—of those hundreds of thousands of respectable persons—the most numerous, and by far the most wealthy order in the community; for if all your Lordships' castles, manors, rights of warren and rights of chase, with all your broad acres, were brought to the hammer, and sold at fifty years' purchase, the price would fly up and kick the beam when counterpoised by the vast and solid riches of those middle classes, who are also the genuine depositaries of sober, rational, intelligent, and honest English feeling. Unable though they be to round a period, or point an epigram, they are solid, right-judging men, and, above all, not given to change. If they have a fault, it is that error on the right side, a suspicion of state quacks—a dogged love of existing institutions—a perfect contempt of all political nostrums. They will neither be led astray by false reasoning, nor deluded by impudent flattery: but so neither will they be scared by classical quotations, or browbeaten by fine sentences; and as for an epigram, they care as little for it as they do for a cannon ball. Grave—intelligent—rational—fond of thinking for themselves—they consider a subject long before they make up their minds on it; and the opinions they are thus slow to form they are not swift to abandon. It is an egregious folly to fancy that the popular clamour for Reform, or whatever name you please to give it, could have been silenced by a mere change of Ministers.

The body of the people, such as I have distinguished and described them, had weighed the matter well, and they looked to the Government and to the Parliament for an effectual Reform. Doubtless they are not the only classes who so felt; at their backs were the humbler and numerous orders of the State; and may God of his infinite mercy avert any occasion for rousing the might which in peaceful times slumbers in their arms! To the people, then, it was necessary, and it was most fit, that the Government should look steadily for support; not to save this or that administration; but because, in my conscience, I do believe that no man out of the precincts of Bethlem Hospital, —nay, no thinking man, not certainly the noble Duke, a most sagacious and reflecting man,—can, in these times, dream of carrying on any Government in despite of those middle orders of the State. Their support must be sought, if the Government would endure— the support of the people, as distinguished from the populace, but connected with that populace, who look up to them as their kind and natural protectors. The middle class, indeed, forms the link which connects the upper and the lower orders, and binds even your Lordships with the populace, whom some of you are wont to despise. This necessary support of the country it was our duty to seek (and I trust we have not sought it in vain), by salutary reforms, not merely in the representation, but in all the branches of our financial, our commercial, and our legal polity. But when the noble Earl talks of the Government being able to sustain itself by the support of himself and his friends, does he recollect the strong excitement which prevailed last winter? Could we have steered the vessel of the State safely through that excitement, either within doors or without, backed by no other support? I believe he was then on the Bay of Naples,

and he possibly thought all England was slumbering like that peaceful lake—when its state was more like the slumbers of the mountain upon its margin. Stand between the living and the dead, indeed! Possibly we might; for we found our supporters among the latter class, and our bitter assailants among the former. True it is, the noble Earl would have given us his honest support; *his* acts would have tallied with his professions. But can this be said of others? Did they, who used nearly the same language, and avowed the same feelings, give anything to the Government, but the most factious opposition? Has the noble Earl never heard of their conduct upon the Timber duties, when, to thwart the Administration, they actually voted against measures devised by themselves —aye, and threw them out by their division? Exceptions there were, no doubt, and never to be mentioned without honour to their names, some of the most noble that this House, or indeed any country of Europe can boast.* They would not, for spiteful purposes, suffer themselves to be dragged through the mire of such vile proceedings, and conscientiously refused to join in defeating the measures themselves had planned. These were solitary exceptions; the rest, little scrupulous, gave up all to wreak their vengeance on the men who had committed the grave offence, by politicians not to be forgiven, of succeeding them in their offices. I do not then think that in making our election to prefer the favours of the country to those of the noble Earl, we acted unwisely, independent of all considerations of duty and of consistency; and I fear I can claim for our conduct no praise of disinterestedness.

My Lords, I have followed the noble Earl as

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* Mr. T. P. Courtenay.

closely as I could through his arguments, and I will not answer those who supported him with equal minuteness, because, in answering him, I have really answered all the arguments against the Bill. One noble Lord* seems to think he has destroyed it, when he pronounces, again and again, that the Members chosen under it will be delegates. What if they were delegates? What should a representative be but the delegate of his constituents? But a man may be the delegate of a single person, as well as of a city or a town; he may be just as much a delegate when he has one constituent as when he has 5000—with this material difference, that under a single constituent, who can turn him off in a moment, he is sure to follow the orders he receives implicitly, and that the service he performs will be for the benefit of one man, and not of many. The giving a name to the thing, and crying out Delegate! Delegate! proves nothing; for it only raises the question, who should be the delegator of this public trust—the people, or the borough-holders? Another noble Lord,† professing to wish well to the great unrepresented towns, complained of the Bill on their behalf, because, he said, the first thing it does is to close up the access which they at present possess to Parliament, by the purchase of seats for mercantile men, who may represent the different trading interests in general. Did ever mortal man contrive a subtlety so absurd, so nonsensical, as this? What! Is it better for Birmingham to subscribe, and raise £5000, for a seat at Old Sarum, than to have the right of openly and honestly choosing its own representative, and sending him direct to Parliament? Such horror have some men of the straight, open, highway of the constitution, that they would,

* Lord Falmouth. † Lord Caernarvon.

rather than travel upon it, sneak into their seats by the dirty, winding, by-ways of rotten boroughs.

