

How

THE TRIAL

OF

Gabbitt

JUDGE *versus* BERKELEY AND OTHERS,

TRIED AT HEREFORD,

On THURSDAY, AUGUST 4, 1825.

BEFORE

SIR JAMES BURROUGH, KNT.

ONE OF THE JUSTICES OF HIS MAJESTY'S COURT OF COMMON PLEAS,

AND A SPECIAL JURY.

TAKEN IN SHORT HAND, BY J. A. DOWLING.

Counsel.

For the Plaintiff.

Mr. CHARLES PHILLIPS.
Mr. JUSTICE.
Mr. LOCKHART.

For the Defendants.

Mr. TAUNTON.
Mr. LUDLOW.
Mr. CAMPBELL,
Mr. HORACE TWISS and Mr. WATSON.

CHELTENHAM:

S. C. HARPER, 350, HIGH STREET;

G. B. WHITAKER, AVE MARIA LANE; SHERWOOD, GILBERT, AND
PIPER, PATERNOSTER-ROW, LONDON.

1825.

Price Three Shillings.

THE TRIAL

JUDGE JOHN BERKLEY AND OTHERS

TRIAL AT BIRMINGHAM

ON THURSDAY AUGUST 4, 1832.

PROSECUTED BY

SIR JAMES BURROUGH, KNT.

ONE OF THE JUSTICES OF HIS MAJESTY'S COURT OF COMMON PLEAS,

AND A SPECIAL JURY.

PRINTED BY J. A. DOWLING.

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For the Defendants
Mr. T. ...
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For the Prosecution
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THE TRIAL

OF

JASPER TOMSETT JUDGE *versus* WILLIAM FITZHARDINGE BERKELEY, Esq., RICHARD CARR HAMMOND, Esq., and LORD SUSSEX LENNOX.

At HEREFORD, August the 4th, 1825,

Before Sir JAMES BURROUGH, Knt., one of the Justices of his Majesty's Court of Common Pleas, and a Special Jury.

THE JURY.

WILLIAM SYMONDS, Esq. Hereford, FOREMAN.
JOHN FREEMAN, Esq. Whitburn.
THOMAS SERGEANT, Esq. Linton.
SAMUEL COMPTON, Esq. Walford.
WILLIAM PALMER, Esq. Weston-under-Penyard.
DANSEY RICHARD DANSEY, Esq. Little Hereford.
FOWLER PRICE, Esq. Tupsley.
JAMES HARE, Esq. Lyoushall.
KEDGWIN HOSKYNS, Esq. Much Birch.
SAMUEL PEPLOE, Esq. Weobly.

TALES MEN.

JOHN DAVENPORT and SAMUEL BISHOP.

Mr. Justice BURROUGH took his seat on the Bench in the Civil Side at Hereford, on the morning of the 4th of August, at 9 o'Clock. This case was fixed for that day; and Mr. Bellamy, the Associate, called over the names of the Special Jury.

WILLIAM SYMONDS, Esq. was the first gentleman who answered to his name. Previous to Mr. Symonds (who was Foreman of the Jury) taking the book to be sworn, the following dialogue took place.

Mr. C. PHILLIPS. Mr. Symonds, before you are sworn, sir, I beg leave to put a question to you, which, for your own honour, I am sure you will thank me for putting. Have you made any declaration—

Mr. SYMONDS. I do not know what you mean, sir.

Mr. CAMPBELL. My Lord, I object to this. It is highly improper.

Mr. Justice BURROUGH. No, no. I never knew any thing of this

kind. If this gentleman has placed himself in such a situation, of course it is his own fault.

Mr. C. PHILLIPS. My Lord, I am informed that this gentleman has expressed an opinion with respect to this action.

Mr. CAMPBELL. My Lord, a Special Jury has been struck; and this is a most unusual course.

Mr. Justice BURROUGH. You can't ask it. You can't ask it.

Mr. C. PHILLIPS. Merely then to your Lordship I will state, that this is a case of the greatest interest to the parties concerned. I never had the pleasure of seeing this gentleman, Mr. Symonds, before; I dare say he is a perfect gentleman, and I have no doubt he is a man of honour and feeling; but I understand he has made a very strong declaration in favour of one of the parties.

Mr. SYMONDS. That *I* have, sir?

Mr. C. PHILLIPS. Yes, you, sir.

Mr. SYMONDS. I beg to deny it. Nothing of the kind.

Mr. CAMPBELL. I am very glad, for the sake of Mr. Symonds, that this has taken place.

Mr. PHILLIPS. Then here, sir, (*to Mr. Symonds*) it is quite right you should see on what authority I state it. (Here the learned Counsel was going to hand Mr. Symonds a letter.)

Mr. Justice BURROUGH. No, no; I will not have it done.

Mr. PHILLIPS. You shall see it, sir, out of Court. I pledge myself as a gentleman that you shall see it, that you may know on what authority I stated so.

Mr. SYMONDS. I will not be sworn, sir, unless you are perfectly satisfied. I think it due to myself to say this, after what you have observed.

Mr. PHILLIPS. I am perfectly satisfied, sir, with whatever you choose to do.

Mr. SYMONDS. I was summoned here, and that was why I have come.

Mr. PHILLIPS. You will take your own course, sir.

Mr. Symonds was then sworn; and as there were but ten Special Jurors, a *Tales* was prayed by the plaintiff.

The case then proceeded.

Mr. LOCKHART opened the pleadings; and stated this was an action for an assault, and the damages were laid at 5000*l.*

Mr. C. PHILLIPS stated the case in the manner following:

May it please your Lordship. Gentlemen of the Jury, You have heard from my learned friend the charge upon this record, to try which, you are this day impanelled; and it becomes my duty to state to you a little more at length, with such observations as appear to me necessary, the facts of the case. Gentlemen, I assure you in the very outset of this action, that I have to express my very deep regret at being obliged to unfold to you its details. I have to regret, that in the performance of a professional duty, I have to detail to you the circumstances of an outrage, which not merely de-

grades the parties who have perpetrated it, but I think also the entire rank of society in which these parties are placed. However, I trust that in your verdict to-day, that class of society (at least) to which they belong, will be vindicated from any participation in, or sympathy with, such misconduct.

The plaintiff is a gentleman of the name of Judge. He is the editor, and I believe in part the proprietor, of a newspaper printed in Cheltenham. He is a gentleman both by birth and education; and though not so highly born as some of these defendants, there never yet was a stain on his reputation. The defendants are, a Mr. Hammond, a gentleman, I understand, most undoubtedly, by birth and education—I believe also by estate. Lord Sussex Lennox, I need scarcely inform you is the son of the late Duke of Richmond, and a brother of the present Duke—he is a gentleman no doubt of very high station—a gentleman participating, I understand, in the fortunes of his illustrious family. The third defendant is Mr. William Fitzhardinge Berkeley—perhaps I should rather call him Colonel Berkeley, as I understand he is better known by that name, though, from his conduct in this transaction, I never should have supposed he held a commission as an officer. He, I dare say, is well known to you. He is the inheritor of extensive estates in the county of Gloucester, and the proprietor and possessor of that ancient castle called Berkeley castle, (I believe,) with at least an income of 20,000*l.* a year.

These, Gentlemen, are the parties on the record; and I shall now simply, and in order, state the details of that, which I consider—most solemnly do I say it, not as an advocate, but as a man and as a gentleman—the most outrageous, unparalleled, and atrocious transaction that ever I had the misfortune to hear of, in or out of a Court of Justice. Colonel Berkeley (and I name him not as the principal defendant in this case, he is not so. The other two are quite as much entangled in this transaction, and perhaps a little more so, to their own discredit)—Colonel Berkeley, I say, took it into his head—perhaps justly, but upon that a word presently—that he had been spoken of harshly in the newspaper edited by Mr. Judge; and he thought proper to appeal, not to the laws of his country—not to require explanation or satisfaction—but he thought proper to proceed to the house of Mr. Judge, attended by his co-defendants. Gentlemen, to say that the way in which he got admission to the house of Mr. Judge was *disgraceful*, is to use an exceedingly mild term. Lord Sussex Lennox went to the house of Mr. Judge on the 14th of March last, at two o'clock, and inquired of the maid-servant whether he was at home? He was not. Lord Sussex Lennox did not then hesitate to say, what you will find was grossly and palpably untrue, namely, that he had a letter for Mr. Judge. He, however, produced a letter; and the maid told him, what I believe was the truth, that Mr. Judge was not at home, and Lord Sussex Lennox departed. At three o'clock he came again—you know at two o'clock

he came with a letter—at three o'clock he came again, and I will prove he was then connected with the party who designed to get into the house. At the time (it will be proved to you in evidence) that he was at the door of Mr. Judge alone, Colonel Berkeley was hiding himself behind the corner of a street called Northfield Place. He was peeping from behind the corner, manifestly anxious to see the success of Lord Sussex Lennox. That shall be proved distinctly; and if any thing is wanting, that marks the plan and deliberation of this transaction, this is it.

Well, Lord Sussex Lennox, I say, again went to the door holding a letter in his hand. He asked if Mr. Judge was at home. The maid said he was. He said, "I have a letter for him." That was intimated to Mr. Judge; and he said, "Let the gentleman walk in." Lord Sussex Lennox walked in, but Mr. Hammond and Colonel Berkeley (whether by a concerted signal or not, I cannot say,) immediately took the opportunity, rushed in, and all three went into the room in which Mr. Judge was sitting. This is the *business*, mark you, for which Lord Sussex Lennox came.—But I don't deny they came concerning something in the paper. The maid-servant heard thus much. Mr. Judge said, "Who have I the honour of addressing?" on which—(not Lord Sussex Lennox, who was the man pretending to have the business with Mr. Judge, but) Colonel Berkeley answered, "I am come to ask something about the paper." On which she heard Mr. Judge say, "You shall have any explanation, if you come to the office." I think a more proper or appropriate answer could not be given on such an occasion; and it grievously aggravates this outrage, that there were ladies living in this house at the time. A most respectable lady, Mrs. Sargent, and her daughter, with whom Colonel Berkeley was in the habit of visiting, then resided in the house; and, really, that he should have selected as the scene of this outrage, the house of a widow lady and her daughter, with whom he was on terms of acquaintance,—whom he was daily visiting,—that he should make that house, I say, the scene of the outrage I have to detail to you, does not much indicate those feelings of a gentleman which I should have expected from his rank. However, thus it is. One of the party said, "No, we shall have explanation now." The maid-servant, thinking perhaps she ought not to stay, went out of the room, and shut the door. She had scarcely left it, when she heard distinctly, over and over again, the lash of a whip, intermingled with Mr. Judge's cries for help and assistance. At the time they entered the room, Gentlemen, Mr. Judge was sitting at his table, occupied with his literary concerns. He was unarmed, but Colonel Berkeley had a large horsewhip in his hand. The maid, terrified at the outcry, attempted to get into the room. She could not. To the honour—yes, to the *honour!* of these defendants be it spoken—(whether it was the *Lord* or the *Gentleman*, I know not)—one of them kept the door fast on the inside, while Colonel Berkeley was perpetrating a most outrageous attack upon the plaintiff, who had thus no means

of assistance—no means of defending himself. They beat him, Gentlemen, until they were tired; and I think I am warranted in saying that Colonel Berkeley was assisted in the outrage by one or other, or both of the other defendants. They beat him, I say, as long as they were able. A lady, a most respectable lady, Miss Morris, who resided in the house, was terrified; and came to prevent, if possible, what she considered to be murder, from being perpetrated. When she tried the door, she found it fastened, but presently it opened; and she heard one of the persons inside exclaim, “Damn him! damn him! He has got enough; let him go now.” Those words, “let him go now,” plainly intimated that one at least of those within was holding him there. He came out, Gentlemen, streaming from head to foot with his blood. That, you would suppose, might have satisfied the most inhuman vengeance; but I am afraid we have not ordinary men to deal with here. Will you believe it?—Can you credit it?—when the man was in that situation, piteously crying for help in his own house—streaming with his blood—that when attempting to get up stairs to his bed-room, (for bed was the fittest place for him,) this *Gentleman*, this *Nobleman*, this *Lord SUSSEX LENNOX*, to the honour of himself, though not to the honour of his illustrious family, seized him by the skirts of his coat and pulled him back, to receive another ferocious attack. Would you believe, that then, Mr. Hammond, who would be indignant if I did not call him a gentleman, seized him by the hair, as he supposed at the moment, pulled him down stairs, and held him for Colonel Berkeley to beat him. That was not all: Mr. Judge had been afflicted with illness a short time previous. He had been under the necessity of having his head shaved, and wore a wig. The grasp caught the wig, the wig came off, and, can you credit it? I am almost inclined to doubt the contents of this brief, and wait to see whether the evidence will establish it, ~~for~~ I can hardly conceive greater atrocity;—will you believe, that Colonel Berkeley took that opportunity when his head was bare—while he was streaming with blood—to lash him over the face until he had cut his eye and cheek through to the bone? Now, Gentlemen, is it not almost beyond credit, that while one was holding him, and another was dragging him, the third was beating this puny, unarmed man, in his own house? Colonel Berkeley having satisfied himself, (and strange must be the mind that could take satisfaction in such brutality,) retired from the house laughing, and exclaiming, “Damn the fellow! damn the fellow! Did I not give it him properly.” There was great risk to be sure, in three attacking an unarmed man! It will also be proved to you, that while they were almost murdering the man, that his companions were screaming, in the language of the prize-ring, “Give it him! give it him! damn the villain! go it! go it.”—Colonel Berkeley then retired, laughing and rejoicing in his triumph over an unarmed man. Mr. Judge retired to his bed-room.

Now, Gentlemen, this was not the mere casual insult which one gentleman inflicts on another, when he takes offence. He retired to his bed-room, he took to his bed, he had physicians attending him, and the surgeon, for a week, was obliged to visit him three times a day; and for a fortnight, this unfortunate young man was unable to leave his bed. More than that, he is a literary man. I shall produce an experienced oculist—because upon a subject of this kind, I did not choose you should take the mere statement or opinion of a surgeon; but I have here a man whose name I need only mention to you to convince you of his eminence as an oculist. I have here Mr. Ware of London, who examined the eye. He will tell you there is a film on the *cornea*, on the ball of the eye, and very likely he will never recover the sight of it. Mr. Ware will state to you, that the slightest inflammation will destroy the eye. It is quite unnecessary, while we are talking of personal suffering, to mention the serious consequence which the loss of an eye may be to a man who lives by literature. But it is scarcely necessary to show any thing of that kind, or to put such witnesses in the box; for if your feelings are not outraged by the conduct of these gentlemen, and the sufferings of Mr. Judge, such evidence can add nothing.

Now I dare say it will be said to-day, that we ought to have indicted these parties. I think we ought. I think that a little personal suffering might teach these gentlemen, perhaps, hereafter, to respect a little more the feelings of others. But we could not indict them, because it is not the smallest aggravation, that the persons of Mr. Hammond and Lord Sussex Lennox were actually unknown to Mr. Judge, and he had no means of proving they were there. Therefore, finding he could not associate these persons in an indictment, he preferred an action, and the only proof I have for you to-day that these gentlemen assisted in this outrage, is an undertaking given by their own attorney, to admit that they were the persons that accompanied Colonel Berkeley, on condition that we should not prosecute criminally. Therefore, the argument is completely taken out of the lips of my learned friend, that we ought to have proceeded by indictment and not by action; because they made it a consideration of their case, that we were not to do so. Therefore, we are here in this action to obtain satisfaction, and therefore let it not be thrown in this gentleman's teeth, that he seeks nothing but money. He had no other means of bringing the parties forward to answer for their conduct, but these. I have now, Gentlemen, stated to you the facts of the case, and the only observation I have made is, that it is both outrageous and unparalleled; and I ask of you, sitting in that jury-box to decide upon your oaths, in what single aggravation is this case deficient? Has it the excuse of sudden indignation? No, Gentlemen, it was perpetrated after the most cold-blooded deliberation. I think it is a great pity when men of this description resort to the brute-practice of the prize-ring, that they do not consult some of

its professors. Barbarians as *they* are, they scorn undue advantage. They are matched at all events, and the vilest among them would be hooted from the Fives Court, that would set three on one, or use any other expedient than the allowable equipoise of strength and science. Have I done, however, with the aggravations of this case? No, Gentlemen, the worst—by far the worst, remains behind—the place of its perpetration. What place was that? The home, the very home of the plaintiff; before his menial servants; within his peaceful threshold; under his sacred roof; that place, above all others, which we are accustomed to regard as an asylum, and a refuge from all the world. That Temple, which, if the feelings of our common nature did not sanctify, the usages of this happy land have rendered sacred; its privileges, the theme and blessing of your country. The spirit of your forefathers have vigilantly guarded it; the constitution of your island has scrupulously respected it; there never yet was a truth more sacred.—There never yet was a boast within your senate, which went so home to the heart of England—which animated every class and calling, the sage, and the warrior, and the peasant so sublimely, as the boast of the immortal Chatham, when he proclaimed against all the world, the inviolable rights of the Englishman's fire-side! And who has violated it? Who has dared to violate it? Perhaps some dungeon outcast—perhaps some foundling of despair, too stupid to appreciate morality or too savage to be restrained by law. No, Gentlemen, it was a magistrate—a minister of justice, forsooth, whose duty it would be to close the prison door on the poorer man, who should dare to imitate his example—a man who, relying in the strength of his confederates and on his enormous wealth, swaggers into the house of the poor and innocent citizen in the face of day, and registers his contempt for law and justice in the blood of its defenceless, unresisting, and overpowered inhabitant. Gentlemen, I state this case strongly to you, because I feel it most deeply. I feel it is not the mere case of the parties before you. You are to-day to decide upon a great general principle, whether our homes are sacred, whether our persons are to be secure, or whether we are to prepare and arm ourselves against every atrocious confederacy, which may set the laws at defiance. If you sanction such conduct this day, by a mitigated verdict, you will go far to decompose the moral and social order of society. It will reduce it again into its original elements. You will place us in a state of mere nature, when the weak must bow in submission to the despotism of the strongest. But I am mistaken in supposing you will give such a verdict. Give me leave to ask, if you were to read to-morrow, that in the wilds of Africa, or the deserts of Siberia, three inhabitants of the land—mere serfs of the soil—had banded together and broken into the house of a defenceless, unsuspecting and lone man, would you not uplift your hands with horror at the atrocity? But you could not read it. I wrong the rude children of the wilderness. I profane the noble principle of nature which

renders strength and generosity inseparable. The savage would not do so. He might be irritated into an instant and terrible retribution; but he would not deliberate over crafty vengeance with confederated guilt. He would not resort to ambushed violence. He would not creep unawares upon his victim. He would give his even-handed foe the chance of combat; but he would shrink instinctively from that sacred home which the intuitive nature of barbarians, as well as of civilized men, has combined in constituting a sanctuary and an asylum. In some nations, it is hallowed by the presence of their household deities—with us, it is held sacred by honour, by hospitality, by the experience of ages, by the retired and tranquil joys it gives to the meanest cottager, which the monarch on his throne feels proud in reverencing. Do I then, Gentlemen, go too far, in calling this an unparalleled case? I shall submit it to a fair and reasonable test. Let my learned friend, Mr. Taunton, who I observed with sorrow smiling at some part of this transaction; let my friend Mr. Taunton, I say, produce its parallel, and I ask no damages. Let him produce an instance in this civilized country, in which three of its aristocracy have thus banded themselves, and swindled themselves into the house of a peaceful citizen and drawn his blood, and that in the noonday too—in a populous neighbourhood, before all mankind, that if, hereafter, the very vulgarest of the rabble should choose to trample on law and decency, he may plead such a case as one in which a Nobleman and a Magistrate had set him the example. Let my learned friend, I say, do that, and I absolve his client. But I will not libel the nobility of the land; I will not insult a moral and a learned magistracy by supposing the possibility of such a case. Let him then produce a case, where three of the lowest of the people—the basest of the populace—have so trampled upon law and civilization. Let him do that, and I will ask no damages. What! In a man's own house! that man unarmed! his blood streaming around him! and *three to one!* Oh! is there a woman or a child, that must not cry “shame!” at such an outrage?

Gentlemen, I have said, conduct such as this is, if it be sanctioned by your verdict this day, may produce a terrific effect in society. Give me leave to ask you, if my learned friends should succeed by their united persuasions, and obtain a mitigated verdict from you, how could you blame hereafter the very lowest and vulgarest of the people, if he had acted upon that verdict? Can you make any difference? Can you make one law for the rich man and another law for the poor man? And if the poor man had been guilty of this outrage, severely and justly would he be punished. Can you make one law for the poor man, and another for the rich man? Shall high rank excuse debasement? Shall refinement of knowledge excuse degradation? Shall the gifts of fortune be perverted to the profligacy of vice? Before you say so, reflect. Suppose you are persuaded by my learned friends to give a mitigated verdict, and one of the

peasantry around this Court were, to-morrow, to act upon it, and enter into your own dwellings, and assail your persons,—might he not justify himself on the very ground of such a verdict? Suppose when you accused him, he retorted this upon you:—“Yes, I did break into your house. I did violate the peace of your family. I did draw your blood; but you had offended me. I was an ignorant man, and you knew better. I was angry, and insult stimulated me. I was a poor man, and though the *laws* might redress me, yet I did not choose so expensive and tedious a remedy. But why call me to an account? It is but the other day Col. Berkeley and his companions did the self-same thing, and you let those men off for a few hundred pounds out of their enormous wealth, which are not as much as a few shillings or a few pence would be, taken from me; and therefore give me leave to ask *why you accuse me?*” I think it would be very hard to regulate the parallel of the occurrences. Now you may perceive by this way of putting it, I am supposing that the defendants mean to prove some provocation.

Gentlemen, I shall deal fairly and candidly with you upon this subject. I dare say Colonel Berkeley means to say to-day, that he was libelled in some of the plaintiff's publications. As to the other two gentlemen, what their defence will be, I am left without the shadow of conjecture. But if that provocation should be given in evidence, two questions then arise for your consideration:—Could any provocation on earth justify such an outrage? That is the first. The second will be, What was the conduct which called forth the commentary?

Now I am free to admit to you, if a man was provoked by a libel, and in his anger met the person who had so provoked him in a public place, in the street for instance, and had taken his revenge on the instant, on the spur of the moment, I am free to admit that the heat of the moment and suddenness might mitigate, though it could not justify, such conduct as that. But I solemnly deny that it would justify the breaking into a man's house—that it could justify the outrage thus deliberately planned, and thus barbarously executed through the instrumentality of others. That I deny most solemnly. I am willing to admit, that if the editor of a newspaper were to drag forth unnecessarily a retired, moral, unoffending individual, and publicly slander him, that editor could not complain of the consequences in which he had involved himself; but even then I would deny that the person so censured had any right to trample the laws under his feet, and to erect himself into a summary tribunal—I would then deny that he had a right to set an example to the peasantry which might induce every man to convert his bludgeon into a sceptre. But, Gentlemen, I deny the aggression. I deny that he dragged Colonel Berkeley from retirement. I deny that the commentaries were not justified by the occasion. If they produce the one, they must then produce the other; and then, in the name of God and man, I will ask you whether there is any

phrase used which the occasions fell short of warranting? I shall not pursue this, Gentlemen. I hope some lingering sense of decorum will prevent a defence of this kind. Not on my account, should I be sorry for the recapitulation; but if such a defence should be resorted to—when the odious topic is brought forward—when your hearts as fathers, and your feelings as men, shall be afflicted and insulted, then I congratulate the *Lord* and the *Gentleman* that they are free from the aggravation of such an apology. Were *their* names ever mentioned? Did *their* names ever appear in *one solitary Journal*? I defy my friends to say so; and if their names did appear, what excuse is that for this brutality? What excuse could it be for the vile and paltry stratagem by which they gained admittance to this gentleman's house?—What excuse would it be for the brutality of this outrage?—What excuse would it be for the vulgar cant words of encouragement uttered during its infliction, when there were three to one, and when they were assisting in drawing the blood of the man who was a stranger even to their very persons? Will they deny it?—I shall prove it to demonstration. Will they admit it?—Then search your hearts, and see if you can extend to them one charitable mitigation. And is it, give me leave to ask, Gentlemen, “in sober sadness,” is it in scenes like this that we are to seek for the young nobility of this realm?—I should have sought for them in the ranks of literature and science; I should have looked for them in the path of charity, guiding and animating her sacred zeal; I should have expected to find them in secluded shades, meditating the bright achievements of their illustrious ancestors, and emulously endeavouring to rival or sustain them: but not, surely, in the noonday broil, assailing the habitation of the unarmed citizen; not staining the peaceful threshold with his blood; not justifying by example, the worst doctrines of the jacobin and the leveller. Fain would I try to find an excuse in youth for this transaction, but youth abhors such deliberate barbarity. It detests this crafty confederacy of the many against the one. Its wildest excesses have more in them of folly, than of crime, and there is always around them a romantic generosity which graces and adorns—I had almost said, redeems them. But here you have all the craft that experience gives to age, without any of the warmth that nature gives to youth—all the cunning that wickedness can give to perpetrate a crime, and all the fraud that can meditate its commission. You have, what I never before witnessed, the most odious combination—the most unnatural union of atrocity and prudence. But, Gentlemen, after all, they are only exposed to the moral degradation of this day. If their defenceless victim had fallen under their infliction—if the blood they shed had unhappily been his life's blood, and I could prove the deliberation that I shall prove, they must have answered at the bar of a very different tribunal. But be your verdict what it may, they have reason to rejoice at it. I know their fortunes enable them to disregard it;

but I ask you, (and when I have asked you that question I shall sit down,) I ask you, shall those fortunes become the passports to crime? Shall they elevate them into village tyrants? Shall they expose our persons to their violence, and our houses to their intrusion? Shall it give them a power which even the Sovereign possesses not? Gentlemen, you will answer these questions, I hope, in the negative, and by so doing, you will confer a great public benefit. You will determine that the rights of the citizen are not to be infringed and compromised. You will redeem from a stain the violated laws of the country. You will teach every class and calling, the humblest as well as the haughtiest, that here proud, impartial justice is administered at this tribunal.

A buz of applause ran through the Court repeatedly, during the learned gentleman's speech.

Here the following admission was put in and read.