But the noble Earl behind* professed much kindness for the great towns—he had no objection to give Birmingham, Manchester, and Sheffield representatives as vacancies might occur, by the occasional disfranchisement of boroughs for crimes. Was there ever any thing so fantastical as this plan of Reform? In the first place, these great towns either ought to have Members, or they ought not. If they ought, why hang up the possession of their just rights upon the event of some other place committing an offence? Am I not to have my right till another does a wrong? Suppose a man wrongfully keeps possession of my close; I apply to him, and say, "Mr. Johnson, give me up my property, and save me and yourself an action of ejectment." Should not I have some cause to be surprised, if he answered, "Oh no, I can't let you have it till Mr. Thomson embezzles £10,000, and then I may get a share of it, and that will enable me to buy more land, and then I'll give you up your field." —"But I want the field, and have a right to get it; not because Thomson has committed a crime, but because it is my field, and not your's,—and I should be as great a fool as you are a knave, were I to wait till Thomson became as bad as yourself." I am really ashamed to detain your Lordships with exposing such wretched trifling.

A speech, my Lords, was delivered by my noble friend under the opposite gallery,† which has disposed of much that remains of my task. I had purposed to show the mighty change which has been wrought in later times upon the opinions, the habits, and the intelligence of the people, by the universal diffusion of knowledge.

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* Lord Harrowby. † Lord Radnor.

But this has been done by my noble friend with an accuracy of statement, and a power of language, which I should in vain attempt to follow; and there glowed through his admirable oration, a natural warmth of feeling to which every heart instinctively responded. I have, however, lived to hear that great speech talked of in the language of contempt. A noble Lord,* in the fulness of his ignorance of its vast subject, in the maturity of his incapacity to comprehend its merits, described it as an amusing—a droll speech; and in this profound criticism a noble Earl† seemed to concur, whom I should have thought capable of making a more correct appreciation. Comparisons are proverbially invidious; yet I cannot help contrasting that speech with another which I heard not very long ago, and of which my noble friend‡ knows something; one not certainly much resembling the luminous speech in question, but a kind of chaos of dark, disjointed figures, in which soft professions of regard for friends fought with hard censures on their conduct, frigid conceptions with fiery execution, and the lightness of the materials with the heaviness of the workmanship—

> "Frigida pugnabant calidis, humentia siccis,
> Mollia cum duris, sine pondere habentia pondus."

A droll and amusing speech, indeed! It was worthy of the same speaker, of whom both Mr. Windham and Mr. Canning upon one occasion said, that he had made the finest they ever heard. It was a lesson deeply impregnated with the best wisdom of the nineteenth century, but full also of the profoundest maxims of the seventeenth. There was not a word of that speech—not one proposition in its luminous context—one sentence of solemn admonition or of

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* Lord Falmouth. † Earl Caernarvon. ‡ Earl Caernarvon.

touching regret—fell from my Noble friend*—not a severe reproof of the selfishness—nor an indignant exclamation upon the folly of setting yourselves against the necessary course of events, and refusing the rights of civilization to those whom you have suffered to become civilized—not a sentiment, not a topic, which the immortal eloquence and imperishable wisdom of Lord Bacon did not justify, sanction, and prefix.

They who are constantly taunting us with subverting the system of the representation, and substituting a parliamentary constitution unknown in earlier times, must be told that we are making no change—that we are not pulling down, but building up—or, at the utmost, adapting the representation to the altered state of the community. The system which was hardly fitted for the fourteenth century, cannot surely be adapted to the nineteenth. The innovations of time, of which our detractors take no account, are reckoned upon by all sound statesmen; and in referring to them, my noble friend† has only followed in the footsteps of the most illustrious of philosophers. "Stick to your ancient parliamentary system," it is said; "make no alteration; keep it exactly such as it was in the time of Harry the Third, when the two Houses first sat in separate chambers, and such as it has to this day continued!" This is the ignorant cry; this the very shibboleth of the party. But I have joined an issue with our antagonists upon the fact; and I have given the evidence of Selden, of Glanville, of Coke, of Noy, and of Prynne, proving to demonstration that the original right of voting has been subjected to great and hurtful changes,—that the exclusive franchise of freemen is an usurpation upon

* Lord Radnor. † Lord Radnor.

householders,—and that our measure is a restoration of the rights thus usurped upon. I have shown that the ministers are only occupied in the duty of repairing what is decayed, not in the work of destruction, or of violent change. Your Lordships were recently assembled at the great solemnity of the Coronation. Do you call to mind the language of the Primate, and in which the Monarch swore, when the sword of kingly estate was delivered into his hands? "Restore the things that are gone into decay; maintain that which is restored; purify and reform what is amiss; confirm that which is in good order!" His Sacred Majesty well remembers his solemn vow, to restore the constitution, and to reform the abuses time has introduced; and I, too, feel the duty imposed on me, of keeping fresh in the recollection of the prince, whom it is my pride and my boast to serve, the parts of our system which fall within the scope of his vow. But if he has sworn to restore the decayed, so has he also sworn to maintain that which is restored, and to confirm that which wants no repairing; and what sacrifice soever may be required to maintain and confirm, that sacrifice I am ready to make, opposing myself, with my sovereign, to the surge that may dash over me, and saying to it, "Hitherto shalt thou come; here shall thy waves be staid." For while that sovereign tells the enemies of all change, "I have sworn to restore!" so will he tell them who look for change only, "I have also sworn to maintain!"

"Stand by the whole of the old constitution!" is the cry of our enemies. I have disposed of the issue of fact, and shown that what we attack is any thing but the old constitution. But suppose, for argument's sake, the question had been decided against us—that Selden, Coke, Noy, Glanville, Prynne, were all wrong—that their doctrine and mine was a mere illu-

sion, and rotten boroughs the ancient order of things —that it was a fundamental principle of the old constitution to have members without constituents, boroughs without members, and a representative Parliament without electors. Suppose this to be the nature of the old, and much admired, and more bepraised, government of England. All this I will assume for the sake of the argument; and I solicit the attention of the noble Lords who maintain that argument, while I show them its utter absurdity. Since the early times of which they speak, has there been no change in the very nature of a seat in Parliament? Is there no difference between our days and those when the electors eschewed the right of voting, and a seat in Parliament, as well as the elective franchise, was esteemed a burthen? Will the same principles apply to that age and to ours, when all the people of the three kingdoms are more eager for the power of voting than for any other earthly possession; and the chance of sitting in the House of Commons is become the object of all men's wishes? Even as late as the union of the Crowns, we have instances of informations filed in the courts of law to compel Parliament men to attend their duty, or punish them for the neglect— so ill was privilege then understood. But somewhat earlier, we find boroughs petitioning to be relieved from the expense of sending members, and members supported by their constituents as long as they continued their attendance. Is it not clear that the Parliamentary law applicable to that state of things cannot be applied to the present circumstances, without in some respects making a violent revolution? But so it is in the progress of all those changes which time is perpetually working in the condition of human affairs. They are really the authors of change, who resist the alterations which are required to adjust the

system, and adapt it to new circumstances;—who forcibly arrest the progress of one portion amidst the general advancement. Take, as an illustration, the state of our jurisprudence. The old law ordained that a debtor's property should be taken in execution. But in early times there were no public funds, no paper securities, no accounts at bankers; land and goods formed the property of all; and those were allowed to be taken in satisfaction of debts. The law, therefore, which only said, let land and goods be taken, excluded the recourse against stock and credits, although it plainly meant that all the property should be liable, and would clearly have attached stock and credits, had they then been known. But when nine-tenths of the property of our richest men consist of stock and credits, to exempt these under pretence of standing by the old law, is manifestly altering the substance for the sake of adhering to the letter; and substituting for the old law, that all the debtor's property should be liable, a new and totally different law, that a small part only of his property should be liable. Yet in no part of our system has there been a greater change than in the estimated value attached to the franchise, and to a seat in Parliament, from the times when one class of the community anxiously shunned the cost of electing, and another as cautiously avoided being returned, to those when both classes are alike anxious to obtain these privileges. Then, can any reasonable man argue, that the same law should be applied to two states of things so diametrically opposite? Thus much I thought fit to say, in order to guard your Lordships against a favourite topic, one sedulously urged by the adversaries of Reform, who lead men astray by constantly harping upon the string of change, innovation, and revolution.

But it is said, and this is a still more favourite argu-

ment, the system works well. How does it work well? Has it any pretensions to the character of working well? What say you to a town of five or six thousand inhabitants, not one of whom has any more to do with the choice of its representatives than any of your Lordships sitting round that table—indeed, a great deal less—for I see my noble friend* is there? It works well, does it? How works well? It would work well for the noble Duke, if he chose to carry his votes to market! Higher rank, indeed, he could not purchase, than he has; but he has many connexions, and he might gain a title for every one that bears his name. But he has always acted in a manner far more worthy of his own high character, and of the illustrious race of patriots from whom he descends, the founders of our liberties, and of the throne which our sovereign's exalted House fills; and his family have deemed that name a more precious inheritance than any title for which it could be exchanged. But let us see how the system works for the borough itself, and its thousands of honest, industrious inhabitants. My Lords, I once had the fortune to represent it for a few weeks; at the time when I received the highest honour of my life, the pride and exultation of which can never be eradicated from my mind but by death, nor in the least degree allayed by any lapse of time—the most splendid distinction which any subjects can confer upon a fellow-citizen—to be freely elected for Yorkshire, upon public grounds, and being unconnected with the county. From having been at the borough the day of the election, I can give your Lordships some idea how well the system works there. You may be returned for the place, but it is at your peril that you show yourself among the inhabitants.

* The Duke of Devonshire.

There is a sort of polling; that is, five or six of my noble friend's tenants ride over from another part of the country—receive their burgage qualifications—vote, as the enemies of the Bill call it, "in right of property," that is, of the Duke's property—render up their title-deeds—dine, and return home before night. Being detained in court at York longer than I had expected on the day of this elective proceeding, I arrived too late for the chairing, and therefore did not assist at that awful solemnity. Seeing a gentleman with a black patch, somewhere about the size of a sergeant's coif, I expressed my regret at his apparent ailment; he said, "It is for a blow I had the honour to receive in representing you at the ceremony." Certainly no constituent ever owed more to his representative than I to mine; but the blow was severe, and might well have proved fatal. I understand this is the common lot of the Members, as my noble friend,* who once sat for the place, I believe, knows; though there is some variety, as he is aware, in the mode of proceeding, the convenient neighbourhood of a river with a rocky channel sometimes suggesting operations of another kind. I am very far, of course, from approving such marks of public indignation; but I am equally far from wondering that it should seek a vent; for I confess, that if the thousands of persons whom the well working of the present system insults with the farce of the Knaresborough election (and whom the Bill restores to their rights) were to bear so cruel a mockery with patience, I should deem them degraded indeed.

It works well, does it? For whom? For the constitution? No such thing. For borough proprietors it works well, who can sell seats, or traffic in influence,

* Lord Tankerville.

and pocket the gains. Upon the constitution it is the foulest stain, and eats into its very core.