We the undersigned, John Stone, attorney for Mr. Jasper Tomsett Judge, and John Prince, attorney for William Fitzhardinge Berkeley, Esquire, and Lord Sussex Lennox, and Robert Carr Hammond, Esquire, do hereby agree as follows: First, I the said John Prince, do hereby undertake to appear and plead to any action which may be commenced against the said William Fitzhardinge Berkeley, Lord Sussex Lennox, and Robert Carr Hammond, Esquire, at the suit of the said Jasper Tomsett Judge, and to admit on the trial of the said cause, that the said Lord Sussex Lennox, and Robert Carr Hammond, were the two persons who accompanied the said William Fitzhardinge Berkeley to the dwelling-house of the said Jasper Tomsett Judge, on Monday the 14th of March, instant. And I the said John Stone, do hereby undertake and agree that the said Jasper Tomsett Judge, shall not institute, prosecute, or countenance, directly or indirectly, any criminal prosecution against the said Lord Sussex Lennox, for any thing which transpired on the said 14th day of March, instant.

Witness,

JOHN STONE, for Self and Housman.

JOHN PRINCE, for Straford and Self.

Mary Curtis called and sworn. Examined by Mr. Justice

You are a married woman, I believe? Yes.

And you follow the occupation of a washerwoman? Yes.

Were you taking home some linen on the 14th of March last? No, Sir.

Were you going along Northfield-street, in Cheltenham? No, Sir.

Do you live in Cheltenham? Yes, Sir.

Well, where were you going on that day? I went out with an intention to see Colonel Berkeley.

Well, were you walking in the street, in the middle of the day, on the 14th of March last? No, not in the middle of the day.

What time was it then? It was between two and three o'clock in the afternoon.

What street were you in? In Sherborne-street.

Did you see Colonel Berkeley? I did, Sir.

Was he alone? No, there were two gentlemen with him.

Now where were they walking, when you first saw them? When I first saw them, they were at Warwick-house.

In the street you mean? Yes.

What street is that? In Portland-street.

Did you see them afterwards, walking in Northfield-place? No, they went up Portland-street.

Do you know where Mr. Judge's house is? Yes.

Where is that? No. 13, Northfield-place.

Did you see either of the three go towards Mr. Judge's house? Yes, I saw them turn the corner.

The corner leading into Northfield-place? Yes.

At that time were they arm in arm? No, Sir.

But they were walking together? Yes.

Did you follow them? I did, Sir.

Mr. Justice *Burrough*.—Did your business lead you that way? I went out with an intention of speaking to Colonel Berkeley.

I believe you did not at that time know the other two gentlemen? No.—I think I should know the tall one.

Did you see either of them go to Mr. Judge's house? No, I did not.

Did you see Colonel Berkeley alone, at any period? No, I did not.

Not afterwards? No, Sir.

Then you went round the corner that leads to Northfield-place? Yes, Sir.

When they were there, did you see all three together? Yes, in the passage.

Before they got to the passage, did either of them separate from the three? No.

You did not see any separation? No.

In what street is that passage? It was the passage of the house in Northfield-place.

Before that, did you see two of them alone? No, Sir, I did not.

Did you at any time see any of them go to Mr. Judge's house? No, I did not.

Mr. Justice *Burrough*.—What passage is that you have been talking of? It was the passage of Mr. Judge's house.

Now, attend to what I am going to say, and be cautious.

Mr. *Taunton*.—Be cautious! why she is your own witness.

Do you say that you never saw Colonel Berkeley alone, during the time you saw them at the corner of Northfield-place? No, Sir.

Did you see any one of the Gentlemen go alone to Mr. Judge's house?

Mr. *Taunton*.—She has three or four times negatived it; and I object to this mode of examination of your own witness.

Now only be cautious for your own sake. Did you see these three gentlemen go into Mr. Judge's house? No, I did not.

You told me just now, that you saw them in the passage? Yes; in the house.

What house? Mr. Judge's house.

Mr. Justice *Burrough*.—What part of the house? In the passage, my Lord.

Did you hear any thing? Yes. I heard the noise of a horsewhip, and I heard the cries of a man, which caused me to run towards the house.

Mr. Justice *Burrough*.—What sort of cries were they? Were any words uttered? No, not until I came to the house, that I heard. I heard a noise at first, but I could not say what sort.

Were they cries of joy or distress? They were cries of distress.

Did you see Colonel Berkeley come from the house? Yes.

Mr. Justice *Burrough*.—Where did the cries proceed from? From the house. Had Colonel Berkeley any thing in his hand when he came out of the house? Yes, a whip.

Mr. Justice *Burrough*.—What sort of a whip? I cannot say.

Did you hear him say anything? Yes, Sir.

What did he say? I heard him say, 'he gave it him damned well.'

Was he laughing? No—he did not laugh.

Was he alone when he said that, or were the other two gentlemen with him?
No—the other two were with him.

The same two gentlemen you had seen with him before? Yes.

Did you see Mr. Judge? I did.

In what condition was he? I saw the blood running down his face.

Mr. Justice *Burrough*.—How soon after was that? I saw him when they came out. I saw him in the passage when they came out.

In what state was Mr. Judge in the passage? I saw the blood run down his face.

Which way did they go, when they came out of the house? They went up Northfield-place, towards the town.

The same way that they came? Yes.

They went off altogether? Yes.

Mr. Justice.—Have you any questions to ask this witness?

Mr. *Taunton*.—No; I have nothing to ask her.

Elizabeth Izzard called and sworn. Examined by Mr. C. Phillips.

Where did you live on the 14th of March last? At No. 13, Northfield-place.

Whose house is that? Mrs. Morris's.

Did Mr. Judge live there at that time? Yes.

Do you know Mrs. Sargent, a widow lady, and her daughter? Yes.

Did they live in the same house? Yes.

Have you ever seen Colonel Berkeley come to visit those ladies? Yes.

You know his person, from having seen him? Yes.

Do you remember answering a knock at the door on that day? Yes.

Who was it knocked? A tall thin gentleman.

Mr. *Phillips*.—It is admitted that that was Lord Sussex Lennox, my Lord.

Mr. *Taunton*.—That fact is not admitted.

Examination of the witness in the box resumed.

Did he ask you for any one? Yes. He asked if Mr. Judge was at home.

What answer did you give him? I told him he was not at home.

This was about two o'clock? Yes.

Did you see that gentleman afterwards, my good girl? Yes, Sir.

How soon afterwards? About half an hour after.

Had he any thing in his hand? Yes—a letter.

Did he say any thing to you then? He asked if Mr. Judge was at home.

He was at home then, and I told him so.

What did he then say? He said, "Will you tell Mr. Judge I have a letter for him."

Did you tell Mr. Judge? Yes.

Now, Elizabeth, did you see any body else with him, at the door, when he said he had a letter for Mr. Judge? No.

Now what did your master do? At the same time that the young gentleman asked if Mr. Judge was at home, I told him he was; and when he said he had a letter for him, I told my master that he had a letter, and he said he could not think who it could be. Mr. Judge said, "Ask him in."

Did you ask him in? Yes.

Did he come in alone? Yes, he did.

How soon afterwards did you see any other persons? In an instant.

How many? Two others.

Was Colonel Berkeley one of the two? Yes.

Did they all go in? Yes.

What room did they go into? Into the parlour.

Was that the room in which Mr. Judge was? Yes, Sir, it was.

Had the door time to close before the other two came in? No.

At the time you told Mr. Judge that there was a gentleman at the door with a letter for him, what was he doing? He was opening his writing-desk.

When these three gentlemen went into Mr. Judge's parlour, did you hear any words pass? (Here the witness appeared very faint.)

Mr. C. Phillips.—My Lord, the witness is very infirm, and subject to fainting fits; would your Lordship have the goodness to allow her a chair?

Mr. Justice Burrough.—Certainly; get a chair for her. You need not alarm yourself.

Some of the gentlemen of the bar laughed.

Mr. C. Phillips.—Don't mind their laughing at you, Elizabeth. It is only done to annoy you.

A chair was procured for the witness, and the examination resumed.

Did you hear Colonel Berkeley say any thing to Mr. Judge? I heard Colonel Berkeley say, "I am under the necessity of calling upon you, Mr. Judge."

What did Mr. Judge say? He said, "Who have I the honour of addressing?" Colonel Berkeley said, "My name is Colonel Berkeley."

What happened then? Then I left the room. Mr. Judge said, "If you will come to the office, I will give you every information of it."

What happened then? Did you stay in the room any longer? No, I did not.

Did you hear any thing said in answer to the expression made use of by Mr. Judge, that he would give every information at the office? Colonel Berkeley and the other gentlemen said, "No; we will have it now, now, now," repeating "now" three times.

Did you remain any longer? No; I closed the door.

Did you go outside of it? Yes.

And closed the door behind you? Yes.

As soon as you were in the passage, did you hear any thing? I heard the lashes of a whip.

Had either of the three gentlemen who went into the room, a whip in his hand? I did not see any body with one but Colonel Berkeley.

Did you hear any noise except the lashes of the whip? I heard the other gentlemen say, "Give it him well, the rascal. Give it him well. It is what he deserves."

Mr. Justice Burrough.—You say the gentlemen said so. Both said so.

Could you hear Mr. Judge's voice? Yes.

What did he say? He said, "For God's sake have mercy on me. Help! Help!"

Did you on that, stay in the passage, or attempt to go into the room? I attempted to get into the room.

Could you get in? No, Sir; the door was fastened.

Did the blows continue? Yes, Sir, they did.

Now you need not state any thing that was said to you next door, but did you go next door for help? Yes.

Well, were you able to get assistance? No.

Did you return? Yes.

Was there any man in your house? No.

None but women? None but women.

Mr. Davis is the gentleman who lives next door? Yes.

Was he able to come? No. As I went into Mr. Davis's the alarm had frightened Mrs. Davis, so that she fell into a fit, and Mr. Davis could not come to give any assistance.

I believe Mrs. Morris has a daughter? Yes.

Was she in the house at the time? Yes, she was.

On your return into the passage, what did you hear or see? I heard Colonel Berkeley or some other gentleman say, "Let him out; he has got enough now."

Were any other persons in the room besides Mr. Judge and these three? No one else.

Did Mr. Judge then come out? He did.

When Mr. Judge came out, had you an opportunity of seeing him? Yes.

In what state was he? His face was completely covered with blood. It was running down his clothes.

Where did Mr. Judge attempt to go? He made for the up stairs.

Was he able to get up? He got up two or three steps.

Was he able to get up the entire flight? No.

What prevented him? The tall thin gentleman, who came to the door with the letter, caught him by the skirts of his coat and pulled him back.

It was the same gentleman who came to the door with the letter? You are sure of that? Yes.

There was another gentleman with Colonel Berkeley? You are sure of that? Yes.

Did that gentleman do any thing? I am not positive, but I am almost positive *he* caught him by the wig, and it came off.

Did any hand pull it off, or did it fall off? It was pulled off.

You are sure of that? Yes, I am quite certain.

Did Colonel Berkeley do any thing with the whip, when the wig was pulled off Mr. Judge's head? Yes.

What did he do? He cut him over the head and eyes.

Are you sure that he struck at his eyes? Yes.

Mr. Taunton.—She has not said that.

Where did he strike at? Over the head and eyes.

Mr. Taunton.—She did not say he struck *at* the eyes.

Mr. C. Phillips.—Now will you tell these gentlemen—(they do not seem to be satisfied, and I don't wonder at it)—where did he strike at? Over the head and eyes.

Did any of those lashings over the head and eyes leave a mark upon the wall? Yes.

Of what? Of blood.

Describe what sort of a mark it left on the wall? The lash of the whip left about a foot long marked in blood on the wall.

Did you see the state of the ground where Mr. Judge had been standing? Yes.

What state was it in? There was blood in several places:

Mr. Justice Burrough.—In the passage or in the room? In the passage.

Was there much blood? Yes, several very large spots of blood.

How long altogether was it, from the time the tall thin gentleman came to the door with the letter, until the time that all three went away? About a quarter of an hour.

They went away, I suppose, at last? Yes.

Where did Mr. Judge go? Mr. Judge went into his parlour.

Where did he go afterwards? He went to his bed-room afterwards.

Did you observe the sofa in the parlour? Yes.

Was there any mark upon it? Yes.

Upon what part? Very near the top of the sofa.

What were the marks on the sofa? Marks of blood in several places.

Was there any medical assistance sent for? Yes.

Mr. C. Phillips.—The surgeons are here, my Lord, and they will be called.

How long was Mr. Judge confined? From the fourteenth to the thirtieth.

Was he confined to his bed? He was confined to his bed.

Mr. Justice Burrough.—All the time? Yes, my Lord.

How often during the day, did the medical men come during the first week? Three times a day in the first week.

You state that Miss Morris was in the house at the time of this transaction? Yes.

Did you see her in the passage also during the time? Yes.

Then she had an opportunity of seeing something that you saw? Yes.

Now I will just end by asking you, are you quite certain that it was the tall thin gentleman who pulled Mr. Judge down the stairs by the skirts of his coat? Yes; I am quite certain of that.

Crossexamined by Mr. Taunton.

You say it was some hand that pulled the wig off? Yes.

Whose hand was it? I think it was Lord Lennox's; but I am not certain.

Then you did not see enough of the transaction to know whose hand it was? I cannot positively say; but I am almost sure it was Lord Lennox.

Then how can you say whether it was pulled off by a hand, or whether it fell off? I saw it pulled off.

Whereabouts were you at this time? I was near the staircase. Very near the staircase.

Where were the parties at that moment? Do you mean Miss Morris?

No; I mean the gentlemen you speak of? At the foot of the stairs. In the passage at the foot of the stairs.

Miss Mary Anne Morris called and sworn. Examined by Mr. C. Phillips.

The witness being on the Bench near Mr. Justice Burrough, was permitted to remain there, and did not remove to the witness box.

Miss Morris, I believe you are the daughter of Mrs. Morris, in whose house Mr. Judge lodged in the month of March last? Yes.

Do you remember on the 14th of that month, having your attention excited by any noise in the house? Perfectly well.

Mr. Justice *Burrough*.—What part of the house were you in? I was in the kitchen, my Lord, underneath the apartment in which Mr. Judge was.

What kind of noise was it you heard? The noise alarmed me.

What sort of noise was it? It was a scuffle—a noise as if several gentlemen were engaged in a scuffle.

Did you go up stairs? Immediately.

To what part of the house? To the door of Mr. Judge's apartment.

Did you try to get in? I did.

Can you state, whether the door was fastened inside or not? It was.

When you got to the door, so that you could hear most distinctly, what did you hear? I heard the cries of Mr. Judge.

He is a slight young man, I believe? Yes.

A thin young man? Yes.

You say you heard the cries of Mr. Judge. Did you hear any other noise? I heard Colonel Berkeley saying, "You deserve it, Sir, you deserve it," repeatedly. That was at each lash of the whip.

Oh! that was what I wanted to know. You did then hear lashes of the whip? Yes, repeatedly.

How many lashes do you think you heard? It is impossible to say.

About how many? Do you think you heard ten or twelve? Quite that, at all events.

I believe there were two highly respectable ladies living in your house, Mrs. and Miss Sargent? Yes.

Did Colonel Berkeley visit them? Yes.

Mrs. Sargent is a widow lady? Yes.

And her daughter is unmarried? Yes.

Did you afterwards see Mr. Judge come out of the parlour? I withdrew a few paces, hearing the door opened.

Did you go out of sight of the door? No.

Did you see Mr. Judge come out of the parlour then? Yes.

What state was he in? A very deplorable one.

Did you observe his face? Yes.

What state was he in? Streaming with blood.

Now, Miss Morris, upon Mr. Judge coming out, where did he attempt to go to? He attempted to go up stairs, towards the drawing room apartments.

Was he able to succeed? No.

What prevented him? One of the gentlemen seized him by the skirt of his coat, and the other by the hair.

Was either of them Colonel Berkeley? No.

Were there any other gentlemen in the passage excepting the two that accompanied Colonel Berkeley, and Mr. Judge? No.

Did they succeed in impeding him in his progress up stairs? Yes.

They pulled him down? Yes.

Did Colonel Berkeley do any thing? He was at that time lashing him with the whip.

Can you say what part he aimed at? All directions.

Did he appear to hit his face and head? Yes, certainly.

Did you see the state of the wall? Yes, there was the mark of the whip on the wall, which must have been bloody, from the blood it left on the wall.

How long was the stain? I cannot say.

About how long—was it an inch or a foot? It was quite a foot, at least. I do not hesitate to say that.

Did you observe the state of the ground at the stairs and in the room? There were several marks of blood on the oil case.

Did you see the servant maid Elizabeth Izzard? I did not. She was hid from my view in consequence of the gentlemen being there.

Were you able to ascertain afterwards that she had an opportunity of seeing this transaction? Yes.

Now when the gentleman seized Mr. Judge by the hair, it was not his own hair, but came off—his head had been shaved, I believe? I was not aware of it at that time; but the wig came off.

It left his head quite bare? Partly so.

Did you afterwards go into Mr. Judge's parlour? Yes.

Did you observe the marks of blood there? Yes.

Did you observe the state of the sofa? Yes; it was very much stained with blood.

From the appearance the sofa had, did it appear to have drops of blood upon it, or as if some bloody head had been rubbed on it? The head must have been pressed on the side. There were not merely spots on it. The head must have been brushed against it, so as to have made the marks I saw.

How long was Mr. Judge confined? I think about a fortnight.

To his bed? Yes.

Now just one question more. Are you quite certain, and so certain that you can solemnly swear it, that these gentlemen were engaged as you have described, in the passage? I can positively swear it.

Every one of them? Yes.

Mr. Taunton declined asking this witness any questions.

Mr. John Brown called and sworn. Examined by Mr. Lockhart.

Are you an assistant surgeon at Cheltenham with Mr. Murley? Yes.

Do you recollect being called in to attend any patient, in the month of March last. On the 14th of March.

Who was it? Mr. Judge.

State what appearances Mr. Judge exhibited to you. What o'clock was it? It was between three and four o'clock.

State the day of the month. The 14th.

Now state the general appearances Mr. Judge presented when you were called in to see him. When I first entered, he was very faint; and had received several very severe blows over the face and head—one more particularly over the eye.

Describe it now—what was the state of the eye, accurately? I did not examine the eye. The eyelids were very much swollen, and I thought the best way would be to apply leeches immediately. He could not bear to have his eye touched.

Did the cheek present any particular appearance? There was a very heavy lash reaching from the eye to the lip, and dividing the lip.

It was a lash more particularly heavy than the rest? Yes. The skin was cut through.

The skin was cut through? Yes, and the lip was divided.

Was there any other medical man called in? I went for a surgeon, and he coincided with me in applying the leeches immediately.

How many did you apply? Twelve.

Did you afterwards observe more particularly, the state of the eye? No, he could not bear the eye to be touched.

Mr. Taunton declined asking this witness any questions.

Mr. Stephen Hempstead Murley called and sworn. Examined by Mr. Justice.

You are a surgeon of considerable practice in Cheltenham? Yes, I am in practice at Cheltenham.

Were you sent for on the 14th of March last, in the evening, to attend Mr. Judge? Yes, I was.

What time in the evening? I was out of town at first, but I saw him, I think, about 7 o'clock.

On your return from Gloucester? Yes.

You went into the bed-room of course? No, into the sitting-room.

Did you find him then applying leeches? They had been applied.

To what part? About the eyes and temples.

Was the eye closed? Yes, it was, and swelling—swelling over the eye.

Leeches, you say, had been applied? Leeches had been applied.

Was the eyelid cut? No; there was a mark extending from the eye down the cheek to the lip. I do not recollect that there was any cut on the eyelid.

When, afterwards, you had an opportunity of examining the eye, how did you find that? There was very considerable inflammation.

Mr. Justice *Burrough*.—How long after? I looked at the eye as soon as I went into the room, my Lord.

Did you at that time see any mark upon the ball of the eye? No, not at that time.

From what did the inflammation and swelling arise? I suppose from a bruise.

Could you at first form an opinion whether the eye could be saved or not? No, I could not.

By what description of blow do you suppose the injury, as you have described it, was occasioned. It would be impossible then to ascertain whether the eye could be saved or not, and it was impossible to know what would be the result of considerable inflammation.

Afterwards, in a subsequent attendance, did you examine the ball of the eye? Yes.

Mr. Justice *Burrough*.—When was that? On the following morning, my Lord.

What appearance did the ball of the eye then exhibit? There was still considerable inflammation, and some opacity on the cornea of the eye.

Mr. Justice *Burrough*.—What do you mean by “opacity?” I mean, a cloudiness of the cornea, my Lord.

What do you mean by the cornea? I mean the transparent part of the eye.

Should I say right, if I called it a phlegm? It was a haziness.

Can you say at this moment to a certainty whether the eye will be saved? There may be probably some defect of vision.

Then you cannot speak with certainty whether the eye will be saved? The

eye is in a great measure restored, and the opacity has been diminishing for some time.

What effect would irritation have upon the eye now? It would depend upon the degree of irritation.

Of course it would. I have been obliged to make applications to promote the absorption of the lymph, which occasioned the opacity. The last time I saw him, there was still some film over the eye,

When was that? When Mr. Stone served me with a subpoena, about a fortnight ago.

Now you mentioned a cut. What sort of cut was that? There was a cut, extending from the cheek below the eye to the angle of the lip. The integument of the lip was cut. There was the mark of a whip down the cheek, but the integument was cut.

Could you judge of his sufferings at the time? He expressed great pain.

He was near fainting, I believe? He was very nearly fainting.

Did he complain of violent headaches? I do not remember.

For the first week, how many times a-day did you attend him? Three times a-day.

How long did you attend him altogether? I attended him regularly for five days. Then he was much better, and I left him under the care of a friend. I went to London for a week, and I saw him generally, when I returned.

Then you thought it necessary to see him when you returned? Yes, but he had left his bed-room then.

How long did he keep his bed? He was confined to his bed-room and bed during the greater part of the time, but he could sit up occasionally.

Mr. Justice *Burrough*.—How long was he confined absolutely to his bed? About a week.

Mr. *Phillips*.—Look at your bill, (putting the bill into the hand of the witness) perhaps that will refresh your memory how long you attended him.

Crossexamined by Mr. Ludlow.

He kept his bed-room nine or ten days? Yes.

And for the first week of that time he kept his bed? Yes, sitting up occasionally for an hour or two.

From his situation, of course it was necessary that he should be kept quiet? Yes, and the room darkened.

Do I understand you to say from seeing the eye, that the injury is of a temporary, or a permanent nature? The opacity is diminished, but I am afraid it will not be wholly removed.

So that it will occasion him very little inconvenience? No.

I believe he has always worn spectacles? Yes.

This cut from the corner of the eye to the lip must have been the effect of a single blow? It should seem it was done by one stroke.

Did you complain to his masters, Messrs. Whitehead and Hughes, and ask to tell him to leave off the style of writing he had pursued? No; I did not say any thing about that.

Re-examined by Mr. C. Phillips.

You say that the mark down the cheek appeared to have been made by one blow? Yes.

Must it not have been a very violent blow? Yes, I should say so.

Mr. John Roberts called and sworn. Examined by Mr. Lockhart.

You are a surgeon, and reside at Minchin Hampton, I believe, Mr. Roberts Yes.

Were you called in at any time to see Mr. Judge. Yes.

When? On the 17th of March last.

Did you examine his eye? Yes.

What appearance did it present at that time? It was most violently inflamed. There was likewise a wound on the external coat.

Was there any wound on the eyelid? There was a bruise.

When you say there was a wound on the external coat, do you mean on the external coat of the eye itself? Yes.

Is it possible for you to state whether it was a cut. Yes, it was.

What effect would such a wound as you saw, produce to the eye? It produced the inflammation which I saw.

Was it a wound which, according to your skill, you should think likely to affect the eye? Yes.

Do you mean, permanently affect it? Yes, from the consequences of the wound.

Did you observe that wound on the cheek which we are told appeared to have been inflicted by one lash? Yes.

What appearance did it present? It was filled with coagulated blood at the time I saw it.

Did you see the lip particularly? I did.

Did the cut there appear to be deep? Perhaps it was cut through the third of an inch.

This was three days after this transaction altogether. In what state did he appear then? He was confined to his bed.

In what way was he affected? He was labouring under a high degree of irritation.

How do you mean; mentally or bodily? Bodily. He was feverish.

Was he in such a state as rendered it absolutely necessary he should keep his bed? Most certainly.

Did you observe any other wounds? There was a large bruise on the eyelid.

And the cut you mention? Yes, but that was one distinct cut, from four to five inches long.

The Counsel for the defence declined asking this witness any questions.

Mr. Martin Ware called and sworn. Examined by Mr. C. Phillips.

You are an oculist, Mr. Ware. We all know your celebrity. You reside in London, I believe? Yes.

Did Mr. Judge call on you at any time for you to examine his eye? Mr. Judge called on me on Monday week, the 25th of last month.

Do you know the date; I forget the time? It was the Monday in last week.

Did you examine his eye professionally? He called upon me for that express purpose.

Did you do so? I did do it.

In what state did you find it? The eye appeared to have recovered from inflammation, but there was a speck upon the *cornea*—the glass of the eye as it might be properly called.

It is the glassy part of the eye? Yes, it is the part through which the light passes to the pupil.

Might that speck or opacity have been occasioned by any infliction or external blow? It might have been, provided inflammation succeeded. Inflammation produced the speck.

Now can you say by an inspection of the eye, whether it is likely to be affected by any future irritation? Yes.

Was it not considerably worse than the other eye? Except from the speck, the eye was healthy.

There may be hopes that it will get well with care? In my opinion it may, but for a long time there will be a slight mark on it.

Probably for ever? I don't say that.

Crossexamined by Mr. Campbell.

Are you any relative to the celebrated oculist, Mr. Ware? I am his son.

Where was it this gentleman called upon you? It was in London he called on me.

You never saw him before? No.

Nor since? Nor since.

Then you think that until it is fully recovered, it will not be quite well?

(*Laughter.*) No.

And you came down to tell us this, all the way from London? I have come down at very considerable inconvenience, and I am very sorry for it. But, however, here I am.

James Wark called and sworn. Examined by Mr. Phillips.

You are a saddler, and reside in Cheltenham? Yes, I am.

Do you remember on the 14th of March last, two gentlemen coming into your shop to purchase a whip? Yes, they came in and asked to purchase a horsewhip, and I showed them several. They said none of them were heavy enough.

About what o'clock in the day was this? It was between twelve and three, but I can't say to an hour.

Did they take a whip from you? No; they did not find any heavy enough. They asked for one of the sort that the jockies ride with. That is, shorter and heavier than those I had.

Mr. *Phillips*.—They wanted one that cuts the horse the best, I suppose.—(*Laughter.*)

Did you ever see those gentlemen since? Frequently.

Who are they? Captain Hammond, and Lord Lennox, to the best of my recollection, was the other.

Have you since seen Lord Sussex Lennox? Yes.

And to the best of your recollection he is the man? Yes.

Are you sure as to Mr. Hammond? Yes.

Did they say any thing else? They laid one or two aside, and said if they could not get a heavier in the town, they would return and take one of those. They desired me to lay them carefully aside.

Well, I suppose they got a heavier, as they did not return? I suppose so; they did not return.

Mr. *Phillips*.—That is my case, my Lord.

DEFENCE.

Mr. TAUNTON opened his case in the manner following:—May it please your Lordship—Gentlemen of the Jury—as counsel for the defendants upon this record, I should very unworthily discharge my duty, seeing a full Special Jury present, by going over the details of the speech made by my learned friend, Mr. Phillips—a speech full, I will not say, of inflammatory matter, but certainly full of extraneous topics—a speech undoubtedly dictated by an ardent imagination, and expressed in the most elaborate language: but it is not, I am quite sure, by the eloquence of counsel that you will permit your judgment, in this or any other instance, to be overcome. You will attend

to the mere facts of the case ; and upon the whole facts of the case, as given in evidence on one side and the other, you will pronounce your verdict. Gentlemen, my learned friend described this, in his speech, as an instance of assault that was characterized by every species of aggravation, save and except one, which one I shall bring more particularly under your attention. It was an assault, my learned friend stated, committed by three upon one ; it was an assault unparalleled in its atrocity, but above all—and upon this last topic my learned friend laid the greatest stress, and considered it as a most crying evil—above all, it was an assault, he said, committed by the peaceful fire-side of the plaintiff ; in that home which was his sanctuary, and in that constitutional Temple of Liberty, within the sacred threshold of the house of the plaintiff—whereas that sacred threshold turns out to belong to Mrs. Morris, (*loud laughter*). I am very willing to admit, Gentlemen, in this case, that the plaintiff, Mr. Judge, received a good sound horsewhipping, and that is the plain English of the transaction, when it is divested of the figurative expressions which have been used. When stripped of all its beautiful exaggeration, that is solely and truly the plain English of my learned friend's eloquent speech. Now I will tell you, in very few words, in what my defence consists. It consists in this simple particular, that he richly deserved it. (*Loud laughter.*) That will be the case I shall lay before you on the part of the defendants, because, though I have no hesitation in saying, that upon the evidence given before you, which I shall not contradict, your verdict must be found not only against Colonel Berkeley, (who my friend has been instructed to designate as Mr. William Fitzhardinge Berkeley,) but also against the other defendants, Mr. Robert Carr Hammond, and Lord Sussex Lennox, still you cannot but see, that from first to last, Colonel Berkeley was the principal actor, and the other two defendants merely accompanied him, in order that, if necessary, they might be witnesses to show what was the transaction that really did take place. They cannot, in this instance, be witnesses, because Mr. Judge, or his attorneys have very adroitly made them defendants, so that their evidence is taken off. They cannot be examined, nor can Mr. Judge himself be examined ; and I could have wished (for this is a topic to which, amongst others, my learned friend resorted) ; I could have wished the present proceeding had been of a criminal nature, instead of a civil one ; because in that case Mr. Judge, the plaintiff, must have presented himself in the witness box, in the character of a witness—he must have stood the test of a cross-examination. We should have heard from his own lips a history of his former life—I won't say of his former adventures, for I know nothing of them. I have heard that he is a gentleman by birth and education. So he is styled by Mr. Phillips. You will have to say, when you have heard the whole of this case, whether he has demeaned himself as a gentleman by birth and education. That he is a gentleman of birth and

education you have no positive evidence, for we know not who or what he is—from what place he came, or whether he dropped, as it were, from the clouds into this peaceful, well-peopled, and well-regulated town, in the character of Editor of *The Cheltenham Journal*. We should have heard a little of his birth; we should have known something of his education, and we should also have known, I think, whether for the beating he has received, he had ever given any provocation. Because although my friend opened this as an unparalleled case in its circumstances, and even went to the Wilds of Africa in order to bring a contrast between the savages there and the supposed savages who stand in the situation of defendants before you, in order to show that the defendants are worse than those savage inhabitants of Africa; I say, we should have known, if he had presented himself in the box, what provocation he had given, for that is the only species of aggravation which my learned friend has not ventured to state. Although he has summoned to his aid every other sort of aggravation, with all his boldness and confidence, he could not give to the present case, this, namely, that it was altogether unprovoked. I will lay before you the provocation received, and I will put it to you, not merely as gentlemen, but as men—as men of the world, endowed with the feelings of men, and having a hope for the affection of your sons, whether flesh and blood could resist the provocation under which Colonel Berkeley laboured at the time when he bestowed this severe chastisement on the plaintiff. A gentleman of birth and education! Let us see how this gentleman of birth and education has conducted himself. He may be, for any thing I know, descended from a splendid line of ancestors. I cannot gainsay it. He may have received a liberal education, but I will say, that a man who can write such a series of scurrilous paragraphs as disgrace the pages of this new paper, called the *Cheltenham Journal*, if he had any ancestors, entirely blots out the splendour of his race; and if he had any education of a liberal sort, certainly he has never profited by it. Because it is one of the inseparable advantages attendant upon a liberal education, which very few can estimate the benefit of, except those who have received it—not that it teaches boys and young men Latin and Greek merely, but that it instils into their minds manly feelings and liberal sentiments—not merely to speak and to write like gentlemen, but that it enables them to be actually gentlemen: and you will have to say, when you hear that which I will read to you, namely, the paragraphs which this editor put into his newspaper almost every week, from the time that it was set up, down to the 14th of March, the day on which the last libel appeared; you will have to say whether such a person as this plaintiff really does deserve and is entitled to the character which my learned friend, out of his liberality, has endowed his client with.

Gentlemen, Colonel Berkeley is a name pretty well known in the world, and those who know any thing of Cheltenham, and those who

have heard any thing of it, know too well that the Colonel has spent a great part of the last fifteen years of his life in Cheltenham; that he has been considered there, I won't say as a patron, but certainly as a great friend to the place. He has frequented it during a great portion of every year—he has brought his friends there—and, in short, there can be no doubt but that he has been a very great advantage to the place. Gentlemen, under such circumstances, he could not but have a great number of acquaintance, and a vast variety of friends at such a place as Cheltenham. Known he must have been to all; acquainted he must have been with many, I may say most of the permanent and casual visitors, in the bonds of friendship. You can conceive what sort of an effect (I won't say upon Colonel Berkeley's character, for, Heaven be praised, these libels now become so common, that no man's character is much affected by them); but you can easily conceive the effect which a weekly series of paragraphs, such as I will read to you, must have had upon the feelings of Colonel Berkeley. He could not have been endowed with the feelings of a human being if he had not felt irritation, and that to a very considerable degree—I say, he could not have been a man, or have had the common feelings of a man, if he had not felt irritation, and that in a considerable degree, under the provocation which he had received. Of the plaintiff he knew nothing, and the plaintiff knew as little of him. Personal intercourse—there had been none. Colonel Berkeley did not even know the person of the man, until he inquired for him on the 14th of March. He had never upon any occasion given umbrage to this gentleman-editor. He had done nothing which could have excited his displeasure. He had no personal resentment towards him. The provocations, therefore, which Mr. Judge every week hurled at the person of Colonel Berkeley, were, on the part of this editor, as wanton as they were wicked; for the paragraphs in question are not merely libels on the Colonel, but with a baseness with which even in these days there are not many parallels, the poisonous venom was aimed at the Colonel through the sides of a revered mother,—the retired, unoffending mother of Colonel Berkeley,—the Dowager Countess of Berkeley; and you shall hear what, not upon one occasion, but week after week, this vendor of filthy calumny dared to publish in his columns respecting this lady, and I will put it to you whether it was possible for Colonel Berkeley, with feelings which every man ought to entertain towards a surviving relative—a mother in the decline of life, helpless and unprotected, except so far as her son can give her help and protection, must have felt, when almost every week, such paragraphs as those I am about to read to you, appeared in this paper of the plaintiff. What do you say to such things as this, for this is the way in which Mr. Judge opens his battery? There is in the paper sometimes an article called, *Fashionable Chit-Chat*. Now what I say is this, that several persons who have never given offence to this editor, who know

nothing of him, and of whom he knows nothing, are dragged forth in these articles, and slandered without any kind of reserve whatever.

“Colonel Berkeley was for many years universally recognized and received as the eldest *legitimate* son of the late Earl of Berkeley, by the title of Lord Dursley.” This appeared in the paper of the 3d of January last. “The famous inquiry in the year 1811, however, reduced him from the patrician to the plebeian rank of society. His mother, the present Countess of Berkeley, was a Miss Tudor, *alias* Cole, the daughter of a butcher in Gloucester. The inquiry disclosed some curious particulars of the late Earl and his Lady.”

Heavens! are all the passages in the private histories of families to be ransacked in this kind of way? Are they to be raked up, and published as food for fashionable scandal, under the title of “Fashionable Chit-Chat,” in the way in which this man has stated supposed circumstances relating to the Berkeley family? Is that to be borne? Is that to be borne, I say? I am not now justifying that which Colonel Berkeley did, because that which he did was undoubtedly a breach of the law, and a breach of the law cannot be justified in a Court of Justice. I am only endeavouring to palliate, to mitigate, to account for, and to satisfy you that he must have been a very singular instance of human forbearance indeed, if he had not noticed such venomous malignity as that which this paragraph discloses.

“His mother, the present Countess of Berkeley, was a Miss Tudor, *alias* Cole, the daughter of a butcher in Gloucester.”

To whom, generally speaking, is this term “*alias*” applied? There is a curious definition of it in Johnson’s dictionary, which I will not give now, but it is ascribed in common usage to persons only of disreputable characters in life, and to persons who are brought to the bar of a criminal Court of Justice. I do not mean to say it is universally so used, but speaking generally, that is the manner and the purpose for which such a term is adopted, namely, to describe a person of infamous character, going by another name than his real one; and can you have a doubt that this editor intended to use it in a sense somewhat similar to the one just described? At all events, be its precise signification what it may, it is a term of reproach—a strong term of reproach—a term of reproach which ought never to be applied to any person but of extremely doubtful and bad character, and which I think a gentleman of birth and education would not be very ready to apply even to persons of that description. Now, Gentlemen, I will read to you another paragraph, in which not only Colonel Berkeley’s mother, but the Colonel himself, is the object of attack, and I am sorry that in the course of that paragraph a matter is introduced which was too much the subject of conversation in the world. I do not think, for the purpose of this inquiry, that it is extremely important to enter into the particulars of the transaction which is alluded to in that para-

graph. We have nothing to do with it, nor had Mr. Judge any thing to do with the particulars of it. You will have to say, by and by, after hearing the parole evidence I shall give, what was the motive of Mr. Judge in publishing these paragraphs. Upon that motive I won't say any thing, but I shall not sit down without bringing that before your consideration, and praying you to pass judgment upon it. Now in that paper—that same paper—for not only is there no paper, I believe verily, which does not contain an attack on Colonel Berkeley, but three or four attacks on him, or some member of his family,—in the same paper is this article, under the head

MISS FOOTE.

“But ere we condemn Miss Foote, let us take an impartial view of her situation, and let him who placed her in that situation receive his due share of our scrutiny. Miss Foote, at a very early age, became acquainted with Colonel Berkeley, and was his victim.” Now, here Mr. Judge chooses to aver a fact, of which he knows nothing—a fact of which he could know nothing—and yet he dares to publish it to the world. “It is difficult to know what term to use when we are speaking of such GENTLEMEN as the Colonel. *Fame* is not a word to be coupled with *their* names. They are *famous*, who, in the field of battle—in the senate—or in the seclusion of their own study, benefit their native land by the exertion of their bravery or their talents. *These* are the votaries of *Fame*—not the heartless seducer—the shameless adulterer—the man who saves a few hundreds at a trial by showing the letters of his partner in guilt; nor the faithless lover, who, having triumphed over the prudence of an amiable and beautiful girl, refuses her the reparation which he had promised, and accuses her of a diminution of affection, when she says, ‘Perform your promise—marry me—let me not bring another miserable being into the world—*marry me*, and let my second child be legitimate.’” Gentlemen, a more impudent string of falsehoods than this paragraph contains, was never presented to the public in any newspaper, however void of shame might be its conductors. The paragraph goes on, “The Examiner of last Sunday says that Colonel Berkeley should have been the very last person to plead *Family* as an obstacle to his marrying Miss Foote, as he himself is the offspring of a connexion previous to wedlock!” I won't offer a word of comment upon that sentence. “Indeed! is it even so! it seems, then, that Miss Foote, even after she was seduced by Colonel Berkeley, was in all respects the equal of Colonel Berkeley's mother! We have said that we cannot call him *famous*—*infamous* is a strong word—*notorious* will answer our purpose. Her notorious persecutor seems to assert that Miss Foote had no longer a claim upon him, because she had listened to the honourable addresses of

other men. Now, it is evident from her letters, that when other proposals were made to her, she still clung anxiously to *his* promises, and the chief cause of complaint which Mr. Hayne has against her is, that while she was professing regard for him, she was evidently imploring Colonel Berkeley to fulfil his promises, with all the undiminished ardour of a first love, and was dreading a final separation from the father of her children. If she was playing a double game, who caused her to do so? Who placed her in a miserable and humiliating situation, from which she was anxious to extricate herself *by any means in her power*? She had become Colonel Berkeley's mistress, deceived by a promise of marriage. She would rather become *his* wife than the wife of another man. But to such a woman her situation must have become every year more painful, and rather than remain Colonel Berkeley's mistress, she would have accepted *any* honourable proposals, though it is evident that her *heart* could not be alienated from her first unworthy lover. Did Miss Foote make large demands on Colonel Berkeley during her engagement with him? *No!*—she had no settlement, and his presents did not exceed 100*l.* in value. Had she the advantage of his society and protection during that period? *No!*—she was neglected during many months of every year! Was she ever accused of being faithless to her seducer, or was her conduct in any way reprehensible? *No!*—no woman could be more respected than Miss Foote. Mr. Fawcett's letter speaks volumes in her favour, and there is not, I believe, an individual in Covent Garden Theatre, who would not gladly bear testimony to the mildness, modesty, and propriety of her manners! Was Colonel Berkeley *as* faithful to Miss Foote, and was his conduct as blameless and respectable? Let trials at Gloucester and triumphs at Cheltenham answer the question. It is to be supposed that Miss Foote could return to her profession, and we trust there cannot be a doubt that her reception from the public will be kind, and we may almost say, affectionate. *She* has been the victim of *one* man—she became his mistress under the impression that at a future time he would make her his wife. We do not mean to vindicate her conduct, but this has been her *only* error, and while shameless and unveiled profligacy is not only tolerated on account of its talent, but flattered and followed, surely the lovely and unfortunate Maria cannot ask in vain for encouragement and protection.

“Yet men will *still* admit, and women *will* still caress the seducer, while the *victim* of seduction is avoided with contempt and aversion. So much for the boasted superiority of English society! So much for the boasted purity of English matrons! So much for the boasted prudence and circumspection of English fathers and mothers!” Gentlemen, in another paper of the very next week—in a paper of January the 10th, there is another article under the head of *Fashionable Chit-Chat*. This paragraph, evidently alluding to Colonel Berkeley, is in

as offensive terms as it is possible for any paragraph to be upon any person who lives in the rank of a country gentleman. "It was common some time since, in the fashionable circles of the metropolis, (in allusion to a certain non-fighting regiment of Hussars,) if a man showed a *white feather*, to remark, 'the 10th don't fight.' 'The Colonel don't fight,' is now the bye-word of contempt among the leaders of the *ton*." Gentlemen, in a paper of the 31st of January there is a very long article, which I will read to you, in which almost all the former topics of slander are brought together, and the whole conveyed in that peculiar language and style which those persons are accustomed to use who are any thing but gentlemen by birth and education. There is in this article a lowness and a vulgarity which could not very well injure Colonel Berkeley, if it stood by itself; but still there are in it some allusions to his family. The same question with respect to his mother—the same ripping up of that inquiry which took place in the House of Lords and ended in that noble assembly giving no decision. "In the summer of 1815 Miss Foote was engaged as a star at Cheltenham, and there W. H. Fitzhardinge Berkeley (commonly called Colonel Berkeley) fell in love with her—if such a creature as this Berkeley may be supposed capable of that passion. Colonel Berkeley applied to her, offering his services to perform for her benefit. He had often previously rendered himself ridiculous by his stage exhibitions, which however had the effect of attracting an audience, as Berkeley is a mighty man indeed at Cheltenham. Miss Foote had parental claims upon her for all that her professional exertions enabled her to accumulate, and an offer like this of course would not have been rejected by any one. Colonel Berkeley performed: *how* it is not our purpose to explain—the man claims the privilege of disgusting his own townfolk:—suffice it to say, he drew together a crowded audience, and Miss Foote felt of course grateful. He seized the opportunity when he had thus ingratiated himself into her consideration, to plead his passion for her, and entreat her acceptance of his visits as an honourable suitor. So far, all was well. It was not Maria's business to reflect how weak the head, or how bad the heart of her admirer. He appeared before her with all the blandishments that wealth and an army-tailor could bestow on him: he told her he adored her, and women are flattered even when told so by a fool. He was a soldier too, (*what* a soldier!) and the softer sex, like the angler's easiest prey, are said to be peculiarly attracted 'by any thing red or glittering,' however worthless the object may really be. Maria Foote was not free from the common weaknesses of her sex: she felt flattered by his attentions, and in return for his hollow professions of attachment, bestowed her affections upon him. Nor is this an impeachment of her understanding, for the strong minded Mary Woolstonecroft loved the weak villain Emley. Indeed it seems the ordination of providence that talented women should place their affections upon ignorant or vicious men. For twelve months the Colonel was

unremitting in his attentions, but pleaded unavoidable circumstances for the delay of his nuptials. The circumstances are these:—the mother of the Colonel produced her husband, Earl Berkeley, more ‘heirs at love,’ than ‘at law.’” Gentlemen, I venture again to say that a more infamous calumny—that a more diabolical libel upon a retired and unoffending female was never dictated by the spirit of malice than that which I have just read to you. My learned friend may attempt to vindicate or to palliate it, but it defies the utmost exertions of his talents. No man can defend this. Can any man say that he who penned such a paragraph as this did not deserve a good horsewhipping? “Not having been united to the Earl till the year 1796, though our hero was born, we think, in 1785 or 1786.” What business has he with that? Of the fact he knows nothing. The fact is not so. Gentlemen, we are not impannelled here to try that fact. We cannot try it. But I here say the fact is not so. I here say a marriage did exist before that year, although from unfortunate circumstances, that marriage was not capable of being proved to the satisfaction of the noble assembly who were appointed to inquire into it. Heavens! Gentlemen, is it not enough that this gentleman has suffered the affliction of not being able to establish his birthright, and can you conceive it possible that any human being could make that a subject of savage exultation, which in the mind of every right-minded and principled man would create sympathy and condolence?

Gentlemen, he goes on, “Our hero.” Colonel Berkeley is “our hero.” And he could not allude to the supposed illegitimacy of the Colonel without planting a thorn in the side of that unfortunate lady, his mother. It is not general expressions in conversation in the freedom of a convivial moment. It is not like that which, when uttered, is only heard by the company present. This is something put into a public newspaper printed at the place where Colonel Berkeley was sojourning—where he was in the habit of resorting; and it not only wounds his feelings, but it goes to alienate the regard and affection of those with whom he was connected: but it more especially goes to bring into contempt, to load with contumely and to overwhelm with insult, that unfortunate victim, I mean Lady Berkeley, with all the venom of this man’s vulgar ribaldry. “Our hero was born, we think, in 1785 or 1786. It is but just to mention that the Earl affirmed that a private marriage took place in 1785; but the House of Lords disallowed the proof.” They did not. The house came to no decision; and it is competent to Colonel Berkeley (my friend may smile if he please) to present another petition to revive anew that inquiry which, in Lord Berkeley’s lifetime, ended in nothing. No judgment was given. The claim was not disallowed. It was only considered immature by the House of Lords to establish a title, the regularity of which, and the existence of which, could only come into discussion when the peerage should become vacant. There was therefore no judgment. I state it publicly, there was no judgment, and

no man living has a right to say that Colonel Berkeley has not that birthright, which if he has not claimed, he can claim, and I believe that probably many months will not elapse before he does claim it. "In consequence of which, one of the Colonel's younger brothers became entitled to the dignity of the earldom; he, however, with great magnanimity refused to accept it, and the Colonel has long been petitioning the crown to grant him the title that at present lies dormant." In another part it goes on, "We have as briefly as possible stated these circumstances, and noted the general impressions; and now, ere we proceed to a more pleasing part of our duty, let us examine on what grounds this man, Berkeley——" this is the language of a gentleman of birth and education—"has broken his faith with a lovely woman who confided in what she imagined he possessed—honour. Is it his birth? Surely Maria Foote, the daughter of an officer in the army, and of a lady whose relations are of the greatest respectability, claims as high a rank as the illegitimate Berkeley. Is it rank? Let us see what this is—a Colonel in the Militia. What induced such a man as Berkeley to join our military forces at all?—vanity, rank vanity." My learned friend said that he inherited Berkeley Castle, with an income of 20,000*l.* a year; not that I believe it: but supposing it to be any proportion of that sum you please, surely it cannot be said of a man because he inherits an estate, that mere vanity induces him to enrol himself in the militia. By whom but by gentlemen of independent property, in the respective counties, are the stations of officers in the militia filled? And if every gentleman is to be driven out of the militia by its being said that he entered it from vanity, I am quite sure the service will not be the better for the exclusion of such persons. "But fighting is not the Colonel's *forte*. No, but regimentals were desirable, that he might

"Strut before a wanton ambling nymph;"

so he adopted the safe expedient of obtaining the honorary title without the danger. What is he besides? an amateur actor, a private player; a creature who, not having the excuse of want, willingly exposes his imbecility on a public stage." Now be it remembered, Gentlemen, that he has never been an amateur actor, excepting from motives of humanity towards Miss Foote. "A thing that with power (as far as worldly dross conveys power) of patronizing the stage, degrades it by ridiculous performances, and actually injures the professors of the art." Now comes a specimen of this gentleman's reasoning, and if every part was as innoxious as this, he never would have received a horsewhipping; but a gentleman coming forward to act for the benefit of a family, actually injures the professors! I suppose this is his political economy. The whole business of the week is injured by a single overflow. Now comes the summing up. "We look upon Berkeley as a singular compound of the butterfly and the wasp. He has all the frivolity of the one, and all the venom of the other."

“Surely the illegitimate son of a butcher’s daughter could not deem it a condescension—”

Mr. C. PHILLIPS.—Mr. Taunton, you are omitting a great deal there. You are joining two sentences, which have a great deal between them. I know it is not convenient to copy out the other parts into your brief.

Mr. TAUNTON.—I am reading it from my brief.

Mr. C. PHILLIPS.—But you will see, you are joining two sentences with a great part between them, and you are leaving that out.

Mr. TAUNTON.—I don’t know why I should read it, if it do not apply to my case. For instance, the next paragraph is—

Mr. C. PHILLIPS.—Excuse me ; what I complain of is this, that you read, as if they exactly followed each other, two paragraphs, between which there is a multitude of others.

Mr. TAUNTON—(looking at a newspaper)—My friend is exceedingly correct. It is so—“he has all the frivolity of the one, with all the venom of the other.” That ends that paragraph. Then begins another about somebody else. “The M—— of A—— is a coxcomb !” (*Laughter.*) Now that is not very pleasant to the M—— of A——, to be posted all over Cheltenham as a coxcomb—“but he is a brave one.” So if a man does not signalize himself in the field of battle, according to the impudence of Mr. Judge, he is not only a coward, but a coxcomb. “Yet he is a brave one. His dandyism”—now that’s not very pleasant. “His dandyism goes no further than his attire ; his heart and mind were not framed in St. James’s. He, under different circumstances, gained the affections of a beautiful woman, (and under such circumstances, too, as did not call for retribution,) but he did not desert her to the lonely solitude of bitter reflection and wounded feeling ; *he* was a man and a soldier ; and, if he was a sinner, he was not a pitiful one.” Now, Gentlemen, all this about the M—— of A—— I have nothing to do with ; and therefore, by your leave, I will pass it over ; because more individuals are not to be exposed than the present inquiry necessarily requires. There is a vast deal more of it which my learned friend may read if he thinks fit, and I am ready upon this occasion to allow, that if you find in any one of these papers a redeeming passage, you ought to give Mr. Judge the benefit of it. But I do not think my learned friend will like you to be trusted with these papers. I have some little love for moderation, and therefore only make a selection ; but there are many, many others, I may state to you, (though it will not go for any thing,) if not quite as bad, very nearly as bad as those I have read to you. “Surely the illegitimate son of a butcher’s daughter could not deem it a condescension ; and as to the futile objection of her having previously surrendered herself to him, he should have remembered the pledge was his honour ; and did not that urge him to it, he might still take her hand with the consoling recollection of

“ My father did so before me.”

Now, Gentlemen, I should observe to you, that to this article there is appended, by way of note, a repetition of the disgusting calumny upon Lady Berkeley; for when it mentions that she had unfortunately produced more heirs at love than at law to Lord Berkeley, there is this note: “ This lady’s name was Mary Cole, and her father was a butcher at Gloucester.”