It works well? For the people of England? For the people, of whom the many excluded electors are parcel, and for whom alone the few actual electors ought to exercise their franchise as a trust? No such thing. As long as a member of Parliament really represents any body of his countrymen, be they freeholders, or copyholders, or leaseholders—as long as he represents the householders in any considerable town—and is in either way deputed to watch over the interests of a portion of the community, and is always answerable to those who delegate him—so long has he a participation in the interests of the whole state, whereof his constituents form a portion; so long may he justly act as representing the whole community, having, with his particular electors, only a general coincidence of views upon national questions, and a rigorous coincidence where their special interests are concerned. But if he is delegated by a single man, and not by a county or a town, he does not represent the people of England; he is a jobber, sent to Parliament to do his own or his patron's work. But then we are told, and with singular exultation, how many great men have found their way into the House of Commons by this channel. My Lords, are we, because the only road to a place is unclean, not to travel it? If I cannot get into Parliament, where I may render the state good service, by any other means, I will go that way, defiling myself as little as I can, either by the filth of the passage, or the indifferent company I may travel with. I won't bribe; I won't job, to get in; but if it be the only path open, I will use it for the public good. But those who indulge in this argument about great men securing seats, do not, I remark, take any account of the far greater numbers of very

little men who thus find their way into Parliament, to do all manner of public mischief. A few are, no doubt, independent; but many are as docile, as disciplined in the evolutions of debate, as any troops the noble Duke had at Waterloo. One borough proprietor is well remembered, who would display his forces, command them in person, carry them over from one flank to the other, or draw them off altogether, and send them to take the field against the larks at Dunstable, that he might testify his displeasure. When conflicting bodies are pretty nearly matched, the evolutions of such a corps decide the fate of the day. The noble Duke* remembers how doubtful even the event of Waterloo might have been had Grouchy come up in time. Accordingly, the fortunate leader of that parliamentary force raised himself to an Earldom and two Lord Lieutenancies, and obtained titles and blue ribbands for others of his family, who now fill most respectable stations in this House.

The system, we are told, works well, because, notwithstanding the manner of its election, the House of Commons sometimes concurs immediately in opinion with the people; and, in the long run, is seldom found to counteract it. Yet sometimes, and on several of the most momentous questions, the run has, indeed, been a very long one. The Slave Trade continued to be the signal disgrace of the country, the unutterable opprobrium of the English name, for many years after it had been denounced in Parliament, and condemned by the people all in one voice. Think you this foul stain could have so long survived, in a reformed Parliament, the prodigious eloquence of my venerable friend, Mr. Wilberforce, and the unanimous reprobation of the country? The American war might have

* Wellington.

been commenced, and even for a year or two persevered in, for, though most unnatural, it was, at first not unpopular. But could it have lasted beyond 1778, had the voice of the people been heard in their own House? The French war, which in those days I used to think a far more natural contest, having in my youth leant to the alarmist party, might possibly have continued some years. But if the Representation of the country had been reformed, there can be no reason to doubt that the sound views of the noble Earl* and the immortal eloquence of my right honourable friend,† whose great spirit, now freed from the coil of this world, may be permitted to look down complacent upon the near accomplishment of his patriotic desires, would have been very differently listened to in a Parliament unbiassed by selfish interests; and of one thing I am as certain as that I stand here—that ruinous warfare never could have lasted a day beyond the arrival of Buonaparte's letter in 1800.

But still it is said public opinion finds its way more speedily into Parliament upon great and interesting emergencies. How does it so? By a mode contrary to the whole principles of representative Government, —by sudden, direct, and dangerous impulses. The fundamental principle of our constitution, the great political discovery of modern times—that, indeed, which enables a state to combine extent with liberty, —the system of representation, consists altogether in the perfect delegation by the people, of their rights and the care of their interests, to those who are to deliberate and to act for them. It is not a delegation which shall make the representative a mere organ of the passing will, or momentary opinion, of his constituents.—I am aware, my Lords, that in pursuing

* Lord Grey. † Mr. Fox.

this important topic, I may lay myself open to uncandid inference, touching the present state of the country; but I feel sure no such unfair advantage will be taken, for my whole argument upon the national enthusiasm for Reform rests upon the known fact that that it is the growth of half a century, and not of a few months; and, according to the soundest views of representative legislation, there ought to be a *general* coincidence between the conduct of the delegate and the sentiments of the electors. Now, when the public voice, for want of a regular and legitimate organ, makes itself, from time to time, heard within the walls of Parliament, it is by a direct interposition of the people, not in the way of a delegated trust, to make the laws—and every such occasion presents, in truth, an instance where the defects of our elective system introduce a recurrence to the old and barbarous schemes of Government, known in the tribes and centuries of Rome, or the assemblies of Attica. It is a poor compensation for the faults of a system which suffers a cruel grievance to exist, or a ruinous war to last twenty or thirty years after the public opinion has condemned it, that some occasions arise when the excess of the abuse brings about a violent remedy, or some revolutionary shock, threatening the destruction of the whole.

But it works well! Then why does the table groan with the petitions against it, of all that people, for whose interests there is any use in it working at all? Why did the country, at the last election, without exception, wherever they had the franchise, return members commissioned to complain of it, and amend it? Why were its own produce, the men chosen under it, found voting against it by unexampled majorities? Of eighty-two English county members, seventy-six have pronounced sentence upon it, and

they are joined by all the representatives of cities and of great towns.

It works well! Whence, then, the phenomenon of Political Unions,—of the people everywhere forming themselves into Associations to put down a system which you say well serves their interests? Whence the congregating of 150,000 men in one place, the whole adult male population of two or three counties, to speak the language of discontent, and refuse the payment of taxes? I am one who never have either used the language of intimidation, or will ever suffer it to be used towards me; but I also am one who regard those indications with unspeakable anxiety. With all respect for those assemblages, and for the honesty of the opinions they entertain, I feel myself bound to declare, as an honest man, as a Minister of the Crown, as a Magistrate, nay, as standing, by virtue of my office, at the head of the magistracy, that a resolution not to pay the King's taxes is unlawful. When I contemplate the fact, I am assured that not above a few thousands of those nearest the chairman could know for what it was they held up their hands. At the same time there is too much reason to think that the rest would have acted as they did, had they heard all that passed. My hope and trust is, that these men and their leaders will maturely re-consider the subject. There are no bounds to the application of such a power; the difficulty of counteracting it is extreme; and as it may be exerted on whatever question has the leading interest, and every question in succession is felt as of exclusive importance, the use of the power I am alluding to, really threatens to resolve all Government, and even society itself, into its elements. I know the risk I run of giving offence by what I am saying. To me, accused of worshipping the democracy, here is indeed a tempting occasion, if

in that charge there were the shadow of truth. Before the great idol, the Juggernaut, with his 150,000 priests, I might prostrate myself advantageously. But I am bound to do my duty, and speak the truth; of such an assembly I cannot approve; even its numbers obstruct discussion, and tend to put the peace in danger,—coupled with such a combination against payment of taxes, it is illegal; it is intolerable under any form of Government; and as a sincere well-wisher to the people themselves, and devoted to the cause which brought them together, I feel solicitous, on every account, to bring such proceedings to an end.

But, my Lords, it is for us to ponder these things well; they are material facts in our present inquiry. Under a system of real representation, in a country where the people possessed the only safe and legitimate channel for making known their wishes and their complaints, a Parliament of their own choosing, such combinations would be useless. Indeed, they must always be mere *brutum fulmen*, unless where they are very general; and where they are general, they both indicate the universality of the grievance and the determination to have redress. Where no safety-valve is provided for popular discontent, to prevent an explosion that may shiver the machine in pieces—where the people—and by the people, I repeat, I mean the middle classes, the wealth and intelligence of the country, the glory of the British name—where this most important order of the community are without a regular and systematic communication with the legislature—where they are denied the constitution which is their birthright, and refused a voice in naming those who are to make the laws they must obey—impose the taxes they must pay,—and control, without appeal, their persons as well as properties—where they feel the load of such grievances, and feel too the

power they possess, moral, intellectual, and, let me add, without the imputation of a threat, physical—then, and only then, are their combinations formidable; when they are armed by their wrongs, far more formidable than any physical force—then, and only then, they become invincible.

Do you ask what, in these circumstances, we ought to do? I answer, simply our duty. If there were no such combinations in existence—no symptom of popular excitement—if not a man had lifted up his voice against the existing system, we should be bound to seek and to seize any means of furthering the best interests of the people, with kindness, with consideration, with the firmness, certainly, but with the prudence also, of statesmen. How much more are we bound to conciliate a great nation, anxiously panting for their rights—to hear respectfully their prayers—to entertain the measure of their choice with an honest inclination to do it justice; and if, while we approve its principle, we yet dislike some of its details, and deem them susceptible of modification, surely we ought, at any rate, not to reject their prayers for it with insult. God forbid we should so treat the people's desire; but I do fear that a determination is taken not to entertain it with calmness and impartiality. (Cries of *No! No!* from the Opposition.) I am glad to have been in error; I am rejoiced to hear this disclaimer, for I infer from it that the people's prayers are to be granted. You will listen, I trust, to the advice of my noble and learned friend,* who, with his wonted sagacity, recommended you to do as you would be done by. This wise and christian maxim will not, I do hope, be forgotten. Apply it, my Lords, to the case before you. Suppose, for a moment, that your

* Lord Plunkett.

Lordships, in your wisdom, should think it expedient to entertain some Bill regulating matters in which this House alone has any concern, as the hereditary privileges of the Peerage, or the right of voting by proxy, or matters relative to the election of Peers representing the aristocracy of Ireland and Scotland, or providing against the recurrence of such an extraordinary and indeed unaccountable event as that which decided on the Huntingdon Peerage without a committee; suppose, after great exertions of those most interested, as the Scotch and Irish Peers, or this House at large, your Lordships had passed it through all its stages by immense majorities, by fifty or a hundred to one, as the commons did the Reform. (Cries of *No.*) I say an overwhelming majority of all who represented any body, all the Members for counties and towns; but to avoid cavilling, suppose it passed by a large majority of those concerned, and sent down to the Commons, whom it only remotely affected. Well—it has reached that House; and suppose the Members were to refuse giving your measure any examination at all in detail, and to reject it at once. What should you say? How should you feel, think you, when the Commons arrogantly turned round from your request, and said—"Let us fling out this silly bill without more ado;—true, it regulates matters belonging exclusively to the Lords, and in which we cannot at all interfere without violating the law of the land; but still, out with it for an aristocratic, oligarchical, revolutionary bill, a bill to be abominated by all who have a spark of the true democratic spirit in their composition. What should you think if the measure were on such grounds got rid of, without the usual courtesy of a pretended postponement, by a vote that this Lords' Bill be rejected? And should you feel much soothed by hearing that some oppo-

sition Chesterfield had taken alarm at the want of politeness among his brethren, and at two o'clock in the morning altered the words, retaining their offensive sense—I ask, would such proceedings in the Commons be deemed by your Lordships a fair, just, candid opposition to a measure affecting your own seats and dignities only? Would you tolerate their saying, "We don't mind the provisions of this Lords' bill; we won't stop to discuss them; we won't parly with such a thing; we plainly see it hurts our interest, and checks our own patronage; for it is an aristocratic bill, and an oligarchical bill, and withal a revolutionary bill?" Such treatment would, I doubt not, ruffle the placid tempers of your Lordships; you would say somewhat of your order, its rights, and its privileges, and buckle on the armour of a well-founded and natural indignation. But your wonder would doubtless increase, if you learnt that your bill had been thus contemptuously rejected in its first stage by a House in which only two members could be found who disapproved of its fundamental principles. Yes, all avow themselves friendly to the principle; it is a matter of much complaint, if you charge one with not being a Reformer; but they cannot join in a vote which only asserts that principle, and recognises the expediency of some Reform. Yes, the Commons all allow your Peerage law to be an abomination; your privileges a nuisance: all cry out for some change as necessary, as imperative; but they, nevertheless, will not even listen to the proposition for effecting a change, which you, the most interested party, have devised and sent down to them. Where, I demand, is the difference between this uncourteous and absurd treatment of your supposed bill by the Commons, and that which you now talk of giving to their's? You approve of the principle of the measure sent up by