Now, Gentlemen, you may observe it is a way with some of these newspaper editors who deal in private libels and calumnies upon private life, to particularly select women as the objects of their attack; that they lead you to suppose they have received certain communications from correspondents, and then the next week they give the answers to those correspondents; and this notable expedient has been resorted to by Mr. Judge to propagate his slander and calumny. In the paper of the following week, February 7th, there is to be found amongst the notices to correspondents, “ Veritas has taken much pains to make us acquainted with a piece of intelligence, with which the whole of the fashionable world long ago have been familiar. Every body knows that Lady Berkeley’s father was a butcher at Gloucester.” So that he strives week after week to libel, to aggravate, and to provoke Colonel Berkeley, by every species of insulting paragraph which he can insert in his paper. Then comes another notice to correspondents: “ The letter by Lothario is well written, though we cannot insert it, for reasons which must be manifest on a moment’s reflection.” Now, if there be one thing more than another, which increases one’s indignation at this ransack of the passages of a man’s private life, it is the disgusting cant of morality which accompanies it. Newspapers, Gentlemen, are not instituted for this purpose. What business has an editor to erect himself, forsooth, into a censor of the public morals of the people? What is it to him whether a man may have committed a private vice, or whether a woman has been guilty of frailty? Are they to be gibbeted by him in his paper, because he says he has a duty to perform? A duty as a public journalist! Let me say, Gentlemen, that it is a self-imposed duty, which is neither warranted by the law of the land, nor the assent of the community: for when these gentlemen talk of duty, let them always remember, that they impose that duty on themselves: and if in the discharge of it, they choose to attack private character, they are answerable for their error. Now, Gentlemen, I shall state to you, that in the course of this system of libelling, Colonel Berkeley did every thing which a man could do to stop it quietly—he applied to a friend that he might endeavour to get it stopped. There are some things which I cannot, from the rules of evidence, lay before you; but he applied to a private friend to interfere with Mr. Whitehead, (who I believe is a respectable gentleman living in the neighbourhood of Stroud, and who set up this paper, and employed

Judge as editor,) that he might, if possible, prevail on Judge to cease writing in this way. Mr. Whitehead, the proprietor of the paper, and the master of Judge, who was his servant at the time, applied to him and remonstrated with him. I will call Mr. Whitehead before you. He is a respectable gentleman. I am quite sure he will state what took place, and you will hear what satisfaction he obtained either for himself or for Colonel Berkeley. Before this time, these attacks had actually driven Mr. Hughes out of the partnership, whom I will also call before you. That gentleman felt distressed at seeing these paragraphs; and when he remonstrated with Mr. Judge, he received but insult and abuse. The consequence of that was, he behaved like a man of honour; he dissolved his partnership; he gave up his share in the paper, and said he would have nothing more to do with the concern. Mr. Whitehead, the other proprietor, also applied to Judge, and what do you think was his answer? He told Mr. Judge that if he did not stop this course he would dismiss him. Mr. Judge, you see, by this time, had felt his strength; and he said, "I defy you to do so; have I not given you a bond to indemnify you against the consequences of my writing." Poor, wretched, ignorant man! Did he suppose that the laws of England are so senseless, as to afford indemnity to any person who breaks and violates them? Even suppose he had given a bond to indemnify Mr. Whitehead from the consequences of these breaches of the law, that bond was not worth one single farthing. "Have not I given you a bond to indemnify you against the consequences of my writings?" Upon this Mr. Whitehead said, if that was the case, he (Mr. W.) must give up his partnership in the paper. "Very well, Sir; that is nothing to me," said Mr. Judge; "if you give it up, my friends will continue it." I will show you, on the part of those two proprietors, that while these libels were going on, they interposed to stop this man. But he obeyed neither of them. He was not to be deterred: and presently you will have to say from what motive he acted. He was not to be deterred by remonstrance: caring as little for them as he did for decency. Putting all persons as well as all things at defiance, he continued his mischievous career. The same libels appeared, after these gentlemen had interposed, as before; and I will state to you only two more, the latter of which, I beg you to bear in mind, appeared in the paper of the 14th of March, the very day on which this chastisement was inflicted, and under the galling provocation of which, Colonel Berkeley was no longer able to restrain his feelings; but forthwith, as my learned friend has taken the pains of showing, procured an instrument of correction, with which he proceeded to the house in which Mr. Judge lodged, and inflicted upon him the whipping of which I shall presently say a word or two. In the paper of the 28th February there is an account which this gentleman is pleased to designate, in ridicule and contempt, "The Berkeley Hunt affair." There is in Gloucestershire a club of gentlemen, instituted for the purpose of

promoting the amusements of the field; and I hope we are no longer in such an age of purity that I shall lose my character by calling them the harmless amusements of the field. This society is called the "Berkeley Hunt," and it has been usual for them to have a festivity once a year in Cheltenham. The members give a ball to the ladies of the place, which has been always well attended. It is a merriment, a festive occasion, and we should suppose that no gentleman of education would feel angry or discomposed upon such an occasion as that described. Not so, however, with this gentleman of birth and education, Mr. Judge. And with a view of carrying on his line of libels, he published a very long article, with which I will trouble you; and I ought to beg your pardon for obtruding it on your attentions—for fatiguing and disgusting you with such contemptible trash as this man puts forth. "In giving a description of this very ludicrously got up affair——" There had been a ball given, Gentlemen, I believe an annual assembly; I believe it only occurred once a year: "In giving a description of this very ludicrously got up affair to those of our readers who may feel an interest in such matters, we would wish to abstain from any personal remark, either towards the great 'Lion of the Night,' Colonel Berkeley, or those of his visitors who honoured him with their support, by attending the Berkeley Hunt Ball, at the Theatre, on Thursday last; but we feel ourselves called upon in the performance of our duties——" Heaven defend us! What would become of the public, if these gentlemen were not to execute these public duties? How much obliged must we feel, by this gentleman courteously discharging every week his public duties for the improvement, edification, and delight of the world! "Or those of his visitors who honoured him with their support, by attending the Berkeley Hunt Ball, at the Theatre, on Thursday last; but we feel ourselves called upon, in the performance of our duties to that public, by whom we are so highly patronized, to give those particulars connected with the 'Affair' which transpired on that day, impartially detailed, with that strict regard to truth with which we hope our Journal will ever be distinguished." What an opinion does this gentleman form of our understandings! What fools, and gulls, and gudgeons, he takes us to be! I was almost inclined to think this nonsense was some interpolation of those who put this brief together. You will see the strict regard to truth, for which this Journal is distinguished. "Every possible exertion had been made for a long time previous, by the friends of Colonel Berkeley, to give all the *eclat* and effect to this Annual 'Affair,' in order to attempt proving to the world, that recent circumstances which have occurred, instead of lessening the Great Lion in the estimation of his Cheltenham supporters, had only tended to raise his character still higher in *their* opinion, and to justly entitle him to their unqualified approbation." Now begins the narrative of the Ball, with that regard to truth which has ever distinguished this "Journal," as it is called. Gentlemen, I like

the good old-fashioned term "Newspaper" infinitely better. "About four o'clock on Thursday afternoon, symptoms of his approach manifested themselves by the appearance of two or three hundred dirty fellows, hallooing and shouting through the High-street, evidently well primed for the occasion, who, we have no doubt, would have shouted just as loud, and with as much sincerity of feeling, had they been engaged upon the same terms to have announced the approach of *Jack K*——, or any other equally respectable personage." A compliment this, I suppose, to the poorer classes of society—the labouring classes, as we used formerly to call them; but the 'operatives,' as they are now more fashionably styled—(*Laughter*)—that they would have hailed with acclamations the man whose assistance might probably convey them to a better state than the present. That is the compliment you see paid to the labouring classes. "In the cavalcade, amongst which there certainly were *some* respectable individuals, we observed two fistic champions, Messrs. *Cannon* and *White-headed Bob* (as he is called by the 'Fancy.')" Now that is a subject with which I dare say "the discharge of his public duties," as he calls them, leads him to be better acquainted than I am, and therefore I shall find no fault with it—"and Mr. *Pea-Green Hayne* (as he was dubbed by Colonel Berkeley). In the Colonel's carriage, which was in the rear of the *procession*, we observed a party of ladies. We certainly congratulate the Colonel upon his improved taste, who, instead, as was his custom upon former occasions of this nature, of complimenting the good folks of Cheltenham, by driving his bull-dog, and his bull-dog only, (*loud laughter*,) in his own carriage, gallantly escorting those ladies, whose character, and whose respectable demeanor, add lustre to their rank. Notwithstanding the waving of sundry dirty pocket handkerchiefs, (*loud laughter*,) the throwing up of half a dozen greasy caps into the air, and the shouting of a few score of idle apprentices, Berkeley must not imagine that by such manifestations of approbation, he may consider himself secure in the estimation of the *respectable* portion of the inhabitants of this town, who looked upon the burlesqued pageant merely as an *attempt* to gain his lost popularity, and to recover that respect, to which, at one time, perhaps, he was justly entitled. Although there were observed many respectable families at the ball in the evening, still there was *something* wanting to give that pleasing satisfaction to those who attended it, which had been experienced on former occasions. Whether that *ennui* which was so evidently felt by the thin list of fashionables throughout the evening, was occasioned by the reflection, that, by their presence, they were individually supporting and applauding the conduct of an Adulterer, we will not pretend to say; but we are convinced, when these give this subject one moment's deliberate consideration, they will feel, as mothers, that they have been supporting the pretensions of a man, in whose society the virtue of their daughters would be placed in the most imminent danger. We have it from the best authority that many

families of the highest rank and respectability in this neighbourhood, who received tickets for that evening, declined the invitation—for what reason is best known to themselves. We are confident that from the decreased number of fashionable visitants on this occasion, to what it had heretofore been, that it will clearly point out to Colonel Berkeley, that whatever may be the opinion of the profligate, the giddy, and the *dependents*, what are the predominant feelings of the better thinking and more discerning part of the community. We are assured by a Correspondent, ‘*that upwards of 100 Ladies of the leading fashionables at this place refused to accept of tickets for the Berkeley Hunt Ball, and though several heads of families were urged by personal applications with an importunity not very delicate, peremptorily refused the invitation.*’ We understand that the number of persons who attended this ‘*affair*’ did not amount to one hundred and forty, two-thirds of whom were gentlemen.—‘*Oh! what a falling off was there!*’—‘*Alas! poor Yorick!*’ Notwithstanding the above remarks, we consider it our duty, as public journalists, to subjoin a list of the Ladies present, as far as we have been able to obtain, upon the best authority.”

Then follows a list of ladies, at the head of which are Ladies Caroline and Mary Berkeley, Mrs. Grantley Berkeley, Mrs. Williams, and several others, whose names it is not necessary to repeat. Now, Gentlemen, it was not true that this ball had been attended by fewer persons of distinction than other balls had been. It was not true that those ladies whose names are inserted in that list, were the only ladies present. There were a great many other ladies present—ladies of character, of rank, and of fortune. He excuses himself from giving a list of the gentlemen, by stating, that he was not enabled to get a correct list in time for insertion. He, however, holds up the names of some ladies to public animadversion, and he holds up to public contempt all persons, male and female, who attended the Berkeley Hunt Ball. He speaks of the ladies who are mothers, as exposing their daughters to danger; and he says the mothers themselves could not be deemed respectable in attending such a ball. He holds up *their* names, I say, to public animadversion; but he does not dare to give the name of a single gentleman. He knew well he was secure from punishment by the ladies. They are not in the habit of horse-whipping; and if he had been horse-whipped by one of them, I question whether he would have brought an action for damages. There may be a reason, therefore, why females are selected and held up to notoriety, and no names of men are published. Gentlemen, I will now only read to you the last libel; and it was under the feelings of irritation produced at the moment, by reading, on the morning of the 14th of March, the day on which this paper was published, the paragraph which I am about to read to you, that Colonel Berkeley was driven at length, after having tried other methods, to that extremity which has been the foundation of this action.

“BERKELEY HUNT. THE PUFF DIRECT.

“We extract the following advertisement from the *Times* of Saturday last. Who, we would ask, but one man would have taken this trouble? Who that man is, we leave to the sagacity of our readers:—the thing speaks for itself.”

“(ADVERTISEMENT.)

“The report, that many ladies refused tickets for the Berkeley Hunt Ball, is wholly without foundation, for on no occasion was it more numerous or fashionably attended.” Now it is one of the singularities in this age of morality, when editorial duties are to be fulfilled, that if a person is spoken of ever so contemptuously in a public newspaper, he is to bear it with patience and resignation. If he contradicts it, he only exposes himself to fresh libel; and if he horse-whips the man who libels him, he has an action brought against him for his pains. Now you see, that this Mr. Judge had dared to assert that which was not true; namely, that many ladies had returned their tickets, and the ball was not attended so numerously or so respectably as it was said to be. Surely a man has a right to contradict this? It is hard indeed if the public press, which is open to make attacks on people, is not also open to the defence of individuals. There would be no measure of justice in the press if that were not the case. What is more in this advertisement than that it is quietly stated, that the ladies had been more numerous and respectable who attended the ball, than on any former occasion? But Mr. Judge wont bear contradiction, and because this was put into the London papers, he publishes this libel in his columns. “In order to pass off ‘the affair’ in the best possible manner, the following paragraphs were inserted in the *Courier* of Friday, and the *Morning Post* of Saturday, and were, no doubt, amply paid for.” Paid for! Why this man measures every thing by money. He seems to think that the public duty of these public journalists may be either enforced or bought off by money. You will hear more upon that presently. I wont read the paragraphs again, because they contain nothing more than a repetition that the entertainment on this occasion was numerously and respectably attended. “We very much fear that Colonel Berkeley is ill-advised. As an old sportsman, we are somewhat surprised that he forgets the old proverb, ‘Look before you leap.’ We presume this is a postscript to the letter to Mr. Claggett. Perhaps we may find time to return to this ‘affair’ again.” Whether he did find time or not, I do not know. Perhaps this personal chastisement taught him it was high time to stop his career of libel. But have I not read enough? Have I not read enough, Gentlemen, and more than enough, to satisfy you, that, though upon this occasion he was severely dealt with, yet he richly deserved it all? And will you give any thing like a serious compensation, or such a compensation as you would give to a plaintiff who

came unspotted and innocent into a Court of Justice? Will you give to such a plaintiff as this the same compensation that you would give to a meritorious and suffering individual? One word more, and one word only.

Gentlemen, I will prove to you in addition to this, that during the course of this system of defamation, which Mr. Judge was pursuing, he received a friendly caution from a brother newspaper editor in Cheltenham. There has been in Cheltenham for many years a respectable newspaper, called the Cheltenham Chronicle, that belongs to Mr. Griffith; and I will show you that during the time he was going on with these libels, Mr. Griffith met him in the streets, and said, "Mr. Judge, what you have published with respect to the Berkeley Hunt Ball is so incorrect, that I shall be obliged to print a contradiction of it, and to give the names of those ladies who really did attend it." Besides, said Mr. Griffith, "If you go on in this way every week, depend upon it, Colonel Berkeley will, some time or other, give you a good threshing for your pains." "Well," said Mr. Judge, "I don't care for that; I think that I am a match for him;" turning himself round, and showing, I am told, a fine manly figure of a person, about six feet high, as tall and as strong as Colonel Berkeley, and being the younger man of the two, much more active; so that you see upon this occasion he actually received a caution, and his reply was, he did not mind it. Was he guilty of malignity? I acquit him of that. He could have no malice against Colonel Berkeley. Then what was he actuated by? Why, by a base and filthy motive of getting money. Gentlemen, he libelled, to be horse-whipped, depend upon it; he had in view this desirable horse-whipping, in order that he might make money by bringing this action. Do I say this at random or heedlessly? No, I do not. What will you say to this? Another person, of the name of Davis, met this "gentleman by birth and education," one day, and remonstrated with him, and told him that Colonel Berkeley felt sore. What do you think he observed to Mr. Davis? "Why don't Colonel Berkeley behave like a man, and send me a £200 note! if he did, I would have taken the other side of the question, and brought him through it." This is public duty, with a vengeance. "I would then have taken the other side, and brought him through it." This is the public duty, in the performance of which he is characterized by such an amiable love for truth. I put it to you, that from first to last this system of libelling has been persevered in, (I won't say to promote the sale of the newspaper, for that must be a secondary motive,) but for the purpose of extorting money from Colonel Berkeley, that these articles should not appear,—that all the antecedent passages in his relations' life should be suppressed. Gentlemen, I am quite unable to expatiate on conduct such as this, and I hope it is unnecessary; when I am addressing myself to men of sense and feeling, I feel myself unequal to the task. I cannot make

the sun shine brighter in broad daylight than it really does, and therefore I am unable to expose the turpitude of conduct like this. I will say no more then to you, than remind you, that upon this occasion Colonel Berkeley has not acted without provocation; and when my learned friend, Mr. Phillips, says he acted without a parallel, he quite forgets all the recent transactions of the day. It is quite a common course to horsewhip a man for this kind of thing. It was but the other day that a gentleman, the son of a noble Earl, had an action brought against him by the editor of a newspaper at Brighton for exactly the same sort of merited punishment. I mention the parties there, because the case was tried in open Court, and therefore it cannot be any secret. He had received provocation of some sort. The editor there, had dared to revile the conduct of a lady to whom Mr. Windham was paying his addresses, and Mr. Windham bestowed on him a good, sound, severe horsewhipping. I am one of those who think he was "well served out," as it is called. Gentlemen, it is not many years ago since a noble Lord, (I wont mention names,) a very near relation of one of his Majesty's ministers, and one of the most popular of them, if there be any degrees of popularity among them, bestowed upon the shoulders of a London editor the same sort of discipline, which the shoulders of Mr. Judge sustained on this occasion; and the only difference between the cases is, that that editor pocketed the horsewhipping, and never made any complaint on the subject. Gentlemen, it is not long ago that a naval officer of high distinction thought proper to bestow (and I believe it was very improperly bestowed) the same sort of chastisement on the author of a book, in which he thought the gallantry of himself and his crew had been improperly spoken of. Another distinguished personage, now no more, bestowed the same sort of punishment on an individual in the streets of London, whom he mistook for the proprietor of a great London newspaper. I mention these instances, in order to remind my learned friend that this punishment of the horsewhip is a good, old, English, legitimate mode of punishment. It is that sort of custom which I might say has become an immemorial usage, (*laughter*) time out of mind; and our ancestors always approved of bestowing this sort of discipline on those who gave them such offence as this man gave Colonel Berkeley on the present occasion; because such persons were not cognizable for their conduct in any other way. I am not justifying it. Don't mistake me. But when my learned friend called it, more than once, an unparalleled case, I mention these instances to satisfy you that it is not unparalleled. I cannot forget, as a matter of history, that it happened to a noble Duke of the realm, (a former Duke of Bedford,) about seventy years ago, to receive a discipline of the same sort on a public race-course. Some gentleman with whom he had a dispute proceeded to this sort of infliction. The assailant was taken off, and his Grace was rescued by the activity

of Mr. Rigby. This brought him into Parliament, and that gentleman, afterwards the Right Honourable Richard Rigby, was made a Privy Councillor and Paymaster of the Forces. You remember the joke that is told about that. George II., who was a German, and did not understand much English, heard the expression, after one of those great victories which distinguished the administration of the immortal Chatham, that "the French had received a *good drubbing*." His Majesty asked Lord Chesterfield what was the meaning of this word, and at the moment when Lord Chesterfield was considering how he should explain to his Majesty the signification of the word, in came his Grace of Bedford. "I beg to refer your Majesty," said Lord Chesterfield, "to his Grace, who can give your Majesty a much better explanation of the term than I can." (*Loud laughter.*)

Now I mention all these cases to show that my learned friend is mistaken when he says, this is an unparalleled case. I do not mean to say, that the horsewhipping in this case was not a severe one. It was undoubtedly; the occasion called for it; and I say, severe as it was, there was nothing excessive in it. My learned friend has talked about drawing blood; and he has used the expression over and over again, that Mr. Judge's blood was drawn. I have heard it said, that if you draw the blood of a *witch*, she is supposed to be powerless. That is one of the superstitions about "drawing blood," which is the expression my learned friend is so fond of. Why what is it? Every fellow who gets a bloody nose, has his blood drawn. (*Laughter.*) Every fellow that fights another and gets a black eye, has inflammation on his eyelid, and perhaps he may have a speck upon the *cornea*, as it is called. He can't see so well with a black eye, of course, as he could before. (*Laughter.*) I don't mean to say that Mr. Judge was not severely handled; but there is no material injury likely to accrue. You have it in evidence—(by the by, we had the third part of a jury in the shape of surgeons, with an apprentice to boot,)—but Mr. Murley tells you, that he does not believe Judge will experience any material inconvenience. It is therefore too much to say that his eye is the worse for it. He who receives the strokes of a horsewhip must be materially inconvenienced. I am much inclined to think, however, that Mr. Judge is very glad he received these stripes in his case, as it gives him an opportunity of putting them on the records of a Court of Justice. All I can say is, that this chastisement was deserved; and that Mr. Judge has only to thank himself for it. As to its being unparalleled, I have shown you instances without number, in which the same sort of punishment has been inflicted. I, therefore, feel quite differently from my learned friend, Mr. Phillips, and I do really say, that so far from considering that Colonel Berkeley let himself down, as my learned friend said, to the degradation of the "Fancy," or something of that sort, he acted—I won't say legally

—but under galling provocation at the moment, and under feelings irritated almost to madness by reiterated insult. You are the judges, Gentlemen. The plaintiff will be entitled to your verdict. You will have to say what damages he ought to receive; but I am quite sure you will take a dispassionate view of the case. I know that my learned friend will, if possible, out-do himself by and by; and yet, as I do not think he can say much more in his reply than he has said in his opening, without meaning any thing disrespectful towards him, I really do expect that all the thunders of his eloquence will be in vain, and all his artillery will be entirely innocent. The libels that have been written and published by the plaintiff, speak strongly for themselves; and whatever he may say in aggravation of the assault, they must be taken into consideration in mitigating your verdict, with respect to the amount of damages. It is not my duty to say any thing to you on that subject, except in a general way. I am not to dictate to you. I have gone through the case; but I will now sit down perfectly confident, that you will not consider this a case for serious damages; and trusting, that as you know the various denominations of the current coin of the realm, you will apportion your verdict accordingly.

William Whitehead, Esq., called and sworn. Examined by Mr. Ludlow.

I believe you live in Gloucestershire, in the neighbourhood of Cheltenham or Stroud? In the neighbourhood of Stroud.

Some time ago you and Mr. Hughes became proprietors of the Cheltenham Journal? Yes.

Do you know Mr. Judge the plaintiff? Yes.

Has he been since that time in your employ? Yes.

As editor of the paper? As editor of the paper.

Then, from the commencement of January to the middle of March, did he fill the office of editor? He did, Sir.

Did you at any time, after the 3d of Jannary, make any application to Mr. Judge, at Cheltenham, in consequence of any thing that appeared in the newspaper? I did.

Can you give the date? I cannot.

Was it before the 14th of March? It was.

Can you give the date? No, I cannot.

Have you any letter, or any other paper, that will assist your memory? I have not. Mr. Watts called upon me, and in consequence of that, I instantly went to Cheltenham.

Now, when you got to Cheltenham, did you see Mr. Judge? I called on Mr. Judge, and stated to him, that it was a great burthen to my mind to be asked so frequently as I was, whether I was the enemy of Colonel Berkeley?

Did he immediately answer that, or did you state any more? I stated to him, the reason I was so asked, was in consequence of paragraphs that appeared in the Cheltenham Journal, and it was supposed I had influence to keep them out, and the object of my visit to him, was in consequence of that supposition, and I hoped he would discontinue them. I asked him if he had any personal animosity against Colonel Berkeley? and he replied, None—that what he had done, he considered his duty as an editor to do.

Did he state for what purpose he considered it his duty? He did, I believe.

What was it he stated? He stated that the Colonel was a man of fascinating manners, and he thought his vices were rather of a dangerous nature to the society he was mixed up with.

Was any thing said about the sale and circulation of the paper?

Mr. *C. Phillips*.—I should think the right way would be, to ask him what passed, and not to lead your own witness.

Mr. Justice *Burrough*.—Was there any thing else said?

Mr. *Ludlow*.—About the sale and circulation of the paper? There was not.—I told him, as we could not agree upon it, I would beg it of him as a personal favour:

To do what? To discontinue his remarks upon Colonel Berkeley, or in fact on any one else. I told him I would rather discontinue the paper than be subject to those interruptions that I had received.

What answer did he make to that? He said, if that was the case, he had no doubt he had friends who would take it off my hands.

Mr. Hughes had retired before this? I am not certain.

Can you tell us whether at that time you were sole proprietor, or you and Mr. Huges were joint proprietors? I should rather think I was sole proprietor.

In point of fact, had any security been given to you, as an indemnity against the consequences of what he wrote?

Mr. *C. Phillips*.—That is in writing, and we cannot have evidence of the contents.

Mr. *Ludlow*.—I ask him the fact, whether he had security?

Mr. Justice *Burrough*.—Well, if it was in writing, security means contents.

Well, I will ask you this. Had any document been given to you by Mr. Judge? Yes.

Now, without telling us the contents of the document, was any thing said with reference to the contents? He said, it was rather hard to take security for a man's conduct, and then tie him down to a different line of acting from what he thought proper.

Was that observation made by him at the time you requested him to desist from these personal attacks? It was.

Was any thing said between you and him respecting whom these writings were composed by? There was not.

Did any thing further take place in that conversation which you recollect? I do not recollect any more. In fact, this has been revived in my mind.

You told me you called on Mr. Judge in consequence of an application from Mr. Watts. Did you mention to Mr. Judge that you called in consequence of the application of Mr. Watts? I have no recollection. I think I put it more generally.

And the time, I think, you say you cannot fix? I cannot.

Can you say what month it was in? I cannot. I had just returned from a journey; and Mr. Watts came to me, and I went off in a few days to Cheltenham.

Did you receive any letter about that time? I did from Colonel Berkeley.

Would a reference to that letter enable you to state the date? I have destroyed the letter.

Did you mention to Mr. Judge having received a letter from Colonel Berkeley? Yes; but not in that interview. I saw him again afterwards, about three weeks afterwards.

What passed on the second interview? It was the same subject. He had not desisted; and I repeated the same reasons.

What did he say? He said he should not have again published any paragraphs, had it not been for observations directed against him in other papers.

What did you say to that? I told him, I thought it was not worth his notice, and I wished he would consider me, among the rest of his considerations.

You being his employer at a salary? Yes.

Mr. Justice *Burrough*.—(To the witness.) Recollect, Sir, all the indemnities

on earth will not protect you. People in that situation can have no indemnity that will protect them. *Witness.* I have since discovered it, my Lord.

What was his answer? He said, as an editor he regarded his duties, as being paramount to every thing else. It was something to that effect.

Crossexamined by Mr. C. Phillips.

He told you that the reason why he did so, was not from personal animosity towards Colonel Berkeley; but he considered him to be a man of fascinating manners, whose vices were dangerous to the society in which he moved, and *that* was the reason why he animadverted on his conduct? Yes.

At that time, I believe, you had read something concerning Colonel Berkeley in other newspapers? I had.

Colonel Berkeley, for some reasons or other, had become the topic of public conversation? He had, I believe.

Have you the least doubt of it? I have not the least doubt of it.

Whether it was written down, or whether he was spoken of, was he a subject of public observation? He was.

Did Mr. Judge's profits consist in a salary, or depend upon the sale of the papers? In a salary.

Therefore his salary was a fixed thing to be received from you? It was, undoubtedly, at that time.

I believe you are still a proprietor? I am not the proprietor.

Are you not one of the proprietors? The same capital that was originally advanced by me, is still in the concern, and the parties are responsible to me for it.

Then you have the same interest? Yes.

Does Mr. Judge still continue as editor? He is editor and proprietor, and its sole conduct is his, up to this instant.

Did you ever receive any message from Lord Sussex Lennox, or Mr. Hammond, that they considered they were aggrieved by any thing in the paper? Never.

Did you ever remonstrate with Mr. Judge, for having mentioned their names in the paper? No, never.

Is Mr. Hughes connected with the paper now? He is not.

Re-examined by Mr. Ludlow.

When was it you declined having any thing to do with the paper, if these paragraphs were continued? It was a little before Colonel Berkeley's coming into Cheltenham.

Do you mean coming in at the time of the ball? Yes, at the time of the ball. I believe it was about that time.

Was that before or after the 14th of March? It was before the 14th of March.

Mr. William Hughes called and sworn. Examined by Mr. Horace Twiss.

Were you at one time a proprietor of the Journal, of which Mr. Judge was editor? Yes, a short time, about three months, not more.

Did you upon any occasion converse with Mr. Judge upon the subject of any thing that appeared in any of those papers? Yes; I think it was the latter end of last November I called upon him, the day after Colonel Berkeley had performed. I called at the office, and among other matters, I said, I thought his critique on the Colonel's performance was uncalled for; because the Colonel had been performing for the benefit of a widow and family.

Was that at the time you were a proprietor? Yes, it was at that time.

What answer did he make to the remonstrance? He said, as long as he was editor of the paper, he should act as he thought proper.

Was that all that passed on that occasion? No; I was telling him that there were typographical errors, and the conduct of the paper was altogether wrong; and if he persisted in it, I should withdraw. I said, many of my friends had found fault with the errors in the paper, and we had several words in consequence of it.

Which ended in your threatening to withdraw? Yes; and I told him ultimately that I would not enter the office again, on account of his general conduct.

Mr. Justice *Burrough*.—In what respect? In every respect, my Lord, as regarded the conduct of the paper: I mean as to the number of misspelled words, and very gross errors; and I thought that as there was a person employed at a salary of a hundred a year, that he ought to see that person attended to it.

Did you allude to any other conduct, which induced you to say you would not again enter the office? Yes; I alluded to that, coupled with the critique upon Colonel Berkeley's performance, and I never entered the office afterwards.

Did you tell him so? Yes, and I have never been there since.

Did you ever express your disapprobation of him more than on that occasion? I felt so indignant at his conduct altogether.

Did you ever, except on that occasion, express your ideas to him? Yes; he behaved altogether so ungentlemanly, that I could not have any thing to do with such a man as that.

Have you, since that, retired from the paper? Yes, I have sold my share to Mr. Whitehead.

Crossexamined by Mr. C. Phillips.

Pray, Mr. Hughes, had Colonel Berkeley often performed on the stage at Cheltenham? Yes, frequently.

Has he not performed there very often? Not very often.

How many times in the course of a year? Five or six times in the course of a year.

How long since, did he begin first? I have known him do it for eight or ten years.

Now I call that very often for a gentleman to appear on the stage. We don't call it often there.

Are you and Mr. Judge on good terms? No; I have never spoken to him since, and I don't mean to speak to him again.

Tell the Gentlemen of the Jury your reason. I have told the reason.

Upon your oath, have you no other reason? I will tell the Jury and the Court and altogether, that there is nothing else, upon my oath.

Come, come, Mr. Hughes, did you never get a letter addressed to Mr. Judge, covering 200*l.*, which you opened? No, I did not.

Well, 100*l.*, upon your oath? No, not covering it.

On your oath, Sir, did you ever get a sealed letter, addressed to Mr. Judge; which you opened? No, I never had a letter to Mr. Judge; that which you allude to, was not sealed or closed.

Was there not money in it? No.

Was there not a quarrel about 50*l.* between you and Mr. Judge?

The witness hesitated.

Come, answer, Sir; I don't suppose you are quibbling because this was a cheque and not money? No, I am not quibbling about it.

Mr. Judge applied to Mr. Whitehead for money, for he was very poor, and I believe he is poor now, and Mr. Whitehead said, "I will write a cheque for a hundred pounds, and I will give it to you, to give Hadley the Printer 50*l.*, and I will leave it to your discretion, whether you will give 50*l.* to Mr. Judge or not,

He was not satisfied? He wanted to pocket the 100*l.* The other person was the printer.

Pray, Sir, how much money did you bring into this concern? Not much.

Did you bring any thing in at all? Nothing at all; but I was equally responsible.

How much did you take out, when you were going out? It was a profitable thing.

Will you tell the Jury how much you took out, though you brought nothing in? I was equally responsible.

Answer my question, Sir; what did you take out with you when your indignation tempted you to leave this concern? How much did you get for quitting this paper? 200*l.*

And you brought nothing into it but your literary talent, I suppose. [No answer.]

Mr. Justice *Burrough*.—What has that to do with it?

Mr. *C. Phillips*.—I will tell your Lordship. This gentleman would represent, that his indignation at Mr. Judge's conduct made him quit this paper, when, in point of fact, he went out for 200*l.*

Mr. Justice *Burrough*.—Well, suppose he did. It does not appear to me that it is material.

Mr. *C. Phillips*.—I apprehend it is, my Lord, because Mr. Hughes has stated here, that he acted from indignation, but I show that he acted for sterling gain.

Crossexamination resumed.

Do you live in Cheltenham still. I live in Hereford.

At this moment, you mean? Yes. (*A laugh.*)

Mr. *Phillips*.—The Jury will take notice of that, Sir.

Do you reside in Cheltenham still? Yes.

You are the proprietor of the George Inn there? I believe I am.

Have you any doubt about it? No.

Colonel Berkeley spends a good deal of property in Cheltenham? Yes.

Re-examined by Mr. H. Twiss.

When you told Judge you should leave the paper, did you tell him you should give up all interest in it? No; I would not condescend to tell him as much.

Mr. John Joseph Hadley called and sworn. Examined by Mr. Watson.

What are you? I am a printer.

Where? At Cheltenham.

Are you connected with a newspaper there? Yes.

What newspaper? The Cheltenham Journal.

Do you happen to know Mr. Judge, the plaintiff in this action? Yes.

Do you know whether he is connected with that paper or not? He is, Sir.

In what capacity? As editor and joint proprietor.

Do you remember when that paper was started first? On the 8th of last November.

Do you mean in last year? Yes.

Can you tell when he commenced to be editor of that paper? At that time.

I think you said he was joint proprietor and editor now? Yes.

Has he been so since the paper started? He has been editor since the paper started.

When did he commence to be part proprietor? I can't exactly tell the time; but I think in last March.

Mr. *Watson* was now going to prove the publication of the different papers in which the alleged libels were contained.

Mr. *C. Phillips*.—I admit all the papers.

Examination of the witness in the box resumed by Mr. Watson.

Pray did you receive the manuscripts to print in the paper? No, it is not my department.

Cross-examined by Mr. C. Phillips.

You are still the printer of it? I am.

When an article appears to be copied, I believe it is generally so headed? For my own part, I very seldom read the paper. (*A laugh.*)

You are the printer, you know? Yes.

Now I ask you, have you not occasionally received other papers, with directions to copy certain articles that are printed in them? It is Mr. Judge's province to determine what is to be printed.

I know it is Mr. Judge's province to determine what is to be printed; but have you not received from Mr. Judge other newspapers to copy out of. Yes, Sir.

And when there is any thing to copy out of another paper, you get that other paper, as it is more easy to compose from print than manuscript? Precisely.

Re-examined by Mr. Watson.

Do you mean you received printed papers to copy into your paper? Yes, Sir.

I asked you a while ago, did you ever receive any manuscripts from Mr. Judge also? No. I have accidentally received copy from him; but very seldom, because his foreman used to receive that.

Mr. Justice *Burrough*.—Used Mr. Judge to furnish the manuscript? Yes, my Lord.

Is the foreman entirely under the direction of Mr. Judge? He is.

Mr. *C. Phillips*.—And many of the things that come in manuscript, come from correspondents. Yes.

Mr. *Watson*.—But all are printed through Judge? Yes.

Mr. Samuel Young Griffith called and sworn. Examined by Mr. Taunton.

I believe, Mr. Griffith, you are proprietor of the Cheltenham Chronicle? I am.

Is that newspaper printed at Cheltenham? Yes.

How many years has that paper been established? About sixteen years.

Do you recollect, Mr. Griffith, a newspaper being set up in Cheltenham called the "Cheltenham Journal"? Very well.

Was that set up about the month of November last? Yes.

Was it published on the same day as the Chronicle? No. It was published on the Monday, and the Chronicle was published on the Thursday.

Do you recollect reading in the Cheltenham Journal, at any time, an account headed, "THE BERKELEY HUNT BALL AFFAIR"? Perfectly well.

Did it happen to you in a day or two afterwards to meet Mr. Judge? I did, in the High Street.

Did you say any thing to him on the subject of that article? I did.

What did you say to him? I said that he had related many falsehoods in that account, which we should be forced to contradict, by inserting the names, in full, of the fashionable persons present at the ball.

Does it happen to you to have read, as they came out, the articles that came out in the Journal on Colonel Berkeley and the rest of the Berkeley Family? Yes.

Now having told him that, did you add any thing respecting Colonel Berkeley? I said, "you had better take care, or else Colonel Berkeley will horsewhip you."

Now, had you ever, before you said this to Mr. Judge, received any intimation from Colonel Berkeley that it was his design to horsewhip him? No; I never had seen him.

You never had seen him? No; not to have any conversation with him. I have met him in the street.

Or had you from any other person received any intimation of any design on the part of Colonel Berkeley to do so? Certainly not; not any one.

Then when you said this, it was a conjecture of your own? It was I own, entirely. I conceived he deserved it.

Was it a conjecture drawn from the probability of the thing? It was from the scurrilous articles contained in the Journal. I thought no Englishman could allow such things to pass unnoticed.

When you intimated the probability of his getting a horsewhipping, what said he? He said, "I am about his match, I think. Don't you think I am?" and turned himself round in this way in a sort of fighting attitude, showing himself.

Showing his shapes, as it is called? Yes, something of that sort.

Now what sort of man is this Mr. Judge. Is he a little diminutive man in stature? I should think him about six feet high, or near that.

Is he a young man, or an aged man? A young man. I should conceive him to be about nine-and-twenty.

Did you say any thing more to him on the subject? If you did, state what it was. I said, he was not only injuring himself as a tradesman, but he must injure Cheltenham, by driving fashionable persons out of it, by inserting paragraphs of that scurrilous description in the paper. He said in reply to that, "We ought to be like Counsel; abuse each other in Court; and out of Court shake hands, and drink a bottle of wine."

Mr. Taunton.—Well, that is not an unparallel. I think it is very like a parallel.

Mr. C. Phillips.—Mr. Taunton, my Lord, has a right to speak for himself, of course.

Examination of the Witness in the box resumed by Mr. Taunton.

Had you ever before spoken to Mr. Judge on the subject of these scurrilities, in his paper, as you call them? I had.

How often? Twice before that.

What did you express to him on those occasions? To the same purport—that I regretted he would still continue in the same course, because it would be ultimately injurious to the town, and if he destroyed the town, he must destroy me with it.

About what time was this? I should think about a month before the other conversation, but I cannot exactly fix the time.

At that time, did he give you any answer? I think he said, "Never mind that;" or something of that sort. The conversation previous to that was very short.

You had twice spoken to him on the subject, previous to Colonel Berkeley's affair? Yes, previous to Colonel Berkeley's affair.

Crossexamined by Mr. C. Phillips.

What is the name of the third paper, in Cheltenham, Mr. Griffith? There is no other besides the Chronicle and the Journal.

Oh! Then let me understand you. Then when this paper of Mr. Judge's was started, it was a rival paper to yours? I did not consider it so. You may call it so.

It took the side against Colonel Berkeley in this business of Miss Foote's? Very much so.

You took the side for him, you know? Not either. Neither one way nor the other.

Do you mean to say that Colonel Berkeley or his friends never sent any thing for insertion in your paper? We both of us received communications.

Have you ever spoken to him on the subject? No, except since this business,—since the horsewhipping.

Were you intimate with Colonel Berkeley before that? I was acquainted with him, as I was acquainted with many other gentlemen of the county.

Since that, you have conversed with him on the subject? I have merely said "Good morning."

Is that the conversation you say you have had since with him? Merely that.

You used to have that before? Yes, and we had that since. I don't know what I could have to say to Colonel Berkeley.

Nor I either, Sir; but you are to tell us. You merely said "Good morning," and passed on? That is all.

Will you say upon your oath, he had no other conversation with you? I do not remember any other.

Do not remember man! But you will? I do say I had not.

Positively? Positively.

I believe you have an indictment hanging over your own head, Mr. Griffith? Have I a right to answer that, my Lord.

Mr. Justice *Burrough*.—I see no objection to your answering it. It is a matter of courtesy.

Mr. *C. Phillips*.—I mean at the suit of Mr. Judge. Have you not had a quarrel with him?—(*The witness hesitated.*)—Come, come, Sir, have you ever been accused of insulting Mr. Judge in any way? I don't mean to ask you if you are guilty, you know?

Witness.—Have I a right to answer that, my Lord?

Mr. *C. Phillips*.—Well, well, I will not ask you. I see how it goes with you. Your not answering will do for me just as well.

Mr. *Taunton*.—I am sure I have no objection to his answering it.

Mr. *C. Phillips*.—I will not ask it, particularly as you have a stick in your hand.

Mr. *Taunton*.—Well, I will. Are you indicted, Mr. Griffith?

Witness.—I am.

Mr. *Taunton*.—What for?

Witness.—For horsewhipping Mr. Judge.

Mr. *C. Phillips*.—And I believe you followed Colonel Berkeley's valiant example, and took another man with you, to help you?

Mr. *Taunton*.—You are indicted, you say, for horsewhipping this same Mr. Judge?

Witness.—I am.

Mr. *Taunton*.—Do you happen to know whether it was the first, second, or third time that he has been horsewhipped?

Witness.—I believe it was the fourth.

Mr. *C. Phillips*.—What do you say was the fourth time?

Witness.—I mean it was the fourth horsewhipping he had.

Mr. *C. Phillips*.—In Cheltenham?

Witness.—No; he got it where he deserved it.

Mr. *C. Phillips* here said something (relative to the witness) which the shorthand writer did not distinctly hear.

Mr. *Taunton*.—(*To Mr. Phillips.*)—The best way is for you not to be answering him—(*To the Witness*)—Then Colonel Berkeley's horsewhipping must have been the third?

Witness.—Certainly.

Mr. C. Phillips.—Are you speaking from your own knowledge, Sir.

Witness.—No, only from report.

Mr. Taunton.—When you are speaking of the horsewhipping which you gave him, you are not speaking from mere report, are you?

Witness.—No, I should think Mr. Judge would know that.

Mr. C. Phillips.—Yes, and you will hear of that, on the floor of the Court of King's Bench, I can tell you.

Mr. Thomas Davis called and sworn. Examined by Mr. Ludlow.

Do you live in Cheltenham? I do.

Have you occasionally read the Cheltenham Journal? Yes.

Did you at any time, in consequence of what you read in that paper, have any conversation with Mr. Judge, the editor of it? Yes.

When did you first speak to him, or have you spoken to him more than once about it? Yes, Sir.

On the first occasion which you spoke to him, what did you say?

Mr. Justice Burrough.—When was it? I can't say when it was. He was in Cheltenham some time before I spoke to him, and since that I have repeated the conversation. I have frequently seen him in his room, and had repeated conversations with him.

Well, how did it begin? He said, "Well, Davis, what do your friends say of the paper?" and I said, they said it was too bad.

Are you able to say as to what particular article you were speaking, when that observation was made? No, there were so many of them.

Mr. Justice Burrough.—Was there nothing said with respect to what it was that was bad?

Witness.—He was alluding to the paragraphs.

What was said? You tell us he asked you what your friends thought of the paper, and you observed they said, "it was too bad." Now, what were you alluding to? Alluding to the paragraphs.

Mr. Justice Burrough.—What paragraphs? Paragraphs on Colonel Berkeley's account.

Mr. Justice Burrough.—Did you select any particular paper, or any particular paragraph? [The witness looked confused, and gave no answer.]

Are you able to say to what particular subject the paragraphs related, on which this conversation took place? I don't rightly understand you.

Mr. Justice Burrough.—What paragraphs were you talking about? How can you be so stupid, man? Paragraphs in the Journal.

Mr. Ludlow.—Have you an impediment in your speech? I have, certainly.

Mr. Justice Burrough.—Not he. No more than I have. What paragraphs were they? Paragraphs in the Journal that I have frequently seen.

Mr. Justice Burrough.—Were they paragraphs about agriculture, or what? Alluding to Colonel Berkeley. I have said so.

Mr. Justice Burrough.—No, you have not said any such thing. Do you say so now? Yes, my Lord.

Now what did you say, and what did he say? If there was any thing more, tell us what it was? I recollect seeing Mr. Judge after a conversation with Mr. Whitehead, and he appeared agitated, and expressed himself in these words, "Why did not Colonel Berkeley behave like a man, and send me a couple of hundred pound notes."

Mr. Justice Burrough.—Are you quite sure he said that? I am, my Lord.

Did he say that, after you understood he had seen Mr. Whitehead? Yes.

Did he add any thing? I believe not at that time.

Did he at any other time? I have heard him use words to that effect at another time, amounting to the same thing—nearly to the same effect.

Well, when was it, and where was it? It was in a conversation in a party. I heard him say that if Colonel Berkeley had paid him, he would have taken the other side of the question.

I want to know whether at any other time you recollect his saying any thing further on the subject? No; I do not recollect any, but those two times I now mention.

What was it he said upon the second occasion? I think he said then that the sum of 300*l.* would have turned the question the other way in some of the papers in London, that had taken up the cause of Miss Foote.

Was that at the same time that he said that if Colonel Berkeley had paid him, he would have taken his side? No, it was a different time.

Did you ever mention to him any thing about an action being brought against his paper? Yes. It was intimated to me by a friend, who said, "If you have any regard for Mr. Judge, you had better tell him his paper will have an action brought against it for a libel, if he does not take care;" and I told him.

Do you recollect what he said to that? He said, "Davis, you know little of papers. You don't know that an action would be the establishing of it."

Mr. *Ludlow*.—Now, repeat that to my Lord.

The witness repeated it.

Mr. Justice *Burrough*.—What time was that said? Can you recollect? No, I cannot.

Mr. Justice *Burrough*.—Was it before or after the other conversations you have been speaking of? No, I do not recollect. It was since Christmas.

Mr. Justice *Burrough*.—Was it before the horsewhipping? Yes.

Do you recollect the subject of horsewhipping being mentioned by you to him? Yes. I heard some friend of mine mention it, and I told Mr. Judge to take care of himself, or else Colonel Berkeley would horsewhip him; and he said he did not believe that.

What did he say to it? He did not give credit to it exactly. He did not believe Colonel Berkeley would ever horsewhip him.

Mr. Justice *Burrough*.—What did he say? Tell us the words. I can't recollect the words. It was to the same effect as I have mentioned.

Mr. Justice *Burrough*.—You have mentioned nothing about it. Was it said why he was to be horsewhipped? No, my Lord.

Well, what was it Mr. Judge said in answer to that which you told him? The impression it made upon his mind appeared to be, that he little thought of being horsewhipped. He expressed words to that effect.

You cannot give us the date when the circumstance of an action being brought for a libel, was mentioned? No.

Crossexamined by Mr. C. Phillips.

Pray, Mr. Davis, when was it that this conversation occurred at the party which you have mentioned, about Mr. Judge saying that if he received 200*l.*, he would write on the other side of the question? About Christmas.

As an honest man, of course you felt very indignant at that? Indeed, I cannot say what my feelings were.

But I suppose you continued your friendship with him? Only for a very short time afterwards.

Were you not on friendly terms with him, Sir, at the time of the horsewhipping? I had not seen him for some time.

Come, come, Sir, that is not an answer to my question. Were you not on friendly terms with him at the time of the horsewhipping? Well, well, I will acknowledge it.

Then his exposure of his own baseness to you, as you would have us believe, did not prevent your still associating with him? I showed him a great deal of attention when he was horsewhipped.

You did, did you? Pray are you acquainted with Colonel Berkeley? Very slightly.

I suppose you told Colonel Berkeley that this base man wanted money for suppressing libels? Not a word of it.

Not a syllable of it, of course, and his knowledge of it does not come from you. Did you tell Colonel Berkeley, before the assault, of this conversation between you and Mr. Judge? I don't believe I had ever spoken to him.

Then up to the day of the assault, as far as you know, Colonel Berkeley knew nothing about it? Certainly not.

It was in an open party that Mr. Judge made use of the expression you describe? Yes.

People were about? Yes. It was a party, and it was spoken before them all. There were some ladies as well as gentlemen.

Now, Sir, upon your oath, is there any human being here to-day, that heard it but yourself? Heard what?

Heard what! Why, Sir, what you have sworn was spoken by Mr. Judge? He mentioned it at two instances.

Now, Sir, take care, I am a plain man, and I like to take things regularly—Let us have one of those instances at a time. Is there any mortal here who heard it besides yourself, when you say it was uttered before all this party? No one that I know of.

How many persons were present? I don't know.

Were there five, or six, or seven, or eight persons present? There were four persons present.

Well, that will do as well as a thousand. Can you mention the names of any of them? They were friends of mine. If my Lord will say I ought to mention the names, I will.

Mr. Justice *Burrough*.—I see no reason why you should not.

Witness.—There was Mrs. Davis, and Mr. and Mrs. Wells, and myself.

Are these people living now? Yes, they are, I believe.

And in perfect health? When I last heard from Mr. Wells, he was well.

Where is he? He is at Cheltenham.

Where you come from? No, not from Cheltenham now. I come from Caernarvonshire.

Is Mrs. Wells well? I hope she is very well. I have no doubt of it.

But, Mr. Davis, I have forgotten to ask you one question—Pray what are you? I am an artist.

An artist! Any man can be an artist, but what kind of an artist are you? I am a painter.

Have you ever had the honour of painting Colonel Berkeley's portrait? No, I have not painted him, but I have painted a portrait of a horse of his.

That is since the horsewhipping? Yes.

Have you ever gone to Berkeley Castle since the horsewhipping? I have not had that pleasure yet.

Yet! O, then, you do expect it?

Mr. Justice *Burrough*.—Why, you know, if he did the pony well, he ought to go. (*Laughter*.)

Did you ever paint any thing for Colonel Berkeley, previous to the horsewhipping? No.

He has found out your merit as an artist then, since? I wish he had found it out before.

Had he any trial of your merit before, or has he found out your merit since the first trial he had of it? Yes.

Did you go into Mr. Judge's room on the day this assault was committed? Yes.

Did you see the man? Yes.

Did you not express your indignation at this horrible outrage? Yes. I was very much hurt to see him in that condition.

Did you not express your indignation at Colonel Berkeley's having brought two men with him to commit this assault? Yes.

Did you see the state Mr. Judge was in? Yes.

In what state was he? He had a towel, washing the blood off his face.

Did you observe the floor-cloth? I did not take particular notice.

Did you not see blood upon it? I don't recollect it. I saw marks of blood on the wall with a whip.

Oh! you do remember the marks of a bloody whip upon the wall? It was pointed out to me.

A good long lash of it? Yes. You have heard something of it already.

But I want to have what you say of it in addition? It was a considerable length.

Was it not a foot long at least? Yes.

Did you see his face? Yes,

Did you see his eyes? Yes.

What condition were they in? Certainly he had a black eye. I did not go to look at it. I did not look at it.

When you saw him, Sir, on your oath, in what state was his eye? The eye appeared to be shut.

Was it closed? Yes, it was closed.

Did you see his cheek? Yes.

What state was that in? There was a very severe bloody mark on it.

Did you observe his lip? I observed his lip was cut.

Did you see Lord Sussex Lennox and Mr. Hammond? I did not know them. When this was taking place in the passage, I saw two gentlemen at the door.

Do you mean the room door? No; two gentlemen standing at the hall door.

Did you go to Mr. Judge's assistance? No. At the time, I was prevented by Mrs. Davis fainting away in my arms.

Mr. and Mrs. Wells, as far as you know, are in health? I believe so.

Mr. Taunton.—We will now have the newspapers read.

Mr. C. Phillips.—Mr. Bellamy, when an article is read, the whole article must be read, and I beg the Jury's attention to the whole of the context.

The following articles, which appeared in the Cheltenham Journal, (with the dates of their publication annexed,) were then put in for the defence, and read by Mr. BELLAMY, the Associate :

January 3rd, 1825.—Extracted from the Sunday Times.

Colonel Berkeley was for many years universally recognized and received as the eldest legitimate son of the late Earl of Berkeley, by the title of Lord Dursley. The famous "Berkeley Inquiry," in the year 1811, however, reduced him from the patrician to the plebeian rank of society. His mother, the present Countess of Berkeley, was a Miss Tudor, *alias* Cole, the daughter of a butcher in Gloucester. The "Inquiry" disclosed some curious particulars of the late Earl and his Lady.

MISS FOOTE.—The papers during the past week have been full of the details of the trial for a breach of promise of marriage, which Miss Foote has brought against Mr. Hayne; and subsequently the letters of Colonel Berkeley have been published, with some of the Lady's replies. All parties concerned in this business have been blamed, and vindicated; and so much has been said or insinuated against Miss Foote, that we wish, if possible, *impartially* to discuss the merits of *her* cause, and (if it proves that they are undeserved) to shield her from the calumnies which are now hurled against her.