the other House, for the sole purpose of amending its own constitution; but you won't sanction that principle by your vote, nor afford its friends an opportunity of shaping its features, so as if possible to meet your wishes. Is this fair? Is it candid? Is it consistent? Is it wise? Is it, I ask you, is it at this time very prudent? Did the Commons act so by you in Sir Robert Walpole's time, when the bill for restraining the creation of Peers went down from hence to that House? No such thing; though it afterwards turned out that there was a majority of 112 against it, they did not even divide upon the second reading. Will you not extend an equal courtesy to the bill of the Commons and of the people?

I am asked what great practical benefits are to be expected from this measure? And is it no benefit to have the Government strike its roots into the hearts of the people? Is it no benefit to have a calm and deliberative, but a real organ of the public opinion, by which its course may be known, and its influence exerted upon State affairs regularly and temperately, instead of acting convulsively, and as it were by starts and shocks? I will only appeal to one advantage, which is as certain to result from this salutary improvement of our system, as it is certain that I am addressing your Lordships. A noble Earl* inveighed strongly against the licentiousness of the Press; complained of its insolence; and asserted that there was no tyranny more intolerable than that which its conductors now exercised. It is most true, that the Press has great influence, but equally true, that it derives this influence from expressing, more or less correctly, the opinion of the country. Let it run counter to the prevailing course, and its power is at an

* Lord Winchilsea.

end. But I will also admit that, going in the same general direction with public opinion, the Press is oftentimes armed with too much power in particular instances; and such power is always liable to be abused. But I will tell the noble Earl upon what foundation this overgrown power is built. The Press is now the only organ of public opinion. This title it assumes; but it is not by usurpation; it is rendered legitimate by the defects of your Parliamentary constitution; it is erected upon the ruins of real representation. The periodical Press is the rival of the House of Commons; and it is, and it will be, the successful rival, as long as that House does not represent the people—but not one day longer. If ever I felt confident in any prediction, it is in this, that the restoration of Parliament to its legtimate office of representing truly the public opinion will overthrow the tyranny of which noble Lords are so ready to complain, who, by keeping out the lawful sovereign, in truth, support the usurper. It is you who have placed this unlawful authority on a rock: pass the Bill, it is built on a quicksand. Let but the country have a full and free representation, and to that will men look for the expression of public opinion, and the Press will no more be able to dictate, as now, when none else can speak the sense of the people. Will its influence wholly cease? God forbid! Its just influence will continue, but confined within safe and proper bounds. It will continue, long may it continue, to watch the conduct of public men—to watch the proceedings even of a reformed legislature—to watch the people themselves—a safe, an innoxious, a useful instrument, to enlighten and improve mankind! But its overgrown power—its assumption to speak in the name of the nation—its pretension to dictate and to command, will cease with the abuse upon which alone

it is founded, and will be swept away, together with the other creatures of the same abuse, which now "fright our Isle from its propriety."

Those portentous appearances, the growth of later times, those figures that stalk abroad, of unknown stature, and strange form — unions and leagues, and musterings of men in myriads, and conspiracies against the Exchequer; whence do they spring, and how come they to haunt our shores? What power engendered those uncouth shapes, what multiplied the monstrous births till they people the land? Trust me, the same power which called into frightful existence, and armed with resistless force, the Irish volunteers of 1782—the same power which rent in twain your empire, and raised up thirteen republics—the same power which created the Catholic Association, and gave it Ireland for a portion. What power is that? Justice denied—rights withheld—wrongs perpetrated—the force which common injuries lend to millions—the wickedness of using the sacred trust of Government as a means of indulging private caprice —the idiotcy of treating Englishmen like the children of the South Sea Islands—the phrensy of believing, or making believe, that the adults of the nineteenth century can be led like children, or driven like barbarians! This it is that has conjured up the strange sights at which we now stand aghast! And shall we persist in the fatal error of combating the giant progeny, instead of extirpating the execrable parent? Good God! Will men never learn wisdom, even from their own experience? Will they never believe, till it be too late, that the surest way to prevent immoderate desires being formed, aye, and unjust demands enforced, is to grant in due season the moderate requests of justice? You stand, my Lords, on the brink of a great event; you are in the crisis of a

whole nation's hopes and fears. An awful importance hangs over your decision. Pause, ere you plunge! There may not be any retreat! It behoves you to shape your conduct by the mighty occasion. They tell you not to be afraid of personal consequences in discharging your duty. I too would ask you to banish all fears; but, above all, that most mischievous, most despicable fear—the fear of being thought afraid. If you won't take counsel from me, take example from the statesmanlike conduct of the noble Duke,* while you also look back, as you may, with satisfaction upon your own. He was told, and you were told, that the impatience of Ireland for equality of civil rights was partial, the clamour transient, likely to pass away with its temporary occasion, and that yielding to it would be conceding to intimidation. I recollect hearing this topic urged within this hall in July 1828; less regularly I heard it than I have now done, for I belonged not to your number—but I heard it urged in the self-same terms. The burthen of the cry was—It is no time for concession; the people are turbulent, and the Association dangerous. That summer passed, and the ferment subsided not; autumn came, but brought not the precious fruit of peace—on the contrary, all Ireland was convulsed with the unprecedented conflict which returned the great chief of the Catholics to sit in a Protestant Parliament; winter bound the earth in chains, but it controlled not the popular fury, whose surge, more deafening than the tempest, lashed the frail bulwarks of law founded upon injustice. Spring came; but no etherial mildness was its harbinger, or followed in its train; the Catholics became stronger by every month's delay, displayed a deadlier resolution, and proclaimed their wrongs in a tone of louder de-