Miss Foote's action was unfortunately brought against Mr. Hayne—and she is therefore accused of manœuvring and duplicity, engaging the affections of a young, thoughtless and rich spark; and counterfeiting attachment for him, while she was professing undiminished regard for another man—and that man the father of her children. This is the very worst light in which Miss Foote's case can be viewed. She appears as a mistress, an unmarried mother of two children, and yet as the affianced bride of a youth who has been induced to make her honourable proposals! But ere we condemn Miss Foote, let us take an impartial view of her

situation, and let him who placed her in that situation receive his due share of our scrutiny. Miss Foote, at a very early age, became acquainted with Colonel Berkeley, and was his victim. It is really difficult to know what term to use when speaking of *such* Gentlemen as the Colonel. *Fame* is not a word to be coupled with *their* names. They are *famous*, who, in the field of battle—the senate—or in the seclusion of their own study, benefit their native land by the exertion of their bravery or their talents. *These* are the votaries of *Fame*—not the heartless seducer—the shameless adulterer—the man who saves a few hundreds at a trial by showing the letters of his partner in guilt—nor the faithless lover, who, having triumphed over the prudence of an amiable and beautiful girl, refuses her the reparation which he had promised and accuses her of a diminution of affection, when she says—“Perform your promise—marry me—let me not bring another miserable being into the world—*marry me*, and let my second child be legitimate.”

Colonel Berkeley's answers are invariably full of *equivocation*—they come from the *head*, not the *heart*, and while we peruse them, we cannot but suspect that they were written with a presentiment that the writer might one day feel it his *interest* to print them. He never makes a manly and explicit reply to her demand, but says, he never made her a promise which he does not mean to fulfil, and then speaks of *circumstance* and *family*. The *Examiner* of last Sunday says, that Colonel Berkeley should have been the very last person to plead *family* as an obstacle to his marrying Miss Foote, as *he himself* is the offspring of a connexion previous to wedlock! Indeed! is it even so! It seems then that Miss Foote, even after she was seduced by Colonel Berkeley, was, in all respects, the equal of Colonel Berkeley's mother! We have said that we cannot call him *famous*—*infamous* is a strong word—*notorious* will answer our purpose. Her notorious persecutor seems to assert that Miss Foote had no longer a claim upon *him*, because she had listened to the honourable addresses of other men. Now it is evident from her letters, that when other proposals were made to her, she still clung anxiously to *his* promises; and the chief cause of complaint which Mr. Hayne has against her is, that whilst she was professing regard for him, she was evidently imploring Colonel Berkeley to fulfil his promises, with all the undiminished ardour of a first love, and was dreading a final separation from the father of her children. If she was playing a double game, who caused her to do so? Who placed her in a miserable and humiliating situation, from which she was anxious to extricate herself *by any means in her power*? She had become Colonel Berkeley's mistress, deceived by a promise of marriage; she would rather have been *his* wife, than the wife of any other man. But to such a woman her situation must have become every year more painful, and rather than remain Colonel Berkeley's mistress, she would have accepted *any* honourable proposals, though it is evident that her *heart* could not be alienated from her first unworthy lover. Did Miss Foote make large demands on Colonel Berkeley during her engagement with him? *No!* she had no settlement, and his presents did not exceed 100*l.* in value! Had she the advantage of his society and protection during that period? *No!*—she was neglected during many months of every year! Was she ever accused of being faithless to her seducer, or was her conduct in any way reprehensible? *No!*—no woman could be more respected than Miss Foote. Mr. Fawcett's letter speaks volumes in her favour, and there is not, I believe, an individual in Covent Garden Theatre, who would not gladly bear testimony to the mildness, modesty, and propriety of her manners! Was Colonel Berkeley *as* faithful to Miss Foote, and was his conduct as blameless and respectable? Let trials at Gloucester, and triumphs at Cheltenham answer the question!

It is to be supposed that Miss Foote will return to her profession; and we trust there cannot be a doubt that her reception from the public will be kind, and, we may almost say, affectionate. *She* has been the victim of *one* man—she became his mistress under the impression that at a future time he would make her his wife. We do not mean to vindicate her conduct—but this has been her *only* error; and while shameless and unveiled profligacy is not only tolerated on account of its talent, but flattered and followed;—surely the lovely and unfortunate Maria cannot ask in vain for encouragement and protection!

Yet men *will* still admit, and women *will* still caress the seducer, while the *victim* of seduction is avoided with contempt, and mentioned with aversion! So much for the boasted superiority of English society! So much for the boasted purity of English matrons! So much for the boasted prudence and circumspection of English fathers and mothers!—*Bath Herald*.

January 10, 1825.—It was common some time since in the fashionable circles of the metropolis, (in allusion to a certain non-fighting regiment of Hussars), if a man showed a *white feather*, to remark, “the 10th don't fight.” “The Colonel don't fight” is now the bye-word of contempt amongst the leaders of the *ton*.

Extracted from Oxberry's Dramatic Biography.

January 31, 1825.—In the summer of 1815, Miss Foote was engaged as a star at Cheltenham, and there W. Fitzhardinge Berkeley, commonly called Colonel Berkeley, fell in love with her; if such a creature as this Berkeley may be supposed capable of that passion. Colonel Berkeley applied to her, offering his services to perform for her benefit; he had often previously rendered himself ridiculous by his stage exhibitions, which, however, had the effect of attracting an audience, as Berkeley is a mighty man indeed at Cheltenham, (* * * * * !). Miss Foote had parental claims upon her, for all that her professional exertions enabled her to accumulate, and an offer like this, of course, would not have been rejected by any one. Colonel Berkeley performed; *how*, it is not our purpose to explain—the man claims the privilege of *disgusting* his own townsfolk:—suffice it to say, he drew together a crowded audience, and Miss Foote felt of course grateful. He seized the opportunity, when he had thus ingratiated himself into her consideration, to plead his passion for her, and entreat her acceptance of his visits as an honourable suitor. So far all was well. It was not Maria's business to reflect how weak the head, or how bad the heart of her admirer; he appeared before her with all the blandishments that wealth and an army tailor could bestow upon him; he told her he adored her, and women are flattered, even when told so by a fool. He was a soldier too, (what a soldier!) and the softer sex, like the angler's easiest pray, are said to be peculiarly attracted "by anything *red* or *glittering*," however worthless the object may really be. Maria Foote was not free from the common weakness of her sex; she felt flattered by his attentions, and in return for his hollow professions of attachment, bestowed her affections upon him. Nor is this an impeachment on her understanding, for the strong-minded Mary Woolstonecroft loved the weak villain Emley. Indeed, it seems the ordination of Providence, that talented women should place their affections upon ignorant or vicious men.

For twelve months the Colonel was unremitting in his attentions, but pleaded unavoidable circumstances for the delay of his nuptials. The circumstances are these:—

The mother of the Colonel* unfortunately produced her husband (Earl Berkeley) more "heirs *at love*" than "at law," not having been united to the Earl till the year 1796, though *our hero* was born, we think, in 1785 or 1786. It is but just to mention, that the Earl affirmed that a private marriage took place in 1785, but *the House of Lords disallowed the proof*; in consequence of which, one of the Colonel's younger brothers became entitled to the dignity of the Earldom; he, however, with great magnanimity, refused to accept it, and the Colonel has long been petitioning the Crown to grant him the title that at present lies dormant.

Colonel Berkeley pleaded all this; persuaded the unsuspecting Maria that a marriage with her would injure his suit at court, and she, at length, consented to admit him, prematurely, to the privileges of a husband, on his solemn asseveration to fulfil his contract the moment he could do so without injuring the hope of his Earldom. This connexion subsisted some years, in the course of which time Miss Foote became the mother of two children; whilst the Colonel buoyed up her hopes with deceitful promises, which his subsequent conduct proves he never meant to perform. Meantime the secret got buzzed in the metropolis, doubtless through the medium of her heartless seducer; for she, of course, guarded her own expressions, and the conduct pursued was not likely to awaken suspicion. Though still the idol of the public, our heroine was wretched in the midst of shouts of approbation. The glare of happiness was around her, the voice of flattery rang in her ears, but the poison of guilty remembrance was fixed in her heart, and ill-requited affection had banished peace from her bosom.

That fascinating and powerful writer, Hope, has the following passage in his *Anastasius, or the Memoirs of a Greek*:—"It is one thing to communicate pleasure to others, and another to taste of joy one's-self;" how bitterly was Maria doomed to prove the truth of the assertion! In *Maria Darlington*, *Rebecca (Ivanhoe)*, *Virginius*, and *Miranda*, Miss Foote gained fresh laurels in her profession. By-the-by, we omitted to mention that, on her first metropolitan benefit, Mr. Betty (a near relative of our heroine's), played *Alexander the Great* to her *Statira*; this, her first tragic effort, was exceedingly creditable to her powers.

During the years which she devoted to the ungrateful Berkeley, Miss Foote had continual offers of marriage, from young, honourable, and wealthy suitors; all of which she was of course, compelled to decline. At length, tired of the baseness of the being—

* This lady's maiden name was Mary Cole; her father was a butcher at Gloucester.

“ Who had taught her eyes to weep
Their first sad tears, and yet could sleep,”

she listened to the honourable addresses of Joseph Hayne, Esq., of Burderop Park, Wiltshire, having previously broken off all personal communication with the Colonel. Hayne became acquainted with all the facts of our heroine's connexion with Berkeley, yet, after this knowledge, offered her his hand and fortune. She accepted his proffer;—for reasons unknown, he broke the appointment for executing the settlement. Again he applied to her for pardon, and, on that occasion, he uttered this memorable sentence—“ *May God strike me dead, if ever I consent to separate myself from you!*” Yet, after this, he made and broke fresh promises, pretending, or asserting that his friends had locked him up; and ultimately declined the match *in toto*. May the God he invoked judge him mercifully, is the worst we wish him hereafter, and the memory of his conduct be his punishment here. For his breach of promise, Miss Foote brought an action, and recovered 3,000*l.* damages.

And now a word or two of Mr. Hayne.—We are informed this precious youth, about three years since, paid his vows to Miss Bartolozzi, the sister of Madame Vestris, and the object of the peculiar regard of the butterfly Petersham; that he deceived Miss B. as he did our heroine, and ultimately refused to fulfil his engagements, and that the friends of that lady, not being so conscientious as *Job Thornberry*, consented to “hush it up,” for a “good round sum.” Mark! we assert this on information from a source which we *think* we can rely upon, BUT WE WILL NOT VOUCH FOR ITS ACCURACY. A celebrated duellist, indeed the *best* shot in the kingdom, is said to have been the mediator in this delicate transaction; and we mention these circumstances, because we think it behoves the parties themselves to give publicity to the facts.—Would they had done so long since! If the story be as we have related it, its remaining a secret has been the means of much unhappiness to Miss Foote, and the cause of a public exposure, that she can never forget. Had she known any thing to incline her to doubt the honour of Hayne, would she not have acted with more circumspection towards him? even if she had been tempted to listen to proposals at all from such a source—which, with such a knowledge, we certainly think she would not have done.

That Joseph Hayne, Esq. is, as Mr. Scarlett represented him, a great fool, we shall not for a moment attempt to deny; but we fear he is something worse. Can there be a crime more dire than trifling with the feelings of a woman? yet, if report be true, he has done this in more instances than one.

We have now to notice a very general observation, *i. e.* that Miss Foote only feigned an attachment for Hayne. Certainly, at the first view, we are led to think that a gentleman, who was the acknowledged partisan of pugilists, and who spent his hours of meditation with such erudite characters as *Tom Cannon* and *Whiteheaded Bob*, and who prided himself on his speed as a horseman, could have few attractions for the elegant, accomplished, talented Maria: but a little reflection alters the case. It has, as we before observed, been long an opinion that talented women, by an unfortunate fatality, love fools; and, far as folly can go, Hayne was eminently qualified to attract. Besides, Miss Foote's early affections had been blighted; she had been deceived by the being to whom her first feelings of attachment had been devoted, and she felt a void in her heart, that could not perhaps be filled by another object, but might be lightened by another's affection. Hayne professed that affection, offered marriage, riches, and rank; and, reflecting upon her own gloomy prospects, she might have looked upon him as

“Something dear to rest upon,
That paid her for the loss of all.”

It has also been said, in justification of Berkeley and Hayne, that Miss Foote had drunk too deeply of the nectar draught of flattery, to sober down to the dull monotony of mere matrimonial comfort. Those who assert this, know very little of human nature, and nothing at all about the stage. Why, even flattery will at last satiate, and plaudits become dull to the accustomed ear. It is true, in a certain way, an actor or actress, once used to the hand of approbation, might miss the soothing sound, and could not perhaps *pursue their efforts* in the profession without it, because it becomes, from habit, the natural stimulus to scenic exertion; but, retired from the stage, the thing ceases; where no exertion is required, we feel not the loss of a stimulant. Quick, in his retirement at Pentonville, is as happy (if not happier), as he ever was when the applauses of all London nightly awaited his appearance on the boards.

We have, as briefly as possible, stated these circumstances, and noticed the general impressions; and now, ere we proceed to a more pleasing part of our duty, let us examine on

what grounds this man, Berkeley, has broken his faith with a lovely woman, who confided in what she imagined he possessed—honour. Is it his birth? Surely Maria Foote, the daughter of an officer in the army, and of a lady whose relatives are of the greatest respectability, claims as high a rank as the illegitimate Berkeley. Is it his rank? Let us see what that is;—a Colonel in the Militia. What induced such a man as Berkeley to join our military forces at all? vanity, rank vanity. Did he wish to serve his country, the line was open to receive him; but fighting is not the Colonel's *forte*; no, but regimentals were desirable, that he might

“Strut before a wanton ambling nymph;”

so he adopted the safe expedient of obtaining the honorary title, without the danger. What is he besides? an amateur actor, a private player; a creature, who not having the excuse of want, willingly exposes his imbecility on a public stage; a thing that, with the power (as far as worldly dross conveys power), of patronizing the stage, degrades it by ridiculous performances, and actually injures the professors of the art;—for supposing the influence of this amateur soldier and volunteer performer to attract an audience at Cheltenham on one night, (that night being generally appropriated for some particular purpose,) the whole business of the week is injured by the single overflow. We look upon Berkeley as a singular compound of the butterfly and the wasp; he has all the frivolity of the one, with all the venom of the other.

* The M—— of A—— is a coxcomb, but he is a brave one; his dandyism goes no further than his attire; his heart and mind were not framed in St. James's. *He*, under different circumstances gained the affections of a beautiful woman, (and under such circumstances too, as did not perhaps call for retribution,) but he did not desert her to the lonely solitude of bitter reflection and wounded feeling; *he* was a man and a soldier; and, if he was a sinner, was not a pitiful one. Had Colonel Berkeley married Miss Foote, who would have blamed him? has any one a right to impugn his conduct? Are there not a myriad of examples of *peers* leading actresses to the altar? * Surely the illegitimate son of a Butcher's daughter could not deem it a condescension; and, as to the futile objection of her having previously surrendered herself to him, he should have remembered the pledge was his honour; and did not that urge him to it, he might still take her hand with the consoling recollection of

“*My Father did so before me.*”

But all these expectations have vanished, and we sincerely hope Miss Foote may live to enjoy happier hours than could have fallen to her lot, had she been united to either Berkeley or Hayne. We think we may say the voice of the public has exculpated our heroine; but with her parents the case is different; and here we conceive the “many-headed monster” has been unjust. Mrs. Foote has been stigmatized as the supervisor of her daughter's delinquency; but how could she act otherwise? the *fatal step*—the first one of error—was taken unknown to her, and when she discovered it, what could she or even her husband do, but

“Take up this mangled matter at the best?”

They, as well as their daughter, were soothed by Berkeley's promises; he had *them* in his toils. Had they refused to countenance the connexion, he would have made that a plea for not ratifying his solemn compact. Up to the last moment of Berkeley's pretended affection, we can pity but not condemn the unhappy parents; they sought their child's welfare, and merely erred in their course after it. But when Berkeley violated his faith, we indeed consider the father culpable; an officer in his Majesty's army to stand tamely by and see his darling daughter blighted, nay insulted by her seducer; oh! shame upon it! age does not excuse this. But, yet, why should the public affix obloquy to this young lady's unhappy mother? *she* could not seek out the wronger of her child, and demand reparation; *she* had nothing but her tears to help her—she might weep over her child's desertion, but she could not revenge it. Enough of bitterness has been allotted to the unhappy mother of the hapless Maria; there needs not the angry voice of popular clamour to wound a heart already stung beyond the skill of surgery. It is our conviction that, whatever are her errors, she has always

Note. These two asterisks mark the part which Mr. Taunton was leaving out, when reading this document, and interrupted by Mr. Phillips.

felt the warmest affection for her child ; and she may now clasp her to her bosom, and say, in the simple but touching language of the dramatist, "Come to my arms, thrice dear to me, for having been the victim of a *****."

To speak of Miss Foote's professional powers is an easy as well as pleasurable task. Her performances are more remarkable for talent than genius. She is, perhaps, to speak with due impartiality, only a second-rate actress, but she possesses one quality which genius does not always boast of, and which indeed is perhaps the best substitute for genius itself,—this is the power of pleasing by a nameless charm, which it is as easy to feel, as it is impossible to describe. This magnetic power, generally designated by the title of fascination, we find in the possession of many beings in whom we in vain search for the cause of attraction ; it is not very common however in professors of the scenic art. With actors and actresses we generally find a definite something that delights us, but this is not the case with our heroine. View her in *Maria Darlington*, we should say she acts with ease, grace, and spirit ; she sings pleasingly, dances delightfully ; but it is neither of these things, no, nor these things conjoined, that yield us so much delight,—it is the magic she throws over them. We are at a loss for a simile, unless we are allowed to compare it to the effect of the sun on animated nature ; the plants, the flowers, the birds, the lakes, are the same, whether Phœbus gilds them or not ; but it is his power that gives a tone to the whole, and that renders them dear to our perceptions and our feelings. Miss Foote's genteel comedy is peculiar for elegance, but it wants force and humour ; nor are her powers at all adapted to the higher walks of tragedy. She is, in a word, in the theatrical world, what the white rose is in the flower-garden ; she has the sweetness, beauty, and fragrance of the red rose, without its colouring. Miss Foote's powers as a singer are limited ; but in such characters as *Phœbe*, in *Rosina*, she is indeed delightful. Her playful manner of singing the lines

"There's fifty young men have told me fine tales,
And call'd me the fairest she ;"

is the nearest musical assimilation to dialogue we ever heard. In *Alladin* and *Johanna* (*The Steward ; or, Fashion and Feeling*), which are technically termed "breaches parts," Miss Foote blends a happy delicacy with a correct delineation ; and, if we had never seen her in the garb of her own sex, should say we had seldom beheld any being more lovely than she appears in the opposite attire. Indeed, the little notion we personally have formed of angels of the masculine gender, are derived from seeing this lady in male habiliments. In person, Miss Foote is about the middle size, with an oval face, most expressive features, and a *tout ensemble* of extreme innocence ; her hair is light brown, and strays in profusion over a beautifully formed neck ; her figure is exquisite, and her eyes—we have searched Anacreon Moore through, for a hue to describe them by—and take this as the most appropriate,

"Her floating eyes, oh ! they resemble
Blue water-lilies, when the breeze
Is making the waters round them tremble."

FEB. 7th, 1825.—VERITAS has taken much pains to make us acquainted with a piece of intelligence, with which the whole of the fashionable world, long ago, have been familiar. Every body knows that Lady Berkeley's father was a butcher at Gloucester.

The letter upon the delinquencies committed by Kean, the professional actor, and Lothario, the private player, is well written, although we cannot insert it, for reasons which must be manifest to the writer upon a moment's reflection.

FEB. 14th, 1825.—A pamphlet has just been published, under the title of "Facts" illustrative of the evidence on the late "trial of Foote v. Hayne," which appears evidently to be written for the purpose of exculpating the conduct of Colonel Berkeley towards Miss Foote. We have neither time nor inclination, this week, to make any remarks upon this anonymous production, and shall only give the observations thereon which appeared in the *Times* of Friday last :—"A pamphlet has been sent to us, the object of which is to destroy the effect of the verdict in the late case of "Miss Foote v. Hayne." It is a pitiful attempt to heap further injury on a woman already too much injured. We fear, from a sort of knowledge and details exhibited in this paltry brochure, that Colonel Berkeley will be suspected of having instigated the work, or of having supplied the writer with materials ; but we trust, and indeed must believe, that Colonel Berkeley cannot have descended to so low a proceeding ; this would be worse even than the apology to Mr. Claggett.

FEB. 21st, 1825.—In another part of our paper will be found a letter from our Correspondent Homo, on the the subject of a pamphlet which has lately been sent forth to the world, either by Colonel Berkeley himself, or by some injudicious friend of his, for the avowed purpose of vindicating the *gallant* Colonel's conduct towards that persecuted and injured female, Miss Foote. We did hope, that the advocates and supporters of Berkeley, would have had the good sense to have suffered this painful and humiliating affair gradually to die away, without again stirring up a subject, which, viewed in all its various bearings, and even upon the showing of this anonymous scribbler, reflects disgrace and dishonour upon the stained and spotted character of the principal actor in this drama of "Fashionable Life." We have but a few more words to say upon this painful subject, when we shall drop it for ever—unless Colonel Berkeley's injudicious partisans again venture to "make a book," for the base purpose of heaping *more* anonymous abuse upon the head of that female, who equally excites our pity and commiseration. If these "Facts," as they are called, had been promulgated to the world, as the avowed production of Colonel Berkeley, instead of the writer (whoever he may be) sheltering himself under the questionable garb of shame-faced mysteriousness, it would have become imperative, on the part of Miss Foote, to rebut the calumnies it contains, and free herself from the slanderous accusations of this scribbler in the dark: but, until it is so acknowledged, we hope Miss Foote will have the good sense to treat this *eighteen-penny pamphlet* with that contemptuous disdain which it so justly deserves, and suffer her distressing case to rest upon its own merits, and upon that evidence, which was so satisfactorily conclusive, adduced before a Jury composed of twelve honest men. That the statements contained in this pamphlet, *if* true, we confess to be seriously injurious to the fame and reputation of this accomplished actress: But, why, we would ask, should the victim of seduction be again dragged forth before the public, to reply to the calumnious insinuations of an unknown assassin in the dark, who, from his malignant and venomous hiding-place, sneaks into the world under the covert of his bookseller? If what he states *be* the truth, why not come openly and manfully into the field? Why have recourse to his favourite tactic of *Bushfighting*?—Why dart forth his empoisoned arrows in the dark at a defenceless female, who is, even now, suffering from the envenomed shafts of her dishonourable seducer? who, instead of being her protector, as the father of the children she has borne him, now glories in the havoc he has made, and has become her greatest curse! This notable scribbler thus concludes his pamphlet:—

"It is presumed, therefore, that the reader, on persuing the whole, will be at once convinced of the fallacy of *ex-parte* opinion, and the conclusion to which he must inevitably come is, that the plaintiff must be suspected, though pitied—the mother and her testimony totally ridiculed—the father universally despised—Colonel Berkeley by no means to be condemned—and Mr. Hayne the greatest goose among all the fashionable cacklers of England's metropolis."

"Colonel Berkeley by no means to be condemned!" Who first seduced the lovely and too confiding Maria from the path of virtue?—Who poured into her weak susceptible heart the "flattering stream of love"—inspired her with a passion of unbounded affection—triumphed over the weakness of her sex—and then deserted her to all the pangs of damning remorse?

We shall conclude our remarks upon this painfully interesting subject with the following extract from the *English Gentleman* of Sunday last:—

"If the new facts lately published respecting Miss Foote's trial are correct, which we doubt, then is the attempt to depreciate the conduct of this young female (duped and deceived on all sides; by Papa and Mamma; by the Colonel and Pea Green) at this moment, as unworthy and base as can well be imagined. The publication now can only proceed from malice, and if every iota of the writer's insinuations were true, still the attempt is heartless, is ungentlemanly, is uncalled for, and disgraceful to its anonymous writer. Indeed, what does his attempt establish? That Miss Foote has, from her infancy, had her fortune in her pretty face, and that Papa and Mamma have made the most of it."

FEBRUARY 28th, 1825. The Berkeley Hunt Affair.—In giving a description of this very ludicrously "got up," affair to those of our readers who may feel an interest in such matters, we would wish to abstain from all personal remarks, either towards the "Great Lion of the night," Colonel Berkeley, or those of his visitors, who honoured him with their support by attending the Berkeley Hunt Ball, at the Theatre, on Thursday last; but we feel ourselves called upon, in the performance of our duties to that public by whom we are so highly pa-

tronized, to give those particulars connected with the "Affair" which transpired on that day, impartially detailed, with that strict regard to truth by which we hope our *Journal* will ever be distinguished. Every possible exertion had been made, for a long time previous, by the friends of Colonel Berkeley, to give all the *eclat* and effect to this annual "Affair," in order to attempt proving to the world, that recent circumstances which have occurred, instead of lessening the Great Lion in the estimation of his Cheltenham supporters, had only tended to raise his character still higher in *their* opinion, and to justly entitle him to their unqualified approbation. About four o'clock on Thursday afternoon, symptoms of his approach manifested themselves by the appearance of two or three hundred dirty fellows hallooing and shouting through the High-street, evidently well primed for the occasion, who, we have no doubt, would have shouted just as loud, and with as much sincerity of feeling, had they been engaged upon the same terms to have announced the approach of *Jack K*—, or any other equally respectable personage. In the cavalcade, amongst which there certainly were *some* respectable individuals, we observed two fistic champions, Messrs. *Cannon* and *White-headed Bob*, (as he is called by the "Fancy,") and Mr. *Pea Green Hayne* (as he was dubbed by Colonel Berkeley). In the Colonel's carriage, which was in the rear of the *procession*, we observed a party of ladies. We certainly congratulate the Colonel upon his improved taste, who, instead, as was his custom upon former occasions of this nature, of complimenting the good folks of Cheltenham, by driving his bull dog, and his bull dog only, in his own carriage, gallantly escorting those ladies whose character and respectable demeanor add lustre to their rank. Notwithstanding the waving of sundry dirty pocket handkerchiefs, the throwing up of half a dozen greasy caps into the air, and the shouting of a few score of idle apprentices, Berkeley must not imagine that by such manifestations of approbation, he may consider himself secure in the estimation of the *respectable* portion of the inhabitants of this town, who looked upon the burlesqued pageant merely as an *attempt* to gain his lost popularity, and to recover that respect, to which, at one time, perhaps he was justly entitled.

Although there were observed many respectable families at the Ball in the evening, still there was *something* wanting to give that pleasing satisfaction to those who attended it, which had been experienced on former occasions. Whether that *ennui* which was so evidently felt by the thin list of fashionables throughout the evening, was occasioned by the reflection that, by their presence, they were individually supporting and applauding the conduct of an adulterer, we will not pretend to say; but we are convinced, when they give this subject one moment's deliberate consideration, they will feel, as mothers, that they have been supporting the pretensions of a man, in whose society the virtue of their daughters would be placed in the most imminent danger. We have it from the very best authority, that many families of the highest rank and respectability in this neighbourhood, who had received tickets for that evening, declined the invitation—for what reason is best known to themselves. We are confident, that from the decreased number of fashionable visitants on this occasion, to what it had heretofore been, that it will clearly point out to Colonel Berkeley, that whatever may be the opinion of the profligate, the giddy, and the *dependants*, what are the predominant feelings of the better-thinking and more discerning part of the community.

We are assured by a correspondent, "that upwards of 100 ladies of the leading fashionables at this place refused to accept of tickets for the Berkeley Hunt Ball, and though several heads of families were urged by personal applications, with an importunity not very delicate, peremptorily refused the invitation." We understand that the number of persons who attended this "affair" did not amount to one hundred and forty—two thirds of whom were gentlemen.—"Oh! what a falling off was there." "Alas! Poor Yorick!"—Notwithstanding the above remarks, we consider it our duty, as public journalists, to subjoin a list of the ladies present, as far as we have been able to obtain, upon the best authority:—

Ladies Caroline and Mary Berkeley, Mrs. Grantley Berkeley; Mrs. Williams, Mrs. Benfield, Mrs. Lind, Mrs. Crampton, Mrs. and Misses Chester, Mrs. and Miss Minster, Mrs. Lee and Misses Seatree, the Misses Pemberton, the Misses Sargent, Mrs. Durell, Mrs. and Miss Watt, Mrs. Prest, Mrs. Newell, Miss Morris, Lady Pynn, Mrs. Darcey, Miss Cuppage, the Misses Birche, Mrs. Crowder, Miss Morley, Mrs. Cregoe and Miss Roberts, Mrs. and Miss Irving, Miss Rawlinson, Mrs. Payn, Mrs. Cobham, Miss Bird, Mrs. Prescod, Mrs. Brice Jackson, Mrs. and Miss Bennet, and Mrs. and Miss Young.

A humorous song was sung at the supper table, descriptive of the eagerness of the ladies to procure tickets—(*query, to the Room or the Gallery*); at any rate, we consider that this song was paying no great compliment to those ladies that *were* present. We have omitted to give the names of the gentlemen who attended the Berkeley Hunt Ball, in consequence of our correspondent not being able to procure a correct list in time for insertion.

BERKELEY HUNT AFFAIR.—THE PUFF DIRECT.

March 14, 1825.—We extract the following *advertisement* from the *Times* of Saturday last:—Who, we would ask, but ONE MAN, would have taken all this trouble? Who that ONE MAN is, we leave to the sagacity of our readers. The thing speaks for itself:—

“ [ADVERTISEMENT].—The report that any ladies refused tickets for the “Berkeley Hunt Ball” is wholly without foundation; for on no occasion has it been more numerous or fashionably attended.”

In order to puff off the “affair” in the best possible manner, the following paragraphs appeared in the *Courier* on Friday last, and in the *Morning Post* on Saturday, and were, we have no doubt, amply paid for:—

“The report mentioned in some of the Papers that several ladies returned their tickets for the Berkeley Hunt Ball, is wholly without foundation; for on no occasion has this annual festivity been more numerous or more fashionably attended.”—*Morning Post*.

“We copied a paragraph from a morning paper of Tuesday, mentioning that at the last Berkeley Annual Hunt Ball, “one hundred ladies were said to have refused tickets.”—We are now requested to state, that “on no occasion was the ball more fashionably or more numerous attended.”—*Courier*.

We very much fear that Colonel Berkeley is ill-advised. As an old sportsman, we are somewhat surprised that he forgets the old proverb—“Look before you leap.” We presume this is a postscript to the letter to Mr. Clagget. Perhaps we may find time to recur to this “affair” again.

Mr. Taunton.—That is my case, my Lord.

 REPLY.

Mr. C. PHILLIPS. May it please your Lordship—Gentlemen of the Jury; it becomes now my arduous duty, under all the circumstances of this case, feeling exhaustion, which, I am sure, every one of you must feel, and which my state of health does not make me feel the less; I say it becomes my duty to reply on the nature of this case, as well upon what the witnesses have detailed, as upon the two hours and a half’s speech of the learned counsel for the defendants. Gentlemen, I thought badly of this case in the beginning. I think much worse of it now: and I declare most solemnly to God, were I in Colonel Berkeley’s situation, and did I possess one tithe part of the enormous fortune which he possesses, I would fling half of it to the winds, rather than venture upon the base, disgusting, unfeeling, and unnatural defence which he has this day adopted. He comes into this Court to answer for an outrage as brutal as it was diabolical. He says, he was provoked to its commission. He says, he was provoked by calumnies upon his parents; and in the face of day—in the face of the public, he puts each of these calumnies in evidence, that they may be trumpeted again through every newspaper in the kingdom. Such is his regard for his venerable parent, that he has every calumny that ever was cast upon her, read this day—for ca-

lumnies Mr. Taunton declares them to be, and he knows whether they are, or not, for he seems to be in the secrets of the family. He has alluded to the legitimacy of Colonel Berkeley, which I did not touch upon—which I never hinted at—which I abstained from religiously and righteously. He has alluded to Colonel Berkeley's mother living before marriage with his father—he has alluded to the seduction of Miss Foote—he has alluded to something about adulterers—who it means I know not; but every one of these has been put in evidence to-day by the filial affection of this virtuous defendant. No matter whom it pains—no matter when to-morrow's newspapers go forth, that his unfortunate mother, whom, God knows, I pity on account of the defence set up this day, reads over again every tittle of these suggestions, and reads that they were made the subject of a public trial in the House of Lords—reads that she was acquitted, because no decision was come to, which actually appears by the name of the defendant upon this record, being not Earl Berkeley, but William Fitzhardinge Berkeley. Good God! in what state must she be when she sees they were given in evidence, untruly to persuade you that they were the cause of Colonel Berkeley's assailing this man. Untruly, I say, Gentlemen. I declare the whole defence is falsehood upon this subject. These paragraphs upon his mother's conduct did not provoke him to the acts of outrage he committed. It is plain they were not the cause, because this outrage was not committed until five weeks after the insertion of the last of them: therefore, they are to-day put in to save his pocket. Therefore they are put in to show, in the phrase of Mr. Taunton, that he acted upon sudden irritation. We will see by and by how sudden his irritation was. But more than that, he does not scruple to rake up the transactions which have given origin to these paragraphs: some unfortunate trial in which the name of Miss Foote has been mentioned, and he does not care, if it save him one shilling in damages, that the scandal of that case should be trumpeted again to all the country. He does not care to show with what impunity the mother's heart shall be broken—he does not care how every modest female in the land shall be insulted—he does not care to tell every father of a family how triumphantly the seducer acts with impunity.

Gentlemen! Is that a defence for a man of honour to make? If any one of you had thought that insults goaded you into an outrage such as this—if any one of you had been made (as we have heard from the evidence Colonel Berkeley was) the common topic of public conversation by the utter destruction of an unfortunate and confiding girl, would you afterwards unbury all the corruption to which that case gave birth, and would you clothe yourself in it with all its ignominy and disgrace? Would you, if the conduct of your mother had been unfortunately made the topic of public discussion—would you, if you were delicate or affectionate children, to save your own pockets, perhaps £100, before the public drag the conduct of that

unhappy parent, and make a talk for the rabble of every town in England, and make her so, that some few pence might be saved out of the enormous coffers which this affectionate son has inherited. Gentlemen, I did not provoke these topics—I did not introduce these points; and I am convinced of this, having, I think, as good filial and paternal affections as Colonel Berkeley, that the idea of their discussion wrings my heart more than it does his, because it was his choice to bring these things before you, and put it to you whether you would not believe he acted with some provocation. But Mr. Taunton, in the most extraordinary speech that it has ever been my misfortune to hear in a Court of Justice, seems to me as if he gloried in this breach of the law. I have his expressions, and by and by it will be my duty to repeat them, lest upon the authority of his high precept some of the unfortunate populace who now hear us, should go forth from this Court, and fancy that upon any imaginary provocation they were qualified to commit murder.

Gentlemen! he began his speech by telling you that my case was the result of ardent imagination. I did comment upon the brutality of this case, as such brutality deserves; but did I omit stating a single fact to you? Did not I prove every fact I stated? Were they not proved by respectable and credible witnesses? Did not my friends retire from the cross-examination of them? Was not the poor servant maid confirmed by Miss Morris? Did they venture to cross-examine a single witness that I produced? And then Mr. Taunton, shamelessly, in the face of this Court, says, the whole case was the result of ardent imagination. I should express my astonishment if, after that observation, that which followed did not create tenfold more horror. He says, in plain English—of plain English I don't know much: what I do know convinces me that the English are an honourable, brave, and generous people; but he says—he, your own countryman, says, this gentleman merely received, in plain English, a sound horsewhipping, and that was the extent of it. Was it? Was it? Is it a plain English custom for two gentlemen to go into a tradesman's shop, and demand deliberately the heaviest horsewhip he can furnish, and when they are not content with what he has, to go elsewhere, and get a heavier? and is it plain English, for a third to join them, and for the three to combine in the most dastardly manner I ever heard of, and to beat an unarmed man almost to death? Is that plain English? God forbid that the authority even of a King's Counsel should ever make it English. But my learned friend says, “you ought to put Lord Sussex Lennox and Mr. Hammond out of this transaction. It would be most convenient, in the five counsel whom Colonel Berkeley has employed on this occasion, to put the other two out of the transaction. But, Gentlemen, it is one thing, their advocates saying so: it is another thing your doing so. Did they not buy the horsewhip, and weigh it in their hands to find the heaviest? Did they not try every encouragement to Colonel Berkeley while he

was committing this outrage? Did they not employ a stratagem—a base, false, most unnatural and unrighteous stratagem, to get into the house? What! did Lord Sussex Lennox (the brother of the present Duke of Richmond, and the son of the late Duke)—one of our nobility, dare to tell a gentleman's servant that he had a letter for her master, when he knew it was an untruth? Good God! is this to be justified? and can it be true that he said he had a letter for Mr. Judge, when he knew it was a falsehood? Did he not trepan the servant? Did he not find by that means a passage for the brutal perpetrator of this outrage? And when they had gained admittance, did they not all three together lock themselves in the room, where this man was alone, to prevent his receiving the slightest help, while this brutal atrocity was committed? You are, upon your oaths, to leave them out of the question. That is what Mr. Taunton tells you. I tell you what—if you can go the whole length of that, your own lives are not worth one pin's purchase, nor the life of any man who is in the power of a brutal ruffian, that chooses to imagine he has been offended. But, says my friend, could any man with the affections of a son endure these paragraphs? Gentlemen, I am sorry they were written. I am sorry, too, that the conduct of Lady Berkeley's son has called them again before the public. But the affections of a son slumbered for a long time in Colonel Berkeley's breast, because there were at least three weeks between the only paragraph reflecting on his mother, and the perpetration of this dreadful outrage. He was carrying his wounded affections in his breast, and it was not until his bull-dog and himself were noticed together, that he ever thought of making this attack. That seems to have operated upon him. But "Mr. Phillips was wrong in calling his client a gentleman!" God knows who would be a gentleman, if we were to judge of them by their conduct. But I went further than that, I gave to Mr. Taunton every iota of respectability he could claim for his clients. God knows, there is no such great respectability in this transaction. Oh, but, says Mr. Taunton, "Mr. Judge forgot his ancestors—if *he* has any." Colonel Berkeley, remember, *has*. Did he remember the long string of illustrious ancestors from whom he inherited that same Berkeley Castle? Did he recollect the train of peers whose portraits no doubt adorn that stately mansion? Did he recollect the rank he holds in this civilized community? Did he recollect any one thing he ought to have recollected, either as a nobleman, a gentleman, or a magistrate? for I am sorry to say there are all these characters in this transaction. Out of this transaction I do not mean to speak of him; and I heartily regret the part he has taken in it; because I never can see, without sorrow and emotion, any man of education so degrade himself as I think he certainly has done, in this transaction. But Colonel Berkeley's mother was in the decline of life—he thought

of that, and that privileged him. Is there no other mother in the community, in the decline of life, of whom Colonel Berkeley ought to think? Do you recollect those papers and those transactions in which originate the foundation of these paragraphs? Without having my "ardent imagination," as my learned friend calls it, cannot his memory turn him to some broken-hearted parent, weeping now over the blight of her best hopes, and every fond affection she might once have cherished? I see this excites the ridicule of one of my learned friends, who is a father, and who, I believe, has all those tender feelings which such an infliction would blast; but his client has not. I wonder, is there no other parent in the creation on whom Colonel Berkeley thought, when he read these paragraphs, that told him what his own mother was, and what took place publicly before an august assembly? Was there not another happy home, with all its joys—with all its blessings around it, which is now for ever a scene of agony, desolation and woe, by his instrumentality? I will be forgiven if I do not give him credit for the fine feelings which his Counsel have attributed to him,—but, says my learned friend, "what right had Mr. Judge to allude to the transaction with Miss Foote? What had he to do with it? What had he to say to it?" Good God! Is there any man who has not to say to it? Have not you to say to it? Have not I to say to it? Has not every man to say to it? who looks upon his child as the joy of his manhood, and expects she will be the prop of his age! When he has bred her up in religion and virtue, and expects to see her perhaps the source of a long line of respectable posterity, has he not to say to it, when he reads of such a transaction as this? Was Mr. Judge the cause of that exposure? Did he drag Colonel Berkeley from retirement? Was he not a public subject, on which other editors as well as Mr. Judge have written, and who you hear from the witnesses in the box, was a topic of public conversation? Was it not buzzed about in the community? Was it not the topic of every man's conversation? Was it not the subject of every virtuous man's just indignation? Who brought it forward? Was not Colonel Berkeley the man? This is the only part which Mr. Taunton calls an atrocious libel, and I ask you, whether there is a single man whose blood would not boil at such a transaction, or who could find terms too strong for such an occasion. But, says Mr. Taunton, there is an imputation upon Colonel Berkeley's courage; and it is said in one of these paragraphs, "the Colonel don't fight." Now, I don't impute to him the want of any such quality as courage; but I think he has taken to-day the strongest mode I ever heard of, to disprove such a quality. He has confessed to you that he has not gone alone, which I think would have been the course of a gallant man—that he did not go unarmed, which I think also is not the way a gallant man meets an unarmed antagonist—but with a heavy horsewhip, and with two aides-de-camp, by a base stratagem, he

gets admission into the house of a man who was busied about his lawful occupations; and when he could not resist—when alone and opposed to three, he was crying “Help!” and “Murder!” he beats him, unresisting, almost to death. Now, I don’t pause to reiterate any single assertion of that paragraph, with respect to the Colonel’s courage. It is not my place, and I am sure I will not doubt it; but I must say this, that believing, as I do, he is, as his Counsel has stated, a man of courage, he must have done the greatest violence to his feelings as a man of chivalry and gallantry, to attack an unarmed man, under circumstances in which no resistance could be availing, and when he could bring himself, after he saw the blood streaming from his victim, to strike him repeatedly again, and all the blows aimed at his head and eyes. Gentlemen, my friend says that it is most false and odious to declare that Colonel Berkeley is not legitimate. I hope it is so—I have no objection, I am sure, to his enjoying as much prosperity as he can possibly wish himself. My learned friend tells you that he is in the secret, and before two or three months go over our heads, we shall see Colonel Berkeley claiming his peerage. I tell you what I would advise him to do when he claims his peerage: I advise him not to go into the House of Lords with a horsewhip, and not to tell the Lord Chancellor, for fear he should not agree with the King’s Counsel, “I took two persons with me to a man’s house, and I instructed one of them to knock at the door, and say he had business with that man, when he had not, and by that means I got entrance to the house, and with the assistance of my two confederates I beat him almost to death; therefore I think I am qualified to be a peer of the realm.” (*Loud and reiterated laughter.*) My learned friend has been talking about Dukes and Lords being horsewhipped. I don’t know whether the instances he has named are true or not. In some of them he has given us the names; in others he has not; but we will see now whether these are parallel cases, for he has given them to us in answer to the challenge I gave him to produce an instance like this. My learned friend says, “Is there in any paper a redeeming passage?” Is there not in every one of them a redeeming passage? Look at one of them; it was a commentary upon the seduction of an amiable and a virtuous girl. Is such a matter to pass by in public—are we to hear evidence given of it in a Court of Justice—is it to become the common town talk—and is the editor of a paper to hold his tongue on peril of his life, or pass it by with some ambiguous panegyric on the adulterer and the seducer?—If conduct such as that is not to be commented upon, I know not where is the liberty of the press. Did Mr. Judge provoke the inquiry?—No. The letters of Colonel Berkeley himself were read, and Miss Foote’s answers were published. How did they get public?—Colonel Berkeley had the answers to the letters, and he must have published them. I think it

was by his means that those letters got into the press, and if he applied to the press to get them inserted, he has no right to complain of comments on the other side of the question. How could the letters go forth unless he opened his bureau, and published them?—It is impossible. The girl would not expose herself, and therefore you have inference amounting to demonstration, that he published them. How, therefore, can that be any mitigation of this brutal outrage? But, says Mr. Taunton, what was it to Mr. Judge? I say, Gentlemen, how could the vices of public men in high life, like Colonel Berkeley, become public, if it were not for the press? and if they are known, of course they will be the subject of reproachful comment. This was a private vice. Colonel Berkeley made it a public vice. It became public by his instrumentality, and the press ought to have been crushed if it had not announced it in indignation. “But,” says Mr. Taunton, in a strain that I never yet heard, even from the public prosecutor in office, “this press, now that we are teaching people to read, is a most mischievous engine. In this day of civilization, when every man is taught to read, forsooth,”—as if it were a crime for a man to have the means of knowledge within his power,—“it is highly improper that the press should presume to talk of the private vices of people in lofty station.” God forbid the press should not hold them up to public indignation, and that it should do so even at the expense of the sensitive feelings of any man in high life. But, says he, there is an allusion to Mr. Kean, the actor, and my learned friend sneered a little, that it was not much matter about him. He is hinted at as a vicious man, but my friend dare not say any thing for him, because he is a poor man: but the heir to the Berkeley Family and the inheritor of its estates, you are told by the learned King’s Counsel, must not have his private vices exposed. But it was all fair to expose poor Mr. Kean, who has already paid dearly the penalty of a crime which Colonel Berkeley has also been guilty of. Gentlemen, undoubtedly editors are answerable for what they publish, but to what? Are they not answerable to the laws of the land? Is it to the bludgeon of any assailant that they are answerable? Do you wish to set that principle afloat? Do you wish to give any man who fancies himself provoked, or who is provoked, a privilege to murder the aggressor? Will Mr. Taunton persuade you to put a bludgeon into the hand, or a pistol into the pocket of any man who is provoked, or who may imagine he is provoked, for it is the same thing, and sanction the use of either of those weapons? For if you are to reduce your verdict to a small sum, because the assault was the consequence of provocation, you say in this instance, that any rich man has only to fancy himself offended, and he may almost immediately put to death the man who he thinks has offended him. Gentlemen, you will take the question of provocation right. The law will punish it. The laws against the press are severe enough, God knows; and Colonel Berkeley, if he were a man of fifty times the birth and fortune he

is, has no right to usurp the prerogative of the laws, and to take the administration of justice, or of vengeance, as in this case it was, into his own hands.

But, says my learned friend, "all this was done in the irritation of the moment, after his mother had been slandered." That is not true, and you will see there is not one word of truth in it; because the two last papers that are put in are dated, the one on the 28th of February, and the other on the 14th of March. Now it is remarkable—I beg of you to bear it in mind—it is most remarkable, that in neither of those two papers is there a single syllable said about his family. There is an allusion, and a most justifiable one, to the trial of "Foote v. Hayne," and to the disclosures that were made on that occasion; but not one word is there about Colonel Berkeley's family; and therefore, any irritation which arose in his mind from the paragraphs of the 28th of February and the 14th of March, was not on account of allusions to his family. Now let us see what those paragraphs were, and I put it to you not only as men, but as gentlemen, whether those paragraphs are not what you would have written yourselves, and acted upon, under the same circumstances. Observe the paragraph of the 28th of February. That could not provoke him to irritation on the moment. Then there is another on the 14th of March, and we will see whether any plea of sudden irritation can be sustained as to that. What are these two paragraphs? It seems that Colonel Berkeley, in the plenitude of his fashionable power, has established a hunt, and that hunt gives an annual ball, to which ball it has hitherto been the practice of the respectable ladies of Cheltenham to go. Between the ball in the previous year and the last ball, in the month of February, the trial of "Foote v. Hayne" came on; and in the course of that trial, disclosures were made, which the newspapers put in. I dare say there is not a father among you who has not read the horrible details of that case. The editor of a newspaper saw the ball advertised. It was expected, as usual, that the modest ladies of Cheltenham should resort to it; and he very naturally said to himself, "It is impossible. It is impossible any mother can go herself. It is impossible for any mother to countenance the disclosures that took place on that trial." Now I ask you, if any of you had brought your wife or daughter to that ball under these circumstances, what would you be telling your daughter? Would it not be saying this to her, in plain and direct terms, "You have read what every body in the land has read—the details of this dreadful tale of seduction. The seducer gives a public ball to-morrow night. Come, you, my child, with me to this ball, and see your parent teach you there is no impropriety in associating with the seducer!" Would not Mr. Judge have neglected his duty if he had not said, when the fact warranted it, that the ball was not well attended? I say it was not well attended. Mr. Taunton says it was. Did he attempt to

prove it? Did he dare to call a witness to show it? I see the master of the ceremonies, Mr. Marshall, standing there. [Here the learned counsel pointed to Mr. Marshall, the master of the ceremonies at Cheltenham, who was standing up in a conspicuous part of the court.] He could have told us whether the ball was well attended or not. Mr. Taunton thought fit to say, I presume from his instructions, that the ball was well attended. Over and over again, he said it. Did he dare to ask the person who was most competent of giving information on the subject? No; and he knows as well as possible, what is the fact, namely, that what this newspaper says is true.

But then, Gentlemen, there is some evidence resorted to on the other side; and one among other witnesses that are called, is Mr. Griffith. You know Mr. Griffith. You remember him. You must recollect the figure he cut after he was asked to tell you whether or not there was an indictment over his head? which, no doubt, will be followed by severe punishment from the Court of King's Bench. Well, then, he is brought to say, that Mr. Judge said on one occasion, "I think I am a match for Colonel Berkeley." Now he is not a match for Colonel Berkeley; and if he were, and he made use of such language, (which I very much doubt,) it was an exceedingly foolish observation. But if he were, Gentlemen, it does not follow that he was a match for three. He had little notion that a gallant soldier would have got two people to assist him, and beat him almost to a mummy. He was not a match for the Colonel and his two associates at the same time. Really they thought he was a lion in a cage, for *three* to be let loose at him at once. If Mr. Judge had been born in the same country as the lion that was exhibited at Warwick the other day, perhaps he would have done as much mischief as he did. However, his being a match for one, does not show that he was a match for three.

Mr. CAMPBELL.—If you mean "Wallace," I am very proud of being of the same country. Don't spare the observation.

Mr. PHILLIPS.—Then I think the lion had much better treatment than Mr. Judge received, because he was baited by them separately, and he had only TWO BRUTES let loose at him at once. (*Applause.*) With respect to my learned friend, Mr. Campbell, and "WALLACE," and the country that gave them birth, I can only say, that as the one has done honour to his country by his noble courage, the other has reflected credit on it by his learning and abilities.

Mr. CAMPBELL.—Thank you.

Mr. PHILLIPS.—But then my learned friend, Mr. Taunton, goes on to answer my challenge, when I said I would defy him to produce a parallel case. He says that horsewhipping persons is quite a common occurrence. He tells you that Mr. Windham horsewhipped a gentleman; he tells you that a noble officer horsewhipped a gentleman, supposing his naval dignity was insulted; and I say, as he says, it was wrong to horsewhip Mr. James. What matter, however, (according to my

learned friend's doctrine,) is it, whether it was right or wrong, if he fancied there was provocation, and it was done? Then he says, a noble Duke—the Duke of Bedford, was horsewhipped, and he told you an entertaining story out of English history about it. Is there a single one of the cases he has mentioned that is a parallel case? Did he venture to tell you that these assailants ever took two other persons to assist them—to lock the door of a man's private room, and to secure the fire-weapons?

Mr. TAUNTON.—That is not in evidence.

Mr. C. PHILLIPS.—Well, come; is it not likely that was what was doing in the room, when you find that three were attacking one? You saw that my learned friend went back even to the reign of George II. He ransacked his *Black Letter*. He told you George the Second was a German, and did not understand English, and he passed off a joke to you about the Duke of Bedford and a *drubbing*. But, in that instance, did *three* gentlemen go to the house of another to horsewhip him? Did they swindle themselves into his house, by one of them going first, on pretence of delivering a letter? Did they wait until they found that no one but women were in the house? Did they then take care to ascertain that the man to be attacked was unarmed? No, Gentlemen, my learned friend, with all his ingenuity and jocularly, cannot produce a parallel case. But if you wanted any thing to cap the climax, do you not find, that a respectable widow and her daughter were living in that very house, whom Colonel Berkeley was in the habit of visiting? Good God! what kind of a man is this Colonel Berkeley?—An officer!—A magistrate!—A gentleman!—Is it HE who makes the house of two defenceless women, the scene of outrage and bloodshed? Ought not the very circumstance of two respectable women living there, with whom he was intimate, (if he had a regard for women, or respected their delicacy,) to have held his hand before he committed this brutal profanation? But, no; he cared not for the delicacy of women, or the morality of men, so long as he glutted his brutal revenge.