* Wellington.

fiance than before. And what course did you, at this moment of greatest excitement, and peril, and menace, deem it most fitting to pursue? Eight months before you had been told how unworthy it would be to yield when men clamoured and threatened. No change had happened in the interval, save that the clamours were become far more deafening, and the threats, beyond comparison, more overbearing. What, nevertheless, did your Lordships do? Your duty; for you despised the cuckoo-note of the season, "be not intimidated." You granted all that the Irish demanded, and you saved your country. Was there in April a single argument advanced, which had not held good in July? None, absolutely none, except the new height to which the dangers of longer delay had risen, and the increased vehemence with which justice was demanded; and yet the appeal to your pride, which had prevailed in July, was in vain made in April, and you wisely and patriotically granted what was asked, and ran the risk of being supposed to yield through fear.

But the history of the Catholic Claims conveys another important lesson. Though in right and policy and justice, the measure of relief could not be too ample, half as much as was received with little gratitude when so late wrung from you, would have been hailed twenty years before with delight; and even the July preceding, the measure would have been received as a boon freely given, which I fear, was taken with but sullen satisfaction in April, as a right long withheld. Yet, blessed be God, the debt of justice, though tardily, was at length paid, and the noble Duke won by it civic honours which rival his warlike achievements in lasting brightness—than which there can be no higher praise. What, if he had still listened to the topics of intimidation and inconsistency which had scared his predecessors? He might have proved

his obstinacy, and Ireland would have been the sacrifice.

Apply now this lesson of recent history—I may say of our own experience, to the measure before us. We stand in a truly critical position. If we reject the Bill, through fear of being thought to be intimidated, we may lead the life of retirement and quiet, but the hearts of the millions of our fellow-citizens are gone for ever; their affections are estranged; we and our order and its privileges are the objects of the people's hatred, as the only obstacles which stand between them and the gratification of their most passionate desire. The whole body of the Aristocracy must expect to share this fate, and be exposed to feelings such as these. For I hear it constantly said, that the Bill is rejected by all the Aristocracy. Favour, and a good number of supporters, our adversaries allow it has among the people; the Ministers, too, are for it; but the Aristocracy, say they, is strenuously opposed to it. I broadly deny this silly, thoughtless assertion. What, my Lords! the Aristocracy set themselves in a mass against the people—they who sprang from the people—are inseparably connected with the people—are supported by the people—are the natural chiefs of the people! *They* set themselves against the people, for whom Peers are ennobled—Bishops consecrated—Kings anointed—the people to serve whom Parliament itself has an existence, and the Monarchy and all its institutions are constituted, and without whom none of them could exist for an hour! The assertion of unreflecting men is too monstrous to be endured—as a Member of this House, I deny it with indignation. I repel it with scorn, as a calumny upon us all. And yet are there those who even within these walls speak of the Bill augmenting so much the strength of the

democracy, as to endanger the other orders of the State; and so they charge its authors with promoting anarchy and rapine. Why, my Lords, have its authors nothing to fear from democratic spoliation? The fact is, that there are Members of the present Cabinet, who possess, one or two of them alone, far more property than any two administrations within my recollection; and all of them have ample wealth. I need hardly say, I include not myself, who have little or none. But even of myself I will say, that whatever I have depends on the stability of existing institutions; and it is as dear to me as the princely possessions of any amongst you. Permit me to say, that, in becoming a member of your House, I staked my all on the aristocratic institutions of the State. I abandoned certain wealth, a large income, and much real power in the State, for an office of great trouble, heavy responsibility, and very uncertain duration. I say, I gave up substantial power for the shadow of it, and for distinction depending upon accident. I quitted the elevated station of representative for Yorkshire, and a leading member of the Commons. I descended from a position quite lofty enough to gratify any man's ambition; and my lot became bound up in the stability of this House. Then, have I not a right to throw myself on your justice, and to desire that you will not put in jeopardy all I have now left?

But the populace only, the rabble, the ignoble vulgar, are for the Bill! Then what is the Duke of Norfolk, Earl Marshal of England? What the Duke of Devonshire? What the Duke of Bedford? (Cries of *Order* from the Opposition.) I am aware it is irregular in any noble Lord that is a friend to the measure; its adversaries are patiently suffered to call Peers even by their christian and surnames. Then I shall be as regular as they were, and ask, does my

friend John Russell, my friend William Cavendish, my friend Harry Vane, belong to the mob, or to the Aristocracy? Have they no possessions? Are they modern names? Are they wanting in Norman blood, or whatever else you pride yourselves on? The idea is too ludicrous to be seriously refuted;—that the Bill is only a favourite with the democracy, is a delusion so wild as to point a man's destiny towards St. Luke's. Yet many, both here and elsewhere, by dint of constantly repeating the same cry, or hearing it repeated, have almost made themselves believe that none of the nobility are for the measure. A noble friend of mine has had the curiosity to examine the list of Peers, opposing and supporting it, with respect to the dates of their creation, and the result is somewhat remarkable. A large majority of the Peers, created before Mr. Pitt's time, are for the Bill; the bulk of those against it are of recent creation; and if you divide the whole into two classes, those ennobled before the reign of George III. and those since, of the former, fifty-six are friends, and only twenty-one enemies of the Reform. So much for the vain and saucy boast, that the real nobility of the country are against Reform. I have dwelt upon this matter more than its intrinsic importance deserves, only through my desire to set right the fact, and to vindicate the ancient Aristocracy from a most groundless imputation.