Now, Gentlemen, I come (and shortly shall I remark upon it) to the evidence which my learned friend, Mr. Taunton, has produced. I think I may throw almost all of it out of the case, except that of Davis. We shall see presently what his evidence is, and you will judge whether you ought to believe it or not;—and if you *do* believe it, whether it can afford a mitigation for Colonel Berkeley's conduct on this occasion. That is a distinct topic to which I shall address myself, and with reference to which, I shall beg the support of your minds in the observations I shall offer.

Gentlemen, the first witness called was Mr. Whitehead; and it was endeavoured to prove through him, that Mr. Judge had some selfish motive, in the pursuance of which, he disregarded advice and remonstrance. What does Mr. Whitehead say?—And his answer is

most material in more points of view than one. Mr. Judge said, "Colonel Berkeley is undoubtedly a man of fascinating manners. His vices are therefore the more dangerous, and I think it my duty to combat and expose them." That, Gentlemen, was a laudable and honourable object on the part of Mr. Judge. Every father of a family must feel doubly indebted to him. "Was there any thing said against the circle of persons among whom Colonel Berkeley moved, and amongst whom Mr. Judge's paper was read, for the purpose of slandering them?"—"No," says Mr. Whitehead, "not one word of the kind. He only spoke of Colonel Berkeley's vices, which he considered it his duty to reprobate." I asked Mr. Whitehead, "Pray, Sir, was not Colonel Berkeley, at that time, a public topic of conversation?"—"Yes, he was." Every body spoke of him. He was the subject of common conversation every where. Though he was not made a public topic of remark by Mr. Judge, he made himself a public topic of conversation. He exhibited himself for ten years, six times a year, on the public stage at Cheltenham. He was a public performer, and combined with that, his various vices were raked up in consequence of a breach of faith with a woman whom he had seduced, which was disclosed upon a public trial in an open Court of Justice. He then became a subject of public conversation, and not until then was there a single line in Mr. Judge's paper about him. Therefore Mr. Judge did not drag him from retirement. He made himself "fair game" for every man, and who could be blamed for speaking of him? He has not produced a single line in any of Mr. Judge's papers reflecting on him or his conduct, before the horrible disclosures made on the trial of "*Foote v. Hayne*." If, then, Colonel Berkeley will make himself a public topic of conversation, and will not conceal his fashionable levities and vices, he must take the consequences. He cannot expect to come into your house or my house to-morrow, or to be admitted into the house of any moral man. See the Attorney-General's speech in that most lamentable and horrible of all cases. See the language of that honourable gentleman with respect to the subject of this trial. Will you suffer Colonel Berkeley to say to you, before your wife and your daughter, "you are a ruffian, and I will horsewhip you, if you don't allow me the opportunity of seducing them?" Did Mr. Judge say one syllable until after that public trial took place? No; and if Colonel Berkeley had not made himself a public topic for every body's remark, from that day to this, Mr. Judge would have taken no notice of him in his paper. Gentlemen, the thing is evidence of itself. Did he ever mention in his paper the name of Mr. Hammond, or Lord Sussex Lennox? No, because they were not public characters. They lived in private life, and until this unfortunate day, they never distinguished themselves in any disgraceful transaction, as I believe. Mr. Judge never said a word about them; and am I not therefore warranted in saying, that he would not have taken notice of

Colonel Berkeley, unless he had made himself conspicuous? Colonel Berkeley must know, that if he made himself food for the public press, the public press would mention him. Then, Gentlemen, Mr. Hughes is called; and it was observed by Mr. Taunton, (but the remark failed him in proof,) that Mr. Hughes was so indignant at the conduct of Mr. Judge that he quitted the paper. Let us see the circumstances attending Mr. Hughes: he came to the paper without a single shilling, and he quitted it with two hundred pounds. He says he saw some typographical errors in the paper, and after a great deal to do, he told his Lordship, that he found fault with the critique upon Colonel Berkeley's performance, and then he was so indignant, that he never went into Mr. Judge's office again. "My indignation prompted me to go so far as to retire from this newspaper, with Two Hundred Pounds in my pocket, though I did not bring a shilling to it!" (*Laughter.*) This is Mr. Hughes; the moral, virtuous Mr. Hughes; the price of whose indignation was exactly Two Hundred Pounds! (*Laughter.*)

I now come, Gentlemen, to the testimony of Davis, and I beg your most particular attention to that man's evidence. However, before I come to that, I must observe on all the papers that have been produced. They produce five, I believe; and out of the five, there are two in which the articles are copied from other papers. Now I am told, it is considered by my learned friends, that makes no difference. I think it makes a great deal of difference; and I will tell you why. It shows you as clear as daylight that Mr. Judge (if even we had not the evidence of Mr. Whitehead) was only doing what all other editors of newspapers did. This subject was written on by almost every editor in England. There is one of the articles that have been read, which was copied from the "Bath Herald," and you have another article from "Oxberry's Dramatic Biography;" and except in those and in one little paragraph, under the head of "Fashionable Chit Chat," there is not the slightest allusion to Colonel Berkeley's family in any of these papers. I say there is not a single sentence touching the birth of Colonel Berkeley, except what is contained in the article from "Oxberry's Dramatic Biography." Let us suppose for a moment that this article roused Colonel Berkeley's indignation. In the first place, he would have to go to Bath, and beat the editor of the "Bath Herald." In the next place, he would have to go to the editor of Oxberry's publication, and beat him. I believe, death has taken poor Oxberry out of his power. But he had no business to come to Mr. Judge, who had merely copied these articles. Perhaps it would be well if he had not copied them; but his copying them only shows that he held an opinion in common with all mankind. He found these things ready made to his hand; he found Colonel Berkeley the topic of public conversation, and why, as an editor of a respectable newspaper, should he not copy them?

Now, Gentlemen, I come to the testimony of Davis. I do not blame Davis for one single word of his testimony, and I will tell you why. Upon his own showing, if he is to be believed, he must deserve a harsher epithet than I am willing to give him; for he tells you, that his friend Mr. Judge made a communication of a most base principle to him, and still he went on with him, on the same terms of intimacy and friendship. He never quarrelled with him on the subject. He kept up his intimacy with him, even after the day of the assault. Therefore, what sort of a fellow is this, who comes here to detail to you, that he converses with a man, whose baseness is monstrous, and yet, for three months after that he continues on terms of intimacy and friendship with the man who is guilty of making an assertion which deserves that character? If it be true that Mr. Judge said what Davis ascribes to him, it is most base; but I do not believe him. Good God! is it credible? Will any one believe, that a man who was sober—(and it is not pretended that Mr. Judge was intoxicated) would, in the face of the whole community, voluntarily make a declaration of his own turpitude—that he would say, before both ladies and gentlemen, he was such a scoundrel, that 200*l.* would induce him to say in his paper whatever was required of him? Do you believe it, I say? Is it credible? Do any of the learned counsel, on the other side, in their own souls, believe it? If he whispered it to the bosom of his friend, it might carry with it an air of probability, though it is false; but is it in human nature, for a man thus to expose his baseness and infamy in public, in the face of a public assembly? What! Did you ever know a man in existence, who would deliberately put a brand on his forehead, stamping him as a scoundrel, in the face of a public assembly?

Mr. WATSON. My friend should recollect, that this “large assembly,” as he calls it, was an assembly of only *three* people.

Mr. C. PHILLIPS. Gentlemen, these interruptions are irregular. My learned friend feels how “the shoe pinches” him. He is but young at the bar, and has not the discretion of his seniors, or he would keep himself quiet, when he knows they are in the wrong. There is my friend Mr. Taunton—my friend Mr. Ludlow—my friend Mr. Campbell, all reflecting seriously on this case, and they do not think it decent to interrupt me when I am going on with observations which are perfectly justifiable.

Mr. WATSON. My learned friends think it is best to set one Irishman against another.

Mr. C. PHILLIPS. Yes! Irishmen with a difference!—Gentlemen, I shall produce the strongest corroboration of my assertion. The words of this man were, that Mr. Judge said this in a public party. I refer to your recollection on the subject. He asserts it was said before ladies and gentlemen. My learned friend is wrong when he says it was said before three only. There were Davis and his wife, and Mr. and Mrs. Wells present, according to his account; and I

have lived long enough in England to know that that makes *four*.—I endure exhaustion enough without being thus interrupted, and my friend is the last person from whom I should have expected this. Now what has become of these four persons? Are they dead? Do you think it did not strike the sagacity of Mr. Prince, the solicitor for these defendants, that it would be of vital importance to confirm Davis in this damning proof against Mr. Judge? It must be an extraordinary case indeed, when an attorney would not go round and seek every confirmation that was possible for an important witness. Mr. Prince, who is an industrious and zealous solicitor, knew as well as any man, of what vital importance it would be to prop up the testimony of Davis. Who brought Davis here? Did he come here by magic? No, Mr. Prince brought him here. I say, it was of vital importance to corroborate him. Where is his own wife? She is alive and well. Where are Mr. and Mrs. Wells? Living in the town of Cheltenham.

We hear no account whatever of such a conversation from them; and not until after he has communicated this conversation, is he employed to paint ponies for the Colonel. He tells you he has not been invited *yet* to Berkeley Castle; and perhaps he has no chance of getting there. However, Mr. and Mrs. Wells are not here. Do you think that Mr. Prince, the solicitor for the defence, did not ask them whether they ever heard any such conversation? I see he shakes his head at it. Do you believe that when he examined Davis, he did not ask the wife whether she recollected such a strange fact? They need not even have gone out of Davis's own house for corroboration; for if this was true, Davis's wife could——

MR. PRINCE.—I never saw her. I never knew she was there.

MR. C. PHILLIPS.—Gentlemen, these interruptions are not decent.

MR. PRINCE.—Then why allude?

MR. C. PHILLIPS.—I am stating to you regularly a clear inference from the absence of evidence; and I say the interruption is not founded in truth. If he did not see the wife, it was his own fault. The husband must have told him that his wife was present at this conversation, if such a conversation really took place; and then it was Mr. Prince's business to see and examine her. From her absence, I contend that such a conversation never took place; and I am the more confirmed in the justice of that observation from the situation in which Davis stands. Taking even his own account, he is either a false witness or a treacherous friend. My friends on the other side may take their choice. He must have betrayed the confidence of friendship, and is therefore unworthy of credit; or he must come here to depose to that falsely, which he tells you upon his oath, he never mentioned until after the assault had been committed two or three days. But in corroboration of the falsehood of his evidence, do you remember one most particular part of it? After all the other statements he had made, I actually brought him to the house of Mr. Judge. He

acknowledged having been in that house immediately after the assault. Do you remember his manner? (Because I knew that he had been there—the servant and Miss Morris had proved the horrible state of the floor and the wall.) I asked him, “Did you see the state of the floor?”—“No, I did not observe it particularly.” I pressed him, and then he let out that the floor was covered with spots of blood; but not one word could I get out at first about it. I then went up stairs with him. “Did you observe his eye?” “No,” says he, “I did not examine it.” Do you think, Gentlemen, that an honourable or an honest man (when in the next breath he says that the eye was swollen, and closed, and in such a state that the man could not see out of it) would give such an equivocating answer as “I did not examine it”? It tallies with the purpose for which he comes here; it tallies with the purpose for which he was brought to Berkeley Castle; and it shows you, to demonstration, the reason why the other three witnesses were kept back.—I ought, I think, rather to say, they were kept back for the purpose of preventing their contradicting him. But I got this fact out of him; and I ask you to believe it, because it is corroborated by the evidence of those who saw the state of Mr. Judge. He says he saw the stripe of a bloody whip on the wall, which was pointed out to him—he saw Mr. Judge streaming with blood; and, therefore, he is a good witness *pro tanto*; for he corroborates the statement of the other witnesses, that Lord Sussex Lennox and Mr. Hammond were there, and assisted in this outrage. But the evidence of facts which Davis has given, is put up triumphantly as a justification for this assault. Now look you to the evidence, Gentlemen. Did that which Davis has stated (even supposing it to be true) provoke Colonel Berkeley? It did not. Davis has stated to you, that he never communicated the fact of this conversation to Colonel Berkeley, until after the assault was committed; and, therefore, when Colonel Berkeley and his associates committed this brutal and outrageous assault, the facts which this witness has audaciously sworn to, formed no ingredient of Colonel Berkeley’s supposed provocation. But, Gentlemen, if Davis has told the truth, what would have been his conduct when he saw the effects of the horse-whipping? Would he not say, “You deserved it. You see what you have brought upon yourself. It is no more than you might expect from the conduct you have adopted, and the course you have pursued.” But, no; he tells you distinctly, upon his oath, that he expressed his indignation at the conduct of Colonel Berkeley. Now conceding, for the sake of argument, for one moment, to my learned friend, Mr. Taunton, who has said,—(and it is an expression which I think he would wish to recal)—who has said, Mr. Judge was “well and properly served out.”—(Mr. Taunton shook his head.)—I have it down. It astounded me, Gentlemen, when I heard from a learned and respectable gentleman, able in the law, and himself an example of morality, and peace, and virtue, (in the face of this community, and in the presence of

many not so well educated as he is,) that "Mr. Judge was properly served out." When I heard it, I confess I felt a cold and curdling thrill run through my veins, and I shuddered at the awful utterance. Is it to be told to the populace of this place, that it was right for Col. Berkeley thus to treat a defenceless inhabitant of Cheltenham? Say you so? If it be so, I will tell you then what must be the consequence:—Every man will, as in Spain, carry a *stiletto* in his pocket, to stab the man who either provokes his vengeance or excites his wrath. But it is not law, Gentlemen; it is not morality; it is not virtue; and I trust in God your verdict will afford no corroboration to such an assertion this day. But I concede now, for the sake of argument, (and I shall soon conclude,) that Colonel Berkeley was provoked. I ask you then this question, and I put to you, as honourable men, even supposing that provocation had been given, does that mitigate such an atrocious outrage as this? I leave Col. Berkeley to stand or fall by that question; and if he did, I will then ask you, has there been any provocation of any kind proved on the part of Lord Sussex Lennox and Mr. Hammond? And who is the worst in the transaction? The man who strikes the blow, or he who, when the victim is calling for help and is streaming with his blood, holds him for the other to commence a fresh infliction? Colonel Berkeley stood there in cold blood—he enjoyed the brutality with which the unfortunate man was held; and he commenced a fresh attack. But I say, what excuse is there for the other two defendants? Were their names mentioned in a single newspaper? I say, no; and my friends must admit it. What business had Mr. Hammond to seize Mr. Judge by the hair of the head? what business had Lord Sussex Lennox to pull him down the stairs by the skirts of his coat, while the other commenced this fresh outrage? Did they receive any provocation that can mitigate your verdict? I ask you, upon your oaths, what excuse can you find for this daring and unfeeling outrage on the part of these two gentlemen? None; and therefore if I give Colonel Berkeley up—if it were right for him to trample on law, and if, in the civilized language of the learned counsel, it was right for him "to serve him out," and to inflict all the blows aimed at this poor man's face and eyes, in the house where two respectable ladies resided, whom he was in the habit of visiting, what can I admit in favour of Mr. Hammond and Lord Sussex Lennox? My learned friend, Mr. Taunton, says, they merely went as witnesses, to see what really did take place. What! as witnesses! Is Miss Morris perjured? Is Elizabeth Izzard perjured? Are you prepared to say that these two defendants were not guilty of a deliberate and atrocious outrage, as the confederates of Col. Berkeley? They abetted it; they did it without provocation, in cold blood, and they did it when the man was bending under the former infliction. What can Colonel Berkeley's provocation say in favour of them? Do you think these two gentlemen went merely as

witnesses? No; they went as Colonel Berkeley's aides-de-camp to assist in this atrocity, and to cheer him on its achievement.

Now, Gentlemen, I leave this case in your hands. It is a case for you. You will decide it, as I think you ought, first as between Colonel Berkeley and Mr. Judge; and then take into consideration the other two defendants; and with respect to provocation towards them, Mr. Judge is as innocent as an infant child. But I was near forgetting one important topic. "Oh!" says the learned counsel, "you were wrong in saying it was Mr. Judge's home. It was not his house, but it was Mrs. Morris's." Did you ever hear such an unavailing quibble in your life? Was it not the house of Mr. Judge? Was it not his home for every purpose? And is it because he is not the inheritor of a castle, that Colonel Berkeley's counsel is to sneer at him, and attribute to him no home in the world? It was his home for every purpose of protection; and whether Mrs. Morris was the landlady, or he was the proprietor of it, it is of very little consequence.

Gentlemen, I leave the case in your hands. I leave it in the consciences of Gentlemen who have honour and feeling. If they think they would be provoked to commit so barbarous an outrage by the paragraphs that have appeared, let them acquit Colonel Berkeley; but then let them say, whether they can acquit the other two defendants, who held the bleeding victim? If you say you can, recollect it is your verdict, and not mine.

I have done my duty, and it is now the time for you to do yours.

THE CHARGE.

Mr. Justice BURROUGH.

Gentlemen of the Jury,—This is an action brought by Mr. Judge against the three defendants whose names you have heard, for an assault. I shall presently go through the evidence. You have heard great efforts made on the part of the plaintiff, and great efforts on the part of the defendants. From the evidence, you will find where the truth of the case lies; and that evidence will be the foundation for your verdict. It is an action brought by Mr. Judge against three persons for an assault. Now, in a case of assault, if you find all three guilty, as I presume you will, your verdict must be joint. You cannot find separate damages. Supposing, therefore, that you give damages, which I presume you will, it must be against all three. Therefore, you must take the case, as a joint case, against three persons. I will state to you now the evidence. We begin first with Mary Curtis. [*Here his Lordship read over the evidence of Mary Curtis, and went on to that of Elizabeth Izzard; in the middle of which he made these observa-*

tions.] Now, I think Colonel Berkeley would have been wise to go down to Mr. Judge's office, when he was asked, to hear what he had to say. But, however, he did not choose to do so. From that time we do not know what passed inside the room, except from the noise that was heard within, and the subsequent appearances; so that there could not have been much conversation. To show that the others were aiding and abetting the assault in the room, the witness states she heard them say, "Give it him! give it him! give it the rascal; it is what he deserves;" and from the witnesses not being able to get in, one of these people must have fastened the door, of course. [*His Lordship proceeded reading the evidence.*] One of the persons inside then said, "Let him out now, he has had enough;" and I hoped all was over now. However, they pursued their attack, and Lord Sussex Lennox pulled him down stairs by the skirts of his coat, and a fresh assault was made. I think they might have let him off then, and not have pulled him down stairs. [*After his Lordship had read over the evidence of Miss Morris, he proceeded thus.*] Now this shows clearly, that all three of the defendants were concerned in the assault. When you come to give your verdict, therefore, you must be under the necessity of giving joint damages, because you cannot separate them. With respect to the fact of the assault being committed by all three, it is impossible for you to entertain a doubt. It is clear that all three came to the house of this man. While they are in the room with him, the witnesses hear one of them striking him, and the others making use of observations, "Give it him! give it him! he deserves it." After he came out, one of them seized and held him; another pulled off his wig, and the third kept striking him; so that your verdict must be against all three. Then the surgeons are called, and I need not go through their testimony. It is enough to say, that they prove very severe injury was done to this man; he was considerably hurt, and, no doubt, a very severe assault was committed upon him by these three persons. Mr. Ware is then called, and he is asked as to the probability of the injury to the eye being lasting. He was asked about its getting well again, and he says it will be a long time first; but, however, injuries were done to this man on various parts of his body by being thus assaulted; and when you come to find your verdict, you will consider what damages ought to be given. You find there are three of them coming together, and I think in a very unmanly and unbecoming way, they attack one man whom they had got alone in a room. I cannot say it shows much courage, however tall or strong he might be, for these three men to use him in the way that they did. This is all the evidence, Gentlemen, for the plaintiff, except the evidence of the saddler, who says, that on the 14th of March, two gentlemen came to his shop and looked at some horsewhips, telling him to put two of the heaviest aside, and saying they would come back and purchase one of them, if they could not find a heavier elsewhere. I do not think that ma-

terially alters the case with respect to the whip that is given in evidence. I do not think it is clear that those two gentlemen were two of the three who committed the assault.

Now, on the part of the plaintiff, there is certainly a very severe assault proved. You see how the case stands on his part. Undoubtedly, any matter of previous provocation which could work upon the feelings of the defendants, one in particular, ought to be taken into consideration.

It is, however, observed truly, that whatever Colonel Berkeley had to provoke him, the other two had nothing to do with it. Now, as far as Colonel Berkeley was concerned, I should say, I can hardly conceive a case of stronger irritation than existed in the present case; but when I look at the facts, the other two had nothing to do with it; and how they came to proceed in such an unmanly way as has been proved, is to me a matter of astonishment. As to Colonel Berkeley, it appears to me, he had the strongest cause of irritation; but no irritation would justify you in finding a verdict for the defendants. You must find for the plaintiff, as undoubtedly an assault has been committed. No words uttered---no letters that were ever published, will justify an assault.

Now, on the part of the defendants, they have called Mr. Whitehead. He says he was dissatisfied with the conduct of this man, and he applied to him to desist from these attacks upon Colonel Berkeley. He seemed careless about it, and talked of his having given security for his conduct. There is nothing very material in this evidence, except that when Mr. Whitehead complains of his pursuing this course towards Colonel Berkeley, he tells you,—what? Why, that Colonel Berkeley was a fascinating man, and therefore his vices were more mischievous in the class of society in which he moved. Now, I do not hold it justifiable to attack a man's character in this way. You cannot justify it. The papers ought to be protected when they keep in the line of their duty, but if they go beyond it, it is not justifiable. What business has any printer with my private character? It is not to be done. They must take the consequences if they will do it. The way in which it is put here, is, "we have a right to say what we please." They have no right to do so. That is not the law of the land, nor any thing like the law of the land. They have no such right. I do not agree that editorial duties are paramount to all other duties. It is all nonsense. It is quite ridiculous talking of duties to perform. There is no duty about it; and if they will abuse people, they must take the consequences of it. (*His Lordship then proceeded with the evidence, commenting on it.*) It has been observed, that when Mr. Hughes came into the concern, he brought nothing with him, and when he went out he took 200l. with him. I see nothing in that; it was a good bargain for him. It was observed by Mr. Phillips, that this man had not told Colonel Berkeley what had passed between him and Judge before the horsewhipping; and there-

fore that Colonel Berkeley could not have that as a provocation; but what Hughes states shows the *quo animo* of Judge in this transaction. It shows the determined mind of Judge to proceed and go on, hand over head, in doing what he could to injure Colonel Berkeley. (*His Lordship then read over the evidence of Mr. Griffith, and made this remark.*) It would seem from this, that there is a combination between these printers to abuse one another; and what Mr. Griffith states, shows the perseverance of Judge in abusing Colonel Berkeley,—that he would go on, and nothing would stop him. Now the next witness called is Davis; and it is said that he is not worthy of belief. That is a matter for you entirely. (*His Lordship then proceeded with Davis's evidence, until he came to that part where Davis says, that Mr. Judge had said Colonel Berkeley ought to have sent him 200*l.* and then he would have written on his side.*) Now, if he did say that, nothing could be more base; because it shows that he abused Colonel Berkeley in order to get money. If he said that, he was guilty of a very base act indeed. He then mentioned that 300*l.* might have turned the thing in the London papers. Now this shows you what baseness exists with some of them, and what can be done for money. It is a very bad trait indeed, if it is true. (*His Lordship then concluded Davis's evidence.*) This is Davis's testimony; and I confess I did not see what Mr. Phillips remarked upon, namely, an inclination on his part to suppress the evidence, that he was present immediately after the assault, and saw the situation and condition both of Judge and the house.

This, Gentlemen, is the parole evidence. Now, as to going through these papers, I shall not do it. To say the best of them, they contain a series of paragraphs, from the 3d of January down to the 14th of March, abusing Colonel Berkeley. If you are anxious to see the particulars, you will take the papers in your hands, and look at them. It seems to me that the question on them amounts to this: Could they be the cause of so much irritation, as to incite Colonel Berkeley to commit the assault at the time he did? Now, that is a thing which I cannot measure. If I saw a regular series of abusive paragraphs in a newspaper reflecting on me, whether I should be inclined to beat a man, I cannot say; but here is a regular series of paragraphs, all abusive of Colonel Berkeley, and it is impossible for me to say what sort of effect that would produce on a man's mind, and whether or not he would proceed, as Colonel Berkeley has done, to resent the injury. It is impossible for me to tell. It is enough to see, that one of them is published on the day when the assault was committed; so that it is pretty manifest it was occasioned by these papers. If you look through them, you will find Colonel Berkeley is called a bastard; his mother is abused with respect to some unfortunate situation she was in; he is called a coward, and "the illegitimate Berkeley," and so on; and he is abused this way

as a bastard and a bad man, after a caution was given to Judge not to proceed in this way. However, this ought not to induce you not to give satisfaction by your verdict, in such damages as you think fair and proper, because Colonel Berkeley has acted all in the wrong. He had no right to take the cudgels into his own hands. Some allowance, however, must be made for human frailty; because it would be different if they had done the same thing coolly and deliberately. Here was enough, perhaps, to irritate Colonel Berkeley, but he was not justified in committing so violent an assault. There was enough, perhaps, to goad him to some sort of violence; and if he had only given him a stroke or two, or a gentle horsewhipping, I should not be disposed to think it a case for heavy damages. But that is not the manner in which it is done here.

These three, who are more than equal to this man, get him into a room, beat him there most violently, and very serious effects are produced. Then when he comes out of the room all three partake in renewing the attack. All this is wrong—very wrong. You are therefore to consider the whole of this case, and to give him such damages as you think all the circumstances warrant. Some damages he must have, and you see, whatever provocation Colonel Berkeley had, the others had none. Your verdict, however, must be joint. You cannot divide it. You will exercise your good sense upon the subject, and give a verdict for the plaintiff in such damages as you think the case requires, for, certainly, a very indecent and cruel assault.

Mr. CAMPBELL. I should wish, my Lord, that the Jury should have the papers handed to them.

The newspapers were accordingly handed to the Jury; and they retired. After an hour's deliberation, they returned a verdict for the plaintiff—Damages 500*l*.

ERRATUM.

Page 3, for *Richard Carr Hammond*, read *Robert Carr Hammond*.

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With an Appendix, containing a description of the Public Institutions, and Amusements of the Town.

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