My Lords, I do not disguise the intense solicitude which I feel for the event of this debate, because I know full well that the peace of the country is involved in the issue. I cannot look without dismay at the rejection of the measure. But grievous as may be the consequences of a temporary defeat—temporary it can only be; for its ultimate, and even speedy success, is certain. Nothing can now stop it. Do not suffer yourselves to be persuaded, that even if the

present Ministers were driven from the helm, any one could steer you through the troubles which surround you, without Reform. But our successors would take up the task in circumstances far less auspicious. Under them, you would be fain to grant a Bill, compared with which, the one we now proffer you is moderate indeed. Hear the parable of the Sybil; for it conveys a wise and wholesome moral. She now appears at your gate, and offers you mildly the volumes —the precious volumes—of wisdom and peace. The price she asks is reasonable; to restore the franchise, which, without any bargain, you ought voluntarily to give: you refuse her terms—her moderate terms,— she darkens the porch no longer. But soon, for you cannot do without her wares, you call her back;— again she comes, but with diminished treasures; the leaves of the book are in part torn away by lawless hands,—in part defaced with characters of blood. But the prophetic maid has risen in her demands—it is Parliaments by the Year—it is Vote by the Ballot—it is Suffrage by the Million! From this you turn away indignant, and for the second time she departs. Beware of her third coming; for the treasure you must have; and what price she may next demand, who shall tell? It may even be the mace which rests upon that woolsack. What may follow your course of obstinacy, if persisted in, I cannot take upon me to predict, nor do I wish to conjecture. But this I know full well, that, as sure as man is mortal, and to err is human, justice deferred enhances the price at which you must purchase safety and peace;—nor can you expect to gather in another crop than they did who went before you, if you persevere in their utterly abominable husbandry, of sowing injustice and reaping rebellion.

But among the awful considerations that now bow down my mind, there is one which stands pre-eminent

above the rest. You are the highest judicature in the realm; you sit here as judges, and decide all causes, civil and criminal, without appeal. It is a judge's first duty never to pronounce sentence, in the most trifling case, without hearing. Will you make this the exception? Are you really prepared to determine, but not to hear the mighty cause upon which a nation's hopes and fears hang? You are. Then beware of your decision! Rouse not, I beseech you, a peace-loving, but a resolute people; alienate not from your body the affections of a whole empire. As your friend, as the friend of my order, as the friend of my country, as the faithful servant of my Sovereign, I counsel you to assist with your uttermost efforts in preserving the peace, and upholding and perpetuating the Constitution. Therefore, I pray and I exhort you not to reject this measure. By all you hold most dear,—by all the ties that bind every one of us to our common order and our common country, I solemnly adjure you,—I warn you,—I implore you,—yea, on my bended knees, I supplicate you—Reject not this Bill!

END OF VOLUME SECOND.

T. CONSTABLE, PRINTER, THISTLE STREET.

ADDENDA TO VOL. II.

1.

AFTER the words "Somerset the Negro," p. 6, line 10, add the following note:

This case is very fully and learnedly argued in Mr. Hargrave's Juridical Tracts, where a very expanded statement of his argument in the Court of King's Bench is given. The question came on by the Negro body applying, in the year 1771, for a writ of Habeas Corpus, which Lord Mansfield, who issued it, desired might be argued in Court on the return being made. Mr. Wallace, Mr. Alleyne, and Mr. Hargrave argued for the Slave's freedom, Mr. Dunning and Sergeant Davy against it. The Court, after taking time to consider, gave judgment for the Slave in 1772. Lord Mansfield said of Slavery, in concluding his judgment, "Slavery is so odious, that nothing can be suffered to support it but positive law, and it is not allowed or approved by the law of England."

The same question had arisen in Scotland, some years before, in the case of Sheddan, a Negro. During the argument before the Court of Session, (a *hearing in presence,* as it is there termed,) he died, and the point was left undecided until the year 1778, when the Court determined, in favour of the Slaves, in the case of Wedderburn *v.* Knight, as the Court of King's Bench had done in Somerset's case.

In France, the same question arose in 1731, and the argument is given at large in the *Causes Célébrès.* The advocates all dwelt with much complacency upon the topic, so familiar to us in this country, that the moment a Slave touches French ground he is free, Slavery being utterly repugnant to their law, and the air of France being too pure to be breathed but by Freemen; and it seems to have been admitted that the Negro's freedom was secured to him at common law; but an edict of 1716 had provided that in certain cases, as for religious instruction, teaching them useful arts, &c., a Slave, under very minute and careful regulations, might be brought to France from the Colonies, and not acquire his freedom; and the question appears to have been determined in the Slave's favour on the ground of these conditions not having been complied with.

2.

To the Sketch of the Character of Mr. Wilberforce, p. 9, second line from the bottom, add the following quotation :

Habebat enim flebile quiddam in quæstibus aptumque cum ad fidem faciendam tum ad misericordiam commovendam : ut verum videretur in hoc illud quod Demosthenem ferunt ei qui quæsivisset quid primum esset in dicendo actionem, quid secundum idem, et idem tertium respondisse. Nulla res magis penetrat in animos, eosque fingit, format et flectit, talesque oratores videri facit, quales ipsi se videri volunt. — (Cicero *Brutus.*)